

**JORDAN P. OKTUBRE, COMPLAINANT, VS. JUDGE RAMON P. VELASCO, MUNICIPAL TRIAL COURT, MAASIN, SOUTHERN LEYTE, RESPONDENT.**

*A.M. No. MTJ-02-1444. July 20, 2004*

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**PER CURIAM:**

This is a complaint for Grave Misconduct, Abuse of Authority, Oppression, and Gross Ignorance of the Law filed by Jordan P. Oktubre (“complainant”) against Judge Ramon P. Velasco (“respondent Judge”) of the Municipal Trial Court, Maasin City, Southern Leyte (“MTC Maasin”).

Complainant is the attorney-in-fact of one Peggy Louise D’Arcy vda. De Paler (“D’Arcy”), a non-resident American. D’Arcy is the widow of Abraham Paler (“Abraham”), a resident of Maasin City, Southern Leyte. Respondent Judge is Abraham’s nephew.

During his lifetime, Abraham built a four-storey commercial and residential building (“Paler building”) in Maasin City on a lot he owned in common with his siblings. After Abraham died, none of his heirs petitioned for the settlement of his estate. D’Arcy, through complainant, administered the Paler building. At the time material to this case, three tenants[1] occupied the Paler building with some rooms reserved for Abraham’s relatives. While he had a room in the Paler building, complainant rarely used it as he stayed most of the time in Javier, Sogod, Southern Leyte. The tenants pay their rent to complainant.

Shortly after his appointment to the MTC Maasin in March 1998, respondent Judge, with D’Arcy’s permission, stayed in the Paler building for a few days. He sought an extension of his stay but D’Arcy turned down his request since during her next visit to the country she would use the room respondent Judge then occupied. Nevertheless, respondent Judge was able to continue staying in the Paler building by transferring to a room reserved for a sister of Abraham.

Complainant alleges that D’Arcy’s refusal to grant extension to respondent Judge’s stay triggered the following series of events narrated in his Complaint:

- In April 2000[,] Judge Velasco in a surprise move sent letters xxx to the tenants of the building in which he passed himself off as the administrator of the estate of Gaspar Paler [Abraham’s father] and co-heir of Abraham Paler, and directed said tenants to deposit their monthly rentals to his office at [the] Municipal Trial Court (MTC) of Maasin City despite the fact that no action has been filed yet for that matter in court;

xxx

- In August 2000[,] Judge Velasco sent a strongly worded letter to Dr. [D’Arcy] with the very obvious purpose of intimidating the latter. The letter contains categorical declarations that he is taking over possession of the building, misrepresentation among others of Judge Velasco that he did it in collaboration with his other relatives, legal arguments, and mostly intimidating words coming from a Judge-Lawyer. Worse, he used his office’s (MTC) letterhead [for] this personal but threatening 5-page letter xxx;

xxx

- [On September 9, 2000], Judge Velasco without my knowledge and permission moved out from the garage [of the Paler building] the service jeep owned by Dr. [D'Arcy] and put it outside of the building causing it to be exposed to the sun and rain;

xxx

- Worried about the vehicle, Dr. [D'Arcy] right away instructed me to return the vehicle (jeep) to the garage and to do something in such a way that it could not anymore be removed by Judge Velasco;

- On September 15, 2000, I proceeded to Maasin City with the sole intention of having the vehicle returned to its rightful place. Upon arrival, I was thankful that Judge Velasco was then at Cebu City so that I could be able to return the jeep without fear of opposition by or confrontation with him. With the assistance of xxx two [others], I returned the vehicle to the garage and removed one of its wheels and placed it inside the computer room of the building;

xxx

- On September 22, 2000, Judge Velasco destroyed the padlock of my room and changed it with another one including the second floor entrance padlock to the third floor with the precise purpose of controlling the ingress and egress of the said building;<sup>[2]</sup>

