

EN BANC

[A.M. No. RTJ-06-2030 (Formerly OCA IPI No. 05-2166-RTJ), October 05, 2007]

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS.
JUDGE AUGUSTINE A. VESTIL, REGIONAL TRIAL COURT, BRANCH
56, MANDAUE CITY, RESPONDENT.**

A.M. No. RTJ-07-2032 (Formerly OCA IPI No. 05-2167-RTJ)

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS.
JUDGE JESUS S. DELA PEÑA, REGIONAL TRIAL COURT, BRANCH
62, OSLOB, CEBU, RESPONDENT.**

R E S O L U T I O N

AUSTRIA-MARTINEZ, J.:

Per Resolution dated May 16, 2005, the Court treated the Memorandum filed by the Office of the Court Administrator (OCA) dated January 24, 2004 as administrative complaints against Judge Jesus S. dela Peña, (Judge dela Peña), Regional Trial Court (RTC) Branch 62, Oslob, Cebu, also formerly Assisting Judge, RTC Branch 56, Mandaue City; and Judge Augustine A. Vestil, (Judge Vestil), RTC Branch 56, Mandaue City, for the irregularities and procedural lapses in the conduct of trial in connection with their handling of Civil Case No. MAN-3855, a Petition for Declaration of Nullity of Marriage, entitled, "*Mary Ann T. Castro-Roa v. Rocky Rommel D. Roa*" (Roa case).

Mary Ann T. Castro-Roa (Castro-Roa), an Assistant City Prosecutor in Cebu,^[1] filed a Petition for Declaration of Nullity of her marriage to Rocky Rommel D. Roa (Rocky) before the RTC, Mandaue City, on June 5, 2000. The case was raffled to Branch 56 presided by Judge Vestil, but it was Assisting Judge dela Peña who took cognizance of the case. Rocky filed his Answer with Counterclaim on August 10, 2000 and the pre-trial was terminated on December 11, 2000.^[2]

Castro-Roa testified on January 29, 2001 despite the absence of Rocky.^[3] In her cross-examination on February 26, 2001, Rocky's counsel, Public Attorney's Office (PAO) lawyer Atty. Noel Anthony R. Maninang, was also absent; thus, it was Public Prosecutor Rolito Sarino who conducted the same.^[4] Judge dela Peña thereafter issued an Order declaring Rocky to have waived his right to cross-examine Castro-Roa.^[5] On March 26, 2001, Castro-Roa's witness, Dr. Glenda Ilano, testified, again despite the absence of Rocky and his counsel. She was cross-examined by Fiscal Sarino.^[6] Judge dela Peña then issued an Order setting the case for hearing on April 10, 2001.^[7]

The next thing that transpired is shown by the Minutes of April 24, 2001, which reads:

FOR FAILURE OF THE DEF.COUNSEL TO APPEAR, THE CROSS EXAM.IS CONSIDERED WAIVED. THE PETITIONER FORMALLY OFFER [sic] THEIRS [sic] EXHIBITS.[8]

On the same day, April 24, 2001, Judge dela Peña rendered his Decision declaring the nullity of Castro-Roa's marriage to Rocky.[9] Rocky and the Office of the Solicitor General (OSG) appealed to the Court of Appeals (CA).[10]

On October 22, 2003, the CA rendered its Decision^[11] declaring the Decision of Judge dela Peña to be null and void due to the "**very apparent fatal irregularities**" in the conduct of the trial of the case which deprived Rocky of due process of law.^[12] The CA ordered the remand of the case to the court of origin to give Rocky a chance to present evidence.^[13]

On December 11, 2003, Castro-Roa filed a Motion to Dismiss Petition (Motion) with Branch 56, stating that she no longer wished to continue the trial of the petition, as on her part it would mean extra effort, time, and money, which would dwindle her meager income.^[14] This time, it was Judge Vestil who acted on the Motion by issuing on January 26, 2004 an Order directing Rocky to file his comment or opposition thereto and setting the hearing thereof for February 6, 2004.^[15]

On February 6, 2004, the Clerk of Court of Branch 56, Atty. Emeline Bullecer-Cabahug issued a "*Constancia*," submitting the Motion for Resolution "considering that the Presiding Judge was in Manila on official business."^[16] In his Order dated March 10, 2004, Judge Vestil granted the Motion noting that Rocky and his counsel were served a copy of the Motion yet they filed no comment or opposition thereto.
[17]

