



PHILJA Bulletin



January to March 2000

Volume II, Issue 5

From the Chancellor's Desk *Lin*

The PHILJA Bulletin has proven its staying power. It came out with its quarterly issues in 1999 as regularly as possible, handicapped only by printing priorities beyond its control. We owe this performance to the resoluteness of our Research and Publications Office.

Indeed, the Academic Office, headed by our outstanding legal scholar, Fr. Rankilio C. Aquino, and the Research and Publications Office, headed by our foremost human rights advocate, Dr. Purificacion V. Quisumbing, have mapped out new directions and given the desired impetus to PHILJA'S objectives and thrusts as an academic institution. With their innovative and coordinated efforts, the splendid support and cooperation of our eminent Professorial Lecturers, and the industry of our well-motivated PHILJA team, all augurs well as we embark on Year 2000 and confront all its challenges.

The Plenary Meeting of the PHILJA Corps of Professors, held at the Academy in Tagaytay City last February 4, was a historic activity, keynoted by our exemplary leader and hands-on Chief Justice Hilario G. Davide, Jr., who spoke of the Corps of Professors as the "substantive body, the soul, the anima" of the Academy. He stressed the significance of the Pre-Judicature Program that PHILJA will be embarking on as "a power paraphernalia which must be equal to the obvious responsibility the Academy is to bear." Aimed at the preparation of syllabi for curricular offerings, legal luminaries in their respective fields, from Courts of all levels, the academe and practicing lawyers graced the plenary sessions. In the words of Justice Jose C. Vitug, Chair of the Supreme Court Legal Education Committee, who graciously gave the Inspirational Message, PHILJA can boast of an assembly of qualified educators, all esteemed experts, who comprise its Corps of Professors.

The same occasion also saw the launching of the PHILJA Judicial Journal, as mandated by Administrative Order NO. 35-96 of the Supreme Court and Republic Act NO. 8557. This Journal will be a quarterly publication of scholarly lectures given during PHILJA seminars for the guidance of Bench, Bar, and students of law. It is a "testament to the PHILJA commitment to advance excellence in the Judiciary," in the words of the Chief Justice. (Continued on page 2)

Excellence
in
the
Judiciary

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PHILJA JUDICIAL JOURNAL LAUNCHED

On February 4, 2000, the maiden issue of the Judicial Journal of the Philippine Judicial Academy was launched at the Ridge Convention Center, Tagaytay City, during the Plenary Meeting of the PHILJA Corps of Professors. The first fifty issues of the Journal were autographed by Chief Justice Hilario G. Davide, Jr. who commended the Journal in his Keynote Address as "a testament to PHILJA's commitment to advance excellence in the Judiciary."

Mandated by PHILJA's charter, RA No. 8557, the Journal contains the lectures given at the Third Appellate Justices Conference held on January 28-30, 1999, with the theme of *Enhancing Judicial Perspectives in the Appellate Level*.

The Judicial Journal's contents include an *Update on Labor Law and Jurisprudence* by Justice Leonardo A. Quisumbing, the recent *Developments in Family Law* by Justice Ricardo C. Puno, *Significant Features of and Jurisprudence in Intellectual Property Law* by Professor Ignacio S. Sapalo, and *On Further Revising the Revised Internal Rules of the Court of Appeals* by Justice Vicente V. Mendoza.

Issues of the PHILJA Judicial Journal for the millennium will now come out quarterly to "serve not only as a compilation of lectures," as envisioned by Dr. Purificacion V. Quisumbing, the Journal's Editor-in-Chief, "but also as a lively forum of ideas and opinions that reflects a dynamic justice system, always relevant and responsive to society's changing needs and challenges as well as to the opportunities for improving the Court as an institution in the light of scientific developments and technological advances."



Chief Justice Hilario G. Davide, Jr., PHILJA Chancellor Ameurfina A. Melencio Herrera, and Dr. Purificacion V. Quisumbing during the launching of the PHILJA Judicial Journal at the First Plenary Meeting of the Corps of Professors.

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

This is not to speak of the traditional programs of the Academy like the Orientation and Immersion Programs for newly-appointed Judges, and the Judicial Career Enhancement Programs for experienced Judges, among others. Training programs for Judges of designated Family Courts are also underway.

It promises to be an exciting and challenging new millennium, with fresh dimensions and expanding horizons, thanks to the indispensable support of all, without exception, for which PHILJA is truly fortunate and extremely grateful.

CORPS OF PROFESSORS FIRST PLENARY MEETING

Forty-one experts in various areas of law gathered for the first Plenary Meeting of the PHILJA Corps of Professors held at the Ridge Convention Center in Tagaytay City on February 4-5, 2000. Noting this, the Honorable Chief Justice Hilario G. Davide, Jr. said in his keynote address:

"We are yet in the frontier of Philippine judicial education . . . On it now are men and women who are masters in law and legal education – each one of you, the well chosen members of the PHILJA Corps of Professors who are among the best from the Judiciary, the academe and the legal practitioners." Participants by Department were:

Constitutional Law

Head: Dean Pacifico A. Agabin
Members: Justice Isagani A. Cruz
Rev. Fr. Joaquin G. Bernas
Professor Carmelo V. Sison
Professor Marvic F. Leonen

Civil Law

Head: Justice Ricardo C. Puno
Members: Dean Eduardo D. De Los Angeles
Judge Ed Vincent S. Albano
Professor Ruben F. Balane

Criminal Law

Head: Justice Romeo J. Callejo, Sr.
Members: Justice Bernardo Fernandez
Justice Rodolfo G. Palattao
Justice Edilberto G. Sandoval

Remedial Law

Head: Justice Oscar M. Herrera, Sr.
Members: Justice Jose Y. Feria
Justice Ricardo J. Francisco
Justice Ricardo P. Galvez
Justice Nicolas P. Lapeña, Jr.

Commercial Law

Head: Professor Roman F. Mabanta, Jr.
Members: Judge Sixto C. Marella, Jr.
Atty. Cesar N. Villanueva
Atty. Hector A. Martinez
Atty. Jose Claro S. Tesoro

International Law and Human Rights

Head: Dr. Purificacion V. Quisumbing
Members: Justice Jorge R. Coquia
Justice Delilah V. Magtolis
Dr. Beujamin B. Domingo
Atty. Antonio A. Oposa, Jr.
Professor Ma. Lourdes A. Sereno

Jurisprudence and Legal Philosophy

Head: Fr. Ranhilio C. Aquino
Members: Justice Camilo D. Quiazon
Atty. Pedro Perez, Jr.
Professor Monserrat G. Babaran.

Ethics and Judicial Conduct

Head: Justice Hilarion L. Aquino
Members: Justice Wenceslao L. Aguir, Jr.
Justice Hector A. Hofileña
Atty. Jose Mario C. Bunag

Special Areas of Concern

Head: ACA Antonio H. Dujua
Members: Professor Sedfrey M. Candelaria
Atty. Manuel M. Goyena

Court Management

Head: Justice Alfredo L. Benipayo
Members: Justice Romulo S. Quimbo
DCA Bernardo T. Ponferrada
Judge Jaime N. Salazar

Legal Method and Research

Head: Professor Myrna S. Feliciano
Members: DCA Zenaida N. Elepaño
Dean Merlin M. Magallona

Court Technology

Head: Atty. Ivan John E. Uy
Members: Atty. Emmanuel L. Caparas
Congressman Leandro B. Verceles, Jr.

(Continued on page 9)

Chief Justice Hilario G. Davide, Jr. and Justice Ameurfina A. Melencio Herrera pose with the Corps of Professors and the PHILJA Staff



The PHILJA Corps of Professors and the Pursuit of Excellence

Keynote Address delivered by Chief Justice Hilario G. Davide, Jr., at the Plenary Meeting for the PHILJA Corps of Professors held on 4 February 2000, Philippine Judicial Academy, Tagaytay City

Madame Justice and Chancellor Ameurfina A. Melencio Herrera, the distinguished Department Heads of PHILJA, members of the Corps of Professors, my friends:

On November 23, 1998, on the eve of the retirement of Chief Justice Andres R. Narvasa, we laid the cornerstone of the proposed building of the Academy at this precious Tagaytay site. This we did however vast the improvements may have been done by the Court on the convention center that came into its hands. The dream was greater than that - a building modern and big enough to house the vision of the Academy. Thus did we take care of the infrastructural body of the Academy. Today, we gather the substantive body of the Academy - the Corps of Professors for its first plenary meeting. The professors gather to attend to the soul, the anima, of the Academy - the course of study of those who will seek admission to and will become members of the Philippine Judiciary. Today, we lay the more enduring cornerstone - as it is expected to be a living foundation that, while deeply planted in the fundamentals, can grow in time with and on time for all changes and circumstances. I must then commend our tireless Chancellor for this historic activity and thank her and all of you for the honor of having been asked to keynote the event. And as I do as you please, let me repeat the pledge I made during the opening ceremonies of the Third Appellate Justices Conference in January last year. During my watch of the Supreme Court, the Academy, in this instance in the planning and more so in the execution of plans for its curriculum, shall receive boundless support and assistance as the Court's implementing arm and the nation's watchdog in the pursuit of excellence in the Judiciary. The pursuit of excellence is one of the core values I underscored in my policy statement embodied in the Davide Watch. I thus urge you to make that your theme and headline for the present and future planning activities - "In Pursuit of Excellence" in and for the Judiciary.

I see that while yet unexpressed, the theme has in fact been in practice in the Academy. It has well prepared for the purposes of this plenary meeting.

On the programs that at the time of its establishment were inherited from the Office of the Court Administrator, the Academy had made refinements and adjustments as dictated by the experience it had in holding the programs in coordination with the Institute of Judicial Administration of the University of the Philippines. The record shows that the Academy has so far

from 1996 conducted thirteen orientation seminars for newly-appointed judges and eight Judicial Career Development Programs. It has developed and held programs for executive judges for eight times; for appellate judges for four times; for court personnel for twenty-six times; for TQM for trial judges for eleven times; trial court performance standards twice; special focus seminars for twenty-eight times. That is an impressive record that started with learning, which led to discerning and then creating. Surely, there is now a wealth of information and abundance of experience on which this assembly can work; from which it glean and wean the wisdom that will guide the Academy in the fulfillment of its now legislated mandate, which is, "to provide and implement a curriculum for judicial education" of justices, judges, court personnel, lawyers and aspirants to judicial posts "designed to upgrade their legal knowledge, moral fitness, probity, efficiency, and capability." The Academy has, rightly indeed, constituted this mandated as its philosophy for being.

