ALFREDO HILADO, MANUEL LACSON, JOSE MA. TUVILLA, JOAQUIN LIMJAP, LOPEZ SUGAR CORPORATION AND FIRST FARMERS HOLDING CORPORATION, PETITIONERS, VS. JUDGE AMOR A. REYES, PRESIDING J...

G.R. NO. 163155. July 21, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The present petition is one for mandamus and prohibition.

Julita Campos Benedicto (private respondent), the surviving spouse of the deceased Roberto S. Benedicto, filed on May 25, 2000 a petition for issuance of letters of administration, docketed as Special Proceeding No. 00-97505, "Intestate Estate of Roberto S. Benedicto" (the case), before the Regional Trial Court (RTC) of Manila. The case was raffled to Branch 21 presided by Judge Amor A. Reyes (public respondent).

Private respondent was, by Order[1] of August 2, 2000, appointed Administratrix of the estate of Benedicto (the estate), and letters of administration were thereafter issued in her favor.

Herein petitioners, Alfredo Hilado, Manuel Lacson, Jose M. Tuvilla, Joaquin Limjap, Lopez Sugar Corporation and First Farmers Holding Corporation had, during the lifetime of Benedicto, filed before the Bacolod City RTC two complaints for damages or collection of sums of money, docketed as Civil Case No. 95-9137 and Civil Case No. 111718, against Roberto Benedicto et al.[2]

In the initial inventory of the estate which private respondent submitted on January 18, 2001[3] in the case before the Manila RTC, she listed, among other liabilities of the estate, the claims of petitioners subject of the above-said Bacolod RTC cases as follows:

LIST OF LIABILITIES

DESCRIPTION AMOUNT

x x x x

A claim of several sugar planters P136,045,772.50
which is presently the subject of [at P50.00 per US
Civil Case No. 95-9137 entitled $1.00]
Lacson et al. v. R.S. Benedictoet al., pending before Branch 44of the Regional Trial Court inBacolod City.

A claim filed by various sugar P35,198,697.40
planters which is presently [at P50.00 per US
the subject of Civil Case No. $1.00]11178 entitled Lopez SugarCorporation et al. v. R.S.Benedicto, et al., pendingbefore Branch 41 of theRegional Trial Court inBacolod City.[4]

(Emphasis and underscoring supplied)

From January 2002 until November 2003, the Branch Clerk of Court of Branch 21 of the Manila RTC allowed petitioners through counsel Sedigo and Associates to regularly and periodically examine the records of the case and to secure certified true copies thereof.

By December 2003, however, Atty. Grace Carmel Paredes, an associate of petitioners' counsel, was denied access to the last folder-record of the case which, according to the court's clerical staff, could not be located and was probably inside the chambers of public respondent for safekeeping.[5]

Petitioners' counsel thus requested public respondent, by letter[6] of January 15, 2004, to allow Atty. Paredes to personally check the records of the case. Acting on the letter, the Officer-In- Charge/Legal Researcher of Branch 21 advised petitioners' counsel in writing that "per instruction of the Hon. Presiding Judge[,] only parties or those with authority from the parties are allowed to inquire or verify the status of the case pending in this Court," and that they may be "allowed to go over the records of the above-entitled case upon presentation of written authority from the [administratrix]."[7]

On February 2, 2004, petitioners' counsel was served with a notice of hearing of the case on February 13, 2004.[8] Petitioners' counsel thus attended such scheduled hearing during which he filed a Motion for Inhibition[9] of public respondent on the ground of gross ignorance, dereliction of duty, and manifest partiality towards the administratrix. Public respondent, noting that an error was committed in the service to petitioners of the notice of hearing, ignored the motion of petitioners' counsel.[10]

Intending to compare the list of properties in the estate's inventory all of which properties were appraised at a fair value of P100 million with the list of assets valued at P1 Billion said to have been ceded in 1990 to the decedent under his Compromise Agreement with the Presidential Commission on Good Government,[11] petitioners' counsel sent the Branch Clerk of Court of Branch 21 of the Manila RTC a letter[12] requesting to be furnished with certified true copies of the "updated inventory."

