

AFFIDAVIT

I, **FERDINAND T. RAFANAN**, of legal age, married and resident of No. 5 Amadec St., Cainta, Rizal, after having been duly sworn, depose and state:

1. I am the Director IV of the Planning Department of the Commission on Elections, having been reassigned to said office on September 6, 2011 from my permanent appointment as Director IV of the Law Department;
2. I joined the Comelec as Provincial Election Supervisor of Ilocos Sur on February 10, 1998;
3. I am executing this Affidavit to oppose the confirmation of the appointment of Comelec Chairman Sixto Brillantes, Jr. for being unfit as Comelec Chairman on the following

GROUND S:

- A. HE VIOLATED SEC. 3 (A) OF THE ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019)
- B. HE DOES NOT WANT TO KNOW THE TRUTH BUT ONLY CLOSURE IN THE MATTER OF FINDING THE CAUSES OF THE DELAY IN THE OCTOBER 25, 2010 BARANGAY ELECTIONS
- C. HE ADMITTED TO UNDERSIGNED THAT HE WAS CORRUPTING THE COMMISSIONERS AND LAWYERS IN THE LAW DEPARTMENT, ECAD AND COMMISSION SECRETARY
- D. HE WAS REPEATEDLY BULLYING AND COMPELLING UNDERSIGNED TO COMPROMISE CASES
- E. HE FAVORS THOSE INVOLVED IN THE P690 MILLION BALLOT SECRECY FOLDER SCAM OVER OTHERS
- F. CONFLICT OF INTEREST AS ELECTION LAWYER
- G. ILLEGALLY REMOVING UNDERSIGNED FROM OFFICE FROM AUGUST 15 TO AUGUST 31, 2011.

DISCUSSION

- A. HE VIOLATED SEC. 3 (A) OF THE ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019)

1. On July 23, 2011 around 7:30am, during the team building activity of the Law Department in a resort in Mataas na Kahoy, Batangas, Chairman Brillantes told me, "Lalabas na ang decision sa Ombudsman sa ballot secrecy folder. Ang penalty ay 1 year suspension. Absuelto sina Tolentino. 3 ang convicted." I said, "Ha? Baliktad naman! Siya ang mastermind, siya pa ang nakawala." Chairman Brillantes said, "Oo nga eh, baliktad." He also said, "Administrative lang. Walang criminal case. Ibargain natin yong 6 months preventive suspension sa penalty para 6

months na lang.” I was offended because I was the one who investigated the scam. Present were Atty. Norie Casingal who was just standing about 1 ½ meters away and Atty. Josslyn Demesa who was seated about the same distance. I don’t know if they heard it.

2. Chairman Brillantes informed us that he officially received the decision on August 23, 2011 and the penalty is 6 months suspension as he had wished.
3. He instructed me on August 24, 2011 to talk to the spokesman of the new Ombudsman to “absolve” them, or “lower the penalty” as he admitted, contrary to the legal remedy (Section 27, RA 6770).
4. There would be conflict of interest on my part and it would be contrary to law and ethics for me to do as he instructed.
5. There is also conflict of interest on his part because he is the Chairman and he is supposed to implement the decision of an independent constitutional body instead of speaking for the respondents.
6. According to him in media reports, he also wrote a letter to the Ombudsman presumably after August 24, 2011 asking if the 6 months preventive suspension could be deducted from the penalty of 6 months suspension. That is an act of lawyering which the constitution prohibits. (Art. IX-A, Section 2. “No member of a Constitutional Commission shall, during his tenure, hold any other office or employment. Neither shall he engage in the practice of any profession or in the active management or control of any business which, in any way, may be affected by the functions of his office, . . .”)
7. With due respect, his query is also a demonstration of ignorance of the law and proper procedure. (Section 24 and Section 25 of Rule XIV of the Omnibus Rules Implementing Book V of the Administrative Code of 1987). It constitutes a second count of this violation.
8. Clearly, his act of “Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter” is a clear violation of RA 3019, Sec. 3 (a).
9. *If Chairman Brillantes wants to influence decisions in the Ombudsman, does he not do it with cases inside Comelec? Director Alarkon and Director Abaya are not even his clients; then what would he do for his clients?*

B. HE DOES NOT WANT TO KNOW THE TRUTH BUT ONLY CLOSURE

1. Sometime in the first week of May, 2011, Chairman Brillantes called me to his office. I brought with me a copy of BAC COMMENTS on the FFC Report on the causes of delays in the October 25, 2010 Barangay and SK elections. I showed said Comments together with a 1-page outline. He was angry because he said it was very long (49 pages) while the other Directors submitted only 1 page or 1 paragraph Comments.
2. I told him that part 1 of the Comments was about the true cause of the delays. He said, “Why are you interested in knowing the truth?” I replied, “We should know the truth so that the same

problems will not be repeated in future elections.” But he said, “I DON’T WANT TO KNOW THE TRUTH! I JUST WANT TO PUT A CLOSURE TO THIS!”

