



# PHILJA Bulletin



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## From the Chancellor's Desk

It is to the credit of the Editor-in-Chief, Dr. Purificacion V. Quisumbing, the Editorial Staff and Editorial Assistants, that we are now on the third issue of the PHILJA *Bulletin*. The second issue suffered some delay due to heavy traffic in the Court's Printing Office but, hopefully, it has reached its readers.

The third issue now carries, as a Supplement, the "Revised Outline of Jurisdiction" by Justice Jose A. Feria, a retired Justice of the Supreme Court. We are confident that it will be of invaluable help to Judges and Court lawyers alike to keep them informed and updated on such an encompassing and crucial topic as jurisdiction.

Unrelenting is the PHILJA collective effort, as the educational arm of the Supreme Court, to make available ways and means to enhance judicial competence, disseminate updated developments in legislation and juridical doctrine, and strengthen desirable attitudes and values in all members of the Bench from the highest to the lowest.

There persists a negative perception of the court system that needs to be turned around. The Supreme Court has taken the lead with a positive rating of 20%. Every effort should be exerted to follow suit.

In the field of judicial education, PHILJA's path is clear.

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## ALTERNATIVE DISPUTE RESOLUTION SEMINAR-WORKSHOP

The Supreme Court recently approved the pilot testing of court-referred mediation cases in the Regional Trial Courts and Metropolitan Trial Courts of Mandaluyong and Valenzuela.

This project is meant to implement Rule 18 of the Rules of Civil Procedure which provides that during pre-trial, the court can consider submission of cases for alternative dispute resolution.

Mediation has been used in many jurisdictions to facilitate resolution of cases through trained mediators who explore with litigants the many avenues of settling cases and reaching compromises. Since the settlement is not imposed but rather reached voluntarily by the litigants themselves, the judgment based on the compromise agreement is not questioned or appealed. It is envisioned that through mediation, the resolution of cases will be hastened, resulting in the unclogging of court dockets.

The PHILJA recently created an ADR Sub-Committee which trained 36 prospective mediators in Subic. Through lectures, demonstrations and role-playing, the following topics were explained: concept and framework for mediation; process of mediation; techniques of mediation; role and qualities of mediators and Filipino values and culture. There was also a workshop which analyzed several cases for mediation in the viewing and critiquing of mock trial mediation. At the end of the training seminar, the Sub-Committee administered a qualifying examination.

This week, the ADR Sub-committee met with the judges of Mandaluyong and Valenzuela to run through the steps they will take to implement the pilot testing. The ADR Sub-Committee also intends to meet the lawyers of the cases selected for pilot testing to explain to them the concept and purpose of mediation, and to seek their assistance and cooperation for a successful pilot testing.

By Dean Eduardo De los Angeles  
Chairperson, ADR Committee



Participants to the Seminar Workshop of Prospective Mediators/Conciliators with (front row from left to right) Dean Pacifico Agabin, Dean Eduardo De los Angeles, Chancellor Ameurfina Melencio Herrera, Justice Leonardo A. Quisumbing, Ret. Justice Gloria C. Paras, Atty. Clemente San Agustin, Dr. Purificacion V. Quisumbing and Comm. Alfredo F. Tadiar at the Subic International Hotel, Olongapo City

### From the Chancellor's Desk

(Continued from page 1)

A judge can serve the cause of justice better and fulfill the mandate of his magistracy in the measure that he or she is informed. Justice is competently served to the extent that the stewards of justice are enlightened. This is the reason that many jurisdictions see in judicial education the fulcrum of judicial reform. This must, ultimately, be PHILJA's *raison d'être*. It is this conviction that lies behind its publications, the PHILJA Bulletin among them. Every judge must be convinced that it is part of his or her bounden duty to be informed and be enlightened so that justice, the end of law, may be better, more competently served!

## A Pilot Project on Alternative Dispute Settlement

[The following is the Welcome Remarks delivered by Justice Ameurfina Melencio Herrera, PHILJA Chancellor at the Seminar-Workshop for Prospective Mediators/Conciliators held at Subic International Hotel, Olongapo City on June 25 to 27, 1999.]

Good afternoon, everyone.

We trust that the three-hour trip was not that much of a hassle.

We are all here for a definite purpose.

While the 1997 Rules of Civil Procedure make provisions for the possible use of alternative modes of dispute resolution (e.g., Rule 18 on Pre-trial and Rule 70 on Forcible Entry and Detainer), judges, lawyers, and litigants have not made much use of these alternative modes. In fact, even after the effectivity of the Rules of Court in 1941, or fifty-eight (58) years ago, which already contained provisions relative to modes of discovery, their use, and even of the pre-trial procedure, has been minimal despite exhortations from the Supreme Court which has on several occasions lamented that fact. This could be attributed, perhaps, to "regrettable unfamiliarity," or timidity to innovate, or lack of trained mediators and conciliators to conduct mediation or conciliation.

It is to try and find a solution to this lament that we are all here together; thanks to the Supreme Court-UNDP Project on Technical Assistance to the Philippine Judiciary on Justice and Development, which is giving us full support.

Actually, this activity has evolved to be multi-purpose.

- 1) To start with, we have our main participants – our prospective mediators/conciliators. They will, hopefully, answer the need for trained, committed, and neutral dispute resolvers and private professionals.
- 2) We have our Regional Trial Court and Metropolitan Trial Court Judges from Mandaluyong City and Valenzuela, Metro Manila, who will be the major actors in the pilot courts. They will give momentum to, and provide leadership to mediated settlement conferences. Although they will not interfere with the mediation procedures, their judicial involvement and commitment will be crucial to determining whether we can go beyond the pilot phase.
- 3) We have our lawyers from the Offices of the Chief Justice and Associate Justices of the Supreme Court, whom we expect to help in disseminating knowledge on the utilization of ADR mechanisms provided for in the 1997 Rules of Civil Procedure.

