



PHILJA Bulletin



July to September 2010

Volume XII, Issue No.47

Excellence in the Judiciary

From the Chancellor's Desk *Ben*

A very full and active quarter for PHILJA has been the period from July to September 2010. Starting with the 19th Orientation Seminar-Workshop for Newly Appointed Clerks of Court to the 20th Pre-Judicature Program, followed by 13 Special Focus Programs, we really had our hands full.

This last activity consisted of:

Seminar-Workshops on the Rule of Procedure for Small Claims Cases

- Region IV (2 batches)
- Region XI
- Region XII
- Region III (2 batches)

Ninth Multi-Sectoral Seminar-Workshop on Agrarian Justice for the Province of Camarines Sur

Knowledge Sharing on New Human Rights Issues: International Humanitarian Law, Anti-Torture Law and Human Security Act in relation to Extralegal Killings and Enforced Disappearances

Information Dissemination through a dialogue between the Barangay Officials and the Chief Justice with other Court Officials

- City of Iloilo
- City of Calbayog
- City of Ormoc
- City of Danao

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► **Seminar-Workshop on the Rule of Procedure for Small Claims Cases**

Development Partners: OCA; USAID; ABA-ROLI

Date: July 13, 2010

Venue: Traders Hotel, Pasay City

Participants: Batch 1- 118 judges and clerks of court of the MTCC, MTC, and MCTC of Region IV

Date: July 15, 2010

Venue: Traders Hotel, Pasay City

Participants: Batch 2- 136 judges and clerks of court of the MTCC, MTC, and MCTC Of Region IV

Date: August 3, 2010

Venue: Marco Polo Hotel, Davao City

Participants: 102 judges and clerks of court of the MTCC, MTC, and MCTC of Region XI

Date: August 5, 2010

Venue: Marco Polo Hotel, Davao City

Participants: 65 judges and clerks of court of the MTCC, MTC, and MCTC of Region XII

Date: September 14, 2010

Venue: Holiday Inn Clark, Pampanga

Participants: Batch 1- 100 judges and clerks of court of the MTCC, MTC, and MCTC of Region III

Date: September 16, 2010

Venue: Holiday Inn Clark, Pampanga

Participants: Batch 2- 105 judges and clerks of court of the MTCC, MTC, and MCTC of Region III

► **Basic Mediation Course**

Biliran, Samar Province, and Southern Leyte Mediation Programs

Date: July 20 to 23, 2010

Venue: Ritz Tower de Leyte, Tacloban City

Participants: 41 mediators

► **Refresher Course for Court-Annexed Mediators**

Tacloban Mediation Program

Date: July 21 to 22, 2010

Venue: Ritz Tower de Leyte, Tacloban City

Participants: 27 mediators

Cagayan de Oro Mediation Program

Date: August 11 to 12, 2010

Venue: Pearlmont Inn, Cagayan de Oro City

Participants: 34 mediators

La Union Mediation Program

Date: September 29 to 30, 2010

Venue: Hotel Ariana, La Union

Participant: 35 mediators

► **19th Orientation Seminar-Workshop for Newly Appointed Clerks of Court**

Date: July 27 to 30, 2010

Venue: Century Park Hotel, Manila

Participants: 55 newly appointed clerks of court, namely:

A. NEW APPOINTMENTS

REGIONAL TRIAL COURTS

NATIONAL CAPITAL JUDICIAL REGION

Atty. Enrico G. Bandilla

RTC Br. 215, Quezon City

Atty. Gladys G. Bautista

RTC Br. 111, Pasay City

Atty. Joan Abigail B. Berango

RTC Br. 214, Mandaluyong City

Atty. Christine Marie V. Buencamino

RTC Br. 63, Makati City

Atty. Jimmy U. Cardines

RTC Br. 221, Quezon City

Atty. Teresita U. Datoon

RTC Br. 87, Quezon City

Atty. Reah B. Guerra

RTC Br. 210, Mandaluyong City

Atty. Adonis A. Laure

RTC Br. 166, Pasig City

Ms. Karen C. Maramba-Firme

RTC Br. 211, Mandaluyong City

Atty. Maria Socorro R. Ramos

RTC Br. 208, Mandaluyong City

Atty. Ann Kathreene M. Santos

RTC Br. 89, Quezon City

Atty. Rachelle E. Uy

RTC Br. 205, Muntinlupa City

REGION I

Atty. Ruth B. Bawayan

RTC Br. 4, Baguio City

Atty. Wilbur R. Cajigal

RTC Br. 65, Laoag City

Atty. Hilda L. Esquejo

RTC Br. 23, Candon, Ilocos Sur

Atty. Christina P. Forayo-Balog-ang

RTC Br. 35, Bontoc, Mt. Province

Atty. Arturo Y. Yadao, Jr.

RTC Br. 24, Cabugao, Ilocos Sur

REGION II

Atty. Glenda A. Pazziuagan

RTC OCC, Tuguegarao City

REGION III

Atty. Elizabeth B. Antonio-Mede

RTC Br. 36, Gapan, Nueva Ecija

Atty. Maria Cristina C. Botigan-Santos

RTC Br. 12, Malolos City

Atty. Joselea Y. Floria
 RTC OCC, City of San Fernando, Pampanga
 Atty. Jenneth M. Gregorio
 RTC Br. 21, Malolos City
 Atty. Dinah F. Imperial
 RTC Br. 31, Guimba, Nueva Ecija
 Atty. Jesselyn J. Pugong
 RTC Br. 71, Iba, Zambales

REGION IV

Atty. Shari Christine SJ. Almario
 RTC Br. 28, Sta. Cruz, Laguna
 Atty. Edwin M. Go
 RTC OCC, Boac, Marinduque
 Atty. Gidor D. Manero
 RTC Br. 51, Puerto Princesa City, Palawan
 Atty. Dioanne B. Palao-Guarino
 RTC Br. 52, Puerto Princesa City, Palawan
 Atty. Jennefer F. Zara-Resurreccion
 RTC Br. 34, Calamba City, Laguna

REGION V

Atty. Martee L. Almoete-Fidel
 RTC Br. 49, Cataingan, Masbate
 Atty. Lino A. Gianan, Jr.
 RTC Br. 42, Virac, Catanduanes
 Atty. Dinah Z. Jamer
 RTC Br. 35, Iriga City

METROPOLITAN TRIAL COURTS**NATIONAL CAPITAL JUDICIAL REGION**

Ms. Maria Daisy B. Abesamis
 MeTC Br. 73, Pateros, Metro Manila
 Ms. Lea Rowena O. Damian
 MeTC Br. 42, Quezon City
 Atty. Melinda Cielo C. Mendoza
 MeTC OCC, Parañaque City

MUNICIPAL TRIAL COURTS IN CITIES**REGION I**

Mr. Noli V. Arde
 MTCC Candon City

REGION III

Mr. Lord Francis D. Musni
 MTCC Br. 2, City of San Fernando, Pampanga

REGION IV

Ms. Ana Tomasa D. Villena
 MTCC Br. 2, Antipolo City, Rizal

REGION V

Mr. Neil D. Eduarte
 MTCC Br. 1, Sorsogon City, Sorsogon
 Ms. Elsa B. Meneses
 MTCC OCC, Sorsogon City, Sorsogon

MUNICIPAL TRIAL COURTS**REGION I**

Ms. Cynthia P. Doria
 MTC Binmaley, Pangasinan

REGION II

Ms. Olivia C. Castillo
 MTC Alcala, Cagayan

REGION III

Ms. Janet Q. Mencias
 MTC San Felipe, Zambales
 Ms. Jenneth R. Padua
 MTC Obando, Bulacan

REGION IV

Ms. Cherry G. Catanyag
 MTC Victoria, Mindoro Oriental
 Mr. Eddie H. Saracanlao
 MTC Bacoar, Cavite
 Ms. Vina F. Wan
 MTC Torrijos, Marinduque

REGION V

Ms. Emily R. Alarte
 MTC Caramoan, Camarines Sur
 Ms. Eden P. Rosare
 MTC Labo, Camarines Norte

MUNICIPAL CIRCUIT TRIAL COURTS**REGION II**

Ms. Maria Ligaya U. Taberna
 2nd MCTC Flora, Apayao
 Ms. Alpha D. Ulep
 9th MCTC Cabanatuan-Luna, Isabela

REGION III

Ms. Cristina R. Roque-Deocariza
 5th MCTC Gerona-Ramos-Pura, Tarlac
 Mr. Fritz Gerald Q. Sindac
 2nd MCTC Ma. Aurora-Dipaculao, Aurora

REGION IV

Ms. Perlita V. Nangit
 6th MCTC Roxas-Cagayancillo-Palawan

REGION V

Mr. Damaso R. Favorito, Jr.
 8th MCTC San Jose-Presentacion, Camarines Sur

► **Ninth Multi-Sectoral Seminar-Workshop on Agrarian Justice for the Province of Camarines Sur**

Development Partners: AJFI; DAR; DOJ; PAO; IDEALS

Date: July 27 to 29, 2010

Venue: Villa Caceres Hotel, Naga City

Participants: 59 comprising selected judges of the RTC, MTCC, MTC, and MCTC, prosecutors, PAO lawyers, PNP officers, DAR provincial officers, and members of the civil society

