

**PROVINCIAL PROSECUTOR ROBERT M. VISBAL, COMPLAINANT, VS.
JUDGE MARINO S. BUBAN, MUNICIPAL TRIAL COURT IN CITIES,
BRANCH 1, TACLOBAN CITY, RESPONDENT.**

A.M. No. MTJ-02-1432. September 03, 2004

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

In a sworn complaint,[1] Assistant Provincial Prosecutor Robert M. Visbal charged Judge Marino S. Buban, MTCC, Branch 1, Tacloban City with Violation of Rule 3.05,[2] Canon 3 of the Code of Judicial Conduct and/or Failure to Decide a Case Within the Reglementary Period, Gross Inefficiency, Misconduct, Bias and Partiality relative to Criminal Cases Nos. 98-07-19 and 98-07-20.[3]

Complainant avers that respondent Judge failed to decide Criminal Cases Nos. 98-07-19 and 98-07-20 within the 90-day period from submission of the parties's memoranda. Hence, complainant prays that respondent Judge be held administratively liable as well as criminally liable for Violation of Article 174[4] of the Revised Penal Code for his failure to disclose in his Certificates of Service from June 1999 that the subject cases were pending decision.

Complainant further alleges that respondent Judge displayed bias in favor of the accused in the above-mentioned criminal cases by his tolerance of the defense's late filing of pleadings and failure to appear in court despite due notice. He claims that respondent Judge harbored a grudge against him because his wife filed an administrative complaint against the latter.

In his Comment,[5] respondent Judge denied the allegations in the complaint. He alleged that the subject cases were originally pending before the sala of Judge Paulino A. Cabello but were subsequently transferred to him after Judge Cabello inhibited himself from hearing the cases. He explains that his inability to dispose of the cases within the prescribed period was due to the failure of his staff to bring the cases to him for proper action. It was only on December 1, 1999 that his attention was called regarding these two cases which had been submitted for decision. However, after going over the memoranda of the parties and other pleadings, he found that the only way to determine the guilt or innocence of the accused is through a full-blown trial. Thus, he scheduled the cases for trial. He admits that he was unable to report the pendency of these two cases in his Certificate of Service because he was unaware that the period to decide them had already lapsed.

Respondent further averred that the administrative case[6] filed by complainant's wife against him was already dismissed by this Court in a Resolution dated August 11, 1997.[7] He notes that complainant has the propensity of filing administrative cases against judges and fellow prosecutors, and he even filed an administrative complaint against Judge Cabello for inhibiting himself from hearing Criminal Cases Nos. 98-07-19 and 98-07-20.

On May 8, 2002, the complaint was docketed as a regular administrative matter and referred to the Executive Judge of the Regional Trial Court of Tacloban City for investigation, report and recommendation.

Executive Judge Leonardo B. Apita inhibited himself in a letter dated June 13, 2002[8] stating that he was related to respondent Judge within the 6th degree of affinity. Thus, the case was referred to Vice Executive Judge Salvador Y. Apurillo.

In his Report dated March 24, 2003,[9] Judge Apurillo concluded that respondent Judge indeed failed to resolve the cases within the reglementary period, but found that part of the blame was attributable to his staff. Since respondent has a caseload of more than 1,000 cases, it could really happen that some important matters may be overlooked. While many lawyers try to help out judges by filing motions for early resolution, this did not happen in the subject cases. If respondent Judge was to be faulted at all, it would be for his failure to devise a system to keep track of the cases pending before him and to efficiently manage his personnel. For his transgression, Judge Apurillo recommended that respondent Judge be “sternly reprimanded.”

The Office of the Court Administrator (OCA) agreed with the factual findings of Judge Apurillo but recommended that respondent Judge be fined in the amount of Three Thousand Pesos (P3,000.00).

As per Resolution of the Court dated February 11, 2004,[10] both complainant[11] and respondent[12] manifested their willingness to submit the case for resolution on the basis of the pleadings filed.

