

## SECOND DIVISION

**[ A.M. NO. MTJ-04-1564 (FORMERLY OCA IPI NO. 03-1452-MTJ), March 11, 2005 ]**

**ALVIN C. GO, COMPLAINANT, VS. JUDGE RIO CONCEPCION ACHAS, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 2, OZAMIS CITY, RESPONDENT.**

### DECISION

**CALLEJO, SR., J.:**

The instant administrative case arose when Atty. Alvin C. Go filed a verified administrative Complaint<sup>[1]</sup> dated August 4, 2003, charging Judge Rio Concepcion Achas, Branch 2, Municipal Trial Court in Cities (MTCC), Ozamis City, with immorality, gross misconduct, dishonesty and violation of the Code of Judicial Conduct.

In his complaint, Atty. Go alleged that the respondent Judge was married to one Angeles Roa-Achas, but was separated in fact from the latter. Long after his appointment as Presiding Judge of the MTCC, Branch 2, Ozamis City, he cohabited with a certain Ma. Paz Gendrada Go, a married woman. He further alleged that the two are living together at Apartment No. 3, Royal Gem Apartelle, Clarin, Misamis Occidental.

According to the complainant, the relationship of the respondent Judge with Mrs. Go appears more scandalous because of the fact that the latter is also an agent of a bonding company which posts bail bonds for the accused facing charges before the respondent Judge's court. The complainant claimed that Judge Achas would call party litigants and ask them to become clients of his "paramour." Furthermore, Mrs. Go could be frequently seen going in and out of the respondent Judge's chambers. There was even one instance when Mrs. Go posted a bond for a certain Victor E. Tago, the accused in Criminal Case No. RTC-3484 and used a falsified certification. The complainant claimed that Mrs. Go withdrew the surety bond on June 6, 2003 upon the advice of the respondent Judge.

The complainant further narrated that he is the counsel of record for the plaintiff in Civil Case No. 1510-MTCC entitled "*Jane's Castor and Coco Oil Mill Corporation v. Constancio Uy*," which the respondent Judge decided in their favor on March 10, 2003. The defendant filed an appeal on April 8, 2003, and, likewise, posted a supersedeas bond in the amount of P290,000.00. However, the cash bond was not deposited with the Clerk of Court, but was received by the respondent Judge who issued an informal acknowledgment receipt dated April 8, 2003. The complainant pointed out that this arrangement was not in accord with Section 19, Rule 70 of the Rules of Court. To prove his allegation that the said amount was in the possession of the respondent Judge, the complainant attached a Certification dated July 14, 2003 issued by the Cashier of the Office of the Clerk of Court, MTCC, Ozamis City,

which stated that as of even date, "no amount of TWO HUNDRED NINETY THOUSAND (P290,000.00) PESOS, whether in cash or check as Supersedeas Bond for the appeal of the aforementioned civil case, has so far been deposited with either this Office or to me nor an official receipt issued therefore to date."<sup>[2]</sup> Atty. Go then filed an Ex Parte Motion with the Regional Trial Court (RTC) of Ozamis City, seeking the surrender of the supersedeas bond to the Clerk of Court.

The complainant also alleged that the respondent Judge maintains a flock of fighting cocks, and actively participates in cockfights and derbies.

In his Comment dated September 23, 2003, the respondent Judge pointed out that the complainant is the counsel of the plaintiff in Criminal Cases Nos. 5671 to 5676, entitled "*People of the Philippines v. Atty. Henry Oaminal*" which are pending before his sala. The complainant called him up, and apprised him that he (the complainant) was closely connected with Lucio Tan, who could help the respondent Judge if he was seeking promotion. The complainant also promised a reward if the accused therein would be arraigned. According to the respondent Judge, he refused the complainant's offer and insisted that the case proceed in accordance with the rules and applicable laws. He later learned that the complainant and Atty. Oaminal were at odds. In the meantime, the latter filed a petition for injunction with the RTC of Ozamis City, Branch 15, praying that the trial of the said criminal cases be enjoined. Having been informed of the injunction case, the respondent Judge alleged that he issued an order holding in abeyance the arraignment of Atty. Oaminal. This may be the reason why the complainant got mad at him and decided to file the instant administrative case.

Anent the issue on immorality, the respondent Judge admits that he is married to Atty. Angeles Roa, and that because of their irreconcilable differences, they have been separated for thirteen (13) years. However, he denied that he is cohabiting with Mrs. Go as alleged by the complainant. He claims that he hired the services of Mrs. Go as a nurse, since he was suffering from several ailments. Mrs. Go visited his place twice a month, and the respondent Judge believes that their purely professional relationship may have been misinterpreted by the complainant.

As regards the supersedeas bond issue, the respondent Judge admitted that he received the amount of P290,000.00 from the defendant-appellant in Civil Case No. 1510-MTCC. He claimed that he accepted the money for safekeeping in the exercise of the court's prerogative to accept surety deposits. He denied, however, that he disposed of the money for his personal benefit. He claims that there was no misconduct nor dishonesty involved in the transaction. The respondent Judge also denied maintaining a flock of fighting cocks and that he participates in cockfights and derbies.

In his Reply dated October 7, 2003, Atty. Go observed that the respondent Judge's answer to the complaint did not squarely meet the issues raised therein. He stressed that the case involved in the complaint is Civil Case No. 1510-MTCC entitled "*Jane's Castor and Coco Oil Mill Corporation v. Constancio Uy*," and not the criminal cases against Atty. Oaminal, an attempt to mislead the Court Administrator. He further averred that the respondent Judge failed to controvert the factual allegations in the complaint.