On 28 September 2000, complainant filed a complaint against respondent Judge with the Punong Barangay of Abgao, Maasin City. Complainant charged respondent Judge for changing the lock of his room and of the door leading to the third floor of the Paler building. Complainant also charged respondent Judge for taking the jeep out of the garage of the Paler building. On 2 October 2000, complainant and respondent Judge met at the Office of Punong Barangay of Abgao for mediation but there was no settlement as respondent Judge questioned complainant's residency in Abgao. Complainant described what transpired after the meeting thus:

- xxx After the hearing, a police officer approached and informed me that the chief of Police of Maasin City wanted to talk to me. As expected [of] every law-abiding citizen, I went with them [to] the Police Station. Thereat, the Chief of Police confronted me with a warrant of [a]rrest. The warrant and the supporting documents show[ed] that I was charged with Robbery in relation to the wheel I removed [from the jeep] and it was issued/signed by Judge Velasco. While still [in a] state of shock because of this malicious prosecution, the police authorities placed me behind bars;

- That upon further examination of the complaint docketed as Criminal Case No. 5485 of [the MTC Maasin] as well as the attached document thereto, it was found out to the surprise of everyone that the complaint of Robbery filed by the Chief of Police was supported by the sole affidavit dated September 29, 2000 of a witness in the person of no other than Judge Ramon Velasco himself, xxx;

- That I was locked up in jail for about six (6) hours before I was able to put up a cash bond of P24,000.00 before the RTC, Br. 25, Maasin City. As I was about to be released in the afternoon of the same day, a subpoena was served at me in the City Jail which required me to file my counter-affidavit to the complaint [for Robbery] xxx;

- That on October 16, 2000, I received another Order dated October 4, 2000 issued by the respondent [J]udge directing me to submit [a] counter-affidavit in another case [for] Malicious Mischief docketed as Crim. Case No. R-5486 of [MTC Maasin]. The Complaint xxx was supported by the same and only affidavit of Judge Velasco dated September 29, 2000 which he used in the aforecited criminal Complaint of Robbery xxx;

- That about the first week of November 2000, I received another subpoena dated October 23, 2000 issued by Judge Velasco. This time a Criminal Case of Falsification by Private Individuals and Use of Falsified

Documents was filed against Dr. [D’Arcy], my principal. The Complaint docketed as Criminal Case No. 5493 of [MTC Maasin], was supported by xxx yet [another] xxx affidavit of Judge Velasco xxx dated October 18, 2000 xxx;[3]

Complainant sought to annul the warrant of arrest in Criminal Case No. 5485 by filing a petition for certiorari in the Regional Trial Court (“RTC”), Branch 25, Maasin City. The RTC granted the petition and annulled the warrant in its Order of 7 December 2000.[4]

Because of these events, complainant filed this complaint on 18 January 2001. Complainant prays that the Court discipline respondent Judge for using his sala’s letterhead, for his failure to inhibit himself from his own criminal complaints, and for his issuance of the warrant of arrest in Criminal Case No. 5485.

In his Comment dated 18 April 2001, respondent Judge admitted doing the acts complainant recounted about the Paler building, its tenants, and D’Arcy’s jeep. Respondent Judge claimed, however, that he merely acted to protect his maternal co-heirs’ interest in the Paler building and in the other properties claimed by D’Arcy. Respondent Judge also stated the following qualifications: (1) he changed the padlock of the grill door leading to the third floor as this was already “worn-out”; (2) he had to open forcibly complainant’s room to clean it as it was already “stinking”; (3) he temporarily transferred the jeep out of the Paler building because the garage had to be cleaned; and (4) he sent the demand letters to the Paler building’s tenants based on Rule 73[5] of the Rules of Court. Respondent Judge added that complainant illegally destroyed the lock of the garage gate when he returned the jeep.[6]

On his filing and taking cognizance of his own complaints for Robbery, Malicious Mischief, and Falsification and Use of Falsified Documents, respondent Judge alleges:

