

ARMANDO M. BALANAY, COMPLAINANT, VS. JUDGE JULIANA ADALEM WHITE, REGIONAL TRIAL COURT, BRANCH 5, EASTERN SAMAR, RESPONDENT.

A.M. No. RTJ-16-2443 (Formerly OCA IPI No. 10-3521-RTJ). January 11, 2016

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

This is an administrative complaint for gross ignorance of the law and serious misconduct filed by complainant Armando M. Balanay against respondent Judge Juliana Adalim-White.

Factual Antecedents

On September 20, 2010, complainant filed before the Office of the Court Administrator (OCA) a verified Affidavit-Complaint[1] charging respondent with gross ignorance of the law for allowing Isidoro N. Adamas, Jr. (Adamas) six furloughs despite being charged with murder in Criminal Case No. 10-07, a non-bailable offense. Worse, respondent granted Adama's motions without requiring the prosecution to comment or giving it opportunity to be heard thereon.

Complainant likewise charged respondent with serious misconduct in precipitately dismissing Criminal Case No. 10-07 by declaring that the prosecution had no witnesses to present when the records showed otherwise. According to the complainant, the prosecution witnesses were not able to attend the hearing on July 22, 2010 because they were not duly notified. In fact, he and his son were willing to testify provided they are placed under the witness protection program.

Complainant further claimed that respondent falsified the July 22, 2010 transcript of stenographic notes (TSN) in Criminal Case No. 10-07. He averred that during the hearing held on said date, the prosecution made a reservation to present additional witnesses. Respondent, however, instructed her court stenographer, Prescila V. Mosende (Mosende), to delete from said TSN such reservation and insert therein other statements which were not made during the said hearing. In support of his allegations, complainant submitted a piece of paper[2] containing respondent's handwritten notes that were incorporated in the July 22, 2010 TSN.

Complainant sought the dismissal of respondent from the service with forfeiture of her retirement benefits.

In her Comment,[3] respondent admitted that she instructed Mosende to correct the July 22, 2010 TSN to make it more coherent and accurate. She claimed that the changes were based on her own notes which Mosende adopted after verifying them from the taped recordings of the proceedings. Respondent maintained that the prosecution never made any reservation to present additional witnesses.

Respondent explained that she granted Adamas six furloughs based on the affidavits of desistance subscribed before Prosecutor Raquel G. Kho (Prosecutor Kho) which were already attached to the records of Criminal Case No. 10-07. She also insisted that Adamas is not a flight risk because he voluntarily surrendered himself to the police.

Respondent prayed for the dismissal of the complaint and that complainant be cited for contempt.

On June 15, 2011, this Court referred this administrative matter to the Court of Appeals, Cebu Station for raffle among the Justices therein and for the Justice to whom this case would be assigned to conduct an investigation and submit a report and recommendation.[4]

Report and recommendation of Justice

Maria Elisa Sempio Diy.

On July 31, 2013, Justice Maria Elisa Sempio Diy (Justice Diy) submitted her Final Report and Recommendations.[5] She opined that respondent is guilty of gross ignorance of the law for allowing Adamas several furloughs based on motions that did not contain a notice of hearing, did not comply with the 3-day notice rule, and were not set for hearing. She, however, recommended that respondent be absolved from the charge of serious misconduct in dismissing the case for want of proof of corruption or willful intent to violate the law. She noted that the propriety of such dismissal was elevated to the Court of Appeals via a Petition for Certiorari. With regard the alleged falsification of the TSN, Justice Diy recommended its dismissal for failure to formally offer in evidence the subject July 22, 2010 TSN. Nonetheless, she found respondent guilty of simple misconduct considering that the records amply show that respondent attempted to alter the questioned TSN.

Justice Diy recommended that respondent be fined in the amounts of P30,000.00 for gross ignorance of the law and PI 0,000.00 for simple misconduct.

On November 11, 2013, we referred this administrative matter to the OCA for evaluation, report and recommendation.

OCA's Recommendation.

In its Memorandum[6] dated May 21, 2014, the OCA agreed with Justice Diy that respondent patently and inexcusably transgressed the rules on motions and for which misfeasance she is guilty of gross ignorance of the law. With regard the charge of serious misconduct, the OCA found substantial evidence to support the same. For the OCA -

the copy of the altered TSN and the scratch paper containing the statements to be inserted in the TSN that were handwritten by respondent Judge herself attached to the complaint-affidavit, the testimony of Mosende that it was [the] respondent Judge who ordered the insertion of the statements, the admission of [the] respondent Judge x x x that she ordered the insertion of the said statements, and the transcription of the stenographers of the Court of Appeals of the hearing covered by the altered TSN[7]

sufficiently established that respondent caused the unauthorized alteration of the TSN which amounts to serious misconduct.

Moreover, the OCA noted that this is not the first time that respondent has been found administratively liable, viz.:

In A.M. No. RTJ-08-2147 [Formerly AM OCA IPI No. 05-2365-RTJ] (Mayor Diego T. Lim vs. Judge Juliana A. White, Regional Trial Court, Br. 5, Oras, Eastern Samar), respondent judge was charged with impropriety and found guilty of conduct unbecoming under Section 1, Rule 140 for which she was reprimanded and warned. In A.M. No. RTJ-14-2474 [Formerly OCA IPI No. 11-3777-RTJ] (Vilma Sulse, et al vs. Judge Juliana Adalim White, Regional Trial Court, Br. 5, Oras, Eastern Samar), respondent Judge was again found guilty of impropriety and fined ten thousand pesos (P10,000.00) and sternly warned.[8]

The OCA, thus, recommended that respondent be found guilty of gross ignorance of the law and gross

misconduct, and that she be suspended from office without salary and other benefits for six months.[9]

Issue

Is respondent guilty of gross ignorance of the law and serious misconduct?

Our Ruling

We adopt the findings and recommendations of the OCA, except as to penalty.

Respondent is guilty of gross
ignorance of the law.

Respondent admits allowing Adamas six consecutive furloughs to attend regular sessions of the Sangguniang Bayan of the Municipality of Oras, Eastern Samar based on very urgent motions that did not contain notice of hearing and were not heard in open court. Thus:

ATTY. ARELLANO:

Now, you said that furlough was granted by [you] on June 18, 2010, right?

JUDGE WHITE:

Yes, sir.

ATTY. ARELLANO:

Did you hear that motion first before you granted it?

JUDGE WHITE:

No, sir.

Q :

Why not?

A :

I did not hear it anymore because there is already an affidavit of desistance coming from the Office of the Provincial Prosecutor and so I feel that the evidence is not strong anymore and I examined the circumstances of the accused, Mr. Isidoro Adamas. The offense was committed on May 28, he surrendered to the authorities on June 1 and the information was filed. To me he was not a flight risk.[10]

ATTY. ARELLANO:

When you read the first motion asking for a furlough on June 18, 2010, you will agree with me that it no longer occurred to your mind to ask the prosecution, specifically Public Prosecutor Raquel G. Kho, to comment or opposed tet [sic] said motion. You did not ask Public Prosecutor Kho to comment, is that right?

A :

I did not ask him to comment, but we met [at] the lobby and. we talked about [those] furloughs and the affidavit of desistance.

Q :

Madame Witness, you are a Regional Trial Court Judge x x x Are you saying that a casual meeting outside the courtroom at the lobby will suffice? Is that what you mean?

A :

No, but the affidavit of desistance was subscribed by Prosecutor Kho.

Q :

I am just asking. Is that what you mean that it is sufficient already? Yes or no?

A :

Yes, I supposed so because I did that.

x x x x

Q :

So that is the practice of others in your Court to notify the other parties of the pending motion even outside [your] courtroom even if you met the other party casually in the lobby of the court? (sic)

A :

Usually, we notify them formally but it doesn't prevent me especially lawyers, fiscals to talk with them.

x x x x

ATTY. ARELLANO:

Now, Madame Witness, being a judge, are you aware of the provisions of the Rules of Court that a notice which does not contain proof of service to other parties and in case if it is litigious does not contain (sic) notice of hearing is a mere scrap of paper?

A :

That is correct[,] sir.

x x x x

Q

:x x x Would that be enough for you to disregard the Rules of Court that a motion which does not contain service to the other party or a notice of hearing specifically in this particular criminal case wherein the accused was charge (sic) of (sic) a capital offense of murder. Was the existence of the affidavit of desistance enough for you to disregard the application of the Rules of Court?

A :

No, they were only asking for a furlough and I felt that Isidoro Adamas must attend that session because he is a public official.

