CARMEN P. EDAÑO, COMPLAINANT, VS. JUDGE FATIMA G. ASDALA, RTC BR. 87, QUEZON CITY, AND STENOGRAPHER MYRLA DEL PILAR NICANDRO, RTC BR. 217, QUEZON CITY, RESPONDENTS.

A.M. NO. RTJ-06-1974 (FORMERLY OCA I.P.I. NO. 05-2226-RTJ). July 26, 2007

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PER CURIAM:

This administrative complaint was initiated by a handwritten complaint to the Supreme Court, through Assistant Court Administrator Antonio H. Dujua dated March 28, 2005, by the complainant Carmen P. Edaño charging Judge Fatima G. Asdala, Regional Trial Court (RTC) of Quezon City, Branch 87, of grave abuse of discretion and authority, and of conduct unbecoming of a judge. A complaint was also lodged against Myrla Nicandro, a stenographer detailed in the same RTC branch, for usurpation of authority, grave misconduct and unauthorized solicitations. Upon receipt of the complaint, we referred it to Court of Appeals (CA) Associate Justice Mariano C. del Castillo for investigation in order to ascertain the veracity of the complainant's accusations and grievances.[1]

The complaint stemmed from a civil case for Support with a prayer for Support Pendente Lite[2] filed by the complainant on behalf of her two minor children, Carlo and Jay-ar, against George Butler, who denies paternity of the children. Then pairing judge, Teodoro A. Bay, issued an Order dated November 12, 1999, directing defendant Butler to provide support pendente lite in the amount of P5,000 per month to be "delivered to the mother (the complainant herein) within the first five (5) days of each month."[3] A writ of execution was subsequently issued which included the garnishing of rental payments for the apartments in Cubao, Quezon City, which are being managed by defendant Butler. It was at this juncture that respondent Judge Asdala took cognizance of the case.

Due to the failure of defendant Butler to comply with the November 12, 1999 Order of the trial court, despite several reprimands and orders to implement, complainant Edaño moved to cite defendant Butler in contempt. On November 23, 2004, respondent Judge Asdala found defendant Butler guilty of indirect contempt and sentenced him to four (4) months imprisonment and a P30,000.00 fine. Subsequently a Bench Warrant was issued against defendant Butler.[4]

On January 25, 2005, after privately meeting with defendant Butler in her chambers, respondent Judge Asdala issued the following ex-parte Order:

> Following his knowledge of Bench Warrant against him, defendant George Butler, personally appeared before the Presiding Judge and pleaded that the contempt fine imposed against him be reduced to P5,000.00 and that the Bench Warrant be recalled.
>
> The matter will be taken under advisement.
>
> SO ORDERED.[5]

The following ex-parte Order was also issued by respondent Judge Asdala:

> In the highest interest of justice, the October 7, 2004 and November 26, 2004[6] Order finding the defendant guilty of indirect contempt is hereby reconsidered. As such, the fine is reduced to P5,000.00 and the

corresponding order of imprisonment is set aside.

SO ORDERED.[7]

On February 1, 2005, defendant Butler paid the P5,000.00 fine.[8] On March 22, 2005, respondent Judge Asdala dismissed complainant Edaño's suit on the ground of insufficiency of evidence.[9] The case is now pending before the CA after the appellate court ordered the trial court to give due course to the complainant's notice of appeal.

In the complainant's letter-complaint, she laments the fact that without notice, much less consent, respondent Judge Asdala met privately with defendant Butler in her chambers to discuss the finding of indirect contempt against the latter without any hearing or minutes of the proceedings and without her or her counsel's participation. As a result of the said private meeting, the fine was reduced from P30,000 to P5,000, the order of imprisonment was deleted, and the Bench Warrant was recalled. The complainant likewise alleges that respondent Judge Asdala forced her to file a complaint for neglect of duty against her own counsel, Atty. Rowena Alejandria, with the Public Attorneys' Office (PAO), as respondent Judge Asdala had a grudge against Atty. Alejandria. She likewise claims that she was given P1,000 by respondent Judge Asdala for her silence. The complainant also faults respondent Judge Asdala for ordering the support pendente lite to be deposited with the Office of the Clerk of Court instead of being directly given to the complainant and for applying the money thus deposited to the payment of the P5,000 fine instead of being given to the complainant. Further, she questions the dismissal of the civil case for support on the ground of insufficiency of evidence, alleging that the basis of the findings is the testimony of Butler which was already stricken off the record as of January 28, 2001.

As against respondent Myrla Nicandro, the complainant alleges that the former subtracted certain amounts from the P10,000 deposited by defendant Butler's daughter, Cristy, before turning over the money to her. Allegedly, the amounts subtracted were given to the respondents. The complainant likewise questions respondent Nicandro's discharge of the functions of Officer-in-Charge (OIC)/ Acting Branch Clerk of Court when the Supreme Court, through the Office of the Court Administrator (OCA), did not approve her designation as such.

In her defense, respondent Judge Asdala avers that the recall of the bench warrant and the reduction of the fine are matters of judicial discretion. She insists that, after the representation of Mr. Butler of his financial inability to pay the original fine, the amendment to her previous orders was more in keeping with justice and fairness. Respondent Judge Asdala likewise denies the charges that she instigated a complaint against Atty. Alejandria. She points to the fact that the complainant herself wrote a letter of apology dated November 19, 2004 to Atty. Alejandria withdrawing her complaint and retracting the statements made therein. As for the designation of respondent Nicandro as OIC for administrative services in Branch 87, respondent Judge Asdala avers that the same was with the knowledge of the Executive Judge of Quezon City; and that as presiding judge of Branch 87, she has the discretion and the authority to appoint whoever has her trust and confidence. With regard to the decision to dismiss the civil case for support, respondent Judge Asdala maintains that the proper remedy is to elevate the matter to the appellate court and not to file an administrative case against her.

Respondent Nicandro, for her part, denies misrepresenting herself as OIC. She avers that she was acting under the designation made by respondent Judge Asdala, with the knowledge of the Executive Judge. As for the other accusations made by the complainant, respondent Nicandro insists that the same are blatant lies. She denies soliciting money from the complainant, and avers that it was in fact the complainant who would frequently go to Branch 87 and borrow money from the court personnel who, out of pity, would oblige to lend her small amounts from time to time. She maintains that at the time the complainant claimed the P10,000 deposited by Butler, respondent Nicandro reminded her of her debts to a number of court personnel — P400 to process server Lito de la Cruz, P100 to Sheriff Victor Yaneza, and P100 to court stenographer Elenita Ribaya. Respondent Nicandro

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allegedly reminded the complainant that she owed respondent Judge Asdala P500 which the latter gave as payment for Sheriff's fee. The payment, however, was no longer accepted by the respondent judge who, instead, directed respondent Nicandro to use the same to buy snacks for the court staff. The same was corroborated by respondent Judge Asdala.

As stated in the Investigation Report and Recommendation of the Investigating Justice, the act of a judge done within his judicial discretion, such as the reduction of fine for indirect contempt, should not be subject to disciplinary action. In the instant complaint, however, the exercise of discretion by the respondent is not impugned. Rather, it is the conduct of respondent Judge Asdala in meeting with defendant Butler without notice or knowledge, much less the presence, of the complainant or her representative that is assailed. The meeting was not an innocuous one for it resulted in the cancellation of the bench warrant, the revocation of the order of imprisonment and the significant reduction in the amount of fine from P30,000.00 to P5,000.00. Respondent Judge Asdala does not deny the private meeting, much less explain its circumstances. As rightly observed by the Investigating Justice, the private meeting was improper, to say the least. It deprived the complainant of her right to be heard on matters affecting her vital interests. The secret meeting cannot but invite suspicion, for no minutes or stenographic notes of the meeting have been presented, if any existed. Respondent judge cannot feign ignorance of the fact that our courts are courts of record.

As the visible representation of the law and justice, judges, such as the respondent, are expected to conduct themselves in a manner that would enhance the respect and confidence of the people in the judicial system.[10] The New Code of Judicial Conduct for the Philippine Judiciary[11] mandates that judges must not only maintain their independence, integrity and impartiality; but they must also avoid any appearance of impropriety or partiality, which may erode the people's faith in the judiciary. Integrity and impartiality, as well as the appearance thereof, are deemed essential not just in the proper discharge of judicial office, but also to the personal demeanor of judges.[12] This standard applies not only to the decision itself, but also to the process by which the decision is made. Section 1, Canon 2, specifically mandates judges to "ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of reasonable observers." Clearly, it is of vital importance not only that independence, integrity and impartiality have been observed by judges and reflected in their decisions, but that these must also appear to have been so observed in the eyes of the people, so as to avoid any erosion of faith in the justice system.[13] Thus, judges must be circumspect in their actions in order to avoid doubt and suspicion in the dispensation of justice. To further emphasize its importance, Section 2, Canon 2 states:

> Sec. 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

As early as June 6, 2003, OCA Circular No. 70-2003 has directed judges as follows:

> In view of the increasing number of reports reaching the Office of the Court Administrator that judges have been meeting with party litigants inside their chambers, judges are hereby cautioned to avoid in-chambers sessions without the other party and his counsel present, and to observe prudence at all times in their conduct to the end that they only act impartially and with propriety but are also perceived to be impartial and proper.[14]

