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FIRST DIVISION

[A.M. NO. RTJ-06-2013 [OCA-IPI NO. 06-2509-RTJ], August 04, 2006]

LEONARDO L. RIVERA, COMPLAINANT, VS. JUDGE BERNABE B. MENDOZA, CLERK OF COURT VI JONATHAN FLORO D. DELA CRUZ AND SHERIFF IV RIZALDE V. SEVERINO, ALL OF THE REGIONAL TRIAL COURT OF ROXAS, ISABELA, BRANCH 23, RESPONDENTS.

RESOLUTION

YNARES-SANTIAGO, J.:

In a letter dated October 28, 2005, complainant Leonardo L. Rivera charged respondents Judge Bernabe B. Mendoza, Clerk of Court VI Jonathan Floro D. Dela Cruz and Sheriff IV Rizalde V. Severino, all of the Regional Trial Court of Roxas, Isabela, Branch 23, with *Manifest Bias and Partiality* relative to Civil Case No. 23-569 entitled *Sps. Leonardo and Francisca Rivera v. Dolores Ll. Querubin.*

Rivera alleged that Judge Mendoza issued a writ of execution despite lack of final and executory judgment and that he was biased in favor of Querubin who was an Australian citizen.

On November 18, 2005, then Court Administrator Presbitero J. Velasco, Jr. [1]informed Rivera that his complaint could not be acted upon for failure to state clearly and concisely the acts and omissions constituting the alleged violations of the respondents. Moreover, the complaint was not written in clear, simple and concise language as to apprise the respondents of the nature of the charge against them and to enable them to prepare their defense. Rivera was thus directed to comply with the foregoing requirements.

However, in a letter dated December 21, 2005, Rivera merely stated that respondents did not give credence to the nationality of Querubin. Moreover, he prayed for this Court to intercede in Civil Case No. 23-569 by ordering the partition of the subject property between him and Querubin.

In the Report dated May 30, 2006, the Office of the Court Administrator (OCA) noted that the complaint did not comply with the requirements set forth under Section 1, Rule 140 of the Rules of Court and that Rivera failed to establish the charges as he only made bare allegations without adducing evidence in support thereof. Hence, the OCA found that there is no necessity for the respondents to comment on the complaint and thus recommended that the instant administrative case be dismissed for lack of merit.

We agree with the findings and recommendation of the OCA.

Section 1, Rule 140 of the Rules of Court provides:

> SECTION 1. *How instituted*. - Proceedings for the discipline of **Judges** of regular and special courts and Justices of the Court of Appeals and the Sandiganbayan may be instituted *motu propio* by the Supreme Court or upon a verified complaint, supported by affidavits of persons who have personal knowledge of the facts alleged therein or by documents which may substantiate said allegations, or upon an anonymous complaint, supported by public records of indubitable integrity. The complaint shall be in writing and shall state clearly and concisely the acts and omissions constituting violations of standards of conduct prescribed for Judges by law, the Rules of Court, or the Code of Judicial Conduct. (Emphasis supplied)

Likewise, the *Uniform Rules on Administrative Cases in the Civil Service* require that the complaint against all **civil servants**, like respondents Clerk of Court Dela Cruz and Sheriff Severino, be written in a clear, simple and concise language and in a systematic manner, otherwise the same will be dismissed.[2]

In the instant case, complainant alleged that Judge Mendoza is biased in favor of Querubin when he did not give credence to the latter's nationality and when he issued a writ of execution in Civil Case No. 23-569 despite lack of a final and executory judgment. As regards respondents Clerk of Court Dela Cruz and Sheriff Severino, we find that there is no allegation as to their alleged infractions.

We agree with the observation of the OCA that complainant failed to allege specific acts or to present proof that would show that respondent judge indeed failed to consider the nationality of Querubin or how it affected the outcome of Civil Case No. 23-569. Anent the issuance of the writ of execution, complainant likewise failed to prove the status of Civil Case No. 23-569 or the fact that there was yet no final and executory judgment thereon. As regards respondents clerk of court and sheriff, there was no averment as to their participation in the alleged infraction. Clearly, complainant failed to comply with the requirements laid down in Section 1, Rule 140 of the Rules of Court and Section 8, Rule II of the *Uniform Rules on Administrative Cases in the Civil Service.*

It is likewise well-settled that in administrative proceedings, the burden of proof that respondents committed the acts complained of rests on the complainant.[3] In the instant case, we find that the charge of manifest bias and partiality is bereft of factual or legal basis hence, the same must be dismissed. Bare allegations of bias and partiality are not enough in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role to dispense justice according to law and evidence and without fear or favor. There should be clear and convincing evidence to prove the charge of bias and partiality. Extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose, in addition to the palpable error that may be inferred from the decision or order itself. [4]

Even assuming that respondent judge erred in failing to consider the nationality of Querubin in deciding Civil Case No. 23-569, or in issuing the writ of execution without a final and executory judgment, complainant's remedy is not through this administrative complaint. It has been held that the filing of an administrative complaint is not the proper remedy for the correction of actions of a judge perceived