The reasons adduced by respondent for his delay in rendering judgment in Criminal Cases Nos. 98-07-19 and 98-07-20 are not novel. A judge cannot take refuge behind the mistakes and inefficiency of his court personnel.[13] He is charged with the administrative responsibility of organizing and supervising them to secure the prompt and efficient dispatch of business, requiring at all times the observance of high standards of public service and fidelity.[14] Indeed, he is ultimately responsible for ensuring that court personnel perform their tasks and that the parties are promptly notified of his orders and decisions.[15] It is his duty to devise an efficient recording and filing system in his court to enable him to monitor the flow of cases and to manage their speedy and timely disposition.[16]

If respondent Judge could not decide the case within the reglementary period, all he had to do was to ask from this Court a reasonable extension of time to dispose of the case, which may have been granted.[17]

Rules 1.02 of Canon 1 and 3.05 of Canon 3 of the Code of Judicial Conduct state:

Rule 1.02. – A judge should administer justice impartially and without delay.

Rule 3.05. – A judge shall dispose of the court’s business promptly and decide cases within the required periods. (Emphasis and italics supplied)

In this connection, SC Administrative Circular No. 13-87 states, *inter alia*, that:

3. Judges shall observe scrupulously the periods prescribed by Article VIII, Section 15 of the Constitution for the adjudication and resolution of all cases or matters submitted in their courts. Thus, all cases or matters must be decided or resolved within twelve months from date of submission by all lower collegiate courts while all other lower courts are given a period of three months to do so. . . (Emphasis and italics supplied)

We find the penalty recommended by the OCA not commensurate to the misconduct committed by respondent.[18]

Section 7, Rule 140 of the Revised Rules of Court, as amended,[19] classifies administrative charges as serious, less serious or light. Undue delay in rendering a decision or order is subsumed under less serious charges under Section 9. Pursuant to Section 11 (B) of the same Rule, such offense is punishable by suspension from office without salary and other benefits for not less than one (1) month nor more than three (3) months or a fine of more than P10,000.00 but not exceeding P20,000.00. Therefore, the impossible penalty warranted in this case is a fine

of P11,000.00.

The resolution of this case will not, however, be complete without passing upon complainant's unusual proclivity of filing several administrative cases against respondent. A verification with the Docket and Clearance Division of the OCA discloses that complainant prosecutor had so far filed the following administrative complaints against respondent Judge:

- 1) A.M. OCA-IPI No. 00-944-MTJ for Nepotism. Complaint dismissed on 18 February 2002;
- 2) A.M. OCA-IPI No. 02-1262-MTJ for Dishonesty and Gross Misconduct. Complaint dismissed on 9 July 2003;
- 3) A.M. OCA-IPI No. 02-1299-MTJ for Grave Misconduct, Malfeasance and Conduct Prejudicial to the Service. Complaint dismissed on 26 March 2003;
- 4) A.M. OCA-IPI No. 97-360-MTJ for Grave Abuse of Judicial Authority, Gross Ignorance of the Law and Serious Misconduct filed by Asuncion Baldonaza, wife of complainant. Complaint dismissed on 11 August 1997;
- 5) A.M. No. MTJ-03-1471 for Gross Inefficiency. Respondent was fined Eleven Thousand Pesos (P11,000.00) on 22 January 2003;
- 6) A.M. No. 02-1432 for alleged Failure to Decide Cases Within the Reglementary Period, Misconduct, Bias and Partiality. This is the case under evaluation.

Complainant's obsessive prosecutorial zeal in filing administrative charges is not limited to respondent Judge because a verification with the Docket and Clearance Division of the OCA reveals that said complainant has, to date, filed no less than 31 administrative cases, inclusive of the foregoing complaints against respondent, against MTC judges, RTC magistrates and other court personnel of Leyte, to wit:

- Against RTC Judges of Leyte:

