



REPUBLIC OF THE PHILIPPINES
SENATE ELECTORAL TRIBUNAL
COA-NCR Bldg., Batasan Road, Quezon City

FRANCIS N. TOLENTINO,
Protestant,

- versus -

SET CASE No. 001-16

LEILA M. DE LIMA,
Protestee.

x- ----- x

RESOLUTION NO. 16-12

In SET Resolution No. 16-08 dated 08 September 2016, the parties were required to appear before the Tribunal at the preliminary conference to be held on Thursday, 06 October 2016, at the Supreme Court *En Banc* Conference Room, 2nd Floor, Supreme Court Building I, Padre Faura, Manila at 10:00 o'clock in the morning. The parties were warned that the failure of the Protestant or his counsel to appear at the preliminary conference shall be cause for dismissal, *motu proprio*, of the election protest; and that should either the Protestee or her counsel fail to appear thereat, the Protestant may be allowed to present evidence *ex parte* and the Tribunal shall render judgment based on the evidence presented.

In the same resolution, the parties were further required to file with the Tribunal, not later than Tuesday, 27 September 2016, in fifteen (15) legible copies, and to serve on the adverse party, both through personal service, a preliminary conference brief. The parties were informed that their failure to file the brief or filing a brief which does not comply with the required contents shall have the same effect as failure to appear at the preliminary conference.

On 15 September 2016, Protestee de Lima filed a *Clarificatory Motion with Motion to Dismiss and/or To Set Case for Preliminary Hearing or Oral Argument (On the Special and Affirmative Defenses)*. Six days later, on 21 September 2016,

Protestant Tolentino filed a *Motion to Expunge (Protestee's Verified Answer to the Amended Election Protest dated 14 August 2016)*, followed the next day, 22 September 2016 by an *Urgent Motion to Cancel Preliminary Conference and Suspend Period for Filing Preliminary Conference Brief*.

On 27 September 2016, Protestee de Lima seasonably served upon counsel for Protestant Tolentino and filed before the Tribunal her Preliminary Conference Brief. On the same date, instead of a Preliminary Conference Brief, Protestant Tolentino through counsel filed a *Motion* and a *Manifestation* with annexed *Comments/Objections [To: Clarificatory Motion with Motion to Dismiss and/or to Set Case for Preliminary Hearing or Oral Argument (on the Special and Affirmative Defenses) dated 15 September 2016]* of Protestee de Lima.

In his *Motion*, Protestant Tolentino reiterated his submission in his *Urgent Motion to Cancel Preliminary Conference and Suspend Period for Filing Preliminary Conference Brief* dated 22 September 2016 that Protestee de Lima's *Verified Answer* is actually a motion to dismiss, a prohibited pleading that must be expunged, which would then entitle him to present his evidence *ex parte*. He likewise averred as reason to cancel the Preliminary Conference scheduled on 06 October 2016 the need to resolve first Protestee de Lima's *Clarificatory Motion with Motion to Dismiss and/or to Set Case for Preliminary Hearing or Oral Argument (on the Special and Affirmative Defenses) dated 15 September 2016*, to which he had filed his *Comments and Objections*. On 28 September 2016, Protestee de Lima filed her *Comment/Opposition (To Protestant's Urgent Motion to Cancel Preliminary Conference and Suspend Period for Filing Preliminary Conference Brief) AND (Motion to Expunge Protestee's Verified Answer to the Amended Election Protest dated 14 August 2016.)*

The case of *Philippine American Life & General Insurance Company vs. Jose Enario*, G. R. No. 182075, September 15, 2010, enunciates the basic rule that "a motion for postponement is a privilege and not a right. A movant for postponement should not assume beforehand that his motion will be granted. The grant or denial of a motion for postponement is a matter that is addressed to the sound discretion of the trial court. x x x."

In *Orosa vs. Court of Appeals*, G. R. No. 118696, September 3, 1996, the Supreme Court declared categorically: "It is settled that parties and counsel should not assume that courts are bound to grant the time they pray for. After all, a motion that is not acted upon in due time is deemed denied. x x x"

In the instant case, Protestant Tolentino filed before the Tribunal an *Urgent Motion to Cancel Preliminary Conference and Suspend Period for Filing Preliminary Conference Brief* on 22 September 2016. When, on 27 September 2016, the deadline set for the submission of the Preliminary Conference Brief, said urgent motion remained unacted upon by the Tribunal, Protestant Tolentino, following the ruling in *Orosa* should have considered his motion as having been denied by the Tribunal and should have, accordingly, filed his Preliminary Conference Brief.

In fact, acting on the motions filed before 27 September 2016, i.e. (a) Protestee de Lima's *Clarificatory Motion with Motion to Dismiss and/or to Set Case for Preliminary Hearing or Oral Argument on the Special and Affirmative Defenses* (b) Protestant Tolentino's *Motion to Expunge (Protestee's Verified Answer to the Amended Election Protest dated 14 August 2016)*; and (c) Protestant Tolentino's *Urgent Motion to Cancel Preliminary Conference and Suspend Period for Filing Preliminary Conference Brief*, the Executive Committee in Resolution No. 16-10 resolved to: **GRANT** the *Clarificatory Motion* of Protestee de Lima by stating that in consonance with the Letter dated 01 September 2016 of the Commission on Elections, it is the protestant who should shoulder the cost of the Vote Counting Machines (VCMs) and the corresponding Consolidated Canvassing System (CCS) Laptops in the event that the said equipment be still in the possession of the Commission on Elections by 01 December 2016 on account of the instant election protest case; **DENY** Protestee de Lima's *Motion to Dismiss* for being a prohibited motion under Rule 28 of the 2013 Rules of the Tribunal; **DIRECT** Protestee de Lima to include in her Preliminary Conference Brief her intention to set for hearing or oral arguments before the Tribunal the Special and Affirmative Defenses raised in her Answer dated 29 July 2016; **DENY** the *Motion to Expunge Protestee's Verified Answer to the Amended Election Protest*, considering that the said motion is in the nature of a motion to declare Protestee in default, which is a prohibited

pleading under the present Tribunal Rules; and **DENY** Protestant Tolentino's *Urgent Motion to Cancel Preliminary Conference and to Suspend Period for Filing Preliminary Conference Brief* of Protestant Tolentino as a motion for postponement is likewise a prohibited pleading under Rule 28 of the 2013 Rules of the Tribunal.

The parties were again reminded that their failure to file the brief or filing a brief which does not comply with the required contents shall have the same effect as failure to appear at the preliminary conference.

Protestant Tolentino, having failed to file his Preliminary Conference Brief as required in Resolution No. 16-08 dated 08 September 2016, which failure, under Rule 43 of the 2013 Rules of the Tribunal, has the same effect as failure to appear at the preliminary conference, he should show cause why his election protest should not be dismissed.

WHEREFORE, Protestant Francis N. Tolentino is required to **SHOW CAUSE** within a non-extendible period of five (5) days from receipt of this Resolution why the instant election protest should not be dismissed for his failure to submit his preliminary conference brief as required in SET Resolution No. 16-08 dated 08 September 2016.

Protestee Leila M. de Lima may file her comments on Protestant Tolentino's compliance within three (3) days from receipt thereof.

SO ORDERED.

06 October 2016.



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson



TERESITA J. LEONARDO-DE CASTRO

Associate Justice
Member



ARTURO D. BRION
Associate Justice
Member



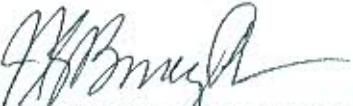
CYNTHIA A. VILLAR

Senator
Member



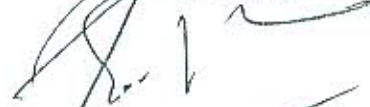
GRACE L. POE

Senator
Member



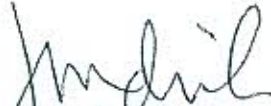
MA. LOURDES "NANCY" S. BINAY

Senator
Member



RICHARD J. GORDON

Senator
Member



FRANKLIN M. DRILON

Senator
Member



ANTONIO "SONNY" F. TRILLANES IV

Senator
Member