

ANTONIO V. BALANA, JR., COMPLAINANT, VS. HON. PERFECTO QUICHO, JUDGE OF FIRST INSTANCE OF ALBAY (BRANCH I), RESPONDENT.

Adm. Case No. 136-J. July 22, 1971

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

As set forth in the report submitted by Honorable Jose M. Mendoza, as Associate Justice of the Court of Appeals, to whom the complaint herein, as well as respondent's answer thereto, were referred for investigation and report thereon, the pertinent facts are:

"In a verified complaint, Antonio V. Balana, Jr. charged the respondent Judge with (a) Incompetence; (b) Gross Negligence and (c) Violation of law.

"The first charge of incompetence is based on the allegation that respondent (a) made a query in the course of a hearing on the inventory submitted in Special Proceeding No. 566 of the Court of First Instance of Albay, a guardianship proceeding, of whether or not the said inventory is required to be under oath; (b) made a statement in the course of the hearing of the accounting reports filed by the guardian that the provision of Section 1(c), Rule 94, was purely directory and (c) that respondent Judge gave due course to the motion for substitution of guardian without notice to the parties concerned, invoking Section 4, Rule 15, Rules of Court.

"The second charge of incompetence consists of the allegation that the motion for removal of guardian dated June 10, 1967 in the said guardianship proceeding was pending for seven (7) months and the respondent Judge neglected to act on the failure of the guardian Tan Chu Lim to submit the required inventory and accounting reports for a period of five (5) years and not having set for hearing the two accounting reports submitted by the said guardian until after the complainant filed a motion for the removal of guardian.

"The last charge of violation of law consists of the allegation that the respondent Judge was not holding court sessions on Saturdays and of having made false statement in the monthly certifications (New Judicial Form No. 86) submitted for the months of October, November and December, 1967, to the Department of Justice, notwithstanding his failure to resolve the complainant's motion for removal of guardian in said Special Proceeding No. 566 for a period of seven (7) months.

"In his answer, dated December 28, 1968, the respondent Judge denied the charges, giving reasons for his denials. He stated that:

"With respect to the first count, he cannot recall whether he made the query in open court 'Must it be under oath?' referring to the form of the inventory filed by the guardian in Special Proceeding No. 566; neither can he recall the statement attributed to him that 'the provisions of the Rules cited (Section 1 (c) Rule 94) are purely directory'; that if he made such remarks, the same must have been recorded stenographically.

"As to the second charge of gross negligence, the respondent Judge alleged that the delay in the resolution of the motion for removal of guardian was due to the fact of the reopening of the incident by the filing of new motions and pleadings after the hearing thereon. In connection with the failure of the guardian to file the

required inventory and account-ing reports for a period of five (5) years, the respond-ent Judge claimed that the guardian was repeatedly reminded of the latter's failure to comply with his duties as guardian.

"Finally, with regard to the last charge, the respondent Judge stated that 'he has adopted a practice of hearing motions any other day of the week in order to have Saturdays for study and preparation of decisions and orders not dictated in open court.' He denied that he made false statement in his monthly certificates (New Judi-cial Form No. 86) for the months of October, November and December, 1967, claiming that the motion for the removal of guardian in Sp. Pro-ceeding No. 566 was not yet submitted for decision owing to the hearing of the inventory and accounting reports."

The findings made by Justice Mendoza, upon consideration of the evidence, oral and documentary, introduced at the hearings held therefor, were:

"First Charge: INCOMPETENCE. - This charge cannot be sustained. While it is true that the respondent Judge may have uttered the remark 'Must it be under oath?' referring to the guardian's inventory and account, nevertheless, such remark is not necessarily an indication of incompetence, taken as an isolated instance of uncertainty as to the exact rule on the matter. Having been made in the course of a hearing, without benefit of a review of the Rules of Court, it cannot be considered a measure of the judicial mind.

"In the same manner, the statement attributed to the respondent Judge that the provisions of Sec-tion 1 (c) Rule 94 are purely directory deserves scant signification. The cited rule provides for the con-ditions of a guardian's bond. Verily, the conditions are mandatory, not directory. But as respondent Judge made such statement just in passing, the error is innocuous.

"As to the fact that the respondent Judge gave due course to the motion for substitution of guardian, without giving notice to the nearest of kins of the ward, we are persuaded by the argument that, as in the initial hearing, the nearest of kins were duly notified, and none of them appeared, the lack of notice to them of the motion for substitution of guardian, who had died meantime, may not be con-sidered fatal violation of Sections 4 and 5, Rule 15, Rules of Court.

"Indeed, the applicable provision on the substi-tution of guardian is Rule 97, particularly Section 2 thereof.

"Second Charge: GROSS NEGLIGENCE. - This charge at first blush may appear to be meritorious considering that the respondent Judge admittedly failed to resolve the motion for removal of guardian for seven (7) months. Considering, however, that in connection with said motion for removal, reasonable notice and opportunity to be heard must be afforded to the guardian (Section 2, Rule 97, Rules of Court), and that other pleadings were subsequently filed, the delay, while not justified, may not be categorized as 'gross negligence.'

"It is likewise obvious that the respondent Judge was negligent in requiring the guardian to comply with his obligation to submit sworn inventory and accounts, but this negligence is simple and not gross, in the absence of any move by an inte-rested party to compel the rendition of such inventory and accounting (Section 7, Rule 96, Rules of Court) until the motion for removal of guardian was filed by complainant.

"Final Charge: VIOLATION OF LAW. - The charge that the respondent Judge does not hold session during Saturdays is admitted by him, but he claims that he has made it a practice to dedicate Saturdays for study and preparation of decisions.

"We do not wish to dwell on the wisdom of such a practice, as that matter is better left to the sound judgment of the judge involved. However, it does not appear that the public has been informed of such prac-tice, thus creating confusion among practicing lawyers in his sala.

"With respect to acts of falsification of the monthly certificates of service (New Judicial Form No. 86), suffice it to state that this count may be deemed in-cluded in Administrative Case No. 138-J, instituted by the Secretary of Justice against the same respond-ent Judge, x x x."

Based upon these findings, which are borne out by the record, Justice Mendoza recommended "that the present charges against respondent Judge Perfecto Quicho be dismissed, although in the final determination of Adm. Case No. 138-J, it is suggested that the herein charges be considered as circumstances affecting the fitness of the respondent Judge in the judicial service."

Finding the foregoing recommendation to be well-taken, the complaint herein is, accordingly, dismissed, without prejudice to such action as may be taken in Administrative Case No. 138-J, on the charge of violation of law by the alleged falsification of respondent's monthly certificate of service.

IT IS SO ORDERED.

Reyes, J.B.L., Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Dizon, J., took no part.

Ruiz Castro, J., on leave.

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