A.M. No. RTJ-04-1833

FIRST DIVISION

[A.M. NO. RTJ-04-1833, June 28, 2006]

ALEXANDER B. ORTIZ, COMPLAINANT, VS. JUDGE IBARRA B. JACULBE, JR., REGIONAL TRIAL COURT OF DUMAGUETE CITY, BRANCH 42, RESPONDENT.

D E C I S I O N

AZCUNA, J.:

This is an administrative complaint filed by Alexander B. Ortiz against Judge Ibarra B. Jaculbe, Jr.[1]

In a verified letter-complaint[2] dated March 20, 2003, Ortiz averred the following: That he is a respondent in a case filed before the sala of Judge Jaculbe; that Atty. Richard Enojo, who is the son-in-law of Judge Jaculbe, represents the plaintiff in the same case; that a compromise agreement was entered into by the parties; that pursuant to the compromise agreement, plaintiff filed a motion for the issuance of a writ of execution; and that the motion was hastily granted by Judge Jaculbe without holding a hearing to prove the failure of defendants to comply with the compromise agreement.

Complainant cites Rule 3.12 of Canon 3 of the Code of Judicial Conduct which reads, as follows:

> A judge should take no part in a proceeding where the judge's impartiality might reasonably be questioned. These cases include, among others, proceedings where:
>
> . . .
>
> (d) the judge is related by consanguinity or affinity to a party litigant within the sixth degree or to counsel within the fourth degree.

Complainant further claims that the relationship between Judge Jaculbe and Atty. Richard Enojo is within the third degree of affinity and thus covered by the rule.

In his Comment,[3] Judge Jaculbe alleges that it has been his practice to voluntarily inhibit himself when a case handled by his son-in-law is raffled to his sala or, alternatively, for his son-in-law to withdraw his appearance. In support of his assertion, he attached as annexes to his Comment some orders of inhibition he issued and some withdrawals of appearance filed by his son-in-law.

The Judge further claims that there is only one exception to his above-stated practice and that is the case now subject of this complaint. He contends, however, that:

. . . there is no legal, equitable and reasonable necessity to inhibit himself and the case can be counted as a disposal from his court, in view of the following cogent and valid grounds:

1. No factual and legal issue [had] been resolved by the undersigned in rendering the judgment based on the compromise agreement, and, there was no issue being resolved by the undersigned in issuing the order for the Writ of Execution, for which issue undersigned could have possibly been biased in favor of his son-in-law;

2. Atty. Richard Enojo (son-in-law of undersigned) participated and appeared very much later and ONLY AS ADDITIONAL COUNSEL for plaintiff, because, Atty. Jose Arbas since the start of the case consistently appeared as the only counsel for plaintiff for several years;

3. During the FIRST court appearance of Atty. Richard Enojo, he immediately manifested that his client is accepting and willing to sign the pending and proposed compromise agreement already submitted by the defendants, which compromise agreement was eventually finalized and submitted to the court for approval; therefore, the appearance of his son-in-law was instead favorable to the defendants and [is] without [the] possibility of partiality and undue influence by the judge;

4. The Judgment was rendered in accordance with the Compromise Agreement, no more[,] no less;

5. The order for issuance of a Writ of Execution as a ministerial duty only of the court was in accordance with the procedure of the Rules of Court, after hearing the same with no opposition and no motion for reconsideration and/or other legal remedies availed of by the defendants; and

6. The appearance of his son-in-law as additional counsel for plaintiff, has long been with the express conformity and acquiescence by the defendants; therefore, the defendants are in estoppel [and] thus cannot now question and complain as to the conduct of this Presiding Judge.

In a Manifestation and Comment,[4] Judge Jaculbe likewise takes exception to the narration of facts by the complainant, as follows –

> The apparent and deliberate misrepresentation of facts briefly states that: undersigned Judge "x x x immediately granted the motion and as a matter of fact, issued [a] writ of execution on April 29, 2002 without conducting a hearing xxx." "Worst is the fact that Hon. Ibarra B. Jaculbe had ordered for the issuance of a writ of execution not in conformity to its decision." "[T]he only reason why the same was expedited by the court is the fact that Atty. Richard Enojo, plaintiff's counsel is his son-in-law." Also, complainant falsely alleged that undersigned Judge "ordered for the issuance of a writ of execution not in conformity to its decision."

Upon referral of the case, the Office of the Court Administrator made the following evaluation and recommendation:

> Rule 3.12 of Canon 3 of the Code of Judicial Conduct specifically provides that "a judge should take no part in any proceeding where the judge's impartiality might reasonably be questioned." Paragraph (d) of said Rule provides [as an instance thereof] the following:
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> "(d) the judge is related by consanguinity or affinity to a party litigant within the sixth degree or to counsel within the fourth degree."
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> Clearly, respondent violated the above canon by deciding Civil Case No. 12320 since his son-in-law, who is related to him in the first degree of affinity, was a counsel for the plaintiff. At least respondent does not pretend to be ignorant of the provisions of the Code of Judicial Conduct and he can not deny that he had violated the same. However, his excuse that his son-in-law was not an original counsel but had only entered his appearance after the case had been pending for over a year and only to announce that his client was ready to sign the compromise agreement is unacceptable. What he should have done the moment his son-in-law entered his appearance was to forthwith disqualify himself and have the case reraffled to another branch. His reluctance to let go of the case, according to him, was [due to] his desire to include the same case among his disposals and considering that it was nearly finished he preferred not to unload it. This[,] again, is a poor excuse for violating the clear injunction written in the Code.
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> Under Rule 140, a violation of the Code of Judicial Conduct may be classified as simple misconduct which is punished by suspension from office without salary for not less than one (1) month nor more than three (3) months or a fine of more than P10,000.00 but not exceeding P20,000.00.
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> **RECOMMENDATION:** It is respectfully recommended that this case be redocketed as a regular administrative matter and considering that respondent had earlier been reprimanded in RTJ-97-1393, he should be made to pay a fine [of] P11,000.00 for simple misconduct.[5]

As indicated by the Office of the Court Administrator, Judge Jaculbe does not dispute the fact that Atty. Richard Enojo is his son-in-law and is, therefore, related to him by affinity in the first degree.

The prohibition against the Judge's sitting in the case is found in the Rule 3.12 of Canon 3 of the Code of Judicial Conduct as quoted above and in Section 1 of Rule 137 of the Rules of Court, which states:

> SECTION 1. *Disqualification of judges*. – No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.