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(as of July 2012)

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## KATARUNGANG PAMBARANGAY

When a police officer tells a complainant that his complaint must pass through mediation in the Barangay Lupon before he can take action, it is not his intention to disregard and take no action on the complaint for reasons unfair to the complainant. The police officer may in fact be doing a favor to him because of the mandatory character of the mediation in the Brgy Lupon being a prerequisite before the case is filed in court. However, it has been observed that the laudable purpose of the Revised Katarungang Pambarangay Law is subverted and its effectiveness undermined by premature issuance of certifications to file action by concerned Barangay Officials; and, likewise by the improper referral of cases to the Barangay by police officers.



This issue aims to provide insights as to when the PNP should refer disputes to the Barangay and when a police officer should entertain certifications to file action.

**Q1: What is the governing law when it comes to mediation in the Barangay?**

A: The Revised Katarungang Pambarangay Law found in sections 399 to 422, Chapter VII, Title I, Book III, and section 515, Title I, Book IV, of Republic Act Number (RA) 7160 otherwise known as the Local Government Code of 1991.

**Q2: Do we have a “Barangay Court”?**

A: No. Barangay Officials do not have judicial powers. They are simply authorized to do conciliation or mediation so that disputes that are within their



jurisdiction will no longer reach the courts and therefore will help in the declogging of court dockets.

**Q3: What will happen if the settlement effort succeeds or fails?**

A: If settlement is reached, the case may no longer be elevated to court. If it fails, a corresponding Certification to File Action (CFA) will be issued by the appropriate Barangay Authority and the case may be filed with the court.

**Problem 1:** CFA was issued alleging that no settlement was ever reached during mediation. During the interview, the police investigator found out that the true reason why the CFA was issued is that the party being complained of failed to comply with his promise or obligation to pay during the confrontation. Is the police investigator required to file the case in court?

A: No. Settlement was already reached. The problem now is the failure of one party to comply with his obligation in the settlement. Such compliance could be exacted thru motion for execution to be filed with the Punong Barangay (within six months from the settlement) or thru Execution by

Court Action (after the lapse of six months) in the Municipal Trial Court.

**Problem 2:** In problem number 1, the complainant insisted to file a criminal case. He tore the CFA and denounced having brought his complaint before the Barangay. Is the police officer now duty bound to act on his complaint and file the case in court?

A: No. The complainant loses his right to prosecute after the settlement. **Note:** The complainant did not follow the proper procedure in repudiating settlement agreements prescribed in Katarungang Pambarangay Law.

**Q4: What are the cases cognizable by the Lupon?**

A: Under section 408 of the Local Government Code, the Lupon of each Barangay shall have jurisdiction to amicably settle all disputes between parties residing in the same city or municipality EXCEPT:

- a. Where one party is the government or any subdivision or instrumentality thereof;
- b. Where one party is a public officer or employee, and the dispute relates to the performance of his official functions;
- c. Offenses punishable by imprisonment exceeding one (1) year or a fine exceeding Five Thousand (Php5,000.00) Pesos;
- d. Offenses where there is no offended party;
- e. Where the dispute involves real properties located in different cities or municipalities unless the parties thereto agree to submit their differences to amicable settlement by appropriate lupon;
- f. Disputes involving parties who actually reside in different barangays of different cities and municipalities except where such barangay units adjoin each other and the parties thereto agree to submit their differences to amicable settlement by appropriate lupon; and,

- g. Such other classes of disputes which the President may determine in the interest of justice or upon recommendation by the Secretary of Justice.

**Problem 3:** The PNP referred the complaint for non-payment of monthly installments of a Collector of a motorcycle company to the Punong Barangay. Is the action of the PNP proper?

A: Not proper. Complaints made by or against corporations, partnerships or other judicial entities shall not be accepted by Lupon Chairman [Sec 1 (b-1), Rule III, Katarungan Pambarangay Rules].

**Problem 4:** If some of the contending parties are government subdivisions or government officials while the others are not, is there a need to undergo mediation in the Barangay?

A: The Supreme Court in the case of GEGARE vs CA, G.R. No. 83907 promulgated September 13, 1989, declared that the purpose of confrontation is to enable the parties to settle their differences amicably. If the other only contending party is the government or its instrumentality or subdivision the case falls within the exception but when it is only one of the contending parties, a confrontation should still be undertaken among the other parties.

**Q6: Who will issue and what are the requirements in issuing a Certification to File Action?**

A: The PNP should entertain a certification for filing a complaint in court or any government office if it is issued by the following Authorities and only if it complies with the following requirements:

1. **Lupon Secretary and attested by the Lupon Chairman (Punong Barangay)** - certifying that:

[a] A confrontation of the parties has taken place and that a conciliation settlement has been reached;

[b] BUT the same has been subsequently repudiated;

2. **Pangkat Secretary and attested by the Pangkat Chairman** certifying that:

[a] a confrontation of the parties took place but no conciliation/settlement has been reached; **OR**

[b] that no personal confrontation took place before the Pangkat through no fault of the complainant.

