REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

Special Fifth Division[1]

PEOPLE OF THE PHILIPPINES, Plaintiff,

- versus -

ELENITA S. BINAY, et al., Accused.

Case No. **SB-06-CRM-0469**

Promulgated:
August 03, 2017

x- -x

RESOLUTION

GOMEZ-ESTOESTA, J:

The issue has been settled: accused Ernesto A. Aspillaga can now take the witness stand in line with prosecution's motion to discharge him as a state witness pursuant to Section 17, Rule 119 of the Revised Rules of Criminal Procedure.

This ruling came about with prosecution's *Motion for Reconsideration* which sought to set aside the Resolution dated December 9, 2016, then laced in the divided opinion of this Court, which majority ruled, viz:

> x x x in the discharge of an accused under Republic Act No. 6981, only compliance with the requirement of Section 14, Rule 110 of the Revised Rules of Criminal Procedure is required but not the requirement of Rule 119, Section 17.

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[1] Pursuant to Rule XVIII, Section 1 (b) of the 2002 Revised Internal Rules of the Sandiganbayan which provides:

(a) xxx xxx xxx xxx.

(b) In Division - The unanimous vote of three (3) Justices in a Division shall be necessary for the rendition of a judgment or final order. In the event a unanimous vote is not obtained, the Presiding Justice shall designate by raffle and on rotation basis two (2) Justices from all the other members of the Sandiganbayan to sit temporarily with them, forming a Special Division of five (5) Justices, and the vote of a majority of such Special Division shall be necessary for the rendition of a judgment or final order.

Here, while the prosecution suggests that Aspillaga be discharged based on Sec. 17, Rule 119 of the RRCP, considering that he was included as one of the accused in the instant case, the Court believes that the said provision of Sec. 17, Rule 119 of the RRCP is inapplicable. The admission of accused Aspillaga as witness in a legislative investigation, pursuant to Sec. 4 of R.A. 6981, permits the application of the provision of Sec. 14, Rule 110 of the RRCP and not the discharge of the accused under Sec. 17, Rule 119 of the RRCP.

> Accordingly, Accused Elenita S. Binay's "Motion for Reconsideration [of Resolution dated 22 January 2016]" dated 10 February 2016, insofar as it prays for the denial of the prosecution's "Motion to Discharge Ernesto A. Aspillaga to be Utilized as State Witness," under Sec. 17, Rule 119 of the Revised Rules o[f] Criminal Procedure, is hereby GRANTED.
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> Pursuant to the case of *Soberano v. People,* as quoted in *Yu v. Presiding Judge, RTC of Tagaytay Cirt, Br. 18,* the prosecution's "Motion to Discharge Ernesto A. Aspillaga to be Utilized as State Witness," under Sec. 17, Rule 119 of the Revised Rules o[f] Criminal Procedure, dated August 5, 2015, is hereby DENIED.

It must be recalled that in this Court's earlier Resolution dated January 22, 2016, the reception of evidence for the discharge of accused Ernesto A. Aspillaga was already set, following the doctrinal case of *People v. The Court of Appeals and Chief Inspector Jose T. Pring*[2] which required a separate hearing in support of the discharge before a final determination is made on whether the conditions under Section 17, Rule 119, have been complied with. The same was over-turned when this Court, through the questioned Resolution voicing the majority opinion[3] at that time, ruled that for the discharge of an accused under Republic Act No. 6981, it is compliance with Section 14, Rule 110 of the Revised Rules of Criminal Procedure which should be made, not Section 17, Rule 119 thereof.

While Prosecution's *Motion for Reconsideration* has been decried by accused Elenita S. Binay to be procedurally flawed,[4] the technical defect apparent in the filing of the *Motion,* particularly referring to the setting of the hearing beyond the 10-day period allowed under Section 5, Rule 15[5] of the 1997 Rules of Civil Procedure, has been disparaged to yield to the more pressing issue at hand. The composition of the members of this Court has since changed and the present majority members of this Special Division have

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[2] G.R. No. 108000, June 17, 1993

[3] Composed of Justice Roland B. Jurado as Chairperson (now retired), Justice Samuel R. Martires (now appointed as Associate Justice of the Supreme Court), and Justice Geraldine Faith A. Econg. The dissenting opinion was made by this ponente, concurred in by Justice Maria Theresa V. Mendoza-Arcega

