

REPORT ON THE JUDICIAL AUDIT CONDUCTED IN THE MCTC-DAPA, SURIGAO DEL NORTE,

A.M. No. 03-10-250-MCTC. September 30, 2004

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

From the September 11, 2002 Report on the Judicial Audit Conducted by members of the Audit Team of the Court Management Office in the Municipal Circuit Trial Court (MCTC), Dapa-Socorro, Surigao del Norte presided by Judge Rolando T. Literato whose official station is at the MCTC Sison-Taganaan, Surigao del Norte where he has a caseload of One Hundred Forty Five (145) and holds office for three days a month, he having been designated as Acting Presiding Judge of the following MCTCs:[1]

A. O.
NO. DATE OF
EFFECTIVITY NO. OF
OFFICE
DAY
PER
MONTH

1. Dapa-Socorro 55-98 31 March 1998 10 days
2. Gen Luna-Pilar 68-99 29 July 1999 3 days
3. Sta. Monica-Burgos 68-99 29 July 1999 1 day
4. Del Carmen-San
Isidro-San Benito 55-98 31 March 98 3 days

the following Comments/Observations[2] are proffered:

Entries in the docket books for both civil and criminal cases are updated only insofar as dismissed/archived/decided cases are concerned.

Clerk of Court Everaldo D. Galanida impressed the audit team to be ignorant of the Rules in Civil Procedures.

In the resetting of cases, wanting are court orders for the same and instead attached to the records are copies of subpoenas sent to the parties.

In Criminal Case No. 318 (Pp. vs. Oscar Mandana, et al.), accused Mandana posted a cash bond in the amount of ten thousand pesos (P 10,000.00) for his release. Attached to the records are merely photocopies of O.R. No. 848001 dated 6 September 2001. Upon inquiry to the Clerk in Charge, the team was informed that the Clerk of Court of MCTC Cantillan-Carrascal, Surigao del Sur, kept the original copies of the receipts of cash bond, the same having posted in said court. Arraignment of Mandana was set on 21 May 2002. No alias warrant of arrest

was issued by the Court for the other eightco-accused which are still-at-large.

In Civil Case No. 256, summons were served on defendants on 10 July 2000. The defendants were declared in default only on 18 March 2002 and set the reception of evidence ex-parte on 16 May 2002. However, in the Order of the Court dated 24 June 2002, again the defendants were declared in default and the reception of evidence ex-parte set on 26 July 2002.

When the audit team informed Judge Literato of the findings and observation of the audit team, he candidly informed us that as Acting Presiding Judge of said Court and considering that he only holds office in said court for a limited period, the movement of cases is under the control of the Clerk of Court. He intimated that there are instances that pleadings filed were not immediately acted upon because it was given to him belatedly. That despite his repeated orders to the Clerk of Court to inform him immediately of the pleadings filed, it only fell to deaf ears. As to the resetting of cases, it was the Clerk of Court who has the privilege to set the date of the hearing.

The team called the Clerk of Court to verify his allegations and when asked why the pleadings were not immediately given to the Judge for immediate action and why the resetting of cases have no court orders, he just kept mum and silent about it. (Underscoring supplied)

Acting on the Report, the Office of the Court Administrator (OCA), by Memorandum of October 22, 2002,[3] issued the following directives to Judge Literato, Clerk of Court Galinada, and Clerk of Court of the MCTC Cantillan-Carrascal:[4]

- Judge Rolando T. Literato, Municipal Circuit Trial Court-Dapa-Socorro, Surigao del Norte, to:

- EXPLAIN within ten (10) days from notice hereof why no disciplinary action should be taken against him for:

- (a-1) declaring the defendants in default and setting the case for reception of evidence ex-parte twice in Civil Case No. 256;

- (a-2) his inaction for a considerable length of time in Election Case No. 209, the last setting of trial having been on 8 July 1999 and on the plaintiff's manifestation and motion to set the case for pre-trial filed on 12 April 1995 in Civil Case No. 081;

- TAKE APPROPRIATE ACTION on Election Case No. 209, Civil Cases Nos. 273, 249, 237, 246, 081, 087, 225, 211, 228, 226, 115, 313, and Crim. Cases Nos. 320, 279, 277, 266, 114, 113, 329, 327, 326 and 243 which have no further setting/action for a considerable length of time.

- INFORM this Office within ten (10) days from notice whether the following cases are decided within the reglementary period and furnish copies of the decisions, to wit: Civil Case[s] No[s]. 106, 902, 861, 857, 859, and 278.

