

SECOND DIVISION

[A.M. No. RTJ-08-2109 (Formerly A.M. OCA IPI No. 06-2463-RTJ, Formerly A.M. OCA I.P.I. No. 06-1-45-RTC), April 30, 2008]

OFFICE OF THE COURT ADMINISTRATOR, PETITIONER VS. JUDGE MOISES M. PARDO AND CLERK OF COURT JESSIE W. TULDAGUE, RTC-CABARROGUIS, QUIRINO (FORMERLY LETTER-COMPLAINT OF JUDGE MOISES M. PARDO, EXEC. JUDGE, RTC-CABARROGUIS, QUIRINO AGAINST ATTY. JESSIE W. TULDAGUE, CLERK OF COURT, SAME COURT), RESPONDENTS.

D E C I S I O N

CARPIO MORALES, J.:

By letter dated August 9, 2005 addressed to Deputy Court Administrator Jose Perez, respondent Judge Moises M. Pardo (Judge Pardo or the Judge) who was, at the time material to the present administrative matter, Executive Judge and Presiding Judge of Branch 31 and acting Presiding Judge of Branch 32 of the two-sala Regional Trial Court (RTC) of Cabarroguis, Quirino, complained against respondent Clerk of Court Jessie W. Tuldague (Tuldague). The body of the letter reads:

I am calling your attention [to] the **Grave and Disrespect[ful] conduct** of Atty. Jessie W. Tuldague, Clerk of Court VI, RTC Cabarroguis, Quirino, **in the conduct of raffle of cases** by calling only the OIC Branch Clerks of Court, and furnishing only the undersigned about the said raffle [*sic*]. The xerox copy of said letter is hereto attached for your perusal.

The said act of said Atty. Tuldague is an affront to the prerogatives of the Executive Judge and x x x he should be penalized for it.

Your fast action hereon is very much sought for.^[1] (Emphasis and underscoring supplied)

The form-notice of raffle issued by Tuldague, which the Judge attached to his letter, reads:

THE OIC[-]BRANCH CLERK OF COURT
RTC, Branch 31
Cabarroguis, Quirino

THE OIC-BRANCH CLERK OF COURT
RTC, Branch 32
Cabarroguis, Quirino

Greetings:

Please be informed that we will be conducting the raffle of cases on August 9, 2005 at the session hall of RTC, Br. ____, Cabarroguis, Quirino at 8:15 A.M.

August 4, 2005 at Cabarroguis, Quirino.

Very truly yours,

ATTY. JESSIE W. TULDAGUE
Clerk of Court VI

COPY FURNISHED:

HON. MOISES M. PARDO

Executive Judge-RTC-Br. 31^[2] (Emphasis and underscoring supplied)

In his Comment,^[3] Tuldague denied that the notice of raffle was in any way disrespectful to Judge Pardo, he claiming that he has been using the above-quoted form-notice of raffle for the past years without Judge Pardo questioning it. He averred that from the time of his appointment as Clerk of Court of the RTC of Cabarroguis, Quirino, he has been the one who initiated and insisted that the raffle of cases be done in open court. He further averred that Judge Pardo filed the letter-complaint in retaliation for his filing of an administrative complaint against him.

Tuldague in turn charged Judge Pardo for having

x x x x

x x x disregarded procedures and committed impropriety when he ordered the civil docket clerk of his sala (Branch 31), on April 28, 2005, to get the records of Land Registration Case No. 264-05, Leoncio Daquioag v. Registry of Deeds, directly from the Office of the Clerk of Court without the benefit of raffle. There was no special raffle conducted to justify the act of Judge Pardo x x x^[4] (Underscoring supplied)