The Court, thereafter, resolved to re-docket the case as a regular administrative

matter and referred the same to Executive Judge Salome P. Dungog, RTC, Ozamis City, for investigation, report and recommendation.<sup>[3]</sup>

In her Report and Recommendation dated October 29, 2004, Executive Judge Dungog made the following recommendation:

When the hearing of this case was called at 8:30 [a.m.] today, Respondent Judge Hon. Rio Concepcion Achas appeared, but the complainant Atty. Alvin C. Go did not appear. Believing that the complainant was on his way to the court, the Court [resolved] to have a second call.

When the said case was called again for the second time at 10:30 [a.m.], still the complainant did not appear. The court observed and noted that at least the complainant had already and indubitably received the first Notice of Hearing which was scheduled on October 15, 2004 at 8:30 [a.m.].

Be it noted that the court is only given thirty (30) days to complete the proceedings of this case.

The non-appearance of the [complainant] in the hearing for two times is tantamount to his loss of interest in the further prosecution of this case, despite sufficient time being accorded to him, thus jeopardizing the respondent in the interest of public service. In fact, the respondent manifested (on record) on this matter.

WHEREFORE, for lack of interest on the part of the [complainant] to pursue his case against the respondent, this court hereby resolves to recommend for the dismissal of the same in the interest of justice and public service.

We do not agree with the recommendation of the Executive Judge.

Indeed, it is settled that in administrative proceedings, the burden of proof that the respondent committed the acts complained of rests on the complainant.<sup>[4]</sup> In fact, if the complainant upon whom rests the burden of proving his cause of action fails to show in a satisfactory manner the facts upon which he bases his claim, the respondent is under no obligation to prove his exception or defense.<sup>[5]</sup> In the absence of evidence to the contrary, the presumption that the respondent has regularly performed his duties will prevail. Even in administrative cases, if a court employee or magistrate is to be disciplined for a grave offense, the evidence against him should be competent and should be derived from direct knowledge.<sup>[6]</sup>

However, it must also be stressed that the withdrawal of the complaint, and, as a corollary, the desistance of witnesses, does not have the legal effect of exonerating a court employee from any administrative disciplinary sanction. It does not operate to divest this Court with jurisdiction to determine the truth behind the matter stated in the complaint.<sup>[7]</sup> The Court's disciplinary authority cannot be dependent on or frustrated by private arrangements between parties. An administrative complaint against an official or employee of the judiciary cannot simply be withdrawn by a

complainant who suddenly claims a change of mind. Otherwise, the prompt and fair administration of justice, as well as the discipline of court personnel, would be undermined.<sup>[8]</sup> Verily, in administrative cases against public officers and employees, the complainants, are, in a real sense, only witnesses.<sup>[9]</sup> In fact, even anonymous complaints against court personnel have been acted upon by the Court, where the charge could be fully borne by public records of indubitable integrity, thus needing no corroboration by evidence to be offered by the complainant.<sup>[10]</sup>

In this case, the respondent Judge himself admitted in his Comment<sup>[11]</sup> that he received the supersedeas bond from a party in the amount of P290,000.00 and did not immediately remit the same to the clerk of court.

Thus, we are more inclined to agree with the findings and the extensive discussion of the Office of the Court Administrator in its Report dated July 8, 2004, to wit:

... We find that the complainant failed to furnish substantial evidence to support his accusation that the respondent judge is having an illicit affair with a certain Mrs. Paz Go. He claims that the respondent judge and Mrs. Go are living under scandalous circumstances in Clarin, Misamis Occidental, yet he failed to attach an affidavit of anyone in Clarin attesting to that fact to satisfy the requirement that administrative complaints against judges must be supported by affidavits of persons who have personal knowledge of the facts therein alleged (Rule 140, Sec. 1, Revised Rules of Court). In this light, we see no need to pursue this charge of immorality in a formal investigation.

Regarding the supersedeas bond issue, the record shows that the respondent judge rendered a judgment in Civil Case No. 1510-MTCC, Branch 2, Ozamis City, for unlawful detainer against the defendant. (Annexes "D" to "D-16," Complaint). To stay execution of judgment pending appeal, the defendant deposited the amount of P290,000.00 as supersedeas bond. The respondent judge received the amount on April 8, 2003, for which he issued an acknowledgment receipt. (Annex "E," Id.)

On July 14, 2003, the Cashier of the MTCC, Ozamis City, issued a certification that "relative to Civil Case No. 1510-MTCC, no amount of TWO HUNDRED NINETY THOUSAND (P290,000.00) PESOS whether in cash or check xxx, has so far been deposited with either this office or to me nor an official receipt issued therefore to date." (Annex "F," Id.)

On July 23, 2003, the respondent judge wrote to complainant Atty. Alvin Go that the supersedeas bond filed in connection with the case on appeal before the RTC, Branch 35, "is in my possession and a receipt was issued by me as Presiding Judge of the court of origin who rendered the judgment in favor of the plaintiff, your client." (Annex "G," Id.)

...

On September 25, 2003, the respondent submitted a MANIFESTATION to the Court Administrator to the effect that the "cash supersedeas bond in the sum of P290,000.00 has already been deposited per caveat issued by