



Supreme Court of the Philippines  
Philippine Judicial Academy



*PHILJA Fax/Electronic Alerts*

Issue 04-09  
September 2004

Judges; Intemperate speech; irrelevant opinion

Judges should refrain from expressing irrelevant opinions in their decisions which may only reflect unfavorably upon their competence and the propriety of their judicial actuations. Moreover, intemperate speech detracts from the equanimity and judiciousness that should be the constant hallmarks of a dispenser of justice. **(AM No. MTJ-01-1377, June 17, 2004)**

Judges: Motion without notice of hearing is pro forma

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. The objective of the rule is to avoid a capricious change of mind in order to provide due process to both parties and to insure impartiality in the trial.

Respondent judge violated a basic and fundamental constitutional principle, due process, when he granted the ex-parte motion without notice of hearing. Respondent was fined P3,000.00. **(AM No. MTJ-01-1377, June 17, 2004)**

Judge: Application for preliminary injunction must be verified

Rule 58, Section 4 (a) of the Rules of Court is clear with regard to the procedure to be followed in the issuance of writs of preliminary injunction, i.e. a preliminary injunction or temporary restraining order may be granted only when the application in the action or proceeding is verified, and shows facts entitling the applicant to the relief demanded. The rule is very explicit in its requirement that a preliminary injunction may be granted only when the complaint is verified. Absence of verification makes an application or petition therefor patently insufficient both in form and substance.

In the present case, the issuance of the writ of preliminary injunction by respondent judge is not a mere deficiency in prudence, discretion and judgment but a patent disregard of well-known rules and, therefore, constitutive of gross ignorance of the law. The complaint was not verified, hence, he should not have issued the writ.

It is the responsibility of judges to keep abreast with the law and changes therein, as well as with the latest decisions of the Supreme Court. One cannot seek refuge in a mere cursory acquaintance with the statute and procedural rules.

Respondent was fined P10,000.00 for ignorance of the law. **(AM No. RTJ-04-1855, July 14, 2004)**

Judges: Hold departure order can be issued only in criminal cases

Circular 39-97 provides that an HDO may be issued only in criminal cases by the RTC and the respondent erred where he issued the hold-departure order against complainant in an action for support

Respondent cannot feign lack of knowledge of the Circular because he cited it in his order dated April 3, 2002. For ignorance of the law, he was reprimanded. **(AM No. RTJ-04-1836, July 14, 2004)**

Judges: Ill health not an excuse for failure to render decision

The Supreme Court is not unaware of the heavy caseload of judges and it is precisely for this reason that it is sympathetic to requests for extension of time within which to decide cases and resolve matters and incidents related thereto.

Respondent judge cannot claim ill health as the primary reason for his failure to act promptly on the cases pending before his sala. As pointed out by the Court Administrator, his illness should not be an excuse for his failure to render decisions or resolutions within the prescribed period. Whenever a judge cannot decide a case promptly, all he has to do is ask the Court for a reasonable extension of time to resolve the case which the respondent failed to do so.

Respondent was fined P15,000.00 for gross inefficiency. **(AM No. 03-11-652-RTC, July 21, 2004)**

Judges: Hold-departure order; ignorance of the law

Circular No, 39-97 limits the authority to issue hold departure order to criminal cases within the jurisdiction of second level courts. Criminal cases within the exclusive jurisdiction of first level courts do not fall within the ambit of the circular. It is logical to state that the criminal cases must be pending in the sala of the RTC concerned.

In this case, at the time of the issuance of the hold-departure order, the criminal cases were only in the preliminary investigation stage in the MTC to determine whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be held for trial. Respondent's issuance of the hold departure order was, therefore, premature and clearly contravenes the mandate of Circular 39-97.

The Court recognizes that not every judicial error bespeaks ignorance of the law and that if committed in good faith, does not warrant administrative sanction, but only in cases within the parameters of tolerable misjudgment. Where, however, the procedure is so simple and the facts so evident as to be beyond permissible margins of error, to still err thereon amounts to ignorance of the law.