► **Knowledge Sharing on New Human Rights Issues: International Humanitarian Law, Anti-Torture Law and Human Security Act in relation to Extralegal Killings and Enforced Disappearances**

Development Partner: EP-JUST

Date: July 29, 2010

Venue: Filipinas Heritage Library, Makati City

Participants: 49 representatives from the Judiciary, DOJ, PAO, CHR, Ombudsman, PNP, AFP, NBI, and IBP

► **Information Dissemination through a Dialogue between the Barangay Officials and the Chief Justice with other Court Officials**

Iloilo City

Date: August 4, 2010

Venue: Division Social and Cultural Hall, Iloilo City

Participants: 233 barangay officials, local government officials, and law students

Calbayog City

Date: August 31, 2010

Venue: Calbayog City Sports, Calbayog City

Participants: 242 barangay and local government officials

Ormoc City

Date: September 2, 2010

Venue: Multi-Purpose Hall, Ormoc City

Participants: 200 barangay and local government officials

Danao City

Date: September 7, 2010

Venue: Danao City Civic Center, Cebu

Participants: 124 barangay officials

► **Multi-Sectoral Capacity-Building on Environmental Laws and the Rules of Procedure for Environmental Cases**

Development Partners: PMO; UNDP; DENR

Date: August 11 to 13, 2010

Venue: Waterfront Hotel, Lapu-Lapu City

Participants: Visayas Batch - 85 comprising judges and clerks of court of the RTC, MTCC, and MCTC, prosecutors, PAO lawyers, PNP and PCG officers, DENR Regional officers, and representatives of NGOs

Development Partners: PMO; UNDP; DENR; DILG

Date: September 15 to 17, 2010

Venue: Pryce Plaza Hotel, Cagayan de Oro City

Participants: CARAGA Batch- 106 comprising judges and clerks of court of the RTC, MTCC, MTC, and MCTC, prosecutors, PAO lawyers, PNP and PCG officers, BFAR officers, NCIP officers, DENR Regional officers, and representatives of NGOs

► **20th Pre-Judicature Program**

Date: August 16 to 27, 2010

Venue: Ilocos Norte Hotel and Convention Center, Ilocos Norte

Participants: 17 lawyers, namely:

1. Atty. Ana Zita B. Abuda
2. Atty. Richardson G. Agbisit
3. Atty. Richard B. Balucio
4. Atty. Charisa Naida S. Castillo-Martin
5. Atty. Nestor T. Corpuz
6. Atty. Da Vinci M. Crisostomo
7. Atty. Ma. Varena P. Kasilag-Villanueva
8. Atty. Vicentito M. Lazo
9. Atty. John Paul A. Martin
10. Atty. Grace Carmela Baltazar Montero
11. Atty. Mariano R. Nalupta, Jr.
12. Atty. Myra Sheila M. Nalupta-Barba
13. Atty. Nicero A. Napigkit
14. Atty. Dennis V. Niño
15. Atty. Sandro Marie N. Obra
16. Atty. Maria Lourdes Esperanza D. Soriano
17. Atty. Elpidio G. Soriano III

► **Personal Security Training for Judges**

Development Partners: OCA; NBI

Date: August 17 to 19, 2010

Venue: Waterfront Hotel, Cebu City

Participants: 50 selected RTC, MTCC, MTC, and MCTC judges of Regions VI to VIII

Date: September 14 to 16, 2010

Venue: Pryce Plaza Hotel, Cagayan de Oro City

Participants: 48 selected RTC, MTCC, MTC, and MCTC judges of Regions IX to XII



► **Seminar-Workshop on Dangerous Drugs Law for Judges, Prosecutors and Law Enforcers of the National Capital Judicial Region (NCJR)**

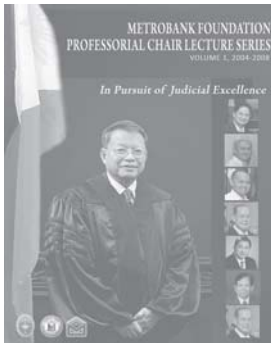
Development Partner: DDB

Date: August 17 to 19, 2010

Venue: Tagaytay Country Hotel, Tagaytay City

Participants: 102

► **Launching of the Publication of the Metrobank Foundation Professorial Lecture Series**



Development Partner: Metrobank Foundation, Inc.
Date: August 20, 2010
Venue: Makati City Hall, Makati City

► **Competency Enhancement Training for Judges and Court Personnel Handling Child Abuse and Trafficking Cases**

Development Partners: CPU-Net; UNICEF
Date: August 24 to 26, 2010
Venue: College of Saint Benilde Hotel, Manila
Participants: 59 comprising RTC judges, clerks of courts, interpreters, court social workers, prosecutors, PAO lawyers, and representatives from development partners

► **Competency Enhancement Training (CET) Program Review**

Development Partners: CPU-Net; UNICEF
Date: August 26 to 27, 2010
Venue: College of Saint Benilde, Manila
Participants: 36 comprising CET lecturers, facilitators, staff and development partners

► **Seminar-Workshop on the Development of a Sextortion Toolkit**

Development Partners: PWJA; IAWJ; Government of Netherlands
Date: September 9 to 10, 2010
Venue: A. Venue Hotel, Makati City
Participants: 43 comprising selected RTC and MTC judges, representatives from different government agencies, and representatives from various NGOs

► **Seminar-Workshop on CEDAW and Gender Sensitivity for Court of Appeals Lawyers**

Development Partners: CA-GAD; Focal Point; AHRC
Date: September 9 to 10, 2010
Venue: Century Park Hotel, Manila
Participants: 44 CA lawyers stationed in Manila

► **12th Convention-Seminar of the Metropolitan and City Judges Association of the Philippines**

Theme: Strengthening the Five Pillars of the Criminal Justice System Towards an Enhanced Dispensation of Justice
Date: September 21 to 24, 2010
Venue: Manila Hotel, Manila
Participants: 153 judges

► **Seminar-Workshop on Comparative Analysis between the Family Code and the Muslim Personal Laws**

Date: September 27 to 29, 2010
Venue: The Gateway Hotel, Surigao City
Participants: 46 comprising RTC, MTCC, MTC, and MCTC judges of Regions X and XI, NBI officers, PNP officers, PAO lawyers, PCG officers, and IBP lawyers

PHILJA BULLETIN

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The **PHILJA Bulletin** is published quarterly by the Research, Publications and Linkages Office of the Philippine Judicial Academy, with office at the 3rd Floor of the Supreme Court Centennial Building, Padre Faura St. cor. Taft Ave., Manila. Tel: 552-9524; Fax: 552-9621; E-mail: research_philja@yahoo.com; philja@sc.judiciary.gov.ph Website: <http://philja.judiciary.gov.ph>

► JUDICIAL MOVES



Hon. Maria Lourdes P. Aranal-Sereno
Associate Justice, Supreme Court
appointed on August 16, 2010



Atty. Enriqueta Esguerra-Vidal
Clerk of Court, Supreme Court
appointed on September 24, 2010



Hon. Edilberto G. Sandoval
Presiding Justice, Sandiganbayan
appointed on September 17, 2010

From the Chancellor's Desk

(Continued from page 1)

Multi-Sectoral Capacity-Building on Environmental Laws and The Rules of Procedure for Environmental Cases

- Visayas Region
- CARAGA Region

Personal Security Training for Judges

- Regions VI-VIII
- Regions IX-XII

Seminar-Workshop on Dangerous Drugs Law for Judges, Prosecutors and Law Enforcers of the National Capital Judicial Region (NCJR)

Competency Enhancement Training for Judges and Court Personnel Handling Child Abuse and Trafficking Cases

Competency Enhancement Training (CET) Program Review

Launching of the Publication of the Metrobank Foundation Professorial Lecture Series

Seminar-Workshop on the Development of a Sextortion Toolkit

Seminar-Workshop on CEDAW, Gender Sensitivity and the Courts for the Court of Appeals

Seminar-Workshop on Comparative Analysis between the Family Code and the Muslim Personal Laws.

Furthermore, we took part in the 12th Convention-Seminar of the Metropolitan and City Judges Association of the Philippines (MeTCJAP).

On Mediation, PHILJA, through the Philippine Mediation Center Office, conducted Basic Mediation Courses for Biliran, Samar Province and Southern Leyte.

Refresher Courses for Court-Annexed Mediators were also held in Tacloban, Cagayan de Oro and La Union.

The Supreme Court, meanwhile, has come up with new rulings and doctrines which are covered in this issue, together with Supreme Court resolutions, circulars, orders and Circulars of the Office of the Court Administrator.

As we go into the year's end, the momentum of these activities provide a pace that augurs well for a productive and fulfilling 2010.

Congratulations to all.

ADOLFO S. AZCUNA
Chancellor

New Rulings

ADMINISTRATIVE LAW

Mass actions of government workers prohibited if coupled with intent of effecting work stoppage or service disruption.

