NOTAN LUMBOS, COMPLAINANT, VS. JUDGE MARIE ELLENGRID S.L. BALIGUAT, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 1, GENERAL SANTOS CITY RESPONDENT.

A.M. NO. MTJ-06-1641 (Formerly A.M. OCA IPI No. 05-1756-MTJ). July 27, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.

Before us is an administrative complaint[1] dated July 28, 2005 filed by Notan Lumbos (complainant) against Judge Marie Ellengrid S.L. Baliguat (respondent), Municipal Trial Court in Cities (MTCC), Branch 1, General Santos City, for Gross Ignorance of the Law, Grave Abuse of Authority, Dereliction of Duty, Grave Misconduct, Oppression and Disbarment (under Resolution A.M. No. 02-9-02-SC, October 1, 2002).

Complainant alleges that: he is one of the accused in a complaint for arson and robbery in Criminal Cases Nos. 46246 and 46247 filed by P/Insp. Richie Siong Bucol on July 14, 2004 before respondent's sala; instead of dismissing the case for patent lack of jurisdiction, respondent propounded a series of leading questions on the witnesses i.e., Jose Orlando Acharon (Acharon) and Edwin Yagat (Yagat) even without prior application for the issuance of warrant of arrest; with the object of issuing a warrant of arrest against all accused, respondent propounded a series of suggestive rather than searching questions on Acharon, who did not actually witness the alleged crime; the purported eye witness Yagat never categorically named the alleged malefactors and their specific participation in the alleged crimes; respondent merely tried to confirm her preconceived presumption of guilt of all accused via suggestive questions; respondent issued an Order for the issuance of a warrant of arrest against complainant and his co-accused without giving them a fair chance to file their respective counter-affidavits; he with his co-accused, filed two motions dated July 24, 2004 and August 17, 2004, respectively, for purposes of lifting the warrant of arrest and proper referral of subject cases to the Office of the City Prosecutor so they can file their respective counter-affidavits; attached to the motion is an excerpt from the police blotter certifying that on July 11, 2004 at 8:30 in the evening, complainant was in Philippine National Police-Camp Lira, which is approximately 25 kilometers from Bawing, Tambler where the alleged crimes were committed; his presence in Camp Lira was precipitated by the suspicious apprehension of some relatives who were detained in the said camp; on September 1, 2004, the Provincial Office of the National Commission on Indigenous Peoples intervened through a Manifestation dated August 30, 2004, praying for the dismissal of the subject cases stating that Acharon, the complainant in the said cases, has no real right or interest to protect, none of his rights were violated, he (Acharon) is even vulnerable to criminal prosecution under Republic Act No. 947, and, the filing of the subject cases in an effort to restrain the legitimate claimants appears to be a mockery of the judicial process; respondent issued an Order dated October 26, 2004 holding in abeyance the prayer for the lifting of the warrant of arrest, pending the submission of counter-affidavits within 10 days from receipt of the Order.

In her Comment[2] dated September 9, 2005, respondent avers that: the criminal cases subject of this complaint were filed before the MTCC, General Santos City, for Preliminary Investigation (PI); on July 15, 2004, being the Executive Judge and by virtue of Sections 84 and 86, Republic Act No. 5412,[3] otherwise known as the City

Charter of General Santos City, Acharon (the complainant in the said cases) and Yagat (the eye witness to the alleged crimes) were duly examined under oath and through searching questions; finding probable cause, a warrant of arrest was issued against all the accused; the accused were directed to file their counter-affidavits but, instead of doing so, the defense filed a Motion to Correct Caption and to Lift the Warrant of Arrest issued; the first prayer was granted but the resolution of the second motion was held in abeyance until the counter-affidavits of all the accused are submitted; no counter-affidavits were filed so respondent resolved the cases and forwarded its records to the City Prosecutor's Office for the filing of proper Information.

