

RE: REQUEST OF THELMA J. CHIONG FOR INVESTIGATION OF THE ALLEGED “JUSTICE FOR SALE” IN CA-CEBU. (A.M. No. 07-4-05-CA)

A.M. No. 07-4-05-CA. February 22, 2008

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

Before the Court are the following three separate letters alleging corruption in the Court of Appeals (CA) Cebu Station:

- Letter of Thelma J. Chiong, requesting investigation of the alleged “Justice for Sale” in CA-Cebu;
- Letter of Executive Judge Fortunato M. De Gracia, Jr., regarding the claims of corruption in the judiciary; and
- Letter of Rosendo Germano, regarding request to abolish the Court of Appeals-Cebu.

A.M. No. 07-4-05-CA stemmed from the letter-request of Thelma J. Chiong, National Vice President of Crusade Against Violence, to the Chief Justice requesting investigation of the alleged “Justice for Sale” in CA-Cebu. Ms. Chiong alleged that they had received a “lot of information” about it. She cited an unspecified case where the Department of Justice (DOJ) allegedly had ordered the withdrawal of an information but CA-Cebu still issued a temporary restraining order (TRO) directing the DOJ not to withdraw the said information. She expressed concern that a “tayo-tayo” system, appears to have developed at present in CA-Cebu, which Ms. Chiong also accused of equating hurried justice with speedy justice. Ms. Chiong, however, did not name any particular Justices or court personnel.

In A.M. No. 07-5-1-SC, Judge Fortunato M. de Gracia, Executive Judge of Regional Trial Court (RTC) Branch 16, Cebu City, recommended the immediate investigation of the derogatory news item published in Sun Star Cebu on April 21, 2007 which was attributed to the alleged “revelations” of RTC Judge Meinrado Paredes of Branch 13 of the same city.

In A.M. No. 07-5-2-SC, Rosendo Germano seeks a positive action from the Chief Justice regarding the alleged erroneous dismissal by the CA- Cebu of Civil Case No. 525 pending in RTC Branch 18, Hilongos, Leyte. According to him, the case was dismissed by the CA-Cebu because “money did much of the talking” and this would be an additional reason to abolish CA-Cebu. Mr. Germano adverted to a column in the Philippine Daily Inquirer regarding an alleged plan of the Chief Justice to abolish the CA-Cebu and transfer it to Manila because of rampant corruption.

In three separate resolutions, the Court referred A.M. No. 07-5-1-SC,[1] A.M. No. 07-5-2-SC,[2] and A.M. No. 07-4-05-CA,[3] to then CA Presiding Justice Ruben T. Reyes[4] for his comment. In turn, the Presiding Justice required the CA Justices stationed in Cebu and Cagayan de Oro to comment on the subject administrative matters.

On July 10, 2007, then CA Presiding Justice Ruben T. Reyes submitted his comment and attached therewith the

separate comments of the CA Justices in Cebu and Cagayan de Oro. We quote a portion of said comment, to wit:

“There can be no denying that for sometime, the Court of Appeals Cebu Station has been the subject of unsavory newspaper items. Said negative articles triggered critical evaluation of the present set-up. One area of concern identified is the prolonged stay of some Justices in the Station, making it possible for them to develop special affiliation with local politicians and influential people. Arguably, there is nothing inherently objectionable in being friendly to the local officials and influential personages, specially when a Justice is a native of the place. However, Justices ought not forget that they must not only be impartial but must strive not to appear partial or beholden to anybody.

Before the full implementation of R.A. No. 8246, the Court of Appeals had only seventeen (17) divisions all stationed in the City of Manila. With the appointment of eighteen (18) justices in 2004, pursuant to the said law, three (3) divisions, 18[th] to 20[th,] were organized in Cebu City and another three (3) divisions, 21[st] to 23[rd], in Cagayan de Oro City.

The composition of the existing seventeen (17) divisions based in Manila remained, while the eighteen (18) justices were assigned to Cebu and Cagayan de Oro stations according to the order of seniority. However, as provided in the Internal Rules of the Court of Appeals, ‘waiver’ of senior members was allowed. Hence, there were instances when members of the Court who were supposed to be assigned in Cebu City or Cagayan de Oro City signed ‘waivers’ and remained in Manila without losing their seniority. Likewise, instances did and still occur that those who are due to move to Manila or Cebu City during a reorganization opt to stay in Cebu City and Cagayan de Oro City by signing a ‘waiver’.

