

RE: REPORT ON THE PRELIMINARY RESULTS OF THE SPOT AUDIT IN THE REGIONAL TRIAL COURT, BRANCH 170, MALABON CITY.

A.M. No. 16-05-142-RTC. September 05, 2017

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

This administrative matter refers to the report on the preliminary results of the spot audit conducted by the Office of the Court Administrator (OCA) in the Regional Trial Court, Branch 170, Malabon City.

The Factual Antecedents

On April 26, 2016, the OCA sent a team to conduct a spot audit of search warrant applications raffled to Branch 170, due to persistent reports pertaining to the alleged irregular issuance of search warrants by Presiding Judge Zaldy B. Docena (Judge Docena).

The Report on the Preliminary Results of the Spot Audit

On May 26, 2016, the OCA submitted to the Court its Report[1] dated May 23, 2016 on the preliminary results of the spot audit. In the Report, the OCA made the following observations:

First, a total of 938 applications for search warrants were filed before the RTC of Malabon City from January 2015 up to April 13, 2016. These applications were distributed among the following judges: Judge Docena, Branch 170, with 761 applications; then Executive Judge Celso Raymundo L. Magsino, Jr. (Judge Magsino), Branch 74, with 175 applications; and Judge Jimmy Edmund G. Batara (Judge Batara), Branch 172, with two applications.[2]

Second, the RTC of Malabon City exceeded the number of search warrants issued by the RTC of Manila (with 56 branches) and the RTC of Quezon City (with 48 branches), notwithstanding the fact that the latter courts are allowed to issue search warrants which are enforceable nationwide.[3]

The data provided by the Statistical Reports Division of the Court Management Office show the number of search warrants issued by selected RTCs in the National Capital Judicial Region from January 2015 up to March 2016:[4]

ISSUING COURT

NUMBER OF SEARCH WARRANTS ISSUED

RTC of Malabon City

763

RTC of Manila

675

RTC of Makati City

75

RTC of Quezon City

68

RTC of Pasig City

9

Third, out of the 761 applications assigned to Branch 170, Judge Docena issued 113 search warrants which are enforceable outside the territorial jurisdiction of the RTC of Malabon City, viz.: [5]

PLACE WHERE SEARCH WARRANTS WERE ENFORCED

JUDICIAL REGION

SEARCH WARRANTS ISSUED

Manila

National Capital Judicial Region

46

Makati City

National Capital Judicial Region

19

Pasig City

National Capital Judicial Region

14

Quezon City

National Capital Judicial Region

8

Taguig City

National Capital Judicial Region

7

Mandaluyong City

National Capital Judicial Region

6

Pasay City

National Capital Judicial Region

4

Caloocan City

National Capital Judicial Region

3

Valenzuela City

National Capital Judicial Region

2

Paranaque City

National Capital Judicial Region

2

Muntinlupa City

National Capital Judicial Region

1

Laguna

4th Judicial Region

1

TOTAL

113

The OCA found this to be in violation of Section 2(a) of Rule 126 of the Rules of Court which provides that an application for a search warrant shall be filed with "[a]ny court within whose territorial jurisdiction a crime was committed." [6]

Fourth, Judge Docena issued 418 search warrants which are also enforceable outside the territorial jurisdiction of the RTC of Malabon City, but this time the applicants specifically invoked Section 2(b) of Rule 126 which allows, for compelling reasons, the filing of the application with any court within the judicial region where the crime was committed or where the warrant shall be enforced. [7]

The OCA, however, pointed out that said search warrant applications merely cited the bare allegations of possible leakage of information and/or that the person subject of the application is influential in the area, or has friends working in the local government offices and the courts. [8]

Fifth, Branch 170 has admitted returns on search warrants where the seizing officer did not proceed with the operation because of new developments and/or information that the subject has already moved out, when the proper procedure is for the applicant to file a motion to set aside the search warrant. [9]

There are also several cases where the returns have yet to be submitted to the court despite the lapse of the 10-day period within which to do so. The OCA considered this to be a failure on the part of Branch 170 "to ascertain if the return has been made, and if none, [to] summon the person to whom the warrant was issued and require him to explain why no return was made." [10]

And sixth, the OCA noted that Branch 170:

a)

xxx issues search warrants even [though] the application is not accompanied with pertinent papers to establish that the applicant [had] conducted a surveillance prior to the filing of said application xxx;

b)

xxx issues search warrants even when the authority of the head of the agency to file the application is a mere photocopy;

c)

[admits] mere photocopies of the inventory of the seized items and inventories that are not under oath; and,

d)

xxx always grants custody of the seized items to the applicant and/or his agency for forensic examination or due to lack of space in the court premises.[11]

Upon the OCA's recommendation, the Court issued a Resolution[12] dated May 31, 2016 placing Judge Docena under immediate preventive suspension for a period of six months. Thus:

xxx The Court resolved, upon the recommendation of the Office of the Court Administrator (OCA), to:

(a) PREVENTIVELY SUSPEND, effective immediately, Judge Zaldy B. Docena, Regional Trial Court (RTC), Branch 170, Malabon City, for six (6) months pending the completion of a more comprehensive and detailed investigation on the issuance of search warrants;

(b) RELIEVE Judge Celso Raymundo L. Magsino, Jr., Branch 74, same court, from his duties as Executive Judge of RTC, Malabon City, and INCLUDE him IN THE INVESTIGATION in view of the apparent irregularity in the raffle of applications for search warrants;

(c) DESIGNATE Judge Jimmy Edmund G. Batara, Branch 72, same court, and Judge Emmanuel D. Laurea, Branch 169, same court, as Executive Judge and Vice-Executive Judge, respectively, of RTC, Malabon City; and

(d) DIRECT the OCA to IMMEDIATELY SEAL/SECURE all records/folders pertaining to applications for search warrant received by Judge Docena.

Let this resolution be personally and immediately served on the parties concerned. xxx[13]

In compliance with the May 31, 2016 Resolution of the Court, the OCA's Audit Team conducted an investigation on the raffle of applications for and issuance of search warrants in the RTC of Malabon City. The investigation was thereafter concluded on June 17, 2016.

The Result of the Investigation

In a Memorandum[14] dated August 4, 2016, the Audit Team submitted the result of the investigation to Court Administrator Jose Midas P. Marquez.

On the Distribution/Raffle of Search Warrant Applications

The Audit Team noted that only two out of the five branches[15] in the RTC of Malabon City, specifically, Branches 74 and 170, took cognizance of search warrant applications, as Branches 72 (Drugs Court), 73 (Family Court), and 169 (Family Court and Agrarian Court) which exclusively handle drugs and family court cases,

respectively, are not included in the raffle of said applications.[16]

The distribution of applications for search warrants in the RTC of Malabon City from January 2015 up to May 10, 2016 is as follows:[17]

BRANCH/JUDGE

APPLICATIONS RECEIVED

Branch 170 (Judge Docena)

795

Branch 74 (Judge Magsino)

- Involving ordinary criminal cases (received by raffle)
- Involving special criminal cases (received in his capacity as Executive Judge)

185

(152)

(33)

Branch 72 (Judge Batara)

- Involving special criminal cases (received in his capacity as the Vice Executive Judge)

4

TOTAL

984

According to Atty. Esmeralda G. Dizon (Atty. Dizon), Clerk of Court VI, Office of the Clerk of Court (OCC), this distribution system is in accordance with their internal policies on the raffle of cases.[18] The pertinent portions of said internal policies are quoted as follows:

INTERNAL OFFICE MEMO

TO: CLERK IN CHARGE OF RAFFLE (Millet/Pam, Mark, Paul)

RE: SW/TRO/TPO

DATE: MAY 2014

Per executive session with the Executive Judge, the following are the innovations with respect to raffling:

xxx

3. Raffle of TRO/TPO/SW shall be special and shall require notices>Returns/complete documentation and presence of witness/applicant in case of SW;
4. Due to its confidentiality, only the Clerk of Court and the Clerk In Charge shall receive any application for SW. Raffle of this nature shall be held at the chambers/office of the EJ/Vice EJ and only the ordinary courts (170 and 74) are eligible for raffle unless the nature subject of application falls exclusively under the powers of EJ or in his absence, the Vice EJ;
5. Ratio of cases between the EJ and Branch 170 shall be in accordance with the Guidelines on the Selection and Designation of EJs (A.M. 03-8-02-SC) which is 2:3;
6. SW shall be raffled on 1:2 daily basis and counted per applicant.

Since Br. 74 is also the EJ, then, SW shall be raffled exclusively to the remaining ordinary court when the EJ is on official leave, official business, official meeting.

xxx

(Sgd.)

ATTY. ESMERALDA G. DIZON

Clerk of Court VI[19]

After a thorough examination of the records of the OCC, the Audit Team concluded that the RTC of Malabon City failed to observe the existing rules in the distribution of search warrant applications involving ordinary criminal cases as provided in Chapter V of the Guidelines on the Selection and Designation of Executive Judges.[20]

The Audit Team cited three instances where the raffle of search warrant applications was clearly inequitable:

- a) in January 2016, Branch 170 received all 16 search warrant applications filed in the RTC of Malabon City;[21]
- b) in February 2016, 44 search warrant applications were assigned to Branch 170, while only five ordinary criminal cases were given to Branch 74;[22] and,
- c) in March 2016, 87 search warrant applications went to Branch 170, while only three ordinary criminal cases were raffled to Branch 74.[23]

In addition, the Audit Team also made the following observations:

First, the application docketed as SW 16-183 was raffled to Branch 170, when it should have been directly assigned to the Executive Judge as it involved violations of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002, and Presidential Decree No. 1866, as amended, or the law on the illegal possession of firearms.[24]

Second, it could not be ascertained whether a special raffle for applications for search warrant was actually conducted in the RTC of Malabon City because the OCC did not prepare the minutes of the raffle.[25]

Third, there are discrepancies between the date of receipt of some search warrant applications appearing in the OCC's logbook and the date stamped on the face of said applications as received by Branch 170.[26]

For instance, SW 15-120-MN appears to have been received by the OCC on May 6, 2015 at 9:00 a.m. and thereafter raffled to Branch 170 on the same day, based on the date stamped on the face of the application.[27] However, the case was recorded in the OCC's logbook only on May 7, 2015.[28] The corresponding search warrant was also issued on May 7, 2015.[29]

The same observation is true for the following applications: SW 15-427 to SW 15-432 - logged as filed with the OCC on September 9, 2015,[30] but the applications were all stamped received on September 8, 2015 at 10:30 a.m.;[31] and SW 15-592 to SW 15-596 - logged as filed with the OCC on November 27, 2015,[32] but the applications were stamped received on November 26, 2015, at 1:00 p.m.[33]

And fourth, there are cases where the caption of search warrant applications already indicates that it is being filed with Branch 170, and typewritten at the bottom of the applications is the name of Judge Docena to whom the application would be subscribed and sworn to.[34]

On the Issuance of Search Warrants by Branch 170

The Audit Team noted that Judge Docena granted all 790 search warrant applications raffled to Branch 170 from

January 2015 up to May 10, 2016, and 192[35] of which are John/Jane Doe search warrants. Out of the 790 search warrants issued, 442 or 55.95% thereof have yielded negative results, remained unserved, or were otherwise never returned to the court.[36]

The Audit Team also found that Judge Docena granted 758 search warrant applications even though the places of commission of the crimes involved therein were outside the territorial jurisdiction of the RTC of Malabon City. Out of 758 applications,[37] 130 had completely failed to cite compelling reasons to warrant their filing in the RTC of Malabon City.[38] Thus:

PLACES WHERE SEARCH WARRANTS ENFORCEABLE

NO COMPELLING REASON

WITH COMPELLING REASON

TOTAL

Laguna

1

-

1

Caloocan City

7

8

15

Las Piñas City

-

6

6

Makati City

18

170

188

Mandaluyong City

6

13

19

Manila

54

116

170

Muntinlupa City

1

15

16

Parañaque City

2

65

67

Pasay City

6

75

81

Pasig City

15

68

83

Quezon City

11

50

61

Taguig City

7

33

40

Valenzuela City

2

9

11

TOTAL

130

628[39]

758

The Audit Team likewise observed that there are instances where the compelling reasons cited by the applicant appear to be without merit, and Judge Docena failed to ask the required probing and exhaustive inquiry on the veracity of the compelling reason invoked.[40]

In addition to its preliminary findings, the Audit Team pointed out the following irregularities pertaining to Judge Docena's issuance of search warrants:

- a) There are search warrants that were issued ahead of the date of filing of the application.[41]
- b) Judge Docena is the signatory of the jurat of all the applications for search warrants before Branch 170. In some cases, the signature appearing thereon is not his customary signature.[42]
- c) There are some applications that are not under oath although the affidavits were signed by Judge Docena.[43]
- d) Page 3 of the application in SW 15-588 is missing, but Judge Docena signed on another page containing the sketch of the place to be searched.[44]
- e) Judge Docena signed the jurat of some affidavits of witnesses, despite the lack of signature of the affiant.[45]
- f) Some affidavits of witnesses are replicated, where only the dates and the addresses relating to the supposed surveillance are changed.[46]
- g) Judge Docena has admitted as proof of surveillance the attachment of a map and pictures of the door of the unit to be searched, as well as the screen of a computer.[47]

The Audit Team also noted several lapses in the management of case records in Branch 170:

