

REVISED RULES OF COURT OF THE PHILIPPINES
SUPREME COURT
RULE 102

HABEAS CORPUS

Sec. 1. *To what habeas corpus extends.* - Except as otherwise expressly provided by law, the writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto.

Sec. 2. *Who may grant the writ.* - The writ of habeas corpus may be granted by the Supreme Court, or any member thereof, on any day and at any time, or by the Court of Appeals or any member thereof in the instances authorized by law, and if so granted it shall be enforceable anywhere in the Philippines, and may be made returnable before the court or any member thereof, or before the Court of First Instance, or any judge thereof for the hearing and decision on the merits. It may also be granted by a Court of First Instance, or a judge thereof, on any day and at any time, and returnable before himself, enforceable only within his judicial district.

Sec. 3. *Requisites of application therefor.* - Application for the writ shall be by petition signed and verified either by the party for whose relief it is intended, or by some person on his behalf, and shall set forth:

(a) That the person in whose behalf the application is made is imprisoned or restrained of his liberty;

(b) The officer or name of the person by whom he is so imprisoned or restrained; or, if both are unknown or uncertain, such officer or person may be described by an assumed appellation, and the person who is served with the writ shall be deemed the person intended;

(c) The place where he is so imprisoned or restrained, if known;

(d) A copy of the commitment or cause of detention of such person, if it can be procured without impairing the efficiency of the remedy; or, if the imprisonment or restraint is without any legal authority, such fact shall appear.

Sec. 4. *When writ not allowed or discharge authorized.* - If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order. Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment.

Sec. 5. *When the writ must be granted and issued.* - A court or judge authorized to grant the writ must, when a petition therefor is presented and it appears that the writ ought to issue, grant the same forthwith, and immediately thereupon the clerk of the court shall issue the writ under the seal of the court; or in case of emergency, the judge may issue the writ under his own hand, and may depute any officer or person to serve it.

Sec. 6. *To whom writ directed, and what to require.* - In case of imprisonment or restraint by an officer, the writ shall be directed to him, and shall command him to have the body of the person restrained of his liberty before the court or judge designated in the writ at the time and place therein specified. In case of imprisonment or restraint by a person not an officer, the writ shall be directed to an officer, and shall command him to take and have the body of the person restrained of his liberty before the court or judge designated in the writ at the time and place therein specified, and to summon the person by whom he is restrained then and there to appear before said court or judge to show the cause of the imprisonment or restraint.

Sec. 7. *How prisoner designated and writ served.* - The person to be produced should be designated in the writ by his name, if known, but if his name is not known he may be otherwise described or identified. The writ may be served in any province by the sheriff or other proper officer, or by a person deputed by the court or judge. Service of the writ shall be made by leaving the original with the person to whom it is directed and preserving a copy on which to make return of service. If that person cannot be found, or has not the prisoner in his custody, then the service shall be made on any other person having or exercising such custody.

Sec. 8. *How writ executed and returned.* - The officer to whom the writ is directed shall convey the person so imprisoned or restrained, and named in the writ, before the judge allowing the writ, or, in case of his absence or disability, before some other judge of the same court, on the day specified in the writ, unless, from sickness or infirmity of the person directed to be produced, such person cannot, without danger, be brought before the court or judge; and the officer shall make due return of the writ, together with the day and the cause of the caption and restraint of such person according to the command thereof.

Sec. 9. *Defect of form.* - No writ of habeas corpus can be disobeyed for defect of form, if it sufficiently appears therefrom in whose custody or under whose restraint the party imprisoned or restrained is held and the court or judge before whom he is to be brought.

Sec. 10. *Contents of return.* - When the person to be produced is imprisoned or restrained by an officer, the person who makes the return shall state therein, and in other cases the person in whose custody the prisoner is found shall state, in writing to the court or judge before whom the writ is returnable, plainly and unequivocally:

(a) Whether he has or has not the party in his custody or power, or under restraint;

(b) If he has the party in his custody or power, or under restraint, the authority and the true and whole cause thereof, set forth at large, with a copy of the writ, order, execution, or other process, if any, upon which the party is held;

(c) If the party is in his custody or power or is restrained by him, and is not produced, particularly the nature and gravity of the sickness or infirmity of such party by reason of which he cannot, without danger, be brought before the court or judge;

(d) If he has had the party in his custody or power, or under restraint, and has transferred such custody or restraint to another, particularly to whom, at what time, for what cause, and by what authority such transfer was made.

Sec. 11. Return to be signed and sworn to. - The return or statement shall be signed by the person who makes it; and shall also be sworn to by him if the prisoner is not produced, and in all other cases unless the return is made and signed by a sworn public officer in his official capacity.

