

## FIRST DIVISION

**[ A.M. No. MTJ-07-1670 (Formerly OCA IPI No. 06-1822-MTJ), July 23, 2008 ]**

**ATTY. RODERICK M. SANTOS AND ALEXANDER ANDRES  
COMPLAINANTS, VS. JUDGE LAURO BERNARDO, MUNICIPAL  
TRIAL COURT, BOCAUE, BULACAN, RESPONDENT.**

### D E C I S I O N

#### **AZCUNA, J.:**

This is an administrative case against respondent MTC Judge Lauro Bernardo for his alleged impropriety, manifest bias and partiality, grave abuse of discretion, and gross ignorance of the law/procedure relative to Criminal Case No. 06-004 entitled "*People of the Philippines v. Atty. Roderick M. Santos and Boyet Andres.*"

On February 9, 2006, Atty. Roderick M. Santos and Alexander Andres filed a verified Affidavit-Complaint charging respondent of:

#### *Impropriety -*

Respondent is using government resources in the discharge of his functions for his personal pleasure and convenience. Specifically, he allows his girlfriend, a certain "*Boots,*" to stay and use as her lounge the judge's chamber in violation of his duty under Rule 2.01 of the Code of Judicial Conduct to maintain proper decorum. On many occasions, even when there is a hearing, his girlfriend stays in the chamber, hindering the full performance of respondent's duties as he has to attend to her whims and caprices, plus the fact that his girlfriend is just cooling herself in the air-conditioned room while litigants have to bear the cramped hot space of the courtroom. This act also invites suspicion since her mere presence therein is an indication of who to talk to regarding a case. Following the case of *Presado v. Genova*, <sup>[1]</sup> the act of respondent constitutes serious misconduct.

#### *Manifest Bias and Partiality -*

Respondent committed manifest bias and partiality when he allowed the filing of Criminal Case No. 06-004 for Grave Coercion against the complainants because it was his chance to get back at Atty. Santos against whom he is harboring a grudge after the latter moved for his inhibition in Criminal Case Nos. 04-430 and 04-572.

Instead of conducting a preliminary investigation after the filing of the complaint to find probable cause to hold complainants herein for trial, respondent immediately signed the criminal complaint upon its filing and ordered that the case be set for "preliminary hearing" on January 12, 2006. His own branch clerk certified that the "complainant and her witnesses only subscribed their statement before the presiding judge." Worse, respondent allowed the criminal case to be filed even if it is based on

hearsay evidence, as the complainant therein, one Dr. Elida D. Yanga, was not in the place at the time the alleged offense happened. From the documents gathered, the undue haste by which respondent acted is very evident because the complaint-affidavit, the criminal complaint, and the subpoena have the common date of January 4, 2006. More so, the subpoena was immediately served on complainants on January 5, 2006.

*Grave Abuse of Discretion and Unfaithfulness to the Law -*

Respondent committed grave abuse of discretion when he did not conduct a preliminary investigation in Crim. Case No. 06-004. Under paragraph 2, Section 1, Rule 112 of the Revised Rules on Criminal Procedure (Rules), [2] preliminary investigation is required to be conducted before the filing of a complaint or information for offenses where the penalty prescribed by law is at least four years, two months and one day. The maximum imposable penalty for Grave Coercion is six years imprisonment; hence, complainants should have been accorded the right to preliminary investigation whereby they could have demonstrated that the complaint is worthless. Respondent, however, chose to be ignorant of the basic provisions of the Rules in order to exact revenge and cause them to unduly stand trial. Despite the Motion to Quash Complaint with Prayer for Voluntary Inhibition filed by complainants to give him a chance to correct his error by at least referring the case to the Office of the Provincial Prosecutor of Bulacan for the conduct of the requisite preliminary investigation, he remained adamant by issuing an order referring the case instead to the Executive Judge of Bulacan for its raffle to another MTC judge. This act showed respondent's deliberate intent to make the complainants accused persons in a criminal case.

By allowing the immediate filing of a patently unmeritorious case, respondent tainted Atty. Santos' good reputation: he is a law practitioner with companies in Makati, Pasig and Manila as clients; he is a businessman and was also a former chairman of the board and current board director of St. Martin of Tours Credit and Development Cooperative, the largest credit cooperative in Region III; and he is a frequent traveler, going abroad at least once a year. With the worthless criminal case filed against him, respondent puts a sore obstacle to Atty. Santos' way of life that is truly an undeserved inconvenience.

