ARCELY Y. SANTOS, COMPLAINANT, VS. JUDGE UBALDINO A. LACUROM, PRESIDING JUDGE, REGIONAL TRIAL COURT, CABANATUAN CITY, BRANCH 29 AND PAIRING JUDGE, BRANCH 30, RESPONDENT.

A.M. NO. RTJ-04-1823. August 28, 2006

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is an administrative complaint filed by Arcely Y. Santos ("complainant") against Judge Ubaldino A. Lacurom ("respondent judge"), Presiding Judge, Regional Trial Court (RTC) of Cabanatuan City, Branch 29 and Pairing Judge, Branch 30. Complainant charged respondent judge with gross misconduct, grave abuse of judicial authority, gross bias and partiality, and gross violation of the Code of Judicial Ethics.

The Facts

The complaint stemmed from respondent judge's alleged bias and partiality in favor of one Rogelio R. Santos, Sr. ("Santos"), who had three pending cases[1] before respondent judge's sala, as shown by the following:

- Respondent judge allowed Santos, a non-lawyer, to appear in court and litigate personally the three cases. Complainant pointed out that Santos was already represented by counsels[2] who have not withdrawn their appearances. Complainant alleged that respondent judge is guilty of gross misconduct and grave abuse of judicial discretion for having allowed a non-lawyer to engage in the practice law.

In Special Proceedings Case No. 516-AF, respondent judge, in an Order[3] dated 28 February 2003, even "appointed" Santos as lead counsel for the petitioners. As early as 26 September 2002, complainant had been questioning the appearance of Santos as "counsel" during the proceedings in court.[4] On 11 November 2002, complainant filed a motion to expunge a pleading signed by Santos, claiming that Santos, a non-lawyer, is not allowed to sign pleadings.[5] In a Joint Resolution dated 7 February 2003, respondent judge denied complainant's motion and stated that Santos is qualified to conduct his litigation personally.[6] Then on 20 February 2003, complainant filed a motion to reconsider the Joint Resolution and suggested that, since Santos is now representing himself and, at the same time, is being represented by counsel, respondent judge should appoint a member of the Bar as lead counsel.[7]

On the other hand, complainant alleged that she and the other oppositors were not allowed to address the court directly and respondent judge even compelled them, under the pain of contempt, to secure the services of a lawyer to represent them.

- Respondent judge always granted, with dispatch, all the pleadings of Santos.

- Respondent judge had unduly delayed the execution of the 28 April 2000 Court of Appeals' decision against

Santos in Cadastral Case No. 384-AF.

- Respondent judge denied complainant's letter-request[8] dated 16 March 2001 for respondent judge to inhibit himself from the cases to avoid suspicion of bias, prejudice, conflict of interest and partiality. Complainant alleged that respondent judge used his office to advance and protect the interests of Santos, respondent judge's "close friend," to the prejudice of complainant and in violation of Canon 2[9] of the Code of Judicial Conduct (Code).

Complainant pointed out that in an earlier case[10] respondent judge inhibited himself because Santos is respondent judge's "close friend."[11]

Complainant also added that respondent judge refused to inhibit himself because he was protecting his interest in Villa Benita Subdivision ("subdivision"). Complainant explained that all three cases involved properties in the subdivision[12] and that respondent judge is an incorporator,[13] a director, an officer and a legal adviser[14] of Villa Benita Homeowners Association ("VBHA"). VBHA allegedly filed several cases before the Housing and Land Use Regulatory Board (HLURB) against Fabern's Inc. and complainant. Complainant asserted that respondent judge had personal knowledge of the facts of the HLURB cases. Complainant added that in refusing to inhibit himself, respondent judge violated Rule 3.12 (a)[15] and Canon 5[16] of the Code.

In its 1st Indorsement dated 15 May 2003, the Office of the Court Administrator (OCA) required respondent judge to comment on complainant's allegations and to show cause why he should not be sanctioned as a member of the Bar for violation of Canon 9, Rule 9.01[17] of the Code of Professional Responsibility.

In an Answer dated 27 June 2003, respondent judge offered the following explanations:

- Respondent judge, citing Section 34, Rule 138[18] of the Rules of Court (Rules), admitted that he allowed Santos to litigate personally his cases before the court.

On Special Proceedings Case No. 516-AF, respondent judge explained that he merely "recognized" Santos as lead counsel because his counsel was often absent from the proceedings.[19] Respondent judge added that complainant's counsel did not object to the appointment of Santos as lead counsel, but merely suggested that lead counsel should be a member of the Bar. Respondent judge also added that, if complainant did not agree with respondent judge's decision on the matter, complainant should have filed a petition for certiorari.

Respondent judge also explained that complainant was allowed to address the court directly, though not at length because complainant was represented by counsel.

