

## EN BANC

**[ A.M. No. CA-09-48-J [Formerly OCA-IPI No. 07-119-CAJ], March 13, 2009 ]**

**THE LAW FIRM OF CHAVEZ MIRANDA ASEOCHE, REPRESENTED  
BY ITS FOUNDING PARTNER, ATTY. FRANCISCO I. CHAVEZ,  
COMPLAINANT, VS. JUSTICE ISAIAS P. DICDICAN, CHAIRMAN,  
NINETEENTH (19<sup>TH</sup>) DIVISION, COURT OF APPEALS, BASED AT  
CEBU CITY, RESPONDENT.**

### RESOLUTION

**TINGA, J.:**

This is an administrative complaint against Justice Isaias P. Dicdican, Chairman of the 19<sup>th</sup> Division of the Court of Appeals based in Cebu City, for violation of Canon 2<sup>[1]</sup> of the Code of Judicial Conduct in the resolution of the incidents in the special civil action for certiorari docketed as CA-G.R. CEB-SP-No. 00440, entitled "*St. Mary Mazzarello School and Sr. Maria Pacencia Bandalan, FMA v. Hon. Fernando R. Elumba, Ma. Kryssil Asparen, represented and assisted by her parents, Sps. Christopher and Sylvia Asparen.*"

The special civil action for certiorari stemmed from a complaint filed by Ma. Krissyl Asparen with the Regional Trial Court of Bacolod City for nullification of disciplinary sanctions, damages with prayer for temporary restraining order (TRO)/injunction, docketed as Civil Case No. 0512512, entitled "*Ma. Krissyl M. Asparen v. St. Mary Mazzarello and Sr. Maria Pacencia Bandalan, FMA, Department of Education.*" The school involved in the case had imposed disciplinary sanctions on its student, Ma. Krissyl M. Asparen, but the same was lifted upon the issuance of the writ of preliminary injunction by Hon. Elumba, the presiding judge of the trial court. The matter was then elevated to the Court of Appeals which issued a TRO, penned by respondent Justice, preventing the enforcement of the order and writ of the trial court.

Immediately thereafter, complainant and Ma. Krissyl Asparen sought the inhibition of respondent from the case on the ground that the latter had previously represented various religious organizations and institutions during his practice of law and the petitioner school in the case is run by a religious organization while petitioner Sr. Bandalan is a nun belonging to said organization.<sup>[2]</sup>

In a Resolution dated 1 April 2005, respondent Justice admitted on record that he once served as counsel of religious organizations but denied that such circumstance affected his impartiality in the case. Respondent Justice, however, found it proper to voluntarily inhibit himself to disabuse the mind of the student and complainant of any suspicion as to his impartiality.<sup>[3]</sup>

Despite his inhibition, respondent Justice allegedly participated again in the case when his name appeared as one of the signatories of a Resolution dated 21 November 2006 of the Court of Appeals admitting the memorandum of the petitioner school and which deemed the petition as submitted for decision.<sup>[4]</sup> As such, complainant filed on 5 December 2006 a Manifestation and Motion for respondent Justice to maintain his earlier inhibition. On 28 September 2007, complainant again filed a Reiterative Motion for Justice Dicdican to Maintain His Earlier Inhibition from the Present Case.<sup>[5]</sup>

Complainant alleged that respondent Justice's actions showed his manifest bias and prejudice against his client in the case--a blatant disregard of Canon 2 of the Code of Judicial Conduct.<sup>[6]</sup>

For his part, respondent Justice maintained that he never participated again in the case after his inhibition therefrom on 1 April 2005. In fact, he never received any of the manifestations and motions filed by complainant subsequent to his inhibition because the case file was no longer with him and the case documents were not forwarded to him. Respondent Justice likewise averred that the assailed Resolution of 21 November 2005 was promulgated based on the agenda which was actually signed by Justices Barza, as *ponente*, Baltazar-Padilla and Gonzales-Sison. This is clearly shown in the Report made by the Court of Appeals Division Clerk dated 25 April 2008.

Moreover, records show that on 9 May 2005, Division Clerk of Court May Faith Trumata forwarded to the Raffle Committee of the Court of Appeals, Cebu City Station the *rollo* of the case for reraffling to another justice in view of respondent Justice's inhibition therefrom. The case was reraffled on 11 May 2005 and was assigned to Justice Enrico Lanzanas. Then on 2 February 2006, Justice Lanzanas penned a resolution requiring the parties to submit their memoranda. On 1 June 2006, however, Justice Lanzanas was transferred to the Court of Appeals of Manila. Consequently, the case was reassigned as part of his initial case load to Justice Romeo F. Barza, a junior member of the 18<sup>th</sup> Division. As a result of a reorganization in August 2006, Justice Barza became a senior member of the 19<sup>th</sup> Division of which respondent Justice is the Chairman. Considering that respondent Justice could no longer participate in the case, Justice Marlene Sison was designated as third member of the 19<sup>th</sup> Division.

On 21 November 2006, the assailed Resolution was promulgated with Stenographer Agnes Joy S. Nobleza mistakenly including respondent Justice as one of the signatories. Proof of this inadvertence is the letter of apology dated 8 November 2007 sent to respondent Justice by Stenographer Nobleza.

Clearly, respondent Justice asserted, the charges leveled against him are devoid of factual basis. Respondent Justice strongly contended, in fact, that complainant should be the one made to answer for the false accusations and insults he had made against the court.

The Court finds the instant administrative complaint devoid of merit and should accordingly be dismissed.

It is settled that in administrative proceedings, the burden of proof that the