

**SPOUSES CAROLINA AND VILLAMOR GRAGERA, COMPLAINANTS,
VS. JUDGE PABLO B. FRANCISCO, REGIONAL TRIAL COURT, BRANCH
26, STA. CRUZ, LAGUNA, RESPONDENT.**

A.M. No. RTJ-02-1670. June 26, 2003

Ponente: VITUG, J.

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VITUG, J.:

In a letter-complaint, dated 27 June 2000, sent to the Office of the Court Administrator (OCA), herein complainants, the spouses Villamor and Carolina Gragera, charged respondent Judge Pablo B. Francisco, a Regional Trial Court (RTC) Judge of Sta. Cruz, Laguna, with unauthorized practice of law relative to Civil Case No. 98-0019, entitled "Luisa B. Francisco-Gonzales, represented by her Attorney-in-Fact Pablo B. Francisco vs. Sps. Carolina and Villamor Gragera" for rescission of contract pending before the RTC of Binangonan, Rizal. The spouses averred that Judge Pablo Francisco had acted as the attorney-in-fact of his sister Luisa Francisco-Gonzales, a resident abroad, in the active prosecution of the case. Except for the initiatory pleading, respondent Judge signed the pleadings relative to the civil case and participated in some of the hearings held relative thereto.

On 30 October 2000, the OCA referred the letter-complaint of spouses Gragera to respondent Judge Francisco for his comment.

Respondent Judge submitted his comment, dated 28 November 2000, in which he explained that Civil Case No. 98-0019 involved his sister, a resident of the United States of America, who had asked him to be her attorney-in-fact in the case. Respondent Judge said that he had engaged the services of Attorney Remigio D. Saladero to be their counsel. Atty. Saladero acted as such until he was constrained to return to South Cotabato in the middle of 1999. Due to the sudden unavailability of Atty. Saladero and not having found as yet an acceptable replacement, respondent Judge was meanwhile obligated to file a motion for pre-trial in time for the Christmas homecoming of his sister. When no amicable settlement was reached by the parties during the pre-trial conference, respondent eventually contracted the services of Attorney Reynaldo Bernardo.

On 15 April 2000, the court trying the civil case issued an order allowing the spouses Gragera (defendants in the case) to file an amended answer. Respondent Judge, believing that the order was erroneous, suggested that Attorney Bernardo file a motion for extension of time within which to file a motion for reconsideration. Due to an apparent miscommunication or misunderstanding, Attorney Bernardo instead filed a motion for extension of time to file a reply to the amended answer. Respondent Judge, after learning that neither a motion for reconsideration nor a reply was filed, forthwith prepared and filed a motion for reconsideration in behalf of his sister. Respondent Judge asserted that his being an attorney-in-fact for his sister did not affect his judicial functions and that he had always filed an official leave whenever he would appear in the civil case. Finally, respondent Judge called attention to the fact that the letter-complaint of the spouses Gragera was not even verified.

In another letter, dated 28 December 2000, sent to the OCA, the spouses Gragera claimed that respondent Judge

had also been appearing in other cases, filed by him as plaintiff, such as in —

- "a. Civil Case No. 99-5398, Pablo B. Francisco vs. Benjamin Figueroa, RTC, Antipolo, Branch 73;
- "b. Civil Case No. 00-022, Pablo B. Francisco vs. Rogelio Sanchez, MTC, Binangonan, Rizal, Branch 1;
- "c. Civil Case No. 00-032, Pablo B. Francisco vs. Rolando Sanchez, MTC, Binangonan, Rizal, Branch 1;
- "d. Civil Case No. 00-021, Pablo B. Francisco vs. Bernardo Persia, MTC, Binangonan, Rizal, Branch 2;
- "e. Another civil case pending before Branch 69 of RTC, Binangonan, Rizal, the details of which have not yet been secured as of this date." [1]

In a resolution, dated 21 August 2002, the case, docketed Administrative Matter RTJ-02-1670, was referred by the Supreme Court to the Court of Appeals for investigation, report and recommendation. In the course of the investigation, several hearings were conducted during which the contending parties were allowed to testify and present their documentary and testimonial evidence. In the hearing of 26 November 2002, the letter-complaint against respondent Judge was subscribed and sworn to by complainant-spouses Gragera before Division Clerk Attorney Romelia Gonzales.

In his investigative report, Justice Elvi John S. Asuncion, to whom the matter was raffled and assigned, stated thusly:

"Respondent Judge denied committing unauthorized practice of law. He contends that he was always represented by counsel in Civil Case No. 98-0019 and in the other ejectment cases which complainants charge that he was appearing in. His lawyers were, initially, Atty. Saladero, then Atty. Bernardo and Atty. Recio. Presently, he is represented in the foregoing cases by Atty. Amor Mia J. Francisco. It is further submitted that in the other ejectment cases where he allegedly appears, respondent Judge is the plaintiff therein and appears in the hearings only as a private individual protecting his rights.

"Moreover, respondent maintains that his appearances in the foregoing cases do not prejudice the dispensation of justice in his sala as shown by the monthly report of cases in the RTC Sta. Cruz, Laguna — Br. 26 (Exhibits 32 — 32FF). Respondent testified that judges are allowed a total of thirty (30) days vacation leave per year and he always files his leave before appearing in the subject cases.

"However, he admits that there were several instances when he prepared the pleadings and signed them himself allegedly by force of circumstances and to avoid prejudice to the principal plaintiff, Luisa Francisco Gonzales.

"Indeed, evidence presented by complainants show that there are occasions when respondent Judge himself would sign the pleadings in the aforesaid cases." [2]

In its report, dated 15 November 2001, the OCA gave its own evaluation; to wit:

"It appears from the record of the case that Atty. Remigio Saladero, Jr., the lawyer who signed the complaint, never represented respondent during court hearings. Thus, the appearance of Atty. Reynaldo Bernardo as collaborating counsel after more than two (2) years from the time the case was filed. In the meantime, it was respondent who acted as counsel and signed pleadings submitted in court. It is therefore undeniably clear that respondent engaged in the practice of law as evidenced by the minutes of the hearings and the motions filed in court." [3]

The OCA and the investigating Justice both recommended the imposition of a fine of P5,000.00 against respondent Judge for unauthorized practice of law.

This Court finds no valid reason to depart from the holding of the investigating Justice and the OCA that respondent Judge Pablo B. Francisco has committed a serious act of impropriety. Rule 5.07 of the Code of

Judicial Conduct provides:

"Rule 5.07. A judge shall not engage in the private practice of law. Unless prohibited by the Constitution or law, a judge may engage in the practice of any other profession provided that such practice will not conflict or tend to conflict with judicial functions."

The proscription against the private practice of law, or just giving professional advice to clients, by Judges is based on public policy. The prohibition applies equally well to the appointment of and acceptance by judges to the post of attorney-in-fact in actual litigations, a fact which is also, by and large, incompatible with the high office, functions, prestige and privileges of a judge.[4] It is of no moment, albeit worse, that the case where he accepts such designation as attorney-in-fact is one that pends before his own court. The mere perception that the judge might or could unduly influence the conduct, as well as the outcome of the case, can undermine, or compromise in the eyes of the public at the very least, the integrity and independence of the court. Thus, it is often said, a judge should avoid not only an actual impropriety but also even the appearance of impropriety.[5]

In the considered view of the Court, the recommended fine of P5,000.00 should be increased to P12,000.00.

WHEREFORE, respondent Judge Pablo B. Francisco is found to have impinged the Code of Judicial Conduct by his act of impropriety, and he is adjudged to pay a FINE of TWELVE THOUSAND (P12,000.00) PESOS with a warning that the commission of a similar or other infractions shall be dealt with severely.

SO ORDERED.

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

[1] Rollo, p. 43.

[2] Investigative Report, p. 5.

[3] Rollo, p. 43.

[4] Carual vs. Brusola, 317 SCRA 54.

[5] Lorena vs. Encomienda, 302 SCRA 632.

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