Respondent claims that: the conduct of the PI and the subsequent issuance of the warrant of arrest are well within the authority given in the City Charter which remains valid and enforceable until revoked by the Sangguniang Panlungsod of General Santos City; there was no usurpation of authority of an RTC Judge when she issued the assailed warrant of arrest as she has authority to do so under the City Charter; she examined only Acharon and Yagat because they were the witnesses to the alleged crimes and the questions propounded were never leading; there was no grave abuse of discretion when she held in abeyance the resolution of the prayer for the lifting of the warrant of arrest because the primary reason why it was withheld was the complainant's failure to submit a counter-affidavit; she did not personally know Acharon as she did not grow up in General Santos City; there is no conflict that the Rules on Criminal Procedure had undergone amendments but it would be very safe to say that the General Santos City Charter is not yet amended, hence, it still stands; and she believes that she did her duty to her very best in accordance with law and feels strongly offended and harassed by the filing of the instant case.

For her defense, respondent avers that: in clean conscience she conducted the PI and thereafter issued the warrant of arrest in good faith and in accordance with law, jurisprudence and the rules and procedures; as a government employee since 1979, she had maintained a clean reputation; she even sacrificed and left her post as Senior Legal Officer of the Department of Labor and Employment (DOLE), National Capital Region (NCR) in 1990 on the ground that she could not take the corruption around her; she had always kept her impartiality in making her decisions and never looked into the persons behind the party litigants; she rose through the ranks asking no favors from anyone and relied on her own skills, abilities, knowledge of the Constitution, laws, rules, regulations and jurisprudence and most especially her unblemished reputation; and with utmost dignity and head held high, respondent reiterates that she had not violated any of the provisions of the Constitution, or the Lawyers' and Judges' Oath, or any of the provisions of the Code of Judicial Conduct, Code of Professional Responsibility, or Canons of Professional Ethics; and she had observed due process and did not misuse it to defeat the ends of justice.

In its Memorandum[4] dated November 21, 2005, the Office of the Court Administrator (OCA) submitted its evaluation and recommendation, to wit:

> EVALUATION: After a careful perusal and consideration of the parties' respective positions and arguments, this Office finds no reasonable ground to hold the respondent administratively liable.
>
> Paragraph (5) Section 5 of the 1987 Constitution provides as follows:
> Sec. 5. The Supreme Court shall have the following powers:
>
> x x x
>
> (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleadings, practice and [enforcement of constitutional rights, pleading practice and] procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

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Under the City Charter of General Santos City, the city court "may also conduct preliminary investigation for any offense without regard to the limits of punishment and may release or commit and bind over any person charged with such offense to secure his appearance before the proper court". However, considering the Honorable Court's power of supervision over all courts, rules of pleading, practice and procedure in all courts have been promulgated. And as a matter of policy and procedure, criminal cases covered by the Rule and initiated by a complaint is being referred to the City Prosecutor for appropriate action.

In the case of Salcedo vs. Nobles-Banz, 134 SCRA 207, the Supreme Court ruled that:

> There is no question that under the Olongapo City Charter, the Municipal Trial Court can conduct preliminary investigation of all offenses. That is substantive law. However, pursuant to our constitutional supervision over all Courts, as a matter of policy, we direct the Municipal Trial Court in the City of Olongapo [that] whenever a criminal case covered by the Rule is initiated by complaint, to refer the same to the City Fiscal for the filing of the corresponding Information x x x.
>
> x x x
>
> The primary function of courts is to try and decide cases, not to conduct preliminary investigation. Thus, in Section 9 of the Rule on Summary Procedure in Special Cases effective August 1, 1983, the Court provided expressly that "in Metro-Manila and chartered cities, (criminal) cases shall be commenced only by information" at the instance of the metropolitan municipal trial court judges themselves who feared that they would be swamped with preliminary investigation which they would have to conduct (instead of cities' fiscals) if criminal complaints were to be directly filed with them. The Court has likewise adopted the same rule and policy in the 1985 Rules on Criminal Procedure effective January 1, 1985 governing the institution of all other offenses that "in Metropolitan Manila and other chartered cities, the complaint may be filed only with the office of the fiscal." (Rule 110, sec.1[b]).