[4] Vide: *Motion to Expunge with Opposition Ad Cautelam [Re: Prosecution's Motion for Reconsideration dated 27 December 2016]*

[5] Sec. 5. Notice of hearing. - The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

deliberated, one and for all, that the very purpose of a Notice of Hearing has been served since the parties had their chance to be heard.[6] More, there should be no issue on the prosecutors' compliance with Bar Matter No. 1922; their MCLE compliance numbers have since been reflected in the *Reply* eventually filed. Besides, We take judicial notice of OCA Circular No. 79-2014 dated May 26, 2014 which no longer sanctioned the failure to disclose the required information to expunction of the pleadings but rather, replaced it with the phrase, "*Failure to disclose the required information would subject the counsel to appropriate penalty and disciplinary action.*"[7]

Indeed, it is the change in the composition of the Court which provided the means to undo a decision that could not stand on its own merit.[8] A motion for reconsideration is often recognized as an adequate remedy against a decision, resolution, or order, as it provides the court opportunity to correct any error it might have committed.[9]

In this wise, with the procedural issues overtaken by the need to correct a substantial error, the *Motion for Reconsideration* should be granted.

The premise is best laid at the outset. The filing of prosecution's *Motion to Discharge Accused Ernesto A. Aspillaga to be Utilized as State Witness* before this Court should *not* be hinged on R.A. No. 6981 or the "Witness Protection, Security and Benefit Act" implemented by the Department of Justice, to permit the purported application of the provision of Section 14, Rule 110. This is where the questioned Resolution erred.

To be clear, the *Motion to Discharge Accused Ernesto A. Aspillaga to be Utilized as State Witness* can only be filed pursuant to Section 17, Rule 119 of the Revised Rules on Criminal Procedure, since it is the *only* distinct mode *which this Court can act on* in discharging an accused as a state witness. Even assuming that the discharge was based on Section 12 of R.A. No. 6981 as the prosecution asserted at the first instance, petitioning the

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[6] citing *Vette Industrial Sales Co. v. Cheng,* G.R. No. 170232, December 5, 2006

[7] OCA Circular No. 79-2014 states:

In the Resolution of the Court En Banc dated January 14, 2014 in the above-cited administrative matter, the Court RESOLVED, upon the recommendation of the MCLE Governing Board, to:

(a) AMEND the June 3, 2008 resolution by repealing the phrase "Failure to disclose the required information would cause the dismissal of the case and the expunction of the pleadings from the records" and replacing it with "Failure to disclose the required information would subject the counsel to appropriate penalty and disciplinary action"; and

(b) PRESCRIBE the following rules for non-disclosure of current MCLE compliance/exemption number in the pleadings: x x x

[8] Vide: *Kilosbayan, Inc. v. Morato, et al.,* G.R. No. 118910, November 16, 1995

[9] *Delos Reyes v. Flores*, G.R. No. 168726, March 5, 2010, 614 SCRA 270, 278, citing *Marawi Marantao General Hospital, Inc. v. Court of Appeals*, 402 Phil. 356 (2001).

Court for the discharge of a witness under the same provision can only be made pursuant to Section 17, Rule 119 of the same Rules, *no other*.

It bears emphasizing, as distinctly held in *Quarto v. Ombudsman, et al.*,[10] that the power to grant immunity from prosecution is essentially a legislative prerogative. The exclusive power of Congress to define crimes and their nature and to provide for their punishment concomitantly carries the power to immunize certain persons from prosecution to facilitate the attainment of state interests, among them, the solution and prosecution of crimes with high political, social and economic impact. In the exercise of this power, Congress possesses broad discretion and can lay down the conditions and the extent of the immunity to be granted.[11]

While the legislature is the *source* of the power to grant immunity, the *authority to implement* is lodged elsewhere. **The authority to choose the individual to whom immunity would be granted is a constituent part of the process and is essentially an executive function**. *Mapa, Jr. v. Sandiganbayan*[12] is instructive on this point:

