

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS.
JUDGE AUGUSTINE A. VESTIL, REGIONAL TRIAL COURT, BRANCH 56,
MANDAUE CITY, RESPONDENT.**

A.M. No. RTJ-06-2030 (Formerly OCA IPI No. 05-2166-RTJ). October 05, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Per Resolution dated May 16, 2005, the Court treated the Memorandum filed by the Office of the Court Administrator (OCA) dated January 24, 2004 as administrative complaints against Judge Jesus S. dela Peña, (Judge dela Peña), Regional Trial Court (RTC) Branch 62, Oslob, Cebu, also formerly Assisting Judge, RTC Branch 56, Mandaue City; and Judge Augustine A. Vestil, (Judge Vestil), RTC Branch 56, Mandaue City, for the irregularities and procedural lapses in the conduct of trial in connection with their handling of Civil Case No. MAN-3855, a Petition for Declaration of Nullity of Marriage, entitled, “Mary Ann T. Castro-Roa v. Rocky Rommel D. Roa” (Roa case).

Mary Ann T. Castro-Roa (Castro-Roa), an Assistant City Prosecutor in Cebu,[1] filed a Petition for Declaration of Nullity of her marriage to Rocky Rommel D. Roa (Rocky) before the RTC, Mandaue City, on June 5, 2000. The case was raffled to Branch 56 presided by Judge Vestil, but it was Assisting Judge dela Peña who took cognizance of the case. Rocky filed his Answer with Counterclaim on August 10, 2000 and the pre-trial was terminated on December 11, 2000.[2]

Castro-Roa testified on January 29, 2001 despite the absence of Rocky.[3] In her cross-examination on February 26, 2001, Rocky’s counsel, Public Attorney’s Office (PAO) lawyer Atty. Noel Anthony R. Maninang, was also absent; thus, it was Public Prosecutor Rolito Sarino who conducted the same.[4] Judge dela Peña thereafter issued an Order declaring Rocky to have waived his right to cross-examine Castro-Roa.[5] On March 26, 2001, Castro-Roa’s witness, Dr. Glenda Ilano, testified, again despite the absence of Rocky and his counsel. She was cross-examined by Fiscal Sarino.[6] Judge dela Peña then issued an Order setting the case for hearing on April 10, 2001.[7]

The next thing that transpired is shown by the Minutes of April 24, 2001, which reads:

FOR FAILURE OF THE DEF.COUNSEL TO APPEAR, THE CROSS EXAM.IS CONSIDERED WAIVED.
THE PETITIONER FORMALLY OFFER [sic] THEIRS [sic] EXHIBITS.[8]

On the same day, April 24, 2001, Judge dela Peña rendered his Decision declaring the nullity of Castro-Roa’s marriage to Rocky.[9] Rocky and the Office of the Solicitor General (OSG) appealed to the Court of Appeals (CA).[10]

On October 22, 2003, the CA rendered its Decision[11] declaring the Decision of Judge dela Peña to be null and void due to the “very apparent fatal irregularities” in the conduct of the trial of the case which deprived Rocky of due process of law.[12] The CA ordered the remand of the case to the court of origin to give Rocky a chance to

present evidence.[13]

On December 11, 2003, Castro-Roa filed a Motion to Dismiss Petition (Motion) with Branch 56, stating that she no longer wished to continue the trial of the petition, as on her part it would mean extra effort, time, and money, which would dwindle her meager income.[14] This time, it was Judge Vestil who acted on the Motion by issuing on January 26, 2004 an Order directing Rocky to file his comment or opposition thereto and setting the hearing thereof for February 6, 2004.[15]

On February 6, 2004, the Clerk of Court of Branch 56, Atty. Emeline Bullecer-Cabahug issued a “Constancia,” submitting the Motion for Resolution “considering that the Presiding Judge was in Manila on official business.”[16] In his Order dated March 10, 2004, Judge Vestil granted the Motion noting that Rocky and his counsel were served a copy of the Motion yet they filed no comment or opposition thereto.[17]

In its Memorandum dated January 24, 2004, the OCA stated that it agrees with the CA’s findings that there were “very apparent fatal irregularities” in the handling of the Roa case,[18] to wit: there was no proof that the parties were given notice for the April 10, 2001 hearing; the Minutes of the April 10, 2001 hearing was not in the records, and it was not explained why it was reset to April 24, 2001; the Minutes of April 24, 2001 merely states that petitioner formally offered her exhibits, and that for failure of the defense counsel to appear, the cross-examination was deemed waived, then on the same day, a Decision was prepared and signed by Judge dela Peña; there was no transcript of stenographic notes (TSN) of the April 24, 2001 proceedings, neither was there proof on record to show that Castro-Roa formally offered her exhibits; and no notice of hearing or any order for the April 24, 2001 setting was issued to show that Rocky was given a chance to present his evidence.[19]

The OCA, in addition, noted that Judge dela Peña dispensed with the requirement of certification from the OSG to show that there was no collusion among the parties, even though such was a requirement at the time. As to Judge Vestil, the OCA found that there was no proof that Rocky was served a copy of Castro-Roa’s Motion and records show that the Order setting the hearing of the Motion, on February 6, 2004 was received by Rocky only on February 12, 2004; despite this, Judge Vestil stated in his March 10, 2004 Order that Rocky and his counsel, who had withdrawn in 2001, were served a copy of the said motion.[20]

In Compliance with the Court’s Resolution dated May 16, 2005, Judges dela Peña and Vestil filed their respective comments.[21]

In his Comment dated June 27, 2005, Judge dela Peña averred the following: He was designated as Assisting Presiding Judge of Branch 56, Mandaue City which had a load of 700 cases, in addition to his assignment as RTC Judge of Branch 62, Oslob, Cebu. In view of an impending transfer to another branch and in his desire to expedite the cases he was handling, he instructed his legal researcher “to get the facts” of the pending cases, one of which was the Roa case. Rocky was given chances to cross-examine Castro-Roa’s witness as well as to present his evidence. Rocky however failed to appear, while his lawyer Atty. Maninang refused to conduct cross-examination, saying that he was not able to confer with his client. Atty. Maninang was notified of all the hearings, since his office is adjacent to the court, and notice to him should be considered as notice to his client. The court proceeded with the case with the active participation of the Assistant City Prosecutor who represented the State. Due to Atty. Maninang’s failure to cross-examine and present evidence for his client, the court considered Rocky to have waived his right over the same. If Rocky had objections to the ruling of the court, he should have filed a motion for reconsideration, but he did not. Finally, the Minutes and Orders may have only been misfiled, which lapse was beyond Judge dela Peña’s control, since he had already assumed his post in Bogo in the last week of May 2001.[22]

He prays that he be extended compassion by the Court since he acted in good faith, observed and applied proper

procedure, rendered the judgment honestly, speedily and fairly, and was uncomplainingly obedient to the additional assignments given him by the Court.[23]

Judge dela Peña submitted a Supplemental Comment dated June 30, 2005 with an Affidavit executed by Rocky on June 28, 2005. Rocky attested that he was properly notified of all hearings, and that in the morning of April 24, 2001, he called up his lawyer and told him that he was waiving his right to present his evidence and that he was submitting the case for decision.[24]

In his Third Indorsement, Judge Vestil submitted the following comment: he never participated in the trial of the Roa case and his only participation was in the resolution of the Motion to Dismiss Petition filed by Castro-Roa; he granted the Motion four months after it was filed and only after Rocky had been allowed ample time to oppose the same; Rocky, as well as his counsel despite his withdrawal, was given notice of the hearing as well as the Order granting the Motion; while it is true that it was only on February 12, 2004 when Rocky received the notice of hearing set for February 6, 2004, still it was incumbent upon Rocky to exert efforts to verify the status of the said Motion from the time of such actual receipt; to date, however, no pleading was filed by Rocky in response to said Motion; absolutely no damage was done to Rocky as regards his counterclaim for the custody of the children, since the same can be threshed out in a separate proceeding; also, with the granting of the Motion, there was a restoration of the marital bonds between the Roas which had been severed by the Decision of Judge dela Peña.[25]

In Compliance with the Court's Resolution dated August 22, 2005,[26] the OCA submitted its Memorandum dated September 11, 2006, with the following findings and recommendations:

Undeniably, respondent Judge dela Peña failed to observe the requirements of prior notice and hearing before rendering the decision in Civil Case No. MAN-3855, essentially depriving Rocky of his right to due process.

Firstly, there was an Order setting the case for hearing on April 10, 2001. Yet, there was nothing to show on record that the parties were properly notified thereof. Neither was there a Minutes of the hearing.

Secondly, there was a Minutes of the hearing on April 24, 2001 suggesting that a Notice of Hearing on that date was sent to, and received by, the parties, as there was a notation on the Minutes declaring that (1) Rocky waived his right to cross-examine an adverse witness for his failure to appear, and (2) Castro-Roa formally offered her exhibits. However, no such notice or Order setting the case for hearing on April 24, 2001, much less any proof of receipt thereof by the parties was attached to the records.

All told, the manner by which the April 24, 2001 Decision was rendered was dubious. As Rocky was merely declared to have waived his right to cross-examine the witness for the adverse party, the next step that respondent Judge dela Peña should have taken was to set the case for the reception of Rocky's evidence. He did not. He opted instead to decide the case in clear violation of Section 5, Rule 30 of the Revised Rules of Court, mandating the grant of opportunity for the defendant to adduce evidence.

Respondent Judge dela Peña's attempt at exculpation all the more proves his administrative culpability. He admitted deciding the case hastily to free himself from going back to Branch 56 after having been designated as acting presiding judge of Branch 61 in Bogo, Cebu. Curiously, the administrative order designating him as such was issued on May 8, 2001 and he received a copy thereof on the third week of May 2001, or almost one (1) month after he rendered the Decision in Civil Case No. MAN-3855 on April 24, 2001. Hence, the haste with which he decided the case could not have been precipitated by his transfer to another court given the sufficiency of time left for him to complete the proceedings thereof before he eventually transferred to Branch 61. That he was informed of such designation in March 2001 was not sufficient justification to dispense with an integral component of the trial such as the presentation of evidence by the defendant.

The manner by which respondent Judge Vestil proceeded upon the Motion to Dismiss Petition was likewise

suspect. Knowing that Rocky received the Notice of Hearing of February 6, 2004 on February 12, 2004 only, or six (6) days after that scheduled hearing, respondent Judge dela Peña went on to issue an Order on March 10, 2004 dismissing the petition without a hearing. It did not matter to him that Section 6, Rule 15 of the 1997 Rules on Civil Procedure mandates that “(n)o written motion set for hearing shall be acted upon by the court without proof of service thereof.”

Respondent Judge Vestil blamed Rocky for not exerting efforts to verify the status of the motion from the time he belatedly received the notice of hearing, conveniently forgetting that he himself was also absent during the scheduled hearing on February 6, 2004, which should have resulted in its cancellation and resetting. However, by taking it upon herself to submit the motion for resolution through a “Constancia,” Atty. Cabahug confirmed a deliberate effort to resolve the motion in Castro-Roa’s favor. Without a doubt, the action was highly irregular because it overstepped the regular functions of a clerk of court [sic], which are administrative in nature. The function to declare a motion submitted for resolution is of judicial character, and can only be exercised by the judge. Neither can it be delegated to his/her clerk of court. In this case, respondent Judge Vestil injudiciously approved, albeit impliedly, the action taken by his clerk of court when he resolved the motion a little over a month after Atty. Cabahug speciously submitted the same for resolution without anymore setting it for hearing.

Respondent Judges dela Peña and Vestil’s disregard of the basic requirements of notice and hearing was too flagrant to be ignored. Having accepted an exalted position as members of the judiciary, they owe to the public and to the courts over which they preside to maintain professional competence at all times and to have the basic rules at the palm of their hands. They, however, failed to live up to the standards. Unfamiliarity with the Rules of Court is a sign of incompetence. To disregard the law when one has become familiar with it is worse because bad faith comes in.

Gross ignorance of the law or procedure is considered a serious charge under Section 8(9) of Rule 140, as amended, of the Rules [of] Court, for which a penalty ranging from a fine of more than P20,000.00 but not exceeding P40,000.00 to suspension or dismissal may be imposed.[27]

The OCA then recommended that:

- [B]oth Judge Jesus S. dela Peña, Regional Trial Court, Branch 22, Oslob, Cebu and Judge Agustin [sic] A. Vestil, Regional Trial Court Branch 56, Mandaue City be FOUND administratively liable for gross ignorance of the law or procedure;
- Judges dela Peña and Vestil be FINED each in the amount of P21,000.00, with a warning that a repetition of a similar act or infraction will be dealt with more severely; and
- Atty. Emeline Bullecer-Cabahug, branch clerk of court, Regional Trial Court, Branch 56, Mandaue City, be REQUIRED to SHOW CAUSE why no disciplinary action should be taken against her for issuing a “Constancia” on February 6, 2004, submitting the Motion to Dismiss Petition in Civil Case No. MAN-3855, entitled Mary Ann T. Castro-Roa vs. Rocky Rommel D. Roa, for resolution.[28]

The Court, in its Resolution[29] dated June 13, 2007, considered the case submitted for resolution, in view of the Manifestation of Judge dela Peña that he is submitting herein case for resolution on the basis of the pleadings already filed; and the failure of Judge Vestil to file any manifestation within the period given in the Court’s Resolution dated February 7, 2007, despite due notice.

The Court’s Ruling

The Court is in full accord with the findings of the OCA but not as to the recommended penalty insofar as Judge dela Peña is concerned.

Liability of Judge dela Peña:

Judge dela Peña is guilty of gross ignorance of the law or procedure tantamount to grave abuse of authority.[30] He completely disregarded the basic provisions of the Rules of Court.

After the direct testimony and cross-examination of Castro-Roa's witness on March 26, 2001, Judge dela Peña issued an Order setting the case for hearing on April 10, 2001.[31] How it was moved to April 24, 2001 is not in the records. As observed by the CA, the Minutes of the April 10, 2001 hearing was not in the records and there was no explanation why the hearing was reset to April 24, 2001.

The Minutes of the hearing held on April 24, 2001, shows that Castro-Roa on that day formally offered her exhibits and, for failure of the defense counsel to appear, Judge dela Peña considered Rocky to have waived his cross-examination of Castro-Roa.[32] As found by the CA, there were no transcripts of stenographic notes of the hearing conducted on April 24, 2001; neither was there any proof to show that Castro-Roa formally offered her exhibits.

Judge dela Peña flagrantly violated the basic order of trial provided for in Section 5, Rule 30 of the Rules of Court, which provides that after the plaintiff has adduced evidence in support of his complaint, the defendant (in this case, Rocky) shall then adduce evidence in support of his defense and his counterclaim.

It is very glaring that Judge dela Peña scandalously acted with such alarming undue haste in rendering a decision in favor of Castro-Roa on the same day that the latter purportedly offered her exhibits, without first affording Rocky the opportunity to present his own evidence; and, as noted by the OCA, without requiring the submission of the certification of the OSG as to whether he was objecting to or was in agreement with the petition, as then required in *Republic of the Philippines v. Court of Appeals*. [33]

In his Comments, Judge dela Peña could only say that it was Rocky's failure to cross-examine Castro-Roa's witnesses and present his own witnesses "for the reason that the lawyer has not conferred with his client [Rocky] despite his advice to him which prompt[ed] the court to consider respondent [Rocky] to have waived the cross-examination and the possible presentation of his evidence." [34] However, Judge dela Peña failed to show that there was a previous notice or warning given to Rocky that the presentation of the latter's evidence shall take place on the very same day, April 24, 2001, after the presentation of Castro-Roa's evidence. This would have justified the declaration of Judge dela Peña that Rocky had waived the presentation of his evidence.

In an attempt to show that Rocky was fully aware of all the hearings and that it was his wish to submit the case for decision on April 24, 2001, Judge dela Peña submitted to the Court an Affidavit executed by Rocky on June 28, 2005 wherein Rocky stated that he was notified of all the settings of the case and that in the morning of April 24, 2001, he called his lawyer to tell him that he was waiving his right to present evidence and that he was submitting the case for decision. [35]

Rocky's affidavit does not hold water. It has no probative value, as it was executed only in 2005 after the CA had pointed out in its Decision the irregularities committed by Judge dela Peña in the hasty rendition of the Decision in favor of Castro-Roa; and after the present administrative case was instituted. Evidently, it is self-serving.

More importantly, said affidavit is absolutely inconsistent with the Minutes of April 24, 2001 and the Comments of Judge dela Peña. The Minutes show that Rocky's counsel failed to appear on April 24, 2001 and on that basis Judge dela Peña not only deemed it as waiver of Rocky's right to cross-examine, but also forthwith rendered a Decision against Rocky. And even if indeed Rocky told his lawyer in the morning of April 24, 2001 that he was waiving his right to present evidence and that he was submitting the case for decision, the Minutes show that Rocky's counsel, Atty. Noel Maninang, was not present at the hearing held on April 24, 2001. There is no showing how Rocky's counsel conveyed to Judge dela Peña that Rocky was waiving his right to present evidence

and he was submitting the case for decision.

Judge dela Peña relies heavily on the admission of Rocky in his Affidavit that he had not been appearing during the presentation of Castro-Roa's evidence despite due notice. To conclude that Rocky was not interested in pursuing the case is not accurate. As Rocky stated in his Affidavit:

x x x In all the aforesaid proceedings, although I was properly notified and fully aware of, I did not appear by reason of financial constraints;

x x x x

That I appealed the case in the Court of Appeals, but I thought it wise to no longer pursue the case, again due to lack of funds.[36] (Emphasis supplied)

Rocky's Affidavit does not justify the act of Judge dela Peña in rendering judgment without giving Rocky an opportunity to present his own evidence. It is well to emphasize that Judge dela Peña's Comment and the Minutes of April 24, 2001, show that it was not on the basis of any manifestation from Rocky's counsel that he is no longer interested in pursuing the case, that Judge dela Peña rendered his premature decision. Rather, it was mainly because of Rocky and his counsel's failure to appear on April 24, 2001 which Judge dela Peña deemed as waiver of Rocky's right to cross-examine. At that time, Judge dela Peña had no knowledge about the "lack of interest" of Rocky in pursuing the case because such assertion was made only in the Affidavit executed in 2005 or four years after the April 24, 2001 hearing. Instead of scheduling the case for reception of defense evidence, as provided for in Section 5, Rule 30 of the Rules of Court, Judge dela Peña issued the decision on the same day that Castro-Roa terminated the presentation of her evidence.

Moreover, the allegation of Judge dela Peña that he decided this case immediately in anticipation of an information he received that he would be designated as acting presiding judge of another court does not exculpate him from liability. As aptly observed by the OCA, it was not sufficient justification to dispense with the presentation of evidence by Rocky, as defendant, and outrightly render a decision in favor of Castro-Roa on the same day.

A judge should observe the usual and traditional mode of adjudication which requires that he should hear both sides with patience and understanding to keep the risk of reaching an unjust decision at a minimum. A judge must neither sacrifice for expediency's sake the fundamental requirements of due process nor forget that he must conscientiously endeavor each time to seek the truth, to know and aptly apply the law, and to dispose of the controversy objectively and impartially.[37] This is especially so since marriage, which is the subject of the case before Judge dela Peña, is legally inviolable; thus, it is protected from dissolution at the whim of the parties.[38]

True is the principle that an administrative case is not the proper remedy for alleged errors committed by a judge in deciding a case where a judicial remedy exists. But in *Roxas v. Eugenio*,[39] the Court held that until there is a final declaration by the appellate court that the challenged order or judgment is manifestly erroneous, there will be no basis to conclude whether respondent judge is administratively liable; and in *Senson v. Pangilinan*[40] the Court expounded that the existence of judicial remedy does not preclude resort to an administrative remedy.[41]

And while the CA may have already resolved the judicial remedy, the ignorance of the judge of both substantive and procedural laws warrants an administrative sanction.[42]

In this case, the fact that the Solicitor General and Rocky elevated the Decision of Judge dela Peña to the CA, and the CA thereafter rendered its Decision on the same, does not bar this Court from taking cognizance of the administrative liability of Judge dela Peña in rendering the assailed decision. The fact that the CA found that there were "very apparent fatal irregularities" even bolsters the administrative culpability of Judge dela Peña on the

matter.

As the CA found very apparent fatal irregularities in Judge dela Peña's Decision, clearly there exists sufficient ground to find him administratively liable.

Finally, the act of Judge dela Peña in rendering a decision on the very same day that Castro-Roa completed the presentation of her evidence without giving Rocky the opportunity to present his evidence, thus, depriving him of due process, is so gross, patent and deliberate that is tantamount to being malicious and having been done in bad faith.

The deplorable haste with which Judge dela Peña disposed of the Roa case, in complete disregard of the rights of Rocky under the Rules of Court, shows his utter lack of competence and integrity in the performance of his duties as a presiding judge, tantamount to grave abuse of authority.

As the Court held in *De Leon v. Corpuz*,^[43]

x x x The observance of the law, which respondent judge ought to know, is required of every judge. When the law is sufficiently basic, a judge owes it to his office to simply apply it; x x x failure to consider a basic and elementary rule, a law or principle in the discharge of his duties, a judge is either too incompetent and undeserving of the position and the title he holds or is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority.

Canon 1 (Rule 1.01) of the Code of Judicial Conduct provides that a judge should be the embodiment of competence, integrity and independence. Canon 3 states that "A judge should perform his official duties honestly and with impartiality and diligence." By his actuations, respondent judge has shown his lack of integrity and diligence, thereby blemishing the image of the judiciary.^[44] (Emphasis supplied)

For his acts committed on April 24, 2001, Judge dela Peña committed gross ignorance of the law or procedure, which is a serious offense under Section 2,^[45] Rule 140 of the Rules of Court, punishable by dismissal from service, suspension from office for more than three months but not exceeding six months, or a fine of more than P20,000.00 but not exceeding P40,000.00 under Section 10^[46] of the same Rule 140.

The penalty of fine in the amount of P21,000.00 recommended by the OCA is inadequate and must be increased.

At the time Judge dela Peña rendered the April 24, 2001 Decision, an administrative case was pending against him. *Neri v. dela Peña*^[47] was filed on July 16, 1999,^[48] and when the decision in said case was promulgated in 2005, the Court held that Judge dela Peña's act of basing his decision on a Manifestation which the other party was totally unaware of and awarding exorbitant damages, ran seriously afoul of the precepts of fair play.^[49] There, he was found guilty of rendering an unjust judgment and meted the penalty of six months suspension with a warning that another infraction of the same kind will merit a penalty beyond mere suspension from public service.^[50]

The pendency of said administrative case against him should have put Judge dela Peña on guard and made him more cautious and circumspect in the discharge of duties. His failure to observe a basic rule, such as the order of trial, manifests such gross ignorance of the law that makes him unfit for the position of a judge or betrays a brazen attitude in the discharge of his duties tantamount to grave abuse of judicial authority.

Judge dela Peña's infraction in the present case is akin to rendering an unjust judgment. But the difference between the present case and *Neri* is that in the latter case, Judge dela Peña awarded exorbitant damages. There is no showing or indication in this case that there is any monetary consideration involved. On that premise, despite the warning made by the Court in *Neri*, Judge dela Peña deserves a penalty of fine of P40,000.00, pursuant to the *De Leon* case.

Liability of Judge Vestil

Judge Vestil is guilty of gross ignorance of the law or procedure. His liability springs from his injudicious issuance of the Order dated January 26, 2004, granting Castro-Roa's Motion despite the infirmities in the notice of hearing and proof of service thereof. Like Judge dela Peña, Judge Vestil completely disregarded the basic rules provided for in the Rules of Court.

Castro-Roa as movant did not specify in her Motion the date and time of its hearing; neither was Rocky furnished a copy thereof.[51] While there is an annotation in the Motion that Atty. Maninang was furnished a copy on "12/11/03," it appears on record that he had much earlier filed a motion to withdraw as Rocky's counsel, with the conformity of Rocky, on July 31, 2001.[52] Evidently, Judge Vestil failed to familiarize himself with the records of the Roa case before acting on the Motion.

It is a fundamental rule that every motion must be set for hearing by the movant except for those motions which the court may act upon without prejudicing the rights of the adverse party. The notice of hearing must be addressed to all parties and must specify the time and date of the hearing, with proof of service.[53] Section 4 of Rule 15 provides that every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure their receipt by the other party at least three days before the date of hearing, while Section 6 states that no written motion set for hearing shall be acted upon by the court without proof of service thereof. Indeed, proof of service is mandatory.[54] A motion without notice of hearing is pro forma, or a mere scrap of paper which the court has no reason to consider; while a motion without proof of service is nothing but an empty formality deserving no judicial cognizance, and the rule mandates that the same shall not be acted upon by the court.[55]

Judge Vestil's statement in his Order that Rocky and his counsel were served a copy of the Motion on December 11, 2003, and yet no opposition or comment was filed thereto, does not exculpate Judge Vestil from liability. As found by the OCA, records show that Rocky never received a copy of the Motion, either personally or through counsel.[56]

Judge Vestil, in granting Castro-Roa's Motion, justifies the same by citing, in his Order, Sections 1[57] and 2[58] of Rule 17 of the Rules of Court. Section 1 pertains to dismissals as a matter of right when a notice of dismissal is filed by the plaintiff before an answer or a motion for summary judgment has been served on him by the defendant. The rule clearly does not apply to the present case because not only was an Answer with Counterclaim already filed; a decision was already rendered by the trial court which, however, was reversed by the CA and remanded to the trial court for further proceedings.

On the other hand, Section 2 refers to dismissals that are discretionary on the court when the motion for the dismissal of the action is filed by the plaintiff at any stage of the proceedings other than before service of an answer or a motion for summary judgment.[59] Section 2 provides that if a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion for dismissal, the dismissal shall be limited to the complaint, and the dismissal shall be without prejudice to the right of the defendant to prosecute his counterclaim in a separate action unless, within 15 days from notice of the motion, he manifests his preference to have his counterclaim resolved in the same action. It is imperative therefore that Rocky should have been properly notified of said Motion, so that he may be apprised of his rights under the Rules of Court.

The OCA also found, and Judge Vestil admitted, that the January 26, 2004 Order which set the hearing on the Motion for February 6, 2004 was received by Rocky only on February 12, 2004, or six days after the scheduled hearing.[60] Consequently, Rocky was not able to appear on February 6, 2004. However, Judge Vestil was also not available on said date, as shown by the aberrant Constancia issued by the Branch Clerk of Court, to wit:

Considering that the Presiding Judge is in Manila for an official business with the Chief of the Supreme Court, the Motion To Dismiss filed by Petitioner, thru counsel, is hereby submitted for resolution.

Mandaue City, Philippines.

6 February 2004.[61]

Instead of correcting the improvident issuance by the Clerk of Court, Judge Vestil issued the Order dated March 10, 2004, granting the dismissal of the petition. Judge Vestil, as aptly pointed out by the OCA, should have cancelled the hearing scheduled by him and reset it to another date. The failure of Judge Vestil to do so constitutes a blatant transgression of respondent's fundamental right to due process.[62]

The act of the Branch Clerk of Court, Atty. Bullecer-Cabahug, in issuing a Constancia on February 6, 2004, submitting the Motion to Dismiss Petition for resolution was beyond her duty as Clerk of Court. Such function is judicial in nature and it was erroneous for Judge Vestil to have adopted the same.

Judge Vestil could only state in his defense that despite Rocky's actual receipt of the notice of hearing on February 12, 2004, he has not made any effort to verify the status of the motion or to file a comment thereto; that from the date of actual receipt of the notice of hearing until the issuance of the Order in March, Rocky had a month to act on the same; yet he did not do so, evincing a conscious decision on his part not to question the said motion; and since the motion was unopposed, he (Judge Vestil) had no other choice but to grant the same.[63]

The Court is not swayed. Suffice it to be stated that the requirements in Sections 4 and 6, Rule 15 of the Rules of Court on notice of hearing and proof of service thereof to the adverse party, far from being merely technical and procedural, are necessary elements of procedural due process.[64] Failure to observe such simple rules constitutes gross ignorance of the law or procedure.

Under Sections 8(9) and 11, Rule 140 of the Rules of Court, gross ignorance of the law is a serious offense punishable by dismissal from service, suspension from office for more than three months but not exceeding six months, or a fine of more than P20,000.00 but not exceeding P40,000.00.

This is not Judge Vestil's first administrative infraction. In *PDCP Development Bank v. Vestil*,^[65] Judge Vestil was fined in the amount of P5,000.00 and warned for issuing in grave abuse of discretion a writ of preliminary injunction in interference with the implementation of an order of another court of co-equal jurisdiction. In *Sanchez v. Vestil*,^[66] he was suspended from office for one year without pay and fined P50,000.00 for gross dereliction of duty and grave misconduct for failing to resolve 114 cases within the reglementary period and to report such fact faithfully.

Considering that the act of Judge Vestil in dismissing Castro-Roa's petition upon her motion despite lack of due notice of hearing, is not of the same nature as in *Sanchez*, the Court finds the penalty of fine of P21,000.00, as recommended by the OCA to be reasonable and just.

A verification from the Retirement Division, OCA, reveals that Judge Vestil compulsorily retired on August 8, 2007. Consequently, the fine herein imposed should be deducted from his accrued leave credits.

The Court reiterates once more that although a judge may not always be subjected to disciplinary action for every erroneous order or decision he renders, that relative immunity is not a license to be negligent or abusive and arbitrary in performing his adjudicatory prerogatives. If judges wantonly misuse the powers vested in them by the law, there will be not only confusion in the administration of justice but also oppressive disregard of the basic requirements of due process.[67] Further, it has been held that ignorance of the law is the mainspring of injustice.[68] Members of the bench are therefore reminded of their duty to be faithful to the law and to maintain

professional competence. They are called upon to exhibit more than just cursory acquaintance with statutes and procedural rules, for their inexcusable failure to observe the same will render them administratively liable.[69]

The Court has consistently held that one who accepts the exalted position of a judge owes the public and the court the ability to be proficient in the law and the duty to maintain professional competence at all times. When a judge displays an utter lack of familiarity with the rules, he erodes the confidence of the public in the courts.[70] Judges must be acquainted not only with legal norms and precepts, but with procedural rules as well. They must be conversant with elementary rules of procedure as well as settled authoritative doctrines.[71] They should strive for excellence surpassed only by their passion for truth, to the end that they be the personification of justice and the Rule of Law.[72]

WHEREFORE, Judge Augustine A. Vestil, RTC, Branch 56, Mandaue City, is found GUILTY of gross ignorance of the law and procedure. He is imposed a penalty of FINE in the amount of P21,000.00 to be deducted from his accrued leave credits.

Judge Jesus dela Peña, RTC, Branch 62, Oslob, Cebu, is found GUILTY of gross ignorance of the law and jurisprudence tantamount to grave abuse of authority. He is imposed a penalty of FINE in the amount of P40,000.00 with a stern warning that a repetition of the same or similar acts shall be dealt with more severely.

Atty. Emeline Bullecer-Cabahug, Branch Clerk of Court, Regional Trial Court, Branch 56, Mandaue City, is required to SHOW CAUSE why no disciplinary action should be taken against her for issuing a Constancia on February 6, 2004, motu proprio submitting for resolution the Motion to Dismiss Petition in Civil Case No. MAN-3855, entitled "Mary Ann T. Castro-Roa v. Rocky Rommel D. Roa." Let the administrative matter against Atty. Bullecer-Cabahug be given a separate docket number and raffled for assignment to a Justice of the Court.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Garcia, Nachura, and Reyes, JJ., concur.
Velasco, Jr., J., on leave.

[1] Rollo, p. 15 (TSN, January 29, 2001, p. 4).

[2] Id. at 222-223.

[3] Id. at 14 (TSN, January 29, 2001, p.3).

[4] Id. at 101-102b (TSN, February 26, 2001, pp 1-3); 204-205.

[5] Id. at 99.

[6] Id. at 110-116 (TSN, March 26, 2001).

[7] Id. at 125.

[8] Id. at 127.

[9] Id. at 134.

[10] Id. at 137-139.

[11] Id. at 142, CA G.R. CV No. 72369.

[12] Id. at 145.

[13] Id. at 148.

[14] Id. at 149.

[15] Id. at 153.

[16] Id. at 154.

[17] Id. at 155.

[18] “Mary Ann T. Castro-Roa, Petitioner-Appellee, v. Rocky Rommel T. Roa, Respondent-Appellant, Republic of the Philippines, Oppositor-Appellant.”

[19] Rollo, pp. 145-147.

[20] Id. at 6-8.

[21] Id. at 194.

[22] Id. at 196-201.

[23] Id. at 201-202.

[24] Id. at 216-217.

[25] Id. at 211-213.

[26] Id. at 221.

[27] Id. at 226-228.

[28] Id. at 228-229.

[29] Id. at 234.

[30] De Leon v. Corpuz, A.M. No. RTJ-03-1780, September 14, 2005, 469 SCRA 624, 631; Spouses Monterola v. Caoibes, Jr., 429 Phil. 59, 69 (2002).

[31] Rollo, pp. 99, 110-116, 125.

[32] Id. at 127.

[33] 335 Phil. 664, 679 (1997).

[34] Rollo, p. 199.

[35] Id. at 217.

[36] Id.

[37] Dayawon v. Garfin, 437 Phil. 139, 148 (2002).

[38] Republic of the Philippines v. Iyoy, G.R. No. 152577, September 21, 2005, 470 SCRA 508, 522.

[39] A.M. No. RTJ-06-2008, July 17, 2006, 495 SCRA 188, 191.

[40] Senson v. Pangilinan, 457 Phil. 497 (2003).

[41] Id. at 501.

[42] De Jesus v. Dilag, A.M. No. RTJ-05-1921, September 30, 2005, 471 SCRA 176, 183.

[43] Supra note 30.

[44] Id. at 631-632.

[45] Now Section 8, Rule 140 of the Rules of Court, as amended by SC Administrative Memorandum No. 01-8-10, effective October 1, 2001.

[46] Now Section 11, Rule 140, as amended, id.

[47] A.M. No. RTJ-05-1896, April 29, 2005, 457 SCRA 538.

[48] Id. at 542.

[49] Id. at 547.

[50] Id. at 548.

[51] See rollo, p. 150.

[52] Id. at 137, 150.

[53] Boiser v. Aguirre, Jr., G.R. No. RTJ-04-1886, May 16, 2005, 458 SCRA 430, 438.

[54] Mutilan v. Adiong, 433 Phil. 25, 32 (2002).

[55] Boiser v. Aguirre, supra note 53.

[56] Rollo, p. 225.

[57] SECTION 1. Dismissal upon notice by plaintiff. --- A complaint may be dismissed by the plaintiff by filing a notice of dismissal at any time before service of the answer or a motion for summary judgment. Upon such notice being filed, the court shall issue an order confirming the dismissal. Unless otherwise stated in the notice, the dismissal is without prejudice, except that a notice operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim.

[58] SEC. 2. Dismissal upon motion of plaintiff. --- Except as provided in the preceding section, a complaint shall not be dismissed at the plaintiff's instance save upon approval of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion for dismissal, the dismissal shall be limited to the complaint. The dismissal shall be without prejudice to the right of the defendant to prosecute his counterclaim in a separate action unless within fifteen (15) days from notice of the motion he manifests his preference to have his counterclaim resolved in the same action. Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice. A class suit shall not be dismissed or compromised without the approval of the court.

[59] Limaco v. Shonan Gakuen Children's House Philippines, Inc., G.R. No. 158245, June 30, 2005, 462 SCRA 530, 539.

[60] Rollo, p. 225.

[61] Supra note 16.

[62] Macias v. Macias, 457 Phil. 463, 471 (2003).

[63] Rollo, p. 212.

[64] Macias v. Macias, *supra* note 62.

[65] PDCP Development Bank v. Vestil, 332 Phil. 507, 512 (1996).

[66] 358 Phil. 477, 498 (1998).

[67] *Id.* at 496.

[68] Abbariao v. Beltran, A.M. No. RTJ-04-1839, August 31, 2005, 468 SCRA 419, 426.

[69] *Id.* at 426-427.

[70] Bitoon v. Toledo-Mupas, A.M. No. MTJ-05-1598, August 9, 2005, 466 SCRA 17, 25-26; Lim v. Dumlao, A.M. No. MTJ-04-1556, March 31, 2005, 454 SCRA 196, 202-203; Contreras v. Monserate, 456 Phil. 655, 664 (2003).

[71] Bitoon v. Toledo-Mupas, *id.* at 26; Vicente v. Majaducon, A.M. No. RTJ-02-1698, June 23, 2005, 461 SCRA 12, 22.

[72] Vicente v. Majaducon, *id.*.

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