- 1) OCA-IPI No. 02-1615-RTJ for Grave Misconduct v. Judge Leonilo C. Apita, Branch 7, Tacloban City. Complaint Dismissed on 03 September 2003;
- 2) OCA-IPI No. 99-873-RTJ for Gross Ignorance of the Law, Grave Abuse of Authority and Acts Prejudicial to the Service v. Judge Leonilo C. Apita, Branch 7, Tacloban City. Complaint Dismissed on 01 January 2000;
- 3) OCA-IPI No. 03-1770-RTJ for Knowingly Rendering Unjust Judgment v. Judge Salvador Y. Apurillo, Branch 8, Tacloban City. Pending;

4) OCA-IPI No. 03-1656-RTJ for Knowingly Rendering Unjust Judgment v. Judge Salvador Y. Apurillo, Branch 8, Tacloban City. Complaint Dismissed on 06 August 2003;

5) OCA-IPI No. 00-967-RTJ for Failure to Decide Case within 90-day period v. Judge Pepe P. Domael, Branch 37, Naval-Biliran. Complaint Dismissed on 24 July 2000;

6) A.M. No. RTJ-93-1096 for Irregularity in Granting Bail v. Judge Getulio Francisco, Branch 6, Tacloban City. Complaint Dismissed on 11 January 1995;

7) A.M. No. RTJ-99-1490 for Falsification of Certificate of Service v. Judge Frisco T. Lilagan, Branch 34, Tacloban City. Fined P1,000.00 27 July 1999;

8) OCA-IPI No. 97-365-RTJ for Grave Misconduct, abuse of Judicial Authority and Oppression v. Judge Roberto A. Navidad, Branch 9, Tacloban City. Complaint Dismissed 11 March 2002;

9) A.M. No. RTJ-03-1744 for Violation of Canon 3.05, Code of Judicial Conduct and Failure to Decide Case within the Reglementary Period v. Judge Rogelio C. Sescon, Branch 9, Tacloban City. Fined P11,000.00 16 August 2003;

10) OCA-IPI No. 03-1879-RTJ for Undue Delay in Resolving Civil Case No. 2002-11236 v. Judge Roberto C. Sescon, Branch 9, Tacloban City. Pending;

- Against other MTC Judges of Leyte:

11) OCA-IPI No. 98-631-MTJ for Gross Incompetence, Negligence and Grave Misconduct in Office v. Judge Paulino A. Cabello, MTCC, Branch 2, Tacloban City. Complaint Dismissed 23 August 2000.

12) A.M. No. MTJ-00-1306 for Gross Ignorance of the Law, Grave Abuse of Judicial Authority and Negligence v. Judge Rodolfo C. Ramos, MTC, Jaro, Leyte. Fined P3,000.00 20 March 2001;

13) OCA-IPI No. 04-1576-MTJ for Grave Misconduct and Gross Ignorance of the Law v. Judge Wenceslao C. Vanilla. Pending;

- Against Court Personnel:

14) OCA-IPI No. 03-1585-P for Violation of pars. 1 & 2 of Administrative Circular No. 24-90 and other Guidelines on Stenographers and Inefficiency v. Gemma Almadden, Court Stenographer III, RTC, Branch 9, Tacloban City. Pending;

15) OCA-IPI No. 02-1262-MTJ for Dishonesty and Gross Misconduct v. Felicisimo Anot, Clerk of Court,

MTCC, Tacloban City. Reprimanded 09 July 2003;

16) OCA-IPI No. 00-957-P for Violation of Section 5 (a), R.A. No. 6713 v. Felicisimo Anota, Clerk of Court, Branch 1, MTCC, Tacloban City. Admonished 15 April 2002;

17) OCA-IPI No. 03-1658-P for Violation of SC Circular No. 24-90 dated 12 July 1990 & other related circulars, Neglect of Duty v. Teresita Calleja, Clerk of Court V, RTC, Branch 7, Tacloban City. Complaint Dismissed 18 February 2004;

18) OCA-IPI No. 02-1299-MTJ for Conduct Prejudicial to the Best Interest of the Service v. Joseph Daya, Interpreter, MTCC, Branch 1, Tacloban City. Complaint Dismissed 26 March 2003;

