

EN BANC

[**A.M. No. MTJ-08-1710 [Formerly A.M. OCA IPI No. 08-2029-MTJ], February 15, 2011**]

RENE C. RICABLANCA, COMPLAINANT, VS. JUDGE HECTOR B. BARILLO, RESPONDENT.

DECISION

CARPIO MORALES, J.:

In a verified complaint^[1] dated July 3, 2006, Rene C. Ricablanca (complainant), Court Stenographer I of the Municipal Trial Court (MTC) of Guihulngan, Negros Oriental, charged Judge Hector Barillo, Presiding Judge of the Municipal Trial Court in Cities (MTCC), Canlaon City, with Grave Judicial Misconduct and Gross Ignorance of the Law. Before the filing of the complaint, respondent had administratively charged complainant for going on Absence Without Official Leave (AWOL).

It appears that while respondent was still Acting Presiding Judge of the MTC Guihulngan, he issued orders archiving the following criminal cases cognizable by the Regional Trial Court (RTC) of Guihulngan, instead of forwarding them to the Office of the Provincial Prosecutor for review and appropriate action.

- a. Criminal Case No. 5216, entitled "PP vs. Erlindo Bacatin a.k.a. Do Dela Cruz" for Murder, archived per Order dated 22 November 1991 (Annex "C" of the Complaint);
- b. Criminal Case No. 5220, entitled "PP vs. Ka Rustan, Ka Arming, Ka Erboy, Ka Rechie, Ka Ford, Ka Radan, Ka Dindo, Ka Wen, and three (3) John Does" for Robbery in Band per duplicate original copy of the Order dated 22 November 1991 (Annex "D" of the Complaint);
- c. Criminal Case No. 6-00-054, entitled "PP vs. Junie Pacion" for Attempted Homicide, per duplicate copy of the Order dated 24 July 2001 (Annex "E" of the Complaint);
- d. Criminal Case No. 9-00-113, entitled "PP vs. Eduardo Flores, a.k.a. Eddie and Allan Flores" for Violation of PD 1866 as amended by R.A. 8294 (archived on 26 August 2002) per duplicate original copy of the Order (Annex "F" of the Complaint); and
- e. Criminal Case No. 5212, entitled "*PP vs. Edwin Barangyao*" for Murder (archived on 22 November 1991 (Annex "F-1" of the Complaint)).^[2]

By complainant's claim, respondent inhibited himself from hearing Criminal Case No. 2-01-173, "*People v. Benny Barillo*," but, to take his place, he (respondent) successfully recommended another judge whom he could influence as in fact the latter archived the case.

Still by complainant's claim, respondent refused to inhibit himself, in violation of the Code of Judicial Conduct, in Civil Case No. 04-1-178, "*Rural Bank of Guihulngan, Negros Oriental, Inc., represented by Renato Miguel Dionaldo Garcia v. Evangeline Ricablanca, et al.*," despite the fact that the plaintiff Rural Bank's representative is a sister of respondent's wife and respondent's wife is in fact an employee of the bank; and that respondent rendered judgment based on a compromise agreement, without the defendant being assisted by counsel, which compromise agreement is contrary to law, morals, public order and public policy.

Complainant went on to relate that respondent's nephew, Renato Garcia, filed several cases in whose favor he (respondent) consistently rendered judgments in which exorbitant, iniquitous and excessive awards were made.

Furthermore, complainant stated that respondent allowed an MTCC aide, who is respondent's relative by consanguinity, to be detailed at the MTC Guihulngan to handle court collections; and in 2004, a Judicial Audit Team discovered a shortage of P90,000 in the collections and the aide was, along with the Clerk of Court, directed to "replenish" the same.

Finally, complainant stated that respondent held office at his residence in Guihulngan and drank beer while conducting court hearings; that on account of his strained relations with respondent, he was detailed at the MTCC, Dumaguete City; and that after his detail, however, he was forced to go on leave but all his applications for the purpose were disapproved by respondent, hence, spawned the earlier-mentioned filing by respondent of an administrative case against complainant for going on AWOL.

In his Comment^[3] to the Complaint, respondent alleged that as he is no longer the Presiding Judge of MTC Guihulngan, not to mention that complainant was not a party to any of the above-mentioned criminal and civil cases, he (respondent) has "no jurisdiction to comment" on the allegations of the complaint. Nevertheless, respondent gave a *general denial* of the charges and dwelt more on why he declared complainant on AWOL.

By Investigation Report^[4] dated October 8, 2009, Judge Alejandro A. Bahonsua, Jr., Acting Presiding Judge of Branch 64/Executive Judge of the RTC of Negros Oriental who was, by this Court's Resolution of July 23, 2008,^[5] directed to investigate the Complaint, found that the archiving of the criminal cases was not in compliance with the Rules.

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In the Orders, Respondent said he archived the cases without prejudice to subsequent prosecution if the accused would subsequently be

arrested, anchored on the provisions of Administrative Circular No. 7-92 of the Supreme Court, the pertinent portion of which provides:

"1.a. A criminal case may be archived only if after the issuance of the warrant of arrest, the accused remains at large for six (6) months from the delivery of the warrant to the proper peace office. An order archiving the case shall require the peace officer to explain why the accused was not apprehended. The Court shall issue an alias warrant if the original warrant is returned by the peace officer together with the report. A copy of the order archiving the case shall be furnished to the complainant."

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This defenses interposed by the Respondent are weak excuses that could not justify his failure to follow the Rules of Court. He was not correct in applying the provisions of Administrative Circular No. 7-92 because he was not acting as the **trial judge** but as the **investigating judge**, and thus his actions were governed by the rules on preliminary investigation under the 2000 Rules of Criminal Procedure, the pertinent provision of which is the first sentence of Sec. 5, Rule 112, which provides:

*"Resolution of the investigating judge and its review. - Within ten (10) days after preliminary investigation, **the investigating judge shall transmit the resolution of the case to the provincial or city prosecutor**, or the Ombudsman or his deputy in cases cognizable by the Sandiganbayan in the exercise of its original jurisdiction, for appropriate action, together with the record of the case which shall include: (a) the warrant if the arrest is by virtue of a warrant; (b) the affidavits, counter-affidavits and other supporting evidence of the parties; (c) the undertaking or bail of the accused and the order of his release; (d) the transcripts of the proceedings during the preliminary investigation; and (e) the order of cancellation of his bail, if the resolution is for the dismissal of the complaint."*

Undisputedly, Respondent failed to follow the mandate of his office as **investigating judge**, and thus fittingly applied herein is the ruling in the case of **Mayor Sotero C. Cantela vs. Judge Rafael S. Almoradie, A.M. No. MTJ-93-749, February 7, 1994**, having substantially the same set of facts, where the Supreme Court found Judge Alradie of the Third Municipal Circular Trial Court of San Fernando-Batuan, 5th Judicial Region, San Fernando, Masbate grossly ignorant of the correct criminal procedure and dismissed him from the service with prejudice to appointment to any government position or public office, including government-owned or controlled corporations, and with forfeiture of all his retirement benefits. x x x

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It is to be noted in the case extant that three of the five cases archived by the Respondent involved serious offenses: Criminal Case No. 5216 for Murder; Criminal Case No. 5220 for Robbery in Band; and; Criminal Case 5212 for Murder, hence, to borrow the language of the Supreme Court, Respondent should have been prompted by the gravity of the offenses to forward the records of the cases within the required 10-day period to the Provincial Prosecutor for appropriate action.

As to the degree of perversity of the manner at the very least, the violations were committed, lies however a big difference between the two cases. In the case of **Almoradie**, respondent judge made the practice, and continued the practice of archiving cases after preliminary investigation even after his attention was called by an Assistant Provincial Prosecutor and his acts were denounced by the Executive Judge. Thus the Supreme Court said:

In several resolutions of Assistant Provincial Prosecutor Danilo V. Ontog, the attention of respondent Judge had been called to the irregular practice of the latter of archiving criminal cases. Even RTC Executive Judge Ricardo Butalid in an article in the local newspaper "Panahon" (issue of 19 August 1990) denounced the irregular practice of respondent Judge of archiving criminal cases after preliminary investigation. Despite these efforts of judge Butalid and the Assistant Provincial Prosecutor to point out the wrong procedure being followed by respondent Judge, the latter remained unperturbed and continued with his irregular practice, This, in effect, facilitated the escape of several accused in the complainants, who have been seen moving freely. Respondent Judge has not therefore been of help in ridding the community of undesirable elements. He has contributed, through this ignorance of the law, to their mockery of the law."

In the case extant, Respondent was only acting as Assisting Judge and then as Acting Presiding Judge of the Municipal Trial Court of Guihulngan, Negros Oriental when he issued the questioned Orders. This court is of the view that Respondent innocently thought that he could legally issue said Orders despite acting only as the Investigating Judge. Besides, nobody had called his attention about the errors he committed, not even the office of the Provincial Prosecutor of Negros Oriental, the Executive judge nor the regular Presiding Judge himself, the Hon. Judge Ricardo M. Garcia. Further, after he ceased to be the Acting Presiding Judge in July 2004, he lost the opportunity to rectify his errors. Hence this Court also believes that the ruling in the case of Northcastle Properties and Estate Corporation vs. Acting Presiding Judge Estrellita M. Paas, MeTC, Branch