



PHJLJA Bulletin



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From the Chancellor's Desk *Ben*

PHJLJA reached its 100th Seminar in the 4th Quarter of 1999. The honor for this centennial milestone went to the Seminar-Workshop for Executive Judges of Metropolitan Trial Courts and Municipal Trial Courts in Cities [PHJLJA 100 EJ M(2) '99], held on December 7 to 10, 1999, at PHJLJA, Tagaytay City.

PHJLJA also saw a series of firsts this quarter. Pursuant to Supreme Court Resolution "A.M. No. 99-7-02-SC PHJLJA," dated July 6, 1999, we have started educational programs for quasi-judicial agencies. A Bankruptcy and Adjudicative Skills Seminar Program (Phase 1) for Hearing Officers of the Securities and Exchange Commission (SEC) was held on December 1-3, 1999, at PHJLJA, Tagaytay City [PHJLJA 99 OJ (1) SEC (1) '99]. The U.S. ASD—Accelerating Growth Investment and Liberalization with Equity (AGILE) co-sponsored the program, with the cooperation of the Ateneo Center for Continuing Legal Education.

The parallel Seminars for Supreme Court, Court of Appeals, and Sandiganbayan Attorneys on December 13-14, 1999 were another first. These were in-house programs which had to be divided into two groups because of their big number, with approximately 100 participants in each group. Venue was in the Court of Appeals auditorium / Justices' Lounge. The Opening and Closing Ceremonies were plenary sessions, with the Chief Justice as the Inspirational Speaker on the last day. The seminar aimed, among others, to improve skills in case analysis and legal writing and to foster the adoption of a wholesome work ethic.

Not actually a first for a visiting lecturer, but a novel one just the same, was the forum on the specialized topic "White Collar Crimes" for Justices of the Court of Appeals and the Sandiganbayan, and selected Judges of the Regional Trial Courts, held last November 24, 1999, at the Court of Appeals Session Hall. Judge Tomson P. Ong, a Fulbright-Sycip Fellow, and a Judge of the Municipal Court of California, Long Beach Judicial District, was the guest lecturer. The topic found relevance in our local setting in light of some of the financial crises we have experienced. White-collar crimes do not strike only at economic empires. They victimize even the lowly earners who, through lives of frugality, are able to entrust to banking institutions savings that allow them and their children some modest measure of security. The lecture was also attended by the U.S. Ambassador, the U.S. Consul General, the Director of the U.S. Information Service, counselors and attaches of the U.S. Embassy, and officials of the Philippine-American Educational Foundation.

It has been a truly busy last quarter of the year, not to speak of the previous ones. We are grateful to all who have been one with us in our endeavor to empower our judges cope with new challenges to the justice system and in our vision of excellence in the Judiciary. To all, we extend our warm and cordial greetings for the holiday season and the coming millennium.

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Excellence in the Judiciary

Video Conferencing Seminar-Workshop

The Philippine Judicial Academy (PHILJA) in coordination with UP Institute of Judicial Administration (IJA), United Nation Children's Fund (UNICEF), Commission on Human Rights- Child Rights Center (CHR-CRC), Center for Child Advocacy (CCA), CD Technologies Asia, Inc., Ateneo Human Rights Center-Adhikain Para sa Karapatang Pambata (AHRC-AKAP), ABS-CBN Foundation and Philippine Information Agency held a multi-sectoral consultation workshop on "Video Conferencing in Trials of Cases Involving the Testimony of Children" from September 28 to 30, 1999 at the Development Academy of the Philippines, Tagaytay City. In attendance were: from the judiciary, Presiding Justice Jesus M. Elbinias of the Court of Appeals, twelve RTC judges, five Court Social Welfare Officers and Officials of the Philippine Judicial Academy; from members of the public bar, five prosecutors, three Public Attorney's Office lawyers; from the coordinating agencies, Chairperson Aurora N. Recina and Director Karen G. Dumpit (CHR-CRC), Atty. Sedfrey Candelaria (AHRC-AKAP), Atty. Emmanuel Caparas (CD Technologies Asia, Inc.); and officials/representatives from UNICEF, DSWD, Child Protection Unit-PGH, Occupational Health and Safety Center, DOLE and ABS-CBN Foundation.



The workshop focused on the task of critiquing and refining the proposed amendments to the Rules on Evidence that concerns the plight of child-witnesses who appear and testify in court.

The examination of existing international and domestic standards in regard to the testimony of child-witnesses during the trial process were discussed by Dr. Purificacion V. Quisumbing and Atty. Sedfrey Candelaria, respectively.

A filmed mock trial demonstrating the video-conferencing technology which was produced by the Philippine Judicial Academy was viewed in the DAP theatre as a prelude to the integration of the critique on the Relevant Rules of Court Provisions and Proposed Amendments on Video-Conferencing with the application of the technology.



To put into context the issues raised by the participants, the proposed amendments in the Rules of Court were further discussed and re-drafted for the Court's approval. The participants expressed the hope that this endeavor will be given priority in relation to the full implementation of the Family Court law.

Participants suggested that PHILJA undertake similar workshops that will involve participants from the different pillars of the justice system.

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CHANCELLOR'S REMARKS ON VIDEO-CONFERENCING

[Delivered by Justice Ameurfina Melencio Herrera at the "Workshop on Video-Conferencing in Trials of Cases Involving the Testimony of Children" held on September 28 to 30, 1999, at the Development Academy of the Philippines, Tagaytay City]

Today is the D-Day for the launching of a novel and significant project – videoconferencing in trials of cases involving the testimony of children, and the amendment to the Rules of Court to allow the use of this technology.

The seed of the idea was planted one-and-a-half years ago after the Supreme Court received a Report of the United Nations High Commissioner for Human Rights (UN-CHR) Needs Assessment Mission in 1997. The mission looked into the implementation of the Convention of the Rights of the Child in the Philippines to determine compatibility with the international standards set by the Convention. The Report concluded that there was "need to undertake a comprehensive reform of the system of administration of juvenile justice" and to make it more "child-friendly."