> The decision to grant immunity from prosecution forms a constituent part of the prosecution process. It is essentially a tactical decision to forego prosecution of a person for government to achieve a higher objective. It is a deliberate renunciation of the right of the State to prosecute all who appear to be guilty of having committed a crime. Its justification lies in the particular need of the State to obtain the conviction of the more guilty criminals who, otherwise, will probably elude the long arm of the law. **Whether or not the delicate power should be exercised, who should be extended the privilege, the timing of its grant, are questions addressed solely to the sound judgment of the prosecution. The power to prosecute includes the right to determine who shall be prosecuted and the corollary right to decide whom not to prosecute**. In reviewing the exercise of prosecutorial discretion in these areas, the jurisdiction of the respondent court is limited. For the business of a court of justice is to be an impartial tribunal, and not to get involved with the success or failure of the prosecution to prosecute. Every now and then, the prosecution may err in the selection of its strategies, but such errors are not for neutral courts to rectify, any more than courts should correct the blunders of the defense [Emphasis appears in the original text lifted from *Quarto v. Ombudsman, et al.*].

Interestingly, the same case of *Quarto v. Ombudsman, et al.* recognized varied pieces of legislation[13] granting immunity from prosecution which have escalated through the years, to wit:

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[10] G. R. No. 169042, October 5, 2011

[11] *Quarto v. Ombudsman, et al.*, G. R. No. 169042, October 5, 2011

[12] G.R. No. 100295, April 26, 1994, lifted from *Quarto v. Ombudsman, et al.*

[13] *Vide*: footnote 59

PD No. 749 (Granting Immunity from Prosecution to Givers of Bribes and Other Gifts and to their Accomplices in Bribery and Other Graft Cases against Public Officers, July 18, 1975);

PD No. 1731 (Providing for Rewards and Incentives to Government Witnesses and Informants and other Purposes, October 8, 1980);

PD No. 1732 (Providing Immunity from Criminal Prosecution to Government Witnesses and for other Purposes, October 8, 1980);

PD No. 1886 (creating the Agrava Fact-Finding Board, October 22, 1983);

1987 Constitution, Article XIII, Section 18(8) (empowering the Commission on Human Rights to grant immunity);

RA No. 6646 (An Act Introducing Additional Reforms in the Electoral System and for other Purposes, January 5, 1988);

Executive Order No. 14, August 18, 1986;

RA No. 6770 (Ombudsman Act of 1989, November 17, 1989);

RA No. 6981 (Witness Protection, Security and Benefit Act, April 24, 1991);[14]

RA No. 7916 (The Special Economic Zone Act of 1995, July 25, 1994); RA No. 9165 (Comprehensive Dangerous Drugs Act of 2002, June 7, 2002);

RA No. 9416 (An Act Declaring as Unlawful Any Form of Cheating in Civil Service Examinations, etc., March 25, 2007); and

RA No. 9485 (Anti-Red Tape Act of 2007, June 2, 2007).

The same case of *Quarto v. Ombudsman, et al.,*[15] thereafter elucidated that the provision under **Section 17 of Rule 119** is itself unique as, without detracting from the executive nature of the power to prosecute and the power to grant immunity, it clarifies that ***in cases already filed with the courts***, the prosecution merely makes a proposal and initiates the process of granting immunity to an accused-witness in order to utilize him as a witness against his co-accused. As explained in *Webb v. De Leon*[16] in the context of the Witness Protection, Security and Benefit Act:

> x x x. The right to prosecute vests the prosecutor with a wide range of discretion - the discretion of whether, what and whom to charge, the exercise of which depends on a smorgasbord of factors which are best appreciated by prosecutors. We thus hold that it is not constitutionally impermissible for Congress to enact R.A. No. 6981 vesting in the Department of Justice the power to determine who can qualify as a witness in the program and who shall be granted immunity from prosecution. Section 9 of Rule 119 does not support the proposition that the power to choose who shall be a state witness is an inherent judicial prerogative. Under this provision, **the court is given the power to discharge a state**

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[14] Emphasis supplied

[15] G. R. No. 169042, October 5, 2011

[16] G.R. No. 121234, August 23, 1995

> **witness only because it has already acquired jurisdiction over the crime and the accused. The discharge of an accused is part of the exercise of jurisdiction but is not a recognition of an inherent judicial function**. [Emphasis ours]

Verily, since the present charge has been pending before the Court since the filing of the Information on October 3, 2006, the discharge of accused Ernesto A. Aspillaga is one that can be recognized by the Court pursuant to **Section 17 of Rule 119.**

