



# PHILJA Bulletin



July to September 2005

Volume VII, Issue No. 27

## From the Chancellor's Desk *Ben*

Ex  
c  
e  
l  
l  
e  
n  
c  
e  
  
i  
n  
  
t  
h  
e  
  
j  
u  
d  
i  
c  
i  
a  
r  
y

True to its mandate, PHILJA continued to provide the necessary training for judges and court personnel through the holding of the 36<sup>th</sup> and 37<sup>th</sup> Orientation Seminars-Workshops for newly appointed judges and for incumbent judges, and the Regional Judicial Career Enhancement Program (Level 4) for judges and clerks of court of the Regional Trial Courts and First Level Trial Courts of Regions III, IV and IX from July to September 2005. The 10<sup>th</sup> Pre-Judicature Program was also held for lawyers aspiring for judicial posts. Basic training on Computer Fundamentals for *Sandiganbayan* Justices has likewise been started preparatory to making the *Sandiganbayan* a fully computerized court.

The importance of mediation in accelerating the judicial process in the resolution of cases, as a measure to declog the courts of their heavy case loads, continued to be emphasized through the conduct of several seminar-workshops on Court-Annexed Mediation, Judicial Dispute Resolution, and on the JURIS Mediation Program Orientation in Pampanga and Bacolod. No less important was the launch of the Court of Appeals Mediation in August.

Making headway are the Special Focus Programs with a host of activities, notably the 2<sup>nd</sup> Seminars on the Strengthening of *Shari'a* and Islamic Jurisprudence and of the *Shari'a* Court System (which were hailed as contributory to the peace process in Mindanao), and the 3<sup>rd</sup> Seminar on Juvenile and Domestic Relations Justice.

Getting its share of this quarter's action is the on-going *Chief Justice Hilario G. Davide, Jr. Distinguished Lecture Series* which called for the active participation of many sectors in the legal community. The excellent lectures of respected local and international jurists and members of the Academe and international organizations, from the First Lecture (February) on *The Legal Profession in the Digital Age* by Retired Justice Jose C. Vitug to the

*(Continued on page 17)*

## Table of Contents

From the Chancellor's Desk.....	1	<i>Office of the Court Administrator</i>
PHILJA News.....	2	<i>OCA Circular No. 61-2005 - Guidelines on the Non-Monetary Remuneration for Overtime Services Rendered for the Judiciary.....</i>
New Rulings of the Supreme Court .....	9	<i>18</i>
Doctrinal Reminders .....	11	<i>OCA Circular No. 78-2005 - Guidelines in the Accreditation of Newspapers and Periodicals seeking to Publish Judicial and Legal Notices and Other Similar Announcements and in the Raffle thereof.....</i>
Resolutions, Orders and Circulars		<i>22</i>
<i>Supreme Court</i>		<i>Upcoming PHILJA Events .....</i>
<i>Resolution on A.M. No. 05-8-26-SC Amendment of Rules 112 and 114 of the Revised Rules on Criminal Procedure by Removing the Conduct of Preliminary Investigation from Judges of the First Level Courts.....</i>	<i>14</i>	<i>23</i>



## PHILJA ACADEMIC PROGRAMS

### RJCEP

PHILJA conducted three (3) Regional Judicial Career Enhancement Programs (RJCEPs, Level 4) for the third quarter of the year. The 5<sup>th</sup> RJCEP for Judges, Clerks of Court and Branch Clerks of Court of the Regional Trial Courts and First Level Trial Courts of Region IX was held on June 29 to July 1, 2005, at the Garden Orchid Hotel, Zamboanga City. One hundred twenty-eight (128) judges and court personnel attended the seminar-workshop, comprising nineteen (19) Regional Trial Court judges, twenty-one (21) First Level Court judges and eighty-eight (88) clerks of court.

The 6<sup>th</sup> RJCEP for Judges, Clerks of Court and Branch Clerks of Court of the Regional Trial Courts and First Level Trial Courts of Region IV was conducted on July 27 to 29, 2005, at the Manila Pavilion Hotel. This was attended by four hundred ten (410) judges and clerks of court, comprising seventy-two (72) Regional Trial Court judges, seventy-eight (78) First Level Trial Court judges, sixty-one (61) clerks of court who are lawyers and one hundred ninety-nine (199) clerks of court who are non-lawyers.

Two (2) batches of the 7<sup>th</sup> RJCEP for Judges, Clerks of Court and Branch Clerks of Court of the Regional Trial Courts and First Level Trial Courts of the Third Judicial Region were conducted. The first batch was held on August 23 to 25, 2005, at the Manila Pavilion Hotel, Manila. One hundred eighty-one (181) participants attended the seminar composing of forty (40) Regional Trial Court judges, thirty-eight (38) First Level Court judges, twenty (20) clerks of courts who are lawyers and eighty-three (83) clerks of court who are non-lawyers. The second batch was held on September 27 to 30, 2005, at the Bayview Park Hotel, Manila. A total of one hundred fifty-four (154) participants attended the seminar composing of thirty-one (31) Regional Trial Court judges, seventeen (17) First Level Trial Court judges, twenty-eight (28) clerks of court who are lawyers and seventy-eight (78) clerks of court who are non-lawyers.

### 36<sup>TH</sup> AND 37<sup>TH</sup> ORIENTATION SEMINAR-WORKSHOPS FOR NEWLY APPOINTED JUDGES

The 36<sup>th</sup> Orientation Seminar-Workshop for Newly Appointed Judges was held on July 11 to 22, 2005, at the PHILJA Development Center, Tagaytay City. In attendance were twenty-eight (28) judges, comprising nineteen (19) newly appointed judges and nine (9) promoted judges.

#### A. New Appointments

##### REGIONAL TRIAL COURTS

##### NATIONAL CAPITAL JUDICIAL REGION

Hon. Lorna F.V. Catris-Chua Cheng  
RTC Br. 168, Marikina City  
Hon. David L. Miranda, Jr.  
RTC Br. 263, Marikina City  
Hon. Manuel S. Quimbo  
RTC Br. 273, Marikina City  
Hon. Jaime M. Guray  
RTC Br. 260, Parañaque City

##### REGION IV

Hon. Edwin G. Larida, Jr.  
RTC Br. 18, Tagaytay City  
Hon. Ernesto L. Marajas  
RTC Br. 8, Batangas City  
Hon. Narmo P. Noblejas  
RTC Br. 69, Binangonan, Rizal

##### REGION V

Hon. Genie G. Agbada  
RTC Br. 42, Virac, Catanduanes

##### REGION VIII

Hon. Agerico A. Avila  
RTC Br. 29, Catbalogan, Samar

##### METROPOLITAN TRIAL COURTS

##### NATIONAL CAPITAL JUDICIAL REGION

Hon. Paulino Q. Gallegos  
MeTC Br. 80, Muntinlupa City  
Hon. Ma. Paz R. Reyes-Yson  
MeTC Taguig

##### MUNICIPAL TRIAL COURTS IN CITIES

##### REGION I

Hon. Cleto R. Villacorta III  
MTCC Br. 2, Baguio City

## REGION VI

Hon. Marie Yvette D. Go  
*MTCC Br. 4, Iloilo City*

## MUNICIPAL TRIAL COURTS

## REGION III

Hon. Ruben C. Hilario  
*MTC Porac, Pampanga*

## REGION IV

Hon. Napoleon A. Monsod  
*MTC Gen. Trias, Cavite*

## REGION V

Hon. Marie Louise A. Guan-Aragon  
*MTC Magallanes, Sorsogon*

## REGION VIII

Hon. Nathaniel E. Baldono  
*MTC Borongan, Eastern Samar*

## MUNICIPAL CIRCUIT TRIAL COURTS

## REGION V

Hon. Ma. Agatha R. Borja-Cu  
*4<sup>th</sup> MCTC San Fernando-Pamplona,  
 Camarines Sur*

## REGION VI

Hon. Alpha S. Delgado  
*14<sup>th</sup> MCTC Alimodian-Leon-San Miguel, Iloilo*

**B. Promotions**

## REGIONAL TRIAL COURTS

## NATIONAL CAPITAL JUDICIAL REGION

Hon. Encarnacion Jaja M. Balbastro  
*RTC Br. 146, Makati City*  
 Hon. Evelyn S. Arcaya-Chua  
*RTC Br. 144, Makati City*  
 Hon. Perpetua T. Atal-Paño  
*RTC Br. 134, Makati City*  
 Hon. Eugene C. Paras  
*RTC Br. 58, Makati City*  
 Hon. Tingaraan U. Guiling  
*RTC Br. 109, Pasay City*  
 Hon. Jesus B. Mupas  
*RTC Br. 112, Pasay City*  
 Hon. Edwin B. Ramizo  
*RTC Br. 114, Pasay City*

## REGION II

Hon. Josefino H. Piamonte  
*RTC Br. 18, Ilagan, Isabela*

## REGION III

Hon. Consuelo A. Bocar  
*RTC Br. 71, Iba, Zambales*

The 37<sup>th</sup> Orientation Seminar-Workshop for Newly Appointed Judges was held on September 12 to 23, 2005, at the PHILJA Development Center, Tagaytay City. In attendance were fifty-one (51) judges, comprising forty-five (45) newly appointed judges and six (6) promoted judges.