- a) Case records have no minutes of the proceedings.[48]
- b) There were two sets of stenographic notes found in 16 search warrant applications.[49]
- c) In most applications, there are no searching questions and answers in writing and under oath, in violation of Section 5, Rule 126 of the Rules of Court.[50]
- d) The search warrant case folders of Branch 170 are not paginated.[51]
- e) In cases where an applicant filed several search warrant applications, some of the documents attached are not original copies.[52]
- f) Case folders are not properly stitched, and some folders have loose pages. Other folders, too, are merely attached using fasteners.[53]
- g) Stenographic notes are not attached to the records.[54]
- h) Transcripts of stenographic notes are similarly not attached to the records.[55]
- i) Branch 170 does not maintain a logbook where entries shall be made within 24 hours after the issuance of the search warrant.[56]

Issuance of Search Warrants by Branch 74

The Audit Team noted that Judge Magsino also granted a considerable number of search warrant applications from January 2015 up to May 10, 2016, where the offenses involved were committed outside the territorial jurisdiction of the RTC of Malabon City.[57] Thus:[58]

PLACES WHERE SEARCH WARRANTS ENFORCEABLE

NO COMPELLING REASON

WITH COMPELLING REASON

TOTAL

Rizal

1

-

1

Caloocan City

1

1

2

Makati City

-

35

35

Mandaluyong City

13

2

15

Manila

1

18

19

Marikina City

-

2

2

Muntinlupa City

-

2

2

Parañaque City

7

10

17

Pasay City

-

16

16

Pasig City

4

10

14

Quezon City

3

3

6

Taguig City

3

7

10

TOTAL

33

106

139

Nevertheless, the Audit Team found no patent irregularities in Judge Magsino's issuance of search warrants assigned to Branch 74,[59] considering that:

1. There is no instance where the date of receipt by the OCC and the date of raffle of the search warrant application to Branch 74, as stamped on the face of the application, are ahead of the date recorded in the logbook of the OCC.[60]

2. There is also no instance where the date of the search warrant issued is ahead of the date of filing of the application in court.[61]
3. The minutes of the proceedings are attached to the case records, but the contents are not complete.[62]
4. Aside from the issuance of search warrants, Judge Magsino also issues an order stating, among others, that the court conducted a hearing and examined the applicant and his witness/informant.[63]
5. The stenographic notes are all attached to the records, although some have yet to be transcribed.[64]
6. Branch 74 observes the guidelines on the custody of computer data under Sections 15 and 16, Chapter IV of Republic Act No. 10175, or the Cybercrime Prevention Act.[65]

For these reasons, the Audit Team no longer discussed the details of the rest of the acts and omissions of Branch 74.

In its 1st Indorsement[66] dated September 27, 2016, the OCA directed Judge Docena and Judge Magsino, as well as the concerned court personnel, to submit their comments on the final report of the Audit Team.

Judge Docena's Comment

In his Comment[67] dated October 28, 2016, Judge Docena submits that he granted the search warrant applications before him "in the good faith belief that there was probable cause for their issuance and in compliance with law and procedure." [68]

Judge Docena clarifies that he had no control over which search warrant applications will be filed in the RTC of Malabon City, much less those that will be raffled to Branch 170.[69] Neither does he or the court personnel under him have any hand in the implementation of the search warrants issued by him or the outcome or results thereof.[70]

Judge Docena likewise contends that there is nothing irregular in his issuance of 192 John/Jane Doe search warrants, considering that the crimes involved therein are mostly violations of the Cybercrime Prevention Act and the E-Commerce Act, where there is indeed difficulty in obtaining the identities of the alleged perpetrators.[71]

As for his issuance of search warrants involving crimes committed outside the territorial jurisdiction of the RTC of Malabon City, Judge Docena denies having violated Section 2(a) of Rule 126 of the Rules of Court and Section 12, Chapter V of A.M. No. 03-8-02, given that the issuance of search warrants is inherent in all courts and venue in search warrant applications is merely procedural and not jurisdictional.[72]

Judge Docena further argues that he "cannot consider the issues of absence of compelling reasons in the [search warrant] application[s], and improper venue *motu proprio* to deny [said] applications outright," as "these have to be raised by the respondent/accused in a motion to quash." [73] And as for those respondents in the search warrants who did not question the venue of the pertinent search warrant applications, they should be deemed to have waived said defense and considered to have acquiesced to the venue of said applications.[74]

In addition, Judge Docena maintains that "he granted the search warrant applications in the good faith belief that there is merit to the compelling reasons provided by the applicants." He insists that "this determination should be respected unless it is shown that [he] is guilty of grave abuse of discretion amounting to excess or lack of jurisdiction." [75]

Judge Docena also explains that "the rule requiring judges to conduct a probing and exhaustive inquiry is applicable only to the determination of probable cause" and not to the compelling reasons cited by an applicant in a search warrant application,[76] as the existence of compelling reasons does not relate to the existence of

probable cause which is the basis for the issuance of the search warrant.[77]

While Judge Docena admits that there are search warrants that appear to have been issued ahead of the date of filing of their respective applications, he argues that the incorrect dates on said warrants are typographical errors which are attributable to honest mistake and inadvertence.[78] He claims that Branch 170 uses previous documents as templates in order to save time and effort,[79] and he surmises that the dates in the orders pertaining to some search warrant applications were unfortunately not properly edited to reflect the correct date.[80]

Finally, Judge Docena begs the Court for understanding and leniency for his failure to properly monitor the submission of returns of the search warrants he issued and to summon those applicants who have yet to file their respective returns, given the extraordinarily high number of search warrants raffled to Branch 170.[81]

Recommendations of the OCA

In a Memorandum[82] dated February 20, 2017, the OCA made the following recommendations:

IN VIEW OF ALL THE FOREGOING, it is respectfully recommended for the consideration of the Honorable Court that:

1. Hon. CELSO R. L. MAGSINO, JR., Presiding Judge, RTC, Branch 74, Malabon City, and then Executive Judge, RTC, Malabon City, be found GUILTY of (a) violation of Supreme Court rules and circulars concerning the raffle of search warrant applications, and Section 2, Rule 126 of the Rules of Court and Section 12, Chapter V of the Guidelines in the Selection and Designation of Executive Judges and. Defining their Powers, Prerogatives and Duties on the issuance of search warrants, and Section 12(b), Rule 126, Rules of Court on, among others, the filing of the returns; and (b) inefficiency in the performance of his duties as Presiding Judge of Branch 74, same court, and FINED in the amount of P20,000.00;
2. Atty. ESMERALDA G. DIZON, Clerk of Court, Office of the Clerk of Court, RTC, Malabon City, be found GUILTY of simple neglect of duty and SUSPENDED from the service for six (6) months, effective immediately;
3. Hon. ZALDY B. DOCENA, Presiding Judge, RTC, Branch 170, Malabon City, be found GUILTY of gross ignorance of the law, gross negligence, and gross misconduct and DISMISSED FROM THE SERVICE with forfeiture of retirement benefits, except accrued leave credits, and disqualification from re-employment in any government institution;
4. Atty. JESUS S. HERNANDEZ, Branch Clerk of Court, RTC, Branch 170, Malabon City, be found GUILTY of simple neglect of duty and SUSPENDED from the service for six (6) months, effective immediately;
5. MS. OLIVIA M. LABAGNAO, MS. DEBHEM E. FARDO, MS. ROSARIO [M. SAN PEDRO], and MS. GIGI M. MENDOZA, Court Stenographers, and MS. ZENAIDA Z. SALONGA, Clerk-in-Charge, all of RTC, Branch 170, Malabon City, be found GUILTY of simple neglect of duty and ADMONISHED to be more diligent and circumspect in the performance of their duties; and
6. Atty. EVELYN M. LOZANO-AGUILAR, Branch Clerk of Court, MA. ALICIA C. MALUBAY, Court Interpreter, and DALISAY C. CASUGA, MYRA D. SANTOS, SHERREE ANN R. RUZGAL, MA. THERESA P. REYES, Court Stenographers, all of RTC, Branch 74, Malabon City, be REMINDED to henceforth strictly comply with existing court issuances on search warrants without necessarily giving up their endeavor to preserve the confidentiality of the information in the records.

Considering the herein recommendation of the OCA that Judge Docena be dismissed from the service, and considering further that the preventive suspension of Judge Docena will in the meantime expire on 1 March 2017, it is likewise hereby recommended that the PREVENTIVE SUSPENSION of Judge Docena expiring on 1 March 2017 BE INDEFINITELY EXTENDED until such time the Court has resolved this administrative

matter.

In a Resolution[83] dated February 28, 2017, the Court extended the preventive suspension of Judge Docena for another three (3) months reckoned from March 1, 2017. Finally, on June 20, 2017, the Court resolved to extend Judge Docena's suspension until such time that this administrative matter would have been resolved.[84]

The Court's Ruling

Section 2, Rule 126 of the Rules of Court provides for the proper venue where applications for search warrant should be filed:

SEC. 2. Court where applications for search warrant shall be filed. - An application for search warrant shall be filed with the following:

(a) Any court within whose jurisdiction a crime was committed.

(b) For compelling reasons stated in the application, any court within the judicial region where the crime was committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced.

However, if the criminal action has already been filed, the application shall only be made in the court where the criminal action is pending.[85]

It is settled that the inclusion of a statement of compelling reasons in a search warrant application that is filed in a court which does not have territorial jurisdiction over the place of commission of the alleged crime is a mandatory requirement, and the absence of such statement renders the application defective.[86]

The absence of a statement of compelling reasons, however, is not a ground for the outright denial of a search warrant application, since it is not one of the requisites for the issuance of a search warrant. Section 4 of Rule 126 is clear on this point:

SEC. 4. Requisites for issuing search warrant. - A search warrant shall not issue except upon probable cause in connection with one specific offense 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 things to be seized which may be anywhere in the Philippines.[87]

In other words, the statement of compelling reasons is only a mandatory requirement in so far as the proper venue for the filing of a search warrant application is concerned. It cannot be viewed as an additional requisite for the issuance of a search warrant.

It is also important to stress that an application for a search warrant merely constitutes a criminal process and is not in itself a criminal action.[88] The rule, therefore, that venue is jurisdictional in criminal cases does not apply thereto.[89] Simply stated, venue is only procedural, and not jurisdictional, in applications for the issuance of a search warrant.

In *Pilipinas Shell Petroleum Corporation v. Romars International Gases Corporation*,[90] the Court ruled that the issue on the absence of a statement of compelling reasons in an application for a search warrant does not involve a question of jurisdiction over the subject matter, as the power to issue search warrants is inherent in all courts.[91] Thus, the trial court may only take cognizance of such issue if it is raised in a timely motion to quash the search warrant. Otherwise, the objection shall be deemed waived, pursuant to the Omnibus Motion Rule.[92]

Consequently, the Court in *Pilipinas Shell* upheld the validity of the questioned search warrants despite the lack of a statement of compelling reasons in their respective applications,[93] as the objection was not properly raised in

a motion to quash.[94]

Note, too, that the determination of the existence of compelling reasons under Section 2(b) of Rule 126 is a matter squarely addressed to the sound discretion of the court where such application is filed, subject to review by an appellate court in case of grave abuse of discretion amounting to excess or lack of jurisdiction.[95]

Clearly, this administrative proceeding is not the proper forum to review the search warrants issued by Judge Docena and Judge Magsino in order to determine whether the compelling reasons cited in their respective applications are indeed meritorious.

Given these circumstances, we cannot agree with the OCA's findings that Judge Docena and Judge Magsino violated Section 2 of Rule 126 by simply issuing search warrants involving crimes committed outside the territorial jurisdiction of the RTC of Malabon City where: a) there is no compelling reason to take cognizance of the applications; and b) the compelling reasons alleged in the applications appear to be unmeritorious.[96]

It is obvious that Judge Docena and Judge Magsino simply exercised the trial court's ancillary jurisdiction over a special criminal process[97] when they took cognizance of the applications and issued said search warrants. And as previously discussed, the propriety of the issuance of these warrants is a matter that should have been raised in a motion to quash or in a certiorari petition, if there are allegations of grave abuse of discretion on the part of the issuing judge.

The Administrative Liabilities

To hold a judge administratively liable for gross misconduct, ignorance of the law or incompetence of official acts in the exercise of judicial functions and duties, it must be shown that his acts were committed with fraud, dishonesty, corruption, malice or ill-will, bad faith, or deliberate intent to do an injustice.[98] Absent such proof, the judge is presumed to have acted in good faith in exercising his judicial functions.[99]

In this case, the OCA found Judge Docena's issuance of the subject search warrants to have been motivated by bad faith,[100] as evidenced by the following attendant circumstances:

First, the high incidence of search warrant operations that yielded negative results, remained unserved, or otherwise were never returned to the court;[101]

Second, Judge Docena appears to have thrown leading questions during the examination of the applicant and the witness in SW 16-257 and SW 14-134;[102]

Third, four search warrants issued by Judge Docena, i.e. Search Warrant Nos. 13-160-MN, 13-161-MN, MN-13-162, and MN-13-163, have been nullified by the Court of Appeals (CA) in CA-G.R. SP No. 132860 for insufficiency of the compelling reasons alleged in the search warrant applications;[103]

And fourth, there were search warrants that appear to have been issued ahead of the dates of filing of their respective applications; search warrants that were released to the witness instead of the applicant; and search warrants which were issued on the date of filing of the application, but appear to have been received by the applicant a day in advance.[104]

We are not convinced. These circumstances alone are clearly insufficient to overturn the presumption that Judge Docena acted in good faith in issuing the subject search warrants.

