IN THE MATTER OF THE PETITION FOR HABEAS CORPUS OF CEZARI GONZALES AND JULIUS MESA ROBERTO RAFAEL PULIDO, PETITIONER, VS. GEN. EFREN ABU, AS CHIEF OF STAFF OF THE ARMED FORCES O...

G.R. NO. 170924. July 04, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a Petition for Review under Rule 45 of the Rules of Court assailing the Decision[1] of the Court of Appeals in CA- G.R. SP No. 90546 which dismissed the Petition for Habeas Corpus filed by petitioner Roberto Rafael Pulido (Pulido) in behalf of Cezari Gonzales and Julius Mesa, and imposed on petitioner the penalty of censure, and its Resolution[2] dated 6 January 2006 denying his motion for reconsideration.

The facts are not disputed.

At around one o'clock in the morning of 27 July 2003, three hundred twenty-one (321) junior officers and enlisted personnel of the Armed Forces of the Philippines (AFP) entered and took over the premises of the Oakwood Premiere Luxury Apartments (Oakwood) located at the Glorietta Complex, Ayala Avenue, Makati City. They disarmed the security guards of said establishment and planted explosives in its immediate surroundings.

The soldiers publicly announced that they went to Oakwood to air their grievances against the administration of President Gloria Macapagal Arroyo (President Arroyo). They declared their withdrawal of support from the Commander-in-Chief of the AFP " President Arroyo " and demanded her resignation and that of the members of her cabinet and top officers of both the AFP and the Philippine National Police (PNP).

At about one o'clock in the afternoon, President Arroyo issued Proclamation No. 427 declaring the country to be under a "state of rebellion." Consequently, she issued General Order No. 4 directing the AFP and the PNP to carry out all reasonable measures, giving due regard to constitutional rights, to suppress and quell the "rebellion."

After a series of negotiations between the soldiers and the government negotiators, the former agreed to return to barracks, thus ending the occupation of Oakwood.

Among those involved in the occupation of Oakwood were Cezari Gonzales and Julius Mesa, both enlisted personnel of the Philippine Navy. It is in their behalf that the Petition for Habeas Corpus was filed before the Court of Appeals.

On 2 August 2003, then AFP Chief of Staff Narciso L. Abaya issued a directive[3] to all Major Service Commanders and to the Chief of the Intelligence Service of the Armed Forces of the Philippines (ISAFP) regarding the Custody of Military Personnel Involved in the 27 July 2003 Mutiny. On the strength thereof, Gonzales and Mesa were taken into custody by their Service Commander.

Gonzales and Mesa were not charged before a court martial with violation of the Articles of War. They were,

however, among the soldiers charged before Branch 61 of the Regional Trial Court (RTC) of Makati City, with the crime of Coup D'etat as defined under Article 134-A of the Revised Penal Code. Said case entitled, "People v. Capt. Milo D. Maestrecampo, et al." was docketed as Criminal Case No. 03-2784. On 18 November 2003, a Commitment Order was issued by the RTC committing custody of the persons of Gonzales and Mesa to the Commanding Officer of Fort San Felipe Naval Base, Cavite City.[4]

On 8 December 2003, Gonzales and Mesa were discharged[5] from military service.

On 16 December 2003, per order of the RTC, Criminal Case No. 03-2784 was consolidated with Criminal Case No. 03-2678 entitled, "People v. Ramon B. Cardenas" pending before Branch 148 of the RTC of Makati City, on the ground that the cases are founded on the same facts and/or formed part of a series of offenses of similar character.[6]

In a Manifestation and Motion dated 3 March 2004, Commodore Normando Naval, Commander of Naval Base Cavite, asked the Makati RTC, Branch 148, to relieve him of his duty as custodian of Gonzales and Mesa and that the latter be transferred to the Makati City Jail.[7] In an Order dated 29 April 2004, the RTC relieved him of his duty but ordered the transfer of Gonzales and Mesa from the Naval Base Cavite in Sangley Point, Cavite City, to the Philippine Marine Brigade Headquarters, Philippine Marine, Fort Bonifacio, Taguig, Metro Manila, under the custody of the Commander of the Marine Brigade of the Philippine Marines, Fort Bonifacio, Taguig, Metro Manila.[8]

In an Order dated 8 July 2004, the RTC resolved the petitions for bail filed by the accused- soldiers. It admitted Gonzales and Mesa, and twenty-five other co-accused to bail pegging the amount thereof at P100,000.00 each.[9]

On 19 July 2004, both Gonzales and Mesa posted bail.[10] On 20 July 2004, the RTC issued orders directing the Commanding Officer of Philippine Marine Corps, Fort Bonifacio, Makati City, to release Gonzales and Mesa from his custody.[11] Despite said orders and their service to the marines, Gonzales and Mesa were not released.

On 21 July 2004, the People of the Philippines moved for partial reconsideration[12] of the order granting bail. Prior to the resolution of said motion, Jovencito R. Zuño, Chief State Prosecutor, advised Brig. Gen. Manuel F. Llena, Judge Advocate General, to defer action on the provisional release of Gonzales and Mesa "until the Motion for Reconsideration shall have been resolved and attained finality."[13] On 26 October 2004, the RTC denied the motion for partial reconsideration.

With the denial of the Motion for Partial Reconsideration, the People filed with the Court of Appeals on 4 February 2005 a special civil action for certiorari under Rule 65 of the Rules of Court with urgent prayer for Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction, asking for the nullification and setting aside of the orders dated 8 July 2004 and 26 October 2004 of Judge Oscar B. Pimentel for having been issued without jurisdiction and/or grave abuse of discretion amounting to lack or excess of jurisdiction. The Petition for Certiorari was raffled to the Seventh Division and was docketed as CA-G.R. SP No. 88440 entitled, "People of the Philippines v. Hon. Oscar B. Pimentel, Presiding Judge of the Regional Trial Court of Makati City, Branch 148." The Court of Appeals (Seventh Division) did not issue a TRO and/or preliminary injunction.

Since Gonzales and Mesa continued to be in detention, a Petition for Habeas Corpus[14] was filed by petitioner Pulido on their behalf on 22 July 2005. The case was docketed as CA-G.R. SP No. 90546 and raffled to the Third Division. In support thereof, it was argued that since Gonzales and Mesa are no longer subject to Military Law as they had been discharged from the service on 8 December 2003, and since they are not charged before a court martial, the military authorities have no jurisdiction to detain them, and there is no legal ground to detain them further because a court order for their release had already been issued.

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On 10 August 2005, the Court of Appeals (3[rd] Division) issued a Writ of Habeas Corpus directing respondents Gen. Efren Abu, Chief of Staff of the Armed Forces of the Philippines, and all persons acting in his stead and under his authority, and Gen. Ernesto de Leon, Flag Officer in Command of the Philippine Navy, and all persons acting in his stead and under his authority, to produce the bodies of Gonzales and Mesa before the Court and to appear and show the cause and validity of their detention.[15]

On 18 August 2005, a return of the Writ of Habeas Corpus was made.[16] Respondents prayed that the Petition for Habeas Corpus be dismissed primarily on two grounds: (1) the continued detention of Gonzales and Mesa is justified because of the pendency of the Petition for Certiorari questioning the order dated 8 July 2004 of the RTC granting bail to Gonzales and Mesa before the 7[th] Division of the Court of Appeals, docketed as CA-G.R. SP No. 88440; and (2) petitioner is guilty of forum shopping because of his failure to state in the petition that the order granting bail has been elevated to the Court of Appeals and pending before its 7[th] Division.