As defined in Section 5 of CSC Resolution No. 02-1316 which serves to regulate the political rights of those in the government service, the concerted activity or mass action proscribed must be coupled with the "intent of effecting work stoppage or service disruption in order to realize their demands of force concession." Wearing similarly colored shirts, attending a public hearing at the GSIS-IU office, bringing with them recording gadgets, clenching their fists, some even badmouthing the guards and PGM Garcia, are acts not constitutive of an (i) intent to effect work stoppage or service disruption and (ii) for the purpose of realizing their demands of force concession.

Precisely, the limitations or qualifications found in Section 5 of CSC Resolution No. 02-1316 are there to temper and focus the application of such prohibition. Not all collective activity or mass undertaking of government employees is prohibited. Otherwise, we would be totally depriving our brothers and sisters in the government service of their constitutional right to freedom of expression.

Government workers, whatever their ranks, have as much right as any person in the land to voice out their protests against what they believe to be a violation of their rights and interests. Civil Service does not deprive them of their freedom of expression. It would be unfair to hold that by joining the government service, the members thereof have renounced or waived this basic liberty. This freedom can be reasonably regulated only but can never be taken away.

(Mendoza, J., Government Service Insurance System (GSIS) and Winston F. Garcia, in his capacity as President and General Manager of the GSIS v. Dinnah Villaviza, Elizabeth Duque, Adronico A. Echavez, Rodel Rubio, Rowena Therese B. Gracia, Pilar Layco, and Antonio Jose Legarda, G.R. No. 180291, July 27, 2010.)

CIVIL LAW

Rules of the Air applicable to all aircrafts registered in the Philippines.

The Rules of the Air of the Air Transportation Office apply to all aircrafts registered in the Philippines. The Boeing 737 and the Twin Otter in this case were both registered in the Philippines. Both are

thus subject to the Rules of the Air. In case of danger of collision between two aircrafts, the Rules of the Air state:

2.2.4.7 *Surface Movement of Aircraft.* In case of danger of collision between **two aircrafts taxiing** on the maneuvering area of an aerodrome, the following shall apply:

- a) When two aircrafts are approaching head on, or approximately so, each shall stop or where practicable, alter its course to the right so as to keep well clear.
- b) **When two aircrafts are on a converging course, the one which has the other on its right shall give way.** (*Emphasis supplied*)

In this case, however, the Boeing 737 and the Twin Otter were not both taxiing at the time of the collision. Only the Twin Otter was taxiing. The Boeing 737 was already on take-off roll. The Rules of the Air provide:

2.2.4.6 *Taking Off.* An aircraft taxiing on the maneuvering area of an aerodrome shall **give way to aircraft taking off or about to take off.** (*Emphasis supplied*)

Therefore, PAL's aircraft had the right of way at the time of collision, not simply because it was on the right side of PAC's aircraft, but more significantly, because it was "**taking off or about to take off.**"

For disregarding PAL's right of way, PAC's pilots were grossly negligent. Gross negligence is one that is characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected.

We find it hard to believe that PAC's pilots did not see the Boeing 737 when they looked to the left and to the right before approaching the runway. It was a clear summer evening in April and the Boeing 737, only 200 meters away, had its inboard lights, outboard lights, taxi lights, and logo lights on before and during the actual take-off roll. The only plausible explanation why PAC's pilots did not see the Boeing 737 was that they did not really look to the left and to the right before crossing the active runway.

Records show that PAC's pilots, while still 350 meters away, prematurely requested clearance to cross the active runway. ATO points out that PAC's pilots should have made a full stop at the holding point to ask for updated clearance right before crossing the

(Continued on next page)

New Rulings

ADMINISTRATIVE LAW (continued)

active runway. Had PAC's pilots done so, ATO would by then be in a position to determine if there was an aircraft on a take-off roll at the runway. The collision would not have happened.

(Carpio, J., *Government Service Insurance System v. Pacific Airways Corporation, Ely Bungabong, and Michael Galvez*, G.R. No. 170414; *Philippine Airlines, Inc., Rogelio Casiño, and Ruel Isaac v. Pacific Airways Corporation, Ely Bungabong, and Michael Galvez*, G.R. No. 170418; *Air Transportation Office, Danilo Alzola, and Ernesto Lim v. Pacific Airways Corporation, Ely Bungabong, and Michael Galvez, Government Service Insurance System (Intervenor)*, G.R. No. 170460, August 25, 2010.)

AGRARIAN LAW**Farmer beneficiaries can transfer title provided they completed amortization payment to Land Bank.**

Presidential Decree No. 27 explicitly prohibits any form of transfer of the land granted under it except to the government or by hereditary succession to the successors of the farmer beneficiary.

Upon the enactment of Executive Order No. 228 in 1987, however, the restriction ceased to be absolute. Land reform beneficiaries were allowed to transfer ownership of their lands provided that their amortizations with the Land Bank of the Philippines (Land Bank) have been paid in full. In this case, the Atienzas' title categorically states that they have fully complied with the requirements for the final grant of title under PD No. 27. This means that they have completed payment of their amortization with Land Bank. Consequently, they could already legally transfer their title to another.

(Abad, J., *Heirs of Paulino Atienza, namely, Rufina L. Atienza, Anicia A. Ignacio, Roberto Atienza, Maura A. Domingo, Ambrocio Atienza, Maxima Atienza, Luisito Atienza, Celestina A. Gonzales, Regalado Atienza and Melita A. Dela Cruz v. Domingo P. Espidol*, G.R. No. 180665, August 11, 2010.)

REMEDIAL LAW**Pollution defined; Pollution Adjudication Board has primary jurisdiction over pollution cases.**

Section 2(a) of PD No. 984 defines "pollution" as "any alteration of the physical, chemical and biological properties of any water x x x as will or is likely to create or render such water x x x harmful,

New Rulings

REMEDIAL LAW (continued)

detrimental or injurious to public health, safety or welfare or which will **adversely affect their utilization** for domestic, commercial, industrial, agricultural, recreational or other legitimate purposes."

It is clear from this definition that the stress to marine life claimed by Jalos, *et al* is caused by some kind of pollution emanating from Shell's natural gas pipeline. The pipeline, they said, "greatly affected" or altered the natural habitat of fish and affected the coastal waters' natural function as fishing grounds. Inevitably, in resolving Jalos, *et al*'s claim for damages, the proper tribunal must determine whether or not the operation of the pipeline adversely altered the coastal waters' properties and negatively affected its life sustaining function. The power and expertise needed to determine such issue lies with the PAB.

Executive Order No. 192 (1987) transferred to the PAB the powers and functions of the National Pollution and Control Commission provided in RA No. 3931, as amended by PD No. 984. These empowered the PAB to "[d]etermine the location, magnitude, extent, severity, **causes and effects**" of water pollution. Among its functions is to "[s]erve as arbitrator for the determination of reparation, or restitution of the damages and losses resulting from pollution." In this regard, the PAB has the power to conduct hearings, impose penalties for violation of PD No. 984, and issue writs of execution to enforce its orders and decisions. The PAB's final decisions may be reviewed by the CA under Rule 43 of the Rules of Court.

Jalos, *et al.* had, therefore, an administrative recourse before filing their complaint with the regular courts. The laws creating the PAB and vesting it with powers are wise. The definition of the term "pollution" itself connotes the need for specialized knowledge and skills, technical and scientific, in determining the presence, the cause, and the effects of pollution. These knowledge and skills are not within the competence of ordinary courts. Consequently, resort must first be made to the PAB, which is the agency possessed of expertise in determining pollution-related matters.

(Abad, J., *Shell Philippines Exploration B.V., represented by its Managing Director, Jeremy Cliff v. Efren Jalos, Joven Campang, et al.*, G.R. No. 179918, September 8, 2010.)

Doctrinal Reminders

CIVIL LAW

Alluvial deposits do not form part of the public domain.

Article 84 of the **Spanish Law of Waters of 1866** specifically covers ownership over alluvial deposits along the banks of a creek. It reads:

ART. 84. Accretions deposited gradually upon lands contiguous to creeks, streams, rivers, and lakes, by accessions or sediments from the waters thereof, belong to the owners of such lands.

Interestingly, Article 457 of the Civil Code states:

ART. 457. To the owners of lands adjoining the banks of rivers belong the accretion which they gradually receive from the effects of the current of the waters.

It is therefore explicit from the foregoing provisions that alluvial deposits along the banks of a creek do not form part of the public domain as the alluvial property automatically belongs to the owner of the estate to which it may have been added. The only restriction provided for by law is that the owner of the adjoining property must register the same under the Torrens system; otherwise, the alluvial property may be subject to acquisition through prescription by third persons.

In contrast, properties of public dominion cannot be acquired by prescription. No matter how long the possession of the properties has been, there can be no prescription against the State regarding property of public domain. Even a city or municipality cannot acquire them by prescription as against the State.

Hence, while it is true that a creek is a property of public dominion, the land which is formed by the gradual and imperceptible accumulation of sediments along its banks does not form part of the public domain by clear provision of law.