Further, it is worthy to state herein that it is the Public Prosecutor who is given by law "direction and control" of all criminal actions. It is he who is primarily responsible for ascertaining through a preliminary inquiry or proceeding "whether there is reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof." Therefore, the preliminary investigation proper is not a judicial function, but an executive function, which is part of the prosecution's job. The assignment of this non-judicial function to judges of inferior courts was dictated by necessity and practical considerations because there are not enough fiscals and prosecutors to investigate crimes in all municipalities all over the country. In the case of Castillo vs. Villaluz, 171 SCRA 39, citing Salta vs. Court Administrator, 143 SCRA 228, the Honorable Court ruled that:

> Whenever there are enough fiscals or prosecutors to conduct preliminary investigation, courts are counseled to leave this job which is essentially executive to them.

It appears that the City of General Santos already has sufficient number of prosecutors who can handle the preliminary investigation of criminal cases. Hence, the same should be referred to them for appropriate action.

It is worth mentioning here that lately, the Honorable Court in A.M. No. 05-8-26-SC dated 30 August 2005 has already withdrawn the power to conduct preliminary investigation from the judges of the first level courts.

Insofar as the issuance of warrant of arrest is concerned, par. (b), Sec. 6, Rule 112 provides:

> Sec. 6. When warrant of arrest may issue. -
>
> x x x
>
> (b) By the Municipal Trial Court. - When required pursuant to the second paragraph of section 1 of this Rule, the preliminary investigation of cases falling under the original jurisdiction of the Metropolitan Trial Court,

> Municipal Trial Court in Cities, Municipal Trial Court, or Municipal Circuit Trial Court may be conducted by either the judge or the prosecutor. x x x. When the investigation is conducted by the judge himself, he shall follow the procedure provided in Section 3 of this Rule. If his findings and recommendations are affirmed by the provincial or city prosecutor, or by the Ombudsman or his deputy, and the corresponding information is filed, he shall issue a warrant of arrest. However, without waiting for the conclusion of the investigation, the judge may issue a warrant of arrest if he finds after an examination in writing and under oath of the complainant and his witnesses in the form of searching questions and answers, that a probable cause exists and that there is a necessity of placing the respondent under immediate custody not to frustrate the ends of justice.

Under the above-quoted rule, the power or authority of the investigating judge to issue a warrant of arrest is limited to those instances where there is a necessity of placing him in custody in order not to frustrate the ends of justice. In the case of Mantaring vs. Roman, 254 SCRA 158, the respondent judge was reprimanded for issuing a warrant without any finding that it was necessary to place the accused in immediate custody in order to prevent a frustration of justice. And we quote:

> Moreover, we think it was improper for respondent judge to have issued the warrants of arrest against complainant and his son without any finding that it was necessary to place them in immediate custody in order to prevent a frustration of justice. It is now settled that in issuing warrants of arrest in preliminary investigations, the investigating judge must:
>
> (a) have examined in writing and under oath the complainant and his witnesses by searching questions and answers;
>
> (b) be satisfied that probable cause exists; and
>
> (c) that there is a need to place the respondent under immediate custody in order not to frustrate the ends of justice.

In the instant case, it appears that respondent ordered the issuance of warrants of arrest against the complainant and his co-accused not only because of the existence of probable cause, but because of her finding that it was necessary to place them under immediate custody in order not to frustrate the ends of justice. Pertinent portion of the Order of the court during the preliminary investigation held on 15 July 2004 is hereunder quoted as follows:

> ORDER: For preliminary investigation and request for immediate issuance of warrant of arrest. After a thorough examination of the complaining witness, Jose Orlando Acharon together with the eye-witness Edwin Yagat through searching questions under oath, the undersigned finds that there is reason to believe that the crimes of arson and robbery and there is a need to place in custody the named accused herein in order not to frustrate the ends of justice and also to prevent them from possibly committing the same crime in the other bunkhouses of the complaining witness, issue warrant of arrest against all the named accused with bailbond fixed at P200,000.00 each for Robbery and no bail for Arson. x x

RECOMMENDATION: Respectfully submitted for the consideration and approval of the Honorable Court our recommendations as follows:

- The instant case against Judge Marie Ellengrid S.L. Baliguat of MTCC, Branch 01 [G]eneral Santos City be DISMISSED for lack of merit; and

- Judge Baliguat be ADVISED to refer criminal cases filed for preliminary investigation to the Office of the City Prosecutor, General Santos City for appropriate action.[5]

Meanwhile, in a Resolution[6] dated February 22, 2006, respondent was required to inform the Court as to the action taken by her on complainant's and his co-accused's motions dated July 24, 2004 and August 17, 2004, respectively, to lift the warrant of arrest and referral of Criminal Cases Nos. 46246 and 46247 to the Office of the

City Prosecutor.