**A. New Appointments**

## REGIONAL TRIAL COURTS

## NATIONAL CAPITAL JUDICIAL REGION

Hon. Alexander S. Balut  
*RTC Br. 76, Quezon City*

## REGION I

Hon. Ma. Susana T. Baua  
*RTC Br. 69, Lingayen, Pangasinan*  
 Hon. Georgina D. Hidalgo  
*RTC Br. 68, Lingayen, Pangasinan*  
 Hon. Robert O. Rudio  
*RTC Br. 40, Dagupan City, Pangasinan*

## REGION II

Hon. Marcelino K. Wacas  
*RTC Br. 25, Tabuk, Kalinga, Apayao*

## REGION III

Hon. Olivia E. Samar  
*RTC Br. 79, Malolos, Bulacan*

## REGION IV

Hon. Hector B. Almeйда  
*RTC Br. 62, Gumaca, Quezon*  
 Hon. Pastor A. de Castro  
*RTC Br. 43, Roxas, Mindoro Oriental*  
 Hon. Adolfo V. Encomienda  
*RTC Br. 57, Lucena City, Quezon*  
 Hon. Fernando L. Felicen  
*RTC Br. 20, Imus, Cavite*  
 Hon. Jose M. Madrid  
*RTC Br. 82, Odiongan, Romblon*  
 Hon. Alberto F. Serrano  
*RTC Br. 92, Calamba, Laguna*

## REGION V

Hon. Pablo C. Formaran III  
*RTC Br. 21, Naga City, Camarines Sur*  
 Hon. Angeles S. Vasquez  
*RTC Br. 13, Ligao City, Albay*

## REGION VIII

Hon. Rowena Nieves A. Tan  
*RTC Br. 42, Balangiga, Eastern Samar*

## REGION IX

Hon. Hipolito P. Bael, Jr.  
*RTC Br. 6, Dipolog City,  
Zamboanga del Norte*

Hon. Gregorio V. dela Peña III  
*RTC Br. 12, Zamboanga City*

Hon. Reynerio G. Estacio  
*RTC Br. 14, Zamboanga City*

Hon. Oscar D. Tomarong  
*RTC Br. 28, Liloy, Zamboanga del Norte*

## REGION X

Hon. Pelagio B. Estopia  
*RTC Br. 8, Malaybalay, Bukidnon*

## REGION XII

Hon. Oscar V. Badelles  
*RTC Br. 5, Iligan, Lanao del Norte*

Hon. Bansawan Z. Ibrahim  
*RTC Br. 13, Cotabato City*

## METROPOLITAN TRIAL COURTS

## NATIONAL CAPITAL JUDICIAL REGION

Hon. Alfredo D. Ampuan  
*MeTC Br. 33, Quezon City*

Hon. Luis Zenon Q. Maceren  
*MeTC Br. 39, Quezon City*

## MUNICIPAL TRIAL COURTS IN CITIES

## REGION I

Hon. Borromeo R. Bustamante  
*MTCC Alaminos, Pangasinan*

## REGION IV

Hon. Teodoro S. Carbonera  
*MTCC Tanauan, Batangas*

## REGION VII

Hon. Monalila S. Tecson  
*MTCC Br. 1, Cebu City*

## REGION IX

Hon. Andrea Asistido-dela Cruz  
*MTCC Panabo City, Davao del Norte*

Hon. Norma Rustre Calatrava  
*MTCC Digos City, Davao del Sur*

## MUNICIPAL TRIAL COURTS

## REGION I

Hon. Caridad V. Galvez  
*MTC Lingayen, Pangasinan*

Hon. Juvencio S. Gascon  
*MTC Cabugao, Ilocos Sur*

Hon. Maria Corazon M. Labrador  
*MTC San Nicolas, Ilocos Norte*

## REGION III

Hon. Amelita V. Cruz-Corpuz  
*MTC Lubao, Pampanga*

Hon. Venancio M. Overreja  
*MTC Paniqui, Tarlac*

Hon. Cecilia S. Talapian  
*MTC Br. 2, Meycauayan, Bulacan*

## REGION IV

Hon. Eloida G. Capuno  
*MTC Calauan, Laguna*

Hon. Harry D. Jaminola  
*MTC Naujan, Mindoro Oriental*

Hon. Mark N. Marcos  
*MTC Roxas, Mindoro Oriental*

Hon. Dinnah A. Topacio  
*MTC Bacoor, Cavite*

## REGION VII

Hon. Veronico R. Sardoncillo  
*MTC Minglanilla, Cebu*

## REGION VIII

Hon. Prospero T. Rapada  
*MTC Naval, Biliran, Leyte*

## REGION XI

Hon. Anita M. Fernandez  
*MTC Sta. Cruz, Davao del Sur*

Hon. Dorothy M. Gonzaga  
*MTC Asuncion, Davao del Norte*

## MUNICIPAL CIRCUIT TRIAL COURTS

## REGION IV

Hon. Cirile M. Foja  
*5<sup>th</sup> MCTC Odiongan-Ferrol, Romblon*

## REGION VI

Hon. Eugene C. Cabardo  
*4<sup>th</sup> MCTC San Dionisio-Concepcion, Iloilo*

## REGION X

Hon. Michelia O. Capadocia  
*7<sup>th</sup> MCTC Opol- El Salvador, Misamis Oriental*



## B. Promotions

### REGIONAL TRIAL COURTS

#### NATIONAL CAPITAL JUDICIAL REGION

Hon. Ralph S. Lee  
RTC Br. 83, Quezon City

#### REGION IV

Hon. Hermenegildo M. Lacap  
RTC Br. 83, Tanauan, Batangas

#### REGION VI

Hon. Rafael Cresencio C. Tan, Jr.  
RTC Br. 30, Dumaguete City, Negros Oriental

#### REGION VIII

Hon. Alma Consuelo D. Esidera  
RTC Br. 20, Catarman, Northern Samar

#### REGION X

Hon. Ruben R. Cagas  
RTC Br. 36, Calamba, Misamis Occidental

---



---

## 10<sup>TH</sup> PRE-JUDICATURE PROGRAM

The 10<sup>th</sup> Pre-Judicature Program was held on August 8 to 19, 2005, at the Training Room, Centennial Building, Supreme Court. Twenty-five (25) participants completed the program along with three (3) sit-ins for second eligibility.

The program is designed for lawyers who aspire for appointment as judges for the First and Second Level Trial Courts and justices of the Court of Tax Appeals, *Sandiganbayan* and Court of Appeals.



## SPECIAL FOCUS PROGRAMS

### SYMPOSIUM ON RESTORATIVE JUSTICE

The *Symposium on Restorative Justice* was conducted by the Academy, in cooperation with the Coalition for Restorative Justice (CRJ) on July 1, 2005, at the Training Room, Centennial Building, Supreme Court. Participants to the symposium were Court of Appeals justices, *Sandiganbayan* justices, Regional Trial Court judges, First Level Trial Court judges and Board of Pardons and Parole lawyers.

Dr. Daniel W. Van Ness, Executive Director of the Prison Fellowship International (PFI) Center for Justice and Reconciliation served as the symposium's resource speaker. He is actively involved in developing and promoting restorative justice theory and practice in national, intergovernmental and scholarly settings. Also, he was a major architect of the Declaration of Basic Principles on the Use of Restorative Justice Programmes in Criminal Justice Matters, which the UN Economic and Social Council endorsed in 2001.

