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# FIRST DIVISION

# [ A.M. No. RTJ-00-1567 [Formerly A.M. OCA-IPI No. 98-559-RTJ], July 24, 2000 ]

## FERNANDO DELA CRUZ, COMPLAINANT, VS. JUDGE JESUS G. BERSAMIRA, RTC, BRANCH 166, PASIG CITY, RESPONDENT.

## R E S O L U T I O N

**YNARES-SANTIAGO, J.:**

In a Verified Complaint[1] filed with the Office of the Court Administrator (OCA) by complainant who identified himself as a "concerned citizen", respondent was charged with the Violation of R.A. No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, the Code of Conduct and Ethical Standards for Public Officials and the Code of Judicial Conduct The case stemmed from three (3) criminal cases assigned to respondent, namely:

> a.] Criminal Case No. 11309 against Roberto Agana y Borja, for violation of Section 16, Article III, R.A. 6425, as amended;
>
> b.] Criminal Case No. 4275-D against Roberto Agana y Borja for violation of P.D. No. 1866; and
>
> c.] Criminal Case No. 4276-D against Sarah Resula y Puga for violation of Section 16, Article III of R.A. No. 6425, as amended.

The complaint, in sum, alleges that respondent as the presiding judge in whose sala the above-enumerated cases are pending, gravely abused his discretion and exhibited evident partiality by: 1.] socializing in posh restaurants particularly in Mario's Restaurant, Quezon City and the Shangri-la EDSA Plaza with then Congresswoman Venice Agana, mother of the accused Roberto Agana, together with their counsel, Atty. Narciso Cruz; 2.] issuing unreasonable orders for postponement which unjustly delay the administration of justice; and 3.] allowing the two accused, Roberto Agana and his live-in partner, Sarah Resula, to submit to a drug test thereby postponing the trial of the cases indefinitely.

The OCA thereafter recommended that the case be referred to an Associate Justice of the Court of Appeals or to any OCA consultant for investigation, report and recommendation within sixty (60) days from notice.[2]

In a Resolution dated February 16, 2000,[3] the Court designated Associate Appellate Court Justice Delilah Vidallon-Magtolis to conduct an investigation, report and recommendation on charges against the respondent within ninety (90) days from notice.

Pursuant thereto, Justice Vidallon-Magtolis thereafter proceeded with the investigation of the case. The complainant did not appear at the hearing. Despite this, Justice Vidallon-Magtolis, bearing in mind that even a desistance of the

complainant is of no moment in an administrative case such as this, proceeded with the investigation by examining the records of the criminal cases involved which respondent had brought along. She subsequently submitted a Report containing the following findings and recommendations:

> At this point it must be pointed out that, had the supposed complainant appeared to substantiate his charges, his testimony could only have been admitted as to the alleged socializing acts of the respondent with the congresswoman-mother of the male accused – granting that he was an eyewitness thereto and was familiar with the judge and the congresswoman as well as the defense counsel, Atty. Cruz. However, as to the alleged partiality of the respondent in granting postponements, his testimony could only be in the form of opinions which would have been inadmissible, considering that he is not party to the criminal cases, neither does he appear to be involved therein in any other capacity. As a matter of fact, his real identity remains to be a question, since he did not actually furnish his real address in his complaints, both with the Ombudsman and with the Court Administrator.
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> At any rate, lest the undersigned be perceived as one shirking from responsibility, she opted not to dismiss the case outright, in view of settled rules that only the Supreme Court can dismiss administrative cases against judges,[4] and considering further that the bulk of the allegations in the complaint are verifiable from the records. Thus, she proceeded on with her investigation, giving the respondent an opportunity to clear his name
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> From the documentary evidence submitted by the respondent and the record of the three criminal cases as well as the respondent's answers to the clarificatory questionings of this investigator, the following facts appear:
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> 1. The arraignment of both accused were postponed for three (3) times, all upon motion of the defense counsel, formerly Atty. Joel Aguilar, the reason being:
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>  (a) unexplained absence of the accused in Court[5]
>
>  (b) the intended attendance of Atty. Aguilar at the 6th National Convention for Lawyers[6]
>
>  (c) absence of both accused who were reportedly in Tagbilaran City[7]
>
> 2. After the arraignment, the accused appeared but once in the three (3) successive settings for trial on the merits. Their counsel, now Atty. Narciso Cruz, never appeared at all, but only filed motions for postponement which were invariably granted even over the objection of the prosecution.[8]
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> 3. Despite the successive absences of the accused, the respondent never issued a warrant of arrest, nor even asked them to explain their absences. According to the respondent, he considered their

