



# PHILJA E-Alerts

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## CA JUSTICES

### • Longevity Pay

In conferring upon certain officials in the Executive the same salaries, aside from their rank, as those of their respective judicial counterparts, Congress intended to make the salaries of the former at par with the latter. The legislative records support this.

In particular, the following portion of the interpellations in connection with Senate Bill No. 2035, which became Republic Act No. 9347, is enlightening:

Asked by the Chair whether the proposed amendment (Section 4) to Article 216 of the Labor Code means an increase in **salaries**, Senator Ejercito Estrada (J) clarified that the section proposes that **the arbiters be at par with the judges of the regional trial courts, and the commissioners at par with the justices of the Court of Appeals.**

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This legislative intent to grant certain officials of the Executive Department the same salaries as that of their respective judicial counterparts should be read in conjunction with how salary is defined in the law and treated vis-à-vis longevity pay in prevailing case law. In enacting a statute, the legislature is presumed to have been aware of, and have taken into account, prior laws and jurisprudence on the subject of legislation. x x x

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Thus, Congress knew, or is presumed to have known, the concept of longevity pay under Section 42 of Batas Pambansa Blg. 129 **as part of the total salary** of members of the Judiciary when it enacted Republic Act Nos. 9417, 9347, and 10071, which granted certain officials of the OSG, the NLRC, and the NPS, respectively, the same salary as their respective counterparts in the Judiciary. Moreover, armed with that knowledge, Congress is presumed to have intended to adopt the definition of “salary” (as constituting basic monthly salary plus longevity pay) when it enacted Republic Act Nos. 9417, 9347, and 10071, which will be in keeping with the legislative intent to equalize the salary of certain executive officials with member of the Judiciary. To do otherwise will negate the express legislative intent.

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Justice A was still a Commissioner of the NLRC when Republic Act No. 9347 took effect. From the date of effectivity of the law onwards, her services as NLRC Commissioner are therefore covered by the beneficial effect of the amendment of Article 216 of the Labor Code by Republic Act No. 9347, which gave the NLRC Commissioners the same rank and salary as Associate Justice of the Court of Appeals. As Republic Act No. 9347 expresses the intent to

place the NLRC Commissioners in exactly the same footing as their counterparts in the Court of Appeals, and “salary” includes longevity pay, then Justice A’s longevity pay should be reckoned from August 26, 2006, the date Republic Act No. 9347 took effect, at which time she was still NLRC Commissioner. Thus, five years after that date, or on August 26, 2011, she became entitled to receive longevity pay equivalent to 5 percent of her monthly basic pay at that time; and, she is now entitled to adjustment of salary, allowances, and benefits only as of that date. **[A.M. Nos. 12-9-5-SC, July 26, 2016]**

## **INTERPRETERS**

### **• Delayed remittance of collections**

Without a quibble, the failure of respondent to remit her collections promptly was unjustifiable. It deprived the court of interest that could have been earned if only these amounts were deposited punctually as instructed. Respondent incurred cash shortages amounting to P47,473.07 from September 2006 to November 2006 and failed to comply with the lawful orders of the OCA requiring her to give a satisfactory explanation for the shortages and failed to produce the documents required to complete the audit. In fact, she did not give attention and respect to these directives even after her compulsory retirement on August 26, 2012. It was only on February 27, 2014 that she paid her shortages after she could not get a clearance from the court.

It must be emphasized that the safekeeping of funds and collections is essential to an orderly administration of justice, and no protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability for government funds. Clerks of Court and those acting in this capacity perform a delicate function as designated custodian of the court’s funds, revenues, records, properties and premises. Hence, any loss, shortage, destruction or impairment of those funds and property makes them accountable.

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For her delay in remitting her collections, and considering she has compulsorily retired since 2012, respondent Interpreter I and Officer in Charge of MTC was fined in the amount of P10,000 and ordered to pay the unrealized interest amounting to P21,993.49, to be deducted from her retirement benefits. **[A.M. No. P-16-3485 (Formerly A.M. No. 14-4-47-MTC), August 1, 2016]**

## **SHERIFFS**

### **• Grave Misconduct**

However, we find several procedural lapses in respondent’s conduct of the auction sale, which make him guilty of grave misconduct.

First, instead of personally serving the notice of the execution sale to the judgment obligor, respondent sent the notice via registered mail, in transgression of Section 15(d), Rule 39 of the Rules, which reads:

**SEC. 15. Notice of sale of property on execution.** – Before the sale of property on execution, notice thereof must be given as follows:

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(d) In all cases, written notice of the sale shall be given to the judgment obligor, at least three days before the sale, except as provided in paragraph (a) hereof where notice shall be given at any time before the sale, **in the same manner as personal service of pleadings and other papers as provided by Section 6, of Rule 13.**

In *Villaceran v. Beltejar*, we ruled that requirements for execution sales under Rule 39 of the Rules must be strictly complied with. The Rules require personal service of the notice to ensure that the judgment obligor will be given a chance to prevent the sale by paying the judgment debt sought to be enforced. If only respondent personally served the notice, there would be no question on who “A” is and there would be no issue on whether complainant has knowledge of the sale.