On 9 September 2005, the Court of Appeals (7[th] Division) rendered its decision in CA-G.R. SP No. 88440 dismissing the petition that questioned the propriety of the granting of bail to Gonzales, Mesa, and twenty-five of their co-accused.[17]

On 12 September 2005, the Court of Appeals (3rd Division) dismissed the Petition for Habeas Corpus for violation of Section 5, Rule 7 of the Rules of Court. It ratiocinated:

> A reading of the parties' submissions reveals a threshold issue - the charge of forum shopping and the related falsity in the certification supporting the petition. We must initially resolve these issues because a finding that the petitioner violated Section 5, Rule 7 of the Rules of Court can lead to the outright dismissal of the present petition. x x x
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> The records show that the present petition contained the following certificate of non- forum shopping:
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> "I, ROBERTO RAFAEL PULIDO, with office address at Unit 1601, 16th Floor 139 Corporate Center Valero Street, Makati City, after having been duly sworn in accordance with law, do hereby state that:
>
> - I am the petitioner in the above-captioned case;
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> - I have read the Petition and caused it to be prepared. All the contents thereof are true to my own personal knowledge and the record;
>
> - I have not heretofore commenced any action or proceeding involving the same issues, in the Supreme Court, the Court of Appeals, or any other tribunal or agency and to the best of my knowledge, no action or proceeding is pending in the Supreme Court, the Court of Appeals, or any other tribunal or agency; except for the related cases of "Eugene Gonzales et al. vs. Gen. Narciso Abaya, et al., G.R. No. 164007 and "Humabono Adaza et al., vs. Gen. Pedro Cabuay et al., G.R. No. 160792, both awaiting the resolution of the Supreme Court.
>
> - (sic, should be 4) If I should learn of any similar action or proceeding filed or is pending in the Supreme Court, the Court of Appeals, or any other tribunal or agency, I undertake to report such fact within five (5) days therefrom to this Court.
>
> The present petition and its accompanying certification likewise show that the petitioner never mentioned the pendency before the Seventh Division of this Court of the certiorari case, SP 88440, for the annulment of the lower court's order granting the soldiers-accused's petition for bail, when this same lower court order is cited as basis for the immediate release of Gonzales and Mesa in the present petition. All that the certification mentioned were the related cases pending before the Honorable Supreme Court. Neither did the petitioner comply with his undertaking under his certification to inform this Court within five (5) days of the pendency of

any similar action or proceeding filed or is pending in the Supreme Court, the Court of Appeals, or any other tribunal or agency, as in fact the certiorari case was already pending with this Court when the present petition was filed. The certiorari case was only brought to our attention after the respondents filed their Return of the Writ.

To be sure, the petitioner, who is also the counsel for the accused Gonzales and Mesa in the criminal case before Branch 148 RTC Makati City and who represents Gonzales and Mesa as private respondents in CA-G.R. SP No. 88440, cannot feign ignorance of the pendency of the certiorari case. Why he deliberately kept the pendency of the certiorari case hidden from us, has not been sufficiently explained. We have no doubt, however, that his deliberate act of withholding information on a material fact directly required to be disclosed by the Rules of Court cannot but have legal consequences.

The primary basis of the present petition is the bail granted to and posted by Gonzales and Mesa. This is very clear from the petitioner's argument that "The continued detention of the enlisted personnel constitutes violation of the lawful orders of the civilian court." He cited in support of this argument the grant and the posting of the bail, and the issuance of the release orders by the lower court. He did not disclose, however, what subsequently happened to the order granting bail. He deliberately omitted in his narration the fact that the People moved to reconsider this order. Thus, he gave the impression that the order granting bail immediately became enforceable and that Gonzales" and Mesa's continued detention is illegal because their constitutional rights to bail, which have received judicial imprimatur, were continuously being violated by the respondents.

