



PHILJA

In Pursuit of Judicial Excellence

BULLETIN

JANUARY-MARCH 2012

VOLUME XIV ISSUE No. 53

From the Chancellor's Desk

The first quarter of 2012 opened with the 61st Orientation Seminar-Workshop for Newly Appointed Judges followed by two batches for the Career Development Program for Court Legal Researchers of the NCJR and the Career Enhancement Program for the RTC Clerks of Court of Region III.



Special Focus Programs, including several trainings on the Small Claims Case Monitoring System, the seminar workshops for Judges on the Effective Use of the Benchbook for Philippine Trial Courts (Expanded and Revised), and on Combating Human Trafficking in the Philippines were also accomplished during this period.

Two Focus Group Discussions were likewise done; one was on Asset Recovery as an Anti-Corruption Tool with visiting British judge Michael Hopmeier giving an excellent presentation of U.K. law and practice on the matter. The other was a Stakeholders Focus Group Discussion on Problem Areas in Taxation.

We continued to assist the Supreme Court Enhanced Justice on Wheels Program (EJOW) by holding its Information Dissemination component through a Dialogue between Barangay Officials and Court Officials in Nueva Ecija and Zambales.

PHILJA also conducted a Capacity Building Seminar on Environmental Laws and the Rules of Procedure for Environmental Cases for the Court of Appeals and the 12th Multi-Sectoral Capacity Building on Environmental Laws and the Rules of Procedure for Environmental Cases.

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TRAININGS, PROGRAMS AND ACTIVITIES



Focus Group Discussion on Asset Recovery as an Anti-Corruption Tool



The Philippine Judicial Academy conducted a Focus Group Discussion with Judge Michael Hopmeier, Circuit Judge, Kingston-upon-Thames Crown Court, United Kingdom, on *Asset Recovery as an Anti-Corruption Tool* on January 13, 2012, at the Bernas Center, Ateneo Professional Schools, Makati City. The discussion provided a venue for experts on asset recovery from the Philippines and the United Kingdom to share experiences and insights on the topic. A total of 18 participants comprising RTC judges, the Sandiganbayan Presiding Justice, and representatives from the Sandiganbayan, the PCGG and the AHRC participated in the FGD.

Apart from the sharing of experiences and insights, problems encountered by the Philippines, particularly by the justice system, were also identified. One notable suggestion on how to deal with the problem on recovery only of identifiable assets was to amend our laws; such that, if there is indeed an accumulation of ill-gotten wealth, whether the asset is found or not, the party will be held liable. Judge Hopmeier also gave suggestions on how to specifically address other problems in asset recovery.



Capacity Building on Environmental Laws and the Rules of Procedure for Environmental Cases for the Court of Appeals

The Philippine Judicial Academy conducted the *Capacity Building Seminar-Workshop on Environmental Laws and the Rules of Procedure for Environmental Cases* for the Court of Appeals on February 15-17, 2012, at the Mallberry Suites Business Hotel, Cagayan de Oro City. Fifty participants comprising CA-CDO justices, court attorneys, and mediators attended the seminar-workshop which covered the topics *Overview of Constitutional, Statutory and Regulatory*

Provisions Related to Environmental Justice; Land Tenurial Instruments in the Philippines; Brown Laws; Blue Laws; Rules of Procedure for Environmental Cases; Civil and Criminal Procedure; Evidence; and Use of ADR Mechanisms in Environmental Litigation.



The seminar was a special curricular offering upon the request of the Court of Appeals–Cagayan de Oro City (CA-CDO) for the first homogenous group after a series of multi-sectoral trainings. The participants were expected to acquire knowledge and understanding of environmental issues affecting the country and the world; of basic environmental laws, rules, regulations, administrative processes, and court-related rules of procedure for environmental cases; as well as increase their awareness of the full potential of mediation in the resolution of environmental cases. It also aimed to determine the problems, issues and concerns attendant to the application of these laws and rules; to identify expeditious and inexpensive reliefs and remedies to environmental cases; to undertake the needed strategic and effective law enforcement measures; and to propose measures to enhance the framework for decision making on environmental issues and addressing policy gaps on environmental justice.



Training on the Small Claims Case Monitoring System

Training on the Small Claims Case Monitoring System (SC2MS) is one of the newest Special Focus Programs of the Philippine Judicial Academy to support the Supreme Court's implementation of a technologically advanced monitoring system of small claims cases in all lower courts.

PHILJA has successfully conducted 11 training programs for First Level Clerks of Court/Clerks in charge of SC2MS since the effectivity of the Rule on Procedure for Small Claims Cases on March 18, 2010, in cooperation with the SC-Program

Management Office and the SC-Office of the Court Administrator, with the United States Agency for International Development (USAID) and the American Bar Association Rule of Law Initiative (ABA-ROLI) as sponsors.

REGION	DATE	VENUE	PARTICIPANTS
NCJR	October 13, 2011	Pasay City	81
Region IV	October 14, 2011	Pasay City	95
Region VI	November 10, 2011	Iloilo City	68
Region VII	November 11, 2011	Iloilo City	53
Region III	November 29, 2011	Angeles City	109
Regions IX, X and Surigao del Sur	December 8, 2011	Cagayan de Oro City	83
Region XI	January 26, 2012	Davao City	66
Region XII	January 27, 2012	Davao City	73
Region V	February 9, 2012	Legazpi City	79
Region I (Batch 1)	March 26, 2012	Laoag City	64
Region I (Batch 1)	March 27, 2012	Laoag City	55
TOTAL			826



Orientation

61st Orientation Seminar-Workshop for Newly Appointed Judges

Date: March 20 to 29, 2012
 Venue: PHILJA Training Center, Tagaytay City
 Participants: 33 newly appointed judges, 11 promoted judges and one laterally promoted judge, namely:

A. New Appointments

Regional Trial Court

Region I

Hon. Raphiel F. Alzate
RTC, Br. 1, Bangued, Abra
 Hon. Gina J. Chan
RTC, Br. 22, Narvacan, Ilocos Sur

Region II

Hon. Rodolfo B. Dizon
RTC, Br. 18, Ilagan, Isabela
 Hon. Conrado T. Tabaco
RTC, Br. 9, Aparri, Cagayan
 Hon. Raymond Reynold R. Lauigan
RTC, Br. 1, Tuguegarao City, Cagayan

Region III

Hon. Grace V. Ruiz
RTC, Br. 22, Malolos City, Bulacan

Region VIII

Hon. Mario O. Quinit
RTC, Br. 17, Palompon, Leyte

Region IX

Hon. Alsad H. Alfad, Jr.
RTC, Br. 25, Siasi, Sulu

Metropolitan Trial Court

National Capital Judicial Region

Hon. Nerina Casandra N. Anastacio-Mendinueto
MeTC, Br. 22, Manila
 Hon. Lourdes Grace S. Barrientos-Sasondoncillo
MeTC, Br. 86, Caloocan City
 Hon. Marlo B. Campanilla
MeTC, Br. 83, Caloocan City

Hon. Jackie B. Crisologo-Saguissag
MeTC, Br. 67, Makati City
 Hon. Jean Susan Desuasido Gill
MeTC, Br. 79, Las Piñas City
 Hon. Michael V. Francisco
MeTC, Br. 85, Caloocan City
 Hon. Dennis J. Rafa
MeTC, Br. 84, Caloocan City

Municipal Trial Court in Cities

Region I

Hon. Myra Sheila M. Nalupta-Barba
MTCC, Br. 1, Laoag City, Ilocos Norte
 Hon. Leody M. Opolinto
MTCC, Br. 3, Baguio City
 Hon. Glenda T. Ortiz-Soriano
MTCC, Br. 2, Baguio City
 Hon. Criselda M. Lamong
MTCC, Alaminos, Pangasinan

Region III

Hon. Aileen Liza M. David
MTCC, Br. 2, San Jose Del Monte City, Bulacan
 Hon. Gerlyn S. Turingan-De Los Reyes
MTCC, Br. 3, San Jose Del Monte City, Bulacan

Municipal Trial Court

Region I

Hon. Edwin B. Maynigo
MTC, Lingayen, Pangasinan
 Hon. Jonathan C. Segundo
MTC, Mankayan, Benguet
 Hon. Zenaida D. Perucho
MTC, Sta. Barbara, Pangasinan
 Hon. Avelina J. Villegas-Rosario
MTC, Calasiao, Pangasinan

Region III

Hon. Jerry C. Perico
MTC, Sasmuan, Pampanga

Region IV-A

Hon. Jeanette L. Bilan
MTC, Br. 1, San Pedro, Laguna

Region VII

Hon. Edwin L. Diez
MTC, Sibonga, Cebu

Municipal Circuit Trial Court

Region II

Hon. Efraim B. Calimuhayan
7th MCTC, Piat-Sto. Niño, Cagayan
 Hon. Glenda B. Columna-Dupaya
4th MCTC, Gonzaga-Sta. Teresita, Cagayan

Region VIII

Hon. Prudencio O. Borgueta, Jr.
5th MCTC, Paranas-San Sebastian, Samar
 Hon. Armando L. Rosadiño
3rd MCTC, Pambujan-Silvino, Lobos, Northern Samar
 Hon. Roland Dennis G. Molina
1st MCTC, Gamay-Lapinig-Mapanas, Northern Samar

B. Promotion**Regional Trial Court****National Capital Judicial Region**

Hon. Emilio Rodolfo Y. Legaspi III

RTC, Br. 13, Manila

Hon. Roberto P. Buenaventura

RTC, Br. 86, Quezon City

Hon. Aurora H. Calledo

RTC, Br. 87, Quezon City

Hon. Catherine P. Manodon

RTC, Br. 104, Quezon City

Hon. Luis Zenon Q. Maceren

RTC, Br. 218, Quezon City

Region I

Hon. Sergio T. Angnganay, Jr.

RTC, Br. 36, Bontoc, Mountain Province

Hon. Asuncion F. Mandia

RTC, Br. 29, San Fernando City, La Union

Hon. Jennifer P. Humiding

RTC, Br. 63, La Trinidad, Benguet

Region II

Hon. Andrew U. Barcena

RTC, Br. 17, Ilagan, Isabela

Hon. Andrew P. Dulnuan

RTC, Br. 31, Cabarroguis, Quirino

Region III

Hon. Sita J. Clemente

RTC, Br. 16, Malolos City, Bulacan

C. Lateral**Municipal Trial Court in Cities****Region I**

Hon. Ivan Kim B. Morales

MTCC, Br. 2, San Fernando City, La Union

**Career Development Program****Career Development Program for Court Legal Researchers of NCJR**

Date: February 7 to 8, 2012

Venue: College of Saint Benilde (CSB) Hotel, Manila

Participants: 50 RTC and MeTC court legal researchers

Date: February 9 to 10, 2012

Venue: College of Saint Benilde (CSB) Hotel, Manila

Participants: 48 RTC and MeTC court legal researchers

**Career Enhancement Program****Career Enhancement Program for RTC Clerks of Court (Region III)**

Date: February 22 to 23, 2012

Venue: PHILJA Training Center, Tagaytay City

Participants: 47 RTC clerks of court

**Special Focus Programs****Training on the Small Claims Case Monitoring System**

Development Partners: OCA; USAID; ABA-ROLI, with assistance of World Bank through SC-PMO

Date: January 26, 2012

Venue: Grand Regal Hotel, Davao City

Participants: 66 MTCC, MTC, and MCTC clerks of court and clerks in charge of SC2MS of Regions XI and IX

Date: January 27, 2012

Venue: Grand Regal Hotel, Davao City

Participants: 73 MTCC, MTC, and MCTC clerks of court and clerks in charge of SC2MS of Regions XII and X

Development Partners: OCA, PMO, USAID, ABA-ROLI

Date: February 9, 2012

Venue: Hotel Venezia, Legaspi City

Participants: 79 MTCC, MTC, and MCTC clerks of court and clerks in charge of SC2MS of Region V

Date: March 26, 2012

Venue: Fort Ilocandia Hotel, Laoag City

Participants: 64 MTCC, MTC, and MCTC clerks of court and clerks in charge of SC2MS of Region I (Batch 1)

Date: March 27, 2012

Venue: Fort Ilocandia Hotel, Laoag City

Participants: 55 MTCC, MTC and MCTC clerks of court and clerks in charge of SC2MS of Region I (Batch 2)

Increasing Judicial Efficiency: Seminar-Workshop for Judges on the Effective Use of the Benchbook for Philippine Trial Courts (Revised and Expanded)

Development Partners: USAID, ABA-ROLI

Date: February 1, 2012

Venue: L'Fisher Hotel, Bacolod City

Participants: 73 RTC, MTCC, MTC, MCTC judges of Region VI

Date: February 20, 2012

Venue: Avenue Plaza Hotel, Naga City

Participants: 76 RTC, MTCC, MTC, MCTC judges of Region V

Date: March 5, 2012

Venue: Fort Ilocandia Resort Hotel, Laoag City

Participants: 75 RTC, MTCC, MTC, MCTC judges of Region I

Date: March 20, 2012

Venue: Hotel Vida, Pampanga

Participants: 78 RTC, MTCC, MTC, MCTC judges of Region III

Capacity Building on Environmental Laws and the Rules of Procedure for Environmental Cases for the Court of Appeals

Date: February 15 to 17, 2012

Venue: Mallberry Suites Business Hotel, Cagayan de Oro City

Participants: 50 CA-CDO justices, court attorneys, and mediators

Information Dissemination through a Dialogue between Barangay Officials and Court Officials