Sec. 12. Hearing on return; Adjournments. - When the writ is returned before one judge, at a time when the court is in session, he may forthwith adjourn the case into the court, there to be heard and determined. The court or judge before whom the writ is returned or adjourned must immediately proceed to hear and examine the return, and such other matters as are properly submitted for consideration, unless for good cause shown the hearing is adjourned, in which event the court or judge shall make such order for the safekeeping of the person imprisoned or restrained as the nature of the case requires. If the person imprisoned or restrained is not produced because of his alleged sickness or infirmity, the court or judge must be satisfied that it is so grave that such person cannot be produced without danger, before proceeding to hear and dispose of the matter. On the hearing the court or judge shall disregard matters of form and technicalities in respect to any warrant or order of commitment of a court or officer authorized to commit by law.

Sec. 13. When the return evidence, and when only a plea. - If it appears that the prisoner is in custody under a warrant of commitment in pursuance of law, the return shall be considered prima facie evidence of the cause of restraint; but if he is restrained of his liberty by any alleged private authority, the return shall be considered only as a plea of the facts therein set forth, and the party claiming the custody must prove such facts.

Sec. 14. When person lawfully imprisoned recommitted, and when let to bail. - If it appears that the prisoner was lawfully committed, and is plainly and specifically charged in the warrant of commitment with an offense punishable by death, he shall not be released, discharged, or bailed. If he is lawfully imprisoned or restrained on a charge of having committed an offense not so punishable, he may be recommitted to imprisonment or admitted to bail in the discretion of the court or judge. If he be admitted to bail, he shall forthwith file a bond in such sum as the court or judge deems reasonable, considering the circumstances of the prisoner and the nature of the offense charged, conditioned for his appearance before the court where the offense is properly

cognizable to abide its order or judgment; and the court or judge shall certify the proceedings, together with the bond, forthwith to the proper court. If such bond is not so filed, the prisoner shall be recommitted to confinement.

Sec. 15. *When prisoner discharged if no appeal.* - When the court or judge has examined into the cause of caption and restraint of the prisoner, and is satisfied that he is unlawfully imprisoned or restrained, he shall forthwith order his discharge from confinement, but such discharge shall not be effective until a copy of the order has been served on the officer or person detaining the prisoner. If the officer or person detaining the prisoner does not desire to appeal, the prisoner shall be forthwith released.

Sec. 16. *Penalty for refusing to issue writ, or for disobeying the same.* - A clerk of a court who refuses to issue the writ after allowance thereof and demand therefor, or a person to whom a writ is directed, who neglects or refuses to obey or make return of the same according to the command thereof, or makes false return thereof, or who, upon demand made by or on behalf of the prisoner, refuses to deliver to the person demanding, within six (6) hours after the demand therefor, a true copy of the warrant or order of commitment, shall forfeit to the party aggrieved the sum of one thousand pesos, to be recovered in a proper action, and may also be punished by the court or judge as for contempt.

Sec. 17. *Person discharged not to be again imprisoned.* - A person who is set at liberty upon a writ of habeas corpus shall not be again imprisoned for the same offense unless by the lawful order or process of a court having jurisdiction of the cause or offense; and a person who knowingly, contrary to the provisions of this rule, recommit or imprisons, or causes to be committed or imprisoned, for the same offense, or pretended offense, any person so set at liberty, or knowingly aids or assists therein, shall forfeit to the party aggrieved the sum of one thousand pesos, to be recovered in a proper action, notwithstanding any colorable pretense or variation in the warrant of commitment, and may also be punished by the court or judge granting writ as for contempt.

Sec. 18. *When prisoner may be removed from one custody to another.* - A person committed to prison, or in custody of an officer, for any criminal matter, shall not be removed therefrom into the custody of another officer unless by legal process, or the prisoner be delivered to an inferior officer to carry to jail, or, by order of the proper court or judge, be removed from one place to another within the Philippines for trial, or in case of fire, epidemic, insurrection, or other necessity or public calamity; and a person who, after such commitment, makes, signs, or countersigns any order for such removal contrary to this section, shall forfeit to the party aggrieved the sum of one thousand pesos, to be recovered in a proper action.

Sec. 19. *Record of writ, fees and costs.* - The proceedings upon a writ of habeas corpus shall be recorded by the clerk of the court, and upon the final disposition of such proceedings the court or judge shall make such order as to costs as the case requires. The fees of officers and witnesses shall be included in the costs taxed, but no officer or person shall have the right to demand payment in advance of any fees to which he is entitled by virtue of the proceedings. When a person confined under color of

proceedings in a criminal case is discharged, the costs shall be taxed against the Republic of the Philippines, and paid out of its Treasury; when a person in custody by virtue or under color of proceedings in a civil case is discharged, the costs shall be taxed against him, or against the person who signed the application for the writ, or both, as the court shall direct.