OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS. JUDGE ALBERTO L. LERMA, RESPONDENT.

A.M. No. RTJ-07-2076. October 12, 2010

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PER CURIAM:

Five (5) administrative cases were filed with the Office of the Court Administrator (OCA) against Judge Alberto L. Lerma (respondent judge) of the Regional Trial Court (RTC), Branch 256, Muntinlupa City, for violating Supreme Court rules, directives, and circulars, for making untruthful statements in his certificates of service, for gross ignorance of the law and/or gross negligence, for delay in rendering an order, for abusing judicial authority and discretion, and for serious irregularity.

In a memorandum[1] dated September 24, 2007, embodying the report and recommendation of the OCA, then Court Administrator Christopher O. Lock (Court Administrator Lock) referred to then Chief Justice Reynato S. Puno (Chief Justice Puno) the five administrative cases filed against respondent judge, to wit: a) Administrative Matter No. 98-6-179-RTC (Re: Request for transfer of arraignment/trial of Criminal Case No. 3639-R); b) OCA IPI No. 07-2644-RTJ ([Ret.] General Meliton D. Goyena v. Judge Alberto L. Lerma); c) OCA IPI No. 07-2643-RTJ (Jose Mari L. Duarte v. Judge Alberto L. Lerma); d) OCA IPI No. 07-2639-RTJ (Atty. Lourdes A. Ona v. Judge Alberto L. Lerma); and e) OCA IPI No. 07-2654-RTJ (Office of the Court Administrator v. Judge Alberto L. Lerma).

Per resolution[2] of the Supreme Court En Banc dated September 25, 2007, the foregoing cases were respectively redocketed as regular administrative cases, as follows: A.M. Nos. RTJ-07-2076, RTJ-07-2079, RTJ-07-2078, RTJ-07-2077, and RTJ-07-2080.

Thereafter, the cases were referred to an Investigating Justice[3] of the Court of Appeals (CA) for investigation and recommendation.

We shall discuss the cases individually, taking into account their peculiar factual surroundings and the findings and recommendations of the Investigating Justice.

a.) A.M. No. RTJ-07-2076

On November 27, 1995, Ruperto Pizarro y Bruno (accused) was charged with Violation of Presidential Decree No. 1866 in an information filed with the RTC, Branch 53, Rosales, Pangasinan and docketed as Criminal Case No. 3639-R.[4] Since accused was already detained at the Quezon City Jail due to the pendency of another criminal case (Criminal Case No. Q-95-64130-31) filed against him. The court ordered that all notices of hearings and proceedings in Criminal Case No. 3639-R be forwarded to the Jail Warden of the Quezon City Jail.[5] Subsequently, in a letter dated March 25, 1998,[6] Officer-in-Charge/City Warden Arnold Buenacosa of the Quezon City Jail informed Judge Teodorico Alfonzo B. Bauzon (Judge Bauzon), RTC of Rosales, Pangasinan, that accused was transferred to the Bureau of Corrections in Muntinlupa City on March 21, 1998 in compliance with the commitment order and decision in Criminal Case No. Q-95-64130-31 of the RTC, Branch 82, Quezon City.

The Supreme Court, in a resolution[7] dated June 30, 1998, directed (1) the Clerk of Court of the RTC, Branch 53, Rosales, Pangasinan, to forward the records of Criminal Case No. 3639-R to the Executive Judge, RTC, Muntinlupa City, for appropriate action; (2) the Executive Judge, RTC, Muntinlupa City, to raffle the case among the judges to arraign the accused and consequently take his testimony; and (3) the Clerk of Court, RTC, Muntinlupa City, to return the records to the RTC, Branch 53, Rosales, Pangasinan, for the continuation of the proceedings.

Pursuant to the Supreme Court resolution, Criminal Case No. 3639-R[8] was raffled to RTC, Branch 256, Muntinlupa City, presided by respondent judge. Accused was arraigned on September 29, 1998. Thereafter, respondent judge proceeded to receive the evidence for the prosecution. On February 7, 2003, the prosecution formally offered its exhibits, but the firearm subject of the information was not included in the formal offer. On June 27, 2005, the accused, through Atty. Abelardo D. Tomas of the Public Attorney's Office (PAO), filed a motion for leave of court to file demurrer to prosecution's evidence.[9] Respondent judge granted the said motion on July 26, 2005.[10] On November 8, 2005, Atty. Rodney Magbanua of the PAO filed a demurrer to prosecution's evidence,[11] contending that, without the subject firearm, the prosecution failed to prove an essential element of the offense. On February 28, 2007, respondent judge issued an order, granting the demurrer to prosecution's evidence and dismissing the case for insufficiency of evidence.[12]

In a memorandum[13] dated September 24, 2007, the OCA charged respondent judge with exceeding his authority under the Supreme Court resolution dated June 30, 1998 in A.M. No. 98-6-179-RTC. According to the OCA, the authority given to respondent judge under the resolution was clearly limited to the arraignment of the accused and the taking of his testimony; it did not authorize respondent judge to decide the merits of the case. The OCA contended that the act of respondent judge constituted violation of a Supreme Court directive, a less serious offense, under Section 9(4), Rule 140, Revised Rules of Court.