The majority opinion in the questioned Resolution,[17] however, relied heavily on *Yu v. Presiding Judge of the RTC of Tagaytay City*[18] where the following disquisition was highlighted:

> Rule 119, Section 17, of the Revised Rules on Criminal Procedure, contemplates a situation where the information has been filed and the accused had been arraigned and the case is undergoing trial. The discharge of an accused under this rule may be ordered upon motion of the prosecution before resting its case, that is, at any stage of the proceedings, from the filing of the information to the time the defense starts to offer any evidence.
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> On the other hand, **in the discharge of an accused under Republic Act No. 6981, only compliance with the requirement of Section 14, Rule 110 of the Revised Rules of Criminal Procedure is required but not the requirement of Rule 119, Section 17** [Emphasis supplied].

It then concluded that for accused Ernesto A. Aspillaga to be discharged as a witness in a legislative investigation under Section 4 of R.A. No. 6981, it is **Section 14 of Rule 110** of the Revised Rules on Criminal Procedure, *not* Section 17 of Rule 119, which finds application, to wit:

> Section 14. Amendment or substitution. — A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.
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> However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party.
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> If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper

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[17] previously the Dissenting Opinion as seen from the caption in the Header

[18] G.R. No. 142848, June 30, 2006

> offense in accordance with Section 19, Rule 119, provided the accused shall not be placed in double jeopardy. The court may require the witnesses to give bail for their appearance at the trial.

The conclusion was ostensibly taken out of context.

As it is, the quoted text from *Yu v. Presiding Judge of the RTC of Tagaytay City* was basically sourced from *Soberano, et al. v. People,*[19] which case thrived in the correct interpretation of two pertinent provisions of the Revised Rules of Criminal Procedure, i.e., Section 14 of Rule 110 on amendment of information and Section 17 of Rule 119 on the discharge of an accused as state witness.

The context of the ruling in *Soberano, et al. v. People* rather placed a distinct demarcation on which provision of law to apply, depending on whether an information has already been filed in court and the accused has been arraigned, and trial proceeded, *or,* whether an information has already been filed, but the accused has not yet been arraigned. Thus:

> xxx xxx xxx xxx.
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> The prosecution likewise professes that Section 14, Rule 110 should be applied, and not Section 17, Rule 119 for the following reasons: first, while the case was already filed in court, the accused therein have not yet been arraigned; second, the trial court ordered the reinvestigation of the case; and third, new evidence dictate the necessity to amend the Information to include new accused and to exclude other accused who will be utilized as state witnesses.
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> There can be no quarrel as to the fact that what is involved here is primarily an amendment of an information to exclude some accused and that the same is made before plea. Thus, at the very least, Section 14, Rule 110 is applicable which means that the amendment should be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. What seems to complicate the situation is that the exclusion of the accused is specifically sought for the purpose of discharging them as witnesses for the State. The consequential question is, should the requirements for discharge of an accused as state witness as set forth in Section 17, Rule 119 be made as additional requirements (i.e., Section 14, Rule 110 and Section 17, Rule 119) or should only one provision apply as ruled by the trial court and the Court of Appeals (i.e., Section 14, Rule 110 or Section 17, Rule 119)?
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> **An amendment of the information made before plea which excludes some or one of the accused must be made only upon motion by the prosecutor, with notice to the offended party and with leave of court in compliance with Section 14, Rule 110. Section 14, Rule 110 does not qualify the grounds for the exclusion of the accused. Thus, said provision applies in equal force when the**

[19] G.R. No. 154629, October 5, 2005

exclusion is sought on the usual ground of lack of probable cause, or when it is for utilization of the accused as state witness, as in this case, or on some other ground.

At this level, the procedural requirements of Section 17, Rule 119 on the need for the prosecution to present evidence and the sworn statement of each state witness at a hearing in support of the discharge do not yet come into play. This is because, as correctly pointed out by the Court of Appeals**, the determination of who should be criminally charged in court is essentially an executive function, not a judicial one.** The prosecution of crimes appertains to the executive department of government whose principal power and responsibility is to see that our laws are faithfully executed. A necessary component of this power to execute our laws is the right to prosecute their violators. The right to prosecute vests the prosecutor with a wide range of discretion — the discretion of whether, what and whom to charge, the exercise of which depends on a smorgasbord of factors which are best appreciated by prosecutors. By virtue of the trial court having granted the prosecution's motion for reinvestigation, the former is deemed to have deferred to the authority of the prosecutorial arm of the Government. Having brought the case back to the drawing board, the prosecution is thus equipped with discretion — wide and far reaching — regarding the disposition thereof.

xx xxx xxx xxx.

Thus, as in almost all things, the prosecution's discretion is not boundless or infinite. The prosecution must satisfy for itself that an accused excluded from the information for purposes of utilizing him as state witness is qualified therefor.

The situation is different in cases when an accused is retained in the information but his discharge as state witness is sought thereafter by the prosecution before it rests its case, in which event, the procedural (in addition to the substantive) requirements of Section 17, Rule 119 apply. Otherwise stated, when no amendment to the information is involved as a by-product of reinvestigation and trial proceeds thereafter, the discharge of the accused falls squarely and solely within the ambit of Section 17, Rule 119. It is fitting then to re-state the rule in Guingona, Jr. v. Court of Appeals that —

. . . [T]he decision on whether to prosecute and whom to indict is executive in character. Only when an information, charging two or more persons with a certain offense, has already been filed in court will Rule 119, Section 9 34 of the Rules of Court, come into play. . . .

Prescinding from the foregoing, it is in a situation where the accused to be discharged is included in the information that the prosecution must present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge in order to convince the judge, upon whom discretion rests, as to the propriety of discharging the accused as state witness.

Clearly then, by way of reiteration, **when an accused is retained in the information but his discharge as state witness is sought thereafter by the prosecution before it rests its case, it is the procedural (in addition to the substantive) requirements of Section 17, Rule 119 which should apply.**

It is this factual scenario which prevails in this case.

As born from the records, the *Information* has been **filed** as early as October 3, 2006, and later **amended**, per Resolution dated June 26, 2009.[20] Both the original *Information* and the amended *Information* particularly **named** intended state witness Ernesto A. Aspillaga as one of the accused. Since then, accused Ernesto A. Aspillaga has undergone arraignment where he pleaded *not guilty* to the charge.[21] A full blown trial ensued. Despite the filing of the present *Motion to Discharge Accused Ernesto A. Aspillaga to be Utilized as State Witness,* the prosecution opted to ***retain*** him as an accused in the *Information.* As thus held in *Soberano, et al. v. People,* at this stage of the proceedings when trial is ongoing, the discharge of an accused before the prosecutions rests its case is under **Section 17 of Rule 119.**

It is not for this Court to allude to the application of **Section 14 of Rule 110** and require the amendment of the *Information* if only to allow the exclusion of accused Aspillaga from the charge. Section 14 of Rule 110 no longer finds application at this instance. This is too late a remedy to dwell into. **The *Information* has long been filed.** To amend it is not for the Court to discern. The settled rule is that the determination of who should be criminally charged in court is essentially an ***executive function***, not a judicial one. As the officer authorized to direct and control the prosecution of all criminal actions, the prosecutor is tasked to ascertain whether there is sufficient ground to engender a well-founded belief that an offense has been committed and that the accused is probably guilty thereof.[22]

On the other hand, the grant of immunity by virtue of R.A. 6981 does not cancel out the application of Section 17 of Rule 119.

As succinctly discussed in *Ampatuan, Jr. v. Secretary De Lima, et al.,*[23]

> The two modes by which a participant in the commission of a crime may become a state witness are, namely: (a) by discharge from the criminal case pursuant to Section 17 of Rule 119 of the Rules of Court; and (b) by the approval of his application for admission into the Witness Protection Program of the DOJ in accordance with Republic Act No. 6981 (The Witness Protection, Security and Benefit Act). These modes are intended to encourage a person who has witnessed

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[20] Records, Volume 2, pp. 93-95
[21] Ibid., p. 375

[22] *Soberano, et al. v. People,* G.R. No. 154629, October 5, 2005; *People v. Librero,* G.R. No. 132311, September 28, 2000

[23] G.R. No. 197291, April 3, 2013

a crime or who has knowledge of its commission to come forward and testify in court or quasi-judicial body, or before an investigating authority, by protecting him from reprisals, and shielding him from economic dislocation.

