

THE SECRETARY OF JUSTICE, COMPLAINANT, VS. HON. ALBERTO J. FRANCISCO, RESPONDENT.

Adm. Case No. 193-J. November 29, 1972

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PER CURIAM:

This is an administrative case instituted by the Honorable Secretary of Justice against the Hon. Alberto J. Francisco, Judge of the Court of First Instance of Manila, Branch IX, for serious misconduct and gross inefficiency in office. The parties submitted this case for resolution on the basis of the pleadings and other papers filed with this Court.

The complaint dated February 2, 1971 makes several inculpatory allegations against the respondent, hereunder set forth.

(1) On or about February 21, 1969 the respondent submitted to the Department of Justice a certificate of service (Judicial Form No. 86) wherein he certified, among others, —

"x x x that all special proceedings, applications, petitions, demurrers, motions, and cases of all kinds which have been under submission for decision or determination for a period of ninety days or more have been determined and decided on or before this 31st day of January, 1969."

On the basis of that certification which obviously was executed under the provisions of Section 5 of the Judiciary Act,^[1] the respondent collected his salary for the period from January 1 to 31, 1969. The records of his court, however, disclose that as of January 31, 1969 there were no less than twenty-four (24) submitted cases and one (1) motion for execution which were undecided and/or unresolved for more than ninety days, several of which had been pending decision as far back as the early months of the year 1967.

(2) On or about March 17, 1969 the respondent submitted another certificate of service to the Department of Justice on the basis of which he collected his salary for the period from February 1 to 28, 1969. The records of his sala, however, show that the aforementioned cases and motion for execution were still unresolved as of February 28, 1969.

(3) On or about May 21, 1969 the respondent submitted a third certificate of service to the effect that he had resolved all cases and/or motions submitted for more than ninety days as of March 31, 1969, although the aforementioned cases were still unresolved and, in addition, three (3) more submitted cases were undecided for more than ninety (90) days.

(4) A fourth certificate of service of similar tenor was submitted by the respondent to the Department of Justice covering the period which ended on April 31, 1969, notwithstanding the fact that the above-mentioned cases were still then unresolved, in addition to three (3) more submitted cases undecided for more than ninety (90) days.

(5) As of January 22, 1971 the respondent had in his docket forty-four (44) other cases and motions which were undecided and/or unresolved although submitted for decision for more than ninety (90) days.

In his answer filed on March 29, 1971, the respondent admitted the truth of the foregoing allegations, but took exception to the extent that they imply that he executed the mentioned certificates of service with malicious intent to misrepresent. More particularly, the respondent's defense may be stated as follows:

(1) Since his appointment in 1962 up to 1971 as district judge^[2] he had attended court sessions regularly and he had applied for summer vacation only in May, 1963 and May, 1965.

(2) Around the early part of 1965 he became ill of hypertension which required medical treatment and for which he was hospitalized in December, 1967. Despite his ailment, however, he prevailed upon his doctor to permit him to conduct court hearings, after which he used to return to the hospital. He is still undergoing medical treatment for high blood pressure.

(3) In July, 1968 his wife suffered a heart attack, followed by cirrhosis of the liver. Later, she became afflicted with cancer of the cervix which required the removal of her ovary, uterus, cervix, Fallopian tube, gall bladder, and appendix. All these ailments caused him and his wife mental anguish and suffering, not to mention the financial difficulties concomitant thereto.

(4) On account of his ailment and those of his wife and in an attempt to dispose of the myriad cases that kept mounting in his sala, he overlooked through inadvertence the disposal of some of the cases which were submitted for decision but which had been tried wholly or partially by his predecessor, especially in those instances where either the stenographic notes were not transcribed or, although transcribed, were not submitted to him, as when a clerk who took them ceased to be connected with his sala.

(5) With respect to the cases heard by him, he had ordered the notes taken during the hearings to be transcribed as he felt it would be unsafe for him to rely on his own notes as they were incomplete. Consequently, pending transcript submission the cases remained undecided.

(6) On the quality of his decisions, only one of his decisions was appealed while he was district judge in Laguna from 1962 to 1965, and this was affirmed by the Court of Appeals; and while he was presiding judge of Branch IX of the Court of First Instance of Manila, from 1966 up to the filing of his answer herein, not one appealed decision of his was reversed or modified.

(7) As to his case output, for the fiscal year 1967-68 he ranked seventh among the twenty-five (25) judges of the Court of First Instance of Manila; and for the calendar year 1968 he ranked third.

(8) Since September, 1970 he had voluntarily desisted from collecting his salary.

(9) The 90-day limitation in Section 5, *supra*, of the Judiciary Act should not be applied to its full extent today as when it was first enunciated on September 20, 1906 by Governor-General James F. Smith,^[3] particularly in the courts of Manila which are always heavily burdened with cases. Furthermore, under the present set-up a judge is required to try cases every morning of the week and hear motions every Saturday morning, so that when a judge resumes his work at two o'clock in the afternoon he has only two hours to avail himself of the services of court stenographers who leave everyday at four o'clock. Consequently, judges like him who have no legal researchers have barely enough time to study cases. The physical condition of his courtroom is, moreover, hardly conducive to facilitating the trial and disposition of cases.

In controversion of the above, the Secretary of Justice's reply avers that:

(1) On the matter of the respondent's vacation leaves, the records of the Department of Justice disclose that he went on vacation as follows:

"in 1963, for 28 days without leave and from May 2-31; in 1964, for 1 day without leave and from March 23 to

25, May 3 to 31, September 1 to 30 and November 19 to 20; in 1965, for 14 days without leave and from September 15 to October 1; in 1966 from January 31 to February 11 and from February 14 to 19; and in 1967 from May 1-31."

(2) On the alleged lack of stenographic notes, of the eleven (11) cases pending decision which were partly tried by his predecessor, only two are without the corresponding transcript, one of which involves only questions of law.

(3) On the alleged non-collection of respondent's salary, the Secretary of Justice himself was the one who ordered the payment suspended due to the respondent's failure to decide many long- pending cases. And the respondent is the only judge in the Court of First Instance of Manila who has failed to decide so many long-pending cases.

In a rejoinder to the above-mentioned reply, the respondent claims that when he was not physically present in the courtroom on certain occasions, it was because he was doing research work in law libraries, and that as of May 26, 1971 he had already disposed of twenty-eight (28) of the cases listed in the complaint at bar.

- After a careful scrutiny of the record, this Court is not persuaded that a verdict of serious inefficiency should be entered against the respondent. While his performance, quantity-wise, was not satisfactory, it cannot be said that the rate of his caseload disposal was comparatively so below par as to have reached the forbidden area of gross or serious inefficiency. For one thing, beyond mere enumeration of the number of unresolved cases under the respondent's responsibility, the State has not shown that the delay in their disposition was deliberate, corrupt or malicious. Merit must be accorded the respondent's substantially uncontroverted claim that it was virtually impossible for him to quickly decide submitted cases because (a) he had to hold trials' every morning from Monday to Friday and to hear motions on Saturday mornings; (b) he had no legal researcher to assist him in his work; (c) several cases in his docket referred to in the complaint were those partly heard by his predecessor, the study and processing of the evidence in which required more than normal judicial exertion; (d) the physical condition of his courtroom is not conducive to the trial and decision of cases; (e) several transcripts of steno notes were not submitted on time; (f) he had practically to go to other places to research for the proper disposition of cases before him; and (g) his wife as well as he himself encountered serious ailments during the period under consideration.

From the nature of the charges and defenses adduced herein, this Court believes that any conclusion as to their intrinsic and relative merits will only serve to provoke an infinitude of opinions, for which reason, and, in a spirit of liberality, this Court deems it necessary to resolve any and all doubt about the efficiency record of the respondent in his favor. Moreover, the record of the instant case also discloses that the respondent's output compares favorably with that of the other branches of the Court of First Instance of Manila. Under the doctrine laid down in *Superable vs. Escalona* (24 SCRA 545), the respondent's efficiency rating cannot be said to fall within the intolerable limits of gross inefficiency.

As a passing footnote to this aspect of the case at bar, it is worth mentioning that a recent study conducted by the U.P. Law Center[4] reported that for the period 1958-1968, inclusive, all the courts of first instance all over the country disposed "of [only] an average of 35% or slightly over one third of their caseloads." Among the provinces and cities whose performance during that period was above the national average is the City of Manila which had an average of 47.8%, second only to Davao which averaged 77.4%. In the fiscal year 1966-1967 the percentage of cases disposed of in Manila was 48.9%, and in the fiscal year 1967-1968 it was 46.3%. The courts which disposed of an average less than 35% (the national average) constituted the majority in the country, according to the said study. Construed thus in terms of the national performance, it appears that the performance of the judges of the City of Manila, output-wise, may be considered above average. As the respondent appears to be one of the top-ranking judges in terms of number of decisions in the City of Manila, one clear conclusion that may be culled is that the respondent's output is way above many, if not most, of the judges throughout the country, particularly

considering that the city of Manila has one of the largest caseloads. To say, nonetheless, that his performance compared to the national average is quite edifying, does not necessarily lend itself to the conclusion that his performance, standing on its own, can withstand the charge of judicial atrophy, since the national average performance of courts of first instance cannot but be sub-standard.[5]

- This Court is convinced, however, that in certifying falsely on several occasions his record of judicial accomplishments, the respondent wandered too far out from the permissible lineaments of judicial behavior. We consequently sustain the charge of gross misconduct against the respondent.

This Court cannot subscribe to the respondent's defense that the execution of the certificates in question was committed through inadvertence or oversight. It cannot be presumed, considering his long experience in the judiciary, that the respondent was not aware or conscious of the nature and significance of the facts which he attested to. Neither could he have encountered any difficulty in verifying whether he still had any case or motion pending for decision beyond the 90-day period prescribed in Section 5 of the Judiciary Act, *supra*, since as a matter of routine duty, clerks of courts of first instance are required to submit monthly reports of cases pending decision, together with pertinent data, e.g., numbers and titles of cases, dates the cases were submitted for decision, total number of cases pending decision, etc.[6] Each court has, in addition, a court journal wherein are entered the court's daily activities pertaining to the cases filed with it.[7] Moreover, the big number of accumulating cases pending decision in his sala for more than 90 days could not have escaped his attention as many of them had been in that state for as far back as in the early months of 1967, aside from the other cases heard by him entirely which had also remained in lethargy for more than 90 days after submission. Indeed, the respondent himself asserted in his answer that he had been giving instructions to his stenographers to speed up the composition of their steno notes. This assertion, without more, clearly belies his excuse of oversight and inadvertence.

Needless to say, a judge's official conduct should be free not only from impropriety but also from any appearance of impropriety.[8] While no judge can probably fully succeed in living up to his precept to everyone's expectation and complete satisfaction, every judge who chooses the Judiciary as his vocation must accept as a fact of life that his conduct — even his private life — is subject to more exacting standards than those which the public may be willing to tolerate in other professions. In thus knowingly and falsely affixing his official signature to the certificates in question in a manner palpably calculated to mislead — as they did — the duly constituted authorities and to attain a prohibited purpose, it is the opinion of this Court that the respondent committed gross misconduct in office.

All the above notwithstanding, because the respondent's resignation from office has been accepted by His Excellency, the President of the Philippines, this Court refrains from making any recommendation as to the nature and extent of the disciplinary sanction that the respondent deserves under the circumstances above-narrated.

Concepcion, C.J., Makalintal, Ruiz Castro, Teehankee, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.

Zaldivar and Fernando, JJ., took no part.

[1] "Sec. 5. Judge's certificate as to work completed.— District judges, judges of municipal courts, and justices of the peace shall certify on their applications for leave, and upon salary vouchers presented by them for payment, or upon the payrolls upon which their salaries are paid, that all special proceedings, applications, petitions, motions, and all civil and criminal cases which have been under submission for decision or determination for a period of

ninety days or more have been determined and decided on or before the date of making the certificate, and no leave shall be granted and no salary shall be paid without such certificate.

[2] The respondent was appointed by the late Pres. Carlos P. Garcia on December 29, 1967 as ad interim district judge for the province of Laguna. He was later extended another ad interim appointment on June 26, 1962 by former Pres. Diosdado Macapagal, which appointment was confirmed by the Commission on Appointments. On September 10, 1966 he was given an ad interim appointment by Pres. Ferdinand E. Marcos to preside over Branch IX, Court of First Instance of Manila.

[3] See Jose P. Bengzon, *The Philippine Judicial System*, 1968 ed., p. 28; Cornejo, *Pre-War Encyclopedic Directory of the Philippines*, p. 148.

[4] U.P. Law Center, "A Study of Judicial Data on the Number of Case Filed, Pending and Disposed of in the Courts of First Instance of the Philippines By Province (Fy 1958-1968)," *Philippine Law Journal*, Vol. XIV, No. 3, July, 1969, pp. 484-553.

[5] See "Senate Findings on Justice's Delay — Why So Slow, Your Honor?," *Sunday Times Magazine*, June 29, 1969, p. 14.

[6] See Circular No. 21, dated June 14, 1948, Circular No. 10, dated February 6, 1952, and Circular No. 21, dated January 12, 1970 of the Department of Justice.

[7] See Circular No. 51, dated June 5, 1969, Department of Justice.

[8] See Section 3, Canons of Judicial Ethics.

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