The Office of the Court Administrator (OCA) subsequently received on November 3, 2005 a copy of an October 18, 2005 letter of Tuldague addressed to Judge Pardo reading:

x x x x

I was informed by Sheriff Tanching Wee that you refuse to sign the Sheriff's Certificate of Sale of Extra-Judicial Foreclosure Cases that we raffled in your absence on the ground that your physical absence during the raffle makes the sale null and void. Please be informed that under A.M. No. 99-10-05-0 as Amended, your absence during the raffle is not a valid ground to declare the sale as void. I hope you will realize that **your line of thinking is not to my detriment but to the damage and prejudice of court users. If you want to make the issue big, then you can bring this small matter up to the Supreme Court again and I'm willing and ready to answer.** From now on, I will be forwarding to your office all Petitions for Extra-Judicial Foreclosure **so you can always**

be present and conduct the raffle yourself. I'm doing this in the interest of service and so as not to prejudice innocent court users who have nothing to do with the **legal controversy and friction between us.**^[5] (Emphasis and underscoring supplied)

On even date, the OCA also received a copy of Judge Pardo's letter-reply to said October 18, 2005 of Tuldague reading:

x x x x

In relation to your letter dated October 18, 2005 regarding the raffle of extra-judicial foreclosure cases which you did without my presence although you know that I am very much present, you know pretty well that what you did was in contravention of A.M. No. 99-10-05-0, as amended by Circular No. 7-2002, and the pertinent provision of which is quoted hereunder, to wit:

"Section 1. All applications for extra-judicial foreclosure of mortgage, whether under the direction of the Sheriff or a notary public pursuant to Act No. 3135, as amended, and Act 1508, as amended, **SHALL BE FILED WITH THE EXECUTIVE JUDGE THROUGH THE CLERK OF COURT**, who is also the Ex-Officio Sheriff (A.M. No. 99-10-05-0, as amended, March 1, 2001).

Section 3. The application for extra-judicial foreclosure **SHALL BE RAFFLED** under the **SUPERVISION of the EXECUTIVE JUDGE**, with the **ASSISTANCE** of the Clerk of Court and Ex-Officio Sheriff, among all Sheriffs including those assigned to the Office of the Clerk of Court and Sheriffs assigned in the branches of the Court. A Sheriff to whom the case only after all other Sheriffs shall have been assigned a case each by raffle (Administrative Circular No. 3-98, February 5, 1998)."

From the above-quoted provisions, you are only to assist in the raffling of the cases and not to act as the Chairman of the Raffle Committee. [Regarding y]our statement that you will be forwarding all petitions received by your office, you should be informed that under the said circular you are to receive all petitions including the corresponding payment of fees.

x x x x^[6] (Emphasis and italics in the original; underscoring supplied)

Acting on the complaint and counter-complaint, the OCA submitted to the Court its Memorandum-Report^[7] dated January 9, 2006 containing its evaluation and recommendation thereon, a portion pertinent to the Judge's complaint against Tuldague of which reads:

Minutes of Raffled Cases dated 8 February 2005, 8 March 2005 and 26 September 2005 submitted to the Court Management Office were noted by Judge Pardo, which, to our mind, only manifest the scheduled date and time of the raffling of cases as well as the actual raffling of cases

were with his consent [*sic*]. Moreover, the absence of any evidence showing that he has ever called the attention of Atty. Tuldague as to the alleged "affront to his prerogatives as Executive Judge" strengthens the defense of Atty. Tuldague that he has long been using the same notice without the judge questioning the same. Such tolerance on the part of the complaining judge is considered acquiescence [with] the adopted procedure and, therefore, negates the act complained of.^[8]
(Underscoring supplied)

In its Resolution of February 8, 2006, the Court approved the OCA's recommendation and accordingly resolved:

(a) to **NOTE** the following, to wit: 1) the letter-complaint dated 9 August 2005 and letters dated 18 October 2005 and 25 October 2005 of Judge Moises M. Pardo, Executive Judge, RTC, Cabarroguis, Quirino; and 2) comment dated 13 September 2005 and letter dated 18 October 2005 of Atty. Jessie W. Tuldague, Clerk of Court, same court;

(b) to **DISMISS** the complaint against Atty. Jessie W. Tuldague, Office of the Clerk of Court, Cabarroguis, Quirino, for 'Grave and Disrespect Conduct' for lack of merit;