Reacting thereto, on February 18, 1998, PHILJA's Judicial Reforms Committee, specifically, its Research Group, submitted to the Supreme Court its Proposals for Reform in the Philippine Juvenile Justice System. One of those proposals addressed the needs of child advocacy within that system. Of special concern was to make the average courtroom less intimidating to child witness; to conceive of a method of eliciting the testimony of a girl-child in the trials of criminal cases that could spare her the ordeal of testifying in open court in the presence of her assailant, often a parent or close relative. Still fresh in our minds was the case of *People v. Ritter* (194 SCRA 690 [1991]) where the trial court had observed that the child-witness "was already shaking with fear after she identified the accused." We then proposed that videoconferencing could provide the solution and was worth exploring to assist the child witness to testify forthrightly and spontaneously.

To implement our proposals, and fully aware that the Philippines has treaty obligations arising from its accession to the Convention on the Rights of the Child, the Academy constituted a sub-committee for a more in-depth study of the feasibility of the idea. You all know the Project Director of the sub-committee, the proficient, and effective planner, Dr. Purificacion V. Quisumbing, our foremost exponent of human rights, and Chair of the PHILJA Department of International Law and Human Rights. It is to her credit and the members of her committee that we have found rhyme and reason to gather here for this presentation.

Procedurally, the Academy first addressed itself to the basic constitutional question of whether or not its proposals would be consistent with the confrontation and due process clauses enshrined in the Bill of Rights of the Philippine Constitution. The faculty members of the Academy were asked to submit position papers that were then discussed in conference.

Various foreign models providing for the testimony of children were studied, including a video-tape provided by Judge Sandra Oxner, a consultant of the World Bank on judicial education. A set of proposed rules was then drafted on the basis of the study. We owe the draft rules to our prodigious and prolific writer, Father Ranzilio C. Aquino, Chair of the PHILJA Department of Jurisprudence and Legal Philosophy.

The sub-committee met to consider the proposals, and decided that the application of the

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ONWARD WITH *STRENGTHENING THE LEGAL PROTECTION OF CHILDREN*

Celebrating its 10th year anniversary this year is the Convention on the Rights of the Child, the most widely accepted international human rights treaty which puts the best interests of the child as a primary consideration "[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies ..." (Article 3).

The Philippine Judicial Academy (PHILJA), to promote the practice of this treaty, addressed Proposals for Reform in the Philippine Juvenile Justice System. A major part of its efforts in implementing these proposals is the series of seminar-workshops it conducted on Strengthening the Legal Protection of Children (SLPC) which, in turn, resulted in a special project on the use of video-conferencing in trials of cases involving children, be they victims, offenders, or witnesses.

Using a multidisciplinary approach (legal, medical, and psycho-social) in the conduct of seminars adopted by PHILJA, the first SPLC seminar-workshop was held on May 14-15, 1998 at the Ridge Convention Center, Tagaytay City, in collaboration with the Ateneo Human Rights Center and Save the Children Fund - U.K. Its fifty-nine (59) participants comprised of a cross-section of judges, prosecutors, public defenders, physicians, psychologists, psychiatrists, police men and women, and social workers who were intensively involved in family and child cases.

The participants agreed in the observation that multiple interviews by officials who are neither child-friendly nor gender-sensitive cause confusion and unnecessary traumatic stress on the part of children-victims. Worse, this is aggravated further by the rigidity of Court procedures.

A plan was therefore made for a replication of this enlightening seminar-workshop in Visayas and Mindanao. In addition, a questionnaire was positively acted upon by the participants regarding the use of video-conferencing in courts or in cases involving children.

Six months later, the second SLPC seminar-workshop was held in Cebu City on November 5-6, 1998, followed by the Mindanao segment conducted in Davao City on April 22-23, 1999, with the additional help of UNICEF, The Asia Foundation, ILO-IPEC, and the Center for Child Advocacy.

The fourth SLPC seminar-workshop for judicial regions IV and V was held in Century Park Hotel, Manila on July 29-30, 1999, and the fifth one for regions I to III in Baguio City from October 7-8. The participants this time had almost doubled, numbering to ninety. Additional funding was received from the Advisory Board Foundation.

Participants in all five SLPC seminar-workshops agreed with the report of United Nations Committee on the Rights of the Child that the Philippine institutions "need to undertake a comprehensive reform of the system of administration of juvenile justice"; a need for officials and officers to be child-sensitive, for lawyers and prosecutors to adopt sensitive interrogation techniques, for judges to ensure efficient and effective case flow management to avoid delay of child cases in court, among others.



The special project on video-conferencing involved the production of a video-taped mock trial on the use of closed-circuit television to alleviate the plight of traumatized child witnesses in facing their assailants in court.

As Justice Ameurina A. Melencio Herrera remarked on the 5th SLPC seminar-workshop, "[T]here is no limit to what can be done to strengthen the legal protection of children . . . We owe it to our children . . . the future and hope of our country."

Protection of Child Rights In the Courts

[Presentation of Justice Ameurfina A. Melencio Herrera, retired Justice of the Supreme Court of the Philippines and Chancellor of the Philippine Judicial Academy, before the Fourth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, on September 9-10, 1999, at the Traders Hotel, Roxas Boulevard, Pasay City.]

Warm Greetings from the Philippine Judicial Academy, the educational arm of the Supreme Court of the Philippines. The Academy was organized on March 12, 1996 through Administrative Order No. 35-96 of the Court. It received a legislative mandate on February 26, 1998 by virtue of Republic Act No. 8557 passed by the Congress of the Philippines.