Worthy of note among your work papers is the draft pre-judicature curriculum. Needless to state, you are called to be very careful about its shape and substance. The contents, the subjects, the manner of instruction, the predictable tutorship results must each and in their entirety be worthy of the great and heavy legislative command that "only participants who have completed the programs prescribed by the Academy and have satisfactorily complied with all the requirements incident thereto may be appointed or promoted to any position or vacancy in the Judiciary." The document that you will draft and the implementation of its details will be the primal process in the system of appointment to the Bench. The Academy with this document will touch the constitutional recommendatory authority of the Judicial and Bar Council and, just as importantly, the presidential prerogative of appointment. The pre-judicature curriculum, a power paraphernalia, must be equal to the obvious responsibility the Academy is made to bear.

I am glad that the Academy has realized this as indicated by the stress in its philosophy on judicial attitudes. Values and value systems are integral parts of the projected pre-judicature curriculum as well as of the existing and yet to be refined curricula on orientation of newly-appointed judges, on judicial career development program and seminar for executive judges. As you and I know, integrity is even a constitutional requirement for judgeship. Sadly though the breach of

the ethical standards continue in intolerable frequency. And sadder yet, the smear on the culprit stains as badly the institution. It may thus be a good idea to consider the incorporation into the design of the curriculum on values and attitudes the piety of a religious rite. After all, judgeship is often likened, not inaccurately I may say, to priesthood. I have called the Courts temples of justice. As I said in the *Daivde Watch*, it is essential that the members of the Judiciary and the members of the legal profession, as officers of the court, be of utmost competence and unassailable integrity.

May I mention too that while the search for the best instructional structures should look at patterns of other jurisdictions more experienced than us in judicial education, we must remain planted on Filipino culture, tradition and legal and judicial history. The Filipino judge should be the permanent focus of attention. The concept that we borrow, if we must, should be adaptable to and workable under local conditions. The readiness to reach out to distant sources must be matched by the will to harmonize the gathered ideas with the Filipino spirit and intellect. Practicality should be the guideline. This brings me to one other suggestion that you might consider. In the planning sessions, in the researches that you will do in libraries as well as in the field, in the holding of programs, in the interaction with the student judges, there must be a constant search for and determination of the more common facts and occurrences that give rise to legal conflicts and correspondingly, of the substantive and procedural law that apply to the current and recurrent legal problems. These will naturally most occupy the judge and he must be assisted in developing expertise in their resolution. Such assistance is as significant as exposure to and information on new, and as such less readily understandable, developments in law and legal science. As always, the delicate balance in curriculum load must be struck.

We are yet in the frontier of Philippine judicial education. The initial clearings have however been encouragingly successful. For that all must be thankful to our Chancellor Ameurfina A. Melencio Herrera, Vice-Chancellor Justice Antonio M. Martinez and his predecessors, the now departed Justice Irene Cortes and Justice Nathanael Grospe; the working staff of the Academy and, of course, the UP Institute of Judicial Administration. The trail is clear and well directed. On it now are men and women who are masters in law and legal education - each one of you, the well chosen members of the PHILJA Corps of Professors who are among the best from the Judiciary, the academe, and legal practitioners. I know that for you, the theme, pursuit of excellence, is but a way of life. You will animate PHILJA and the Judiciary with that way of life. Yes, listen to Jesus Christ speaking through Matthew: Be the salt of the earth. Be the light of the world. Your light must shine before men - meaning, the Judges and court personnel who will be trained by PHILJA and the public at large who will be served by them - so that they may see goodness in your acts and give praise to the Heavenly Father. Remember, too, what Jesus said through Luke: the harvest is rich, but the workers are few.

Finally, today PHILJA launches the PHILJA Judicial Journal. It is a testament to its commitment to advance excellence in the Judiciary. Its editorial focus makes it entirely different from all others. Chancellor Herrera states it explicitly in the Foreword: "to provide a forum for both fact and opinion related to the assiduous study of the law, the relentless pursuit of justice, the constant search for the attribute of excellence in Judges, and the enhancement of a culture of professionalism in the Bench." I congratulate PHILJA for the publication of the Journal.

May the Teacher above guide and bless us all. Good day.



Chief Justice Hilario G. Davide Jr., Justice Ameurfina A. Melencio Herrera, and Dr. Purificacion V. Quisumbing during the First Plenary Meeting of the Corps of Professors, Tagaytay City

CIVIL LAW

Torts And Damages; Extent of Liability of Employer for Acts or Omission of His Employees.

The following are principles in American Jurisprudence on the employer's liability for the injuries inflicted by the negligence of an employee in the use of an employer's motor vehicle which are applicable in our jurisdiction albeit based on the doctrine of *respondeat superior*, not on the principle of *bonus pater familias* as in ours:

I. Operation of employer's motor vehicle in going to or from meals.

It has been held that an employee who uses his employer's vehicle in going from his work to a place where he intends to eat or in returning to work from a meal is not ordinarily acting within the scope of his employment in the absence of evidence of some special business benefit to the employer. Evidence that by using the employer's vehicle to go to and from meals, an employee is enabled to reduce his time-off and so devote more time to the performance of his duties supports the finding that an employee is acting within the scope of his employment while so driving the vehicle.

II. Operation of employer's vehicle in going to or from work.

In the same vein, traveling to and from the place of work is ordinarily a personal problem or concern of the employee, and not a part of his services to his employer. Hence, in the absence of some special benefit to the employer other than the mere performance of the services available at the place where he is needed, the employee is not acting within the scope of his employment even though he uses his employer's motor vehicle.

The employer may, however, be liable where he derives some special benefit from having the employee drive home in the employer's vehicle as when the employer benefits from having the employee at work earlier and, presumably, spending more time at his actual duties. Where the employee's duties require him to circulate in a general area with no fixed place or hours of work, or to go to and from his home to various outside places of work, and his employer furnishes him with a vehicle to use in his work, the courts have frequently applied what has been called the "special errand" or "roving commission" rule, under which it can be found that the employee continues in the service of his employer until he actually

reaches home. However, even if the employee be deemed to be acting within the scope of his employment in going to or from work in his employer's vehicle, the employer is not liable for his negligence where at the time of the accident, the employee has left the direct route to his work or back home and is pursuing a personal errand of his own.

III. Use of employer's vehicle outside regular working hours.

An employer who loans his motor vehicle to an employee for the latter's personal use outside of regular working hours is generally not liable for the employee's negligent operation of the vehicle during the period of permissive use, even where the employer contemplates that a regularly assigned motor vehicle will be used by the employee for personal as well as business purposes and there is some incidental benefit to the employer. Even where the employee's personal purpose in using the vehicle has been accomplished and he has started the return trip to his house where the vehicle is normally kept, it has been held that he has not resumed his employment, and the employer is not liable for the employee's negligent operation of the vehicle during the return trip. (*Daivide, Jr., C.J., Castilex Industrial Corporation v. Vicente Vasquez, Jr. and Luisa So Vasquez, and Cebu Doctors' Hospital, Inc.*, GR 132266, December 21, 1999)



PROCEDURAL LAW

Appeal; splitting of appeals of a single decision.

An appeal of a single decision cannot be split between two courts. The splitting of appeals is not conducive to the orderly administration of justice and invites possible conflict of dispositions between the reviewing courts. Specifically, the Court of Appeals has no jurisdiction to review an appeal of a judgment imposing an indeterminate sentence, if the same ruling also imposes reclusion perpetua, life imprisonment or death for crimes arising out of the same facts. In other words, the Supreme Court has exclusive jurisdiction over appeals of criminal cases in which the penalty imposed below is reclusion perpetua, life imprisonment or death, even if the same decision orders, in addition, a lesser penalty or penalties for crimes arising out of the same occurrence and facts. (*Panganiban, J., Lito Limpangog and Jerry Limpangog v. Court of Appeals and People of the Philippines*, GR 134229, November 26, 1999)

CONSTITUTIONAL LAW**Trial-type proceedings not essential to due process.**

A formal trial-type hearing is not at all times and in all instances essential to due process. It is enough that the parties are given a fair and reasonable opportunity to explain their respective sides of the controversy and to present evidence on which a fair decision can be based. (*Ynares-Santiago, J.*, Miguel Melendres v. COMELEC and Ruperto Concepcion, GR 129958, November 25, 1999)

Right to counsel; kind of counselling required by the Constitution; effective and vigilant counsel.

The right to counsel is a fundamental right and contemplates not a mere presence of the lawyer beside the accused. In *People v. Bacamante* (47 SCRA 47), the term "effective and vigilant counsel" was explained as one able to advise and assist his client from the time the confessant answers the first question asked by the investigating officer until the signing of the extrajudicial confession. Moreover, the lawyer should ascertain that the confession is made voluntary and that the person under investigation fully understands the nature and consequence of his extrajudicial confession in relation to his constitutional rights. A contrary rule would undoubtedly be antagonistic to the constitutional rights to remain silent, to counsel and to be presumed innocent. (*Puno, J.*, *People v. Orlando Labtan y Daquihon*, Henry Feliciano and Jonelto Labtan, GR 127493, December 8, 1999)

ADMINISTRATIVE LAW**Interpretation of administrative rules by administrative agencies.**

The interpretation of an administrative government agency, which is tasked to implement a statute, is accorded great respect, and ordinarily controls the construction of the courts. However, courts will not hesitate to set aside such executive interpretation when it is clearly erroneous, or when there is no ambiguity in the rule, or when the language or words used are clear and plain or readily understandable to any ordinary reader. Stated differently, when an administrative agency renders an opinion or issues a statement of policy, it merely interprets a pre-existing law and the administrative interpretation is at least advisory for it is the courts that finally determine what the law means. (*Ynares-Santiago, J.*, Miguel Melendres, Jr. v. Commission on Elections and Ruperto Concepcion, GR No. 129958, November 25, 1999)

POLITICAL LAW**Ex-post facto law defined.**

An ex-post facto law has been defined in the case of *Kay Villegas Kami, Inc.* (35 SCRA 429) as one which:

- (a.) makes criminal an act before the passage of the law and which was innocent when done, and punishes such an act;
- (b.) aggravate a crime, or makes it greater than it was, when committed;
- (c.) changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed;
- (d.) alters the legal rules of evidence, and authorizes conviction upon less or different testimony than the law required at the time of the commission of the offense;
- (e.) assuming to regulate civil rights and remedies only, in effect imposes penalty or deprivation of a right for something which when done was lawful; and
- (f.) deprives a person accused of a crime of some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty.