On April 11, 2006, respondent filed his Comment arguing in the main that the charges against him are hearsay, without factual and legal basis, and are a malicious imputation upon his person; and that the acts stated in the complaint were based solely on the bare allegations of the complainants as no corroborative statements of witnesses were presented to prove the same. In contradicting complainants' representation, he stated thus:

*As to the charge of Impropriety:*

"Boots" (whose maiden name was Ma. Rosario M. Layuga) is now respondent's lawful wife, as proven by a marriage certificate showing their civil union before a Caloocan City Regional Trial Court (RTC) judge on March 14, 2006. There was no occasion or intention on his part to make the judge's chamber a residential or dwelling place. Instead, his wife's presence is "actually dictated by a moral duty in the exercise of marital responsibility" since he has been allergic to some foods, particularly fish and some beans. In fact, last October 2005, after eating fish,

respondent nearly lost his life due to a severe allergy had it not been for the timely medical intervention administered at a nearby hospital. Aside from this, he is suffering from irregular heartbeat which causes constant rise of his blood pressure and uric acid. Also, his wife is not merely present in the chamber since, while in there, she is also attending to some activities. Being self-employed and with extensive exposure to trading, she administers the family property consisting of leased premises and landholdings in Pandi, Bulacan.

Respondent's relation to his wife is "serious, open and known to the public" and that the atmosphere prevailing in the court's chamber even in the alleged presence of his wife is "an atmosphere of friendship, respect and decency." He related that he and his wife are regular participants of Marriage Encounter prayer meetings as well as in the prayer assemblies conducted by the Couples for Christ. Respondent is an active member of the Rotary Club of Sta. Maria and Knights of Columbus, Marian Council of Sta. Maria, Bulacan while his wife is a member of the Inner Wheel Club of the Philippines. As members, they are active participants in the clubs' community projects and other civic activities. On top of these, respondent judge presented Resolution No. 06-03-025, dated 20 March 2006, of the Sangguniang Bayan of Bocaue, Bulacan signifying its "unilateral decree of support and commendation to [respondent] in recognition of his long years of commendable and meritorious service in the dispensation of justice" and the Certificate of Commendation, dated 30 March 2006, issued by the Mayor of the Municipality of Bocaue.

*As to the charge of Manifest Bias and Partiality:*

Complainants interpreted that when respondent signed the criminal complaint as well as subscribed the affidavits of the witnesses under oath he already made a finding of probable cause. This is not correct because his signature was only for the purpose of administering an oath, as evidenced by the certification issued by the clerk of court. The fact is that the criminal case did not reach the stage of preliminary investigation since complainants filed a Motion for Inhibition which was readily granted. Respondent conducted the court proceedings in accordance with the provisions of the Rules, particularly Sections 3 (a) and 8 (b) of Rule 112.<sup>[3]</sup>

*As to the charge of Grave Abuse of Discretion and Unfaithfulness to the Law:*

Admittedly, preliminary investigation must be conducted before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four years, two months and one day without regard to fine. In the case of Grave Coercion, however, there is no need for a preliminary investigation since *prision correccional* (six months and one day to six years), which is the imposable penalty for said crime, does not fall within the required penalty of *prision correccional* maximum (four years, two months and one day). The criminal case against complainants should proceed in accordance with Section 8 (b) of Rule 112.

When respondent issued a subpoena setting the case for preliminary hearing it was taken as a measure of "damage control." Knowing that a member of the Bar is being charged before the court, it might have afforded the parties the chance to thresh out their differences and possibly settle amicably. Likewise, his order to forward the case to the Office of the Executive Judge was but a result of his voluntary inhibition from the case, which he had chosen to definitely rule upon instead of further quashing the criminal complaint since the Motion filed by complainants prayed

respondent to resolve two "judiciously irreconcilable" issues.

As a background, the enmity between respondent and Atty. Santos started in Criminal Case Nos. 04-430 and 04-572 wherein the latter appeared as private prosecutor in Criminal Case No. 04-430 for Reckless Imprudence Resulting to Damage to Property. The accused in said case later on filed a similar case (docketed as Criminal Case No. 04-572) against Atty. Santos' client. Respondent found probable cause in both cases. Atty. Santos questioned this ruling but, on appeal, the RTC sustained the findings. Atty. Santos did not elevate the matter to the appellate court until the decision became final.

In order for liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but most importantly it must be established that he was moved by bad faith, dishonesty or some other like motive. In this case, respondent has nothing to gain, material or otherwise, from the outcome of the criminal action; he met the parties only during the proceedings in court, not before its filing, and he inhibited himself promptly from the case. Atty. Santos instead is the one who has animosity to respondent; he must realize and understand that what he (respondent) had done is just all in a day's work and nothing personal about it.

In their Reply, the complainants argued that aside from converting the judge's chamber into a "nursing home" or "convalescent center" what is more troubling is respondent's own admission that his wife's activities therein are not limited to the "[care] for the sick" but also to her involvement in trading, which is highly irregular and improper since they are being conducted within the court's premises. As regards the commendations received by respondent, the complainants stated that it is most likely that everybody working in the Municipal Government of Bocaue got an award because it was given during its 400<sup>th</sup> foundation day; that the "*pro-forma*" certificates do not show whether he deserves it or not; and in any event, these awards are totally irrelevant to the case. Incidentally, complainants also mentioned that court sessions in Bocaue usually start late almost at 2:00 p.m. or later, instead of 1:30 p.m.

Likewise, complainants commented on the "disturbing procedure" followed by respondent, which is, allowing the criminal complaint to be immediately entered in the criminal docket (thus, converting it to a criminal case by a mere stroke of the clerk of court's pen) and signing the criminal complaint aside from the affidavit-complaint without first finding probable cause. This, according to them, is contrary to the provision of Sec. 3 (a), Rule 112 of the Rules which states that only the affidavits must be subscribed and sworn to, a rule that respondent must follow when he is to conduct his investigatory functions under Sec. 3 or Sec. 9 (b), Rule 112.<sup>[4]</sup> Complainants also dismissed respondent's reasoning that his actuation was based on Sec. 3 (a) and Sec. 9 (b), Rule 112 because, as proven by the absence of any transcript of stenographic notes (TSN), the latter did not conduct searching questions and answers to Dr. Yanga and her witnesses. He has to explain, therefore, why he admitted a complaint based on hearsay evidence since the person who was not the object of the alleged coercive acts is the one who is the offended party in the criminal case.

Complainants insisted that since the maximum penalty imposable for the offense of

Grave Coercion is six years, a preliminary investigation should have been held. Moreover, they maintained that Rule 112 is a complete procedure in itself; hence, as stated in Sec. 9 (b), it is the duty of respondent to dismiss the complaint or find probable cause within ten (10) days from its filing and not to call for a "preliminary hearing," which is a non-existent procedure in the Rules.

Lastly, Atty. Santos denied that he was the one who has hard feelings against respondent. Instead, he claimed that it is a matter of record, in the Order resolving the Motion for Voluntary Inhibition in Crim. Case Nos. 04-430 and 04-572, that the latter branded him as somebody he could not "co-exist with ... in the quest for a just and equitable administration of justice." Atty. Santos alleged that respondent even furnished the Executive Judge of Bulacan with a copy of the Order to broadcast that he is a difficult lawyer to deal with. He emphasized that this administrative complaint is not about his client in Crim. Case No. 04-572 but is concerned with the injustice committed by respondent when he willingly and deliberately violated established rules and legal doctrines just so complainants would suffer undue injury by being tried for a fabricated case of Grave Coercion.

Parrying the supplementary allegations, on the other hand, respondent countered in his Rejoinder that it is unfair for complainants to conclude, much more insinuate, that his wife has something to do with any impropriety by her mere presence in the chamber. He reiterated that her company is necessitated by his health condition and that, anyway, she also has her own business to attend to - that of managing the family inheritance of leased premises in the nearby town of Pandi, Bulacan, and actively engaging herself in an independent business concern, held not in MTC-Bocaue, which is the large-scale trading of electric transformers, metal scraps and heavy equipment entrusted to her by her uncles and close relatives.

As to the charge of frequent delay of court sessions, respondent stated that he has been always present and ready to begin the proceedings but it is the desire of most lawyers to start at 2:00 p.m., more or less, because most of them, including the public prosecutor and the PAO lawyer, come from RTC hearings and even all the way from Malolos City. To compensate for the lost time, however, he averred that court sessions adjourn even up to 6:30 p.m. so that all cases may be accommodated.

Respondent clarified that when he signed the affidavits of Dr. Yanga and her witnesses it was only for the purpose of administering the oath of the person filing the criminal complaint. He posited that the proper rule that must be applied is not Sec. 3 (a), Rule 112, which refers to the procedure in preliminary investigation, but Sec. 3, Rule 110<sup>[5]</sup> on the institution of criminal actions providing that the complaint must be subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated. Further, while respondent conceded that there was really no TSN available because no hearing was held he asserted that under Sec. 9 (b) of Rule 112 a judge is authorized to just personally evaluate the evidence before him to find probable cause instead of personally examining in writing and under oath the complainant and his witnesses in the form of searching questions and answers. Finally, respondent firmly held on to his position that Grave Coercion is not one of the crimes requiring preliminary investigation since the minimum penalty imposable for said offense is six months and one day.

On February 20, 2007, the Office of the Court Administrator (OCA) found