

SECOND DIVISION

[A.M. NO. RTJ-07-2052, March 30, 2009]

**LORENA P. ONG, COMPLAINANT, VS. JUDGE OSCAR E. DINOPOL,
REGIONAL TRIAL COURT, BRANCH 24, KORONADAL CITY, SOUTH
COTABATO, RESPONDENT.**

D E C I S I O N

CARPIO MORALES, J.:

The present administrative case arose in the course of the proceedings in Civil Case No. 1632, "*Lorena P. Ong, Plaintiff, v. Domingo Ong, Defendant*" (the civil case), an action for declaration of nullity of marriage or legal separation and damages filed before the Regional Trial Court (RTC), Koronadal City and raffled to Branch 24 thereof, presided over by Judge Oscar E. Dinopol (respondent).

In the course of the trial of the civil case, the therein plaintiff-herein complainant Lorena P. Ong filed on April 1, 2005 a motion for the issuance of a "protection order"^[1] praying for the custody of her two children, Lorenzo Ruiz Ong^[2] and Maria Monica Loren Ong,^[3] then 10 and 4 years old, respectively, and support from her husband-therein defendant Domingo Ong (Domingo).

By Order^[4] of June 23, 2005, respondent ordered Domingo to turn over to complainant the custody of Maria Monica Loren. During the pendency of the hearing on the custody of Lorenzo Ruiz, Domingo sought reconsideration of the June 23, 2005 Order, but it was denied by Order of September 15, 2005.^[5]

After the issuance of the September 15, 2005 Order, respondent interviewed the parties' children the result of which is incorporated in his Order^[6] dated September 22, 2005, viz:

In the working area of the staff of RTC Branch 24 and in their presence, the Presiding Judge past 10:00 a.m. of September 15, 2005 conducted an unannounced interview of the children of the parties for about 30 minutes and discovered that both children, in spite of the encouragement of the Presiding Judge, refused to sleep with their mother, plaintiff in this case, they apparently are well treated and cared of by their father while they are forced to do things by their mother. It also appeared from the manifestation in court by counsel for the plaintiff that the latter is enrolled in a nursing school that required her to devote her quality time in school and away from her children. (Underscoring supplied)

By said Order of September 22, 2005, respondent thus set aside his June 23 and September 15, 2005 Orders, disposing as follows:

ACCORDINGLY, as the children are bound to be in the custody of plaintiff for a minimal period each day, and considering the paramount interest of the children who should not be further traumatized as narrated by them, the previous order denying the motion for reconsideration is hereby set aside. Meantime, let a *status quo ante* before the filing of this case be maintained and custody of the children remain temporarily with defendant until the hearing on 19 January 2006, subject to the inherent right of plaintiff to be with her children, but not forcing them to sleep with her. The parties are likewise encouraged to attend to their Sunday obligations as a family. (Underscoring supplied)

Complainant filed a motion for reconsideration^[7] of this Order. In the meantime, respondent issued an Order^[8] dated February 22, 2006 directing the court-appointed Social Welfare Officer, Hidelisa O. Soria (Soria), to conduct a child study report on the minor children and recommend who, between their parents, would have preliminary custody over them.

In her Social Case Study Report,^[9] Soria recommended that: **(1)** both complainant and Domingo "must undergo and submit themselves to a Neuro-Psychiatric Evaluation and Therapy and be referred to Dra. Agnes Padilla, Department Head, Davao Medical Center, Psychiatry Department, JP Laurel Avenue, Davao City," and **(2)** both children will remain under the custody of their father, Domingo, during school days from Monday to Friday afternoon, and of their mother from Friday evening to Sunday, the arrangement to be implemented on "a six months (6) trial custody to prevent a traumatic turn-over of the minors, considering that solidarity between father-son-daughter relationships is visibly intact." In the same Report, Soria manifested that she would submit a progress report after six months to determine who shall have permanent custody of the children.

By Order^[10] of August 17, 2006, respondent approved Soria's recommendation. To this Order Domingo filed a motion for reconsideration, praying that complainant should be given custody over their children only on Sundays since "during Saturdays they (children) still need to wind up their academic activities and requirements, which they can do well if they are in the place they consider a home - where defendant and the children are staying." Domingo capped his motion, though, by imploring complainant that "with open arms, they are still waiting for [her] to come home and stay with him and their children."^[11] Complainant opposed the motion.