Second, respondent stated in the notice of execution sale that the sale shall be held at the main entrance of the Hall of Justice. The Rules, however, require that for property not capable of manual delivery, the sale shall be held at the office of the clerk of court of the regional trial court that issued the writ of execution. In *Villaceran*, we held the sheriff therein liable for ignorance of this rule, as well.

Third, respondent deviated from his ministerial duty in executing the 2008 Writ when he decided that the excess from the execution sale shall cover the costs of suit. Section 19, Rule 39 of the Rules provides:

**SEC. 19. How property sold on execution; who may direct manner and order of sale. –** All sales of property under execution must be made at public auction, to the highest bidder, to start at the exact time fixed in the notice. **After sufficient property has been sold to satisfy the execution, no more shall be sold and any excess property or proceeds of the sale shall be promptly delivered to the judgment obligor or his authorized representative, unless otherwise directed by the judgment or order of the court.** When the sale is of real property, consisting of several known lots, they must be sold separately; or, when a portion of such real property is claimed by a third person, he may require it to be sold separately. When the sale is of personal property capable of manual delivery, it must sold within view of those attending the same and in such parcels as are likely to bring the highest price. The judgment obligor, if present at the sale, may direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels which can be sold to advantage separately. Neither the officer conducting the execution sale, nor his deputies, can become a purchaser, nor be interested directly or indirectly in any purchase at such sale.

On the other hand, Section 8, Rule 142 of the Rules provides how costs of suit are taxed:

**SEC. 8. Costs, how taxed. – In inferior courts, the costs shall be taxed by the justice of the peace or municipal judge and included in the judgment.** In superior courts, costs shall be taxed by the clerk of the corresponding court on five days’ written notice given by the prevailing party to the adverse party. With this notice shall be served a statement of the items of costs claimed by the prevailing party, verified by his oath or that of his attorney. Objections to the taxation shall be made in writing, specifying the items objected to. Either party may appeal to the court from the clerk’s taxation. The costs shall be inserted in the judgement if taxed before its entry, and payment thereof shall be enforced by execution.

Instead of returning the excess amount from the auction sale to complainant as required in the Rules, respondent allegedly applied it to costs of suit. However, he failed to exhibit proof that the 2008 Writ directed him to make such application. He also did not present a court-approved computation of the costs of suit. Rather than showing the legal basis for his

actuation, respondent took refuge on the letter of the plaintiff's wife. Thus, in his Comment before us, he stated:

With respect to complainant's allegation that he [pertaining to himself] should have delivered to her sister [the complainant] the excess proceeds of the auction sale as the alleged minimum bid representing the accrued rentals and attorney's fees is only P2,600,000, the undersigned Sheriff asserts that there were no excess proceeds to deliver because of the costs of suit that should be paid by the complainant, her sister and their co-defendant. **As a matter of fact the bid price of P5,000,000 is considered too small an amount and even short compared to the amount of P16,935,737 total payment being demanded by the plaintiff as decided by the court in Civil Case No. ABC. x x x**

By his own words, respondent sheriff casts **doubt** on his trustworthiness and propriety as an officer of the court. To our mind, respondent allowed himself to be swayed or influenced by the letter of the plaintiff's wife who demanded P1,800,000 as costs of suit, and which amount was not reflected in the 2008 Writ. The conduct of respondent sheriff betrayed the foremost duty of sheriffs to execute the order of the court strictly to the letter. Sheriffs are under obligation to perform their duties honestly, **faithfully** and to the best of their ability; they must conduct themselves with propriety and decorum, and above all else, be **above suspicion**.

Should respondent find the MCTC decision confusing or wanting as to the cost of suit, he should have asked the MCTC for clarification. Respondent is expected to know the limits of his authority. We have frequently reiterated that the sheriff and his deputies merely perform ministerial, not discretionary functions. In the performance of their duties, sheriffs are supposed to execute orders of this court strictly to the letter of the order and the governing law. They are not supposed to decide and interpret for themselves unclear wordings of the judgment or order.

The foregoing series of procedural lapses committed by respondent shows misconduct in service. Misconduct is the transgression of some established and definite rule of action, more particularly unlawful behavior or gross negligence by a public officer. In *Tan v. Dael*, we held that any act of deviation from the procedures is considered a misconduct that warrants disciplinary action.

Further, in deviating from the Rules, respondent also violated the Code of Conduct for Court Personnel in the Judiciary, which mandates that court personnel are enjoined to "expeditiously enforce rules and implement orders of the court within the limits of their authority."

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For his grave misconduct, respondent was dismissed from the service with forfeiture of all retirement benefits except accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations. The OCA was likewise directed by the Court to file appropriate criminal charges against respondent. **[A.M. No. P-13-3113, August 2, 2016]**