

JUDGE FATIMA GONZALES-ASDALA, PETITIONER, VS. VICTOR PEDRO A. YANEZA (LEGAL RESEARCHER II) RESPONDENT.*A.M. No. P-08-2455 (Formerly OCA I.P.I. No. 05-2175-P). April 30, 2008*

Ponente: CARPIO MORALES, J.

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The first two complaints subject of the present resolution merited a counter-complaint -- the third subject case.

In OCA I.P.I. No. 05-2175-P, complainant Judge Fatima Gonzales Asdala (Judge Asdala), then Presiding Judge of Branch 87 of the Regional Trial Court (RTC) of Quezon City, charged[1] Legal Researcher II Victor Pedro A. Yaneza (Yaneza) with gross neglect for failure to inform her of a Notice of Appeal filed by the petitioner in Special Proceeding No. Q-01043860, "Estate of Li Guat and Chua Kay," and to prepare a draft of the proforma order normally issued under the circumstances.

It appears that the Notice of Appeal was filed on June 11, 2004 during which Yaneza was the Officer-in-Charge of the Branch Clerk's Office. Judge Asdala only got wind of the filing of the Notice of Appeal on February 18, 2005 after Amy Soneja (Soneja), the Officer-in Charge on Judicial Matters, informed her about it.

In his Explanation[2] in compliance with Judge Asdala's February 19, 2005 memorandum to him, Yaneza stated that since appeals in special proceedings should be by record of appeal and not by notice of appeal, "there was no necessity to call the attention of the Presiding Judge for the reason that she is not under any obligation to act on a wrongful pleading or a wrong method of appeal." [3]

In the Comment[4] he filed on June 14, 2005 in compliance with the May 10, 2005 First Indorsement[5] of the Office of the Court Administrator (OCA), Yaneza reiterated his above-said explanation, adding that

x x x there is a more sinister motive behind Judge Asdala's actions and inaction in relation to the Estate of Li Guat and Chua Kay. xxx Sometime in February 2003 Judge Asdala misused her office and meddled in a case represented by Atty. Marcelino Bautista, former RTC Judge of Quezon City. This became the subject of an administrative case filed by the latter against Judge Asdala [AM No. RTJ-05-1916] and as an offshoot Atty. Bautista together with his client went to the media to expose Judge Asdala's alleged misuse of her office xxx. [T]he Supreme Court decided the case against Judge Asdala on May 1[0], 2005 and fined her P40,000.00.[6] The TV Program Direct Connect was hosted by Atty. Batas Mauricio. Judge Asdala retaliated and filed a libel case against Atty. Bautista and his client which is now pending before RTC Branch 100, Quezon City under Crim. Case No. 03-119215 entitled ["People of the Philippines vs. Melencio P. Manansala III and Marcelino Bautista Jr."] Judge Adsala did not include the TV host Atty. Batas Mauricio xxx in her complaint for libel [as] she had other plans of getting even. It so happens that counsel on record in SPECIAL PROCEEDINGS NO. Q-01-43860 entitled ["Estate of Li Guat and Chua Kay"] is the law firm of Atty. Mauricio. xxx Judge Asdala after several hearings finally dismissed the case. Thereafter, when the notice of appeal was filed she did not act on it. Now she wants to make me a convenient escape [sic] goat to cover for her sins.[7] (Underscoring supplied.)

Yaneza later claimed, during the hearing of OCA I.P.I. No. 05-2175-P conducted by the OCA, that on Judge

Asdala's instruction, he inserted the Notice of Appeal in a folder of pending incidents which was placed on a table near the entrance to Judge Asdala's chamber.[8]

In OCA I.P.I. No. 05-2228-P, Judge Asdala, by letter of April 18, 2005 addressed to the RTC Executive Judge of Quezon City, charged Yaneza with abandonment, insubordination, misconduct, and acts prejudicial to the interest of the service. [9]

In support of her charges, Judge Asdala alleged as follows: She issued to Yaneza Memorandum No. 24 directing him to submit case reports, together with their attachments, for November and December 2005, and to make the necessary corrections therein following their rejection by the OCA, but that despite repeated verbal instructions, Yaneza failed to comply therewith; and that on April 1, 2005, Yaneza wrote her that it was not his responsibility to submit the attachments and correct the reports.