Thank you for this invitation to the Fourth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions which will discuss the "Role of National Institutions in the Protection and Promotion of Human Rights" and, particularly, the "Role of national human rights institutions in the protection and promotion of the human rights of children."

A Report of the United Nations High Commissioner for Human Rights "Needs Assessment Mission to the Philippines" in 1997, which looked into the implementation of the Convention of the Rights of the Child to determine compatibility with the international standards set by the Convention, stressed the "need to undertake a comprehensive reform of the system of administration of juvenile justice" in the Philippines. It also advocated a more child-friendly justice system.

Apropos thereto, on February 18, 1998, PHILJA's Judicial Reforms Committee, specifically, its Research Group, submitted to the Supreme Court its Proposals for Reform in the Philippine Judicial System. One of those proposals addressed the needs of child advocacy within the justice system. Of special concern was to conceive of a method of eliciting the testimony of the child that would not be trauma-inducing. We researched on the feasibility of the new technology of video-conferencing and its admissibility in court. A primary obstacle to overcome was the provision in the Philippine Constitution requiring that an accused must meet his witnesses face to face and, of course, the requirements of due process.

To this end, and fully aware that the Philippines has treaty obligations arising from its accession to the Convention on the Rights of the Child, the Academy constituted a sub-committee that studied the problem. The committee gave a favorable recommendation and proposed further amendments to our Rules on Evidence that would accommodate the special needs of minors who appear in court either as witnesses or even as the accused. The proposed rules would allow the video-conferencing of the testimony of a child witness to spare her the ordeal of having to face her assailant in open court, while keeping intact all the rights, both substantive and procedural, of the accused.

The physical set-up envisages a suitable room linked to the courtroom by closed circuit-television and other necessary electronic and communications facilities. Such equipment allows the Judge and the accused, as well as the public, unless excluded, to observe the child-witness and to communicate with counsel, should the latter be in the same room as the child, or with the court-appointed psychologist, if there is one. All dialogues during the trial are transmitted through microphones, video-cameras and TV monitors. In other words, the child witness is in a separate room with her mother or guardian, a social worker, a court psychologist, if any, the two lawyers examining her, while the Judge, the accused, and the public, unless excluded, are in the courtroom. They can see and hear one another, however, through all the equipment in place.

Additionally, consonant with the psychological finding that it is necessary to spare the child from repeated questioning on a traumatic experience, we will be proposing rules for the videotaping of a child's interview in the early stages of investigation, as well as for the adoption of rules on deposition. Similarly, there is a proposed rule that will allow psychologists and psychiatrists to pose questions to the child-witness because lawyers and judges may not always be familiar with the manner of questioning best suited to the child.

Thanks to the common concern and cooperation shown by different institutions, agencies and persons, led by the Philippine Commission on Human Rights headed by Hon. Aurora N. Recina, our capable Chairperson, PHILJA has just completed the filming of a video-taped presentation that will apply the proposed rules. It is a pilot project aimed at evolving a child-sensitive Philippine judicial system and the strengthening of the legal protection of children. It is also in anticipation of the full implementation of our Family Courts Act. It is an explicit thrust and not a generalized approach.

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ELECTION LAW

Election Protest; Photocopying of Ballots

While it may be true that there is no specific COMELEC rule governing the photocopying of ballots, it has become a practice allowed by the Commission itself in numerous election cases. Furthermore, photocopying the ballots is not entirely without legal basis as Rule 27 of the Rules of Court expressly allows it as a mode of discovery.

Just as the court may allow, for good cause shown, the reproduction of relevant evidence in the custody of any party, so may it allow the same with respect to evidence in its custody. Although the grant of such motion is admittedly discretionary on the part of the trial judge, nevertheless, it cannot be arbitrarily or unreasonably denied because to do so would bar access to relevant evidence that may be used by a party litigant and, hence, impair his fundamental right to due process. (*Romero, J., Roberto Alberto v. COMELEC, Judge Legasto, MeTC, Quezon City and Arnaldo Cando, GR 132242, July 27, 1999*)



CRIMINAL LAW

Constitutional provision abolishing the death penalty; its character and retroactive effect.

The provision of the 1987 Constitution abolishing the death penalty is penal in character since it deals with the penalty to be imposed for capital crimes. This penal provision may be given retroactive effect during three possible stages of a criminal prosecution: (a) when the crime has been committed and the prosecution began; (b) when sentence has been passed but the service has not begun; and (c) when the sentence is being carried out.

The abolition of the death penalty in 1987 retroactively affected and benefited accused-appellants. Article 22 of the Revised Penal Code provides that

“penal laws shall have a retroactive effect insofar as they favor the person guilty with a felony, who is not a habitual criminal although at the time of the publication of such laws, a final sentence has been pronounced and the convict is serving the same.” The reimposition of the death penalty will not affect them. The framers of the Constitution themselves state that the law to be passed by Congress reimposing the death penalty (RA 7659) can only have prospective application. (*Bernas, The 1987 Constitution of the Republic of the Philippines: A Commentary; Bernas, The Intent of the 1986 Constitution Writers.*) (*Melo, J., People v. Alfonso Patalin, Jr., Alex Mijague, and Nestor Pas, GR 125539, July 27, 1999*)



REMEDIAL LAW

Certiorari as a mode of appeal distinguished from Certiorari as a special civil action.

One of the basic distinctions between certiorari as a mode of appeal and an original special civil action for certiorari is that in appeal by certiorari, the appellate court acts in the exercise of its appellate jurisdiction and power of review, while on certiorari as an original action, the higher court exercises original jurisdiction under its power of control and supervision over the orders of the lower court. Moreover, the period for filing appeal is much shorter than for filing an original action for certiorari. Consequently, where the appealed judgment was rendered by the RTC in the exercise of its original jurisdiction, the appeal to the Court of Appeals may be taken by writ of error or ordinary appeal. Hence, the Court of Appeals committed no grave abuse of discretion in taking cognizance of the appeal. (*Quisumbing, J., Tensorex Industrial Corporation v. Court of Appeals and Mercantile Insurance Co., Inc., GR No. 117925, October 12, 1999*)



Decision Writing; Constitutional Requirements; Mandate of Section 2 of Rule 120 of the Rules of Court

The lower court judge in imposing the death penalty did not mention his basis for imposing the higher penalty which is a violation of the constitutional requirement, reiterated in the Rules of Court, that every decision must distinctly state the facts and the law on which it is based.

When the decision of the trial court does not state the specific factual bases for the conclusion of guilt beyond reasonable doubt reached therein but merely makes sweeping generalizations, the same does not strictly follow the standards set by the rules on Criminal Procedure.

The trial judge's failure to award civil indemnity in his judgment of conviction all the more confirms his nonchalant attitude to the mandate of Section 2 of rule 120 of the Rules of Court which states:

"If it is of conviction, the judgment shall state (a) the legal qualification of the offense constituted by the acts committed by the accused, and the aggravating or mitigating circumstances attending the commission thereof, if there are any; (b) the participation of the accused in the commission of the offense, whether as principal, accomplice or accessory after the fact; (c) the penalty imposed upon the accused; and (d) the civil liability or damages caused by the wrongful act to be recovered from the accused by the offended party if there is any, unless the enforcement of the civil liability by a separate action has been reserved or waived."

A strict compliance with the mandate of the said provision is imperative in the writing of every decision. Otherwise, the rule would simply become a tool for speculations (*Ynares- Santiago, J., People v. Rolando Cayago y Reyes, GR 128827, August 18, 1999*)

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

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

Constitutional Right to Counsel; Custodial Rights of a Person

The right to counsel is afforded by Section 12 (e), Article III of the 1987 Constitution only to persons under investigation for the commission of an offense.

Custodial rights of a person are not available wherever he volunteers statements without being asked. (*Ynares-Santiago, J., People v. Rolando Cayago y Reyes, GR 128827, August 18, 1999*)

Evidence

Circumstantial evidence; requisites to support conviction

Direct evidence of the commission of a crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt. Under the Rules of Court and pursuant to settled jurisprudence, conviction may be had even on circumstantial evidence provided three requisites concur:

- (a) there is more than one circumstance;
- (b) the facts from which the inferences are derived are proven; and
- (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

Simply put, for circumstantial evidence to be sufficient to support a conviction, all circumstances must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis except that of guilt. Facts and circumstances consistent with guilt and inconsistent of innocence, constitute evidence which, in weight and probative force, may surpass even direct evidence in its effect upon the court. (*Ynares-Santiago, J., People v. Edgar Lopez y Emoylan, GR 131151, August 25, 1999*)

Indemnity, Beneficiaries thereof

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

Co-ownership; Effect of sale of the whole property by a co-owner.

Even if a co-owner sells the whole property as his, sale will effect only his own share but not those of the other co-owner who did not consent to the sale. Under Article 493 of the Civil Code, the sale or other disposition affects only the seller's share pro-indiviso and the transferee gets only what corresponds to the grantor's share in the partition of the property owned in common. Since a co-owner is entitled to sell his undivided share, a sale of the entire property by one co-owner without the consent of the other co-owners is not null and void. However, only the rights of the co-owner/seller are transferred, thereby making the buyer a co-owner of the property. The proper action in a case like this is not for the nullification of the sale or for the recovery of possession of the property owned in common from the third person, but the division or partition of the entire property if it continued to remain in the possession of the co-owners who possessed and administered it. Such partition should result in segregating the portion belonging to the seller and its delivery to the buyer. (*Quisumbing, J.*, Tomas Claudio Memorial College, Inc. v. Court of Appeals, Hon. Laejandro Marquez, Crisanta De Castro, Efrina De Castro, Ireneo De Castro and Artemio De Castro, GR 124262, October 12, 1999)

Availability of Appeal not a bar to a resort to extraordinary remedies

Settled is the rule that availability of an appeal does not foreclose resort to the extraordinary remedies, such as certiorari and prohibition, where appeal is not adequate or equally beneficial, speedy and sufficient. (*Quisumbing, J.*, Tensorex Industrial Corporation v. Court of Appeals and Mercantile Insurance Co. Inc., GR No. 117925, October 12, 1999)

Professional Conduct and Responsibility of lawyers in the Government Service

Respondent's claim that he may not be held liable for the administrative offense of professional misconduct because he committed the acts complained of as a public prosecutor and not as a private lawyer is unavailing. The Code of Professional Responsibility provides that the canons also apply to lawyers in the government service in the discharge of their official tasks. (**Canon 6, CPR**) (*Romero, J.*, Atty. Penticostes v. Prosecutor Ibañez, A.C. CBD No. 167, March 9, 1999)

Cases of Rape; Rules in the Evaluation of the Evidence

In prosecutions for rape, the Supreme Court has been guided by the following considerations in the evaluation of the evidence: (a) an accusation for rape can be made with facility; it is difficult to prove it but more difficult for the person accused, though innocent to disprove it; (b) in view of the nature of the crime in which only two persons are involved, the testimony of the complainant must be scrutinized with extreme caution; (c) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. Conviction must rest on nothing less than a moral certainty of guilt. (*Mendoza, J.*, People v. Juan Mangasin y Lucanas, GR 130599 – 600, April 21, 1999)

Land Registration

Reconstitution of title, its nature and purpose; notice to occupant of the land covered by the title jurisdictional

Reconstitution of title is simply the reissuance of a new duplicate certificate of title, allegedly lost or destroyed. If a certificate of title has not been lost but is in fact in the possession of another person, then the reconstituted title is void and the court that rendered the decision had no jurisdiction. The sending of notice to the occupant of the land covered by the title sought to be reconstituted is mandatory and jurisdictional. If no notice of the date of hearing of a reconstitution case is served on the possessor or anyone else having interest in the property involved, the order of reconstitution is null and void. (*Panganiban, J.*, Jose Manuel Stilianopulos v. The City of Legaspi, GR No. 133913, October 12, 1993)

Judges – Mandatory Continuous Trial System

Judges should not disregard Administrative Circular No. 3-90 requiring all trial courts to adopt the mandatory continuous trial system in accordance with (1) Administrative Circular No. 4 to the effect that trial courts should, after arraignment, fix the specific dates needed to complete the presentation of evidence by the parties and conduct the trial without unnecessary postponements, and (2) Circular No. 1-89, which has established the guidelines to be observed by the trial courts in the conduct of such trials. (Resolution in A.M. 99-8-108- MCTC)

Contempt – Distinction between civil and criminal contempt

Civil contempt is the failure to do something ordered by a court to be done for the benefit of a party. A criminal contempt is any conduct directed against the authority or dignity of the court. Civil contempt proceedings are generally held to be remedial and civil in their nature; that is, they are proceedings for the enforcement of some duty, and essentially a remedy for coercing a person to do the thing required. If the contempt is initiated by the court or tribunal exercising the power to punish a given contempt, it is criminal in nature and the proceedings are to be conducted in accordance with the principles and rules applicable to criminal cases. The State is the real prosecutor.

The real character of the proceedings in contempt cases is to be determined by the relief sought or by the dominant purpose. The proceedings are to be regarded as criminal when the purpose is primarily punishment and civil when the purpose is primarily compensatory or remedial.

The courts and the other tribunals vested with the power of contempt must exercise the power to punish for contempt for purposes that are impersonal, because that power is intended as a safeguard not for the judges as persons but for the functions that they exercise. (*Pardo, J., Securities and Exchange Commission Chairman and Associate Commissioners v. Manuel D. Recto, Pelagio Ricalde and Cesar Manalaysay*, GR 129521, September 7, 1999)

Election Law

A certificate of votes is not sufficient to establish the true and genuine results of the election. A certificate of canvass issued on the basis of the election returns is required to proclaim the elected candidates.

It is settled that the disqualification or non-qualification of the winner in a vice mayoralty race does not justify the proclamation of the defeated candidate who obtained the second highest number of votes.

The vacancy due to the ineligibility of the winning candidate should be filled up in accordance with Section 44 of the Local Government Code of 1991. (*Gonzaga-Reyes, J., Kaiser B. Recabo, Jr. v. Commission on Elections and Francisco Reyes, Jr.*, GR 134293; June 21, 1999)

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

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

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

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

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

SUPREME COURT

A.M. No. 99-4-08-SC

Re: Recommendations of the Public Information Committee regarding (1) its specific functions and responsibilities and (2) program of activities of the Public Information Office.- The Court Resolved to APPROVE the recommendations of the Public Information Committee regarding (1) its specific functions and responsibilities and (2) program of activities of the Public Information Office, as follows:

- A. Functions and Responsibilities of the Committee
 1. Study and recommend policies and programs on the dissemination of news regarding decisions and activities of the Court and the judiciary, especially in matters of great national importance
 2. Exercise oversight authority over the Office of Public Information
 3. Conduct such other activities as may be essential to keep the public informed in respect of the Court's duties and obligations under the Constitution and applicable laws
- B. Program of Activities of the Public Information Office

MEDIA RELATIONS

1. Prepare and distribute, as often as possible, news bulletins about newsworthy events in the Supreme Court
2. Offer periodic workshops or seminars that are designed to inform members of the media about the work of the Court and its procedures
3. Prepare backgrounders and other forms of publication, when necessary
4. Maintain a healthy relationship with both the print and the broadcast media by encouraging mutual accessibility and credibility

THE BENCH AND THE BAR

1. Articulate through various media forms (print, broadcast and electronic) the Court's vision and mission statements expressed in the "Davide Watch"

2. Follow through on regional dialogues between the Chief Justice and judges of the lower courts and their personnel to discuss various problems and concerns
3. Assist the MISO in developing an information database that is useful both to the public and the bench and bar
4. Coordinate with various bar associations to inform them of Court activities

THE BUSINESS COMMUNITY AND THE NGO'S

1. Assist justices and court officials in their speaking engagements
2. Disseminate decisions affecting business and non-government organizations, and report to the Court their feedback
3. Coordinate with important employer, labor and other non-government associations

PUBLICATIONS

1. Inventory all current publications printed under the auspices of the Court and the judiciary
2. Publish abstracts of important publications that may better help in disseminating crucial facts about the work of the Court.

OTHERS

1. Establish an information system amongst court offices and the PIO to facilitate the public information campaign of the Court
2. Actively assist students, researchers and professors in accessing information about the Court, its history, and various cases
3. Assist the PHILJA and the UP Law Center (and similar academic bodies) in upgrading the judiciary and the legal profession in their training programs

Very truly yours,
 LUZVIMINDA D. PUNO
 Clerk of Court

By: (SGD). MA. LUISA D. VILLARAMA
 Assistant Clerk of Court

ADMINISTRATIVE CIRCULAR No. 10-99-A

To: ALL PERSONNEL OF THE TRIAL COURTS
 Subject: PRESCRIBED OFFICE UNIFORM FOR
 MALE EMPLOYEES

Clarification is made on the prescribed office uniform for male employees of the trial courts stipulated in Administrative Circular No. 10-99 of the Chief Justice dated 12 August 1999. The schedule therefor is as follows:

Mondays and Wednesdays- blue pants and light
 blue barong
 Tuesdays and Thursdays- khaki pants and light
 khaki barong

The sample of color/fabric which were earlier sent by the Financial Management Office, Office of the Court Administrator shall be observed.

08 September 1999.(SGD.) JOSUE N. BELLOSILLO
 Acting Chief Justice

ADMINISTRATIVE CIRCULAR No. 11-99

ATTENDANCE OF COURT OFFICIALS AND PERSONNEL IN TRAININGS, SEMINARS, WORKSHOPS AND CONFERENCES CONDUCTED IN THE PHILIPPINES

The Office of the Chief Justice has been receiving requests from the officials and personnel of several offices of the Judiciary to attend training, seminars, conferences, or workshops on various subjects or topics.

Henceforth, attendance by court officials and personnel in training, seminar, workshops, or conferences to be held within the Philippines may be authorized only if these are sponsored or conducted by the Supreme Court itself, the Philippine Judicial Academy (PHILJA), associations or organizations of court officials or employees in coordination with the PHILJA or the Institute of Judicial Administration (IJA), the Integrated Bar of the Philippines (IBP), the Civil Service Commission (CSC) or other agencies of the Government, relevant professional organizations, or non-governmental organizations duly accredited by the CSC.

Unless specially authorized, only those holding

permanent positions who have at least very satisfactory performance ratings during the latest rating period, and who have not attended a similar activity for the last two (2) years may be allowed to participate in such training, seminars, workshops or conferences.

In every case, the participants shall submit a report on their participation within five (5) days from the completion of the training, seminar, workshop, or conference, which shall be accompanied by a certification of successful completion or certificate of attendance by the sponsoring institution or organization. The report shall be submitted to the Office of the Chief Justice, copies furnished the Office of the Administrative Services of the Supreme Court for participants from the Supreme Court, the presiding Justice of the Court of Appeals and the Presiding Justice of the Sandiganbayan for participants from the Court of Appeals and the Sandiganbayan, respectively, and the Office of the Court Administrator for participants from the lower courts.

This Administrative Circular takes effect upon its promulgation and shall be disseminated by the Clerk of Court of the Supreme Court and the Court Administrator. Copies thereof shall be furnished the Presiding Justice of the Court of Appeals, the Presiding Justice of the Sandiganbayan, and Chairman of the Civil Service Commission.

Promulgated this 1st day of September 1999.
 (SGD.) HILARIO G. DAVIDE, JR.
 Chief Justice

ADMINISTRATIVE CIRCULAR No. 14-99

INVENTORY OF BOOKS OF LOWER COURTS
 AND GUIDELINES FOR THE ESTABLISHMENT
 OF LOWER COURT LIBRARIES AND DISTRIBUTION OF BOOKS

The following guidelines are adopted for the inventory of books heretofore released to the lower courts, the establishment of libraries, and the distribution of books to the lower courts:

I. INVENTORY OF BOOKS

To update and reconcile records of books in all lower courts, all judges and clerks of courts should submit to the Supreme Court Library, not later than 31 December 1999, an inventory of all books heretofore re-

ceived by their respective courts, indicating therein the titles and authors, if any, of such books. A copy of the inventory should be furnished the Office of the Chief Justice.

II. COURT LIBRARIES

Lower court libraries may be established upon the request made to the Chief Justice by the Executive Judges on condition that a space will be provided for such libraries.

The collection of court libraries shall consist of the following:

1. A set of Supreme Court Reports Annotated, and the Philippine Reports starting with volume 154;
2. Books on subjects within the coverage of the jurisdiction of lower courts;
3. Available reference books; and
4. Publications of the Supreme Court.

III. DISTRIBUTION OF BOOKS

1. For every ten (10) salas of the Regional Trial Courts – One (1) set of Supreme Court Reports Annotated (SCRA)
2. For all Regional Trial Courts with single salas – One (1) set each of Supreme Courts Reports Annotated (SCRA).
3. For all Regional Trial Courts which do not have a set of SCRA- One (1) set each of Philippine Reports starting with volume 154.
4. For all Metropolitan Trial Courts, Municipal Trial Courts, Municipal Trial Courts in Cities, Municipal Circuit Trial Courts and Shari'a Courts – One (1) set each of Philippine Reports starting with volume 154.
5. For the Jurisconsult in Islamic Law, in Marawi City, One (1) set of SCRA.
6. For individual branches of the lower courts – Supreme Court publications, annual SCRA Quick Index Digest and the latest selected codal publications such as: Civil Code, Revised Penal Code, Rules of Court, and Local Government Code.

The Supreme Court Library shall regularly update the allocation of books pursuant to the above guidelines. Notices with the corresponding Memorandum Receipts should be sent to the lower courts for the updating.

This Circular shall take effect immediately.

The Chief of the Supreme Court Library Services shall disseminate copies of this Circular to all Executive Judges and Clerks of Courts.

Promulgated this 30th day of September 1999
(SGD.) HILARIO G. DAVIDE, JR.
Chief Justice

ADMINISTRATIVE CIRCULAR NO. 17-99

ACCURATE REPORTING OF CASES SUBMITTED FOR DECISION/RESOLUTION

All judges are enjoined to exercise utmost care and diligence in the submission of their monthly reports of cases, especially those submitted or deemed submitted for decision or resolution.

In this regard, they should coordinate with their Clerks of Court to ensure the accuracy of the reports.

Failure to make faithful and accurate monthly report of the status of cases may be a ground for withholding of salaries and for appropriate disciplinary action.

This Administrative Circular shall take effect on 1 December 1999.

Promulgated this 8th day of November 1999.
(SGD.) HILARIO G. DAVIDE, JR.
Chief Justice

ADMINISTRATIVE CIRCULAR No. 18-99

CREATING TASK FORCES TO PREPARE A PERSONNEL MANUAL AND A FINANCIAL INTERNAL CONTROL MANUAL FOR THE SUPREME COURT AND THE LOWER COURTS

To ensure effective, efficient and expeditious official actions on personnel and financial matters, it is necessary to promulgate (1) Personnel Manual and (2) Manual for Financial Internal Control for the Supreme Court and the lower courts which shall rationalize and streamline the guidelines / procedures in such matters.

