

MARIA CRISTINA OLONDRIZ PERTIERRA, COMPLAINANT, VS. JUDGE ALBERTO L. LERMA, PRESIDING JUDGE, RTC, BRANCH 256, MUNTINLUPA CITY, RESPONDENT.

A.M. No. RTJ-03-1799 [Formerly OCA IPI No. 01-1268-RTJ]. September 12, 2003

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Two complaints[1] were filed by complainant Maria Cristina Olondriz Pertierra, on September 27, 2001 and on June 20, 2002, against respondent Judge Alberto L. Lerma, Presiding Judge of the Regional Trial Court (RTC) of Muntinlupa City, Branch 256, for (1) gross ignorance of the law, and (2) conduct unbecoming a judge, bias, partiality, impropriety, and lack of integrity to continue as a member of the judiciary.

It appears that on September 14, 1999, Arturo B. Pertierra, husband of the complainant, filed a petition for declaration of absolute nullity of marriage. The case, docketed as Civil Case No. 99-266, was raffled to Branch 256 of the RTC of Muntinlupa City, presided over by Judge Lerma.

According to the complaint[2] dated September 27, 2001, respondent judge manifested gross ignorance of the law in granting petitioner Pertierra's urgent motion[3] in said Civil Case to allow the disposition of the complainant's share in the Manila Polo Club valued at P3.15 million pesos. Complainant asserted that respondent judge should not have granted said motion since the Manila Polo Club share did not form part of the conjugal property, but was part of her inheritance from her late father. Moreover, said complainant, respondent judge failed to order petitioner Pertierra to render an accounting of the proceeds of the sale.

Complainant further averred that after she received a copy of the Resolution[4] granting said motion, she immediately filed on August 8, 2000, a motion for reconsideration.[5] However, despite the lapse of more than a year, the respondent failed to resolve her motion for reconsideration. Instead, he set the case for pre-trial on September 5, 2001[6] without first referring the case to the Office of the Public Prosecutor or the Office of the Solicitor General (OSG) for investigation as required by Article 48[7] of the Family Code.

The complainant averred that the reason for respondent judge's favorable action on petitioner's urgent motion, before referring the case to the Office of the Public Prosecutor or the OSG, was that the respondent judge was a "close golfmate" of petitioner's counsel, Atty. Felisberto L. Verano, Jr.

In his letter-comment[8] dated December 20, 2001, respondent judge denied any irregularity surrounding the issuance of the resolution granting the urgent motion to dispose of the Manila Polo Club share. He claimed that he granted said motion only after duly considering the pleadings and evidence presented. He averred that although the complainant opposed the motion, she did not offer any evidence to support her claim that she inherited the property from her father. Neither did she offer to shoulder the expenses of the drug rehabilitation of their children despite clearly being in a better financial position to do so. The respondent judge stated that since the share was in petitioner Arturo B. Pertierra's name and the proceeds of the sale were to redound to the benefit of the spouses' children, he granted the motion.

As to the complainant's motion for reconsideration, the respondent judge explained that his failure to resolve said motion was due to the complainant's failure to secure the services of another lawyer after her counsel of record withdrew his appearance on August 20, 2001.[9] He denied that Atty. Felisberto L. Verano, Jr. was a "close golfmate."

On June 20, 2002, Maria Cristina Olondriz Pertierra filed another complaint,[10] this time charging the respondent judge with conduct unbecoming a judge, bias, partiality, impropriety, and lack of integrity to continue as a member of the judiciary. This complaint alleged that on June 19, 2002, she arrived at 12:30 p.m. in the courtroom of Branch 256 for her hearing scheduled at 1:00 p.m. and chanced upon the respondent judge talking and having lunch with Atty. Felisberto L. Verano, Jr., counsel for her estranged husband, Arturo B. Pertierra. The respondent judge was shocked to see her, and despite not having finished his lunch, the respondent judge stood up to head for his chambers. Atty. Verano, Jr., for his part, left the courtroom with his face down.

Upon the recommendation of the Office of the Court Administrator (OCA), this Court resolved on July 31, 2002 to admonish the respondent judge for his failure to act on the complainant's motion for reconsideration despite the lapse of more than one (1) year from its filing on August 8, 2000. This Court also required the respondent judge to resolve said motion within ten (10) days from notice of the Resolution and to take appropriate steps towards a strict compliance with Article 48 of the Family Code and to report his compliance. The complainant's administrative action for gross ignorance of the law was considered premature, and hence dismissed, for lack of cause of action since there was yet no finding from an appellate court that the respondent judge erred or gravely abused his discretion in issuing the questioned Resolution. Finally, this Court required the respondent judge to comment on the complaint dated June 20, 2002.

In two (2) separate comments[11] filed by way of compliance with the foregoing Resolution of this Court, the respondent judge claimed that by Order[12] dated August 7, 2002, he had granted complainant's motion to inhibit. The records of Civil Case No. 99-266 were already transmitted to the Office of the Clerk of Court for re-raffle. Thus, he no longer had authority to resolve the motion for reconsideration.