Dr. Van Ness introduced to the Judiciary the restorative justice as a new movement in the fields of victimology and criminology. Acknowledging that crime causes injury to people and communities, it insists that of restoring justice the parties be permitted to participate in the process. Accordingly, restorative justice programs enable the victim, the offender and affected members of the community to be directly involved in responding to the crime. They become central to

the criminal justice process, with State and legal professionals becoming facilitators of a system that aims at offender accountability, reparation to the victim and full participation by the victim, offender and community. He stressed that the restorative process of involving all parties is fundamental to achieving the outcome of reparation and peace.





## SPECIAL FOCUS PROGRAMS

### SEMINARS ON STRENGTHENING SHARI'A AND ISLAMIC JURISPRUDENCE

A series of activities were conducted by the Academy, in partnership with the Mindanao Economic Development Council (MEDCo), the United Nations Development Programme (UNDP), and the Program Management Office of the Supreme Court (PMO-SC) to strengthen the *Shari'a* and Islamic Jurisprudence.

The *Seminar on Strengthening Shari'a and Islamic Jurisprudence* was conducted on July 25 to 29, 2005, at the Garden Orchid Hotel, Zamboanga City. It has two (2) parts, the first part focused on strengthening *Shari'a* and Islamic jurisprudence and the second part focused on orientation on formal and informal modes of alternative dispute resolution. This was attended by fifty-nine (59) participants, comprising twenty-three (23) judges, twenty-three (23) clerks of court, and thirteen (13) selected participants from the Court of Appeals (CA), the Tawi-Tawi Department of Health (DOJ), the Integrated Bar of the Philippines (IBP), the Armed Forces of the Philippines (AFP) – Southern Command, the Philippine National Police (PNP), and the National Bureau of Investigation (NBI).

This was followed by the *Consultative Meeting regarding the Seminar on Strengthening Shari'a and Islamic Jurisprudence* held on September 2, 2005, at the VIP Hotel, Cagayan de Oro City. Fourteen (14) participants, comprising judges and clerks of court attended the meeting.

Another *Seminar on Strengthening Shari'a and Islamic Jurisprudence* was conducted on September 26 to 30, 2005, at the Grand Men Seng Hotel, Davao City. A total of forty-eight (48) participants attended the seminar, consisting of six (6) judges; two (2) clerks of court; twenty-five (25) other court personnel; and fifteen (15) representatives from the Armed Forces of Philippines (AFP), Philippine National Police (PNP), National Bureau of Investigation (NBI), Commission on Human Rights (CHR), and Public Attorney's Office (PAO).

### NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY AND CODE OF CONDUCT FOR COURT PERSONNEL

For the Court of Tax Appeals, the Academy, in collaboration with the Program Management Office of the Supreme Court (PMO-SC), Office of Administrative Services of the Supreme Court (OAS-SC), United States Agency for International Development (USAID), and the American Bar Association – Asia Law Initiative (ABA-Asia) conducted a series of orientation and immersion program on the New Code of Conduct for the Philippine Judiciary and the Code of Conduct for Court Personnel.

The *Judicial Reform Advocacy: Orientation-Workshop on the Code of Judicial Conduct for Court Personnel of the Court of Tax Appeals* was conducted on July 11 and 12, 2005, at the Court of Tax Appeals, Quezon City. A total of seventy-six (76) court employees attended the orientation.

This was followed by the conduct of the *Roundtable Discussion on the New Code of Judicial Conduct* on July 13, 2005. All the six (6) justices of the Court of Tax Appeals attended the discussion.

---



---

### BASIC COMPUTER TRAINING FOR SANDIGANBAYAN JUSTICES

The Academy, in coordination with the United States Agency for International Development (USAID), The Asia Foundation (TAF), the Rule of Law Effectiveness (ROLE), and the American Bar Association – Asia Law Initiative (ABA-Asia) conducted the *Basic Computer Training for Sandiganbayan Justices (Module 1: Computer Fundamentals)* on August 30 and 31, 2005, at the Somerset Millennium Hotel, Legaspi Village, Makati City. *Sandiganbayan* Presiding Justice Teresita J. Leonardo-De Castro with the other twelve (12) *Sandiganbayan* associate justices attended the training. The training was conducted in view of the computerization of the *Sandiganbayan*, a part of the modernization program of the Judiciary.



## SPECIAL FOCUS PROGRAMS

### 3<sup>RD</sup> REGIONAL MULTI-SECTORAL SEMINAR-WORKSHOP ON JUVENILE AND DOMESTIC RELATIONS JUSTICE (ADVANCED LEVEL)

PHILJA, in partnership with the United Nations Children's Fund, *Adhikain Para Sa Karapatang Pambata* – Ateneo Human Rights Center (AKAP-AHRC), United States Agency for International Development (USAID), and The Asia Foundation (TAF) conducted the 3<sup>rd</sup> Regional Multi-Sectoral Seminar-Workshop on Juvenile and Domestic Relations Justice (Advanced Level) on September 7 to 9, 2005, at the CSB Hotel, Malate, Manila. A total of fifty-eight (58) participants attended the seminar composing of judges, branch clerks of court, court social workers, prosecutors, lawyers from the Public Attorney's Office, and officers of the Philippine National Police (PNP) and Bureau of Jail Management and Penology (BJMP) handling women and children's cases. This cluster of participants came from the National Capital Region particularly in the designated Family Courts in the cities of Caloocan, Las Piñas, Malabon, Mandaluyong, Muntinlupa, Parañaque, and Valenzuela.

Topics and activities covered by the seminar-workshop were updates on new laws on family, women, and children; dispute resolution skills; and the drafting and validation of rules and guidelines for family courts, specifically on adoption, diversion, Court Appointed Special Advocate/Guardian *Ad Litem* (CASA/GAL), use of live link television, and mediation on family law cases.



## ON MEDIATION

### SEMINAR-WORKSHOP ON MEDIATION

Two (2) seminar-workshops were conducted under the Tacloban Mediation Program for the third quarter of 2005 by the Academy's Philippine Mediation Center (PMC), in cooperation with the United States Agency for International Development (USAID), and The Asia Foundation (TAF).

The *Basic Seminar-Workshop on Mediation* was held on July 18 to 22, 2005, at Hotel Alejandro, Tacloban City. A total of fifty (50) participants attended the seminar, comprising local government officials and personnel, lawyers, retired judges, court personnel, prosecutors, media practitioners, academicians, Philippine National Police (PNP) officers, engineers, businessmen, and other professionals.

This was followed by an *Orientation Seminar-Workshop on Mediation for Judges and Lawyers* on September 19 and 20, 2005, at the Hotel Alejandro, Tacloban City. Fifty-nine (59) participants attended the seminar, comprising of judges and lawyers. Twelve (12) cases were reported settled during the Internship Program.

Furthermore, a *Media Information Campaign* was conducted on September 20, 2005. DCA Bernardo T. Ponferrada, Head of the PHILJA's Judicial Reforms Office, Executive Judge Salvador Y. Apurillo of the Tacloban Regional Trial Court, and Atty. Alberto Hidalgo, President of the Integrated Bar of the Philippines - Leyte Chapter were interviewed by the local television, radio, and print media practitioners. The press conference was aired simultaneously over local radio stations and ABS-CBN News. The press conference provided a wider media mileage and increased the awareness of the general public about mediation in the Leyte province.





## ON MEDIATION

### CA MEDIATION PROJECT

The *Court of Appeals Mediation Project* was successfully launched on August 31, 2005, at the Court of Appeals Auditorium, Manila. The launching was graced by the Chief Justice; Justices of the Supreme Court and Court of Appeals; Officials of the Supreme Court and Office of the Court Administrator; Clerks of Court, Division Clerks of Court, Mediators and Trainers of the Court of Appeals; representatives from the United States Agency for International Development (USAID) and The Asia Foundation (TAF). The launching was divided into two (2) parts. The first part was the cutting of the ribbon, unveiling of the Philippine Mediation Center - Court of Appeals (PMC-CA) Marker, and the blessing of the PMC-CA Office. A program followed at the Court of Appeals Auditorium.

The *Court of Appeals Mediation Project* now called the *Appeals Court Mediation (ACM) Project* is currently in the Second Phase of its Internship Program for Newly Trained Mediators. This is pursued by the Academy through the Philippine Mediation Center, in cooperation with USAID and TAF.

The project is considered a milestone in the court-annexed mediation which was introduced under the Action Program for Judicial Reform (APJR) of Chief Justice Hilario G. Davide, Jr. ACM carries mediation one step further from the trial courts to the appellate court level. It seeks to enhance the efficiency and effectiveness of the administration of justice through the use of alternative modes of dispute resolution and provide affordable judicial service to the people.



