



Supreme Court of the Philippines
Philippine Judicial Academy



PHILJA Fax/Electronic Alerts

Issue 05-05
May 2005

ADMINISTRATIVE CIRCULAR NO. 26-2005

DECLARING JUNE 2005 AS JAIL DECONGESTION MONTH AND EXHORTING JUDGES OF THE FIRST AND SECOND LEVEL COURTS TO CONDUCT JAIL VISITATIONS DURING THE MONTH

WHEREAS, under Section 25 of Rule 114 of the 2000 Revised Rules of Criminal Procedure, the courts exercise supervision over all persons in custody for the purpose of eliminating unnecessary detention, and the executive judges of the Regional Trial Courts are required to conduct monthly personal inspections of provincial, city, or municipal jails and the prisoners within their respective jurisdiction for the purposes therein stated;

WHEREAS, it has been noted that there are offenders who have been detained for a period equal to, or more than, the minimum of the penalty prescribed by law for the offense for which they have been charged and the trial or appeal proceedings of which are still ongoing; and, there have been instances when the offenders have remained under detention even if they have already served the imprisonment penalty imposed by the courts;

WHEREAS, there is a need to address the perennial problem of congestions in prison cells in various penal institutions which does not only frustrate the full implementation of the rehabilitation program for offenders, but also violate their human dignity; and

WHEREAS, in June 2005, specifically on the eleventh, the Supreme Court will celebrate its 104th founding anniversary; and it would be fitting and proper to include as one of its anniversary activities the declaration of the month of June as *Jail Decongestion Month*.

NOW, THEREFORE, and taking into consideration the recommendation of the Office of the Court Administrator, the whole month of June 2005 is hereby declared *Jail Decongestion Month*. All judges of the first and second level courts, with the assistance of the public prosecutors, public attorneys, legal aid lawyers of the Integrated Bar of the Philippines (IBP), and defense lawyers, are directed to conduct visitations and ocular inspections of jails within their respective jurisdictions on the **eleventh day of June 2005** and on other days of said month as may be deemed necessary.

In these visits, the Judges concerned, assisted by their respective Branch Clerks of Court and Legal Researchers, shall consider the following:

1. The possible release of detention prisoners pursuant to Section 16, Rule 114 of the 2000 Revised Rules of Criminal Procedure and Article 29 of the Revised Penal Code, as amended, of those who have already served their sentence, as the case may be, unless the release is not warranted due to any other lawful ground or cause;
2. The possibility of a plea of "guilty" to a lesser offense under Section 2, Rule 116 of the 2000 Revised Rules of Criminal Procedure unless prohibited by law; and
3. The conduct of dialogues with the detention prisoners to inquire on their accommodation, health concerns, and the segregation of the sexes and of the minors from adults; to ensure the observance of their rights as detainees; and to strive to eliminate conditions prejudicial to their rights.

To effectively pursue and implement the objectives of these activities, the following guidelines are hereby adopted:

1. The Branch Clerk of Court shall segregate case records of criminal cases involving detention prisoners.
2. With the supervision of the Presiding judges and the assistance of the Legal Researchers, the Branch Clerks of Court shall accomplish the Detainees Data Sheet (**Annex "A"**) and attach the same to the case record of the detainee.

The data sheet shall contain the maximum and minimum period of the penalty imposable for the crime charged without regard to the application of the Indeterminate Sentence Law. It shall also contain all possible lower offenses included in the crime charged with their corresponding minimum and maximum penalties which could be imposed by reason of the mitigating circumstance of plea of guilty.

3. Thereafter, the Branch Clerk of Court shall call to a conference the public prosecutors and defense lawyers concerned to discuss the possibility of a plea of guilty to a lesser offense or the release of the prisoner on a reduced bail. The defense lawyers shall be requested to discuss the matter with their clients and to file the appropriate pleadings if the latter are amenable. If their clients are not amenable, the defense lawyers shall forthwith inform the Branch Clerks of court of such fact.
4. The Branch Clerks of court shall also confer with the jail wardens and provide them with the copy of the accomplished Detainee's Data Sheet. The wardens shall keep a file of the data sheets, provide the detainees with their respective data sheets, and explain to them the contents thereof.
5. Each Branch Clerk of Court shall inform the Presiding Judge of the results of the conferences before the scheduled date of visitations.

Within thirty (30) days after the *Jail Decongestion Month*, the Branch Clerks of Court shall submit to the office of the court Administrator a **Report** with a list of decided cases involving detention prisoners, as well as the names of detention prisoners in their

respective jurisdictions released under (a) a reduced bail, (b) a plea of guilty to a lesser offense, or (c) Section 16, Rule 114 of the Revised Rules of Criminal Procedure when the period of detention is equal to, or more than, the maximum penalty for the offense charge.

The Office of the Court Administrator shall implement this Administrative Circular and, for that purpose, promulgate such guidelines as may be necessary for its effective and efficient implementation.

This Administrative Circular shall take effect upon its issuance.

Issued this 17th day of May 2005.

(SGD) HILARIO G. DAVIDE, Jr.
Chief Justice

Letter of Clarification Re: Section V, sub-paragraph A.2 of A.M. No. 04-7-02-SC (Re: Guidelines on Corporate surety Bonds)

13 May 2005-05-23

ATTY. GRACE S. BELVIS

Clerk of Court
Office of the Clerk of Court – Regional Trial Court
Pasig City, Manila

Dear Atty. Belvis:

This refers to your 18 April 2005 letter requesting clarification on a matter concerning the procedure observed in the raffling of accredited surety companies as provided for in Section V, sub-paragraph A.2 of A.M. No. 04-7-02-SC (*Re: Guidelines on Corporate Surety Bonds*).

You raised two (2) situations in your letter. The first one deals with a situation where a litigant shows up with a waiver indicating Surety Company "C" as his choice despite the fact that the turn of the company to negotiate with a litigant is not yet due based on the ranking order arrived at by the court through the raffle system (Surety Companies "A" and "B" being ahead in the order of priority). In the second situation, even before the full observance of the ranking order is finished, another litigant presents a waiver showing Surety Company "C" as his choice, too.

Based on the aforementioned premises, you posit the following queries: (a) Is the waiver executed by the litigant *before* the full observance of the ranking order acceptable under the new Guidelines on Surety Bonds? (b) how soon can a waiver be entertained and accepted? Is it necessary that a particular round be finished first before any waiver is entertained?

The court devised the "raffle system" and the "ranking order" to give litigants who are not familiar with the bonding system the opportunity to secure the services of a surety company at the lowest possible cost. The amount of premium offered by each accredited company varies and the creation of a ranking order through a raffle system levels the playing field, giving litigant the chance to choose a surety company whose services he can afford. On the other hand, all the surety companies accredited by the Supreme court (through the OCA) are given the chance to do business with the litigants. Under the new system, no accredited surety company is left out in the cold. It must be stressed however that what the guidelines offer to both the litigant and the surety company are mere "opportunities" to negotiate and arrive at an agreement.

The OCA is nonetheless cognizant of the case where a waiver may be executed by the litigant. These are cases where there is an (a) urgent need for the litigant to secure a bond for his temporary liberty, and (b) where a litigant is already familiar with the bonding system and has in fact previously transacted with and is fully satisfied with the services offered by the company of his choice (regardless of the cost of premium). A waiver in these cases shall suffice. A waiver can also be accepted even when the observance of the ranking order is not yet finished, as this does not change the fact that the litigant is in a state of urgency to post bail and secure his liberty or that has acquired familiarity with the services of the surety company he intends to transact with.

