Republic of the Philippines
Supreme Court
Manila

EN BANC

RE: DRAFT DEPARTMENT OF JUSTICE-NATIONAL PROSECUTION SERVICE'S [DOJNPS] RULES ON PRELIMINARY INVESTIGATIONS AND INQUEST PROCEEDINGS

A.M. No. 24-02-09-SC

Present:

GESMUNDO, *C.J.*,
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M. V.,
GAERLAN,
ROSARIO,
LOPEZ, J. Y.,
DIMAAMPAO,
MARQUEZ,
KHO, JR., and
SINGH, *JJ.*

Promulgated:

May 28, 2024

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RESOLUTION

ZALAMEDA, *J.*:

The Court's Sub-Committee on the Revision of the Rules of Criminal Procedure (Sub-Committee),[1] received from one of its members from the Department of Justice (DOJ), a copy of the draft DOJ Circular on the proposed Rules on Preliminary Investigation and Inquest Proceeding in the National

[1] With the Honorable Associate Justices Rodil V. Zalameda as Chairperson, Jhosep Y. Lopez as Vice-Chairperson, and Jose Midas P. Marquez, Antonio T. Kho, Jr., and Maria Filomena D. Singh, as members.

Prosecution Service (DOJ-NPS Rules). Coincidentally, the Court's rules on Preliminary Investigation (Rule 112) are among those to be revised under the Proposed Rules on Criminal Procedure. Thus, to ensure harmony between the DOJ's conduct of preliminary investigations or inquest proceedings and our existing court procedures, the Sub-Committee solicited comments from the members of the *banc*.

In a Letter dated October 27, 2023 addressed to Undersecretary Raul T. Vasquez (Usec. Vasquez), Chief Justice Alexander G. Gesmundo (the Chief Justice) transmitted the comments of the members of the *banc* to the DOJ for its consideration.

Through a Letter[2] dated January 22, 2024, Usec. Vasquez highlighted the matters adopted by the DOJ from the Court's comments in its final version of the DOJ-NPS Rules, attaching a complete copy of the same.

The Chief Justice wrote a letter[3] dated February 7, 2024 addressed to the *banc*, urging its members to recognize the authority of the DOJ to promulgate its DOJ-NPS Rules consistent with jurisprudence that the conduct of preliminary investigation [and inquest proceedings] is not a judicial function but part of the prosecution's job, a function of the executive.[4] The Chief Justice further stated that this would entail the repeal of the affected provisions under Rule 112 of the current Revised Rules on Criminal Procedure.

A brief history of the rules on preliminary investigation

Under the Rules of Court promulgated in 1940 (1940 Rules of Court), preliminary investigation is defined as a previous inquiry or examination made before the arrest of the defendant by the judge or officer authorized to conduct the same, with whom a complaint or information has been filed imputing the commission of an offense cognizable by the Court of First Instance, for the purpose of determining whether there is a reasonable ground to believe that an offense has been committed and the defendant is probably guilty thereof, so as to issue a warrant of arrest and to hold him for trial.[5] The 1964 version of the Rules of Court (1964 Rules of Court) essentially maintained such a definition but used the term "preliminary examination"

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2 *Rollo*, pp. 2-3.
3 *Id.* at 1.
4 *Citing Castillo v. Villaluz*, 253 Phil. 30 (1989) [Per J. Narvasa, First Division]; *Lim v. Felix*, 272 Phil. 122 (1991) [Per J. Gutierrez Jr., *En Banc*]; *Beltran v. Dinopol*, 533 Phil. 728 (2006) [Per J. Carpio Morales, Third Division].
5 RULES OF COURT (1940), Rule 108, sec. 1.

instead of preliminary investigation.[6] In *People v. Montilla*,[7] the Court ruled that "our statutory rules and jurisprudence required *prima facie* evidence, which was of a higher degree or quantum, and was even used with dubiety as equivalent to 'probable cause.'" It noted, however, that such problems and confusing concepts were clarified by the 1985 amendment of the Rules of Court.

