

EN BANC**[A.M. No. 16-05-142-RTC, September 05, 2017]****RE: REPORT ON THE PRELIMINARY RESULTS OF THE SPOT AUDIT IN THE REGIONAL TRIAL COURT, BRANCH 170, MALABON CITY.****D E C I S I O N****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	JUDICIAL REGION	SEARCH WARRANTS ISSUED

ENFORCED		
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	4 th 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 wan-ants 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)	185
- Involving ordinary criminal cases	(152)
(received by raffle)	(33)

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