

ALEXANDER B. ORTIZ, COMPLAINANT, VS. JUDGE IBARRA B. JACULBE, JR., REGIONAL TRIAL COURT OF DUMAGUETE CITY, BRANCH 42, RESPONDENT.

A.M. No. RTJ-04-1833. June 28, 2005

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is an administrative complaint filed by Alexander B. Ortiz against Judge Ibarra B. Jaculbe, Jr.[1]

In a verified letter-complaint[2] dated March 20, 2003, Ortiz averred the following: That he is a respondent in a case filed before the sala of Judge Jaculbe; that Atty. Richard Enojo, who is the son-in-law of Judge Jaculbe, represents the plaintiff in the same case; that a compromise agreement was entered into by the parties; that pursuant to the compromise agreement, plaintiff filed a motion for the issuance of a writ of execution; and that the motion was hastily granted by Judge Jaculbe without holding a hearing to prove the failure of defendants to comply with the compromise agreement.

Complainant cites Rule 3.12 of Canon 3 of the Code of Judicial Conduct which reads, as follows:

A judge should take no part in a proceeding where the judge's impartiality might reasonably be questioned. These cases include, among others, proceedings where:

.....

(d) the judge is related by consanguinity or affinity to a party litigant within the sixth degree or to counsel within the fourth degree.

Complainant further claims that the relationship between Judge Jaculbe and Atty. Richard Enojo is within the third degree of affinity and thus covered by the rule.

In his Comment,[3] Judge Jaculbe alleges that it has been his practice to voluntarily inhibit himself when a case handled by his son-in-law is raffled to his sala or, alternatively, for his son-in-law to withdraw his appearance. In support of his assertion, he attached as annexes to his Comment some orders of inhibition he issued and some withdrawals of appearance filed by his son-in-law.

The Judge further claims that there is only one exception to his above-stated practice and that is the case now subject of this complaint. He contends, however, that:

. . . there is no legal, equitable and reasonable necessity to inhibit himself and the case can be counted as a disposal from his court, in view of the following cogent and valid grounds:

- No factual and legal issue [had] been resolved by the undersigned in rendering the judgment based on the compromise agreement, and, there was no issue being resolved by the undersigned in issuing the order for the Writ of Execution, for which issue undersigned could have possibly been biased in favor of his son-in-law;

- Atty. Richard Enojo (son-in-law of undersigned) participated and appeared very much later and ONLY AS ADDITIONAL COUNSEL for plaintiff, because, Atty. Jose Arbas since the start of the case consistently appeared as the only counsel for plaintiff for several years;
- During the FIRST court appearance of Atty. Richard Enojo, he immediately manifested that his client is accepting and willing to sign the pending and proposed compromise agreement already submitted by the defendants, which compromise agreement was eventually finalized and submitted to the court for approval; therefore, the appearance of his son-in-law was instead favorable to the defendants and [is] without [the] possibility of partiality and undue influence by the judge;
- The Judgment was rendered in accordance with the Compromise Agreement, no more[,] no less;
- The order for issuance of a Writ of Execution as a ministerial duty only of the court was in accordance with the procedure of the Rules of Court, after hearing the same with no opposition and no motion for reconsideration and/or other legal remedies availed of by the defendants; and
- The appearance of his son-in-law as additional counsel for plaintiff, has long been with the express conformity and acquiescence by the defendants; therefore, the defendants are in estoppel [and] thus cannot now question and complain as to the conduct of this Presiding Judge.

In a Manifestation and Comment,[4] Judge Jaculbe likewise takes exception to the narration of facts by the complainant, as follows —

The apparent and deliberate misrepresentation of facts briefly states that: undersigned Judge "x x x immediately granted the motion and as a matter of fact, issued [a] writ of execution on April 29, 2002 without conducting a hearing x x x." "Worst is the fact that Hon. Ibarra B. Jaculbe had ordered for the issuance of a writ of execution not in conformity to its decision." "[T]he only reason why the same was expedited by the court is the fact that Atty. Richard Enojo, plaintiff's counsel is his son-in-law." Also, complainant falsely alleged that undersigned Judge "ordered for the issuance of a writ of execution not in conformity to its decision."

Upon referral of the case, the Office of the Court Administrator made the following evaluation and recommendation:

Rule 3.12 of Canon 3 of the Code of Judicial Conduct specifically provides that "a judge should take no part in any proceeding where the judge's impartiality might reasonably be questioned." Paragraph (d) of said Rule provides [as an instance thereof] the following:

"(d) the judge is related by consanguinity or affinity to a party litigant within the sixth degree or to counsel within the fourth degree."

Clearly, respondent violated the above canon by deciding Civil Case No. 12320 since his son-in-law, who is related to him in the first degree of affinity, was a counsel for the plaintiff. At least respondent does not pretend to be ignorant of the provisions of the Code of Judicial Conduct and he can not deny that he had violated the same. However, his excuse that his son-in-law was not an original counsel but had only entered his appearance after the case had been pending for over a year and only to announce that his client was ready to sign the compromise agreement is unacceptable. What he should have done the moment his son-in-law entered his appearance was to forthwith disqualify himself and have the case reraffled to another branch. His reluctance to let go of the case, according to him, was [due to] his desire to include the same case among his disposals and considering that it was nearly finished he preferred not to unload it. This[,] again, is a poor excuse for violating the clear injunction written in the Code.

Under Rule 140, a violation of the Code of Judicial Conduct may be classified as simple misconduct which is

punished by suspension from office without salary for not less than one (1) month nor more than three (3) months or a fine of more than P10,000.00 but not exceeding P20,000.00.

RECOMMENDATION: It is respectfully recommended that this case be redocketed as a regular administrative matter and considering that respondent had earlier been reprimanded in RTJ-97-1393, he should be made to pay a fine [of] P11,000.00 for simple misconduct.[5]

As indicated by the Office of the Court Administrator, Judge Jaculbe does not dispute the fact that Atty. Richard Enojo is his son-in-law and is, therefore, related to him by affinity in the first degree.

The prohibition against the Judge's sitting in the case is found in the Rule 3.12 of Canon 3 of the Code of Judicial Conduct as quoted above and in Section 1 of Rule 137 of the Rules of Court, which states:

SECTION 1. Disqualification of judges. — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

The prohibition under the rules is clear. Therefore, Judge Jaculbe's failure to inhibit himself when his son-in-law appeared as counsel in a case he was trying is a patent violation of the Code of Judicial Conduct and the Rules of Court. In *Sales v. Calvan*,^[6] the Court found that Judge Calvan violated the rule on disqualification of judges as set out in the Code of Judicial Conduct and the Rules of Court when he conducted the preliminary investigation of a criminal case where his wife was the niece of the private complainant. The Court articulated therein, as follows —

In *Garcia v. De la Peña*, we explained the rationale for this disqualification:

The rule on compulsory disqualification of a judge to hear a case where, as in the instant case, the respondent judge is related to either party within the sixth degree of consanguinity or affinity rests on the salutary principle that no judge should preside in a case in which he is not wholly free, disinterested, impartial and independent. A judge has both the duty of rendering a just decision and the duty of doing it in a manner completely free from suspicion as to his fairness and as to his integrity. The law conclusively presumes that a judge cannot objectively or impartially sit in such a case and, for that reason, prohibits him and strikes at his authority to hear and decide it, in the absence of written consent of all parties concerned. The purpose is to preserve the people's faith and confidence in the courts of justice.

The disqualification is mandatory, and respondent has no option other than to inhibit himself from the criminal case. The appropriate step for respondent to take would have been to immediately desist from hearing the case, even at the preliminary investigation stage. His failure to do so is a glaring violation not only of the Rules of Court but also of the Code of Judicial Conduct, which mandates in Canon 3, Rule 3.12:

Rule 3.12 — A judge should take no part in a proceeding where the judge's impartiality might reasonably be questioned. These cases include, among others, proceedings where:

.....

(d) the judge is related by consanguinity or affinity to a party litigant within the sixth degree or to counsel within the fourth degree;

.....

Even in *Perez v. Suller*, which respondent cites in support of his arguments, we ruled that respondent Judge Suller should have refrained from handling the preliminary investigation of the case involving his nephew, a relative by consanguinity within the sixth degree and thus covered by the prohibition in Rule 137 of the Rules of Court. We further held:

While conducting preliminary investigation may not be construed strictly as "sitting in a case," the underlying reason behind disqualification under Rule 3.12 [of Canon 3] of the Code of Judicial Conduct and Section 1 of Rule 137 is the same.

We have time and again reminded judges of their obligation to keep the image of the judiciary unsullied and worthy of the people's trust. Respondent clearly failed to uphold this duty.

In that case, the Court imposed a fine of P10,000 on Judge Calvan for violation of Section 1 of Rule 137 of the Rules of Court and of Rule 3.12 of Canon 3 of the Code of Judicial Conduct.

Section 9 of Rule 140 of the Rules of Court provides that a violation of Supreme Court rules falls under a Less Serious Charge. Section 11 of the same rule states that the following sanctions may be imposed for Less Serious Charges: "1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or 2. A fine of more than P10,000.00 but not exceeding P20,000.00."

In the present case, since Judge Jaculbe was earlier reprimanded by the Court in RTJ-97-1393, the recommendation of the Office of the Court Administrator to impose a fine of P11,000 is appropriate.

WHEREFORE, Judge Ibarra B. Jaculbe Jr., presiding judge of the Regional Trial Court of Dumaguete City, Branch 42, is found GUILTY of violating Section 1 of Rule 137 of the Rules of Court and Rule 3.12 of Canon 3 of the Code of Judicial Conduct and a FINE of P11,000 is hereby imposed on him.

No costs.

SO ORDERED.

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

[1] Regional Trial Court of Dumaguete City, Branch 42.

[2] Rollo, pp. 1-7; Another letter-complaint with substantially the same allegations was also filed on December 5, 2002, Rollo, pp. 88-90.

[3] Dated May 9, 2003, Rollo, pp. 22-34.

[4] Dated July 1, 2003; Rollo, pp. 97-102.

[5] Rollo, pp. 127-128.

[6] 428 Phil. 1 (2002).

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