3. **Punong Barangay** if requested by the proper party on the ground of failure of settlement where the dispute involves members of the same indigenous cultural community, which shall be settled in accordance with the customs and traditions of that particular cultural community, or where one or more of the parties to the aforesaid dispute belong to the minority and the parties mutually agreed to submit their dispute to the indigenous system of amicable settlement, and there has been no settlement as certified by the datu or tribal leader or elder to the Punong Barangay of place of settlement (Secs. 1,4 & 5, Rule IX, Katarungang Pambarangay Rules

**Q7: What is the effect if the case is filed without having gone through mediation in the Barangay when mediation is required?**

A: A case filed in court without compliance with prior Barangay conciliation which is a pre-condition for formal adjudication



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**Q5: Is it not that there is a prohibition to settle criminal cases?**

A: Yes, there is a prohibition but there is no obstacle to settle disputes. The framers of the Katarungan Pambarangay Law consciously use the word "dispute" rather

than "case" in its provisions. Only those that were filed in court are categorized as "cases" while those filed or referred in the Barangay are considered "disputes".

may be dismissed upon motion of defendant/s, not for lack of jurisdiction of the court but for failure to state a cause of action or prematurity (Royales vs. IAC, 127 SCRA 470; Gonzales vs. CA, 151 SCRA 289); **OR**, the court may suspend proceedings upon petition of any party under Sec. 1, Rule 21 of the Rules of Court; and refer the case motu proprio to the appropriate Barangay authority applying by analogy Sec. 408 [g], 2nd par., of the Revised Katarungang Pambarangay Law which reads as follows:

"The court in which non-criminal cases not falling within the authority of the Lupon under this Code are filed may, at any time before trial, motu proprio refer case to the Lupon concerned for amicable settlement.

**Important:**

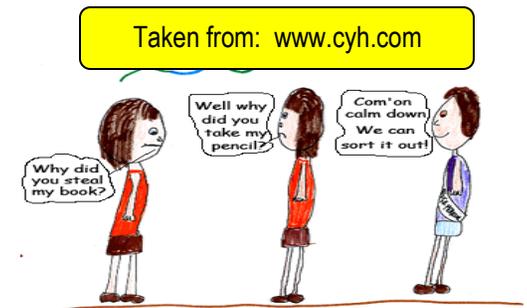
If mediation or conciliation efforts before the Punong Barangay proved unsuccessful, there having been no agreement to arbitrate; OR, where the respondent fails to appear at the mediation proceeding before the Punong Barangay, the Punong Barangay shall not issue at this stage a certification to file action, because it is now mandatory for him to constitute the Pangkat before whom mediation, conciliation, or arbitration proceedings shall be held (SC Circular No. 14-93).

**Q8: A Punong Barangay asked from the police officer during a conference whether or not a party who refused to appear before the Lupon can be arrested? The police officer asked the same question in LEGAL ADVICE 24/7.**

A: No. The caller was advised to inform the Punong Barangay about his remedies under Section 515 of the Local Gov't Code. Such refusal or wilful failure to appear before the lupon or pangkat may be punished by the city or municipal court as indirect contempt of court upon application filed therewith by the lupon chairman, the pangkat chairman, or by any of the contending parties. Further, such refusal or wilful failure to appear shall be reflected in the records of the lupon secretary or in the minutes of the pangkat

secretary and shall bar the complainant who fails to appear, from seeking judicial recourse for the same cause of action, and the respondent who refuses to appear, from filing any counterclaim arising out of, or necessarily connected with the complaint

**Problem 5:** Annun filed a complaint against Alma before the Barangay. The Punong Barangay issued a CFA certifying that the case "may now be filed in court because the defendant refused to appear before him despite repeated invitations". Is the issuance of CFA proper?



A: Not proper. It is mandatory for him to constitute the Pangkat.

**Q9: What are the instances where cases cognizable by the Lupon must be filed directly in Court?**

- A: In the following instances:
- a. Where the accused is under detention;
  - b. Where the person has otherwise been deprived of personal liberty calling for a habeas corpus proceedings;
  - c. Where the action is coupled with provisional remedies such as injunction, attachment, delivery of personal properties, support, etc
  - d. Where the dispute arises from the Comprehensive Agrarian Reform Law (CARL). **Note:** It is the Barangay Agrarian Reform Council (BARC) that will take charge of the dispute.
  - e. Labor disputes or controversies arising from employer-employee relationship.
  - f. Violence against Women and Children (VAWC) cases except issuance of Protection Orders

**Problem 6:** Bart boxed Franz causing less serious injuries. The police apprehended Bart immediately after the incident. The investigator asked if he will file the case for inquest or refer the case to the Barangay because of the penalty of the crime which is imprisonment of one month and one day to six months only?

A: File the case for inquest because the offender is under detention.

**Problem 7:** Gerry and Franzen are live-in partners and the mauling incident happened three days ago when it was reported to the police. Should the PNP refer the case to the Barangay?

A: No. File the case in the Prosecutor's Office for preliminary investigation. Mediation in the barangay involving violations of the VAWC law is discouraged.