In her Compliance[7] dated March 10, 2006, respondent avers that despite ample time given to the respondents to submit their counter-affidavit, they failed to do so and attaching thereto the Resolution[8] dated January 14, 2005, denying the Motion to Quash Warrant of Arrest for lack of merit and forwarded the records of Criminal Cases Nos. 46246 and 46247-I to the Office of the City Prosecutor for further proceedings.

At issue is whether or not the acts committed by respondent judge constitute gross ignorance of the law, abuse of authority, dereliction of duty, and oppression warranting dismissal from judicial service and disbarment.

We adopt the evaluation and recommendation of the OCA.

Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof and should be held for trial.[9] And prior to the issuance of A.M. No. 05-8-26-SC[10] which took effect on October 3, 2005, among the officers authorized by Sec. 2, Rule 112[11] of the Revised Rules on Criminal Procedure to conduct preliminary investigation are the city prosecutors and judges of the MTC and MCTC.

As provided under Sec. 37 of Batas Pambansa Blg. 129, Judges of Metropolitan Trial Courts, except those in the National Capital Region, of Municipal Trial Courts, and Municipal Circuit Trial Courts shall have authority to conduct preliminary investigation of crimes alleged to have been committed within their respective territorial jurisdictions which are cognizable by the Regional Trial Courts. x x x Provided, however, that, if after the preliminary investigation the Judge finds a prima facie case, he shall forward the records of the case to the Provincial/City Fiscal for the filing of the corresponding information with the proper court. No warrant of arrest shall be issued by the Judge in connection with any criminal complaint filed with him for preliminary investigation, unless after an examination in writing and under oath or affirmation of the complainant and his witnesses, he finds that a probable cause exists. x x x

The Charter of General Santos City, specifically Sec. 84,[12] authorizes the city court to conduct preliminary investigations for any offense without regard to the limits of punishment and may release or commit and bind over any person charge[d] with such offense to secure his appearance before the proper court.

Under Sec. 6(b), Rule 112 of the Rules on Criminal Procedure, without waiting for the conclusion of the investigation, the judge may issue a warrant of arrest if he finds after an examination in writing and under oath of the complainant and his witnesses in the form of searching questions and answers, that a probable cause exists and that there is a necessity of placing the respondent under immediate custody not to frustrate the ends of justice.

And as can be gleaned from the provision of the Rules on Criminal Procedure,[13] in Manila and other chartered cities, the complaint shall be filed with the office of the prosecutor unless otherwise provided in their charters.

Thus, respondent did not commit gross ignorance of the law nor grave abuse of discretion in conducting the said PI. It is very clear from the aforementioned provision that city judges are authorized to conduct preliminary investigation and examination. The conduct by respondent of the PI and the subsequent issuance of the warrant of arrest are well within the authority given under the substantive law as well as the Charter of General Santos City.

Salcedo v. Nobles-Bans,[14] cited by the complainant, is not on all fours with the present case. In the said case, respondent judge dismissed the criminal cases covered by the Rules on Summary Procedure, instead of referring the same to the City Fiscal for the filing of the corresponding Informations. In the present case, what is being questioned was the PI conducted by the respondent and the subsequent issuance of the warrant of arrest, which is neither covered by the Rules on Summary Procedure nor dismissed by the respondent.