Respondent thereupon issued an Order^[12] dated August 25, 2006 modifying the schedule of custody by giving 1) complainant custody of the children from 8:00 o'clock in the morning of Saturday, beginning August 26, 2006 and every Saturday thereafter, until 7:00 o'clock Monday morning of August 28, 2006, and every Monday thereafter; and 2) Domingo custody from 7:00 o'clock Monday morning of August 28, 2006 and every Monday thereafter, until 8:00 o'clock of Saturday morning, and every Saturday thereafter. The Order stated that the alternate custody scheme was only for a three-month trial period.

Significantly, complainant did not file any motion for reconsideration of the August 25, 2006 Order.

Perceiving, however, that respondent had become "patently partial in favor of

[Domingo]," complainant filed on September 15, 2006 a motion for inhibition^[13] of respondent from further hearing the case, which motion she set for hearing on September 22, 2006.

Respondent set the hearing of the motion for inhibition, however, to November 16, 2006 as he ordered Domingo to comment thereon.^[14]

Before her motion for inhibition could be heard, however, complainant filed on October 31, 2006 the present verified letter-complaint^[15] dated October 25, 2006 against respondent charging him for: **(1)** *gross violation of Sections 18,*^[16] *20*^[17] *and 28*^[18] *of Republic Act No. 9262 (otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004");* **(2)** *gross violation of judicial ethics and knowingly rendering an unjust judgment relative to Civil Case No. 1632;* and **(3)** *unduly and unreasonably delaying the resolution of her motion to inhibit.* She prayed that respondent "be administratively investigated and sanctioned" and, "in the meantime, be directed to inhibit himself from further hearing [the civil] case due to obvious partiality."

By 1st Indorsement^[19] dated November 2, 2006, complainant's letter-complaint was endorsed by the Office of the Chief Justice for appropriate action to the Office of the Court Administrator (OCA).

In the meantime, Domingo submitted in the civil case his comment^[20] on complainant's motion for inhibition, disputing complainant's charge of partiality on the part of respondent towards him, contending that respondent's orders were properly issued in the exercise of his sound discretion.

By Order^[21] of November 3, 2006, respondent denied complainant's motion for reconsideration of the September 22, 2005 Order, as well as her motion for inhibition. Complainant filed a motion for reconsideration of the Order of November 3, 2006, stressing that with her filing of the present administrative complaint, respondent "should inhibit himself from further hearing the civil case."^[22] This motion was denied by Order^[23] dated January 3, 2007.

Back to the administrative complaint, respondent, in compliance with the directive^[24] of the OCA, filed his Answer/Comment^[25] thereon dated January 12, 2007 denying the charges leveled against him and praying that the complaint be dismissed for being totally unfounded.

By Resolution of June 13, 2007, this Court's Second Division referred the administrative case to Executive Justice Teresita Dy-Liacco Flores of the Court of Appeals (CA), Mindanao Station, for assignment by raffle among the associate justices there, and for investigation, report and recommendation. The case was raffled to Associate Justice Edgardo A. Camello.

By his December 14, 2007 Investigation Report, Justice Camello recommended the dismissal of the administrative complaint "for insufficiency of evidence,"^[26] Nevertheless, he went on to recommend that "respondent should be strongly reminded to refrain from entertaining litigants outside the court premises to avoid

any suspicion of impropriety,"^[27] in light of respondent's admission in his Affidavit proffered during the hearing of the administrative complaint, viz: that "Domingo Ong visited [his] house one evening complaining that he had been deceived by his counsel and Lorena Ong because sometime in December 2006, while he and his wife Lorena were observing the alternate shared custody of their minor children, his lawyer told him to allow Lorena to take custody of Lorenz during the Christmas break, and assured him that Lorena will return the child to him," but that "since February 11, 2007, Lorena did not anymore return Lorenz until [that day]"; and that again, "on September 4, 2007, Domingo Ong visited [his] house to complain that Lorena brainwashed Lorenz against [him] because Lorenz suddenly turned against him and did not anymore return to him."^[28]

Thus, the Investigating Justice reported:

