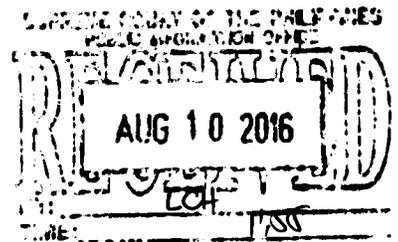




Republic of the Philippines
Supreme Court
Manila



EN BANC

DEPARTMENT OF JUSTICE,
represented by SECRETARY
LEILA M. DE LIMA,
Petitioner,

A.M. No. RTJ-14-2369
[Formerly OCA I.P.I. No. 12-3907-RTJ]

- versus -

JUDGE ROLANDO G.
MISLANG, Presiding Judge,
Branch 167, Regional Trial
Court, Pasig City,
Respondent.

X-----X
HOME DEVELOPMENT
MUTUAL FUND (HDMF),
represented by ATTY. JOSE
ROBERTO F. PO,
Petitioner,

A.M. No. RTJ-14-2372
[Formerly OCA I.P.I. No. 11-3736-RTJ]

Present:

SERENO, C.J.,
CARPIO,
VELASCO, JR.,*
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,*
DEL CASTILLO,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE,
LEONEN,
JARDELEZA,* and
CAGUIOA, JJ.

- versus -

JUDGE ROLANDO G.
MISLANG, Presiding Judge,
Branch 167, Regional Trial
Court, Pasig City,
Respondent.

Promulgated:

July 26, 2016

X-----X
[Signature]

* No part.

among others, denied said petition for lack of common issues and parties. In denying Lee's prayer for suspension, the panel of prosecutors explained:

At first glance, it may appear that the issues in Civil Case No. 10-1120 are related to the issues in NPS No. XVI-INV-10L-00363, however, a cursory reading of the pertinent records of the two cases will reveal that, in the first, the main issue is the right of GA to replace its buyers pursuant to the Memorandum of Agreement (MOA), Funding Commitment Agreement (FCA), and Collection Servicing Agreement (CSA) it entered into with HDMF while, in the second, the matter to be resolved is whether or not respondents are liable for the crime of syndicated estafa. Moreover, there is no commonality of parties in the two cases, therefore, whatever would be the decision of the court in the aforementioned civil case will certainly not affect the resolution of the herein criminal complaint. And this is true since, as shown in the complaint in Civil Case No. 10-1120, the case is not about the sale of the properties to Evelyn B. Niebres, Ronald Gabriel Perez San Nicolas, and Catherine Bacani, rather, the action was filed by GA to compel HDMF to honor the provisions of the MOA, FCA and CSA entered into by the parties and/or compel HDMF to accept the replacement buyers/borrowers as offered by GA.¹

Lee moved for a partial reconsideration of the abovementioned Omnibus Order but the same was denied. The DOJ panel of prosecutors likewise directed him to file his counter-affidavit. On July 28, 2011, after filing his counter-affidavit, Lee filed a Petition for Injunction (with Application for Temporary Restraining Order or *TRO*) against the DOJ, which was raffled to the sala of Judge Mislang. Again, Lee sought to suspend the preliminary investigation being conducted by the DOJ in the 2nd DOJ case, and subsequently, to likewise prevent the filing of the Information in the 1st DOJ case. On August 5, 2011, Lee's counsel inquired if the DOJ's counsel would be willing to enter into a stipulation with regard to the existence of the 2nd DOJ case and the Makati civil case. After the counsel of the DOJ had acceded to said request, the parties, with the permission of Judge Mislang, then agreed to submit for resolution the petition for injunction upon submission of their respective memoranda within fifteen (15) days, since there were no longer factual matters that needed to be threshed out in a full-blown trial. However, on August 12, 2011, after Lee had submitted his memorandum the day before, he filed an unverified Urgent Motion for the *ex-parte* resolution of his application for the issuance of a TRO. Thereafter, without waiting for the DOJ's memorandum, Judge Mislang issued Orders dated August 16, 2011 and August 26, 2011, granting Lee's petition. Thus, the HDMF and the DOJ filed separate complaints, docketed as OCA I.P.I. No. 11-3736-RTJ and OCA I.P.I. No. 12-3907-RTJ, respectively, against Judge Mislang, alleging that the latter acted in patent

¹ Rollo (A.M. No. RTJ-14-2369), p. 8.