I would want also to give them a special assignment – that of drafting proposed amendments to the Rules of Civil Procedure to incorporate Mediation Proceedings into those Rules. You will have as basic working documents the draft of the Guidelines for the pilot courts, which PHILJA submitted to the Supreme Court for consideration and approval; and a draft prepared by Chairman Tadiar years ago in 1994 when he was still Director of the Office of Legal Aid of the University of the Philippines.

Please organize yourselves and select a Team Leader and a Rapporteur. Time permitting, we will ask you to submit your draft in a plenary session towards the end of this Seminar-Workshop.

- 4) We also have our participants from PHILJA, Dr. Purificacion V. Quisumbing, who heads our Research and Publications Office; and Atty. Zenaida C. Pagaduan, head of our Court Personnel Division. They are two of our built-in constituencies in PHILJA projects.
- 5) Mention must likewise be made of the Coordinators of this project: Justice Gloria C. Paras, who is the Executive Director of the Judicial Reforms Committee of PHILJA, and her able assistant, Mr. Jose T. Name. They worked extremely hard to put everything together including rendering overtime yesterday even though it was a holiday in Manila.
- 6) Special mention must now be made of our prime-movers, the members of our ADR Subcommittee: its Chairman, Atty. Eduardo B. de los Angeles, former Dean of the Ateneo College of Law, and member of the Consultants Group of the Judicial Reforms Committee of PHILJA; and his members, Atty. Pacifico A. Agabin, former Dean of the University of the Philippines College of Law, and member of the Consultants Group and Research Group of the Judicial Reforms Committee of PHILJA; and a third member, Chairman Alfredo F. Tadiar of Amnesty Commission fame, who graciously agreed to be pulled out every now and then from the Commission to try and help push through a pet project of his when he was still in U.P. They designed the module for this Seminar, and considering their background, know-how, and experience, we can expect a fruitful learning experience in the mediation process.
- 7) And since royalty comes last, I would like to mention now Justice Josue N. Bellosillo, the Special Representative of the Supreme Court to the SC-UNDP Project. Helping him are Atty. Jose Midas P. Marquez, the Project Director, and Atty. Rhodora Raterta, the Project Manager, without all of whose blessings, we would not be here today and the next two days.

All these having been said, it is my privilege to declare the Seminar-Workshop for Prospective Mediators/Conciliators, open. We welcome you all warmly and trust that our collaborative effort will jump-start the pro-active use of one of the ADR mechanisms and help bring parties to a settlement instead of undergoing the rigors of trial. Thereby, we also help unplug the heavy dockets of our courts.

Thank you all for being one with us in the spirit of court reforms and continuing judicial education.

## Closing Remarks of Justice Josue N. Bellosillo on Alternative Dispute Resolution

*[The following was delivered at the Seminar-Workshop for Prospective Mediators/Conciliators held on June 25 to 27, 1999 at the Subic International Hotel, Olongapo City]*

First, let me greet the principal characters of this three-day Seminar for Prospective Mediators/Conciliators. Of course, I am referring to the great, energetic Chancellor of the Philippine Judicial Academy, Justice Ameurфина Melencio-Herrera; Dr. Purificacion Quisumbing, a global citizen from whose experience we can learn, particularly on human rights and gender sensitivity, among others; Justice Gloria Conti Paras, tireless Executive Director of the Judicial Reform Committee of PHILJA; our legal scholars whose expertise takes us from beyond the classrooms and the court rooms to the communities where reforms matter most; Dean Eduardo de los Angeles, Dean Pacifico Agabin, Chair Alfredo Tadiar; our other resource persons; PHILEXPORT-TAPS representatives, our Secretariat from PHILJA and the SC-UNDP Project Management Office; and most especially our eager and active participants, our prospective mediators, our Judges and the Supreme Court attorneys and staff.

Having greeted everyone in the room, I would like to extend to all of you the felicitous greetings of the Chief Justice and other Associate Justices of the Supreme Court. They join me in congratulating everyone here present in what may be said as another breakthrough in our determined effort at judicial reform.

I am sure that you are all raring to go home to your families after having worked over the weekend under the tutelage of our esteemed moderators and resource persons in this joint endeavor of the Philippine Judicial Academy, the Supreme Court-UNDP Project "Technical Assistance to the Philippine Judiciary on Justice and Development," and the PHILEXPORT-TAPS Project. Bearing in mind the song popularized by Melina Mercouri, "But Never on a Sunday, for It's My Day of Rest," I just hope that encroaching on your quality time with your families on a Sunday is truly worth it for everyone. May you all go home with happy smiles on your faces knowing that you have fruitfully participated in this great effort to lighten our court dockets and thereby improve the administration of justice.

The Judiciary's mission has evolved through the years. From being reactive, the Supreme Court has now become more and more proactive, particularly as to how the Judiciary can become more effective, efficient and responsive to the public clamor for reform.

The Fernan and Narvasa courts have built upon the initiatives of their eminent predecessors thus, in the recent past, we have seen persistent efforts of the High Court to cleanse the judiciary, continuously revise the court rules and procedures, upgrade the skills of judges and court personnel. The Davide Court is now in the midst of initiating a comprehensive judicial reform agenda "leading the Philippine Judiciary and the Legal Profession towards the next millennium" including the realization of the legislative mandate on the Family Courts and the Speedy Trial Act.

I am happy to note that the *Blueprint of Action for the Judiciary*, will be submitted as a strategic component of the judicial reform agenda. PHILJA, one of the major partners of the Project, has also been in the forefront of identifying possible judicial reforms. But, of all the challenges facing the Judiciary today, we have to recognize that the inadequate judicial budget, the need for systematic and structural changes in the Judiciary and the entire administration of justice, the growing number of laws giving rise to new conflicts, need to be addressed with strategic actions involving many sectors.

Judicial delay and clogging of dockets, which are also problems in many other jurisdictions, are areas where the solution lies not only in the hands of the judges and justices but in each and every citizen.

Through the collaborative and consultative process which we undertook for the different components of the Project, seeking alternative modes of conflict resolution has always been proposed. This alternative can only be successful if all the stakeholders play their part, and play their part well. An empowered citizenry, whom we envision as a society which understands not only the court processes, but also the role that the justice system plays in our society, is important in all these.