P-LVIII

That construing the actuation of the complainant [in filing the complaints before the Barangay Captain] to be deliberate in defiance of my order and utmost disrespect of my person and my official capacity [sic] and to vindicate my name, honor and reputation, and evident infractions of our penal laws, I filed the criminal complaint for ROBBERY against the private complainant Jordan Oktubre and docketed as Crim. Case No. 5485 and another criminal complaint for MALICIOUS MISCHIEF docketed as Crim. Case No. R-5486 xxx;

P-LIX

That the xxx institution of the criminal complaint for Robbery was not a malicious suit as it was anchored on facts as conveyed and attested by [witnesses] and the corpus delicti of the crime of Robbery and Malicious Mischief are established as shown by the destroyed garage padlock and the fact of loss of the right wheel rim and tire of the jeep;

P-LX

It is further qualified admitted [sic] that the institution of the suit against the private complainant Jordan Oktubre was by way of protecting the interest of my co-heirs and to enforce the law as my judicial mandate dictates;

P-LXI

That it is likewise admitted that another criminal case for FALSIFICATION OF DOCUMENT BY PRIVATE INDIVIDUALS AND USE OF FALSIFIED DOCUMENT was filed against the principal of Jordan P. Oktubre in the person of Dr. Peggy D’Arcy Paler and docketed as Crim. Case No. R-5493 on the basis of the unearthed evidently fraudulent and deliberate act of falsification by non-disclosure of a material fact relative to her citizenship, she being an American citizen, on her Affidavit of Sole Adjudication xxx;

P-LXII

That after proper evaluation of the Complaint for Robbery against complainant Jordan P. Oktubre and referral to jurisprudence on this matter, particularly the cited cases of PP. vs. Abapo, 239 SCRA 373, Webb vs. De Leon, et al., GR 121234, 63 SCAD 196, in utmost good faith, with the end in view of dispensation of justice expeditiously [sic] and not to frustrate the ends of justice and finding probable cause thereof for the issuance of a Warrant of Arrest, [I] verily issued the Warrant of Arrest against complainant Jordan Oktubre;

P-LXIII

That it is further admitted that the Court [in the complaint for Robbery] issued a subpoena to the complainant to submit his counter-affidavit and other controverting evidences pursuant to Rule 112, Sec. 3, Rules of Court xxx;[7]

Respondent Judge inhibited himself from the three criminal cases in his Orders of 4, 6, and 25 October 2000.

In its Report (“Report”) dated 13 March 2002, the Office of the Court Administrator (“OCA”) recommends that respondent Judge be fined P10,000 for Grave Misconduct, Gross Ignorance of the Law and Grave Abuse of Authority. The Report reads:

The records of this case show that complainant Mr. Jordan Oktubre was arrested and detained pursuant to a Warrant of Arrest xxx and a Commitment Order xxx issued by the respondent [J]udge, the basis for which is a Criminal Complaint for Robbery supported by an affidavit executed by the respondent Judge Ramon Velasco. Also, in Criminal Case No. 5486 for “Malicious Mischief”, records show that the complaint is supported by [the] lone affidavit of Judge Ramon Velasco xxx and in an Order marked Annex “I”, accused Jordan Oktubre was directed to submit his counter-affidavit by the respondent.

Aggrieved by the issuance of respondent [J]udge [of the warrant of arres], herein complainant elevated the matter to the Regional Trial Court, Branch 25, Maasin, Southern Leyte via “Certiorari and/or Prohibition with Application for Temporary Restraining Order and Writ of Preliminary Injunction”. The RTC in its Order dated December 7, 2000 xxx ruled that “respondent [J]udge in issuing a warrant of arrest violative of [Rule 112, Sec. 6, par. 2 of the Rules of Court] may not only be committing grave abuse of discretion but gross ignorance of the law xxx”. Consequently, the warrant of arrest was declared null and void.

