

## SECOND DIVISION

[ **A.M. No. RTJ-11-2258 (formerly A.M. OCA IPI No. 10-3340-RTJ), June 20, 2012** ]

**ELADIO D. PERFECTO, COMPLAINANT, VS. JUDGE ALMA CONSUELO DESALES-ESIDERA, RESPONDENT.**

### D E C I S I O N

**BRION, J.:**

For resolution is the present administrative complaint<sup>[1]</sup> filed by Eladio D. Perfecto (*complainant*) against Presiding Judge Alma Consuelo Desales-Esidera (*respondent*), Regional Trial Court, Branch 20, Catarman, Northern Samar, for violation of the Code of Judicial Conduct and ignorance of the law.

#### The Factual Antecedents

In support of the charges, the complainant alleges that on July 29, 2008, he filed a Petition to Cite for Contempt against one Dalmacio Grafil and a Ven S. Labro. The petition was docketed as Special Civil Action No. 194<sup>[2]</sup> and was raffled to the court presided over by the respondent. The complainant laments that the case has since been gathering dust in the court of the respondent. He maintains that the respondent should be made administratively liable for her failure to act on the case within a reasonable period of time.

On the second cause of action, the complainant claims that he is the publisher and Editor-in-Chief of the Catarman Weekly Tribune (*CWT*), the only accredited newspaper in Northern Samar. He claims that in Special Proceedings Nos. C-346 (for adoption and change of name)<sup>[3]</sup> and C-352 (for adoption),<sup>[4]</sup> the respondent directed the petitioners to have her orders published in a newspaper of national circulation. Through these directives, the complainant posits, the respondent betrayed her ignorance of the law, considering that all judicial notices and orders emanating from the courts of Catarman, Northern Samar should be published only in the *CWT*, pursuant to Presidential Decree No. 1079.<sup>[5]</sup>

The Office of the Court Administrator (*OCA*), through then Deputy Court Administrator Nimfa C. Vilches, referred the complaint to the respondent for comment.<sup>[6]</sup> Through her comment filed on March 1, 2010,<sup>[7]</sup> the respondent denies the complaint's allegations and prays for its dismissal. With respect to her alleged inaction on the petition for contempt (Special Civil Action No. 194), she maintains that the summons were served on the respondents.<sup>[8]</sup> Eventually, the respondents filed their Answer with Affirmative Defenses and Counterclaim,<sup>[9]</sup> but no other pleadings followed. The respondent denies the complainant's claim that he made several follow-ups with her regarding the case.

The respondent faults the complainant for the lack of movement in the case. She contends that the complainant could have just filed a motion to set the case for preliminary conference, instead of bringing an administrative complaint against her. Be this as it may, she claims that out of consideration to a fellow lawyer – the complainant’s counsel, Atty. Elinor C. Chin, allegedly had been seeking treatment in Manila for brain tumor – and because of information she received that the complainant was no longer interested in the case, she withheld action on the petition. However, after the Court’s July-December 2009 docket inventory, she realized that the case (among others) was not moving, prompting her to set it for trial.

Relative to the issue on the publication of court orders/notices, the respondent submits that the CWT is not generally circulated in the province. According to her, “[t]he [CWT] caters only to those who buy commercial space from the publisher for announcements and legal notices. But even to these clients, the copies of the newspapers where the notices appear are delivered late; thus, defeating the purpose of the requirement of publication.”<sup>[10]</sup> Attached to her comment is a list of cases where she was constrained to reset the hearings because of the delay in the publication of court orders and notices.<sup>[11]</sup> The respondent adds that CWT does not even have a business permit to operate in the province.

To prove her point, the respondent made a survey of CWT’s track record in Northern Samar (24 towns) in terms of subscription and quality of service. The response of sixteen (16) towns, banks and other establishments confirmed the respondent’s observations about CWT.<sup>[12]</sup> The replies ranged from no subscription, subscription terminated, no circulation in the municipality, to late or irregular delivery.

Apart from her reservations on CWT’s capability to satisfy the requirement of publication for court orders and notices, the respondent posits that her directives to have her orders published in a newspaper of general circulation do not violate Presidential Decree No. 1079, as her directives even ensure that court orders and notices are published on time.

In a letter dated March 24, 2010<sup>[13]</sup> to the OCA, the respondent reiterates her observation that CWT is not generally circulated in Northern Samar. For this reason, she requests that her court be exempted from publishing judicial orders and notices in CWT. She also asks that an investigation be conducted on the matter and, if warranted, the accreditation of CWT be revoked.

Acting on the OCA’s report dated October 11, 2010,<sup>[14]</sup> the Court issued a Resolution on January 10, 2011,<sup>[15]</sup> re-docketing the case as a formal administrative complaint against the respondent, and denying (1) the respondent’s request for the revocation of CWT’s accreditation, the OCA not being the proper office to address the issue, and (2) the respondent’s request for exemption from publishing judicial orders/notices in a newspaper accredited by the Executive Judge, for lack of merit. Lastly, the Court required the parties to manifest whether they were willing to submit the case for decision on the basis of the pleadings/records on file.

By way of a Manifestation (with Motion) dated March 23, 2011,<sup>[16]</sup> the respondent

manifests that she is not willing to submit the case for decision based on the pleadings. She asks instead that the case be investigated. The complainant, on the other hand, submits the case for decision "as a hearing is no longer necessary because all the evidences for the complaint x x x are documentary, and respondent failed to refute or rebut the same in her answer, but rather admitted material allegations in the complaint."<sup>[17]</sup>

On June 8, 2011, the Court issued a Resolution<sup>[18]</sup> referring the case to the OCA for evaluation, report and recommendation. In its report dated August 16, 2011,<sup>[19]</sup> the OCA informed the Court that it found no cogent reason to submit the case for investigation (by a Court of Appeals Justice); neither did the respondent present any compelling justification for such an investigation. It, therefore, recommended that the case be considered submitted for decision. The Court adopted the OCA recommendation in its Resolution dated November 14, 2011.<sup>[20]</sup>

Through another Manifestation dated February 14, 2012,<sup>[21]</sup> the respondent advises the Court that she is of the firm belief that the second cause of action for ignorance of the law (non-publication of court orders/notices in CWT) had already been passed upon by the Court (Third Division) in its Decision in A.M. No. RTJ-11-2270.<sup>[22]</sup> Thinking that the issue to be investigated would only be the first cause of action, she asks for clarification on the matter.

#### The Court's Ruling

We find the respondent's Manifestation of February 14, 2012 in order. Indeed, the complainant's second cause of action, emanating from the respondent's directive to have court orders/notices published in a newspaper of national circulation, had already been passed upon by this Court in the decision above cited. Relevant portions of the decision stated:

Anent the allegations of ignorance of the law and usurpation of authority against respondent Judge Esidera, for issuing a directive to the petitioner in a special proceedings case to cause the publication of her order in a newspaper of general publication, this Office finds the same devoid of merit.

Complainant Perfecto had made a similar allegation in OCA I.P.I. No. 10-3340-RTJ, insisting that all orders from the courts of Northern Samar should only be published in the *Catarman Weekly Tribune*, the only accredited newspaper in the area.

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[T]hat *Catarman Weekly Tribune* is the only accredited newspaper of general publication in *Catarman* does not bar the publication of judicial orders and notices in a newspaper of national circulation. A judicial notice/order may be published in a newspaper of national circulation and said newspaper does not even have to be accredited.<sup>[23]</sup> (underscorings supplied)