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disregard of the rules on injunctive relief and prejudicial question, exhibited gross ignorance of the law and/or procedure, and manifested partiality and gross misconduct in issuing the assailed Orders.

After a careful review and evaluation of the case, the Office of the Court Administrator (*OCA*) recommended in both Complaints that Judge Mislang be found guilty of gross ignorance of the law and be dismissed from service, with forfeiture of retirement benefits except leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations.²

The Court's Ruling

The Court finds no compelling reason to deviate from the findings and recommendations of the *OCA*.

The application for TRO for the 2nd DOJ case was incorporated in the petition for injunction. However, the DOJ was not given any notice of Lee's Urgent Motion for *ex-parte* resolution of his TRO application. And despite the parties' agreement in court to submit for resolution said petition for injunction only upon submission of their respective memoranda, Judge Mislang granted Lee's application for TRO without waiting for the DOJ's memorandum. He never conducted a hearing on either the application for TRO or on the motion for resolution of the TRO. Clearly, this is in violation of the DOJ's constitutional right to be heard and to due process. Judge Mislang's wanton disregard of the DOJ's right to due process was repeated when he granted the TRO for the 1st DOJ case. Although the application for TRO was contained in a verified petition, the DOJ was not properly served with a copy of the petition or the urgent motion for hearing. It was not likewise served with any notice of hearing. And notwithstanding the lack of proof of service, Judge Mislang still proceeded to hear the application for TRO against the 1st DOJ case during the hearing on the petition for issuance of a writ of preliminary injunction against the 2nd DOJ case.

Verily, Judge Mislang manifested serious lack of knowledge and understanding of the basic legal principles on prejudicial question and on jurisdiction in petitions for suspension of criminal action based on prejudicial questions, as prescribed by Sections 6³ and 7,⁴ Rule 111 of the

² Evaluation and recommendation submitted by Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Thelma C. Bahia, dated October 8, 2013.

³ **Section 6.** *Suspension by reason of prejudicial question.* — A petition for suspension of the criminal action based upon the pendency of a prejudicial question in a civil action may be filed in the office of the prosecutor or the court conducting the preliminary investigation. When the criminal action has been

Jose M. Marquez - Bahia

Revised Rules of Criminal Procedure. The OCA adopted the ruling of the Court of Appeals (Seventeenth Division) in *Department of Justice v. The Hon. Rolando Mislang, etc. and Delfin Lee*, CA-G.R. SP No. 121594, dated April 16, 2012, thus:

After a thorough and judicious study of the attendant factual and legal milieu, this Court has come to the conclusion that **no prejudicial question exists that would justify the issuance by public respondent Judge of the writ of preliminary injunction as both cases before the DOJ can proceed independently of that with the Makati RTC.**

This Court agrees with petitioner's contention that no prejudicial question exists with respect to the first DOJ case. A prejudicial question is understood in law as that which must precede the criminal action and which requires a decision before a final judgment can be rendered in the criminal action with which said question is closely connected. The civil action must be instituted prior to the institution of the criminal action. **As it was shown that the recommendation by the NBI for DOJ to investigate Lee and other officials of the GA for estafa was filed ahead of the civil case which Lee filed against HDMF before the Regional Trial Court of Makati City, the doctrine of prejudicial question is untenable in the first DOJ case.**

Moreover, it did not escape this Court's attention that when Lee moved for the issuance of a temporary restraining order to enjoin the DOJ, in the first DOJ case, ... he did not file a petition for suspension of criminal action by reason of prejudicial question before the panel of DOJ prosecutors, in violation of the provisions of **Section 6, Rule 111 of the Revised Rules of Court... The rule is clear that in filing a petition for suspension of criminal action based upon a pendency of a prejudicial action in a civil action, the same should be made before the office of the prosecutor or the court conducting the preliminary investigation. If an information had already been filed before the court for trial, the petition to suspend should be filed before the court where the information was filed.**