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In Ribaya v. Binamira-Parcia,[15] we held that as long as the constitutional mandate was complied with, that is, the warrant of arrest was issued upon a finding of probable cause personally by the judge after an examination under oath or affirmation of the complainant and the witnesses he may produce, the warrant of arrest was valid. After all, the purpose of issuing the warrant of arrest was to place the respondents under immediate custody in order not to frustrate the ends of justice;[16] and whether it is necessary to place the accused in custody is left to the judge's sound judgment.[17] As aptly found by the OCA in its evaluation,[18] respondent ordered the issuance of the warrants of arrest not only because of the existence of probable cause, but because of her finding that it was necessary to place the accused under immediate custody in order not to frustrate the ends of justice. We find nothing irregular in the course of action taken by the respondent.

We held in Jamora v. Bersales,[19] that when a preliminary investigation is conducted by a municipal court trial judge, he is obligated, upon conclusion of the preliminary investigation, to transmit to the provincial or city fiscal, for appropriate action, the resolution of the case. In this case, immediately after the determination of a probable cause, respondent judge forwarded the records of the criminal cases to the Office of the City Prosecutor for further proceedings which bespeaks of respondent's knowledge of the law, both substantive and procedural.

However, as adverted to earlier, under A.M. No 05-8-26-SC, which took effect on October 3, 2005, the officers authorized to conduct preliminary investigations are the: (a) Provincial or City Prosecutors and their assistants; (b) National and Regional State Prosecutors; and (c) other officers as may be authorized by law. xxx[20] The preliminary investigation of cases falling under the original jurisdiction of the Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court or Municipal Circuit Trial Court shall be conducted by the prosecutor. xxx

The above-mentioned administrative matter included the following proviso:

> All First Level Courts shall continue with the preliminary investigation of cases pending with them and terminate them not later than December 31, 2005.Upon the date of effectivity of these amendments, First Level Courts shall no longer accept new cases for preliminary investigation, which fall under the exclusive jurisdiction of courts of other levels.

It must be emphasized that the conduct of respondent in the handling of the PI and the subsequent issuance of the warrants of arrest is well within the mandate of the law and not indicative of any grave abuse of discretion on her part. The criminal cases subject of this complaint were filed on July 15, 2004 and still governed by Rule 112 of the Revised Rules on Criminal Procedure in force at the time of the commission of the crime charged; while A.M. No. 05-8-26-SC which took effect on October 3, 2005, commanded the first level courts to continue with the preliminary investigation of cases pending with them and terminate them not later than December 31, 2005.

It is settled that as a matter of policy, the acts of a judge in his judicial capacity are not subject to disciplinary action. He cannot be subjected to liability - civil, criminal or administrative - for any of his official acts, no matter how erroneous, as long as he acts in good faith.[21] To hold, otherwise, would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.[22] An inquiry into the administrative liability of a judge may be resorted to only after the available remedies have been exhausted and decided with finality.[23] For until there is a final declaration by the appellate court that the challenged order or judgment is manifestly erroneous, there will be no basis to conclude whether respondent is administratively liable.[24]

To constitute gross ignorance of the law, it is not enough that the subject decision, order or actuation of the judge in the performance of his official duties is contrary to existing law and jurisprudence but, most importantly, he must be moved by bad faith, fraud, dishonesty, or corruption.[25] Good faith and absence of malice, corrupt

motives or improper considerations, are sufficient defenses in which a judge charged with ignorance of the law can find refuge.[26] In this case, we are convinced that respondent conducted the PI and the subsequent issuance of the warrants of arrest in clean conscience, in good faith and in accordance with law, jurisprudence, rules and procedures.

WHEREFORE, premises considered, the administrative case against Judge Marie Ellengrid S.L. Baliguat, Municipal Trial Court in Cities, Branch 1, General Santos City is DISMISSED. And in line with A.M. No. 05-8-26-SC, withdrawing the power to conduct preliminary investigation from judges of first level courts, she is ADVISED to refer criminal cases filed for preliminary investigation to the Office of the City Prosecutor, General Santos City for appropriate action.
SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ., concur.

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[1] Rollo, pp. 1-19.

[2] Rollo, pp. 46-51.

