CAPT. SALVADOR BERNALDEZ (RET.), COMPLAINANT, VS. JUDGE HENRY B. AVELINO AND CLERK OF COURT GUILLERMO E. ACOLOLA, MUNICIPAL CIRCUIT TRIAL COURT OF PANAY-PONTEVEDRA, PONTEVEDRA, ...

A.M. NO. MTJ-07-1672 (FORMERLY OCA I.P.I. NO. 04-1600-MTJ). July 09, 2007

Ponente: CORONA, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/9f5abaa959a2/

CORONA, J.:

This is an administrative complaint[1] for abuse of authority against respondents Judge Henry B. Avelino and clerk of court Guillermo E. Acolola, both of the Municipal Circuit Trial Court of Panay-Pontevedra in Pontevedra, Capiz (MCTC-Pontevedra).

On December 2, 1997, complainant Capt. Salvador Bernaldez (ret.)[2] filed a case for unlawful detainer, docketed as Civil Case No. 371, against Castor Calinao, Jr. in the MCTC-Pontevedra.[3] On January 2, 1998, Calinao asked for the dismissal of the action,[4] contending that the MCTC lacked jurisdiction over the subject matter.[5]

A preliminary conference was held on January 27, 1998.[6] Respondent judge, finding a semblance of an agrarian dispute, referred the matter to the Department of Agrarian Reform (DAR)[7] for it to determine whether the case was appropriate for trial or not.[8]

On April 21, 1998, the provincial agrarian reform officer advised respondent judge that pursuant to Section 76 of the Comprehensive Agrarian Reform Law:[9]

> [T]he court can take cognizance of the case for the purpose of determining whether or not it has jurisdiction to try [this] case because of the defense of tenancy interposed by the defendant.[10]

Certain that the MCTC had jurisdiction over the subject matter, respondent clerk of court scheduled a preliminary conference[11] on June 19, 1998. The complainant filed an urgent motion for postponement due to unavailability of counsel.[12] The motion was granted and the preliminary conference was moved to August 28, 1998.[13] But on that date, the complainant moved for another postponement because of the unavailability of counsel.[14] The motion was again granted and respondent clerk of court rescheduled the preliminary conference on October 9, 1998,[15] and again on November 13, 1998.[16] Complainant filed an urgent motion to postpone it because his attorney-in-fact had to go to Manila.[17] The motion was again granted, for the third time.

The preliminary conference was repeatedly postponed and rescheduled several more times in the following years.[18]

On July 3, 2000, respondent judge denied Calinao's motion to dismiss.[19] The case was once more set for preliminary conference on August 21, 2000 and April 24, 2001 but both (scheduled) preliminary conferences did not push through.[20] Thereafter, no further proceedings took place and the case remained dormant for almost two years.

On January 28, 2003, the complainant moved to set the case for preliminary conference.[21] Acting on the motion, respondent clerk of court scheduled one on March 4, 2003[22] but respondent judge postponed it due to an illness.[23] No subsequent preliminary conference was scheduled and the case again remained idle.

On July 5, 2004, the complainant filed this complaint in the Office of the Court Administrator (OCA). He alleged that respondents abused their authority in inordinately delaying the resolution of Civil Case No. 371[24] which was governed by the Rule on Summary Procedure (the rule). Despite the specific mandate of the rule to dispense with cases falling under its scope[25] within a specified period,[26] Civil Case No. 371 remained unresolved for almost 10 years.

Respondents denied the complainant's allegation.

According to respondent judge, the delay in resolving Civil Case No. 371 was not his fault. He claimed that the complainant filed numerous motions for postponement (of the scheduled preliminary conferences) which delayed the case.[27] He, on the other hand, cancelled only one preliminary conference (due to an illness) and ordered the respondent clerk of court to inform the parties beforehand of its postponement.[28] Hence, the delay was attributable to the complainant. Moreover, aside from being the presiding judge of MCTC- Pontevedra, respondent judge was assigned to other courts due to vacancies and/or the inhibition of other judges.[29] These additional assignments made it difficult for him to decide his cases within the prescribed period.[30]

Respondent clerk of court reiterated the arguments of respondent judge and added that the complainant should have simply called his attention (and informed him that he wanted to present evidence) instead of filing this case.[31]

After considering the respective contentions of the complainant and respondents, the OCA concluded that, because the complainant asked for the postponements, the delay could not solely be due to respondents. Respondent judge's leniency in granting postponements did not amount to patent and gross abuse of power since he neither evaded nor refused to perform his legal duty. Nevertheless, respondent judge still could not evade liability since the case had been pending for almost a decade despite the fact that it involved relatively simple summary proceedings. Hence, according to the OCA, he was liable for undue delay in disposing of his cases.[32]

Undue delay in the disposition of cases is a less serious charge.[33] Section 11(B) of Rule 140 of the Rules of Court provides:

> B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed:
>
> - Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or,
>
> - A fine of more than P10,000.00 but not exceeding P20,000.