(*Kapunan, J.*, *People v. Charito Isug Magbanua*, GR 128888, December 3, 1999)

ELECTION LAW**Commission on Elections; Authority of COMELEC sitting en banc to decide election cases in the first instance.**

In *Sarmiento v. Commission on Elections* (212 SCRA 307, 313), the Court ruled that the COMELEC, sitting en banc, does not have the requisite authority to hear and decide election cases in the first instance. This power pertains to the divisions of the Commission. Any decision by the Commission en banc as regards election cases decided by it in the first instance is null and void. (*Quisumbing, J.*, *Rolando Abad, Jr., v. Commission on Elections*, Hon. Octavio A. Fernandez, Jr., Presiding Judge, and Susanito Sarenas, Jr., GR 128877, December 10, 1999)

CIVIL LAW**Compensatory damages; rate of interest to be awarded.**

The doctrine enunciated in *Eastern Shipping Lines, Inc. v. Court of Appeals* which was reiterated in *Philippine National Bank v. Court of Appeals* x x x is that:

- (1) When an obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be twelve (12%) percent per annum to be computed from default, i.e., from judicial or extra-judicial demand under and subject to the provisions of Article 1169 of the Civil Code.
- (2) When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of six (6%) percent per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.
- (3) When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be twelve (12%) percent per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit. (*Gonzaga-Reyes, J., Adalia Francisco v. Court of Appeals, Herley Commercial and Construction Corporation and Jaime C. Ong, GR 116320, November 29, 1999*)

Judgment; against whom judgment in an ejectment suit is binding

It is well settled that a judgment in an ejectment suit is binding not only upon the defendants in the suit, but also against those not made parties thereto, if they are:

- (a) trespassers, squatters or agents of the defendant fraudulently occupying the property to frustrate the judgment;
- (b) guests or other occupants of the premises with the permission of the defendant;
- (c) transferees pendente lite;
- (d) sublessees; or
- (e) members of the family, relatives and other privies of the defendant.

(*Mendoza, J., Oro Cam Enterprises, Inc. v. Court of Appeals, and Angel Chaves, Inc., GR 128743, November 29, 1999*)

Attorney's lien.

An attorney's lien does not extend to land which is the subject matter of the litigation. (*Pardo, J., Flora Doronilla et al v. Court of Appeals, GR 120634, December 3, 1999*)

ELECTION LAW**Payment of filing fee jurisdictional in election protest; reglementary period in filing protest.**

It is the payment of the filing fee that vests jurisdiction of the court over the election protest, not the payment of the docket fees for the claim of damages and attorney's fees. The subsequent payment of the filing fee will not extricate petitioner from this predicament considering that before the payment of the filing fee, a case is not deemed duly registered and docketed. The date of payment of the filing fee is deemed the actual date of the filing of the election protest.

Section 3 of Rule 35 of the COMELEC Rules provides that the petition shall be filed within ten (10) days following the date of proclamation of the results of the election and the filing of an election protest beyond the period deprives the court of jurisdiction over the protest. (*Ynares-Santiago, J., Miguel Melendres v. COMELEC and Ruperto Concepcion, GR 129958, November 25, 1999*)

PROCEDURAL LAW**Service of summons; availment of substituted service; explanation for need of substituted service in the proof of service or officer's return necessary.**

Section 6, Rule 14 of the Rules of Court requires that summons must be served personally on the defendant. However, should personal service be unattainable, substituted service may be availed of under Section 7, Rule 14 (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion residing therein or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof. In a long line of cases the Supreme Court held that the impossibility of personal service justifying availment of substituted service should be explained in the proof of service; why efforts exerted towards personal service failed. The pertinent facts and circumstances attendant to the service of summons must be stated in the proof of service or Officer's Return; otherwise, the substituted service cannot be upheld. It bears stressing that since service of summons especially for actions in personam is essential for the acquisition of jurisdiction over the person of the defendant, the resort to a substituted service must be duly justified. Failure to do so would invalidate all subsequent proceedings on jurisdictional grounds. (*Purísima, J., Spouses Mariano and Julieta Madrigal v. Court of Appeals, Hon. Presiding Judge, Br. 139, Makati RTC and Spouses Joseph and Josefina Aquino, GR 129955, November 26, 1999*)

Cause of action; lack of cause of action as a ground for dismissal; elements thereof.

Lack of cause of action as a ground for a motion to dismiss must appear on the face of the complaint itself, meaning that it must be determined from the allegations of the complaint and from none other.

A cause of action exists if the following elements are present: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or to not violate such right; and (3) an act or omission on the part of the defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery of damages (*Gonzaga-Reyes, J., Cora Vergara v. The Court of Appeals, Hon. Camilo Montesa, Jr., RTC Malolos, GR 117929, November 26, 1999*)

Indictment; Remedies against an indictment that fails to allege the time of the commission of the crime with sufficient definiteness.

The remedy against an indictment that fails to allege the time of the commission of the offense with sufficient definiteness is a motion for bill of particulars provided for in Section 6, Rule 116 of the Rules of Court of 1964.

As may be deduced from the above discussion, it is already too late in the day for appellant to question the sufficiency of the information. He had all the time to raise this issue during the course of the trial, particularly during his arraignment. He could have filed for a bill of particulars in order to be properly informed of the dates of the alleged rape. However, appellant chose to be silent and never lifted a finger to question the information. As a result, he is deemed to have waived whatever objections he had and he cannot now be heard to seek affirmative relief. Furthermore, objections as to matters of form or substance in the information cannot be made for the first time on appeal. (*Kapunan, J., People v. Charito Isug Magbanua, GR 128888, December 3, 1999*)

*Corps of Professors First Plenary Meeting
(Continued from page 3)*

Each academic department met in working sessions and successfully produced syllabi for the different courses prescribed in the PHILJA Core curricula previously approved by the Supreme Court. And all the professors and lecturers pledged to devote time and effort in promoting scholarship and integrity for the pursuit of excellence in the Judiciary.

Justice Jose C. Vitug, the Chair of the Supreme Court's Committee on Legal Education delivered the Inspirational Message and administered the oath-taking of the Acceptance and Commitment of the members of the Corps of Professors. He remarked that "[t]he Judiciary can only be defined by what its members make of it . . . An institutionalized, integrated, professionalized and continuing system of legal education [is] needed to produce justices, judges, court lawyers and personnel . . . who could assure the people of their right to speedy, honest and scholarly disposition of cases instituted by or against them before the courts."

SUPREME COURT

A.M. No. 99-10-05-SC

PROCEDURE IN EXTRA-JUDICIAL FORECLOSURE OF MORTGAGE

In line with the responsibility of an Executive Judge under Administrative Order No. 6, dated June 30, 1975, for the management of courts within his administrative area, included in which is the task of supervising directly the work of the Clerk of Court, who is also the *Ex-Officio* Sheriff, and his staff, and the issuance of commissions to notaries public and enforcement of their duties under the law, the following procedures are hereby prescribed in extra-judicial foreclosure of mortgages:

1. All applications for extra-judicial foreclosure of mortgage whether under the direction of the Sheriff or a notary public, pursuant to Act 3135, as amended by Act 4118, and Act 1508, as amended, shall be filed with the Executive Judge, through the Clerk of Court who is also the Ex-Officio Sheriff.
2. Upon receipt of an application for extra-judicial foreclosure of mortgage, it shall be the duty of the Clerk of Court to:
 - a) Receive and docket said application and to stamp thereon the corresponding file number, date and time of filing;
 - b) Collect the filing fees therefor and issue the corresponding official receipt;
 - c) Examine, in case of real estate mortgage foreclosure, whether the applicant has complied with all the requirements before the public auction is conducted under the direction of the Sheriff or a notary public, pursuant to Sec. 4 of Act 3135, as amended;
 - d) Sign and issue the certificate of sale, subject to the approval of the Executive Judge, or in his absence, the Vice-Executive Judge; and
 - e) After the certificate of sale has been issued to the highest bidder, keep the complete records, while awaiting any redemption within a period of one (1) year from date of registration of the certificate of sale with the Register of Deeds concerned, after which the records shall be archived.

Where the application concerns the extra-judicial foreclosure of mortgages of real estates and/or chattels in different locations covering one's indebtedness, only one filing fee corresponding to such indebtedness shall be collected. The collecting Clerk of Court shall, apart from the official receipt of the fees, issue a certificate of payment indicating the amount of indebtedness, the filing fees collected, the mortgages sought to be foreclosed, the real es-

tates and/or chattels mortgaged and their respective locations, which certificate shall serve the purpose of having the application docketed with the Clerks of Court of the places where the other properties are located and of allowing the extra-judicial foreclosure to proceed thereat.

3. The notices of auction sale in extra-judicial foreclosure for publication by the Sheriff or by a notary public shall be published in a newspaper of general circulation pursuant to Section 1, Presidential Decree No. 1709, dated January 26, 1977, and non-compliance therewith shall constitute a violation of Section 6 thereof.
4. The Executive Judge shall, with the assistance of the Clerk of Court, raffle applications for extra-judicial foreclosure of mortgage under the direction of the Sheriff among all Sheriffs, including those assigned to the Office of the Clerk of Court and Sheriffs IV assigned in the branches.
5. No auction sale shall be held unless there are at least two (2) participating bidders. otherwise the sale shall be postponed to another date. If on the new date set for the sale there shall not be at least two bidders, the sale shall then proceed. The names of the bidders shall be reported by the Sheriff or the notary public who conducted the sale to the Clerk of Court before the issuance of the certificate of sale.