In its Memorandum dated January 24, 2004, the OCA stated that it agrees with the CA's findings that there were "*very apparent fatal irregularities*" in the handling of the Roa case,^[18] to wit: there was no proof that the parties were given notice for the April 10, 2001 hearing; the Minutes of the April 10, 2001 hearing was not in the records, and it was not explained why it was reset to April 24, 2001; the Minutes of April 24, 2001 merely states that petitioner formally offered her exhibits, and that for failure of the defense counsel to appear, the cross-examination was deemed waived, then on the same day, a Decision was prepared and signed by Judge dela Peña; there was no transcript of stenographic notes (TSN) of the April 24, 2001 proceedings, neither was there proof on record to show that Castro-Roa formally offered her exhibits; and no notice of hearing or any order for the April 24, 2001 setting was issued to show that Rocky was given a chance to present his evidence.
[19]

The OCA, in addition, noted that Judge dela Peña dispensed with the requirement of certification from the OSG to show that there was no collusion among the parties, even though such was a requirement at the time. As to Judge Vestil, the OCA found that there was no proof that Rocky was served a copy of Castro-Roa's Motion and records show that the Order setting the hearing of the Motion, on February 6, 2004

was received by Rocky only on February 12, 2004; despite this, Judge Vestil stated in his March 10, 2004 Order that Rocky and his counsel, who had withdrawn in 2001, were served a copy of the said motion.^[20]

In Compliance with the Court's Resolution dated May 16, 2005, Judges dela Peña and Vestil filed their respective comments.^[21]

In his Comment dated June 27, 2005, Judge dela Peña averred the following: He was designated as Assisting Presiding Judge of Branch 56, Mandaue City which had a load of 700 cases, in addition to his assignment as RTC Judge of Branch 62, Oslob, Cebu. In view of an impending transfer to another branch and in his desire to expedite the cases he was handling, he instructed his legal researcher "to get the facts" of the pending cases, one of which was the *Roa* case. Rocky was given chances to cross-examine Castro-Roa's witness as well as to present his evidence. Rocky however failed to appear, while his lawyer Atty. Maninang refused to conduct cross-examination, saying that he was not able to confer with his client. Atty. Maninang was notified of all the hearings, since his office is adjacent to the court, and notice to him should be considered as notice to his client. The court proceeded with the case with the active participation of the Assistant City Prosecutor who represented the State. Due to Atty. Maninang's failure to cross-examine and present evidence for his client, the court considered Rocky to have waived his right over the same. If Rocky had objections to the ruling of the court, he should have filed a motion for reconsideration, but he did not. Finally, the Minutes and Orders may have only been misfiled, which lapse was beyond Judge dela Peña's control, since he had already assumed his post in Bogu in the last week of May 2001.^[22]

He prays that he be extended compassion by the Court since he acted in good faith, observed and applied proper procedure, rendered the judgment honestly, speedily and fairly, and was uncomplainingly obedient to the additional assignments given him by the Court.^[23]

Judge dela Peña submitted a Supplemental Comment dated June 30, 2005 with an Affidavit executed by Rocky on June 28, 2005. Rocky attested that he was properly notified of all hearings, and that in the morning of April 24, 2001, he called up his lawyer and told him that he was waiving his right to present his evidence and that he was submitting the case for decision.^[24]

In his Third Indorsement, Judge Vestil submitted the following comment: he never participated in the trial of the *Roa* case and his only participation was in the resolution of the Motion to Dismiss Petition filed by Castro-Roa; he granted the Motion four months after it was filed and only after Rocky had been allowed ample time to oppose the same; Rocky, as well as his counsel despite his withdrawal, was given notice of the hearing as well as the Order granting the Motion; while it is true that it was only on February 12, 2004 when Rocky received the notice of hearing set for February 6, 2004, still it was incumbent upon Rocky to exert efforts to verify the status of the said Motion from the time of such actual receipt; to date, however, no pleading was filed by Rocky in response to said Motion; absolutely no damage was done to Rocky as regards his counterclaim for the custody of the children, since the same can be threshed out in a separate proceeding; also, with the granting of the Motion, there was a restoration of the marital bonds between the Roas which had been severed by the Decision of Judge dela Peña.^[25]

In Compliance with the Court's Resolution dated August 22, 2005,^[26] the OCA submitted its Memorandum dated September 11, 2006, with the following findings and recommendations:

Undeniably, respondent Judge dela Peña failed to observe the requirements of prior notice and hearing before rendering the decision in Civil Case No. MAN-3855, essentially depriving Rocky of his right to due process.

Firstly, there was an Order setting the case for hearing on April 10, 2001. Yet, there was nothing to show on record that the parties were properly notified thereof. Neither was there a Minutes of the hearing.

Secondly, there was a Minutes of the hearing on April 24, 2001 suggesting that a Notice of Hearing on that date was sent to, and received by, the parties, as there was a notation on the Minutes declaring that (1) Rocky waived his right to cross-examine an adverse witness for his failure to appear, and (2) Castro-Roa formally offered her exhibits. However, no such notice or Order setting the case for hearing on April 24, 2001, much less any proof of receipt thereof by the parties was attached to the records.

All told, the manner by which the April 24, 2001 Decision was rendered was dubious. As Rocky was merely declared to have waived his right to cross-examine the witness for the adverse party, the next step that respondent Judge dela Peña should have taken was to set the case for the reception of Rocky's evidence. He did not. He opted instead to decide the case in clear violation of Section 5, Rule 30 of the Revised Rules of Court, mandating the grant of opportunity for the defendant to adduce evidence.

Respondent Judge dela Peña's attempt at exculpation all the more proves his administrative culpability. He admitted deciding the case hastily to free himself from going back to Branch 56 after having been designated as acting presiding judge of Branch 61 in Bogu, Cebu. Curiously, the administrative order designating him as such was issued on May 8, 2001 and he received a copy thereof on the third week of May 2001, or almost one (1) month after he rendered the Decision in Civil Case No. MAN-3855 on April 24, 2001. Hence, the haste with which he decided the case could not have been precipitated by his transfer to another court given the sufficiency of time left for him to complete the proceedings thereof before he eventually transferred to Branch 61. That he was informed of such designation in March 2001 was not sufficient justification to dispense with an integral component of the trial such as the presentation of evidence by the defendant.

The manner by which respondent Judge Vestil proceeded upon the Motion to Dismiss Petition was likewise suspect. Knowing that Rocky received the Notice of Hearing of February 6, 2004 on February 12, 2004 only, or six (6) days after that scheduled hearing, respondent Judge dela Peña went on to issue an Order on March 10, 2004 dismissing the petition

without a hearing. It did not matter to him that Section 6, Rule 15 of the 1997 Rules on Civil Procedure mandates that "(n)o written motion set for hearing shall be acted upon by the court without proof of service thereof."

Respondent Judge Vestil blamed Rocky for not exerting efforts to verify the status of the motion from the time he belatedly received the notice of hearing, conveniently forgetting that he himself was also absent during the scheduled hearing on February 6, 2004, which should have resulted in its cancellation and resetting. However, by taking it upon herself to submit the motion for resolution through a "Constancia," Atty. Cabahug confirmed a deliberate effort to resolve the motion in Castro-Roa's favor. Without a doubt, the action was highly irregular because it overstepped the regular functions of a clerk of clerk of court [sic], which are administrative in nature. The function to declare a motion submitted for resolution is of judicial character, and can only be exercised by the judge. Neither can it be delegated to his/her clerk of court. In this case, respondent Judge Vestil injudiciously approved, albeit impliedly, the action taken by his clerk of court when he resolved the motion a little over a month after Atty. Cabahug speciously submitted the same for resolution without anymore setting it for hearing.

Respondent Judges dela Peña and Vestil's disregard of the basic requirements of notice and hearing was too flagrant to be ignored. Having accepted an exalted position as members of the judiciary, they owe to the public and to the courts over which they preside to maintain professional competence at all times and to have the basic rules at the palm of their hands. They, however, failed to live up to the standards. Unfamiliarity with the Rules of Court is a sign of incompetence. To disregard the law when one has become familiar with it is worse because bad faith comes in.

Gross ignorance of the law or procedure is considered a serious charge under Section 8(9) of Rule 140, as amended, of the Rules [of] Court, for which a penalty ranging from a fine of more than P20,000.00 but not exceeding P40,000.00 to suspension or dismissal may be imposed.^[27]

The OCA then recommended that:

1. [B]oth Judge Jesus S. dela Peña, Regional Trial Court, Branch 22, Oslob, Cebu and Judge Agustin [sic] A. Vestil, Regional Trial Court Branch 56, Mandaue City be FOUND administratively liable for gross ignorance of the law or procedure;
2. Judges dela Peña and Vestil be FINED each in the amount of P21,000.00, with a warning that a repetition of a similar act or infraction will be dealt with more severely; and
3. Atty. Emeline Bullecer-Cabahug, branch clerk of court, Regional Trial Court, Branch 56, Mandaue City, be REQUIRED to SHOW CAUSE why no disciplinary action should be taken against her for issuing a "Constancia" on February 6, 2004, submitting the Motion to Dismiss