

JUDGE ROBERTO NAVIDAD, COMPLAINANT, VS. JOSE B. LAGADO, CLERK OF COURT, REGIONAL TRIAL COURT, BRANCH 9, TACLOBAN CITY, RESPONDENT.

A.M. No. P-03-1682 (formerly OCA IPI No. 97-374-P). September 30, 2004

Ponente: CORONA, J.

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CORONA, J.:

This concerns the report to this Court dated July 31, 1997 of Acting Presiding Judge Roberto A. Navidad, Regional Trial Court (RTC), Branch 9, Tacloban City on the irregularities, anomalies and/or infractions committed by his branch clerk of court, Atty. Jose B. Lagado. The report was treated as an administrative complaint for grave misconduct, insubordination and anti-graft and corrupt practices.

The pertinent portions of the report follow:

As the Presiding Judge of RTC – Branch 9 in Tacloban City, pursuant to Supreme Court Resolution (En Banc) in A.M. No. 96-00-372 dated 22 October 1996, I have discovered the following irregularities, anomalies and/or infractions committed principally by Atty. Jose B. Lagado, Branch Clerk of Court, namely:

- As Branch Clerk of Court and for a fee, he has been processing bail bonds and qualifying bondsmen coming from the towns of Dagami and Burauen, Leyte and recommending the same to the Court for approval despite the fact that there are no sufficient securities therein. It appears that Branch 9 has been the base of operations of this syndicate involving false bail bonds with the assistance of some court personnel from RTC – Branch 6, one of them being SILVERIO MENDOZA who is currently with RTC – Palompon, Leyte but who is nevertheless often seen just roaming around the corridors of the Bulwagan Building at Tacloban City.

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- Likewise as Clerk of Court, Atty. Lagado had been compromising the integrity of the Court while at the same time violating the neutrality of the Court in its dispensation of justice, by sending communication in order to favor some party litigants. This infraction is akin to the case of the Court Administrator vs. Atty. Gadon in A.M. No. P-95-1142 (A.M. No. 93-3-1003).

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- Every month, while he posts a List of Cases Submitted for Decision, furnishing a copy thereof to the Integrated Bar of the Philippines (IBP), Leyte Chapter, he, however, does not furnish the Presiding Judge a copy of such list nor submit the records of said cases to the Presiding Judge.

- In another case, he has sought from the undersigned the return to the respondent of different contraband articles seized by virtue of a defective search warrant even as his initiative was denied, in open court, by the counsel for said respondent.

He personally typed the afore-mentioned obviously defective search warrant, which was issued contrary to law, inasmuch as it lumped up in a single search warrant the different classes of contraband items of which

four (4) separate applications were filed therefor.

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- In relation to the “theft” of court records/cases by Judge Walerico Butalid, there are facts and circumstances indicating a conspiracy between Atty. Jose Lagado and Judge Butalid, such as -

- Sometime in the early part of 1997, despite the existing suspension of Judge Butalid, Atty. Lagado, without clearing the matter with the undersigned or with the Executive Judge, sent a telegram to the Office of the Court Administrator requesting that Judge Butalid be allowed to decide the cases subject of an audit;

- The facility with which Judge Butalid, after a long absence, found said records suggests a conference as to the location of said records/cases between them;

- The “theft” happened after Atty. Lagado served the Notice of Hearing to Judge Butalid of the latter’s administrative case;

- d. Atty. Lagado is in possession of three (3) letters of Judge Butalid to him asking that the records of three (3) cases be given to him;

Surprisingly, no information of this matter was given to the undersigned. Instead, he wrote the Executive Judge and it was through the latter that said information had reached me.

- Atty. Jose Lagado has demonstrated acts of insubordination towards the undersigned when I assumed office. Despite proper instructions, he was reluctant to provide the undersigned with working space in Branch 9 or its chambers. It was only after more than two (2) months, and the threat of insubordination, that he relented. Yet, he had previously made available the sheriff’s table for the private secretary of Pros. Robert Visbal, and providing her with equipment and supplies even as it inconvenienced the court employees of Branch 9 in their routinary functions. This practice was stopped only after my reprimand and a request to Pros. Visbal to advise his secretary from holding office at Branch 9.