Q :

I understand that he needed to attend. Now when you felt that he needed to attend the session, was that also enough for you to disregard the rules that a motion must contain proof of service to the other party and a notice, of hearing? Was that enough for you to disregard those rules?

A :

Yes, I considered the fact that Mr. Isidoro Adamas is a public official. So he has to work.[11]

x x x x

Q :

Madam Witness, you will agree with me that this motion was filed on June 18, 2010 at 8:50 am., as shown by the rubber stamp marking.

A :

Yes, sir.

Q :

And considering that the movant accused wanted to attend the session of the Sangguniang Bayan of Oras, Eastern Samar on June 18, 2010 also on that very same day at 9 o'clock in the morning you immediately granted this motion in your Order dated June 18, 2010 given in chambers before 9 a.m.?

A :

That is correct. There is no time indicated here. So, I don't know. I cannot recall now, but that is the Order.[12]

It is basic, however, that bail hearing is necessary even if the prosecution does not interpose any objection or leaves the application for bail to the sound discretion of the court.[13] Thus, in *Villanueva v. Judge Buaya*,[14] therein respondent judge was held administratively liable for gross ignorance of the law for granting an *ex parte* motion for bail without conducting a hearing. Stressing the necessity of bail hearing, this Court pronounced that:

The Court has always stressed the indispensable nature of a bail hearing in petitions for bail. Where bail is a matter of discretion, the grant or the denial of bail hinges on the issue of whether or not the evidence on the guilt of the accused is strong and the determination of whether or not the evidence is strong is a matter of judicial discretion which remains with the judge. In order for the judge to properly exercise this discretion, he must first conduct a hearing to determine whether the evidence of guilt is strong. This discretion lies not in the determination of whether or not a hearing should be held, but in the appreciation and evaluation of the weight of the prosecution's evidence of guilt against the accused.

In any event, whether bail is a matter of right or discretion, a hearing for a petition for bail is required in order for the court to consider the guidelines set forth in Section 9, Rule 114 of the Rules of Court in fixing the amount of bail. This Court has repeatedly held in past cases that even if the prosecution fails to adduce evidence in opposition to an application for bail of an accused, the court may still require the prosecution to answer questions in order to ascertain, not only the strength of the State's evidence, but also the adequacy of the amount of bail.[15]

A fortiori, respondent is administratively liable for gross ignorance of the law for granting *ex parte* motions to allow Adama's temporary liberty without setting the same for hearing. If hearing is indispensable in motions for bail, more so in this case where the motions for the temporary liberty of Adamas were filed without offering any bail or without any prayer that he be released on recognizance. Besides, the reasons relied upon in said motions - to allow Adamas to attend the Sangguniang Bayan sessions - had already been rebuked by this Court. In *People v. Hon. Maceda*[16] reiterated in *Trillanes IV v. Judge Pimentel Sr.*,[17] this Court held that "all prisoners whether under preventive detention or serving final sentence cannot practice their profession nor engage in any business or occupation or hold office, elective or appointive, while in detention."

That the prosecution has already filed affidavits of desistance[18] and that, to the opinion of respondent, the accused is not a flight risk, do not justify non-compliance with procedural rules. It is basic that bail cannot be allowed without prior hearing. It is also basic that litigious motions that do not contain a notice of hearing are nothing but a useless piece of paper which the court should not act upon. These rules are so elementary that not to know them constitutes gross ignorance of the law. In *Atty. Adalim-White v. Judge Bugtas*[19] (where incidentally

herein respondent was the complainant), we elucidated on gross ignorance of the law as follows:

We have held time and again that a judge is called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules. It is imperative that he be conversant with basic legal principles and be aware of well-settled authoritative doctrines. He should strive for excellence exceeded only by his passion for truth, to the end that he be the personification of justice and the rule of law. When the law is sufficiently basic, a judge owes it to his office to simply apply it; anything less than that would be gross ignorance of the law. x x x

Respondent is guilty of gross misconduct

We also agree with the OCA that there is substantial proof to hold respondent liable for gross misconduct even if the altered TSN was not formally offered in evidence. Respondent admitted in her Comment[20] dated November 24, 2010 and Memorandum[21] dated May 1, 2013 that she instructed Mosende to make some changes in the July 22, 2010 TSN, viz.:

When the draft [TSN] of the July 22, 2010 proceedings was submitted for correction to respondent by the court stenographer, Ms. Prescila Mosende, the missing or omitted statements were brought to her attention. To rectify the errors in the draft, respondent showed her notes to Ms. Mosende and later transcribed it for the latter on another sheet of paper. Ms. Mosende verified the corrections by referring it to her tape recordings.[22]

The sheet of paper[23] mentioned on respondent's Comment and Memorandum, on the other hand, contains her handwritten notes that read as follows:

Court

-

What about this secret witness [whose identity] you do not want to make known x x x. Has an application for witness protection program been applied with the DOJ?

Fiscal Kho

-

I believe not yet your honor. I myself [do] not know his identity. Last night your honor Fiscal Umil informed me of his plan that a certain witness will be enrolled in the Witness Protection Program.

Court

-

Why is there no formal notice to the Court?

Fiscal Kho

-

I just learned this last night during the wake.

Upon the instructions of respondent, these notes were, in turn, incorporated in the July 22, 2010 TSN and certified as true and correct by Mosende.

To determine the accuracy and correctness of said TSN, the investigating justice directed two stenographic reporters[24] of Court of Appeals, Cebu Station to make their own transcription of the proceedings in Criminal Case No. 10-07 held on July 22, 2010 based on audio records. From their transcriptions, the above-quoted exchanges between respondent and Prosecutor Kho do not exist. Indubitably, respondent tried to make it appear

that she and Prosecutor Kho made the above-quoted statements during the proceedings held on July 22, 2010 when in truth no such statements were actually made.

A TSN "is supposed to be a faithful and exact recording of all matters that transpired during a court proceeding." [25] Respondent's act of directing her subordinate to alter the TSN by incorporating therein statements pertaining to substantial matters that were not actually made during the hearing constitutes gross misconduct which warrants administrative sanction.

Proper Penalty

The OCA recommended the penalty of suspension of six months without salary and other benefits against respondent. In *Mayor him v. Judge White*, [26] however, we reprimanded respondent for unbecoming conduct and warned her that the commission of similar acts of impropriety will be dealt with more severely. Then in *Sulse v. Judge White* [21] we again found respondent guilty of impropriety and conduct unbecoming of a judge and imposed a penalty of fine of P10,000.00 with stern warning that a repetition of the same offense shall be dealt with more severely. Since respondent had previously been adjudged guilty and penalized for various infractions, with repeated warnings of more severe sanction in case of repetition, we deem it appropriate to increase the recommended penalty of six months suspension to one year without salary and other benefits.

WHEREFORE, the Court finds Judge Juliana Adalim-White GUILTY of GROSS IGNORANCE OF THE LAW and GROSS MISCONDUCT and SUSPENDS her from office for one (1) year without salary and other benefits, and STERNLY WARNS her that this Court will not hesitate to impose the supreme penalty of dismissal from the service, with all its accessory penalties, in case she commits the same or other similar acts.

SO ORDERED.

Carpio, (Chairperson), Brion, Mendoza, and Leonen, JJ., concur.

[1] Rollo, pp. 1-6.

[2] Id. at 35.

[3] Id. at 43-48.

[4] Id. at 77.

[5] Id. at 824-865.

[6] Id. at 868-878.

[7] Id. at 876.

[8] Id. at 878.

[9] Id.

[10] Final Report and Recommendations, pp. 15-16; rollo, pp. 838-839.

[11] Id. at 18-22; id. at 841-845.

[12] Id. at 26; id. at 849.

[13] *Basco v. Judge Rapatalo*, 336 Phil. 214,220-221 (1997).

[14] 650 Phil. 9 (2010).

[15] Id. at 20-21.

[16] 380 Phil. 1,5(2000).

[17] 578 Phil. 1002, 1015 (2008).

[18] Rollo, pp. 380-383.

[19] 511 Phil. 615, 627 (2005).

[20] Rollo, pp. 43-48.

[21] Id. at 509-520.

[22] Id. at 44.

[23] Id. at 35

[24] Rossie Alesna-Maceda and Cresilda Dumaran.

[25] Judge Almario v. Atty. Resus, 376 Phil. 857, 867 (1999).

[26] A.M. No. RTJ-08-2147 [Formerly A.M. OCA IPI No. 05-2365-RTJ], November 10, 2008. (Minute Resolution)

[27] A.M. No. RTJ-14-2374 [Formerly OCA IPI No. 11-3777-RTJ], February 3, 2014. (Minute Resolution)

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