By still another letter,[13] petitioners' counsel requested to be furnished with certified true copies of the order issued by the court during the hearing of February 13, 2004, as well as the transcript of stenographic notes taken thereon.[14]

By Order[15] of March 2, 2004, public respondent indicated why petitioners had no standing to file the Motion for Inhibition as well as to request for certified true copies of the above-indicated documents. Read the Order of March 2, 2004:

> Perusal of the motion shows that the movant is asking this Court to act on their motion despite the denial of their Omnibus Motion to Intervene which to date remains pending resolution with the Court of Appeals.
>
> As correctly pointed out by the Administratrix, said motion is filed by persons/entities who have no legal standing in the above-entitled case, hence they cannot ask anything from this Court, much more for this Court to act on pleadings filed or soon to be filed.
>
> For the record, the Court received two (2) letters dated February 17 and 27, 2004 addressed to Atty. Maria Luisa Lesle G. Gonzales, the Branch Clerk of Court-asking that he be furnished with certified true copies of the updated inventory and Order issued by this Court on February 13, 2004 hearing as well as the corresponding transcript of stenographic notes within fifteen (15) days from receipt of said letters.
>
> Considering that the movants were not allowed to intervene in the proceedings per order of this Court dated January 2, 2002, copies of all pleadings/orders filed/issued relative to this case may only be secured from the [Administratrix] and/or counsel.[16] (Underscoring supplied)

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Petitioners thus filed on April 30, 2004 before this Court the present petition for mandamus and prohibition to compel public respondent to allow them to access, examine, and obtain copies of any and all documents forming part of the records of the case and disqualify public respondent from further presiding thereover.

In their petition, petitioners contend that the records of the case are public records to which the public has the right to access, inspect and obtain official copies thereof,[17] recognition of which right is enjoined under Section 7, Article III of the Constitution and Section 2, Rule 135 and Section 11, Rule 136 of the Rules of Court.

Petitioners further contend that public respondent manifested her arbitrariness, malice and partiality through her blatant disregard of basic rules in the disposition and safekeeping of court records, and her denial of their right to access the records suffices to bar her from presiding over the case;[18] and public respondent's incompetence, malice, bad faith and partiality are underscored by her failure to enforce for more than three years the requirement of the Rules of Court on the prompt submission by the administratrix of her final inventory and the filing of a periodic accounting of her administration.[19]

By Comment[20] filed on September 21, 2004, private respondent submits that the petition is fatally defective since petitioners failed to disclose in their certification of non-forum shopping that they had earlier instituted an administrative complaint against public respondent which prayed for the same reliefs[21] - for the disqualification of public respondent from presiding over the case and for the court docket to be opened for examination.

Private respondent further submits that the petition for prohibition should be dismissed since petitioners are not parties to the case, hence, they have no personality to file a motion for inhibition.[22]

As to the alleged denial of petitioners' right to examine court records and participate in the proceedings, private respondent submits that this is not unqualifiedly true for petitioners must have secured a copy of the inventory of the assets and liabilities of the estate, they being aware of the declared fair value of the estate and their counsel was present during the February 13, 2004 hearing.[23]

For consideration then are the following issues: (1) whether the present petition is fatally defective for failure of petitioners to disclose in the certificate of non-forum shopping that they had priorly instituted an administrative complaint against public respondent which prays for the same reliefs; (2) whether a writ of mandamus may issue to compel public respondent to allow petitioners to examine and obtain copies of any or all documents forming part of the records of the case; and (3) whether a writ of prohibition will issue in favor of petitioners, who are not parties to the case, to inhibit public respondent from presiding over the case.

As reflected above, petitioners had, before the filing of the present petition, filed an administrative complaint before this Court against public respondent, "Alfredo Hilado, Lopez Sugar Corporation and First Farmers Holding Corporation v. Judge Amor A. Reyes, Regional Trial Court of Manila, Branch 21," docketed as A.M. No. RTJ-05-1910.

Petitioners subsequently filed a supplemental[24] and a second supplemental administrative complaint[25] praying for 1) the imposition of appropriate disciplinary sanctions against public respondent for, among other things, denying them their right to access the docket of the case, and 2) the disqualification of public respondent from presiding over the case, which latter prayer was, however, subsequently withdrawn in a motion[26] filed on April 30, 2004, the same day that the present petition was filed.

Denying the existence of forum shopping, petitioners argue that it "exists only where the elements of litis pendencia are present, or where a final judgment in one case will amount to res judicata in the other."[27]

It is well settled that the doctrine of res judicata applies only to judicial or quasi-judicial proceedings, and not to

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the exercise of administrative powers.[28]

The non-existence of forum shopping notwithstanding, this Court proscribes the filing of an administrative complaint before the exhaustion of judicial remedies against questioned errors of a judge in the exercise of its jurisdiction.

Resort to and exhaustion of judicial remedies are prerequisites for the taking of, among other measures, an administrative complaint against the person of the judge concerned. So Atty. Flores v. Hon. Abesamis[29] teaches:

> x x x [T]he law provides ample judicial remedies against errors or irregularities being committed by a Trial Court in the exercise of its jurisdiction. The ordinary remedies against errors or irregularities which may be regarded as normal in nature (i.e., error in appreciation or admission of evidence, or in construction or application of procedural or substantive law or legal principle) include a motion for reconsideration (or after rendition of a judgment or final order, a motion for new trial), and appeal. The extraordinary remedies against error or irregularities which may be deemed extraordinary in character (i.e., whimsical, capricious, despotic exercise of power or neglect of duty, etc.) are inter alia the special civil actions of certiorari, prohibition or mandamus, or a motion for inhibition, a petition for change of venue, as the case may be.
>
> x x x Resort to and exhaustion of these judicial remedies, as well as the entry of judgment in the corresponding action or proceeding, are pre-requisites for the taking of other measures against the persons of the judges concerned, whether of civil, administrative, or criminal nature. It is only after the available judicial remedies have been exhausted and the appellate tribunals have spoken with finality, that the door to an inquiry into his criminal, civil or administrative liability may be said to have opened, or closed.
>
> x x x Law and logic decree that "administrative or criminal remedies are neither alternative nor cumulative to judicial review where such review is available, and must wait on the result thereof" Indeed, since judges must be free to judge, without pressure or influence from external forces or factors, they should not be subject to intimidation, the fear of civil, criminal or administrative sanctions for acts they may do and dispositions they may make in the performance of their duties and functions; x x x[30] (Emphasis and underscoring supplied; citations omitted)

It is thus only after a questioned action of a judge in a pending case has been judicially resolved with finality that the door to an inquiry into his or her administrative liability may be said to have opened.

Parenthetically, during the pendency of the present petition or on April 15, 2005, the Second Division of this Court rendered a decision[31] on the above-said administrative complaint filed by petitioners against public respondent.

On the merits of the petition for mandamus, Section 7 of Article III of the Constitution provides:

> SECTION 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law. (Emphasis and underscoring supplied)

The above-quoted constitutional provision guarantees a general right - the right to information on matters of "public concern" and, as an accessory thereto, the right of access to "official records" and the like. The right to information on "matters of public concern or of public interest" is both the purpose and the limit of the constitutional right of access to public documents.[32]

Insofar as the right to information relates to judicial records, an understanding of the term "judicial record" or "court record" is in order.

The term "judicial record" or "court record" does not only refer to the orders, judgment or verdict of the courts. It comprises the official collection of all papers, exhibits and pleadings filed by the parties, all processes issued and returns made thereon, appearances, and word-for-word testimony[33] which took place during the trial and which are in the possession, custody, or control of the judiciary or of the courts for purposes of rendering court decisions. It has also been described to include any paper, letter, map, book, other document, tape, photograph, film, audio or video recording, court reporter's notes, transcript, data compilation, or other materials, whether in physical or electronic form, made or received pursuant to law or in connection with the transaction of any official business by the court, and includes all evidence it has received in a case.[34]

In determining whether a particular information is of public concern, there is no right test. In the final analysis, it is for the courts to determine on a case to case basis whether the matter at issue is of interest or importance as it relates to or affect the public.[35]

It bears emphasis that the interest of the public hinges on its right to transparency in the administration of justice, to the end that it will serve to enhance the basic fairness of the judicial proceedings, safeguard the integrity of the fact-finding process, and foster an informed public discussion of governmental affairs. Thus in Barretto v. Philippine Publishing Co.,[36] this Court held:

> x x x The foundation of the right of the public to know what is going on in the courts is not the fact that the public, or a portion of it, is curious, or that what is going on in the court is news, or would be interesting, or would furnish topics of conversation; but is simply that it has a right to know whether a public officer is properly performing his duty. In other words, the right of the public to be informed of the proceedings in court is not founded in the desire or necessity of people to know about the doing of others, but in the necessity of knowing whether its servant, the judge, is properly performing his duty. x x x
>
> The case in Cowley vs. Pulsifer (137 Mass. 392) is so pertinent to the questions presented for our decision in the case at bar that we cannot refrain from quoting extensively therefrom. x x x
>
> x x x "The general advantage to the country in having these proceedings made public more than counterbalances the inconveniences to the private persons whose conduct may be the subject of such proceedings." x x x
>
> "The chief advantage to the country to which we can discern, and that which we understand to be intended by the foregoing passage, is the security which publicity gives for the proper administration of justice. x x x It is desirable that the trial of causes should take place under the public eye, not because the controversies of one citizen with another are of public concern, but because it is of the highest moment that those who administer justice should act under the sense of public responsibility, and that every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed."

From this quotation it is obvious that it was not the idea of the supreme court of Massachusetts to lay down the proposition that simply because a pleading happened to be filed in a public office it becomes public property that any individual, whether interested or not, had the right to publish its contents, or that any newspaper was privileged to scatter the allegations contained therein to the four corners of the country. The right of the public to know the contents of the paper is the basis of the privilege, which is, as we have said, the right to determine by its own senses that its servant, the judge, is performing his duties according to law. x x x[37] (Emphasis and underscoring supplied; citations omitted)

Decisions and opinions of a court are of course matters of public concern or interest for these are the authorized expositions and interpretations of the laws, binding upon all citizens, of which every citizen is charged with knowledge.[38] Justice thus requires that all should have free access to the opinions of judges and justices, and it would be against sound public policy to prevent, suppress or keep the earliest knowledge of these from the

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public.[39] Thus, in Lantaco Sr. et al. v. Judge Llamas,[40] this Court found a judge to have committed grave abuse of discretion in refusing to furnish Lantaco et al. a copy of his decision in a criminal case of which they were even the therein private complainants, the decision being "already part of the public record which the citizen has a right to scrutinize."

Unlike court orders and decisions, however, pleadings and other documents filed by parties to a case need not be matters of public concern or interest. For they are filed for the purpose of establishing the basis upon which the court may issue an order or a judgment affecting their rights and interests.

In thus determining which part or all of the records of a case may be accessed to, the purpose for which the parties filed them is to be considered.

In intestate proceedings, the heirs file pleadings and documents for the purpose of establishing their right to a share of the estate. As for the creditors, their purpose is to establish their claim to the estate and be paid therefor before the disposition of the estate.

Information regarding the financial standing of a person at the time of his death and the manner by which his private estate may ultimately be settled is not a matter of general, public concern or one in which a citizen or the public has an interest by which its legal rights or liabilities maybe affected. Granting unrestricted public access and publicity to personal financial information may constitute an unwarranted invasion of privacy to which an individual may have an interest in limiting its disclosure or dissemination.

If the information sought then is not a matter of public concern or interest, denial of access thereto does not violate a citizen's constitutional right to information.

Once a particular information has been determined to be of public concern, the accessory right of access to official records, including judicial records, are open to the public.

The accessory right to access public records may, however, be restricted on a showing of good cause. How "good cause" can be determined, the Supreme Judicial Court of Massachusetts in Republican Company v. Appeals Court teaches:[41]

> The public's right of access to judicial records, including transcripts, evidence, memoranda, and court orders, maybe restricted, but only on a showing of "good cause." "To determine whether good cause is shown, a judge must balance the rights of the parties based on the particular facts of each case." In so doing, the judge "must take into account all relevant factors, "including, but not limited to, the nature of the parties and the controversy, the type of information and the privacy interests involved, the extent of community interest, and the reason for the request.""[42] (Emphasis and underscoring supplied; citations omitted)

And even then, the right is subject to inherent supervisory and protective powers of every court over its own records and files.[43]

The Supreme Court of Canada, expounding on the right of the court to exercise supervisory powers over materials surrendered into its care, held:

> It follows that the court, as the custodian of the exhibits, is bound to inquire into the use that is to be made of them and, in my view, is fully entitled to regulate that use by securing appropriate undertakings and assurances if those be advisable to protect competing interests. x x x
>
> In exercising its supervisory powers over materials surrendered into its care, the court may regulate the use made of it. In an application of this nature, the court must protect the respondent and accommodate public interest in access. x x x In an application of this nature the court must protect the respondent and accommodate the public interest in access. This can only be done in terms of the actual purpose, and in the face of obvious

> prejudice and the absence of a specific purpose, the order for unrestricted access and reproduction should not have been made.[44] (Underscoring supplied)

In fine, access to court records may be permitted at the discretion[45] and subject to the supervisory and protective powers of the court,[46] after considering the actual use or purpose for which the request for access is based and the obvious prejudice to any of the parties. In the exercise of such discretion, the following issues may be relevant: "whether parties have interest in privacy, whether information is being sought for legitimate purpose or for improper purpose, whether there is threat of particularly serious embarrassment to party, whether information is important to public health and safety, whether sharing of information among litigants would promote fairness and efficiency, whether party benefiting from confidentiality order is public entity or official, and whether case involves issues important to the public."[47]

By the administratrix-private respondent's own information, petitioners are the plaintiffs in two complaints (against Roberto Benedicto et al.) for damages and/or sums of money, Civil Case No. 95-9137 and Civil Case No. 11178, filed before the Bacolod RTC. She contends, however, that "if the motion to dismiss [these RTC Bacolod cases is] granted, . . . petitioners would have absolutely no interest of any kind [over] the [e]state of the [d]eceased Roberto S. Benedicto."[48]

Petitioners' stated main purpose for accessing the records - to monitor prompt compliance with the Rules governing the preservation and proper disposition of the assets of the estate, e.g., the completion and appraisal of the Inventory and the submission by the Administratrix of an annual accounting[49] - appears legitimate, for, as the plaintiffs in the complaints for sum of money against Roberto Benedicto et al., they have an interest over the outcome of the settlement of his estate. They are in fact "interested persons" under Rule 135, Sec. 2 of the Rules of Court reading:

> Rule 135, SEC. 2. Publicity of proceedings and records. - x x x x The records of every court of justice shall be public records and shall be available for the inspection of any interested person, at all proper business hours, under the supervision of the clerk having custody of such records, unless the court shall, in any special case, have forbidden their publicity, in the interest of morality or decency. (Underscoring supplied),

entitled to be informed of the inventory as well as other records which are relevant to their claims against Benedicto.

As long then as any party, counsel or person has a legitimate reason to have a copy of court records and pays court fees,[50] a court may not deny access to such records. Of course as this Court held in Beegan v. Borja,[51] precautionary measures to prevent tampering or alteration must be observed:

> We are not unaware of the common practice in the courts with respect to the photocopying or xeroxing of portions of case records as long as the same are not confidential or disallowed by the rules to be reproduced. The judge need not be bothered as long as the permission of the Clerk of Court has been sought and as long as a duly authorized representative of the court takes charge of the reproduction within the court premises if warranted or if not, the said court representative must bring along the case records where reproduction takes place and return the same intact to the Clerk of Court.[52]

In fine, this Court finds the petition for mandamus meritorious, petitioners being "interested persons" who have a legitimate reason or purpose for accessing the records of the case.

Respecting the prohibition aspect of the petition, the same fails.

Sections 1 and 2 of Rule 137 of the Rules of Court which govern disqualification of judges provide:

> SECTION 1. Disqualification of judges. - No judge or judicial officer shall sit in any case in which he, or his

> wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he was presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.
>
> A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just and valid reasons other than those mentioned above.
>
> SECTION 2. Objection that judge disqualified, how made and effect. - If it be claimed that an official is disqualified from sitting as above provided, the party objecting to his competency may, in writing, file with the official his objection, stating the grounds therefor, and the official shall thereupon proceed with the trial, or withdraw therefrom, in accordance with his determination of the question of his disqualification. His decision shall be forthwith made in writing and filed with the other papers in the case, but no appeal or stay shall be allowed from, or by reason of, his decision in favor of his own competency, until after final judgment in the case. (Emphasis and underscoring supplied)

Since petitioners are not parties to the case, they may not seek public respondent's inhibition, whether under the first paragraph of above-quoted Section 1 which constitutes grounds for mandatory disqualification, or under the second paragraph of the same section on voluntary disqualification.

WHEREFORE, the petition for mandamus is GRANTED. Public respondent is ORDERED to allow petitioners to access, examine, and obtain copies of any and all documents-part of the records of Special Proceeding No. 00-97505 bearing on the inventory of assets and liabilities of the estate and the hearing conducted by the trial court on February 13, 2004, subject to precautionary measures to prevent tampering or alteration thereof.

The petition for prohibition is DISMISSED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr. JJ., concur.

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[1]Rollo (GR. No. 163155), pp. 45-47.

[2]Id. at 148.

[3] Id. at 9.

[4]Id. at 48.

[5] Id. at 12.

[6] Id. at 77-78.

[7] Id. at 40.

[8]Id. at 58.

[9] Id. at 59-76.

[10] Id. at 13.

[11] Id. at 14.

[12]Id. at 80-81.

[13]Id. at 82.

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[14] Id. at 41-42.

[15]Ibid.

[16]Ibid.

[17] Id. at 19.

[18]Id. at 25.

[19]Id. at 28.

[20] Id. at 142-150.

[21] Id. at 145-146.

[22] Id. at 145.

[23] Id. at 147.

[24] Rollo (A.M. No. RTJ-05-1910), pp. 112-118.

[25] Id. at 173-189.

[26] Id. at 225-228.

[27] Rollo (G.R. No.163155) at 165. Vide First Philippine International Bank v. Court of Appeals, 322 Phil 280 (1996).

[28]Montemayor v. Bundalian, 453 Phil. 158, 169 (2003).

[29] 341 Phil. 299 (1997).

[30] Id. at 312-313.

[31] In Hilado v. Reyes, A.M. No. RTJ-05-1910, April 15, 2005, 456 SCRA 146, respondent was, "for denying the complainants access to court records," reprimanded with warning that a repetition fo the same or similar act shall be dealt with more severely.

[32] J. BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 335, (1996 ed.).

[33] BLACK'S LAW DICTIONARY 1273 (6[th]., 1991). See also the definition of civil docket 481.

[34] Rule3 (a) of the Rules for Public Access to Court Records of the State of Vermont.http://www.vermontjudiciary.org/rules/publicaccess.htm (visited May 31, 2006).

[35]Hilado v. Reyes, citing Legaspi v. Civil Service Commission, supra at 159.

[36]30 Phil. 88 (1915).

[37] Id. at 92-94.

[38]Ex parte Brown, 166 Ind. 593, 78 N.E. 553 (1906).

[39]Ibid.

[40] 195 Phil. 325, 334 (1981).

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[41] 442 Mass, 218, 812 N.E.2d 887.

[42]Ibid.

[43] Nixon v. Warner Communications, Inc. et al., 435 U.S. 589, 98 S.Ct. 1306, 3 Media L.Rep.2074, 55 L.Ed.2d570 (1978).

[44] Vickery v. Nova Scotia Supreme Court (Prothonotary), [1991] 1 S.C.R. 671.

[45] Times-Call Publishing Co., v. Wingfield, 159 Colo. 172, 410 P.2d 511 (1966).

[46] Nixon v. Warner Communications, Inc. et al., supra.

[47] Pansy v. Borough of Stroudsburg, 23 F.3d 772, 22 Media L. Rep. 1641, 28 Fed.R.Serv.3d 1129, 62 USLW 2693.

[48] Rollo (G.R. No. 163155), p. 148.

[49] Id. at 11.

[50] LeClair et al. v. New England Telephone and Telegraph Company, 112 N.H. 187, 294 A.2d 698 (1972).

[51]261 SCRA 474 (1996).

[52] Id. at 480.

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