- Clerk of Court Evernaldo D. Galinada to:

- (2.1) EXPLAIN within ten (10) days from notice hereof why no disciplinary action should be taken against him for:

- serving the summons on defendants through registered mail in Civil Cases Nos. 258, 859, 857, 861, 084, 083 and 888 in gross violation of the Rules on Civil Procedure;

- resetting the case without the appropriate Court orders; and

- his failure to present the records of Civil Cases Nos. 899, 113, 859 and 060 and Criminal Cases Nos. 337, 306 and 330 during the conduct of the audit; and

(2.2) TAKE APPROPRIATE ACTION to UPDATE the entries in the docket books with WARNING that a similar infraction in the future will be dealt with more severely; and

- The Clerk of Court, Municipal Circuit Trial Court, Cantillan-Carrascal, to EXPLAIN within ten (10) days from notice hereof why he is keeping the original copy of Receipt No. 848001 dated 6 Sept. 2001 of the cash bond in the amount of ten thousand pesos (P10,000.00) posted by accused Oscar Mandana for his release in Criminal Case No. 318 (Pp. vs. Oscar Mandana, et al) and attaching merely photo copies of the same to the records. (Emphasis and italics in the original; underscoring supplied)

In compliance with the OCA directive, Judge Literato proffered his Explanation[5] which the OCA, in its Memorandum of October 23, 2003 for the Chief Justice,[6] tabulated as follows:[7]

CASE

NUMBER

AUDIT FINDINGS EXPLANATION

CV No. 256 Defendants were twice declared in default and setting the case for reception of evidence ex-parte per Orders dated 16 May 2002 and 24 June 2002 The reception of evidence for the plaintiff on 16 May 02 was reset to June 24, 02. Judge was misled by theoral manifestation of counsel to declaredef in default. Per Order 25 Oct. 2002 case reset to 15 Nov. 2002 for possible settlement

Elec. Case No. 209 Failure to set the case for a considerable length of time. Last setting of trial was on 8 July 1999 Case was filed on 16 May 1997. When he was designated APJ in Apr. 1998, he ordered the Comelec to deliver the ballot boxes which was complied on 07 June 1999. He alleged that he cannot be faulted for not acting on the said case since 12 May 1999, considering that it is the Clerk of Courtwho has direct control over thepersonnel of MCTC. Case was dismissed on 26 July 2002 for being moot and academic

CV No. 081 Failure to set the case for pre-trial despite Plaintiff's manifestation and motion to set the case for pre-trial filed on 12 April 1995 Motion is for continuation of pre-trial, having conducted the PT last March 2002

CV No. 273 No further action/setting Parties filed Compromise Agreement on 15 Feb. 2002

CV No. 249

- do -

Case cannot be submitted for resolution because Exh. G which was reserved by the plaintiff has not been filed before the Court despite the Order dated 25 March 2002

CV No. 237

- do -

Defs. Motion to Dismiss and Opposition submitted for resolution on 24 Sept. 2002

CV No. 246

-do -

Case Dismissed on 14 October 2002, def. fully settled its obligation

CV No. 081 (087)

- do -

Copy of the complaint has not been served to the def. Plaintiff failed to inform the court of the last known address of def.

CV No. 225

- do -

Plaintiff given 15 days to file their FOE per Order 24 Oct. 2002 but plaintiff failed to comply

CV No. 211

- do -

Set for Trial on 09 January 2003

CV No. 228

- do -

Def. declared in default on June 26, 2002. Presentation of evidence ex-parte reset to 13 January 2003

CV No. 226

- do -

Hearing on 27 Nov. 2002 reset to 6 Feb. 2003. Counsel for plaintiff moved for resetting

CV No. 115

- do -

Dismissed on 27 June 2002

CV No. 313

- do -

Accused arraigned and hearing reset to 17 Oct. 2002 per Order 17 Sept. 2002

CR No. 320

- do -

Accused arraigned on 20 March 2002. Postponements were asked by the Prosecutor's Office reset to 14 February 2003

CR No. 279

- do -

Accused has not been arrested, no longer residing at given address per return dated Sept. 2002

CR No. 277

- do -

Cases dismissed on based on Affidavit of Desistance

CR No. 266

- do -

Accused arraigned on 7 January 2003

CR No. 114

- do -

Accused arraigned on 18 Sept. 2002 and set hearing on 13 Oct. 2002. Parties failed to appear reset it on 7 January 2003

CR No. 113

- do -

Dismissed provisionally on 18 Sept. 2002

CR No. 329

- do -

Accused convicted per decision of 24 Sept. 2002

CR No. 327

CR No. 326

- do -

Dismissed per Resolution of 5 November 2002

CR No. 243

- do -

Accused no longer residing in given address

(Underscoring supplied).

As reflected in the immediately reproduced tabulation, Judge Literato explains that with respect to Civil Case No. 256, he was misled into declaring the defendant twice in default by the verbal manifestation of the plaintiff's counsel. A judge, however, should pore over the record of a case calendared for hearing before he conducts the same to determine its status failing which he would be, as herein respondent judge was by his own admission, misled by the party or parties, thereby abdicating control of the proceedings to litigants and/or their counsel. It bears emphasis that such control should be as it is lodged with the judge.

With respect to Election Case No. 209, the judge extenuates himself from inaction thereon by claiming that "it is the Clerk of Court who is responsible in the calendar[ing] of cases, he being a designated Judge only and has no direct control over the personnel of the MCTC of Dapa and Socorro." He hastens to add that the case was already dismissed (on July 26, 2002 for being moot and academic).

Contrary, however, to the judge's claim, it is he, as the judge, not the Clerk of Court, which has control and supervision of not only the proceedings in a case but of court personnel.

On Civil Case No. 273, the judge informs that the parties thereto filed a Compromise Agreement on February 15, 2002. The judge submitted the Compromise Agreement[8] dated February 15, 2002 which obligates the therein defendant to pay the plaintiff "the total amount of her monetary obligation" at P2,000.00 monthly beginning March 2002. While the Compromise Agreement prays for its approval, the judge is silent on what action he took thereon.

On Civil Case No. 249, the judge informs that the reception of evidence was scheduled on March 25, 2002 but the case “cannot be submitted for Resolution because Exhibit ‘G,’ [the presentation] of which was reserved by the plaintiff, has not been filed . . . despite the Order dated March 25, 2002.”

Again, it bears repeating that the judge controls the proceedings in a case. Without him imposing a time frame for the compliance by litigants or their counsel with court orders, he thereby abdicates control of the proceedings to them.

As for Civil Case No. 237, the judge informs that a Motion to Dismiss the case was submitted for resolution on September 24, 2002. Given that, he had three months to resolve the motion or up to December 24, 2002. Yet, as of the date he prepared his explanation or on January 13, 2003, he gave no information on what action he took on the motion. It can then be presumed that the motion had remained unresolved. He thus violated the 90-day period fixed by the Constitution in resolving motions and incidents pending before a judge which amounts not only to gross inefficiency but constitutes a violation of Rule 3.05, Canon 3 of the Code of Judicial Conduct mandating disposition of the court’s business promptly within the required period.[9]

On Civil Case No. 087, the judge informs that summons not having been served on the defendant, the counsel for the plaintiff, requested for substituted service and undertook to furnish the last known address of the defendant but had failed to honor his undertaking. Given that, the case should not have been allowed to remain pending in the docket of the court, the judge having some options thereon including dismissing or archiving it.

On Civil Case No. 225, the judge informs that by Order of October 24, 2002, the plaintiff was given fifteen (15) days to file formal offer of exhibits but that no such offer had been made. No action having been thereafter taken by the judge, he allowed the litigant to control the course of the case. Under the circumstances, he could have declared the plaintiff to have waived the right to proffer his exhibits and to have rested its case and thereafter set the case for reception of defense evidence.

On Civil Case No. 211, the judge informs that the case was set for hearing on November 13, 2002 during which the plaintiffs showed up without counsel while the defendants and counsel failed to show up, prompting him to reset the hearing to January 9, 2003.

If a plaintiff’s counsel is duly notified of a particular setting but fails to show up without any reason or justification therefor, the judge should not automatically reset the hearing but should issue a show cause order why the counsel should not be faulted for delaying the administration of justice.

On Civil Case No. 115, the judge informs that the case was dismissed on June 27, 2002 but that the plaintiff filed a Motion for Reconsideration. When the motion was filed, the judge does not inform.

On Criminal Case No. 313, the judge informs that the accused was arraigned on September 17, 2002 and the case was set for hearing on October 17, 2002. What happened on October 17, 2002, the judge gives no information.