The records of OCA reveal that, in 2005, respondent judge was administratively sanctioned for his failure to decide cases within the reglementary period.[34] Since this complaint involved a similar offense, the OCA recommended that the maximum fine of P20,000 be imposed and that respondent judge be directed to immediately decide the case.[35]

With regard to the respondent clerk of court, the OCA found that he faithfully performed his administrative duty as clerk of court by scheduling preliminary conferences in Civil Case No. 371.[36] For this reason, the OCA recommended that respondent clerk of court be exonerated.[37]

We adopt the findings of the OCA with modifications.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

RESPONDENT JUDGE DESERVES A
MORE SEVERE SANCTION

Delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute.[38] Article III, Section 16 of the 1987 Constitution provides that:

> All persons shall have the right to a speedy disposition of their cases before all judicial, quasi- judicial and administrative bodies.

Pursuant to this mandate, Section 5, Canon 6 of the Code of Judicial Conduct instructs judges to "perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness."[39] Similarly, the Code of Judicial Ethics holds that a judge should be "prompt in disposing of all matters submitted to him, remembering that justice delayed is often justice denied."[40]

Civil Case No. 371 was an unlawful detainer case. Its prompt resolution was a matter of public policy as unlawful detainer cases[41] are subject to summary procedure. The rule was adopted to enforce the constitutional rights of litigants to the speedy disposition of cases.[42] Hence, it is disappointing when it is the judge himself who causes the delay.[43]

Respondent judge could have facilitated the prompt disposition of Civil Case No. 371. He could have denied the motions for postponement since he had full control of the proceedings. He could have even dismissed the action for failure to prosecute.[44] Instead, he allowed the case to remain pending for years.

Moreover, his additional assignments were no excuse for the delay in resolving the case. We have held that the designation of a judge to preside over another sala is an insufficient reason to justify delay in deciding a case.[45]

As noted by the OCA, this was not the first time respondent judge failed to act promptly on matters pending in his court. He was sanctioned for gross inefficiency in 2005.[46] For this reason, we find that the recommended fine of P20,000 is not sufficient. He should also be suspended from office for three months without pay.

RESPONDENT CLERK OF COURT
IS LIABLE FOR SIMPLE NEGLECT
OF DUTY

Branch clerks of court are administrative assistants of presiding judges. Their duty is to assist in the management of the calendar of the court and all other matters not involving the exercise of discretion or judgment of judges. Clerks of court must diligently supervise and manage court dockets and records.[47] The 2002 Manual of Clerks of Court provides:

> 1. CLERK OF COURT[48] 1.1. Office of the Clerk of Court
>
> xxx
> 1.1.1. Adjudicative Functions
>
> xxx
>
> c. Prepares and signs monthly report of cases.[49]
>
> 1.1.2. Non-Adjudicative Functions
>
> xxx
> i. Studies and recommends to the Executive Judge ways and means to improve both adjudicative and administrative support;
> xxx[50]

Indeed, clerks of first level courts share in the duty to efficiently manage the court system. For this reason, they are expected to act promptly on their assigned tasks to prevent the clogging of cases in court and to assist in the administration of justice without delay.[51]

While clerks of court are not guardians of a judge's responsibility, they are expected to assist in the speedy disposition of justice.[52] Thus, as an administrative assistant, respondent clerk of court should have reminded respondent judge that Civil Case No. 371 had been pending for almost 10 years and that it called for immediate action, being summary in nature. He should have noted these on the monthly reports[53] he submitted to respondent judge.[54] Moreover, he should have adopted a system whereby long-standing cases could be given priority over more recent ones. Because Civil Case No. 371 remained undecided for an unreasonable length of time, respondent clerk of court obviously failed to perform what was expected of him.

We thus find him liable for simple neglect of duty. But since this is his first offense, he deserves some leniency.

WHEREFORE, Judge Henry B. Avelino is hereby found GUILTY of violating Section 9(1), Rule 140 of the Rules of Court, Section 5, Canon 6 of the Code of Judicial Conduct, and the provision on promptness (no. 6) of the Code of Judicial Ethics. Accordingly, he is SUSPENDED from office without salary and benefits for three months[55] effective upon notice hereof and ordered to pay a fine of P20,000.00. He is warned that a repetition of the same or similar offense shall be dealt with more severely. He is also directed to promptly dispose of Civil Case No. 371.