Nueva Ecija

Date: February 22, 2012

Venue: Convention Center, Gapan City Hall, Gapan City

Participants: 117 barangay officials

Zambales

Date: February 23, 2012

Venue: Plenary Hall B, Olongapo City Convention Center, Olongapo City

Participants: 226 barangay officials

Seminar-Workshop on Combating Human Trafficking in the Philippines

Development Partners: U.S. Department of Justice Criminal Division through OPDAT

Date: February 29 to March 1, 2012

Venue: Altavista Hotel, Malay, Aklan

Participants: 44 RTC judges and prosecutors handling human trafficking cases

Date: March 13 to 14, 2012

Venue: Sheridan Hotel, Puerto Princesa City, Palawan

Participants: 35 RTC judges, prosecutors and court personnel of Region IV

Gender Sensitivity Training for Judges, Court Interpreters and Court Social Workers

Development Partners: Committee on Gender Responsiveness in the Judiciary; Subcommittee on Training and Development; ADB

Date: March 28 to 29, 2012

Venue: East Asia Royale Hotel, General Santos City

Participants: 52 RTC, MTCC, MTC and MCTC judges, court interpreters and court social workers and observer from Philippine Commission on Women

12th Multi-Sectoral Capacity Building on Environmental Laws and the Rules of Procedure for Environmental Cases

Development Partner: DENR

Date: March 28 to 30, 2012

Venue: Mallberry Suites Business Hotel, Cagayan de Oro City
Participants: 80 RTC, MTCC, MCTC judges and clerks of court, PAO lawyers, mediators, representatives from DENR central office, regional office, PENROs, and CENROs, PNP, PCG, NCIP and BFAR of Region X



Focus Group Discussions

Asset Recovery as an Anti-Corruption Tool: A Focus Group Discussion with Judge Michael Hopmeier

Development Partners: PCGG, AHRC, British Embassy Manila, Friedrich Naumann Foundation

Date: January 13, 2012

Venue: Bernas Center, Ateneo Professional Schools, Rockwell Center, Makati

Participants: 18 SB Justices, RTC judges, representatives from PCGG, SB and AHRC

Stakeholders' Focus Group Discussion on Problem Areas in Taxation

Development Partners: CTA, USAID, ABA-ROLI Philippines

Date: February 24, 2012

Venue: Traders Hotel, Roxas Boulevard, Pasay City

Participants: 22 representatives from CTA, BIR, Bureau of Local Government Finance, DOJ, Bureau of Customs, PEZA, and SGV and Co.



Convention-Seminars

8th National Convention and Seminar of the Philippine Association of Court Social Workers, Inc. (PACSWI)

Theme: Strengthening the Professionalism and Ethics of the Social Workers in the Judiciary

Date: March 7 to 9, 2012

Venue: Bethel Guest House, Dumaguete City

Participants: 82 court social workers

17th National Convention and Seminar of the Philippine Women Judges Association (PWJA)

Theme: Women Judges: 25 Years of Upholding Judicial Independence, The Rule of Law and Women Rights

Date: March 14 to 16, 2012

Venue: Manila Hotel

Participants: 345 judges



On Alternative Dispute Resolution

Orientation Conference with Stakeholders on Court-Annexed Mediation (Quezon Mediation Program)

Date: March 22, 2012

Venue: Queen Margaret Hotel, Lucena City

Participants: 142 RTC, MTCC, MTC, and MCTC judges, clerks of court, representatives from IBP, PAO, LGU, National Prosecution Service, business, academe and media.

Work Orientation and Skills Enhancement Seminar for Philippine Mediation Center Unit Staff

Date: March 26 to 27, 2012

Venue: Grand Regal Hotel, Davao City

Participants: 23 PMC Unit staff in Mindanao

Date: March 28 to 29, 2012

Venue: Hotel Fortuna, Cebu City

Participants: 36 PMC Unit staff in Visayas

Pre-Internship Orientation of Justices, Clerks of Court, Court Personnel, Trained Mediators and PMC Unit Staff of the Court of Appeals—Cebu City on Appeals Court Mediation (ACM)

Date: March 29, 2012

Venue: Hotel Fortuna, Cebu City

Participants: 38 CA-Cebu justices, assistant and division clerks of court, trained mediators and PMC unit staff



Judicial Moves

Supreme Court



Hon. ANTONIO M. EUGENIO, JR.
Deputy Court Administrator
appointed on March 20, 2012

Court of Appeals



Hon. PAMPIO A. ABARINTOS
Executive Justice
Court of Appeals—Cebu Station
designated on November 11, 2011

2012 Upcoming PHILJA Events

(Continued from page 28)

- 15th PACE National Convention and Seminar
May 9-11, Puerto Princesa City
- CEP for Professional Regulation Commission Directors,
Lawyers and Legal Staff
May 10-11, Manila
- Personal Security Training for Judges
May 15-17, Tagaytay City
- Basic Mediation Course (Quezon Mediation Program)
May 22-25, Lucena City
- Pre-Internship Orientation and Meeting with Judges, Clerks
of Court, Branch Clerks of Court, PMC Unit Staff and
Mediator-Trainees in CAM (Quezon Mediation Program)
May 25, Lucena City
- Seminar-Workshop for Special Commercial Court Judges
NCJR and Region IV, *May 29-30, Manila*
Regions I, II, III and V, *June 20-21, Manila*
- Seminar-Workshop on the Rules of Procedure on Intellectual
Property Cases for Judges, Prosecutors and Clerks of Court
NCJR and Region IV, *May 31, Manila*
Regions I, II, III and V, *June 22, Manila*
- Career Development Program for Court Legal Researchers
Region III (Batch 1), *June 14-15, Manila*
- ASEAN Awareness Program on Trafficking in Persons for Judges
June 5-6, Laoag City
- Training of Trainers in JDR
June 6-7, Manila
- 62nd Orientation Seminar-Workshop for Newly Appointed
Judges
June 13-22, Tagaytay City
- Refresher/Advanced Course for CAM (Cities of Cagayan de
Oro, Iligan, Ozamiz and Marawi)
June 20-21, Cagayan de Oro City
- Judicial Settlement Conference for Judges on JDR (Skills-
based Course)
June 26-29, Tagaytay City

From the Chancellor's Desk
(Continued from page 1)

A convention-seminar with the theme *Women Judges: 25 Years of Upholding Judicial Independence, the Rule of Law and Women Rights* was conducted in celebration of the 25th year of the Philippine Women Judges Association. A convention seminar for the Philippine Association of Court Social Workers, Inc., (PACSWI) was also held.

On the Alternative Dispute Resolution front, the Academy mounted an Orientation Conference with Stakeholders on Court-Annexed Mediation in the province of Quezon and held several Work Orientation and Skills Enhancement Seminars for our PMC Unit staffs in different parts of the Visayas and Mindanao. A Pre-Internship Orientation in Appeals Court Mediation (ACM) was done for Justices, Clerks of Court, Court Personnel, Trained Mediators and PMC Unit Staff in the Court of Appeals in Cebu City.

The dedication, industry and training of all our staff and personnel were once more evident in the conduct of these activities. Congratulations and thank you to all.

I also wish to thank all our development partners for their financial support as well as for the trust and confidence they have in the Academy in pursuit of our common goal. The United States Department of Justice Criminal Division through its OPDAT, the United States Agency for International Development (USAID), the American Bar Association–Rule of Law Initiative (ABA-ROLI), the Child Protection Unit Network (CPU-NET), the United Nations Children's Fund (UNICEF), The Asia Foundation (TAF) and the Department of Environment and Natural Resources (DENR), are deserving of our deepest appreciation.

Thank you, too, to the Honorable Chief Justice, Renato C. Corona and the Supreme Court, for the tireless support and encouragement given to PHILJA and all its undertakings.

Finally, thanks to the Almighty for the blessings and graces needed to serve our people effectively.

All the best.


ADOLFO S. AZCUNA
Chancellor

NEW RULINGS



Constitutional Law

Procedure in electing Philippine citizenship.

Commonwealth Act (CA) No. 625, enacted pursuant to Section 1(4), Article IV of the 1935 Constitution, prescribes the procedure that should be followed in order to make a valid election of Philippine citizenship, to wit:

SECTION 1. The option to elect Philippine citizenship in accordance with subsection (4), [S]ection 1, Article IV, of the Constitution shall be expressed in a statement to be signed and sworn to by the party concerned before any officer authorized to administer oaths, and shall be filed with the nearest civil registry. The said party shall accompany the aforesaid statement with the oath of allegiance to the Constitution and the Government of the Philippines.

Based on the foregoing, the statutory formalities of electing Philippine citizenship are: (1) a statement of election under oath; (2) an oath of allegiance to the Constitution and Government of the Philippines; and (3) registration of the statement of election and of the oath with the nearest civil registry.

Furthermore, no election of Philippine citizenship shall be accepted for registration under CA No. 625 unless the party exercising the right of election has complied with the requirements of the Alien Registration Act of 1950. In other words, he should first be required to register as an alien. Pertinently, the person electing Philippine citizenship is required to file a petition with the Commission of Immigration and Deportation (now Bureau of Immigration) for the cancellation of his alien certificate of registration based on his aforesaid election of Philippine citizenship and said Office will initially decide, based on the evidence presented the validity or invalidity of said election. Afterwards, the same is elevated to the Ministry (now Department) of Justice for final determination and review.

It should be stressed that there is no specific statutory or procedural rule which authorizes the direct filing of a petition for declaration of election of Philippine citizenship before the courts. The special proceeding provided under Section 2, Rule 108 of the Rules of Court on Cancellation or Correction of Entries in the Civil Registry, merely allows any interested party to file an action for cancellation or correction of entry in the civil registry, i.e., election, loss and recovery of citizenship, which is not the relief prayed for by the respondent.

Be that as it may, even if we set aside this procedural infirmity, still the trial court's conclusion that respondent duly elected Philippine citizenship is erroneous since the records undisputably show that respondent failed to comply with the legal requirements for a valid election. Specifically, respondent had not executed a sworn statement of her election of Philippine citizenship. The only documentary

evidence submitted by respondent in support of her claim of alleged election was her oath of allegiance, executed 12 years after she reached the age of majority, which was unregistered. As aptly pointed out by the petitioner, even assuming *arguendo* that respondent's oath of allegiance suffices, its execution was not within a reasonable time after respondent attained the age of majority and was not registered with the nearest civil registry as required under Section 1 of CA No. 625. The phrase "reasonable time" has been interpreted to mean that the election should be made generally within three years from reaching the age of majority. Moreover, there was no satisfactory explanation proffered by respondent for the delay and the failure to register with the nearest local civil registry.

Based on the foregoing circumstances, respondent clearly failed to comply with the procedural requirements for a valid and effective election of Philippine citizenship. Respondent cannot assert that the exercise of suffrage and the participation in election exercises constitutes a positive act of election of Philippine citizenship since the law specifically lays down the requirements for acquisition of citizenship by election. The mere exercise of suffrage, continuous and uninterrupted stay in the Philippines, and other similar acts showing exercise of Philippine citizenship cannot take the place of election of Philippine citizenship. Hence, respondent cannot now be allowed to seek the intervention of the court to confer upon her Philippine citizenship when clearly she has failed to validly elect Philippine citizenship. As held in *Ching*, the prescribed procedure in electing Philippine citizenship is certainly not a tedious and painstaking process. All that is required of the elector is to execute an affidavit of election of Philippine citizenship and, thereafter, file the same with the nearest civil registry. Having failed to comply with the foregoing requirements, respondent's petition before the trial court must be denied.

Villarama, Jr., *J.*, *The Republic of the Philippines v. Nora Fe Sagun*, G.R. No. 187567, February 15, 2012.



Administrative Law

Detail and reassignment distinguished and defined.

A *detail* is defined and governed by Executive Order 292, Book V, Title 1, Subtitle A, Chapter 5, Section 26(6), thus:

- (6) **Detail.** A detail is the movement of an employee from one agency to another without the issuance of an appointment and shall be allowed, only for a limited period in the case of employees occupying professional, technical and scientific positions. If the employee believes that there is no justification for the detail, he may appeal his case to the Commission. Pending appeal, the decision to detail the employee shall be executory unless otherwise ordered by the Commission. *(underscoring supplied)*

New Rulings
Administrative Law (continued)

On the other hand, a *reassignment* is defined and governed by E.O. 292, Book V, Title 1, Subtitle A, Chapter 5, Section 26(7), thus:

- (7) **Reassignment.** – An employee may be reassigned from one organizational unit to another in the same agency; *Provided*, That such reassignment shall not involve a reduction in rank, status or salaries. (*underscoring supplied*)

The principal distinctions between a detail and reassignment lie in the place where the employee is to be moved and in its effectivity pending appeal with the CSC. Based on the definition, a detail requires a movement from one agency to another while a reassignment requires a movement within the same agency. Moreover, pending appeal with the CSC, an order to detail is immediately executory, whereas a reassignment order does not become immediately effective.

In the case at bench, the lateral movement of Pacheo as Assistant Chief, Legal Division, from Quezon City to San Fernando, Pampanga, within the same agency is undeniably a reassignment. The OSG posits that she should have first reported to her new place of assignment and then subsequently question her reassignment. It is clear, however, from E.O. 292, Book V, Title 1, Subtitle A, Chapter 5, Section 26(7) that there is no such duty to first report to the new place of assignment prior to questioning an alleged invalid reassignment imposed upon an employee. Pacheo was well within her right not to report immediately to RR4, San Fernando, Pampanga, and to question her reassignment.

Reassignments involving a reduction in rank, status or salary violate an employee's security of tenure, which is assured by the Constitution, the Administrative Code of 1987, and the Omnibus Civil Service Rules and Regulations. Security of tenure covers not only employees removed without cause, but also cases of unconsented transfers and reassignments, which are tantamount to illegal/constructive removal.

The Court is not unaware that the BIR is authorized to assign or reassign internal revenue officers and employees as the exigencies of service may require. This authority of the BIR, however, should be prudently exercised in accordance with existing civil service rules.

Mendoza, J., Republic of the Philippines, represented by the Civil Service Commission v. Minerva M.P. Pacheo, G.R. No. 178021, January 31, 2012.



