



Supreme Court of the Philippines Philippine Judicial Academy



PHILJA Fax/Electronic Alerts

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OCA CIRCULAR NO. 93-2004

TO: **ALL JUDGES, CLERK OF COURT AND COURT PERSONNEL OF THE METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS, SHARI'A CIRCUIT COURTS**

SUBJECT: **REMINDER OF THE STRICT OBSERVANCE OF ADMINISTRATIVE CIRCULAR NO. 3-98** (Re: Payment of Docket and Filing Fees in Extrajudicial Foreclosure); **SECTION 21 RULE 141 OF THE RULES OF COURT; SECTION 3 PRESIDENTIAL DECREE NO. 385; and ADMINISTRATIVE CIRCULAR NO. 07-99** (Re: Exercise of Utmost Caution, Prudence, and Judiciousness in Issuance of Temporary Restraining Orders and Writs of Preliminary Injunctions)

Pursuant to the Resolution of the Third Division of the Supreme Court dated 05 April 2004 and to give notice to the concern raised by the Government Service Insurance System (GSIS) to expedite extrajudicial foreclosure cases filed in court, we wish to remind all concerned to the pertinent provisions of Administrative Circular No. -398, to wit:

"2. No written request/petition for extrajudicial foreclosure of mortgages, real or chattel, shall be acted upon by the Clerk of Court, as Ex-Officio Sheriff, without the corresponding filing fee having been paid and the receipt thereof attached to the request/petition as provided for in Sec. 7 ©, of Rule 141 of the Rules of Court.

3. No certificate of sale shall be issued in favor of the highest bidder until all fees provided for in the aforementioned sections and paragraph 3 of Section 9 (I) of Rule 141 of the Rules of Court shall have been paid. The sheriff shall attach to the records of the case a certified copy of the Official Receipt of the payment of the fees and shall note the O.R. number in the duplicate of the Certificate of Sale attached to the records of the case."

Moreover, to settle any queries as to the status of exemption from payment of docket and legal fees of government entities, Section 21, Rule 141 of the Rules of Court explicitly provides:

"Sec. 21. Government exempt.- The Republic of the Philippines, its agencies and instrumentalities, are exempt from paying the legal fees provided in this rule. Local governments and **government-owned or controlled corporations with or without independent charters** are **not exempt** from paying such fees."

Likewise, to attain the purpose of Presidential Decree No. 385, strict observance should likewise be given to Section 3 thereof:

SECTION 3. Upon the application for foreclosure of the collateral of delinquent borrowers, whether judicially or extrajudicially, by any government financial institution, the court and/or officials concerned shall immediately act and give priority to the same and schedule the publication thereof within Five (5) days from receipt of the application, the auction sale to be held not later than ten (10) days from date of the last publication. The Certificate of Sale must be issued on the date of sale and the same must be registered by the Register of Deeds concerned not later than five (5) days after submission of the Certificate of Sale."

Finally, judges are hereby enjoined to exercise utmost caution, prudence, and judiciousness in issuance of Temporary Restraining Orders and Writs of Preliminary Injunctions mandated by Administrative Circular No. 07-99, taking into account that though the latter categorically prohibits courts from issuing restraining orders or preliminary injunctions in cases involving infrastructure and natural resources development projects of, and public utilities operated by the government, it may apply with equal force to foreclosure proceedings initiated by government financial institutions.

For the guidance of all concerned.

04 August 2004.

(SGD.) PRESBITERO J. VELASCO, Jr.
Court Administrator

OCA CIRCULAR NO. 108-2004

TO: **ALL JUDGES**

SUBJECT: **DESIGNATION OF A COURT PERSONNEL/POLICE OFFICER AS ESCORT FOR A LOWER COURT JUDGE AND REQUESTS OF JUDGES TO CARRY FIREARMS**

Quoted hereunder for your information are the pertinent paragraphs of the resolution of the Court En Banc dated 24 August 2004 in A.M. No. 04-6-18-SC, Re: Position Paper on Continuing Assassinations/International Killings of Judges while in the Performance of their Duties. – x x x

"A. x x x

B. x x x

C. x x x

D. Designation of a Court Personnel/Police Officer as Escort for a Lower Court Judge

Judges who are facing imminent threats on their lives is hereby **AUTHORIZED** to designate, as escort, one member of their staff (i.e., Sheriff or Process Server). No designation shall be made without the express consent of the concerned employee and prior approval of the Court Administrator. Further, the designation shall only be for the duration of the period requested by the Judge and subject to the guidelines that may hereafter be set by the OCA Security Committee for Lower Court Judges.