For one thing, it is unfair to hold the low rate of success of search warrant operations against Judge Docena, given that the courts have absolutely no participation in the implementation of the search warrants that they issue.

For another, it is a grave error to consider the CA's nullification of four search warrants issued by Judge Docena

as an indication that all warrants issued by him suffer from the same infirmity. After all, not every mistake or error of judgment of a judge in the performance of his official duties makes him liable therefor.[105]

Nevertheless, we find sufficient evidence to hold Judge Docena administratively liable for gross neglect of duty for the serious mismanagement of search warrant applications in Branch 170.

Section 12. Rule 126 of the Rules of Court provides:

SEC. 12. Delivery of property and inventory thereof to court; return and proceedings thereon. -

a) The officer must forthwith deliver the property seized to the judge who issued the warrant, together with a true inventory thereof duly verified under oath.

b) Ten (10) days after issuance of the search warrant, the issuing judge shall ascertain if the return has been made, and if none, shall summon the person to whom the warrant was issued and require him to explain why no return was made. If the return has been made, the judge shall ascertain whether Section 11 of this Rule has been complied with and shall require that the property seized be delivered to him. The judge shall see to it that subsection (a) hereof has been complied with.

c) The return on the search warrant shall be filed and kept by the custodian of the log book on search warrants who shall enter therein the date of the return, the result, and other actions of the judge.[106]

The records show that Judge Docena has failed to properly monitor the submission of returns as required under Section 12(b) and (c) of Rule 126, considering that:

- the returns on 172 search warrants[107] have yet to be submitted, and Judge Docena failed to summon each of the 39 applicants thereof to court to explain why no return was made.[108]

- 350 returns[109] were filed by applicants well beyond the 10-day period to do so, with the delay ranging from 11 days up to six months and five days(in SW 15-477).[110]

- 43 returns[111] were not immediately acted upon, with the delay ranging from one month and 22 days up to five months and 12 days (in SW 15-435).[112]

- 29 returns[113] have yet to be acted upon.

Judge Docena likewise committed several lapses in ascertaining whether Section 12(a) of Rule 126 was complied with by the applicants in: a) SW 15-503-IVIN, where mere photocopies of the inventory of the seized items were submitted;[114] b) in SW 16-286-MN, where the inventories are not under oath and the signatures of the witnesses are unidentifiable because their printed names are not indicated in the inventory;[115] and c) in SW 16-273-MN, where only one witness signed the inventory sheet.[116]

We also find that Judge Docena failed to comply with his administrative responsibilities under Rules 3.08 and 3.09 of the Code of Judicial Conduct which provide:

RULE 3.08 - A judge should diligently discharge administrative responsibilities, maintain professional competence in court management, and facilitate the performance of the administrative functions of other judges and court personnel.

RULE 3.09 - A judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and fidelity.[117]

as it appears that the concerned court personnel in Branch 170, namely Atty. Jesus S. Hernandez (Atty. Hernandez), the Branch Clerk of Court, Ms. Zenaida Z. Salonga, the Clerk-in-Charge, together with Ms. Olivia

M. Labagnao, Ms. Rosario M. San Pedro, Ms. Debhem N. Fajardo, and Ms. Gigi M. Mendoza, all court stenographers, too, are all guilty of simple neglect of duty for failure to diligently perform their respective administrative duties.

Atty. Hernandez, as the administrative officer in Branch 170, fell short of the diligence and care required of him in the following instances:

- a. Case records have no minutes of the proceedings.[118]
- b. Some search warrants are incorrectly dated, thus making it appear that they were issued ahead of the date of filing of their respective applications.[119]
- c. Some search warrants were handed over to the witnesses instead of the applicants.[120]
- d. There is no date and time of receipt of the case folder by Branch 170 on the face of the search warrant applications.[121]
- e. The search warrant case folders in Branch 170 are not paginated.[122]
- f. In several applications, some documents attached thereto are not original copies.[123]
- g. Case folders are not properly stitched, and some folders have loose pages. Other folders, too, are merely attached using fasteners.[124]

The court stenographers were likewise remiss in the performance of their duties under Section 17, Rule 136 of the Rules of Court, given that they failed to produce a total of 34 stenographic notes or seven sets of consolidated notes, and to properly label their stenographic notes.[125] It also appears that they only prepared transcripts of stenographic notes upon request of the applicants.[126]

As for the Clerk-in-Charge, she clearly violated Section 12(c) of Rule 126,[127] when she unjustifiably failed to maintain the required log book for search warrant applications in Branch 170.

It is settled that "[a] judge presiding over a branch of a court is, in legal contemplation, the head thereof having effective control and authority to discipline all employees within the branch." [128] Consequently, Judge Docena shares accountability for the administrative lapses of his staff that contributed to the clearly disorganized and inefficient dispatch of business in Branch 170.

Finally, we hold Judge Magsino and Atty. Dizon administratively liable for simple misconduct, in their capacities as the Executive Judge and the Clerk of Court of the RTC of Malabon, respectively, for imposing their own internal policies and practices[129] in lieu of the existing rules in the raffle of applications involving ordinary cases covered by Chapter V of the Guidelines on the Selection and Designation of Executive Judges and Defining their Powers, Prerogatives and Duties (Guidelines).

To be specific, Judge Magsino and Atty. Dizon failed to observe the pertinent portion of Section 6 of the Guidelines which requires the search warrant applications assigned to a branch during the special raffle to be deducted from the number of cases allotted to on the next scheduled regular raffle. This, however, was not implemented in the RTC of Malabon City.[130]

Judge Magsino and Atty. Dizon also failed to observe the proper ratio of the raffling of cases prescribed under par. 1, Chapter V of Administrative Order No. 6 dated June 30, 1975,[131] which states:

V. CASELOAD AND HONORARIUM

1. The caseload of the Executive Judge shall be as follows:

xxxx

c. In case of multiple branches (salas) of more than five (5), the distribution of cases shall be in the proportion of one (1) case for the Executive Judge and two (2) for each of the other judges.[132]

Their use of an improvised system of counting the applicants (instead of the applications)[133] in the special raffle is simply unacceptable, as the Executive Judge, much less the Clerk of Court, has absolutely no discretion to deviate from the prescribed ratio for the raffling of cases without prior approval from this Court.

This resulted in an inequitable distribution of search warrant applications between Branches 170 and 74 at a ratio of almost 6:1, or a six out of seven chance that an application will be raffled to Branch 170, thereby removing the unpredictability of the raffling process, so much so that some applicants already indicate that their applications are being filed with Branch 170.[134]

The Penalties

On the one hand, gross neglect of duty or gross negligence "refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, in so far as other persons may be affected. xxx In cases involving public officials, [there is gross negligence] when a breach of duty is flagrant and palpable." [135]

It is important to stress, however, that the term "gross neglect of duty" does not necessarily include willful neglect or intentional wrongdoing. It can also arise from situations where "such neglect which, from the gravity of the case or the frequency of instances, becomes so serious in its character" that it ends up endangering or threatening the public welfare.[136]

In contrast, simple neglect of duty means the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference.[137]

Under Section 46(A), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), gross neglect of duty is classified as a grave offense punishable by dismissal from the service (even for the first offense), while simple neglect of duty is a less grave offense, punishable by suspension without pay for one (1) month and one (1) day to six (6) months for the first offense.

In this case, we find the gravity of Judge Docena's neglect in the performance of his duties to be so serious in character that the Court may unquestionably impose against him the penalty of dismissal from the service.

Nevertheless, we take into consideration his length of service of thirty (30) years in various sectors of the government, with eight (8) years spent rendering service in the Judiciary as a Technical Assistant in the Supreme Court from 1985 to 1987 and as an RTC Judge from 2010 up to present,[138] his candid admission of his lapses and his commitment to undertake stringent steps to address the matters brought to his attention by the OCA[139] as mitigating factors that serve to temper the penalty to be imposed upon him.[140] We also note that this is Judge Docena's first time to be administratively sanctioned by this Court. Thus, instead of imposing the penalty of dismissal, we deem it proper to impose against Judge Docena the penalty of suspension for two (2) years without pay.

As for Atty. Hernandez, we agree with the OCA's conclusion that he undoubtedly failed to meet the standards required of him as an effective and competent clerk of court.[141] The OCA recommended that Atty. Hernandez be suspended without pay for six (6) months.[142] We, however, modify this recommendation and reduce the penalty to suspension without pay for one (1) month and (1) day, considering the fact that this is his first

offense,[143] and the errors he committed are purely administrative in nature and are not gross or patent.

We likewise agree with the OCA's finding that Ms. Salonga (the Clerk-in-Charge) and Ms. Labagnao, Ms. Fardo, Ms. San Pedro, and Ms. Mendoza (the court stenographers) also failed to diligently perform their respective duties.[144] Since this, too, is their first offense, we adopt the OCA's recommendation[145] and impose the penalty of admonition that they be more circumspect in the performance of their respective duties.

On the other hand, "[m]isconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be proved by substantial evidence. Otherwise, the misconduct is only simple." [146]

In this case, there is no substantial evidence to show that Judge Magsino and Atty. Dizon's actions involved the elements of corruption, willful intent to violate the law or to disregard established rules to qualify their misconduct as grave. Absent such malicious intent or bad faith on their part, they may only be held administratively liable for simple misconduct.

Although the penalty for simple misconduct is suspension without pay of one (1) month and one (1) day to six (6) months,[147] the RRACCS allows the payment of a fine in place of suspension if the offense is committed without abusing the powers of one's position or office.[148] Considering that this is also the first offense for both Judge Magsino and Atty. Dizon, we find the imposition of a fine of P20,000.00 to be proper and commensurate for their transgressions.

Four of the Justices voted for the dismissal of Judge Docena from the service.

WHEREFORE, the Court:

1. FINDS Hon. Celso R. L. Magsino, Jr., Presiding Judge, Regional Trial Court, Branch 74, Malabon City, and then Executive Judge, Regional Trial Court, Malabon City, GUILTY of simple misconduct, and hereby orders him to pay a FINE in the amount of Twenty Thousand Pesos (P20,000.00), with a STERN WARNING that a repetition of the same or similar acts will be dealt with more severely;
2. FINDS Atty. Esmeralda G. Dizon, Clerk of Court, Office of the Clerk of Court, Regional Trial Court, Malabon City, GUILTY of simple misconduct, and hereby orders her to pay a FINE in the amount of Twenty Thousand Pesos (P20,000.00), with a STERN WARNING that a repetition of the same or similar acts will be dealt with more severely;
3. FINDS Hon. Zaldy B. Docena, Presiding Judge, Regional Trial Court, Branch 170, Malabon City, GUILTY of gross neglect of duty, and hereby SUSPENDS him from office for a period of two (2) years without pay, with a STERN WARNING that a repetition of the same or similar acts will be dealt with more severely;
4. FINDS Atty. Jesus S. Hernandez, Branch Clerk of Court, Regional Trial Court, Branch 170, Malabon City, GUILTY of simple neglect of duty, and hereby SUSPENDS him from office for a period of one (1) month without pay, with a STERN WARNING that a repetition of the same or similar acts will be dealt with more severely;
5. FINDS Ms. Zenaida Z. Salonga, Clerk-in-Charge, and Ms. Olivia M. Labagnao, Ms. Debbem E. Fardo, Ms. Rosario M. San Pedro, and Ms. Gigi M. Mendoza, Court Stenographers, Regional Trial Court, Branch 170, Malabon City, GUILTY of simple neglect of duty, and are ADMONISHED to be more diligent and circumspect in the performance of their duties.

SO ORDERED.

Sereno, C. J., on official leave.

Velasco, Jr., Leonardo-De Castro, Perlas-Bernabe, Jardeleza, Caguioa, Martires, Tijam, and Reyes, Jr., JJ., concur.

Carpio, [**] J., I join the dissent of J. Peralta.

Peralta, J., Pls. see dissenting opinion.

Bersamin, J., I join the dissent of J. Peralta.

Leonen, J., I join the Dissent of Justice Peralta.

Gesmundo, J., No participation related to one of the parties.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on September 5, 2017 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled administrative matter, the original of which was received by this Office on September 25, 2017 at 2:17 p.m.

Very truly yours,

(SGD)

FELIPA G. BORLONGAN-ANAMA

Clerk of Court

[1] Rollo, Vol. I, pp. 1-7.

[2] Id. at 1-2.

[3] Id. at 5.

[4] Id.

[5] Id. at 2-3.

[6] Id. at 2.

[7] Id. at 3.

[8] Id.

[9] Id. at 4.

[10] Id.

[11] Id.

[12] Id. at 10.

[13] Id.

[14] Folder of Annexes "1", pp. 1-26.

[15] Three newly-appointed judges for Branches 289 to 291 have yet to assume office. Id. at 2.

[16] Id. at 2.

[17] Id.

[18] Id. at 2.

[19] Id. at 2-3. Emphasis supplied.

[20] Id. at 4.

[21] Id. at 5; see also Table 1. Distribution of Applications for Search Warrant (RTC, Malabon C.) - January 2016, id. at 30.

[22] Id.; see also Table 2. Distribution of Applications for Search Warrant (RTC, Malabon C.) - February 2016, id. at 31.