19) OCA-IPI No. 02-1461-P for Violation of the Manual for Clerks of Court v. Anne Beth Polo-Igano, Clerk of Court II, MTC, Pastrana, Leyte. Complaint Dismissed 24 March 2003;

20) OCA-IPI No. 03-1658-P for Violation of SC Circular No. 24-90 dated 12 July 1990 and other related circulars, Neglect of Duty v. Salome Montezon, Stenographer, Branch 7, Tacloban City. Complaint Dismissed 18 February 2004;

21) A.M. No. RTJ-93-1096 for Irregularity in Granting Bail v. Blanche A. Salino, Clerk of Court, RTC, Branch 6, Tacloban City. Complaint Dismissed 11 January 1995;

22) OCA-IPI No. 97-235-P for Violation of R.A. No. 6713, Section 5 (a) v. Edgardo M. Tutaan, Clerk of Court, MTC, Palo, Leyte. Admonished 18 June 1997;

23) A.M. No. P-00-1408 for Violation of R.A. No. 6713 v. Gonzalo Velarde, Clerk of Court, MTC, Alangalang, Leyte. Complaint Dismissed 25 April 2001;

24) OCA-IPI No. 00-998-P for Failure to Respond to a Letter v. Flordeliza Villanueva, Cashier, MTCC, OCC, Tacloban City. Complaint Dismissed 21 January 2002;

25) OCA-IPI No. 02-1262-MTJ for Dishonesty and Gross Misconduct v. Flordeliza Villanueva, Cashier, MTCC, Tacloban City. Reprimanded 09 July 2003.

In a Resolution dated July 7, 2004, the Court directed complainant to show cause why he should not be held administratively liable for his propensity for filing false charges against officials and employees of the court within a non-extendible period of ten (10) days from notice. Complainant thereafter filed his Compliance stating that although some of those administrative complaints may not have merited the judicious evaluation of this

Court, it is his honest belief that the administrative complaints he filed were well-founded. Furthermore, he had noble intentions of particularly bringing to the attention of this Court the abuses and irregularities in the lower court for appropriate action.

We find complainant's explanation unsatisfactory. His propensity to litigate raises doubts as to how he could find the time to perform his duties at all. Such an excessive tendency to complain even the slightest of administrative infractions in some of the cases constitutes an oppressive and gross abuse of legal processes. This imposes on the precious time of the Court and impedes the speedy and efficient dispensation of justice. Complainant should be reminded that it is the duty of a lawyer as an officer of the court not to foment suits among individuals.

A lawyer owes to society and to the court the duty not to stir up litigation. The Code of Professional Responsibility states that "a lawyer shall not, for any corrupt motive or interest encourage any suit or proceeding." [20] Thus, a lawyer is ordered "not to become an instigator of controversy and a predator of conflict instead of a mediator of concord and a conciliator for compromise, a virtuoso of technicality in the conduct of litigation instead of a true exponent of the primacy of truth and justice." [21] In fact, lawyers are called upon to resist the whims and caprices of their clients and to temper the latter's propensity to litigate because the Lawyer's Oath to uphold the cause of justice is superior to his duty to his clients. [22]

The foregoing dictum which is embodied in the Canons of Professional Responsibility applies with equal vigor to lawyers in the government service like complainant. [23] Indeed, Rule 7.03 of the Code of Professional Responsibility explicitly states that –

Rule 7.03. – A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession. [24]

Government lawyers who are public servants owe utmost fidelity to the public service because public service is a public trust. [25] A lawyer does not shed his professional obligations upon assuming public office. [26] In fact, his professional obligations should make him more sensitive to his official obligations because a lawyer's disreputable conduct is more likely to be magnified in the public eye. [27]

It is worthy to note that complainant has already been cited by this Court in *Visbal v. Ramos* [28] for wantonly making baseless charges for malfeasance thus:

We must stress that gross ignorance of the law is a serious accusation. It therefore behooves complainant to be more circumspect in hurling this charge. Indeed, a person who accuses a judge of this very serious offense must be sure of the grounds for the accusation, or else be found ignorant of the law, as in this case. Judges, while expected to be a cut above the rest in the legal profession, are not inured to the strain concomitant with baseless and unfair aspersions on their competence. They certainly deserve a better treatment, especially from a prosecutor who should know, at the very least, the basic provisions of the Rules of Criminal Procedure. (Emphasis and italics supplied).