These modes, while seemingly alike, are distinct and separate from each other.

Under Section 17, Rule 119 of the Rules of Court, the discharge by the trial court of one or more of several accused with their consent so that they can be witnesses for the State is made upon motion by the Prosecution before resting its case. The trial court shall require the Prosecution to present evidence and the sworn statements of the proposed witnesses at a hearing in support of the discharge. The trial court must ascertain if the following conditions fixed by Section 17 of Rule 119 are complied with, namely: (a) there is absolute necessity for the testimony of the accused whose discharge is requested; (b) there is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused; (c) the testimony of said accused can be substantially corroborated in its material points; (d) said accused does not appear to be most guilty; and (e) said accused has not at any time been convicted of any offense involving moral turpitude.

On the other hand, Section 10 of Republic Act No. 6981 provides:

> Section 10. State Witness. — Any person who has participated in the commission of a crime and desires to be a witness for the State, can apply and, if qualified as determined in this Act and by the Department, shall be admitted into the Program whenever the following circumstances are present:
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> a. the offense in which his testimony will be used is a grave felony as defined under the Revised Penal Code or its equivalent under special laws;
> b. there is absolute necessity for his testimony;
> c. there is no other direct evidence available for the proper prosecution of the offense committed;
> d. his testimony can be substantially corroborated on its material points;
> e. he does not appear to be most guilty; and
> f. he has not at any time been convicted of any crime involving moral turpitude.
>
> An accused discharged from an information or criminal complaint by the court in order that he may be a State Witness pursuant to Sections 9 and 10 of Rule 119 of the Revised Rules of Court may upon his petition be admitted to the Program if he complies with the other requirements of this Act. **Nothing in this Act shall prevent the discharge of an accused, so that he can be used as a State Witness under Rule 119 of the Revised Rules of Court.**

Save for the circumstance covered by paragraph (a) of Section 10, supra, the requisites under both rules are essentially the same. Also worth noting is that an accused discharged from an information by the trial court pursuant to Section 17 of Rule 119 may also be admitted to the Witness Protection Program of the DOJ provided he complies with the requirements of Republic Act No. 6981.

A participant in the commission of the crime, to be discharged to become a state witness pursuant to Rule 119, must be one charged as an accused in the criminal case. The discharge operates as an acquittal of the discharged accused and shall be a bar to his future prosecution for the same

offense, unless he fails or refuses to testify against his co-accused in accordance with his sworn statement constituting the basis for his discharge. The discharge is expressly left to the sound discretion of the trial court, which has the exclusive responsibility to see to it that the conditions prescribed by the rules for that purpose exist.

While it is true that, as a general rule, the discharge or exclusion of a co-accused from the information in order that he may be utilized as a Prosecution witness rests upon the sound discretion of the trial court, such discretion is not absolute and may not be exercised arbitrarily, but with due regard to the proper administration of justice. Anent the requisite that there must be an absolute necessity for the testimony of the accused whose discharge is sought, the trial court has to rely on the suggestions of and the information provided by the public prosecutor. The reason is obvious — the public prosecutor should know better than the trial court, and the Defense for that matter, which of the several accused would best qualify to be discharged in order to become a state witness. The public prosecutor is also supposed to know the evidence in his possession and whomever he needs to establish his case, as well as the availability or non-availability of other direct or corroborative evidence, which of the accused is the 'most guilty' one, and the like.

On the other hand, there is no requirement under Republic Act No. 6981 for the Prosecution to first charge a person in court as one of the accused in order for him to qualify for admission into the Witness Protection Program. The admission as a state witness under Republic Act No. 6981 also operates as an acquittal, and said witness cannot subsequently be included in the criminal information except when he fails or refuses to testify**. The immunity for the state witness is granted by the DOJ, not by the trial court. Should such witness be meanwhile charged in court as an accused, the public prosecutor, upon presentation to him of the certification of admission into the Witness Protection Program, shall petition the trial court for the discharge of the witness.** The Court shall then order the discharge and exclusion of said accused from the information [Emphasis supplied].

Regardless of whether Ernesto S. Aspillaga was admitted into the WPP under Section 4 of Republic Act No. 6981, the prosecution is certainly not barred from filing its *Motion to Discharge Accused Ernesto A. Aspillaga to be Utilized as State Witness* under **Section 17, Rule 119** of the Revised Rules on Criminal Procedure.