According to Justice Remedios S. Fernando, the situation is not in accord with the provisions of R.A. No. 8246. Said law never mentions a ‘waiver’. Instead, the only guiding principle provided in determining the place of assignment is ‘precedence’ or seniority in accordance with the dates of appointments or the order in which the appointments were issued by the President.

The deviation in the implementation of the law can be abandoned by strictly following the provisions on assignment of Justices to the six (6) divisions of the Court stationed in Cebu and Cagayan de Oro. Otherwise, it would appear that those who signed the ‘waiver’ could hold on and claim a vested right to their assignment.”

According to the CA Justices in Cebu – namely, Executive Justice Arsenio J. Magpale and Justices Isaias P. Dicdican, Pampio A. Abarintos, Agustin S. Dizon, Antonio L. Villamor, Priscilla Baltazar-Padilla, Francisco P. Acosta and Stephen C. Cruz – the letters and news items against them lack details and basis. They challenge the complainants to identify the alleged corrupt Justices before the proper channels so that only the corrupt, if any, will be compelled to account for their own actions. This will also spare innocent Justices, as well as the entire Philippine Judiciary, from unjust criticisms. According to them, the abolition by the Supreme Court of the CA-Cebu Station is not possible because CA-Cebu was created by law and, as such, its abolition may be done only through legislation.

The CA Justices in CA-Cagayan de Oro submitted their comment through Executive Justice Teresita Dy-Liacco Flores on the subject matter of the letters of Ms. Chiong and Mr. Germano, as the probe requested by Judge De Gracia Jr. should be referred to the Office of the Court Administrator. They share the view of the Justices of CA-Cebu that the abolition of CA-Cebu is not the solution. They opine that the Court’s role should not only be to investigate but to encourage litigants and lawyers to come forward with their evidence and to name names. This, to them, will positively serve to reinstate the good name of the Court. Moreover, the abolition of CA-Cebu by the Supreme Court would be an encroachment by the judiciary into the realm of the legislative branch. Abolition will also transgress the spirit and letter of Republic Act 8246,[5] which is to bring justice closer to the people.

Former Presiding Justice Ruben T. Reyes sought the views and comments of the Division Chairmen and other

Justices in Manila, meeting with them several times. The following options in the stationing of Justices emerged from the exchange of views and consultations:

- First Option. The first 51 Justices shall constitute the 1[st] to 17[th] Divisions in Manila with the first 17 as chairmen, the next 17 as senior members and the last 17 as junior members. The 52[nd] to 69[th] Justices shall constitute the 18[th] to 20[th] (Cebu Station) and the 21[st] to 23[rd] Divisions (Cagayan de Oro Station) with the first six (6) as chairmen, the next six (6) as seniors and the last six (6) as juniors. Movements in case of any vacancy shall be in accordance with seniority such that the most recent appointee begins his service as junior member of the 23[rd] Division.
- Second Option. The organization of the twenty-three (23) Divisions of the Court shall be in accordance with strict seniority, such that the first 23 members shall be chairmen, the next 23 shall be senior members and the last 23 shall be junior members. Movements in case of vacancy shall follow the seniority line, such that the most recent appointee begins his service as junior member of the 23[rd] Division.
- Third Option. The first 51 Justices shall constitute the 1st to 17th Divisions in Manila with the first 17 as chairmen, the next 17 as seniors and the last 17 as juniors. The 18[th] to 20[th] Divisions in Cebu shall be constituted by the 52[nd] to the 60[th] Justices with the first three (3) as chairmen, the next three (3) as seniors and the last three (3) as juniors. The 21[st] to 23[rd] Divisions in Cagayan De Oro shall be constituted by the 61[st] to 69[th] Justices with the first three (3) as chairmen, next three (3) as seniors and the last three (3) as juniors. Movements in case of vacancy shall follow the seniority line such that the most recent appointee begins his service as junior member of the 23[rd] Division.
- All 23 Divisions shall be in Manila with the first 17 continuing to handle cases for Luzon. The 18[th] to 20[th] shall continue to handle cases coming from the Visayas and the 21[st] to 23[rd] shall continue to handle cases coming from Mindanao, said 18[th] to 23[rd] Divisions being temporarily stationed in Manila in the interest of the service pursuant to R.A. 8246. The assignment of Justices to the Divisions shall follow the path outlined in the second option.

On July 12, 2007, the aforesaid options were put to a vote. Former Presiding Justice Ruben T. Reyes, in his letter dated July 30, 2007 addressed to Chief Justice Reynato Puno, reported that of the total of 65 Justices (there being four vacancies), seventeen (17) Justices chose Option 1. Options 2 and 3 got four (4) votes each while Option 4 won the nod of fifteen (15) Justices. Ten (10) Justices picked none of the four specific options, as they prefer the investigation first of the alleged corruption in CA-Cebu. Another ten (10) voted for the status quo, favoring the perpetuation of the waiver. Then Presiding Justice Reyes reached the following conclusion from the result of the voting of the CA Justices:

This implies that the great majority of forty (40) are not averse to a reorganization in response to the initiatives for reforms. They differ only on the manner or mode of reorganization. But a common thread runs through them – FOLLOW STRICT SENIORITY WITHOUT WAIVERS IN ASSIGNMENT OF WORK STATION.

However, the new Presiding Justice, Conrado M. Vasquez, Jr., in his letter dated December 10, 2007 addressed to the Chief Justice, reported that in the course of the subsequent discussions of the CA Justices, they realized that the “Status Quo” option did not really lose in the en banc deliberation held on July 12, 2007. Although only ten (10) voted for the “Status Quo” option, there were ten (10) who also voted for the “none of the above” option which was really equivalent to “Status Quo.” Thus, the CA held another en banc meeting to clarify the consensus, which was put to a vote anew. Aside from the first four (4) options in the first voting, the “Status Quo” was added as the fifth option. The results of the CA en banc second round of voting were as follows:

First Option - 0

Second Option - 0

Third Option - 0

Fourth Option - 19

Fifth Option - 34

The CA accordingly revised its former stand on the issue. It recommends that the “Status Quo” be maintained. The proponents of the said option believed that the evil sought to be avoided and addressed [by the reorganization of the Divisions] was no longer in existence and that proper measures had been taken and put in place.

We shall deal hereunder with the issue of the reorganization of the Divisions of the Court of Appeals which was precipitated by the general accusations of corruption in CA-Cebu. The subject matters of the respective letters of Ms. Chiong and Mr. Germano pertain to the actions taken by the trial courts in pending cases which are subject to review, not in an administrative case but in the proper judicial proceedings prescribed by the Rules of Court.

The legal feasibility of the options voted upon by the incumbent Justices of the Court of Appeals hinges on the interpretation of the provisions of Sections 3 and 6 of R.A. 8246 which are quoted hereunder:

SECTION 3. Section 10 of Batas Pambansa Blg. 129, as amended, is hereby further amended to read as follows:

Sec. 10. Place of Holding Sessions. — The Court of Appeals shall have its permanent stations as follows: The first seventeen (17) divisions shall be stationed in the City of Manila for cases coming from the First to the Fifth Judicial Regions; the Eighteenth, Nineteenth, and Twentieth Divisions shall be in Cebu City for cases coming from the Sixth, Seventh and Eighth Judicial Regions; the Twenty-first, Twenty-second and Twenty-third Divisions shall be in Cagayan de Oro City for cases coming from the Ninth, Tenth, Eleventh, and Twelfth Judicial Regions. Whenever demanded by public interest, or whenever justified by an increase in case load, the Supreme Court, upon its own initiative or upon recommendation of the Presiding Justice of the Court of Appeals, may authorize any division of the Court to hold sessions periodically, or for such periods and at such places; as the Supreme Court may determine. for the purpose of hearing and deciding. cases. Trials or hearings in the Court of Appeals must be continuous and must be completed within three (3) months unless extended by the Chief Justice of the Supreme Court.

SECTION 6. Nothing in this Act shall be construed to allow the transfer, except in cases of temporary assignment, of any member of the Court of Appeals to any place or station without his or her written consent, or to undermine the security of tenure of its members as provided in the Constitution, or alter the seniority in said Court in accordance with existing laws. (Emphasis supplied)

We need not belabor the discussion on either the abolition of CA Divisions stationed in Cebu and Cagayan de Oro or the permanent transfer of the said Cebu and Cagayan de Oro Divisions to Manila (Fourth Option). The said options are out of the question in the absence of an amendatory legislation, considering the explicit language of the above-quoted provisions of law. As to the first, second and third options, we take it that the CA Justices have understood that the options as proposed shall be followed strictly and that these options will entail the movements of Justices and support staff from station to station as the reorganization of the Divisions take place from time to time by reason of vacancies in the CA, in accordance with the order of seniority and without any provision for waiver.

The Justices in CA-Cebu are of the view that the transfer of Justices from one station to another cannot be done without the consent of the Justices concerned. They cite the aforequoted provisions of RA No. 8246 as well as Section 9, Rule 1 of the 2002 Internal Rules of the Court of Appeals (IRCA) which reads:

Sec. 9. Reorganization of Divisions –

(a) Reorganization of Divisions shall be effected whenever a permanent vacancy occurs in the chairmanship of a Division, in which case assignment of Justices to the Divisions shall be in accordance with the order of seniority unless a waiver is executed by the Justice concerned which waiver shall be effective until revoked by him in writing.

The Waiver shall be as follows:

WAIVER

Except in cases of temporary assignment, I hereby GIVE/DO NOT GIVE my consent to be transferred either as Chairman/Senior/Junior Member to any Division in any other station.

It is understood that this will not affect my seniority in the Court of Appeals.

It is further understood that this Waiver shall be effective until revoked in writing.

Associate Justice

Date

In the exigencies of the service, the Presiding Justice may temporarily assign any Associate Justice to any station, or defer the reorganization of the Divisions.

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The highlighted portions of the above-quoted provisions are amendments introduced to the 2002 IRCA which took effect on February 28, 2005.

The CA Justices stationed at Cagayan de Oro, through Associate Justice Teresita Dy-Liacco Flores, express their concurrence with the view of the Justices in Cebu City, for the following reasons:

If the CA were to adopt a scheme whereby the Justices would be assigned to the three Stations strictly on the basis of seniority, it will effectively deprive the Cebu and Cagayan de Oro Stations of the experience of the more senior Justices. Many of the best practices of the Court are not reduced into written rules (e.g. the IRCA) but are handed down by tradition. Moreover, the junior Justices in Cagayan de Oro will have to pass by Cebu Station once they rise in their ranking. They cannot continue serving in Cagayan de Oro and wait till their time is up for Manila posting unlike what is done today. For Cagayan de Oro Justices, this means expense, trouble in relocation and disruption and delay in decision writing.

In their joint letter dated September 20, 2007 addressed to the Chief Justice, the Justices of the CA Divisions in Cebu and Cagayan de Oro further state:

The practice of waivers is a cherished hope and joy to those who sacrifice in the meantime being assigned to stations away from their families. Despite the existence of the Court's stations, some of us had pursued our applications to be Justices, precisely because of the practice of waivers. After all, we believed that we could rely on the stability of practice and tradition, especially that of the judiciary. Removing the waiver therefore deflates morale, while its retention serves as a continued attraction for the best and the brightest to join the Court.

The creation of the three (3) CA Divisions in each of the Cebu City and Cagayan de Oro City stations has given rise to the practice of "waiver" of transfer to another station, even if it would mean a promotion to fill up a vacancy in the Chairmanship or Senior Membership of a Division located in another CA station. The said

“waiver” now forms part of the Internal Rules of the said Court, as amended.

Apparently, Section 6 of R.A. 8246 has been construed by the CA Justices to mean that the waiver of Senior Members due for transfer to another station in accordance with the rule on reorganization, which is based on seniority, is a matter of right on the part of the Senior Member concerned. More precisely, the CA Justices of Cebu and Cagayan de Oro believe that “the existence of waiver is explicitly embodied in Section 6 of RA 8246.”

Section 6 of RA No. 8246, cited by the CA Justices as a legal basis for the aforesaid waiver, does not allow any provision of the said law to be used to justify the transfer of any member of the CA to any place or station without his or her consent. However, the movement from one station to another concerned here is occasioned by the operation of the IRCA, and not by the construction of the provision of RA No. 8246. To our mind, the said provision of law guarantees that a Member of the Court of Appeals shall not be transferred without his consent from a station where he ought to be. The said station is determined not by RA No. 8246 but by the rule on the reorganization of Divisions contained in the IRCA. The said rule is anchored on the solitary standard supplied by R.A. No. 8246, which is seniority. Pertinently, Section 3 of Batas Pambansa Blg. 129, as amended by R.A. 8246 provides:

Sec. 3. Organization.â”€ There is hereby created a Court of Appeals which shall consist of a Presiding Justice and sixty eight (68) Associate Justices who shall be appointed by the President of the Philippines. The Presiding Justice shall be so designated in his appointment, and the Associate Justices shall have precedence according to the dates of their respective appointments, or when the appointments of two or more of them shall bear the same dates, according to the order in which their appointments were issued by the President. Any member who is reappointed to the Court after rendering service in another position in the government shall retain the precedence to which he was entitled under his original appointment and his service to the Court shall, for all intents and purposes, be considered as continuous and uninterrupted.