The court employee designated to serve as escort for his/her Judge shall be entitled to overtime pay at the rate of One Hundred Pesos (P100.00) per day when rendering a maximum of three (3) hours of service on weekdays which shall start from 5:00 p.m. to 8:00 p.m. and One Hundred Fifty Pesos (P150.00) per day during weekends when rendering service from 8:00 a.m. to 4:00 p.m.

In cases where a Judge faces a direct threat on his life, he may report the same to the PNP which shall in turn immediately provide him with a police escort. In this connection, the OCA is hereby **AUTHORIZED** to enter into a Memorandum of Agreement with the Philippine National Police on the grant of such request.

E. Special Processing Privileges for the Firearms of the Judges

The OCA already has the commitment of PNP Director Hermogenes E. Ebdane, Jr. for the grant of requests from Judges for permission to carry their firearms outside the confines of their stations. It should be noted that under Section 881 of the Revised Administrative Code. Judges are among those persons not required to secure permits to carry firearms outside their residence."

For your Guidance.

14 September 2004

(SGD) **PRESBITERO J. VELASCO, Jr.**
Court Administrator

Judges; Charges against judges for acts before their appointment to the bench shall be investigated by the Office of the Court Administrator

Charges against judges even if made for acts committed by them before their appointment to the judiciary are to be investigated by the Office of the Court Administrator pursuant to Rule 139-B, Section 1, as amended. The reason for this is that such acts may reflect on or affect the judicial functions of the respondent. **(A.M. No. MTJ-00-1318, November 23, 2004)**

Judges; Issuance of writ of preliminary injunction without notice and hearing constitutes ignorance of the law

The rule on injunction as provided under Rule 58 of the Rules of Court is that it can only be granted upon a verified application showing facts entitling the applicant to the relief demanded and upon the filing of a bond executed to the party or person enjoined. It is also provided that no preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined unless shown that great or irreparable injury would result to the applicant before the matter can be heard.

Respondent judge was found guilty of gross ignorance of the law and ordered suspended for six (6) months for failing to conduct a hearing before issuing a writ of injunction and without prior notice to the complainant herein. **(A.M. No. RTJ-04-1857, November 23, 2004)**

Judges; Relying on branch clerk of court in the management of caseload is negligence

The Judge's branch clerk of court might indeed have failed to inform him of the cases submitted for decision, but it is clear negligence for a judge to rely mainly on his clerk to manage his caseload. He himself must keep track of his pending cases for decision so that he may act on them promptly.

For failure to decide cases within the prescribed period, respondent was guilty of gross neglect of duty and fined P22,000.00. **(A.M. No. 04-3-63-MTCC, November 23, 2004)**

Judges; unjustified failure to comment on charges against respondent constitutes gross misconduct

In failing to comment on the complaint against him despite repeated directives from the Supreme Court, the respondent is guilty of his duty to defend himself against complainant's charge. It is gross misconduct even outright disrespect for the Court for respondent to exhibit indifference to the resolutions requiring him to comment. A resolution of the Supreme Court should be complied with promptly. Such failure betrays not only a recalcitrant streak in character, but also disrespect for the Court's lawful order and directive.

Respondent was fined P21,000.00. **(A.M. No. 03-1515-MTC, November 19, 2004)**

Judges; acts of a judge in his judicial capacity not subject to disciplinary action

In the absence of fraud, dishonesty, or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action even though such acts are erroneous. He cannot be subjected to liability – civil, criminal, or administrative. The case against respondent was dismissed for lack of merit. **(A.M. No. RTJ-04-1887, December 9, 2004)**

Judges; grant of written motion without hearing constitutes manifest partiality and bias

Section 4 Rule 15 of the Rules of Court requires that a written motion shall be set for hearing by the applicant except those which the court may act upon without causing prejudice to the rights of the adverse party. A motion without notice of hearing is pro forma; a mere scrap of paper and presents no question which the court would decide.

Respondent claims that the motions were not litigious and need not be set for hearing and that the determination whether a motion is litigious or not is subject to her sound discretion. It may be true that Section 4 of Rule 15 affords the judge some measure of discretion to dispense with a hearing where the motion does not prejudice the adverse party. However, the motion was clearly litigious because of the alternative prayer to allow the accused to travel abroad; hence, respondent should have notified the adverse party instead of acting precipitately.

For manifest partiality and bias, respondent was fined P20,000.00 **(A.M. No. OCA-IPI-03-1687-RTJ, November 17, 2004)**

Judges; failure to observe the requirement of a finding of probable cause before issuing warrant of arrest constitute gross ignorance of the law

Respondent judge erred in ordering the arrest of the accused in a criminal case without conducting the requisite preliminary investigation to determine probable cause. He displayed gross ignorance of the law for which she was fined P21,000.00. **(A.M. No. MTJ-01-1358, November 11, 2004)**

Judges; violation of Rule 114 of the Revised Rules of Criminal Procedure on the grant of bail

Jurisprudence is replete with decisions on the procedural necessity of a hearing, summary or otherwise, relative to the grant of bail, especially in cases involving offenses punishable by death, reclusion perpetua or life imprisonment, where bail is a matter of discretion. Under the present rule a hearing is mandatory in granting bail whether it is a matter of right or discretion. The grant or denial of bail where it is a matter of discretion hinges on the issue of whether or not the evidence of guilt of the accused is strong and the determination thereof is a matter of judicial discretion.

Respondent judge granted bail to the accused without conducting a hearing in violation of Section 8 and 18 of Rule 114 of the Revised Rules of Criminal Procedure. He was fined P20,000.00 **(A.M. No. 03-1800-RTJ, November 26, 2004)**

Clerk of Court; certifying correctness of entries in DTR even if they are not correct constitutes dishonesty

Respondent is liable for dishonesty because he certified to the correctness of the DTR's of the members of his staff though he knew that they were not always present as they claimed they were in their DTR's.

For dishonesty, respondent was suspended for six months and one day. **(A.M. No. P-04-1901, November 23, 2004)**

Clerk of Court; notarizing documents not connected with official function constitutes abuse of authority

Clerks of Court are notaries public ex-officio and may thus notarize documents or administer oaths but only when the matter is related to the exercise of their official functions. They should not in their ex-officio capacity take part in the execution of private documents bearing no relation at all to their official functions. It is not within the respondents' functions and duty, to notarize subject deed of sale. She is guilty of abuse of authority and fined P2,000.00. **(A.M. No. P-02-1644, November 11, 2004)**

Court Stenographer; complainant has the burden of substantiating his charges in the complaint

In administrative proceedings, the complainant has the burden of proving the allegations in this complaint with substantial evidence, otherwise, the presumption that respondent has regularly performed his duties will prevail. Reliance on mere allegations, conjectures and suppositions will leave an administrative complaint with no leg to stand on. Charges based on mere suspicion and speculation cannot be given credence. The case against respondent was dismissed for failure of the complainant to substantiate his charges. **(A.M. No. P-02-1557, December 8, 2004)**

Sheriff; failure to examine in extra-judicial foreclosure whether applicant has complied with the requirements under Act 3135 constitutes simple misconduct and neglect of duty

Paragraph 2 and 2 © of Administrative Order No. 3 as amended by A.M. No. 99-10-05-0 specifically provides that it is the duty of the office of the sheriff to examine, upon receipt of an application for extra-judicial foreclosure of real estate mortgage whether the applicant has complied with all the requirements under Act 3135.

Respondent sheriff failed to ascertain that the application for extrajudicial foreclosure with mortgage did not contain any statement regarding the requisite special power of attorney conferring upon the mortgagee the power to sell the mortgage property at public auction in the event of mortgagor's failure to pay his debts. Such absence should have alerted him and he should have referred to the attached deed of real estate mortgage where he could see the absence of such authority.

For his failure to comply with the said Administrative Order, he was found guilty of simple misconduct and neglect of duty and fined P10,000.00. **(A.M. No. P-04-1897, November 11, 2004)**

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