



PHILJA Bulletin



July to September 2004

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Excellence in the judiciary

From the Chancellor's Desk *Ben*

ONENESS was the PHILJA slogan arrived at during its Team Building Seminar, accompanied by a signed covenant of commitment to the Supreme Court and the Academy.

That united spirit accounts for the high level of satisfaction for Mediation as disclosed by The Asia Foundation-sponsored SWS Mediation Survey Results released on September 30, 2004. They revealed that 63% of Judges/Clerks of Court replied that the Mediation Center Units had assisted in declogging the dockets while 46% opined that they have simplified the judicial system. Satisfaction with the fairness of the settlement of the case rated a net of +100% for lawyers and +94% for litigants. With consistent determination, Mediation may still reach its goal of accelerating the disposition of cases, giving more time to judges to render quality decisions, and empowering the people to settle their own disputes with a win-win solution.

Closely following that heartening result was the successful launch of the Enhanced Pre-trial Procedure under the Canadian-Philippine JURIS project, comprising court-annexed mediation, Judicial Dispute Resolution, and the two-judge system of settling cases in the ADR Pilot Model Court sites in San Fernando City, Pampanga and Bacolod City.

Topping these two milestones was the formal signing of the Consortium Agreement between PHILJA and the San Beda Graduate School of Law. The arrangement refers to the crediting of fifteen (15) units towards the conferral of the degree of Master of Laws offered by San Beda College to qualified judges and lawyers who are endorsed by the Chancellor on the basis of their performance ratings in RJCEPs and PJP's.

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PHILJA ACADEMIC PROGRAMS

PHILJA's 10th, 11th and 12th RJCEPs

The Academy's 10th *Regional Judicial Career Enhancement Program (Level 3) for Judges, Clerks of Court and Branch Clerks of Court of the Regional Trial Courts and First Level Courts of Region XI* was conducted on July 28 to 30, 2004, at the Grand Regal Hotel, Davao City. This was attended by a total of one hundred sixty-eight (168) participants, composed of thirty-five (35) Regional Trial Court Judges, thirty (30) First Level Court Judges, and one hundred three (103) Clerks of Court.

The 11th *Regional Judicial Career Enhancement Program (Level 3) for Judges, Clerks of Court and Branch Clerks of Court of the Regional Trial Courts and First-Level Courts of Region III* was held on August 24 to 26, 2004, at the Manila Pavilion Hotel, Manila. Participants were composed of sixty-nine (69) Regional Trial Court Judges, sixty-three (63) First Level Court Judges, forty-eight (48) Clerks of Court (lawyers), and one hundred sixty (160) Clerks of Court (non-lawyers), or a total of three hundred forty (340) participants.

The 12th *Regional Judicial Career Enhancement Program (Level 3) for Judges, Clerks of Court and Branch Clerks of Court of the Regional Trial Courts and First-Level Courts of Region IV* was held on September 28 to 30, 2004, at the Manila Pavilion Hotel, Manila. Participants were composed of seventy-three (73) Regional Trial Court Judges, seventy-seven (77) First Level Trial Court Judges, two hundred forty-nine (249) Clerks of Court, of which seventy-one (71) were lawyers while one hundred seventy-eight (178) were non-lawyers, or a total of three hundred ninety-nine (399) Judges and Court Personnel.



SPECIAL FOCUS PROGRAMS

6th and 7th SEMINAR WORKSHOP FOR EXECUTIVE AND VICE-EXECUTIVE JUDGES

The 6th *Seminar Workshop for Executive Judges* was held on July 21 to 23, 2004, at the PHILJA Development Center, Tagaytay City. It aimed to enhance and develop the Executive Judges' court managerial and administrative skills. Participants were composed of twenty-five (25) Executive Judges, nine (9) Vice-Executive Judges, eight (8) 1st Vice-Executive Judges, six (6) 2nd Vice-Executive Judges, and five (5) 3rd Vice-Executive Judges of the National Capital Judicial Region (NCJR), or a total of fifty-three (53) NCJR Executive and Vice-Executive Judges.

Judge Priscila S. Agana, PHILJA Executive Secretary, spoke of the qualities of a good leader in her Opening Remarks, enjoining the participants to adhere to the training rules and policies of the Academy. Justice Ameurfina A. Melencio Herrera, PHILJA Chancellor, delivered the Closing Remarks. She asked for the Executive Judges' full cooperation in court-annexed mediation.

The 7th *Seminar Workshop for Executive Judges and Vice Executive Judges of Regions I and III* was held on August 18 to 20, 2004, at the Summer Place Hotel, Baguio City. This was attended by eighty-four (84) Executive Judges and Vice Executive Judges, composed of twenty-nine (29) Executive Judges and Vice Executive Judges from Region I, twenty-one (21) Executive Judges and Vice Executive Judges from Region II, and thirty-four (34) Executive Judges and Vice Executive Judges from Region III.



Participants of the *Seminar Workshop for Executive Judges* held on July 21 to 23, 2004, at PHILJA Development Center, Tagaytay City.



SPECIAL FOCUS PROGRAMS

SEMINAR ON ANTI-TRAFFICKING IN PERSONS

PHILJA, in cooperation with the Department of Justice, United States Agency for International Development, American Center for International Labor Solidarity, Trade Union Congress of the Philippines, University of the Philippines Law Center, and the National Police Commission, conducted the *Seminar on Anti-Trafficking in Persons* on September 3 to 4, 2004, at the Orchid Garden Suites, Manila. Forty-four (44) participants attended the seminar, comprising twenty (20) judges, fourteen (14) prosecutors, and ten (10) participants from other government agencies.

Commissioner Celia Sanidad-Leones of the National Police Commission (NAPOLCOM) welcomed the participants and thanked the partner agencies in the conduct of the seminar. The Keynote Address was delivered by Justice Ameurфина A. Melencio Herrera. Her speech centered on measures to be undertaken to prevent trafficking in persons. She emphasized that systematic and coordinated implementation is vital and effective criminal justice response to human trafficking is essential.

CONFERENCE ON VALUES AND PROFESSIONAL DEVELOPMENT

The first *Conference on Values and Professional Development* was conducted by the Academy, in collaboration with the Values for Development Foundation, Inc. (VDFI), on September 9 to 10, 2004, at the PHINMA Training Center, Tagaytay City. A total of forty-two (42) participants attended the conference, comprising twenty-one (21) judges, two (2) deans of law schools, five (5) law practitioners, and six (6) and eight (8) representatives from the business sector and VDFI, respectively. The purpose of the program was to bring together professionals from the government and the private sector and deepen their conviction on ethical values in work, family, and society, and to bolster socio-economic, political, and cultural development.

Justice Ameurфина A. Melencio Herrera, PHILJA Chancellor, encouraged the participants in her Welcome Remarks to translate the ideals of ethical standards into action, and stressed that the insights gained would allow them to be better individuals and more responsible citizens. Mr. Jose L. Cuisia, Jr., VDFI President, delivered his greetings to the participants and thanked the Academy for its commitment in providing quality education and deepening the conviction of professionals on the importance of values in professional development.

Father Javier de Pedro, Ph.D. in Industrial Engineering and Doctor in Canon Law (J.C.D.), Assistant Director of the Monterols University Residence Hall, Barcelona, Spain and Director of Gaudaira University Residence Hall in Seville, Spain, was the lecturer for the two-day seminar. He discussed the Basic Concepts of Rights and Duties, The Individual and the General Concept of Law, Human Laws and Responsibilities of Citizenship, Human Laws and their Enforcement, and Basic Concepts of Legal Positivism.

Chief Justice Hilario G. Davide, Jr., in his Closing Remarks, stressed the need for a morally discerning society and encouraged everyone to be proud and courageous when acting pursuant to values of truth and peace. He called on everyone to have a heart of integrity and taught them the steps to achieve this end: *first*, discerning what is good and right; *second*, acting on what you discern; and *third*, propagating what is good. He likewise gave a new meaning to VDFI and that is, "Vision, Dedication, Freedom and Integrity."

APPELLATE JUSTICES DISCUSSION SESSIONS

Two *Appellate Justices Discussion Sessions* were held. The first discussion session, held on September 14, 2004, was attended by twenty-four (24) Justices from the 1st and 12th Divisions of the Court of Appeals. The 2nd Discussion Session, held on September 15, 2004, was attended by twenty-three (23) Justices from the 13th and 23rd Divisions of the Court of Appeals. Both sessions were held at the Justice Alex Reyes Conference Room, Court of Appeals, Manila.



SPECIAL FOCUS PROGRAMS

SEMINAR WORKSHOP FOR COMMERCIAL COURT JUDGES

PHILJA, in collaboration with the United States Agency for International Development (USAID) and The Asia Foundation (TAF), conducted the *Seminar Workshop for Commercial Court Judges* on September 15 to 17, 2004, at the Eugenio Lopez Center, Antipolo City. Participants were composed of four (4) Associate Justices of the Court of Appeals and forty-seven (47) Regional Trial Court Judges, or a total of fifty-one (51) participants.

Topics covered during the three-day seminar workshop were Intellectual Property Cases and Jurisdiction; Evaluative Study of the Interim Rules on Corporate Rehabilitation; Application of Civil Law Principles to Commercial Transactions and Commercial Issues; Proposal for Amendments and Policy Reform; Mediation and Other ADR Applications in Commercial Disputes; Evaluative Discussion on the Conflicting Corporate Jurisdiction of the RTC and the Securities and Exchange Commission; Leading Developments in Commercial Law and Developments to Expand Jurisdiction of Special Commercial Courts; Privatization; Banking and Gross Border Insolvency; and Comparative Discussion on the Proposed Consolidated Interim Rules of Procedure on Corporate Liquidation in Insolvency and the Current Rules of Insolvency on Corporate Insolvency.

Justice Ameurfina A. Melencio Herrera, PHILJA Chancellor, delivered the Opening Remarks. Also present during the Opening Ceremonies were Mr. Daryl R. Veal, Legal and Regulatory Advisor, Office of Economic Development and Governance, USAID and Mr. Ky Johnson, Assistant Country Representative, TAF, who gave their messages on behalf of the partner funding agencies. Ambassador Lilia R. Bautista, former Chairperson of the Securities and Exchange Commission and currently Philippine Ambassador to Belgium, delivered the Closing Remarks. In her speech, she underscored the need for further training and collaboration between the Judiciary, the prosecution, and the law enforcement agencies to prosecute fraudulent financial disclosure with our adoption of international accounting standards, and stressed the need to include in the future programs of the

Academy discussions on financial crimes related to securities and capital market for commercial court judges.

COLLOQUIUM FOR COMMERCIAL COURT JUDGES ON INTELLECTUAL PROPERTY LAW

PHILJA, in cooperation with the Intellectual Property Office, EC-ASEAN Intellectual Property Rights Co-Operation Programme II (ECAP II), and European Communities, conducted the first *Colloquium for Commercial Court Judges on Intellectual Property Law* on September 21 to 23, 2004, at Dusit Hotel Nikko, Makati City. A total of fifty-two (52) participants attended the activity, comprising forty-eight (48) Commercial Court Judges and forty (40) representatives from the Intellectual Property Office.

