

ESTANISLAO V. ALVIOLA, COMPLAINANT, VS. JUDGE HENRY B. AVELINO, MCTC, PONTEVEDRA-PANAY, CAPIZ, RESPONDENT.

A.M. No. MTJ-08-1697 (Formerly OCA-I.P.I. No. 05-1784-MTJ). February 29, 2008

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TINGA, J.:

This is an administrative complaint against respondent Judge Henry B. Avelino of the 2nd Municipal Circuit Trial Court of Pontevedra-Panay, Pontevedra, Capiz for gross neglect of duty relative to a civil case for unlawful detainer and damages, docketed as Civil Case No. 405 and entitled “Spouses Estanislao V. Alviola and Carmen L. Alviola v. Spouses Dullano and Theresa Suplido.”

In a Complaint[1] dated 5 October 2005, complainant alleged that the complaint in the civil case was filed on 24 September 2002. After the defendants filed their answer on 10 October 2002, the case was set for pre-trial conference on 19 November 2002. Following several postponements, the pre-trial conference was actually conducted and terminated on 26 August 2004. More than a year after the termination of the pre-trial conference, respondent judge had not issued a pre-trial order. Complainant had already filed before the sala of respondent judge a manifestation regarding this matter but respondent Judge still failed to issue the required pre-trial order.[2]

In a Manifestation[3] dated 6 March 2006, complainant informed the Court that on 9 February 2006, he had received a copy of defendants’ motion for correction of the pre-trial order dated 6 February 2006. Complainant likewise manifested that respondent judge had granted the same[4] and issued an Amended Pre-trial Order[5] dated 2 January 2006 without the notice required by Section 4, Rule 15 of the 1997 Rules of Civil Procedure and without giving complainant the opportunity to file his comment thereon. As such, on 22 February 2006, complainant moved[6] for respondent judge to reconsider his order granting defendants’ motion for correction of pre-trial order.[7]

In his Comment[8] dated 5 December 2005, respondent judge maintained that pre-trial conferences were set on 19 November 2002 and 2 January 2003 but both were postponed at the instance of both parties for purposes of settlement. Further settings were likewise postponed as defendants’ counsel had moved for the suspension of the proceedings of the civil case in deference to another civil case pending before the Regional Trial Court of Roxas City, Capiz for annulment/cancellation of title of the same property involved. After respondent judge had resolved the motion, the continuation of the pre-trial conference was scheduled and the parties agreed to have it on 30 July 2004. Finally, the parties had their exhibits marked on 26 August 2004. Thereafter, the parties were given sufficient time to settle the case pursuant to A.M. No. 03-1-09-SC (Rule on Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-trial and Use of Deposition-Discovery Measures) which became effective on 16 August 2004.[9]

Respondent Judge admitted that the delay in the issuance of the pre-trial order was due to the fact that he had opted to concentrate on the disposal of other cases required to be terminated before 30 December 2005 pursuant to A.M. No. 05-8-26-SC. Respondent judge, thus, argued that he cannot be held liable for gross neglect of duty due to his efforts to unclog the court’s docket of pending cases as borne out by the record.[10]

In a Report[11] dated 25 April 2006, the Office of the Court Administrator (OCA) found respondent judge guilty of violating Paragraph 8, Title I (A) of A.M. No. 03-1-09-SC. The said provision requires judges to issue the required pre-trial order within ten (10) days after the termination of the pre-trial conference. Clearly, respondent judge violated the provision by issuing the Pre-Trial Order more than ten days after the termination of the Pre-Trial Conference on 26 August 2004.

Accordingly, the OCA recommended that the matter be formally docketed as an administrative complaint. In addition, the OCA recommended that respondent judge be suspended from office without salary and other benefits for two (2) months.[12]

In a Resolution[13] dated 21 June 2006, the Court noted the OCA's report and directed the parties to manifest their willingness to submit the case for resolution on the basis of the pleadings filed. Complainant, in his Manifestation[14] dated 30 August 2005, informed the Court of his willingness to submit the case for resolution on the basis of the pleadings/records already filed and submitted. Respondent judge likewise manifested the same willingness in his Manifestation dated 23 March 2007.[15]

The recommendation is well-taken.

Paragraph 8, Title I (A) of A.M. No. 03-1-09-SC entitled "Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures" states that:

- The judge shall issue the required Pre-Trial Order within ten (10) days after the termination of the pre-trial. Said Order shall bind the parties, limit the trial to matters not disposed of and control the course of the action during the trial x x x

Evidently, respondent judge violated the above-quoted provision by issuing the pre-trial order only on 2 January 2005[16] or more than four (4) months after the termination of the pre-trial conference. It should likewise be underscored that since the civil case is an unlawful detainer case falling within the ambit of the Rules on Summary Procedure, respondent judge should have handled the same with promptness and haste.[17] The reason for the adoption of the Rules on Summary Procedure is precisely to prevent undue delays in the disposition of cases. It is therefore not encouraging when, as in the case at bar, it is the judge himself who occasions the delay sought to be prevented by the rule. By no means is the aim of speedy disposition of cases served by respondent judge's inaction.[18]

Section 9 (1),[19] Rule 140, as amended, of the Revised Rules of Court provides that undue delay in rendering an order is classified as a less serious charge punishable by suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or a fine of more than P10,000.00 but not exceeding P20,000.00.[20]

For the record, respondent judge was fined P20,000.00 in A.M. No. MTJ-05-1583, entitled *Arcenas v. Avelino*[21] for gross inefficiency. In addition, respondent Judge was fined P20,000.00 in A.M. No. MTJ-05-1606, *Office of the Court Administrator v. Avelino*,[22] likewise for gross inefficiency. As such, the Court agrees with the OCA that a sterner penalty is in order.

WHEREFORE, respondent Judge Henry B. Avelino of the 2nd Municipal Circuit Trial Court of Pontevedra-Panay, Pontevedra, Capiz is liable for undue delay in rendering a pre-trial order and is hereby **SUSPENDED** from office without salary and other benefits for a period of **TWO (2) MONTHS** effective immediately upon service of this Resolution. He is **STERNLY WARNED** that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

Carpio, (Acting Chairperson), Carpio-Morales, Azcuna,[*] and Velasco, Jr., JJ., concur.

* As replacement of Justice Leonardo A. Quisumbing who is on official leave per Administrative Circular No. 84-2007.

[1] Rollo, pp. 1-2.

[2]Id. at 61.

[3]Id. at 30-33.

[4] Id. at 55. In an Order dated 7 February 2006.

[5]Id. at 56-58.

[6] Id. at 59-60. Motion for Reconsideration dated 22 February 2006.

[7] Id. at 31-32.

[8] Id. at 28-29.

[9] Id. at 29.

[10]Id.

[11]Id. at 61-64.

[12]Id. at 64.

[13] Id. at 65.

[14] Id. at 66.

[15] Id. at 78-79.

[16] Id. at 52 and 82-84. The defendants' motion for correction of pre-trial order states that it was issued on 2 January 2005.

[17]Bunyi v. Hon. Caraos, 394 Phil. 211, 217 (2000).

[18] Cuevas v. Balderian, 389 Phil. 580, 583 (2000).

[19] As amended by A.M. No. 01-8-10-SC, which took effect on 01 October 2001.

[20] RULES OF COURT, Rule 140, Sec. 11(b), as amended.

[21] A.M. No. MTJ-05-1583, 11 March 2005, 453 SCRA 202.

[22] MTJ No. 05-1606, 9 December 2005, 477 SCRA 9.

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