The 1985 Rules on Criminal Procedure reverted to the term preliminary investigation, which it defined as an inquiry or proceeding for the purpose of determining whether there is sufficient ground to engender a well-founded belief that a crime cognizable by the Regional Trial Court has been committed and that the respondent is probably guilty thereof, and should be held for trial.[8] This definition was maintained in the Revised Rules of Criminal Procedure promulgated in 2000 (2000 Rules).[9] As noted in *Montilla*, the quantum of evidence required in preliminary investigation is such evidence as suffices to "engender a well-founded belief" as to the fact of the commission of a crime and the respondent's probable guilt thereof.

In *Hashim v. Boncan*,[10] the Court has clarified that the purpose of preliminary investigation is to determine probable cause. It is for the presentation of such evidence only as may engender well-grounded belief that an offense has been committed and that the accused is probably guilty thereof. This was reiterated by the Court in Supreme Court Circular No. 12-87,[11] when it discussed the mandate of judges under the 1987 Constitution in personally determining the probable cause for the issuance of a warrant of arrest. The Court stated that the judge may either rely upon the fiscal's certification of the existence of probable cause or disregard said certification and require submission of supporting affidavits to aid in the determination of probable cause for the issuance of a warrant of arrest.

Authority to conduct preliminary investigation

The conduct of preliminary investigation has been shared by the judiciary and the executive up until the revision of the 2000 Rules in 2005.[12]

The judiciary's authority to conduct preliminary investigation can be gleaned from Republic Act No. 296, as amended by Republic Act No. 3828

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6 RULES OF COURT (1964), Rule 112, sec. 1.
7 349 Phil. 640 (1998) [Per J. Regalado, *En Banc*].
8 1985 RULES ON CRIMINAL PROCEDURE (1985), Rule 112, sec. 1.
9 REVISED RULES OF CRIMINAL PROCEDURE (2000), Rule 112, sec. 1.
10 71 Phil. 216 (1941) [Per J. Laurel, *En Banc*].
11 Guidelines on the Issuance of Warrants of Arrest under sec. 2, art. III, 1987 Constitution issued on June 30, 1987.
12 A.M. No. 05-8-26-SC, August 30, 2005.

(*Judiciary Act of 1948*) and Batas Pambansa Blg. 29 (*Judiciary Reorganization Act of 1980*). Under Republic Act No. 296, as amended, justices of the peace and judges of municipal courts of chartered cities may also conduct preliminary investigation for any offense alleged to have been committed within their respective municipalities and cities, which are cognizable by Courts of First Instance and the information filed with their courts without regard to the limits of punishment.[13] In 1981, Batas Pambansa Blg. 129 was enacted, authorizing judges of Metropolitan Trial Courts, except those in the National Capital Region, of Municipal Trial Courts, and Municipal Circuit Trial Courts to conduct preliminary investigation of crimes alleged to have been committed within their respective territorial jurisdictions which are cognizable by the Regional Trial Courts.[14]

Meanwhile, the executive's authority is reflected in Republic Act No. 732 (*Amendment of the Revised Administrative Code*), Republic Act No. 5180, as amended by Presidential Decree Nos. 77 and 911 (*Uniform System of Preliminary Investigation*), and Republic Act No. 10071 (*Prosecution Service Act of 2010*).

Under Republic Act No. 732, a provincial fiscal is given the authority to conduct investigation into the matter of any crime or misdemeanor and have the necessary information or complaint prepared or made against persons charged with the commission of the same.[15] Republic Act No. 5180, as amended, states that no information for an offense cognizable by the Court of First Instance shall be filed by the provincial or city fiscal or his assistants or by a state prosecutor, without first conducting a preliminary investigation. The investigating fiscal or state prosecutor is tasked to determine probable cause to conduct a preliminary investigation based on the complainant's sworn statements and documents submitted. If the same is established, respondent shall be required to submit counter-affidavit and supporting documents in order for the investigating fiscal or state prosecutor to determine if a *prima facie* case exists to file an information in court, where the fiscal or prosecutor shall certify that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof.[16] The mandate of the National Prosecution Service to be primarily responsible for the conduct of preliminary investigation and prosecution of all cases involving violation of penal laws is expressly provided in Republic Act No. 10071.[17]

Under the 1940 Rules of Court, the following have the authority to conduct preliminary investigation: (1) justice of peace; (2) municipal judge; (3) city fiscal; and (4) municipal mayor, for any offense alleged to have been committed within their respective municipalities and cities, without regard to

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[13] REPUBLIC ACT NO. 296, as amended by Republic Act No. 3828 (1963), sec. 87.
[14] BATAS PAMBANSA BILANG 129 (1981), sec. 37.
[15] REPUBLIC ACT NO. 732 (1952), sec. 1687.
[16] REPUBLIC ACT NO. 5180, as amended by Presidential Decree No. 77 and 911 (1976), sec. 1.
[17] REPUBLIC ACT NO. 10071 (2010), sec. 3.

the limits of punishment.[18] The same is true under the 1964 Rules of Court, with the addition of provincial fiscals.[19]

On the other hand, the 1985 Rules on Criminal Procedure provides that preliminary investigation may be conducted by the following: (1) provincial or city fiscals and their assistants, (2) judges of the Municipal Trial Courts and Municipal Circuit Trial Courts, (3) national and regional state prosecutors, and (4) such other officers as may be authorized by law.[20] The 2000 Rules maintained the enumeration in the 1985 Rules on Criminal Procedure. Notably, in 2005, judges of the Municipal Trial Courts and Municipal Circuit Trial Courts were removed from those authorized to conduct preliminary investigation.[21]

When preliminary investigation is required

Per the 1940 Rules of Court, every justice of the peace, municipal judge or city fiscal shall have jurisdiction to conduct preliminary investigation of all offenses alleged to have been committed within his municipality or city, cognizable by the Court of First Instance.[22] The same is true under the 1964 Rules of Court, with the addition of the authorized officer's provincial jurisdiction.[23] In the 2000 Rules, preliminary investigation is required to be conducted for offenses where the penalty prescribed by law is at least four years, two months, and one day without regard to the fine.[24] This was retained under the amended rules in 2005.[25]

Authority of the DOJ to promulgate its own rules and its repercussions on Rule 112 of the 2000 Rules

As illustrated above, preliminary investigation, as a vehicle to determine whether a person should be indicted, used to be a function shared by judges and prosecutors. The paradigm, however, shifted to one of exclusivity in favor of public prosecutors. As early as 1986 in *Salta v. Court of Appeals*,[26] the Court has held that the conduct of preliminary investigation

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18 RULES OF COURT (1940), Rule 108, sec. 2.
19 RULES OF COURT (1964), Rule 112, sec. 2.
20 1985 RULES ON CRIMINAL PROCEDURE (1985), Rule 112, sec. 2.
21 REVISED RULES OF CRIMINAL PROCEDURE (2000), Rule 112, sec. 2, as amended by A.M. No. 05-8-26-SC, August 30, 2005.
22 RULES OF COURT (1940), Rule 108, sec. 2.
23 RULES OF COURT (1964), Rule 112, sec. 2.
24 REVISED RULES OF CRIMINAL PROCEDURE (2000), Rule 112, sec. 1.
25 A.M. No. 05-8-26-SC, August 30, 2005.
26 227 Phil. 213 (1986) [Per J. Gutierrez, Jr., Second Division].

is an executive, not a judicial function. Thus:

> A preliminary investigation is intended to protect the accused from the inconvenience, expense, and burden of defending himself in a formal trial until the reasonable probability of his guilt has first been ascertained in a fairly summary proceeding by a competent officer. It is also intended to protect the State from having to conduct useless and expensive trials. Section 1, Rule 112 of the present Rules of Court states that it is conducted for the purpose of determining whether there is sufficient ground to engender a well-founded belief that a crime cognizable by the court has been committed and that the respondent is probably guilty thereof and should be held for trial. *The preliminary investigation proper is, therefore, not a judicial function. It is a part of the prosecution's job, a function of the executive.*[27] (Emphasis supplied; citation omitted.)

This pronouncement was reiterated in the 1997 case of *People v. Navarro*,[28] where the Court has held:

> It must be stressed that preliminary investigation is an executive, not a judicial, function. As the officer authorized to direct and control the prosecution of all criminal actions, a prosecutor is primarily responsible for ascertaining whether there is sufficient ground to engender a well-founded belief that an offense has been committed and that the accused is probably guilty thereof.[29]

By reason of this shift in the nature of preliminary investigation, the Court has adopted a policy of non-interference in the public prosecutor's conduct thereof.