The Personnel Manual may contain chapters on the following:

1. Constitutional and statutory history and powers and functions of the Supreme Court and the lower courts

2. Personnel policies and procedures in recruitment, employment, and filling up of vacancy
3. Nature and status of appointments and their effectivity
4. Revocation of appointments
5. Selection and Promotions Board
6. Employee's personal records
7. Office attendance and overtime requests
8. Leaves
9. Office decorum
10. Administrative discipline
11. Training programs
12. Performance evaluation system
13. Rules on the adjustment of complaints and grievances
14. Official documents, transactions and communications and records
15. Use of equipment and facilities
16. Property accountability
17. Office control and security measures
18. Employees' benefits, privileges and services
19. Office travel
20. Employees' organization and activities, etc.

The Manual for Financial Internal Control may contain chapters on the following matters:

1. Cash

2. Property
3. Expenditures and disbursements
4. Internal audit unit
5. Budgeting systems
6. Internal reporting systems, etc.

For these purposes, the following Task forces are hereby created, which shall be responsible in the preparation of the Manuals.

TASK FORCE ON PERSONNEL MANUAL

xxx

TASK FORCE ON INTERNAL FINANCIAL CONTROL MANUAL

xxx

Each Chairman is authorized to designate a Secretary, Assistant Secretary and an aide who must be employees of any of the offices of the Supreme Court.

To expedite the preparation of the Manuals, the Task Force may use as guide the Personnel Manual and Manual for Financial Internal Control adopted by the COMELEC when the Chief Justice was its Chairman. Copies thereof shall be furnished the Task Force.

The Task Force shall submit the drafts of the Manuals on or before 29 February 2000.

15 November 1999.(SGD.) HILARIO G. DAVIDE, JR.
Chief Justice

(Continued from page 3 Video Conferencing ...)

rules, particularly the provision for videoconferencing of the testimony of a child witness, would be illustrated, acted out and recorded in a mock trial.

Consultations with media, judges, prosecutors, psychologists, social welfare officers and technology experts were made. Overnight, the sub-committee was transformed into story-line and script writers, producer, director, narrator, make-up artists, instant actors and actresses. The end-product of that combined, coordinated, and determined effort, which necessitated working till the wee-hours of the morning for the filming proper, we will see today in the form of video-recorded mock trial that will apply the proposed amendments to the relevant rules. It is presented to you for your inputs.

We will then formally submit the refined amendatory rules to the Supreme Court for its consideration and approval. Hopefully, the Court will find, as we have found that, as conceived and crafted, constitutionally established rights are respected, and two equally compelling interests protected: the rights of the accused and the rights of the child.

Whatsoever the imperfections, the filmed mock trial utilizing videoconferencing technology, is best viewed as a tool to stimulate discussion. It is a pilot project aimed at evolving a child-sensitive Philippine juvenile justice system, substantively and procedurally. It is in anticipation of the full implementation of our Family Courts Act. It is an explicit thrust and not a generalized approach. It is imaginative, creative and constructive.

The seed of an idea has germinated. We invite all to adopt plans of action that will contribute to the creation of culture of children's rights, and the elevation of the handling of child cases to both a science and an art.

OFFICE OF THE COURT ADMINISTRATOR

ADMINISTRATIVE CIRCULAR NO. 65-99

TO ALL PROCESS SERVERS 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: MOTORCYCLE LOANS FOR PROCESS SERVERS

For the information and guidance of all concerned, quoted hereunder is the Resolution of the Court En Banc dated October 19, 1999 in Administrative Matter No. 99-8-12-SC Re: Motorcycle Loans for Process Servers.

"A.M. No. 99-8-12-SC Re: Motorcycle Loans for Process Servers.

In a letter dated May 5, 1999, the Process Server Association of the Philippines (PROSAPHIL) thru its President requested the Chief Justice for the procurement of motorcycles for the use of process servers in the interest of speedy service of summons and other court processes. The request was forwarded to the Court Administrator and the Financial Management Office for recommendation and report.

The Financial Management Office filed Memorandum recommending approval of the request and stated that an estimated amount of seventy million two hundred thousand pesos (P70, 200,000.00) will be necessary to fund the program. The FMO suggested that the grant of the loan should be made in batches and that the succeeding batch of loans shall not be approved until after the first batch shall have paid their loans in order not to deplete the resources of the JDF.

The Court Administrator filed Memorandum on September 30, 1999 recommending the approval of the request and stating that the purchase of the said motorcycles under the proposed Motorcycle Acquisition Program (MAP) may be deemed part of the welfare and personnel development plan mandated by Section 31, Chapter 5, Subtitle A, pertaining to the Civil Service Commission of Title I Book V of the 1987 Administrative Code. Moreover, the use of the funds from the Judiciary Development Fund to finance personnel welfare program has been previously allowed by the Court in a Resolution dated August 18, 1988 in Administrative Matter No. 98-8-01-SC Re: Creation and Operation of the Supreme Court Health and Welfare Plan. The Court Administrator recommended the following guidelines for the implementation of the Motorcycle Acquisition Program (MAP) as follows:

(3) Recommendation:

We recommend the establishment of the Motorcycle Acquisition Program (MAP) for the Process Servers of the lower courts and the Office Court Administrator recommended the following:

- a. The Office of the Court Administrator should be tasked to implement the Program;
- b. The Court Administrator should be authorized to approve the applications under the said Program;
- c. The Court Administrator should issue a circular to inform all Process Servers interested about the Motorcycle Acquisition Program and the qualifications, terms and conditions; and
- d. The Court Administrator should assign the appropriate personnel in the Office of the Court Administrator to assist in the implementation and administration of the Program.