In reality, the Court has yet to hear the testimony to be made by accused Ernesto A. Aspillaga on whether he can be discharged as a state witness following the stringent requirements of Section 17 of Rule 119. The motion for his discharge, therefore, cannot be nipped outright because of a perceived procedural error. Otherwise, this would lamentably be seen as suppressing a vital and material piece of evidence that may have a niche in the prosecution of the case.

WHEREFORE, the prosecution's *Motion for Reconsideration* which seeks the discharge of accused Ernesto A. Aspillaga pursuant to Section 17, Rule 119 of the Revised Rules of Criminal Procedure is **GRANTED.**

The questioned Resolution dated December 9, 2016 is **SET ASIDE**.

Let a hearing on the reception of evidence for the discharge of accused Ernesto A. Aspillaga be held on October 4, ***2017 at 8:30 in the morning.***

In view of the same, the *Motion to Expunge* [referring to prosecution's *Motion for Reconsideration*] filed by accused Elenita S. Binay which was incorporated in her *Opposition Ad Cautelam* is **DENIED**.

SO ORDERED.

MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice

WE CONCUR:

MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

EDGARDO M. CALDONA
Associate Justice

BAYANI H. JACINTO
Associate Justice

I DISSENT:

GERALDINE FAITH A. ECONG
Associate Justice

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DISSENTING OPINION

Econg, J:

The Resolution on the prosecution's Motion for Reconsideration dated December 27, 2016 states that the procedural flaw has been disparaged to yield to a more pressing issue and to correct a substantial error. The dispositive portion reads:

> WHEREFORE, the prosecution's Motion for Reconsideration which seels the discharge of accused Ernesto A. Aspillaga pursuant to Section 17, Rule 119 of the Revised Rules of Criminal Procedure is **GRANTED**.
>
> The questioned Resolution dated December 9, 2016 is **SET ASIDE**.

With due respect to my colleagues, I dissent.

The prosecution's Motion for Reconsideration should be considered defective as it was filed not in accordance with Section 5, Rule 15 of the Revised Rules of Court. The Motion of the prosecution was filed on December 27, 2016.[1] In the said Motion, it prayed that the incident be set for hearing on January 10, 2017.[2] The date set by the prosecution for the hearing of the Motion is clearly beyond the 10-day period allowed under the Rules. Therefore, the prosecution violated the so-called 10-day motion rule considering that the date specified and requested by the prosecution is four (4) days beyond the 10-day period provided under Section 5, Rule 15 of the Rules of Court.

> Section 5. Notice of hearing. – The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion. *(Underscoring provided)*

Even the prosecution, in its Reply, admitted that the setting requested for hearing of the Motion is four (4) days

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[1] *Records*, Vol. VI, pp. 98-105.
[2] *Id.*, p. 106.

beyond the allowed period under the Rules, although it reasoned that such date was requested to ensure the receipt by the accused of the Motion considering the intervening holidays. However, I find the prosecution hardly persuasive enough to convince me to accept its reasoning. The rule is clear. The prosecution cannot, at its own discretion, deviate from the Rules to make allowances for the other party. Jurisprudence dictates that rules of procedure, especially those prescribing the period within which certain acts must be done, "have oft been held as absolutely indispensable to the prevention of needless delays and to the orderly discharge of business".[3] This cannot be trifled with.

Accused Binay's reliance on the Supreme Court's pronouncement in *Garcia v. Sandiganbayan*[4] is correct.

> *The Motion to Dismiss remains defective and of no legal effect despite the disposition by the Sandiganbayan of the issue raised in the motion. The subsequent action of the court on a defective motion does not cure the flaw, for a motion with a fatally defective notice is a useless scrap of paper, and the court has no authority to act thereon. The Sandiganbayan recognized that the motion suffered from a fatal procedural defect, declaring that "any motion that does not comply with Sec[.] 5, Rule 15 of the Rules must be regarded as 'a mere scrap of paper, should not be accepted for filing, and if filed, is not entitled to judicial cognizance and does not affect any reglementary period involved for the filing of the requisite pleading,'" but nevertheless addressed the issue of lack of jurisdiction. Error may be imputed to the Sandiganbayan in delving into the merits of the Motion to Dismiss since the effect of non-compliance with the requisites for a valid notice of hearing is that the motion is legally non-existent, that is as if it has never been filed. There is actually no motion which the court should act upon; it was nothing but a piece of paper filed with the court and presented no question which the court could decide.*