For instance, in *People v. Navarro*,[30] it was held that a trial court "cannot directly order an assistant prosecutor to, particularly over the objections of the latter's superiors, to conduct a preliminary investigation," because to allow the court to do so is to "authorize [the court] to meddle in the executive and administrative functions of the provincial or city prosecutor." Most noteworthy, however, was the Court's ruling in *Chan y Lim v. Secretary of Justice*,[31] where it was held:

> Albeit the findings of the Justice Secretary are not absolute and are subject to judicial review, *this Court generally adheres to the policy of non-interference in the conduct of preliminary investigations, particularly when the said findings are well-supported by the facts as established by the evidence on record.* Absent any showing of arbitrariness on the part of the prosecutor or any other officer authorized to conduct preliminary investigation, courts as a rule must defer to said officer's finding and determination of probable cause, since the determination of the existence of probable cause is the function of the prosecutor. Simply stated, findings of the Secretary of Justice are not subject

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[27] *Id.* at 219.
[28] 337 Phil. 122 (1997) [Per J. Panganiban, Third Division].
[29] *Id.* at 130.
[30] *Id.* at 131.
[31] 572 Phil. 118 (2008) [Per J. Nachura, Third Divsion].

> to review, unless made with grave abuse of discretion.[32] (Emphasis supplied.)

Considering the nature of preliminary investigations, and the Court's policy on non-interference in the conduct thereof, the Court resolves to recognize the authority of the DOJ to promulgate its own rules on preliminary investigation. Indeed, it is within the DOJ's prerogative to direct and control the conduct of preliminary investigations, and the Court will not interfere with the same so long as it not tainted with grave abuse of discretion.

Further, to obviate any obstacle in the DOJ's implementation of the DOJ-NPS Rules, the Court resolves to repeal the provisions of Rule 112 of the 2000 Rules that are inconsistent therewith. It must be stressed that the promulgation of the DOJ-NPS Rules would not *ipso facto* repeal Rule 112 of the 2000 Rules.

In *Estipona v. Hon. Lobrigo*,[33] the Court held that the power to promulgate rules of pleading, practice, and procedure is now within its exclusive domain and no longer shared with the Executive and Legislative departments, and that the Court could assert its discretion to amend, repeal, or even establish new rules of procedure, to the exclusion of these branches of government.

Thus, it is settled that only the Court could repeal Rule 112 of the 2000 Rules. Nevertheless, to remove the impediment that the present Rule 112 seems to impose upon the promulgation of the DOJ-NPS Rules, and in recognition of the DOJ's authority to promulgate its own rules on preliminary investigation, the repeal of the pertinent provisions under Rule 112 of the 2000 Rules inconsistent with the DOJ-NPS is warranted.

The repeal, however, is without prejudice to the Court's promulgation of its own procedure, of a new rule touching upon preliminary investigation. In fact, the Sub-Committee for the Revision of the Rules on Criminal Procedure proposes a new version of Rule 112. This version contains: (1) definitions of preliminary investigation and inquest, (2) an acknowledgment that the conduct of preliminary investigation is within the exclusive jurisdiction of the DOJ, the Office of the Ombudsman, the Commission on Elections, and other officers as may be authorized by law, and (3) other provisions not inconsistent with the proposed DOJ-NPS Rules. The same was introduced because the Sub-Committee recognizes that other government agencies also conduct preliminary investigations, which will not be covered by the DOJ-NPS Rules.

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[32] *Id.* at 130.

[33] 816 Phil. 789 (2017) [Per J. Peralta, *En Banc*].

FOR THESE REASONS, the Court hereby **RECOGNIZES the AUTHORITY** of the Department of Justice to promulgate its 2024 DOJ-National Prosecution Service Rules on Preliminary Investigations and Inquest Proceedings (2024 DOJ-NPS Rules).

Thereafter, and once the 2024 DOJ-NPS Rules are promulgated by the DOJ, the pertinent provisions of Rule 112 of the 2000 Revised Rules on Criminal Procedure, as amended, inconsistent therewith are deemed **REPEALED.** This shall be without prejudice to the Court's promulgation of its own rules of procedure, of a new rule touching upon preliminary investigation, consistent with the 2024 DOJ- NPS Rules.

Let a copy of the 2024 DOJ-NPS Rules be endorsed to the Sub-Committee on the Revision of the Rules of Criminal Procedure for its guidance and appropriate action.

SO ORDERED.

RODIL V. ZALAMEDA
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

MARVIC M. V. F. LEONEN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
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