The petitioner next omitted the fact that after the denial of its motion for reconsideration of the order granting bail, the People filed the certiorari case before this Court, seeking to annul the lower court's order. While we are aware of the rule that " the mere pendency of a petition for certiorari will not prevent the implementation of the assailed order unless the court where the petition was filed issues either a temporary restraining order or a writ or preliminary injunction " the filing of a petition for habeas corpus while the order granting bail is being questioned on a petition for certiorari raises issues beyond the immediate execution of the lower court's bail and release orders. They raise questions on the propriety of filing the habeas corpus petition to seek the release of persons under detention, at the same time that a petition regarding their continued detention and release are pending. Apparently, the petitioner wanted to avoid these questions, prompting him to actively conceal the subsequent motion for reconsideration of the bail order and the petition for certiorari directly questioning this same order. In short, the petitioner conveniently omitted in his narration of facts the material factual antecedents detrimental to his cause; he chose to narrate only the factual antecedents favorable to his cause.

That the present petition has direct and intimate links with the certiorari case is beyond doubt as they involve two sides of the same coin. The certiorari case filed by the People seeks to prevent the release of Gonzales and Mesa by annulling the lower court's grant of bail. The present petition, on the other hand, was filed in behalf of Gonzales and Mesa to secure their immediate release because the order granting bail is already executory. In effect, the petitioner seeks to implement through a petition for habeas corpus the provisional release from detention that the lower court has ordered. The question this immediately raises is: can this be done through a petition for habeas corpus when the validity of the grant of bail and the release under bail are live questions before another Division of this Court?

We believe and so hold that his cannot and should not be done as this is precisely the reason why the rule against forum shopping has been put in place. The remedies sought being two sides of the same coin (i.e., the release of Gonzales and Mesa), they cannot be secured through separately-filed cases where issues of jurisdiction may arise and whose rulings may conflict with one another. To be sure, we clearly heard the petitioner say that there can be no conflict because the effectiveness of our ruling in this petition will depend on the nature and tenor of the ruling in the certiorari case; there is no basis for a release on habeas corpus if this same Court will rule in the certiorari case that the grant of bail is improper. For this very same reason, we should not entertain the present petition as the matter before us is already before another co- equal body whose ruling will be finally determinative of the issue of Gonzales' and Mesa's release. The Decision of the Seventh

> Division of this Court, heretofore footnoted, ordering the release on bail of Gonzales and Mesa drives home this point.
>
> To be strictly accurate, the issues of detention and immediate release that are now before the two Divisions of this Court are likewise properly within the jurisdiction of the lower court who has original jurisdiction over the criminal case and who has issued the order granting bail in the exercise of this jurisdiction. If indeed there is a question relating to the immediate release of Gonzales and Mesa pursuant to the lower court's order pending the determination of the certiorari issues, such question should be brought before the lower court as the tribunal that has ordered the release, or before the Seventh Division of this Court in the exercise of its supervisory powers over the lower court. The Decision recently promulgated by the Seventh Division of this Court ordering the release on bail of the soldiers-accused effectively demonstrates this point.
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> The inter-relationships among the criminal case below, the certiorari case and the present petition, as well as among the courts where these cases are pending, show beyond doubt that the petitioner committed forum shopping in the strict sense of that term i.e., the attempt by a party, after an adverse opinion in one forum, to seek a favorable opinion in another forum other that through an appeal or certiorari. The "adverse" aspect for the petitioner, while not an opinion, is no less adverse as he has failed to secure the release of Gonzales and Mesa before the lower court and before this Court in the certiorari case (as of the time of the filing of the present petition); thus, he came to us in the present petition. That the Seventh Division of this Court has ordered the release on bail of the soldiers-accused, thus rendering the present petition moot and academic after the finality of the 7th Division Decision, plainly demonstrates this legal reality.[18]

The Court further imposed on petitioner the penalty of censure for the aforesaid violation. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, we hereby DISMISS the petition for violation of and pursuant to Section 5 Rule 7 of the Rules of Court. The petitioner, Atty. Roberto Rafael Pulido, is hereby CENSURED for these violations. Let a copy of this Decision be furnished the Honorable Supreme Court, to be attached to the petitioner's record as a member of the Bar, as a RECORD OF CENSURE that may be referred to and considered in any future similar act.[19]

On 5 September 2005, petitioner filed a Motion for Reconsideration[20] which the Court of Appeals (Special Former Third Division) denied in its resolution[21] dated 6 January 2006.

Petitioner is now before us raising the following issues:

> WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN DISMISSING THE PETITION FOR HABEAS CORPUS ON THE GROUND OF FORUM SHOPPING.
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> - WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT CONSIDERING THE NATURE OF THE ACTION AND LIMITED ITSELF TO THE ISSUE OF FORUM SHOPPING.
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> - WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN IMPOSING UPON PETITIONER THE PENALTY OF CENSURE.
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> - WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT PASSING UPON THE EXISTENCE OR ABSENCE OF VALID GROUNDS TO DETAIN JULIUS MESA AND CEZARI GONZALES.

Petitioner prays that the assailed decision and resolution of the Court of Appeals be reversed and set aside, and an order be issued ordering respondents to immediately release Gonzales and Mesa. He further prays that the censure against him be also reversed and set aside.

Before respondents could comment on the petition, petitioner filed, with leave of court, a Motion to Withdraw the

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Prayer for the Immediate Release of Julius Mesa and Cezari Gonzales.[22] Petitioner informed the Court that the Commanding General of the Philippine Marines had ordered the release of Gonzales and Mesa and surrendered their persons to the RTC of Makati City, Branch 148. Thus, Mesa and Gonzales are now enjoying temporary liberty by virtue of the release orders dated 20 July 2004 issued by the RTC. Petitioner asks that the prayer for the immediate release of Gonzales and Mesa be dismissed but asks that the other prayers in the petition be granted.

In its comment, the Solicitor General stressed that the habeas corpus petition has been rendered moot and academic by reason of the release of Mesa and Gonzales from detention and, in the absence of an actual case or controversy, it is impractical to consider and resolve issues involving the validity or legality of their detention, including the alleged refusal of the Court of Appeals to resolve said issues.

When the release of the persons in whose behalf the application for a Writ of Habeas Corpus was filed is effected, the Petition for the issuance of the writ becomes moot and academic.[23] With the release of both Mesa and Gonzales, the Petition for Habeas Corpus has, indeed, been rendered moot. Courts of justice constituted to pass upon substantial rights will not consider questions where no actual interests are involved. Thus, the well-settled rule that courts will not determine a moot question. Where the issues have become moot and academic, there ceases to be any justiciable controversy, thus rendering the resolution of the same of no practical value.[24] This Court will therefore abstain from expressing its opinion in a case where no legal relief is needed or called for.[25]

The only remaining issues to be resolved are: (1) Is petitioner guilty of forum shopping? (2) Should petitioner be penalized when he failed to inform the 3[rd] Division of the Court of Appeals of the pendency of the Petition for Certiorari filed by respondents before the 7th Division of the same court which asked for the annulment of the RTC's order granting Gonzales and Mesa's petition for bail?

To support his contention that there was no forum shopping, petitioner asserts that the issues in the petitions for certiorari and habeas corpus are not similar/identical. As to his non- disclosure of respondents' filing of the motion for reconsideration and the Petition for Certiorari, petitioner claims that the same has no legal relevance to the Petition for Habeas Corpus because at the time he filed said petition, the order granting bail subsisted and has not been reversed or modified; and no TRO or injunction has been issued that would affect the efficacy or validity of the order granting the bail and the order directing the release of Mesa and Gonzales.

For filing a Petition for Habeas Corpus despite the pendency of the Petition for Certiorari that questioned the validity of the order granting bail, which order is precisely the very basis of the Petition for Habeas Corpus, petitioner is guilty of forum shopping.