And proposed the following qualifications, terms and conditions for the availment of motorcycle loans by process servers:

- (1) The employee must be a holder of a permanent item in the Judiciary;
- (2) The employee must be appointed to a Process Server position;
- (3) The employee must have rendered at least three (3) years of continuous service in the Judiciary;
- (4) The employee must be fifty-nine (59) years or less as of the date of the application for the motorcycle;
- (5) The employee must have no pending administrative or criminal case as of the date of the application for the motorcycle loan;
- (6) The employee must have a minimum total of thirty (30) days of earned vacation and/or sick leave credits as of the date of the application for the motorcycle loan and 50% of such minimum total must always be maintained and may be used only by the employee concerned for valid and meritorious reasons as determined by the Court Administrator.
- (7) Only the cost of the motorcycle shall be advanced from the Judiciary Development Fund. The employee shall shoulder the cost of forwarding or freightage, if any; registration charges, insurance premiums as well as other incidental expenses. The employee shall also be responsible for the costs of maintenance and repair of the motorcycle.
- (8) The cost of the motorcycle shall be amortized over a period of three (3) years. For this reason, the employee must render service obligation in the Judiciary for three (3) years immediately after receipt of the motorcycle during which period the installments shall be deducted monthly from his salary. All payments shall accrue in favor of the JDF.

Should the employee fail to render the required three-year service obligation through his own fault, negligence, unsatisfactory or poor performance or other causes within his control resulting in the non-payment of the full cost of the motorcycle, or should the employee resign, transfer

to an agency or office under another branch of Government, voluntarily retire, or be separated/removed from the service, the entire unpaid balance shall become due and payable.

(9) The deductions from the salary of the employee must not reduce his monthly take home pay to an amount lower than P2, 000.00 after deducting all other statutory deductions (in accordance with the provisions of Section 36, General Provisions of the General Appropriations Act for 1999).

(10) The PROSAPHIL shall not in any manner collect or charge fees of any nature (processing, etc.) from Process Servers applying for a motorcycle under the Motorcycle Acquisition Program.

This Court hereby APPROVES the request of PROSAPHIL for the adoption of the Motorcycle Acquisition Program, as recommended by the FMO and OCAD, with the following additional terms and conditions for the availment of motorcycle loans;

1. The applicant is a licensed motorcycle driver;
2. A co-maker/guarantor possessing the same qualifications required under the terms and conditions nos. 1,3,4,5 and 6 and with a salary grade equal to or higher than that of the applicant should be required to guarantee payment of the loan."

October 28, 1999 (SGD.) ALFREDOL BENIPAYO

Court Administrator

(Continued from page 5 *Protection...*)

In the latter part of this month, we will be holding a Consultation- Workshop, with the kind assistance principally of UNICEF and other partners, so that judges, court workers, law enforcers, prosecutors, non-government agencies, in other words, a multi-disciplinary composition, may be introduced to those rules and may discuss and comment on them. The refined rules will then be submitted to our Supreme Court for approval.

This novel approach to children's testimony in courts in the Philippines is, indeed, a challenge in the area of implementation of the Convention on the Rights of the Child, and we are exerting all effort to meet that challenge.

The Academy has also taken the stand that such concerns as gender sensitivity and strengthening the legal protection for children are human rights concerns, and it is as such that the Academy has addressed those issues.

On the broader spectrum, allow me to mention that PHILJA's academic programs are administered by curricular departments, in accordance with the areas of study and concern that constitute the Academy's courses. One of these is the Department on International Law and Human Rights presently chaired by Dr. Purificacion V. Quisumbing, our foremost exponent of human rights. She is a member of the Philippine Bar and a doctorate degree holder in public law. She was Director of the United Nations Human Rights Center at New York before she joined the Academy. Because of this department, programs of PHILJA, as a matter of academic policy, address human rights issues and concerns. Judges and court officers, therefore, are apprised not only of Philippine laws guaranteeing human rights and providing redress, but are also introduced to international covenants and documents to which the Philippines is a party.

So much so, that in almost all courses offered by the Academy to judges, one session, at least, is devoted to human rights and social context issues themes. This *ex profeso* treatment of human rights has not only instilled in participants the importance of the topic. It has also given them the opportunity to establish the connection between the international commitment of the Republic to human rights as well as its constitutional policy and the day-to-day administration of justice.

In the formulation of our academic courses, the Academy is also privileged to have in its Faculty Fr. Ranhilio C. Aquino, Head of our Academic Office and Chair of the Department of Jurisprudence and Legal Philosophy. He holds a doctorate in jurisprudence and another doctorate in philosophy. He sees to it that in all our academic offerings, the philosophy and the objectives of the Academy are adhered to religiously.

Through this forum, and with concerted effort, we are hopeful that we can look forward to the creation of a culture of children's rights, and the elevation of the handling of child cases to both a science and an art.

Concluding, I would like to state that PHILJA is committed to human rights in the sense that it is committed to the Rule of Law. Its offices are constituted as to allow for particular attention to human rights. Its courses are so structured as to give human rights the emphasis they deserve. In short, it is institutionally committed to the understanding, enhancement and enforcement of human rights as children's rights, and children's rights as human rights.

PHILJA Bulletin

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3rd Floor of the Supreme Court Building
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PRESIDING JUDGE

**RESEARCH AND LINKAGES OFFICE
PHILIPPINE JUDICIAL ACADEMY
SUPREME COURT**

1999 Upcoming PHILJA Events

<i>Date</i>	<i>Seminars</i>	<i>Venue</i>
November 18 to 19	3 rd National Convention PROSAPHIL	General Santos City
November 24	Forum on White Collar Crimes	Court of Appeals
December 1 to 3	SEC – Seminar	Tagaytay City
December 7 to 10	Seminar Workshop for Executive Judges MeTC; MTCC	Tagaytay City
December 13 to 14	In-House Seminar-Workshop for SC and CA Attorneys	SC Session Hall

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