Considering that respondent [J]udge is the complainant o[f] the cases, his issuance of the warrant of arrest is in violation of Sec. 6, Rule 112 of the Rules of Court and Sec. 37 of the Judiciary Act of 1980. Having resorted to such act, he acted as the private complainant, xxx judge and executioner.

It was also noted that in [the] letters xxx sent to the tenants of the Paler Building and to Dr. [D’Arcy], respondent [Judge] used the letter head of his Office “Municipal Trial Court of Maasin, Southern Leyte” and signed the same as its Presiding Judge. This to our mind, constitutes undue influence.[8]

The OCA’s recommendation finding respondent Judge guilty of Grave Misconduct, Gross Ignorance of the Law and Grave Abuse of Authority is well-taken. However, the Court finds the recommended penalty disproportionate to respondent Judge’s offenses and instead imposes on him the penalty of dismissal from service.

**Respondent Judge is Liable for Grave  
Misconduct and Grave Abuse of Authority**

Canon 2, Rule 2.03 (“Rule 2.03”) of the Code of Judicial Conduct (“Code”) provides:

A judge shall not allow family, social or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.

Rule 3.12 of the Code (“Rule 3.12”), which is substantially similar to Rule 137, Section 1 (“Rule 137, Section 1”) of the 1964 Rules of Court,[9] mandates that—

A judge should take no part in a proceeding where the judge’s impartiality might reasonably be questioned. These cases include, among others, proceedings where:

- the judge has personal knowledge of disputed evidentiary facts concerning the proceeding;
- the judge served as executor, administrator, guardian, trustee or lawyer in the case or matters in controversy, or a former associate of the judge served as counsel during their association, or the judge or lawyer was a material witness therein;
- the judge’s ruling in a lower court is the subject of review;
- the judge is related by consanguinity or affinity to a party litigant within the sixth degree or to counsel within the fourth degree;
- the judge knows that the judge’s spouse or child has a financial interest, as heir, legatee, creditor, fiduciary, or otherwise, in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.

In every instance the judge shall indicate the legal reason for inhibition. (Emphasis added)

For inappropriately using his Office’s letterhead and for acting on his own criminal complaints against complainant and D’Arcy, respondent Judge violated these rules. Thus, he is liable for grave misconduct[10] and grave abuse of authority.

#### On Respondent Judge’s Use of His Office’s Letterhead

Respondent Judge does not deny sending several letters bearing his sala’s letterhead on matters involving an apparent dispute in the administration of the estates of two relatives. His excuse for doing so is that he wanted to protect the interest of his maternal co-heirs in the Paler building and other disputed properties. This explanation is flimsy. Even if he is the “administrator” of the estates of Abraham and Gaspar Paler (“Gaspar”), Abraham’s father, and representative of his maternal co-heirs,[11] respondent Judge has no business using his sala’s letterhead for private matters. Respondent Judge should know that a court’s letterhead should be used only for official correspondence. Respondent Judge aggravates his liability when, in his letters to the tenants, he further required them to pay their rent at the MTC Maasin, although he was then staying at the Paler building. By these calculated steps, respondent Judge in the words of Rule 2.03, clearly intended to “use the prestige of his judicial office” to advance the interest of his maternal co-heirs.

#### On Respondent Judge’s Failure To Recuse Himself from His Criminal Complaints

As we noted in *Perez v. Suller*,[12] the rule on disqualification of judges under Rule 3.12 and Rule 137, Section 1

—  
[S]tems from the principle that no judge should preside in a case in which he is not wholly free, disinterested, impartial and independent. A Judge should not handle a case in which he might be perceived to be susceptible to bias and partiality. The rule is intended to preserve the people’s faith and confidence in the courts of justice.

True, a judge should possess proficiency in law so that he can competently construe and enforce the law.

