

ASUNCION B. VISBAL, COMPLAINANT, VS. JUDGE ROSABELLA M. TORMIS, MUNICIPAL TRIAL COURT IN CITIES, CEBU CITY, BRANCH 4, RESPONDENT.

A.M. No. MTJ-07-1692 [Formerly A.M. OCA I.P.I. No. 02-1289-MTJ]. November 28, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Records show that Asuncion B. Visbal (complainant) filed on September 26, 2001 an administrative complaint[1] for dishonesty and grave misconduct against Judge Rosabella M. Tormis (respondent), Presiding Judge of the Municipal Trial Court in Cities (MTCC), Cebu City, Branch 4 in connection with a criminal complaint filed by respondent against complainant which was lodged before Branch 2 of the MTCC, Tacloban City.

In compliance with the 1st Indorsement[2] dated May 29, 2002 of then Senior Deputy Court Administrator (DCA) Zenaida N. Elepaño,[3] which directed her to file her comment on the complaint and to furnish complainant a copy thereof, respondent filed her Comment[4] dated July 2, 2002.

By letter[5] dated July 29, 2002, complainant informed the DCA that she had not yet received a copy of respondent's Comment and requested that she be furnished one so that she (complainant) could file her Reply thereto. Nevertheless, complainant expressed her willingness to submit her complaint for resolution on the basis of the evidence on record.

The Court's First Division dismissed the complaint against respondent, by Resolution[6] of September 18, 2002, in this wise:

Considering the letter dated September 26, 2001 filed by Asuncion B. Visbal charging Judge Rosabella M. Tormis, MTCC, Br. 4, Cebu City with dishonesty and grave misconduct for deliberately making untruthful statements in her affidavit of complaint dated September 15, 1998 and falsely testifying before the court on July 8, 1999 relative to a criminal complaint against her for "Direct Assault Upon A Person in Authority" docketed as Crim. Case No. 98-11-CR-18 before MTCC, Tacloban City, Br. 2, the Court Resolves to:

(a) NOTE and DISMISS the instant administrative complaint filed by Asuncion Visbal against Judge Rosabella M. Tormis, MTCC, Cebu City, the remedy being judicial; (Emphasis and italics in the original; underscoring supplied)[7]

In the same Resolution of September 18, 2002, acting on the July 29, 2002 letter of complainant, the Court resolved to:

(b) DIRECT Judge Tormis to explain in writing within ten (10) days from notice why she should not be administratively sanctioned for appearing in court without prior approval from the Court;

x x x x

(d) require respondent judge to FURNISH complainant with a copy of her comment within ten (10) days from

notice hereof. (Emphasis and italics in the original; underscoring supplied)[8]

Respondent, in compliance with the Court's September 18, 2002 Resolution, submitted an Explanation[9] dated October 25, 2002 (Explanation) stating that, inter alia, she thought that the rule for prior permission for judges to testify in courts or proceedings would not apply to her as she was a victim of a crime; and that she had furnished complainant with a copy of her Comment to the complaint.

Earlier, complainant, by "Manifestations"[10] dated October 18, 2002, informed the Court that she had not yet received a copy of respondent's Comment to the complaint as directed by the Court's September 18, 2002 Resolution.

After the Court noted respondent's above-said Explanation and complainant's September 18, 2002 Manifestation, the First Division of the Court referred the case, by Resolution[11] of December 9, 2002, to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.

Still later, complainant filed "Manifestations with Motion to Require Respondent to Show Proof of Service"[12] dated January 27, 2003 stating that she had not yet received a copy of respondent's Comment to the complaint and that she was immensely amazed by [r]espondent's propensity to lie even to th[e] Honorable Supreme Court."

By Memorandum[13] of April 1, 2003, the DCA found respondent's reasons behind her failure to seek prior permission from the Court "justifiable."

It is the policy of this Court to require judges and court personnel to seek permission from the Court whenever they appear in court in their behalf. This inhibitory rule is in line with Administrative Circular No. 5 dated 4 October 1988 of this Court which requires judiciary officials and employees to devote their entire time to government service to ensure efficient and speedy administration of justice. In respondent's case, she failed to secure prior permission from the Court due to time constraints and her belief that such prior permission did not apply in her case. We find her reasons justifiable considering that she became a member of the bench only on 12 March 1999, took her oath on 22 June 1999 and assumed office at MTCC, Branch 4, Cebu City on 15 July 1999. Moreover, when she testified in court on 8 July 1999, she acted as a private complainant in a criminal case she filed before she joined the bench.

However, we take this occasion to remind Judge Tormis that as a member of the bench, she should conduct herself in a manner as to be beyond reproach and suspicion, so as not to create an impression to the public that she is utilizing the power or prestige of her position. It would be difficult for the public to dismiss the suspicion that there exist fraternal ties among the judges especially when she appears before a co-equal court.

Under the circumstances, we believe that it would have been more prudent on the part of the respondent judge to have at least informed the Court that she will testify before Branch 2, MTCC-Tacloban City. In so doing, respondent will manifest her intention to personify judicial integrity and exemplify honest public service.[14] (Emphasis and underscoring supplied)

On the alleged failure of respondent to furnish complainant with a copy of her Comment on the complaint, the DCA recommended that respondent "be required to show proof of service to [complainant] of her Comment to the Complaint."[15]

The Court, by Resolution[16] of May 5, 2003, approved the recommendation of the DCA and gave respondent a period of ten days from notice to show proof of service to complainant of her Comment on the complaint.

By Explanation[17] dated June 2, 2003, respondent, in compliance with the Court's May 5, 2003 Resolution, reiterated her earlier statements in her Explanation dated October 25, 2002, including her statement that she had furnished complainant with a copy of her Comment on the complaint. The Court thereupon referred the complaint

anew for evaluation, report and recommendation to the OCA, by Resolution[18] of July 30, 2003.

The OCA, by Memorandum[19] of September 9, 2003, finding that the only issue to be evaluated was whether respondent failed to comply with the directive of the Court to show proof of service upon complainant of her Comment on the complaint, recommended as follows:

- Respondent Judge be DIRECTED to explain why she should not be cited in contempt for her obdurate defiance of the repeated directives of this Court for her to furnish complainant a copy of her Comment to the Complaint; and
- For the last time, she be DIRECTED to show proof of service to complainant Asuncion B. Visbal of her Comment within ten (10) days from notice hereof.[20] (Emphasis and underscoring supplied)

Finding the recommendation of the OCA in order, the Court ordered respondent, by Resolution[21] of October 6, 2003, to:

- (a) EXPLAIN why she should not be cited in contempt for her obdurate defiance to the repeated directives of this Court for her to furnish complainant with a copy of her Comment on the complaint; and
- (b) SHOW proof of service, for the last time, to complainant Asuncion B. Visbal of her Comment to the complaint,

both within ten (10) days from notice hereof.[22] (Emphasis and italics in the original; underscoring supplied)

As the records do not show that respondent complied with the October 6, 2003 Resolution of the Court despite her receipt thereof as shown by Registry Return Receipt No. 48680, this Court, by Resolution[23] of March 2, 2005, ordered her to pay a fine of P2,000 and to comply with the October 6, 2003 Resolution, both within a non-extendible period of ten days from notice. Respondent paid the fine.[24]

The Court, by Resolution[25] of August 10, 2005, thereafter referred the case once again to the OCA for evaluation, report and recommendation. In compliance therewith, the OCA submitted a Memorandum[26] dated July 18, 2006 with the following evaluation:

Respondent's failure to comply with the directives of the Court in its Resolutions dated September 18, 2002[,] May 5, 2003[,] October 6, 2003 and March 2, 2005 to furnish complainant Visbal a copy of her Comment dated July 2, 2002 cannot be countenanced. Respondent should know that judges must respect the order and decisions of higher tribunals, especially the Supreme Court, from which all other courts take their bearings. A resolution of the Supreme Court is not to be construed as a mere request nor should it be complied with partially, inadequately or selectively. (Guerrero vs. D[e]ray, A.M. No. MTJ-02-1466[,] December 10, 2002; Joseph [sic] vs. Abarquez[,] 261 SCRA 629).

In the judiciary, when the judge himself becomes the transgressor of the law which he is sworn to apply, he places his office in disrepute, encourages disrespect for the law and impairs public confidence in the integrity of the judiciary itself. (Vedaña vs. Valencia[,] 356 SCRA 317).