[3] Sec. 84. Jurisdiction of City Court. - The city court shall have the same jurisdiction in civil and criminal cases, and the same incidental powers as are at present or hereafter conferred by law. It may also conduct preliminary investigations for any offense without regard to the limits of punishment and may release or commit and bind over any person charge[d] with such offense to secure his appearance before the proper court.

Sec. 86. Preliminary examinations in the city fiscal's office, city court and Court of First Instance. - Every person arrested shall, without necessary delay, be brought to the city fiscal, the city court, or to the Court of First Instance, for preliminary hearing, release on bail or trial. In cases triable in the city court, the defendant shall not be entitled as of right to preliminary examination, except to summary one to enable the court to fix the bail in any case where the prosecution announces itself ready and is ready for trial within three days, not including Sundays, after the request for an examination is presented. In all cases brought to the Office of the City Fiscal involving crimes cognizable by the Court of First Instance, where the accused is not already in the legal custody of the police, no complaint or information shall be filed without first giving the accused a chance to be heard in a preliminary investigation, where such accused can be subpoenaed and appear before the investigating fiscal, with the right to cross-examine the complainant and his witnesses: Provided, That when the accused is detained, he may ask for a preliminary investigation, but he must sign a waiver of the provision of Article one hundred twenty-five of the Revised Penal Code, as amended: And provided, further, That if the case has already been filed in court, he may ask for reinvestigation thereof later on with the same right to cross-examine the witnesses against him: Provided, finally, That notwithstanding such waiver the said investigation must be terminated within seven days from its inception.

[4] Rollo, pp. 56-59.

[5] Rollo, pp. 56-59.

[6] Id. at 60.

[7] Id. at 62-63.

[8] Id. at 66-68.

[9] RULES OF COURT, Rule 112, Sec. 1.

[10] Re: Amendment of Rules 112 and 114 of the Revised Rules on Criminal Procedure by Removing the Conduct of Preliminary Investigation from Judges of the First Level Courts.

[11] Sec. 2. Officers authorized to conduct preliminary investigation. - The following may conduct preliminary investigations: (a) Provincial or City Prosecutors and their assistants; (b) Judges of the Municipal Trial Courts and Municipal Circuit Trial Courts; (c) National and Regional State Prosecutors; and (d) Other officers as may be authorized by law. x x x.

[12] See note 3.

[13] RULES OF COURT, Rule 110, Sec. 1, par. (b).

[14] No. L-67540, January 17, 1985, 134 SCRA 207.

[15] A.M. No. MTJ-04-1547, April 15, 2005, 456 SCRA 107.

[16] Id. at 119.

[17] Sesbreño v. Aglugub, A.M. No. MTJ-05-1581, February 28, 2005, 452 SCRA 365, 373.

[18] Rollo, p. 58.

[19] A.M. MTJ-04-1529, December 16, 2004, 447 SCRA 20, 29.

[20] RULES OF COURT, Rule 112, Sec. 2.

[21] Hilado v. Reyes, A.M. No. RTJ-05-1910, April 15, 2005, 456 SCRA 146, 162.

[22] Sacmar v. Reyes-Carpio, 448 Phil. 37, 42 (2003).

[23] Portic v. Villalon-Pornillos, A.M. No. RTJ-02-1717, May 28, 2004, 430 SCRA 29, 39.

[24] Sacmar v. Reyes-Carpio case, note 22.

[25] Officers and Members of the Integrated Bar of the Philippines, Baguio-Benguet Chapter v. Pamintuan, A.M. No. RTJ-02-1691, November 19, 2004, 443 SCRA 87, 101; Ong v. Rosete, A.M. No. MTJ-04-1538, October 22, 2004, 441 SCRA 150, 159-160; Pesayco v. Layague, A.M. No. RTJ-04-1889, December 22, 2004, 447 SCRA 450, 460; Dadizon v. Asis, A.M. No. RTJ-03-1760, January 15, 2004, 419 SCRA 456, 461; Zuño v. Cabebe, A.M. OCA No. 03-1800-RTJ, November 26, 2004, 444 SCRA 382, 391.

[26] Diego v. Castillo, A.M. No. RTJ-02-1673, August 11, 2004, 436 SCRA 67, 75.

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