Complainant is therefore guilty of misconduct, defined as the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character and implies wrongful intent and not mere error in judgment. [29]

Given the prevailing facts of this case, a fine of Ten Thousand Pesos (P10,000.00) should suffice.

WHEREFORE, in view of all the foregoing, judgment is hereby rendered:

- 1) Ordering respondent Judge Marino S. Buban to PAY a FINE of Eleven Thousand Pesos (P11,000.00); and

2) Ordering Prosecutor Robert M. Visbal to PAY a FINE of Ten Thousand Pesos (P10,000.00).

Both complainant and respondent are likewise STERNLY WARNED that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, and Azcuna, JJ., concur.
Carpio, J., on official leave.

[1] Rollo, p. 1.

[2] Rule 3.05. – A judge shall dispose of the court’s business promptly and decide cases within the required periods.

[3] People v. Mary Ann Cabangisan, et al.

[4] ART. 174. False medical certificates, false certificates of merit or service, etc. – The penalties of arresto mayor in its maximum period to prision correccional in its minimum period and a fine not to exceed P1,000.00 pesos shall be imposed upon:

x x x x x x x x

2. Any public officer who shall issue a false certificate of merit or service, good conduct or similar circumstances.
x x x.

[5] Rollo, p. 9.

[6] A.M. OCA-IPI No. 97-360-MTJ entitled Asuncion B. Baldonaza v. Judge Marino E. Buban.

[7] Rollo, pp. 17-19.

[8] Id., p. 78.

[9] Id., pp. 34-38.

[10] Id., p. 99.

[11] Id., p. 100.

[12] Id., p. 105.

[13] Pagayao v. Imbing, 415 Phil. 230 [2001].

[14] Gonzales-Decano v. Siapno, A.M. No. MTJ-00-1279, 1 March 2001, 353 SCRA 269.

[15] Visbal v. Ramos, A.M. No. MTJ-00-1306, 20 March 2001, 354 SCRA 631.

[16] Gordon v. Lilagan, 414 Phil. 221 [2001].

[17] OCA v. Judge Lyliha A. Aquino, A.M. No. RTJ-00-1555, 22 June 2000, 334 SCRA 179; citing Casia v. Gestopa, 371 Phil. 131 [1999], citing Report on the Judicial Audit Conducted in the Municipal Trial Court, Sibulan, Negros Oriental, 347 Phil. 139 [1997].

[18] See Hilario v. Concepcion, 383 Phil. 843 [2000]; Bernardo v. Fabros, 366 Phil. 485 [1999].

- [19] By SC Adm. Memo Circ. No. 01-8-10 dated 11 September 2001.
- [20] Rule 1.03, Code of Professional Responsibility.
- [21] *Castañeda v. Ago*, G.R. No. L-28546, 30 July 1975, 65 SCRA 505, 512.
- [22] *Cobb-Perez v. Lantin*, G.R. No. L-22320, 22 May 1968, 23 SCRA 637.
- [23] Canon 6, Canons of Professional Responsibility.
- [24] *Collantes v. Renomeron*, A.C. No. 3056, 16 August 1991, 200 SCRA 584.
- [25] *Igoy v. Soriano*, A.M. No. 2001-9-SC, 11 October 2001, 367 SCRA 70.
- [26] *Agpalo R.E. Legal Ethics*, 6[th] ed. (1997), p. 67.
- [27] *Id.*, citing *Macoco v. Diaz*, 70 Phil. 97 [1940].
- [28] A.M. No. MTJ-00-1306, 20 March 2001, 354 SCRA 631.
- [29] *Autobus Workers' Union v. NLRC*, 353 Phil. 419 [1998].

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