absences as waiver of appearance. Yet, in the two instances that the prosecution was ready,[9] he (respondent) did not proceed with the hearing – which should have been done if there was a waiver of appearance.

4. When the respondent acted on the "Voluntary Submission to Confinement, Treatment and Rehabilitation" of both accused, he did not give the prosecution an opportunity to file comment or opposition thereto.[10]

5. The respondent's order of January 26, 1998, allowing the confinement, treatment and rehabilitation of the accused was not officially sent to the Dangerous Drugs Board. His directive in the second paragraph of the order, to wit: "The pertinent report must be submitted to the Court soonest"[11] is rather vague in that it did not state who should make the report nor the limit of the period given for its submission.

6. The respondent never checked with the Dangerous Drugs Board whether or not the two accused had indeed submitted themselves for confinement, treatment and rehabilitation with said office. This gives the impression that the respondent's order of January 26, 1998 was made merely to enable him to suspend the proceedings, including the case for violation of P.D. [No.] 1866, which is not subject to such suspension under R.A. [No.] 6425, as amended.

7. When the respondent issued the order of September 18, 1998,[12] where he appears to have *motu proprio* set the case anew for hearing on November 12, 1998, there was already a case filed against him in the Office of the Ombudsman[13] on January 30, 1998.[14] Likewise, this administrative complaint was already filed on February 2, 1998 with the Office of the Court Administrator, and the latter had already directed the respondent on September 9, 1998, to file his comment to such complaint.[15] Obviously, he was stirred to action by the filing of such complaints and not because of his diligent performance of his duties and responsibilities.

8. The respondent denied that he knew of the fact that accused Roberto Agana is the son of then Congresswoman Venice Agana of Bohol. According to him, he learned about it when Atty. Narciso Cruz "entered his appearance and then he said it was *pro bono* basis and the accused is the son of a congresswoman".[16] When asked by this investigator whether that information was made in open court or in chambers, he answered that "he came to my chambers."[17]

9. Subsequently, after realizing through the statements of this investigator that a judge should not allow lawyers and parties litigants with pending cases to see him in chambers,[18] the respondent tried to redeem himself after resting his case on May 9, 2000, by explaining that when Atty. Cruz saw him in chambers, the

latter had not yet entered his appearance as defense counsel. He did not, however, ask for the correction of the transcript of stenographic notes of April 7, 2000.

10. The order of inhibition[19] was issued by the respondent long after this administrative case had been filed against him. Hence, it could not be taken as a voluntary inhibition to show lack of interest on the criminal cases.

Justice Vidallon-Magtolis thus found that:

> All the foregoing are indications that the respondent's official conduct had not been entirely free from the appearance of impropriety, neither has the respondent remained above suspicion in his official actuations in connection with the criminal cases involving Agana and Resula. He has fallen short of the requirements of probity and independence.[20] A judge's conduct should be above reproach, and in the discharge of his official duties, he should be *conscientious*, thorough, courteous, patient, punctual, just, *impartial*.[21]

Thus, in the case of *Garcia vs. Burgood*,[22] the Supreme Court held:

> We deem it important to point out that a judge must preserve the trust and faith reposed on him by the parties as an impartial and objective administrator of justice. When he exhibits actions that rise fairly or unfairly, to perceptions of bias, such faith and confidence are eroded xxx.

Justice Vidallon-Magtolis recommended that respondent be fined the sum of Ten Thousand (P10,000.00) Pesos with a stern warning that a repetition of the acts complained of will be dealt with more severely.

The Court agrees with the Investigating Justice that respondent's conduct was hardly exemplary in this case.

The Court in a litany of cases has reminded members of the bench that the unreasonable delay of a judge in resolving a pending incident is a violation of the norms of judicial conduct and constitutes a ground for administrative sanction against the defaulting magistrate.[23] Indeed, the Court has consistently impressed upon judges the need to decide cases promptly and expeditiously on the principle that justice delayed is justice denied.[24]

In the case at bench, the fact that respondent tarried too long in acting on the pending incidents in the Criminal Cases Nos. 11309, 4275-D and 4276-D, hardly becomes open to question. If at all, respondent judge's foot-dragging in acting on the incidents in the said cases, which stopped only when administrative complaints were filed against him with the Ombudsman and the OCA, is a strong *indicia* of his lack of diligence in the performance of his official duties and responsibilities.

It must be remembered in this regard that a "speedy trial" is defined as one "conducted according to the law of criminal procedure and the rules and regulations, *free from vexatious, capricious and oppressive delays*."[25] The primordial purpose of this constitutional right is to prevent the oppression of the accused by delaying

criminal prosecution for an indefinite period of time.[26] This purpose works both ways, however, because it, likewise, is intended to prevent delays in the administration of justice by requiring judicial tribunals to proceed with reasonable dispatch in the trial of criminal prosecutions.[27]

At the risk of sounding trite, it must again be stated that "Judges are bound to dispose of the court's business promptly and to decide cases within the required period.[28] We have held in numerous cases that failure to decide cases and *other matters* within the reglementary period constitutes gross inefficiency and warrants the imposition of administrative sanctions.[29] If they cannot do so, they should seek extensions from this Court to avoid administrative liability."[30] Indeed, judges ought to remember that they should be prompt in disposing of *all* matters submitted to them, for justice delayed is often justice denied.

Certainly, "Delay in the disposition of cases erodes the people's faith in the judiciary. [31] It is for this reason that this Court has time and again reminded judges of their duty to decide cases expeditiously. Delay in the disposition of even one case constitutes gross inefficiency[32] which this Court will not tolerate."[33]

With regard to the charge of partiality, the Court pointed out in *Dawa v. De Asa*[34] that the people's confidence in the judicial system is founded not only on the magnitude of legal knowledge and the diligence of the members of the bench, but also on the highest standard of integrity and moral uprightness they are expected to possess.[35] It is towards this sacrosanct goal of ensuring the people's faith and confidence in the judiciary that the Code of Judicial Conduct mandates the following:

> RULE 1.02. A judge should administer justice impartially and without delay.
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> CANON 2 – A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES.
>
> RULE 2.01 – A judge should so behave at all times to promote public confidence in the integrity and impartiality of the judiciary.
>
> CANON 3. – A JUDGE SHOULD PERFORM OFFICIAL DUTIES HONESTLY, AND WITH IMPARTIALITY AND DILIGENCE.

By the very nature of the bench, judges, more than the average man, are required to observe an exacting standard of morality and decency. The character of a judge is perceived by the people not only through his official acts but also through his private morals as reflected in his external behavior. It is therefore paramount that a judge's personal behavior both in the performance of his duties and his daily life, be free from the appearance of impropriety as to be beyond reproach.[36] Only recently, in *Magarang v. Judge Galdino B. Jardin, Sr.,*[37] the Court pointedly stated that:

> While every public office in the government is a public trust, no position exacts a greater demand on moral righteousness and uprightness of an individual than a seat in the judiciary. Hence, judges are strictly mandated to abide by the law, the Code of Judicial conduct and with existing administrative policies in order to maintain the faith of the people in the administration of justice.[38]