Considering that no information has yet been filed against Lee and the action that was brought before the court *a quo* was one for injunction and damages, **the public respondent Judge gravely erred when he took cognizance of Lee's prematurely filed petition and granted his prayer for the issuance of a temporary restraining order.**

Nevertheless, even if the civil case was filed ahead of the first DOJ case, the doctrine of prejudicial question is still inapplicable.

filed in court for trial, the petition to suspend shall be filed in the same criminal action at any time before the prosecution rests.

⁴ **Section 7. Elements of prejudicial question.** — The elements of a prejudicial question are: (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed.

Y. M. Mislang - Mislang

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... (I)njunction will not lie to enjoin a criminal prosecution because public interest requires that criminal acts be immediately investigated and protected for the protection of society. It is only in extreme cases that injunction will lie to stop criminal prosecution. Public respondent Judge anchored his issuance of the writ on the existence of a prejudicial question. However, this Court finds that **the facts and issues in the Makati civil case are not determinative of Lee's guilt or innocence in the cases filed before the DOJ.** Verily public respondent Judge committed grave abuse of discretion amounting to lack of or in excess of jurisdiction when he issued the writ of preliminary injunction enjoining the DOJ from filing an information of estafa against Lee in the first DOJ case and from proceeding with the preliminary investigation in the second DOJ case.

WHEREFORE, in view of the foregoing, the instant Petition is hereby GRANTED. The assailed Order issued by public respondent Judge dated September 5, 2011 in Civil Case No. 73115-PSG for Injunction is **ANNULLED** and **SET ASIDE** for having been issued with grave abuse of discretion amounting to lack or in excess of jurisdiction. The writ of preliminary injunction is hereby lifted for lack of basis both in fact and in law.⁵

Gross ignorance of the law is the disregard of basic rules and settled jurisprudence. A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence. Though not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, the same applies only in cases within the parameters of tolerable misjudgment.⁶ Such, however, is not the case with Judge Misleng. Where the law is straightforward and the facts so evident, failure to know it or to act as if one does not know it constitutes gross ignorance of the law.⁷ A judge is presumed to have acted with regularity and good faith in the performance of judicial functions. But a blatant disregard of the clear and unmistakable provisions of a statute, as well as Supreme Court circulars enjoining their strict compliance, upends this presumption and subjects the magistrate to corresponding administrative sanctions.⁸

For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be

⁵ *Rollo* (A.M. No. RTJ-14-2372), pp. 140-141. (Emphasis in the original)

⁶ *Peralta v. Judge Omelio*, 720 Phil. 60, 86 (2013).

⁷ *Id.*

⁸ *Caguioa v. Judge Laviña*, 398 Phil. 845, 848 (2000).

pp. 140/141 - 141

established that he was moved by bad faith, dishonesty, hatred, or some other like motive. Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in all good faith. Judicial competence requires no less. Thus, unfamiliarity with the rules is a sign of incompetence. Basic rules must be at the palm of his hand. When a judge displays utter lack of familiarity with the rules, he betrays the confidence of the public in the courts. Ignorance of the law is the mainspring of injustice. Judges owe it to the public to be knowledgeable, hence, they are expected to have more than just a modicum of acquaintance with the statutes and procedural rules; they must know them by heart. When the inefficiency springs from a failure to recognize such a basic and elemental rule, a law or a principle in the discharge of his functions, a judge is either too incompetent and undeserving of the position and the prestigious title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority. In both cases, the judge's dismissal will be in order.⁹

Judge Mislang issued two (2) TROs, a writ of preliminary injunction and a *status quo* order, both of which did not satisfy the legal requisites for their issuance, in gross violation of clearly established laws and procedures which every judge has the duty and obligation to be familiar with. The antecedent incidents of the case brought before Judge Mislang were clear and simple, as well as the applicable rules. Unfortunately, he miserably failed to properly apply the principles and rules on three (3) points, *i.e.*, the prematurity of the petition, the inapplicability of the prejudicial question, and the lack of jurisdiction of the court. His persistent disregard of well-known elementary rules in favor of Lee clearly reflects his bad faith and partiality.