Impartiality is essential to the proper discharge of the judicial office. It applies not only to "the decision itself but also to the process by which the decision is made."[15] As such, judges must ensure that their "conduct, both in and out of the court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary."[16] In the same vein, the Code of Judicial Conduct behooves all judges to avoid impropriety and the appearance of impropriety in all their activities, as such is essential to the performance of all the activities of a judge in order to maintain the trust and respect of the people in the

judiciary.[17]

In the case at bar, respondent Judge Asdala's actions as above discussed put into question the impartiality, independence, and integrity of the process by which the questioned amended orders were reached. Her actions miserably fell short in the discharge of her duty as an officer of the court and as a living embodiment of law and justice.

Further, respondent Judge Asdala, in insisting on the designation of respondent Nicandro as OIC, blithely and willfully disregarded the Memorandum of this Court, through the OCA, which approved the designation of Amy Soneja alone -- and not in conjunction with respondent Nicandro -- as OIC.[18] While the presiding judge, such as respondent Judge Asdala, can recommend and endorse persons to a particular position, this recommendation has to be approved by this Court. Again, the respondent judge ought to know that the Constitution grants this Court administrative supervision over all the courts and personnel thereof. In the case at bar, despite the Court's approval of Amy Soneja's designation, the respondent judge allowed, if not insisted on, the continued discharge of the duties of OIC by respondent Nicandro. Respondent Judge Asdala even had the gall to insist that as presiding judge she has the authority and discretion to designate "anyone who works under her, as long as that person enjoys her trust and confidence."[19] Coming from a judge, such arrogance, if not ignorance, is inexcusable. The memorandum from the OCA regarding the designation of court personnel is no less an order from this Court. Court officials and personnel, particularly judges, are expected to comply with the same. Respondent judge's gross insubordination cannot be countenanced.

This is not the first time that respondent Judge Asdala has been disciplined and penalized by this Court. She has been found guilty of various administrative complaints in at least four (4) other occasions.[20] In 1999, in Dumlao, Jr. v. Asdala,[21] respondent Judge Asdala was admonished for partiality. A year later, in Bowman v. Asdala,[22] she was fined P2,000.00 for grave abuse of discretion in nine (9) cases when she deliberately withheld and did not attach a copy of her order of inhibition which resulted in the non-transmittal of the records of the criminal cases. In 2005, in Manansala III v. Asdala,[23] she was likewise ordered to pay a fine of P40,000.00, the highest fine that may be imposed for serious offenses committed by judges and justices,[24] for gross misconduct after she interfered with a case of a German national who was then detained at the police station awaiting inquest investigation. In the said case, respondent Judge Asdala requested the German national's release from custody and asked for the amicable settlement of the case against the latter. Compounding her transgressions, respondent Judge Asdala likewise ordered her court's sheriff to engage the assistance of policemen in order to retrieve the German national's car so that it may be turned over to her custody. Just last year, in 2006, in Request of Judge Fatima Gonzales-Asdala, RTC-Branch 87, Quezon City, for Extension of the Period to Decide Civil Case No. Q-02- 46950 & 14 Others,[25] this Court once again imposed a fine of P11,000.00 on respondent judge for her repeated and unjustifiable failure to render decisions within the prescribed period. Each penalty imposed on her in the said cases came with a stern warning that the subsequent commission of the same or similar offense shall be dealt with more severely. Respondent Judge Asdala has time and time again blatantly disregarded this stream of warnings. Such repeated infractions and heedless transgressions can no longer be countenanced by this Court. As we have repeatedly stressed, "there is no place in the judiciary for those who cannot meet the exacting standards of judicial conduct and integrity."[26]

Be that as it may, the accusation that respondent Judge Asdala instigated the complainant to file a complaint against Atty. Alejandria must be dismissed for lack of sufficient evidence. Similarly, we agree with the Investigating Justice that the dismissal of the civil case for support cannot be a ground for administrative complaint as the matter is on appeal with the CA and appeal is the appropriate remedy of the aggrieved party.

Respondent Nicandro, on her part, has been accused of usurping the functions of OIC. While she acted on the

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strength of the memorandum of respondent Judge Asdala designating her as such, it is undeniable that she is aware of the memorandum of this Court, through the OCA, approving Amy Soneja's designation as OIC/Branch Clerk of Court. Respondent Nicandro's continued exercise of the functions of OIC after the disapproval of her designation is a clear defiance of the instruction of this Court.