Clerk of court Guillermo E. Acolola is found GUILTY of simple neglect of duty and is hereby SUSPENDED from office without salary and benefits for three months.[56] He is warned that a repetition of the same or similar offense shall be dealt with more severely.

Let a copy of this resolution be attached to the personal records of respondents in the Office of Administrative Services, Office of the Court Administrator.
SO ORDERED

Puno, C.J., (Chairperson), Azcuna, and Garcia, JJ., concur.
Sandoval-Gutierrez, J., on leave.

---

[1] Dated July 5, 2004.

[2] Complainant appointed his sister, Elda Vigo, as his attorney-in-fact.

[3] Rollo, pp. 2-4.

[4] Id.

[5] Id., p. 26. The first page of the paper Calinao filed is missing. It is not known if the paper he filed was an answer or a motion to dismiss. Based on the records, respondent judge did not issue an order resolving the matter.

[6] Notice dated January 12, 1998, id., p. 24.

[7] Reply of Provincial Agrarian Reform Officer, id., p. 22.

[8] Respondent judge's comment, id., p. 94.

[9] RA 6657, Sec. 76. The provision states that:

Section 76. Repealing Clause. Section 35 of Republic Act Number 3844, Presidential Decree Number 316, the

last two paragraphs of Section 12, Presidential Decree Number 1038 and all other laws, decrees, executive orders, rules, regulations, issuances or parts thereof inconsistent with this act are hereby repealed or amended according.

The quoted provision modified the jurisdiction of the DAR over tenancy disputes.

[10] Rollo, p. 22.

[11] Id., p. 41. This notice and all subsequent ones used pre-trial conference instead of preliminary conference.

[12] Motion dated June 9, 1998, id., p. 40. Complainant's counsel had a hearing with Regional Trial Court (RTC) —Kalibo, Aklan for a hearing in Civil Case No. 5326, Cahilig v. de Jesus.

[13] Id. p. 23

[14] Motion dated August 24, 1998, id., pp. 28-29. Complainant's counsel had a hearing with RTC-Cebu City for a hearing in Civil Case No. CEB-21208, Sezian v. Alyssa Resort.

[15] Notice dated September 1, 1997, id., p. 47. According to respondent clerk of court's answer, this preliminary conference was postponed upon the complainant's motion.

[16] Notice dated October 7, 1998, id., p. 39.

[17] Motion dated November 10, 1998, id., p. 30.

[18] Id., pp. 27, 52, 68, 74. The records show that pre-trial conferences were scheduled (but not held due to unknown reasons) on January 5, 1999, February 4, 1999, May 9, 2000 and June 20, 2000.

[19] Id., pp. 66-67. This order pertains to Calinao's motion (to dismiss) dated February 10, 1999 and opposition dated March 1, 1999.

[20] The records do not show what transpired during the August 21, 2000 preliminary conference. According to respondent clerk of court's comment, the complainant moved for the postponement of the April 24, 2001 preliminary conference. (The complainant did not file a written for postponement.)

[21] Motion dated January 28, 2003, rollo, p. 90.

[22] Notice dated January 29, 2003, id., p. 91.

[23] Respondent judge's answer, id., p. 95.

[24] Complaint, id., pp. 2-3.

[25] See, The 1991 Revised Rules on Summary Procedure, Sec. 1. The section provides the scope of the Rules.

[26] The 1991 Revised Rules on Summary Procedure. The pertinent sections provide:

> Sec. 7. Preliminary conference; appearance of parties. — Not later than thirty (30) days after the last answer is filed, a preliminary conference shall be held. xxx
>
> Sec. 8. Record of the preliminary conference.— Within five (5) days after the termination of the preliminary conference, the court shall issue an order stating the matters taken up therein, including but not limited to:
>
> xxx
> c) Whether, on the basis of the pleadings and the stipulations and admissions made by the parties, judgment may be rendered without the need of further proceedings, in which event the judgment shall be rendered within thirty (30) days from the issuance of the order; xxx

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

Sec. 9. Submission of affidavits and position papers. Within ten (10) days from receipt of the order mentioned in the next preceding section, the parties shall submit the affidavits of their witnesses and other evidence on the factual issues defined in the order, together with their position papers setting forth the law and facts relied upon by them.

Sec. 10. Rendition of judgment. Within thirty (30) days after receipt of the last affidavits and position papers, or the expiration of the period for filing the same, the court shall render judgment.