As to the charge of conduct unbecoming a judge, bias, partiality, impropriety, and lack of integrity to continue as a member of the judiciary, respondent judge explained that Atty. Verano, Jr.'s presence in the courtroom on June 19, 2002, was due to the invitation of the Branch Clerk of Court to come and share in the celebration of the birthdays of two court personnel, namely, Lawrence Panganiban and Dina Azamar. The respondent asserted that he was merely chatting with Atty. Verano, Jr., on trivial matters and that it was erroneous for the complainant to brand it improper.

In its memorandum[13] dated January 7, 2003, the OCA, through Deputy Court Administrator Christopher O. Lock, recommended that the respondent judge be found guilty of the light offense of fraternizing with lawyers and penalized with a fine of P1,000 with warning that a repetition of the same or similar act in the future will be dealt with more severely.

There is no dispute that on June 19, 2002, the respondent judge was seen in the act of having lunch with Atty. Felisberto L. Verano, Jr., the counsel for the petitioner in Civil Case No. 99-266, in which complainant is a party. What is at issue is the propriety of the respondent judge's act of associating socially with a counsel who has a pending case before his court.

Under Canon 30 of the Canons of Judicial Ethics, we find this admonition: "It is not necessary to the proper performance of judicial duty that judges live in retirement or seclusion; it is desirable that, so far as the reasonable attention to the completion of their work will permit, they continue to mingle in social intercourse, and that they should not discontinue their interest in or appearance at meetings of members of the bar. A judge should,

however, in pending or prospective litigation before him be scrupulously careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendship constitute an element in determining his judicial course."

For respondent judge to eat lunch with counsel is not wrong per se. The Canons, however, provides that as much as possible he should be scrupulously careful to avoid any suspicion that his social or business or friendly relationship is an element in "determining his judicial course." Knowing that Atty. Verano, Jr., is counsel of the petitioner in an annulment case pending before him, the respondent judge should have thought twice about joining counsel for lunch, especially in the courtroom at that.

Respondent judge also cannot feign ignorance of the continued suspicion cast upon him by the complainant because the alleged bias or favorable treatment given to Atty. Verano, Jr., was already raised in her first complaint. Respondent judge ought to have been more scrupulous in his acts in order not to give her ground for another complaint.

A judge is human, although he is expected to rise above human frailties. At the very least, there must be an earnest and sincere effort on his part to do so. Considering that a judge is the visible representation of the law and of justice, the citizenry expects his official conduct as well as his personal behavior to always be beyond reproach.

In this instance, however, there is no showing that the respondent judge acted with malice or bad faith. But his action constitutes an instance of "fraternizing with lawyers and litigants," which is conduct unbecoming a judge. Under Rule 140[14] of the Rules of Court, such conduct of fraternizing with counsel who has a pending case in his sala, is punishable by a fine of not less than P1,000 but not exceeding P10,000 pesos and/or censure, reprimand, or admonition with warning. The OCA recommends that respondent judge be penalized with a fine of P1,000. In the light, however, of his inhibition from the case, per Order dated August 7, 2002, which obviates further suspicion of bias or prejudice to a party, the alternative penalty of reprimand appears to us sufficient.

WHEREFORE, Judge Alberto L. Lerma, Presiding Judge of Branch 256 of the Regional Trial Court of Muntinlupa City, is found **LIABLE** for a light offense constituting conduct unbecoming a judge. He is hereby **REPRIMANDED**, with a warning that a repetition of the same or similar offense shall be dealt with more severely.

SO ORDERED.

Bellosillo, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Rollo, pp. 1-2; 96-97.

[2] Id. at 1-2.

[3] Id. at 32-34.

[4] Id. at 53-54.

[5] Id. at 55-59.

[6] Id. at 1.

[7] Art. 48. In all cases of annulment or declaration of absolute nullity of marriage, the Court shall order the prosecuting attorney or fiscal assigned to it to appear on behalf of the State to take steps to prevent collusion between the parties and to take care that evidence is not fabricated or suppressed.

x x x

[8] Rollo, pp. 66-68.

[9] Id. at 83-85.

[10] Id. at 96-97.

[11] Id. at 111, 117-118.

[12] Id. at 112.

[13] Id. at 122-124.

[14] Rule 140. Charges against Judges.

SECTION 5. Light Charges.—Light charges include:

- Drunkenness or vulgar and unbecoming conduct in a public place;
- Gambling in public;
- Sleeping during trial;
- Harsh and oppressive behavior and the use of intemperate or vulgar language in the courtroom;
- Fraternizing with lawyers and litigants with pending case/cases in his court; and
- Undue delay in the submission of monthly reports.

x x x

SECTION 10. Sanctions.— x x x

C. If the respondent is culpable of having committed a light charge, any of the following sanctions shall be imposed:

- A fine of not less than P1,000.00 but not more than P9,999.00, and/or
- Censure;
- Reprimand;
- Admonition with warning.

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