In his comment dated November 16, 2007, respondent judge asserted that there was neither a conscious nor a deliberate intent on his part to disobey any directive of the Supreme Court when he granted the demurrer to evidence filed by the accused in Criminal Case No. 3639-R. He claimed that, through inadvertence, he was not able to recall the limits of the referral made to him, and stressed that he ruled on the merits of the case in a way not tainted with fraud, dishonesty, or corruption. He emphasized that he acted on the demurrer to evidence because of the inadequacy of the evidence for the prosecution and because of the failure of the latter to object to the demurrer. He maintained that it would have been wrong for him to add to the penalty already being served by the accused when there was no evidence to warrant the detention of the latter for the unproved offense.[14]

Under Section 9(4), Rule 140, Revised Rules of Court, failure to obey the Court's resolution is a less serious offense that carries a penalty of suspension from office without salary and other benefits for not less than one (1) month or more than three (3) months, or a fine of more than P10,000.00 but not exceeding P20,000.00.

The Investigating Justice recommends that a fine of P15,000.00 be imposed upon respondent, based on the following findings:

In criminal actions, it is a fundamental rule that venue is jurisdictional. The place where the crime was committed determines not only the venue of the action but is an essential element of jurisdiction. Thus, a court cannot exercise jurisdiction over a person charged with an offense committed outside the limited territory. Furthermore, the jurisdiction of a court over a criminal case is determined by the allegations in the complaint or information.[15]

The demurrer to evidence filed by the accused cited the accusatory portion of the information which charged him with unlawful possession of a caliber .30 U.S. carbine with two magazines and twenty-five (25) rounds of

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ammunition. The information clearly stated that the accused possessed the carbine, magazines, and ammunitions in Barangay Cabalaongan Sur, Municipality of Rosales, Province of Pangasinan. Had respondent judge exercised a moderate degree of caution before resolving the demurrer to evidence, a mere perusal of the records would have reminded him that his court was only authorized to arraign the accused, to receive the evidence in the said case, and to return the records of the case to the RTC, Branch 53, Rosales, Pangasinan for continuation of the proceedings. In every case, a judge shall endeavor diligently to ascertain the facts.[16]

Respondent judge was found wanting in the diligence required of him. We agree with the Investigating Justice in finding respondent judge guilty of violating a Supreme Court directive, and impose upon him a fine of P15,000.00.

b.) A.M. No. RTJ-07-2080

In a letter[17] dated August 28, 2007, Godofredo R. Galindez, Jr., (Godofredo), president of the Alabang Country Club, Inc. (Alabang Country Club), in response to the letter dated August 21, 2007 of Court Administrator Lock, stated that respondent judge played golf at the Alabang Country Club on the following dates and tee-off time:

Date

Tee off-time

April 8, 2000

12:00 P.M.

July 21, 2000

1:08 P.M.

August 4, 2000

1:20 P.M.

November 28, 2000

10:00 A.M.

May 17, 2001

3:05 P.M.

September 29, 2001

12:56 P.M.

March 5, 2002

1:00 P.M.

June 19, 2002

7:12 A.M.

February 12, 2004

1:35 P.M.

February 28, 2005

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10:41 A.M.

With the exception of May 17, 2001, during which respondent judge allegedly played nine (9) holes of golf, Godofredo stated in his letter that the former played eighteen (18) holes of golf on all the aforestated dates.

In another letter[18] dated September 3, 2007, Hirofumi Hotta (Hirofumi), operations manager of TAT Filipinas Golf Club (Tat Filipinas), in answer to an inquiry made by Court Administrator Lock, stated that respondent judge visited the said golf club and appeared to have played golf there on the following dates - all Thursdays - and time:

Date

Time

April 14, 2005

1:30 P.M.

April 28, 2005

1:30 P.M.

August 18, 2005

1:30 P.M.

August 25, 2005

1:30 P.M.

November 17, 2005

1:30 P.M.

November 24, 2005

1:30 P.M.

December 15, 2005

1:30 P.M.

January 26, 2006

1:30 P.M.

February 9, 2006

1:30 P.M.

March 2, 2006

1:30 P.M.

March 23, 2006

1:30 P.M.

April 6, 2006

1:30 P.M.

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April 27, 2006

1:30 P.M.

June 15, 2006

1:30 P.M.

December 14, 2006

1:30 P.M.

According to the OCA, its records in the Office of the Administrative Services show that respondent judge did not declare his absences on July 21, 2000, August 4, 2000, March 5, 2002, February 12, 2004, and February 28, 2005, during which he reportedly played golf at the Alabang Country Club. Further, in a certification[19] dated September 5, 2007, Hermogena F. Bayani (Hermogena), Supreme Court Chief Judicial Staff Officer, Leave Division, OCA, stated that respondent judge did not file any application for a leave of absence on all the dates mentioned by Hirofumi in his letter dated September 3, 2007. These constituted violations of Supreme Court Memorandum Order dated November 19, 1973, Administrative Circular No. 3-99 dated January 15, 1999, and Administrative Circular No. 5 dated October 4, 1988.[20]

The OCA asserted that on the days that respondent judge played golf, he was lost to the judiciary for half the working/session hours on those days, positing that this is not merely truancy but also dishonesty and falsification of certificates of service.