(Villarama, Jr, J., Office of the City Mayor of Parañaque City, Office of the City Administrator of Parañaque City, Office of the City Engineer of Parañaque City, Office of the City Planning and Development Coordinator, Office of the Barangay Captain and Sangguniang Pambarangay of Barangay Vitalez, Parañaque City, Teresita A. Gatchalian, Enrico R. Esguerra, Ernesto T. Pracale, Jr., Manuel M. Argote, Conrado M. Canlas, Josephine S. Dauigoy, Allan L. Gonzales, Ester C. Asehan, Manuel A. Fuentes, and Myrna P. Rosales *v.* Mario D. Ebio and his children/heirs namely, Arturo V. Ebio, Eduardo V. Ebio, Renato V. Ebio, Lourdes E. Magtangob, Mila V. Ebio, and Arnel V. Ebio, G.R. No. 178411, June 23, 2010.)

Family home; constitution of a family home; exemption from execution.

The general rule is that the family home is a real right which is gratuitous, inalienable and free from attachment, constituted over the dwelling place and the land on which it is situated, which confers upon a particular family the right to enjoy such properties, which must remain with the person constituting it and his heirs. It cannot be seized by creditors except in certain special cases.

Kelley, Jr. v. Planters Products, Inc. lays down the rules relative to the levy on execution over the family home, *viz:*

No doubt, a family home is generally exempt from execution provided it was duly constituted as such. **There must be proof that the alleged family home was constituted jointly by the husband and wife or by an unmarried head of a family. It must be the house where they and their family actually reside and the lot on which it is situated. The family home must be part of the properties of the absolute community or the conjugal partnership, or of the exclusive properties of either spouse with the latter's consent, or on the property of the unmarried head of the family. The actual value of the family home shall not exceed, at the time of its constitution, the amount of P300,000 in urban areas and P200,000 in rural areas.**

Under the Family Code, there is no need to constitute the family home judicially or extrajudicially. All family homes constructed after the effectivity of the Family Code (August 3, 1988) are constituted as such by operation of law. All existing family residences as of August 3, 1988 are considered family homes and are **prospectively** entitled to the benefits accorded to a family home under the Family Code.

The exemption is effective from the time of the constitution of the family home as such and lasts as long as any of its beneficiaries actually resides therein. Moreover, the debts for which the family home is made answerable must have been incurred after August 3, 1988. **Otherwise (that is, if it was incurred prior to August 3, 1988), the alleged family home must be shown to have been constituted either judicially or extrajudicially pursuant to the Civil Code.** (*Emphasis supplied*)

For the family home to be exempt from execution, distinction must be made as to what law applies based on **when** it was constituted and what requirements must be complied with by the judgment debtor or his successors claiming such privilege. Hence, two sets of rules are applicable.

If the family home was constructed *before* the effectivity of the Family Code or before August 3, 1988,

(Continued on next page)

Doctrinal Reminders
 CIVIL LAW (continued)

then it must have been constituted either judicially or extrajudicially as provided under Articles 225, 229-231 and 233 of the Civil Code. Judicial constitution of the family home requires the filing of a verified petition before the courts and the registration of the court's order with the Registry of Deeds of the area where the property is located. Meanwhile, extrajudicial constitution is governed by Articles 240 to 242 of the Civil Code and involves the execution of a public instrument which must also be registered with the Registry of Property. Failure to comply with either one of these two modes of constitution will bar a judgment debtor from availing of the privilege.

On the other hand, for family homes constructed after the effectivity of the Family Code on August 3, 1988, there is **no need to constitute extrajudicially or judicially**, and the exemption is effective from the time it was constituted and lasts as long as any of its beneficiaries under Article 154 actually resides therein. Moreover, the family home should belong to the absolute community or conjugal partnership, or if exclusively by one spouse, its constitution must have been with consent of the other, and its value must not exceed certain amounts depending upon the area where it is located. Further, the debts incurred for which the exemption does not apply as provided under Article 155 for which the family home is made answerable must have been incurred after August 3, 1988.

And in both cases, whether under the Civil Code or the Family Code, it is not sufficient that the person claiming exemption merely alleges that such property is a family home. This claim for exemption must be set up and proved.

(Carpio Morales, J., Juanita Trinidad Ramos, Alma Ramos Worak, Manuel T. Ramos, Josefina R. Rothman, Sonia R. Post, Elvira P. Munar, and Ofelia R. Lim v. Danilo Pangilinan, Rodolfo Sumang, Lucrecio Bautista and Rolando Antenor, G.R. No. 185920, July 20, 2010.)

Prescription as a mode of acquiring ownership; acquisitive prescription may be ordinary or extraordinary.

Prescription, as a mode of acquiring ownership and other real rights over immovable property, is concerned with lapse of time in the manner and under conditions laid down by law, namely, that the possession should be in the concept of an owner, public, peaceful, uninterrupted, and adverse. The party who asserts ownership by adverse possession must prove the presence of the essential elements of acquisitive prescription.

Acquisitive prescription of real rights may be ordinary or extraordinary. Ordinary acquisitive prescription requires possession in good faith and with just title for 10 years. In extraordinary prescription, ownership and other real rights over immovable property are acquired through uninterrupted adverse possession for 30 years without need of title or of good faith.

Possession "in good faith" consists in the reasonable belief that the person from whom the thing is received has been the owner thereof, and could transmit his ownership. There is "just title" when the adverse claimant came into possession of the property through one of the modes recognized by law for the acquisition of ownership or other real rights, but the grantor was not the owner or could not transmit any right.

(Brion, J., Rosario P. Tan v. Artemio G. Ramirez, Moises G. Ramirez, Rodrigo G. Ramirez, Domingo G. Ramirez, and Modesta Ramirez Andrade, G.R. No. 158929, August 3, 2010.)

Simulated contracts; absolutely simulated contracts are void while relatively simulated contracts are valid.

In the interpretation of contracts, the intention of the parties is accorded primordial consideration; such intention is determined from the express terms of their agreement, as well as their contemporaneous and subsequent acts. When the parties do not intend to be bound at all, the contract is absolutely simulated; if the parties conceal their true agreement, then the contract is relatively simulated. An absolutely simulated contract is void, and the parties may recover from each other what they may have given under the simulated contract, while a relatively simulated contract is valid and enforceable as the parties' real agreement binds them. Characteristic of simulation is that the apparent contract is not really desired or intended to produce legal effects, or in any way, alter the juridical situation of the parties.

(Brion, J., Anselmo Taghoy and the late Vicenta T. Apa, substituted by her heirs, namely, Manuel T. Apa, Nicasio T. Apa, Delfin T. Apa, Alma A. Jacalan, Arlene A. Sumalinog, Aida A. Arong, Elena A. Cosep, Alfredo T. Apa, Isabelo T. Apa, Jr., Isabelo T. Apa III, Sherwin T. Apa and Florito T. Apa. v. Sps. Felixberto Tigol, Jr. and Rosita Tigol, G.R. No. 159665, August 3, 2010.)

COMMERCIAL LAW

Check; definition of; crossed checks; effects of crossing a check.

A check is a bill of exchange drawn on a bank payable on demand. There are different kinds of checks. In this case, crossed checks are the subject of the controversy. A crossed check is one where two parallel lines are drawn across its face or across the corner thereof. It may be crossed generally or specially.

A check is crossed specially when the name of a particular banker or a company is written between the parallel lines drawn. It is crossed generally when only the words "and company" are written or nothing is written at all between the parallel lines, as in this case. It may be issued so that presentment can be made only by a bank.

In order to preserve the credit worthiness of checks, jurisprudence has pronounced that crossing of a check has the following effects: (a) the check may not be encashed but only deposited in the bank; (b) the check may be negotiated only once – to one who has an account with a bank; and (c) the act of crossing the check serves as warning to the holder that the check has been issued for a definite purpose so that he must inquire if he has received the check pursuant to that purpose, otherwise, he is not a holder in due course.

The Court has taken judicial cognizance of the practice that a check with two parallel lines in the upper left hand corner means that it could only be deposited and not converted into cash. The effect of crossing a check, thus, relates to the mode of payment, meaning that the drawer had intended the check for deposit only by the rightful person, *i.e.*, the payee named therein. The crossing of a check is a warning that the check should be deposited only in the account of the payee. Thus, it is the duty of the collecting bank to ascertain that the check be deposited to the payee's account only.

(Nachura, J., *Vicente Go. v. Metropolitan Bank and Trust Co.*, G.R. No. 168842, August 11, 2010.)

Local water districts are government owned and controlled corporations; not private corporations.

Our ruling in *Feliciano* squarely addressed the difference between a private corporation created under general law and a GOCC created by a special charter, and we need only to quote what *Feliciano* said:

We begin by explaining the general framework under the fundamental law. The Constitution recognizes two classes of corporations. The first refers to private corporations created under a general law. The second refers to government-owned or controlled corporations created by

special charters. Section 16, Article XII of the Constitution provides:

SEC. 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.

The Constitution emphatically prohibits the creation of private corporations except by a general law applicable to all citizens. The purpose of this constitutional provision is to ban private corporations created by special charters, which historically gave certain individuals, families or groups special privileges denied to other citizens.