Father Ranhilio Aquino, in his Statement of Purpose, stated that the holding of this Colloquium was in relation to the passing of Republic Act No. 8293, the Intellectual Property Code of the Philippines, and its Implementing Rules and Regulations, which should help the judges in the disposition of their cases. Atty. Emma C. Francisco, Director-General of the Intellectual Property Office, delivered the Welcome Address. She hopes that through this seminar, the Philippines would be a "knowledge-based economy," benefiting from intellectual property. She aspires to have laws adoptive to international standards; promote intellectual property; and bolster the enforcement of intellectual property rights. Mr. Niclas Morey, Manager of the Local Coordination Unit of ECAP II in Bangkok Thailand, gave his Greetings. ECAP II financed the entire program and appreciated the conduct of seminars that promote awareness of intellectual property.



Participants of the *Seminar Workshop for Commercial Court Judges* held on September 15 to 17, 2004, at the Eugenio Lopez Center, Antipolo City.



ON MEDIATION

JURIS PILOT PROJECT ORIENTATION

The Academy, with the Philippine Mediation Center Unit in Pampanga, conducted the *JURIS Pilot Project Orientation for Executive Judges, Judges, Clerks of Court, Branch Clerks of Court, Civil and Criminal Cases Clerks, Court Personnel, and Mediators* on July 1 and 2, 2004, at the San Fernando Provincial Social Hall, City of San Fernando, Pampanga. In preparation for the Internship for Mediators scheduled on July 13 to August 13, 2004 at the same venue, the program was designed to familiarize the participants with mediation as an enhanced pre-trial proceeding.

JURIS PILOT ADR MODEL COURTS LAUNCHED

PHILJA, in cooperation with the National Judicial Institute (NJI) of Canada and the Philippine Mediation Center (PMC), successfully launched the *JURIS Pilot ADR Model Courts or the Enhanced Court-Annexed Mediation Project* on July 13, 2004, at the San Fernando Provincial Social Hall, San Fernando Provincial Compound, City of San Fernando, Pampanga.

The affair was graced by Chief Justice Hilario G. Davide, Jr., Canadian Ambassador Peter Sutherland, Pampanga Governor Mark Lapid, and San Fernando City Mayor Oscar Rodriguez as special guests. Acknowledged in the ceremony were fifty (50) trained Mediators from Pampanga, along with the participating judges, court personnel, ALG representatives, and other stakeholders.

ACTION PLANNING WORKSHOP ON THE MEDIATION PROJECT IN TRIAL COURTS

PHILJA conducted the *Action Planning Workshop on the Mediation Project in Trial Courts* on July 26 to 27, 2004, at the Manila Pavilion Hotel, Manila. This is the last component of The Asia Foundation Grant following the Trial Court Evaluation Workshops in the Cities of Davao, Cebu and Manila and the Evaluation of Court-Annexed Mediation by Stakeholders done by the Social Weather Stations (SWS) in the National Capital Judicial Region, Cebu, and Davao as part of the grant. The planning

workshop was intended to provide solutions to problems identified in the three (3) evaluation workshops and the survey conducted by SWS, or to give concrete measures in the implementation of the solutions reached during the workshop in the further improvement of mediation in the country.

MEDIATION FUND INSTITUTIONALIZED

The Court *En Banc*, in its Resolution (A.M. No. 04-2-04-SC) dated July 20, 2004, resolved to approve the Proposed Revision of Rule 141, Revised Rules of Court, on Legal Fees. Section 9 of said Resolution contains the following rules on the collection of mediation fees:

"A. Trial Courts

The Clerks of Court of the Regional Trial Courts and the First-Level Courts shall collect the amount of FIVE HUNDRED PESOS (P500.00):

1. Upon the filing of a Complaint or an Answer with a mediatable permissive or compulsory counterclaim or cross-claim, complaint-in-intervention, third-party complaint, fourth-party complaint, etc. in civil cases, a Petition, an Opposition, and a Creditor's Claim in Special Proceedings;
2. Upon the filing of Complaint/Information for offenses covered by the *Katarungang Pambarangay Law*, violation of B.P. Blg. 22, estafa, and libel cases where damages are sought; and

Upon the filing of a Complaint/Information for quasi-offenses under Title 14 of the Revised Penal Code.

The Clerks of Court of the First Level Courts shall collect the amount of FIVE HUNDRED PESOS (P500.00) upon the filing of a Notice of Appeal to the Regional Trial Court.

The Clerks of Court of the Regional Trial Courts shall collect the amount of ONE THOUSAND PESOS (P1,000.00) upon the filing of a Notice of Appeal to the Court of Appeals or the Sandiganbayan.

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B. Court of Appeals, Sandiganbayan, and Court of Tax Appeals

The Clerks of Court of the Court of Appeals, Sandiganbayan, and Court of Tax Appeals (CTA) shall collect the amount of ONE THOUSAND PESOS (P1,000.00) upon the filing of a mediatable case, petition, special civil action, a comment/answer to the petition or action, and appellee's brief. The Clerk of Court of the Court of Tax Appeals shall also collect the amount of ONE THOUSAND PESOS (P1,000.00) for the appeals from the decision of a CTA Division to the CTA *En Banc*.

Provided that, in all cases, a pauper litigant shall be exempt from contributing to the Mediation Fund. Despite such exemption, the court shall provide that the unpaid contribution to the Mediation Fund shall be considered a lien on any monetary award in a judgment favorable to the pauper litigant.

And, *provided further*, that an accused-appellant shall also be exempt from contributing to the Mediation Fund.

The amount collected shall be receipted and separated as part of a special fund to be known as the "Mediation Fund," and shall accrue to the SC-PHILJA-PMC Fund, disbursements from which are and shall be pursuant to guidelines approved by the Supreme Court.

The Fund shall be utilized for the promotion of court-annexed mediation and other relevant modes of alternative dispute resolution (ADR), training of mediators, payment of mediators' fees, and operating expenses of the Philippine Mediation Center (PMC) units, including expenses for technical assistance and organizations/individuals, transportation/communication expenses, photocopying, supplies and equipment, expense allowance and miscellaneous expenses, whenever necessary, subject to auditing rules and regulations. In view thereof, mediation fees shall not form part of the Judiciary Development Fund (JDF) under P.D. No. 1949 nor of the special allowances granted to justices and judges under Republic Act No. 9227."

JURIS EDUCATION STUDY TOUR IN CANADA

Prof. Sedfrey M. Candelaria, Head of PHILJA's Research, Publications and Linkages Office and Chair, Department of Special Areas of Concern; Judge Nimfa C. Vilches, Branch 48, Regional Trial Court, Manila and Member, PHILJA Department of Special Areas of Concern; and Judge Rosalina L. Pison, Branch 107, Regional Trial Court, Quezon City, were the Philippine delegates to the *Family Mediation Seminar*, also known as the *JURIS Education Study Tour*, held from August 23 to September 3, 2004, in Vancouver and Kelowna, British Columbia, Canada. The delegates are experts on family law, family conflict, and family mediation in the Philippines. This seminar was the Judicial Education phase of the JURIS Project, with focus on Family Mediation. It aimed to enhance the capacity and skills of the delegates in developing a family mediation program for the specialized training of family court judges and court personnel in the JURIS Project.

JDR PROJECT IN THE JURIS PILOT ADR MODEL COURT

Following the successful launching of the *JURIS Pilot ADR Model Courts* or the *Enhanced Court-Annexed Mediation Project* on July 13, 2004, at San Fernando City, Pampanga, PHILJA, in cooperation with the National Judicial Institute (NJI) of Canada and the Philippine Mediation Center (PMC), once again launched the *Judicial Dispute Resolution (JDR) Project* in the *JURIS Pilot ADR Model Courts*, on August 27, 2004, at the Garden Royale, Goldenfields Complex, Bacolod City, Negros Occidental.

A unique highlight of the Bacolod JDR Launching, apart from the formal launching ceremonies, was the actual settlement of cases undergoing JDR by the judges of the Bacolod City Hall of Justice. The guests were also given an opportunity to ask questions and familiarize themselves with the Judicial Dispute Resolution (JDR) process, thereby making the activity more meaningful and successful. The entire activity was witnessed by Chief Justice Hilario G. Davide, Jr., Canadian Ambassador Peter Sutherland, Congressman Monico Puentebella, Mayor Evelio R. Leonardia of Bacolod City, with other officials, representatives, and guests from the Supreme Court, Canada, National Judicial Institute (NJI), The Asia Foundation, Alternative Law Groups, Inc., and Strategic Organizational Services Philippines, Inc.

Mayor Leonardia, in his Welcome Remarks, was very grateful to the Canadian government for guiding and assisting this laudable program, and likewise to Chief Justice Davide for his presence, which provided the needed impetus and inspiration for this historic event concerning the legal profession in Bacolod City. Together with his fellow Bacoleños, he was honored that Bacolod City was chosen as a pilot area for court-annexed mediation, which should help litigants settle their differences without having to go to court, thereby decongesting the court dockets as well.

EXEMPTION FROM NEW PRE-TRIAL GUIDELINES

The Court *En Banc*, in its Resolution dated August 10, 2004, approved the recommendation of the Philippine Judicial Academy to exempt the trial courts in the areas covered by court-annexed mediation and the JURIS Project, as well as trial courts in other areas where court-annexed mediation and the JURIS project may be implemented in the future, from the application of A.M. No. 03-1-09-SC - Re: Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures, effective August 16, 2004.

The Academy recommended the said exemption to avoid further confusion on the part of the judges and clerks of court in areas where the mediation project is ongoing, pertaining to the procedural differences present in the New Pre-Trial Guidelines or A.M. No. 03-1-09-SC and the approved Guidelines on Pre-Trial for Court-Annexed Mediation or A.M. No. 01-10-5-SC-PHILJA and Enhanced Pre-Trial Procedure (JURIS Project) or A.M. No. 04-1-12-SC.

TRAINERS' TRAINING FOR COURT OF APPEALS MEDIATION

The Academy's Philippine Mediation Center, in cooperation with the United States Agency for International Development (USAID), The Asia Foundation (TAF), and the Singapore Mediation Centre (SMC), conducted its first *Trainers' Training for Court of Appeals Mediation*, on September 13 to 15, 2004, at the Pan Pacific Hotel, Manila. Participants comprised ten (10) lawyers and ten (10) non-lawyers from the academe and professional training organizations. The training was handled by Singapore's flagship mediation organization, the

Singapore Mediation Centre (SMC). Trainers from SMC were Mr. Loong Seng Onn, Executive Director of SMC and Assistant Director of the Singapore Academy of Law, and Ms. Carol Liew, Manager of SMC and also a member of the Singapore Bar. She has been heavily involved in conflict resolution programs in Singapore.