[23] Id.; see also Table 3. Distribution of Applications for Search Warrant (RTC, Malabon C.) - March 2016, id. at 32.

[24] Id.

[25] Id. at 6.

[26] Id.

[27] Id.; see also Annex "I," id. at 41.

[28] Id.; see also Annex "J," id. at 44.

[29] Id.; see also Annex "L-1," id. at 46.

[30] Id.; see also Annexes "M" to "M-6," id. at 47.

[31] Id.; see also Annexes "N" to "S-1," id. at 54-59.

[32] Id.; see also Annexes "T" to "T-5," id. at 60.

[33] Id.; see also Annexes "U" to "Y-1," id. at 61-71.

[34] Id. at 7; see also Annexes "AA" to "AA-2" and "AB" to "AB-2," id. at 74-75.

[35] See Table 5. Search warrants against John/Jane Does issued by Branch 170, id. at 193-206

[36] Id. at 10.

[37] See Table 3. Search warrants involving offenses committed outside the territorial jurisdiction of RTC, Branch 170, Malabon City, id. at 83-93.

[38] Id. at 9-10.

[39] See Table 4. Search warrants involving offenses committed outside the territorial jurisdiction of RTC, Branch 170, Malabon City - COMPELLING REASON WAS STATED IN THE APPLICATION, id. at 94-192.

[40] Id. at 12.

[41] Id. at 18; see also Annexes "DU" to "DW-2," "DX" to "DZ-1," "EA" to "EC-2," "ED" to "EF-2," "EG" to "EI-2," "EJ" to "EL-2," and "EM" to "EO-1," id. at 534-563.

[42] Id. at 16; see also Annexes "BO" to "BP-1," id. at 446-447.

[43] Id.; see also Annexes "BQ" to "BR-1" and "BS" to "BT-1," id. at 449-453.

[44] Id.; see also Annexes "BU" to "BU-1," id. at 455-456.

[45] Id.; see also Annexes "BV" to "BW-1" and "BX" to "BY-1," id. at 458-463.

[46] Id.

[47] Id. at 17.

[48] Id.

[49] Id.; see also Table 10. Cases with two (2) sets of stenographic notes, id. at 232-236.

[50] Id.

[51] Id. at 20.

[52] Id. at 21.

[53] Id.

[54] Id.

[55] Id.

[56] Id.

[57] Id. at 22.

[58] Id. at 9.

[59] Id. at 22.

[60] Id.

[61] Id.

[62] Id.

[63] Id.

[64] Id.

[65] Id.

[66] Rollo, Vol. I, pp. 96-122.

[67] Id. at 38-72.

[68] Id. at 42.

[69] Id. at 42.

- [70] Id.
- [71] Id. at 56.
- [72] Id. at 43.
- [73] Id. at 47.
- [74] Id. at 49.
- [75] Id. at 50.
- [76] Id. at 51.
- [77] Id. at 53.
- [78] Id. at 63.
- [79] Id. at 57.
- [80] Id. at 63.
- [81] Id. at 64-69. See also Judge Docena's Supplemental Comment dated November 10, 2016, id. at 904-907.
- [82] Id. at 526-603.
- [83] Id. at 604-605.
- [84] Id., unpaginated.
- [85] Emphasis supplied.
- [86] Pilipinas Shell Petroleum Corporation v. Romars International Gases Corporation, 753 Phil. 707, 715 (2015).
- [87] Emphasis supplied.
- [88] Pilipinas Shell Petroleum Corporation v. Romars International Gases Corporation, supra note 84 at 717, citing Malaloan v. Court of Appeals, 302 Phil. 273, 285 (1994).
- [89] Id. at 718.
- [90] Id.
- [91] Id. at 718.
- [92] Id. at 715-716.
- [93] Id. at 718.
- [94] Id. at 716.
- [95] People v. Chiu, 468 Phil. 183, 198 (2004).
- [96] Rollo, Vol. I, pp. 570 and 599.
- [97] Malaloan v. Court of Appeals, 302 Phil. 273, 285-286 (1994).
- [98] Andrada v. Hon. Judge Banzon, 592 Phil. 229, 233-234 (2008).
- [99] Lacadin v. Judge Mangino, 453 Phil. 414, 422 (2003).

[100] Rollo, Vol. I, p. 571.

[101] Id.

[102] Id. at 573.

[103] Id. at 573-574.

[104] Id. at 574.

[105] Lacadin v. Judge Mangino, *supra* note 99, citing Atty. Relova v. Judge Rosales, 441 Phil. 104, 115 (2002).

[106] Emphasis supplied.

[107] See Table 11. Search warrants which returns have yet to be submitted, Folder of Annexes "1," pp. 247-250.

[108] Rollo, Vol. I, p. 512.

[109] See Table 12. Cases which returns were filed beyond the 10-day period, Folder of Annexes "1," pp. 251-298.

[110] Id. at 251.

[111] See Table 13. Sample list of cases which returns were not immediately acted upon, id. at 297-301.

[112] Id. at 297.

[113] See Table 14. Returns to be acted upon, id. at 302-305.

[114] See Annex "EW," id. at 576.

[115] See Annexes "EX" to "EX-2," id. at 577.

[116] See Annexes "EZ" to "EZ-1," id. at 579.

[117] Emphasis supplied.

[118] Rollo, Vol. I, p. 532.

[119] Id.

[120] Id. at 533.

[121] Id.

[122] Id.

[123] Id.

[124] Id.

[125] Id. at 595.

[126] Id. at 545.

[127] Id. at 595.

[128] *Amane v. Atty. Mendoza-Arce*, 376 Phil. 575, 600 (1999).

[129] See Annexes "A" and "B," Folder of Annexes "1," pp. 28-29.

[130] Rollo, Vol. I, pp. 551-552.

[131] Id. at 552-553.

[132] Emphasis supplied.

[133] See Annex "A," Folder of Annexes "1," p. 28.

[134] Rollo, Vol. I, p. 556.

[135] Office of the Ombudsman v. De Leon, 705 Phil. 26, 37-38 (2013).

[136] Clemente v. Bautista, 710 Phil. 10, 16-17 (2013). See also Clerk of Court Rodrigo-Ebron v. Adolfo, 550 Phil. 449, 455 (2007).

[137] Office of the Ombudsman v. De Leon, supra note 135 at 38.

[138] Per Judge Docena's Service Record from the Records Division of the OAS.

[139] Rollo, Vol. I, p. 966.

[140] See Office of the Court Administrator v. Atty. Gaspar, 659 Phil. 437, 443 (2011), where the Court considered Atty. Gaspar's candid admission of her lapses and her apologies as mitigating factors that served to temper the penalty imposed against her.

[141] Rollo, Vol. I, p. 595.

[142] Id. at 596.

[143] See Tudtud v. Atty. Caayon, 494 Phil. 9, 15 (2005).

[144] Rollo, Vol. I, p. 595.

[145] Id.

[146] See Santos v. Rasalan, 544 Phil. 35, 43 (2007).

[147] REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE, Rule 10, Section 46(D).

[148] Id. at Section 47(1)(c).

DISSENTING OPINION

PERALTA, J.:

With due respect to the majority opinion, I respectfully submit this dissenting on the penalties imposed on Docena. This case is pursuant to the spot audit conducted by the Office of the Court Administrator (OCA) on the distribution and/or raffle of applications for and issuance of search warrants in the Regional Trial Court (RTC), Branch 170, Malabon City.

The procedural and factual antecedents of the present case are as follows:

On April 26, 2016, the OCA sent a team to conduct a spot audit of search warrant applications raffled to Branch 170 of the Malabon RTC brought about by persistent reports on the alleged irregular issuance of search warrants by Presiding Judge Zaldy B. Docena. The team, likewise, examined the Office of the Clerk of Court (OCC) since a significant number of applications were being raffled to Branch 170 despite the existence of four (4) other

branches at that time.

On May 26, 2016, the OCA submitted to the Court its initial Report[1] dated May 23, 2016 on the preliminary results of the spot audit. Upon the OCA's recommendation, the Court En Banc issued a Resolution[2] dated May 31, 2016, thus:

The Court Resolved, upon the recommendation of the Office of the Court Administrator (OCA), to

(a) PREVENTIVELY SUSPEND, effective immediately, Judge Zaldy B. Docena, Regional Trial Court (RTC), Branch 170, Malabon City, for six (6) months pending the completion of a more comprehensive and detailed investigation on the issuance of search warrants;

(b) RELIEVE Judge Celso Raymundo L. Magsino, Jr., Branch 74, same court, from his duties as Executive Judge of RTC, Malabon City, and INCLUDE him IN THE INVESTIGATION in view of the apparent irregularity in the raffle of applications for search warrants;

(c) DESIGNATE Judge Jimmy Edmund G. Batara, Branch 72, same court, and Judge Emmanuel D. Laurea, Branch 169, same court, as Executive Judge and Vice-Executive Judge, respectively, of RTC, Malabon City; and

(d) DIRECT the OCA to IMMEDIATELY SEAL/SECURE all records/folders pertaining to applications for search warrant received by Judge Docena.

Let this resolution be personally and immediately served on the parties concerned.

On August 4, 2016, the Audit Team rendered its final report. It found out that there was an unusual volume and inequitable distribution of the applications for search warrants in the Malabon RTC by the OCC and the Office of the Executive Judge. A total of 984 applications for search warrants were filed before the RTC of Malabon City from January 2015 up to May 10, 2016. These applications were distributed among the following judges: 795 for Judge Docena, Branch 170; 185 for Judge Celso Raymundo L. Magsino, Jr., Branch 74; and four (4) applications for Jimmy Edmund G. Batara, Branch 72.

According to Atty. Esmeralda G. Dizon, Clerk of Court VI, OCC, Malabon RTC, only two (2) out of the five (5) branches, specifically, Branches 74 (Special Commercial Court) and 170 (Environmental Court), took cognizance of search warrant applications, since Branches 72 (Drugs Court), 73 (Family Court), and 169 (Family Court and Agrarian Court) are excluded from the raffle of said applications because they exclusively handle drugs and family court cases.

After an exhaustive examination of the records of the OCC, Branch 74, and Branch 170, the Audit Team made the following findings:

1. There was non-observation of existing rules in the distribution of the applications involving ordinary criminal cases provided in Chapter V[3] of the Guidelines[4] on the Selection and Designation of Executive Judges (the Guidelines).

In January 2016, Branch 170 received all the sixteen (16) search warrant applications filed in the Malabon RTC. In February 2016, forty-four (44) search warrant applications were assigned to Branch 170, while only five (5) ordinary criminal cases were given to Branch 74. And in March 2016, eighty-seven (87) applications went to Branch 170, while only three (3) were given to Branch 74.

2. An application involving violation of two (2) offenses (Comprehensive Dangerous Drugs Act of 2002 and Comprehensive Firearms and Ammunition Regulation Act), which are both covered by Section 11, Chapter V of the Guidelines, was assigned to Branch 170.

3. A Notice of Special Raffle would be prepared even in cases covered by Section 11,[5] Chapter V of the Guidelines.

4. Lack of minutes of the special raffle for applications for search warrant to prove that a raffle was indeed conducted.

5. There were discrepancies between the date the application was received by the OCC, as reflected in its logbook, and the date stamped on the application, as received by Branch 170.

For instance, SW15-120-MN appears to have been received by the OCC on May 6, 2015 at 9:00 a.m. and, thereafter, raffled to Branch 170 on the same day, based on the date stamped on the face of the application. However, the case was registered as filed in the OCC's logbook only on May 7, 2015. The corresponding search warrant was also issued on May 7, 2015.

The same observation is true for the following applications: SW15-427 to SW15-432 - logged as filed with the OCC on September 9, 2015, but the applications were all stamped received on September 8, 2015 at 10:30 a.m., and SW15-592 to SW15-596 - logged as filed with the OCC on November 27, 2015, but the applications were stamped received on November 26, 2015, at 1:00 p.m.

6. One application even has no docket number, date of receipt by the OCC, date of raffle, and date received by the court branch to which it was raffled.

7. In some cases, the heading of the application would already indicate that it was being filed with Branch 170 and Judge Docena's name would already be typewritten at the bottom of said application, even before the actual raffle was made.

8. The search warrants issued by the Malabon RTC even exceeded the number of search warrants issued by the RTCs of Manila (with 56 branches) and of Quezon City (with 48 branches), notwithstanding the fact that the latter courts are allowed to issue search warrants which are enforceable nationwide.

The following data provided by the Statistical Reports Division of the Court Management Office would show the number of search warrants issued by selected RTCs in the National Capital Judicial Region from January 2015 up to March 2016:

ISSUING COURT

NUMBER OF SEARCH WARRANTS ISSUED

Malabon City (5 branches)

763

Manila (56 branches)

675

Makati City (30 branches)

75

Quezon City (48 branches)

68

Pasig City (21 branches)

9. Sudden decrease in the applications filed with the Malabon RTC during the dates when the OCA requested for statistical data on search warrants and the week, when it became clear that the object of the spot audit was to investigate on search warrant applications

After consolidating all the search warrant applications which Branches 170 and 74 acted upon, the Audit Team discovered that out of the 980 applications filed and acted upon by said branches from January 2015 to May 10, 2016, only 45 or 4.6% actually involves offenses committed within its territorial jurisdiction. The rest, or 95.4% of the applications, involves offenses committed outside Malabon.