However, Judge Mislang cannot be held administratively liable for not requiring Lee to post a bond for the issuance of a TRO. In *Bautista v. Abdulwahid*,¹⁰ the Court dismissed the charge of gross ignorance of the law and procedure against Court of Appeals Associate Justice Hakim S. Abdulwahid for, among others, issuing an *ex-parte* TRO without requiring the posting of a bond. The Court upheld the OCA's recommendation that the complaint should be dismissed for lack of factual and legal bases, considering that the issuance of the TRO *ex-parte* was the most reasonable way to enjoin the enforcement of the final notice to vacate issued by the Municipal Trial Court without rendering the action sought to be enjoined moot and academic.

⁹ *Re: Complaint Against Justice John Elvi S. Asuncion of the Court of Appeals*, 547 Phil. 418, 438 (2007).

¹⁰ 522 Phil. 390 (2006).

John Elvi S. Asuncion

The Court notes that this is not the first time that Judge Mislang has committed a serious infraction. In fact, he has been facing a seemingly endless string of administrative charges since April 2007. In A.M. No. RTJ-08-2104,¹¹ one Atty. Leo C. Romero charged Judge Mislang with misrepresentation, violation of Supreme Court Administrative Circular No. 13, gross ignorance of the law, and grave abuse of discretion relative to the issuance of a search warrant against David C. Romero for violation of Article 293 (Robbery) of the Revised Penal Code. The Court then found Judge Mislang guilty and ordered him to pay a fine of ₱20,000.00, with a stern warning that a repetition of the same or similar act shall be dealt with more severely.

In A.M. No. RTJ-15-2434,¹² the Court likewise found him guilty of gross ignorance of the law. In this case, Jeffrey B. Patawaran filed a complaint against Judge Mislang. A criminal case for unlawful importation of assorted jewelry worth millions of pesos filed by the government through the Presidential Anti-Smuggling Group had been assigned to Judge Mislang. The accused in said case, Siu Ting Alpha Kwok, was charged with violation of Section 3601, in relation to Section 2530, of the Tariff and Customs Code of the Philippines. Then after the prosecution rested its case, Kwok filed a Demurrer to Evidence which Judge Mislang granted on the ground of insufficiency of evidence. He likewise directed the Bangko Sentral ng Pilipinas (BSP) and the customs officer who had custody of the seized jewelry to immediately release the same to Kwok, despite the existing Warrant of Seizure and Detention issued by the Bureau of Customs. The Court had ruled that while Judge Mislang's ruling on the Demurrer to Evidence may have been a purely judicial matter, he was guilty of Gross Ignorance of the Law when he directed the immediate release of the smuggled jewelry to Kwok. As a judge, he ought to know that the RTCs are devoid of any competence to pass upon the validity or regularity of seizure and forfeiture proceedings which the Bureau of Customs conducted and to enjoin or otherwise interfere with these proceedings.¹³ Also, forfeiture of seized goods in the Bureau of Customs is a proceeding against the goods and not against the owner. It is a proceeding *in rem*, which means it is directed against the *res* or the illegally imported articles, and entails a determination of the legality of their importation. Accordingly, while the accused in an unlawful importation case may turn out to be absolved from any criminal liability, it does not necessarily follow that the seized goods should also be automatically released. Indubitably, Judge Mislang's directive for the immediate release of the confiscated contraband shows his ignorance of the

¹¹ *Romero v. Judge Mislang*, February 6, 2008, First Division Resolution.

¹² *Patawaran v. Judge Mislang*, August 12, 2015, Third Division Resolution.