### WORKSHOP ON JUDICIAL DISPUTE RESOLUTION

The *Workshop on Judicial Dispute Resolution (JDR)* was conducted by the Academy's Philippine Mediation Center (PMC), the Justice Reform Initiatives Support (JURIS) Project, and the National Judicial Institute (NJI) of Canada on September 1 and 2, 2005, at the Training Room Centennial Bldg., Supreme Court, Manila. Ten (10) judges from the cities of Bacolod and San Fernando, Pampanga attended the workshop. The workshop tackled the discussion among others, on practices and timelines as required by NJI.

---



---

### JURIS MEDIATION PROGRAM ORIENTATION AND WORKSHOPS

Two (2) *JURIS Mediation Program Orientation and Workshops* were conducted by the Academy's Philippine Mediation Center (PMC), the Justice Reform Initiatives Support (JURIS) Project, and the National Judicial Institute (NJI) of Canada. The first orientation and workshop was held on September 13 and 14, 2005, at the L' Fisher Hotel, Bacolod City. There were sixty-one (61) attendees comprising twenty-five (25) judges and thirty-six (36) clerks of court and branch clerks of court.

The second orientation and workshop was conducted on September 20 and 21, 2005, also at the same venue. Twenty-nine (29) participants attended the workshop, consisting of twelve (12) judges and seventeen (17) clerks of court and branch clerks of court.

The activity for the program was divided into two (2) parts. The first part was devoted to sessions orienting the judges and clerks of court on the nature, philosophy, and operations of court-annexed mediation. The second part was allotted to workshops which allowed the participants to assess their experience on court-annexed mediation during the Settlement Period and were asked to make suggestions regarding the procedures.



## POLITICAL LAW

### CSC Regional Office's Ruling Binds National and Local Government Agencies.

The provisions of P.D. No. 807 (Civil Service Decree) and E.O. No. 292 (Administrative Code of 1987) are clear that the Regional Offices of the CSC are empowered to enforce Civil Service laws, rules, policies and standards on personnel management or personnel actions of national and local government agencies within their jurisdiction, and to enforce the same laws, rules, policies and standards with respect to the conduct of public officers and employees. From this power necessarily flows the authority to issue opinions and rulings regarding personnel management in both national and local government agencies. Moreover, these opinions and rulings perforce bind the aforementioned government agencies, otherwise, the authority given by law to these Regional Offices would become useless and said Regional Offices can be rendered impotent by government agencies which can simply choose to ignore their opinions and rulings on the convenient ground that they are not binding.

In the present case, the provision of law being enforced by the Regional Office of the CSC is Section 36 of P.D. No. 807 and Section 46 of E.O. No. 292 which both provide that no officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process. Hence, the ruling of the CSC Regional Office that the memorandum directing private respondent to cease and desist from performing her duties and functions and advising her to go on leave with or without pay is contrary to existing Civil Service law and rules.

(*Austria-Martinez, J., Israel G. Peralta, Parole and Probation Administration, Cotabato City v. Court of Appeals, The Ombudsman and Nida Olegario*, G.R. No. 141966, June 30, 2005)

## CIVIL LAW

### Custody of a minor child

Sexual preference or moral laxity alone does not prove parental neglect or incompetence. Not even

the fact that a mother is a prostitute or has been unfaithful to her husband would render her unfit to have custody of her minor child. To deprive the wife of custody, the husband must clearly establish that her moral lapses have had an adverse effect on the welfare of the child or have distracted the offending spouse from exercising proper parental care.

It is therefore not enough for Crisanto to show merely that Joycelyn was a lesbian. He must also demonstrate that she carried on her purported relationship with a person of the same sex in the presence of their son or under circumstances not conducive to the child's proper moral development. There is no evidence that the son was exposed to the mother's alleged sexual proclivities or that his proper moral and psychological development suffered as a result.

(*Panganiban, J., Joycelyn Pablo-Gualberto v. Crisanto Rafaelito Gualberto V*, G.R. No. 154994; *Crisanto Rafaelito Gualberto V v. Court of Appeals*; Hon. Helen B. Ricafort, Presiding Judge, RTC Parañaque City, Branch 260; and *Joycelyn C. Pablo-Gualberto*, G.R. No. 156254, June 28, 2005)

## MERCANTILE LAW

### Intellectual Property Code; utility models not copyrightable.

It bears stressing that the focus of copyright is the usefulness of the artistic design, and not its marketability. The central inquiry is whether the article is a work of art. Works for applied art include all original pictorials, graphics, and sculptural works that are intended to be or have been embodied in useful article regardless of factors such as mass production, commercial exploitation, and the potential availability of design patent protection.

Indeed, while works of applied art, original intellectual, literary and artistic works are copyrightable, useful articles and works of industrial design are not. A useful article may be copyrightable only if and only to the extent that such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing

## MERCANTILE LAW (continued)

independently of the utilitarian aspects of the article.

Being plain automotive spare parts that must conform to the original structural design of the components they seek to replace, the Leaf Spring Eye Bushing and Vehicle Bearing Cushion are not ornamental. They lack the decorative quality or value that must characterize authentic works of applied art. They are not even artistic creations with incidental utilitarian functions or works incorporated in a useful article.

(*Callejo, Sr., J., Jessie G. Ching v. William Salinas, Sr., et. al.*, G.R. No. 161295, June 29, 2005)

## REMEDIAL LAW

### Evidence; Admissibility of tape recordings.

It is generally held that sound recording is not inadmissible because of its form where a proper foundation has been laid to guarantee the genuineness of the recording. In our jurisdiction, it is a rudimentary rule of evidence that before a tape recording is admissible in evidence and given probative value, the following requisites must first be established, to wit:

- (1) A showing that the recording device was capable of taking testimony;
- (2) A showing that the operator of the device was competent;
- (3) Establishment of the authenticity and correctness of the recording;
- (4) A showing that changes, additions, or deletions have not been made;
- (5) A showing of the manner of the preservation of the recording;
- (6) Identification of the speakers; and
- (7) A showing that the testimony elicited was voluntarily made without any kind of inducement.

In one case, it was held that the testimony of the operator of the recording device as regards its operation, his method of operating it, the accuracy of the recordings, and the identities of the persons speaking laid a sufficient foundation for the admission of the recordings. Likewise, a witness' declaration that the sound recording

represents a true portrayal of the voices contained therein satisfies the requirement of authentication. The party seeking the introduction in evidence of a tape recording bears the burden of going forth with sufficient evidence to show that the recording is an accurate reproduction of the conversation recorded.

These requisites were laid down precisely to address the criticism of susceptibility to tampering of tape recordings.

(*Chico-Nazario, J., Cirse Francisco "Choy" Torralba v. People of the Philippines*, G.R. No. 153699, August 22, 2005)

### Verification and Certification against forum shopping; Whether the absence of the signature of the person misjoined as a party-plaintiff in either the verification page or certification against forum shopping is ground for the dismissal of the action.

A misjoined party plaintiff has no business participating in the case as a plaintiff in the first place, and it would make little sense to require the misjoined party in complying with all the requirements expected of plaintiffs.

At the same time, Section 11, Rule 3 of the 1997 Rules of Civil Procedure states that "neither misjoinder nor non-joinder of parties is ground for dismissal of an action."

Clearly, misjoinder of parties is not fatal to the complaint. The rule prohibits dismissal of a suit on the ground of non-joinder or misjoinder of parties. Moreover, the dropping of misjoined parties from the complaint may be done *motu proprio* by the court, at any stage, without need for a motion to such effect from the adverse party.

Since the misjoined party plaintiff receives no recognition from the court as either an indispensable or necessary party-plaintiff, it then follows that whatever action or inaction the misjoined party may take on the verification or certification against forum-shopping is inconsequential.

(*Tinga, J., Christine Chua v. Jorge Torres and Antonio Beltran*, G.R. No. 151900, August 30, 2005)

## ELECTION LAW

### Pre-proclamation controversies are limited to challenges directed against the Board of Canvassers and its proceedings.

Pre-proclamation controversies are limited to challenges directed against the Board of Canvassers and proceedings before said Board relating to particular election returns. It is limited to an examination of the election returns on their face. It is beyond the COMELEC's jurisdiction to go beyond the face of the returns or investigate election irregularities.