Finding alternative means of resolution, and making it work, has in fact been a quest for many groups seeking judicial reform, the Supreme Court itself, the PHILJA, the academe, the NGOs and other stakeholders. We have all been brought together by a common goal, a fervor which I am sure will outlast this seminar.

Your Supreme Court dreams of the time when individuals, families and communities would be able to make choices on when to litigate, how to litigate, when to agree to disagree and most importantly when to find areas and pursue avenues for conciliation. For this purpose, we need highly committed individuals and groups of individuals in our society to continue opening pathways for conciliation and mediation. And all of you now, my friends, the prospective model mediators – the village elders, the responsible citizens, the Judges under whose direction the mediators will be working on, our Supreme Court lawyers and staff - have now become our veritable partners in seeking creative solutions to settlement disputes.

Yesterday, I was going over the Final Report of the Pilot Project on Court Referral for Mediation prepared by the Office of Legal Aid of the UP College of Law, I was reminded some eight (8) years ago I was the Guest Speaker in the official launching of that Project, an experiment on the practicability of using alternative means of settling pending court cases, with the ever dynamic Professor Alfredo F. Tadiar as Project Director. Now, or eight (8) years hence, I can safely say that the Project is a great success, and we are now building from the gains and learning of that pioneering study as well as from the vast experience and wisdom of our resource persons and moderators, leaders all in the field of alternative dispute resolution.

The promulgation of the 1997 Rules of Civil Procedure has now opened wide the door for alternative dispute resolution. However, and unfortunately, many are still in the dark on how the system works. In this regard, we have yet a long way to go.

The ADR Sub-Committee of the PHILJA Judicial Reform Committee has chosen Valenzuela and Mandaluyong as our pilot areas which, with your permission, may I start calling henceforth no longer

pilot areas, but prospective “model” areas, which may not only be models for ADR but also for court and case management. They may be the “show-cases” of court-community collaboration. And this is a challenge to our Executive Judges as well as RTC and MeTC Judges who are with us today. Do well, serve well, guide mediators properly, without unduly influencing them, and your performance will be forever be remembered not only by our generation, but all future generations.

For our prospective mediators, be impartial at all times and maintain your integrity since your actions will reflect on the entire judicial system. Always be creative and innovative, and learn to listen and understand that the unsaid may be more important than what has been expressed verbally. As you may have been repeatedly told, be patient and understanding. Be the key to unlock the heretofore unopened door to alternative dispute resolution. Lead the parties in having an open discussion of their concerns. Help them solve their problem; do not be another problem. In the end result, three (3) words are important to remember: practical, amicable and fair. Let the community know what inroads you and the courts have made, without betraying the trust of the parties since information learned therefrom are strictly confidential.

For our Supreme Court attorneys and staff, this seminar should widen your horizons in your understanding of the role of the Supreme Court as a catalyst for change. Beyond decision-making, its power to amend its rules to make court processes and procedures more effective in declogging its dockets and reduce judicial delay has to be fully appreciated by all.

To the Philippine Judicial Academy, the UNDP and PHILEXPORT-TAPS, our resource persons and moderators, let us continue to be inspired participants of the process of judicial reform. Yes, let us all work together, so that someday, all odds notwithstanding, each one of us can say, “Yes, it can be done and I can show you how!” Let us aim always to do our best, and let our setbacks open windows of opportunity to make the system better. With everyone’s help, dedication and devotion, I can say that we are on our way to achieving “Justice for all, and by all.” Thank you and have a pleasant journey home!

## ELECTION LAW

### Dual Citizenship; Interpretation thereof under RA 7160, Sec. 40 (d) and in RA 7854, Sec. 20.

In including Section 5 in Article IV on citizenship, the concern of the Constitutional Commission was not with dual citizens per se, but with naturalized citizens who maintain their allegiance to their countries of origin even after their naturalization. Hence, the phrase "dual citizenship in RA No. 7160, Sec. 40 (d) and in RA No. 7854, Sec. 20 must be understood as referring to "dual allegiance." Consequently, persons with mere dual citizenship do not fall under this disqualification.

### Filing of Certificate of Candidacy Sufficient to renounce American (second) citizenship.

By filing a certificate of candidacy when he ran for his present post, private respondent elected Philippine citizenship and in effect renounced his American citizenship. X x x there is no merit in petitioner's contention that the oath of allegiance contained in private respondent's certificate of candidacy is insufficient to constitute renunciation of his American citizenship. Equally without merit is petitioner's contention that to be effective, such renunciation should have been made upon private respondent reaching the age of majority since no law requires the election of Philippine citizenship to be made upon majority age. (*Mendoza, J.*, Ernesto S. Mercado v. Eduardo Barrios Manzano and the Commission on Elections; GR 135083, May 26, 1999)

## ADMINISTRATIVE LAW

### Vice-Governor who is an Acting Governor, (not Governor); Power or Prerogative to Preside over the Sessions of the Sangguniang Panlalawigan (SP).

The Vice-Governor does not relinquish nor abandon his position and title as Vice-Governor by merely becoming an Acting Governor (not Governor), or by merely exercising the powers and duties of the higher office. But the problem is, while in such ca-

capacity, does he temporarily relinquish the powers, functions, duties and responsibilities of the Vice-Governor, including the power to preside over the session of the S. P.? The New Local Government Code is silent on this matter, yet this query should be answered in the positive. A Vice-Governor who is concurrently an Acting Governor is actually a quasi-Governor which means that for purposes of exercising the legislative prerogatives and powers, he is deemed as a non-member of the SP for the time being. (*Ynares-Santiago, J.*, Romeo Gamboa Jr. v. Marcelo Aguire and Juan Araneta, GR 134213, July 20, 1999)