The case of *Acampado v. Spouses Cosmilla*[5], is even more instructive and discusses the effect of a defective Motion for Reconsideration. It says:

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[3] *Landbank of the Philippines v. Ascot Holdings and Equities*, G.R. No. 175163, October 19, 2007, *Lazaro v. Court of Appeals*, G.R. No. 137761, April 6, 2000, citing *Shioji v. Harvey*, 43 Phil. 333, 341, April 27, 1922, per Malcolm, J. See also *FJR Garments v. CA*, 130 SCRA 216, June 29, 1984; *Alvero v. De la Rosa*, 76 Phil. 428, March 29, 1946; *Almeda v. CA*, 292 SCRA 587, July 16, 1998.
[4] G.R. No. 167103, August 31, 2006, 532 Phil. 338-351.
[5] G.R. No. 198531, September 28, 2015.

(A) Motion for Reconsideration is a contentious motion that needs to comply with the required notice and hearing and service to the adverse party as mandated by the following provisions of the Revised Rules of Court:

> *RULE 15. SEC. 4. Hearing of motion. — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant. Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.*
>
> *SEC. 5. Notice of hearing. — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.*
>
> *SEC. 6. Proof of service necessary. — No written motion set for hearing shall be acted upon by the court without proof of service thereof.*

The foregoing requirements — that the notice shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion — are mandatory, and if not religiously complied with, the motion becomes pro forma. A motion that does not comply with the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is a worthless piece of paper which the clerk of court has no right to receive and which the court has no authority to act upon. The logic for such requirement is simple: a motion invariably contains a prayer which the movant makes to the court which is usually in the interest of the adverse party to oppose. The notice of hearing to the adverse party is therefore a form of due process; it gives the other party the opportunity to properly vent his opposition to the prayer of the movant. In keeping with the principles of due process, therefore, a motion which does not afford the adverse party a chance to oppose should simply be disregarded. Principles of natural justice demand that a right of a party should not be affected without giving it an opportunity to be heard.

> *Harsh as they may seem, these rules were introduced to avoid capricious change of mind in order to provide due process to both parties and to ensure impartiality in the trial.*

Given the pronouncement of the Supreme Court, the motion for reconsideration filed by prosecution is a mere scrap of paper and this Court has no authority to act on it as it violates Rule 15 of the Revised Rules of Court.

On the other hand, anent the issue of the prosecution's non-compliance with Bar Matter (BM) No. 1922 which requires practicing members of the bar to indicate and specify in all pleadings filed before the courts or quasi-judicial bodies, the number and date of issue of their MCLE Certificate of Compliance or Certificate of Exemption, as may be applicable, for the immediately preceding compliance period, I register my concurrence with the opinion of the majority that it should be the counsel, in this case, the prosecution lawyers who must suffer the appropriate penalty in their personal capacity for the non-compliance with BM No. 1922. Verily in *People vs. Arrojado*[6], the Supreme Court held that:

> *Failure to disclose the required information would subject the counsel to appropriate penalty and disciplinary action. Thus, under the amendatory Resolution, the failure of a lawyer to indicate in his or her pleadings the number and date of issue of his or her MCLE Certificate of Compliance will no longer result in the dismissal of the case and expunction of the pleadings from the records. Nonetheless, such failure will subject the lawyer to the prescribed fine and/or disciplinary action.*

It is also worthy to note that in the prosecution's Reply, it merely claimed inadvertence or negligence as its reason for non-compliance. Such deviation from or non-observance of the Rules should be frowned upon and the prosecution should be reminded to adhere to the applicable laws and rules for the orderly and speedy administration of justice.

In sum, it is my opinion that the Motion for Reconsideration filed by the prosecution should be **DENIED** as it is should be considered as a mere scrap of paper and must be expunged from the case records.

Geraldine Faith Econg
GERALDINE FAITH A. ECONG*
Associate Justice

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[6] G.R. No. 207041, November 9, 2015.
* Sitting as Special Member per Administrative Order No. 10-C-2016 dated September 19, 2016.