On Criminal Case No. 279, the judge informs that per the September 27, 2002 1[st] Indorsement of the Dapa Police, the warrant for the arrest of the accused could not be served as he is no longer residing at his given address. What action he took, the judge is silent. What he should have done was to issue an alias warrant and to, in the meantime, archive the case pending the successful service thereof.

On Criminal Case No. 243, the judge informs that per the 1[st] Indorsement of October 18, 2002 of the Dapa Police, the warrants for the arrest of the two accused were returned unserved as they were no longer residing at their given addresses, one being already in Mangagoy, Surigao del Sur, and the other being already in Metro Manila. Again the judge could have issued alias warrants of arrest and archived the case pending the successful

service thereof.

This Court thus gathers from the judge's Explanation that the delay in the disposition of cases pending in his sala at Dapa is attributable to, in the main, his failure to control the proceedings or course of the cases; to issue orders on, or if orders are issued to note therein, what transpired during scheduled hearings; to impose deadlines in the submission of documents or performance of acts incident to the disposition of cases; to acquaint himself with the status of cases; and to resolve pending incidents on time, and take appropriate action on incidents arising in the course of proceedings.

The judge's abdication of his functions and duties to court personnel and/or to litigants and/or their counsel betrays his inefficiency — his lack of mastery of basic legal practice and procedure.

The OCA thus rightfully notes in its Memorandum for the Chief Justice dated October 21, 2003 as follows:

. . . Judges cannot be allowed to use their staff as shields to evade responsibility for mistakes and mishaps in the course of the performance of their duties (Hilario vs. Concepcion, 327 SCRA 96). He should be the master of his own domain and take responsibility for the mistakes of his subjects (Pantaleon vs. Guadiz Jr. 323 SCRA 147). Judges are bound to dispose of the court's business promptly and to decide cases within the required period (Dela Cruz vs. Bersamira, 336 SCRA 253). Delay in the disposition of even one (1) case constitutes gross inefficiency which the Supreme Court will not tolerate. . . [10]

The OCA accordingly faults the judge for "gross inefficiency," which is a less serious charge, "mitigated by the fact (a) that this is his first offense not to mention . . . (b) that he is also an Acting Presiding Judge of three (3) MCTCs including [that of MCTC Dapa-Socorro]," and recommends that he be fined the amount of Five Thousand (P5,000.00) Pesos with a warning that a repetition of the same be dealt with more severely.

This Court finds that, indeed, respondent judge is guilty of gross inefficiency and even gross negligence,[11] hence, falling under the classification of less serious charge in Sec. 9 of Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, which is punishable by Sec. 11 B of the same rule, as amended by 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 P20,000.00.

That respondent was designated Acting Presiding Judge in other stations in addition to his original station is no excuse for his delay in promptly deciding a case.[12]

A judge should at all times remain in full control of the proceedings in his sala and should follow the time limit set for deciding cases[13] or resolving motions. He should not depend on his clerk of court for the calendaring of cases, for court management is ultimately his responsibility.[14]

That a judge must be conversant with basic legal principles[15] and procedures is elementary. Among other things, he is expected to keep his own record of cases and to note therein their status so that he may act on them accordingly and promptly.[16] He must thus adopt a system of record management and organize his docket in order to bolster the prompt and effective dispatch of business.[17] Unreasonable delay in resolving a pending incident is a violation of the norms of judicial conduct.[18]

Given the judge's litany of infractions, the recommended penalty is unreasonably light.

As for respondent Clerk of Court, he gave the following explanation as correctly synthesized by the OCA:

. . . [T]heir process servers were instructed to personally serve the summons in civil cases. However, there are instances where they are advised by the counsels to demand payment of the sheriff's expenses from the plaintiffs themselves. It is only when the plaintiffs fail to make the necessary payment that summons will be

mailed. He assured the Court that the said incident will not be repeated as his office will not accept or receive complaints unless the filing and other fees are completely settled.

As to the matter of resetting without appropriate orders, he stressed that there are instances when Judge Literato would just call to inform him that he will not be able to arrive at the scheduled hearings due to bad weather condition. It is reportedly in such situations that the hearings are reset without the appropriate orders. Further, there were also instances that Judge Literato forgot to prepare the orders of resetting due to his busy schedule. As for the unaccounted records, he maintained that the same were dismissed already and that the entries in the docket books are presently being updated.[19]

Except with respect to respondent Clerk of Court Evernaldo D. Galanida's justification in the mailing of summons which was correctly brushed aside by the OCA, his explanation was found satisfactory.

Under the Rules of Court, upon the filing of the complaint and the payment of the requisite legal fees, the Clerk of Court shall forthwith issue the corresponding summons to the defendants (Sec. 1, Ibid). In the assessment of the legal fees, included is the payment for service of summons and copy of complaint, for each defendant, sixty pesos (par. 1, Sec. 9, Rule 141, Ibid.)

The summons may be served by the sheriff, his deputy, or other proper court officer, or for justifiable reasons by any suitable person authorized by the court issuing the summons (Sec. 3, Ibid). However, in instances wherein the defendant is residing in another province, the Court as a matter of practice, deputizes the sheriff of the court nearer to the place of residence of the defendant for expediency. The expenses incurred therefore, shall be reimbursed by the Supreme Court upon presentation of the required documents.

Apparently, COC Galinada in demanding the sheriff's expenses for the service of summons, misinterpreted the last paragraph of Sec. 9 as amended, to wit:

"Sec. 9 Sheriffs and other persons service processes."

x x x x x

In addition to the fees thereinabove fixed, the party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriff's expenses in serving or executing the process x x x, including the kilometrage for each kilometer of travel, guard's fees, warehousing and similar charges, in an amount estimated by the sheriff, subject to the approval of the court. x x x

In order to avoid similar procedural lapses in the future, COC Galinada should likewise be fined in the amount of two thousand pesos (Php2,000.00) and sternly warned that a repetition of the same in the future shall be dealt with more severely.[20] (Emphasis in the original)

As in the case of respondent judge, the OCA recommends that respondent Clerk of Court be fined the amount of P5,000.00 with stern warning. The recommendation is in order.

Respecting the directive to the MCTC Clerk of Court of Cantillan-Carrascal, Belen L. Guillen, on her alleged keeping in custody of the original copy of O.R. No. 848002 dated September 6, 2001 covering the receipt of the Ten Thousand (P10,000.00) Pesos cash bond posted by accused Oscar Mandana in Criminal Case No. 318, said Clerk of Court's denial thereof,[21] which is corroborated by the accused himself by Affidavit of December 16, 2002[22] wherein he acknowledged that he indeed has the original copy of the receipt, is well taken.

WHEREFORE, this Court hereby imposes upon MCTC Judge Rolando T. Literato a FINE of Twenty Thousand (P20,000.00) Pesos as it does impose a FINE upon MCTC Clerk of Court Evernaldo D. Galanida in the amount of Five Thousand (P5,000.00) Pesos, both amounts payable within thirty (30) days.

Respondent Judge and respondent Galanida are ADMONISHED to be more conversant with legal practice and

procedure and to be more diligent in the performance of their sworn duties as a magistrate and clerk of court, respectively. And they are STERNLY WARNED that a commission of the same or similar infractions will be faulted more strictly.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, and Corona, JJ., concur.

- [1] OCA's Memorandum/Report for the Chief Justice dated October 21, 2003, Rollo at 82.
- [2] Memorandum/Report for the Deputy Court Administrator dated September 11, 2002, Rollo at 3.
- [3] Rollo at 7.
- [4] Ibid.
- [5] Id. at 41-43.
- [6] Id. at 82-88.
- [7] Id. at 84-85.
- [8] Id. at 49.
- [9] *Martin v. Guerrero*, 317 SCRA 166 (1999); *Office of the Court Administrator v. Aquino*, 334 SCRA 179 (2000).
- [10] Id. at 85-86.
- [11] *Cuevas v. Balderian*, 334 SCRA 242 (2000).
- [12] *Gallego v. Doronila*, 334 SCRA 339 (2000).
- [13] *Mosquera v. Legaspi*, 335 SCRA 326 (2000).
- [14] *Office of the Court Administrator v. Salva*, 336 SCRA 133 (2000).
- [15] *Dizon, Jr. v. Veneracion*, 336 SCRA 241 (2000).
- [16] Report on the Judicial Audit conducted in the RTC-Branch 37, Lingayen, Pangasinan, 336 SCRA 344 (2000).
- [17] Report on the Judicial Audit Conducted in Quezon City RTC, Branches 87 and 98, 338 SCRA 141 (2000).
- [18] *Dela Cruz v. Bersamira*, 336 SCRA 353 (2000).
- [19] OCA's Memorandum/Report for the Chief Justice dated October 21, 2003 at 86.
- [20] Id. at 86-87.
- [21] Answer to OCA Memorandum, Rollo at 8-9.
- [22] Rollo at 18 (vide English translation, Id. at 20).

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