

## OCA CIRCULARS NO. 39-2002, August 21, 2002

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**TO:**

THE COURT OF APPEALS, SANDIGANBAYAN, REGIONAL TRIAL COURTS, SHARI'A DISTRICT COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS, SHARI' A CIRCUIT COURTS, THE DEPARTMENT OF JUSTICE AND THE INTEGRATED BAR OF THE PHILIPPINES

**RE:**

CLARIFICATION OF AMENDMENT TO SECTION 5, RULE 110 OF THE REVISED RULES OF CRIMINAL PROCEDURE

The Supreme Court En Banc in its resolution dated 10 April 2002, in A. M. No. 02-2-07-SC, RE: Proposed Amendments to Section 5, Rule 110 of the Revised Rules of Criminal Procedure, Resolved to approve the amendment to Sec. 5, Rule 110 to read as follows:

"Section 5. Who must prosecute criminal actions.— All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of a public prosecutor, or in the event of lack of public prosecutors, the private prosecutor may be authorized in writing by the Chief of Prosecution Office or the Regional State Prosecutor to prosecute the case subject to the approval of the court. Once so authorized to prosecute the criminal action, the private prosecutor shall continue to prosecute the case up to the end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn.

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xxx"

The aforementioned resolution did not state the entire first (1[st]) paragraph of Section 5, Rule 110 of the Revised Rule of Criminal Procedure resulting to confusion on the right of the offended party, any peace officer or public officer to prosecute the criminal cases before the Municipal Trial Courts or Municipal Circuit Trial Courts when the public prosecutor is not available. Such right on the part of the offended party, peace officer or public officer to prosecute the criminal case in the aforementioned courts is still in effect and not withdrawn. It is therefore necessary to state in toto the first (1[st]) paragraph on Section 5, Rule 110 as amended by the Supreme Court Resolution dated April 2002 in A. M. No. 02-2-07-SC as follows:

"Section 5. Who must prosecute criminal actions. — All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of a public prosecutor. In case of heavy work schedule of the public prosecutor, or in the event of lack of public prosecutors, the private prosecutor may be authorized in writing by the chief of the Prosecution Office or the Regional State Prosecutor to prosecute the

case subject to the approval of the court. Once so authorized to prosecute the criminal action, the private prosecutor shall continue to prosecute the case up to the end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn. However, in Municipal Trial Courts or Municipal Circuit Trial Courts when the prosecutor assigned thereto or to the case is not available, the offended party, any peace officer, or public officer charged with the enforcement of the law violated may prosecute the case. This authority shall cease upon the actual intervention of the prosecutor or upon evaluation of the case to the Regional Trial Court

xxx

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xxx" (emphasis ours)

This amendment to Rule 110 took effect on the first day of May 2002 following its publication in the Manila Bulletin.

This supercedes OCA Circular No. 14-2002 dated 01 June 2002.

For the information and guidance of all concerned.

August 21, 2002.

**PRESBITERO J. VELASCO, JR.**

Court Administrator

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