¹³ *Rallos v. Judge Gako, Jr.*, 398 Phil. 60, 70 (2000), citing *Bureau of Customs v. Ogario*, 385 Phil. 928 (2000), further citing *Jao v. CA*, 319 Phil. 105 (1995).

J. B. Patawaran - done

law and settled jurisprudence. At this instance, in view of the prior warning and the gravity of his offense, the penalty of dismissal would have been warranted. Out of benevolence, however, the Court simply suspended him for six (6) months without pay, and reiterating the warning of a more serious penalty in the event of another similar transgression.

Gross ignorance of the law, which is classified as a serious charge, is punishable by a fine of more than ₱20,000.00 but not exceeding ₱40,000.00, and suspension from office for more than three (3) but not exceeding six (6) months, without salary and other benefits, or dismissal from service.¹⁴ In *Peralta v. Judge Omelio*,¹⁵ the Court found that Judge Omelio had already been sternly warned in two (2) previous cases that repetition of the same or similar acts shall be dealt with more severely. Yet, he still continued transgressing the norms of judicial conduct. The Court then ruled that all his past and present violations raised a serious question on his competence and integrity in the performance of his functions as a magistrate. It thus adopted the recommendation of the OCA that the supreme penalty of dismissal was the proper penalty to be imposed, since it was already the third time that he was found administratively liable. Indeed, the Court could no longer afford to be lenient this time, lest it would give the public the impression that incompetence and repeated offenders are being countenanced in the judiciary. Judge Mislang's actions did not only affect the image of the judiciary, it also put his competency and even his moral character in serious doubt. In order to have a successful implementation of the Court's relentless drive to purge the judiciary of morally unfit members, officials, and personnel, a rigid set of rules of conduct must necessarily be imposed on judges. The standard of integrity applied to them is – and should be – higher than that of the average person for it is their integrity that gives them the privilege and right to judge.¹⁶ Considering Judge Mislang's repeated infractions and obstinate refusal to correct his ways despite previous warnings, the Court is constrained to impose the penalty of dismissal in this case.

¹⁴ Section 8 of Rule 140 on the Discipline of Judges and Justices, as amended by A.M. No. 01-8-10-SC, classifies gross ignorance of the law and gross misconduct constituting violations of the Code of Judicial Conduct as serious charges, with the following imposable penalties:

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;

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

¹⁵ *Supra* note 6.

¹⁶ *Samson v. Judge Caballero*, 612 Phil. 737, 752 (2009).

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WHEREFORE, PREMISES CONSIDERED, the Court finds Judge Rolando G. Misláng, Regional Trial Court, Pasig City, Branch 167, **GUILTY** of Gross Ignorance of the Law in A.M. No. RTJ-14-2369 and A.M. No. RTJ-14-2372 and **ORDERS** his **DISMISSAL** from the service with **FORFEITURE** of retirement benefits, except leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations.

SO ORDERED.



MARIA LOURDES P. A. SERENO
Chief Justice



ANTONIO T. CARPIO
Associate Justice

(No part relation to a party)


PRESBITERO J. VELASCO, JR.
Associate Justice

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Arturo D. Brion
ARTURO D. BRION
Associate Justice


DIOSDADO M. PERALTA
Associate Justice

No part

LUCAS P. BERSAMIN
Associate Justice

Mariano C. Del Castillo
MARIANO C. DEL CASTILLO
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice

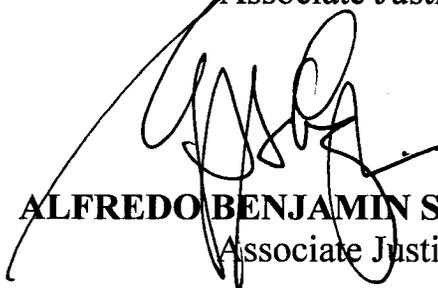

JOSE CATRAL MENDOZA
Associate Justice


BIENVENIDO L. REYES
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice

No part
FRANCIS H. JARDELEZA
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice