

ATTY. JULIETA A. OMAÑA, PETITIONER, VS. JUDGE PRUDENCIO A. YULDE, MTC, MULANAY, QUEZON, RESPONDENT.

A.M. No. MTJ-01-1345. August 26, 2002

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Atty. Julieta A. Omaña filed a sworn letter-complaint dated October 4, 1998 charging Judge Prudencio A. Yulde, Municipal Trial Court, Mulanay, Quezon with “Ignorance of the Law, Grave Abuse of Authority, Incompetence, Grave Misconduct and Conduct Unbecoming a Member of the Judiciary” together with her Sworn Affidavit dated December 4, 1998 charging Judge Yulde with partiality in favor of the adverse party and engaging in a drinking spree with lawyers who have pending cases in his sala.

Respondent Judge filed his Comment dated April 15, 1999.

The then Court Administrator Alfredo L. Benipayo submitted to this Court his findings and recommendation dated January 2, 2001, portions of which read as follows:

“Complainant claims that respondent, instead of setting Civil Case No. 141 for hearing within the seventy-two (72) hour effectivity of the TRO for the purpose of determining whether the same should be extended or not, set the hearing beyond said period in violation of the Rules. In his comment, respondent neither denies nor confirms this accusation. Although generally, we can consider respondent’s silence as an admission, complainant however failed to supply the necessary documents in support of the claim. The questioned TRO and order setting the summary hearing beyond the prescribed period were not submitted. Given this failings, respondent has in his favor the presumption of regularity in the performance of official duty.

“On the claim of respondent’s alleged failure to act on the motions filed by complainant, respondent’s explanation thereon is devoid of merit. He cannot justify his inaction on mere allegation that there are still unresolved conflicting claims of facts raised by the parties. It is incumbent upon him to resolve motions within the period of ninety (90) days from submission thereof. ‘Delay in resolving motions and incidents pending before a judge within the reglementary period of 90-days fixed by the constitution and the law is not excusable and constitutes gross inefficiency’ (Guinto[1] vs. Lucero, 261 SCRA 1, August 3, 1996).

“Complainant also assails the validity of respondent’s Order of September 18, 1998 granting the Ex-Parte TRO with twenty (20) day effectivity. Evidently, this is a judicial issue, hence whether said order was validly issued or not must be raised on (sic) the proper judicial forum and not through the instant administrative complaint. As held in *Flores vs. Abesamis*, 275 SCRA 382, 1997, thus:

‘Disciplinary proceedings and criminal actions against judges are not complementary or suppletory of nor a substitute for the judicial remedies which are ‘available. Resort to and exhaustion of judicial remedies, as well as the entry of judgment in the corresponding action or proceedings, are pre-requisites for the taking of other measures against the persons of the judges concerned, whether of civil, administrative or criminal nature. It is only after the available judicial remedies have been exhausted and the appellate tribunals have spoken with finality, that the door to an inquiry into his criminal, civil or administrative liability may be said to have opened or

closed,' (Flores vs. Abesamis, 272 SCRA 382, 1997)

"Relative to Criminal Cases Nos. 1949, 1951, 1956 and 1957, respondent informs that the preliminary investigation thereon had been concluded and the records of the cases remanded to the Office of the Provincial Prosecutor of Quezon on October 2, 1998. This negates the accusation that he has been acting on the same.

"The charge that respondent failed to conduct the requisite preliminary investigation in a criminal case for frustrated murder must fail, not only because of want of evidence but more so because this matter calls for judicial remedy which, as stated above, could not be substituted by the instant administrative case.

"Anent the incident that happened during the scheduled pre-trial conference on November 24, 1998, we agree with respondent that complainant should have notified the court that she was unavailable that morning but intends to appear in the afternoon schedule. As alleged by complainant herself, the leeway of scheduling the pre-trial conference both in the morning and afternoon sessions was intended for the adverse parties who were not present when the same was motu-proprio reset by the court. When she "did not post any objection to the resetting, it is presumed that she agreed to attend the morning and afternoon schedule. Her imprudence of not informing the court of her unavailability that morning should not be blamed on respondent Judge.

"However, respondent could not escape administrative responsibility for his admitted act of having a 'drinking spree' with a group of persons which includes Atty. Abcede who has pending cases with his sala, especially that the same was done during office hours notwithstanding that the same was outside the court. As a judge, he ought to avoid occasions where his partiality may be put to doubt or suspicion. 'One who occupies an exalted position in the administration of justice must pay a high price for the honor bestowed upon him, for his private as well as his official conduct must at all times be free from the appearance of impropriety' (Lugue vs. Kayanan, 29 SCRA 165).

"In sum, respondent judge should be held administratively liable for his failure to resolve motions within the ninety (90) day reglementary period and for his indiscretion of having drinking sessions during office hours with counsel who has pending cases with his sala.

"RECOMMENDATION: respectfully submitted for the consideration of the Honorable Court are our recommendations that:

"1. this case be RE-DOCKETED as an administrative matter; and

"2. Judge Prudencio A. Yulde be required to pay a FINE of ten thousand pesos (P10,000.00) with WARNING that a repetition of the same or similar acts shall be dealt with more severely."[2]

Per our Resolution dated February 12, 2000, parties were required to manifest if they are willing to submit the case for decision based on the pleadings already filed.[3] In compliance therewith, both parties manifested that they agree to submit the case on the basis of the pleadings already filed in Court[4] which we noted in our Resolutions dated June 18, 2001[5] and August 6, 2002[6] .

Based on the pleadings filed by the parties, we uphold the findings and recommendations of the then Court Administrator Benipayo.

As to the charge that respondent scheduled a TRO beyond 72 hours – the same must fail. Indeed, respondent has in his favor the presumption of regularity in the performance of his official duty when herein complainant, who is a lawyer, failed to present the temporary restraining order and the order to support her claim that respondent set the hearing of the application for the TRO beyond the 72-hour effectivity thereof in violation of the Rules of Court. Despite the opportunity given to her by the Court, she opted not to present evidence.

As to the issue on the validity of the Order dated September 11, 1998 granting the issuance of a TRO – the same should have been raised in the proper judicial forum and not through an administrative complaint as done by

herein complainant. As we have ruled in *Tolentino vs. Camano, Jr.*, not all errors of a judge can be the subject of disciplinary action, but only those tainted by fraud, dishonesty, corruption or malice^[7], of which none has been alleged and proven in the present administrative case.

As to the charge of complainant relative to the preliminary investigation mandated in Criminal Cases Nos. 1949, 1951, 1956 and 1957 - there is no evidence to refute the information given by respondent in his Comment that said cases were all remanded to the Office of the Provincial Prosecutor of Quezon on October 2, 1998 per records of the Court.^[8] Despite receipt of a copy of respondent's Comment, complainant not only failed to contradict the same but also she opted to submit the administrative case on the basis of the pleadings and did not present countervailing evidence against the claim of respondent.

As to the charge that respondent failed to conduct preliminary investigation in the criminal case for frustrated murder – complainant likewise did not present evidence in support thereof. Moreover, the matter called for judicial remedy and not the filing of an administrative complaint. Our ruling in the aforementioned *Tolentino* case likewise applies.

As to the charge of complainant that respondent dismissed Civil Case No. 141 for failure of plaintiff and herein complainant counsel to appear for pre-trial conference in the morning of November 24, 1998 although the pre-trial is also scheduled at 2:00 in the afternoon - complainant has no valid reason to complain against respondent as she admittedly failed to appear at the pre-trial conference scheduled in the morning. There is no evidence showing that she had earlier advised the respondent of her unavailability in the morning, or, that she had valid reasons justifying her absence therefrom.

As to the failure of respondent to resolve motions and for his indiscretion of having drinking session during office hours with counsels who have pending cases in his sala – respondent is guilty thereof and should be penalized accordingly.

In her complaint, Atty. Julieta Omaña specifically alleged:

“5. On May 27, 1998 the undersigned filed a Motion to Disqualify Counsel for defendants, Atty. Roberto Avio, on the ground that he being the Provincial Attorney of Quezon Province is disqualified or prohibited to engage in private practice of his profession which is deemed submitted after June 14, 1998. The motion was not acted upon and remained pending until September 14, 1998 when “new counsel entered his appearance in lieu of the former counsel.

“6. On June 9, 1998 Omnibus Motion was filed seeking for the resolution of the application for preliminary injunction. The same was not acted upon, hence, on July 28, 1998, the undersigned filed a Motion to Inhibit the Presiding Judge in handling Civil Case No. 141, on the ground that he is related to defendants counsel, the reason why the case remained unacted upon and this Motion to Inhibit as of this date remained unacted upon.”^[9]

Respondent Judge did not deny the same in his Comment. Respondent explains his inaction, thus:

“x x x. The very question now is who really is in the actual possession of the fishpond in litigation and this is the reason why the under-signed Acting Judge Designate of this Court was reluctant to issue the necessary and proper ruling on the issues raised by both parties.^[10]

x x x if really the judge hearing these cases has not made any ruling on the prayers of Atty. Julieta Omaña, it is all because of the conflicting facts both alleged by the party litigants.”^[11]

which does not justify at all his failure to act on the pending incidents.

Rule 3.05, Canon 3 of the Code of Judicial Conduct provides:

“Rule 3.05. A judge should dispose of the court’s business promptly and decide cases within the required periods.”

We have consistently held that a judge should be imbued with a high sense of duty and responsibility in the discharge of his obligation to promptly administer justice.[12]

In her Sworn Affidavit, complainant states:

“8. That while waiting for the hearing in the afternoon of November 24, 1998, pursuant to the Court Order dated October 21, 1998, an old man came to the Court and relayed to the Court’s Staff, in my presence and in the presence of my client, Mrs. Primitiva San Miguel, plaintiff in Civil Case No. 141 and defendant in Civil case No. 139, that the Presiding Judge cannot anymore come to Court because he had a drinking spree with Atty. Euclides Abcede, counsel of plaintiff in Civil Case No. 139 and allegedly counsel for defendant Jun Sison in Civil Case No. 141, with Atty. Rogelio Cortez of Gumaca, Quezon, defendant in Civil Case No. 141 and with the old man, an informant. He said further the good Judge had already fallen asleep.

“9. The informant further told the Court staff in my presence and in the presence of Mrs. Primitiva San Miguel that they drunk the one litter bottle Fundador brought along with Atty. Abcede and latter he caused to buy one more litter bottle of Fundador.”[13]

While no other evidence was presented by complainant to corroborate or establish the information given by the “old man” in her presence; and, no evidence was likewise presented that the respondent failed to return to his court that afternoon, respondent Judge admitted in his Comment that on said date, he joined a drinking spree with counsels with pending cases before his court, in this wise:

“When your judge is about to leave the Court at almost 12:00 noon of that day, I was invited by a friend (Ex. Mayor Buhay) in their place and when your judge arrived at the house of Ex. Mayor Buhay, the group of Atty. Euclides Abcede; Atty. Rogelio Cortez and Public Prosecutor Ernesto Altamira, Jr. together with other persons, were already there having a drinking spree. This Jun Sison is not there and the person who offered one bottle of Fundador is Mr. Romeo Fuentes, the Supervising Inspector of the Superlines Transportation Company. We never talked of anything there touching the Civil Cases handled by Atty. Omaña and Atty. Abcede.[14]”

Clearly therefrom, respondent Judge failed to conduct himself in the manner prescribed by Rule 2.01, Canon 2 of the Code of Judicial Conduct, to wit:

“Rule 2.01. A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.[15]

Members of the Judiciary are expected to so conduct themselves as to be beyond reproach and suspicion, and be free from any appearance of impropriety in their personal behavior not only in the discharge of their official duties but also in their private capacities.[16]

As soon as respondent Judge had noticed the presence of lawyers who have pending cases in his sala, he should have excused himself from engaging in a drinking spree. A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.[17] Respondent Judge should have avoided fraternization with lawyers in a drinking session or attending the party tendered by the ex-mayor.[18] The conduct of a judge must be free from any whiff of impropriety not only with respect to the performance of his judicial duties but also to his behavior outside his sala and even as a private individual.[19]

In *Masangay vs. Aggabao*[20], we emphasized the relevance of Rule 30 of the Canons of Judicial Ethics, to wit:

“Rule 30. Social Relations. - It is not necessary to the proper performance of judicial duty that judges should

live in retirement or seclusion; it is desirable that, so far as the reasonable attention to the completion of their work will permit, they continue to mingle in social intercourse, and that they should not discontinue their interests in a or appearance at meetings of members of the bar. A judge should, however, in pending or perspective litigation before him be scrupulously careful to avoid such action as may reasonably tend to waken the suspicion that his social or business relations or friendship constitute an element in determining his judicial course.”[21]

We note that respondent had reached the compulsory retirement age of 70 years on October 30, 2001. Cessation from office because of retirement does not warrant the dismissal of the administrative complaint against a judge while he was still in service.[22] Respondent has not received his retirement benefits per his Second Motion for Early Resolution dated February 19, 2002 which was noted in our Resolution dated April 3, 2002[23] . We also note that in Administrative Matter No. 01-3-51-Municipal Trial Court, respondent is being made to explain the unresolved cases pending in the municipal trial courts where he was designated Acting Judge.[24]

WHEREFORE, we find respondent Judge Prudencio A. Yulde guilty of inefficiency and impropriety, in violation of Rule 2.01, Canon 2 and Rule 3.05, Canon 3 of the Code of Judicial Conduct. A fine of P10,000.00 is imposed on him, to be deducted from his retirement benefits, subject to the final resolution of A.M. No. 01-3-51-MTC.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, and Ynares-Santiago, JJ., concur.

[1] Should be “Guintu”.

[2] Rollo, pp. 57-58.

[3] Rollo, p. 59.

[4] Manifestation dated March 9, 2001 of complainant Atty. Julieta A. Omaña, rollo, p. 61; Manifestation dated May 23, 2001 of respondent Judge Prudencio A. Yulde, rollo, p. 63.

[5] Rollo, p. 62.

[6] Rollo, p. 70.

[7] 322 SCRA 559, 572.

[8] Rollo, p. 42; Comment, p. 3.

[9] Rollo, p. 4.

[10] Rollo, p. 41

[11] Rollo, p. 42.

[12] Bunyi vs. Caraos, 339 SCRA 696; Judicial Audit Report, Brs. 21, 35 & 36 and MTCC, Brs. 1 & 2, Santiago City; RTC, Br. 17, Iligan, Isabela; RTC, Br. 31, Cabarroguis Quirino and MTC, Cauayan & Echague, Isabela, 343 SCRA 427; Guintu vs. Lucero, 261 SCRA 1; Ubarra vs. Tecson, 134 SCRA 4.

[13] Rollo, p. 14.

[14] Rollo, p. 43.

[15] Took effect October 20, 1989.

[16] Arcenio vs. Pagorogon, 224 SCRA 247, 255.

[17] Masangkay vs. Aggabao, 238 SCRA 427, 440.

[18] Ibid. p. 440.

[19] Padilla vs. Silerio, 331 SCRA 515, 520.

[20] Masangkay case, supra.

[21] Administrative Order No. 162 issued by then Secretary of Justice Roman Oreta on August 1, 1946.

[22] Cabarloc vs. Cabusora, 348 SCRA 217, 226 2000.

[23] Rollo, p. 75.

[24] Rollo, p. 76.

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