Judge Asdala further alleged:

From April 3, 2005 when she admonished him even up to the time of writing of the abovesaid letter of April 18, 2005 to the Executive Judge, Yaneza went on leave without accomplishing a "proper and timely" application as required by Civil Service Rules. She thus issued Memorandum No. 26 directing him to report back for work within eight hours from receipt thereof. The process server of the branch, who was tasked to deliver the memorandum, reported however that Yaneza refused to open the door of his house, constraining him to leave the memorandum by the door of Yaneza's house.

By letter of May 10, 2005 to the Executive Judge,[10] and by way of Comment/Complaint[11] filed before the OCA, Yaneza explained that he tried to have the reports brought to the OCA by the process server but failed because Judge Asdala had been sending the process server on private errands and she did not allow anyone other than herself to give orders to him (process server).

Yaneza added that Judge Asdala has a "propensity to order the Court Process Server to do unusual tasks like driving her children to school,"[12] and that she was in fact fined by this Court for utilizing the Court Deputy Sheriff to do things for her own interest.[13]

Explaining further, Yaneza alleged that he requested Rowena Agulo, the clerk in charge of civil cases, bring the reports to the OCA but she was not allowed by Myrla Nicandro who acted as officer-in-charge (OIC) of Branch 87. Furthermore, Yaneza claimed:

The trouble with the Office is that there is much confusion, there are two (2) OIC[s], one Ms. Amy Soneja who was properly designated by the Supreme Court and the other Ms. Myrla Nicandro who was not appointed by the Supreme Court but presents herself [as] and [is] treated by the Presiding Judge as the OIC, thus appearing to be a usurper;

x x x x

In Branch 87, Ms. Soneja is the properly appointed OIC by the Supreme Court[,] meaning[,] she is the only one who can exercise the powers of the Office of the Clerk of Court and no other. Myrla Nicandro not being properly appointed by the Supreme Court has no authority to present herself as OIC. It is a public misrepresentation. Any exercise of the powers of the Clerk of Court by Ms. Nicandro is [a] usurpation before our eyes. xxx Myrla Nicandro is only a stenographer by rank and has no item in the plantilla of Branch 87. She is only detailed, has been transferred from several offices[;] maybe her best qualification is that she is a kumare of the Presiding Judge and a constant companion in various activities. x x x

x x x x

It is very difficult to ask any of the clerical staff to go and file the reports [with] the Supreme Court, since they

have to secure permission from a usurper OIC Myrla Nicandro[. I]n fact I requested Rowena Agulo[,] clerk in charge of civil cases[,] to file the reports but the usurper turned down her request for permission;

By way of comment [on] my application for leave, it is the practice of the Presiding Judge to allot the time in which the staff will take leave. x x x But for several years now, the Presiding Judge has not allocated any period for us to go on leave. Thus, I did not have any vacation for years. x x x

After conferring with the properly appointed OIC Ms. Amy Soneja, I submitted an application for leave dated April 1, 2005, and she in turn submitted it to the usurper OIC Myrla Nicandro, and it is only lately thru this complaint that [I] became aware that my application for leave was not approved.[14] (Emphasis and underscoring supplied)

Annexed to Yaneza's May 10, 2005 letter of the Executive Judge was, among others, a copy of his application for leave covering the period April 4, 5 and 6, 2005, which was received by Branch 87 of the Quezon City RTC at 10:00 A.M. on April 1, 2005.[15]

On recommendation of the OCA,[16] the Court considered Yaneza's above-stated Comment filed at the OCA on June 14, 2005 to Judge Asdala's letter-complaint as well as the Comment/Complaint Yaneza filed at the OCA on August 30, 2005, as counter-complaints which were docketed as OCA IPI No. 06-2449-RTJ, and required her to file her comment thereon.[17]

In her Comment[18] in OCA I.P.I. No. 06-2449-RTJ, Judge Asdala alleged that the charges against her were ill-motivated, reiterated her own charges against Yaneza, and emphasized Yaneza's alleged incompetence and laziness.