The proceedings in a pre-proclamation controversy are summary in nature. Reception of evidence *aliunde*, such as the List of Voters with voting records is proscribed. Issues such as fraud or terrorism attendant to the election process, the resolution of which would compel or necessitate the COMELEC to pierce the veil of election returns which appear to be *prima facie* regular on their face are anathema to a pre-proclamation controversy. Such issues should be posed and resolved in a regular election protest, which is within the original jurisdiction of the Regional Trial Court.

(*Austria-Martinez, J. Ms. Bairansalam Laut Lucman v. Comelec*, G.R. No. 166229, June 29, 2005)

## CIVIL LAW

### Guidelines in the award of damages and rates of interest.

In *Eastern Shipping Lines, Inc. v. Court of Appeals*, the Supreme Court laid down the following guidelines:

I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest, in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as

follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonable established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonable ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgement of the court awarding a sum of money becomes final and executory, the rate of legal interest whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

(*Davide, Jr. C.J., The President of Philippine Deposit Insurance v. Hon. Wilfredo Reyes, RTC Manila, et al.*, G.R. No. 154973, June 21, 2005)



*CIVIL LAW (continued)*

**Right to reacquire expropriated land; whether an owner of an expropriated land for public use have the right to re-acquire it after the public use is abandoned**

The answer to that question depends upon the character of the title acquired by the expropriator, whether it be the State, a province, a municipality, or a corporation which has the right to acquire property under the power of eminent domain. If, for example, land is expropriated for a particular purpose, with the condition that when that purpose is ended or abandoned the property shall return to its former owner, then, of course, when the purpose is terminated or abandoned the former owner reacquires the property so expropriated. If, for example, land is expropriated for a public street and the expropriation is granted upon condition that the city can only use it for a public street, then, of course, when the city abandons its use as a public street, it returns to the former owner, unless there is some statutory provision to the contrary. If upon the contrary, however, the decree of expropriation gives to the entity a fee simple title, then of course, the land becomes the absolute property of the expropriator, whether it be the State, a province, or municipality, and in that case the non-user does not have the effect of defeating the title acquired by the expropriation proceedings.

When land has been acquired for public use in fee simple, unconditionally, either by the exercise of eminent domain or by purchase, the former owner retains no rights in the land, and the public use may be abandoned or the land may be devoted to a different use, without any impairment of the estate or title acquired, or any reversion to the former owner.

(*Chico-Nazario, J., Air Transportation Office (ATO) and MACTAN-CEBU International Airport Authority (MCIAA) v. Apolonio Gopuco, Jr., G.R. No. 158563, June 30, 2005*)

**CRIMINAL LAW**

**Rape case; a mentally retarded individual may be a credible witness**

In rape cases, the victim's credibility is crucial to the determination of the accused's culpability as the crime generally involves two (2) persons only

*CRIMINAL LAW (continued)*

and usually perpetrated in seclusion. While it may be difficult to determine the credibility of one who is a mental retardate, it can still be attained by deducing from the manner he or she testifies in court as to the surrounding facts of the crime committed.

As long as a witness' testimony is straightforward, candid and unflawed by inconsistencies or contradictions in its material points, and his or her demeanor is consistent with one who has been victimized to thus bolster credibility with the verity born out of human nature and experience, as in the herein victim's case, credibility can be accorded to him or her.

(*Carpio Morales, J., People of the Philippines v. Jeus Macapal, Jr., G.R. No. 155335, July 14, 2005*)

**REMEDIAL LAW**

**Jurisdiction over cases for violation of R.A. No. 8293, Intellectual Property Code.**

The issues posed for resolution are – (1) Which court has jurisdiction over criminal and civil cases for violation of intellectual property rights?  
xxx

Under Section 170 of R.A. No. 8293, which took effect on January 1, 1998, the criminal penalty for infringement of registered marks, unfair competition, false designation of origin and false description or representation, is imprisonment from two (2) to five (5) years and a fine ranging from Fifty Thousand Pesos (Php50,000) to Two Hundred Thousand Pesos (Php200,000), to wit:

SEC. 170. *Penalties.* - Independent of the civil and administrative sanctions imposed by law, a criminal penalty of imprisonment from two (2) to five (5) years and a fine ranging from Fifty thousand pesos (Php50,000.00) to Two hundred thousand pesos (Php200,000.00) shall be imposed on any person who is found guilty of committing any of the acts mentioned in Section 155 [Infringement], Section 168 [Unfair Competition] and Section 169.1 [False Designation of Origin and False Description or Representation].

REMEDIAL LAW (continued)

Corollarily, Section 163 of the same Code states that actions (including criminal and civil) under Sections 150, 155, 164, 166, 167, 168 and 169 shall be brought before the proper courts with appropriate jurisdiction under existing laws, thus –

SEC. 163. *Jurisdiction of Court.* – All actions under Sections 150, 155, 164 and 166 to 169 shall be brought before the *proper courts with appropriate jurisdiction under existing laws.* (Emphasis supplied).

The existing law referred to in the foregoing provision is Section 27 of R.A. No. 166 (The Trademark Law) which provides that jurisdiction over cases for infringement of registered marks, unfair competition, false designation of origin and false description or representation, is lodged with the Court of First Instance (now Regional Trial Court) –

SEC. 27. *Jurisdiction of Court of First Instance.* – All actions under this Chapter [V – Infringement] and Chapters VI [Unfair Competition] and VII [False Designation of Origin and False Description or Representation], hereof shall be brought before the Court of First Instance.

We find no merit in the claim of petitioner that R.A. No. 166 was expressly repealed by R.A. No. 8293. The repealing clause of R.A. No. 8293, reads –

SEC. 239. *Repeals.* – 239.1. All Acts and *parts of Acts inconsistent herewith*, more particularly Republic Act No. 165, as amended; *Republic Act No. 166*, as amended; and Articles 188 and 189 of the Revised Penal Code; Presidential Decree No. 49, including Presidential Decree No. 285, as amended, are hereby repealed. (Emphasis added)

Notably, the aforequoted clause did not expressly repeal R.A. No. 166 in its entirety, otherwise, it would not have used the phrases “parts of Acts” and “inconsistent herewith;” and it would have simply stated “Republic Act No. 165, as amended; Republic Act No. 166, as amended; and Articles 188 and 189 of the Revised Penal Code’ Presidential Decree No. 49, including

Presidential Decree No. 285, as amended are hereby repealed.” It would have removed all doubts that said specific laws had been rendered without force and effect. The use of the phrases “parts of Acts” and “inconsistent herewith” only means that the repeal pertains only to provisions which are repugnant or not susceptible of harmonization with R.A. No. 8293. Section 27 of R.A. No. 166, however, is consistent and in harmony with Section 163 of R.A. No. 8293. Had R.A. No. 8293 intended to vest jurisdiction over violations of intellectual property rights with the Metropolitan Trial Courts, it would have expressly stated so under Section 163 thereof.

Moreover, the settled rule in statutory construction is that in case of conflict between a general law and a special law, the latter must prevail. Jurisdiction conferred by a special law to Regional Trial Courts must prevail over that granted by a general law to Municipal Trial Courts.

In the case at bar, R.A. No. 8293 and R.A. No. 166 are special laws conferring jurisdiction over violations of intellectual property rights to the Regional Trial Court. They should therefore prevail over R.A. No. 7691, which is a general law. Hence, jurisdiction over the instant criminal case for unfair competition is properly lodged with the Regional Trial Court even if the penalty therefor is imprisonment of less than six (6) years, or from two (2) to five (5) years and a fine ranging from Php50,000.00 to Php200,000.00.

In fact, to implement and ensure the speedy disposition of cases involving violations of intellectual property rights under R.A. No. 8293, the Court issued A.M. No. 02-1-11-SC dated February 19, 2002 designating certain Regional Trial Courts as Intellectual Property Courts. On June 17, 2003, the Court further issued a Resolution consolidating jurisdiction to hear and decide Intellectual Property Code and Securities and Exchange Commission cases in specific Regional Trial Courts designated as Special Commercial Courts.