3. He then urged me not to file the Comments anymore. He said “I already told you that you have no liability. The BAC has no liability. Why do you still file?” I replied, “*naifile ko na kahapon eh.*” He said. “*Yes, but you could pull it out.*” I said, “*Paano ko naman ipupull out eh lahat kami sa BAC pumirma?*” “*Bakit, sino bang nag prepare?*” I replied, “*ako.*” He said, “*O ikaw naman pala, eh di puwede mo ipull out. So ngayon fufurnisan ko lahat ng Commissioners, magagalit sila sayo; lahat na lang ng Commissioners liable. Ikaw na lang ang tama.*”

C. HE ADMITTED TO UNDERSIGNED THAT HE WAS CORRUPTING THE COMMISSIONERS, AND LAWYERS IN THE LAW DEPARTMENT, ECAD AND OFFICE OF THE COMMISSION SECRETARY

1. On August 9, 2011, around 1 p.m., Chairman Brillantes called me to his office conference room. We were joined by Atty. Michael Villaret until about 2 p.m.
2. Then from 2 p.m. until about 4 p.m. we discussed alone in the conference room. He bullied me by repeatedly saying I have no friends, everybody hates me, I have a personality problem, I don’t know how to compromise, etc. At around 4 p.m., we moved into his own room and continued talking together until 6 p.m.
3. In his room, I started hearing strange things from him. He said, “*Ayaw ko nang mag compromise. Nagsawa na ako. It is not my character. Wait until I get confirmed and you will see a different personality.*”
4. At one point he said, “*Sarmiento is the most decent among them, pero marunong din magcompromise. Kung may nakikiusap sa akin sa kaso, ibinibigay ko na lang sa kanya. Ang reputation nya kasi ay mabagal sya kaya nagiging moot and academic na lang.*”
5. He also said, “*Everybody here is dirty. Siguro pag binigyan ako ng reorganization act, tatanggalin ko ang two thirds. Ikaw na lang ang matino e. But you cannot reform this office if you do not know how to play around. You have to play their game. So you should dirty yourself a little.*” I did not say anything.
6. Then at another point, he said, “*Nilalagyan ko lang ang mga Commissioners. Pati nga mga lawyers mo sa Law Department binabayaran ko ang mga yan. Pati sa ECAD at sa office ni Josie dela Cruz, naglalagay din ako. Syempre hindi na ngayon. Ako na ang boss eh. Pag nagkikita kami, nagkakahiyaan na lang.*” I did not know what to say and I looked up to the left and saw the clock. I said, “*5 o’clock na pala.*”
7. He also said, “*Do you think JT can still be your friend? Pagkatapos mong imbestigahan? Hindi na. Hinahanapan ka na lang ng butas. Lahat sila binabantayan lahat ng kilos mo.*”

D. HE WAS REPEATEDLY BULLYING AND COMPELLING ME TO COMPROMISE CASES

1. On June 15, 2011, 1:30 p.m., Chairman Brillantes met with all the then 12 lawyers of the Law Department. He said he had just had a retreat with all the Commissioners during the weekend and he added, “*Nag-inoman kami.*” Gusto nyo mag-inoman din tayo?”

They indicated that Director Demesa was good at it. I said "di ko kaya yan."

2. Then Chairman Brillantes said, "You have a major problem because the Commissioners do not like you. Even the senior staff do not like you. The Law Dept is a major department." I said, "you know the reasons why they have that attitude towards me. I will tell you the reasons one by one in private." He replied, "Yes I know the reasons already."
3. He pointed to a vacant chair between Director Demesa and me. "Oh, why is the chair vacant?" And we all laughed. Director Demesa then held a folder on the table and pulled out a memo or something and she said, "He filed a complaint against me in the Ombudsman and CSC." I said, "No I did not file a complaint. Nagfurnish lang ako ng investigation report."
4. After he prodded the lawyers to complain also against me, Chairman Brillantes ended the meeting by saying that I had to settle with Director Demesa. He said, "What is 30 days from today? Ah sa July 15, you have to **settle** before that. But before that I want that we meet again, all of us. Let's meet outside." I said, "Sir, where?" "Emerald restaurant, Roxas Blvd., next Wednesday 5:30 p.m." However, it did not materialize because on July 22 at 10 a.m. he came to my office and informed me he had another meeting.
5. I was bothered by his moves especially stirring dissensions in the Law Department or a revolt against me. It's Abalos all over again, I thought. So, on June 28, 2011, I wrote to him a Memorandum asking him what he meant by "**settle**". I also listed some cases to show why he said I had a "major problem": the Hello Garci scandal, the P1.2 billion Megapacific scam, the P690 million ballot secrecy folder scam - all involved some Directors; the delays in the conduct of the October 25, 2010 barangay elections, and the election offense case in Lanao del Sur in the May 10, 2010 elections that involved some directors and a Commissioner.
6. On June 27, 2011, morning, Chairman Brillantes called me to his office. He said again that the Commissioners did not like me; they hated me. He asked why Deputy Executive Director Sinacruz hated me so much. I said he is involved in the P1.2 billion Megapacific scandal. (It was also about those days that a Korean was coming to the Philippines offering himself as a witness.)
7. And I said concerning the Commissioners, they have a case because of the illegal appointment of Director Josslyn Demesa as Chair of the Provincial Board of Canvassers of Lanao del Sur; and I did not grab the case to investigate. I was simply ordered first by Chairman Melo to look into the matter, and then secondly by the Commission en Banc thru a resolution. I said only investigated it, and that was the result.
8. Chairman Brillantes said, "Oo nga inutosan ka nga eh di ka na nagtatanong; tinatamaan mo na lahat." At that point, I was disappointed because I sensed right away that he would want a cover up.
9. He also said that there we were a lot of problems in the Finance Services Department. He said "tambak ang problema doon" and as he said so his body language showed he was hopeless. So I asked

- him what were the problems and he said, "Ang dami nawawalang pera! That is why we are going to reorganize, and we will start with the Law department."
10. I told him right away "don't touch me"; I said "you should help me; I supported you in your confirmation during the last confirmation hearing. I texted all the lawyers and asked them to attend to show our support. I was wondering why there was no Commissioner." He said, "ayan di ka nagtatanong eh. I told them not to come because each one of them had an issue. Si ganito si ganyan si ganyan may issue pag nakita sila ni kwan lalong kwan." "Ah ganon pala," I said.
 11. He kept on telling me that they did not like me and that they hated me. He asked me "sino ang kakampi mo sa mga Commissioners?" I did not answer but I sensed that he was waiting for who i would name; he was probably expecting me to name Commissicner Sarmiento but i did not name him. So he volunteered to talk about Commissioner Sarmiento.
 12. "He was even the one who did a lot of talking a while ago against you," he said. "Well, may caso sila," I said, and i asked him, "tulongan mo ako. You help me as before. Don't touch me in the Law department." And he answered, "no I could not help you anymore! Marami sila at nagagalit sila sayo." He further said, "I could only help you when i'm on the outside again. I'm almost fed up. I'm about to announce it."
 13. And then as we walked to the door we stopped behind the door and I asked, "Botohan na ba ito?" (I had in mind ang tama ba ay padamihan) And he said, "ikaw na lang kasi ang malinis dito eh."
 14. On August 9, 2011, he repeated his bullying of me and his insistence on compromise. He repeated his personal attacks which he would always do every time we talk together alone. He said "*Lahat sila galit sayo, pati mga Senior Staff.*" I said, "*But you know the reasons. Why should they love me after I investigated them and found them liable.*" "*But even those whom you did not investigate also do not like you. You have no friends.*" I replied "*That's not true. I also have friends.*" "*Tell me, who are your friends?*" I replied "*Syempre ajaw kong sabihin.*" And I noticed that he was getting mad. So I said, "*Well, you are my friend*", and he said, "*Bakit ako lang? Aside from me, who else?*" And I kept quiet because I was feeling bad.
 15. He said, "You have a personality problem". I said, "No, I reject that. That is not true. Every time we talk, you always attack my person and I do not like that. Do you want me also to attack you?" I stood up and continued arguing. I said, "We are only discussing legal issues. Let us stick to the issues", and he said, "But personality is also an issue". I said, "No, that is irrelevant".
 16. He said, "Lahat ng tao galit sayo! You have no friends!" I said, "I'm popular." He asked, "*Where? Outside or inside COMELEC?*" And I replied, "outside, I'm popular and even inside COMELEC." He said "*You are popular because of your personality.*" "*Why? What is my personality?*" He said, "You do not know how to compromise!"

17. I said, the issue is *"Tama ba yong investigation na ginawa ko kay Director Demesa? Ikaw pa nga ang kasama kong nagdidiscuss noon bago ka naging Chairman. Pareho lang tayo ng opinion diyan. O tama ba yong ginawa ko?"* He replied *"Tama, you are right. But you have a personality problem"*. *"How is that a personality problem"*, I said. He said, *"Tama ka nga but you don't know how to compromise"*. *"Why? What is the compromise here?"* I said. *"Dinimiss na nga ng en banc nagfile ka pa ng MR"* and I replied, *"Syempre, ako na kasi ang iniipit eh. Dinimiss na nga, pinapaexplain pa ako. At saka pinag usapan naman nating dalawa yong MR bago ka naging Chairman."* He said, *"Chairman na ako noon, and you were telling me na pag dineny namin iaakyat mo pa sa Supreme Court. Yan ang sinasabi ko, you do not know how to compromise! That is your personality problem"*.
18. Then I said, *"What about the delay in the Barangay Elections?"* The issue there is *"tama ba yong comments namin sa BAC?"* *"Tama"*, he answered, *"And I told you, you will be absolved. You have no liability whatever."* I said *wag mo na i-file yong comments mo."* And I replied, *"Nong mag-usap tayo naifile ko na eh one day earlier."* He said. *"Yes, but you could pull it out"*.

E. HE FAVORS THOSE INVOLVED IN THE P690 MILLION BALLOT SECRECY FOLDER SCAM OVER OTHERS

1. Comelec en Banc Resolution No. 9267 promulgated on August 2, 2011 shows that Atty. Allen Abaya who was suspended by the Ombudsman was favoured to perform the functions of Director Ferdinand T. Rafanan who had investigated him and who was removed from the Law Department.
2. When later or on August 31, 2011, the suspension of Atty. Abaya set in, his absolved co-respondent in the case Atty. Maria Norina Tangaro-Casingal took over until Director Esmeralda Ladra assumed office on or about September 12, 2011.
3. Atty. Casingal has been promoted as Acting Director III of the Law Department.

F. CONFLICT OF INTEREST AS ELECTION LAWYER

Chairman Brillantes must account for all the election offense cases and election protests that he and/or his law firm handled while he was in private practice. The more cases, the less he can serve as Chairman because he would have to inhibit. The rationale behind the disqualification from being appointed as Commissioner or Chairman of any candidate who ran in the previous election should be all the more applicable to him who was handling so many cases in Comelec prior to his appointment. When he inhibits, his mere presence as the Chairman constitutes influence sufficient to prejudice the perception of impartiality required of decisions of an impartial constitutional body. Since he would even intervene in behalf of those found guilty by the Office of the Ombudsman who are not his clients, what could he not do to cases inside Comelec?

H. ILLEGALLY REMOVING UNDERSIGNED FROM OFFICE FROM AUGUST 15 TO AUGUST 31, 2011

The reason he gave was that he would "reassign" me to the Joint Comelec-DOJ Committee effective August 15, 2011. I said that was not a valid "reassignment" under the law but a constructive dismissal. Then he came up with another resolution removing me again from the Law Department and also from the Joint Committee and reassigning me to the Planning Department. The reason he gave for removing me from the Committee was that I was "uncontrollable." These acts are not in accordance with law.

4. Undersigned affiant-oppositor reserves the right to expound in detail the grounds cited above during the confirmation hearing.


FERDINAND T. RAFANAN
Affiant

REPUBLIC OF THE PHILIPPINES)
CITY OF PASAY CITY)SS.

SUBSCRIBED and sworn to before me this 14th day of September 2011 in the City of PASAY CITY. Affiant, known to me and known to be the same person who executed the foregoing affidavit, exhibited to me his Comelec ID No. 10-28000 and Voter's ID.


ATTY. CECILIO C. CASALLA
NOTARY PUBLIC

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