



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.

Tel. No: 02 5529524 Fax No: 02 5529621

E-mail address
philja@sc.judiciary.gov.ph
research_philja@yahoo.com

Website address
<http://philja.judiciary.gov.ph>

PHILIPPINE JUDICIAL ACADEMY

Justice Adolfo S. Azcuna
Chancellor

Dean Sedfrey M. Candelaria
Head, Research, Publications
and Linkages Office

Atty. Ma. Melissa R. Dimson-Bautista
Editor

Editorial, Research and Circulation
Research, Publications
and Linkages Office

Issue 17-10
October 2017

JUDGES

- **The benefits under RA No. 9946 are applicable to justices and judges who died prior to the effectivity of RA No. 9946**

By virtue of the retroactivity clause in Section 3-B, the “benefits” under RA No. 9946 are made to apply to justices and judges who died *prior* to the effectivity of RA No. 9946.

The TWG suggests that “the benefits of RA No. 9946 are available retroactively, only to those who retired prior to ***and are still alive upon*** its effectivity and not necessarily to those who [had] retired and died prior thereto or to those who had not retired but died prior to RA No. 9946.” The TWG is incorrect.

Even in *Gruba*, the Court recognized the entitlement to survivorship benefits of surviving spouses of justices and judges who died prior to the effectivity of RA No. 9946. There was no express mention that the coverage of the law includes only those who have retired prior to and are still alive upon its effectivity. Thus, the Court held that Judge Gruba, who passed away prior to the effectivity of RA No. 9946, is still covered by the law by virtue of Section 3-B. The Court then went on to state that Mrs. Gruba would have been entitled to the claimed survivorship benefits had Judge Gruba complied with the minimum age requirement to become eligible for retirement at the time of his death. Citing established jurisprudence, the Court ratiocinated:

Providing retroactivity to judges and justices who died while in service conforms with the doctrine that retirement laws should be liberally construed and administered in favor of persons intended to be benefited.” [T]he liberal approach aims to achieve the humanitarian purposes of the law in order that the efficiency, security, and well-being of government employees may be enhanced. Ensuring the welfare of families dependent on government employees is achieved in the changes made in Republic Act No. 9946. It will be consistent with the humanitarian purposes of the law if the law is made retroactive to benefit the heirs of judges and justices who passed away prior to the effectivity of Republic Act No. 9946.

Thus, there is no question that the benefits under RA No. 9946 extend to those who had died before February 11, 2010. This would include the survivorship benefits in favor of surviving spouses of such deceased justices and judges. The Court sees no compelling reason at this point to revisit this ruling. **[A.M. No. 17-08-01-SC, September 19, 2017]**

- **Who are the “surviving spouses” referred to under Section 3, paragraph 2; Meaning of the term “retired” as appearing in Section 3, paragraph 2, of RA No. 9946**

It is clear that the benefits of the law, effective February 11, 2010, are granted to a surviving legitimate spouse of a justice or judge who:

1. had retired; or
2. was eligible to retire optionally at the time of death.

The Guidelines (RAC 81-2010) also describe the beneficiaries of the law to be the surviving legitimate spouse of a justice or judge who:

1. had retired and was receiving a monthly pension; or
2. was eligible to retire optionally at the time of death and would have been entitled to receive a monthly pension.

The TWG, thus, posits that the surviving spouse of a justice or judge, who had not retired but died while in actual service, is not eligible to receive the survivorship benefit (monthly pension) under Section 3 of RA No. 9946, unless said justice or judge was eligible to retire optionally at the time of death. The TWG, however, notes that the surviving spouse is entitled to the death benefit under Section 2, along with the other heirs of the deceased justice or judge.

It is imperative, at this juncture, to clarify the meaning of the term “retired” as appearing in Section 3, paragraph 2, of RA No. 9946.

In *Gruba*, the Court elucidated that the term “retirement” may be understood either in its strict sense or broad sense. When used in a strict legal sense, the term refers to mandatory or optional retirement. However, when used in a more general sense, “retire” may encompass the concepts of both disability retirement and death.

It seems from the position taken by the TWG that the term “retired” under Section 3, paragraph 2, of RA No. 9946 is used in its strict sense, i.e., the justice or judge who is considered “retired” must be one who had reached certain age and length of service conditions only, just like a justice or judge who is eligible to retire optionally. A reading of the entire law, however, reveals that it also refers to justices and judges who “retire” due to **permanent disability**, whether total or partial, and justices or judges who **died** or were **killed while in actual service**.

Particularly significant for the present purposes is the discussion in *Gruba* of the meaning of the term “retired” found in the retroactivity clause, Section 3-B, that was added to RA No. 910. x x x

x x x x

An initial look at the law might suggest that the retroactivity of Republic Act No. 9946 is limited to those who retired prior to the effectivity of the law. However, a holistic treatment of the law will show that the set of amendments provided by Republic Act No. 9946 is not limited to justices or judges who retired after reaching a certain age and a certain number of years in service. The changes in the law also refer to justices or judges who “retired” due to permanent disability or partial permanent disability as well as justices or judges who died while in active service.

In the light of these innovations provided in the law, the word “retired” in Section 3-B should be construed to include not only those who already retired under Republic Act No. 910 but also those who retired due to permanent disability. It also includes judges and justices who died or were killed while in service.

Providing retroactivity to judges and justices who died while in service conforms with the doctrine that retirement laws should be liberally construed and administered in favor of persons intended to be benefited. [T]he liberal approach aims to achieve the humanitarian purposes of the law in order that the efficiency, security, and well-being of government employees may be enhanced. Ensuring the welfare of families dependent on government employees is achieved in the changes made in Republic Act No. 9946. It will be consistent with the humanitarian purposes of the law if the law is made retroactive to benefit the heirs of judges and justices who passed away prior to the effectivity of Republic Act No. 9946.

Even if the discussion by the Court on the interpretation of the term “retired” is in reference to Section 3-B, it is reasonable to apply the same interpretation in the construction of the same term found in Section 3, paragraph 2. It should be stressed that the said term qualifies the words “justices or judges” to whom the benefits under the law are granted. In turn, such benefits referred to under the said provision of law are the same benefits as elsewhere mentioned. A statute must be so construed as to harmonize and give effect to all its provisions whenever possible. There would be more confusion rather than harmony in the provisions if the meaning of the same term in one paragraph should be different from that found in another.

To reiterate, Section 3, paragraph 2, of RA No. 9946 also refers to the legitimate surviving spouses of justices or judges who “retired” due to permanent disability or partial permanent disability as well as to justices or judges who died or were killed while in active service. **[A.M. No. 17-08-01-SC, September 19, 2017]**

- **Surviving spouses of justices and judges who died in actual service are entitled to survivorship benefits**

There is no question that even *prior* to RA No. 9946, justices or judges who are considered retired due to disability are granted lump sum retirement pay as gratuity benefits. They are further entitled to a lifetime monthly pension if they survive the gratuity period. Likewise, the heirs of justices or judges who died while in actual service are, subject to other qualifications, entitled to death benefits:

- (a) 10-year lump sum gratuity if the deceased had rendered at least 20 years of government service;
- (b) 5-year lump sum gratuity if government service is less than 20 years.

The law did not provide for monthly pension in case of death while in actual service.

The retirement benefits by reason of disability, as well as death benefits, had been retained in RA No. 9946. However, the new law, aside from reducing the length of service from 20 years to 15 years, grants full monthly pension benefits in favor of retirees, regardless of age, due to permanent disability with 15 years of service; whereas, *pro-rata* monthly pension benefits are given to those with less than 15 years of service. In case of their death, the surviving legitimate spouses substitute them and are entitled to survivorship pension benefits equivalent to the same amount that their spouses are receiving or would have received (full or *pro-rata*, as the case may be) had they not died. There is likewise no express mention of monthly pension benefits, even *pro rata*, to be given to the legitimate surviving spouse or heirs of the justices or judges who died while in actual service.

In *Gruba*, the Court recognized that “death,” in the spirit of liberal construction of retirement laws, is construed as a disability retirement. Citing *Re: Retirement Benefits of the late City Judge Galang, Jr. (Galang)*, the Court said that “there is no more permanent or total physical disability than death.” x x x

X X X X

We hold that the surviving spouses of justices and judges who died or were killed while in actual service are entitled to survivorship benefits based on **total permanent disability**. Had the justice or judge not died, but merely became incapacitated to discharge the duties of his/her office, he/she would have been entitled to a full monthly pension after the 10-year gratuity period if the length of service is at least 15 years, or *pro rata* monthly pension if otherwise. In case of subsequent death, he/she would have been substituted by the surviving spouse who will receive the same amount as survivorship benefit.

For purposes of survivorship benefits, it is more consistent with logic and reason that we read into the law the inclusion of such benefits in favor of the surviving spouses of justices or judges who, regardless of age, died while in service. In so holding, we recognize that the dire situation of the surviving spouses of justices or judges who were retired due to permanent disability is no different from those whose spouses were retired due to death.

Thus, in the case of a justice or judge who, by reason of his death while in actual service, is considered retired due to permanent disability, his/her legitimate surviving spouse is entitled to survivorship benefit, the amount of which shall be determined by the length of service of the deceased justice or judge: that is, full monthly pension if the length of service is at least 15 years, or *pro rata* monthly pension if less than 15 years.

It must be clarified, however, that the survivorship benefit, which is on top of the death benefits granted under Section 2 of RA No. 9946, is conditioned on the survival by the surviving spouse of the gratuity period of 10 years provided for total permanent disability. This should cover those who died in service but with less than 15 years of service. That is, even though the lump sum gratuity is equivalent to 5 years of salary, the payment of survivorship pension should commence only after the lapse of 10 years, not 5 years. Otherwise, with a shorter waiting period of only 5 years, the surviving spouses of justices or judges who died in service but with less than 15 years of service would be placed in a more advantageous position compared to those whose deceased spouses were retired due to disability but with at least 15 years of service. **[A.M. No. 17-08-01-SC, September 19, 2017]**

- **Surviving legitimate spouses entitled to the automatic adjustment of survivorship benefits**

The basic provision on automatic increase in the pension of justices and judges is found in Section 3-A, which we reproduce:

SEC. 3 - A. All pension benefits of retired members of the Judiciary shall be automatically increased whenever there is an increase in the salary of the same position from which he/she retired. (emphasis supplied)

On the other hand, paragraph 2, Section 3 provides that “[u]pon the death of a justice or judge of any court in the Judiciary, if such justice or judge has retired, or was eligible to retire optionally at the time of death, the surviving legitimate spouse shall be entitled to receive all the retirement benefits that the deceased justice or judge would have received had the justice or judge not died.”

Section 3-A should not be read in isolation, but in conjunction with paragraph 2, Section 3. The particular words, clauses, and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole. In short, every meaning to be given to each word or phrase must be ascertained from the context of the body

of the statute since a word or phrase in a statute is always used in association with other words or phrases and its meaning may be modified or restricted by the latter.

Consistent with the foregoing principle, the phrase “all the retirement benefits” appearing in paragraph 2, Section 3 must be understood as subject to, rather than exclusive of the adjustment for increases referred to in Section 3-A. The retirement benefits referred to under the law include pension benefits. The phrase “all the retirement benefits” is unqualified. *Ubi lex non distinguit nec nos distinguere debemus*. When the law does not distinguish, we must not distinguish. Had the justice or judge not died, the automatic increase in the pension benefit would have been applied in favor of the justice or judge. And since survivorship pension benefit emanates from the pension benefit due the justice or judge, it follows necessarily that the surviving legitimate spouse is entitled to the adjustment pursuant to the provision on automatic increase. Such interpretation is more in keeping with the beneficent purposes of RA No. 9946 which, in the first place, was enacted to benefit the surviving legitimate spouses of justices and judges. x x x

x x x x

Given, however, that the salaries of justices and judges had since been increased by virtue of the 1st and 2nd tranches of salary increases under EO No. 201, series of 2016, effective 1 January 2016, the corresponding survivorship pension benefits of all those who are entitled must also be increased pursuant to Section 3-A of RA No. 9946. As noted above, there were applications for survivorship benefits by surviving spouses that were approved but without the adjustment of salary increases directed by EO No. 201. These approved applications include those of the surviving spouses of justices and judges who died prior to the effectivity of RA No. 9946 who are the subjects of this case.

Consistent with the ruling laid down in the present case, beneficiaries of survivorship pension benefits who are presently receiving amounts which are not yet adjusted by the latest salary increases must be paid the differential equivalent to the excess of the adjusted amount over the amount actually received effective January 1, 2016, to be charged against the amounts allotted for pension benefits under the General Appropriations Act. **[A.M. No. 17-08-01-SC, September 19, 2017]**

- **Conduct unbecoming a judge**

Under Canon 5, Rule 5.02:

RULE 5.02. – A judge shall refrain from financial and business dealings that tend to reflect adversely on the court's impartiality, interfere with the proper performance of judicial activities or increase involvement with lawyers or persons likely to come before the court. A judge should so manage investments and other financial interests as to minimize the number of cases giving grounds for disqualification.

As this Court explained in *Dionisio v. Hon. Escano*:

The restriction enshrined under Rules 5.02 and 5.03 of the Code of Judicial Ethics on judges with regard to their own business interests is based on the possible interference which may be created by these business involvements in the exercise of their judicial duties which may tend to corrode the respect and dignity of the courts as the bastion of justice. Judges must not allow themselves to be distracted from the performance of their judicial tasks by other lawful enterprises. It has been a time-honored rule that

judges and all court employees should endeavor to maintain at all times the confidence and high respect accorded to those who wield the gavel of justice.

Respondent judge's act of attempting to sell rice to his employees and to employees of other branches was highly improper. As a judge, he exercised moral ascendancy and supervision over these employees. If the sale had pushed through, he would have profited from his position. As the Office of the Court Administrator observed:

[Respondent] cannot also deny that his position did not influence the "would-be buyers" to actually partake in the sale of rice. If employees of the other court branches and offices of the Makati City Hall could be persuaded to buy the subject rice because a judge asked them to, what more with the employees of his own branch[?]

For his improper acts, respondent judge is found guilty of conduct unbecoming a judge and fined in the amount of P5,000. **[A.M. No. MTJ-17-1900 (Formerly OCA IPI No. 13-2585-MTJ), August 9, 2017]**

CLERKS OF COURT

- **Grave Misconduct; Dishonesty; Gross Neglect of Duty**

Specifically in this case, the clerk of court is an important officer in our judicial system. The said office is the nucleus of all court activities, adjudicative and administrative. The administrative functions are as vital to the prompt and proper administration of justice as his judicial duties are. The clerk of court performs a very delicate function. He or she is the custodian of the court's funds and revenues, records, property and premises. Being the custodian thereof, the clerk of court is liable for any loss, shortage, destruction or impairment of said funds and property. Needless to say, thus, clerks of court should be steadfast in their duty to submit monthly reports on the court's finances pursuant to OCA Circular No. 50-95 and 113-2004 and to immediately deposit the various funds received by them to the authorized government depositories.

In this case, it is undisputed that respondent failed to perform her duties to submit the required monthly reports as regards the financial records of the court and to remit the court collections. Respondent also admitted to the fact that she used court funds for her personal needs. Worse, it was discovered that respondent also resorted to falsifying and/or tampering with court official receipts to financially gain from court collections.

Given the findings of the OCA audit team, as well as the findings of the presiding judge in his investigation, coupled with respondent's admission of the infractions imputed against her, it is evident that respondent not only failed to perform the duties of her office but also failed to live up to the high ethical standards expected of court employees.

Delayed remittance of cash collections by clerks of court and failure to submit monthly reports thereon constitute gross neglect of duty. The act of misappropriating court funds, regardless of the purpose therefor, constitutes dishonesty, not only against the public, but against the Court as well, which conduct is definitely very unbecoming of a court personnel. Dishonesty is a serious offense which reflects on the person's character and exposes the moral decay which virtually destroys his honor, virtue, and integrity. Collectively, these acts constitute grave misconduct, which cannot be tolerated as it denigrates this institution's image and integrity. Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service provides that such grave offenses are punishable by dismissal from service.

One final note: Every action, good or bad, has consequences. A man brings upon himself what his conduct deserves. That being said, while We commiserate with the plight of the

respondent, being a single parent with three children dependent on her, We cannot simply disregard her misconduct. Even the restitution of the shortages will not obliterate her liability. For the same reason, We cannot just accept respondent's proposition to merely let her resign after restitution of the shortages as her actions warrant the exercise of this Court's disciplining power on court employees. In fact, with the said acts, respondent may even be adjudged to be criminally liable. Indeed, any conduct, act or omission on the part of those who violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary shall not be countenanced.

Finding the respondent guilty of grave misconduct, dishonesty and gross neglect of duty, respondent was ordered dismissed from the service with forfeiture of all retirement benefits, excluding accrued leave credits, and with prejudice to reemployment in any branch or agency of the government, including government-owned and controlled corporations. **[OCA IPI No. 10-3423-P and A.M. No. P-11-2889, August 22, 2017]**

SHERIFFS

- **Simple Neglect of duty**

Section 10, Rule 141 of the Rules of Court, as amended reads:

SEC. 10. Sheriffs, process servers and other persons serving processes. With regard to sheriffs 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 the 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, and the sheriffs expenses shall be taxed as costs against the judgment debtor.** (Emphasis supplied)

Moreover, the deposit and payment of expenses incurred in enforcing writs are governed by Section 9, Rule 141 of the Rules of Court:

SEC. 9. Sheriffs and other persons serving processes.

x x x x

In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary; incidental, or final, shall pay the sheriffs expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, in an amount estimated by the sheriff subject to the 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. 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, and the sheriffs expenses shall be taxed as costs against the judgment debtor.** (Emphasis supplied)

In the instant case, it is undisputed that respondent miserably failed to comply with the above-requirements of Sections 9 and 10. He admitted that a sum total of P172,600 was given

to him by the complainant. Indeed, while respondent complied with the preparation of an estimate of expenses and in obtaining the court's approval for such, he, however, wilfully disregarded the rules insofar as his collection and receipt of the monies which should have been deposited with the clerk of court, and the subsequent liquidation of his expenses. The acquiescence or consent of the plaintiffs to such arrangement, does not absolve the sheriff for failure to comply with the aforementioned rules. Compulsory observance of the rules under the circumstances is also underscored by the use of the word *shall* in the above Sections. Any act deviating from these procedures laid down by the Rules is misconduct that warrants disciplinary action.

To reiterate, the rule requires that the sheriff executing the writs shall provide an estimate of the expenses to be incurred that shall be approved by the court. Upon the court's approval, the interested party shall then deposit the amount with the clerk of court and *ex officio* sheriff. Thereafter, the expenses shall then be disbursed to the assigned deputy sheriff who shall execute the writ subject to the latter's liquidation upon the return of the writ. Any amount unspent shall be returned to the interested party. The rule does not allow direct payment of sheriff expenses from the interested party to the sheriff. Thus, respondent's failure to faithfully comply with the provisions of Rule 141 of the Rules of Court warrants the imposition of disciplinary measures.

Needless to say, only payment of sheriff's fees may be received by sheriffs. Even assuming that the payments were offered to him by complainant to defray expenses of the demolition is of no moment. It makes no difference if the money, in whole or in part, had indeed been spent in the implementation of the writ. The sheriff may receive only the court-approved sheriff's fees and the acceptance of any other amount is improper, even if applied for lawful purposes. Sheriffs are not allowed to receive any *voluntary* payments from parties in the course of the performance of their duties. To do so would be inimical to the best interests of the service because even assuming *arguendo* such payments were indeed given and received in good faith, this fact alone would not dispel the suspicion that such payments were made for less than noble purposes. Corollary, a sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedural steps, otherwise, it would amount to dishonesty or extortion.

x x x Respondent's repeated collection and receipt of sums of money from a party-litigant purportedly to defray expenses of the demolition without rendering an accounting and liquidation thereof, not only is a violation of the rules but also in effect constituted misconduct. That conduct, therefore, fell too far short of the required standards of public service. Such conduct is threatening to the very existence of the system of the administration of justice.

These circumstances show without doubt that the respondent is liable for simple misconduct, defined as a transgression of some established rule of action, an unlawful behavior, or negligence committed by a public officer. x x x

The Court held respondent sheriff liable for simple misconduct and was fined in the amount equivalent to one month salary, with a stern warning that the commission of the same offense or similar act in the future will be dealt with more severely. **[A.M. No. P-16-3424 (Formerly OCA IPI No. 11-3666-P), August 7, 2017]**