Criminal Law

Probation; probation still available to accused notwithstanding his appeal should he be imposed by final judgment a penalty lower than six years.

The Probation Law, said the Court in *Francisco*, requires that an accused must not have appealed his conviction before he can avail himself of probation. This requirement "outlaws the element of speculation on the part of the accused—to wager on the result of his appeal—that when his conviction is finally

affirmed on appeal, the moment of truth well-nigh at hand, and the service of his sentence inevitable, he now applies for probation as an 'escape hatch' thus rendering nugatory the appellate court's affirmance of his conviction."

Here, however, Arnel did not appeal from a judgment that would have allowed him to apply for probation. He did not have a choice between appeal and probation. He was not in a position to say, "By taking this appeal, I choose not to apply for probation." The stiff penalty that the trial court imposed on him denied him that choice. Thus, a ruling that would allow Arnel to now seek probation under this Court's greatly diminished penalty will not dilute the sound ruling in *Francisco*. It remains that those who will appeal from judgments of conviction, when they have the option to try for probation, forfeit their right to apply for that privilege.

Besides, in appealing his case, Arnel raised the issue of correctness of the penalty imposed on him. He claimed that the evidence at best warranted his conviction only for attempted, not frustrated, homicide, which crime called for a probationable penalty. In a way, therefore, Arnel sought from the beginning to bring down the penalty to the level where the law would allow him to apply for probation.

In a real sense, the Court's finding that Arnel was guilty, not of frustrated homicide, but only of attempted homicide, is an original conviction that for the first time imposes on him a probationable penalty. Had the RTC done him right from the start, it would have found him guilty of the correct offense and imposed on him the right penalty of two years and four months maximum. This would have afforded Arnel the right to apply for probation.

The Probation Law never intended to deny an accused his right to probation through no fault of his. The underlying philosophy of probation is one of liberality towards the accused. Such philosophy is not served by a harsh and stringent interpretation of the statutory provisions. As Justice Vicente V. Mendoza said in his dissent in *Francisco*, the Probation Law must not be regarded as a mere privilege to be given to the accused only where it clearly appears he comes within its letter; to do so would be to disregard the teaching in many cases that the Probation Law should be applied in favor of the accused not because it is a criminal law but to achieve its beneficent purpose.

One of those who dissent from this decision points out that allowing Arnel to apply for probation after he appealed from the trial court's judgment of conviction would not be consistent with the provision of Section 2 that the probation law should be interpreted to "provide an opportunity for the reformation of a penitent offender." An accused like Arnel who appeals from a judgment convicting him, it is claimed, shows no penitence.

This may be true if the trial court meted out to Arnel a correct judgment of conviction. Here, however, it convicted Arnel of the wrong crime, frustrated homicide, that carried a penalty in excess of six years. How can the Court expect him to feel penitent over a crime, which as the Court now finds, he did not commit? He only committed attempted homicide with its maximum penalty of two years and four months.

New Rulings
Criminal Law (continued)

Ironically, if the Court denies Arnel the right to apply for probation under the reduced penalty, it would be sending him straight behind bars. It would be robbing him of the chance to instead undergo reformation as a penitent offender, defeating the very purpose of the probation law.

At any rate, what is clear is that, had the RTC done what was right and imposed on Arnel the correct penalty of two years and four months maximum, he would have had the right to apply for probation. No one could say with certainty that he would have availed himself of the right had the RTC done him right. The idea may not even have crossed his mind precisely since the penalty he got was not probationable.

The question in this case is ultimately one of fairness. Is it fair to deny Arnel the right to apply for probation when the new penalty that the Court imposes on him is, unlike the one erroneously imposed by the trial court, subject to probation?

The Supreme Court found petitioner Arnel Colinares **GUILTY** beyond reasonable doubt of attempted homicide, and **SENTENCED** him to suffer an indeterminate penalty from four months of *arresto mayor*, as minimum, to two years and four months of *prision correccional*, as maximum, and to pay Rufino P. Buena the amount of P20,000.00 as moral damages, without prejudice to petitioner applying for probation within 15 days from notice that the record of the case has been remanded for execution to the Regional Trial Court of San Jose, Camarines Sur, in Criminal Case T-2213.

Abad, J., Arnel Colinares v. People of the Philippines, G.R. No. 182748, December 13, 2011.

Procedure to be followed in the seizure and custody of prohibited drugs.

Section 21 of Republic Act No. 9165 provides the procedure to be followed in the seizure and custody of prohibited drugs, to wit:

Sec. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

- (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

x x x x

The provisions of Article II, Section 21(a) of the Implementing Rules and Regulations (IRR) of Republic Act No. 9165 provide:

x x x x

- (a) The apprehending office/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided*, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

x x x x

A review of the records establishes that the aforesaid procedure laid down by Republic Act No. 9165 and its IRR was not followed. Several lapses on the part of the buy-bust team are readily apparent. To start with, no photograph of the seized *shabu* was taken. Secondly, the buy-bust team did not immediately mark the seized *shabu* at the scene of the crime and in the presence of Relato and witnesses. Thirdly, although there was testimony about the marking of the seized items being made at the police station, the records do not show that the marking was done in the presence of Relato or his chosen representative. And, fourthly, no representative of the media and the Department of Justice, or any elected official attended the taking of the physical inventory and to sign the inventory.

Under the foregoing rules, the marking immediately after seizure is the starting point in the custodial link, because succeeding handlers of the prohibited drugs or related items will use the markings as reference. It further serves to segregate the marked evidence from the corpus of all other similar and related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, obviating switching, "planting," or contamination of evidence. It is crucial in ensuring the integrity of the chain of custody, which is defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, thus:

- b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item

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New Rulings

Criminal Law (continued)

shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition;

While the last paragraph of Section 21(a) of the IRR provides a saving mechanism to ensure that not every case of non-compliance irreversibly prejudices the State's evidence, it is significant to note that the application of the saving mechanism to a situation is expressly conditioned upon the State rendering an explanation of the lapse or lapses in the compliance with the procedures. Here, however, the Prosecution tendered no explanation why the buy-bust team had failed to mark the seized *shabu* immediately after the arrest. Nevertheless, even assuming that marking the *shabu* at the scene of the crime by the buy-bust team had not been practical or possible for the buy-bust team to do, the saving mechanism would still not be applicable due to the lack of a credible showing of any effort undertaken by the buy-bust team to keep the *shabu* intact while in transit to the police station.

The procedural lapses committed by the buy-bust team underscored the uncertainty about the identity and integrity of the *shabu* admitted as evidence against the accused. They highlighted the failure of the Prosecution to establish the chain of custody, by which the incriminating evidence would have been authenticated. An unavoidable consequence of the non-establishment of the chain of custody was the serious doubt on whether the *shabu* presented as evidence was really the *shabu* supposedly seized from Relato.

In a prosecution of the sale and possession of methamphetamine hydrochloride prohibited under Republic Act No. 9165, the State not only carries the heavy burden of proving the elements of the offense of, but also bears the obligation to prove the *corpus delicti*, failing in which the State will not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt. It is settled that the State does not establish the *corpus delicti* when the prohibited substance subject of the prosecution is missing or when substantial gaps in the chain of custody of the prohibited substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court. Any gap renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt. Thus, Relato deserves exculpation, especially as we recall that his defense of frame-up became plausible in the face of the weakness of the Prosecution's evidence of guilt.

Bersamin, J., *People of the Philippines v. Darwin Relato y Ajero*, G.R. No. 173794, January 18, 2012.

**Remedial Law****Service of notice to file answer by publication not provided in the Rules of Court.**

The only modes of service of pleadings, motions, notices, orders, judgments and other papers allowed by the rules are personal service, service by mail and substituted service if either personal service or service by mail cannot be made, as stated in Sections 6, 7 and 8 of Rule 13 of the Rules of Court. Nowhere under this rule is service of notice to file answer by publication is mentioned, much less recognized.

Furthermore, the Court would like to point out that service by publication only applies to service of summons stated under Rule 14 of the Rules of Court where the methods of service of summons in civil cases are: (1) personal service; (2) substituted service; and (3) service by publication. Similarly, service by publication can apply to judgments, final orders and resolutions as provided under Section 9, Rule 13 of the Rules of Court, as follows:

SEC. 9. Service of judgments, final orders or resolutions.

Judgments, final orders or resolutions shall be served either personally or by registered mail. When a party **summoned by publication** has failed to appear in the action, **judgments, final orders or resolutions** against him shall be **served upon him also by publication** at the expense of the prevailing party. *(emphasis supplied)*

As correctly ruled by the CA:

Its third error was when it authorized service by publication after initially dismissing the case for failure of plaintiffs-appellees to furnish the current address of defendants-appellants. There is, however, nothing in the Rules that authorizes publication of a notice of hearing to file answer. What is authorized to be published are: (1) summons, and (2) final orders and judgments.

x x x x

The above-quoted provision cannot be used to justify the trial court's action in authorizing service by publication. Firstly, what was published was not a final order or judgment but a simple order or notice to file answer. Secondly, even granting that the notice to file answer can be served by publication, it is explicit in the Rule that publication is allowed only if the defendant-appellant was summoned by publication. The record is clear that defendants-appellants were not summoned by publication.

On this point, the petitioners argue that the publication was a valid and justified procedure because following the ruling of the RTC, it was "an extra step to safeguard the interest of the defendants done pursuant to the inherent power of the courts to control its proceedings to make them [conformable] to law and justice." The petitioners further argue that "the defendants in a civil case cannot seize control of the proceedings or cause them to be suspended indefinitely by the simple expedient of not filing their

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DOCTRINAL REMINDERS



Labor Law

Termination of employment for just causes; due process must be observed even in the presence of just causes.

In its 1941 ruling in *National Labor Union, Inc. v. Standard Vacuum Oil Company*, the Court expressly stated thus:

x x x **The conviction of an employee in a criminal case is not indispensable to warrant his dismissal by his employer. If there is sufficient evidence to show that the employee has been guilty of a breach of trust, or that his employer has ample reason to distrust him, it cannot justly deny to the employer the authority to dismiss such employee.** All that is incumbent upon the Court of Industrial Relations (now National Labor Relations Commission) to determine is whether the proposed dismissal is for just cause x x x. **It is not necessary for said court to find that an employee has been guilty of a crime beyond reasonable doubt in order to authorize his dismissal.** (*emphasis supplied*)

In *Philippine Long Distance Telephone Co. v. NLRC*, the Court held that the acquittal of the employee from the criminal prosecution for a crime committed against the interest of the employer did not automatically eliminate loss of confidence as a basis for administrative action against the employee; and that in cases where the acts of misconduct amounted to a crime, a dismissal might still be properly ordered notwithstanding that the employee was not criminally prosecuted or was acquitted after a criminal prosecution.

In *Batangas Laguna Tayabas Bus Co. (BLTB Co.) v. NLRC*, the Court explained further, as follows:

Fraud or willful breach of trust reposed upon an employee by his employer is a recognized cause for termination of employment and **it is not necessary that the employer should await the employee's final conviction in the criminal case involving such fraud or breach of trust before it can terminate the employee's services.** In fact, **even the dropping of the charges or an acquittal of the employee therefrom does not preclude the dismissal of an employee for acts inimical to the interests of the employer.**

To our mind, **the criminal charges initiated by the company against private respondents and the finding after preliminary investigation of their *prima facie* guilt of the offense charged constitute substantial evidence sufficient to warrant a finding** by the Labor Tribunal of the existence of a just cause for their termination based on loss of trust and confidence. The Labor Tribunal need not have gone further as to require private respondent's conviction of the crime charged, or inferred innocence on their part from their release from detention, which was mainly due to their posting of bail. (*emphasis supplied*)

Indeed, the employer is not expected to be as strict and rigorous as a judge in a criminal trial in weighing all the

probabilities of guilt before terminating the employee. Unlike a criminal case, which necessitates a moral certainty of guilt due to the loss of the personal liberty of the accused being the issue, a case concerning an employee suspected of wrongdoing leads only to his termination as a consequence. The quantum of proof required for convicting an accused is thus higher – proof of guilt beyond reasonable doubt – than the quantum prescribed for dismissing an employee – substantial evidence. In so stating, we are not diminishing the value of employment, but only noting that the loss of employment occasions a consequence lesser than the loss of personal liberty, and may thus call for a lower degree of proof.

It is also unfair to require an employer to first be morally certain of the guilt of the employee by awaiting a conviction before terminating him when there is already sufficient showing of the wrongdoing. Requiring that certainty may prove too late for the employer, whose loss may potentially be beyond repair. Here, no less than the DOJ Secretary found probable cause for qualified theft against the petitioner. That finding was enough to justify her termination for loss of confidence. To repeat, her responsibility as the supervisor tasked to oversee the affairs of the kiosk, including seeing to the secure handling of the sales proceeds, could not be ignored or downplayed. The employer's loss of trust and confidence in her was directly rooted in the manner of how she, as the supervisor, had negligently handled the large amount of sales by simply leaving the amount inside the cabinet drawer of the kiosk despite being aware of the great risk of theft. At the very least, she could have resorted to the SOP of first seeking guidance from the main office on how to secure the amount if she could not deposit in the bank due to that day being a Sunday.

Yet, even as we now say that the respondents had a just or valid cause for terminating the petitioner, it becomes unavoidable to ask whether or not they complied with the requirements of due process prior to the termination as embodied in Section 2(d) of Rule I of the *Implementing Rules of Book VI of the Labor Code*, viz:

SEC. 2. Security of tenure. – x x x

x x x x

- (d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes as defined in Article 282 of the Labor Code:

- (i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.
- (ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires, is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.

Doctrinal Reminders
Labor Law (continued)

- (iii) **A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.** (*emphasis supplied*)

x x x x

We answer the query in the negative in the light of the circumstances of the petitioner's termination set forth in her affidavit, to wit:

x x x x

14. **While I was giving my statement to the security officer of the Mall, respondents Vina and Sylvia Mariano came with a policeman and they brought me to Precinct 9, Malate Police Station. Cristina Calung also arrived and together with the sister of Vina and Sylvia, they operated the booth as if nothing happened;**
15. **I was detained at the police station from 11:15 a.m., November 10, up to 11:30 a.m., November 11, 1997;**
16. **After my release from the police precinct, I contacted by phone our office and I was able to talk to respondent Sylvia Mariano. I told her that since I was innocent of the charges they filed against me, I will report back to work. She shouted at me on the phone and told me she no longer wanted to see my face.** I therefore decided to file a complaint for illegal dismissal against respondents with the NLRC, hence this present suit; (*emphasis supplied*)

x x x x

The petitioner plainly demonstrated how quickly and summarily her dismissal was carried out without first requiring her to explain anything in her defense as demanded under Section 2(d) of Rule I of the *Implementing Rules of Book VI of the Labor Code*. Instead, the respondents forthwith had her arrested and investigated by the police authorities for qualified theft. This, we think, was a denial of her right to due process of law, consisting in the opportunity to be heard and to defend herself. In fact, their decision to dismiss her was already final even before the police authority commenced an investigation of the theft, the finality being confirmed by no less than Sylvia Mariano herself telling the petitioner during their phone conversation following the latter's release from police custody on November 11, 1997 that she (Sylvia) "no longer wanted to see" her.

The fact that the petitioner was the only person suspected of being responsible for the theft aggravated the denial of due process. When the respondents confronted her in the morning of November 10, 1997, for the first time after the theft, they brought along a police officer to arrest and hale her to the police precinct to make her answer for the theft. They evidently already concluded that she was the culprit despite a thorough investigation of the theft still to be made. This, despite their obligation under Section 2(d) of Rule I of the *Implementing Rules of Book VI of the Labor Code*, *firstly*, to give her a "reasonable opportunity within which to explain (her) side;" *secondly*, to set a "hearing or conference

during which the employee concerned, with the assistance of counsel if (she) so desires is given opportunity to respond to the charge, present (her) evidence, or rebut the evidence presented against (her);" and *lastly*, to serve her a "written notice of termination x x x indicating that upon due consideration of all the circumstances, grounds have been established to justify (her) termination." They wittingly shunted aside the tenets that mere accusation did not take the place of proof of wrongdoing, and that a suspicion or belief, no matter how sincere, did not substitute for factual findings carefully established through an orderly procedure.

The fair and reasonable opportunity required to be given to the employee before dismissal encompassed not only the giving to the employee of notice of the cause and the ability of the employee to explain, but also the chance to defend against the accusation. This was our thrust in *Philippine Pizza, Inc. v. Bungabong*, where we held that the employee was not afforded due process despite the dismissal being upon a just cause, considering that he was not given a fair and reasonable opportunity to confront his accusers and to defend himself against the charge of theft notwithstanding his having submitted his explanation denying that he had stolen beer from the company dispenser. The termination letter was issued a day before the employee could go to the HRD Office for the investigation, which made it clear to him that the decision to terminate was already final even before he could submit his side and refute the charges against him. Nothing that he could say or do at that point would have changed the decision to dismiss him. Such omission to give the employee the benefit of a hearing and investigation before his termination constituted an infringement of his constitutional right to due process by the employer.

The respondents would further excuse their failure to afford due process by averring that "even before the respondents could issue the petitioner any formal written memorandum requiring her to explain the loss of the P50,912.00 sales proceeds x x x she went post haste to the NLRC and filed a case for illegal dismissal" in order to "beat the gun on respondents." However, we cannot excuse the non-compliance with the requirement of due process on that basis, considering that her resort to the NLRC came after she had been told on November 11, 1997 by Sylvia that she (Sylvia) "no longer wanted to see" her. The definitive termination closed the door to any explanation she would tender. Being afforded no alternative, she understandably resorted to the complaint for illegal dismissal.

Bersamin, J., Lolita S. Concepcion v. Minex Import Corporation/Minerama Corporation, Kenneth Meyers, Sylvia P. Mariano, and Vina Mariano, G.R. No. 153569, January 24, 2012.



Civil Law

Family home; constitution of family home.

In the earlier case of *Kelley, Jr. v. Planters Products, Inc.*, we stressed that:

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

Doctrinal Reminders
Civil Law (continued)

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.** (*emphasis supplied and citation omitted*)

The foregoing rules on constitution of family homes, for purposes of exemption from execution, could be summarized as follows:

First, family residences constructed before the effectivity of the Family Code or before August 3, 1988 must be constituted as a family home either judicially or extrajudicially in accordance with the provisions of the Civil Code in order to be exempt from execution;

Second, family residences constructed after the effectivity of the Family Code on August 3, 1988 are automatically deemed to be family homes and thus exempt from execution from the time it was constituted and lasts as long as any of its beneficiaries actually resides therein;

Third, family residences which were not judicially or extrajudicially constituted as a family home prior to the effectivity of the Family Code, but were existing thereafter, are considered as family homes by operation of law and are prospectively entitled to the benefits accorded to a family home under the Family Code.

Here, the subject property became a family residence sometime in January 1987. There was no showing, however, that the same was judicially or extrajudicially constituted as a family home in accordance with the provisions of the Civil Code. Still, when the Family Code took effect on August 3, 1988, the subject property became a family home by operation of law and was thus prospectively exempt from execution. The petitioners were thus correct in asserting that the subject property was a family home.

Despite the fact that the subject property is a family home and, thus, should have been exempt from execution, we nevertheless rule that the CA did not err in dismissing the petitioners' complaint for nullification of TCT No. T-221755 (M). We agree with the CA that the petitioners should have asserted the subject property being a family home and its being exempted from execution at the time it was levied or within a reasonable time thereafter. As the CA aptly pointed out:

In the light of the facts above summarized, it is evident that appellants did not assert their claim of exemption within a reasonable time. Certainly, reasonable time, for purposes of the law on exemption, does not mean a time after the expiration of the one-year period provided for in Section 30 of Rule 39 of the Rules of Court for judgment debtors to redeem the property sold on execution, otherwise it would render nugatory final bills of sale on execution and defeat the very purpose of execution – to put an end to litigation. x x x.

Reyes, J., Spouses Araceli Oliva-De Mesa and Ernesto S. De Mesa v. Spouses Claudio D. Acero, Jr. and Ma. Rufina D. Acero, Sheriff Felixberto L. Samonte and Registrar Alfredo Santos, G.R. No. 185064, January 16, 2012.

Right of redemption; written notice requirement indispensable.

ART. 1623 of the Civil Code succinctly provides that:

ART. 1623. The right of legal pre-emption or redemption shall not be exercised except within thirty days **from the notice in writing by the prospective vendor**, or by the vendor, as the case may be. The deed of sale shall not be recorded in the Registry of Property, unless accompanied by an affidavit of the vendor that he has given written notice thereof to all possible redemptioners.

The right of redemption of co-owners excludes that of adjoining owners. (*emphasis supplied*)

The indispensability of the “written notice requirement” for purposes of the exercise of the right of redemption was explained by this Court in *Barcellano v. Bañas*, thus:

Nothing in the records and pleadings submitted by the parties shows that there was a written notice sent to the respondents. Without a written notice, the period of thirty days within which the right of legal pre-emption may be exercised, does not start.

The indispensability of a written notice had long been discussed in the early case of *Conejero v. Court of Appeals*, penned by Justice J.B.L. Reyes:

With regard to the written notice, we agree with petitioners that such notice is indispensable, and that, in view of the terms in which the Article of the Philippine Civil Code is couched, mere knowledge of the sale, acquired in some other manner by the redemptioner, does not satisfy the statute. The written notice was obviously exacted by the Code to remove all uncertainty as to the sale, its terms and its validity, and to quiet any doubts that the alienation is not definitive. The statute not having provided for any alternative, the method of notification prescribed remains exclusive.

This is the same ruling in *Verdad v. Court of Appeals*:

The written notice of sale is mandatory. This Court has long established the rule that notwithstanding actual knowledge of a co-owner, the latter is still entitled to a written notice from the selling co-owner in order to remove all uncertainties about the sale, its terms and conditions, as well as its efficacy and status.

Lately, in *Gosiengfiao Guillen v. The Court of Appeals*, this Court again emphasized the mandatory character of a written notice in legal redemption:

From these premises, we ruled that “[P]etitioner-heirs have not lost their right to redeem, for in the absence of a written notification of the sale by the vendors, the 30-day period has not even begun to run.” These premises and conclusion leave no doubt about the thrust of *Mariano*: **The right of the petitioner-heirs to exercise their right of legal redemption exists, and the running of the period for its exercise has not even been triggered because they have not been notified in writing of the fact of sale.**

Doctrinal Reminders
Civil Law (continued)

x x x x

Justice Edgardo Paras, referring to the origins of the requirement, would explain in his commentaries on the New Civil Code that despite actual knowledge, the person having the right to redeem is **STILL** entitled to the written notice. Both the letter and the spirit of the New Civil Code argue against any attempt to widen the scope of the “written notice” by including therein any other kind of notice such as an oral one, or by registration. If the intent of the law has been to include verbal notice or any other means of information as sufficient to give the effect of this notice, there would have been no necessity or reason to specify in the article that said notice be in writing, for under the old law, a verbal notice or mere information was already deemed sufficient.

Time and time again, it has been repeatedly declared by this Court that where the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application. Where the language of a statute is clear and unambiguous, the law is applied according to its express terms, and interpretation should be resorted to only where a literal interpretation would be either impossible or absurd or would lead to an injustice. x x x (citations omitted)

Here, it is undisputed that the respondents did not receive a written notice of the sale in favor of the petitioners. Accordingly, the 30-day period stated under Article 1623 of the Civil Code within which to exercise their right of redemption has not begun to run. Consequently, the respondents may still redeem from the petitioners the portion of the subject property that was sold to the latter.

Reyes, J., Spouses Roman A. Pascual and Mercedita R. Pascual, Francisco A. Pascual, Margarita Corazon D. Mariano, Edwin D. Mariano and Danny R. Mariano v. Spouses Antonio Ballesteros and Lorenza Melchor-Ballesteros, G.R. No. 186269, February 15, 2012.



Commercial Law

Corporate officer; definition of; who are considered corporation officers.

In *Easycall Communications Phils., Inc. v. King*, this Court held that in the context of Presidential Decree No. 902-A, **corporate officers** are those officers of a corporation who **are given that character either by the Corporation Code or by the corporation’s by-laws**. Section 25 of the Corporation Code specifically enumerated who are these corporate officers, to wit: (1) president; (2) secretary; (3) treasurer; and (4) **such other officers as may be provided for in the by-laws**.

The aforesaid Section 25 of the Corporation Code, particularly the phrase “such other officers as may be provided for in the by-laws,” has been clarified and elaborated in this Court’s recent pronouncement in *Matling Industrial and Commercial Corporation v. Coros*, where it held, thus:

Conformably with Section 25, a position must be expressly mentioned in the [b]y-[l]aws in order to be considered as a corporate office. Thus, the creation of an office pursuant to or under a [b]y-[l]aw enabling provision is not enough to make a position a corporate office. [In] *Guerrea v. Lezama* [citation omitted] the first ruling on the matter, held that **the only officers of a corporation were those given that character either by the Corporation Code or by the [b]y-[l]aws; the rest of the corporate officers could be considered only as employees or subordinate officials**. Thus, it was held in *Easycall Communications Phils., Inc. v. King* (citation omitted):

An “office” is created by the charter of the corporation and the officer is elected by the directors or stockholders. On the other hand, an employee occupies no office and generally is employed not by the action of the directors or stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee.

x x x x

This interpretation is the correct application of Section 25 of the Corporation Code, which plainly states that the corporate officers are the President, Secretary, Treasurer and such other officers as may be provided for in the [b]y-[l]aws. **Accordingly, the corporate officers in the context of PD No. 902-A are exclusively those who are given that character either by the Corporation Code or by the corporation’s [b]y-[l]aws.**

A different interpretation can easily leave the way open for the Board of Directors to circumvent the constitutionally guaranteed security of tenure of the employee by the expedient inclusion in the [b]y-[l]aws of an enabling clause on the creation of just any corporate officer position.

It is relevant to state in this connection that the **SEC, the primary agency administering the Corporation Code, adopted a similar interpretation of Section 25 of the Corporation Code in its Opinion dated November 25, 1993 (citation omitted), to wit:**

Thus, pursuant to the above provision (Section 25 of the Corporation Code), **whoever are the corporate officers enumerated in the by-laws are the exclusive Officers of the corporation and the Board has no power to create other Offices without amending first the corporate [b]y-laws. However, the Board may create appointive positions other than the positions of corporate Officers, but the persons occupying such positions are not considered as corporate officers within the meaning of Section 25 of the Corporation Code and are not empowered to exercise the functions of the corporate Officers, except those functions lawfully delegated to them. Their functions and duties are to be determined by the Board of Directors/Trustees. (emphasis supplied)**

A careful perusal of petitioner corporation’s by-laws, particularly paragraph 1, Section 1, Article IV, would explicitly reveal that its corporate officers are composed only of: (1) Chairman; (2) President; (3) one or more Vice President; (4) Treasurer; and (5) Secretary. **The position of General Manager was not among those enumerated.**

Doctrinal Reminders
Commercial Law (continued)

Paragraph 2, Section 1, Article IV of petitioner corporation's by laws, empowered its Board of Directors to appoint such other officers as it may determine necessary or proper. It is by virtue of this enabling provision that petitioner corporation's Board of Directors allegedly approved a resolution to make the position of General Manager a corporate office and, thereafter, appointed respondent thereto making him one of its corporate officers. All of these acts were done without first amending its by laws so as to include the General Manager in its roster of corporate officers.

With the given circumstances and in conformity with *Matling Industrial and Commercial Corporation v. Coros*, this Court rules that respondent was not a corporate officer of petitioner corporation because his position as General Manager was not specifically mentioned in the roster of corporate officers in its corporate by-laws. The enabling clause in petitioner corporation's by-laws empowering its Board of Directors to create additional officers, *i.e.*, General Manager, and the alleged subsequent passage of a board resolution to that effect cannot make such position a corporate office. *Matling* clearly enunciated that the board of directors has no power to create other corporate offices without first amending the corporate by-laws so as to include therein the newly created corporate office. Though the board of directors may create appointive positions other than the positions of corporate officers, the persons occupying such positions cannot be viewed as corporate officers under Section 25 of the Corporation Code. In view thereof, this Court holds that unless and until petitioner corporation's by-laws is amended for the inclusion of General Manager in the list of its corporate officers, such position cannot be considered as a corporate office within the realm of Section 25 of the Corporation Code.

Perez, J., *Marc II Marketing, Inc. and Lucila V. Joson v. Alfredo M. Joson*, G.R. No. 171993, December 12, 2011.



Criminal Law

Fencing; elements of fencing.

The elements of "fencing" are (1) a robbery or theft has been committed; (2) the accused, who took no part in the robbery or theft, "buys, receives, possesses, keeps, acquires, conceals, sells or disposes, or buys and sells, or in any manner deals in any article or object taken" during that robbery or theft; (3) the accused knows or should have known that the thing derived from that crime; and (4) he intends by the deal he makes to gain for himself or for another.

Here, someone carnapped Mantequilla's Nissan Safari on May 25, 1998. Two years later in December 2000, Dimat sold it to Delgado for P850,000.00. Dimat's defense is that the Nissan Safari he bought from Tolentino and later sold to Delgado had engine number TD42-126134 and chassis number CRGY60-YO3553 as evidenced by the deeds of sale covering those transactions. The Nissan Safari stolen from

Mantequilla, on the other hand, had engine number TD42-119136 and chassis number CRGY60-YO3111.

But Dimat's defense is flawed. **First**, the Nissan Safari Delgado bought from him, when stopped on the road and inspected by the police, turned out to have the engine and chassis numbers of the Nissan Safari stolen from Mantequilla. This means that the deeds of sale did not reflect the correct numbers of the vehicle's engine and chassis.

Second. Dimat claims lack of criminal intent as his main defense. But Presidential Decree 1612 is a special law and, therefore, its violation is regarded as *malum prohibitum*, requiring no proof of criminal intent. Of course, the prosecution must still prove that Dimat knew or should have known that the Nissan Safari he acquired and later sold to Delgado was derived from theft or robbery and that he intended to obtain some gain out of his acts.

Dimat testified that he met Tolentino at the Holiday Inn Casino where the latter gave the Nissan Safari to him as collateral for a loan. Tolentino supposedly showed him the old certificate of registration and official receipt of the vehicle and even promised to give him a new certificate of registration and official receipt already in his name. But Tolentino reneged on this promise. Dimat insists that Tolentino's failure to deliver the documents should not prejudice him in any way. Delgado himself could not produce any certificate of registration or official receipt.

Based on the above, evidently, Dimat knew that the Nissan Safari he bought was not properly documented. He said that Tolentino showed him its old certificate of registration and official receipt. But this certainly could not be true because, the vehicle having been carnapped, Tolentino had no documents to show. That Tolentino was unable to make good on his promise to produce new documents undoubtedly confirmed to Dimat that the Nissan Safari came from an illicit source. Still, Dimat sold the same to Sonia Delgado who apparently made no effort to check the papers covering her purchase. That she might herself be liable for fencing is of no moment since she did not stand accused in the case.

Abad, J., *Mel Dimat v. People of the Philippines*, G.R. No. 181184, January 25, 2012.



Remedial Law

Offer of Evidence.

Section 34 of Rule 132 of the Rules of Court provides:

SEC. 34. Offer of Evidence. – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

"The offer of evidence is necessary because it is the duty of the court to rest its findings of fact and its judgment only and strictly upon the evidence offered by the parties. Unless and until admitted by the court in evidence for the

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Doctrinal Reminders

Remedial Law (continued)

purpose or purposes for which such document is offered, the same is merely a scrap of paper barren of probative weight.”

The Court cannot, likewise, disturb the findings of the RTC and the CA as to the evidence presented by the Francias. It is elementary that objection to evidence must be made after evidence is formally offered. It appears that Wincorp was given ample opportunity to file its Comment/Objection to the formal offer of evidence of the Francias but it chose not to file any.

All told, the CA committed no reversible error in rendering the assailed July 27, 2010 Decision and in issuing the challenged October 14, 2010 Resolution.

Mendoza, J., Westmont Investment Corporation v. Amos P. Francia, Jr., Cecilia Zamora, Benjamin Francia, and Pearlbank Securities, Inc., G.R. No. 194128, December 7, 2011.

OCA Circular No. 22-2012
(continued from page 27)

VIII. POLICIES ON DISTRIBUTION OF BENEFITS AND BURIAL ASSISTANCE OF DECEASED MEMBER

1. The burial assistance and medical reimbursements of the deceased member shall be equally divided among the declared beneficiaries.
2. In the absence of declared beneficiaries, the burial assistance and medical reimbursements of the deceased member shall be distributed in accordance with the applicable provisions on testate or intestate succession. In the absence of any qualified claimant, the claim shall, be forfeited by the SCHWP.
3. Those who paid for the funeral expenses can claim the burial assistance but not the medical reimbursements provided that the claimant shall comply with the requirements indicated in VI.3 herein.

IX. LIBERAL CONSTRUCTION

In exceptional and meritorious cases, the Board may relax the application of the rules for the benefit of the claimant.

X. EFFECTIVITY

These guidelines shall take effect upon approval of the Court En Banc for all SCHWP claims with admission/confinement dates filed thereafter.

Previous memoranda and/or board resolutions inconsistent with these guidelines are hereby revoked or repealed.

March 26, 2012.

(Sgd.) JOSE MIDAS P. MARQUEZ
Court Administrator

RESOLUTIONS



RESOLUTION of the COURT *En Banc* dated February 21, 2012, on A.M. No. 11-6-10-SC

RE: GUIDELINES FOR LITIGATION IN QUEZON CITY TRIAL COURTS

To test the practicability and feasibility of the proposed guidelines, the Quezon City Trial Courts shall uniformly and consistently apply and enforce these Guidelines from their date of effectivity, and all who practice before Quezon City Trial Courts shall observe and comply with them.

A. Guidelines Common to Criminal and Civil Cases, including Special Proceedings and Land Registration Cases

1. **Limitation on pleadings.** – Parties may file pleadings subsequent to the complaint, answer and reply, regarding any incident in a pending case, only upon prior leave of court, and in no case to exceed 40 pages in length, double-spaced, using size 14 font.
2. **Motions.**
 - a. Motions that do not conform with the requirements of Rule 15 of the Rules of Court are scraps of paper that do not merit the court’s consideration. The branch clerk of court shall inform the judge of non-compliant motions. The court shall then immediately issue a final order declaring the motion a mere scrap of paper unworthy of any further court action, without necessity of a hearing or comment from the adverse party.
 - b. Courts shall require only a comment or opposition to any motion, which shall be filed within an inextendible period of five days. Thereafter, the motion shall be submitted for resolution by the court. Unless allowed, the filing of a reply, rejoinder, or sur-rejoinder is hereby prohibited.
3. **Notice and service of processes through private couriers.**
 - a. There shall be presumptive notice to a party of a court setting if such notice appears on the record to have been mailed at least 20 days prior to the scheduled date of hearing if the addressee is from within the National Capital Region, or at least 30 days if the addressee is from outside the National Capital Region.
 - b. A party may opt to avail of private couriers for the service of pleadings, motions and other submissions. Proof of service in such case shall either be a sworn certification or affidavit of service from the courier specifically referring to the date of service and the corresponding tracking number for the mail matter.
4. **Postponements.**
 - a. Judges shall not grant any postponement except for acts of God or *force majeure*.

A.M. No. 11-6-10-SC (*continued*)

- b. No motion for postponement, whether written or oral, shall be acted upon by the court unless accompanied by the original official receipt from the Office of the Clerk of Court of Quezon City evidencing payment of the postponement fee.
- c. In civil cases, in the absence of counsel, the court shall proceed with the hearing *ex parte* with no right to cross-examination. If it is the witness who is absent, the presentation of such witness shall be declared waived.

In criminal cases, in the absence of counsel *de parte*, the hearing shall proceed upon appointment by the court of a counsel *de officio*. If it is the witness who is absent, the presentation of such witness shall be declared waived.

In either case, if the scheduled hearing is unable to proceed due to such absence, the court shall require the absent counsel and/or party to pay the expenses of the present party or witness for appearing in court on that date.

5. **Calendar call.** – Courts shall call the calendar at exactly 8:30 a.m. or 2:00 p.m., as the case may be, to determine which cases are ready to proceed. No second call shall be made except only of those cases where both parties have manifested their readiness to proceed. The remaining time after the first call shall be divided equally among the ready cases to ensure that all will be heard on that day.
6. **Oral offer of evidence.** – The offer of evidence, the comment thereon, and the court ruling shall be made orally. A party is required to make his oral offer of evidence on the same as the presentation of his last witness, and the opposing party is required to immediately interpose his objection thereto. Thereafter, the judge shall make the ruling on the offer of evidence in open court.

In making the offer, the counsel shall cite the specific page numbers of the court record where the exhibits being offered are found if attached thereto. The court shall always ensure that all exhibits offered are submitted to the court on the same day.

If the exhibits are not attached to the record, the party making the offer must submit the same during the offer of evidence in open court.

7. **Lack of transcripts of stenographic notes.** – Incomplete or missing transcripts of stenographic notes is not a valid reason to interrupt or suspend the mandatory period for deciding a case. Judges who conducted the trial in a case and heard the testimonies of some or all of the witnesses shall not defer the submission of the case for judgment on this ground. In cases where the case was heard completely by another judge, the new judge tasked to write the decision shall be given 60 days from assumption to office to require the

completion of transcripts before the case is deemed submitted for decision.

8. **Consolidations.**

- a. Consolidation of cases shall only be allowed if both or all of the cases sought to be consolidated have not yet passed the pre-trial or preliminary conference stage.
- b. In cases involving multiple accused where a later information is filed involving an accused who was subjected to further investigation by the Office of the City Prosecutor of Quezon City, over an incident which has the same subject matter as a prior information/s against different accused, the later case when filed under cover of a motion for consolidation from the OCP-QC shall no longer be raffled, but shall be assigned directly to the court where the earlier cases are pending. If the earlier cases are already at the trial stage and witnesses have been presented by the prosecution, the prosecution shall be allowed to merely adopt the evidence so far presented against the new accused, subject to the latter's right to cross-examine the said witnesses.
- c. In civil cases, consolidation shall be granted only if there is identity of parties and issues in the affected cases.

9. **Inhibitions.** – Each party shall only be allowed to file one motion for inhibition in any case strictly on grounds provided for under Rule 137 of the Rules of Court.

10. **Memoranda.**

- a. After completion of trial, the court shall require the parties to submit their memoranda which shall not exceed 25 pages in length, single-spaced, on legal size paper, using size 14 font.

11. **Free legal assistance.** – If a party fails to qualify for the services of the Public Attorney's Office, the Integrated Bar of the Philippines–Quezon City Chapter shall provide free legal assistance to the said party. For this purpose, the IBP-QC Chapter shall submit to the Executive Judges of the Quezon City trial courts, a list of IBP-QC lawyers who may be appointed by the courts to act as counsel *de officio* in such cases. The lists shall be disseminated among all the trial courts in the station.

B. **Guidelines for Civil Cases**

1. **Mediation, judicial dispute resolution, preliminary conference as mandatory parts of pre-trial.** – The order setting the case for pre-trial shall also include
 - a. a referral to the PMC for mandatory mediation proceedings in cases covered by the rule, and/or
 - b. a setting for judicial dispute resolution, as well as
 - c. a preliminary conference before the Branch Clerk of Court.

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A.M. No. 11-6-10-SC (*continued*)

The pre-trial proper before the court must take place only after all the foregoing shall have been completed.

The court shall strictly impose sanctions for non-appearance during mediation, judicial dispute resolution, and/or preliminary conference before the Branch Clerk as these are mandatory parts of pre-trial.

Courts must strictly comply with the Guidelines to be Observed in the Conduct of Pre-Trial under A.M. No. 03-1-09-SC.

2. **Motions relating to pre-trial matters.**

- a. Motions relating to the following pre-trial matters shall be filed before the scheduled date of pre-trial, otherwise they shall be barred:
 - i. Summary judgment and judgment on the pleadings
 - ii. Amendments to pleadings, including the adding or dropping of parties
 - iii. Suspension of proceedings
 - iv. Dismissals under Rule 16, save for lack of jurisdiction over the subject matter of the case.
- b. The courts must resolve said motions not later than 30 days after submission. Pre-trial proper shall only be conducted after such resolution.

3. **Affidavits in lieu of direct testimony.**

- a. The direct examination of all witnesses shall be presented through Affidavits, preferably in question and answer format. Paragraphs shall be consecutively numbered for facility of reference.
- b. The Affidavits shall take the place of the witness' direct examination and no additional oral direct testimony shall be allowed by the court save for the witness' identification and confirmation of his Affidavit and its marking. The failure to submit such Affidavits on the date they are required to be submitted shall amount to a waiver of such submission and of the presentation of the witness/es concerned.
- c. The party presenting the Affidavit shall serve a copy of the same on the adverse counsel and the court not later than five days before the scheduled pre-trial. He shall also attach thereto copies of all documents identified and referred to by the witness in the Affidavit which are intended to be marked in evidence.
- d. Cross-examination shall be conducted immediately after the confirmation of the Affidavit, and the testimony of the witness shall be completed on the same setting.