After receiving evidence on the three cases, Hearing Officer Designate Romulo S. Quimbo made the following findings and recommendations:

In OCA-IPI No. 05-2175-P, x x x [t]he evidence does not show that the failure of Yaneza to bring the [Notice of Appeal] to the attention of Judge Asdala was motivated by any corrupt motives. As a matter of fact, while he admitted his failure to call the attention of Judge Asdala regarding said notice of appeal, he reasoned that there was no necessity to bring it to her because it was not the proper pleading. x x x

However, although the notice of appeal filed in the case may have been insufficient to satisfy the rules, still it was not for him to decide. He should have brought the matter to the complainant's attention. When he ruled that the said notice of appeal was not the correct pleading, he was performing a judicial power reserved for the presiding judge.

Yaneza, however, averred that in obedience to the instructions of Judge Asdala, he had placed the notice of appeal on a table near complainant's door together with other pending incidents. This is denied by Judge Asdala. Be that as it may, we cannot hold respondent Yaneza liable for willful concealment of the notice of appeal. No motive has been ascribed or proven against Yaneza. On the other hand, it is not denied that the counsel for the petitioners in the Li Guat case was Atty. Mauricio, the television host where the acts of Judge Asdala amounting to obstruction of justice and for which she was fined P40,000.00 in A.M. No. RTJ-05-1916 had been aired. It is not farfetched to think that the dismissal of Special Proceedings No. A-01-43860 and her failure to act on the notice of appeal was the result of some animosity which she felt against Atty. Mauricio.

In OCA-IPI No. 05-2228-P, x x x respondent Yaneza was in duty bound to prepare and submit the reports within the first week of the following month. Hence, his failure to submit the November 2004 report during December and his failure to submit the December 2004 report in early January amounts to inefficiency. His excuse that there was confusion in the office because of the two OICs is rather lame.

This inefficiency, although not particularly listed in Section 23, Rule XIV of Book V of Executive Order No.

292 (Administrative Code) as among the offenses that may be committed by government employees, deserves a reprimand and a stern warning that any repetition of the same would be dealt with more drastically.

Judge Asdala further charges Yaneza for abandonment of his position. She averred that she had directed her OIC to inform Yaneza that his application for leave had been disapproved. She also issued a memorandum directing Yaneza to report to the office and this memorandum was served on Yaneza by the process server who was, however, unable to serve the same personally on Yaneza.

Yaneza was unable to substantiate his charges against Judge Asdala [in OCA-IPI No. 06-2449-RTJ]. xxx

There appears to be some merit in the statement of Yaneza as regards the confusion of the personnel because of the presence of two (2) OIC's – Ms. Amy So[n]eja, who was regularly appointed by the Supreme Court and Ms. Myrla Nicandro, who was appointed by Judge Asdala. This act of Judge Asdala is covered by x x x Memorand[a] No. 0009, s. of 2005 (pp. 81-82, Rollo, 05-2228-P) and No. 0019, s. of 2005 (Ibid., pp. 83-85). This is the reason advanced by Yaneza as regards the inefficiency of Branch 87. x x x

The undersigned recommends that OCA-IPI No. 2175-P [sic] be re-docketed as a regular administrative matter and that respondent Victor Pedro A. Yaneza be reprimanded and sternly warned that a repetition of the same offense or the commission of a similar one in the future would be more drastically dealt with; that OCA-IPI No. 05-2228-P [sic] be dismissed for lack of merit and that OCA-IPI No. 06-2449-RTJ be also dismissed but Judge Asdala be required to explain why she appointed another OIC Branch Clerk considering that one had already been designated by the Court.[19] (Emphasis and underscoring supplied)

In OCA IPI No. 05-2175-P, this Court finds the immediately quoted findings, as well as the recommendation, of Hearing Officer Designate Romulo S. Quimbo well-taken.

