

## **EN BANC**

**[ A.M. No. RTJ-07-2076, October 12, 2010 ]**

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS.  
JUDGE ALBERTO L. LERMA, RESPONDENT.**

**[A.M. NO. RTJ-07-2077]**

**ATTY. LOURDES A. ONA, COMPLAINANT, VS. JUDGE ALBERTO L.  
LERMA, RESPONDENT.**

**[A.M. NO. RTJ-07-2078]**

**JOSE MARI L. DUARTE, COMPLAINANT, VS. JUDGE ALBERTO L.  
LERMA, RESPONDENT.**

**[A.M. NO. RTJ-07-2079]**

**RET. GENERAL MELITON D. GOYENA, COMPLAINANT, VS. JUDGE  
ALBERTO L. LERMA, RESPONDENT.**

**[A.M. NO. RTJ-07-2080]**

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS.  
JUDGE ALBERTO L. LERMA, RESPONDENT.**

## **D E C I S I O N**

### **PER CURIAM:**

Five (5) administrative cases were filed with the Office of the Court Administrator (OCA) against Judge Alberto L. Lerma (respondent judge) of the Regional Trial Court (RTC), Branch 256, Muntinlupa City, for violating Supreme Court rules, directives, and circulars, for making untruthful statements in his certificates of service, for gross ignorance of the law and/or gross negligence, for delay in rendering an order, for abusing judicial authority and discretion, and for serious irregularity.

In a memorandum<sup>[1]</sup> dated September 24, 2007, embodying the report and recommendation of the OCA, then Court Administrator Christopher O. Lock (Court Administrator Lock) referred to then Chief Justice Reynato S. Puno (Chief Justice Puno) the five administrative cases filed against respondent judge, to wit: a) Administrative Matter No. 98-6-179-RTC (*Re: Request for transfer of arraignment/trial of Criminal Case No. 3639-R*); b) OCA IPI No. 07-2644-RTJ ([*Ret.*] *General Meliton D. Goyena v. Judge Alberto L. Lerma*); c) OCA IPI No. 07-2643-RTJ (*Jose Mari L. Duarte v. Judge Alberto L. Lerma*); d) OCA IPI No. 07-2639-RTJ (*Atty. Lourdes A. Ona v. Judge Alberto L. Lerma*); and e) OCA IPI No. 07-2654-RTJ (*Office of the Court Administrator v. Judge Alberto L. Lerma*).

Per resolution<sup>[2]</sup> of the Supreme Court En Banc dated September 25, 2007, the foregoing cases were respectively redocketed as regular administrative cases, as follows: A.M. Nos. RTJ-07-2076, RTJ-07-2079, RTJ-07-2078, RTJ-07-2077, and RTJ-07-2080.

Thereafter, the cases were referred to an Investigating Justice<sup>[3]</sup> of the Court of Appeals (CA) for investigation and recommendation.

We shall discuss the cases individually, taking into account their peculiar factual surroundings and the findings and recommendations of the Investigating Justice.

#### **a.) A.M. No. RTJ-07-2076**

On November 27, 1995, Ruperto Pizarro y Bruno (accused) was charged with Violation of Presidential Decree No. 1866 in an information filed with the RTC, Branch 53, Rosales, Pangasinan and docketed as Criminal Case No. 3639-R.<sup>[4]</sup> Since accused was already detained at the Quezon City Jail due to the pendency of another criminal case (Criminal Case No. Q-95-64130-31) filed against him. The court ordered that all notices of hearings and proceedings in Criminal Case No. 3639-R be forwarded to the Jail Warden of the Quezon City Jail.<sup>[5]</sup> Subsequently, in a letter dated March 25, 1998,<sup>[6]</sup> Officer-in-Charge/City Warden Arnold Buenacosa of the Quezon City Jail informed Judge Teodorico Alfonso B. Bauzon (Judge Bauzon), RTC of Rosales, Pangasinan, that accused was transferred to the Bureau of Corrections in Muntinlupa City on March 21, 1998 in compliance with the commitment order and decision in Criminal Case No. Q-95-64130-31 of the RTC, Branch 82, Quezon City.

The Supreme Court, in a resolution<sup>[7]</sup> dated June 30, 1998, directed (1) the Clerk of Court of the RTC, Branch 53, Rosales, Pangasinan, to forward the records of Criminal Case No. 3639-R to the Executive Judge, RTC, Muntinlupa City, for appropriate action; (2) the Executive Judge, RTC, Muntinlupa City, to raffle the case among the judges to arraign the accused and consequently take his testimony; and (3) the Clerk of Court, RTC, Muntinlupa City, to return the records to the RTC, Branch 53, Rosales, Pangasinan, for the continuation of the proceedings.

Pursuant to the Supreme Court resolution, Criminal Case No. 3639-R<sup>[8]</sup> was raffled to RTC, Branch 256, Muntinlupa City, presided by respondent judge. Accused was arraigned on September 29, 1998. Thereafter, respondent judge proceeded to receive the evidence for the prosecution. On February 7, 2003, the prosecution formally offered its exhibits, but the firearm subject of the information was not included in the formal offer. On June 27, 2005, the accused, through Atty. Abelardo D. Tomas of the Public Attorney's Office (PAO), filed a *motion for leave of court to file demurrer to prosecution's evidence*.<sup>[9]</sup> Respondent judge granted the said motion on July 26, 2005.<sup>[10]</sup> On November 8, 2005, Atty. Rodney Magbanua of the PAO filed a *demurrer to prosecution's evidence*,<sup>[11]</sup> contending that, without the subject firearm, the prosecution failed to prove an essential element of the offense. On February 28, 2007, respondent judge issued an order, granting the demurrer to prosecution's evidence and dismissing the case for insufficiency of evidence.<sup>[12]</sup>

In a memorandum<sup>[13]</sup> dated September 24, 2007, the OCA charged respondent judge with exceeding his authority under the Supreme Court resolution dated June 30, 1998 in A.M. No. 98-6-179-RTC. According to the OCA, the authority given to respondent judge under the resolution was clearly limited to the arraignment of the accused and the taking of his testimony; it did not authorize respondent judge to decide the merits of the case. The OCA contended that the act of respondent judge constituted violation of a Supreme Court directive, a less serious offense, under Section 9(4), Rule 140, Revised Rules of Court.

In his comment dated November 16, 2007, respondent judge asserted that there was neither a conscious nor a deliberate intent on his part to disobey any directive of the Supreme Court when he granted the demurrer to evidence filed by the accused in Criminal Case No. 3639-R. He claimed that, through inadvertence, he was not able to recall the limits of the referral made to him, and stressed that he ruled on the merits of the case in a way not tainted with fraud, dishonesty, or corruption. He emphasized that he acted on the demurrer to evidence because of the inadequacy of the evidence for the prosecution and because of the failure of the latter to object to the demurrer. He maintained that it would have been wrong for him to add to the penalty already being served by the accused when there was no evidence to warrant the detention of the latter for the unproved offense.<sup>[14]</sup>

Under Section 9(4), Rule 140, Revised Rules of Court, failure to obey the Court's resolution is a less serious offense that carries a penalty of suspension from office without salary and other benefits for not less than one (1) month or more than three (3) months, or a fine of more than P10,000.00 but not exceeding P20,000.00.

The Investigating Justice recommends that a fine of P15,000.00 be imposed upon respondent, based on the following findings:

In criminal actions, it is a fundamental rule that venue is jurisdictional. The place where the crime was committed determines not only the venue of the action but is an essential element of jurisdiction. Thus, a court cannot exercise jurisdiction over a person charged with an offense committed outside the limited territory. Furthermore, the jurisdiction of a court over a criminal case is determined by the allegations in the complaint or information.<sup>[15]</sup>

The demurrer to evidence filed by the accused cited the accusatory portion of the information which charged him with unlawful possession of a caliber .30 U.S. carbine with two magazines and twenty-five (25) rounds of ammunition. The information clearly stated that the accused possessed the carbine, magazines, and ammunitions in Barangay Cabalaongan Sur, Municipality of Rosales, Province of Pangasinan. Had respondent judge exercised a moderate degree of caution before resolving the demurrer to evidence, a mere perusal of the records would have reminded him that his court was only authorized to arraign the accused, to receive the evidence in the said case, and to return the records of the case to the RTC, Branch 53, Rosales, Pangasinan for continuation of the proceedings. In every case, a judge shall endeavor diligently to ascertain the facts.<sup>[16]</sup>

Respondent judge was found wanting in the diligence required of him. We agree with the Investigating Justice in finding respondent judge guilty of violating a Supreme Court directive, and impose upon him a fine of P15,000.00.

