



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-18-CRM-0296**
Plaintiff, For: Violation of Sec. 3(e)
of Republic Act No. 3019

SB-18-CRM-0298-307, 309-310,
0314-0315, 0318-0319 and
0322-0323
For: Falsification of Public Document

Present

- versus -

FRANCISCO A. CALALAY, JR.,
ET AL.,

FERNANDEZ, SJ, J.,
Chairperson
MIRANDA, J. and
VIVERO, J.

Accused.

Promulgated:

JUL 02 2019

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RESOLUTION

FERNANDEZ, SJ, J.

In the Order dated May 22, 2019, this Court directed accused Flordeliza A. Alvarez to show cause¹ why she should not be suspended *pendente lite* in accordance with Sec. 13 of Republic Act No. 3019 (R.A. No. 3019).

¹ 2018 Revised Internal Rules of the Sandiganbayan, Rule VIII, Sec. 4. *Suspension Pendente Lite*. – After the arraignment of an accused public officer against whom a valid information charging any of the violations referred to in Section 13 of R.A. No. 3019 is filed, the Sandiganbayan shall *motu proprio* give the said accused a non-extendible period of ten (10) calendar days from notice within which to explain in writing why he should not be preventively suspended. Thereafter, the Sandiganbayan shall issue an order of preventive suspension of the accused, if found warranted under the aforesaid provision of R.A. No. 3019, as well as applicable decisions of the Supreme Court.

RESOLUTION

People vs. Calalay, et al.

SB-18-CRM-0296, 0298-0307, 0309-0310, 0314-0315, 0318-0319, 0322-0323

Page 2 of 5

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In her *Explanation On the issue of Preventive Suspension*,² accused Alvarez manifests that she would not oppose the imposition of preventive suspension upon her. However, she prays that the Court not impose such suspension in the maximum period of 90 days, considering the loss of her income, and also considering that the presentation of the prosecution's evidence will be terminated soon.

Sec. 13 of R.A. No. 3019 provides:

Sec. 13. Suspension and loss of benefits. – Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as complex offense and in whatever stage of execution and mode of participation, is pending in court shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

x x x

(underscoring supplied)

Under the aforementioned provision, suspension from office is mandatory whenever a valid information charges an incumbent public officer with (1) violation of R.A. No. 3019; (2) violation of Title 7, Book II of the Revised Penal Code (RPC); (3) any offense involving fraud upon government; or (4) any offense involving fraud upon public funds or property.³

The first requisite is present. Accused Alvarez is an incumbent public officer charged with one (1) count of violation of Sec. 3(e) of R.A. No. 3019 and eighteen (18) counts of Falsification of Public Document. The latter may be considered as an offense involving fraud upon public funds.⁴

According to accused Alvarez, she is currently serving as a Researcher under the Office of Councilor Hero Clarence M. Bautista for the period January 1 to June 30, 2019 under a service contract. In

² Dated June 11, 2019 and filed on June 13, 2019

³ *Bustillo v. Sandiganbayan*, G.R. No. 146217, April 7, 2006

⁴ Please see *Flores v. Layosa* G.R. No. 154714, August 12, 2004

RESOLUTION

People vs. Calalay, et al.

SB-18-CRM-0296, 0298-0307, 0309-0310, 0314-0315, 0318-0319, 0322-0323

Page 3 of 5

x-----x

Preclaro v. Sandiganbayan,⁵ the Supreme Court held that contractual personnel are still considered public officers under Sec. 2(b) of R.A. No. 3019. To wit:

Petitioner misconstrues the definition of "public officer" in R.A. No. 3019 which, according to Sec. 2(b) thereof "includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exemption service receiving compensation, even nominal, from the government..."

The word "includes" used in defining a public officer in Sec. 2(b) indicates that the definition is not restrictive. The terms "classified, unclassified or exemption service" were the old categories of positions in the civil service which have been reclassified into Career Service and Non-Career Service by PD 807 providing for the organization of the Civil Service Commission and by the Administrative Code of 1987.