(*Puno, J., Manolo Samson v. Hon. Victoriano Cabanos, RTC Judge, Antipolo City, G.R. No. 161693, June 28, 2005*)

## SUPREME COURT

A.M. No. 05-8-26-SC

**RE: AMENDMENT OF RULES 112 AND 114  
OF THE REVISED RULES ON  
CRIMINAL PROCEDURE BY REMOVING  
THE CONDUCT OF PRELIMINARY  
INVESTIGATION FROM JUDGES  
OF THE FIRST LEVEL COURTS**

**RESOLUTION**

Acting on the Resolution dated August 26, 2005 of the Committee on the Revision of Rules of Court, the Court Resolved to AMEND Rules 112 and 114 of the Revised Rules on Criminal Procedure as follows:

**RULE 112**

**PRELIMINARY INVESTIGATION**

**SECTION 1. *Preliminary investigation defined; when required.***-Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.

Except as provided in Section 6 of this Rule, a preliminary investigation is required to be conducted before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four (4) years, two (2) months and one (1) day without regard to the fine. (1 a)

**SEC. 2. *Officers authorized to conduct preliminary investigations.***-The following may conduct preliminary investigations:

- (a) Provincial or City Prosecutors and their assistants;
- (b) National and Regional State Prosecutors; and
- (c) Other officers as may be authorized by law.

Their authority to conduct preliminary investigations shall include all crimes cognizable by the proper court in their respective territorial jurisdictions. (2a)

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

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

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

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

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

(c) Within ten (10) days from receipt of the *subpoena* with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him



A.M. NO. 05-8-26-SC (continued)

to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.

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

(e) The investigating officer may set a hearing if there are such facts and issues to be clarified from a party or a witness. The parties can be present at the hearing but without the right to examine or cross-examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned.

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

(f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial. (3a)

SEC. 4. *Resolution of investigating prosecutor and its review.*-If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information, He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally, examined the complainant and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.

Within five (5) days from his resolution, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the

*Sandiganbayan* in the exercise of its original jurisdiction. They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.

No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or the Ombudsman or his deputy.

Where the investigating prosecutor recommends the dismissal of the complaint but his recommendation is disapproved by the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy on the ground that a probable cause exists, the latter may, by himself, file the information against the respondent, or direct another assistant prosecutor or state prosecutor to do so without conducting another preliminary investigation.

If upon petition by a proper party under such rules as the Department of Justice may prescribe or *motu proprio*, the Secretary of Justice reverses or modifies the resolution of the provincial or city prosecutor or chief state prosecutor, he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties. The same rule shall apply in preliminary investigations conducted by the officers of the Office of the Ombudsman. (4a)

SEC. 5. *When warrant of arrest may issue.*-

(a) *By the Regional Trial Court.*-Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order when the complaint or information was filed pursuant to section 6 of

(Continued on NEXT page)

A.M. NO. 05-8-26-SC (continued)

this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

(b) *By the Municipal Trial Court.-*When required pursuant to the second paragraph of section 1 of this Rule, the preliminary investigation of cases falling under the original jurisdiction of the Metropolitan Trial Court or Municipal Trial Court in Cities, Municipal Trial Court or Municipal Circuit Trial Court **SHALL** be conducted by the prosecutor. The procedure for the issuance of a warrant of arrest by the judge shall be governed by paragraph (a) of this section.

(c) *When warrant of arrest not necessary.-*A warrant of arrest shall not issue if the accused is already under detention pursuant to a warrant issued, by the municipal trial court in accordance with paragraph (b) of this section, or if the complaint or information was filed-pursuant to section 6 of this Rule or is for an offense penalized by fine only. The court shall then proceed in the exercise of its original jurisdiction. (6a)

SEC. 6. *When accused lawfully arrested without warrant.-*When a person is lawfully arrested without a warrant involving an offense which requires a preliminary investigation, the complaint or information may be filed by a prosecutor without need of such investigation provided an inquest has been conducted in accordance with existing rules. In the absence or unavailability of an inquest prosecutor, the complaint may be filed by the offended party or by a peace officer directly with the proper court on the basis of the affidavit of the offended party or arresting officer or person.

Before the complaint or information is filed, the person arrested may ask for a preliminary investigation in accordance with this Rule, but he must sign a waiver of the provisions of Article 125 of the Revised Penal Code, as amended, in the presence of his counsel. Notwithstanding the waiver, he may apply for bail and the investigation must be terminated within fifteen (15) days from its inception.

After the filing of the complaint or information in court without a preliminary investigation, the accused may within five (5) days from the time he learns of its filing, ask for a preliminary investigation with the same right to adduce evidence in his defense as provided in this Rule. (7a; sec. 2, RA. No. 7438)

#### SEC. 7. *Records.-*

(a) *Records supporting the information or complaint.-* An information or complaint filed in court shall be supported by the affidavits and counter-affidavits of the parties and their witnesses, together with the other supporting evidence and the resolution on the case.

(b) *Record of preliminary investigation.-*The record of the preliminary investigation conducted by a prosecutor **OR OTHER OFFICERS AS MAY BE AUTHORIZED BY LAW** shall not form part of the record of the case. However, the court, on its own initiative or on motion of any party, may order the production of the record or any of its part when necessary in the resolution of the case or any incident therein, or when it is to be introduced as an evidence in the case by the requesting party. (8a)

SEC.8. *Cases not requiring a preliminary investigation nor covered by the Rule on Summary Procedure.-*

(a) *If filed with the prosecutor.-*If the complaint is filed directly with the prosecutor involving an offense punishable by an imprisonment of less than four (4) years, two (2) months and one (1) day, the procedure outlined in section 3(a) of this Rule shall be observed. The prosecutor shall act on the complaint based on the affidavits and other supporting documents submitted by the complainant within ten (10) days from its filing.

(b) *If filed with the Municipal, Trial Court.-*If the complaint or information is filed with 'the Municipal Trial Court or Municipal Circuit Trial Court for an offense covered by this section, the procedure in section 3(a) of this rule shall be observed. If within ten (10) days after the filing of the complaint of information, the judge finds no probable cause after personally evaluating the evidence, or after personally examining in writing and under

A.M. NO. 05-8-26-SC (continued)

oath the complainant and his witnesses in the form of searching questions and answers, he shall dismiss the same. He may, however, require the submission of additional evidence; within ten (10) days from notice, to determine further the existence of probable cause. If the judge still finds no probable cause despite the additional evidence, he shall, within ten (10) days from its submission or expiration of said period, dismiss the case. When he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused had already been arrested, and hold him for trial. However, if the judge is satisfied that there is no necessity for placing the accused under custody, he may issue summons instead of a warrant of arrest. (9a)

x x x

#### RULE 114

#### BAIL

SEC. 17. *Bail, where filed.*-(a) Bail in the amount fixed may be filed with the court where the case is pending, or, in the absence or unavailability of the judge thereof, with any regional trial judge, metropolitan trial judge, municipal trial judge, or municipal circuit trial judge in the province, city, or municipality. If the accused is arrested in a province, city, or municipality other than where the case is pending, bail may be filed with any regional trial court of said place or, if no judge thereof is available, with any metropolitan trial judge or municipal trial judge or municipal circuit trial judge, therein.

(b) Where the grant of bail is a matter of discretion, or the accused seeks to be released on recognizance, the application may be filed only in the court where the case is pending on trial or appeal.

(c) Any person in custody who is not yet charged in court may apply for bail, with any court in the province, city or municipality where he is held. (17a)

All First Level Courts shall continue with the preliminary investigation of cases pending with them and terminate them not later than December 31, 2005.

Upon the date of effectivity of these amendments, First Level Courts shall no longer

accept new cases for preliminary investigation, which fall under the exclusive jurisdiction of courts of other levels.

These amendments shall take effect on October 3, 2005 following their publication in newspaper of general circulation not later than September 15, 2005.

August 30, 2005.

(Sgd.) DAVIDE, JR., CJ, PUNO, PANGANIBAN, QUISUMBING, YNARES-SANTIAGO, SANDOVAL-GUTIERREZ, CARPIO, AUSTRIA-MARTINEZ, CORONA, CARPIO-MORALES, CALLEJO, SR., AZCUNA, TINGA, CHICO-NAZARIO, GARCIA, JJ.

Chancellor's Desk  
(Continued from page 1)

Eighth Lecture (August) on *Judicial Reform - Issues to Consider* by Mr. Anthony G. Toft, Chief Counsel, East Asia and Pacific Region, World Bank, increased interest in the series and heightened expectations for the remainder of the lectures.