4. **Execution in appealed ejectment cases.** – In ejectment cases brought to the Regional Trial Court on appeal,

where the latter's decision has already become final and executory, a motion for execution of said decision shall be filed only with and resolved by the Metropolitan Trial Court which originally heard the case.

C. **Guidelines for Criminal Cases**

1. **Schedule of arraignment.**

- a. The arraignment shall be set within seven days from receipt by the court of the case, for detained accused, and within 20 days from receipt by the court of the case, for non-detained accused.
- b. The court must set the arraignment of the accused in the commitment order, in the case of detained accused, or in the order of approval of bail, in any other case.

For this purpose, where the Executive Judges and Pairing Judges act on bail applications of cases assigned to other courts, they shall coordinate with the courts to which the cases are actually assigned for scheduling purposes.

- c. Notice of arraignment shall be sent to the private complainant or complaining law enforcement agent for purposes of plea bargaining, pursuant to Rule 116, Section 1(f) of the Rules of Court.
2. **Suspension of arraignment.** – Courts shall strictly observe the general rule that there shall be no suspension of arraignment except for any of the three grounds stated in Rule 116, Section 11 of the Rules of Court.

- a. In case of suspension of arraignment by reason of a pending petition for review with the DOJ, no court shall allow a suspension beyond 60 days. In granting motions on this ground, the court shall already set the arraignment on the 61st day from the date of filing of the petition with the DOJ, or the nearest available trial date thereafter.
- b. A motion for preliminary investigation shall only be granted where the accused was made subject to inquest proceedings, pursuant to Rule 112, Section 7 of the Rules of Court.
- c. In cases where a motion for preliminary investigation or re-investigation is granted by the court, the Office of the City Prosecutor of Quezon City shall complete the preliminary investigation or re-investigation as the case may be, and submit its resolution to the court within 60 days from receipt of the order granting the motion for preliminary investigation or re-investigation. Upon lapse of the 60-day period without a resolution on the preliminary investigation or re-investigation, the court shall proceed with the arraignment of the accused. In the order granting the motion for preliminary investigation or re-investigation, the court shall already set the arraignment of the accused.
- d. The court shall not allow the deferment of arraignment on ground of absence of counsel *de parte* for the accused if a prior postponement for

A.M. No. 11-6-10-SC (*continued*)

the same reason has been granted and both accused and counsel are duly notified of the arraignment. In such instances, the court shall appoint a counsel *de officio* to assist the accused for arraignment purposes only.

3. **Waiver of reading of the information.** – The court, upon personal examination of the accused, may allow a waiver of the reading of the Information upon the express understanding and intelligent consent of the accused and his counsel, which consent shall be evidenced in both the minutes/certificate of arraignment and the order of arraignment. The court shall ensure the accused's full understanding of the consequences of the waiver before approving the same.
4. **Petitions for bail.** – Except in complex cases involving multiple accused and multiple offended parties, an application for bail shall be heard and resolved within 60 days from the date of the first hearing, and consistent with the rules, summary in nature, preferably requiring the submission by the prosecution of the affidavits of its witnesses with right of cross-examination by the defense.
5. **Pre-trial.**
 - a. The court shall schedule the arraignment and pre-trial on the same date in all cases, except in cases which require mediation and/or judicial dispute resolution. The pre-trial proper in the latter cases must be scheduled immediately upon conclusion of mediation and/or judicial dispute resolution.
 - b. If the arraignment and pre-trial will be conducted on separate dates, the setting of pre-trial and trial dates must be made during the arraignment.
 - c. The order setting the case for pre-trial shall also include:
 - a. a referral to the PMC for mandatory mediation proceedings in cases covered by the rule, and/or
 - b. a setting for judicial dispute resolution, as well as
 - c. a preliminary conference before the Branch Clerk or Court, pursuant to A.M. No. 03-1-09-SC.

The pre-trial proper before the court must take place only after all the foregoing shall have been completed.
 - d. The court shall proceed with pre-trial despite the absence of the accused and/or private complainant provided they were duly notified of the same.
 - e. Courts must strictly comply with the Guidelines to be Observed in the Conduct of Pre-Trial under A.M. No. 03-1-09-SC.

6. **Affidavits in lieu of direct testimony.**

- a. As a rule, testimony of witnesses in criminal cases shall be given orally in open court, except (a.1) when the parties agree to submit affidavits in lieu of oral testimony; and (a.2) to prove the civil liability.
- b. The Affidavits so submitted shall take the place of the witness' direct examination and additional oral direct testimony shall be allowed only upon the court's sound discretion. The failure to submit Affidavits on the date they are required to be submitted shall amount to a waiver of such submission and of the presentation of the witness/es concerned.
- c. The party presenting the Affidavit shall serve a copy of the same on the adverse counsel and the court not later than five days before the scheduled pre-trial. He shall also attach thereto copies of all documents identified and referred to by the witness in the Affidavit which are intended to be marked in evidence.
- d. Cross-examination shall be conducted immediately after the confirmation of the Affidavit, and the testimony of the witness shall be completed on the same setting.
- e. Expert testimony shall always be given orally.

7. **Demurrer and submission of case for decision.**

- a. Once the prosecution rests its case, the court must inquire from the accused whether he will file a demurrer to evidence or he will no longer present evidence, and then act accordingly.
 - b. When the defense rests its case, unless the prosecution expressly moves to present rebuttal evidence, the court shall require the parties to submit their memoranda and in the same order, schedule the date of promulgation of the judgment, within the period required by the law or the rules.
8. **Private prosecutors.** – In cases where the civil liability is being prosecuted by a private counsel, a written authority from the Office of the City Prosecutor of Quezon City in favor of the Private Prosecutor, to try the case even in the absence of the Public Prosecutor, must be submitted to the court no later than the pre-trial stage.

With this authority on record, the court may set trial in this case and other cases being tried by Private Prosecutors with delegated authority, on a separate day when the presence of the Public Prosecutor may be dispensed with.

D. **Applicability of the Guidelines**

These Guidelines shall apply to all newly filed cases, as well as pending cases where trial has not started yet, whether or not the pre-trial has been concluded.

For pending cases where trial has already commenced, where the parties consent to the application of the Guidelines for the remainder of the case proceedings, the Guidelines shall be applied by the court to that case as well.

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A.M. No. 11-6-10-SC (continued)

E. Monitoring and Evaluation

- a. The application of and adherence to these Guidelines shall be subject to periodic monitoring by the Committee and its technical support staff.

For this purpose, Quezon City Trial Courts shall accomplish and submit a periodic report of data on a form to be generated and distributed by the Committee. Training in the use of the form shall be done by the Committee's technical support staff.

- b. The project shall be subject to quarterly reviews by the Committee. At the end of the 6th month from such date of effectivity, the Committee shall prepare a Mid-Term Report on the project for submission to the Supreme Court, and at the end of the 12th month from such date of effectivity, the Committee shall prepare and submit a Final Report on the project to the Supreme Court.

F. Effectivity

These Guidelines shall take effect on April 16, 2012, after its publication for two consecutive weeks in two newspapers of general circulation in the country and after posting for one month at all floors of the Hall of Justice of Quezon City, including at the Offices of the Clerks of Court of the Regional Trial Court and the Metropolitan Trial Court.

Velasco, Jr., J., on official business. Brion and Del Castillo, JJ., on leave.

Very truly yours,

(Sgd.) ENRIQUETA E. VIDAL
Clerk of Court



RESOLUTION of the COURT *En Banc* dated March 20, 2012, on A.M. No. 12-3-5-SC

RE: EXEMPTING ALL DETAINEES FROM PAYMENT OF COURT CLEARANCES FEES AS A PREREQUISITE FOR THEIR RELEASE

The Court resolved to **NOTE** the following letters:

- a. Letter dated March 5, 2012 of Justice Roberto A. Abad, informing the Court that the Committee for the Decongestion of Provincial City and Municipal Jails has received concerns that a great number of detainees whose cases have already been provisionally dismissed by the trial courts are unable to secure their freedom because they could not afford to pay the P125.00 clearance fee and recommending that these court clearances be waived for jail detainees who still could not pay the same after the lapse of 10 days from the issuance of the order of release; and
- b. Letter dated March 7, 2012 of Justice Presbitero J. Velasco, Jr., recommending the amendment of Sections 7(n) and 8(o) of Rule 141, Rules of Court, in connection with the above request of Justice Abad.

Acting on the aforesaid Letters, the Court Resolved to **APPROVE** the proposed amendment of Sections 7(n) and 8(o) of Rule 141 of the Rules of Court, to read as follows:

RULE 141 LEGAL FEES

SEC. 7. Clerks of Regional Trial Courts. — x x x

- (n) For clearance and certifications issued — FIFTY (P50.00) PESOS; **provided, however, that such fee shall be automatically waived in favor of detainees who could not pay the same after the lapse of 10 days from the issuance of the order for their release.**

SEC. 8. Clerks of Court of the First Level Courts. — x x x

- (o) For clearance and certifications issued — FIFTY (P50.00) PESOS; **provided, however, that such fee shall be automatically waived in favor of detainees who could not pay the same after the lapse of 10 days from the issuance of the order for their release.**

The amendment shall have effect on April 16, 2012, after its publication for two consecutive weeks in two newspapers of general circulation in the country.

Del Castillo, J., on leave.

Very truly yours,

(Sgd.) ENRIQUETA E. VIDAL
Clerk of Court

New Rulings

Remedial Law (continued from page 10)

answers or by feigning ignorance of the proceedings. All these could have been avoided had the defendants not been so inexplicably complacent and utterly lacking in ordinary prudence."

The Court is not convinced.

As already discussed above, the basic rules on modes of service of pleadings, motions, notices, orders, judgments, and other papers are mandatory in nature and, therefore, must be strictly observed. The Court is not unaware of the inherent power of courts to control its proceedings. Nonetheless, the exercise of such inherent power must not violate basic court procedures. More importantly, it must not disregard one's basic constitutional right to procedural due process.

Mendoza, J., Rogelio Aberca, Rodolfo Benosa, Nestor Bodino, Noel Etabag, Danilo dela Fuente, Belen Diaz-Flores, Manuel Mario Guzman, Alan Jasminez, Edwin Lopez, Alfredo Mansos, Alex Marcelino, Elizabeth Protacio-Marcelino, Joseph Olayer, Carlos Palma, Marco Palo, Rolando Salutin, Benjamin Segundo, Arturo Tabara, Edwin Tulalian, and Rebecca Tulalian v. Maj. Gen. Fabian Ver, Col. Fidel Singson, Col. Gerardo B. Lantoria, Col. Rolando Abadilla, Col. Galileo Kintanar, Lt. Col. Panfilo M. Lacson, Maj. Rodolfo Aguinaldo, Capt. Danilo Pizarro, 1LT. Pedro Tango, 1LT. Romeo Ricardo, 1LT. Raul Bacalso, M/SGT. Bienvenido Balaba and "John Does", G.R. No. 166216, March 14, 2012.

CIRCULARS



OCA Circular No. 168-2011

TO: ALL JUDGES OF THE FAMILY COURTS AND SINGLE SALA SECOND LEVEL COURTS IN THE NATIONAL JUDICIAL CAPITAL REGION AND REGION IV-A

SUBJECT: NON-COMMITMENT OF THE CHILDREN IN CONFLICT WITH THE LAW (CICL) AT THE CENTER FOR RESTORATIVE ACTIVITIES AND DEVELOPMENT LEARNING EXPERIENCES (CRADLE)

The Department of Social Welfare and Development (DSWD) has informed this Office of the proposed transfer of the management of Children in Conflict with the Law (CICL) from the Center for Restorative Activities and Development Learning Experiences (CRADLE) to its other licensed and accredited Social Welfare and Development Agencies.

Relative thereto, the DSWD has initially identified three Non-Government Organizations which are now serving the CICL, namely:

- a. ERDA – Buhay Kalikasan Revitalizing and Expanding Towards Rehabilitation and Reintegration (ERDA-BK RESTORE);
- b. Virlanie Foundation; and
- c. PREDA Foundation,

and requested that no CICL be committed anymore to the CRADLE. This is in relation to the 72 CICL who are currently committed at the CRADLE which has only one Social Worker from DSWD-NCR who is in charge of the rehabilitation program.

Henceforth, all concerned are hereby **DIRECTED**, effective immediately, to **REFRAIN** from **COMMITTING** any CICL to the CRADLE, considering that there is already a transitional process for the transfer of management of the CICL's cases to the abovementioned certified DSWD licensed and accredited Social Welfare and Development Agencies.

Strict compliance herewith is hereby enjoined.

December 2, 2011.

(Sgd.) JOSE MIDAS P. MARQUEZ
Court Administrator



OCA Circular No. 171-2011

TO: ALL OFFICIALS AND EMPLOYEES OF THE COURT OF APPEALS, SANDIGANBAYAN, COURT OF TAX APPEALS, 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: REITERATION OF ADMINISTRATIVE CIRCULAR NO. 53-2002 (RE: SINGING OF THE SUPREME COURT AND THE JUDICIARY HYMNS IN ALL OFFICIAL PROGRAMS OF THE JUDICIARY) AND OCA CIRCULAR NO. 8-2003 (RE: IMPLEMENTING GUIDELINES IN THE SINGING OF THE SUPREME COURT AND THE JUDICIARY HYMNS IN ALL OFFICIAL PROGRAMS OF THE JUDICIARY)

In the Resolution dated October 4, 2011 in Administrative Matter No. 11-9-12-SC (*Re: Request of Justice Michael P. Elbinias, Court of Appeals, Re Judiciary Hymn*), the Honorable Court En Banc resolved to:

- a. **REITERATE** the directives contained in Administrative Circular No. 53-2002 dated November 4, 2002 requiring that the Supreme Court Hymn and the Judiciary Hymn shall always be sung during all official functions held or sponsored by the Supreme Court, or by all lower courts, or by any office under or adjunct to it, including the Office of the Court Administrator and the Philippine Judicial Academy; and
- b. **DIRECT THE STRICT COMPLIANCE** with OCA Circular No. 8-2003 dated January 22, 2003 (Implementing Guidelines in the Singing of the Supreme Court and the Judiciary Hymns in all Official Programs of the Judiciary) by all Justices, Judges and officials and employees of the Court of Appeals, Sandiganbayan, Court of Tax Appeals, 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.