Justice Antonio M. Martinez, PHILJA Vice-Chancellor, delivered the Welcome Remarks. He presented the differences between mediation and litigation based on the goals and objectives that underlie each process. Mr. Daryl R. Veal, Legal and Regulatory Advisor, Office of Economic Development and Governance, USAID and Mr. Ky Johnson, Assistant Representative, TAF, gave messages on behalf of their respective organizations. Both lauded PHILJA's efforts to solve the courts' docket congestion problem through mediation and affirmed their commitment to support alternative dispute resolution in the Philippines.

The training was designed to equip participants with the knowledge and skills to be able to conduct a training on mediation individually, in pairs, or collectively; develop a mediation curriculum or modules, case study materials, and evaluation tools for training purposes; conduct training evaluation or assessment (pre-assessment, mid- and post-assessment); and handle or manage a mediation training.

CAGAYAN DE ORO'S MEDIATION PROGRAM UPDATES

The Academy's Philippine Mediation Center had a successful start in its mediation program in Cagayan de Oro, as follows:

Basic Seminar Workshop on Mediation

This was conducted on September 20 to 24, 2004, at the VIP Hotel, Cagayan de Oro. Fifty-one (51) participants attended the program, out of the sixty (60) selected applicants for the project, with a seminar fee of One Thousand Five Hundred (P1500.00) Pesos per participant. The participants consisted of lawyers, academicians, businessmen, retired teachers, doctors, engineers, HRD managers, and other professionals. This program initially offered the first module developed specifically for mediation. MCLE accredited, it is the first mediation seminar authorized to collect seminar fees.

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Advocates Forum for Judges and Court Personnel

The forum was convened on September 22, 2004 and attended by forty-two (42) judges and court personnel. The highlight of the forum was the presentation of the fifty-one (51) Mediators-Trainees from the Basic Seminar Workshop on Mediation to the judges-participants.

Advocates Forum for Lawyers and Other Stakeholders

A separate forum for lawyers and other stakeholders was conducted on September 23, 2004. In attendance were forty (40) lawyers and stakeholders, comprising radio and print media practitioners, academicians, local government officials, and representatives from non-government organizations. The forum was televised courtesy of the Oro Chamber of Commerce, an organization which fully supported the mediation program since it started in Cagayan de Oro.

Channel 31 Live Television Interview on Cagayan de Oro Mediation Program

Ms. Susan Palmes, a KBP Official in Cagayan de Oro, TV Host of Channel 31 and Mediation-Trainee, conducted a live interview with Dean Reynaldo L. Suarez, Atty. Ronald Tolentino, Ms. Vilmi Quipit, and Mr. Joey T. Name, Jr. regarding the Cagayan de Oro Mediation Program. Several phone-in questions were received and entertained from the viewers during the program.



ON PHILJA

SIGNING OF CONSORTIUM AGREEMENT

The Philippine Judicial Academy (PHILJA), represented by its Chancellor, Justice Ameurfina A. Melencio Herrera, and San Beda College, represented by its Rector-President, Dom Anscar J. Chupungco, OS.B., S.L.D., signed a Consortium Agreement for a Master's Program in Law, on August 11, 2004, at the Session Hall, Supreme Court, Manila.

Present during the signing ceremony were Chief Justice Hilario G. Davide Jr.; Justice Reynato S. Puno; Justice Romeo J. Callejo, Sr., PHILJA Professorial Lecturer; Justice Ricardo C. Puno, Chair of PHILJA's Department of Civil Law and Program Adviser; Justice Antonio M. Martinez, PHILJA Vice-Chancellor; Fr. Ranhilio C. Aquino, Head of the PHILJA Academic Affairs Office, who is also the current Dean of the San Beda College Graduate School of Law; and other Supreme Court officials and guests.

In relation with the recently signed Consortium Agreement, PHILJA held its 7th Pre-Judicature Program on September 24 to October 23, 2004. Graduates of the program, who met the Academy's standards upon endorsement of the PHILJA Chancellor, will earn fifteen (15) units towards the Master of Laws (L.M.) degree at the San Beda College Graduate School of Law.

OCA CIRCULAR NO. 100-2004

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Pre-termination Rate	Revert to regular savings rate
Documentation	LAND BANK Certificate of Time Deposit
Documentary Stamp Tax (DST)	P0.30 for every P200.00 on the original CTD and on every renewal thereof

Upon receipt of this Circular, the amount deposited in the LBP bank account for fiduciary funds shall be placed in a Time Deposit for a term of 30 days. The certificate of time deposit shall be issued in the name of the Court including the particulars on the branch and station when applicable.

The trial court's existing LBP savings/current

account will be maintained for purposes of accepting fiduciary funds received from the first day up to the last day of the month. Any amount in said account shall then be placed in Time Deposit at the end of the month. Said Time Deposit shall always be renewed on the last day of the month.

Any withdrawal of fiduciary funds shall be approved by the court and shall first be taken from LBP savings/current account being maintained. If the amount in said account is not sufficient then the balance shall be taken from the Time Deposit which withdrawal shall be made preferably on the last day of the month.

27 August 2004.

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

CIVIL LAW

Default proceedings not allowed in the declaration of nullity and annulment of marriage.

The Rules of Court prohibit default proceedings in cases involving declaration of nullity of marriage.

Section 3, Rule 9 of the 1997 Rules of Civil Procedure provides that if the defending party in an action for annulment, or declaration of nullity of marriage, or for legal separation fails to answer, the court shall order the prosecuting attorney to investigate whether or not a collusion between the parties exists, and if there is no collusion, to intervene for the State in order to see to it that the evidence submitted is not fabricated. Thus, the report of the Public Prosecutor is a condition *sine qua non* for further proceedings to go on in the case. (*Tinga, J., Margie Macias Corpus v. Judge Wilfredo G. Ochotorena*, A.M. RTJ-04-1861, July 30, 2004)

REMEDIAL LAW

Demurrer to evidence; lack of legal capacity to sue is not a proper ground for a demurrer to evidence.

A demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence and is presented after the plaintiff rests his case. It is an objection by one of the parties in an action to the effect that the evidence, which his adversary produced, is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The evidence contemplated by the rule on demurrer is that which pertains to the merits of the case. Thus, as correctly held by the Court of Appeals, lack of legal capacity to sue is not a proper ground for a demurrer to evidence, pertaining as it does to a technical aspect, and it having nothing to do with the evidence on the merits of the complaint. (*Tinga, J., Daniel Celino v. Heirs of Alejo and Teresa Santiago*, G.R. No. 161817, July 30, 2004)

Judicial admissions must be made in the same case.

A party may make judicial admissions in (a) the pleadings filed by the parties, (b) during the trial either by verbal or written manifestations or stipulations, or (c) in other stages of the judicial proceedings.

To constitute judicial admission, the admission must be made in the same case in which it is offered.

If made in another case or in another court, the fact of such admission must be proved as in the case of any other fact, although if made in a judicial proceeding, it is entitled to greater weight. (*Carpio, J., Republic Glass Corporation v. Laurence Qua*, G.R. No. 144413, July 30, 2004)

Rule 47 of the Rules of Civil Procedure does not apply to an action to annul the levy and sale at public auction of petitioner's properties or the sheriff's certificate of sale over said properties.

Rule 47 of the Rules of Civil Procedure applies only to a petition to annul a judgment or final order and resolution in civil actions on the ground of extrinsic fraud, or lack of jurisdiction, or due process. It does not apply to an action to annul the levy and sale at public auction of petitioner's properties or the certificate of sale executed by the deputy sheriff over said properties. Neither does it apply to an action to nullify a writ of execution because a writ of execution is not a final order or resolution, but is issued to carry out the mandate of the court in the enforcement of a final order or judgment. It is a judicial process to enforce a final order or judgment against the losing party. (*Callejo, Sr., J., Aurora Guiang v. Eva T. Go*, G.R. No. 146996, July 30, 2004)

CRIMINAL LAW

Regional Trial Courts have jurisdiction to try violations of the Intellectual Property Code, R.A. 8293.

Section 163 of the Intellectual Property 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.

The existing law referred to is Section 27 of R.A. No. 166, the Trade Mark 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. R.A. 8293 did not expressly repeal R.A. 166 in its entirety; only parts thereof that are inconsistent were repealed. (*Yñares-Santiago, J., Manolo Samson v. Hon. Reynaldo Daway, Presiding Judge, Quezon City RTC, People and Caterpillar*, G.R. No. 160054-55, July 21, 2004)

CIVIL LAW

Liability of employers with their employees for quasi-delicts is solidary in the "boundary system;" the jeepney driver is the employee of the jeepney owner.

While the provisions of Article 2176 do not expressly provide for solidary liability, the same can be inferred from the wordings of the first paragraph of Article 2180, which states that the obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of person for whom one is responsible.

Moreover, Article 2180 should be read with Article 2194, which categorically states that the responsibility of two or more persons who are liable for *quasi-delict* is solidary. In other words, the liability of joint tortfeasors is solidary. Verily, under Article 2180 of the New Civil Code, an employer may be held solidarily liable for the negligent act of his employee.

An employer-employee relationship exists between the owner of a public vehicle who operates it under the "boundary system" and the driver. Indeed, to exempt from liability the owner of the vehicle on the ground that he is a mere lessor would be not only to abet flagrant violations of the Public Service Law, but also to place the riding public at the mercy of reckless and irresponsible drivers – reckless because the measure of their earnings depends largely upon the number of trips they make and hence, the speed at which they drive, and irresponsible because most, if not all of them, are in no position to pay the damages they might cause. (*Ynares-Santiago, J., Spouses Francisco Hernandez and Aniceta Hernandez and Juan Gonzales v. Spouses Lorenzo Dolor and Margarita Dolor, et al. G.R. No.160286, July 30, 2004*)

Rates of interest must be agreed upon by lender and borrower.

The accessory duty of a borrower to pay interest does not give the lender unrestrained freedom to charge any rate other than that which was agreed upon. No interest shall be due, unless expressly stipulated in writing. It would be the zenith of farcicality to specify and agree upon rates that could be subsequently upgraded at whim by only one party to the agreement.

The unilateral determination and imposition of increased rates is violative of the principle of mutuality of contracts ordained in Article 1308 of the Civil Code. One-sided impositions do not have the force of law between the parties because such impositions are not based on the parties' essential equality.

Although escalation clauses are valid in maintaining fiscal stability and retaining the value of money on long-term contracts, giving the lender an unbridled right to adjust the interest independently and upwardly would completely take away from the borrower the right to assent to an important modification in their agreement and would also negate the element of mutuality in their contracts.

x x x x x

While the Usury Law ceiling on interest rates was lifted by Central Bank Circular No. 905, nothing in said circular grants lenders *carte blanche* authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets. (*Panganiban, J., New Sampaguita Builders Construction and Spouses Eduardo Dee and Arcelita Dee v. Philippine National Bank, G.R. No. 148753, July 30, 2004*)

Exercise of the right of redemption; statement of intention to redeem must be accompanied by an actual tender of payment.