However, it is more important that he should act and behave in such a manner that the parties before him have confidence in his impartiality.[13] Indeed, even conduct that gives rise to the mere appearance of partiality is proscribed.[14]

Here, although he is the complainant in the three criminal complaints, respondent Judge did not disqualify himself from the cases. Worse, he even issued a warrant of arrest in Criminal Case No. 5485, resulting in the arrest and detention of complainant. By doing so, respondent Judge violated Rule 3.12 and, by implication Section 1 of Rule 137, which covers the preliminary stages of criminal prosecution. To be sure, the situation in this case does not fall under any of the instances enumerated in Rule 3.12. Nevertheless, as the provision itself states, such enumeration is not exclusive. More importantly, paragraph (d) prohibits a judge from sitting in a case where he is related to a party or to counsel within the sixth and fourth degree of consanguinity or affinity, respectively. Thus, there is more reason to prohibit a judge from doing so in cases where he is a party. Indeed, the idea that a judge can preside over his own case is anathema to the notion of impartiality that such was no longer included in the enumeration in Rule 3.12 nor covered by Section 1 of Rule 137.

Respondent Judge's subsequent inhibition from the three cases does not detract from his culpability for he should not have taken cognizance of the cases in the first place. The evil that the rule on disqualification seeks to prevent is the denial of a party of his right to due process. This became fait accompli when respondent Judge refused to abide by such rule. Equally damaging was the effect of respondent Judge's conduct on the image of the judiciary, which without a doubt, immeasurably suffered from it. It is well to remind respondent Judge —

As public servants, judges are appointed to the judiciary to serve as the visible representation of the law, and more importantly, of justice. From them, the people draw their will and awareness to obey the law xxx. If judges, who swore to obey and uphold the constitution, would conduct themselves xxx in wanton disregard and violation of the rights of complainant, then the people, especially those with whom they come in direct contact, would lose all their respect and high regard for the institution of the judiciary itself, not to mention, cause the breakdown of the moral fiber on which the judiciary is founded.[15]

Respondent Judge is

Liable for Gross Ignorance of the Law

Respondent Judge does not deny that he did not conduct a preliminary investigation on the complaint for Robbery in Criminal Case No. 5485 where he issued the warrant of arrest against complainant. As justification, he claims that he acted in good faith based on pertinent jurisprudence. This explanation deserves scant consideration. Section 3 of Rule 112 sets out in detail the procedure for conducting preliminary investigation, thus:

Procedure. — Except as provided for in Sec. 7 hereof, no complaint or information for an offense cognizable by the Regional Trial Court shall be filed without a preliminary investigation having been first conducted in the following manner:

- The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents in such number of copies as there are respondents, plus two (2) copies for the official file. The said affidavits shall be subscribed and sworn to before any fiscal or government official authorized to administer oath, or, in their absence or unavailability, before a notary public, who must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.
- Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent, attaching thereto a copy of the complaint, affidavits and other supporting documents.

- Such counter-affidavits and other supporting evidence submitted by the respondent shall also be sworn to and certified as prescribed in paragraph (a) hereof and copies thereof shall be furnished by him to the complainant. Within ten (10) days from receipt thereof, the respondent shall submit counter-affidavits and other supporting documents. He shall have the right to examine all other evidence submitted by the complainant.

- If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall base his resolution on the evidence presented by the complainant.

- If the investigating officer believes that there are matters to be clarified, he may set a hearing to propound clarificatory questions to the parties or their witnesses, during which the parties shall be afforded an opportunity to be present but without the right to examine or cross-examine. If the parties so desire, they may submit questions to the investigating officer which the latter may propound to the parties or witnesses concerned.

- Thereafter, the investigation shall be deemed concluded, and the investigating officer shall resolve the case within the (10) days therefrom. Upon the evidence thus adduced, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.[16]

Criminal Case No. 5485 involves Robbery punishable either with prision mayor (six years and one day to 12 years) or prision mayor in its minimum period (six years and one day to eight years), depending on the value of the property taken.[17] In either case, the offense falls under the jurisdiction of the Regional Trial Courts for which Section 1 of Rule 112 mandates the conduct of a preliminary investigation.[18] As one of the officers authorized to conduct preliminary investigation under Section 2[19] of Rule 112, respondent Judge is duty-bound to know and strictly follow the procedure and requirements in Rule 112.

