

## **FIRST DIVISION**

**[ A.M. No. MTJ-98-1169, January 29, 2002 ]**

**CITY GOVERNMENT OF TAGBILARAN, REPRESENTED BY THE  
CITY ADMINISTRATOR AND SPECIAL COUNSEL, COMPLAINANT,  
VS. JUDGE AGAPITO HONTANOSAS, JR., PRESIDING JUDGE OF  
BRANCH 1, MTCC OF TAGBILARAN CITY, RESPONDENT.**

### **RESOLUTION**

**DAVIDE JR., C.J.:**

In a complaint filed on 29 May 1997 with the Office of the Court Administrator, complainant charges respondent Judge Agapito Hontanosas, Jr., Presiding Judge, Branch 1, Municipal Trial Court in Cities, Tagbilaran City,<sup>[\*]</sup> with (1) open defiance of a lawful order of a superior court directing respondent's inhibition from a case; and (2) open, notorious, and habitual gambling in the casinos of Cebu and in the cockpits of Bohol.

On the first charge the complainant alleges as follows:

In two criminal cases filed by the City Government against BARBARA ONG, for her habitual refusal to pay the correct amount of amusement taxes, the City asked for the inhibition of Judge Hontanosas. Respondent refused to inhibit himself, so the City of Tagbilaran filed a petition with the REGIONAL TRIAL COURT of Tagbilaran to compel inhibition.

The RTC Branch I issued an Order requiring Judge Hontanosas to relinquish the cases. Instead of obeying the order of the Superior Court, Judge Hontanosas forced the Fiscal to rest the case, even before the prosecution could cross-examine the defense witnesses. Thereafter, Judge Hontanosas rendered a judgment of ACQUITTAL in favor of BARBARA ONG and all her other co-accused.

Incidentally, Barbara Ong is the wife of the richest Chinese-Filipino businessman in Bohol, FREDERICK ONG.

...

This is not IGNORANCE OF THE LAW. This is an open, premeditated and willful DEFIANCE OF THE LAW and all the accepted norms of judicial conduct. We can only surmise on the millions of reasons which motivated respondent Judge Hontanosas to act in such manner. If only the Bank Secrecy Law could be lifted, we would be able to determine the exact number of reasons behind the blatant, open, public, malicious, premeditated and despicable conduct which has completely eroded the public's perception of the judiciary in Tagbilaran City.

Anent the second ground, complainant alleges, thus:

It is a matter of common knowledge among lawyers in Bohol and the general public in Tagbilaran that Judge Hontanosas goes to Cebu on the afternoon fast boat (90 minutes travel time) and comes back on the early trips from Cebu to Tagbilaran. He does this 3 to 4 times a week. He goes to the Casinos in Cebu and spends the whole night in the casinos, before going to Cebu pier to take the early trip back to Tagbilaran, arriving in Tagbilaran at 6:00 a.m. or 7:00 a.m.

Every Sunday, and in every so-called Derby cockfights, Judge Hontanosas is seen in the cockpits of Tagbilaran and the nearby towns.

...

We have talked to several lawyers and litigants who have appeared before Judge Hontanosas, and they have informed us that for as little as P500 and P5,000, you can secure a decision in your favor. Surely, none of these litigants and lawyers will come out to testify against Respondent Hontanosas. But we are stating this here in order to demonstrate the damage that Judge Hontanosas has done to the public perception of the judiciary in Tagbilaran City.

Complainant prays that the complaint be scheduled for formal investigation; that pending investigation respondent be suspended from office in view of the gravity of the charges; and that after investigation respondent be ordered removed from office and his name stricken off from the roll of attorneys.

The complaint was signed by Atty. Victor De la Serna, who designated himself as Special Counsel; and verified by Arcadio Sarmiento, City Administrator.

In a 1st Indorsement dated 21 January 1998, then Court Administrator Alfredo L. Benipayo required respondent to answer the complaint.

Respondent filed his Answer on 10 March 1998. As to the first charge, he maintains that the aforementioned order of the RTC was unlawful for lack of due notice and hearing and for failure to implead the real parties-in-interest; besides, the said order merely advised him to inhibit. Moreover, that order was issued in connection with a petition for certiorari which was a prohibited pleading, since the cases were covered by the Rules on Summary Procedure. As regards the second charge, he denies that he gambles in the casinos of Cebu, but admits that he would sometimes go to Nivel Hills Casino in Cebu to "accompany his wife who want[ed] to have some excitement and recreation in said casino playing only the slot machines." He also admits that he "goes to the cockpits during Sundays and holidays and even gamble a little on these occasions."

By way of affirmative defenses, respondent avers that the filing of the instant administrative complaint was purely an act of vengeance on the part of Atty. De la Serna for the former's verdict in Criminal Cases Nos. 7142 and 7143 which was unfavorable to the prosecution handled by the latter. Moreover, Atty. De la Serna had no legal authority to sign the complaint in behalf of the City Government of

Tagbilaran because no resolution was ever passed creating said office and giving the Mayor the power to appoint a Special Counsel; under the Charter of Tagbilaran City, it is the City Fiscal (now City Prosecutor) who is empowered to represent the City in all civil and criminal cases.

In its resolution of 2 December 1998, the Court resolved to docket this case as a regular administrative matter and required the parties to inform the Court whether they were willing to submit this case for decision on the basis of the pleadings already filed.

Respondent answered in the affirmative in his Manifestation dated 19 January 1999. On the other hand, Atty. De la Serna and Mr. Sarmiento, in a Manifestation dated 21 January 1999, informed the Court that they were no longer interested in pursuing this case because they felt that it would be "futile to spend any more time and effort and mailing cost on this case." The Court thereafter referred the latter Manifestation to the Office of the Court Administrator for evaluation and report.

In his Memorandum dated 12 November 2001, the new Court Administrator, Justice Presbitero J. Velasco, Jr., points out that the Court does not, as a matter of course, dismiss administrative complaints against members of the Bench on account of the withdrawal of the charges or desistance of the complainant from prosecuting the complaint; otherwise its disciplinary power may be put to naught, thereby undermining the trust character of a public office and impairing the integrity and dignity of the Court as a disciplining authority. On the merits of the case, the Court Administrator recommended that the first charge be dismissed not because of the desistance of the complainant but because of patent lack of merit for the following reasons:

1. The inhibition of respondent from subject criminal cases is not mandatory under the circumstances. Paragraph I of Section 1, Rule 137 of the Rules of Court provides the instances when a judge is under obligation to inhibit himself from sitting in a case. Judge Hontanosas' case does not fall under any of those mentioned in said provision. His case therefore falls under the second paragraph of Section 1, Rule 137 which gives discretion to the judge whether or not to inhibit himself from a case, provided there are just or valid reasons therefor. Thus, the Regional Trial Court cannot interfere with Judge Hontanosas' exercise of his discretion. In this sense, therefore, the order of the RTC cannot be said to be "lawful" one which respondent is duty-bound to obey;
2. Plaintiff's Motion for Inhibition, on which the RTC Order is based, did not cite any reason or basis therefor. It merely stated: "complainant and counsel does (sic) not believe that the Presiding Judge can be impartial and dispassionate in hearing and deciding this case." As to why the movant believes that Judge Hontanosas cannot be impartial in the trial of this case, the motion did not say. It absolutely failed to raise any ground or justification for the call to inhibit;
3. Under Section 19(g) of the 1991 Revised Rule on Summary Procedure, a petition for certiorari against any interlocutory order is