The general rule in redemption is that it is not sufficient that a person offering to redeem manifests his desire to do so. The statement of intention must be accompanied by an actual and simultaneous tender of payment. This constitutes the exercise of the right to repurchase.

In several cases decided by the Court where the right to repurchase was held to have been properly exercised, there was an unequivocal tender of payment for the full amount of the repurchase price. Otherwise, the offer to redeem is ineffectual. Bonafide redemption necessarily implies a reasonable and valid tender of the entire repurchase price, otherwise the rule on the redemption period fixed by law can easily be circumvented. (*Corona, J., BPI Family Savings Bank v. Spouses Juanuario Antonio Veloso and Natividad Veloso, G.R. No. 141974, August 9, 2004*)

REMEDIAL LAW

Rights of a party declared in default.

A party declared in default loses his standing in court and his right to adduce evidence and to present his defense. He, however, has the right to appeal from the judgment by default and assail said judgment on the ground, *inter alia*, that the amount of the judgment is excessive or different in kind from that prayed for, or that the plaintiff failed to prove the material allegations of his complaint, or that the decision is contrary to law. Such party declared in default is proscribed from seeking a modification or reversal of the assailed decision on the basis of the evidence submitted by him in the Court of Appeals, for if it were otherwise, he would thereby be allowed to regain his right to adduce evidence, a right which he lost in the trial when he was declared in default. (*Callejo, Sr., J., Rural Bank of Sta. Catalina v. Land Bank*, G.R. No. 148019, July 26, 2004)

Voluntary appearance is a waiver of necessity of a formal notice.

In *Busuego v. Court of Appeals*, the Court ruled that a voluntary appearance is a waiver of the necessity of a formal notice. An appearance in whatever form, without explicitly objecting to the jurisdiction of the court over the person, is a submission to the jurisdiction of the court over the person. While the formal method of entering an appearance in a case pending in the courts is to deliver to the clerk a written direction ordering him to enter the appearance of the person who subscribes it, an appearance may be made by simply filing a formal motion, or plea, or answer. This formal method of appearance is not necessary. He may appear without such formal appearance and, thus, submit himself to the jurisdiction of the court. He may appear by presenting a motion, for example, and, unless by such appearance, he specifically objects to the jurisdiction of the court, he thereby gives his assent to the jurisdiction of the court over his person. When the appearance is by motion objecting to the jurisdiction of the court over his person, it must be for the sole and separate purpose of objecting to the jurisdiction of the court. If his motion is for any other purpose than to object to the jurisdiction of the court over his person, he thereby submits himself to the jurisdiction of the court. (*Callejo, Sr., J., Ofelia Herrera-Felix v. Court of Appeals and St. Joseph Resources Development Inc.*, G.R. No. 143736, August 11, 2004)

An ejectment case involves a different cause of action from an *accion publiciana* or the plenary action to recover the right of possession, and from *accion reivindicatoria* or the action to recover ownership.

An ejectment case involves a different cause of action from an *accion publiciana* or *accion reivindicatoria*, and the judgment of the former shall not bar the filing of another case for recovery of possession as an element of ownership. A judgment in a forcible entry or detainer case disposes of no other issue than that of possession and establishes only who has the right of possession, but by no means constitutes a bar to an action for determination of who has the right or title of ownership.

What really distinguishes an action for unlawful detainer from a possessory action and from a reivindicatory action is that the first is limited to the question of *possession de facto*.

The summary action of ejectment, *accion publiciana*, and *accion reivindicatoria* are the three kinds of actions to judicially recover possession. (*Quisumbing, J., Melchor Custodio v. Rosendo Corrado*, G.R. No. 146082, July 30, 2004)

Applicability of the rule on summary judgment.

Whether a trial court, which has jurisdiction over the person of the parties to, and the subject matter of the case will grant a motion for summary judgment, is within its power or authority in law to perform. Its propriety rests on its sound discretion and judgment. In the event that it errs in finding that there is no genuine issue to, thus, call for the rendition of a summary judgment, the resulting decision may not be set aside directly or indirectly by petition for *certiorari*, but may only be corrected on appeal or other direct review. Contrary to petitioners' argument that the rule on summary judgment applies to only two kinds of action – an action to recover a debt or liquidated demand for money, and an action for declaratory relief – the rule is applicable to all kinds of action. (*Carpio-Morales, J., Heirs of Baldomero Roxas v. Hon. Alfonso Garcia, RTC Judge, Tagaytay City*, G.R. No. 146208, August 12, 2004)



CASE DIGESTS ON FAMILY LAW

By: Justice Alicia V. Sempio-Diy
PHILJA Professor

TENEBRO v. C.A., G.R. No. 150758, February 18, 2004, En Banc (J. Ynares Santiago)

Facts: There was no record of Tenebro's first marriage in the civil registrar's office. Besides, Tenebro's second marriage was declared void *ab initio* on the ground of psychological incapacity.

Issue: Is Tenebro guilty of bigamy for having contracted two marriages?

Held:

- (1) An individual who contracts a second marriage during the subsistence of a valid marriage is criminally liable for bigamy notwithstanding the subsequent declaration that his second marriage is void *ab initio* on the ground of psychological incapacity.

There is no cogent reason for distinguishing between a subsequent null and void marriage purely because it is a second or subsequent marriage, and a subsequent marriage that is null and void on the ground of psychological incapacity insofar as the criminal liability for bigamy is concerned. The declaration of nullity of the second marriage on the ground of psychological incapacity is not an indication that Tenebro's second marriage lacked the essential requisites for validity. Although the declaration of nullity of the second marriage retroacts to the date of its celebration as far as the vinculum between the parties is concerned, the second marriage is not without legal effects, among which are the status of the children thereof being legitimate and that of incurring criminal liability for bigamy.

- (2) The mere fact that no record of a marriage exists in the civil registrar's office does not invalidate the marriage provided all requisites for its validity are present. There is no requirement in the law that a marriage contract needs to be submitted to the civil registrar as a condition precedent for the validity of a marriage.

VILLANUEVA, ET AL. v. C.A. & HEIRS OF RETUYA, G.R. No. 143286, April 14, 2004 (J. Carpio)

Facts: Eusebia and Nicolas got married in October, 1926. In 1945, Nicolas left Eusebia and their children and cohabited with Pacita, who had no occupation or properties of her own. On October 4, 1957, Nicolas purchased the lot in question, which was registered only in his name.

Issue: Is said lot conjugal property of Nicolas and Eusebia, or co-owned by Nicolas and Pacita under Art. 148 of the Family Code?

Held:

- (1) The lot in question is conjugal property of Nicolas and Eusebia. Under Art. 116 of the Family Code, all properties acquired by the spouses during the marriage are presumed conjugal.
- (2) Pacita's reliance on Art. 148 of the Family Code is misplaced. Under this Article, there must be proof of "actual joint contribution" by both live-in partners before the property becomes co-owned by them in proportion to their contribution.

The presumption of equality of contribution arises only in the absence of proof of their proportionate contribution in the property. Therefore, without proof of actual contribution by both parties, there is no co-ownership and no presumption of equal sharing. Pacita failed to prove that she made an actual contribution in the acquisition of the lot in question.

From the Chancellor's Desk

(continued from page 1)

Venturing into new undertakings, PHILJA is slowly testing its capabilities in high-tech activities with its tele-video refresher course for Mediators and the production of three (3) mediation videos to be used as training tools for mediation training.

The prospects for innovativeness in the delivery of quality judicial education continue to be bright.

SUPREME COURT

RESOLUTION of the COURT EN BANC, dated 22 June 2004, on A.M. No. 04-6-12-SC

"A.M. No. 04-6-12-SC.- Re: Creation of Additional Branches of the Municipal Trial Courts in Cities, Roxas City. The Court Resolved, upon the recommendation of the Office of the Court Administrator, to:

(a) IMPLEMENT Republic Act No. 9267 by creating two (2) more branches of the Municipal Trial Court in Cities in Roxas City, to wit: Branches 3 and 4;

(b) CREATE the following positions, to wit: Municipal Trial Court in Cities, Roxas City

No. of Positions	Position/Title	Salary Grade
2	City Trial Court Judge	27
2	Clerk of Court III	22
2	Court Legal Researcher I	12
2	Interpreter II	10
6	Court Stenographer II	10
2	Sheriff III	10
2	Clerk IV	8
2	Clerk III	6
2	Process Server	5
2	Utility Worker I	1

Office of the Clerk of Court

No. of Positions	Position/Title	Salary Grade
1	Clerk of Court III	22
1	Sheriff III	10
1	Process Server	5
1	Clerk IV	8
2	Clerk III	6
1	Administrative Officer	11

TOTAL: 31

(c) RE-CLASSIFY the position of Cash Clerk II (salary grade 6) to Cash Clerk III (salary grade 8) to be included in the Personnel Services Itemization in the Municipal Trial Court in Cities, Roxas City to conform with the Staffing Pattern;

(d) INFORM and DIRECT the Judicial and Bar Council to accept applications for the positions of Presiding Judges, Municipal Trial Court in Cities, Roxas City, Branches 3 and 4, respectively; and

(e) ORDER that all court records be amended to conform with the foregoing developments."

VITUG, J., *on official leave*. Ynares-Santiago and Austria-Martinez, JJ., *on leave*.

Very truly yours,

(Sgd.) LUZVIMINDA D. PUNO
Clerk of Court



RESOLUTION of the COURT EN BANC, dated 22 June 2004, on A.M. No. 99-07-SC

RE: GUIDELINES FOR QUALIFYING FOR JUDICIAL OFFICE

RESOLUTION

Acting on the recommendation of the Chairman of the Committee on Revision of the Rules of Court and in order to prevent a gap in the service of newly appointed judges who are transferees from other government agencies or private employment, the Court Resolves to AMEND Guideline Nos. 3-C and 5, to read as follows:

"3. Immersion Program

A. xxx xxx xxx

B. xxx xxx xxx

C. Newly appointed judges shall commence undergoing the immersion program **within three (3) days** from the date they take their oath of office."

"5. Payment of initial compensation

The right of newly appointed judges to their initial salaries shall accrue as of the date **they take their oath of office**. The Immersion Program shall commence **not later than three days** thereafter."

These amendments shall be retroactive as of the date of effectivity of the Resolution in A.M. No. 97-7-07-SC or on August 1, 1999.

Promulgated this 22nd day of June 2004.

Very truly yours,

(Sgd.) LUZVIMINDA D. PUNO
Clerk of Court

SUPREME COURT

REVISED ADMINISTRATIVE CIRCULAR No. 50-2001

ESTABLISHING THE MERIT SELECTION AND PROMOTION PLAN FOR THE LOWER COURTS (MSPP- LC)

Pursuant to Section 32, Book V of Administrative Code of 1987 (Executive Order No. 292) and Civil Service Commission (CSC) Memorandum Circular No.3, s. 2001, this Merit Selection and Promotion Plan for the Lower Courts (MSPP-LC) is hereby established for the guidance of all concerned.

I. OBJECTIVES

The MSPP- LC aims to

1. Establish a system that is characterized by strict observance of the merit, fitness and equality principles in the selection of employees for appointment to positions in the career service; and
2. Create equal opportunities to all qualified men and women for employment and career advancement in the lower courts.

II. SCOPE

This MSPP-LC shall cover career positions in the first and second level or its equivalent in the lower courts other than the Court of Appeals, Sandiganbayan and Court of Tax Appeals, namely, Regional Trial Courts, Shari'a District Courts, Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, Municipal Circuit Trial Courts, and Shari'a Circuit Courts.

III. DEFINITION OF TERMS

As used in this Administrative Circular, the following terms shall mean as follows:

Career Service - positions in the civil service characterized by (1) entrance based on merit and fitness to be determined as far as practicable by competitive examination, or based on highly technical qualifications; (2) opportunity for advancement to higher career positions; and (3) security of tenure.

Comparatively at Par - predetermined reasonable difference or gap between point scores of candidates for appointment established by the SPB-LC.

Deep Selection - the process of selecting a candidate for appointment who is not next-in-rank, but possesses superior qualifications and competence.

Discrimination - a situation wherein a qualified applicant is not included in the selection line-up on account of gender, civil status, pregnancy, disability, religion, ethnicity or political affiliation.

First Level Positions - those which involve non-professional or sub-professional work in a non-supervisory or supervisory capacity, requiring less than four (4) years of college studies, such as clerical, trades and crafts, and custodial service positions.

Job Requirements - requisites not limited to the qualification standards of the position, but may include skills, competencies, potentials, physical and psycho-social attributes necessary for the successful performance of the duties required of the position.

Education and Training - include educational background, successful completion of training courses accredited by the CSC, scholarships, training grants, and other human resource development programs, which must be relevant to the duties of the position to be filled.

Experience and Outstanding Accomplishments - include occupational history, relevant work experience acquired either from the government or private sector, and accomplishments worthy of special commendation.

Psycho-Social Attributes - the characteristics or traits of a person which involve both psychological and social aspects. Psychological attribute includes the way a person perceives things, ideas, beliefs, and understanding, and how a person acts and relates these things to others and in social situations.

Potential - the capacity and ability of a candidate to assume the duties of the position to be filled and those of higher or more responsible positions.

Next-in-Rank Position - a position which, by reason of the hierarchical arrangement of positions in the agency or in the government, is determined to be in the nearest degree of relationship to a higher position as contained in the agency's System of Ranking Positions (SRP).

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Personnel Actions - any action denoting the movement or progress of personnel in the civil service, such as original appointment, promotion, transfer, reinstatement, reemployment, detail, reassignment, secondment, and demotion.

Promotion - the advancement of an employee from one position to another with an increase in duties and responsibilities as authorized by law and usually accompanied by an increase in salary.

Qualification Standards - a statement of the minimum qualifications for a position, which shall include education, experience, training, civil service eligibility, and physical characteristics and personality traits required in the performance of the job.

Qualified Next-in-Rank - an employee appointed on a permanent status to a position next-in-rank to the vacancy as reflected in the SRP approved by the head of agency, and who meets the requirements for appointment to the next higher position.

Second Level Positions - those which involve professional, technical, and scientific work in a non-supervisory or supervisory capacity up to Division Chief level or its equivalent.

Selection - the systematic method of determining the merit and fitness of a person on the basis of qualifications and ability to perform the duties and responsibilities of the position.

Open Positions - positions that do not have any next-in-rank positions or residual positions of each level which may be filled up by lateral/vertical entry.

Selection Line-up - a listing of qualified and competent applicants for consideration to a vacancy which includes, but not limited to, the comparative information of their education, experience, training, civil service eligibility, performance rating (if applicable), relevant work accomplishments, physical characteristics, psycho-social attributes, personality traits and potential.

Superior Qualifications - any outstanding relevant work accomplishments, educational attainment, and training appropriate for the position to be filled, which shall include demonstration of exceptional job mastery and potentials in major areas of responsibility.

System of Ranking Positions - the hierarchical arrangement of positions from highest to lowest, which shall be a guide in determining which position is next-in-rank, taking into consideration the following:

- a. Organizational structure;
- b. Salary grade allocations;
- c. Classification and functional relationship of positions; and
- d. Geographical location.

IV. BASIC POLICIES

1. Selection of appointees in the lower courts shall be open to all qualified men and women according to the principle of merit, fitness, and equality.

There shall be equal employment opportunities for men and women at all levels of positions in the lower courts, provided that they meet the minimum requirements of the position to be filled.

There shall be no discrimination in the selection of employees on account of gender, civil status, disability, religion, ethnicity, or political affiliation.

2. The Merit Selection and Promotion Plan (MSPP) shall cover positions in the first and second levels, and shall also include original appointments and other related personnel actions.
3. When a position covered by this MSPP-LC becomes vacant, applicants selected for appointment thereto, who are competent, qualified, and possess the appropriate civil service eligibility, shall be considered for permanent appointment.
4. Vacant positions marked for filling shall be published in accordance with Republic Act No. 7041 (Publication Law). The published vacant positions shall also be posted in at least three (3) conspicuous places in the court, where such vacancies exist for at least ten (10) calendar days. Other appropriate modes of publication shall be considered.
5. The members of the Selection and Promotion Board for the Lower Courts (SPB-LC) shall

(Continued on next page)

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undergo orientation and workshop on the selection/promotion process and CSC policies on appointments.

6. The Chief Justice shall, as far as practicable, ensure equal opportunity for men and women to be represented in the SPB-LC.
7. All qualified next-in-rank employees shall be automatically considered candidates for promotion to the next higher position.
8. The appointing authority may appoint an applicant who is not next-in-rank, but who possesses superior qualifications and competence, and has undergone the selection process.
9. The SPB-LC shall maintain fairness and impartiality in the assessment of candidates for appointments. Towards this end, the SPB-LC may initiate innovative schemes in determining the best and most qualified candidate.

The following appointments shall no longer be screened by the SPB-LC:

- a. Substitute appointments due to their short duration and emergency nature. However, should the position be filled by regular appointment, candidates for the position should be screened and passed upon by the SPB-LC;
 - b. Appointment to personal and primarily confidential positions; and
 - c. Renewal of temporary appointment issues to incumbent personnel.
10. Recommendations for appointment to vacancies in the branch of a court shall be made by the Presiding Judge or the Acting Presiding Judge thereof, and submitted to the Executive Judge for transmittal to the Office of Administrative Services, Office of the Court Administrator (OAS-OCA), for consideration or deliberation by the SPB-LC.

For vacancies in the Office of the Clerk of Court, recommendations shall be made by the Executive Judge.

The Presiding Judge/Acting Presiding Judge or the Executive Judge, as the case may be, shall forward to the OAS-OCA all other applications submitted to his office, for inclusion in the deliberations of the SPB-LC.

The recommendee of the Judge shall be given priority only if the said applicant-recommendee possesses superior qualifications than, or is at least equally qualified as, the other applicants.

11. The SPB-LC shall evaluate the qualifications of the recommendees/applicants. Through a resolution, it shall recommend to the Court either the approval or denial of applications, taking into consideration the qualification requirements of the position to be filled up.
12. No relatives of incumbent employees within the third civil degree of consanguinity or affinity shall be appointed in the same branch/office, except when the appointment involves the promotion of an incumbent employee of the same branch/office, or a change of status of appointment, or a renewal of temporary appointment.
13. In the absence of qualified applicants or qualified next-in-rank employees, recommendees who fail to meet the appropriate eligibility, training, and experience requirements of the position may be appointed under temporary status provided that the appointee submits (a) a CSC certification as to the non-availability of eligibles within the area; and if there are any, a waiver executed by the eligibles that they are not interested to be appointed, stating also their reasons for waiving their right to be considered for appointment; and (b) an affidavit of the appointee that he/she is willing to accept an appointment under temporary status.
14. The comparative competence and qualifications of candidates for appointment shall be determined on the bases of the following:
 - a. *Performance* - For appointment by promotion, the performance rating of the appointee for the last rating period prior to the effectivity date of the appointment should be at least very satisfactory.

For appointment by transfer, the performance rating for the last rating period immediately preceding the transfer from the former office or agency should be at least very satisfactory.
 - b. *Eligibility* - This is granted to a person who passes in a civil service/board/Bar examination, or to one who obtains high

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scholastic grades/honors upon graduation from college, usually evidenced by a certificate of eligibility issued by the CSC and the entry of the eligible's name in the CSC register of eligibles.

- c. *Education and Training* - These include educational background, successful completion of training courses conducted by institutions accredited by the Civil Service Commission, scholarships, and grants, which are relevant to the duties of the position to be filled.
- d. *Experience and Outstanding Accomplishments* - These include occupational history, relevant work experiences acquired either from the government or private sector, and accomplishments worthy of special commendation.
- e. *Psycho-Social Attributes and Personality Traits* - These refer to the characteristics or traits of a person, which involve both psychological and social aspects. Psychological traits include the manner an applicant perceives things, ideas, and beliefs and understanding, and how he/she acts and relates these things to others and in social situations.
- f. *Potentials* - These refer to the capacity and ability of a candidate to assume not only the duties of the position to be filled, but also higher or more responsible positions.

A greater percentage weight shall be allocated to performance.

- 15. No employee may be promoted to a position that is more than two (2) salary grades higher than the employee's present position, except in very meritorious cases, such as when the vacant position is (a) next-in-rank as identified in the System of Ranking Positions (SRP) approved by the Chief Justice, or (b) the lone or entrance position indicated in the staffing pattern.
- 16. An employee who is on local or foreign scholarship, training grant, or maternity leave, may be considered for promotion. For this purpose, the performance rating to be considered shall be that obtained immediately prior to the scholarship, or training grant, or maternity leave. If promoted, the effectivity date of the promotional appointment shall be on the assumption to duty of the appointee.

- 17. Promotion within six (6) months prior to compulsory retirement shall not be allowed, except as otherwise provided by law.
- 18. The day following the receipt of a notice of the appointment issued, the Judge or the Clerk of Court shall cause the posting of said notice of appointment at three (3) conspicuous places within the court's premises for a period of at least fifteen (15) calendar days.

V. PROCEDURE

1. Request for Authority to Fill Vacant Positions

The Court Administrator, upon recommendation by the Deputy Court Administrator concerned, shall request authorization from the Chief Justice to fill vacancies in the lower courts. In the case of positions soon to be vacated due to the compulsory retirement of their incumbents, the request shall be made within six (6) months prior to the date of the incumbent's retirement. In case of vacancies due to other causes, such as optional retirement, death, transfer, dismissal, resignation, or promotion of the incumbents, the request for authorization to fill shall be made within one (1) month from the occurrence of the vacancy. The Court Administrator shall specify the positions to be filled and the court or office where such positions belong. Upon approval of the request, OAS-OCA shall notify the concerned Judge/Acting Presiding Judge and Executive Judge.

The OAS-OCA shall regularly notify the Deputy Court Administrator concerned of the vacancies.

2. Publication of Vacant Positions

Within one (1) month from notice of approval of the Chief Justice, the OAS-OCA shall:

- (1) Cause the publication of the vacant positions in the CSC Bulletin of Vacant Positions or through other modes of publication; and
- (2) Require the Clerk of Court concerned to post notices of vacancies.

Within five (5) days from notification, the Clerk of Court shall post notices of the vacancies to be filled in three (3) conspicuous places in the

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court's premises for ten (10) calendar days. The notice shall specify the qualification standards and requirements for the position.

Within two (2) months from the expiration of the 10-day period of posting, the following guidelines shall be observed:

- a. The Presiding Judge/Acting Presiding Judge shall submit all applications, with or without his recommendation, to the Executive Judge.
- b. The Executive Judge shall indorse all applications, with or without his recommendation, to OAS-OCA within five (5) days from receipt thereof.

Vacant positions, which are not filled within six (6) months, shall be re-published.

The following positions are exempt from the requirements of publication and posting of notices:

- a. Primarily confidential positions;
- b. Policy determining positions;
- c. Highly technical positions;
- d. Other non-career positions; and
- e. Positions to be filled by existing regular employees in case of reorganization.

3. Listing of All Candidates for the Position

The OAS-OCA shall prepare a list of candidates aspiring for the vacant position, either within or outside the branch/office, including qualified next-in-rank employees.

4. Preliminary Evaluation of Qualifications

The OAS-OCA shall conduct preliminary evaluation of the qualifications of all candidates named in the list. Those initially found qualified shall be included in a selection line-up, which shall also reflect the candidates' comparative competence and qualifications based on the following factors:

- a. Performance;
- b. Education and training;
- c. Experience and outstanding accomplishments;
- d. Psycho-social attributes and personality traits; and

e. Potential.

5. Notification of Outcome of Preliminary Evaluation

The OAS-OCA shall notify all applicants of the outcome of the preliminary evaluation.

6. Submission of Line-Up to the SPB-LC

The OAS-OCA shall immediately submit the selection line-up to the SPB-LC for its deliberation.

7. Assessment of Competence and Qualification of Candidates

The SPB-LC shall make a systematic assessment of the competence and qualifications of candidates for appointment. It shall evaluate and deliberate *en banc* the qualifications of those listed in the selection line-up.

8. Submission of Resolution Containing the List of Candidates to the Court

The resolution containing the list of candidates recommended for appointment, from which the appointee will be chosen, shall be in the prescribed format, to be signed by all those who participated therein, and to be submitted to the Office of the Chief Justice within five (5) days from its approval by the SPB-LC.

The list of recommended candidates should reflect the comparative competence and qualification of the top five (5) ranking candidates.

9. Assessment and Selection by the Chief Justice and the Chairmen of the Divisions

The Chief Justice, with the concurrence of the Chairmen of the Divisions, pursuant to AM. No. 99-12-08-SC, shall assess the merits of the SPB-LC's recommendation for appointment and, in the exercise of their sound discretion, appoint the candidate who is deemed most qualified for appointment to the vacant position.

10. Transmittal of Resolution / Approval of Appointment

The resolution containing the approved appointment of the selected candidate, signed by the Chief Justice, with the concurrence of the Chairmen of the Divisions, pursuant to A.M. No. 99-12-08-SC, shall be transmitted to

REVISED A.C. No. 50-2001 (continued)

the OAS-OCA for the processing and preparation of the commission evidencing the appointment.

11. Posting of a Notice Announcing the Appointment

After the appointment has been made by the Chief Justice, with the concurrence of the Chairmen of the Divisions, pursuant to A.M. No. 99-12-08-SC, the OAS-OCA shall immediately request the Judge or the Clerk of Court concerned to post a notice announcing the appointment in three (3) conspicuous places within the court's premises for at least fifteen (15) days. The date of posting should be indicated in the notice.

VI. GRIEVANCE (PROTEST)

1. Grounds of Protest

A qualified next-in-rank employee may file a protest against the appointment issued for the following reasons:

- a. Non-compliance with the selection process;
- b. Discrimination on account of gender, civil status, disability, pregnancy, religion, ethnicity, or political affiliation;
- c. Disqualification of the appointee to a career position for reason of lack of confidence of the recommending authority; and
- d. Other violations of the provisions of this MSP-LC.

2. Forms and Contents of Protest

The protest shall be written in clear, simple and concise language, and in a systematic manner. The aggrieved party shall be called the "Protestant" and the proposed appointee the "Protestee."

The protest shall contain the following:

- a. The position contested, including its item number in the Plantilla;
- b. The full name, office, position, and salary per annum of both the protestant and the protestee;
- c. The specifications of the protest; and
- d. The comparative data qualifications pertaining to both the protestant and the

protestee by showing their education, training, experience, outstanding accomplishments, civil service eligibility, latest performance rating.

3. When to File Protest

The protest may be filed within fifteen (15) days from notice of the appointment by the protestant.

Failure to file a protest within the prescribed period shall be deemed a waiver of one's right, and no protest shall thereafter be entertained.

4. Procedure in Filing Protest

- a. The aggrieved party shall, within the prescribed period, file his protest in triplicate copies, together with all relevant documents, directly with the OAS-OCA which, in turn, shall immediately forward the same to the SPB-LC.
- b. The SPB-LC shall, within three (3) days from receipt of the protest, require the recommending Judge or the Presiding/ Executive Judge where the contested position exists, to comment thereon within five (5) days.
- c. The documents at hand relevant to the protest and the comment thereon of the Judge concerned shall be forwarded by the SPB-LC, together with its own recommendation and findings on the matter, to the Chief Justice and the Chairmen of the Divisions for resolution.

In case of failure on the part of the Judge concerned to file a comment within the prescribed period, the protest shall be submitted to the Chief Justice and the Chairmen of the Divisions for resolution on the basis of available documents/records at hand.

- d. The decision of the Chief Justice and the Chairmen of the Divisions on the protest is final and executory.

VII. COMPOSITION OF THE SPB-LC

There shall be a Selection and Promotion Board for Lower Courts (SPB-LC) for first and second level positions in the lower courts, other than the Court of Appeals, Sandiganbayan and Court of Tax

(Continued on next page)

REVISED A.C. No. 50-2001 (continued)

Appeals, with the following composition as organized under Administrative Circular No. 42-2001, dated 13 August 2001, to wit:

- Chairman - The Court Administrator
- Vice-Chairman- The Most Senior Deputy Court Administrator
- Member - Representative from the Office of the Chief Justice
- The Head of the Office of Administrative Services of the Office of the Court Administrator
- Two (2) Representatives of the Philippine Association of Court Employees, one (1) from the 1st level positions and one (1) from the 2nd level positions, who shall serve only as such representative for a period of two (2) years. Both representatives shall participate only in the screening of candidates for vacancies in the level which they represent.
- Secretary-Recorder - To be designated by the Chairman
- Asst. Secretary Recorder - To be designated by the Chairman

The SPB-LC shall assiduously study and screen applications for the positions in the lower court, and, thereafter, make recommendations thereon to the Court for approval.

Specifically, the SPB-LC shall act on the following:

1. When an applicant who is not yet in the service is recommended to a vacant position and there are qualified applicants thereto who are already in the service;
2. When more than one (1) applicant for the same position are recommended by the Presiding Judge;
3. When the applicant recommended by the Acting Presiding Judge in his designated court is different from the recommendee of the permanent judge therein who is detailed to another court;
4. When the applicant recommended by the Acting Presiding Judge or by the regular Presiding Judge detailed in another court is

different from the recommendee of the Executive Judge;

5. When the recommendee of a judge is objected to by a co-employee of the nominee belonging to the same court; and
6. Such other matters as may be referred to the SPB-LC for resolution.

VIII. FUNCTIONS AND RESPONSIBILITIES

1. SELECTION AND PROMOTION BOARD, LOWER COURTS (SPB- LC)

The SPB-LC for first and second level positions shall have the following functions and responsibilities:

- a. Adopt a formal screening procedure and formulate criteria for the evaluation of candidates for appointment, taking into consideration the following:
 - a.1 Reasonable and valid standards and methods of evaluating the competence and qualifications of all applicants competing for a particular position; and
 - a.2 Criteria for evaluation of qualifications of applicants for appointment, which must suit the job requirements of the position.
- b. Disseminate screening procedure and criteria for selection to all lower court officials and employees, and interested applicants. Any modification of the procedure and criteria for selection shall likewise be properly disseminated.
- c. Prepare a systematic assessment of the competence and qualifications of candidates for appointment. Maintain fairness and impartiality in the assessment of candidates.
- d. Evaluate and deliberate *en banc* the qualifications of those listed in the selection line-up.
- e. Submit, by resolution, the list of candidates recommended for appointment from which the appointing authority shall choose the applicant to be appointed.
- f. Maintain records of all deliberations, which must be made accessible to interested parties upon written request, and for inspection and audit by the CSC; and

REVISED A.C. No. 50-2001 (continued)

- g. Orient the officials and employees in the lower courts pertaining to the policies relative to personnel actions.
2. OFFICE OF ADMINISTRATIVE SERVICES,
OFFICE OF THE COURT ADMINISTRATOR
(OAS-OCA)

The OAS-OCA shall have the following functions and responsibilities:

- a. Disseminate copies of the Merit Selection Plan for Lower Courts to all Judges after approval thereof by the Civil Service Commission;
- b. Develop a System of Ranking Positions (SRP) for approval by the Chief Justice, copy furnished the CSC and its Field Office concerned, for reference purposes;
- c. Develop and maintain an updated qualification database of employees to include education, training, experience, skills, competencies and other similar information;
- d. Develop a program to fast-track the career movement of employees with superior qualifications.
3. EMPLOYEES

The employees shall be responsible for updating their Personal Data Sheet annually, if deemed necessary, and submit supporting documents thereto to the OAS-OCA.

IX. EFFECTIVITY

The Merit Selection Plan for the Lower Courts herein established and the subsequent amendments thereto shall take effect immediately after approval by the Civil Service Commission.

Issued this 1st day of June 2004.