Respondent Judge aggravated his liability when he proceeded to issue the warrant of arrest. Section 6 of Rule 112 provides:

When warrant of arrest may issue. — x x x (b) By the Municipal Trial Court. — If the municipal trial court judge conducting the preliminary investigation is satisfied 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 in order not to frustrate the ends of justice, he shall issue a warrant of arrest.[20] (Emphasis supplied)

This is the same procedure prescribed in Section 2,[21] Article III of the Constitution and in Section 5, Rule 126[22] of the Revised Rules of Criminal Procedure. A judge who issues a warrant of arrest without first complying with such mandatory procedure[23] is liable for gross ignorance of the law.[24] In *Cabilao v. Judge Sardido*,[25] we ruled:

We have held, in a number of cases before this Court, that the procedure described in Section 6 of Rule 112 is mandatory because failure to follow the same would amount to a denial of due process. With respect to the issuance by inferior courts of warrants of arrest, it is necessary that the judge be satisfied that probable cause exists: 1) through an examination under oath and in writing of the complainant and his witnesses, which examination should be 2) in the form of searching questions and answers. This rule is not merely a procedural but a substantive rule because it gives flesh to two of the most sacrosanct guarantees found in the fundamental law: the guarantee against unreasonable searches and seizures and the due process requirement. (Emphasis supplied)

The only instance where the judge may dispense with such procedure is when the application for the warrant of arrest is filed before a Regional Trial Court judge. In such a case, the RTC judge can rely on the report of the prosecutor on the finding of probable cause.[26] Criminal Case No. 5485 does not fall under such exception.

### The Penalty Appropriate to the Case

The OCA recommends the imposition of P10,000 fine on respondent Judge. As earlier stated, the Court finds this penalty disproportionate to the gravity of respondent Judge's offenses. In several cases,[27] we have imposed the penalty of dismissal against judges for grave misconduct alone. In *OCA v. Judge Bara-acal*,[28] we dismissed a lower court judge for grave misconduct. Considering that respondent Judge's grave misconduct is compounded by his other offenses of grave abuse of authority and gross ignorance of the law, his dismissal from service is more than justified.[29]

WHEREFORE, we find respondent Ramon P. Velasco, Presiding Judge of the Municipal Trial Court, Maasin City, Southern Leyte, GUILTY of Grave Misconduct, Gross Ignorance of the Law, and Grave Abuse of Authority for violation of Rule 2.03 and Rule 3.12 of the Code of Judicial Conduct. He is DISMISSED from the service with forfeiture of retirement benefits and with prejudice to reinstatement in any branch of the government or any of its agencies or instrumentalities, including government owned or controlled corporations. However, he shall receive any accrued leaves due him as of this date.

### SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, and Chico-Nazario, JJ., concur.  
Corona, J., on leave.

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[1] LIDEF, Inc., National Census and Statistics Office of Maasin City, and Joseph Tupas.

[2] Complaint, pp. 2-4.

[3] Ibid., pp. 5-6.

[4] Annex 42.

[5] Venue and Process, Settlement of Estate of Deceased Persons.

[6] Comment, pp. 16-20.

[7] Ibid., pp. 22-24. (Capitalization in the original)

[8] Rollo, pp. 3-4.

[9] This provision states: "No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may in the exercise of his sound discretion, disqualify himself from sitting in a case for just or valid reasons other than those mentioned above."

[10] See *Cortes v. Judge Catral*, 378 Phil. 456 (1999).

[11] The Court notes, however, that no petition was ever filed to settle Gaspar's estate. Also, at the time respondent Judge sent the letters to the tenants on 1 April 2000 and to D'Arcy on 31 July 2000, the petition to

settle Abraham's estate was not yet filed as this was done only on 16 January 2001. Lastly, the Special Power of Attorney executed in respondent Judge's favor by his maternal co-heirs was signed only on 3 October 2000.

