

## THIRD DIVISION

**[ A.M. No. RTJ-98-1425, November 16, 1999 ]**

**DOMINGO G. PANGANIBAN, COMPLAINANT, VS. JUDGE PABLO B. FRANCISCO AND BRANCH CLERK ATTORNEY LIWAYWAY ABASOLO, RESPONDENTS.**

### RESOLUTION

**VITUG, J.:**

In the instant administrative matter, Domingo G. Panganiban has charged Judge Pablo B. Francisco of the Regional Trial Court ("RTC") of Sta. Cruz, Laguna, Branch 26, and Acting Clerk of Court Liwayway Abasolo of the same court with "malversation/estafa, bribery, and violation of the Anti-Graft and Corrupt Practices Act."

The case stems from a mayoralty protest filed in July 1995 by Enrique Bautista contesting the election and proclamation of herein complainant Domingo Panganiban as being the duly elected municipal mayor of Sta. Cruz, Laguna. The protest, docketed Election Contest No. SC-10, was raffled to the *sala* of Judge Hilario F. Corcuera of Branch 27. Another election protest, docketed Election Contest No. SC-11, was also filed by Grace Vergara, Lito F. Noroña, Rolando L. Unison, and Alberto E. Pabellon, the unsuccessful candidates for the *Sangguniang Bayan* of Sta. Cruz, Laguna, against the proclaimed winners in the local elections. Election Contest No. SC-11 was raffled to the *sala* of respondent Judge. The two cases were later consolidated and assigned to Judge Francisco, who then constituted five Revision Committees, each with three members with substitute watchers, for the revision of ballots. Four committees were organized for Election Contest No. SC-11, and a cash deposit of P229,200.00 was fixed therefor, broken down, as follows:

"one (1) chairman	P100.00
one (1) revisor for the protestants	P100.00
one (1) revisor for the protestees	P100.00
Total	----- P300.00
P300 X 191 precincts =	P57,300.00
P57,300 X 4 committees =	P229,200.00" <sup>[1]</sup>

A single committee was constituted for Election Contest No. SC-10, and a cash deposit of P57,300.00 was fixed, hereunder itemized, as follows:

"one (1) chairman	P100.00
one (1) revisor	P100.00
for the protestants	
one (1) revisor	P100.00
for the protestees	
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Total	P300.00

P300 X 191 precincts = P57,300.00"<sup>[2]</sup>

The total cash deposit for the two cases amounted to P286,500.00. The deposits were made pursuant to Section 10, Rule 35, of the COMELEC Rules of Procedure; thus -

"SEC. 10. *Cash deposit.* - (a) In any protest, counter-protest or protest-in-intervention not requiring ballot revision, the protestant, the counter-protestant, or intervenor, as the case may be, shall upon the payment of the filing fee, make a cash deposit in the amount of five hundred pesos (P500.00) which shall be applied to the payment of all expenses incidental to such protest, counter-protest or protest-in-intervention. When circumstances so warrant, additional cash deposits may be required. Any unused balance thereof shall be returned to the party making the deposit.

"(b) In case revision of ballots is required, there shall be deposited, within ten days after being required by the Court, the sum of three hundred pesos (P300.00) for every ballot box for the compensation of revisors at the rate of P100.00 each.

"(c) Failure to make the cash deposits herein provided within the prescribed time limit shall result in the automatic dismissal of the protest, counter-protest, or protest-in-intervention, as the case may be.

"(d) In case the party who has paid the expenses and costs wins, the court shall assess, levy and collect the same as costs from the losing party."

Judge Francisco ordered the revision of ballots to commence on 09 October 1995 and to continue daily from 1:00-5:00 p.m., excepting Saturdays, Sundays and holidays, until its completion.

On 17 October 1995, the protestants executed a Special Power of Attorney in favor of respondent Abasolo designating the latter to be their attorney-in-fact to "give and signify (their) conformity to any and all disbursement from any fund which (they) have deposited in court to cover expenses for supplies, tools, equipment, additional remuneration or benefits for persons or stenographers and the like in relation to the aforementioned election cases x x x." Upon advice, however, of respondent Judge who pointed out that respondent Abasolo was a court employee, the latter declined the appointment and another Special Power of Attorney was on even date executed in favor of Ms. Dina Veronica Lleander. In the course of the revision of the ballots for

191 precincts, respondent Judge ordered the withdrawal and delivery to respondent Abasolo, of the following amounts:

"DATE	AMOUNT
August 11, 1995	P1,000.00
October 10, 1995	P3,383.00
October 12, 1995	P17,450.00
October 19, 1995	P12,805.00
October 26, 1995	P17,100.00
November 6, 1995	P13,700.00
November 10, 1995	P22,000.00
November 16, 1995	P23,800.00
November 22, 1995	P25,900.00
November 29, 1995	P34,760.00
December 5, 1995	P31,650.00
December 14, 1995	P11,800.00
February 13, 1996	P17,900.00
March 22, 1996	P11,500.00
March 22, 1996	P 2,600.00
March 29, 1996	P25,000.00
April 2, 1996	P13,400.00

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P285,748.00"<sup>[3]</sup>

On 23 November 1995, the counsel for complainant filed a "Motion to Render Accounting," asseverating that there were disbursements made from the cash deposit without notice to counsel and that some members of the revision committees were not being paid their due compensation. This incident was followed by an administrative complaint filed by Panganiban charging respondent Judge with having prematurely taken over the proceedings of Election Contest No. SC-10 despite a pending motion for reconsideration filed by his counsel. The complaint further asserted that while the amount of P57,300.00 was fixed as exclusive revisors fees in Election Contest No. SC-10 (191 ballot boxes X P300.00, pursuant to COMELEC Rules of Procedure, Part VI, Rule 35, Section 10, paragraph b), respondent Judge, however, still required the four protestants in Election Case No. SC-11 to deposit P57,300.00 each, which was likewise paid by protestant Bautista. It was only later, complainant said, that he discovered the "clandestinely executed"