However, before any waiver is granted, all concerned Clerks of Court are advised to observe the following precautionary procedure:

a. Before acting on the waiver presented by the litigant, the Clerk of Court concerned shall brief the litigant of the raffle system and direct the former to immediately negotiate with the representative of the surety company *originally* scheduled to transact with the litigant under the raffle system. The clerk of Court shall issue to the litigant a copy of the Joint statement of Waiver (herein attached as Annex "A") to be accomplished by both the litigant and the representative of the surety company originally scheduled to transact with the latter. The Statement shall state that the two parties attempted to come into terms but the same failed;

b. While the litigant is negotiating with the surety company, the Clerk of court shall keep on file the waiver presented to him/her by the litigant.

c. Upon the submission or return of the Joint Statement of Waiver by the litigant, the Clerk of court shall verify the authenticity of the document.

d. If the Statement is duly executed, the Clerk of Court shall then accept the waiver, allowing the litigant to post bail through the surety company of his/her choice.

e. If the representative of the surety company refuses to affix his/her signature on the Statement of Waiver, the litigant shall make known this fact to the Clerk of Court either verbally or in writing. If it is established by the Clerk of Court that the refusal is based on whimsical/capricious reasons, the waiver shall be accepted.

f. The waiver, as accepted, shall apply only to the **person of the litigant** who executes the same and to the **particular case** mentioned in the same document. No general waiver or one encompassing future cases shall be entertained or accepted.

g. The waiver shall also include therein the name of the surety company which the litigant intends to transact with. In the event that the transaction fails. No second (or third waiver, as the case may be) waiver for *the same case* will be entertained and the litigant shall be required to fully observe the ranking order. This means that the litigant will have to go through the surety company originally intended for him/her under the raffle system. If the litigant fails to come into terms with the surety company, he/she shall proceed to negotiate with the surety company next in line under the raffle system.

h. No waiver shall be entertained or accepted if the surety company mentioned therein is not duly accredited by the Court. The clerk of Court shall ensure that all papers of the said surety company are in order.

Noting the aforementioned precautionary measures, only then can the waiver executed by the litigant be entertained and accepted.

For your information and proper guidance.

Very truly yours,

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

Judges: inefficiency

By his own admission, it took seventeen (17) months to resolve the motion for reconsideration filed in Civil Case No. 28-469-2001. Moreover, respondent judge resolve the motion for reconsideration only after the filing of the instant complaint, leading one to wonder whether such resolution would have been further delayed had complainant not lodged the case against him. This is a blatant transgression of the rule that judges should dispose of the case with promptitude for the same is not only an ethical issue but a constitutional right of litigants as well.

For inefficiency, respondent was fined P5,000.00. (A.M. No. RTJ-04-1889, December 22, 2004)

Judges: ignorance of the law

If a complaint or information is filed directly with the Municipal Trial Court, the procedure laid down in Section 3(a) of Rule 112 of the Rules shall be observed. If the judge finds no sufficient ground to hold the respondent for trial, he shall dismiss the complaint or information. Otherwise, he shall issue a warrant of arrest or a commitment order if the accused had already been arrested, and hold the latter for trial. However, the judge is given the discretion to merely issue summons instead of a warrant of arrest if he does not find it necessary to place the accused under custody.

It is not obligatory but merely discretionary upon the investigating judge to issue a warrant for the arrest of the accused even after having personally examined the complainant and his witnesses in the form of searching questions for the determination of whether probable cause exists. Whether it is necessary to place the accused in custody in order not to frustrate the ends of justice is left to the judge's sound judgment. Moreover, the judge is not required to transmit the records of the case to the prosecutor for review.

In this case, respondent judge, following the foregoing procedure, found probable cause to hold the accused for trial and forthwith set their arraignment and pre-trial. There is nothing irregular in the course of action taken by respondent judge.

For liability to attach for ignorance of the law, the assailed order, decision or actuations of the judge in the performance of official duties must not only be found erroneous but most importantly, it must be established that he was moved by bad faith, dishonesty or some other like motive.

Case dismissed for lack of merit. A.M. No. MTJ-05-1581, February 28, 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. Jack Andrew O. Miranda
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 3rd 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

If you have any Fax No. or E-mail address, please let us know so we could send direct to you the "Alerts."