In short, Congress cannot enact a law creating a private corporation with a special charter. Such legislation would be unconstitutional. Private corporations may exist only under a general law. If the corporation is private, it must necessarily exist under a general law. Stated differently, only corporations created under a general law can qualify as private corporations. Under existing laws, that general law is the Corporation Code, except that the Cooperative Code governs the incorporation of cooperatives.

The Constitution authorizes Congress to create government-owned or controlled corporations through special charters. Since private corporations cannot have special charters, it follows that Congress can create corporations with special charters only if such corporations are government-owned or controlled.

Obviously, LWDs [*referring to local water districts*] are not private corporations because they are not created under the Corporation Code. LWDs are not registered with the Securities and Exchange Commission. Section 14 of the Corporation Code states that "[A]ll corporations organized under this code shall file with the Securities and Exchange Commission articles of incorporation x x x." LWDs have no articles of incorporation, no incorporators and no stockholders or members. There are no stockholders or members to elect the board of directors of LWDs as in the case of all corporations registered with the Securities and Exchange Commission. The local mayor or the provincial governor appoints the directors of LWDs for a fixed term of office. This Court has ruled that LWDs are not created under the Corporation Code, thus:

From the foregoing pronouncement, it is clear that what has been excluded from the coverage of the CSC are those corporations created pursuant to the Corporation Code. **Significantly, petitioners are not created under the said**

(Continued on next page)

Doctrinal Reminders
COMMERCIAL LAW (continued)

code, but on the contrary, they were created pursuant to a special law and are governed primarily by its provision. (*Emphasis supplied*) (Citations Omitted)

Feliciano further categorically held that PD No. 198 constitutes the special charter by virtue of which local water districts exist. Unlike private corporations that derive their legal existence and power from the Corporation Code, water districts derive their legal existence and power from PD No. 198. Section 6 of the decree in fact provides that water districts “shall exercise the powers, rights and privileges given to private corporations under existing laws, in addition to the powers granted in, and subject to such restrictions imposed under this Act.” Therefore, water districts would not have corporate powers without PD No. 198.

As already mentioned above, the Court reiterated this ruling – i.e., that a water district is a government-owned and controlled corporation with a special charter since it is created pursuant to a special law, PD No. 198 – albeit with respect to the authority of the COA to audit water districts, in *De Jesus v. COA*.

In light of these settled rulings, specifically rendered conclusive on LMWD by *Feliciano v. COA* and the application of the principle of “conclusiveness of judgment,” we cannot but deny the present petition and petition in intervention.

(Brion, J., Engr. Ranulfo C. Feliciano, in his capacity as General Manager of the Leyte Metropolitan Water District (LMWD), Tacloban City, Napoleon G. Aranez, in his capacity as President and Chairman of “No Tax, No Impairment of Contracts Coalition, Inc.,” v. Hon. Cornelio C. Gison, Undersecretary, Department of Finance, G.R. No. 165641, August 25, 2010.)

REMEDIAL LAW

Awards for moral damages, exemplary damages, and attorney’s fees are not immediately executory.

On September 19, 2006, the Court *en banc* issued a Resolution in A.M. No. 01-2-04-SC titled “Re: Amendment of Section 4, Rule 1 of the Interim Rules of Procedure Governing Intra-Corporate Controversies by Clarifying that Decisions Issued Pursuant to Said Rule are Immediately Executory Except the Awards for Moral Damages, Exemplary Damages and Attorney’s Fees, if any.” The Court resolved to amend specifically Section 4, Rule 1 of the Interim Rules, to wit:

Acting on the Resolution dated September 5, 2006 of the Committee on the Revision of Rules of Court, the Court Resolved to AMEND Section 4, Rule 1 of The Interim Rules of Procedure Governing Intra-Corporate Controversies as follows:

x x x x

Sec. 4. Executory nature of decisions and orders. –

All decisions and orders issued under these Rules shall immediately be executory EXCEPT THE AWARDS FOR MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY’S FEES, IF ANY. No appeal or petition taken therefrom shall stay the enforcement or implementation of the decision or order, unless restrained by an appellate court. Interlocutory orders shall not be subject to appeal.

The amended provision expressly exempts awards for moral damages, exemplary damages, and attorney’s fees from the rule that decisions and orders in cases covered by the Interim Rules are immediately executory. As can be gleaned from the title of A.M. No. 01-2-04-SC, the amendment of Section 4, Rule 1 of the Interim Rules was crafted precisely to clarify the previous rule that decisions on intra-corporate disputes are immediately executory, by specifically providing for an exception. Thus, the prevailing rule now categorically provides that awards for moral damages, exemplary damages, and attorney’s fees in intra-corporate controversies are *not* immediately executory.

Indisputably, the amendment of Section 4, Rule 1 of the Interim Rules is procedural in character. Well-settled is the rule that procedural laws are construed to be applicable to actions pending and undetermined at the time of their passage, and are deemed retroactive in that sense and to that extent. Procedural laws do not fall under the general rule against retroactive operation of statutes. Further, the retroactive application of procedural laws does not violate any personal rights because no vested right has yet attached or arisen from them. Clearly, the amended Section 4, Rule 1 of the Interim Rules must be applied retroactively to the present case. Therefore, the trial court’s award of exemplary damages and attorney’s fees in favor of private respondents is not immediately executory.

(Carpio, J., Heirs of Santiago C. Divinagracia v. Honorable J. Cedrick O. Ruiz, Presiding Judge, Branch 39, Regional Trial Court, Iloilo City; Gerry D. Sumaculub, as Clerk of Court of the Regional Trial Court; CBS Development Corporation, Inc. (CBSDC) represented by its President and Chief Executive Officer, Rogelio M. Florete, Sr., and Diamel Inc., represented by Rogelio M. Florete, Sr., G.R. No. 172023, July 9, 2010.)

Protests on decisions of the Bids and Awards Committee; three requirements that must be met by a protesting party.

Section 55 of RA No. 9184 provides:

Protests on Decisions of the BAC. – Decisions of the BAC in all stages of procurement may be protested to the head of the procuring entity and shall be in writing. Decisions of the BAC may be protested by filing a verified position paper and paying a non-refundable protest fee. The amount of the protest fee and the periods during which the protests may be filed and resolved shall be specified in the IRR,

while Section 58 thereof provides:

Resort to Regular Courts: Certiorari. – Court action may be resorted to only after the protests contemplated in this Article shall have been completed. Cases that are filed in violation of the process specified in this Article shall be dismissed for lack of jurisdiction. The Regional Trial Court shall have jurisdiction over final decisions of the procuring entity. Court action shall be governed by Rule 65 of the 1997 Rules of Civil Procedure.

This provision is without prejudice to any law conferring on the Supreme Court the sole jurisdiction to issue temporary restraining orders or injunctions relating to infrastructure projects of the government.

Section 55 of RA No. 9184 sets three requirements that must be met by a party desiring to protest the decision of the Bids and Awards Committee (BAC). These are: (1) the protest must be in writing, in the form of a verified position paper; (2) the protest must be submitted to the head of the procuring entity; and (3) the payment of a non-refundable protest fee.

(Carpio Morales, J., Land Registration Authority, represented by Hon. Benedicto Ulep, in his capacity as Administrator, Hon. Edilberto R. Feliciano, Deputy Administrator and Chairman, BAC-PGSM, Hon. Ofelia Abueg-Sta. Maria, Vice-Chairman, BAC-PGM, Elisa Ocampo, Edelmira N. Salazar, Atty. Josefina Montaner, Rosette Mabunay, Cherry Hernandez, Noel Sabariza, as Members, BAC-PGSM *v.* Lanting Security and Watchman Agency, represented by Atty. Thomas L. Lanting, G.R. No. 181735, July 20, 2010.)

A motion for reconsideration is a condition *sine qua non* before filing petition for *certiorari*.

A motion for reconsideration is a condition *sine qua non* before the filing of a petition for *certiorari*. In *Republic v. Sandiganbayan*, we held:

As a rule, the special civil action of *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, as amended, lies only when the lower court has been

given the opportunity to correct the error imputed to it through a motion for reconsideration of the assailed order or resolution. The rationale of the rule rests upon the presumption that the court or administrative body which issued the assailed order or resolution may amend the same, if given the chance to correct its mistake or error. The motion for reconsideration, therefore, is a condition *sine qua non* before filing a petition for *certiorari*.

Here, petitioners filed the instant petitions for *certiorari* without interposing a motion for reconsideration of the assailed Resolution of the Sandiganbayan. Section 1 of the same Rule 65 requires that petitioners must not only show that the trial court, in issuing the questioned Resolution, “acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction,” but that “there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law.” We have held that the “plain,” “speedy,” and “adequate remedy” referred to in Section 1 of Rule 65 is a *motion for reconsideration* of the questioned Order or Resolution. It bears stressing that the strict application of this rule will also prevent unnecessary and premature resort to appellate proceedings. We thus cannot countenance petitioners’ disregard of this procedural norm and frustrate its purpose of attaining speedy, inexpensive, and orderly judicial proceedings.

In justifying their failure to file the required motion for reconsideration, petitioners vehemently assert that they were “deprived of due process and there is extreme urgency for relief, and that under the circumstances, a motion for reconsideration would be useless.”

We are not persuaded.