This Resolution amends or modifies accordingly Administrative Order No. 3 issued by then Chief Justice Enrique M. Fernando on 19 October 1984 and Administrative Circular No. 3-98 issued by the Chief Justice Andres R. Narvasa on 5 February 1998.

The Court Administrator may issue the necessary guidelines for the effective enforcement of this Resolution.

The Clerk of Court shall cause the publication of this Resolution in a newspaper of general circulation not later than 27 December 1999 and furnish copies thereof to the Integrated Bar of the Philippines.

This Resolution shall take effect on the fifteenth day of January of the year 2000.

Enacted this 14th day of December 1999 in the City of Manila.

(SGD.) DAVIDE, JR. CJ, BELOSILLO, MELO, PUNO, VITUG, KAPUNAN, MENDOZA, PANGANIBAN, QUISUMBING, PURISIMA, PARDO, BUENA, GONZAGA-REYES, YNARES-SANTIAGO, DE LEON

A.M. No. 99-10-09-SC

RESOLUTION CLARIFYING GUIDELINES ON THE APPLICATION FOR AND ENFORCEABILITY OF SEARCH WARRANTS

Gentlemen:

Quoted hereunder, for your information, is a resolution of the Court En Banc dated 25 January 2000:

“A.M. No. 99-10-09-SC. – Re: Resolution Clarifying the Guidelines on the Application for and Enforceability of Search Warrants. – The Court Resolved to APPROVE the Draft Resolution Clarifying the Guidelines on the Application For and Enforceability of Search Warrants, viz:

In the interest of an effective administration of justice and pursuant to the powers vested in the Supreme Court by the Constitution, the following are authorized to act on all applications for search warrants involving heinous crimes, illegal gambling, dangerous drugs and illegal possession of firearms:

The Executive Judge and Vice Executive Judges of Regional Trial Courts, Manila and Quezon City, filed by the Philippine National Police (PNP), the National Bureau of Investigation (NBI), the Presidential Anti-Organized Crime Task Force (PAOC-TF) and the Reaction Against Crime Task Force (REACT-TF) with the Regional Trial Courts of Manila and Quezon City.

The applications shall be personally endorsed by the Heads of the said agencies, for the search of places to be particularly described therein, and the seizure of property of things as prescribed in the Rules of Court, and to issue the warrants, if justified, which may be served in places outside the territorial jurisdiction of said courts.

The authorized judges shall keep a special docket book listing the details of the applications and the result of the searches and seizures made pursuant to the warrants issued.

This Resolution is effective immediately and shall continue until further orders from this Court and shall be an exception to the provisions of Circular No. 13 dated 1 October 1985 and Circular No. 19 dated 4 August 1987.

This Resolution supersedes Administrative Order No. 20-97, issued on 12 February 1997, and Administrative Order No. 46-97, issued on 19 March 1997.

The Court Administrator shall implement this Resolution.

Enacted this 25th day of January 2000.”

Very truly yours,
LUZVIMINDA D. PUNO
Clerk of Court

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

A.M. No. 99-11-07-SC

DESIGNATION OF CERTAIN BRANCHES OF THE REGIONAL TRIAL COURTS AS FAMILY COURTS.

Gentlemen:

Quoted hereunder, for your information, is a resolution of the Court En Banc dated 1 February 2000:

“A.M. No. 99-11-07-SC. – Re: Designation of certain branches of the Regional Trial Courts as Family Courts. – The Court Resolved to APPROVE the draft resolution designating certain branches of the Regional Trial Court as Family Courts, to wit:

To implement the provisions of Section 17 of Republic Act No. 8369, otherwise known as the “Family Courts Act of 1997,” and in the interest of the expeditious, effective and efficient administration of justice, and subject to the guidelines herein set forth, the following branches of the Regional Trial Courts are hereby designated as Family Courts which shall exclusively try and decide the cases subject of Section 5 of said Act:

NATIONAL CAPITAL JUDICIAL REGION

Manila

- (1) Br. 29, Judge Cielito M. Grulla
- (2) Br. 37, Judge Vicente A. Hidalgo
- (3) Br. 48, Judge Nimfa C. Vilches

Quezon City

- (4) Br. 94, Judge Romeo F. Zamora
- (5) Br. 106, Judge Natividad G. Dizon
- (6) Br. 107, Judge Rosalina L. Pison

Pasay City

- (7) Br. 109, Judge Lilia Cruz Lopez

Kalookan City

- (8) Br. 130, Judge Jaime T. Hamoy

Makati City

- (9) Br. 140, Judge Leticia P. Morales
- (10) Br. 144, Judge Candido P. Villanueva

Pasig City

- (11) Br. 159, Judge Rodolfo R. Bonifacio
- (12) Br. 162, Judge Erlinda P. Uy
- (13) Br. 261, Judge Agnes R. Carpio

Malabon

(14) Br. 169, Judge Emmanuel D. Laurea

Valenzuela City

(15) Br. 172, Judge Floro P. Alejo

Las Piñas City

(16) Br. 254, Judge Manuel B. Fernandez, Jr.

Parañaque City

(17) Br. 260, Judge Helen Bautista-Ricafort

*FIRST JUDICIAL REGION***Baguio City**

(18) Br. 4, Judge Amado S. Caguioa

La Trinidad, Benguet

(19) Br. 9, Judge Francis A. Buliyat

Laoag City

(20) Br. 11, Judge Perla B. Querubin

San Fernando, La Union

(21) Br. 66, Judge Adolfo F. Alagar

Dagupan City

(22) Br. 43, Judge Silverio Q. Castillo

Urdaneta City

(23) Br. 49, Judge Rodrigo G. Nabor

Lingayen, Pangasinan

(24) Br. 68, Judge Salvador P. Vedaña

*SECOND JUDICIAL REGION***Tuguegarao City**

(25) Br. 4, Judge Lyliha A. Aquino

Santiago City

(26) Br. 21, Judge Fe Albano Madrid

Bayombong, Nueva Vizcaya

(27) Br. 29, Judge Gil L. Valdez

*THIRD JUDICIAL REGION***Malolos, Bulacan**

(28) Br. 13, Judge Andres B. Soriano

Cabanatuan City

(29) Br. 26, Judge Johnson L. Ballutay (APJ)

Sto. Domingo, Nueva Ecija

(30) Br. 88, Judge Cholita B. Santos

Angeles City

(31) Br. 60, Judge Ofelia T. Pinto

San Fernando, Pampanga

(32) Br. 45, Judge Adelaida Ala Medina

Olongapo City

(33) Br. 73, Judge Alicia Lumboy Santos

*FOURTH JUDICIAL REGION***Batangas City**

(34) Br. 1, Judge Conrado C. Genilo, Jr.

Lipa City

(35) Br. 85, Judge Avelino G. Demetria

Cavite City

(36) Br. 17, Judge Manuel A. Mayo (APJ)

San Pablo City

(37) Br. 30, Judge Marivic B. Umali

Sta. Cruz, Laguna

(38) Br. 26, Judge Pablo B. Francisco

Puerto Princesa City

(39) Br. 50, Judge Nelia Y. Fernandez

Lucena City

(40) Br. 54, Judge Abello M. Marte

Antipolo City

(41) Br. 72, Judge Rogelio L. Angeles

*FIFTH JUDICIAL REGION***Legaspi City**

(42) Br. 9, Judge Antonio C. Alfane

Tabaco, Albay

(43) Br. 16, Judge Cesar A. Bordeos

Naga City

(44) Br. 20, Judge Marino Bodiao

Masbate, Masbate

(45) Br. 48, Judge Jacinta B. Tambago

Sorsogon, Sorsogon

(46) Br. 51, Judge Jose L. Madrid

*SIXTH JUDICIAL REGION***Kalibo, Aklan**

(47) Br. 3, Judge Sheila Martelino Cortez

Roxas City

(48) Br. 14, Judge Salvador S. Gubaton

Hoilo City

(49) Br. 27, Judge Ma. Elena G. Opinion

(50) Br. 30, Judge Adriano S. Savillo

Bacolod City

(51) Br. 52, Judge Anastacio B. Rufon

San Carlos City

(52) Br. 58, Judge Abraham D. Caña

*SEVENTH JUDICIAL REGION***Tagbilaran City**

(53) Br. 1, Judge Teofilo D. Baluma

Cebu City

(54) Br. 22, Judge Pampio A. Abarintos

(55) Br. 24, Judge Olegario R. Sarmiento, Jr.

Dumaguete City

(56) Br. 31, Judge Rogelio L. Carampatan

*EIGHTH JUDICIAL REGION***Tacloban City**

(57) Br. 7, Judge Leonilo B. Apita

Catbalogan, Samar

(58) Br. 27, Judge Sinfioriano A. Monsanto

*NINTH JUDICIAL REGION***Dipolog City**

(59) Br. 7, Judge Soledad A. Acaylar

Pagadian City

(60) Br. 22, Judge Harun B. Ismael

Zamboanga City

(61) Br. 15, Judge Vicente L. Cabatingan

TENTH JUDICIAL REGION**Butuan City**

(62) Br. 1, Judge Marissa Macaraig Guillen

Oroquieta City

(63) Br. 13, Judge Ma. Nimfa Penaco-Sitaca

Cagayan de Oro City

(64) Br. 22, Judge Francisco L. Calingin

(65) Br. 37, Judge Jose L. Escobido

ELEVENTH JUDICIAL REGION**Davao City**

(66) Br. 8, Judge Salvador M. Ibarreta, Jr.

(67) Br. 12, Judge Paul T. Arcangel

TWELFTH JUDICIAL REGION**Iligan City**

(68) Br. 2, Judge Maximo B. Ratunil

Marawi City

(69) Br. 9, Judge Amer R. Ibrahim

The following guidelines shall be observed:

Section 1. In stations where no branches of the Regional Trial Court are herein designated as Family Courts, the cases falling within the jurisdiction of the Family Courts shall be raffled among the branches of the Regional Trial Court within the same station which then shall try and decide such cases according to existing issuances. However, the branches of the Regional Trial Court in these stations which have previously been designated to try and decide juvenile and domestic relations cases and cases involving youthful offenders shall continue to take cognizance of such cases.