The failure of respondent judge to comply with the Court's directives constitutes a less serious offense which under Rule 140 of the Rules of Court as amended is punishable with suspension from office without salary and other benefits for not less than one (1) nor more than (3) months, or a fine of more than P10,00.00 but not exceeding P20,000.00.[27] (Italics in the original; Underscoring supplied),

with the DCA recommendation that respondent be fined in the amount of P11,000, with a stern warning that a repetition of a similar act be dealt with more severely.[28]

By Resolution[29] of March 5, 2007, the Court required the parties to manifest whether they were willing to

submit the matter for resolution on the basis of the pleadings filed within fifteen days from notice. By Resolution[30] of July 4, 2007, the Court noted complainant's compliance.[31] To date, nothing has been heard from respondent.

The present case would have not unnecessarily dragged and would have spared the time of the Court had respondent complied with the repeated directives (four in all) of the Court for her to show proof that she furnished complainant with a copy of her Comment on the complaint.

That respondent paid, as above-stated, the fine of P2,000 is an admission that either she refused to present proof of service to complainant of her Comment or she did not furnish complainant with said document. In either case, she shows her blatant disrespect to the orders of the Court.

Resolutions of this Court should not be treated lightly. As a judge, respondent must be the first to exhibit respect for authority.[32] *Gaspar v. Adaoag*[33] teaches:

Judges should respect the orders and decisions of higher tribunals much more so this Court from which all other courts should take their bearings. A resolution of the Supreme Court should not be construed as a mere request and should not be complied with partially, inadequately or selectively.[34]

The disrespect of respondent becomes more pronounced as the Court has noted that to date, she has not even complied with its latest Resolution of March 5, 2007.

The recommended penalty of P11,000 is, under the circumstances, thus too light.

In *Guerrero v. Judge Deray*,[35] which was cited by the DCA, the Court held that a judge "who deliberately and continuously fails and refuses to comply with the resolution of [the Supreme] Court is guilty of gross misconduct and insubordination." [36] (*Italics in the original*). This ruling was reiterated in *Dela Cruz v. Vallarta*. [37]

And, also in *Guerrero*, this Court held that "indifference or defiance to the Court's orders or resolutions may be punished with dismissal, suspension or fine as warranted by the circumstances." [38]

As earlier reflected above, the Court did not impose sanctions on respondent for appearing in court without prior permission, after her Explanation was accepted by the Court, albeit she was "reminded to be more cautious at all times in her activities, official or otherwise." But she was fined P2,000 for her failure to comply with the October 6, 2003 Resolution of this Court.

In *Lachica v. Tormis*[39] this Court noted that herein respondent had been administratively charged on eight separate occasions.

This is not the first time that respondent judge was sanctioned by this Court. It appears that aside from this case, respondent judge has been administratively charged eight (8) other times. Of these cases three (3) have been dismissed.[40]

On April 27, 2004 in Administrative Matter No. MTJ-00-1337, the Court found respondent guilty of improper conduct for trying to influence the course of litigation in Criminal Case No. 99796-12 and was accordingly reprimanded. She was also admonished for conduct unbecoming of a judge.

On December 17, 2004, respondent was fined in the amount of P5,000.00 in Administrative Matters Nos. 04-7-373-RTC and 04-7-374-RTC, for gross violation of Section 17, Rule 114, for having approved the bail of an accused in Criminal Cases Nos. CEB-BRL-783 and 922 pending before the RTC, Branch 60, Barili, Cebu, absent showing of unavailability of all RTC judges in Cebu City.

On March 16, 2005, respondent judge was admonished in Administrative Matter No. 04-1554-MTJ and reminded to be more circumspect in granting postponements.

Clearly, being chastised thrice has not reformed respondent. From the foregoing considerations, we find that the penalties recommended by the investigating judge and the OCA are not commensurate to respondent judge's misconduct which is aggravated by her past misdeeds. Respondent judge's infraction merits suspension from the service for six (6) months.[41] (*Italics in the original*),

Respondent was thus, in Lachica, suspended from office for six (6) months without salary and other benefits for gross misconduct.

Gross misconduct, a serious charge under Section 8, Rule 140 of the Rules of Court, carries a penalty of fine ranging from P20,000 to P40,000, or suspension from office without salary and other benefits for more than three months but not exceeding six months.[42] To the Court, suspending respondent for six (6) months without salary and other benefits is in order.

