



PHILJA E-Alerts

The PHILJA Electronic Alerts is published by the Research, Publications and Linkages Office of the Philippine Judicial Academy, with office at the 3rd Floor of the Supreme Court Centennial Building, Padre Faura Street corner Taft Avenue, Manila.

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Issue 16-02
February 2016

CA Justices: Bare allegations will not suffice to sustain a claim of partiality.

The complainant's main allegation in his administrative complaint is **partiality** on the part of the respondent-Justices who dismissed outright the petition for review which he filed in behalf of the petitioners in CA G.R. CEB SP No. 06984. The complainant accuses the respondent-Justices of favoring the other party to the case by dismissing the petition based purely on technicalities, without consideration of the prayer stated in the petition.

Bare allegations, however, will not suffice to sustain a claim of partiality. The complainant carries the burden of proof to show that the conduct of the judge, or the respondent-Justices in this case, was clearly indicative of arbitrariness and prejudice before the questioned conduct could be stigmatized as biased and partial. **The evidence of bias or prejudice must be clear and convincing.**

Moreover, it is also important that the resulting order, resolution, or decision must have been rendered based on an "extrajudicial source" in order for a claim of partiality to be upheld against the judge or justices who issued the order, resolution, or decision. This rule is known in the United States as the **Extra-Judicial Source Rule**, which was enunciated in the case of *Carter v. State*. In that case, the Supreme Court of the State of Georgia held that "in order to be disqualifying, the alleged bias must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case."

In this jurisdiction, we held in *Gochan v. Gochan* that as long as decisions made and opinions formed in the course of judicial proceedings are based on the evidence presented, the conduct observed by the magistrate, and the application of the law, such opinions – even if later found to be erroneous – will not sustain a claim of personal bias or prejudice on the part of the judge.

In the present case, other than the complainant's accusation, we find nothing in the administrative complaint and in the records to sufficiently convince us that the respondent-Justices were partial in issuing their dismissal resolution dated January 17, 2013.

For failure to substantiate the allegations with clear and convincing evidence, the charge against respondent-Justices was dismissed. **(IPI No. 14-222-CA-J, February 23, 2016)**

Judges: Rule 140, Sec. 8. Dishonesty and violations of the Anti-Graft and Corrupt Practices Law (R.A. No. 3019).

The respondent's convictions by the Sandiganbayan for violation of Section 3(e) of R.A. No. 3019 and for malversation of public funds confirm that the administrative charges for which he may be found liable are serious charges under Section 8(2) of Rule 140 of the Rules of Court, as amended. Malversation is likewise considered as a serious charge since it is a crime involving moral turpitude.

x x x x

In the present proceedings, our function is limited to the determination of whether substantial evidence exists to hold the respondent administratively liable for acts he is alleged to have committed while he was still the mayor of Dapitan City.

In this determination, it is immaterial that the respondent was not yet a member of the Judiciary when he allegedly committed the acts imputed to him; judges may be disciplined for acts committed **prior** to their appointment to the judiciary. Our Rules itself recognizes this situation, as it provides for the immediate forwarding to the Supreme Court for disposition and adjudication of charges against *justices and judges before the IBP, including those filed prior to their appointment to the judiciary*. It need not be shown that the respondent continued to do the act or acts complained of; it is sufficient that the evidence on record supports the charge/s against the respondent through proof that the respondent committed the imputed act/s violative of the Code of Judicial Conduct and the applicable provisions of the Rules of Court.

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Viewed against the positive declarations of the prosecution witnesses, which are supported by the documents on record, the respondent's denial cannot stand. The respondent even failed to substantiate his claim that the charges against him had been politically motivated. Thus, by *substantial evidence*, we consider it fully established that the respondent actively worked for the approval of the P1 million cash advance from the CIF; that he facilitated the withdrawal of the P1 million by Nortal; and that he received and used this withdrawn amount for his personal benefit.

x x x x

Considering the nature and extent of the respondent's transgressions, we find the imposition of the supreme administrative penalty of dismissal to be appropriate. The people's confidence in the judicial system is founded not only on the competence and diligence of the members of the bench, but also on their integrity and moral uprightness. We would violate this standard and unduly tarnish the image of the Judiciary if we allow the respondent's continued presence in the bench. We would likewise insult the legal profession if we allow him to remain within the ranks of legal professionals. **(A.M. No. RTJ-13-2361 [Formerly OCA IPI No. 13-4144-RTJ], February 2, 2016)**

Sheriffs: Gross Misconduct.

The duties of sheriffs in the implementation of writs are explicitly laid down in Section 10, Rule 141 of the Rules of Court, as amended, which reads:

Sec. 10. Sheriffs, process servers and other persons serving processes.— x x x

x x x x

With regard to sheriff's expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, **the interested party shall pay said expenses in an amount estimated by the sheriff, subject to approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and ex-officio sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. The liquidation shall be approved by the court. Any unspent amount shall be refunded to the party making the deposit.** A full report shall be submitted by the deputy sheriff assigned with his return, the sheriff's expenses shall be taxed as cost against the judgment debtor. (Emphasis supplied)

The aforesaid rule enumerated the steps to be followed in the payment and disbursement of fees for the execution of a writ, to wit: (1) the sheriff must prepare and submit to the court an estimate of the expenses he would incur; (2) the estimated expenses shall be subject to court approval; (3) the approved estimated expenses shall be deposited by the interested party with the Clerk of Court, who is also the *ex-officio* sheriff; (4) the Clerk of Court shall disburse the amount to the executing sheriff; (5) the executing sheriff shall thereafter liquidate his expenses within the same period for rendering a return on the writ; and (6) any amount unspent shall be returned to the person who made the deposit.

It is clear from the enumeration that sheriffs are not authorized to receive direct payments from a winning party. Any amount to be paid for the execution of the writ should be deposited with the Clerk of Court and it would be the latter who shall release the amount to the executing sheriff. The amount deposited should be spent entirely for the execution only and any remainder of the amount should be returned.

It is evident that respondent sheriff is guilty of misconduct when he appropriated for himself the money he received from complainants, purportedly as "full payment" for the enforcement of the writ of execution. He never denied the authenticity of his handwritten acknowledgement receipt showing that he received from complainants the amount of P70,000.00. He simply argued that he was "hoodwinked" by complainants to acknowledge the amount supposedly for liquidation purposes. Other than his vague explanation, there was no accounting of the amount he admitted to have received. In fact, there was also no showing that liquidation was prepared and submitted to the court as required under the rules.

Since he was already dismissed in a separate administrative case, respondent sheriff who was found guilty of gross misconduct was ordered to return the amount given by complainants plus interest under pain of contempt. (**OCA I.P.I No. 13-4148-P, February 10, 2016**)

Process Server: Insubordination; Conduct Unbecoming a court employee.

Boorishness, foul language and any misbehavior in court premises diminishes its sanctity and dignity. Any fighting or misunderstanding between and among court personnel becomes a disgraceful sight reflecting adversely on the good image of the judiciary. Professionalism, respect for the rights of others, good manners, and right conduct are expected of all judicial officers and employees. Quarreling with a co-employee, especially when done before the public or within the premises and during office hours, is prejudicial to public service. An employee of the judiciary is expected to accord respect for the person and rights of others at all times, and that his every act and word should be characterized by prudence, restraint, courtesy and dignity.

Government service is people oriented where high strung and belligerent behavior cannot be allowed. Whatever the court employee's motives may be, as a public officer, courtesy should be his policy. A court employee is expected to do no more than what duty demands and no less than what privilege permits.

Respondent process server evidently failed to act in accordance with the strict and high standards for court employees. She should have observed courtesy, civility, and self-restraint in her dealings with complainant, who was not only her co-employee, but as Clerk of Court II, was also her superior. Given the circumstances, respondent could have simply approached complainant and calmly and politely asked for the reason as to why her DTR entries were modified; there was utterly no need for respondent to raise her voice and use insulting and offensive words against complainant.

For simple discourtesy and conduct unbecoming a court employee, respondent was reprimanded. **(A.M. No. P-15-3300 [Formerly OCA I.P.I. No. 12-4011-P], February 10, 2016)**

Clerk: Serious Dishonesty; Impersonation.

As correctly observed by the OCA, respondent herself acknowledged, in her Answer, that another person took the examination in her behalf. This court, however, finds no merit to her defense that the same was done without her knowledge and that it was Maignas who perpetrated the unauthorized substitution.

In *Donato, Jr. v. Civil Service Commission*, this Court approved the findings of the CSC and ruled that:

“In the offense of impersonation, there are always two persons involved. The offense cannot prosper without the active participation of both persons – (CSC Resolution No. 94-6582). Further, by engaging or colluding with another person to take the test in his behalf and thereafter by claiming the resultant passing rate as his, clinches the case against him. In cases of impersonation, the Commission has consistently rejected claims of good faith, for “it is contrary to human nature that a person will do (impersonation) without the consent of the person being impersonated.” (CSC [R]esolution No. 94-0826)”

In the present case, aside from the self-serving claim of respondent that it was Maignas who facilitated the alleged impersonation of her civil service examination, records do not show any measure taken up by her to correct the same. No amount of good faith can be attributed to respondent. Good faith necessitates honesty of intention, free from any knowledge of circumstances that ought to have prompted her to undertake an inquiry. Moreover, since Maignas already passed away, it seems to this Court that it is too convenient for respondent to pin the blame to a person who is no longer around to defend herself.

For Serious Dishonesty, in lieu of dismissal, the penalty which her offense carry, but which can no longer be effectively imposed because of her resignation, respondent was meted the penalty of forfeiture of whatever benefits still due her from the government, except accrued leave credits if she has earned any; and was likewise declared disqualified from employment in any branch or instrumentality of the government, including government-owned or controlled corporations. **(A.M. No. P-16-3423 [Formerly A.M. No. 13-9-89-MTCC] February 16, 2016)**