Respondent was fined P5,000.00. (AM No. RTJ-04-1850, July 14, 2004)

**Judges: Error of judgment**

A judge may not be disciplined for error of judgment unless there is proof that the error is made with a conscious and deliberate intent to commit an injustice. The questioned orders of respondent were well reasoned and legally sound. Certainly, an administrative complaint is not the appropriate course of action when judicial remedies exist.

Case against respondent was dismissed for lack of merit. (AM No. RTJ-03-1791, July 8, 2004)

**Judges: Oppression**

A warrantless arrest is valid if any of the circumstances enumerated in Section 5 of Rule 113 of the Rules of Court is present.

Respondent's acts of introducing himself as a judge and of requesting the police officers to arrest without warrant the complainants violated the latter's constitutional right, an act which partakes of the nature of oppression, defined as an act of cruelty, severity, unlawful exaction, domination or excessive use of authority.

Respondent was fined P20,000 for oppression. (AM No. RTJ-04-1859, July 13, 2004)

**Judges: Grave misconduct and grave abuse of authority; use of office letterhead**

Rule 3.12 of the Code of Judicial Conduct which is similar to Rule 137, Section 1 of the 1964 Rules of Court mandates that a judge should take no part in a proceeding where the judge's impartiality might reasonably be questioned.

For acting on his own criminal complaints against complainant and using his sala's letterhead for private matters, respondent is guilty of grave misconduct and gross abuse of authority. He should know that a court's letterhead should be used only for official correspondence.

Although he is the complainant in the criminal complaint filed against complainant, respondent did not disqualify himself from the case. Worse, he even issued a warrant of arrest resulting in the arrest and detention of complainant. The idea that a judge can preside over his own case is anathema to the notion of impartiality.

Respondent was dismissed from the service. (AM No. MTJ-02-1444, July 22, 2004)

**Judges: Asking clarificatory questions by judge not partiality**

Complainant also charges respondent judge with bias and partiality since he asked clarificatory questions on the complainant's witnesses as if respondent was acting as protestee's counsel. The Supreme Court has ruled in a number of its pronouncement that impartiality of a judge cannot be assailed on the ground that he asked clarificatory questions during the trial.

Complaint against respondent was dismissed for lack of merit. (AM No. OCA IPI-03-1671-RTJ, May 5, 2004)

**Judges: Complaint has no legal or factual basis**

Contested decision of respondent contains nothing indicative of bad faith, malice or corrupt motive in arriving at such particular decision. The decision was absolutely based on the facts and circumstances established during the trial and is in accordance with law and jurisprudence.

The complaint is without legal or factual basis hence, dismissed for lack of merit. (AM No. OCA-IPI-02-1337-MTJ, February 11, 2004)

**Judges: Failure to notify prosecution before granting bail**

Whether bail is a matter of right or discretion and even if no charge has yet been filed in court against a respondent-suspect-detainee, reasonable notice of hearing is required to be given to the prosecutor or at least his recommendation must be sought.

It bears stressing that the prosecution should be afforded reasonable opportunity to comment on the application for bail by showing that evidence of guilt is strong.

Under the circumstances, by respondent judge's assailed grant of bail, the prosecution was deprived of due process for which he is liable for gross ignorance of the law or procedure. (AM No. RTJ-03-1774, May 27, 2004)

**Judges: Pardoning power of the President does not extend to administrative penalties imposed by the Supreme Court**

The Supreme Court has ruled that the power of the President to grant executive clemency in administrative cases refers only to administrative cases in the executive branch and not in the judicial and legislative branches of the government. The pardoning power of the President cannot be allowed to extend to administrative penalties imposed by the Court in administrative cases concerning officials and employees of the Judiciary. This would not only breach the principle of separation of powers but would likewise impair and diminish the power of the Court to discipline and punish erring officials and employees of the Judiciary. (AM No. SCC-95-2, April 13, 2004)

**Judges: Failure to decide case within the prescribed period**

The failure of a judge to decide a case within the prescribed period is inexcusable and constitutes gross inefficiency.