- Respondent judge denied that he always granted the pleadings of Santos.

- Respondent judge denied that the Court of Appeals' decision in Cadastral Case No. 384-AF has remained unenforced because of his bias in favor of Santos. Respondent judge stated that he had ordered the implementation of the decision as early as 25 September 2000[20] and issued a writ of execution on 25 October 2002.[21]

- Respondent judged stated that he denied complainant's request to inhibit himself because he can fairly hear and decide the cases.

On respondent judge's inhibition in Civil Case No. 3074-AF, respondent judge explained that he inhibited himself from the case because Santos was his "close friend," while respondents were not respondent judge's friends. In these cases, respondent judge pointed out that he was friends with both Santos and the other parties[22] to the cases, in effect, "neutralizing" respondent judge's close friendship with Santos.

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Respondent judge explained that Santos became a "close friend" when Santos lent his portable bunker to Dr. Ferdinand Lacurom ("Dr. Lacurom"), respondent judge's son, during the construction of Dr. Lacurom's house in the subdivision. Respondent judge also admitted that the officers of Fabern's Inc. extended a favor to Dr. Lacurom when they facilitated the cementing of the road in front of Dr. Lacurom's house.[23] However, respondent judge denied that he received any favor from Santos.

On the matter of VBHA, respondent judge denied that he had any interest to protect in the subdivision, as respondent judge is not a landowner, or homeowner, or lessee in the subdivision. Respondent judge clarified that Dr. Lacurom is the one who owns property in the subdivision and that respondent judge stayed there only on some occasions. Respondent judge admitted that he is a "nominal" incorporator and adviser of VBHA.[24] Atty. Napoleon Reyes, president of VBHA, requested respondent judge to agree to be an incorporator of VBHA "to lend a bit of prestige to the association." However, respondent judge stated that his only participation in VBHA was to sign the registration documents of VBHA. Respondent judge clarified that he never attended any of the meetings of VBHA, nor has he any knowledge of any case filed by VBHA before the HLURB.

Respondent judge also stated that if complainant filed the proper motion for inhibition, he would have granted the same.

The OCA's Report and Recommendation

In its Report dated 21 November 2003, the OCA recommended that the complaint be re-docketed as an administrative matter and that respondent judge be fined P5,000. The OCA found respondent judge administratively liable for recognizing Santos as lead counsel despite the fact that Santos had two counsels of record. The OCA did not find respondent judge liable for the delay in the execution of the decision of the Court of Appeals in Cadastral Case No. 384-AF, as the delay was brought about by the parties themselves. On respondent judge being an incorporator and adviser of VBHA and his refusal to inhibit himself from the cases, the OCA opined that the subject cases are not covered by the rule on mandatory disqualification of judges, hence, respondent judge's inhibition rested upon his own discretion.

In a Resolution dated 21 January 2004, the Court resolved to docket the case as a regular administrative matter and required the parties to manifest within ten days from notice if they were willing to submit the case for resolution based on the pleadings on record. Respondent judge manifested affirmatively. Complainant filed a memorandum dated 9 August 2004 reiterating her allegations. In turn, respondent judge also submitted a memorandum on 21 August 2004.

Complainant filed the present administrative complaint on 5 May 2003 when respondent judge was still presiding judge of Branch 29 and pairing judge of Branch 30. Respondent judge compulsorily retired on 16 May 2003. However, his retirement does not render this administrative case moot.[25]

The Court's Ruling

In administrative proceedings, the complainant has the burden of proving by substantial evidence the allegations in the complaint.[26] In this case, complainant failed to prove that respondent judge granted with dispatch all the pleadings of Santos and that respondent judge was responsible for the delay in the execution of the Court of Appeals' decision in Cadastral Case No. 384-AF. Hence, the Court dismisses this particular charge.

On a Party's Right to Self Representation

The Rules recognize the right of an individual to represent himself in any case in which he is a party. The Rules state that a party may conduct his litigation personally or by aid of an attorney, and that his appearance must be

either personal or by a duly authorized member of the Bar.[27] The individual litigant may personally do everything in the progress of the action from commencement to the termination of the litigation.[28] A party's representation on his own behalf is not considered to be a practice of law as "one does not practice law by acting for himself, any more than he practices medicine by rendering first aid to himself."[29]

Therefore, Santos can conduct the litigation of the cases personally. Santos is not engaged in the practice of law if he represents himself in cases in which he is a party. By conducting the litigation of his own cases, Santos acts not as a counsel or lawyer but as a party exercising his right to represent himself. Certainly, Santos does not become a counsel or lawyer by exercising such right.