(c) to **DIRECT** Atty. Tuldague:

(1) to **REFRAIN** from personally conducting the raffling of cases (regular raffle as well as raffle of applications for extrajudicial foreclosure of mortgage);

(2) to **ASSIST** the Raffle Committee (Executive Judge and presiding Judge of the other branch - Judge Pardo only, in the instant case) in the raffling and assignment of cases;

(3) to **LEAVE** the preparation of the Minutes of the Raffle to the two stenographers designated to record the raffle proceedings; and

(4) to **EXPLAIN** why no administrative sanction should be imposed on him for proceeding with the raffle of cases/applications for extra-judicial foreclosure of mortgage in the absence of the Executive Judge;

(d) to **DIRECT** Judge Moises M. Pardo, Executive Judge, RTC, Cabarroguis, Quirino:

(1) to **EXPLAIN** why no administrative sanction should be imposed on him for allowing the Clerk of Court to conduct the raffle of cases in his station without his being personally present thereat for a long period of time prior to the filing of his complaint dated 9 August 2005; and

(2) **DISREGARD** the 2nd Indorsement dated 10 October 2005 of this Office requiring him to submit his Reply to the Comment

dated 13 September 2005 of Atty. Tuldague and, instead, submit his comment on the allegation of Atty. Tuldague that he took the records of Land Registration Case No. 264-05, entitled "Leoncio Daquioag vs. Registry of Deeds" from the Office of the Clerk of Court which has not yet been included in the raffled cases;

- (e) to ***DIRECT*** the Raffle Committee, Judge Pardo as Executive Judge and pairing Judge of the other branch, Atty. Tuldague, as the Clerk of Court, and the two (2) stenographers designated to record the proceedings to ***STRICTLY OBSERVE*** the procedure in the raffle of cases including the preparation of the minutes thereof (Sec. 4, Chapter V of the Guidelines on the Selection and Appointment of Executive Judges and Defining their Powers, Prerogatives and Duties dated February 1, 2004); and
- (f) to ***TREAT*** the matter, with respect to the irregularity in the raffling of cases, as an OCA-Informal Preliminary Inquiry and to ***CONSOLIDATE*** the same with the other complaints subject of our Memorandum dated October 7, 2005 in order to join all issues concerning the courts at Cabarroguis, Quirino. (Emphasis and italics in the original; underscoring supplied)^[9]

In compliance with the Court's foregoing directive, Tuldague, in his Comment/Explanation,^[10] denied that he personally conducted regular raffle of cases and applications for extrajudicial foreclosure of mortgage, and averred that he only once conducted a raffle of applications for extrajudicial foreclosure of mortgage because he "thought that [Judge Pardo] is no longer interested, considering that he verbally ordered us to raffle cases in open court without him conducting the raffle himself x x x."^[11]

In his March 28, 2006 letter,^[12] Judge Pardo denied that he did not participate in the raffle of cases, to prove which he submitted Transcripts of Stenographic Notes taken thereon.^[13] He averred that when he discovered on August 12, 2005 the irregularity in the raffling of foreclosure cases the day before, he prepared and issued Notices of Regular Raffling of Cases effective August 22, 2005.^[14]

With regard to the charge that he allowed Tuldague to conduct the raffle of cases in his absence, Judge Pardo cited his earlier quoted reply-letter to Tuldague's October 18, 2005 letter to refute the same.^[15]

Judge Pardo likewise denied the charge that he took the records of Land Registration Case No. 264-05, claiming that

x x x Due to the voluminous records of cases in my sala, and that of the other sala where I am designated, I learned sometime [in] September 2005 or after deciding the case on the merits that the same was not raffled. As a judge, every case which the then Branch Clerk of Court presents to me and schedules for hearing, [is] presumed to have been regularly docketed in said branch, and that it was regularly delivered to the same, and moreover, ... I discovered that the said case [called for] a