## CIVIL SERVICE LAW

### Appeals; Party Adversely Affected

"The Court of Appeals reversed the decision of the Civil Service Commission and held respondent not guilty of nepotism. Who now may appeal the decision of the Court of Appeals to the Supreme Court? Certainly not the respondent who was declared not guilty of the charge. Nor the complainant George P. Sean who was merely a witness for the government. Consequently, the Civil Service Commission has become the party adversely affected by such ruling, which seriously prejudices the Civil Service system. Hence, as an aggrieved party, it may appeal the decision of the Court of Appeals to the Supreme Court. By this ruling, we now expressly abandon and overrule extant jurisprudence that "the phrase 'party adversely affected by the decision' refers to the government employee against whom the administrative case is filed for the purpose of disciplinary action which may take the form of suspension, demotion in rank or salary, transfer, removal, or dismissal from office." Xxx In other words, we overrule prior decisions holding that the Civil Service Law does not contemplate a review of decisions exonerating officers or employees from administrative charges enunciated in *Paredes v. CSC*; *Mendez v. CSC*; *Magpale c. CSC*; *Navarro v. CSC* and *Export Processing Zone* and more recently *Del Castillo v. CSC*. " (*Pardo, J.*, Civil Service Commission v. Pedro O. Dacoycoy, GR 135805, April 29, 1999) (Continued on page 10)

### **Search Warrants; Probable Cause; Discretion of Judge; Description of Things to be seized; Abuse in the Enforcement of Search Warrants**

In the case of *Central Bank v. Morfe* (20 SCRA 507) it was held that the question of whether or not a probable cause exists is one which must be determined in light of the conditions obtaining in given situations. In *Luna v. Plaza* (26 SCRA 310) it was held that the existence of a probable cause depends to a large extent upon the finding or opinion of the judge who conducted the required examination of the applicant and the witnesses.

It is within the discretion of the examining judge to determine what questions to ask the witnesses so long as the questions asked are germane to the pivot of inquiry – the existence or absence of a probable cause.

The law does not require that the things to be seized must be described in precise and minute detail as to leave no room for doubt on the part of the searching authorities. Otherwise, it would be virtually impossible for the applicants to obtain a warrant as they would not know exactly what kind of things they are looking for. Since the element of time is very crucial in criminal cases, the effort and time spent in researching on the details to be embodied in the warrant would render the purpose of the search nugatory. (*Purísima, J., Benjamin Kho and Elizabeth Alindogan v. Hon. Roberto L. Makalintal and NBI*, GR 94902-06, April 21, 1999)

### **Extraordinary Remedies under the Rules; Essential Requisite for their Availability**

An essential requisite for the availability of the extraordinary remedies under the Rules is an absence of an appeal nor any plain, speedy and adequate remedy in the ordinary course of law; one which has been so defined as a remedy which would equally be beneficial, speedy and sufficient; not merely a remedy which at some time in the future will bring about a revival of the judgment complained of in the certiorari proceeding, but a remedy which will promptly relieve the petitioner from the injurious effects of the judgment and the acts of the inferior court or tribunal concerned. (*Vitug, J., Indalicio Conti v. CA, Civil Service Commission and Polytechnic University of the Philippines*, GR 134441, May 19, 1999)

### **Exemplary Damages Awarded where the Crime was Committed with the Aggravating Circumstance of Dwelling.**

The rule is where the crime was committed with the aggravating circumstance of dwelling, exemplary damages should be awarded (*Melo, J., People v. Manolito Monsayac*, GR 126787, May 24, 1999)

### **Indemnity, Beneficiaries thereof**

The RTC ordered the P50,000 indemnity to be paid to the victim's surviving spouse alone. The award should actually also be given to their nine children who, like their mother, are compulsory heirs of the victim. The same is true with regard to the award of moral and exemplary damages. (*Mendoza, J., People v. Nicolas Bahenting*, GR 127659, February 24, 1999)

### **Local Government Officials; Vacancies, Temporary or Permanent in the Positions of Governor, Vice-Governor, Mayors and Vice-Mayors; Provisions of Batas Pambansa 337, the old Local Government Code and RA 7160, the Local Government Code of 1991, compared.**

Sections 49 (a) and 466 (a) (1) of RA 7160, the Local Government Code of 1991, provide that the Vice-Governor should be the presiding officer of the SP. In addition to such function, he becomes the Governor and assumes the higher office of the unexpired term of his predecessor in case of permanent vacancy therein. When the vacancy, however, is merely temporary, the Vice-Governor shall automatically exercise the powers and perform the duties and functions of the Governor.

When the Vice-Governor exercises the powers and duties of the office of the Governor, he does not assume the latter office. He only acts as the Governor, but does not become the Governor. His assumption of the powers, duties and functions of the provincial Chief Executive does not create a permanent vacuum or vacancy in his position as the Vice-Governor. He does not relinquish his position and title as Vice-Governor by merely becoming an Acting Governor or by merely exercising the powers and duties of the higher office.

(Continued from previous page)

It has been held that if a Mayor who is out of the country is considered "effectively absent," the Vice-Mayor should discharge the duties of the Mayor during the latter's absence. Although it is difficult to lay down a definite rule as to what constitutes absence, yet this term should be reasonably construed to mean "effective" absence that is, one that renders the officer concerned powerless, for the time being, to discharge the powers and prerogatives of his office.

The creation of a temporary vacancy in the office of the governor creates a corresponding temporary vacancy in the office of the Vice-Governor, whenever the latter acts as Governor by virtue of such temporary vacancy. (*Ynares Santiago, J., Romeo J. Gamboa, Jr v. Marcelo Aguirre, Jr., and Juan y. Araneta, G.R. 134213, July 20, 1999*)

### **Docket Inventory Report**

The Clerks of Court and Branch Clerks of Court must heed Administrative Circular No. 10-94 directing them to submit a docket Inventory Report every semester. The Court agrees with OCA that excuse of a heavy caseload in their branch is not a valid justification for the infraction. For failing to submit the Semestral Docket and Inventory of Cases, the Clerk of Court is fined One Thousand Pesos (P1,000.00). (Resolution in A.M. 99-8-108- MCTC, Report on the Spot Judicial Audit conducted in Metropolitan Trial Court, Branch 36, Quezon City)