**Problem 8:** While on foot patrol in the Barangay, Gerry, a Tanod, was boxed by Bart when the former stopped the latter in making public disturbance. Gerry did not intend to file a case against Bart knowing that he suffered slight injuries only. As the days went by, Bart was bragging that he assaulted Gerry which prompted Gerry to file a case against Bart. Upon noticing that the incident happened five days ago, and Gerry suffered slight physical injuries only, the PNP referred the case to the Punong Barangay. Is the referral proper?

A: Not proper. The case is not cognizable by the Lupon. Gerry is a public officer and the disputes relates to the performance of his duties. Further, the case is Direct Assault Against an Agent of Person in Authority which carries a penalty of more than 1 year imprisonment.

**Q10: The Investigator asked from LEGAL ADVICE 24/7 what to do with a CFA that he received 76 days after the mauling incident happened. He pointed out that under the RPC, slight physical injuries must be filed within two months after the incident occurred.**

A: File the case. Section 410(c) of the Local Gov't Code provides: "While the dispute is under mediation, conciliation, or arbitration, the prescriptive periods for offenses and cause of action under existing laws shall be interrupted upon filing of the complaint with the punong barangay. The prescriptive periods shall resume upon receipt by the complainant of the complaint or the certificate of repudiation or of the certification to file action issued by the lupon or pangkat secretary: Provided, however, That such interruption shall not exceed sixty (60) days from the filing of the complaint with the punong barangay".

**Q11: The complainant wanted that the PNP refer the dispute to the Barangay where the incident took place and not in the barangay where the respondent resides because of the connections of the respondent to the Punong Barangay. The Investigator asked where the case should be referred?**



A: Refer the case to the Barangay where the respondent resides. **Note:** If there are two or more respondents residing in different barangays, the complainant has the option where to file the complaint.

**Q12: In Question Number 10, the Investigator found-out that the dispute happened in the workplace where both parties are employed. In what Barangay should the dispute be referred?**

A: In the barangay where such workplace or institution is located. Procedural rules including those relating to venue are designed to insure a fair and convenient hearing to the parties with complete justice between them as a result. Elsewise stated, convenience is the raison d'etre of the rule on venue.

**Q13: The police officer tried to help an ABC President of the town. He averred that the ABC President asked from him whether or not issuance of a Certification to File Action will cure the defect of filing the complaint without undergoing mediation in the Barangay?**

A: No. The ABC President has to wait for the order of the Court remanding the case for mediation/arbitration in his Barangay and then follow the steps required under the Katarungan Pambarangay Law before issuing the CFA.

**Q14: During a barangay fiesta, accused boxed a resident of that Barangay. The case was filed without undergoing Barangay conciliation. The accused raised premature filing as a defense citing that even if he is from another town, he has a store in that Barangay. Is the contention of the accused tenable?**

A: The Lupon shall have no jurisdiction over disputes where the parties are not actual residents of the same city or municipality.

**Q15: Spouses Manacnis executed a Special Power of Attorney (SPA) in favor of their daughter Catherine to represent them in filing a case, attend the conciliation proceedings in the Barangay and to sign any agreement therein, etc. A CFA was issued and Catherine approached the PNP Duty Officer to file the case. Is the PNP obliged to entertain the complaint of Catherine?**

A: The PNP has to entertain Catherine because of the SPA and not because of the CFA. **Note:** The execution of SPA to attend conciliation in the Barangay is not allowed by the Katarungang Pambarangay Law specifically by Section 415 of RA 7160 which mandates the personal appearance of the parties before the lupon and likewise prohibits the appearance of representatives.

**Q16: Assuming that in question number 14 agreement was successfully reached between Catherine and the representative of the respondent. Is the agreement enforceable?**

A: No. The agreement is inefficacious. Personal appearance of the parties before the Lupon is mandatory.

**Q17: Which should prevail, the Katarungan Pambarangay Law or the Conciliation procedures among indigenous cultural communities?**

A: Section 399(f) of the Local Gov't Code provides: "In barangays where majority of the inhabitants are members of indigenous cultural communities, local systems of settling disputes through their councils of datu or elders shall be recognized without prejudice to the applicable provisions of this (Local Gov't) code." The procedure is reflected in question number 6 paragraph 3.



**Q18: Presupposing that under the customs and traditions of a particular indigenous cultural community, near to frustrated homicide or murder cases cannot be filed without undergoing conciliation. Is the PNP bound by such custom or tradition?**

A: The power of the tribal leaders to effect settlement is embodied under the Katarungan Pambarangay Law and in case of land dispute, by the Indigenous Peoples Act (RA 8371). It is safe to assume that only disputes having gravity as that which are cognizable by the Barangay are within the powers of the tribal leader to arbitrate. Frustrated Homicide cases are not within the ambit of Katarungang Pambarangay and should be dealt with in accordance with our criminal laws. **Note:** the police officer should require from the person who alleged as a member of the cultural community his registration as such and also demand a codified conflict resolution duly approved by the National Commission on Indigenous Peoples or any other Authorities.

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