The Ninth Lecture in the above-mentioned Lecture Series ended the quarter on an exultant note on the topic *The Commitment to Judicial Education - A Presentation*, with our eminent jurists and experts as speakers. Retired Chief Justice Andres R. Narvasa, Chief Justice Hilario G. Davide, Jr., Senior Associate Justice Reynato S. Puno, Associate Justice Artemio V. Panganiban, Retired Justice Ricardo C. Puno, Sr., and Vice Chancellor Justo P. Torres, Jr. traced the remarkable history of PHILJA from its birth to its present commendable position in the administration of judicial education. Well-presented were the ongoing projects and linkages of the PHILJA by the respective Chairs of the Academic Departments. Justice Panganiban very appropriately spoke of the Lecture Series, together with the other retirement activities in honor of Chief Justice Davide, as a celebration of thanksgiving.

We are, indeed, rising to the challenge of Mr. George Thomson, Executive Director of Canada's National Judicial Institute, who has named PHILJA as "one of the world leaders in developing judicial education."



## OFFICE OF THE COURT ADMINISTRATOR

## OCA CIRCULAR NO. 61-2005

TO: 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 COURT, MUNICIPAL  
CIRCUIT TRIAL COURTS AND SHARI'A  
CIRCUIT COURTS

SUBJECT: GUIDELINES ON THE NON-  
MONETARY REMUNERATION FOR  
OVERTIME SERVICES

Quoted hereunder is the Implementing Guidelines  
on the Non-Monetary Remuneration for Overtime  
Services Rendered for the Judiciary, to wit:

**“IMPLEMENTING GUIDELINES ON THE  
NON-MONETARY REMUNERATION FOR  
OVERTIME SERVICES RENDERED  
FOR THE JUDICIARY”**

“WHEREAS, a revised amended guidelines on  
the rendition of overtime services was issued by  
the Honorable Chief Justice Hilario G. Davide, Jr.  
on July 21, 2004;

“WHEREAS, the Civil Service Commission and  
Department of Budget and Management issued  
Joint Circular No. 12, s. 2004 dated October 4, 2004,  
to provide a uniform, policy on the availment of  
compensatory time-off in lieu of overtime pay;

“WHEREAS, on April 4, 2005, the Honorable  
Chief Justice issued Administrative Circular No. 18-  
2005 adopting as part of the Judiciary's austerity  
program the aforementioned Joint Circular No. 2,  
s. 2004;

“WHEREAS, the adoption of the  
aforementioned Joint Circular No. 2 would give  
incalculable advantage and benefit to the Judiciary,  
to the service, and to personnel rendering overtime  
service;

“NOW, THEREFORE, the following guidelines  
on the non-monetary remuneration for overtime  
services rendered are hereby adopted pursuant to  
Joint Circular No. 2;

1. Purpose - These guidelines shall be the basis for the availment of compensatory time off in lieu of overtime pay for rendering overtime services.
2. Coverage - These guidelines shall apply to all employees of the Supreme Court up to Chiefs of Division, whether permanent, temporary, coterminous or casual, including those of the Presidential Electoral Tribunal and the Judicial and Bar Council, the Court of Appeals, the *Sandiganbayan*, the Court of Tax Appeals, and all Courts in the first and second levels.
3. Exemption - These guidelines shall not cover the official drivers of the Chief Justice and Associate Justices of the Supreme Court and the Presiding Justices and Associate Justices of the Court of Appeals, Court of Tax Appeals and the *Sandiganbayan* who may continue to receive overtime pay instead of the non-monetary remuneration. At the discretion of the Chief Justice and if justified by compelling reasons, exceptions to the application of the Joint Circular on non-monetary remuneration for overtime service rendered may be authorized.
4. Definition of Terms -
 

**Compensatory Overtime Credit (COC)** refers to the accrued number of hours an employee earns as a result of services rendered beyond regular working hours, and/or those rendered on Saturdays, Sundays, Holidays or scheduled days off without the benefit of overtime pay.

**Compensatory Time-Off (CTO)** refers to the number of hours or days an employee is excused from reporting for work with full pay and benefits. It is a non-monetary benefit provided to an employee in lieu of overtime pay.
5. Guidelines -
  - 5.1 Employees are required to render forty (40) hours of work in a week. Employees may be required to render overtime service in the exigency of the service when work has to be done beyond office hours due to compelling reasons and emergency situations.

OCA CIRCULAR NO. 61-2005 (continued)

5.2 The Heads of Offices shall determine the need for overtime services, the date, time and its purpose. They shall request authority from the Chief Justice / Presiding Justice / Executive Judge to render overtime service indicating therein the tasks to be completed and the expected time of completion.

5.3 Requests for overtime shall be made by the Head of Office and must be submitted to the Chief Justice / Presiding Justice / Executive Judge for approval before actual service of overtime is rendered.

5.4 Activities for which Overtime services may be authorized

5.4.1 Completion of infrastructure and other projects with set deadlines.

5.4.2 Work involving the preparation for and administration of Bar Examinations, where existing personnel are not adequate to handle such work during regular working days.

5.4.3 Seasonal work such as budget preparation and rendition of annual reports to meet scheduled deadlines

5.4.4 Preparation of special financial accountability reports required occasionally by central monitoring agencies like the Congress of the Philippines, the Senate, the Office of the President, Commission on Audit, Department of Budget and Management, and the National Economic Development Authority.

5.4.5 Implementation of special program/projects embodied in directives and authorizations, and with specific dates to complete which are in the nature of additional work of personnel with their regular duties.

5.4.6 Services rendered by drivers and other immediate staff of officials authorized to have such staff support when they are required to keep the

same working hours of their superiors.

5.4.7 Rendition of skeletal force on Saturdays by all officials and employees of the judiciary under Administrative Circular No. 2-99 dated 15 January 1999 issued by the Chief Justice.

5.4.8 Other services which the Chief Justice may deem to require overtime work.

#### 5.5 Computation of COCs

The COC is expressed in number of hours, computed as follows:

5.5.1 For overtime services rendered on weekdays or scheduled work days:

$COC = \text{number of hours of overtime services} \times 1.0$

5.5.2 For overtime services rendered on weekends, holidays or scheduled days off:

$COC = \text{number of hours of overtime services} \times 1.5$

#### 5.6 Accrual and Use of COCs

5.6.1 Each employee may accrue not more than forty (40) hours of COCs in a month. In no instance, however, shall the unexpended balance exceed one hundred twenty hours (120) hours.

5.6.2 The COCs should be used as time-off within the year these are earned. The unutilized COC should not be carried over in the ensuing year, hence, are non-cumulative.

5.6.3 The COCs shall be considered as official time for the following purposes:

5.6.3.1 compliance with compensation rules relative

(Continued on NEXT page)

OCA CIRCULAR NO. 61-2005 (continued)

to the entitlement to PERA, Additional Compensation, year-end benefits, and other benefits received on a regular basis; and

5.6.3.2 computation of service hours for entitlement to sick and vacation leave credits, and to step increment due to length of service.

#### 5.7. Limitation on the Use of COCs

5.7.1 The COCs cannot be used to offset undertime/s or tardiness incurred by the employee during regular working days.

5.7.2 The COCs earned cannot be converted to cash, hence, are non-commutative.

5.7.3 The COCs will not be added to the regular leave credits of the employee; hence, it is not part of the accumulated leave credits that is paid out to the employee.

#### 5.8 Effect on Personnel Movement

5.8.1 In cases of resignation, retirement, or separation from the service, the unutilized COCs are deemed forfeited.

5.8.2 In case of detail, secondment or transfer to another agency, the COCs earned in one agency cannot be transferred to another agency, nor could the employee receive the monetary equivalent thereof.

5.8.3 In case of promotion, except when promoted to a position not qualified to receive overtime pay under previous issuances, the employee will retain his or her accrued COC

#### 5.9 Issuance of Certificate of COC Earned

An employee who has earned COC shall be granted a Certificate of COC earned duly approved and signed by the Chief Administrative Officer/Personnel Officer as

the case may be. The certificate indicates the number of hours of earned COC by the employee in a month. The certificate would be issued at the end of each month.

#### 5.10 Availment of CTO

5.10.1 The CTO may be availed of in blocks of four (4) or eight (8) hours.

5.10.2 The employee may use the CTO continuously up to a maximum of five (5) consecutive days per single availment, or on staggered basis within the year.

5.10.3 Employees who were granted COC shall request their Chief of Office on the schedule of availment of the CTO. The said schedule shall be submitted to the Administrative/Personnel Office. In the exigency of the service, however, the schedule may be recalled and subsequently rescheduled by the Head of the Office of the employee within the year.