In OCA IPI No. 05-2228-P, the Hearing Officer Designate observes that Yaneza's failure to file the reports, while constituting inefficiency, is "not particularly listed in Sec. 23, Rule IV of Book V of Executive Order No. 292 (Administrative Code) as among the offenses that maybe committed by government employees." He nevertheless recommends that Yaneza be reprimanded.

Section 52 (c) (14) of Rule 11 of the Revised Uniform Rules on Administrative Cases in the Civil Service provides that failure to process documents and complete action on documents and papers within a reasonable time from preparation thereof, except as otherwise provided in the rules implementing the Code of Conduct and Ethical Standards for Public Officials and Employees, shall be penalized with a reprimand on the first offense, a suspension for one to 30 days on the second offense, and dismissal on the third offense.[20] It bears noting that, as the Hearing Officer Designate himself notes, Yaneza was "duty bound to prepare and submit the reports" on time. It is in this light that the Court finds Yaneza to have violated Civil Service Rules.

Respecting Yaneza's unauthorized absences, he admits that he did not report for work from April 3, 2005 until sometime in May of the same year,[21] he claiming that he applied for a vacation leave. The copy of his approved application for vacation leave submitted before this Court was, however, only for April 4-6, 2005.[22] While he claims to have subsequently applied for a second vacation leave,[23] he did not present a copy of any such application. In fact he admits having gone on leave without verifying whether his purported applications for the purpose were approved.[24]

The Revised Rules for Administrative Cases in the Civil Service penalizes frequent unauthorized absences with suspension of six months and one day to one year on the first offense, and dismissal on the second offense.[25] Civil Service Memorandum Circular No. 4, series of 1991 penalizes, for habitual absenteeism, any civil service employee who incurs unauthorized absences in excess of the allowable 2.5 monthly leave credit under the Leave Law for at least three months in a semester or at least three consecutive months during the year,[26] which

Supreme Court Circular No. 2-99 equates with frequent absenteeism.[27] As there is no record of Yaneza's available leave credits when he was absent on the dates involved in the case, he cannot be faulted for frequent unauthorized absenteeism. Judge Aquino v. Fernandez[28] enlightens:

The reason for the requirement that employees applying for vacation leave, whenever possible, must submit in advance their applications [for] vacation leave, is to enable heads of offices to make the necessary adjustments in the work assignments among the staff so that the work may not be hampered or paralyzed. However, it is clear from [Sections 49-54 of Rule XVI of the Omnibus Civil Service Rules and Regulations] that mere failure to file a leave of absence in advance does not ipso facto render an employee administratively liable. In case the application for vacation leave of absence is filed after the employee reports back to work but disapproved by the head of the agency, then, under Section 50[29] xxx, the employee shall not be entitled to receive his salary corresponding to the period of his unauthorized leave of absence. The unauthorized leave of absence becomes punishable only if the absence is frequent or habitual under Section 23 (q), Rule XIV of the omnibus Civil Service Rules and Regulations or detrimental to the service under Section 23 (r) [sic][30] or the official or employee falsified his daily time record under Section 23 (a) or (f) of the same Omnibus Civil Service Rules.[31] (Italics in the original; emphasis and underscoring supplied)

In the absence then of evidence that Yaneza's unauthorized absences were frequent or habitual, or that he falsified his daily time record, or that his absence was inimical to the interest of public service, the Court may not administratively discipline him.[32] He is, however, not entitled to receive his salary corresponding to the period of his unauthorized absences. Following the provision of Article 2154 of the Civil Code that "[i]f something is received where there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises," he must return the same if he had already received it.

Finally, in OCA IPI No. 06-2449-RTJ, this Court finds well-taken the findings and recommendation of the Hearing Officer Designate.

In *Edaño v. Asdala*,[33] the Court, by Decision of July 26, 2007, dismissed Judge Asdala from the service for gross insubordination and gross misconduct unbefitting of a member of the judiciary.[34] This leaves it unnecessary to still consider the complaint against her for personally designating her choice of an OIC Branch Clerk of Court despite the previous official designation of one by the Court.

WHEREFORE,

OCA-I.P.I. No. 05-2175-P is DISMISSED for lack of merit.

OCA-I.P.I. No. 05-2228-P is REDOCKETED as a regular administrative matter. Victor Pedro A. Yaneza is found GUILTY of violation of the Revised Uniform Rules on Administrative Cases in the Civil Service for failure to process documents and complete action on documents and papers within a reasonable time from preparation thereof, and is accordingly REPRIMANDED with WARNING that a repetition of the same offense will be dealt with more severely.

If Yaneza had received his salary corresponding to his unauthorized absences from April 3, 2005 to May 31, 2005, he is ORDERED to return the same. The Office of the Court Administrator is ordered to verify the matter and, if in the affirmative, to implead the order.

OCA-I.P.I. No. 06-2449-RTJ is DISMISSED for mootness.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, Azcuna, and Brion, JJ., concur.

* Additional member per Raffle dated April 23, 2008.

[1] Rollo (A.M. No. P-08-2455), pp. 1-4.

[2] Id. at 5-7.

[3] Id. at 6.

[4] Id. at 16-20.

[5] Id. at 15.

[6] Manansala III v. Asdala, A.M. No. RTJ-05-1916, May 10, 2005, 458 SCRA 349, 367.

[7] Rollo (OCA I.P.I. No. 05-2175-P), pp. 18-19.

[8] TSN, February 6, 2007, pp. 6, 31-32.

[9] Rollo (OCA I.P.I. No. 05-2228-P), pp. 2-5.

[10] Id. at 6-9.

[11] Id. at 28-37.

[12] Id. at 29.

[13] Ibid. Vide Manansala III v. Adsala, A.M. No. RTJ-05-1916, May 10, 2005, 458 SCRA 349, 367.

[14] Rollo (A.M. No. P-08-2456), pp. 7-9.

[15] Id. at 19.

[16] Rollo (A.M. No. P-08-2455), p. 55; id. at 94.

[17] Id. at 56; id at 95.

[18] Rollo (A.M. No. RTJ-08-2113), pp. 60-63.

[19] Consolidated Report (not paginated).

[20] Revised Uniform Rules on Administrative Cases in the Civil Service, Rule IV, Section 52 (C) (14).

[21] TSN, February 6, 2007, p. 17.

[22] Rollo (A.M. No. P-08-2456), p. 19.

[23] TSN, February 6, 2007, 11-12.

[24] Vide id. at 14-17.

[25] Revised Uniform Rules on Administrative Cases in the Civil Service, Rule IV, Section 52 (A)(17).

[26] Vide Supreme Court Circular No. 1-91; Atty. Talion v. Ayupan, 425 Phil. 41, 52 (2002).

[27] The said circular mentions absenteeism and tardiness, even if such do not qualify as "habitual" or "frequent"

under Civil Service Commission Memorandum Circular No. 04, Series of 1991.” However, Civil Service Memorandum Circular No. 04, Series of 1991 only defines “habitual” and not “frequent” absences. Thus, by implication, Supreme Court Circular No. 2-99 equates “frequent” with “habitual” absences.

[28] 460 Phil. 1 (2003).

[29] Omnibus Civil Service Rules and Regulations, Rule XVI, Section 50:

Sec. 50. Effect of unauthorized leave. – An official/employee who is absent without approved leave shall not be entitled to receive his salary corresponding to the period of his unauthorized absence. It is understood, however, that his absence shall no longer be deducted from his accumulated leave credits, if there is any.

[30] Section 23 (r) refers to “refusal to perform official duty.” “Conduct grossly prejudicial to the best interest of the service” is in Section 23 (t).

[31] Judge Aquino v. Fernandez, supra note 28 at 11-12. Citations omitted.

[32] Vide id. at 12.

[33] Edaña v. Asdala, A.M. No. RTJ-06-1974, July 26, 2007, 528 SCRA 212.

[34] Id. at 226.

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