It has been held that forum shopping is the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another (and possibly favorable) opinion in another forum (other than by appeal or the special civil action of certiorari), or the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. Thus, it has been held that there is forum shopping " (1) when, as a result of an adverse decision in one forum, a party seeks a favorable decision (other than by appeal or certiorari) in another; OR (2) if, after he has filed a petition before the Supreme Court, a party files a motion before the Court of Appeals, since in such a case, he deliberately splits appeals in the hope that even in one case in which a particular allowable remedy sought for is dismissed, another case (offering a similar remedy) would still be open; OR (3) where a party attempts to obtain a preliminary injunction in another court after failing to obtain the same from the original court.[26]

The Court has laid down the yardstick to determine whether a party violated the rule against forum shopping, as where the elements of litis pendentia are present or where a final judgment in one case will amount to res judicata in the other. Stated differently, there must be between the two cases: (a) identity of parties; (b) identity of rights

asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration.[27]

As lucidly explained by the Court of Appeals, the ultimate relief sought by petitioner in both the certiorari and habeas corpus cases is the release of Gonzales and Mesa. Petitioner should not have filed the Petition for Habeas Corpus because the relief he is seeking therein is the same relief he is asking for in the certiorari case. Moreover, the main issue in both cases boils down to whether Gonzales and Mesa should be released on bail. Because of the presence of the elements of litis pendentia -- parties, reliefs and issue are substantially the same/similar in the two cases; and any decision in the certiorari case will be binding on the habeas corpus case " petitioner is thus guilty of forum shopping.

For his failure to inform the Court of Appeals of the pendency of the certiorari case, petitioner clearly violated his obligation to disclose within five days the pendency of the same or a similar action or claim as mandated in Section 5(c), Rule 7[28] of the Rules of Court.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. SP No. 90546 dated 12 September 2005 is AFFIRMED. Costs against the petitioner.

SO ORDERED.

Puno C.J., Ynares-Santiago, Carpio, Austria-Martinez, Corona, Azcuna, Tinga, Chico-Nazario, Garcia, and Velasco, Jr. JJ., concur.
Quisumbing, J., on official leave.
Sandoval-Gutierrez, J., on leave.
Nachura, J., no part. filed pleadings as Sol Gen.

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[1] Penned by Associate Justice Arturo D. Brion with Associate Justices Eugenio S. Labitoria and Eliezer R. de Los Santos, concurring; CA rollo, pp. 201-220.

[2] Id. at 145-147.

[3] Rollo, p. 109.

[4] CA rollo, pp. 127-128.

[5] CA rollo, pp. 66-67.

[6] Id. at 133.

[7] Id. at 61-63.

[8] Id. at 129-132.

[9] Id. at 15-50.

[10] Rollo, pp. 111 and 114.

[11] Id. at 110 and 113.

[12] CA rollo, pp. 135-145.

[13] Id. at 146.

[14] CA rollo, pp. 2-67.

[15] Id. at 82-87.

[16] Id. at 88-108.

[17] Rollo, pp. 122-130.

[18] Rollo, pp. 51-57.

[19] Id. at 59.

[20] CA rollo, pp. 235-258.

[21] Penned by Associate Justice Arturo D. Brion with Associate Justices Eliezer R. de Los Santos and Monina Arevalo Zenarosa, concurring; CA, rollo, pp. 275-286.

[22] Rollo, pp. 137-142.

[23] Olaguer v. Military Commission No. 34, The Trial Counsel of Military Commission No. 34, G.R. No. L-54558, 22 May 1987, 150 SCRA 144, 153.

[24]Korea Exchange Bank v. Gonzales, G.R. No. 139460, 31 March 2006, 486 SCRA 166, 176.

[25] Huibonhoa v. Concepcion, G.R. No. 153785, 3 August 2006, 497 SCRA 562, 572.

[26] Philippine Radiant Products, Inc. v. Metropolitan Bank and Trust Co., Inc., G.R. No. 163569, 9 December 2005, 477 SCRA 299, 313-314.

[27] Velasquez v. Hernandez, G.R. No. 150732, 31 August 2004, 437 SCRA 357, 367.

[28]

> SEC. 5. Certification against forum shopping.- The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

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