(Sgd.) HILARIO G. DAVIDE, JR.
Chief Justice
Chairman, First Division

(Sgd.) REYNATO S. PUNO
Associate Justice
Chairman, Second Division

(Sgd.) JOSE C. VITUG
Associate Justice
Chairman, Third Division

(By virtue of and pursuant to A.M. No. 99-12-08-SC-revised)

A.M. No. 04-5-19-SC

RESOLUTION PROVIDING GUIDELINES IN THE INVENTORY AND ADJUDICATION OF CASES ASSIGNED TO JUDGES WHO ARE PROMOTED OR TRANSFERRED TO OTHER BRANCHES IN THE SAME COURT LEVEL OF THE JUDICIAL HIERARCHY

WHEREAS, Administrative Circular No. 3-94, issued on 26 January 1994 to amend Administrative Circular No. 1-94 dated 14 January 1994, provides for the guidelines in the distribution of cases among reassigned judges and those of newly created branches, and Administrative Circular No. 5-98, issued on 18 February 1998, in turn amends paragraph A of Administrative Circular No. 3-94;

WHEREAS, the said amended guidelines were further amended by the Resolution in A.M. No. 98-3-114-RTC entitled, "Re: Cases Left Undecided by Judge Sergio D. Mabunay, RTC, Branch 24, Manila" (354 Phil. 698 [1998]); and

WHEREAS, notwithstanding said issuances, it has been observed that judges, who are promoted or transferred to other stations, leave many undecided cases, thereby unfairly creating additional workload for judges who are subsequently appointed thereto,

NOW, THEREFORE, BE IT RESOLVED, as it is hereby Resolved, that in accordance with Section 5 (3), Article VIII of the Constitution vesting this Court with the power to assign temporarily judges of lower courts to other stations as public interest may require, and with Section 6 of the same article mandating that this Court shall have administrative supervision over all courts and personnel thereof, cases assigned to judges who have been transferred, detailed or assigned to any branch within or outside the judicial region of the same court or promoted to a higher court, shall be managed and decided under the following guidelines:

1. All judges are enjoined to exercise judicial functions and responsibilities in accordance with the constitutional mandate of speedy disposition of cases, the Code of Judicial Conduct, and the need to prevent clogging of court dockets, always keeping in mind that, in the event of their transfer, detail or assignment to other branches of the same court within or outside the judicial region to which they have

(Continued on next page)

A.M. No. 04-5-19-SC (continued)

been appointed, or of other promotion to a higher court, they shall have decided all cases raffled to them that are submitted for decision.

2. Except as herein provided, all cases shall remain in the branch to which these have been raffled and assigned. Only cases that have been submitted for decision or those past the trial stage, i.e., where all the parties have finished presenting their evidence prior to the transfer or promotion to the judge to which these are raffled/assigned, shall be resolved or disposed by him/her in accordance with the guidelines herein set forth.
3. A judge transferred, detailed or assigned to another branch shall be considered as Assisting Judge of the branch to which he was previously assigned. However, except as herein below provided, the records of cases formerly assigned to him/her shall remain in his/her former branch.
4. The judge who takes over the branch vacated by a transferred/detailed/assigned judge shall, upon assumption of duty and within one (1) week, conduct an inventory of all pending cases in the branch. The inventory shall state the docket number, title, and status of each case. The inventory shall be submitted to the Office of the Court Administrator within five (5) working days from completion thereof.
5. Should any case be left undecided by the transferred/detailed/assigned judge, the judge conducting the inventory shall cause the issuance to the parties of a notice of transfer/detail/assignment of the judge to which the case had been assigned, with a directive for the plaintiff/s to manifest within five (5) days from receipt of such notice, whether or not he/she desires that the transferred judge should decide the case. The desire of the plaintiff, who may opt to have the case decided by the new judge, shall be respected. However, should the defendant oppose the manifestation of the plaintiff, the new judge shall resolve the matter in accordance with these Guidelines. Should the plaintiff fail to submit such manifestation within the said five-day period, the presumption is that he/she desires that the case be decided by the transferred judge.
6. The manifestation of the plaintiff that the case should be decided by the transferred judge shall

be forwarded to the Office of the Court Administrator which, upon receipt thereof, shall issue the proper directive. A directive requiring the transferred judge to decide the case immediately shall state any of these conditions:

- (a) If the new station of the transferred judge is within the province of the judicial region of his/her former station, the case shall be decided in such station by the transferred judge who shall adjust his/her calendar to enable him/her to dispose the undecided case at his/her own expense without sacrificing efficiency in the performance of his/her duties in his/her new station.
- (b) If the new station of the transferred judge is outside of the province in the judicial region of his/her former station, the records of the undecided case shall be delivered either by personal service or by registered mail to the transferred judge and at his/her own expense.

In either case, the Office of the Court Administrator shall furnish the parties to the case with a copy of such directive and the transferred judge shall return to his former branch the records of the case with the decision that the new judge shall promulgate in his stead.

7. Should a motion for reconsideration of the decision or for new trial be filed by any party, the transferred judge shall resolve the same. However, if a motion for new trial is granted by the transferred judge, the new judge shall preside over the same, resolve the motion, and see to its final disposition.
8. A judge who applies for transfer to another branch or for promotion shall submit to the Judicial and Bar Council a certification that he/she has no pending undecided case submitted for decision at the time of the filing of his/her application. In no case shall a promoted judge be allowed to take his/her oath of office and assume his/her new responsibilities unless and until he/she shall have issued another certification manifesting that he/she has decided or disposed all cases assigned to him/her in his/her previous position.

This Resolution, which shall supersede all Resolutions, circulars and other issuances relative
(Continued on page 24)

SUPREME COURT

A.M. No. 04-7-06-SC

RE: CONDITIONS ON THE COMMERCIAL EXPLOITATION OF SUPREME COURT DECISIONS

RESOLUTION

WHEREAS, Section 176 of Republic Act No. 8293, otherwise known as the *Intellectual Property Code of the Philippines*, provides:

SECTION 176. Works of the Government. -

176.1. No copyright shall subsist in any work of the Government of the Philippines. **However, prior approval of the government agency or office wherein the work is created shall be necessary for exploitation of such work for profit. Such agency or office may, among other things, impose as a condition the payment of royalties.** No prior approval or conditions shall be required for the use of any purpose of statutes, rules and regulations, and speeches, lectures, sermons, addresses, and dissertations, pronounced, read or rendered in courts of justice, before administrative agencies, in deliberative assemblies and in meetings of public character. (Sec. 9, first par., P.D. No. 49)

176.2. The author of speeches, lectures, sermons, addresses, and dissertations mentioned in the preceding paragraphs shall have the exclusive right of making a collection of his works. (n) [Emphasis supplied]

WHEREAS, Section 184 of R.A. No. 8293 also provides:

SECTION 184. Limitations on Copyright. -

184.1. Notwithstanding the provisions of Chapter V, **the following acts shall not constitute infringement of copyright:**

(a)xxx

xxx

(k) Any use made of a work for the purpose of any judicial proceedings or for the giving of professional advice by a legal practitioner. [Emphasis supplied]

WHEREAS, there is a need to impose reasonable conditions on the commercialization of decisions of the Court since private entities are compiling decisions of the Court and selling the compiled decisions to the public and even to the Court itself;

NOW, THEREFORE, the Court hereby **ADOPTS** the following conditions on the commercial exploitation of decisions of the Supreme Court:

1. Authors of student textbooks and legal treatises may reproduce, in whole or in part, decisions of the Supreme Court without need of securing prior written approval from the Court. The Court hereby grants to authors of student textbooks and legal treatises approval to reproduce its decisions, subject to the following:
 - a. The author shall provide the Supreme Court Library two (2) free copies of the student textbook or legal treatise. On turn-over of the two copies to the Supreme Court Library, the Court shall issue a confirmation of approval to commercialize the decisions reproduced in the student textbook or legal treatise. This condition is separate from the deposit of two copies of the work of the copyright owner under Section 191 of RA No. 8293;
 - b. The Supreme Court Library shall have the right to digitize the student textbook or legal treatise **for exclusive use for research purposes** by Justices, Judges and court attorneys of the Judiciary **in connection with judicial proceedings**;
 - c. These conditions apply to any revision of the student textbook.
2. Any person may compile and reproduce decisions of the Supreme Court for commercial exploitation upon prior written approval of the Court, subject to the following:
 - a. The person compiling and selling the decisions shall provide the Supreme Court Library twenty (20) free copies of the compiled decisions in the format the compilation is sold to the public;
 - b. If the compilation is in printed copies, the Supreme Court Library shall have the right to digitize the compilation **for exclusive use for research purposes** by Justices, Judges and court attorneys of the Judiciary;
 - c. If the compilation is in digitized format, the Supreme Court Library shall have the right

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A.M. No. 04-7-06-SC (continued)

to make available the digitized compilation for exclusive use for research purposes by Justices, Judges and court attorneys of the Judiciary. The person compiling shall submit to the Supreme Court Library a text-file digitized copy of the compilation;

- d. The Court shall have the right to purchase copies of the compilation at cost, that is, by paying only the cost of reproducing the compilation, the cost of installation, and the cost of any accompanying software license. Such copies shall be used exclusively by Justices, Judges and court attorneys of the Judiciary and shall not be re-sold by the Court;
 - e. The compilation shall bear the notice "Compiled for sale to the public with the permission of the Supreme Court";
 - f. These conditions apply to any updating of the compilation.
3. Decisions of the Supreme Court are downloadable from its Website www.supremecourt.gov.ph in digitized format for direct commercial exploitation subject to these conditions.
 4. The conditions under paragraphs 1 and 2 are in lieu of royalty payments to the Court.

This Resolution shall take effect on 1 September 2004 following its publication in two (2) newspapers of general circulation not later than 31 July 2004.

20 July 2004.

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

A.M. No. 04-5-19-SC
(Continued from page 22)

to the same subject matter, shall be circularized to all courts. It shall take effect immediately.

Promulgated this 8th day of June 2004.

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

MEMORANDUM ORDER NO. 53-2004

AUTHORIZING THE COURT ADMINISTRATOR TO IMPLEMENT HIS PROPOSAL TO ALLOW EACH TRIAL COURT, IN RESPECT OF THE JUDICIARY DEVELOPMENT FUND (JDF), TO OPEN ITS OWN ACCOUNT WITH THE LAND BANK OF THE PHILIPPINES (LBP) SUBJECT TO CERTAIN CONDITIONS

WHEREAS, the Court often has difficulty in reconciling the JDF because of delay or unavailability of reports of collections, and is sometimes confused in identifying which of the bank deposits made for the Supreme Court account pertain to the JDF;

WHEREAS, to solve the problem and facilitate the preparation of bank reconciliation statements for the Court, the Court Administrator, in response to the recommendation of the Commission on Audit (COA) in its Annual Audit Report on the Supreme Court and the Lower Courts for CY 2003, that the two existing JDF accounts be closed or otherwise discontinued and that beginning August 2004 the courts for every province should open their own JDF accounts with the LBP, recommended, instead, that every court nationwide be allowed to open such account subject to the following conditions:

1. There must be an automatic monthly fund transfer from the trial courts' respective LBP accounts to a mother account under the exclusive control of the Supreme Court; and
2. All trial courts must be prohibited from making withdrawals from the said LBP accounts.

WHEREAS, in his letter of 28 July 2004 to the Court Administrator, a copy of which is attached as part hereof, Mr. Dominador T. Tersol, COA Director IV and head of Cluster II (Legislative/Judicial/Constitutional Commissions National Government Sector) of the COA, interposed no objection to the aforementioned recommendation of the Court Administrator.

WHEREAS, the recommendation of the Court Administrator is a measure that would not only effectively solve the problem of difficulty or delay in bank reconciliation of the JDF, but would also ensure immediate and correct segregation of the JDF fund from the Special Allowance for the Judiciary (SAJ) Fund under Republic Act No. 9227.