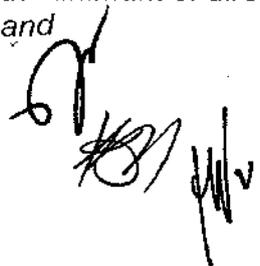
Non-career service in particular is characterized by –

- (1) *Entrance on bases other than those of the usual test of merit and fitness utilized for the career service; and (2) tenure which is limited to a period specified by law, or which is coterminous with that of the appointing authority or subject to his pleasure, or which is limited to the duration of a particular project for which purpose employment was made.*

The Non-Career Service shall include:

- (1) Elective officials and their personal or confidential staff;
- (2) Secretaries and other officials of Cabinet rank who hold their positions at the pleasure of the President and their personal and confidential staff(s);
- (3) Chairman and members of commissions and boards with fixed terms of office and their personal and confidential staff;
- (4) Contractual personnel or those whose employment in the government is in accordance with a special contract to undertake a specific work or job, requiring special or technical skills not available in the employing agency, to be accomplished within a specific period, which in no case shall exceed one year, and performs or accomplishes the specific work or job, under his own responsibility with minimum of direction and supervision from the hiring agency; and

⁵ G.R. No. 111091, August 21, 1995



RESOLUTION

People vs. Calalay, et al.

SB-18-CRM-0296, 0298-0307, 0309-0310, 0314-0315, 0318-0319, 0322-0323

Page 4 of 5

X-----X

(5) Emergency and seasonal personnel.

From the foregoing classification, it is quite evident that petitioner falls under the non-career service category (formerly termed the unclassified or exemption service) of the Civil Service and thus is a public officer as defined by Sec. 2(b) of the Anti-Graft & Corrupt Practices Act (R.A. No. 3019).

The fact that petitioner is not required to record his working hours by means of a bundy clock or did not take an oath of office became unessential considerations in view of the above-mentioned provision of law clearly including petitioner within the definition of a public officer.

(underscoring supplied)

The second requisite, *i.e.*, that the accused is charged under a valid Information, is also present.

In *Flores v. Layosa*,⁶ it was held that while mandatory in nature, suspension *pendente lite* is not automatic or self-operative. Prior to the imposition of such suspension, the validity of the Information must be determined in a pre-suspension hearing. Although there are no specific rules for such hearing, it suffices that the accused is afforded the opportunity to challenge the validity or regularity of the proceedings, and that the Information is found valid.

Accused Alvarez had the opportunity to file, but did not file her motion to quash the Informations, or anything, challenging the validity or regularity of the proceedings, before she entered her pleas during her arraignment on August 9, 2018.

Both requisites having been complied with, this Court is duty-bound to order the suspension of the accused. As held in *Beroña v. Sandiganbayan*:⁷

Section 13 is so clear and explicit that there is hardly room for any extended court rationalization of the law. Section 13 unequivocally mandates the suspension of a public official from office pending a criminal prosecution under RA 3019 or Title 7, Book II of the Revised Penal Code or for any offense involving public funds or property or fraud on government. This Court has repeatedly held

⁶ G.R. No. 154714, August 12, 2004

⁷ G.R. No. 142456, July 27, 2004

RESOLUTION

People vs. Catalay, et al.

SB-18-CRM-0296, 0298-0307, 0309-0310, 0314-0315, 0318-0319, 0322-0323

Page 5 of 5

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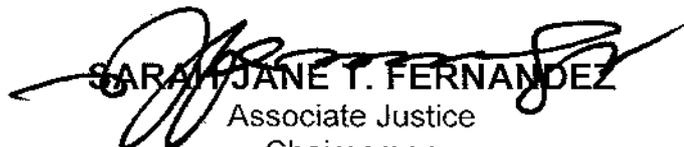
that such preventive suspension is mandatory, and there are no 'ifs' and 'buts' about it.

WHEREFORE, the Court NOTES accused Alvarez' *Explanation*, and orders the suspension *pendente lite* of accused FLORDELIZA A. ALVAREZ as Researcher under the Office of Councilor Hero Clarence M. Bautista, and from any other public positions she may now or hereafter hold for a period of ninety (90) days from receipt of this Resolution.

Let a copy of this Resolution be furnished the Secretary of the Department of Interior and Local Government (DILG) for the implementation of this order of suspension. The Secretary is requested to inform the Court of the action taken thereon within fifteen (15) days from receipt hereof.

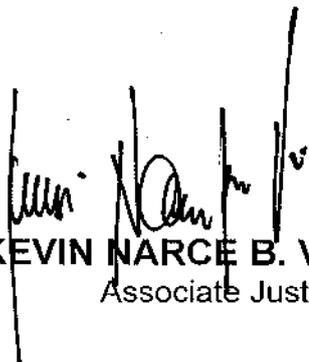
The suspension of the accused shall automatically be lifted upon the expiration of the ninety-day period from the implementation of this Resolution.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice