



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

DR. JANOS B. VIZCAYNO,
Complainant,

A.M. No. MTJ-10-1772

Present:

CARPIO, *Acting C.J.*,
Chairperson,
BRION,
DEL CASTILLO,
ABAD,** and
PERLAS-BERNABE, JJ.

- versus -

JUDGE JASPER JESSE G. DACANAY,
in his official capacity as the Presiding
Judge of the Municipal Circuit Trial
Court of Liloan-Compostela, Cebu,
Respondent.

Promulgated:

DEC 05 2012 *[Signature]*

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DECISION

CARPIO, *Acting C.J.*:

Dr. Janos B. Vizcayno (Dr. Vizcayno) filed the present administrative complaint against Judge Jasper Jesse G. Dacanay (Judge Dacanay), Presiding Judge of the 7th Municipal Circuit Trial Court (MCTC), Liloan-Compostela, Cebu for Gross Ignorance of the Law, Abuse of Authority, Manifest Partiality and Delay relative to Civil Case No. 650-R entitled “*Deodito R. Pulido, et al. v. Janos B. Vizcayno.*” The Office of the Court Administrator (OCA) recommended that Judge Dacanay be found guilty of committing conduct prejudicial to the best interest of the service and be

* Per Special Order No. 1384 dated 4 December 2012.

** Designated additional member per Raffle dated 3 December 2012.

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imposed a fine of ₱25,000 with a stern warning that a repetition of the same offense shall be dealt with more severely. The OCA also recommended payment by Judge Dacanay of the fine of ₱11,000 imposed on him in *Cabahug v. Dacanay*, A.M. No. MTJ-03-1480, dated 10 September 2003, within 15 days from notice.

The Facts

The memorandum from the OCA narrated the facts as follows:

In a **VERIFIED ADMINISTRATIVE COMPLAINT** dated September 25, 2009 (with enclosures), Dr. Janos B. Vizcayno (complainant) charges Judge Jasper Jesse G. Dacanay (respondent judge) of the Municipal Circuit Trial Court (MCTC), Liloan-Compostela, Cebu, with Gross Ignorance of the Law, Abuse of Authority, Manifest Partiality and Delay.

Complainant is the defendant in a civil complaint for forcible entry and damages, docketed as Civil Case No. 650-R entitled, "*Deodito R. Pulido, et al. v. Janos B. Vizcayno*," filed before the MCTC, Liloan-Compostela, Cebu. On March 31, 2009, respondent judge (together with the plaintiff who allegedly fraternized with and entertained him), without notice to complainant, conducted an *ex-parte* ocular inspection on the property subject of the civil action. Complainant only learned of the ocular inspection through neighbors Norma Tan, Herminia Domain, and Fernan Baguio. Feeling aggrieved, complainant filed a motion for inhibition of respondent judge to hear the civil action. The motion was set for hearing on April 24, 2009. However, respondent judge opted to proceed with the hearing of the case on May 29, 2009. In a heated argument, complainant and his counsel moved that the motion for inhibition be first resolved, but respondent judge ignored the same.

Complainant argues that respondent judge committed a gross violation of the due process clause protected under the Constitution when the latter conducted an *ex-parte* ocular inspection without notice to him. Also, respondent judge failed to live up to that norm of conduct that "judges should not only be impartial but should also appear impartial," when he conducted the ocular inspection together with the plaintiffs. Such act, complainant claims, is highly improper and grossly inappropriate, and is a violation of Canon 2 of the New Code of Judicial Conduct for the Philippine Judiciary (New Code of Judicial Conduct) which provides that "a judge should avoid impropriety and the appearance of impropriety in all activities."

In his **COMMENT** dated November 24, 2009 (with enclosures), respondent judge, among others, explains that he went to the subject property with his utility personnel only to conduct his own personal investigation on the case to determine whether the disputed construction therein really exists, and to help him in suggesting to the parties to settle the case amicably. At the time of his personal inspection of the property, no one from either the plaintiffs or the defendant ever entertained him. What he did was to make a mere assessment of the property for his personal satisfaction, in all good faith and without fraud, dishonesty, or malicious intent.

Respondent judge further stresses that it is still premature for complainant and his counsel to conclude that he is biased against them, as the case is still then in the preliminary stage wherein there is still a possibility of amicable settlement. Likewise, respondent judge maintains that complainant and his counsel should have waited for the finality of the denial of the motion for his inhibition. Citing the case of *Roxas v. Eugenio, Jr.*, respondent judge argues that an administrative complaint against a judge cannot be pursued simultaneously with the judicial remedies accorded to parties aggrieved by an erroneous order or judgment, as administrative remedies are neither alternative nor cumulative to judicial review where such review is available to aggrieved parties and the same has not been resolved with finality.

Respondent judge asserts that he cannot be accused of gross ignorance of the law, abuse of authority, manifest partiality, and delay, as he made the inspection in good faith and with noble intentions. Citing *Lumbos v. Baligwat*, he argues that to constitute gross ignorance of the law, it is not enough that the subject decision, order or actuation of the judge in the performance of his official duties is contrary to existing law and jurisprudence, but it must be moved by bad faith, fraud, dishonesty or corruption. He likewise denies incurring delay, averring that the records of the case easily reveal that it was complainant and his counsel who, for several instances, failed to appear during the scheduled hearings of the case.

Respondent judge intimates that it was Atty. Gabriel Cañete (complainant's counsel) who actually filed the instant administrative complaint against him. He states that complainant's counsel got embarrassed before his client when, during the May 29, 2009 hearing, Atty. Carlos Allan Cardenas (opposing counsel for plaintiff) argued that the motion for inhibition was a mere scrap of paper for his failure to state thereat his Mandatory Continuing Legal Education (MCLE) number and the date of issue of the requisite certificate of compliance with respect thereto. Chagrined with what happened, complainant's counsel threatened respondent judge that he was going to file several charges against him.

Respondent judge states that the instant administrative case stemmed from two (2) events when he went to the area where the subject property is situated to without notifying the parties while the case is pending before his sala, and when he allegedly ignored the motion to inhibit himself from handling the case filed by the complainant, the defendant in Civil Case No. 650-R.

When complainant's counsel filed the Motion for Inhibition, he did not indicate his MCLE compliance. Thus, respondent judge did not inhibit from handling the case. Under Bar Matter No. 1922 (2009), the failure of a practicing lawyer to disclose the number and date of issue of his MCLE Certificate of Compliance or Certificate of Exemption in his pleadings in court "*would cause the dismissal of the case and the expunction of the pleadings from the records.*" Complainant's counsel might have felt that he was being forced out from the case, which might have made him angry. Nonetheless, respondent judge eventually inhibited from handling the case on March 10, 2010. From the time the civil case was filed in 2008 up to the time when he (respondent judge) inhibited himself on March 10, 2010, complainant cannot categorically say that he was placed at a disadvantage because no ruling was issued by the respondent judge.¹ (Emphasis in the original)

Dr. Vizcayno, through counsels, filed a Verified Reply² dated 14 December 2009. Dr. Vizcayno noted that Judge Dacanay's Comment lacked verification as well as Mandatory Continuing Legal Education (MCLE) Compliance Number and asked for the expunction of the Comment from the case records. Dr. Vizcayno further stated that Judge Dacanay had shown undue preference to the opposing party, even making an off-the-record comment during the hearing: "*Dako man kayo na imong yuta, doctor! Kaning mga reklamante ba, pobre ni sila!*" ("Your lot is very big, doctor! These complainants, they are poor!")³

The OCA's Ruling

On 10 March 2010, the OCA, under Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Jesus Edwin A. Villasor, issued its Evaluation and Recommendation on the present complaint.

¹ *Rollo*, pp. 293-295.

² *Id.* at 122-130.

³ *Id.* at 164.

The OCA held that Dr. Vizcayno and Judge Dacanay should be given the opportunity to adduce and establish their respective evidence on Judge Dacanay's alleged impropriety and denial of due process.

The OCA's recommendation reads as follows:

RECOMMENDATION: Respectfully submitted, for the consideration of the Honorable Court, is our recommendation that the instant administrative complaint against Judge **Jasper Jesse G. Dacanay** of the Municipal Circuit Trial Court, Liloan-Compostela, Cebu, be **REDOCKETED** as a regular administrative case; and the same be **REFERRED** to the Executive Judge of the Regional Trial Court, Mandaue City, for **investigation, report and recommendation** within sixty (60) days from receipt of the records.⁴ (Emphasis in the original)

This Court, in a Resolution⁵ dated 17 November 2010, re-docketed administrative complaint OCA-IPI No. 09-2203-MTJ as regular administrative matter A.M. No. MTJ-10-1772 and referred the matter to the Executive Judge of the Regional Trial Court of Mandaue City for investigation, report, and recommendation.

Executive Judge Marilyn Lagura-Yap (Judge Lagura-Yap), in her Partial Report⁶ dated 5 July 2011, indicated that the investigation is already completed and ready for her resolution, findings, and recommendation. She asked for another 60 days to submit her complete report. In her Final Report⁷ dated 22 September 2011, Judge Lagura-Yap stated that Judge Dacanay failed to show that his act of inspecting the property subject of Civil Case No. 650-R was proper. Although there was insufficient evidence to conclude that Judge Dacanay acted with bad faith, fraud, dishonesty, or corruption, there is still no doubt that the inspection of the property was done in the absence of Dr. Vizcayno and his counsels. Hence, Judge

⁴ Id. at 165.

⁵ Id. at 169.

⁶ Id. at 196.

⁷ Id. at 204-214.

Dacanay's lack of prudence merited liability for conduct prejudicial to the best interest of the service and not for gross ignorance of the law. Moreover, Judge Lagura-Yap found that Judge Dacanay did not incur delay in the resolution of the Motion for Inhibition dated 13 April 2009 because the motion did not comply with the requirements of Bar Matter No. 1922.⁸ Judge Dacanay's Order dated 30 September 2009 was issued within the required 90-day period for resolution because the 13 April 2009 Motion for Inhibition was submitted for resolution only on 19 August 2009. Judge Dacanay inhibited from Civil Case No. 650-R on 10 March 2010.

Judge Lagura-Yap's recommendation reads as follows:

WHEREFORE, the undersigned Executive Judge respectfully submits the following recommendations to the Honorable Supreme Court, for consideration, to wit:

a. To find the respondent judge, Judge Jasper Jesse G. Dacanay, liable for Conduct Prejudicial to the Best Interest of the Service; and

b. To reprimand the respondent judge, Judge Japer [sic] Jesse G. Dacanay, with a warning that a repetition of the same or similar act in the future shall be dealt with severely.⁹

In its Memorandum¹⁰ dated 27 February 2012, the OCA found no reason to deviate from the findings of Judge Lagura-Yap but revised her recommendation as to the penalty.

The OCA's recommendation reads as follows:

PREMISES CONSIDERED, for conducting an ocular inspection without informing the parties, we find respondent, Judge Jasper Jesse Dacanay, **guilty of conduct prejudicial to the best interest of the**

⁸ Bar Matter No. 1922 required "practicing members of the bar to indicate in all pleadings filed before the courts or quasi-judicial bodies, the number and date of issue of their MCLE Certificate of Compliance or Certificate of Exemption, as may be applicable, for the immediately preceding compliance period. Failure to disclose the required information would cause the dismissal of the case and the expunction of the pleadings from the records."

⁹ *Rollo*, p. 214.

¹⁰ *Id.* at 293-300.

service in violation of Sec. 1, Canon 4 of The New Code of Judicial Conduct, which is considered a serious charge.

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Considering that respondent judge has been previously imposed a fine of eleven thousand pesos (₱11,000) in A.M. No. MTJ-03-1480 dated September 10, 2003 which has not been paid yet, we respectfully recommend that Judge Jasper Jesse G. Dacanay be:

1. found **GUILTY** of committing conduct prejudicial to the best interest of the service in violation of Canon 4 of The New Code of Judicial Conduct for the Philippine Judiciary, and meted or imposed a **FINE** of twenty-five thousand pesos (₱25,000.00) to be paid together with the **FINE** of eleven thousand pesos (₱11,000.00) imposed in A.M. No. MTJ-03-1480, dated September 10, 2003, within fifteen (15) days from notice; and

2. **STERNLY WARNED** that a repetition of the same or similar offense shall be dealt with more severely.¹¹ (Emphasis in the original)

The Issues

The issues which we consider for our resolution are: (1) whether Judge Dacanay should be held administratively liable for conduct prejudicial to the best interest of the service for conducting an ocular inspection without informing the parties, and (2) whether Judge Dacanay should be held administratively liable for the delay in the resolution of the Motion for Inhibition.

The Court's Ruling

We affirm the recommendation of the OCA.

¹¹ Id. at 299-300.

*Conduct prejudicial
to the best interest of the service*

Section 1, Canon 4 of the New Code of Judicial Conduct¹² states that “[j]udges shall avoid impropriety and the appearance of impropriety in all of their activities.”

From the OCA’s recommendation, we glean the following pertinent facts: (1) On 31 March 2009, Judge Dacanay went to Catarman, Liloan, Cebu to personally see Lot 1529-P, subject of the forcible entry and damages in Civil Case No. 650-R pending in his court; and (2) Judge Dacanay inspected the property in the presence of the plaintiffs and in the absence of Dr. Vizcayno and his counsels.

Judge Dacanay’s actuations, although not necessarily attended with bad faith, fraud, dishonesty or corruption, were precipitate and imprudent. The pre-trial stage has not begun. There was failure to inform all parties about the ocular inspection. Judge Dacanay issued an Order dated 31 March 2009, the same day as the ocular inspection, resetting the preliminary conference on 29 May 2009, yet the order did not contain any notice to the parties of Judge Dacanay’s ocular inspection.

We have previously ruled that an ocular inspection without notice to nor presence of the parties is highly improper.¹³ Good and noble intentions notwithstanding, Judge Dacanay’s actuations gave an appearance of impropriety. His behavior diminished public confidence in the integrity and impartiality of the judiciary. We have repeatedly stressed that all those involved in the dispensation of justice, from the presiding judge to the

¹² The New Code of Judicial Conduct for the Philippine Judiciary took effect on 1 June 2004, following its publication not later than 15 May 2004 in two newspapers of large circulation in the Philippines.

¹³ *Adan v. Judge Abucejo-Luzano*, 391 Phil. 853 (2000). See Justice Claudio Teehankee’s Separate Opinion in *In re: Rafael C. Climaco*, 154 Phil. 105, 124 (1974).

lowliest clerk, must always be beyond reproach. Their conduct must, at all times, be circumscribed with the heavy burden of responsibility free from any suspicion that may taint the judiciary. As the administration of justice is a sacred task, this Court condemns and cannot countenance any act on the part of court personnel that would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary.¹⁴

Judges should be extra prudent in associating with litigants and counsel appearing before them to avoid even a mere perception of possible bias or partiality. Judges need not live in seclusion, nor avoid all social interrelations. When time and work commitments permit, judges may continue to relate to members of the bar in worthwhile endeavors in such fields of interest as are in keeping with the noble objectives of the legal profession.

However, in pending or prospective litigations before them, judges should be scrupulously careful to avoid anything that may tend to awaken the suspicion that their personal, social or sundry relations could influence their objectivity. Not only must judges possess proficiency in law, they must also act and behave in such manner that would assure litigants and their counsel of the judges' competence, integrity and independence.¹⁵

Gross misconduct consisting of violations of the Code of Judicial Conduct is a serious charge. Section 11(A) of Rule 140, as amended,¹⁶ provides:

SEC. 11. *Sanctions.* – A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. *Provided*, however, that the forfeiture of benefits shall in no case include accrued leave credits;

¹⁴ *Chua v. Sorio*, A.M. No. P-07-2409, 7 April 2010, 617 SCRA 474.

¹⁵ *Atty. Molina v. Judge Paz*, 462 Phil. 620, 630 (2003) citing *Sibayan-Joaquin v. Judge Javellana*, 420 Phil. 584 (2001).

¹⁶ The amendments to Rule 140, found in A.M. No. 01-8-10, took effect on 1 October 2001 following their publication in two newspapers of general circulation on or before 15 September 2001.

2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or

3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

*Delay in the resolution
of the motion for inhibition*

We see no reason to deviate from the OCA's findings, which stated thus:

x x x [R]espondent judge in his Order dated September 30, 2009, expunged from the records the said motion because the counsel of complainant failed to indicate the date of issue and number of his MCLE Compliance as required by Bar Matter No. 1922. Said Order may therefore be considered as a denial of the Motion for Inhibition, which was issued within the 90-day period to resolve a motion.

The failure of respondent judge to resolve the Motion for Reconsideration of the Order dated September 30, 2009, which was filed on October 21, 2009, could not be attributable to him because on November 9, 2009, he received a directive from the Office of the Court Administrator to comment on the instant complaint. Since an order was issued on September 30, 2009 to expunge the Motion for Inhibition from the record of the case, and that on March 30, 2010, he eventually inhibited from the case, there was no unreasonable delay on the part of the respondent judge.¹⁷

Judge Dacanay issued his Orders well within the three-month period imposed by Section 15, Article VIII of the Constitution.¹⁸

Judge Dacanay's ocular inspection without notice to the parties constitutes conduct prejudicial to the best interest of the service, in violation of Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary. However, in view of the still unpaid fine of ₱11,000 in the 10

¹⁷ Rollo, pp. 298-299.

¹⁸ Sec. 15. (1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within x x x three months [from date of submission] for all other lower courts.

(2) A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief or memorandum required by the Rules of Court or by the court itself.

September 2003 case of *Cabahug v. Dacanay*, A.M. No. MTJ-03-1480, for which Judge Dacanay was found guilty of undue delay in resolving a motion, it would seem that Judge Dacanay has a cavalier attitude in the performance of his judicial duties. For this reason, we increase the fine recommended by the OCA in the present case from ₱25,000 to ₱30,000. Judge Dacanay would well be reminded to behave at all times in a way that will promote public confidence in the integrity and impartiality of the judiciary.

WHEREFORE, respondent Judge Jasper Jesse G. Dacanay is found guilty of committing conduct prejudicial to the best interest of the service in violation of Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary and is imposed a fine of ₱30,000. Judge Dacanay is directed to pay, within 15 days from notice of this Decision, this fine together with the fine imposed in A.M. No. MTJ-03-1480. Judge Dacanay is sternly warned that a repetition of the same or similar offense shall be dealt with more severely.


SO ORDERED.





ANTONIO T. CARPIO
Acting Chief Justice

WE CONCUR:


ARTURO D. BRION
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


ROBERTO A. ABAD
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice