781 Phil. 362

EN BANC

[IPI No. 14-222-CA-J, February 23, 2016]

RE: COMPLAINT OF ATTY. MARIANO R. PEFIANCO AGAINST JUSTICES MARIA ELISA SEMPIO DIY, RAMON PAUL L. HERNANDO, AND CARMELITA SALANDANAN-MANAHAN, OF THE COURT OF APPEALS CEBU.

DECISION

BRION, J.:

For this Court's resolution is the letter-complaint[1] dated February 20, 2014, filed by Atty. Mariano R. Pefianco (*complainant*) seeking the suspension from office of Associate justices Maria Elisa Sempio Diy, Carmelita Salandanan-Manahan, and Ramon Paul L. Hernando (*respondent-Justices*) of the Court of Appeals, Cebu City Station, for alleged violations of Canon 3 of the New Code of Judicial Conduct on impartiality, and Sec. 3(e) of Republic Act No. 3019[2] on causing-undue injury or giving unwarranted benefits, advantage, or preference to a private party, in the discharge of judicial functions, through manifest partiality, evident bad faith, or gross inexcusable negligence.

In a memorandum[3] dated April 1, 2014, Court Administrator Jose Midas P. Marquez forwarded the letter-complaint to the Office of the Chief Justice for appropriate action. The case was docketed as IPI No. 14-222-CA-J.

The complainant, who is the counsel for the petitioners in CA G.R. CEB SP No. 06984,[4] claimed that the respondent-Justices, through their January 17, 2003 resolution in the same case, appeared to be "trying hard to find faults on the petition for review to justify its dismissal favorable to respondents xxx without reading the prayer of the said petition."[5] The complainant's prayer was for the CA to "gives (*sic*) due course to the PETITION and that an order issue directing the respondent secretary (*of the DENR*) to certify the record of DENR CASE No. 8859 to this Honorable Court (*referring to the CA*) in order to have the annexes of this petition authenticated and thereafter for review."[6]

In the assailed resolution dated January 17, 2013, in CA G.R. CEB SP No. 06984, the respondent-Justices, who are members of the CA Twentieth (20th) Division, dismissed outright the petition for review filed by the complainant on the following grounds:

a. The assailed decision of the DENR which is attached to the petition for review is not a duplicate original or certified true copy thereof.

b. The assailed resolution dated June 6, 2012, denying petitioner's motion for reconsideration of the decision of the DENR was not

attached to said petition.

c. Counsel for petitioners, herein complainant Atty. Pefianco, has no Special Power of Attorney to sign the Verification and Certification of Non-Forum Shopping in behalf of petitioners.

d. The notarial certificate also failed to state the office address of the notary public in violation of Section 2(c), Rule VIII of the 2004 Rules on Notarial Practice.[7]

We required the respondent-Justices to file their comments on the complaint in a resolution[8] dated June 10, 2014.

In compliance with our June 10, 2014 resolution, Justices Sempio Diy and Salandanan-Manahan filed a Joint Comment[9] dated October 10, 2014. Justice Hernando separately filed his Comment[10] dated November 14, 2014.

Comments to the administrative complaint

Justices Sempio Diy and Salandanan-Manahan maintain that the outright dismissal of the complainant's clients' petition for review (in CA G.R. CEB SP No. 06984), due to the above-mentioned procedural infirmities, is warranted and supported by the Rules of Court and by jurisprudence. They specifically point to Section 7 of Rule 43 of the 1997 Rules of Civil Procedure that states:

> SEC. 7. *Effect of failure to comply with requirements*. - The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

And while the application of procedural rules may be relaxed by the court, they contend that the court's grant of leniency must be anchored on the existence of persuasive and meritorious grounds; that the party invoking liberality must at least provide a reason for its noncompliance; and that, in this case, the complainant gave no reason to justify the failure to comply with the requirements in the proper filing of a petition for review.

Further, they allege that the charges against them for violations of Canon 3 of the New Code of Judicial Conduct, and Sec. 3(e) of R.A. No. 3019 are utterly baseless and unwarranted; that, in dismissing the petition for review of the complainant's clients, "gross incompetence, gross ignorance of the law or gross misconduct" or "manifest partiality, evident bad faith or gross inexcusable negligence" cannot be imputed against them; a judge or justice can only be held administratively liable if it can be shown that he or she committed an error so gross and patent as to produce an inference of bad faith. They maintain that their January 17, 2003 resolution is supported by legal, procedural, and jurisprudential bases, and that no bad faith or malice should be inferred from their dismissal of the subject petition for review merely because their resolution is adverse to the complainant's clients.

Also, Justices Sempio Diy and Salandanan-Manahan argue that a judicial remedy is

still available to the complainant's clients from the dismissal of their petition for review; that the filing of the present administrative complaint is not an alternative, neither complementary nor supplementary, to the judicial remedies provided by law.

In a separate comment filed, *Justice Hernando* contends that the present administrative complaint is baseless and vexatious and must be dismissed outright because the remedy for the complainant's case is judicial, not administrative, in nature; that the filing of an administrative complaint against a judge or justice is not an appropriate remedy where judicial recourse is available.

Also, he argues that the complainant has no authority to file the present administrative complaint, as he appears to be without any special power of attorney from his clients for such purpose; and that the complainant's lack of authority reflects upon his utter ignorance of the rules on representative parties and of the substantive law on Agency.

The respondent-Justices mentioned in their comments that the complainant had been suspended by this Court for one (1) year in a resolution dated August 12, 2012, in Administrative Case (*A.C.*) No. 6116;[11] thus, they contend that, at the time he filed (on February 7, 2013) the motion for reconsideration to the CA's dismissal resolution, the complainant was without authority to practice law and to represent his clients by reason of his suspension.

OUR RULING

We **DISMISS** the present administrative complaint filed against Associate Justices Maria Elisa Sempio Diy, Carmelita Salandanan-Manahan, and Ramon Paul L. Hernando of the Court of Appeals, Cebu City Station, **for being devoid of legal and factual merit**.

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 impartiality. 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.**[12]

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**,[13] which was enunciated in the case of *Carter v. State*.[14] 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*[15] 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.[16]

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 impartial in issuing their dismissal resolution dated January 17, 2013.

Though no copy of the assailed January 17, 2013 resolution is contained in the records, the reasons for the dismissal (of the subject petition for review) were sufficiently discussed and reiterated in the December 11, 2013 resolution issued by the same respondent-Justices in CA G.R. CEB SP No. 06984. A copy of the December 11, 2013 resolution, which denied with finality the motion for reconsideration (to the dismissal resolution) filed by the complainant, is attached to the Joint Comment submitted to this Court by Justices Sempio Diy and Salandanan-Manahan. We quote herein the pertinent paragraphs of the December 11, 2013 resolution:

> In the subject January 17, 2013 resolution, this Court dismissed the petition for certiorari (sic) filed by the petitioners for the following infirmities:
>
> 1. The assailed decision of the DENR attached to the petition for certiorari (*sic*) is not a duplicate original or certified true copy thereof.
>
> 2. The alleged resolution dated June 6, 2012, denying petitioners' motion for reconsideration of the decision of the DENR was not attached to the petition for certiorari (*sic*).
>
> 3. Counsel for petitioners, Atty. Mariano Pefianco, has no Special Power of Attorney to sign the Verification and Certification of Non-Forum Shopping in behalf of petitioners.
>
> 4. The notarial certificate also failed to state the office address of the notary public in violation of Section 2(c), Rule VIII of the 2004 Rules on Notarial Practice.
>
> xxx xxx xxx
>
> At the outset, this Court manifests that it takes strong exception to petitioners' vitriolic allegation that this Court is "trying hard to find faults on [in] the petition for review to justify its dismissal favourable to respondents herein." It is stressed that the Rules mandate the dismissal of an infirmed petition. It is clearly not finding fault[s] when the