Petitioners may not arrogate to themselves the determination of whether a motion for reconsideration is necessary or not. To dispense with the requirement of filing a motion for reconsideration, petitioners must show concrete, compelling, and valid reason for doing so. They must demonstrate that the Sandiganbayan, in issuing the assailed Resolution, acted capriciously, whimsically and arbitrarily by reason of passion and personal hostility. Such capricious, whimsical and arbitrary acts must be apparent on the face of the assailed Resolution. These, they failed to do.

The People in the instant case absolutely failed to provide any explanation as to why it did not first move for reconsideration of the challenged Sandiganbayan judgment before seeking a writ of *certiorari* from this Court. We therefore cannot find any “concrete, compelling, and valid reason” to except the People from the aforementioned general rule of procedure.

(Leonardo-De Castro, J., *People of the Philippines v. The Hon. Sandiganbayan (4th Division) and Henry Barrera*, G.R. Nos. 153952-71, August 23, 2010.)

ADMINISTRATIVE CIRCULAR NO. 51-2010

AMENDING THE GUIDELINES ON LOCAL TRAVEL FOR OFFICIALS AND EMPLOYEES OF THE JUDICIARY

WHEREAS, Administrative Circular No. 15-2005, dated March 22, 2005, provides for the guidelines for local and foreign travels of officials and employees of the judiciary;

WHEREAS, Administrative Circular No. 15-2005 further provides under its specific guidelines on local travel for fixed travel rates for travel beyond 50-kilometer radius;

WHEREAS, the current local travel rates provided under Administrative Circular No. 15-2005 are no longer realistic considering the high cost of hotel and lodging accommodation as well as expenses for meals and the prevailing rates of transportation;

WHEREAS, the Constitutional Fiscal Autonomy Group (CFAG), recognizing the need to rationalize travel expenses to make the grant thereof fair and equitable to the officials and employees of CFAG member agencies, adopted CFAG Joint Resolution No. 98 on June 18, 2010 providing for revised rates of local travel allowance;

WHEREAS, the Supreme Court as a member agency of the CFAG adheres to the policies and resolutions of the CFAG which aim to strengthen the fiscal autonomy of its member agencies and adopts the provisions of CFAG Joint Resolution No. 98 to govern local travel of officials and employees of the judiciary;

NOW THEREFORE, pursuant to CFAG Joint Resolution No. 98 and in order to provide for a uniform policy on local travel of officials and employees of the judiciary, the following provisions are hereby adopted amending the local travel guidelines under Administrative Circular No. 15-2005:

- 1) The travel allowance of officials and employees, regardless of rank and destination, shall be increased from Eight Hundred Pesos (P800) per day to One Thousand Five Hundred Pesos (P1,500) per day, to be apportioned as follows:

Particulars	Percentage	Amount
Hotel/lodging	50%	P 750
Meals at P150 per meal	30%	450
Incidental Expenses	20%	300
TOTAL	100%	P1,500

- 2) Full travel expenses shall be allowed only in case of absence from the permanent official station for one full day or more;

Particulars	Cost of Meal	Incidental Expenses	Hotel or Lodging	Total
Departure from permanent station before 12:00 noon	P 450	P 300	P 750	P1,500
Departure from permanent station after 12:00 noon	150	300	750	1,200
Arrival at permanent station before 12:00 noon	150	300	0	450
Arrival at permanent station before 12:00 noon	300	300	0	600

- 3) The aforementioned travel allowance shall no longer require submission of official receipts during liquidation;
- 4) Claims for reimbursement of actual travel expenses in excess of the travel expenses herein authorized may be allowed upon certification by the Chief Justice or his authorized representative as absolutely necessary in the performance of an assignment and upon presentation of bills and receipts: *Provided*, that a certification or an affidavit of loss shall not be considered as appropriate replacement for the required hotel/lodging bills and receipts: *Provided, further*, that reimbursement for actual travel expenses shall only be authorized for the officials specified under existing accounting and auditing rules and regulations;
- 5) Cash advance for miscellaneous expenses (CAME) to the designated team/group leader for expenses not covered by the travel allowance may be granted in an amount not exceeding Four Thousand Five Hundred Pesos (P4,500): *Provided*, that a cash advance in a higher amount may only be authorized if duly supported by an itemized budget estimate: *Provided, further*, that such cash advance shall be given to bonded officials only;
- 6) Unless otherwise provided, the travel expenses authorized herein shall be chargeable against the regular appropriations allotted for the purpose of the court to which the official or employee belongs;
- 7) The cash advance for travel and miscellaneous expenses granted under these guidelines shall be liquidated in the manner provided for under existing accounting and auditing rules and regulations. The provisions of Administrative Circular No. 83-2006, dated June 21, 2006, on

Administrative Circular No. 51-2010 (continued)

“Liquidation of Cash Advance pursuant to Executive Order No. 248, as amended” shall be strictly applied.

The guidelines herein provided shall apply to local travel beyond a 50-kilometer radius as defined under Section 5, Executive Order No. 298, dated March 23, 2004.

All provisions of Administrative Circular No. 15-2005, other circulars, orders or resolutions which are not inconsistent with the provisions of this Administrative Circular shall remain in full force and effect.

The Clerk of Court, the Court Administrator and the Chiefs of the Fiscal Management and Budget Office, Supreme Court and the Financial Management Office, Office of the Court Administrator shall ensure faithful compliance with this Administrative Circular. The Presiding Justices of the Court of Appeals, the Sandiganbayan and the Court of Tax Appeals shall likewise strictly implement it in their respective courts.

This Administrative Circular shall take effect immediately.

Issued this 7th day of July 2010.

(Sgd.) RENATO C. CORONA
Chief Justice



OCA CIRCULAR NO. 64-2010

TO: ALL JUDGES OF THE REGIONAL TRIAL COURTS, SHARI'A DISTRICT COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS AND SHARI'A CIRCUIT COURTS

SUBJECT: SERVICE OF SUBPOENA AND OTHER COURT PROCESSES TO THE DESIGNATED COURT PROCESS OFFICER (CPO) OF THE PHILIPPINE NATIONAL POLICE (PNP)

This Office has received a letter from Police Director General Jesus A. Verzosa, Chief, Philippine National Police, relative to the failure of some police witnesses in attending court hearings resulting to the dismissal of criminal cases on the ground that these police personnel have not personally received copy of the *subpoena* and other court processes issued by the court.

Relative thereto, Police Director General and Chief Jesus A. Verzosa of the Philippine National Police issued Memorandum Circular No. 2008-0801-003

dated August 1, 2008 (*Uniform Guidelines in the Service of Subpoena and the Court Processes issued by the Courts, Tribunals, Administrative and Quasi-Judicial Bodies*), designating Court Process Officer (CPO) in all police offices/units down to the police stations, who shall be responsible for the service of *subpoena* and other legal processes to the police personnel concerned.

In view of the foregoing, you are hereby directed to issue additional copy of *subpoena* and other court processes to the designated PNP Court Process Officer (CPO) of the Police Office/Unit where the police witness is assigned to ensure attendance of the police office/witness concerned.

For strict compliance.

May 4, 2010.

(Sgd.) JOSE MIDAS P. MARQUEZ
Court Administrator



OCA CIRCULAR NO. 69-2010

TO: ALL JUDGES AND CLERKS OF COURT OF THE REGIONAL TRIAL COURTS

SUBJECT: PERSONAL NOTICE TO THE PARTIES OF THE RAFFLE OF CASES IN ELECTION CONTESTS BEFORE THE COURTS INVOLVING ELECTIVE MUNICIPAL OFFICIALS (A.M. No. 10-4-1-SC)

Pursuant to the Resolution of the Honorable Court En Banc in A.M. No. 10-4-I-SC dated April 27, 2010, which approved the *2010 Rules of Procedure in Election Contests before the Courts Involving Elective Municipal Officials*, you are hereby directed to strictly comply with the requirement of personal notice to the parties before the raffle of cases in election contests involving elective municipal officials, to wit:

SEC. 11. Raffle of cases. – The Supreme Court shall designate the Regional Trial Courts within a judicial region that shall take cognizance of election protests and petitions for *quo warranto*. A raffle conducted by the executive judge shall determine the assignment of cases to these courts, except in *single-sala* courts or courts specifically designated by the Supreme Court. No court shall assume jurisdiction over an election contest unless the case has been properly assigned to it as provided herein.

At least 24 hours before the raffle, the clerk of court must serve personal notice to the parties, stating the date and time of the raffle. Proof of service to the parties shall be submitted to the court, and the raffle shall be open to the public. The Supreme Court shall issue the necessary circular implementing this proviso. (*Emphasis supplied*).

(Continued on next page)

OCA Circular No. 69-2010 (continued)

The Rules shall take effect on May 21, 2010 following their publication in the Manila Bulletin on May 6, 2010.

May 12, 2010.