(Continued on next page)

OFFICE OF THE COURT ADMINISTRATOR**OCA CIRCULAR NO. 83-2004**

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

The Bureau of Corrections had brought to the attention of this Office their concern arising from documents received pertaining to detainees/prisoners, i.e., court orders/decisions/court processes/resolutions directing the release of inmates with the order stamped marked "Original Signed" above the typewritten name of the judge, and do not bear the dry seal of the court. The determination as to their veracity has caused undue delay to the would be action taken on the matter.

In order to forestall future delay/inconveniences/action relating to the detainees/prisoners, the following shall be observed:

1. Copies of decisions/resolutions directing the release of prisoners and subpoenas/summons requiring their appearance in court shall be in original or duplicate copy bearing the signature of the judge and the dry seal of the court. In the absence of the original or duplicate copy, a photocopy shall be duly certified by the Clerk of Court with the dry seal of the court;
2. Decisions/resolutions granting probation shall be accompanied by a release order duly signed by the judge bearing the dry seal of the court.

For strict compliance.

26 July 2004.

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

Memorandum Order No. 53- 2004

(Continued from page 24)

WHEREFORE, the recommendation of the Court Administrator is hereby APPROVED subject to the aforementioned conditions, and the Court Administrator is hereby AUTHORIZED to implement it and issue the appropriate guidelines for the purpose.

This Memorandum Order shall take effect upon its issuance.

Issued this 13th day of August 2004.

(Sgd.) HILARIO G. DAVIDE, JR.
Chief Justice
Chairman, First Division

OCA CIRCULAR NO. 89-2004

TO : THE REGIONAL TRIAL COURTS, SHARI'A DISTRICT COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS, AND SHARI'A CIRCUIT COURTS

SUBJECT : **REITERATION OF THE GUIDELINES IN THE ARCHIVING OF CASES**

It has come to the attention of the Office of the Court Administrator that some judges are unfamiliar with, or even unaware of, Administrative Circular No. 7-A-92, dated 21 June 1993, pertaining to the guidelines in the archiving of cases.

For the guidance of all concerned, the following guidelines established in the said Administrative Circular are hereby restated:

I. CRIMINAL CASES

- (a) A criminal case may be archived only if after the issuance of the warrant of arrest, the accused remains at large for six (6) months from the delivery of the warrant to the proper peace officer. An order archiving the case shall require the peace officer to explain why the accused was not apprehended. The court shall issue an alias warrant if the original warrant of arrest is returned by the peace officer together with the report.
- (b) The Court, *motu proprio* or upon motion of any party, may likewise archive a criminal case when proceedings therein are ordered suspended for an indefinite period because:
 - (1) The accused appears to be suffering from an unsound mental condition, which effectively renders him unable to fully understand the charge against him and to plead intelligently, or to undergo trial, and he has to be committed to a mental hospital;
 - (2) A valid prejudicial question in a civil action is invoked during the pendency of the criminal case unless the civil and the criminal cases are consolidated; and
 - (3) An interlocutory order or incident in the criminal case is elevated to, and is pending resolution/ decision for an indefinite period before a higher court which has issued a

(Continued on next page)

OCA CIRCULAR NO. 89-2004 (continued)

temporary restraining order or writ of preliminary injunction; and

- (4) When the accused has jumped bail before arraignment and cannot be arrested by the bondsman.

II. CIVIL CASES

In civil cases, the court may, *motu proprio* or upon motion, order that a civil case be archived only in the following instances:

- (a) When the parties are in the process of settlement, in which case the proceedings may be suspended and the case archived for a period not exceeding ninety (90) days. The case shall be included in the trial calendar on the day immediately following the lapse of the suspension period.
- (b) When an interlocutory order or incident in the civil case is elevated to, and is pending resolution/decision for an indefinite period before a higher court which has issued a temporary restraining order or writ of preliminary injunction.
- (c) When defendant, without fault or neglect of plaintiff, cannot be served with summons within six (6) months from issuance of original summons.

GENERAL PROVISIONS

- (a) Copies of the order archiving the case shall be furnished the parties.
- (b) A special docket shall be maintained to record the cases, both criminal and civil, that have been archived.
- (c) A periodic review of the archived cases shall be made by the Presiding Judge.
- (d) The Presiding Judge shall, *motu proprio* or upon motion of any party, order the reinstatement/revival of an archived case and its withdrawal from the archives whenever the same is ready for trial or further proceedings.
- (e) The Branch Clerk of Court shall submit to the Office of the Court Administrator a list of archived cases (stating the reason/s for archiving the case), which shall be attached to the Monthly Reports of Cases (SC Form No. 1-2004), submitted monthly by each court (A.C. No. 1-2001, dated January 2, 2001).

Judges are directed to comply with the provisions of this Circular and, accordingly, to archive cases which are covered by the guidelines herein stated. In doing so, there will be less number of pending cases in the active docket which is, needless to state, presently clogged.

Judges are likewise reminded that in accomplishing the Monthly Report of Cases (SC Form No. 1-2004), the archived cases are to be deducted from the total number of cases pending at the end of the month. However, they are not considered in the computation of the disposition rate of the judges.

Strict compliance with this Circular is hereby enjoined.

12 August 2004.

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



OCA CIRCULAR NO. 93-2004

TO: ALL JUDGES, CLERK OF COURT AND COURT PERSONNEL OF THE METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS, SHARI'A CIRCUIT COURTS

SUBJECT: **REMINDER ON THE STRICT OBSERVANCE OF ADMINISTRATIVE CIRCULAR NO. 3-98** (Re: Payment of Docket and Filing Fees in Extrajudicial Foreclosure); **SECTION 21 RULE 141 OF THE RULES OF COURT; SECTION 3 PRESIDENTIAL DECREE NO. 385; and ADMINISTRATIVE CIRCULAR NO. 07-99** (Re: Exercise of Utmost Caution, Prudence, and Judiciousness in Issuance of Temporary Restraining Orders and Writs of Preliminary Injunctions)

Pursuant to the Resolution of the Third Division of the Supreme Court dated 05 April 2004 and to give notice to the concern raised by the Government Service Insurance System (GSIS) to expedite extrajudicial foreclosure cases filed in court, we wish to remind all concerned to the pertinent provisions of Administrative Circular No. 3-98, to wit:

- "2. No written request/petition for extrajudicial foreclosure of mortgages, real or chattel, shall be acted upon by the Clerk of Court, as Ex-Officio Sheriff, without the corresponding filing fee having been paid and the receipt thereof attached to the request/petition as provided for in Sec. 7 (c), of Rule 141 of the Rules of Court.
3. No certificate of sale shall be issued in favor of the highest bidder until all fees provided for in the aforementioned sections and paragraph 3 of Section 9 (I) of Rule 141 of the Rules of Court shall have been paid. The sheriff shall attach to the records of the case a certified copy of the Official Receipt of the payment of the fees and shall note the O.R. number in the duplicate of the Certificate of Sale attached to the records of the case."

Moreover, to settle any queries as to the status of exemption from payment of docket and legal fees of government entities, Section 21, Rule 141 of the Rules of Court explicitly provides:

"Sec. 21. Government exempt. - The Republic of the Philippines, its agencies and instrumentalities, are exempt from paying the legal fees provided in this rule. Local governments and government-owned or controlled corporations with or without independent charters are not exempt from paying such fees."

Likewise, to attain the purpose of Presidential Decree No. 385, strict observance should likewise be given to Section 3 thereof:

"SECTION 3. Upon the application for foreclosure of the collateral of delinquent borrowers, whether judicially or extrajudicially, by any government financial institution, the court and/or officials concerned shall immediately act and give priority to the same and schedule the publication thereof within Five (5) days from receipt of the application, the auction sale to be held not later than ten (10) days from date of the last publication. The Certificate of Sale must be issued on the date of sale and the same must be registered by the Register of Deeds concerned not later than five (5) days after submission of the Certificate of Sale."

Finally, judges are hereby enjoined to exercise utmost caution, prudence, and judiciousness in issuance of Temporary Restraining Orders and Writs of Preliminary Injunctions mandated by Administrative Circular No. 07-99, taking into account that though the latter categorically prohibits courts from issuing restraining orders or preliminary injunctions in cases involving infrastructure and natural resources development projects of, and public utilities operated by the government, it may apply with equal force to foreclosure proceedings initiated by government financial institutions.

For the guidance of all concerned.

04 August 2004.

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



OCA CIRCULAR NO. I00-2004

TO: JUDGES AND CLERKS OF COURT OF THE REGIONAL TRIAL COURTS, SHARI'A DISTRICT COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS, AND SHARI'A CIRCUIT COURTS

SUBJECT: THE OPENING OF TIME DEPOSIT ACCOUNTS WITH THE LAND BANK OF THE PHILIPPINES FOR ALL FIDUCIARY FUND DEPOSITS BELOW ONE MILLION (P1,000,000.00) PESOS

The Land Bank of the Philippines (LBP) has allowed the Judiciary to place fiduciary fund deposits' below One Million (P 1,000,000.00) Pesos of first and second level courts, including Shari'a courts, in Time Deposit with the following features:

Minimum Deposit Requirement	1,000
Term	Minimum of 30 days
Interest Rate	Based on weekly posted rates
	Prevailing Rates:
	1,000.00-49,999.99 - 3.25% p.a.
	50,000.00-249,999.99 - 3.50% p.a.
	250,000.00-499,999.99 - 3.75% p.a.
	500,000.00-999,999.99 - 4.00% p.a.

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PHILJA Bulletin

PRIVATE OR UNAUTHORIZED USE TO AVOID
PAYMENT OF POSTAGE IS PENALIZED BY FINE OR
IMPRISONMENT OR BOTH.

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

2004 Upcoming PHILJA Events

<i>Date</i>	<i>Seminars / Activities</i>	<i>Venue</i>
October 13-15	Environmental Law Training of Trainers Seminar-Workshop	PHILJA Development Center Tagaytay City
October 14-16	Convention and Seminar of the PTJLI	Casablanca Hotel Legaspi City
October 20-22	Convention and Seminar of the PJA	Amigo Terraces Hotel Iloilo City
October 27-29	Seminar-Workshop on Anti-Money Laundering	Eugenio Lopez Center Antipolo City
October 27-29	1 st Regional Multi-Sectoral Seminar-Workshop on Juvenile and Domestic Relations Justice (Advanced Level)	CSB Hotel Malate, Manila
November 11-12	Symposium on the New Code of Judicial Conduct	Eugenio Lopez Center Antipolo City
November 17-19	2 nd Regional Multi-Sectoral Seminar-Workshop on Juvenile and Domestic Relations Justice (Advanced Level)	City Garden Suites Ermita, Manila
November 16-19	Convention and Seminar of the MCJAP	Fort Ilocandia Hotel Laoag City
Nov. 22- Dec. 3	8 th Pre-Judicature Program	General Santos City
November 24-26	Regional Judicial Career Enhancement Program (Level 3)-NCJR	Manila Pavilion Hotel Manila

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