

EN BANC

[A.M. No. P-10-2767 [Formerly AM OCA IPI 08-2905-P], April 12, 2011]

**ANTONIO EXEQUIEL A. MOMONGAN, COMPLAINANT, VS.
PRIMITIVO A. SUMAYO, CLERK III AND ARIEL A. MOMONGAN,
PROCESS SERVER, RESPONDENTS.**

DECISION

PER CURIAM:

Primitivo A. Sumayo (respondent), Clerk III of Branch 10 of the Regional Trial Court (RTC) of Cebu City, was charged with Gross Dishonesty and Falsification of Public Document by Antonio Exequiel A. Momongan (complainant) by letter of October 11, 2007^[1] which was forwarded by RTC Branch 58 Judge Gabriel T. Ingles.^[2] He was similarly charged, in an undated anonymous letter,^[3] which was forwarded by the Deputy Ombudsman (Visayas)^[4] to the Court. Another court employee, Ariel Momongan (Ariel), Process Server in the RTC, Office of the Clerk of Court (OCC), Cebu City was also similarly faulted. The complaint against Ariel was, after submitting his "Counter Affidavit," not given due course.

The crux of the complaint against respondent is that he forged his civil service eligibility in that someone took the civil service examination in his stead, and he lacked one accounting subject in his course, hence, contrary to his claim, he was not a college graduate.

Respondent explains, however, that since he majored in banking and finance and had fully satisfied the number of required units in accounting, he dropped that accounting subject, and the University of Visayas allowed him to receive his college diploma.

In any event, respondent claims that even assuming that he did not earn the complete units required to merit the issuance to him of a diploma, the "deficiency" has been cured by his consistent, satisfactory performance rating while in the service.

Respecting the allegation that he is not a civil service eligible, respondent vaguely proffers that his civil service eligibility was passed upon, "checked and ratified" by the Civil Service Commission which approved his appointment.

Acting on the complaints, the Office of the Court Administrator (OCA) wrote^[5] the Registrar of the University of Visayas in Cebu requesting a "Certification of [respondent's] Graduation," it appearing from his scholastic records that he was given two incomplete grades in two subjects - Government Accounting and Auditing Part II in his last semester (second semester, 1982-1983) in college. The University of Visayas did not, however, respond to the letter-request.

The Court, on recommendation of the OCA, referred the complaints against respondent to the Executive Judge of RTC Cebu for report and recommendation. Respecting the complaint against Ariel, since the position of Process Server does not require civil service eligibility, the OCA dismissed the same.

Judge Meinardo P. Paredes, Executive Judge of the RTC Cebu and Presiding Judge of Branch 13 thereof, conducted an investigation of the complaint on November 22, 2001 during which the complainant and respondent appeared.

When confronted by the investigating judge on the purported statement in his Personal Data Sheet (PDS) that he is a college graduate, respondent answered that he "only stated college level."

When the investigating judge suggested that respondent submit a copy of his PDS, he committed to submit the same.

In the same investigation, as respondent claimed to have submitted to the Supreme Court a Certification bearing on the result of the civil service examination he took, he, again on the suggestion of the investigating judge, committed to submit a copy thereof. He was thereupon given 15 days from the conclusion of the investigation on November 22, 2010 to submit certified true copies of the following:

- 1) Certificate of Eligibility from the Civil Service Commission;
- 2) Personal Data Sheet mentioned by Hon. Jose P. Perez; and
- 3) Certificate of Graduation from the University of Visayas, Cebu City^[6]

In his December 16, 2010 Report and Recommendation,^[7] the investigating judge noted that respondent failed to submit the required documents and that he instead filed a Manifestation stating that, to quote the investigating judge, "the proper court procedure is for the prosecution or complainant to produce the evidence and for the defendant or respondent to present [sic] his defense."

Noting then that respondent failed to refute complainant's allegation that he is not eligible to hold permanent office in the judiciary and that he falsified his employment record, the investigating judge *recommended* that he be dismissed from the service with forfeiture of all his benefits.

The Court finds the Report and Recommendation of the investigating judge in order.

Respondent's failure to adduce documentary proof of his civil service eligibility and of his graduation from the University of Visayas, Cebu indicates that any information he may divulge or present would be detrimental to his cause. Inevitably, the Court is led to the conclusion that, contrary to his representation, he was neither a college graduate nor did he pass the requisite civil service exam.

In the aforementioned Report and Recommendation, the investigating judge quoted excerpts of the hearing on November 22, 2010 during which respondent finally and unqualifiedly admitted that he does not have a college diploma as he did not graduate. It bears particularly noting that despite the investigating judge's