The Audit Team noted that Branches 170 and 74 granted the following number of applications for search warrant despite the fact that the commission of the crimes was in a place outside the territorial jurisdiction of the Malabon RTC:

- With no compelling reason in the application: Branch 170-130; Branch 74-33
- With compelling reason/s: Branch 170- 628; Branch 74-106

There was likewise a high incidence of negative results, unserved warrants, and no returns, translating to 56% (Branch 170) and 42% (Branch 74) of the issued search warrants enforceable outside Malabon, thus:[6]

PLACE WHERE SEARCH WARRANTS ENFORCEABLE

BRANCH 170

BRANCH 74

NO COMPELLING REASON

WITH COMPELLING REASON

TOTAL

NO COMPELLING REASON

WITH COMPELLING REASON

TOTAL

Laguna

1

-

1

-

-

-

Rizal

-

-

-

1

-

1

Caloocan City

7

8

15

1

1

2

Las Piñas City

-

6

6

-

-

-

Makati City

18

170

188

-

35

35

Mandaluyong City

6

13

19

13

2

15

Manila City

54

116

170

1

18

19

Marikina City

-

-

-

-

2

2

Muntinlupa City

1

15

16

-

2

2

Parañaque City

2

65

67

7

10

17

Pasay City

6

75

81

-

16

16

Pasig City

15

68

83

4

10

14

Quezon City

11

50

61

3

3

6

Taguig City

7

33

40

3

7

10

Valenzuela City

2

9

11

-

-

-

TOTAL

130

628

758 (out of 795 applications)

33

106

139

RESULTS other than positive (negative, unserved, no returns

426 (out of 758 or 56%)

58 (out of 139 or 42%)

The Audit Team likewise observed that where the compelling reasons cited by the applicant appeared to be without merit, Judge Docena failed to conduct the required probing and exhaustive inquiry on the veracity of the supposed compelling reason invoked.

In all, the team found that Judge Docena granted 790 search warrant applications from January 2015 up to May 10, 2016, and 192 of which are John/Jane Doe search warrants. Out of the 790 search warrants issued, about 55.95% or 442 have yielded negative results, remained unserved, or were otherwise never returned to the court.

The OCA found this to be in violation of Section 2(a) of Rule 126 of the Rules of Court. Branch 170 also admitted returns on search warrants where the seizing officer did not proceed with the operation because of new developments and/or information that the subject had already moved out, when the proper procedure would have been for the applicant to file a motion to set aside the search warrant. Likewise, the application docketed as SW16-183 was raffled to Branch 170, when it should have been directly assigned to the Executive Judge as it involved violations of Presidential Decree No. 9165, or the Comprehensive Dangerous Drugs Act of 2002, and PD No. 1866, as amended, or the law on the illegal possession of firearms.

The Audit Team noted that Judge Magsino also granted a considerable number of search warrant applications from January 2015 up to May 10, 2016, where the offenses involved were committed outside the territorial jurisdiction of the RTC of Malabon City, thus:[7]

PLACES WHERE SEARCH WARRANTS ENFORCEABLE

NO COMPELLING REASON

WITH COMPELLING REASON

TOTAL

Rizal

1

-

1

Caloocan City

1

1

2

Makati City

-

35

35

Mandaluyong City

13

2

15

Manila

1

18

19

Marikina City

-

2

2

Muntinlupa City

-

2

2

Parañaque City

7

10

17

Pasay City

-

16

16

Pasig City

4

10

14

Quezon City

3

3

6

Taguig City

3

7

10

TOTAL

33

106

139

Nevertheless, the Audit Team found no patent irregularities in Judge Magsino's issuance of search warrants assigned to Branch 74.[8]

In its 1st Indorsement[9] dated September 27, 2016, the OCA directed Judge Docena and Judge Magsino, as well as the concerned personnel, to submit their respective Comments on the Audit Team's final report.

For his defense, Judge Docena submitted that he granted the search warrant applications before him in good faith, believing that there was probable cause for their issuance and it was in compliance with the law and procedure. He clarified that he had no control over which search warrant applications will be filed in the RTC of Malabon City, much less those that will be raffled to Branch 170. Also, he or the court personnel under him did not have any hand in the implementation of the search warrants which he issued or in its outcome or results. He likewise contended that there was nothing irregular in his issuance of the 192 John/Jane Doe search warrants, considering that the crimes involved therein are mostly violations of the Cybercrime Prevention Act and the e-Commerce Act, where there is difficulty in obtaining the identities of the alleged perpetrators.

As for his issuance of search warrants involving crimes committed outside the territorial jurisdiction of the RTC of Malabon City, Judge Docena denied having violated Section 2(a) of Rule 126 of the Rules of Court and Section 12, Chapter V of the Guidelines, given that the issuance of search warrants is inherent in all courts, and venue in search warrant applications is merely procedural and not jurisdictional. He further argued that he could not

consider the issues of improper venue and the absence of compelling reasons in the search warrant applications as grounds to outrightly deny said applications, since these should have been duly raised by the respondent/accused in a motion to quash. In addition, Judge Docena maintained that he granted the search warrant applications in good faith, believing that the compelling reasons provided by the applicants were meritorious. He insisted that his determination should be respected unless it is shown that he was guilty of grave abuse of discretion amounting to excess or lack of jurisdiction. The rule requiring judges to conduct a probing and exhaustive inquiry is applicable only to the determination of probable cause and not to the compelling reasons cited by an applicant in a search warrant application, as the existence of compelling reasons does not relate to the existence of probable cause which is the basis for the issuance of the search warrant.

As to the search warrants that appear to have been issued ahead of the date of filing of their respective applications, Judge Docena claimed that the incorrect dates on said warrants were mere typographical errors that are attributable to honest mistake and inadvertence.

After a careful review and evaluation of the case, the OCA, in a Memorandum[10] dated February 20, 2017, made the following recommendations:

IN VIEW OF ALL THE FOREGOING, it is respectfully recommended for the consideration of the Honorable Court that:

1. Hon. CELSO R. L. MAGSINO, JR., Presiding Judge, RTC, Branch 74, Malabon City, and then Executive Judge, RTC, Malabon City, be found GUILTY of (a) violation of Supreme Court rules and circulars concerning the raffle of search warrant applications, and Section w, Rule 126 of the Rules of Court and Section 12, Chapter V of the Guidelines in the Selection and Designation of Executive Judges and Defining their Powers, Prerogatives and Duties on the issuance of search warrants, and Section 12(b), Rules 126, Rules of Court on, among others, the filing of the returns; and (b) inefficiency in the performance of his duties as Presiding Judge of Branch 74, same court, and FINED in the amount of P20,000.00;
2. Atty. ESMERALDA G. DIZON, Clerk of Court, Office of the Clerk of Court, RTC, Malabon City, be found GUILTY of simple neglect of duty and SUSPENDED from the service for six (6) months, effective immediately;
3. Hon. ZALDY B. DOCENA, Presiding Judge, RTC, Branch 170, Malabon City, be found GUILTY of gross ignorance of the law, gross negligence, and gross misconduct and DISMISSED FROM THE SERVICE with forfeiture of retirement benefits, except accrued leave credits, and disqualification from re-employment in any government institution;
4. Atty. JESUS S. HERNANDEZ, Branch Clerk of Court, RTC, Branch 170, Malabon City, be found GUILTY of simple neglect of duty and SUSPENDED from the service for six (6) months, effective immediately;
5. MS. OLIVIA M. LABAGNAO, MS. DEBHEM E. FARDO, MS. ROSARIO [M. SAN PEDRO], AND MS. GIGI M. MENDOZA, Court Stenographers, and MS. ZENAIDA Z. SALONGA, Clerk-in-Charge, all of RTC, Branch 170, Malabon City, be found GUILTY of simple neglect of duty and ADMONISHED to be more diligent and circumspect in the performance of their duties; and
6. Atty. EVELYN M. LOZANO-AGUILAR, Branch Clerk of Court, MA. ALICIA C. MALUBAY, Court Interpreter, and DALISAY C. CASUGA, MYRA D. SANTOS, SHERREE ANN R. RUZGAL, MA. THERESA P. REYES, Court Stenographers, all of RTC, Branch 74, Malabon City be REMINDED to henceforth strictly comply with existing court issuances on search warrants without necessarily giving up their endeavor to preserve the confidentiality of the information in the records.

Considering the herein recommendation of the OCA that Judge Docena be dismissed from the service, and considering further that the preventive suspension of Judge Docena will in the meantime expire on 1 March

2017, it is likewise hereby recommended that the PREVENTIVE SUSPENSION of Judge Docena expiring on 1 March 2017 BE INDEFINITELY EXTENDED until such time the Court has resolved this administrative matter.

In a Resolution[11] dated February 28, 2017, the Court extended the preventive suspension of Judge Docena for another three (3) months reckoned from March 1, 2017. On June 20, 2017, the Court resolved to extend Judge Docena's suspension until such time that this administrative matter is resolved.

The Court's Ruling

The Court finds no cogent reason to depart from the findings and recommendations of the OCA.

Indeed, there are irregularities in the issuance of search warrants in Branch 170, RTC, Malabon City.

Office of the Executive Judge and the Office of the Clerk of Court

Based on the records, it is clear that the Malabon RTC was not observing the guidelines in the raffle of search warrant applications, among others, Section 6, Chapter V of the Guidelines and Administrative Order No. 6,[12] as reiterated in OCA Circular No. 58-2015,[13] also in relation to pertinent provisions in the raffle cases under Chapter V of the Guidelines.

While the conduct of more than one (1) special raffle of search warrant applications in a day is sanctioned by the Rules, Judge Magsino and Atty. Dizon, Clerk of Court, Malabon RTC, however, failed to observe the pertinent portion of Section 6, Chapter V of the Guidelines, which requires that the cases/search warrant applications assigned to a branch during the special raffle be deducted from the number of cases allotted to it on the next scheduled regular raffle. Instead, no off-setting was made. Worse, Atty. Dizon even claims that they simply adopted the policy of the previous Executive Judges of counting any number of applications as one (1), as long as these were filed by a single applicant.

Judge Magsino and Atty. Dizon also failed to observe the ratio for the raffling of cases prescribed under paragraph 1, Chapter V of Administrative Order No. 6.[14] According to Judge Magsino, he rejected the suggestion to apply the 1:2 ratio since it would remove the unpredictability of the raffling process because applications would have to be assigned to a branch to equalize the number, and any such attempt to equalize would require human intervention, which, in turn, would be more prejudicial. But the Executive Judge has no discretion to deviate from the prescribed ratio for raffling without prior approval of the Court. On the other hand, Atty. Dizon maintains that they observed the prescribed 1:2 ratio, only that the counting is made per applicant, regardless of the number of search warrant applications applied for. The Court finds this improvised system simply unacceptable.

The OCA likewise pointed out the following observations further indicating a violation of the Guidelines:

- Lack of documentation of the special raffles for search warrant applications;
- The heading of some applications would already indicate that it was being filed with Branch 170 and Judge Docena's name would already be typewritten at the bottom of the jurat, even before the actual raffle was made;
- Discrepancies between the dates stamped on the face of some applications that were received by Branch 170 and those entered in the OCC logbook; and
- The face of the application against one Xiao Long acted upon by Branch 170 did not bear any docket number, date of receipt by the OCC, date of raffle, and date received by Branch 170.

Judge Docena

Section 2, Rule 126 of the Rules of Court provides for the proper venue where applications for search warrant should be filed:

SEC. 2. Court where applications for search warrant shall be filed. - An application for search warrant shall be filed with the following:

(a) Any court within whose jurisdiction a crime was committed.

(b) For compelling reasons stated in the application, any court within the judicial region where the crime was committed if the place of commission of the crime is known, or any court within the judicial region where the warrant shall be enforced.

However, if the criminal action has already been filed, the application shall only be made in the court where the criminal action is pending.[15]

Judge Docena and Judge Magsino maintain that they may take cognizance of applications for search warrants enforceable outside the territorial jurisdiction of their courts pursuant to the rulings in *Malaloan v. CA*,^[16] where the Court ruled that a search warrant is a special criminal process, which is inherent in all court, and in *Pilipinas Shell Petroleum Corporation v. Romars International Gases Corporation*,^[17] where it was held that the rule that venue is jurisdictional does not apply to search warrant applications.

What both judges are missing, however, is the fact that in *Malaloan v. CA*, while the Court indeed ruled that a court may take cognizance of an application for search warrant in connection with an offense committed outside its territorial jurisdiction, it clearly stated that the executive judge (of the court within whose territorial jurisdiction the crime was committed), or the lawful substitute in the area, shall have primary jurisdiction. The rest of the courts may take cognizance of the same only when compelling reasons of urgency, subject, time, and place, are extant. Hence:

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It is, therefore, incorrect to say that only the court which has jurisdiction over the criminal case can issue the search warrant, as would be the consequence of petitioners' position that only the branch of the court with jurisdiction over the place to be searched can issue a warrant to search the same. It may be conceded, as a matter of policy, that where a criminal case is pending, the court wherein it was filed, or the assigned branch thereof, has primary jurisdiction to issue the search warrant; and where no such criminal case has yet been filed, that the executive judges or their lawful substitutes in the areas and for the offenses contemplated in Circular No. 19 shall have primary jurisdiction.