The Court, however, notes the use of the disjunctive word "or" under the Rules, signifying disassociation and independence of one thing from each of the other things enumerated,[30] to mean that a party must choose between self-representation or being represented by a member of the bar. During the course of the proceedings, a party should not be allowed to shift from one form of representation to another. Otherwise, this would lead to confusion, not only for the other party, but for the court as well. If a party, originally represented by counsel, would later decide to represent himself, the prudent course of action is to dispense with the services of counsel and prosecute or defend the case personally.[31]

For the orderly administration of justice, respondent judge should not have allowed Santos to litigate personally because Santos was already represented by counsel. Respondent judge should have required Santos to choose between self-representation or being represented by counsel.

Moreover, respondent judge should not have recognized Santos as lead counsel. The "lead counsel" is the lawyer on either side of a litigated action who is charged with the principal management and direction of the party's case, as distinguished from his collaborating counsels or subordinates.[32] In recognizing Santos as "lead counsel", respondent judge made it appear that Santos was a counsel or lawyer when he is not. To repeat, when a party represents himself in his own case, he does so not as a counsel or lawyer but as a party exercising his right of self-representation.

On Respondent Judge's Inhibition

The Court agrees with the OCA's finding that respondent judge's inhibition from the cases was discretionary. The three cases do not fall under the instances covered by the rule on the mandatory disqualification of judges[33] and the issue of voluntary inhibition is primarily a matter of conscience and sound discretion on the part of the judge.[34]

Besides, complainant did not follow the proper procedure for the disqualification of judges. In Constante v. Pimentel,[35] the Court ruled that the procedure for disqualification of judges in Section 2, Rule 137[36] must be substantially followed.

On Respondent Judge's Violation of the Code of Judicial Conduct

On respondent judge's admission that Dr. Lacurom received a favor from the officers of Fabern's Inc., respondent judge violated Rule 5.04[37] of the Code. Fabern's Inc. is the petitioner in Cadastral Case No. 384-AF, which was then pending before respondent judge's sala. Respondent judge should have advised Dr. Lacurom not to accept any favor from Fabern's Inc. or from any of its officers[38] or principal stockholders. Judges, as occupants of exalted positions in the administration of justice, must pay a high price for the honor bestowed on them.[39] Their private, as well as their official conduct, must always be free from the appearance of impropriety.[40]

On respondent judge's close friendship with Santos, such fact did not render respondent judge guilty of violating

any canon of judicial ethics as long as his friendly relations with Santos did not influence his official conduct as a judge in the cases where Santos was a party.[41] Complainant failed to present any convincing proof that respondent judge gave any undue privileges in his court to Santos, or that Santos benefited from his personal relations with respondent judge, or that respondent judge used his influence, if any, to favor Santos.

However, it would have been more prudent if respondent judge avoided hearing the cases where Santos was a party because their close friendship could reasonably tend to raise suspicion that respondent judge's social relationship with Santos would be an element in his determination of the cases of Santos.[42] This may erode the trust of the litigants in respondent judge's impartiality and eventually, undermine the people's faith in the administration of justice.[43] Judges must not only render a just, correct and impartial decision but should do so in such a manner as to be free from any suspicion as to his fairness, impartiality and integrity.[44]

On the Appropriate Penalty Against Respondent Judge

Respondent judge's actuations constitute simple misconduct, a less serious charge punishable with (a) suspension from office without salary and other benefits for a period of not less than one month but not more than three months; or (b) fine of more than P10,000 but not exceeding P20,000.[45] However, considering that respondent judge had retired compulsorily on 16 May 2003 after twenty-eight years of service in the government and that this is respondent judge's first offense, the P10,000 withheld from his retirement benefits[46] should be forfeited as sufficient penalty for his administrative offense.[47]

WHEREFORE, the Court finds respondent Judge Ubaldino A. Lacurom GUILTY of simple misconduct and ORDERS the FORFEITURE of the P10,000 withheld from his retirement benefits.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales and Tinga, JJ., concur.Velasco, Jr., J., no part due to prior action in OCA.

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[1] The three cases are:

- Special Proceedings Case No. 516-AF entitled "In re: Settlement of the Intestate Estate of Spouses Filomeno Santos, Sr. and Benita Rodriguez Santos, Rogelio R. Santos, Sr. (Petitioner) v. Romeo R. Santos et al. (Oppositors) v. Hermogenes Beltran (Intervenor);"

- Civil Case No. 3866 entitled "Rogelio R. Santos, Sr. v. Juliet Lalida Berosa Y. Santos, et al." for Annulment of Contract; and

- Cadastral Case No. 384-AF entitled "In re: Petition for Second Owner's Copies of Transfer Certificate of Title No. 51132, etc. of the Registry of Deeds of Cabanatuan City, Fabern's Incorporated v. Rogelio R. Santos, Sr."

[2] Atty. Noel J. Buenaventura represented Santos in all the cases. Atty. J.V. Bautista also represented Santos in Special Proceedings Case No. 516-AF.

[3] Rollo, pp. 6-7.

[4] Id. at 8-16.

[5] Id. at 54-57. Motion to Expunge or Strike Out Comments/Opposition to the Motion for Reconsideration dated 23 September 2002.

[6] Id. at 58-60, 62.

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[7] Id. at 61 and 63.

[8] Id. at 30.

[9] Canon 2—A judge should avoid impropriety and the appearance of impropriety in all activities.

[10] Docketed as Civil Case No. 3074-AF entitled "Rogelio R. Santos v. Atty. Miguelito Ortiz and Ernest Linsangan."

[11] Rollo, p. 47.

[12] Id. at 130.

[13] Id. at 33-36.

[14] Id. at 31.

[15] Rule 3.12—A judge should take no part in a proceeding where the judge's impartiality might be reasonably questioned. These cases include, among others, proceedings where:

(a) the judge has personal knowledge of disputed evidentiary facts concerning the proceeding;

x x x x

[16] Canon 5—A judge should regulate extra-judicial activities to minimize the risk of conflict with judicial duties.

[17] Canon 9—A lawyer shall not, directly or indirectly, assist in the unauthorized practice of law.

Rule 9.01—A lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the Bar in good standing.

[18] Section 34, Rule 138 of the Rules of Court provides:

> SEC. 34. By whom litigation conducted.—In the court of a justice of peace[,] a party may conduct his litigation in person, with the aid of an agent or [a] friend appointed by him for that purpose, or with the aid of an attorney. In any other court, a party may conduct his litigation personally or by aid of an attorney, and his appearance must be either personal or by a duly authorized member of the [B]ar.

[19] Rollo, p. 49.

[20] Id. at 95.

[21] Id. at 94-97.

[22] Respondent judge stated that Renato Santos, Benito "Ben" Santos and Alberto Santos, oppositors in Special Proceeding Case No. 516-AF and officers of Fabern's Inc. were also his friends.

[23] Rollo, p. 52.

[24] Id. at 125.

[25] See Neri v. Hurtado, Jr., A.M. No. RTJ-00-1584, 18 February 2004, 423 SCRA 200.

[26] Adarne v. Aldaba, A.C. No. 801, 27 June 1978, 83 SCRA 734.

[27] RULES OF COURT, Section 34, Rule 138.

[28] Cortes v. Agcaoili, 355 Phil. 848 (1998).

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[29] Maderada v. Mediodea, 459 Phil. 701 (2003) citing Nelson v. Smith, 151 ALR 512, 516, 18 December 1944.

[30] Agpalo, Statutory Construction 146 (1990).

[31] Rustia v. Judge of First Instance of Batangas, 44 Phil. 62 (1922).

[32] BLACK'S LAW DICTIONARY 799 (5th Ed., 1979).

[33] RULES OF COURT, Section 1, Rule 137.

[34] Gutang v. CA, 354 Phil. 77 (1998).

[35] A.M. No. 2128-JC, 31 August 1978, 85 SCRA 41.

[36] Section 2, Rule 137 of the Rules of Court provides:

SEC. 2. Objection that judge disqualified, how made and effect. - If it be claimed that an official is disqualified from sitting as above provided, the party objecting to his competency may, in writing, file with the official his objection, stating the grounds therefor, and the official shall thereupon proceed with the trial, or withdraw therefrom, in accordance with his determination of the question of his disqualification. x x x

[37] Rule 5.04—A judge or any immediate member of the family shall not accept a gift, bequest, favor or loan from anyone except as may be allowed by law.

[38] Rollo, p. 52.

[39] Molina v. Paz, A.M. No. RTJ-01-1638, 8 December 2003, 417 SCRA 174.

[40] CODE OF JUDICIAL CONDUCT, Canon 2.

[41] Macariola v. Asuncion, 199 Phil. 295 (1982).

[42] CANONS OF JUDICIAL ETHICS, Canon 30.

[43] Padilla v. Zantua, Jr., A.M. No. MTJ-93-888, 24 October 1994, 237 SCRA 670.

[44] Maliwat v. CA, 326 Phil. 732 (1996).

[45] RULES OF COURT, Sections 9(7) and 11(B), Rule 140, as amended by A.M. No. 01-8-10-SC, effective 1 October 2001.

[46] In a Resolution dated 19 January 2004, the Court granted respondent judge's request for the release of his compulsory retirement benefits and retained P10,000 to answer for the penalty the Court may impose on his pending administrative case.

[47] Report on the Judicial Audit Conducted in RTC, Branches 29, 56 & 57, Libmanan, Camarines Sur, 374 Phil. 611 (1999).

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