Respondent judge, in his comment, countered that contrary to the allegations of the OCA, he only played golf thrice in 2000, once in 2001, twice in 2002, six (6) times in 2005, and five (5) times in 2006 - a total of eighteen (18) times in six years, or at the average of three (3) times a year. He argued that his playing golf 18 times in six years, or thrice a year, could not be reasonably characterized as habitual to the extent that it jeopardized the discharge of his functions as a judge. He alleged that since he shared his courtroom with the other judges in Muntinlupa, he only played golf on days when no other place was available for him to carry out his official functions. Likewise, he explained that, in 1996, his physician advised him to exercise more vigorously after he was diagnosed with diabetes and hypertension. Respondent judge also stressed that he had never missed a day in hearing cases pending in his sala.[21]

In the hearing conducted by the Investigating Justice on December 4, 2007, the OCA presented Godofredo, Hirofumi, and Sheila Aquino as witnesses.

Godofredo testified that the dates and time when respondent judge played golf at the Alabang Country Club, as mentioned in his letter, are based on the logbook entries made by the starter in the country club. A starter, explained Godofredo, is a person who records in the logbook the names of the individuals who play in the golf course. The starter may be the player himself or a member who brings in guests to play golf.

On cross-examination, Godofredo admitted that he is not the custodian of the logbook; that he is neither the starter nor the person who wrote the entries in the logbook; and that he does not recognize in whose handwriting the entries were made.

Hirofumi, the operations manager of TAT Filipinas, testified that Aquino, the front desk receptionist in the golf club, made the listing of the respective dates and time when respondent judge played at TAT Filipinas based on the data stored in their office computer.

Aquino, who had been employed by the company for fifteen (15) years, and had been working as its front desk

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receptionist for six (6) years, testified that she saw respondent judge sign the registered member forms at the golf club prior to playing golf.

The Investigating Justice found as insufficient the evidence that the OCA presented to show that respondent judge played golf at the Alabang Country Club on the dates alleged, but found substantial evidence that respondent judge played golf at TAT Filipinas on the dates and time indicated in Hirofumi's letter dated September 3, 2007.

The testimony of Aquino, along with the certification issued by Hermogena, that respondent judge did not file any leave of absence on the dates indicated in Hirofumi's letter, indubitably established that respondent judge violated Supreme Court Memorandum Order dated November 19, 1973, Administrative Circular No. 3-99 dated January 15, 1999, and Administrative Circular No. 5 dated October 4, 1988.

Supreme Court Memorandum Order dated November 19, 1973 provides for the observance by judges, among other officials and employees in the judiciary, of a five-day forty-hour week schedule which shall be from 8:00 a.m. to 12:00 p.m. and from 12:30 p.m. to 4:30 p.m. from Mondays to Fridays.

Violation of Supreme Court rules, directives, and circulars, and making untruthful statements in the certificate of service are considered less serious charges under Section 9, Rule 140 of the Rules of Court. Under Section 11(B) of Rule 140, these acts may be punished by suspension from office without salary and other benefits for not less than one (1) month or more than three (3) months, or a fine of more than P10,000.00 but not exceeding P20,000.00.

On the basis of the foregoing findings, we adopt the recommendation of the Investigating Justice that, in this administrative case, a fine of P15,000.00 be imposed upon respondent judge.

c.) A.M. No. RTJ-07-2077

On January 24, 1995, the RTC, Branch 142, Makati City, rendered a decision in Civil Case No. 90-659, entitled Alexander Van Twest v. Gloria A. Anacleto and/or International Corporate Bank, ordering defendant bank (Interbank) or its successors-in-interest to release in favor of plaintiff Alexander Van Twest (Van Twest) the entire proceeds of Interbank Foreign Currency Trust Deposit (FCTD) No. 39156 in the amount of Deutsch Mark (DM) 260,000.00, including accrued interest and other earnings. The decision also directed defendant Gloria Anacleto to return to plaintiff the sum of DM 9,777.37 with interest thereon. The court ordered the defendants, jointly and severally, to pay plaintiff P500,000.00 as moral damages, P250,000.00 as exemplary damages, P200,000.00 as attorney's fees, and the costs of suit.[22] However, even before the decision was rendered, Van Twest had disappeared and was believed to have been kidnapped and killed.[23]

Subsequently, Atty. Ernesto V. Perez (Atty. Perez), representing Van Twest, filed a Motion for Execution of Decision. In the motion, Atty. Perez informed the RTC of Makati City that, on October 30, 2006, the RTC, Branch 256, Muntinlupa City, with respondent judge presiding, granted the petition to appoint the former as administrator of the properties or estate of absentee Van Twest in Special Proceeding No. 97-045, entitled In the Matter of the Petition to Appoint an Administrator for the Estate of Absentee Alexander Van Twest a.k.a. Eugene Alexander Van West.[24] On January 27, 2007, the RTC Branch 142, Makati City, granted the motion for execution.[25]

Union Bank of the Philippines (Union Bank) filed a Manifestation and Urgent Ex-Parte Motion dated May 23, 2007 in Special Proceeding No. 97-045, praying that the exercise by Atty. Perez of powers as administrator of absentee Van Twest be held in abeyance until the said manifestation and motion is heard. Because respondent judge was on official leave at the time of the filing of the Manifestation and Urgent Ex-Parte Motion, Judge Philip A. Aguinaldo, pairing judge of RTC Branch 256, Muntinlupa City, acted on the same, and, in an order dated May

28, 2007, granted Union Bank's urgent ex-parte motion.

Union Bank thereafter filed an Urgent Manifestation and Motion to Recall Writ of Execution/Garnishment in Civil Case No. 90-659, citing, in support thereof, the order dated May 28, 2007 issued by Judge Aguinaldo in Special Proceeding No. 97-045.

On June 1, 2007, Atty. Perez filed with the Muntinlupa RTC an Omnibus Motion: 1) To Lift or Set Aside Pairing Judge's Order of May 28, 2007 for having been issued without jurisdiction, grave abuse of discretion and/or violation of due process of law; 2) To Cite Union Bank of the Philippines' counsel for Indirect Contempt.

At the hearing of the omnibus motion on June 6, 2007, respondent judge ordered Atty. Lourdes A. Ona (Atty. Ona), counsel for Union Bank, to file her Opposition and/or Comment to the said Motion within 10 days. Atty. Perez was given the same period from receipt of the Opposition and/or Comment to file his Reply thereto, if necessary, and thereafter, the matter would be deemed submitted for resolution.

On the same day, however, respondent judge issued another order bearing the same date, ruling that the bank had not shown any legal basis to set aside the court's decision of October 30, 2006, or to suspend the Letters of Administration issued to Atty. Perez pursuant thereto. The order then concluded that Atty. Perez may exercise all the powers granted to him as Administrator of the absentee Van Twest until further orders of the court.

In a letter dated July 23, 2007, addressed to the OCA, complainant alleged that respondent judge's issuance of the second order dated June 6, 2007 was irregular, in light of the following: 1) At the hearing held on June 6, 2007, the omnibus motion filed by Atty. Perez was deemed submitted for resolution only after the complainant shall have filed her comment/opposition thereto or until the 10-day period shall have expired; 2) The issuance of the second order dated June 6, 2007 was secretly railroaded to give Atty. Perez a ground to oppose Union Bank's Urgent Manifestation and Motion to Recall Writ of Execution/Garnishment filed with the RTC, Branch 142, Makati City, in time for its hearing originally set on June 8, 2007; 3) Even the staff of respondent judge did not become aware of the second June 6, 2007 order until much later, since respondent judge never furnished complainant with a copy thereof until the latter made inquiries regarding the same; and 4) The contents of the second order dated June 6, 2007 contradicted the first order and rendered the pending incident moot and academic.

Respondent judge, in his comment, denied the charge and argued that the same should be dismissed. The complainant, according to respondent judge, should instead be meted disciplinary penalties as a member of the bar.

Notwithstanding the recommendation of the Investigating Justice, the Court finds that the actions of respondent judge constitute gross negligence and/or gross ignorance of the law.

We have repeatedly held that to warrant a finding of gross ignorance of the law, it must be shown that the error is "so gross and patent as to produce an inference of bad faith."[26] Gross negligence refers to negligence characterized by want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable.[27]

In the instant case, the issuance by respondent of divergent orders raises serious questions of impropriety that taint respondent judge's credibility, probity, and integrity. Coupled with the clandestine issuance of the second order -- where the Union Bank counsel and even the judge's own staff were left completely in the dark -- the action of

respondent judge gives rise to an inference of bad faith. Indeed, we have ample reason to believe -- as Atty. Ona posits -- that the secretly-issued second order was really intended to give Atty. Perez the ammunition to oppose Union Bank's Urgent Manifestation and Motion to Recall Writ of Execution/Garnishment which was to be heard by the RTC of Makati City. Under the circumstances, the breach committed by respondent can be characterized as flagrant and palpable.

This action of respondent judge violates Section 8 of Rule 140, and carries the penalty of dismissal from the service or suspension from office for more than three (3) months but not exceeding six (6) months, or a fine of P20,000.00 but not exceeding P40,000.00.

For this violation, we impose upon respondent judge the penalty of dismissal from the service, with forfeiture of all benefits, except earned leave credits, and perpetual disqualification from reemployment in the government service, including government-owned and controlled corporations.

d) A.M. No. RTJ-07-2078

Jose Mari L. Duarte (complainant) is one of the defendants in Civil Case No. 2003-433, entitled "Eugene T. Mateo v. The Board of Governors of Ayala Alabang Village Association: Paolo V. Castano, Constantino A. Marcaida, Ruben P. Baes, Eric Yutuc, Roberto Santiago, Beatriz "Bettina" H. Pou, Edilberto Uichanco, Salvador S. Arceo, Jr., Benjamin Narciso, Guy L. Romualdez, and Jose Mari L. Duarte," for Declaration of the General Membership Meeting and Election of the Ayala Alabang Village Association (AAVA) as void ab initio, with prayer for the Issuance of a Preliminary Injunction and/or a Temporary Restraining Order (TRO) and Status Quo Order. Eugene T. Mateo filed the case on July 29, 2003 with the RTC, Muntinlupa City, and it was eventually raffled to the RTC, Branch 256, Muntinlupa City, presided over by respondent judge.[28]

On August 15, 2003, defendants Salvador S. Arceo, Jr. (Arceo) and Benjamin Narciso (Narciso) filed their answer with affirmative defenses and counterclaims, while all the other defendants filed a motion to dismiss. In moving for the dismissal of the case, all defendants invoked the trial court's lack of jurisdiction over the case and plaintiff's lack of cause of action. On September 2, 2003, plaintiff filed his opposition to motion to dismiss with motion to declare defendants in default. In an order dated September 12, 2003, respondent judge denied defendants' motion to dismiss and plaintiff's motion to declare defendants in default, and set for hearing plaintiff's application for the issuance of a TRO. Respondent judge eventually denied the prayer of plaintiff for the issuance of a TRO on September 26, 2003.

On November 25, 2003, respondent judge rendered a decision in favor of plaintiff, declaring the AAVA's general membership meeting held on June 15, 2003 void ab initio, and ordering that the status quo of the board's composition prior to the proceedings of June 15, 2003 be maintained. The respondent judge also enjoined defendants Arceo, Narciso, Guy L. Romualdez (Romualdez) and Jose Mari L. Duarte from further exercising the functions of the office they respectively hold. He directed the holding of another election of the AAVA board, and ordered the defendants to pay jointly and severally the amount of P100,000.00 as and by way of attorney's fees. The respondent judge dismissed the defendants' counterclaim.

The aggrieved complainant, together with all the other defendants, appealed to the CA from the above-cited decision. On December 10, 2003, plaintiff filed with the RTC a petition to direct defendants to show cause why they should not be cited and thereafter punished for indirect contempt of court (petition for indirect contempt) for their alleged defiance of respondent judge's decision dated November 25, 2003, as shown by their continued performance of duties as governors of Ayala Alabang Village, despite receipt of a copy of the said decision.

On July 1, 2004, respondent judge issued an order declaring complainant, Arceo and Romualdez, guilty of

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indirect contempt, and ordering each of them to pay a fine in the amount of P30,000.00.

Unperturbed, complainant and his co-defendants Arceo and Romualdez moved for reconsideration of the July 1, 2004 order. On September 24, 2004, respondent judge granted their motion for reconsideration, and reversed and set aside his order dated July 1, 2004.

On June 29, 2007, the Special Sixteenth Division of the CA issued a resolution, ruling that the lower court should have dismissed the plaintiff-appellee's Complaint for Declaration of the General Membership Meeting and Election of the AAVA as void ab initio with prayer for the Issuance of a Preliminary Injunction and/or TRO and Status Quo Order because it is the Housing and Land Use Regulatory Board that has jurisdiction over the dispute.

On August 23, 2007, Mateo filed a complaint with the Supreme Court, contending that respondent judge did not have the judicial authority to hear and decide the issues involved in Civil Case No. 2003-433 for want of jurisdiction. According to complainant, this was brought to the attention of respondent judge, but the latter, being grossly ignorant of existing laws and rules, if not completely insolent of the same, and with grave abuse of discretion, took cognizance of the case.

In his comment, respondent judge argued that the error he allegedly committed could be corrected by an available judicial remedy. He maintained that if he erroneously assumed jurisdiction over Civil Case No. 2003-433, the proper recourse available to complainant was not an administrative complaint, but a petition for certiorari under Rule 65 of the Rules of Court.

The Investigating Justice recommended that the instant administrative case against respondent judge be dismissed. This Court takes the opposite view.

It is true that to constitute gross ignorance of the law, it is not enough that the subject decision, order, or actuation of the judge in the performance of his official duties is contrary to existing law and jurisprudence but, most importantly, he must be moved by bad faith, fraud, dishonesty, or corruption.[29]

However, when the law is so elementary -- and the matter of jurisdiction is an elementary principle that judges should be knowledgeable of -- not to be aware of it constitutes gross ignorance of the law. Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural rules. They are expected to keep abreast of our laws and the changes therein as well as with the latest decisions of the Supreme Court. They owe it to the public to be legally knowledgeable, for ignorance of the law is the mainspring of injustice. Judicial competence requires no less. It is a truism that the life chosen by a judge as a dispenser of justice is demanding. By virtue of the delicate position which he occupies in society, he is duty bound to be the embodiment of competence and integrity.[30]

On the matter of the order finding complainant guilty of indirect contempt, we also find the action of respondent judge sadly wanting. Section 4, Rule 71 of the same Rules provides:

Sec. 4. How proceedings commenced. - Proceedings for indirect contempt may be initiated motu proprio by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.

In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but said petition shall be docketed, heard and

decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision.[31]

The Rules are unequivocal. Indirect contempt proceedings may be initiated only in two ways: (1) motu proprio by the court; or (2) through a verified petition and upon compliance with the requirements for initiatory pleadings. The procedural requirements are mandatory considering that contempt proceedings against a person are treated as criminal in nature.[32] Conviction cannot be had merely on the basis of written pleadings.[33]

The records do not indicate that complainant was afforded an opportunity to rebut the charges against him. Respondent judge should have conducted a hearing in order to provide complainant the opportunity to adduce before the court documentary or testimonial evidence in his behalf. The hearing also allows the court a more thorough evaluation of the circumstances surrounding the case, including the chance to observe the accused present his side in open court and subject his defense to interrogation from the complainants or from the court itself.[34]

It must be remembered that the power to punish for contempt should be used sparingly with caution, restraint, judiciousness, deliberation, and due regard to the provisions of the law and the constitutional rights of the individual.[35] In this respect, respondent judge failed to measure up to the standards demanded of member of the judiciary.

As already mentioned above, gross ignorance of the law or procedure is classified as a serious charge under Section 8(9), Rule 140, Revised Rules of Court, and a respondent found guilty of serious charge may be punished by: a) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations, provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; b) suspension from office without salary and other benefits for more than three (3) months but not exceeding six (6) months; or c) a fine of more than P20,000.00 but not exceeding P40,000.00.

In this case, we find respondent judge guilty of gross ignorance of the law, and impose upon him a fine of P40,000.00.

e.) A.M. No. RTJ-07-2079

On January 19, 2006, Bennie Cuason (Cuason) was charged before the RTC, Muntinlupa City, with estafa under Article 315, paragraph 2(a) of the Revised Penal Code, for defrauding Brigadier General Meliton D. Goyena (Gen. Goyena) (Ret.) by convincing the latter to invest, entrust, and/or deliver the amount of Twenty Million Pesos (P20,000,000.00) on the promise that the former would return the investment with interest, plus two (2) Condominium Certificates of Title over residential units on the 20[th] floor at Tower B of Diamond Bay Towers Condominium, with a total value of Nine Million Five Hundred Ninety-Two Thousand Pesos (P9,592,000.00). Gen. Goyena gave the amount of Twenty Million Pesos (P20,000,000.00) to the accused and received two (2) condominium certificates of title with numbers 6893 and 6894. After verification, complainant found that the condominium units were non-existent, or had not yet been constructed.

The case was docketed as Criminal Case No. 06-179 and was raffled to RTC, Branch 204, Muntinlupa City, presided over by Judge Juanita T. Guerrero (Judge Guerrero).

On February 14, 2006, accused Cuason, through counsel, filed with the RTC an entry of appearance with a plea to determine whether or not probable cause exists for the purpose of issuance of a warrant of arrest. Complainant, also through counsel, subsequently filed a Motion to deny the application for judicial determination of probable cause and to cite accused in contempt of this Honorable Court on the ground of forum shopping. On April 4,

2006, accused Cuason filed his comment and/or opposition thereto, and on April 10, 2006, accused Cuason filed a supplemental comment and/or opposition to the motion.

With the designation of RTC, Branch 204, Muntinlupa City, as a special court for drug cases on May 2, 2006, the case was re-raffled to the sala of respondent judge. After hearing the respective arguments of the parties, respondent judge issued an omnibus order dated September 4, 2006, dismissing Criminal Case No. 06-179. The pertinent portions of the omnibus order read as follows:

On this first issue, this Court, after a careful scrutiny of the arguments and evidence of both parties, believes that there was payment already made as to the principal obligation as admitted by the complainant in his affidavit dated September 20, 2005 (page 3, par. 17) and what is being left is the payment of interest which, under the premises, is in [the] form of condominium certificates. So also, while the complainant questions the authenticity of those certificates as well as the existence of [the] condominium units subject thereof, accused, indubitably, was able to satisfy this Court as to the authenticity of the questioned certificates and the existence of the units by showing proofs to that effect.

On September 6, 2006, Gen. Goyena filed with the RTC a very urgent manifestation with motion for the court to conduct ocular inspection, and on September 22, 2006, he filed an omnibus motion for reconsideration, ocular inspection and inhibition, anchored on the following grounds: 1) as correctly found by the Office of the City Prosecutor of Muntinlupa City, the two (2) condominium units used in partly settling the liabilities of the accused to the private complainant do not exist - a fact that should have been established by now, if only the court allowed the ocular inspection prayed for; 2) the court overlooked the pronouncement in the very case it has relied on, that "Allado and Salonga constitute exceptions to the general rule and may be invoked only if similar circumstances are clearly shown to exist"; and 3) the order dismissing the case was improperly or irregularly issued.

On September 18, 2006, complainant filed a letter-complaint addressed to then Supreme Court Chief Justice Artemio Panganiban, charging respondent judge with abuse of judicial authority and discretion, serious irregularity, and gross ignorance of the law, allegedly shown by the latter's act of willfully and knowingly reversing the well-grounded finding of probable cause made by the Office of the City Prosecutor of Muntinlupa City.

Thereafter, respondent judge issued an order dated October 4, 2006, inhibiting himself from sitting in Criminal Case No. 06-179, and directing that the records of the case be forwarded to the Office of the Clerk of Court of the RTC, Muntinlupa City, for appropriate re-raffling. The case was eventually re-raffled to the RTC, Branch 206, Muntinlupa City, presided over by Judge Patricia Manalastas-de Leon (Judge Manalastas-De Leon).

In his memorandum dated September 24, 2007, Court Administrator Lock found ample basis to charge respondent judge with delay in rendering an order and for abuse of judicial discretion and authority

The OCA stated that Criminal Case No. 06-179 was assigned to respondent judge on May 2, 2006, a fact which the latter did not dispute. More than a month later, or on June 19, 2006, respondent judge set accused Cuason's motion to determine whether or not a probable cause exists for the purpose of the issuance of a warrant of arrest and complainant's motion to deny application for judicial determination of probable cause and to cite accused in contempt of this Honorable Court on the ground of forum shopping for hearing on July 17, 2006. It must be stressed that accused Cuason and complainant filed their respective motions on February 14, 2006 and on March 22, 2006, or while the case was still pending in the sala of Judge Guerrero. After hearing the said motions on July 17, 2006, it took another forty-eight (48) days for respondent judge to issue the omnibus order dated September 4, 2006, dismissing the case for lack of probable cause.

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In his comment dated November 23, 2007, respondent judge insists that the charge filed against him should be dismissed.

This Court finds that respondent judge's delay in the determination of probable cause clearly runs counter to the provisions of Section 6, Rule 112 of the Revised Rules of Criminal Procedure, which provides:

Sec. 6. When warrant of arrest may issue. - (a) By the Regional Trial Court. - Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to Section 7 of this Rules. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

While respondent judge could not have ascertained the existence of probable cause for the issuance of an arrest warrant against Cuason within ten (10) days from the filing of the complaint or information - Criminal Case No. 06-179 having been re-raffled to his sala only on May 2, 2006 - prudence demanded that respondent judge should have determined the existence of probable cause within ten (10) days from July 17, 2006, the date he heard the respective arguments of the parties. This interpretation is in keeping with the provisions of Section 6, Rule 112.

By allowing forty-eight (48) days to lapse before issuing the two-page omnibus order dated September 4, 2006, respondent judge should be held liable for undue delay in rendering an order, which is classified as a less serious charge under Section 9(1), Rule 140 of the Rules of Court, punishable by suspension from office without salary and other benefits for not less than one (1) month or more than three (3) months, or a fine of more than P10,000.00 but not exceeding P20,000.00.

Furthermore, the Court agrees with the OCA that the respondent judge is guilty of abuse of judicial discretion and authority.

The information in Criminal Case No. 06-179 clearly accuses Cuason of falsely pretending that he can return the investment of complainant by paying cash and two (2) condominium units when in fact these units do not exist or have not yet been constructed. The issue therefore boils down to whether or not the condominium units exist, and the incontrovertible proof of this are the condominium units themselves. The logical thing to do would have been to order the conduct of an ocular inspection. Instead of an ocular inspection, respondent relied on the certificate of registration, the development permit, the license to sell, the building permit, and the Condominium Certificate of Title â€- on the basis of which the judge ordered the dismissal of the case. It may be that an ocular inspection was premature at the time the respondent dismissed the case because at that time the case was not yet set for the presentation of evidence of the parties. Nevertheless, it now appears that the pieces of evidence relied upon by the respondent do not fully support his conclusion.

Section 4, Rule 128 of the Rules of Court provides that "evidence must have such a relation to the fact in issue as to induce belief in its existence or non-existence." "Relevancy is, therefore, determinable by the rules of logic and human experience...Relevant evidence is any class of evidence which has `rational probative value' to the issue in controversy."[36] Logic and human experience teach us that the documents relied upon by respondent do not constitute the best evidence to prove the existence or non-existence of the condominium units. To repeat, the best evidence would have been adduced by an ocular inspection of the units themselves.

Judge Lerma should also have exercised caution in determining the existence of probable cause. At the very least, he should have asked the prosecutor to present additional evidence, in accordance with Section 6, Rule 112 of the Revised Rules of Criminal Procedure or, in the alternative, to show cause why the case should not be dismissed instead of precipitately ordering the dismissal of the case. The circumstances required the exercise of caution considering that the case involved estafa in the considerable amount of P20 Million for which the complainant paid P129,970.00 in docket fees before the Office of the City Prosecutor and later P167,114.60 as docket fee for the filing of the Information before the RTC.

For this particular violation, we find respondent judge guilty and impose upon him a fine of P21,000.00.

As an unflattering footnote to these administrative offenses, the OCA, upon the authority of the Chief Justice, conducted a judicial audit from August 21-30, 2007 of the RTC, Branch 256, Muntinlupa. The initial result of the audit revealed that Judge Lerma failed to decide 30 civil cases and 11 criminal cases within the 90-day reglementary period. It also appears that 101 civil cases and 137 criminal cases remained unacted despite the lapse of a considerable period.

Judge Lerma had previously been sanctioned by this Court. In a resolution dated September 13, 2003 in A.M. No. RTJ-03-1799, entitled Ma. Cristina Olondriz Pertierra v. Judge Alberto L. Lerma, this Court found him liable for conduct unbecoming a judge and imposed upon him the penalty of reprimand. In that case, Judge Lerma was found having lunch with a lawyer who has a pending case in his sala.

The totality of all these findings underscore the fact that respondent judge's actions served to erode the people's faith and confidence in the judiciary. He has been remiss in the fulfillment of the duty imposed on all members of the bench in order to avoid any impression of impropriety to protect the image and integrity of the judiciary.