(Sgd.) JOSE MIDAS P. MARQUEZ
Court Administrator



OCA CIRCULAR NO. 74-2010

TO: ALL JUDGES AND COURT PERSONNEL

SUBJECT: GUIDELINES IN THE SUBMISSION OF APPLICATIONS FOR APPOINTMENT IN THE LOWER COURTS

Item 2(b), Part V of the Amended Revised Administrative Circular No. 50-2001 Establishing the Merit Selection and Promotion Plan for the Lower Courts (MSPP-LC) provides that:

2. Publications of Vacant Positions

x x x x

- b. Notify the Clerk of Court to post notices of vacancies.

Within five days from the notification, the Clerk of Court shall post notices of vacancies to be filled in three conspicuous places in the court's premises for 10 working days. The notice shall specify the qualification standards and requirements for the position.

Within two months from the expiration of the 10-day period of posting, the following guidelines shall be observed:

- a. The Presiding Judge or Acting Presiding Judge shall submit all applications, with or without recommendation, to the Executive Judge.
- b. The Executive Judge shall indorse all applications, with or without recommendation, to OAS-OCA within five days from receipt thereof.

x x x x

For the guidance of all concerned and to fix the period in the submission of applications, the following procedures shall be observed:

1. Before posting the Notice of Vacancy, the Executive Judge (for vacancies in the Office of the Clerk of Court) or the Presiding Judge (for vacancies in the branch or station), shall wait for the notification from the Office of Administrative Services, Office of the Court Administrator (OAS-OCA) except in

OCA Circular No. 74-2010 (continued)

the following instances:

1. vacancies in the newly created courts;
2. renewal of temporary appointments;
3. reappointment or reemployment (change of status of employment from temporary to permanent).

The OAS-OCA shall notify the Executive Judge/ Presiding Judge to direct the Clerk of Court of the Office of the Clerk of Court / Clerk of Court of the branch or station, to post notices of vacancies within five days from receipt of the approval by the Chief Justice of the authority to fill vacancies in the lower courts. Within five days from receipt of the notice, the Executive Judge/Presiding Judge shall immediately inform the OAS-OCA of the date of the start of posting.

2. The notice of vacancy shall be posted in three conspicuous places in the court's premises and in other public places for at least 10 consecutive working days. It shall include the qualification standards for the position and the checklist of requirements prepared by the OAS-OCA, necessary for the evaluation of the application. Within two months from the expiration of the 10-day period for posting, the applicant/s shall submit the requirements to the judge where the vacancy exists.
3. All applications, together with the complete or incomplete requirements received by the Executive Judge/Presiding Judge, shall be indorsed to the OAS-OCA within the two-month period following the expiration of the 10-day period for posting. The indorsement shall be accompanied by a certification, under oath, by the Executive Judge/ Presiding Judge that the list submitted contains the name/s of all applicants/s who applied for the position.

The date of mailing shall be the determining factor to consider whether the indorsement was sent within the two-month period. For application/s personally filed before the OAS-OCA, the date of receipt by the OAS-OCA is the controlling factor.

4. All application/s directly filed with the OAS-OCA personally or sent through mail within the two-month period, shall be referred to the Executive Judge or Presiding Judge for comment and/or appropriate action within five days from receipt of the application/s. The Executive Judge/Presiding Judge shall provide the applicant/s with a checklist of requirements to be submitted to the OAS-OCA

OCA Circular No. 74-2010 (continued)

within the same period of two months following the expiration of the 10-day period for posting. Thereafter, the OAS-OCA shall evaluate all the applications and shall submit the list to the Selection and Promotion Board-Lower Courts (SPB-LC) within 15 days. Those with incomplete form or lacking requirement/s shall still be included in the list to be submitted to the SPB-LC with a notation as to the lacking form or requirement/s. If after assessment of competence and qualification of candidates, the applicant found by the SPB-LC to be the most qualified for the position applied for has incomplete and/or lacking requirement/s, the SPB-LC may require the said applicant to accomplish the incomplete form and/or to submit the lacking requirement/s.

5. All application/s received from the OAS-OCA or personally filed with the Executive Judge/Presiding Judge after the aforesaid two-month period may still be endorsed by the Executive Judge/Presiding Judge to the OAS-OCA for submission to the SPB-LC. The name/s of the aforesaid applicant/s shall be included in the list of candidate/s has not yet been submitted to the Court by the SPB-LC. A notation that the aforesaid application/s was/were submitted after the two-month period shall be indicated.
6. For this purpose, the Certification to be issued by the Clerk of Court that the vacant position to be filled has been posed in three conspicuous places in the court's premises and other public places, such as:
 - a. the Office of the Clerk of Court;
 - b. branch of a court, for vacancies in the branch;
 - c. general bulletin board; and
 - d. such other conspicuous places.

for a period of at least 10 working days in accordance with Republic Act No. 7041 shall be made under oath and shall indicate the date when the notice was posted and the public places where it was posted.

7. Henceforth, all courts shall follow the prescribed format of Notice of Vacancy and Certification of posting of vacancies. Copies of the aforesaid format are hereto attached for ready reference.

This circular shall take effect on July 1, 2010.

May 21, 2010.

(Sgd.) JOSE MIDAS P. MARQUEZ
Court Administrator

CERTIFICATION OF POSTING OF VACANCY

This is to certify that the notice of vacancy for the position of _____ in the _____ (court) has been posted for at least 10 consecutive working days from _____ to _____ in the following public places:

1. _____
2. _____
3. _____

pursuant to RA No. 7041 (publication of Vacant Positions in the Government).

_____ Date _____

Clerk of Court
(Clerk of Court in the OCC for vacancies in the OCC)
(Clerk of Court in the branch for vacancies in the branch)

SUBSCRIBED AND SWORN TO before me this _____ day of _____ 20____, affiant exhibiting to me his/her Supreme Court Identification Card No. _____.

Notary Public

Republic of the Philippines
Court
_____ Judicial Region

NOTICE OF VACANCY

Notice is hereby given that the position of _____, Item No. _____, SG _____ in the _____ (court) is vacant.

Applicant/s must possess the following qualifications:

Education:
Eligibility:
Experience:
Training:

Please submit your application/s, together with the complete requirements (see attached checklist of requirements) on or before (please specify exact date of the expiration of submission which is the end of the two month period following the lapse of the ten-day period for posting) to the Honorable _____, Executive Judge/Presiding Judge.

_____ (Date) _____

Clerk of Court
(COC in the OCC for vacancies in the OCC)
(COC in the branch for vacancies in the branch)



OCA CIRCULAR NO. 76-2010

TO: ALL JUDGES OF THE REGIONAL TRIAL, COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, AND MUNICIPAL CIRCUIT TRIAL COURTS

SUBJECT: PHILIPPINE NATIONAL POLICE CUSTODIAL CENTER

The Philippine National Police (PNP) has adopted measures management of the PNP Custodial Center.

To support this project, the Philippine National
(Continued on next page)

OCA Circular No. 76-2010 (continued)

Police has sought the assistance of this Office to advise all lower courts to refrain from issuing orders committing detainees at the PNP Custodial Center considering that the Center has temporarily discontinued the admission and acceptance of detention prisoners within its facility and has prepared the necessary effort for the transfer of several of the detainees to the Bureau of Jail Management and Penology and other detention facilities.

In view of the foregoing, you are hereby directed to refrain from issuing orders committing detainees at the PNP Custodial Center.

For strict compliance.

May 31, 2010.

(Sgd.) JOSE MIDAS P. MARQUEZ
Court Administrator



OCA CIRCULAR NO. 83-2010

TO: ALL JUDGES AND PERSONNEL OF THE FIRST AND SECOND LEVEL COURTS

SUBJECT: OBSERVANCE OF THE PROPER FORMAT AND PAYMENT OF CERTIFIED TRANSCRIPTS OF STENOGRAPHIC NOTES (TSN) OF CASES FILED IN THE LOWER COURTS

Pursuant to the Resolution of the Court's First Division dated April 26, 2010 in A.M. No. P-09-2661 [Formerly A.M. OCA IPI No 09-3174-P] (*Anonymous Complaint v. Gertrudes F. Felitro Minerva A. Respicio and Edna A. Externon*, all Court Stenographers, Regional Trial Court, Branch 197, Las Piñas City), all lower courts are hereby reminded to **strictly comply** with the provisions of the Supreme Court Administrative Circular No. 35-2004 (Guidelines in the Allocation of Legal Fees) dated August 20, 2004, particularly the provision on the proper format and payment of certified transcripts of stenographic notes of cases:

SEC. 11. Stenographers. – Stenographers shall give certified transcript of notes taken by them to every person requesting the same **upon payment to the Clerk of Court** of (a) Ten Pesos (P10) **for each page of not less than 250 words** before the appeal is taken and (b) Five Pesos (P5) for the same page, after the filing of the appeal, provided, *however*, that **one-third (1/3) of the total charges shall accrue to the Judiciary Development Fund (JDF)** and the remaining two-thirds (2/3) to the stenographer concerned." (*Emphasis supplied*)

June 23, 2010.

(Sgd.) JOSE MIDAS P. MARQUEZ
Court Administrator

OCA CIRCULAR NO. 95-2010

TO: ALL EXECUTIVE/PRESIDING JUDGES AND CLERKS OF COURT / ACCOUNTABLE OFFICERS OF THE FIRST AND SECOND LEVEL COURTS

SUBJECT: PROHIBITION ON THE SUBSTITUTION OF PAYMENTS OF DOCKET FEES FROM ONE COURT STATION TO ANOTHER

The Supreme Court En Banc in its Resolution dated June 15, 2010, in A.M. No. 10-4-122-RTC, Re: Letter of Clerk of Court Aideliza J. Lumbatan, RTC, Medina, Misamis Oriental, relative to a Case for Settlement of Estate and Annulment of Documents for Erroneously Paid Filing Fees, **RESOLVED**, upon recommendation of the Office of the Court Administrator, **that substitution of payments of docket fees from one court station to another, as a result of erroneously filing of cases by reason of improper jurisdiction/venue, is not allowed.**

Strict compliance with the foregoing proscription is hereby enjoined.

July 12, 2010.

(Sgd.) JOSE MIDAS P. MARQUEZ
Court Administrator



OCA CIRCULAR NO. 108-2010

TO: ALL JUDGES AND CLERKS OF COURT IN THE FIRST AND SECOND LEVEL COURTS

SUBJECT: GUIDELINES FOR THE TEMPORARY REPLACEMENTS OF CLERKS OF COURT IN THE HANDLING OF CASE/S FROM WHICH THEY ARE DISQUALIFIED UNDER SECTION 1, RULE 137 OF THE RULES OF COURT, AS AMENDED

The Court En Banc, in a Resolution dated June 3, 2008, in A.M. No. 08-4-1-SC, resolved to amend Section 1, Rule 137 of the Rules of Court, to include the disqualification of clerks of court, to wit:

SEC. 1. Disqualification of Judges. – No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of the review, without the written consent of all parties in interest, signed by them and agreed upon the record.

The above disqualification shall likewise apply to all clerks of court, assistant clerks of court, deputy clerks

of court and branch clerks of court in all court levels insofar as relevant to them in the performance of their respective functions and duties.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

To implement the aforementioned amendment, the Honorable Chief Justice Renato C. Corona has approved the guidelines for the temporary replacements of clerks of court in the handling of the particular case/s from which they are disqualified under Section 1, Rule 137 of the Rules of Court, as amended. These guidelines are as follows:

- (1) The clerks of court in all the branches of the first and second level courts shall conduct a screening of cases now pending before their respective courts to verify and report in writing to their respective presiding judges, if there are grounds for their disqualification in regard to the performance of their functions and duties, under the first paragraph of Section 1, Rule 137 of the Rules of Court. If such disqualification exists, the Presiding Judge of the court shall issue an order relieving the clerk of court from handling the particular case/s, and thereafter shall designate an employee within the branch to take over the functions of the branch clerk of court insofar as the particular case/s is concerned until its termination.
- (2) For newly filed/raffled case/s in a particular branch of the court, before any pleading can be accepted, the counsel of the respective party-litigants shall be directed to file written manifestations, under oath, declaring as to whether or not they, or their respective clients are related to the clerk of court of the branch where the case/s has been filed/raffled, stating therein their degree of relationship by affinity or consanguinity.

Where there exists a relationship between the branch clerk of court and one of the parties involved in the subject case/s or a counsel of any of the parties to the case/s such that the branch clerk of court is disqualified in accordance with Section 1, Rule 137 of the Rules of Court as amended, the Presiding Judge of the court shall issue an order relieving the clerk of court from handling the particular case/s, and thereafter, shall designate an employee within the branch to take over the functions of the branch clerk of court insofar as the particular case/s is/are concerned until its termination.

- (3) In the designation of the employee who will take over the functions of the branch clerk of court, the Presiding Judge shall observe the provisions of Civil Service Commission Memorandum Circular No. 6, series of 2005, re: Guidelines on Designation in the civil service, quoted hereunder:
 - A. Employees to be designated should hold permanent appointments to career positions.

- B. Designees can only be designated to positions within the level they are currently occupying. xxx

First level personnel cannot be designated to perform the duties of second level positions.

This circular shall take effect immediately.

August 9, 2010.

(Sgd.) JOSE MIDAS P. MARQUEZ
Court Administrator



OCA CIRCULAR NO. 112-2010

TO: ALL PRESIDING JUDGES AND CLERKS OF COURT OF FIRST LEVEL COURTS EXCEPT SHARI'A CIRCUIT COURTS

SUBJECT: NOTARIZATION OF THE VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING IN THE FORMS FOR STATEMENT OF CLAIM AND RESPONSE IN SMALL CLAIMS CASES

This Office has been receiving reports that judges are dismissing small claims cases based on the ground that the Verification and Certification of Non-Forum Shopping in the Statement of Claim form is not subscribed before the Clerk of Court. The confusion arises from par. 6 of the Information for the Plaintiff which states:

6. Have the form and all your supporting documents, especially the Verification form, notarized by the Clerk of Court in the OCC.

The above statement does not mean that only the Clerk of Court is authorized to notarize the Verification and Certification as neither the Rule of Procedure itself nor the Administrative Guidelines requires it. Clerks of Court may notarize only when the documents presented are not yet notarized in order to assist the party to forego with the services of a notary public for a fee. Likewise, The "Clerk of Court" authorized to notarize is not limited to the Clerks of Court in the Office of the Clerk of Court, but includes likewise Branch Clerks of Court.

To reiterate, even if the Verification and Certification is notarized by a notary public, the Statement of Claim shall be accepted.

For your information and guidance.

August 13, 2010.

(Sgd.) JOSE MIDAS P. MARQUEZ
Court Administrator

3rd Floor, Supreme Court Centennial Building
Padre Faura St. cor. Taft Ave., Manila, Philippines
1000

2010 Upcoming PHILJA Events

- 21st Pre-Judicature Program
October 4-15, General Santos City
- Orientation Seminar-Workshop for Newly Appointed Clerks of Court
October 5-8, Davao City
- Roundtable Discussion on Court Leadership: Judicial Reform and Improving Judicial Administration Around the World
October 7, Makati City
- Courtroom Security Training for Judges
October 11-13, Quezon City
- Seminar-Workshop on the Rule of Procedure for Small Claims Cases – Region 9
October 14, Dipolog City
- PJA Convention-Seminar
October 14-16, Camarines Sur
- Seminar-Workshop on the Rule of Procedure for Small Claims Cases – Region 9
October 14, Dipolog City
- Convention-Seminar of FLECCAP
October 20-22, Manila
- Convention-Seminar of CLERAP
October 20-22, Cagayan de Oro City
- Conference-Workshop on JDR for Manila MeTC Judges
October 20-22, Manila
- Information Dissemination (E-JOW)
October 26, Caloocan City
- Seminar on Banking Laws
October 26-27, Davao City
- Mediation Refresher Course (Negros Occidental)
October 28-29, Bacolod City
- Seminar on Combating Human Trafficking in the Philippines
November 2-3, Cebu City
- Information Dissemination (E-JOW)
November 4, Butuan City
- Seminar-Workshop on CEDAW, Gender Sensitivity and the Courts for Court of Appeals Lawyers
November 4-5, Cagayan de Oro City
- Mediation Refresher Course (NCJR-Batch 2, Bulacan, Rizal, Cavite)
November 4-5, Manila
- Final Validation Workshop on the Sextortion Toolkit
November 4-6, Aklan
- Information Dissemination (E-JOW)
November 6, Surigao City
- Information Dissemination (E-JOW)
November 8, Prosperidad, Agusan del Sur
- Roundtable Discussion for Justices on Improved Use of International Labour Standards in the Judiciary
November 10, Manila
- Conference-Workshop on JDR for Manila RTC Judges
November 10-12, Manila
- Seminar-Workshop on Improved Use of International Labour Standards in the Judiciary for Lawyers
November 10-12, Manila
- Information Dissemination (E-JOW)
November 15, Nabunturan, Compostela Valley
- Seminar-Workshop on the Rule of Procedure for Small Cases (Region 6)
November 16-18, Bacolod City
- Enhanced Justice on Wheels (E-JOW), Launching and Dialogue
November 17, Mati, Davao Oriental
November 18, Tagum City, Davao del Norte
November 19, Davao City
November 22, Alabel, Sarangani
- Seminar-Workshop on the Rules of Court on Alternative Dispute Resolution
November 22-25, Manila
- Personal Security Training for Judges
November 23-25, Laoag City
- Seventh Metrobank Foundation Professorial Chair Lecture Series
November 24, Manila
- Information Dissemination (E-JOW)
November 25, Tagbilaran City
- Convention-Seminar of PTLJI
November 25-27, Davao City
- Information Dissemination (E-JOW)
December 1, Vigan City, Ilocos Sur
- Convention-Seminar of PHILACI
December 1-3, Baguio City
- Information Dissemination (E-JOW)
December 2, Laoag City, Ilocos Norte
- Seminar-Workshop on the Rule of Procedure for Small Cases (Region 2)
December 2, Tuguegarao City
- Seminar on Dangerous Drugs Law for Judges, Prosecutors and Law Enforcers
December 7-9, Tagaytay City
- Second National Conference on SC ADR Mechanisms
December 7-8, Manila
- Information Dissemination (E-JOW)
December 10, City of San Fernando, Pampanga