A final word. To put to rest complainant's persistent clamor for a copy of respondent's July 2, 2002 Explanation-comment, the OCA is directed to furnish her with a copy thereof.

WHEREFORE, respondent Judge Rosabella M. Tormis, Presiding Judge, Municipal Trial Court in Cities, Cebu City, Branch 4 is, for gross misconduct, **SUSPENDED** for six (6) months without salary, with a **STERN WARNING** that still another repetition of a similar act will be dealt with most severely.

The Office of the Court Administrator is **DIRECTED** to furnish complainant Asuncion B. Visbal with a copy of respondent's July 2, 2002 Comment on the complaint.

SO ORDERED.

Sandoval-Gutierrez, Carpio, (Acting Chairperson), and Tinga, JJ., concur.
Quisumbing, (Chairperson), J., on official leave.
Velasco, Jr., J., no part.

* On Official Leave.

** Additional Member per Administrative Circular No. 84-2007.

*** Acting Chairperson.

**** No part due to prior action in the OCA.

[1] Rollo, pp. 16-18.

[2] Id. at 15

[3] Now Court Administrator.

[4] Rollo, pp. 4-7.

[5] Id. at 61.

[6] Id. at 63-64.

[7] Id. at 63.

[8] Id. at 63-64.

[9] Id. at 76-77.

[10] Id. at 69-71-A.

[11] Id. at 81.

[12] Id. at 83-84.

[13] Id. at 90-91.

[14] Id. at 91.

[15] Ibid.

[16] Id. at 92.

[17] Id. at 96-97.

[18] Id. at 146-147.

[19] Id. at 150-152.

[20] Id. at 151-152.

[21] Id. at 156-157.

[22] Id. at 156.

[23] Id. at 160-161. The Resolution reads:

It appearing that respondent Judge Rosabella M. Tormis failed to comply with the resolution of October 6, 2003 which required her to explain why she should not be cited in contempt for the obdurate defiance to the repeated directives of this Court for her to furnish complainant with a copy of her comment on the complaint and to show proof of service thereof, both within ten (10) days from notice thereof, despite receipt of a copy thereof as evidenced by Registry Return Receipt No. 48680 with delivery dated October 30, 2003, the Court Resolves to:

(a) IMPOSE a fine of P2,000.00 on respondent Judge Rosabella M. Tormis payable to the Cash Division, OCA; and

(b) Require Judge Tormis to COMPLY with the resolution of October 6, 2003.

both within a NON-EXTENDIBLE period of ten (10) days from notice hereof. (Emphasis and italics in the original)

[24] Vide photocopy of the Official Receipt No. 21731181 dated May 9, 2005; id. at 176.

[25] Id. at 190.

[26] Id. at 192-194.

[27] Id. at 193.

[28] Id. at 194.

[29] Id. at 197.

[30] Id. at 205.

[31] Id. at 200.

[32] Office of the Court Administrator v. Legazpi, Jr., A.M. No. MTJ-06-1661, January 25, 2007, 512 SCRA 570.

[33] A.M. No. MTJ-04-1565, August 16, 2006, 499 SCRA 1.

[34] Id. at 6.

[35] 442 Phil. 85 (2002).

[36] Id. at 95.

[37] A.M. No. MTJ-04-1531, March 6, 2007, 517 SCRA 465.

[38] Supra note 35 at 95; vide Palon, Jr. v. Vallarta, A.M. No. MTJ-04-1530, March 7, 2007, 517 SCRA 624, 629; Gaspar v. Adaoag, supra note 33 at 7; Lumapas v. Judge Tamin, 452 Phil. 972, 984 (2003).

[39] A.M. No. MTJ-05-1609, September 20, 2005, 470 SCRA 206.

[40] The list includes the present case, then docketed as A.M. OCA IPI No. 02-1289-MTJ, which, as earlier stated, although dismissed, respondent was fined in the amount of P2,000 for failure to comply with a resolution issued by the Court and was reminded to be more cautious at all times of her activities, official or otherwise, so as to prevent any suspicion that she is using the power and prestige of her position improperly.

[41] Supra note 39 at 216-217.

[42] Sec. 11 (A), Rule 140.

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