Accordingly, Administrative Circular No. 53-2002 is hereby reiterated and all concerned officials and employees are hereby **REMINDED** to strictly **comply** with the pertinent provisions of OCA Circular No. 8-2003.

SINGING OF THE SUPREME COURT AND THE JUDICIARY HYMNS IN ALL OFFICIAL PROGRAMS OF THE JUDICIARY

Hymns manifest the ideals of a country or an institution, and are among the most solemn of the various forms of expressions of love for it. They are thus effective means

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OCA Circular No. 171-2011 (*continued*)

of promoting or strengthening unity and solidarity among the citizens of a country or the stakeholders of an institution, and of developing their principled pride as such.

The *Supreme Court Hymn* and the *Judiciary Hymn* put in words and in music what the Supreme Court and the Judiciary represent, as well as the sacramental role they play in our democratic society in upholding the rule of law and dispensing justice. The singing of these hymns by the Justices, judges and other court officials and employees is their act of solemn dedication to the ideals and goals of these institutions, their expression of gratitude for the rare privilege of public service through these institutions, and their prayer for strengthening the bond of unity and solidarity among them as public servants.

Accordingly, during the Flag Ceremony and at all official programs sponsored by the Supreme Court or by any office under it, including the Office of the Court Administrator and the Philippine Judicial Academy, the *Supreme Court Hymn* and the *Judiciary Hymn* must be sung. To ensure the active participation of the audience during such programs, the hymns must be embodied in the printed programs for the occasion.

Likewise, during the Flag Ceremony and at all other official programs sponsored by all other courts below the Supreme Court, the *Judiciary Hymn* must be sung. To ensure the active participation of the audience during such programs, the hymn must be embodied in the printed program for the occasion.

X X X X

OCA CIRCULAR NO. 8-2003

IMPLEMENTING GUIDELINES IN THE SINGING OF THE SUPREME COURT AND THE JUDICIARY HYMNS IN ALL OFFICIAL PROGRAMS OF THE JUDICIARY

The following rules are hereby prescribed for observance by all concerned:

1. During the flag-raising ceremony every Monday morning or more specifically, immediately after the pledge of allegiance (*panunumpa sa watawat*), the *Judiciary Hymn* must be sung;
2. Likewise, at any and all programs, seminars, workshops, conventions, gathering, training and all other events sponsored by all courts below the Supreme Court, the *Judiciary Hymn* must be sung. The hymn must be printed on a piece of paper or must be embodied in the printed program for the occasion and the same be distributed to all participants; and
3. The concerned officials or employees must dutifully memorize and wholeheartedly sing the said hymn.

Officials of the abovementioned courts shall ensure the active and full participation of the audience in the singing of the Judiciary Hymn during such ceremony or program.

For strict compliance.

December 7, 2011.

(Sgd.) JOSE MIDAS P. MARQUEZ
Court Administrator



OCA Circular No. 04-2012

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

SUBJECT: IMPLEMENTATION OF SECTION 37 OF REPUBLIC ACT NO. 10155 (GENERAL APPROPRIATIONS ACT OF 2012)

Quoted hereunder for your information is **Section 37 of Republic Act No. 10155**, otherwise known as the **General Appropriations Act of 2012**:

SEC. 37. Authorized Deductions. – *Deductions from salaries, emoluments or other benefits accruing to any government employee chargeable against the appropriations for Personal Services may be allowed for the payment of individual employee's contributions or obligations due to the following:*

- a. *The BIR, PHILHEALTH, GSIS and HDMF*
- b. *Mutual benefits associations, thrift banks and non-stock savings and loan associations duly operating under existing laws which are managed by and/or for the benefit of government employees;*
- c. *Associations/cooperatives/provident funds organized and managed by government employees for their benefit and welfare; and,*
- d. *Duly licensed insurance companies accredited by national government agencies.*

Provided that such deductions shall not reduce the employee's monthly net take home pay to an amount lower than Five Thousand Pesos (P5,000.00), after all authorized deductions: PROVIDED FURTHER, that in the event total authorized deductions shall reduce net take home pay to less than Five Thousand Pesos (P5,000.00), authorized deductions under item (a) shall enjoy first preference, those under item (b) shall enjoy second preference and so forth.

Pursuant thereto, no loans will be processed by the Office of Administrative Services, Office of the Court Administrator unless the applicant has a monthly net take home pay of at least Five Thousand Pesos (P5,000.00).

For guidance and implementation.

January 13, 2012.

(Sgd.) JOSE MIDAS P. MARQUEZ
Court Administrator



OCA Circular No. 05-2012

TO: ALL JUDGES OF THE FIRST AND SECOND LEVEL COURTS

SUBJECT: OBSERVANCE OF THE ONE-DAY EXAMINATION OF WITNESS RULE

The National Police Commission (NAPOLCOM) Technical Committee on Crime Prevention and Criminal Justice (TCCPCJ) passed two resolutions relative to (a) the continued appearance in court hearings of police officer-chemists as witnesses notwithstanding the acceptance by the defense and the prosecution of the evidence and technology, as well as the stipulation of the said evidence in court; and (b) giving priority in the witness stand to police officers who are witnesses in a particular case so as not to hamper the administrative and operational performance of the offices or units of the said police officers. In the aforementioned resolutions, the NAPOLCOM-TCCPCJ resolved to request the strict observance of the One-Day Examination of Witness Rule in cases where a police officer is called upon to appear before the court as witness.

To address the concern of the NAPOLCOM-TCCPCJ and in the interest of crime prevention and administration of criminal justice, all trial court judges are hereby **EXHORTED** to observe the provision on One-Day Examination of Witness Rule under A.M. No. 03-1-09-SC (Rule on Guidelines to be Observed by the Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures) in all cases particularly those involving police officers:

- i. x x x. The One-Day Examination of Witness Rule, that is, a witness has to be examined in one day only, shall be strictly adhered to subject to the court's discretion during trial whether or not to extend the direct and/ or cross-examination for justifiable reasons.

January 16, 2012.

(Sgd.) JOSE MIDAS P. MARQUEZ
Court Administrator



OCA Circular No. 10-2012

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

SUBJECT: ENTRIES IN THE LOGBOOK OF ATTENDANCE

In the Resolution dated November 21, 2011, in A.M. No. P-11-301S [formerly A.M. No. 09-2-49-RTC] (*Falsification of the Daily Time Record of Charlie A. Regilme, Legal Researcher II, Regional Trial Court, Branch 21, Manila*), the First Division of the Court resolved, among others, to **DIRECT** the Office of the Court Administrator to **ISSUE** a circular regarding the entries in the logbook of attendance that the personnel should enter their arrival in the office in the order of time of arrival.

Accordingly, all officials and personnel of the lower courts are hereby **REMINDED** to **strictly observe** the pertinent provision of Administrative Circular No. 38-2004 dated August 20, 2004 (*Prescribing Uniform Rules in Recording the Office Attendance of all Officials and Employees of the Judiciary*), to wit:

- I. Recording of Office Attendance
 - A. Modes of Recording Office Attendance

The daily office attendance in all courts and offices in the Judiciary shall be recorded through the bundy clock, the chronolog time recorder machine (CTRM), the daily time record (DTR or Form 48), the certification of service (CS), or such other modes of recording as may be prescribed by this Court. Regardless of the method of recording office attendance used by each official and employee, all offices shall maintain a logbook of attendance where all officials and employees must log in chronologically by signing and indicating thereon their time of arrival at and departure from the office. (emphasis supplied)

February 6, 2012.

(Sgd.) JOSE MIDAS P. MARQUEZ
Court Administrator



OCA Circular No. 14-2012

TO: THE CLERKS OF COURT OF THE COURT OF APPEALS, SANDIGANBAYAN, COURT OF TAX APPEALS, REGIONAL TRIAL COURTS AND FIRST LEVEL COURTS (METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS AND MUNICIPAL CIRCUIT TRIAL COURTS)

SUBJECT: REITERATION OF PROVISIONS I (PARAGRAPH A [1]) AND II (PARAGRAPHS 4 AND 5) OF OCA CIRCULAR NO. 58-2007, AND RESTATEMENT OF PROVISION I, PARAGRAPH A (1) THEREOF, BY OCA CIRCULAR NO. 51-2011

It has come to the attention of this Office that despite issuance of OCA Circular No. 58-2007 dated May 24, 2007 (Re: Reiteration of the Guidelines on the Collection of Fees for the Mediation Fund under Section 9, Rule 141 [A.M. No. 04-2-04-SC, effective August 16, 2004] and [A.M. No. 01-10-5-SC PHILJA, dated October 16, 2001]), as well as restatement of Provision I, paragraph A [1] thereof, by OCA Circular No. 51-2011 dated April 6, 2011 (Re: Consolidated and Revised Guidelines to Implement the Expanded Coverage of Court-Annexed Mediation [CAM] and Judicial Dispute Resolution [JDR], and Reiteration of the Guidelines on the Collection of Fees for the Mediation Fund Under Section 9, Rule 141, of the Rules of Court as Revised and

(Next page)

OCA Circular No. 14-2012 (*continued*)

OCA Circular No. 58-2007 dated May 24, 2007), many lower courts still fail to:

- a. **collect** the amount of P500.00 mediation fees, specifically upon the filing of an Answer with mediatable permissive or compulsory counterclaim or cross-claim, complaint-in-intervention, third-party complaint, fourth-party complaint, etc., in civil cases;
- b. **deposit** the mediation fees collected from any mediatable case filed at different level courts, to the Philippine Mediation Center (PMC) Trust Fund; and
- c. **submit** the PMC Monthly Report of Collections and Deposits (PMCRCD) directly to the PHILJA Finance Division, and **substantiate** the same with the required attachments such as the duplicate copy of official receipt/s, validated deposit slip/s and other relevant supporting papers.

Relative thereto, all concerned are hereby **REQUIRED** to **STRICTLY OBSERVE** and **IMPLEMENT** Provisions I and II of OCA Circular No. 58-2007 as restated by OCA Circular No. 50-2011 insofar as to Provision I, paragraph A[1] thereof, to wit:

I. Fees to be Collected for Mediation Fund

A. Clerks of Court of the following courts shall, collect fees to form the Mediation Fund under Section 9, Rule 141, of the Rules of Court as revised in A.M. No. 04-2-04 SC, which took effect August 16, 2004, upon the filing of:

- (1) The following pleadings in the Regional Trial Courts, and First Level Courts the amount of P500.00 Mediation Fee —

Civil Case

- A Complaint
- **Answer with mediatable counterclaim**
 - **permissive or compulsory counterclaim**
 - **third-party complaint, fourth-party complaint, etc.**
- **Complaint-in-Intervention**
- **Answer-in-Intervention**

x x x x

II. Duty of the Clerks of Court or Officers-in-Charge

x x x x

4. Deposits of Collection

The depository bank for the Mediation Fund shall be the Land Bank of the Philippines. The income and interest earned shall likewise form part of the Fund.

The Clerks of Court, Officers-in-Charge, or their duly authorized officers shall deposit daily the collections accruing to the Fund with: **(a) the SC PHILJA PMC Trust Fund (Rule 141) LBP Savings Account No. 3472-1000-08**, for collections under Section 9, Rule 141 of the Revised Rules of Court; and **(b) the SC PHILJA PMC Trust Fund, LBP Account No. 0592-1055-60**, for collection under A.M. No. 01-10-5-SC-PHILJA.

In the absence of an LBP Branch, Postal Money Orders (PMO's) payable to the Philippine Judicial Academy (PHILJA) can be purchased from the local Post Office and sent to PHILJA Finance Division for proper deposit.

5. Monthly Reports

Separate "**Monthly Report of Collection**" shall be regularly prepared for the collections under Section 9, Rule 141 of the Revised Rules of Court, and for the collections under A.M. No. 01-10-5-SC-PHILJA, **attaching therewith: (a) the duplicate copy of the official receipts issued during such month covered; and (b) the validated copy of the Deposit Slips.**

x x x x

(emphasis supplied)

Henceforth, all the required monthly financial reports and accompanying attachments, as well as queries relative to collection and deposit of mediation fees **shall be directly submitted and coursed** through the following address:

**PHILIPPINE JUDICIAL ACADEMY
FINANCE OFFICE—ACCOUNTING DIVISION
3F Centennial Building, Supreme Court
Padre Faura, Manila**

For strict compliance.

March 1, 2012.

(Sgd.) JOSE MIDAS P. MARQUEZ
Court Administrator



OCA Circular No. 18-2012

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

SUBJECT: CONTACT NUMBERS OF COURT OFFICIALS

In line with the continuing efforts to update the Judiciary Book of the Office of the Court Administrator, and to fully ensure the speedy means of communicating with the judiciary officials, all concerned are hereby **REQUESTED** to **SUBMIT** to this Office through the Court Management Office the landline telephone number of their respective regular sala stations, or in case of its unavailability, the landline

OCA Circular No. 18-2012 (*continued*)

telephone number of the Office of the Clerk of Court or a personal mobile number of the Clerk of Court, and of the judges, at their option, within five days from receipt hereof. The e-mail addresses of all concerned, if any, may also be provided.

For strict compliance.

March 13, 2012.

(Sgd.) JOSE MIDAS P. MARQUEZ
Court Administrator



OCA Circular No. 22-2012

TO: ALL JUDGES AND PERSONNEL OF THE LOWER COURTS

SUBJECT: IMPLEMENTING RULES AND REGULATIONS OF THE SUPREME COURT HEALTH AND WELFARE PLAN FOR THE LOWER COURTS

For the information of all concerned, the Court *en banc*, in its Resolution dated January 31, 2012 in A.M. No. 98-8-01-SC (Re: Supreme Court Health and Welfare Plan [re Implementing Rules and Regulations]), approved hereunder Implementing Rules and Regulations of the Supreme Court Health and Welfare Plan for the Lower Courts:

IMPLEMENTING RULES AND REGULATIONS OF THE SUPREME COURT HEALTH AND WELFARE PLAN FOR THE LOWER COURTS

I. OVERVIEW

The Supreme Court Health and Welfare Plan for the Lower Courts is a medical benefits scheme which aims to provide financial assistance to officials and personnel of the Lower Courts (RTCs, MeTCs, MTCCs, MTCs, MCTCs, Shari'a District Courts, Shari'a Family Courts and Shari'a Circuit Courts). Membership to the Plan shall be voluntary. Benefits assistance is, primarily, by way of reimbursement of hospitalization and other medical expenses.

The groundwork for the implementation of the Supreme Court Health and Welfare Plan (SCHWP) was laid down through the En Banc Resolution in A.M. No. 98-8-01 SC (Creation and Operation of the Supreme Court Health and Welfare Plan) dated August 19, 1998.

Policy-making and administrative supervision over SCHWP matters shall be exercised by a Board.

Screening and processing for payment of claims for the SCHWP for the Lower Courts shall be done through a complement of workers, collectively called "Secretariat." Medical Screening Committees evaluate claims prior to approval by the Board. There are three screening committees, Committees "A", "B", and "C", headed by a medical doctor, and composed of three other members who are representatives of the Office of the Chief Justice, the Office of the Clerk of Court En Banc, and the Office of the Court Administrator.

II. MEMBERSHIP/COVERAGE

1. Membership to the Plan shall be voluntary for all judges, officials and personnel of first and second level courts nationwide, including maintenance staff in the Halls of Justice;
2. Active membership commences once initial monthly dues has been paid.
3. Payment of monthly dues is through salary deduction; the rates shall be uniform.

III. BENEFITS

1. Hospital Confinement (Medical or Surgical)
 - Up to P50,000.00 per member per year, exclusive of PhilHealth benefits;
 - Additional P20,000.00, if illness is dreadful (Total: P70,000.00 per member per year);
 - Covers all inpatient services which are medically necessary, including room and board, professional fees, use of operating room and recovery room, medicines, blood and blood products, x-ray, and other laboratory procedures.
2. Outpatient Benefits
 - Up to P20,000.00 per member per year deductible from the maximum benefit limit of P50,000.00 per member per year;
 - Additional P30,000.00, if illness is dreadful (Total: P50,000.00 per member per year);
 - Includes professional fees and charges for consultation, prescribed diagnostic procedures, treatment of minor injuries, emergency care, and prescribed vaccinations and/or medications excluding vitamins and food supplements.
3. Special Outpatient Procedures

The following special procedures may be reimbursed up to P 50,000.00 even as outpatient:

 - Cataract extraction including cost of lens and professional fees;
 - Extra Corporal shock wave lithotripsy;
 - Chemotherapy, radiotherapy, brachytherapy, and other similar modalities for treatment of a dreadful condition;
 - Hemodialysis and/or peritoneal dialysis;
 - Coronary angiography, angioplasty and other similar procedure either for diagnostic or therapeutic.
4. Dreadful Illnesses

The following ailments shall be considered as dreadful:

 - Cerebrovascular accidents (thrombo-embolic or hemorrhagic) with resultant coma or paralysis;
 - Central nervous system tumor or infections (e.g., encephalitis, meningitis and the like);

(Next page)

OCA Circular No. 22-2012 (continued)

- Complicated cardio-vascular conditions;
- Chronic obstructive pulmonary disease stages III and IV;
- All forms of malignancy (in any stage);
- Chronic kidney failure, stages IV and V;
- Decompensated Liver Cirrhosis;
- Gastro-intestinal tract bleeding and other related conditions requiring exploratory laparotomy/intestinal resection and/or anastomosis;
- Blood dyscrasias (e.g., leukemias, lymphoma, idiopathic thrombocytopenic purpura, and the like);
- Major forms of trauma with attendant complications such as paralysis and/or similar conditions.

NOTE: Any illness/condition(s) not among those mentioned above shall not be regarded as dreadful, unless medical evaluation shows otherwise.

5. Burial Assistance

- P20,000.00 per member.

IV. EXCLUSIONS

Not covered under the benefits are the following:

1. Herbal medicines and medicinal products not licensed by BFAD;
2. Alternative methods of health care which include but are not limited to acupuncture, acupressure, chiropractics, nutritional therapy, and other similar methods of treatment are not reimbursable under this plan, unless the method was availed as remedy when conventional methods of cure have proven to be ineffective. To be reimbursable, the availed method should have been prescribed and/or undertaken under supervision by a licensed physician and/or chiropractor;
3. Dental procedures, such as tooth extraction, root canal treatment, oral prophylaxis, gum treatment, prosthesis and the like except surgical removal of impacted tooth when indicated as certified by attending Orthodontist;
4. Expenses for optical and hearing aid devices;
5. Pregnancy-related expenses including pre-natal check-ups, normal spontaneous delivery, caesarean section, dilatation and curettage due to spontaneous abortion, and post-delivery care;

Note: In cases when spontaneous delivery is attended by complication such as uncontrolled vaginal bleeding with resultant emergency hysterectomy (removal of the uterus) the expenses incurred for said procedure

i.e., hysterectomy, may be reimbursable upon thorough evaluation by the SCHWP Screening Committee.

6. Treatment of any injury attributable to a member's own misconduct, gross or contributory negligence, intemperate use of drug or alcoholic beverages, vicious or immoral acts, direct or indirect participation in the commission of crime, violation of law or ordinances; .
 7. Treatment of injuries or illness resulting from suicide or self-destruction whether sane or insane;
 8. Cosmetics services, plastic and reconstructive surgery, experimental procedure, sex transformation and services related to fertility, infertility, artificial insemination circumcision and organ transplant;
- Note: In case of severe trauma wherein restoration of the anatomical function of the affected part is deemed necessary, reconstructive surgery may be considered upon thorough evaluation of the SCHWP committee.
9. Congenital defects;
 10. Sexually transmittable diseases, such as, but not limited to the following: Gonorrhoea, Urethritis (gonococcal or non-gonococcal), Penile/Vaginal Warts, and the like, except HIV-related diseases, such as AIDS;
 11. All other items not directly related to the medical management of the member-employee such as extra bed, extra food, extra television and other amenities.

V. RULES ON FILING CLAIMS

1. Claims should be filed within the reglementary period as follows:
 - a. Outpatient Claims
File within 30 days from date of availment/ payment of doctor's fee, purchase of medicines and/or payment of laboratory fees);
 - b. Hospital Confinement
File within 60 days from date of discharge;
 - c. Dreadful diseases
File within 90 days from date of discharge for hospital confinement claims or date of availment/ payment of doctor's fee, purchase of medicines and/or payment of laboratory fees for out-patient claims;
 - d. Burial
File within 365 days from date of death.
2. If the claim is directly filed at SCHWP Secretariat, the date of receipt at SCHWP is the date of filing.
3. If a claim is mailed, the date of mailing indicated in the envelope shall be the date of filing.
4. All necessary documentary requirements shall be complied with upon filing. Claims filed with incomplete

OCA Circular No. 22-2012 (continued)

documentary requirements shall outright be disapproved.

5. If an illness is continuing, medical certification, and/or prescription for said illness should be updated at least every six months.
6. Claims filed beyond the reglementary periods shall be disapproved.
7. Motion for Reconsideration of denied claims shall be filed within 10 working days from receipt of a notice of disapproval.

VI. DOCUMENTARY REQUIREMENTS FOR PROCESSING/PAYMENT OF CLAIMS

1. Confinement

- a. Application Form duly accomplished, attested by the Judge/Executive (Judge, or whenever appropriate, the Chief of Office, Administrative Services–Office of the Court Administrator, or the concerned Deputy Court Administrator;
- b. Medical Certificate (should indicate date of issuance, name of patient, and diagnosis);
- c. Statement of Account (should indicate the MEDICARE/PHILHEALTH deduction);
- d. Medical Prescription and Receipts of medicines purchased;
- e. Hospital Bill Receipts – original copy (should indicate MEDICARE/PHILHEALTH deduction);

Note: Claimants whose hospital bill has been paid by a private HMO shall submit either a certificate of payment issued by the private HMO or a certified true copy of the receipt issued by the hospital to the HMO. Either of the two documents shall be submitted within 60 days from the date of the filing.

- f. Professional fee receipts – original copy (should indicate the MEDICARE/PHILHEALTH deduction);
- g. Operative and Anesthesia Records – certified true copy issued by the hospital (if necessary);
- h. Histopathology results (if necessary).

Note: Failure to submit above requirements within reglementary period shall be a ground for disapproval.

2. Outpatient

- a. Application Form duly accomplished, attested by the Judge/Executive Judge, or whenever

appropriate, the Chief of Office, Administrative Services–Office of the Court Administrator, or the concerned Deputy Court Administrator;

- b. Medical Certificate – original or certified true copy (should indicate date of issuance, name of patient, and diagnosis);
- c. Medical Prescription and Receipts of medicines purchased (should indicate clearly the items purchased) (if medicine expenses are to be reimbursed);
- d. Professional/consultation fee receipts (if professional/consultation fees are to be reimbursed);
- e. Doctor’s request/results of laboratory exams including original official receipt (OR) of the examination done (if laboratory fees are to be reimbursed).

3. Burial

- a. Application Form duly accomplished, attested by the Judge/Executive Judge, or whenever appropriate, the Chief of Office, Administrative Services–Office of the Court Administrator, or the concerned Deputy Court Administrator;
- b. Death Certificate (certified true copy);
- c. Marriage contract (if married at the time of death optional);
- d. If the claimant is other than the indicated beneficiary, proof of funeral expenses (e.g., original receipts, certification for funeral parlor, etc.) and affidavit of waiver;
- e. Affidavit of Guardianship (for dependents of minor age).

VII. POLICIES IN CLAIM PROCESSING

1. Only out-of-pocket (OOP) payment claims, shall be processed.
2. Only original official receipts, shall be accepted. VAT-registered cash invoice and sales invoice may be allowed if it indicates the name of pharmacy/drugstore, address, Tax Identification Number, VAT registration number and clearly indicates the item(s) bought; otherwise, it shall not be honored.
3. Drugs/medicines and laboratory procedures/examinations shall be reimbursed if deemed medically necessary and related to the actual diagnosis as per attached medical certificate.
4. Prescription for maintenance medication should be updated every six months. Non-compliance with this requirement shall be a basis for disapproval of claim.

(Continued on page 16)

2012 Upcoming PHILJA Events

- Special Commercial Courts' Focus Group Discussion on the Problem Areas in Commercial Law
April 10, Manila
- Orientation Seminar-Workshop on Comparative Analysis between the Family Code and the Code of Muslim Personal Laws
April 11-12, Cagayan de Oro City
- Orientation and Screening of Prospective Mediators and PMC Unit Staff (Quezon Mediation Program)
April 11-12, Lucena City
- Training on SC2MS
Regions VI, VII and VIII, *April 12 Cebu City*
Region II, *April 26, Manila*
Region IV (Batch 2), *May 14, Manila*
- E-JOW
San Juan City, *April 13, San Juan City*
Province of Benguet, *April 25, La Trinidad, Benguet*
Municipality of Agoo, *April 26, Agoo, La Union*
City of Lipa, *May 23, Lipa City*
Calapan City, *May 24, Calapan City, Oriental Mindoro*
Navotas City, *June 29, Navotas City*
- PJP
25th, April 16-27, Manila
26th, May 14-25, Manila
- Increasing Judicial Efficiency: Seminar-Workshop on the Effective Use of the Benchbook for Philippine Trial Courts (Revised and Expanded)
Region II judges, *April 18 Tuguegarao City*
Region IV judges, *May 24, Manila*
- Supreme Court attorneys, *June 15 Manila*
Court of Appeals attorneys, *June 29 Manila*
- CEP for RTC Clerks of Court
Region IV, *April 18-20, Tagaytay City*
Region V, *May 22-24, Legazpi City*
Regions VII and VIII, *June 19-21 Cebu City*
- 9th CLERAP Biennial National Convention and Seminar
April 18-20, Legazpi City
- Judicial Settlement Conference for Judges on JDR (Skills-based Course)
April 24-27, Tagaytay City
June 26-29, Tagaytay City
- Multi-Sectoral Capacity Building on Environmental Laws and the Rules of Procedure for Environmental Cases
13th (CAR), *April 25-27, Baguio City*
14th (Region I), *May 30-June 1 Baguio City*
15th (Region IX including Isabela City), *June 27-29, Zamboanga City*
- 7th PHILACI National Convention and Seminar
April 25-27, Puerto Princesa City
- Seminar-Workshop on CEDAW and Gender Sensitivity for Court of Appeals (Manila Station)
Employees, *April 26-27, Manila*
Lawyers, *May 17-18, Manila*
- Seminar-Workshop for CTA Lawyers, Tax Specialists and other Stakeholders
May 2-4, Pasig City
- JCEP for RTC Judges
Region IV, *May 2-4, Tagaytay City*
Region VIII, *June 19-21, Palo, Leyte*

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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 Street corner Taft Avenue, Manila. Tel: 552-9524; Fax: 552-9621; E-mail: research_philja@yahoo.com; philja@sc.judiciary.gov.ph; Website: <http://philja.judiciary.gov.ph>