



# Supreme Court of the Philippines Philippine Judicial Academy



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### Judges: disciplinary proceedings against judges

Disciplinary proceedings and criminal actions against judges are not complementary or suppletory of, nor a substitute for, judicial remedies. Resort to or exhaustion of these remedies, as well as entry of judgment in the corresponding action or proceeding are prerequisites for the taking of other measures against the persons of the judges concerned, whether civil, administrative, or criminal in nature. It is only after the available judicial remedies have been exhausted and the appellate tribunals have spoken with finality that the door to an inquiry into his criminal, civil or administrative liability may be said to have opened, or closed.

The complaint against respondent judge was found to have no basis as all his orders and rulings were all in accordance with the rules. However, he was admonished to exercise proper care and restraint in his language. As borne by the records, he uttered intemperate, impatient and even haughty language during the proceedings of the cases against complainant. (A.M. No. RTJ-06-11918, June 8, 2005)

### Judges: ignorance of the law

A motion without notice of hearing is pro forma, a mere scrap of paper. It presents no question which the court could decide. The court has no reason to consider it and the clerk has no right to receive it. The rationale behind the rule is plain: unless the movant sets the time and place of hearing, the court will be unable to determine whether the adverse party agrees or objects to the motion, and if he objects, to hear him on his objection, since the rules themselves do not fix any period within which he may file his reply or opposition. The objective of the rule is to avoid a capricious change of mind in order to provide due process to both parties and ensure impartiality in the trial.

Respondent judge had ignored a fundamental rule. He acted too precipitately in granting defendant's motion despite the absence of the requirements as above prescribed. As a judge, he is expected to keep abreast of laws and prevailing jurisprudence. Unfamiliarity with the rules is a sign of incompetence.

For gross ignorance of the law, he was fined P5,000.00. (A.M. No. RTJ-04-1886, May 16, 2005)

### Judges: grave abuse of authority

Under Section 5, rule 58 of the 1997 Rules of Civil Procedure, a temporary restraining order may be issued only if it appears from the facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the writ of preliminary injunction could be heard.

Respondent judge ordered a hearing on the issuance of a temporary restraining order although it was not prayed for in the complaint. The Supreme Court was not impressed with his argument that the caption and the body of the complaint showed an intent to include a prayer for a temporary restraining order. Nowhere in the allegations in the complaint was it shown that great or irreparable injury would result to the plaintiff pending hearing on the preliminary injunction.

More, respondent issued the temporary restraining order without requiring the plaintiff to post a bond. While Section 4 (b) of Rule 58 gives the presiding judge the discretion to require a bond before granting a TRO, the Rules did not intend to give the judge the license to exercise such discretion arbitrarily to the prejudice of the defendant.

For grave abuse of authority, respondent was fined P20,000.00. (A.M. No. RTJ-03-1814, May 26, 2005)

### Judges: gross misconduct; gross ignorance of the law

Section 5, Rule 112 of the Rules of Criminal Procedure explicitly states that within ten (10) days after the conclusion of the preliminary investigation, an investigating judge shall transmit to the provincial or city prosecutor for appropriate action her resolution of the case together with the records thereof.

Respondent cannot brush aside her duty to transmit to the Provincial Prosecutor within the said 10-day period her resolution as well as the records of the case on the excuse that complainant could still file appropriate pleadings within the reglementary period because the law does not allow her such discretion. Her pretext reinforced the fact that she did not know the fundamental rules on preliminary investigation, and evinced her weakness and her lack of knowledge of the basic precepts of the law. It only proves grave abuse of authority on her part which is tantamount to gross ignorance of the law.

For gross ignorance of the law, respondent was suspended for three (3) months without pay. (A.M. No. MTJ-03-1419, June 8, 2005)

**Judges: gross ignorance of the law**

Dangerous Drugs are defined by Section 3, paragraph (j) of R.A. 9165, as including those in the Schedules listed and annexed to the 1961 single Convention on Narcotic Drugs, as amended by the 1972 Protocol, and in the Schedules annexed to the 1971 UN single Convention on Psychotropic Substances which were made an integral part of R.A. No. 9165.

Under the foregoing section, dangerous drugs are classified into (1) narcotic drugs, as listed in the 1961 Single Convention on Narcotic Drug as amended by the 1972 Protocol, and (2) Psychotropic substances, as listed in the 1971 UN Single convention on Psychotropic Substances.

Respondent judge justified her granting of bail to the accused because of her belief that methamphetamine hydrochloride or shabu is merely a precursor and therefore the sale thereof is not a capital offense. This opinion is blatantly erroneous. One need not go beyond the four corners of RA9165 to see her palpable error in the application of the law. A plain reading of the law would immediately show that methamphetamine hydrochloride is a dangerous drug and not a controlled precursor. If only she prudently went over the pertinent provision of RA 9165, particularly Section 3, items (h) and (j) and properly made the corresponding reference to the schedule and tables annexed thereto, she would have easily ascertained that methamphetamine hydrochloride is listed in the 1971 UN single Convention on Psychotropic Substances which are considered dangerous drugs. It is not listed in the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic substances as respondent stated.