#### 6. Procedures

The following procedures shall be observed in the rendition of overtime services and availment of compensatory time off:

6.1 The Administrative/Personnel Office shall be furnished with a copy of the approved authority to render overtime services.

6.2 The employee renders overtime services as stipulated in the Office Order.

6.3 The Administrative/Personnel Office prepares a summary of overtime services rendered in a month, and computes the equivalent COCs, for the purpose of the issuance of the COC Certificate.

6-4 The Chief of the Administrative/Personnel Office issues the Certificate of COCs, specifying the number of COCs earned in a month.

6.5 The employees who have acquired the Certificate of COC shall request their Head of Office on the schedule of availment of



OCA CIRCULAR NO. 61-2005 (continued)

the CTO. The approved request shall then be submitted to the Administrative/ Personnel Office, which shall record the availment of the CTO of the employee.

6.6 The employee avails of the CTO.

7. Duties and Responsibilities

7.1 Heads/Chiefs of Offices

7.1.1 The Heads/Chiefs of Offices shall recommend to the Chief Justice/ Presiding Justice/ Executive Judge employees who will be authorized to render overtime services beyond regular working hours in accordance with these guidelines and the rules and regulations on overtime service contained in Memorandum Circular No. 08-2004.

7.1.2 Grant certificate of COC earned, concurrently setting safeguard measures to prevent any form of fraud and/or duplicity.

7.1.3 Approve/disapprove schedule of CTO as requested by the employee without compromising the delivery of services to clientele.

7.1.4 Ensure proper implementation of these guidelines, and act accordingly should violations or irregularities be committed.

7.2 Employees

7.2.1 Observe properly the procedures in earning of COC and availing of CTO.

7.2.2 Request approval from the Head/Chief of Office on the availment schedule of CTO.

7.2.3 Monitor the balance of earned COCs vis-a-vis CTOs availed of.

7.3 Administrative / Personnel Officer Concerned

7.3.1 Reflect on the time card the application for CTO filed by the employee.

7.3.2 Submit to the Head/ Chief of Offices concerned monthly report on summary of overtime services rendered and the equivalent COCs; and report critical incidents or observations.

7.3.3 Recommend measures to improve the implementation of the guidelines on the grant of COCs and availment of CTOs.

8. Certificate of Compensatory Overtime Credit (COC)

**Front**

Certificate of COC Earned

This certificate entitles Mr./Ms. \_\_\_\_\_ to \_\_\_\_\_ of Compensatory Overtime Credits. (number of hours)

\_\_\_\_\_  
Head of Office

Date Issued: \_\_\_\_\_  
Valid Until: \_\_\_\_\_

**Back**

No. of Hours of Earned COCs/ Beginning Balance	Date of CTO	Used COCs	Remaining COCs	Remarks

Approved by: \_\_\_\_\_ Claimed: \_\_\_\_\_

Head of Office HRMO

(Continued on page 22)

## OCA CIRCULAR NO. 78-2005

TO: ALL EXECUTIVE JUDGES AND CLERKS OF COURT

SUBJECT: *En Banc* Resolution A.M. No. 01-1-07-SC dated 16 October 2001, prescribing the Guidelines in the Accreditation of Newspapers and Periodicals seeking to Publish Judicial and Legal Notices and Other Similar Announcements and in the Raffle thereof

The Office of the Court Administrator has been receiving numerous anonymous letters that there are still some Clerks of Courts who are not complying with *En Banc* Resolution A.M. No. 01-1-07-SC dated 16 October 2001, particularly under Section 10 of the said resolution, that is:

*"SEC. 10. Requirement of raffle.- All notices, announcements and advertisements subject hereof shall be distributed for publication to accredited newspapers or periodicals by raffle. No such notices, announcements and advertisements may be assigned for publication without being raffled.*

**The raffle of judicial or legal notices for publication shall be included in the regular raffle of cases,** provided that special raffles may be conducted for notices that need to be published before the regular raffle could be conducted.

The **posting** of judicial notices for publication, the raffle procedure and the publication of the results thereof shall be conducted in the same manner as the raffle of cases as provided in the Manual for Clerks of Court. All accredited newspapers or periodicals shall as much as possible be assigned an equal number of notices to publish but the same must be done thru raffle." (*Emphasis supplied.*)

Considering the importance of the publications of judicial notices and other similar announcement, it is incumbent upon the judiciary to implement regulations to see to it that the conduct of the same including the raffle thereof should therefore be protected and guarded against from any attempt of scheming parties to manipulate its conduct and implementation.

With this in mind, our Supreme Court has issued circulars and other issuances regulating the publication of judicial notices, advertisement for public biddings, notices of auction sales and other similar notices to ensure uniform compliance and to protect the interest of the public, in general, and of litigants, in particular.

For that matter, all Executive Judges and Clerks of Court are again reminded to take special attention to *En Banc* Resolution A.M. No. 01-1-07-SC dated 16 October 2001, prescribing the Guidelines in the Accreditation of Newspapers and Periodicals seeking to Publish Judicial and Legal Notices and Other Similar Announcements and in the Raffle thereof.

STRICT COMPLIANCE HEREWITH IS HEREBY ENJOINED.

29 July 2005.

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

OCA CIRCULAR NO. 61-2005  
(Continued from page 21)

9. Saving Clause

Issues or conflicts arising from those guidelines shall be resolved by the Chief Justice.

10. Effectivity

These guidelines shall take effect on May 15, 2005.

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

(Sgd.) EDEN T. CANDELARIA  
Deputy Clerk of Court and  
Chief Administrative Officer

For the information and guidance of all concerned.

18 May 2005.

(Sgd.) ZENAIDA N. ELEPAÑO  
Acting Court Administrator





3<sup>rd</sup> Floor, Supreme Court Centennial Building  
Padre Faura St. cor. Taft Ave., Manila, Philippines  
1000

## 2005 Upcoming PHILJA Events

<i>Date</i>	<i>Seminars / Activities</i>	<i>Venue</i>
Sept. 1-2	Workshop on Dispute Resolution	Training Room, Centennial Building, Supreme Court Cagayan de Oro City
Sept. 2	Consultative Meeting on the Second Seminar on Strengthening <i>Shari'a</i> and Islamic Jurisprudence	
Sept. 7-9	3rd Regional Multi-Sectoral Seminar-Workshop on Juvenile and Domestic Relations Justice (Advanced Level)	CSB Hotel, Malate, Manila
Sept. 12-23	37th Orientation Seminar-Workshop for Newly Appointed Judges	PHILJA Development Center, Tagaytay City
Sept. 27-30	Regional Judicial Career Enhancement Program (Level 4) for Judges, Clerks of Court and Branch Clerks of Court of the Regional Trial Courts and First Level Trial Courts of the Third Judicial Region (Batch 2)	Bayview Park Hotel, Manila
Sept. 26-30	Seminar on Strengthening <i>Shari'a</i> Court System: Part I - Strengthening <i>Shari'a</i> Court System; Part II - Orientation on Conflict Resolution	Grand Men Seng Hotel, General Santos City
Oct. 3-4	Orientation Seminar-Workshop on Mediation for Judges and Lawyers (General Santos Mediation Program)	Casa Luisa Restaurant, General Santos, City
Oct. 6	Roundtable Discussion on Criminal Law, Anti-Terrorism and Evidence Gathering	Training Room, Centennial Building, Supreme Court

*Chancellor, Philippine Judicial Academy*  
**JUSTICE AMEURFINA A. MELENCIO HERRERA**

*Editor-in-Chief*  
**PROFESSOR SEDFREY M. CANDELARIA**

*Doctrines and Issuances*  
**ATTY. MARLYDS ESTARDO**  
**QUEENCY S. CORTEZ**

*Features and News*  
**MELANIE H. PEREZ**  
**JOCELYN D. BONDOC**

*Layout, Production and Circulation*  
**ARMIDA M. SALAZAR**

*Printing*  
**EDMUNDO M. MOREDO**

The *PHILJA Bulletin* is published quarterly by the Research and Linkages Office of the Philippine Judicial Academy, with office at the 3<sup>rd</sup> Floor of the Supreme Court Centennial Building, Padre Faura St. cor. Taft Ave., Manila. Telephone No. 552-9524; Telefax No. 552-9526; E-mail address: [research\\_philja@yahoo.com](mailto:research_philja@yahoo.com); Website address: <http://philja.supremecourt.gov.ph>