This should not, however, mean that a court whose territorial jurisdiction does not embrace the place to be searched cannot issue a search warrant therefor, where the obtention of that search warrant is necessitated and justified by compelling considerations of urgency, subject, time and place. Conversely, neither should a search warrant duly issued by a court which has jurisdiction over a pending criminal case, or one issued by an executive judge or his lawful substitute under the situations provided for by Circular No. 19, be denied enforcement or nullified just because it was implemented outside the court's territorial jurisdiction.

xxx[18]

Also, *Malaloan* was promulgated in 1994, when the 1985 Rules on Criminal Procedure still governed. At that time, Section 2 of Rule 126 of the 2000 Rules on Criminal Procedure, specifically providing for the Courts where applications for search warrant shall be filed, was yet to be inserted in the Rules. Therefore, whatever was held in *Malaloan* has already been modified by the promulgation of the 2000 Revised Rules on Criminal Procedure.

Further, when granting or denying a search warrant, *Pilipinas Shell* should be treated as an exception rather than

the general rule. In that case, the Court merely resolved the issue of whether or not the court of origin was correct when it reconsidered its Order of denial of the Motion to Quash the search warrant on the ground that the application should have been filed with the RTC of Iriga City. Holding that the issue is not one involving jurisdiction, the Court ruled that the court of origin should not have taken cognizance of the same since the respondent raised the issue for the first time in his Motion for Reconsideration, violating the Omnibus Motion rule.

Note that, while the court in *Pilipinas Shell* upheld the validity of the questioned search warrants despite the lack of a statement of compelling reasons in the application since the objection pertaining thereto was never duly raised in a motion to quash, such remedy of filing a motion to quash cannot be availed of in this case because here, a criminal case was yet to be filed, or the search warrants yielded negative results, remained unserved or were never returned to the court.

It has been adequately shown that Judge Magsino and Judge Docena violated Section 2, Rule 126 of the Rules of Court when they took cognizance of applications for search warrant that involved offenses committed outside the territorial jurisdiction of the Malabon RTC, Judge Docena issued (1) 130 search warrants involving crimes committed outside the territorial jurisdiction of the Malabon RTC, without any compelling reason for him to take cognizance of the applications and (2) search warrants involving crimes committed outside the territorial jurisdiction of the Malabon RTC, with compelling reasons, but such that a reasonably prudent man would not right away accept without propounding further questions to dispel any doubt on their soundness or relevance.

An exhaustive and probing inquiry is necessary in order to enable the court to verify the genuine existence of a compelling reason, by examining the affiant, through searching questions. It is only through this process that the court can be assured that there is an actual reason to believe that the applicant's operations might be compromised if the application was filed with the court having primary jurisdiction over the same. This step will ultimately guide the court on whether or not it should take cognizance of said application.

Moreover, it is settled that the determination of compelling reasons is addressed to the sound discretion of the court. The general rule is that an application for a search warrant should be filed in the court within whose territorial jurisdiction the crime was committed. It is only when there is a good or compelling reason that said application can be filed in any court within the judicial region of the place where the crime was committed, if known, or before any court within the judicial region where the warrant shall be enforced. Indeed, the issuance of a search warrant by a court outside the territorial jurisdiction where the crime was committed is the exception rather than the general rule. A judge, therefore, should exercise prudence and caution in granting applications for a search warrant and in ascertaining the actual presence of a good or compelling reason to warrant the application of the exception. In the present case, however, the court did not even bother to exercise its sound judicial discretion as it would readily and regularly accept bare allegations of possible leakage of information as valid compelling reasons, notwithstanding that the respondents named in the applications are all John/Jane Does. The Court cannot simply sustain Judge Magsino's position that the court may rely on the unsubstantiated allegation that the respondents may have informants inside the court. Otherwise, this would render the requirements provided under the Rules futile. And besides, while said allegation of possible insiders may also be conveniently claimed with respect to any other court, interestingly, the applicants for search warrants would always seem to choose the Malabon RTC over the others. This, to the Court, is, in itself, highly dubious and gives an impression of irregularity.

Well-settled is the rule that, unless the acts were committed with fraud, dishonesty, corruption, malice or ill-will, bad faith, or deliberate intent to do an injustice, the respondent judge may not be administratively liable for gross misconduct, ignorance of the law, or incompetence of official acts in the exercise of judicial functions and duties,

particularly in the adjudication of cases.[19]

In the case at bar, however, the following attendant circumstances would reveal that Judge Docena's blatant violation of the Rules in the issuance of the subject search warrants clearly contradicts any claim of good faith:

1. The high incidence of operations that yielded negative results, unserved warrants, and those that were never returned to the court, which constituted around 55.95% or 442 out of the 790 search warrants that were issued.

Judge Docena argues that his branch, as the issuing court, has no participation in the implementation of the search warrants, thus, it has nothing to do with the high number of negative results and unserved warrants. Also, his failure to summon the applicants in the 155 search warrants and submit the respective returns should simply be considered as a failure to monitor the submission of returns in 39 warrants, since the orders he was supposed to issue would involve only 39 applicants for the 172 search warrants he issued. With regard to his failure to monitor the ten (10)-day period within which to submit the returns, the same was due to the extraordinarily high number of search warrant applications he received and the cases pending in his court. Also, he would always try to remind his staff to monitor the submission of the returns, but the latter would sometimes fail to do so due to the load of his court's search warrants and other regular matters that they would need to attend to.

True, the court has no participation in the implementation of search warrants. However, a reasonably prudent man would be alerted by the high rate of unsuccessful returns and failure to file returns before his court. This should have prompted Judge Docena to be stricter and more careful in the application of the rules on the issuance of search warrants, which primarily exist to protect the rights of the respondents in ex parte proceedings. Moreover, a judge's duty to summon the applicants to whom the warrants were issued and require them to explain why no return was made within the prescribed period is one of the most important safeguards against possible abuses in the implementation of warrants. His failure to comply with these requirements clearly violates Section 12(b),[20] Rule 126 of the Rules of Court and seriously casts doubt on his motive since several applicants had repeatedly secured warrants from his court without ever bothering to file a return.

Judge Docena's practice of issuing search warrants to the same applicant who would not file the required returns for previous warrants is highly suspicious. To illustrate, he issued the following: twenty-two (22) search warrants in three (3) successive appearances of an applicant at a four (4)-month interval; nineteen (19) search warrants in three (3) successive appearances of an applicant at a two (2)-to three (3)-month interval; thirteen (13) search warrants in three (3) successive appearances of an applicant at a one (1)-to three (3)-month interval; and seven (7) search warrants in two (2) successive appearances of an applicant.

Also, Judge Docena would allow the submission of inventory sheets without the required verification under oath despite the high rate of unsuccessful implementation of warrants, in utter violation of Section 12(a),[21] Rule 126. By doing this, the court allowed the submission of inventory sheets which could have possibly been tampered. Thus, Judge Docena rendered the devised safeguards ineffectual, to the prejudice of the citizens, whose rights might have been transgressed.

Surely, he cannot simply put the blame on his staff or on the court's workload. A judge cannot take refuge behind the inefficiency or mismanagement of his very own court personnel. Certainly, a judge is responsible, not only for the dispensation of justice, but also for managing his court efficiently to ensure the prompt delivery of court services. In the discharge of the functions of his office, a judge must always strive to act in a manner that puts him and his conduct above reproach and beyond any dubiety.[22]

More importantly, the number of search warrants, i.e., 790, that he issued within the short span of January 2015 to May 10, 2016 is ridiculously excessive. On the average, assuming that during that period there were twenty (20)

working days per month and there were no holidays, it would then mean that Judge Docena was issuing at least two (2) search warrants per day, further assuming that he was never absent even just for a single day.

2. In SW16-257 and SW14-134, Judge Docena threw leading questions during the examination of the applicant and its witnesses, thus:

SW16-257

Q:

There are some specific persons without names they are just John and Jane Does. There is no question about the two applications against Stanley Co xxx Navotas City, but with respect to the rests in Pasay and in Manila you have to cite a compelling reason why you filed the applications here instead of applying in Pasay City or in Manila?

Applicant:

Your honor we (are) applying to this Honorable Court instead in Pasay or in Manila because according to our informant our subjects and their clients are "marami po bumibisita mga allegedly na mga PNP personnel na hindi naka uniform at nagpupunta naman po doon na walang ginagawa."

Q:

So if they have that what may happen?

A:

It will jeopardize the operation, Your Honor.

Q:

It will jeopardize your operation because for sure there might be some leakage or premature disclosure?

A:

Yes, your Honor.[23]

SW14-134

Q:

NBI SRA. Romeo G. Astrero, we noticed that the subjects of your applications are all from Makati City, why xxx did you file your application here in Malabon City?

A:

Your Honor, for compelling reasons that they are known in Makati... Other than that, the primordial reason is that the operation might be burned out because the subject persons are influential personalities in Makati City and have widespread connections. They could be easily tipped off by some unscrupulous court employees.

Q:

You mean the subjects of this applications... the five (5) subject-persons are well connected in Makati City and influential is what you are trying to say?

A:

Yes your Honor, that is why we opted to file here in Malabon City so that our efforts would not be put into waste.

Q:

And to prevent any leakage?

A:

Yes, your Honor.[24]

3. The issue on the validity of Judge Docena's issuance of search warrants that were enforceable outside his court's territorial jurisdiction had already been passed upon by the CA on May 29, 2015 in a decision which eventually became final and executory, to wit:

In the same manner, the requirement of territorial jurisdiction in the issuance of search warrant can also be excused upon showing of "compelling reasons" as stated in paragraph (b) of Section 2, Rule 126 of the Rules of Criminal Procedure. However, this circumstance is absent in the instant case. It bears stressing that the "compelling reasons" for filing an application for a search warrant outside the territorial jurisdiction, where the same is to be enforced, is determined based on factors of urgency, subject, time and place. Here, there is no sufficient allegation of "compelling reasons" stated in respondents' application for search warrants which justify the procurement of the same outside the territorial jurisdiction of respondent judge, i.e., from the RTC of Malabon instead of RTC of Makati or Quezon City.

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WHEREFORE, the instant petition for certiorari and prohibition is hereby GRANTED, and Search Warrant No. 13-160-MN, Search Warrant No. MN-13-161-MN, Search Warrant No. MN-13-162, and Search Warrant No. MN-13-163 are declared NULL and VOID. Accordingly, any transaction carried out pursuant to, or in connection thereto are SET ASIDE and likewise declared VOID without any FORCE and EFFECT. The articles seized by virtue thereof are declared inadmissible in evidence and the same should be returned to petitioners. The Writ of Preliminary Injunction issued in this case is hereby MADE PERMANENT.

SO ORDERED.[25]

Hence, he could not feign ignorance of the rules and utilize his own interpretation of the same.

4. Several search warrants were issued ahead of the dates when the same were filed and some were released to the witness despite the fact that the search warrant was clearly addressed to a peace officer. Worse, there were search warrants issued on the date that the same were filed but the applicant had received copies of the same a day before the date of said warrants.

Judge Docena explains that his branch would document templates and that his staff would merely enter the new information. He avers that the typographical errors resulted from honest mistake and inadvertence on his part and that of his staff. His Branch Clerk of Court, Atty. Jesus S. Hernandez, further explained that, in all probability, the encoder had used the search warrant documents in SW15-383 and SW15-384 issued on August 20, 2015, which likewise involved a violation of the Cybercrime Law, and the dates indicated in SW15-388 to SW15-389 had not been corrected to August 24, 2015, the date when its corresponding applications were filed. Atty. Hernandez, however, was not able to identify the supposed specific template that was used for SW15-401 on September 1, 2015, with the filing made the day after or on September 2, 2015.

While Judge Docena claims that he has no personal knowledge of any witness being allowed to receive a copy of the warrant, Atty. Hernandez stated that when in the company of the applicant, a witness to the application should not be allowed to receive the search warrant for and in behalf of the team. As to the applicant's receipt of copies of the warrant a day before the date of its issuance, Judge Docena explains that the applicant actually received the copies on September 17, 2015; he merely wrote September 16, 2015 because he thought that it was still the 16th.

The Court might have accepted said lame excuses if it occurred only once and under ordinary circumstances. However, the fact is that the applicant in SW15-449 to SW15-453 was the same applicant who was given nineteen (19) search warrants in three (3) successive appearances at two (2)-to three (3)-month interval, without first submitting the returns for the previous warrants that had been issued in its favor.