As to the charge of unauthorized solicitation, it is clear that respondent Nicandro, at the very least, acted as "collection agent" of the office staff with regard to the alleged amounts owed by complainant. Such action on the part of respondent Nicandro lacks the propriety and proper decorum expected of a court personnel. This is not the first time that this Court had censured respondent Nicandro's behavior in dealing with party litigants. Early this year, on February 12, 2007, she was fined for gross insubordination for her willful failure and indifference to the orders of this Court despite having been found in contempt for her refusal to comply with the said orders. She was also reprimanded for willful failure to pay a just debt despite repeated demands from the complainant therein.[27] Such infractions are conduct highly prejudicial to the best interest of the service.

This Court has repeatedly stressed its unbending policy not to tolerate or condone any act or omission that falls short of the exacting norms of public office, especially on those expected to preserve the image of the judiciary. Again, this Court will not shirk from its responsibility of weeding out those who stain the integrity and dignity of the judiciary.

IN VIEW WHEREOF, judgment is hereby rendered:

> - Respondent Judge Fatima G. Asdala is found GUILTY of gross insubordination and gross misconduct unbefitting a member of the judiciary and is accordingly DISMISSED from the service with forfeiture of all salaries, benefits and leave credits to which she may be entitled.
>
> - Respondent Myrla Nicandro is found GUILTY of insubordination in assuming the position and discharging the functions of OIC/ Branch Clerk of Court without and in defiance of proper authority and is accordingly SUSPENDED from the service for a period of sixty (60) days, without pay, commencing on the day immediately following her receipt of a copy of this Decision, with a warning that a repetition of the same or similar acts shall be dealt with more severely. The period of suspension shall not be chargeable against her leave credits. Respondent Nicandro is likewise ordered to immediately cease and desist from discharging the functions of OIC/Branch Clerk of Court and from representing herself as such.

Respondent Nicandro is likewise REPRIMANDED for conduct prejudicial to the best interest of the service and ordered to abstain from transacting with party litigants other than for official purposes.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Garcia, Velasco, Je., and Nachura, JJ., concur.

[1] Rollo, pp. 1-6.

[2] Docketed as Civil Case No. Q-97-30576.

[3] Exhibit A.

[4] Exhibit P, Exhibit 5-Asdala.

[5] Rollo, p. 35.

[6] Id., p. 35; the Order referred to is actually dated November 23, 2004; rollo, pp. 9-10.

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[7] Investigation Report and Recommendation, p. 3, citing Exhibit V, Exhibit 4-Asdala.

[8] Rollo, p. 36.

[9] Id., pp. 38-45.

[10] Investigation Report and Recommendation, June 19, 2006, p.10, citing Capuno v. Jaramillo, Jr., A.M. No. RTJ-94-944.

[11] A.M. No. 03-05-01-SC, June 1, 2004.

[12] Office of the Court Administrator v. Barron, A.M. No. RTJ-98-420, October 8, 998, 297 SCRA 376, 392; Yuson v. Noel, A.M. No. RTJ-91-762, October 1, 1993, 227 SCRA 1, 7.

[13] Capuno v. Jaramillo, Jr., A.M. No. RTJ-93-944, July 20, 1994, 234 SCRA 212, 232.

[14] OCA Circular No. 70-2003, June 6, 2003; emphasis supplied.

[15] Canon 3, Code of Judicial Conduct.

[16] Id. at Canon 3, Section 2.

[17] Id. at Canon 4, Section 1.

[18] Rollo, p. 15.

[19] Rollo, p. 178.

[20] Dumlao, Jr. v. Asdala, A.M. No. RTJ-99-00-1428 (February 8, 1999); Bowman v. Asdala, A.M. No. RTJ-00-1546 (March 6, 2000); Manansala III v. Asdala, A.M. No. RTJ-05-1916 (May 10, 2005); Request of Judge Fatima Gonzales-Asdala, RTC-Branch 87, Quezon City, for Extension of the Period to Decide Civil Case No. Q-02-46950 & 14 Others, A.M. No. 05-10-618-RTC (July 11, 2006).

[21] A.M. No. RTJ-99-00-1428, (February 8, 1999).

[22] A.M. No. RTJ-00-1546 (March 6, 2000).

[23] A.M. No. RTJ-05-1916 (May 10, 2005).

[24] Section 11 of Rule 140 of the Rules of Court.

[25] A.M. No. 05-10-618-RTC (July 11, 2006).

[26] Capuno, note at 13; Vistan v. Nicolas, A.M. No. MTJ-87-79 and A.C. No. 3040, September 13, 1991.

[27] Macrina M. Bisnar v. Myrla P. Nicandro, A.M. No. P-00-1427, February 14, 2007.

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