Parenthetically, the admission made by respondent in his affidavit that one of the parties in Civil Case No. 1632-24, Domingo, visited him twice in his residence during the pendency of the case below should not be taken against him for purposes of the present administrative charge. That matter was not even alleged in the complaint. It was the respondent who volunteered the information in his affidavit presented during the hearing in order to prove that he is hiding nothing and to prove that he is impartial in the discharge of his duties as judge. x x x. Domingo's visits (sometime in March or April 2007 and on September 4, 2007) to the house of respondent took place long after the happening of the following material events to the case, i.e., issuance of the assailed Order, the filing of the motion for inhibition, the denial of the motion for inhibition and the filing of this administrative case before the Office of the Court Administrator. Apparently, the purpose of Domingo's visit was to complain to the respondent about what Domingo perceived as connivance between his lawyer and complainant Lorena, which resulted in the refusal of minor Lorenzo Ruiz to be under his custody, a situation discordant to the court-ordered shared custody over the feuding couple's children for the three-month trial period. The complainant presented no proof that the visits of Domingo were upon the prodding of the respondent. The circumstances *per se* could hardly be equated with the improper conduct of fraternizing with litigants. Still and all, the broad injunction of *Section 1, Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary* that judges should avoid impropriety and the appearance of impropriety in all their activities, warrants a strong reminder to the respondent that he should in the future refrain from entertaining any party to a case pending before his sala outside the court premises most especially in his own residence, for no matter how innocent such act might be in truth, the probability of its being publicly perceived as malicious is not remote at all. x x x. Like Caesar's wife, a judge must not only be pure but beyond suspicion (*State Prosecutors v. Muro*, A.M. No. RTJ-92-876, Sept. 19, 1994 (Underscoring supplied)).^[29]

The recommendation is well-taken.

The established rule is that in administrative proceedings, the complainant bears the onus of proving, in general by substantial evidence, the allegations in the complaint.^[30] Such burden must overcome the presumption of regularity in the performance

of a judge's functions. The presumption necessarily springs from a judge's solemn oath of office to administer justice according to the law and evidence, without respect to any person and without fear or favor.^[31] Complainant failed to discharge the onus, however.

Under the first ground of her complaint, complainant alleged that respondent "grossly violated" R.A. No. 9262, specifically **Sections 18** (requiring prompt action for any application for protection order), **20** (treating an application for a protection order a priority over all other cases) and **28** (granting to the mother automatic custody of "children below seven years old or older but with mental or physical disabilities," "unless the court finds compelling reasons to order otherwise").

Complainant contradicted herself, however, when she stated in her complaint that upon filing her motion for protection order, which mainly prayed that the custody of her children be given to her, respondent acted properly, thus:

When I filed through my counsel a motion for provisional remedies among others, the custody of my children especially Maria Monica Loren who is still below seven years old, Judge Dinopol was initially on the right tract (sic). He issued an order dated April 19, 2005 giving the defendant, my husband, five days from receipt of the order to show cause why the custody of my children should not be given to me as provided for in Article 213 of the Family Code x x x. On June 23, 2005, he issued an order directing the defendant to turn over to me the custody of my daughter Monica Loren Ong x x x. I even started to testify in court insofar as the prayer for the custody of my son, Lorenzo Ruiz Ong who is already over seven years old, is concerned. On July 14, 2005, defendant through his counsel filed a motion for reconsideration of the order dated June 23, 2005 x x x. The motion was denied in Judge Dinopol's order dated September 15, 2005 x x x.^[32] (Underscoring supplied)

Complainant anchors the second ground of her complaint on respondent's issuance of the Order of September 22, 2005 giving back the temporary custody of the children to Domingo "until the hearing on January 19, 2006." She contends that respondent grossly violated judicial ethical standards and knowingly rendered an unjust judgment in the civil case, thus:

x x x. In the order dated September 22, 2005, Judge Dinopol made a sudden turn around and revised his previous orders granting me the custody of my daughter who is below seven years old. His reason was his alleged "unannounced interview" with the children on September 15, 2005 x x x where the children expressed their desire to stay with their father and that I could not devote my quality time with the children because I was enrolled at a nursing school. I had gone over the Rules on Civil Procedure and other provisions of the Rules of Court, but I had never encountered such procedures as "unannounced interview" which was conducted by Judge Dinopol. x x x. It is obvious that the "unannounced interview" was made as a result of the out-of-court discussion of defendant's counsel and Judge Dinopol, a gross violation of judicial ethical standards. x x x. The other reason for Judge Dinopol's reversal of his previous orders that I could not devote quality time with