Judge Docena likewise miserably failed to satisfactorily explain the following findings:

1. The case records had no minutes of the proceedings that should have reflected the attendance of the applicants and their witnesses. This serves as the primary proof that, a hearing was conducted and would dispel any suspicion that the application was not set for hearing or that the applicants did not present any witnesses;
2. The absence of stenographic notes and/or transcript of stenographic notes in fifty (50) search warrant applications;
3. There were two (2) sets of stenographic notes in some applications;
4. Despite page 3 of the application in SW15-588 was missing, Judge Docena still signed it, which he did on the page containing the sketch of the place to be searched;
5. There were some applications which were not under oath, but Judge Docena still signed the affidavits. He also signed the jurat of some of the witnesses' affidavits despite the absence of the affiants' signatures;
6. Some affidavits of various witnesses were repeatedly replicated by simply changing the dates and addresses for the conduct of the supposed surveillance. All contained the verbatim allegation that "the group always reminds me, from time to time, not to disclose to anyone about their operation in the Philippines, otherwise, something bad will happen to me. They also boast that they are well connected with authorities in the area."
7. In some cases, the required authority to file the search warrant application, which is issued by the respective heads of the agencies, were mere photocopies. The court's act of accepting mere photocopies could lead to unauthorized filing of applications;
8. In most applications, there were no searching questions and answers under oath and in writing, in violation of Section 5, Rule 126 of the Rules of Court. Instead, Judge Docena would sign the jurat at the bottom of the application and the affidavits of the witnesses. Some of said affidavits, however, were subscribed and sworn to before another officer authorized by law;
9. Most of the returns were filed beyond the ten (10)-day period;
10. There were returns which were belatedly acted upon. Most of these were presented to the audit team only upon demand. There were also several returns which are yet to be acted upon;
11. In some cases, the court honored mere photocopies of the inventory of the seized items, inventories that were not under oath, those with signatures of unidentified witnesses because no printed names were indicated, and/or inventories with only one (1) witness appearing in the inventory sheet;
12. The court accepts the justification presented for warrants which were not implemented even without the supporting documents. For instance, when a search warrant was not served simply upon information that the area had already been vacated;
13. Judge Docena does not also observe Section 12(a), Rule 126 of the Rules of Court,[26] and Sections 15[27] and 16,[28] Chapter IV of Republic Act 10175 or the Cybercrime Prevention Act; and
14. There were some pending incidents which were already due for resolution, considering that the respective

periods within which to submit the comment had already lapsed.

In most of the above-cited instances, Judge Docena would attribute the lapses to his alleged work overload. But the flimsiness in his excuse only shows how lackadaisically the search warrant proceedings are being done in his court, without regard to the essential right of every person against unreasonable searches and seizure.

Further, when SW15-615 and SW15-621 were ordered withdrawn without stating any reason for the same, Judge Docena argued that there was nothing irregular about it because it was issued in good faith for the prompt dispatch of the pending matter before the court. But it must be stressed that the withdrawn applications were duly stamped as received by the OCC. As such, even if the applications were not returned to the applicants, the receiving copies (duplicate copies) left with the applicants likewise bear the OCC stamp, and therefore, could possibly be used for extortion. Hence, there is a need to take particular attention to the reasons why the application is being withdrawn and to briefly discuss said reasons in the order.

There were also applications for search warrant filed before the OCC which were not under oath. It was only during the examination of the applicants and their witnesses that the defect was cured by Judge Docena himself by signing the jurat. Judge Docena maintains that he is authorized to administer oath under the law. The issue here, however, is not his authority to administer oaths, but the propriety of regularly accepting applications for search warrants which are not even sworn under oath, as required under the rules.

Corollarily, the Court finds Judge Docena guilty of gross ignorance of the law, gross neglect of duty, and gross misconduct.

Gross ignorance of the law is the disregard of basic rules and settled jurisprudence. A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence. Though not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, the same applies only in cases within the parameters of tolerable misjudgment. Such, however, is not the case with Judge Docena. Where the law is straightforward and the facts so evident, failure to know it, or to act as if one does not know it constitutes gross ignorance of the law. A judge is presumed to have acted with regularity and good faith in the performance of judicial functions. But a blatant disregard of the clear and unmistakable provisions of a statute, as well as Rules of Court enjoining their strict compliance, upends this presumption and subjects the magistrate to corresponding administrative sanctions.[29]

On the other hand, gross neglect of duty or gross negligence refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, in so far as other persons may be affected. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable.[30] It is important to stress, however, that the term gross neglect of duty does not only include willful neglect or intentional wrongdoing. It can also arise from situations where such neglect which, from the gravity of the case or the frequency of instances, as in Judge Docena's case, becomes so serious in its character that it ends up endangering or threatening the public welfare.[31]

For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive. Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in all good faith. Judicial competence requires no less. Thus, unfamiliarity with the rules is a sign of incompetence. Basic rules must be at the palm of his hand. When a judge displays utter lack of familiarity with

the rules, he betrays the confidence of the public in the courts. Ignorance of the law is the mainspring of injustice. Judges owe it to the public to be knowledgeable, hence, they are expected to have more than just a modicum of acquaintance with the statutes and procedural rules; they must know them by heart. When the inefficiency springs from a failure to recognize such a basic and elemental rule, a law or a principle in the discharge of his functions, a judge is either too incompetent and undeserving of the position and the prestigious title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority. In both cases, the judge's dismissal will be in order.[32]

Indubitably, Judge Docena, motivated by bad faith, issued search warrants outside of his court's territorial jurisdiction, in violation of Section 2, Rule 126 of the Rules of Court. He likewise violated the Code of Judicial Conduct ordering judges to ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.[33]

The blatant breach of duty in this case is all over the records. Judge Docena simply used as convenient excuses oversight, inadvertence, honest mistake, lack of sufficient time to scrutinize the inventory sheets, adoption of policies implemented by previous judges, heavy caseload, and that he would always remind his staff to comply with the rules. By constantly disregarding the rules on the issuance of search warrants, Judge Docena has rendered the court rules futile. He acted with conscious indifference to the possible undesirable consequences to the parties involved.

It has been said that of all the rights of a citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves the exemption of his private affairs, books and papers from inspection and scrutiny of others. While the power to search and seize is necessary to the public welfare, still it must be exercised and the law enforced without transgressing the constitutional rights of the citizens, for the enforcement of no statute is of sufficient importance to justify indifference to the basic principles of government. Thus, in issuing a search warrant, the judge must strictly comply with the requirements of the Constitution and the statutory provisions.[34]

Judge Docena also violated Section 7, Canon 6 of the Code of Judicial Conduct which provides that judges shall not engage in conduct incompatible with the diligent discharge of judicial duties.

Indeed, Judge Docena's acts likewise constituted gross misconduct. Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former.[35]

To hold a judge administratively liable for gross misconduct, ignorance of the law or incompetence of official acts in the exercise of judicial functions and duties, it must be shown that his acts were committed with fraud, dishonesty, corruption, malice or ill-will, bad faith, or deliberate intent to do an injustice.[36] The Court has repeatedly and consistently held that the judge must not only be impartial but must also appear to be impartial as an added assurance to the parties that his decision will be just. The litigants are entitled to no less than that. They should be sure that when their rights are violated they can go to a judge who shall give them justice. They must trust the judge, otherwise, they will not go to him at all. They must believe in his sense of fairness, otherwise, they will not seek his judgment. Without such confidence, there would be no point in invoking his action for the justice

they expect.[37]

In this case, the OCA aptly found Judge Docena's issuance of the subject search warrants to have been motivated by bad faith, as evidenced by the aforesaid circumstances.

Lastly, Judge Docena also failed to comply with his administrative responsibilities under Rules 3.08 and 3.09 or the Code of Judicial Conduct which provide:

RULE 3.08 - A judge should diligently discharge administrative responsibilities, maintain professional competence in court management, and facilitate the performance of the administrative functions of other judges and court personnel.

RULE 3.09 - A judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and fidelity.[38]

Court Personnel of Branch 170

As it appears that the concerned court personnel in Branch 170, namely Atty. Hernandez, the Branch Clerk of Court, Zenaida Z. Salonga, the Clerk-in-Charge, together with Olivia M. Labagnao, Rosario M. San Pedro, Debhem N. Fajardo, and Gigi M. Mendoza, all court stenographers, too, are all guilty of simple neglect of duty for failure to diligently perform their respective administrative duties.

Atty. Hernandez, as the administrative officer in Branch 170, fell short of the diligence and care required of him in the following instances:

- a. Case records have no minutes of the proceedings.
- b. Some search warrants are incorrectly dated, thus making it appear that they were issued ahead of the date of filing of their respective applications.
- c. Some search warrants were handed over to the witnesses instead of the applicants.
- d. There is no date and time of receipt of the case folder by Branch 170 on the face of the search warrant applications.
- e. The search warrant case folders in Branch 170 are not paginated.
- f. In several applications, some documents attached thereto are not original copies.
- g. Case folders are not properly stitched, and some folders have loose pages. Other folders, too, are merely attached using fasteners.

The court stenographers were likewise remiss in the performance of their duties under Section 17, Rule 136 of the Rules of Court, given that they failed to produce a total of 34 stenographic notes, or seven sets of consolidated notes, and to properly label their stenographic notes. It also appears that they only prepared transcripts of stenographic notes upon request of the applicants.

As for the Clerk-in-Charge, she clearly violated Section 12(c) of Rule 126, when she unjustifiably failed to maintain the required logbook for search warrant applications in Branch 170.

It is settled that a judge presiding over a branch of a court is, in legal contemplation, the head thereof having effective control and authority to discipline all employees within the branch.[39] Consequently, Judge Docena likewise shares accountability for the administrative lapses of his staff that contributed to the clearly disorganized and inefficient dispatch of business in Branch 170.

Finally, the Court holds Judge Magsino and Atty. Dizon administratively liable for simple misconduct, in their capacities as the Executive Judge and the Clerk of Court of the RTC of Malabon, respectively, for imposing their own internal policies and practices in lieu of the existing rules in the raffle of applications involving ordinary cases covered by Chapter V of the Guidelines.

To be specific, Judge Magsino and Atty. Dizon failed to observe the pertinent portion of Section 6 of the Guidelines which requires the search warrant applications assigned to a branch during the special raffle to be deducted from the number of cases allotted to on the next scheduled regular raffle. This, however, was not implemented in the RTC of Malabon City.[40]

Judge Magsino and Atty. Dizon also failed to observe the proper ratio of the raffling of cases prescribed under par. 1, Chapter V of Administrative Order No. 6 dated June 30, 1975,[41] which states:

V. CASELOAD AND HONORARIUM

1. THE CASELOAD OF THE EXECUTIVE Judge shall be as follows:

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c. In case of multiple branches (salas) of more than five (5), the distribution of cases shall be in the proportion of one (1) case for the Executive Judge and two (2) for each of the other judges.[42]

Their use of an improvised system of counting the applicants (instead of the application)[43] in the special raffle is simply unacceptable, as the Executive Judge, much less the Clerk of Court, has absolutely no discretion to deviate from the prescribed ratio for the raffling of cases without prior approval from this Court.

This resulted in an inequitable distribution of search warrant applications between Branches 170 and 74 at a ratio of almost 6:1, or a six out of seven chance that an application will be raffled to Branch 170, thereby removing the unpredictability of the raffling process, so much so that some applicants already indicate that their applications are being filed with Branch 170.

Penalties

Under Section 46(A), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), gross neglect of duty is classified as a grave offense punishable by dismissal from the service (even for the first offense), while simple neglect of duty is a less grave offense, punishable by suspension without pay for one (1) month and one (1) day to six (6) months for the first offense. Atty. Hernandez undoubtedly failed to meet the standards required of him as an effective and competent clerk of court.

As for Salonga (the Clerk-in-Charge) and Labagnao, Fardo, San Pedro, and Mendoza (the court stenographers), they, likewise, failed to diligently perform their respective duties.[44] Since this is their first offense, the Court rules that the penalty to be imposed upon them be that of admonition so that they be more circumspect in the performance of their respective duties.

The RRACCS classifies simply misconduct as a less grave offense, punishable by suspension without pay of one (1) month and one (1) day to six (6) months for the first offense.[45] In this case, there is no substantial evidence to show that Judge Magsino and Atty. Dizon's actions involved the elements of corruption, willful intent to violate the law, or to disregard established rules to qualify their misconduct as grave.

Finally, the Court finds that the gravity of Judge Docena's acts and omissions in the performance of his duties is so serious in character such that the Court may unquestionably impose against him the penalty of dismissal from the service. Gross neglect of duty and gross misconduct are grave offenses that merit the most severe penalty of dismissal from service.[46] Gross ignorance of the law, which is also classified as a serious charge, is punishable

by a fine of more than P20,000.00 but not exceeding P40,000.00, and suspension from office for more than three (3) but not exceeding six (6) months, without salary and other benefits, or dismissal from the service. Judge Docena's acts raised a serious question on his competence and integrity in the performance of his functions as a magistrate. Thus, the Court adopts the recommendation of the OCA that the supreme penalty of dismissal is the proper penalty to be imposed.[47] Lastly, the Court, in a number of administrative cases, had the occasion to rule that a judge may still be validly dismissed from service for gross ignorance of the law and brazen disregard of the rules even without the detestable allegation and proof of corruption.[48] Judge Docena's thirty (30) years in government service, with eight (8) years as a Technical Assistant at the Supreme Court, and his stint as an RTC Judge since 2010 cannot even be reasonably appreciated as a mitigating factor for the Court to reduce the impossible penalty upon him. On the contrary, said length of service should be considered against him since the same should have enabled him to become more knowledgeable in the application of the Rules and more discerning in the execution of his duties as a magistrate. Instead, it appears that all those years have only rendered him to become completely ignorant of the existing Rules of Court, specifically on the issuance and implementation of search warrants, and allowed him to repeatedly abuse the trust reposed on him by taking advantage of his position. It is settled that length of service is an alternative circumstance. It is not a magic word that, once invoked, will automatically be considered as a mitigating circumstance in favor of the party invoking it. Length of service can be appreciated either as a mitigating or aggravating circumstance, depending on the factual milieu of the case.[49] Judge Docena's actions did not only put his competency and moral character in serious doubt, but likewise placed the image of the Judiciary in serious jeopardy. In order to succeed in the Court's relentless crusade to purge the Judiciary of morally rotten members, officials, and personnel, a rigid set of rules of conduct must necessarily be imposed on judges. The standard of integrity applied to them should be higher than that of the average person for it is their integrity that gives them the privilege and right to judge.[50]

WHEREFORE, the Court finds:

1. Judge Celso R. L. Magsino, Jr., Presiding Judge, Regional Trial Court, Branch 74, Malabon City, and then Executive Judge Regional Trial Court, Malabon City, GUILTY of violation of Supreme Court rules and circulars, particularly on raffle of search warrant applications, issuance of search warrants, and filing of returns, and hereby FINES him in the amount of P20,000.00, with a STERN WARNING that a repetition of the same or similar acts shall be dealt with more severely;
2. Atty. Esmeralda G. Dizon, Clerk of Court, Office of the Clerk of Court, Regional Trial Court, Malabon City, GUILTY of simple misconduct, and hereby FINES her in the amount of P20,000.00, with a STERN WARNING that a repetition of the same or similar acts shall be dealt with more severely;
3. Judge Zaldy B. Docena, Presiding Judge, Regional Trial Court, Branch 170, Malabon City, GUILTY of gross ignorance of the law, gross negligence, and gross misconduct and hereby DISMISSES him from the service with FORFEITURE of retirement benefits, except leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations;
4. Atty. Jesus S. Hernandez, Branch Clerk of Court, Regional Trial Court, Branch 170, Malabon City, GUILTY of simple neglect of duty, and hereby SUSPENDS him from office for a period of one (1) month without pay, with a STERN WARNING that a repetition of the same or similar acts shall be dealt with more severely;
5. Zenaida Z. Salonga, Clerk-in-Charge, and Olivia M. Labagnao, Debhem E. Fardo, Rosario M. San Pedro, and Gigi M. Mendoza, Court Stenographers, Regional Trial Court, Branch 170, Malabon City, GUILTY of simple neglect of duty, and are ADMONISHED to be more diligent and circumspect in the performance of their duties.

[1] Evaluation and recommendation submitted by Court Administrator Jose Midas P. Marquez dated May 23, 2016; rollo, Vol. I, pp. 1-7.

[2] Rollo, Vol. I, p. 10.

[3] xxxx

SEC. 6. Special raffle and action on urgent matters. - As a rule, there shall be no special raffle of any case except in petitions for the writ of habeas corpus, applications for bail in cases where the complaint or information has not yet been filed with the court, applications for the issuance of a temporary restraining order (TRO), cases involving foreign tourists, cases with motions for special raffle accompanied by a motion for reduction of bail, and applications for the issuance of search warrants subject to the provisions of Section 11 of this Chapter.

The special raffle shall be conducted upon written application of a party. A certification granting or denying the application and citing the reason/s therefor shall be issued accordingly. Such certification shall be attached to the record of the case or expediente immediately after the initial pleading and shall form part of the record of the case. For expediency, the Executive Judge shall be allowed to write his action on the application if there are no other reasons aside from those mentioned in the application.

If the application is granted, the special raffle shall be held in the session hall of the Executive Judge in the presence of the members of the Raffle Committee scheduled to sit on the date of raffle, or, if not available, the members of the Raffle Committee of the next regular raffle. The phrase "special raffle" shall be written on the upper left-hand corner of the complaint or information in the same manner provided for in Section 4 (e) and (f) of this Chapter. A certification to the effect that a special raffle was duly held and that the case was assigned to the branch drawn in the process shall be issued and signed by all the members of the Raffle Committee.

The date and time of the raffle shall be written on the front cover of the record of the case or expediente and on the first page of the initial pleading and signed by the members of the Raffle Committee.

In the preparation of the list of cases to be included in the next regular raffle, the Clerk of Court shall include the cases specially raffled prior to the scheduled regular raffle, indicating therein the branch to which these cases have been assigned. Except as stated above, all other procedures outlined above shall be observed.

If the application for special raffle is denied, the case shall be included in the list of cases for the next regular raffle.

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SEC. 10. Issuance of search warrants in ordinary criminal cases. — All applications for search warrants, if filed with the Executive Judge, shall be assigned by raffle to a judge within his area of administrative supervision, under whose direction the search warrant shall be issued for the search and seizure of personal property. After the application shall have been raffled and transmitted to a branch, the Judge assigned to conduct the examination of the complainant and witnesses shall immediately act on the same, bearing in mind that time and confidentiality of information are important considerations in the issuance of search warrants.

Raffling shall be strictly enforced, except only in cases where an application for search warrant is filed directly with any judge in whose jurisdiction the place to be searched is located, after office hours or during Saturdays, Sundays and legal holidays, in which case the applicant shall be required to certify under oath the urgency of the issuance thereof after office hours, or during Saturdays, Sundays or legal holidays.

[4] A.M. No. 03-8-02-SC, February 15, 2004.

[5] SEC. 11. Issuance of search warrants in special criminal cases filed with multiple-branch courts. -

All applications for search warrants in criminal cases relating to crimes against public order as defined by the provisions of Chapters I to VII, Title Three, Book Two of the Revised Penal Code, as amended, illegal possession of firearms and ammunitions, violations of the Comprehensive Dangerous Drugs Act of 2002 and such similar laws as may subsequently be enacted and deemed by the Supreme Court as included herein shall no longer be raffled and shall immediately be taken cognizance of and acted upon by the Executive Judges of multiple-branch RTCs, MeTCs and MTCCs under whose jurisdiction the place to be searched is located. For expediency, the Executive Judge may assign on rotation basis the Vice-Executive Judges to take cognizance of and act on such applications.

The provisions of this Section shall apply only to cases falling within the respective jurisdictions of the aforementioned courts.

Whenever the Executive Judge is on official leave of absence or is not physically present in the station, the Vice-Executive Judge shall take cognizance of and personally act on the applications for search warrants. Whenever the Executive Judge and the Vice-Executive Judge/s are on official leave of absence or are not physically present in the station, the application may be taken cognizance of and acted upon by the judge who is the most senior in tenure among the permanent judges in the station. If there are two or more judges of equal seniority in tenure, the application may be acted upon by the judge who is the most senior in the judiciary. If there are two or more judges of equal seniority in the judiciary, the application may be acted upon by the judge who is the most senior in age in the station.

[6] Rollo, Vol. I, pp. 534-535.

[7] Id. at 9.

[8] Id. at 22.

[9] Id. at 96-122.

[10] Id. at 526-603.

[11] Id. at 604-605.

[12] June 30, 1975.

[13] March 23, 2015.

[14] V. CASELOAD AND HONORARIUM

1. The caseload of the Executive Judge shall be as follows:

- a. In case of multiple branches (salas) of not more than two (2), the distribution of cases shall be in the proportion of three (3) cases for the Executive Judge and four (4) for the other judges.
- b. In case of multiple branches (salas) of not less than three or more than five (5), the distribution of cases shall be in the proportion of two (2) cases for the Executive Judge and three (3) for each of the other judges.
- c. In case of multiple branches (sala) of more than five (5), the distribution of cases shall be in the proportion of one (1) case for the Executive Judge and two (2) for each of the other Judges.

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[15] Emphasis supplied.

[16] G.R. No. 104879, May 6, 1994, 232 SCRA 249.

[17] 753 Phil. 707, 716 (2015).

[18] Emphasis ours.

[19] *Andrada v. Judge Banzon*, 592 Phil. 229 (2008).

[20] Section 12. Delivery of property and inventory thereof to court; return and proceedings thereon. — xxx

(b) Ten (10) days after issuance of the search warrant, the issuing judge shall ascertain if the return has been made, and if none, shall summon the person to whom the warrant was issued and require him to explain why no return was made. If the return has been made, the judge shall ascertain whether section 11 of this Rule has been complied with and shall require that the property seized be delivered to him. The judge shall see to it that subsection (a) hereof has been complied with.

[21] Section 12. Delivery of property and inventory thereof to court; return and proceedings thereon. - (a) The officer must forthwith deliver the property seized to the judge who issued the warrant, together with a true inventory thereof duly verified under oath.

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[22] *Bayaca v. Judge Ramos*, 597 Phil. 86, 98 (2009).

[23] *Rollo*, Vol. I, p, 573.

[24] *Id.*

[25] *De Janeiro Global Solutions BPO, Inc., et al. v. Judge Docena, et al.*, CA-G.R. SP No. 132860, May 29, 2015.

[26] Section 12. Delivery of property and inventory thereof to court; return and proceedings thereon. — (a) The officer must forthwith deliver the property seized to the judge who issued the warrant, together with a true inventory thereof duly verified under oath.

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[27] Section 15. Search, Seizure and Examination of Computer Data. — Where a search and seizure warrant is properly issued, the law enforcement authorities shall likewise have the following powers and duties.

Within the time period specified in the warrant, to conduct interception, as defined in this Act, and:

- (a) To secure a computer system or a computer data storage medium;
- (b) To make and retain a copy of those computer data secured;
- (c) To maintain the integrity of the relevant stored computer data;
- (d) To conduct forensic analysis or examination of the computer data storage medium; and
- (e) To render inaccessible or remove those computer data in the accessed computer or computer and communications network.

Pursuant thereof, the law enforcement authorities may order any person who has knowledge about the functioning of the computer system and the measures to protect and preserve the computer data therein to provide, as is

reasonable, the necessary information, to enable the undertaking of the search, seizure and examination.

Law enforcement authorities may request for an extension of time to complete the examination of the computer data storage medium and to make a return thereon but in no case for a period longer than thirty (30) days from date of approval by the court.

[28] Section 16. Custody of Computer Data. - All computer data, including content and traffic data, examined under a proper warrant shall, within forty-eight (48) hours after the expiration of the period fixed therein, be deposited with the court in a sealed package, and shall be accompanied by an affidavit of the law enforcement authority executing it stating the dates and times covered by the examination, and the law enforcement authority who may access the deposit, among other relevant data. The law enforcement authority shall also certify that no duplicates or copies of the whole or any part thereof have been made, or if made, that all such duplicates or copies are included in the package deposited with the court. The package so deposited shall not be opened, or the recordings replayed, or used in evidence, or then contents revealed, except upon order of the court, which shall not be granted except upon motion, with due notice and opportunity to be heard to the person or persons whose conversation or communications have been recorded.

[29] DOJ v. Judge Misláng, A.M. No. RTJ-14-2369, July 26, 2016.

[30] Office of the Ombudsman v. De Leon, 705 Phil. 26, 37-38 (2013).

[31] Clemente v. Bautista, 710 Phil. 10, 16-17 (2013). See also Clerk of Court Rodrigo-Ebron v. Adolfo, 550 Phil. 449, 455 (2007).

[32] DOJ v. Judge Misláng, *supra* note 29.

[33] Section 2, Canon 3 of the Code of Judicial Conduct.

[34] People v. Mamaril, 465 Phil. 654, 669 (2004).

[35] Office of the Ombudsman v. De Zosa, 751 Phil. 293, 300 (2015).

[36] Andrada v. Hon. Judge Banzon, *supra* note 19 at 233-234.

[37] Lai v. People, G.R. No. 175999, July 1, 2015.

[38] Emphasis ours.

[39] Attorney v. Atty. Mendoza-Arce, 376 Phil. 575, 600 (1999).

[40] Rollo, Vol. I, pp. 551-552.

[41] *Id.* at 552-553.

[42] Emphasis supplied.

[43] See Annex "A," Folder of Annexes "1," p. 28.

[44] Rollo, Vol. I, p. 595.

[45] Rule 10, Section 46(D).

[46] Revised Rules on Administrative Cases in the Civil Service (2011), Rule 10, Sec. 46. Classification of Offenses - Administrative Offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following grave offenses shall be punishable by dismissal from the service:

- a. Serious Dishonesty;
- b. Gross Neglect of Duty;
- c. Grave Misconduct;
- d. Being Notoriously Undesirable;
- e. Conviction of a crime involving moral turpitude;
- f. Falsification of official document;
- g. Physical or mental incapacity or disability due to immoral or vicious habits;

[47] DOJ v. Judge Misláng, A.M. No. RTJ-14-2369, July 26, 2016; citing Peralta v. Judge Omelio, A.M. No. RTJ-11-2259, October 22, 2013.

[48] See Marcos v. Cabrera-Fuller, A.M. No. RTJ-16-2472, January 24, 2017; OCA v. Yu, A.M. Nos. MTJ-12-1813, 12-1-09-MeTC, MTJ-13-1836, MTJ-12-1815, MTJ-13-1821, and OCA IPI Nos. 11-2398-MTJ, 11-2399-MTJ, 11-2378-MTJ, 12-2456-MTJ, November 22, 2016; DOJ v. Judge Misláng, A.M. No. RTJ-14-2369, July 26, 2016; OCA v. Tormis, A.M. No. MTJ-12-1817, March 12, 2013, 693 SCRA 117; OCA v. Castañeda, A.M. RTJ-12-2316, October 9, 2012, 682 SCRA 321; Senarlo v. Paderanga, A.M. No. RTJ-06-2025, April 5, 2010, 617 SCRA 247.

[49] Civil Service Commission v. Cortez, 474 Phil 670, 686 (2004).

[50] DOJ v. Judge Misláng, A.M. No. RTJ-14-2369, July 26, 2016.

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