[12] 320 Phil. 1 (1995).

[13] *Fernandez v. Presbitero*, A.M. No. 486-MJ, 13 September 1977, 79 SCRA 60 citing *Tan, Jr. v. Gallardo*, G.R. Nos. L-41213-14, 5 October 1976, 73 SCRA 306.

[14] *Espiritu v. Judge Jovellanos*, 345 Phil. 823 (1997); *Balleza v. Mun. Judge Astorga*, 162 Phil. 575 (1976); *Palang v. Hon. Zosa*, 157 Phil. 761 (1974).

[15] *Cayao v. Del Mundo*, A.M. No. MTJ-93-803, 15 September 1993, 226 SCRA 497.

[16] Superseded by Section 3, Rule 112 of the Revised Rules of Criminal Procedure, effective 30 December 2000.

[17] REVISED PENAL CODE, Art. 299(b).

[18] Section 1 of Rule 112 provides: "Definition. — Preliminary investigation is an inquiry or proceeding for the purpose of determining whether there is sufficient ground to engender a well founded belief that a crime cognizable by the Regional Trial Court has been committed and that the respondent is probably guilty thereof and should be held for trial." Section 7 of Rule 112 provides: "When accused lawfully arrested without warrant.— When a person is lawfully arrested without a warrant for an offense cognizable by the Regional Trial Court the complaint or information may be filed by the offended party, peace officer or fiscal without a preliminary investigation having been first conducted, on the basis of the affidavit of the offended party or arresting officer or person. However, before the filing of such complaint or information, the person arrested may ask for a preliminary investigation by a proper officer in accordance with this Rule but he must sign a waiver of the provisions of Article 125 of the Revised Penal Code, as amended, with the assistance of a lawyer and in case of non-availability of a lawyer, a responsible person of his choice. Notwithstanding such waiver, he may apply for bail as provided in the corresponding rule and the investigation must be terminated within fifteen (15) days from its inception. If the case has been filed in court without a preliminary investigation having been first conducted, the accused may within five (5) days from the time he learns of the filing of the information, ask for a preliminary investigation with the same right to adduce evidence in his favor in the manner prescribed in this Rule."

[19] "Officers authorized to conduct preliminary investigation. — The following may conduct preliminary investigation:

- Provincial or city fiscal and their assistants;
- Judges of the Municipal Trial Courts and Municipal Circuit Courts;
- National and Regional state prosecutors;
- Such other officers as may be authorized by law.

Their authority to conduct preliminary investigation shall include all crimes cognizable by the proper court in their respective jurisdictions." (Emphasis supplied)

[20] Superseded by Sec. 6, Rule 112 of Revised Rules of Criminal Procedure.

[21] This provision reads: "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce and particularly

describing the place to be searched and the person to be seized.” (Emphasis supplied) Superseded by Sec. 6, Rule 112 of Revised Rules of Criminal Procedure.

[22] This provision states: “Examination of complainant; record. — The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted.”

[23] *Silva v. Presiding Judge, RTC, Negros Oriental*, Br. 33, G.R. No. 81756, 21 October 1991, 203 SCRA 140.

[24] *Chu v. Tamin*, A.M. No. RTJ-03-1786, 28 August 2003.

[25] 316 Phil. 134 (1995).

[26] *Soliven v. Makasiar*, G.R. No. L-82585, 14 November 1988, 167 SCRA 393.

[27] E.g. *Guray v. Judge Bautista*, 413 Phil. 1 (2001); *Arban v. Judge Borja*, 227 Phil. 597 (1986).

[28] 351 Phil. 604 (1998).

[29] Under Sections 9 and 11 of Rule 140 of the Rules of Court, gross misconduct is a serious charge punishable with dismissal from the service.

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