

## THIRD DIVISION

**[ A.M. No. RTJ-06-1995 (Formerly OCA IPI No. 02-1480-RTJ), September 25, 2007 ]**

**FELICIDAD TENENAN, COMPLAINANT, VS. JUDGE FERNANDO F. FLOR, JR., RESPONDENT.**

### RESOLUTION

#### **NACHURA, J.:**

An administrative complaint for Gross Negligence, Gross Incompetence, and Abuse of Authority was lodged by Felicidad Tenenan (complainant) before the Office of the Court Administrator (OCA) against Judge Fernando F. Flor, Jr. (respondent), Acting Presiding Judge of the Regional Trial Court, Branch 14, Lagawe, Ifugao, for violating Rules 1.01, 2.01, 2.03, and 3.12(d) of the Code of Judicial Conduct and Section 1, Rule 137 of the Rules of Court.

After respondent filed his Comment, the OCA referred the matter to Court of Appeals Associate Justice Danilo B. Pine (Investigating Justice) for investigation, report, and recommendation.

After due proceedings, the Investigating Justice made the following findings and recommendations:

#### **I. Violation of Rules 1.01<sup>[1]</sup> and 2.01<sup>[2]</sup>**

The complaint alleged that complainant, in March 1998, started a construction on the land she is claiming in Banting, Lamut, Ifugao for which respondent and his wife, Atty. Ester Flor, filed against complainant for Abatement of Illegal Construction and Recovery of Ownership and Possession with the Municipal Circuit Trial Court (MCTC), Lamut-Kiangan-Tinoc, Lamut, Ifugao. The MCTC later dismissed the case. Thereafter, respondent and his wife started harassing complainant, one instance of which was when respondent allegedly ordered three men to cut two Gemelina trees planted on complainant's claimed land. Complainant learned of the cutting of the trees from witnesses to whom two of the three men admitted that respondent verbally instructed them to do so.

The Investigating Justice found nothing improper on the part of respondent and his wife in filing the case. He said that while complainant claimed the subject land, respondent and his wife are not precluded from protecting their interest on the same land, which is still classified as a forest zone. He also found that complainant should not fault respondent for instituting the case considering that she made the construction without a building permit. He further found insufficient the evidence that it was respondent who directed the cutting of Gemelina trees, as the affidavits and testimonies of complainant's witnesses regarding the admission of the men who felled the trees were hearsay in nature. Thus, the Investigating Justice

recommended the dismissal of this charge.

## **II. Violation of Rule 2.03**<sup>[3]</sup>

Complainant claimed that respondent and his wife harassed her when they filed a criminal case against her for violation of Section 68, P.D. 75 (should be P.D. No. 705)<sup>[4]</sup> when the couple saw her pruning a Gemelina tree on her claimed land. Said case was docketed as Criminal Case No. 1325 and filed before the Regional Trial Court, Lagawe, Ifugao, Branch 14, presided by respondent. Allegedly, they also filed charges for malicious mischief and light threats arising from the same incident before the MCTC without resorting to the mandatory *barangay* conciliation process.

The Investigating Justice found that respondent was justified in not resorting to the *barangay* conciliation process because he was able to proffer competent evidence that he is not a resident, nor even a member, of Barangay Banting in Lamut, Ifugao, but that his official residence is at 208 Brgy. San Geronimo, Bagabag, Nueva Viscaya. The Investigating Justice recommended that this charge should likewise be dismissed.

## **III. Violation of Rule 3.12 (d)**<sup>[5]</sup> **of the Code of Judicial Conduct and Section 1, Rule 137**<sup>[6]</sup> **of the Rules of Court**

The complaint stated that, in the criminal case for violation of Section 68 of P.D. 705 before his *sala*, respondent issued a warrant for the arrest of complainant, knowing that the private complainant therein was his wife, Atty. Ester Flor. Complainant claimed that only after she filed a motion for his inhibition did respondent try to rectify his act by recalling the warrant and thereafter inhibiting himself from the case.

In his Comment, respondent explained that the warrant of arrest was inadvertently issued because it was mixed with the alias warrants placed by the criminal docket clerk on his table for his signature. The Investigating Justice found this explanation preposterous. He said that it would be incredible for respondent not to notice that the warrant he issued against complainant was an original warrant distinguishable from an alias warrant, especially as the clerk placed only six case folders on his table. More importantly, the Investigating Justice pointed out that, with the knowledge of the circumstances which gave rise to the case and their personal involvement therein, respondent ought to have inhibited himself from taking cognizance of the case at the outset. According to the Investigating Justice, by his failure to inhibit himself from the said criminal case, respondent is indeed guilty of violations of Section 1, Rule 137 of the Rules of Court and of Rule 2.03, Canon 2 of the Code of Judicial Conduct, and deserves a penalty of fine in the amount of P20,000.00 with a stern warning that a repetition of the same or similar act in the future would merit a more severe penalty.

After a judicious review of the records of this case, this Court finds the findings and recommendations of the Investigating Justice to be well taken.

In administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in the complaint. The basic rule that mere allegation is not evidence cannot be disregarded. This is particularly true in the