

## SECOND DIVISION

[ A.M. No. MTJ-10-1772, December 05, 2012 ]

**DR. JANOS B. VIZCAYNO, COMPLAINANT, VS. JUDGE JASPER  
JESSE G. DACANAY, IN HIS OFFICIAL CAPACITY AS THE  
PRESIDING JUDGE OF THE MUNICIPAL CIRCUIT TRIAL COURT  
OF LILOAN-COMPOSTELA, CEBU, RESPONDENT.**

### 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 7<sup>th</sup> 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 imposed a fine of P25,000 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 P11,000 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. Baliguat*, 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 Reply<sup>[2]</sup> 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!")<sup>[3]</sup>

### **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.

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.<sup>[4]</sup> (Emphasis in the original)

This Court, in a Resolution<sup>[5]</sup> 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 Report<sup>[6]</sup> 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 Report<sup>[7]</sup> 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 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.<sup>[8]</sup> 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.<sup>[9]</sup>