The “transfer” contemplated by Section 6 of R.A. No. 8246 presupposes that a member of the CA is in the station allocated to him by the rules, the said law being silent in this regard, from which station he cannot be transferred without his consent. Paradoxically, the said provision of law is invoked to allow the CA Justices to preempt the operation of the rule on reorganization, at their discretion by executing a waiver, in the form and content provided in Section 9, Rule 1 of the IRCA, as amended.

The assignment of Justices to the various CA Divisions has a direct bearing on the exercise of the function of adjudication of cases. The respective stations or places of assignment of the Justices serve as the basis for the assignment of cases to them in view of the system of distribution of cases among the City of Manila, Cebu City and Cagayan de Oro City stations prescribed by R.A. No. 8246. Akin to the raffle of cases, it is imperative to keep the image of an impartial and independent Judiciary, that application of the rule on the assignment of Justices be consistent, uniform, transparent and objective. Compliance with the said rule should not depend solely on the personal interest or preference of the Justice concerned nor should it be left to the latter’s absolute discretion.

Finally, the Junior Justices have equal right to the faithful observance of the rule on reorganization, which fixes their own places of assignment or station. The assignment of Justices to a particular station is not purely an administrative concern or a matter of formality or privilege, which the Senior Justices by their expedient act of “waiver” can choose to withhold at will from the Junior Justices who may be adversely affected by a deviation from the rule on reorganization. No vested or acquired right can arise from the act of waiver by the Senior Justices which infringes upon the rights of the Junior Justices. (Article 2254, Civil Code). The “waiver” contained in the IRCA ignores or overlooks this possibility of infringement of the right of the Junior Justices to transfer to a particular station under the aforementioned rule.

Accordingly, we find compelling reasons to set aside the amendment to Section 9, Rule I of the IRCA which

institutionalizes the “waiver” of the place of assignment or station of the CA Justices.

It has also been brought to this Court’s attention that the Cagayan de Oro station is perennially beset by vacancies resulting from immediate movement of Justices from one station to another whenever a permanent vacancy occurs in the Chairmanship of the Division, which would call for the reorganization of the Divisions under the IRCA. We perceive the need to address the situation occasioned by the operation of the said rule on reorganization, particularly the ensuing vacancies in the Cagayan de Oro City station where the newly appointed Members of the Court of Appeals are always assigned.

IN VIEW WHEREOF, the Court resolves to APPROVE the recommendation of the Court of Appeals to maintain the STATUS QUO in the places of assignment of the incumbent Members of the said Court, provided that henceforth, no waiver of the assignment of any Member of the Court to a particular station pursuant to the Rule on Reorganization of the Divisions, which is based on seniority, shall be allowed unless approved by the Supreme Court, and provided further that no movement in the places of assignment due to the reorganization of the Divisions shall take place until an Associate Justice shall have been appointed to fill-up the vacancy in the Court membership. Section 9, Rule 1 of the Internal Rules of the Court of Appeals is hereby AMENDED accordingly.

SO ORDERED.

Puno, C.J., (Chairperson), Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Velasco, Jr., Nachura, and Reyes, JJ., concur.
Chico-Nazario, J., on official leave

[1] Resolution dated May 3, 2007

[2] Resolution dated May 3, 2007.

[3] Resolution dated April 10, 2007.

[4] Now Supreme Court Associate Justice.

[5] An Act Creating Additional Divisions In The Court Of Appeals, Increasing The Number Of Court Of Appeals Justices From Fifty-One (51) To Sixty-Nine (69), Amending For The Purpose Batas Pambansa Bilang 129, As Amended, Otherwise Known As The Judiciary Reorganization Act of 1980, Appropriating Funds Therefor, And For Other Purposes.”

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