Sec. 2. In stations where branches of the Regional Trial Court are herein designated as Family Courts, all the judges of the Regional Trial Court shall cause the conduct of an inventory of all pending cases within ten (10) working days from receipt of a copy of this Resolution. Two (2) lists (see enclosed forms) shall be prepared during the inventory: (a) a list of cases falling within the jurisdiction of the Family Court; and (b) a list of cases outside the jurisdiction of the Family Court. The lists shall indicate the docket number and the status of each case – whether for pre-trial, trial or submitted for decision.

A. The judge of the branch designated as Family Court shall:

- (1) Retain the cases falling within the jurisdiction of the Family Court; and

- (2) Submit the list of cases outside the jurisdiction of the Family Court, except the cases where the trial has already begun as provided for in Section 3 hereof, to the Executive Judge for the redistribution of the listed cases among the remaining branches of the Regional Trial Court within the same station. The redistribution of the cases shall be effected through raffle, and after notice to the parties. Thereafter, the records of the cases shall be transmitted to the branches of the Regional Trial Court to which they have been raffled.

Copies of the lists of the segregated cases and the minutes and the results of the raffle shall be submitted within ten (10) days after the raffle to the Court Management Office of the Office of the Court Administrator.

B. The judges of the remaining branches of the Regional Trial Court shall:

- (1) Retain the cases outside the jurisdiction of the Family Court; and
- (2) Submit the list of cases falling within the jurisdiction of the Family Court, except the cases where the trial has already begun as provided for in Section 3 hereof, to the Executive Judge for the unloading of the listed cases to the branch which has been designated as Family Court. However, in stations where two (2) or more branches of the Regional Trial Court have been designated as Family Courts, the cases falling within the jurisdiction of the said courts shall be raffled among such designated branches. The records of the cases shall then be transmitted to such designated branch or branches, as the case may be.

Copies of the lists of the segregated cases and the minutes and the results of the raffle shall be submitted within ten (10) days after the raffle to the Court Management Office of the Office of the Court Administrator.

Sec. 3. Cases where trial has already begun shall continue to be heard by the respective branches to which they have been originally assigned. For purposes hereof, the trial of a criminal case is considered to have already begun when the accused or any of them had already been arraigned. The trial of a civil case is considered to have already begun when pre-trial had already been conducted and a pre-trial order issued.

Sec. 4. The branches of the Regional Trial Court designated as Family Courts shall continue to perform their

duties and functions as such within the purview of this Resolution even after they shall have become vacant due to the retirement, death, incapacity, dismissal, resignation, transfer, detail or promotion of the incumbent judges appointed/designated to preside over them; and their successors, whether permanent or temporary, shall act as Presiding Judges of these designated Family Courts, until the Family Courts shall have been actually established in accordance with the provisions of Section 3 of Republic Act No. 8369 unless such authority is sooner revoked by the Supreme Court.

Sec. 5. In stations where two (2) or more branches of the Regional Trial Court have been designated as Family Courts, in case of temporary incapacity, absence or disability of the judge of the designated Family Court to perform his duties or his inhibition, the pairing system for multiple sala stations subject of Circular No. 7 dated 23 September 1974, as amended, shall apply.

In case the judge of the designated Family Court should be penalized in the appropriate administrative disciplinary proceedings with suspension for a period of more than three (3) months or in case of any permanent vacancy by reason of the resignation, retirement, death, dismissal from the judicial service, transfer or promotion of the judge of the designated Family Court, the pairing system herein adverted shall likewise apply.

In stations where only one (1) branch of the Regional Trial Court has been designated as Family Court, whenever any of the designated branch becomes vacant, temporarily or permanently, for any of the reasons stated herein, the Chief Justice shall designate a judge to temporarily preside over the said Family Court.

Sec. 6. This Resolution amends or supersedes any resolution, order, circular, memorandum or issuance inconsistent herewith.

Sec. 7. This Resolution shall take effect on 1 March 2000, and shall be published in a newspaper of general circulation not later than 15 February 2000.

APPROVED this 1st day of February 2000.”

Very truly yours,
LUZVIMINDA D. PUNO
 Clerk of Court
 BY: (SGD.) **MA. LUISA D. VILLARAMA**
 Assistant Clerk of Court

A.M. No. 99-12-06-SC

PROPOSAL FOR THE INCLUSION IN THE CURRICULA OF ELEMENTARY AND SECONDARY SCHOOLS (PUBLIC AND PRIVATE) OF THE STUDY OF THE JUDICIARY

Gentlemen:

Quoted hereunder, for your information, is a resolution of the Court en Banc dated 25 January 2000:

A.M. No. 99-12-06-SC – *In Re: Recommendation No. C-15 of the Consultants' Group Judicial Reforms Committee, PHILJA* – Acting upon the recommendation of the Committee on the Revision of the Rules of Court, the Court Resolved to INFORM the Department of Education, Culture and Sports the following Recommendation No. C-15, dated 9 November 1999, of the Consultants' Group, Philippine Judicial Academy (PHILJA), to wit:

BACKGROUND

Judges and the judicial process have not had the best public relations for the past few years. The newspaper, radio and television reports do not educate the people on the judicial process and the hard work, sacrifice, patience and study that it demands from the judges, nor do the media take pains to make the public understand the problems that beset the Judiciary. On the other hand, contempt, rather than respect, for members of the Bench results when news of the dismissal of corrupt, dishonest, immoral or incompetent judges is sensationalized in the press and radio. The belief of the poor that courts exist only for the rich and that judges can be bought is buttressed by news stories about wealthy convicts who receive special treatment even in jail.

As things are, the young children are contaminated by their elders' negative view of the Judiciary, an institution of vital importance to our society. Therefore, there is a need to educate the youth on our country's judicial system and the judicial process. They should be informed of the efforts of the Supreme Court to improve the administration of justice and introduce reforms in the Philippine juvenile justice system in order to comply with the standards set by the United Nations Convention on the Rights of the Child and other international agreements that the Philippines is a party to. The most effective means of bringing such information to the children would be by including its study in the curricula of the elementary and secondary schools, both public and private.

In the elementary level, a subject called "SIBIKA" (CIVICS), is offered from Grade 1 to Grade 7, through a series of books – one volume for each grade which teaches

children to become useful and responsible citizens. "SIBIKA" teaches about Philippine history, culture, tradition, geography, government, our heroes and our fundamental rights as citizens. Unfortunately, a study of the Judiciary, the branch of government that protects and enforces those rights, is barely touched in these books. Hence, there is a need to include a chapter on the functions of the Judiciary, to be presented within the children's level of understanding. Field trips to the different courts within their locality should be a party of this course of study.

When the children reach the secondary level of education, a more detailed study of the workings of the judicial system and its relation to the other branches of government may be undertaken and the same may be included in the study of Philippine government and related subjects.

As aforesaid, the study should be presented within the children's level of understanding and should use the layman's language, whether in English or in the native tongue. The purpose is to develop respect for an institution that re-energizes democracy through its application of due process.

It is noteworthy that insofar as legal literacy is concerned, as early as 1983, the University of the Philippines Law Complex had launched the project "Practical Law for Elementary and High Schools" which aims to equip the young with functional legal literacy so that they can thrive in a democratic society and, in turn, ensure that the society remains democratic. Its objectives are to develop functional legal literacy at the earliest possible level with emphasis on the individual's vital role in a democratic society and provide youth with knowledge of their fundamental rights and liberties, how to protect these rights and how to respect those of others.

RECOMMENDATION

It is therefore proposed that the Supreme Court recommend to the Department of Education, Culture and Sports, the inclusion in the curricula of the elementary and secondary schools, public and private, of the study of the Philippine Judiciary as an institution that protects and enforces the rights of citizens and compels the performance of their duties and obligations.

The Court further RESOLVED to request the Department of Education, Culture and Sports to approve and implement the foregoing recommendation.

Let copies of this Resolution be furnished His Excellency President Joseph Ejercito Estrada and Honorable

Secretary Andrew Gonzales of the Department of Education, Culture and Sports.

Very truly yours,
LUZVIMINDA D. PUNO
Clerk of Court

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

A.M. No. 99-12-08-SC

REFERRAL OF ADMINISTRATIVE MATTERS AND CASES TO THE DIVISIONS OF THE COURT OR TO THE CHIEF JUSTICE AND CHAIRMEN OF DIVISIONS FOR APPROPRIATE ACTIONS

WHEREAS, a considerable number of administrative matters or cases are still referred to the Court *En Banc* for disposition, determination or resolution;

WHEREAS, the Court *En Banc* should be relieved of most of such cases to enable it to have more time for judicial matters which require lengthy careful deliberations.

NOW, THEREFORE, the Court hereby RESOLVES, thus:

- I. To REFER to the Divisions for their appropriate action or resolution the following:
 - 1) Administrative matters relating to:
 - (a) Inhibition of judges;
 - (b) Extension of time to decide cases;
 - (c) Compulsory, optional or disability retirement of judges and court personnel;
 - (d) Application for survivorship benefits;
 - (e) Dropping from the roll of employees who are absent without leave;
 - (f) Transfer of venues;
 - (g) Reports on financial and judicial audits, unless they are converted into administrative cases;
 - (h) Reports on burning or destruction of court records; and
 - (i) Cases left undecided by retired or promoted judges unless the matter has ripened into an administrative case.
 - 2) Administrative cases relating to:
 - (a) The discipline of officials and personnel of the Judiciary, except those involving the Presiding Justices and Associate Justices of the Court of Appeals and the Sandiganbayan which shall be resolved by the Court *En Banc*; *Provided*, however, that if the penalty to be imposed is dismissal from the service, suspension for more than one (1) year, or fine of more than P20,000, the Division concerned shall refer the case to the Court

En Banc for final action;

(b) The discipline of members of the Philippine Bar; *Provided*, however, that where the penalty to be imposed is disbarment, indefinite suspension, suspension for more than one (1) year, or fine of more than P20,000, the Division concerned shall refer the case to the Court *En Banc* for final action; and

(c) Any other administrative matter which has ripened into an administrative case.

II. To REFER to the Chief Justice and the Chairmen of the Divisions for their appropriate action or resolution, for and in behalf of the Court *En Banc*, administrative matters relating to:

(a) Appointments of personnel in the Supreme Court, Court of Appeals, Sandiganbayan, Court of Tax Appeals, the lower courts (including the Sharia'h courts), the Philippine Judicial Academy, and officers and members of existing committees;

(b) Creation of *ad hoc* committees;

(c) Extension of service of court personnel after reaching the compulsory age of retirement;

(d) Details of Judges and court personnel, except the assignment of a Judge, in addition to the regular duties of his own court, as acting Presiding Judge of a vacant court or as assisting Judge of another Judge, which may be done by the Chief Justice alone;

(e) Foreign travel of Justices or Judges and court personnel; and

(f) Disposal of old records and unserviceable vehicles, equipment and the like.

Upon the effectivity of this Resolution, all of the above matters or cases, presently assigned to the Court *En Banc*, except those whose decisions or resolution are subject to motions for reconsideration, shall be transferred to the Divisions to where their *ponentes* are assigned or to the Chief Justice and Chairman of the Divisions, as the case may be.

The provisions of previous Circulars, resolutions, or orders inconsistent herewith are deemed repealed or modified accordingly.

This resolution shall take effect on 15 February 2000 and shall be published once in a newspaper of general circulation in the Philippines before 30 January 2000.

Enacted this 18th day of January 2000.

(SGD.) DAVIDE, JR. CJ, BELOSILLO, MELO, PUNO, VITUG, KAPUNAN, MENDOZA, PANGANIBAN, QUISUMBING, PURISIMA, PARDO, BUENA, GONZAGA-REYES, YNARES-SANTIAGO, DE LEON

A.M. No. 00-2-01-SC.

Re: Resolution Amending Rule 141 (Legal Fees) of the Rules of Court – Version 1 and Version 2. – Version 1 and Version 2 of Resolution amending Rule 141 (Legal Fees) of the Rules of Court. – The Court Resolved to APPROVE Version 2 of the resolution amending Rule 141 (Legal Fees) of the Rules of Court, viz:

Pursuant to the resolution of the Court of 14 September 1999 in A.M. No. 99-8-01-SC, Rule 141 of the Rules of Court is hereby further amended to read as follows:

RULE 141

LEGAL FEES

SEC. 1. *Payment of fees.* – Upon filing of the pleading or other application which initiates an action or proceeding, the fees prescribed therefor shall be paid in full. (n)

SEC. 2. *Fees in lien.* – Where the court in its final judgment awards a claim not alleged, or a relief different from, or more than that claimed in the pleading, the party concerned shall pay the additional fees which shall constitute a lien on the judgment in satisfaction of said lien. The clerk of court shall assess and collect the corresponding fees. (n)

SEC. 3. *Persons authorized to collect legal fees.* – Except as otherwise provided in this rule, the officers and persons hereinafter mentioned, together with their assistants and deputies, may demand, receive, and take the several fees hereinafter mentioned and allowed for any business by them respectively done by virtue of their several offices, and no more. All fees so collected shall be forthwith remitted to the Supreme Court. The fees collected shall accrue to the general fund. However, all increases in the legal fees prescribed in amendments to this rule as well as new legal fees prescribed herein shall pertain to the Judiciary Development Fund as established by law. The persons herein authorized to collect legal fees shall be accountable officers and shall be required to post bond in such amount as prescribed by law. (1a)

SEC. 4. *Clerks of the Court of Appeals and of the Supreme Court.* –

(a) For filing an action, proceeding, appeal by notice or record on appeal when required, entering appearance of the parties, entering orders of the court, filing and docketing all motions, docketing of case on all proper dockets, and indexing the same, entering, recording and certification of judgment and remanding of records to the lower court, taxing the costs, administering all

necessary oaths or affirmations in the action or proceeding, recording the opinion of the court, and issuing all necessary process in the action or proceeding not herein otherwise provided for, each action or special proceeding, five hundred (P500.00) pesos;

- (b) For the performance of marriage ceremony, including issuance of certificate of marriage, three hundred (P300.00) pesos;
- (c) For furnishing transcripts of the record or copies of any record, judgment, or entry of which any person is entitled to demand and receive a copy, for each page, four (4.00) pesos;
- (d) For each certificate not on process, thirty (P30.00) pesos;
- (e) For every search for anything above a year's standing and reading the same, fifteen (P15.00) pesos;
- (f) For a commission on all money coming into his hands by these rules or order of the court and caring for the same, two and one-half (2.5%) percent on all sums not exceeding four thousand (P4,000.00) pesos and one and one-half (1.5%) percent upon all sums in excess of four thousand (P4,000.00) pesos, and one (1%) percent on all sums in excess of forty thousand (P40,000.00) pesos. (4a)

SEC. 5. *Fees to be paid by the advancing party.* – The fees of the clerk of the Court of Appeals or of the Supreme Court shall be paid him at the time of the entry of the action or proceeding in the court by the party who enters the same by appeal, or otherwise, and the clerk shall in all cases give a receipt for the same and shall enter the amount received upon his book, specifying the date when received, person from whom received, name of action in which received, and amount received. If the fees are not paid, the court may refuse to proceed with the action until they are paid and may dismiss the appeal or the action or proceeding. (3a)

SEC. 6. *Fees of bar candidates.* –

- (a) For filing the application for admission to the bar, whether admitted to the examination or not, one thousand and seven hundred fifty (P1,750.00) pesos for new applicants, and for repeaters, plus the additional amount of two hundred (P200.00) pesos multiplied by the number of times the applicant has failed in the bar examinations;
- (b) For admission to the bar, including oath taking, signing of the roll of attorneys, the issuance of diploma of admission to the Philippine Bar, one thousand and seven hundred fifty (1,750.00) pesos;
- (c) Other Bar Fees. – For the issuance of:
 - 1. Certification of admission to the Philippine Bar P 50.00
 - 2. Certificate of good standing (local) P 50.00
 - 3. Certificate of good standing (foreign)

- P 100.00
- 4. Verification of membership in the bar P 50.00
- 5. Certificate of grades in the bar examinations P 50.00
- 6. Other certification of records at the Bar Office, per page P 15.00
- 7. A duplicate diploma of admission to the Philippine Bar P 500.00

For services in connection with the return of examination notebooks to examinees, a fee of thirty (P30.00) pesos shall also be charged. (6a)

SEC. 7. *Clerks of Regional Trial Courts.* –

- (a) For filing an action or a permissive counterclaim or money claim against an estate not based on judgment, or for filing with leave of court a third-party, fourth-party, etc., complaint, or a complaint in intervention, and for all clerical services in the same, if the total sum claimed, exclusive of interest, or the stated value of the property in litigation, is:

1. Less than P100,000.00	P 500.00
2. P100,000.00 or more but less than P150,000.00	800.00
3. P150,000.00 or more but less than P200,000.00	1,000.00
4. P200,000.00 or more but less than P250,000.00	1,500.00
5. P250,000.00 or more but less than P300,000.00	1,750.00
6. P300,000.00 or more but less than P350,000.00	2,000.00
7. P350,000.00 or more but less than P400,000.00.....	2,250.00
8. For each P1,000.00 in Excess of P400,000.00	10.00

- (b) For filing:
 - 1. Actions where the value of the subject matter cannot be estimated P 600.00
 - 2. Special civil actions except judicial foreclosure of mortgage which shall be governed by paragraph (a) above 600.00
 - 3. All other actions not involving property.....600.00

In a real action, the assessed value of the property, or if there is none, the estimated value thereof shall be alleged by the claimant and shall be the basis in computing the fees.

- (c) For filing requests for extra-judicial foreclosure of

real estate or chattel mortgage, if the amount of the indebtedness, or the mortgagee's claim is:

1. Less than P50,000.00	P 275.00
2. P50,000.00 or more but less than P100,000.00	400.00
3. P100,000.00 or more but less than P150,000.00	500.00
4. P150,000.00 or more but less than P200,000.00	650.00
5. P200,000.00 or more but less than P250,000.00	1,000.00
6. P250,000.00 or more but less than P300,000.00.....	1,250.00
7. P300,000.00 or more but less than P400,000.00.....	1,500.00
8. P400,000.00 or more but less than P500,000.00.....	1,750.00
9. P500,000.00 or more but not more than P1,000,000.00.....	2,000.00
10. For each P1,000.00 in excess of P1,000,000.00.....	10.00

(d) For initiating proceedings for the allowance of wills, granting letters of administration, appointment of guardians, trustees, and other special proceedings, the fees payable shall be collected in accordance with the value of the property involved in the proceedings, which must be stated in the application or petition, as follows:

1. More than P100,000.00 but less than P150,000.00.....	P 2,000.00
2. P150,000.00 or more but less than P200,000.00.....	2,250.00
3. P200,000.00 or more but less than P250,000.00.....	2,500.00
4. P250,000.00 or more but less than P300,000.00.....	2,750.00
5. P300,000.00 or more but less than P350,000.00.....	3,000.00
6. P350,000.00 or more but not more than P400,000.00.....	3,250.00
7. For each P1,000.00 in excess of P400,000.00.....	10.00

If the value of the estate as definitely appraised by the court is more than the value declared in the application, the difference of fee shall be paid: provided that a certificate from the clerk of court that the proper fees have been paid shall be required prior to the closure of the proceedings.

(e) For filing petitions for naturalization or other modes of acquisition of citizenship, two thousand (P2,000.00) pesos;

(f) For filing petitions for adoption, support, annulment of marriage, legal separation and other actions or proceedings under the Family Code, two hundred (P200.00) pesos;

If the proceedings involve separation of property, an additional fee corresponding to the value of the property involved shall be collected, computed in accordance with the rates for special proceedings.

(g) For all other special proceedings not concerning property, two hundred (P200.00) pesos;

(h) For the performance of marriage ceremony including issuance of certificate of marriage, three hundred (P300.00) pesos;

(i) For filing an application for commission as notary public, five hundred (P500.00) pesos;

(j) For certified copies of any paper, record, decree, judgment or entry thereof for each page, four (P4.00) and fifteen (P15.00) pesos for certification;

(k) For a commission on all money coming into the clerk's hands by law, rule, order or writ of court and caring for the same, one and one-half (1.5%) per centum on all sums not exceeding forty thousand (P40,000.00) pesos, and one (1%) per centum on all sums in excess of forty thousand pesos.

(l) For any other services as clerk not provided in this section, one hundred and fifty (P150.00) pesos shall be collected. (7a)

SEC. 8. Clerks of Courts of the First Level. –

(a) For each civil action or proceeding, where the value of the subject matter involved, or the amount of the demand, inclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs is:

1. Not more than P20,000.00.....	P 150.00
2. More than P20,000.00 but not more than P100,000.00	500.00
3. More than P100,000.00 but not more than P200,000.00	1,250.00
4. More than P200,000.00 but not more than P300,000.00	1,750.00
5. More than P300,000.00 but not more than P400,000.00	2,500.00

In a real action, other than for forcible entry and unlawful detainer, the assessed value of the property or if not declared for taxation purposes, the assessed value of the adjacent lots, or if there is none, the estimated value

thereof shall be alleged by the claimant and shall be the basis in computing the fees.

(b) For initiating proceedings for the allowance of wills, granting of letters of administration and settlement of estates of small value, where the value of the estate is:

1. Not more than P20,000.00	P 250.00
2. More than P20,000.00 but not more than P100,000.00	1,350.00
3. More than P100,000.00 but not more than P200,000.00	2,000.00
4. For each proceeding other than the allowance of wills (probate), the granting of letters of administration, settlement of estate of small value, two hundred (P200.00) pesos;	

(c) For forcible entry and unlawful detainer cases, one hundred and fifty (P150.00) pesos;

(d) For appeals in all actions or proceedings, including forcible entry and detainer cases, taken from courts of first level, two hundred (P200.00) pesos;

(e) For the performance of marriage ceremony, including issuance of certificate of marriage, three hundred (P300.00) pesos;

(f) For taking affidavit, twenty-five (P25.00) pesos;

(g) For taking acknowledgement, thirty (P30.00) pesos;

(h) For taking and certifying depositions, including oath, per page, eight (P8.00) pesos;

(i) For certified copies of any record, per page, ten (P10.00) pesos;

(j) For stamping and registering books as required by articles nineteen and thirty-six of the Code of Commerce, each book, thirty (P30.00) pesos;

(k) For performing notarial acts for which fees are not specifically fixed in this section, the same fees which notaries public are entitled to receive. (8a)

SEC. 9. *Sheriffs and other persons serving processes.* –

(a) For serving summons and copy of complaint, for each defendant, sixty (P60.00) pesos;

(b) For serving subpoenas in civil action or proceeding, for each witness to be served, twenty-four (P24.00) pesos;

(c) For executing a writ of attachment against the property of defendant, sixty (P60.00) pesos;

(d) For serving a temporary restraining order, or writ of injunction, preliminary or final, of any court, sixty (P60.00) pesos;

(e) For executing a writ of replevin, sixty (P60.00) pesos;

(f) For filing bonds or other instruments of indemnity or security in provisional remedies, for each bond or instrument, fifty (P50.00) pesos;

(g) For executing a writ or process to place a party in possession of real estates, one hundred and fifty (P150.00) pesos;

(h) For advertising a sale, besides cost of publication, seventy-five (P75.00) pesos;

(i) For taking inventory of goods levied upon when the inventory is ordered by the court, one hundred and fifty (P150.00) pesos per day of actual inventory work;

(j) For levying on execution on personal or real property, seventy-five (P75.00) pesos;

(k) For issuing a notice of garnishment, for each notice, thirty (P30.00) pesos;

(l) For money collected by him by order, execution, attachment, or any other process, judicial or extrajudicial, the following sums, to wit:

1. On the first four thousand (P4,000.00) pesos, five (5%) per centum;
2. On all sums in excess of four thousand (P4,000.00) pesos, two and one-half (2.5%) per centum.

In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriff's expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and ex-officio sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment

debtor. (9a)

SEC. 10. *Stenographers.* – Stenographers shall give certified transcript of notes taken by them to every person requesting the same upon payment of (a) six (P6.00) pesos for each page of not less than two hundred and fifty words before the appeal is taken and (b) three pesos and sixty centavos (P3.60) for the same page, after the filing of the appeal, provided, however, that one-third of the total charges shall be paid to the court and the remaining two-thirds to the stenographer concerned. (10a)

SEC. 11. *Notaries.* – No notary public shall charge or receive for any service rendered by him any fee, remuneration or compensation in excess of those expressly prescribed in the following schedule:

- (a) For protests of drafts, bills of exchange, or promissory notes for non-acceptance or non-payment, and for notice thereof, thirty-six (P36.00) pesos;
- (b) For the registration of such protest and filing or safe-keeping of the same, thirty-six (P36.00) pesos;
- (c) For authenticating powers of attorney, thirty-six (P36.00) pesos;
- (d) For sworn statement concerning correctness of any account or other document, thirty-six (P36.00) pesos;
- (e) For each oath of affirmation, thirty-six (P36.00) pesos;
- (f) For receiving evidence of indebtedness to be sent outside, thirty-six (P36.00) pesos;
- (g) For issuing a certified copy of all or part of his notarial register or notarial records, for each page, thirty-six (P36.00) pesos;
- (h) For taking depositions, for each page, thirty-six (P36.00) pesos; and
- (i) For acknowledging other documents not enumerated in this section, thirty-six (P36.00) pesos. (11a)

SEC. 12. *Other officers taking depositions.* – Other officers taking depositions shall receive the same compensation as above provided for notaries public for taking and certifying depositions. (10)

SEC. 13. *Witness fees.* – (a) Witnesses in the Supreme Court, in the Court of Appeals and in the Regional Trial Courts, either in actions or special proceedings, shall be entitled to one hundred (P100.00) pesos per day inclusive of travel

time;

- (b) Witnesses before courts of the first level shall be allowed fifty (P50.00) pesos per day;
- (c) Fees to which witnesses may be entitled in a civil action shall be allowed, on the certification of the clerk of court or judge of his appearance in the case. A witness shall not be allowed compensation for his attendance in more than one case or more than one side of the same case at the same time, but may elect in which of several cases or on which side of a case, when he is summoned by both sides, to claim his attendance. A person who is compelled to attend court on other business shall not be paid as witness. (11a)

SEC. 14. *Fees of appraisers.* – Appraisers appointed to appraise the estate of a ward or of a deceased person shall each receive a compensation of two hundred (P200.00) pesos per day for the time actually and necessarily employed in the performance of their duties and in making their reports, which fees, in each instance, shall be paid out of the estate of the ward or deceased person, as the case may be. Any actual and necessary traveling expenses incurred in the performance of their duties of such appraisers may likewise be allowed and paid out of the estate. (12a)

SEC. 15. *Fees of commissioners in eminent domain proceedings.* – The commissioners appointed to appraise land sought to be condemned for public use in accordance with these rules shall each receive a compensation of two hundred (P200.00) pesos per day for the time actually and necessarily employed in the performance of their duties and in making their report to the court, which fees shall be taxed as a part of the costs of the proceedings. (13a)

SEC. 16. *Fees of commissioners in proceedings for partition of real estate.* – The commissioners appointed to make partition of real estate shall each receive a compensation of two hundred (P200.00) pesos per day for the time actually and necessarily employed in the performance of their duties and in making their report to the court, which fees shall be taxed as a part of the costs of the proceedings. (14a)

SEC. 17. *Fees, and the account thereof.* – The clerk, under the direction of the judge, shall keep a book in which shall be entered the items of fees which have accrued for the transaction of businesses covered by the provisions of this rule, for which fees are payable, specifying for what business each time of fees has accrued. Receipts shall be given for all fees received and they shall be accounted for in the manner provided in relation to the fees of clerks of courts in actions. The book of fees kept by the clerk shall be

accounted for in the manner provided in relation to the fees of the clerk of court in inspection of auditing officer and others interested therein. (15)

SEC. 18. *Indigent-litigants exempt from payment of legal fees.* – Indigent litigants (a) whose gross income and that of their immediate family do not exceed four thousand (P4,000.00) pesos a month if residing in Metro Manila, and three thousand (P3,000.00) pesos a month if residing outside Metro Manila, and (b) who do not own real property with an assessed value of more than fifty thousand (P50,000.00) pesos shall be exempt from the payment of legal fees.

The legal fees shall be a lien on any judgment rendered in the case favorably to the indigent litigant, unless the court otherwise provides.

To be entitled to the exemption herein provided, the litigant shall execute an affidavit that he and his immediate family do not earn a gross income above mentioned, nor they own any real property with the assessed value aforementioned, supported by an affidavit of a disinterested person attesting to the truth of the litigant’s affidavit.

Any falsity in the affidavit of a litigant or disinterested person shall be sufficient cause to strike out the pleading of that party, without prejudice to whatever criminal liability may have been incurred. (16a)

SEC. 19. In addition to the fees imposed in the preceding sections, a victim-compensation fee of five (P5.00) pesos pursuant to Republic Act No. 7309 shall be assessed and collected for the filing of every complaint or petition initiating an ordinary civil action, special civil action or special proceeding in the trial courts including civil actions impliedly instituted with criminal actions under Rule 111, Revised Rules of Criminal Procedure where a filing fee is likewise collected. All sums collected shall be remitted to the Department of Justice every quarter by the Clerk of Court concerned. (18-A)

SEC. 20. *Other fees.* – The following fees shall also be collected by the clerks of Regional Trial Courts or courts of the first level, as the case may be:

(a) In estafa cases where the offended party fails to manifest within fifteen (15) days following the filing of the information that the civil liability arising from the crime has been or would be separately prosecuted:

- 1. Less than P100,000.00 P 500.00
- 2. P100,000.00 or more but less than P150,000.00 800.00
- 3. P150,000.00 or more but

- less than P200,000.00 1,000.00
- 4. P200,000.00 or more but less than P250,000.00 1,500.00
- 5. P250,000.00 or more but less than P300,000.00 1, 750.00
- 6. P300,000.00 or more but less than P350,000.00 2,000.00
- 7. P350,000.00 or more but no more than P400,000.00 2,250.00
- 8. For each P1,000.00 in excess of P400,000.00 10.00

(b) For motions for postponement after completion of the pre-trial stage, one hundred pesos (P100.00) for the first, and an additional fifty pesos (P50.00) for every postponement thereafter based on that for the immediately preceding motion: Provided, however, that no fee shall be imposed when the motion is found to be based on justifiable and compelling reason;

(c) For bonds by sureties in criminal and civil cases, three hundred pesos (P300.00);

(d) For applications for and entries of certificates of sale and final deeds of sale in extra-judicial foreclosures of mortgages, three hundred (P300.00) pesos;

(e) For applications for and certificates of sale in notarial foreclosures:

- 1. On the first four thousand (P4,000) pesos, five (5%) percent;
- 2. On all sums in excess of four thousand (P4,000) pesos, two and one-half (2.5%) percent. (A.M. No. 99-8-01-SC, September 14, 1999)

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. (19)

This Resolution shall take effect on the 1st day of March, 2000, and shall be published in two (2) newspapers of general circulation not later than the 15th of February 2000.

Very truly yours,
LUZVIMINDA D. PUNO
Clerk of Court

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

Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

GLORIA LUCAS,
Complainant,

A.M. No. MTJ – 99 – 1226
(Formerly OCA IPI No.97-
315-MTJ)

- versus -

Present:
Bellosillo,
(Chairman),
Mendoza,
Quisumbing,
Buena, and
De Leon, Jr., JJ.

JUDGE AMELIA A. FABROS,
MeTC, Branch 9, Manila,
Respondent.

Promulgated:
January 31, 2000

X-----X

RESOLUTION

QUISUMBING, J.:

In a verified complaint¹ dated May 20, 1997, complainant Gloria Lucas charged respondent, Judge Amelia A. Fabros of the Metropolitan Trial Court, Branch 9, Manila, with Gross Ignorance of the Law and Grave Abuse of Discretion relative to Civil Case No. 151248 entitled "Editha F. Gacad, represented by Elenita F. Castelo vs. Gloria Lucas, for Ejectment."

Complainant, who was the defendant in the aforecited case, alleged that Judge Amelia A. Fabros issued an Order² dated February 26, 1997 granting the plaintiff's motion for reconsideration of the Order³ dated January 13, 1997, which dismissed the case for failure of plaintiff and her counsel to appear at the Preliminary Conference.

Complainant averred that it is elementary, under Section 19 (c) of the Rules of Summary Procedure, that a motion for reconsideration is prohibited, but respondent judge, in violation of the rule, granted the motion for reconsideration. She added that, notwithstanding the fact that the respondent herself had pointed out in open court that the case is governed by the Rules on Summary Procedure,⁴ the judge ordered the revival of the case out of malice, partiality and with intent to cause an injury to complainant.

Further, complainant alleged that the actuations of

the respondent is in blatant disregard of the established rules on procedure, and it is an instance where the doctrine of IPSA LOQUITOR may once again may be applied by the Court to discipline judges.

On June 18, 1997, respondent judge was required to comment on the administrative complaint. In her Comment⁵ dated September 16, 1997, she admitted that she granted the motion for reconsideration even if the same is a prohibited motion in an ejectment case. She explained, however, that it was granted in the interest of justice.

In her Comment, respondent stated:

"The Order subject of this complaint is the Order dated January 13, 1997 dismissing the complaint for ejectment for failure of the plaintiff to appear for preliminary conference and more importantly her lawyer, Atty. Jose Suing, who was duly empowered to appear for preliminary conference by virtue of a Special Power of Attorney.

Immediately upon learning the said order of dismissal and awarding of attorney's fees, Atty. Suing filed a Motion for Reconsideration on January 17, 1997 (Annex "A") stating that he failed to appear due to a sudden excruciating stomach pain. He further stated that his secretary called the Court but to no avail until finally the call came through and she was informed that the case was dismissed. Over the objection of the defendant that the Motion for Reconsideration was a prohibited pleading which this Presiding Judge is fully aware of under the Rule on Summary Procedure, the Motion for Reconsideration was nonetheless granted in the interest of justice. The question is poised. Are the actuations of judges to be governed strictly by the Rule on Summary Procedure despite their belief in good faith that in special cases, its observance would result in a miscarriage of justice? This Presiding Judge does not think so. Judges are supposed to be responsible Public Officials and should be able to perceive and discern circumstances which might lead to miscarriage of justice, thus, negating the very purpose and essence of the Rule on Summary Procedure. The Rule on Summary Procedure is not a straitjacket and it is believed it was never meant to be that. This is the reason why we have in the Rules of Court Section 5 (g) of Rule 135 which is one of the inherent

¹ Rollo, pp. 1-2.

² *Id.* at 3.

³ *Id.* at 3-A.

⁴ *Id.* at 5.

⁵ *Id.* at 9-11.

powers of the Court, that is, to amend and control its process and orders so as to make them conformable to law and justice. Ignorance of the law, to the mind of the undersigned, is the act of a judge in taking legal steps or adopting procedure unknowingly aware that they are contrary to established Rules which should be known to the judge. This Presiding Judge in this particular case was fully aware of the Rule on Summary Procedure. She fully knew that the Motion for Reconsideration was a prohibited pleading but she still considered it because to deny it would result in a miscarriage of justice. It was not a capricious, whimsical and despotic act when viewed in the light of this circumstance.

With respect to the allegation that the charge of ignorance of the law was compounded by the failure to issue a writ of execution, it bears stressing that the Order dated January 13, 1997 never gained finality because the plaintiff was able to file the Motion for Reconsideration within the fifteen (15) day period, that is, on January 17, 1997. But even if it is argued validly that the Motion for Reconsideration being a prohibited pleading did not interrupt the running of the period of appeal, still the said Order did not gain finality as far as defendant Gloria Lucas is concerned because as the record shows, it was she who received the Order, not her lawyer, Atty. Sulit."

The complaint and the Comment were referred to the Office of the Court Administrator for evaluation, report and recommendation after the case was docketed as an administrative matter. On August 25, 1997, OCA in a Memorandum, submitted the following findings:

"After a careful perusal of the records of the case, we find that respondent Judge Fabros abused her discretion in granting the Motion for Reconsideration.

Respondent Judge Fabros maintained that she could not be guilty of gross ignorance of the law as she knows that a motion for reconsideration of judgment is a prohibited motion in an ejection case. She explained that although there is already a judgment dismissing the case, she granted the plaintiff's motion for reconsideration in the interest of justice since the reasons stated in the motion for reconsideration are meritorious.

Respondent failed to realize that the first duty of the court is to apply the law and that when the law is clear and unambiguous, there is no room for interpretation. Although her intention was good, this could not free her from liability.

Respondent should have denied the motion since the plaintiff had other judicial remedies like appeal."⁶

The Office of the Court Administrator recommended that respondent judge be fined the amount of P2,000.00 for grave abuse of discretion. The Court, however, finds this recommendation without factual and legal basis.

As a rule, a motion for reconsideration is a prohibited pleading under Section 19 of the Revised Rule on Summary Procedure. Thus,

"SEC. 19. *Prohibited pleadings and motions.* – The following pleadings, motions, or petitions shall not be allowed in the cases covered by this Rule.

xxx

(c) Motion for new trial, or for reconsideration of a judgment, or for reopening of trial;

xxx"

This rule, however, applies only where the judgment sought to be reconsidered is one rendered on the merits. As held by the Court in an earlier case involving Sec. 15 (c) of the Rules on Summary Procedure, later Sec. 19 (c) of the Revised Rules on Summary Procedure effective November 15, 1991: "The motion prohibited by this Section is that which seeks reconsideration of the judgment rendered by the court after trial on the merits of the case."⁷ Here, the order of dismissal issued by respondent judge due to failure of a party to appear during the preliminary conference is obviously not a judgment on the merits after trial of the case. Hence, a motion for the reconsideration of such order is not the prohibited pleading contemplated under Section 19 (c) of the present Rule on Summary Procedure. Thus, respondent judge committed no grave abuse of discretion, nor is she guilty of ignorance of the law, in giving due course to the motion for reconsideration subject of the present complaint.

ACCORDINGLY, the complaint filed against respondent Judge Amelia A. Fabros is **DISMISSED**.

SO ORDERED.

(SGD.) **LEONARDO A. QUISUMBING**
Associate Justice

WE CONCUR:

(SGD.) **RELLOSILLO**, Chairman, **MENDOZA**,
BUENA, DE LEON

⁶ *Id.* at 29.

⁷ *Joven v. Court of Appeals*, 212 SCRA 700, 707-708 (1992).

3rd Floor of the Supreme Court Building
Taft Avenue, Manila

PRESIDING JUDGE

RESEARCH AND LINKAGES OFFICE
PHILIPPINE JUDICIAL ACADEMY
SUPREME COURT

2000 Upcoming PHILJA Events

<i>Date</i>	<i>Seminars</i>	<i>Venue</i>
January 10 to 14	13th Orientation Seminar Workshop for Newly-Appointed Judges	PHILJA, Tagaytay City
January 21	Video-tape Viewing on Mandatory Mediation in Pre Trial	Court of Appeals, Manila
February 4 to 5	Corps of Professors Plenary Meeting	PHILJA, Tagaytay City
February 15 to 18	Judicial Career Enhancement Program for RTC Judges	PHILJA, Tagaytay City
February 22-25	Judicial Career Enhancement Program for MeTC, MTCC, MTC, MCTC	PHILJA, Tagaytay City
March 7	Seminar on Domestic Violence	Court of Appeals, Manila
March 13 to 17	14th Orientation Seminar Workshop for Newly-Appointed Judges	PHILJA, Tagaytay City
March 21 to 24	Training Program for Family Court Judges	DAP, Tagaytay City

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