In his answer dated February 5, 1998, respondent refuted the allegations of the report and narrated the following:

- As to the charge of fake bail bonds, undersigned hereby strongly denies the same as he has not processed and recommended the approval of unqualified sureties, nor have demanded any consideration therefrom since the beginning. From whom did respondent receive any fee is not mentioned since it never existed in our Court. In fact, in order not to compromise the integrity of the Court, he sees to it that sureties possess all the qualifications required under Sections 11, 12 and 14 of the Rules on Criminal Procedures and these sureties where real properties are used as bail bond to guarantee the appearance of an accused with a pending case in our sala are properly registered and the lien is duly annotated in the Office of the Register of Deeds of the province or city where the land lies, as reflected in the bail bond. There was no bail bond after registration and annotation that has been cancelled for being irregular such that the property used is non-existent. The alleged syndicate of false bail bonds in RTC, Branch 9 is purely an imaginary accusation of Judge Roberto A. Navidad. That is why he cannot specifically pinpoint who among these sureties are engaged in such activity. And in compliance with complainant’s unnumbered memorandum dated January 23, 1997 (Annex 1) which he claims bears the approval of then Executive Judge Getulio M. Francisco, undersigned has no longer processed and administered an oath of any surety in view of the disqualification imposed by complainant’s memorandum (which is even violative of the due process principle). And it must be noted that during the incumbency of the complainant, he had approved only eight (8) property bail bonds filed with our Court as evidenced by Annexes “2” and series. Moreover, the affidavit of said Elpidia Ripalda (Annex 3) never mentioned any participation of the undersigned in the alleged transaction (bail bond) in the case of Genny Berdan. In fact, I have not even seen nor have known her since, to repeat, I was no longer involved in the processing and qualifying of bail bonds at that time. This bail bond of Genny Berdan in Crim. Case No. 97-01-12 was qualified and approved by complainant himself last March 3, 1997 as shown by Annex “4”. Surprisingly, undersigned is perplexed why I

was said to be in connivance with one Silverio Mendoza as I have no knowledge about this bail bond of Genny Berdan. It is now crystal clear that complainant's accusation is wanting of factual basis;

- Anent complainant's second charge, I likewise deny the same and further disagree that the case of the Court Administrator vs. Atty. Manuel B. Gadon in A.M. No. P-95-1142, June 16, 1995, A.M. No. 93-3-1003-RTC is of no relevance to the case at bar. Offered to refute these charges is the explanation stated in my "Compliance" to the Order dated May 23, 1997 (Annex 5 and series) which was officially received by Rosalina M. Padilla, Legal Researcher of this Court on August 11, 1997, the original copy of which was personally given by the latter to Judge Roberto A. Navidad, but is not found in the records of the case, which omission shows a motivated suppression of evidence by the complainant. Be it respectfully noted that copies of compliance have been furnished the Honorable Chief Justice, the Hon. Court Administrator and the Hon. Deputy Court Administrator, as evidenced by the registry receipts attached on page 3 thereof;

- Paragraph 3 of the Report is the performance of the undersigned's duties mandated under Administrative Circular No. 10-94. And it might be stressed herein that cases submitted for decision have been assigned to our Legal Researcher, who keeps a list in a separate record book and takes note which record of a case had been given to the Judge for resolution or decision. Such system had long been practiced in order to account the actual possessor of the record of a case to prevent from its being lost (See Annex 6). It also helps the early retrieval of records of cases and serves as a proof that the Presiding Judge had the records with him until a decision/resolution had been handed down by him. Nonetheless, the delegated task is being closely monitored by the undersigned since cases submitted for decision are properly reported in our Monthly Report of Cases, which the Presiding Judge signs;

- Paragraph 4 of the Report is likewise strongly denied since I have no knowledge of complainant's averments stated therein. It must be emphasized that indeed, it is true that undersigned had typed the said Search Warrant No. 04-96 issued on August 26, 1996, but done only upon instruction of our then Presiding Judge, Walerico B. Butalid. As to its propriety, however, I have no authority to pass upon an opinion that the same is contrary to law since this is a judicial function reposed only upon the magistrate of the Court. Complainant seems to reach a conclusion that undersigned was interested in this case, but he is not, when he and complainant discussed the pending Motion of the defense counsel, which was resolved in the Order of the Court dated February 10, 1997 (Annex F of the Report). I could hardly imagine why complainant, after our academic discussion, would now try to twist the real score of things;

- Paragraph 5 of the Report, alleging a conspiracy in the theft of court records/cases by Judge Butalid, is likewise denied. In fact, undersigned immediately reported the incident to the Executive Judge, Hon. Getulio M. Francisco of RTC, Tacloban City (Annex 7). If indeed, I had an agreement with Judge Butalid, then I would not have reported the matter to the Executive Judge. Moreover, the telegram sent to the Hon. Court Administrator (Annex 8) by the undersigned was not a request that Judge Butalid be allowed to decide the cases, subject of a previous audit, but was only soliciting advice whether Judge Butalid still had the authority to decide cases after audit had been conducted. It is not also surprising why Judge Butalid found those records of cases submitted for decision because he personally knows where these records were properly kept, long before his suspension. All these records are kept in an open shelf to give free access to stenographers, in order for them to transcribe court proceedings previously taken. I have not also served a Notice of Hearing to Judge Butalid in the latter's administrative case, prior to the theft incident. Further, undersigned has no knowledge about those letter[s] of Judge Butalid because the latter's request was made only verbally thru the phone, as clearly stated in my letter-query dated March 12, 1997 (Annexes 9 and 9-A). Finally, the reason why undersigned did not inform Judge Navidad about this matter and instead reported directly to the Executive Judge, Hon. Getulio M. Francisco was because of complainant's indifference, which was due to my letter dated January 6, 1997 (Annex 10). Complainant, upon learning of said letter, called a staff meeting in the afternoon of the following day (January 7, 1997) wherein undersigned was scolded and insulted in the presence of his staff, for having usurped a judicial function. Said letter, however, is supported by his own memorandum

issued on November 12, 1996 (Annex 10); and

- Paragraph 6 of the Report is likewise denied as I have not unreasonably disregarded any instruction of the complainant. The reason why I was unable to provide him with a working space was the fact that Judge Butalid did not turn over the key to the chamber until the early part of March, 1997. Said key was later on given to the complainant, who is still in possession of the same, up to now. Regarding complainant's allegation that undersigned offered the sheriff's table for the private secretary of Pros. Robert Visbal, who was then assigned to our Court, and had provided the latter with the necessary equipment and supplies is likewise denied since I have not, nor anybody else for that matter, consented to such an arrangement, knowing for a fact that complainant has a personal misunderstanding with Pros. Robert Visbal. Besides, the sheriff's table is located in a blind corner of the staff room, which makes it highly impossible for me to see and observe who is using the typewriter situated therein.

The penultimate paragraph of the Report wherein complainant alleges loss of trust with the undersigned and that he had to utilize the services of our Legal Researcher and other court personnel, which purports that I was not cooperating with him and/or I am not performing my duties and responsibilities as the Branch Clerk of Court of RTC, Branch 9, Tacloban City, is negated by the fact that aside from the performance of my usual duties and responsibilities, I even used to draft initial order of cases assigned to our sala which are submitted to the complainant for his approval, wherein complainant signifies "OK" or "Finalize", as can be gleaned from Annexes "12" and series;

Finally, I wish to state herein that despite complainant's indifference and/or intention to malign the integrity of the undersigned who had spent his almost twenty (20) years of honest and dedicated service in the government, the present charges against me being the first, I will not threaten a Judge who deserves a high respect in our society, and who is looked up to [sic] me as a model of truth and justice.

In a resolution dated April 5, 2000, the case was referred to Executive Judge Santos T. Gil, RTC, Tacloban City for investigation, report and recommendation.

On June 19, 2002, the Court ordered Judge Gil to show cause why he should not be disciplinarily dealt with or held in contempt for failure to submit his investigation report in compliance with our resolution of April 5, 2000, reiterated in another resolution dated November 26, 2001.

On August 9, 2002, the OCA received an undated explanation from Judge Gil together with his investigation report dated July 19, 2002. He explained that he meant no disobedience to this Court and that all he wanted was to get along well with all his colleagues and his subordinates.

Judge Gil's report recommended the dismissal of the following charges against respondent as they were not duly proven:

(a)

violation of the neutrality of the court by disclosing to a party litigant the status of a case;

(b)

processing property bail bonds and qualifying bondsmen with inexistent properties;

(c)

failure to provide Judge Navidad with copies of lists of cases submitted for decision;

(d)

interceding for the release of contraband seized by virtue of a defective search warrant; and

(e)

preparing an omnibus or general search warrant.

In a resolution dated October 9, 2002, the Court referred the report to the OCA for evaluation, report and recommendation. The Court also found the undated explanation of Judge Gil to be too flimsy.

The OCA agreed with the findings of the investigating judge and made the following evaluation and recommendations:

After a careful perusal and examination of the records of the case, we find no cause to controvert the findings of the Investigating Judge. Complainant failed to satisfactorily establish that respondent processed and qualified fake bail bonds and recommended for approval property bonds with insufficient securities.

The affidavit of Elpidia Ripalda which complainant attached to his complaint pointed to Silverio Mendoza, another court employee, who introduced her to Cayetano Esplanada, a bondsman who did not possess sufficient securities. There was nothing in the affidavit that linked respondent to the illegal transactions of Esplanada. Moreover, complainant did not attach to his complaint copies of the alleged fake or spurious bail bonds which respondent processed.

Complainant's charge that respondent was in connivance with Judge Walerico B. Butalid in taking out of case records during the period of Judge Butalid's suspension must also fail. Records show that when Judge Butalid brought out of the court on 19 March 1997 records of some cases submitted for decision, respondent immediately reported the matter to then Executive Judge Getulio M. Francisco. He also sent a letter to former Court Administrator Alfredo L. Benipayo inquiring whether Judge Butalid still has authority to decide cases submitted to him for decision and requesting instruction whether he should accede to Judge Butalid's verbal order to turn over to the latter the records of these cases.

Judge Navidad likewise failed to prove that respondent interceded for the release of seized contraband articles. If it was true that respondent committed the act complained of, Judge Navidad could have exercised his power to cite respondent in contempt of court for impeding or obstructing justice.

The complaint of Judge Navidad that he was not apprised of what cases were submitted for decision was controverted by Rosalina M. Padilla, Legal Researcher of RTC, Branch 9, Tacloban City. In her affidavit dated 25 July 2000, Padilla claimed that as the court personnel in charge of cases submitted for decision, part of her work was to place the records of these cases on top of the table of the judge and to see to it that a piece of paper was stapled on the cover of each expediente indicating therein the date it was submitted for decision.

Furthermore, Administrative Circular No. 4-95 requires Clerks of Court to submit to the Office of the Court Administrator Monthly Report of Cases certified correct by the Presiding Judge/Acting Presiding Judge. Item No. V of the Report is the list of cases submitted for decision. Thus, complainant as Acting Presiding Judge of Branch 9 cannot validly claim that he was totally ignorant of the cases submitted for decision in that court.

Respondent, however, should be held liable for allowing the private secretary of Assistant Provincial Prosecutor Robert Visbal to use the table of the sheriff as well as the office typewriter and supplies. It is not possible for him to be unaware that Prosecutor Visbal's secretary has been using the sheriff's table for more than six (6) months.

It is apparent that respondent has been remiss in the performance of his duties. Section 7, Rule 136 of the

Revised Rules of Court requires that “the Clerks of Court shall safely keep all records, papers, files, exhibits and public property committed to his charge, including the library of the court, the seal and furniture belonging to his office.”

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Likewise, the act of respondent in informing the counsel of one of the parties of the status of a case pending in their court without prior inquiry from the said party should not be left uncorrected. While respondent’s intention, i.e., to unclog the docket of the court, was noble, he created the impression that he was partial to one party. He should have first sought the advice of the complainant on the matter, the latter being the Acting Presiding Judge of RTC, Branch 9 during that time.

Records show however that this is the first complaint filed against the respondent in his more than twelve (12) years of service in the judiciary.

In its Resolution dated 5 April 2000, the Court directed Executive Judge Santos T. Gil to submit his report and recommendation within sixty (60) days from receipt of the records. The records of the case were transmitted to Judge Gil on 29 May 2000. However, the Investigating Judge submitted his Report only on 9 August 2002 or two (2) years and three (3) months from the time the records thereof was transmitted to him, without any partial report or request for extension of time to submit his report and recommendation. He submitted his report only after the Court issued two (2) Resolutions ordering him to submit the required investigation report. The reason for the delay offered by Judge Gil in his explanation to the Court, that is, he wanted to maintain harmonious relationship with other judges and court employees, is weak and unconvincing.

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PREMISES CONSIDERED, this office submits the following recommendations:

- The complaint be re-docketed as an administrative case against Atty. Jose B. Lagado, Clerk of Court, RTC, Branch 9, Tacloban City;
- Atty. Jose B. Lagado be admonished and warned that a repetition of the same or similar acts in the future shall be dealt with more severely; and
- Judge Santos T. Gil, Executive Judge, RTC, Tacloban City be fined in the amount of Ten Thousand Pesos (P10,000.00) for failure to comply with the lawful orders of the Court and warned that a repetition of the same or similar act in the future shall be dealt with more severely.

We reviewed the records of the case and are satisfied with the findings of the investigating judge and the Court Administrator. There is no reason for us to disturb their findings.

As with the factual findings of trial courts, credence should be given to those of the investigating judge who had the opportunity to hear the witnesses and observe their demeanor.[1] In this case, the investigating judge recommended the dismissal of the charges against respondent clerk of court for lack of sufficient proof to establish the irregularities and anomalies alleged to have been committed. According to Judge Gil:

It is obvious that matters of greater or graver interest could have been elicited in the investigation had complainant Honorable Judge Roberto A. Navidad testified and supported his accusations against respondent. His absence simply weakens the cause or reason of his crusade. The invisible radiation from the charges he instituted, cannot just be ferreted or brought out in the open as it is hampered well nigh by the rules that hearsay evidence is inadmissible. It is true though and which this investigator is well aware of, that waiver or desistance by the complainant in administrative complaint cannot be entertained or abandoned because administrative complaint is imbued with public interest. But submitting to the doctrine aforesaid does not lend credence indispensably that the investigator should be the prosecutor or complainant himself fused into one.

Strict adherence to impartiality, shall as it must be observed. As a consequence, logic and human experience are the only tools employed in this investigation to arrive at a certain degree with appropriate recommendation.

However, it is perceived, blame cannot be fully laid upon complainant Honorable Judge Navidad on his inability to testify to support his charges. He was Presiding [Judge], Branches 7 and 9 of the Regional Trial Court in Tacloban City as Judge designate only. His home court is the Regional Trial Court of Calbayog City, and thereby, distance considered, coupled with workload most courts are experiencing today, Honorable Judge Navidad, cannot be totally blamed, on his inability to attend on the investigation of the charges he instituted.

However, as to the allegation that respondent allowed a private person to use the office table, typewriter and other office supplies, we find respondent's explanation unconvincing. Rule 136 Section 7 of the Rules of Court provides that it is the clerk of court's duty to safely keep all records, papers, files, exhibits and public property committed to his charge, including the library of the court and the seal and furniture belonging to his office. The 2002 Revised Manual for Clerks of Court further states that the clerk of court has control and supervision over his personnel, all properties and supplies in his office.

The investigation conducted by Judge Gil showed that respondent failed to show utmost dedication to his job. As court custodian, it was his responsibility to ensure that the court's properties were safely kept. He lacked diligence in performing his official duties and in supervising and managing not only court records and documents but also the physical assets of the court.

Likewise, respondent's act in disclosing to plaintiff's counsel the status of Civil Case No. 96-03-35 pending in their sala, particularly the fact that the defendant failed to answer the complaint (as a result of which plaintiff filed his motion to declare defendant in default), was against the norm of conduct required of a clerk of court. Respondent's claim that his only purpose was allegedly to declog the docket of the court and that no effort was made to exact any material consideration lacks merit. His act violated the court's policy of maintaining fairness and neutrality in the administration of justice. The nature of his work mandated him to be the epitome of competence, honesty and integrity. As a clerk of court, he occupied a position of public trust and confidence. With the prestige of the office went the corresponding responsibility to safeguard the integrity of the court and its proceedings, to earn respect therefor to maintain the authenticity and correctness of court records, and to uphold the confidence of the public in the administration of justice.[2]

Under the Uniform Rules on Administrative Cases in the Civil Service, light offenses carry a penalty of reprimand for the first violation. Considering that this is the first time that respondent Jose B. Lagado has been charged administratively in his twelve years of service in the judiciary, he should be merely reprimanded and warned that a repetition of the same or similar act shall be dealt with more severely.

We agree with the recommendation of the OCA with respect to the liability of Judge Santos T. Gil for failing to comply with the lawful orders of this Court. His explanation cannot diminish his liability, considering the unreasonably long delay incurred. He submitted his investigation report only after more than two years and after the Court issued two resolutions ordering him to show cause why he should not be disciplinarily dealt with. Undue delay in the submission of an (investigative) report is classified as a light offense[3] and carries the penalty of fine of not less than P1,000 but not more than P9,999 and/or censure, reprimand and admonition with warning.[4]

WHEREFORE, in view of all the foregoing, Atty. Jose B. Lagado is hereby REPRIMANDED. He is ordered to be more circumspect, diligent and cautious in the performance of his official duties and is STERNLY WARNED that the repetition of the same or similar act will be dealt with more severely.

Likewise, Judge Santos T. Gil is hereby ordered to pay a fine of P2,000 for not complying promptly with the

lawful orders of this Court. He is also STERNLY WARNED that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

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

[1] Llamas vs. Lacandola, A.M. 00-4-188-RTC, 13 September 2001; 365 SCRA 108.

[2] Office of the Court Administrator vs. Lucio, P-96-1206, 11 June 1996; 257 SCRA 287.

[3] Rule 140, Sec. 5.

[4] Rule 140, Sec. 10 (C).

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