

## SECOND DIVISION

[ A.C. No. 11925, September 28, 2020 ]

**RE: RESOLUTION DATED OCTOBER 11, 2017 IN OCA IPI NO. 16-4577-RTJ (ROBERTO T. DEOASIDO AND ATTY. JEROME NORMAN L. TACORDA V. HONORABLE JUDGE ALMA CONSUELO B. DESALES-ESIDERA, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 20, CATARMAN, NORTHERN SAMAR, AND ATTY. LEONARDO SARMIENTO III, FORMER CLERK OF COURT, REGIONAL TRIAL COURT, BRANCH 20, CATARMAN, NORTHERN SAMAR,) VS. ATTY. JEROME NORMAN L. TACORDA, RESPONDENT.**

### D E C I S I O N

**INTING, J.:**

In the Verified Complaint<sup>[1]</sup> dated April 29, 2016, Roberto T. Deoasido (Deoasido) and Atty. Jerome Norman L. Tacorda (Atty. Tacorda) (collectively, complainants) charged then Presiding Judge Alma Consuelo B. Desales-Esidera (Judge Desales-Esidera) of Branch 20, Regional Trial Court (RTC), Catarman, Northern Samar with gross ignorance of the law, gross neglect of duties, delay in the administration of justice, and impropriety relative to Civil Case No. C-1102 entitled, *Heirs of Lucia Mijares-Telegrapo, et. al. v. Miguel Balberde*, a case for reconveyance.

Deoasido is one of the heirs in the civil case, while Atty. Tacorda claimed to be their counsel. Atty. Anselmo Alvanez IV (Atty. Alvanez) initially handled the case until he was suspended by the Court from the practice of law.<sup>[2]</sup>

Complainants alleged that there were numerous postponements made by Judge Desales-Esidera as evidenced by various certified true copies of the transcript of stenographic notes (TSNs) and minutes of the proceedings, to wit:

1. Minutes of 05 April 2005 proceedings - the parties through their counsels were directed to submit simultaneously their position papers.

Complainants wondered why they were directed to do so when the case is for reconveyance and position papers are not required since it is not governed by the Rules on Summary Procedure.

2. Minutes of 11 September 2008 proceedings - contained remarks that the hearing would be reset as both counsels were not in court when the case was called.

Complainants bewailed that respondent Judge did not even issue an order requiring both counsels to show cause for not appearing in

court. They added that respondent Judge did not also impose postponement fees as strictly required by the rules. They insisted that the delay is attributable to the passive act of respondent Judge which is violative of the Constitution, the Speedy Trial Act and existing jurisprudence.

3. Minutes of 24 October 2008 proceedings - merely had the inscription that the hearing was reset without indicating the reason for the postponement, nor was there a Notice of Postponement filed by either counsel.

Complainant reasoned that our courts are courts of records, and such principle is so basic that even a first year law student can decipher and understand it by heart, which unfortunately respondent Judge's court did not apply.

4. Minutes of the 19 February 2009 proceedings - contained entries that the initial hearing was again reset for the reason that not all the heirs were contacted, hence complainant Deoasido was directed to contact the other heirs, and a certain Atty. Balicud was also required to submit the names of the heirs of Miguel Balberde.

Complainant Atty. Tacorda stressed that it is a basic rule that there is already sufficient authority when a party litigant is equipped with an SPA conferring upon him the authority to sign, attend, negotiate for settlement and act in their stead regarding the case.

As to the directive that Atty. Balicud should submit the names of the heirs of Miguel Balberde, the same is too vague and susceptible of various interpretations. By these acts and omissions, respondent Judge delayed the case.

5. Minutes of the 14 January 2010 and 21 September 2010 proceedings - these merely contained the entries that the hearings were reset without giving any reasons for the repeated postponements.
6. Minutes of the 09 December 2010 proceedings - its entry merely noted that respondent Judge inhibited from the case. Again, the minutes contained no reason for the recusal in blatant disregard of basic rules of court.<sup>[3]</sup>

Complainants also asserted that from the time of the filing of the complaint in 2002 up until April 22, 2016, only the first witness for the plaintiffs was presented in court. This civil case is now presided by a certain Judge Decoroso-Turla.<sup>[4]</sup>

Meanwhile, in her Comment with Counterclaim<sup>[5]</sup> filed on August 30, 2016, Judge Desales-Esidera alleged the following:

The complaint should be dismissed on the ground that Atty. Tacorda, as a member of the bar, failed to indicate his Mandatory Continuing Legal Education compliance;

that just like the other administrative cases initiated by the latter, the complaint had no basis in fact and in law and had no other purpose but to harass her, beleaguer her, and disturb her work as a judge.<sup>[6]</sup>

The ill feelings Atty. Tacorda exhibited against her amounted to perjury and were in clear violation of the Lawyer's Oath and the Code of Professional Responsibility (CPR); that the series of administrative cases filed against her, proved that it was a demolition plan in view of her adverse decisions against some "*political bigwigs and complainant Atty. Jerome Norman Tacorda is a willing conspirator with the cooperation of his clients.*" She added that one of Atty. Tacorda's law firm partners is a relative of one of those sentenced by her and who is still fighting for a reversal of her decision despite its affirmance by the higher courts.<sup>[7]</sup>

Also, the complaint was unfounded since the basis of the complaint, which were the minutes' did not reflect in detail the entire proceedings that transpired during the trial, but only a summary thereof; that the more complete and reliable court document should have been the TSNs and the eventual orders she issued because the court interpreter did not know shorthand writing and could only write what he understood during the proceedings. Yet, complainants opted not to attach the TSNs and the orders as mentioned because had they done so, there would be no case against her because of the presumption that *when the evidence is suppressed, it is adverse when produced.*<sup>[8]</sup>

As to the alleged submission of position papers on April 5, 2005, she was still the judge in the Municipal Trial Court, Bobon, Northern Samar. The attached Minutes<sup>[9]</sup> of the session actually reflected the name of Acting Presiding Judge Jose F. Falcotelo; hence, it could be said that she had nothing to do with the requirement respecting the submission of position papers.<sup>[10]</sup>

Moreover, the September 11, 2008 postponement was because she was attending a seminar in Tacloban City as stated in the Notice of Order dated August 13, 2008; that to her mind, the notice already served as a notice to the litigant? that she would not be able to attend the hearing and which would no longer require any postponement fees according to the rules.<sup>[11]</sup>

Further, complainants intentionally omitted the Order<sup>[12]</sup> she issued for the proceedings on October 24, 2008; and that the hearing was reset due to the demise of defendant Miguel Balberde and the substitution was in order.<sup>[13]</sup>

Atty. Tacorda failed to observe Section 16,<sup>[14]</sup> Rule 3, Rules of Court when the Special Power of Attorney in favor of Deoasido executed by his siblings and attached to the records did not include the hiring of Atty. Tacorda, or any other lawyer to represent them. Moreover, the court was informed that not all heirs were contacted; hence, the directive to contact all the heirs to be substituted.<sup>[15]</sup>

As to the minute dated January 14, 2010, although it did not state therein the reason for postponement, the order of even date reads that there was a power failure; while the Order of Inhibition dated December 9, 2010 did not fail to state Judge Desales-Esidera's reason for recusal. She added that as a natural occurrence of her inhibition, the hearing would be postponed. Therefore, after inhibiting herself,

she had nothing more to do with the case and no longer answerable as to why it was only on April 22, 2016 that the first witness was presented.<sup>[16]</sup>

Lastly, there was no September 21, 2010 hearing, minutes, or order. She said that it was during the proceedings on September 2, 2010 that the hearing was reset to October 21, 2010.<sup>[17]</sup>

#### *Evaluation and Recommendation of the Office of the Court Administrator (OCA)*

The Court Administrator recommended that the instant administrative complaint against Judge Desales-Esidera be dismissed for utter lack of merit based on the following evaluation, which reads in this wise:

With respect to the charge of gross ignorance of the law, the Court in the case of *Amante-Descallar vs. Ramas* set forth the elements of the offense as follows: that the subject order or actuation of the judge in the performance of his official duties must not only be contrary to existing law and jurisprudence, but more importantly, must be attended by bad faith, fraud, dishonesty or corruption. However, based on the records at hand, both elements were not established by complainants.

As can be deduced, complainants did not present proof that there were orders or resolutions that respondent Judge issued in the performance of her official duties which are contrary to existing law and jurisprudence and motivated by bad faith, fraud, dishonesty and corruption. In fact, complainants merely presented, intentional or otherwise, the minutes of the proceedings. This Office subscribes to respondent Judge's stand that the minutes, which was the basis of complainants for filing the instant case, do not reflect in detail the entire proceedings but merely a summary of what transpired during the trial.

With respect to the charge of neglect of duty, the same is defined as the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference. On the other hand, gross neglect of duty is characterized by want of even the slightest care, or by conscious indifference to the consequences, or by flagrant and palpable breach of duty. In the instant case, complainants want to impress upon the Court that respondent Judge's negligence is the direct cause of delay in their case. However, this imputation has no leg to stand on. *Firstly*, as stated earlier, the minutes presented by complainants in filing the instant case, is insufficient to establish the entire proceedings. *Secondly*, complainants failed to ascribe specific conduct that amounts to failure on the part of respondent Judge to give proper attention to a required task or to discharge a duty due to carelessness or indifference. For her part, respondent Judge was able to satisfactorily explain the reasons for the postponements.

It bears stressing that the complainant in an administrative proceeding bears the onus of establishing, by substantial evidence, the averments in the complaint. In the absence of contrary evidence, what will prevail is the presumption that the respondent has regularly performed his official duties. Substantial evidence is such amount of relevant evident which a