The explanation of respondent is completely unsatisfactory. Incidents such as numerous postponements of hearings, non-submission of transcript of stenographic notes and the possibility of an amicable settlement between the parties are not reasonable justifications for failing to dispose of a case and render a decision within the prescribed period. Respondent was fined P20,000.00. (AM No. RRTJ-00-1526, June 03, 2004)

**Judges; In Administrative proceedings, complainant has the burden of proving the allegations in the complaint**

In administrative proceedings, the complainant has the burden of proving by substantial evidence the allegations in his complaint, absent such, what will prevail is the presumption that respondent regularly performed his duties

The rules demand that if the respondent judge should be disciplined for grave misconduct, the evidence against him should be competent and should be derived from direct knowledge.

The absence of any evidence showing that respondent acted culpably reduces the charge against him into a mere indictment.

The case against respondent was dismissed for lack of merit. **(AM No. RTJ-04-1854, June 8, 2004)**

**Judges; Promulgation of judgment by a judge who takes over the sala of another judge who died**

A judge who takes over the sala of another judge who died during office cannot validly promulgate a decision penned by the latter. In fact, decisions promulgated after the judge who penned the same had been appointed to and qualified in another office are null and void. To be binding, a judgment must be duly signed and promulgated during the incumbency of the judge whose signature appears thereon. In single courts, like the regional trial courts and the municipal trial courts, a decision may no longer be promulgated after the ponente has vacated his office.

Respondent judge cannot claim that his only participation in the promulgation of the questioned decision was "merely an exercise of a ministerial duty to enforce the said decision which was already long rendered by the judge who actually and completely heard the above mentioned criminal case on the merits."

Respondent is guilty of ignorance of the law and fined P20,000.00. **(AM No. MTJ-02-1417, May 27, 2004)**

**Judges; Voluntary inhibition to try a case**

The issue of whether a judge should voluntarily inhibit himself is addressed to his sound discretion pursuant to paragraph 2 of Section 1 of Rule 137 which provides for the rule on voluntary inhibition.

Taking together all the acts and conduct of respondent relative to complainant's case, the Court believed that she did not exhibit any bias or partiality to warrant her voluntary inhibition from the case. Bias and partiality cannot be presumed, for in administrative proceedings no less than substantial proof is required. Apart from bare allegations, there must be convincing evidence to show that respondent is indeed biased and partial.

Complaint against respondent was dismissed for lack of merit. **(AM no. RTJ-04-1852, June 3, 2004)**

**Judges; Gross ignorance of the law; jurisdiction over subject matter distinguished from jurisdiction over the person**

Elementary is the distinction between jurisdiction over the subject-matter and jurisdiction over the person. Jurisdiction over the subject-matter is conferred by the Constitution or by law. In contrast, jurisdiction over the person is acquired by the court by virtue of the party's or accused's voluntary submission to the authority of the court or through the exercise of its coercive processes. Jurisdiction over the person is waivable unlike jurisdiction over the subject-matter which is neither subject to agreement nor conferred by consent of the parties. Jurisdiction over the subject-matter is ascertained by considering the allegations of the complaint or information.

Respondent judge is not cognizant of the difference as he blatantly confused one with the other. Jurisdiction over the criminal cases against complainant pertains to the Regional Trial Court, hence, respondent gravely erred in taking cognizance of the criminal cases against complainant and worst still, in issuing warrants for complainant's arrest.

As a last ditch effort to make respondent see the light, complainant moved to quash for lack of jurisdiction; yet it was futile. Respondent denied the motion, thereby manifesting his gross ignorance of the law.

Respondent judge was fined P10,000.00. **(AM No. MTJ-04-1543, May 31, 2004)**

**Judges; Disciplinary proceedings do not complement, supplement or substitute judicial remedies**

The rule is that disciplinary proceedings do not complement, supplement, or substitute judicial remedies. Any inquiry into the administrative liability of a judge may be resorted to only after the available remedies have been exhausted and decided with finality. There is nothing on record to suggest that complainant first availed of such remedies before filing the complaint against respondent.

Complaint dismissed for lack of merit. **(AM No. RTJ-02-1717, May 28, 2004)**

**Chancellor, Philippine Judicial Academy**  
Ameurфина 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 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

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