However, should the court find it necessary to clarify certain material facts, it may, during the said period, issue an order specifying the matters to be clarified, and require the parties to submit affidavits or other evidence on the said matters within ten (10) days from receipt of the said order. Judgment shall be rendered within fifteen (15) days after the receipt of the last clarificatory affidavits or the expiration of the period for filing the same.

The court shall not resort to the clarificatory procedure to gain time for the rendition of judgment.

[27] Respondent judge's answer, rollo, pp. 95-96.

[28] Id.

[29] Id.

[30] Id.

[31] Respondent clerk of court's answer, id., pp. 107-108.

[32] Id., p. 124.

[33] RULES OF COURT, Rule 140, Sec. 9 (1).

[34] Office of the Court Administrator v. Judge Avelino, MTJ No. 05-1606, 9 December 2005, 477 SCRA 1, 9. A 2004 audit conducted by the Court Management Office of the OCA revealed that Judge Avelino had numerous unresolved cases in his dockets. He excused himself by saying that his court had inadequate facilities as they did not have computers. This Court pointed out that the Constitution mandates the speedy disposition of cases and prescribes periods within which cases must be resolved. Lack of computers did not excuse his delay in the disposition of cases. Judge Avelino was found administratively liable for his gross inefficiency. The dispositive portion reads:

WHEREFORE, the Court finds Judge Henry B. Avelino administratively liable for gross inefficiency and is hereby meted the penalty of FINE of TWENTY THOUSAND PESOS (P20,000.00), payable within thirty (30) days. He is further ADMONISHED to be more diligent in the performance of his sworn duty as a dispenser of justice.

[35] Rollo, p. 125.

[36] Id.

[37] Id. The OCA did not provide any legal basis for the exoneration of respondent clerk of court.

[38] Bank of the Philippine Islands v. Generoso, A.M. No. MTJ-94-407, 25 October 1995, 249 SCRA 477, 480-481.

[39] CODE OF JUDICIAL CONDUCT, Canon 6, Sec. 5. See also CODE OF JUDICIAL CONDUCT (1989), Canon III, Rule 3.05.

[40] CODE OF JUDICIAL ETHICS, no. 6.

[41] Office of the Court Administrator v. Judge Henry B. Avelino, supra note 34 at 480.

[42] Tugot v. Coliflores, AM No. MTJ-00-1332, 16 February 2004, 423 SCRA 1, 9.

[43] Bank of the Philippine Islands v. Generoso, supra note 38, at 15.

[44] THE 1991 REVISED RULES ON SUMMARY PROCEDURE, Sec. 7. The section provides that:

Sec. 7. Preliminary conference, appearance of parties. xxx The failure of the plaintiff to appear in the preliminary conference shall be a cause for the dismissal of his complaint. xxx

In this case, the complainant repeatedly moved for the cancellation of scheduled preliminary conferences. These cancellations are tantamount to failure to prosecute. See also RULES OF COURT, Rule 17, Sec. 3.

[45] Office of the Court Administrator v. Judge Henry B. Avelino, supra note 34 at 16.

[46] Id.

[47] RE: Report on the Judicial Audit Conducted in the Regional Trial Court Branches 61, 134 and 147, Makati, Metro Manila, A.M. P-93-944, 5 September 1993, 248 SCRA 5, 25. See also Nones v. Ormita, A.M. No. P-01-1532, 9 October 2002, 390 SCRA 519.

[48] This provision pertains to clerks of first level courts.

[49] 2002 Manual of Clerks of Court, Chapter VII, D.1.1.1.1.c.

[50] Id., Chapter VII, D.1.1.1.2.i.

[51] RE: Report on the Judicial Audit Conducted in the Regional Trial Court Branches 61, 134 and 147, Makati, Metro Manila, supra note 47, at 25.

[52] Id.

[53] 2002 MANUAL OF CLERKS OF COURT, Chapter VII, D.1.1.1.1.c.

[54] RE: Report on the Judicial Audit Conducted in the Regional Trial Court Branches 61, 134 and 147, Makati, Metro Manila, supra note 46 at 24. The monthly report which shows the status of each case is submitted to the judge.

[55] RULES OF COURT, Rule 140, Sec. 11(B).

[56] CSC Resolution No. 91-1631, Sec. 23(2)(a). The section provides:

Sec. 23. Administrative offences with its (sic) corresponding penalties are classified into grave, less grave, and, light depending on the gravity of its (sic) nature and effects of said acts in government service.
xxx The following are less grave offenses with their corresponding penalties:

> (a) Simple Neglect of Duty
> 1[st] Offense - Suspension for one (1) month and one (1) day to six (6) months
> 2[nd] Offense - Dismissal
> xxx

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.