For gross ignorance of the law, respondent judge was suspended for six (6) months. **(A.M. No. RTJ-04-1820, June 8, 2005)**

**Judges: gross ignorance of the law**

Section 2, Rule 71 of the Rules of Court provides that a person adjudged in direct contempt by any court may not appeal therefrom but may avail himself of the remedies of certiorari or prohibition. The execution of the judgment shall be suspended pending resolution of such petition provided such person files a bond x x x .

Respondent's denial of complainant's request to post a bond for his provisional liberty violated complainant's right to due process – his right to avail of the remedies of certiorari or prohibition pending resolution of which the execution of judgment should have been suspended. His denial of the request betrayed his ignorance. He was fined P5,000.00. **(A.M. No. RTJ-05-1919, June 27, 2005)**

**Judges: failure to resolve motion within prescribed period**

Section 4 of Rule 37 provides that a motion for new trial or reconsideration shall be resolved within thirty (30) days from submission.

Respondent was able to resolve complainants' motion for reconsideration after more than a year. His explanation that the delay was occasioned by her clerk of court's failure to bring the matter to her attention could not free her from administrative liability. As a judge, she has the bounden duty to maintain proper monitoring of cases submitted for decision or resolution.

For undue delay in resolving complainants' motion, respondent was find P10,000.00. **(A.M. No. RTJ-03-1804, June 23, 2005)**

**Judge: gross ignorance of the Rules**

In *Sangguniang Bayan of Batac, Ilocos Norte vs. Judge Efren Albano*<sup>1</sup> and reiterated in *Bagunas vs. Fibular*<sup>2</sup> the Court ruled that under the new rules of procedure, preliminary investigation has only one stage, viz:

[U]nder the old rules, the preliminary investigation conducted by a municipal judge had two stages: (1) the preliminary examination stage during which the investigating judge determines whether there is reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof, so that a warrant of arrest may be issued and the accused held for trial; and (2) the preliminary investigation proper where the complaint or information is read to the accused after his arrest and he is informed of the substance of the evidence adduced against him, after which he is allowed to present evidence in his favor if he so desires. **Presidential Decree 911, upon which the present rule is based, removed the preliminary examination stage and integrated it into the preliminary investigation proper. Now, the proceeding consist of only one stage.**

Section 3, Rule 112 of the Rules of Court outlines the procedure for conducting a preliminary investigation:

Section 3. Procedure. - The preliminary investigation shall be conducted in the following manner:

<sup>1</sup> 329 Phil 363 [1996]

<sup>2</sup> 352 Phil 206 [1998]

(a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant, and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public, each of whom must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense.

Objects as evidence need not be furnished a party but shall be made available for examination, copying, or photographing at the expense of the requesting party.

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.

(d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.

(e) The investigating officer may set a hearing if there are facts and issues to be clarified from a party or a witness. The parties can be present at the hearing but without the right to examine or cross-examine.

They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned.

The hearing shall be held within ten (10) days from submission of the counter-affidavits and other documents or from the expiration of the period for their submission. It shall be terminated within five (5) days.

(f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

Respondent judge disregarded the procedure for preliminary investigation in Criminal Case No. 4598. As it were, he merely took the statements of complainant therein and, on that very same day, terminated his investigation and issued warrants of arrest against the defendants who were not furnished with the copies of the complaint for robbery, thereby denying them the chance to examine the same and the evidence submitted. Nor were they given the opportunity to submit their counter-affidavits and supporting documents. If anything else, the respondent judge's actuations in the premises only betray his ignorance of procedural rules and reckless disregard of the accused's basic right to due process.

For gross ignorance of the rules, respondent was fined P10,000.00. (A.M. No. MTJ-04-1532, June 27, 2005)

**Chancellor, Philippine Judicial Academy**

Ameurfina A. Melencio Herrera

**Head, Research and Linkages Office**

Prof. Sedfrey M. Candelaria

**Editors**

Dean Eulogia M. Cueva      Atty. Orlando B. Cariño

**Editorial Assistants**

Atty. Amelia T. Guillamun

**Staff**

Romano A. Zapico  
Rodrigo G. Javier  
Blythe M. Lumague

The *PHILJA Fax/Electronic Alerts* is issued monthly by the Research and Linkages Office of the Philippine Judicial Academy with offices at the 3<sup>rd</sup> Floor of the Supreme Court Centennial Building, Taft Avenue, Manila. Tel No. (02)552-9518; Telefax; (02)552-9526 E-mail address: research\_philja@yahoo.com

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