### **Serious Misconduct to warrant dismissal of a public officer**

To warrant dismissal of a public officer from the service, there must be reliable evidence showing that the acts complained of were corrupt or inspired by an intention to violate the law. The misconduct must be serious, important, weighty, momentous and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment. The misconduct must also have a direct relation to and be connected with the performance of his official duties. (*Bellosillo, J., Romulo F. Manuel by Horacio M. Pascual v. Judge Demetrio C. Calimag, Jr., AM No. RTJ 99-1441, May 28, 1999*)

### **Misconduct in office defined**

Misconduct in office has been authoritatively defined by Justice Tuazon in *Lacson v. Lopez* in these words : Misconduct in office has a definite and well-understood legal meaning. By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. Xxx it is necessary to separate the character of the man from the character of the officer. (Cited in the case of *Manuel v. Caluiag, AM RTJ 99-1441, May 28, 1999*)

### **Hold Departure Order; Authority therefore limited to Regional Trial Courts; SC Circular No. 39-97 dated June 19, 1997**

Under Supreme Court Circular No. 39-97, dated June 19, 1997, the authority to issue hold departure orders is limited to the Regional Trial Courts in criminal cases within their exclusive jurisdiction. The Code of Judicial Conduct enjoins judges to be faithful to the law and maintain professional competence. They should be diligent in keeping abreast with developments in law and jurisprudence, and regard the study of law as a never ending and ceaseless process. (Resolution in A.M. 99-8-108- MCTC)

### **Judges – Mandatory Continuous Trial System**

Judges should not disregard Administrative Circular No. 3-90 requiring all trial courts to adopt the mandatory continuous trial system in accordance with (1) Administrative Evidence by the parties and conduct the trial without unnecessary postponements, and (2) Circular No. 1-89, which has established the guidelines to be observed by the trial courts in the conduct of such trials. (Resolution in A.M. 99-8-108- MCTC)

### **Guardian; Imposition of the Death Penalty under RA 7659**

Xxx In *People v. Garcia*, 281 SCRA 463, we held that the restrictive definition of a guardian, that of a legal or a judicial guardian, should be used in construing the term "guardian" for the purpose of imposing the death penalty under RA 7659 (*Pardo, J., People v. Joven Dela Cuesta y Pararas, GR 126 134, March 2, 1999*)



## SUPREME COURT

### A.M. NO. 99-4-06-SC

#### RESOLUTION AUTHORIZING THE ORGANIZATION OF THE SHARI'AH APPELLATE COURT

WHEREAS, R.A. No. 6734, entitled An Act Providing for an Organic Act for the Autonomous Region in Muslim Mindanao, approved on 1 August 1989, has created the Shari'ah Appellate Court. Section 2 to 12 thereof read as follows:

SEC. 2. There is hereby created a Shari'ah Appellate Court which, together with other Shari'ah and tribal courts, shall have jurisdiction over cases involving persons, family and property relations.

The Regional assembly shall, in consultation with the Supreme Court, determine the number and the territorial jurisdiction of these courts.

#### *Shari'ah Appellate Court*

SEC. 3. The Shari'ah Appellate Court shall be composed of one (1) Presiding Justice and two (2) Associate Justices. Any vacancy shall be filled within ninety (90) days from the occurrence thereof.

SEC. 4.(1) The Justices of the Shari'ah Appellate Court shall possess the same qualifications as those of the Justices of the Court of Appeals and, in addition, shall also be learned in Islamic law and jurisprudence.

(2) The members of the Shari'ah appellate Court shall be appointed by the President from a list of at least three (3) nominees prepared by the Judicial and Bar Council. The nominees shall be chosen from a list of recommendees submitted by the Regional Assembly. Such appointments need no confirmation.

SEC. 5. The Shari'ah Appellate Court shall have the following powers:

(1) Exercise original jurisdiction over petitions for *certiorari*, prohibition, *mandamus*, *habeas corpus*, and other auxiliary writs and processes in aid of its appellate jurisdiction; and

(2) Exercise exclusive appellate jurisdiction over all cases tried in the Shari'ah District Courts as established by law.

SEC. 6. The decisions of the Shari'ah Appellate Court shall be final and executory: *Provided, however*, that nothing herein contained shall affect the original and appellate jurisdiction of the Supreme Court as provided in the Constitution.

SEC. 7. The Presiding and Associate Justices of the Shari'ah Appellate Court shall serve until they reach the age of seventy (70) years, unless sooner removed for cause in the same manner as Justices of the Court of Appeals or become incapacitated to discharge the duties of their office.

SEC. 8. The Presiding Justice and Associate Justices of the Shari'ah Appellate Court shall receive the same compensation and enjoy the same privileges as the Presiding Justice and Associate Justices of the Court of Appeals, respectively.

SEC. 9 (1) The Supreme Court shall, upon recommendation of the Presiding Justice of the Shari'ah Appellate Court, appoint the court administrator and clerk of court of said Appellate Court. Such other personnel as may be necessary for the Shari'ah Appellate Court shall be appointed by the Presiding Justice of said court.

(2) The pertinent provisions of existing law regarding the qualifications, appointment, compensation, functions, duties and other matters relative to the personnel of the Court of Appeals shall apply to those of the Shari'ah Appellate Court.

SEC. 10. The Members of the Shari'ah Appellate Court and of other Shari'ah Appellate courts established by law shall not be designated to any agency performing quasi-judicial or administrative functions.

SEC. 11. The official seat of the Shari'ah Appellate Court shall, unless the Supreme Court decides otherwise, be in the seat of the Autonomous Government.

SEC. 12. Proceedings in the Shari'ah Appellate Court and in the Shari'ah lower courts as are established in the Autonomous Region shall be governed by such special rules as the Supreme Court may promulgate.

WHEREAS, to give meaning to the intent of the Act and to give full appellate relief to parties aggrieved by decision of the Shari'ah District courts, the formal organization of the Shari'ah Appellate Court should not be delayed any longer.

WHEREFORE, the Court hereby RESOLVES that the Shari'ah Appellate Court established by RA 6734 be formally organized effective 1 January 2000, and for the purpose, DIRECTS:

1. The Office of the Court Administrator to prepare and submit the required budget for the operation and maintenance of the Shari'ah Appellate Court for the calendar year 2000; and, the Regional Assembly of the Autonomous Region in Muslim Mindanao to submit a list of recommendees for the position of Presiding Justice and the two (2) positions of Associate Justices;

2. The Judicial and Bar Council to consider at least three (3) nominees for each of the above positions from the aforementioned list. The council's list of nominees shall forthwith be submitted to the President; and
3. The Committee on the Revision of the Rules of Court to draft the internal Rules of the Shari'ah Appellate Court and, for that purpose, to solicit the assistance of the Court of Appeals Justices Jainal D. Rasul and Omar U. Amin.

The Court further RESOLVES to request the Department of Budget and Management to provide the funds for the budget of the Shari'ah Appellate Court for calendar year 2000.

This resolution shall take effect immediately.

City of Manila, 8 June 1999.

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

*New Rulings (Cont. from page 6)*

## CRIMINAL PROCEDURE

### Depositions Not Allowed in Criminal Cases

Do the rules allowing the deposition of witnesses apply to criminal cases? The *ponencia* of Madame Justice Ynares-Santiago answers this question, posed in the case of Hubert Webb in the negative. A deposition is a mode of discovery, and should be taken before, and not during trial. It appears though that the holding of the majority rested in part on the factual consideration that the matters to be established by means of the deposition had already been introduced in evidence by way of documentary exhibits.

In a separate opinion, the Chief Justice, however, while occurring in the result, is of the view, that

Rule 119, sections 4 and 5 which apply to the "conditional examination" of witnesses for the purpose of perpetuating testimony provide room for depositions before the commencement of the trial, anytime thereafter, as the need arises, but before promulgation of judgment. He also calls attention to the fact that *Rule 24, Section 7* used to be *Rule 134, Section 7*, within the rules on criminal procedure.

Justice Puno in his own separate opinion expressed the belief that the move towards the liberalization of the rules on criminal procedure towards affording the accused ample means to defend himself is inexorable. (*Ynares-Santiago, J, People of the Philippines v. Hubert Jeffrey P. Webb, GR 132577, August 17, 1999*)

## A.M. No. 99-7-07-SC

RESOLUTION PRESCRIBING GUIDELINES  
FOR QUALIFYING FOR JUDICIAL OFFICETO : NEW AND ORIGINAL APPOINTEES TO  
THE JUDICIARY AND INCUMBENT  
JUDGES WITH LATERAL AND/OR PRO-  
MOTIONAL APPOINTMENTS

Every person appointed as judge shall, before entering upon the performance of his judicial functions and the discharge of his duties and responsibilities, take and subscribe an oath of office and shall, whenever applicable, undertake an orientation seminar-workshop and undergo an immersion program.

In order to forestall problems regarding qualifying for judicial office, including the right to initial compensation, the following guidelines are hereby promulgated:

1. Oath of Office
  - A. All newly-appointed judges shall take the oath of office upon the occasion of every appointment to a position in the Judiciary.
  - B. A newly-appointed judge must take his oath of office within ten (10) days from receipt of notice of his appointment from the Chief Justice. The judge shall furnish the Office of Administrative Services of the Office of the Court Administrator (OCA) a copy of his oath office.
  - C. Should a newly-appointed judge be unable to take his oath of office pursuant to the immediately preceding paragraph, he shall forthwith submit to the Chief Justice a written explanation for his inability to take such oath and inform the Chief Justice when he can take the oath.
  - D. An appointee to any position of Judge in the Judiciary who decides to decline his appointment shall, within ten (10) days from receipt of notice of his appointment, inform in writing the Chief Justice of such decision and the reason/s therefor.
2. Orientation Seminar-Workshop
  - A. All (1) new and original appointees; and (2) judges of the first level courts promoted to the Regional Trial Courts who have already taken their oath of office shall undertake an orientation seminar-workshop to be conducted by the Philippine Judicial Academy (PHILJA). Unless otherwise directed, a judge given a lateral promotion or transfer need not take the orientation seminar-workshop.
  - B. Judges required to undertake the orientation seminar-workshop shall await notification by the PHILJA of the schedule of such orientation seminar-workshop which they should attend.
  - C. Any judge who would be unable to attend the scheduled orientation seminar-workshop should, immediately after receiving notice, inform in writing the Chancellor of the PHILJA and the Court Administrator of such inability and the reason/s therefor.
3. Immersion Program
  - A. All (1) new and original appointees; and (2) judges of the first level courts promoted to the Regional Trial Courts who have already taken their oath of office shall undergo an immersion program. Unless otherwise directed, a judge given a lateral promotion or transfer need not undergo an immersion program.
  - B. All new and original appointees shall undergo the immersion program for one (1) month. Judges of the first level courts promoted to the Regional Trial Court shall undergo the immersion program for two (2) weeks only.
  - C. Newly-appointed judges shall commence undergoing the immersion program within ten (10) days from receipt of notice from the PHILJA. The immersion program shall be under the supervision of the Executive Judge specified in the notice from the PHILJA.
  - D. Should any judge be unable to undergo the immersion program within ten (10) days from receipt of the notice from PHILJA, he should immediately inform in writing the Chancellor of the said Academy and the Court Administrator of such inability and the reasons therefore.
4. Actual assumption and exercise of judicial office
  - A. Judges given lateral promotion or laterally transferred shall perform their judicial functions and discharge their

duties and responsibilities immediately after furnishing the Office of Administrative Services of the OCA with copies of their oath of office.

Should there be a judge designated as Acting Presiding Judge of the court/sala of the appointee, the said judge should cease performing his functions and discharging his duties as such Acting Presiding Judge upon actual assumption and exercise by the appointee of his judicial office.

- B. Before undertaking the orientation seminar-workshop and while undergoing the immersion program, judges of the first-level courts who have been promoted to multiple-sala Regional Trial Courts shall not perform their judicial functions. They may only act on administrative matters (e.g., the conduct of inventory of pending cases, personnel management matters, etc.).

Before undertaking the orientation seminar-workshop and while undergoing the immersion program, judges of the first-level courts who have been promoted to single-sala Regional Trial Courts may already act on judicial matters which are urgent in nature or which need immediate action (e.g., applications for temporary restraining orders; complaints for preliminary injunction; applications for bail; petitions for the issuance of the writ of habeas corpus, etc.).

- D. Before undertaking the orientation seminar-workshop and after completion of the immersion program, judges of the first-level courts who have been promoted to either single-sala or multiple-sala Regional Trial Courts may already enter upon the performance of their judicial functions and the discharge of the duties and responsibilities.

Should there be a judge designated as Acting Presiding Judge of the court-sala of the appointee, the said judge should cease performing his functions and discharging his duties as such Acting Presiding Judge upon completion by the appointee of his immersion program.

- E. Before undertaking the orientation seminar-workshop and while undergoing the immersion program, new and original appointees to the Judiciary, although they have already taken their oath of office, cannot perform judicial functions. However, they may act on administrative matters.

- F. Before undertaking the orientation seminar-workshop and after completion of the immersion program, new and original appointees to multiple-sala Regional Trial Courts shall not perform their judicial functions. They may act on administrative matters only.

- G. Before undertaking the orientation seminar-workshop and after completion of the immersion program, new and original appointees to single-sala Regional Trial Courts may already act on judicial matters urgent in nature or which need immediate action.

Should there be a judge designated as Acting Presiding Judge of the court of the new and original appointee who has already completed the immersion program although he has not yet undertaken the orientation seminar-workshop, the said judge should cease performing his functions and discharging his duties as such Acting Presiding Judge upon completion by the appointee of his immersion program.

5. Payment of initial compensation

The right of newly-appointed judges to their initial salaries shall accrue as of the date of the first day of either the orientation seminar-workshop or the immersion program, whichever date is earlier. In order to expedite the processing of their initial salaries, newly-appointed judges should accomplish the required documents relative to their appointments. Inquiries on this matter should be addressed to the Office of Administrative Services of the OCA.

6. Dissemination of information to applicants

The Secretariat of the Judicial and Bar Council shall furnish all applicants for appointment to the Judiciary with copies of this resolution for their information and guidance.

This Resolution shall take effect on 1 August 1999.

Promulgated this 20<sup>th</sup> day of July 1999.

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

**A.M. No. 99-5-08-SC****RESOLUTION CREATING AN ADDITIONAL POSITION OF ASSISTANT COURT ADMINISTRATOR AS CHIEF OF THE PUBLIC INFORMATION OFFICE**

Gentlemen:

Quoted hereunder, for your information, is a resolution of the Court En Banc dated June 22, 1999

WHEREAS, P.D. No. 828, Section 7, as amended by P.D. No. 842 which creates the Office of the Court Administrator, authorizes the Supreme Court to "create such offices, services, divisions and other units in the Office of the Court Administrator, as may be deemed necessary."

WHEREAS, pursuant to this authority, the Supreme Court adopted Resolution No. 98-7-01-SC, which took effect on 1 June 1998, creating in the Office of the Court Administrator the Publication and Information Office with the proviso that it may be placed directly under the Office of the Chief Justice whenever justified by circumstances as determined by the Court;

WHEREAS, pursuant to its Resolution No. 98-12-08-SC, which took effect on 1 January 1999, the Court renamed the Publication and Information Office as Public Information Office and placed it directly under the Office of the Chief Justice in view of the need to disseminate news about the Court and its decisions, especially in cases of great national importance;

WHEREAS, the Public Information Office's role is vital to the Court's work considering that its deliberations are, by the very nature of the Court's function, not open to the public and its members do not express themselves on the issues before them except through their decisions and separate opinions;

WHEREAS, the effective performance of the WHEREAS, to attract qualified individuals, Chief of the Public Information Office must be an Assistant Court Administrator.

WHEREFORE, the Court resolved: (1) to create an additional position of Assistant Court Administrator, with salary grade of 30, as Chief of the Public Infor-

mation Office, and (2) to appropriate such amount as may be necessary for the creation of the additional position out of the savings of the Supreme Court, as may be earmarked by the Chief Justice in accordance with his augmentation power, until such time as the regular appropriations therefore shall have been provided in the budget for the Supreme Court in the General Appropriations Act.

This Resolution shall take effect immediately.

(SGD.) DAVIDE, JR. (CJ.), ROMERO, BELLOSILLO, MELO, PUNO, VITUG, KAPUNAN, MENDOZA, PANGANIBAN, QUISUMBING, PURISIMA, PARDO, BUENA, GONZAGA-REYES, SANTIAGO

**ADMINISTRATIVE CIRCULAR No. 08-99**

To: ALL OFFICIALS AND PERSONNEL OF THE JUDICIARY Re: PROMPT ACTION ON LETTERS AND REQUESTS AND PUBLIC'S PERSONAL TRANSACTION

It has been observed by, and brought to the attention of, the Chief Justice that in some instances, complaints, letters or requests from the public addressed to the officials of the Judiciary are belatedly answered or not answered at all.

All concerned are reminded of paragraphs (a) and (d) of Section 5 of R.A. No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, which explicitly mandate as follows:

Sec. 5. Duties of Public Officials and Employees. In the performance of their duties, all public officials and employees are under obligation to:

(a) Act promptly on letters and requests. All public officials and employees shall, within fifteen (15) working days from receipt thereof, respond to letters, telegrams or other means of communications sent by the public. The reply must contain, the action taken on the request. *(Continued on page 15)*

## OFFICE OF THE COURT ADMINISTRATOR

### CIRCULAR NO. 43-99

TO: All Judges of the Regional Trial Courts, the Metropolitan Trial Courts, the Municipal Trial Courts in Cities, the Municipal Trial Courts and the Municipal Circuit Trial Courts

SUBJECT: Guidelines in the Implementation of Resolution No. 99-1-04-SC dated 2 February 1999 of the Supreme Court En Banc

These guidelines are issued in implementation of the provisions of Resolution No. 99-1-04-SC dated 2 February 1999 of the Supreme Court En Banc granting incentives to judges who are given additional duty of hearing and deciding cases of other branches of their court or of other courts of the same level.

1. The provisions of Resolution No. 99-1-04-SC shall apply to the following as indicated herein:

A. Judges of the Regional Trial Courts:

(1) A judge who has been officially designated as Acting Presiding Judge by the Supreme Court to handle the cases of an additional or another court/sala;

(2) A pairing judge (under the pairing system for multiple sala stations pursuant to the provisions of Circular No. 7 dated 23 September 1974 as amended by Circular No. 19-98 dated 18 February 1998) who takes cognizance of the cases of his paired sala; and

(3) An assisting judge officially designated to assist the presiding judge/acting presiding judge of an another court/sala.

B. Judges of the Metropolitan Trial Courts, the Municipal Trial Courts in Cities, the Municipal Trial Courts and the Municipal Circuit Trial Courts:

(1) A judge who has been officially designated as Acting Presiding Judge by the Executive Judge of the Regional Trial Court to handle the cases in other courts/salas; and

(2) An assisting judge officially designated to assist the presiding judge/acting presiding judge of an another sala.

2. The following rules shall be observed:

A. Judges of the Regional Trial Courts –

(1) A judge of the Regional Trial Court officially designated as Acting Presiding Judge by the Supreme Court to handle cases in an additional or another sala shall hold trial or conduct proceedings at least twice a week in his official station. Should this schedule be not feasible or practicable because the judge is designated to handle cases in four or more courts/salas, the judge involved shall submit to the Court Administrator for his information the schedule he intends to observe.

(2) A judge of the Regional Trial Court who, upon his request or initiative, is detailed to another court shall not be entitled to the additional expense allowance and monthly hardship allowance for the particular detail from the said official station

B. Judges of the Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court and Municipal Circuit Trial Court –

(1) A judge of the Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court and Municipal Circuit Trial Courts may the Executive Judge to handle cases in an additional or other salas. In no instance shall such judge be designated to handle cases in more than three (3) other salas. However, he may still be assigned by the Supreme Court to handle additional cases in a fourth or fifth sala, depending on his caseload in his station and other assigned courts.

(2) The Executive Judge shall designate the judge presiding over the court/sala nearest to the court/sala which requires the services of a judge, unless there are justifiable reasons for designating a different judge presiding over a court/sala distant from the

needful court/sala involved. In the latter instance, the Executive Judge shall submit to the Office of the Court Administrator the justification and information on the caseload of the nearest court/sala.

(3) A judge of the Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court and Municipal Circuit Trial Court who, upon his request or initiative, is detailed to another court shall not be entitled to the additional expense allowance and monthly hardship allowance.

3. Pairing judges shall submit the following documents in support of claims for the additional expense allowance and monthly hardship allowance:

A. Copies of the calendar of hearing and minutes certified by the Clerk of Court or Branch Clerk of Court, as the case may be, of the court wherein the claimant performed additional duties; and

B. Voucher with the required signatures of the claimant and/or the officials concerned.

4. Non-pairing judges shall submit the following documents in support of claims for the additional expense allowance and monthly hardship allowance:

A. Certified true copies each of (1) the designation of the claimant by the Supreme Court; or (2) the official designation issued by the Executive Judge;

B. Copies of the calendar of hearing and minutes certified by the Clerk of Court or Branch Clerk of Court, as the case may be, of the court wherein the claimant performed additional duties; and

C. Voucher with the required signatures of the claimant and/or the officials concerned.

5. Assisting judges shall submit the following documents in support of claims for the additional expense allowance and monthly hardship allowance:

A. Certified true copies of the designation of the claimant by the Supreme Court;

B. Copies of the calendar of hearing and minutes certified by the Clerk of Court or Branch Clerk of Court, as the case may be, of the court wherein the claimant performed additional duties; and

C. Voucher with the required signatures of the claimant and/or the officials concerned.

6. The provisions of these guidelines shall take effect immediately.

(SGD.) ALFREDO L. BENIPAYO  
Court Administrator

NOTED:  
(SGD.) HILARIO G. DAVIDE, JR.  
Chief Justice

*Administrative Circular No. 08-99*  
(Continued from page 13)

(d) Act immediately on the public's personal transaction. All public officials and employees must attend to anyone who wants to avail himself of the service of their offices and must, at all times, act promptly and expeditiously.

The Presiding Justices of the Court of Appeals and the Sandiganbayan, the Court Administrator, the Deputy Court Administrators, the Assistant Court Administrators, the Clerk of Court of the Supreme Court, the Presiding Judge of the Court of Tax Appeals, and all Executive Judges and clerks of court of all other courts shall see to it that this Circular is immediately disseminated and strictly observed.

This Circular shall take effect immediately.

City of Manila, 02 July 1999.

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

3rd Floor Old Supreme Court Building  
Taft Avenue, Manila

## PRESIDING JUDGE

RESEARCH AND LINKAGES OFFICE  
PHILIPPINE JUDICIAL ACADEMY  
SUPREME COURT

## 1999 Upcoming PHILJA Events

<i>Date</i>	<i>Seminars</i>	<i>Venue</i>
September 9 to 10	General Assembly and Seminar of Judges of the MetroTC and MTCC	Cebu City
September 15 to October 5	Seminar for Shari'a Court Judges and Clerks of Court on Philippine Law	Tagaytay City
September 28 to 30 October 6 to 8	Seminar Workshop on Video Conferencing Strengthening the Legal Protection of Children Regions I to III	DAP, Tagaytay City
October 11 to 15 October 14 to 16	Orientation Seminar for Newly Appointed Judges Convention of PTJLI	Baguio City
October 26-28 November 18 to 19	Convention of CLERAP 3 <sup>rd</sup> National Convention of PROSAPHIL	Bacolod Convention Plaza Bacolod City Davao City Dragon Palace General Santos City

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*Chancellor*

Justice Antonio M. Martinez  
*Vice-Chancellor*

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