To reiterate, officers of the court have the duty to see to it that justice is dispensed evenly and fairly. Not only must they be honest and impartial, but they must also appear to be honest and impartial in the dispensation of justice. Judges should make sure that their acts are circumspect and do not arouse suspicion in the minds of the public. When they fail to do so, such acts cast doubt upon their integrity and ultimately on the judiciary in general.[37] "Courts will only succeed in their task and mission if the judges presiding over them are truly honorable men, competent and independent, honest and dedicated." [38]

Respondent judge failed to live up to the judiciary's exacting standards, and this Court will not withhold penalty when called for to uphold the people's faith in the Judiciary.[39]

WHEREFORE, premises considered, the Court RULES, as follows:

1) In A.M. No. RTJ-07-2076, Judge Alberto Lerma is found GUILTY of violating a Supreme Court directive, and we impose upon him a FINE in the total amount of FIFTEEN THOUSAND PESOS (P15,000.00);

2) In A.M. No. RTJ-07-2080, Judge Alberto Lerma is FINED in the total amount of FIFTEEN THOUSAND PESOS (P15,000.00) for violation of Supreme Court rules, directives, and circulars, and for making untruthful statements in his certificate of service;

3) In A.M. No. RTJ-07-2077, Judge Alberto Lerma is found GUILTY of gross misconduct and punished with the penalty of DISMISSAL from the service, with forfeiture of all benefits, except earned leave credits, with prejudice to reemployment in any government agency or instrumentality.

4) In A.M. No. RTJ-07-2078, we find Judge Alberto Lerma GUILTY of gross ignorance of the law, and impose upon him a FINE of FORTY THOUSAND PESOS (P40,000.00); and

5) In A.M. No. RTJ-07-2079, we find Judge Alberto Lerma GUILTY of grave abuse of authority and undue delay

in rendering an order, and impose upon him a FINE of TWENTY-ONE THOUSAND PESOS (P21,000.00).

This Decision is final and immediately executory.

SO ORDERED.

Corona, C.J., Nachura, Leonardo-De Castro, Brion, Bersamin, Del Castillo, Villarama, Jr., Mendoza, and Sereno, JJ., concur.
Carpio and Abad, JJ., on official Leave.
Carpio Morales, J., certify that J. Morales voted to concur with the ponencia:
Velasco, Jr., and Perez, JJ., no part.
Peralta, J., on Leave.

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[1] Rollo (RTJ-07-2076), pp. 9-22.

[2] Id. at 38-39.

[3] Justice Hakim S. Abdulwahid of the CA.

[4] Rollo (RTJ-07-2076), p. 41.

[5] Id. at 53.

[6] Id. at 99.

[7] Id. at 8.

[8] Docketed as Criminal Case No. 98-464 in the RTC of Muntinlupa.

[9] Rollo (RTJ-07-2076), p. 339.

[10] Id. at 346.

[11] Id. at 357-359.

[12] Id. at 386-387.

[13] Supra note 1.

[14] Rollo (RTJ-07-2076), pp. 393-396.

[15] Macasaet v. People, G.R. No. 156747, February 23, 2005, 452 SCRA 255, 271.

[16] Santos v. How, A.M. No. RTJ-05-1946, January 26, 2007, 513 SCRA 25.

[17] Rollo (RTJ-07-2080), p. 31.

[18] Id. at 33.

[19] Id. at 35.

[20] Id. at 60.

[21] Id. at 66-68.

[22] Folder of Exhibits, pp. 20-21.

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[23] Rollo (RTJ-07-2077), p. 83.

[24] Folder of Exhibits, p. 83.

[25] See Folder of Exhibits, p. 43.

[26] Joaquin v. Madrid, A.M. No. RTJ-04-1856, September 30, 2004, 439 SCRA 567, 578.

[27] Brucal v. Hon. Desierto, 501 Phil. 453, 465-466 (2005).

[28] Rollo (RTJ-07-2078), pp. 1-2.

[29] The Officers and Members of the Integrated Bar of the Philippines, Baguio-Benguet Chapter v. Judge Pamintuan, 485 Phil. 473, 489 (2004).

[30] Espino v. Hon. Salubre, 405 Phil. 331 (2001).

[31] Emphasis supplied.

[32] Atty. Cañas v. Judge Castigador, 401 Phil. 618, 630 (2000).

[33] Soriano v. Court of Appeals, G.R. No. 128938, June 4, 2004, 431 SCRA 1, 8.

[34] Aquino v. Ng, G.R. No. 155631, July 27, 2007, 528 SCRA 277.

[35] Ruiz v. Judge How, 459 Phil. 728 (2003).

[36] Florenz Regalado, Remedial Law Compendium, Vol. II, 6[th] Rev. Ed., p. 436.

[37] Procedure adopted by Judge Liangco Re: Raffle of Cases, 391 Phil. 666 (2000).

[38] Ernesto L. Pineda, LEGAL AND JUDICIAL ETHICS (1999 ed.), p. 367.

[39] Jabao v. Judge Bonilla, 372 Phil. 823, 835 (1999), citing Sadik v. Casar, 266 SCRA 1 (1997); Ortigas & Co, Ltd. Partnership v. Velasco, 277 SCRA 342 (1997).

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