**b.) A.M. No. RTJ-07-2080**

In a letter<sup>[17]</sup> dated August 28, 2007, Godofredo R. Galindez, Jr., (Godofredo), president of the Alabang Country Club, Inc. (Alabang Country Club), in response to the letter dated August 21, 2007 of Court Administrator Lock, stated that respondent judge played golf at the Alabang Country Club on the following dates and tee-off time:

<b><i>Date</i></b>	<b><i>Tee off-time</i></b>
April 8, 2000	12:00 P.M.
July 21, 2000	1:08 P.M.
August 4, 2000	1:20 P.M.
November 28, 2000	10:00 A.M.
May 17, 2001	3:05 P.M.
September 29, 2001	12:56 P.M.
March 5, 2002	1:00 P.M.
June 19, 2002	7:12 A.M.
February 12, 2004	1:35 P.M.
February 28, 2005	10:41 A.M.

With the exception of May 17, 2001, during which respondent judge allegedly played nine (9) holes of golf, Godofredo stated in his letter that the former played eighteen (18) holes of golf on all the aforestated dates.

In another letter<sup>[18]</sup> dated September 3, 2007, Hirofumi Hotta (Hirofumi), operations manager of TAT Filipinas Golf Club (Tat Filipinas), in answer to an inquiry made by Court Administrator Lock, stated that respondent judge visited the said golf club and appeared to have played golf there on the following dates - all Thursdays - and time:

<b><i>Date</i></b>	<b><i>Time</i></b>
April 14, 2005	1:30 P.M.
April 28, 2005	1:30 P.M.
August 18, 2005	1:30 P.M.
August 25, 2005	1:30 P.M.
November 17, 2005	1:30 P.M.
November 24, 2005	1:30 P.M.
December 15, 2005	1:30 P.M.
January 26, 2006	1:30 P.M.
February 9, 2006	1:30 P.M.
March 2, 2006	1:30 P.M.
March 23, 2006	1:30 P.M.
April 6, 2006	1:30 P.M.
April 27, 2006	1:30 P.M.
June 15, 2006	1:30 P.M.
December 14, 2006	1:30 P.M.

According to the OCA, its records in the Office of the Administrative Services show that respondent judge did not declare his absences on July 21, 2000, August 4, 2000, March 5, 2002, February 12, 2004, and February 28, 2005, during which he reportedly played golf at the Alabang Country Club. Further, in a certification<sup>[19]</sup> dated September 5, 2007, Hermogena F. Bayani (Hermogena), Supreme Court Chief Judicial Staff Officer, Leave Division, OCA, stated that respondent judge did not file any application for a leave of absence on all the dates mentioned by Hirofumi in his letter dated September 3, 2007. These constituted violations of Supreme Court Memorandum Order dated November 19, 1973, Administrative Circular No. 3-99 dated January 15, 1999, and Administrative Circular No. 5 dated October 4, 1988.<sup>[20]</sup>

The OCA asserted that on the days that respondent judge played golf, he was lost to the judiciary for half the working/session hours on those days, positing that this is not merely truancy but also dishonesty and falsification of certificates of service.

Respondent judge, in his comment, countered that contrary to the allegations of the OCA, he only played golf thrice in 2000, once in 2001, twice in 2002, six (6) times in 2005, and five (5) times in 2006 - a total of eighteen (18) times in six years, or at the average of three (3) times a year. He argued that his playing golf 18 times in six years, or thrice a year, could not be reasonably characterized as habitual to the extent that it jeopardized the discharge of his functions as a judge. He alleged that since he shared his courtroom with the other judges in Muntinlupa, he only played golf on days when no other place was available for him to carry out his official functions. Likewise, he explained that, in 1996, his physician advised him to exercise more vigorously after he was diagnosed with diabetes and hypertension. Respondent judge also stressed that he had never missed a day in hearing cases pending in his sala.<sup>[21]</sup>

In the hearing conducted by the Investigating Justice on December 4, 2007, the OCA presented Godofredo, Hirofumi, and Sheila Aquino as witnesses.

Godofredo testified that the dates and time when respondent judge played golf at the Alabang Country Club, as mentioned in his letter, are based on the logbook entries made by the starter in the country club. A starter, explained Godofredo, is a person who records in the logbook the names of the individuals who play in the golf course. The starter may be the player himself or a member who brings in guests to play golf.

On cross-examination, Godofredo admitted that he is not the custodian of the logbook; that he is neither the starter nor the person who wrote the entries in the logbook; and that he does not recognize in whose handwriting the entries were made.

Hirofumi, the operations manager of TAT Filipinas, testified that Aquino, the front desk receptionist in the golf club, made the listing of the respective dates and time when respondent judge played at TAT Filipinas based on the data stored in their office computer.

Aquino, who had been employed by the company for fifteen (15) years, and had