

## SECOND DIVISION

**[ A.M. No. RTJ-06-2026 (Formerly OCA IPI No. 06-2496-RTJ), March 04, 2009 ]**

**ATTY. ANTONIO G. CAÑEDA, COMPLAINANT, VS. JUDGE ERIC F. MENCHAVEZ, RESPONDENT.**

### DECISION

**BRION, J.:**

Before us is the Complaint filed on April 12, 2006 by Atty. Antonio G. Cañeda (*complainant*) against Presiding Judge Eric F. Menchavez (*respondent*) of the Regional Trial Court (RTC), Branch 21, Cebu City, for violation of Section 6(3), Rule 140 of the Rules of Court in relation with Canons 2.01, 3.01 and 3.03 of the Code of Judicial Conduct for the Philippine Judiciary.<sup>[1]</sup>

#### The Antecedents

The complainant is the counsel of one of the defendants, Virginia Borromeo Guzman, in Civil Case No. CEB-30956, entitled *Roberto Borromeo, et al. v. Heirs of Juan Borromeo*, for judicial partition, pending with the respondent's RTC Branch 21. Lawyer Pepito C. Suello is complainant's collaborating counsel in the case. Both Ms. Guzman and Atty. Suello executed affidavits in connection with the complaint.<sup>[2]</sup>

It appears from the complaint and the supporting affidavits that the respondent called the partition case for hearing on December 14, 2005 at 11 o'clock in the morning. Due to be taken up was the motion to segregate the inheritance shares of one of the plaintiffs, Roberto Borromeo.

The respondent asked the complainant at the start of the hearing if the defendants he was representing were amenable to a partition. The complainant answered in the affirmative, subject to the conditions that the counsel for the plaintiffs would withdraw a pending motion for reconsideration before the Supreme Court to clear one of the areas subject to partition of squatters, and would secure a writ of execution.

Atty. Delfin V. Nacua (*Atty. Nacua*), counsel for the plaintiffs, replied that he could not withdraw the motion before the Supreme Court. At this point, the respondent asked the complainant if he was amenable to segregate only the share of Roberto Borromeo. The complainant expressed reservations about it. Instead he advanced the idea that the parties talk to each other through mediation. The respondent thereupon blurted out "*never mind mediation, walay hinundan na (it's useless).*"

When the respondent checked on the progress of the case, the complainant remarked that it was being delayed because no proper summons (*by publication*) had been served on the defendants who were residing outside the country. The

respondent reacted by angrily banging his gavel and shouting, "*I said no publication period.*" He banged the gavel so hard that it broke, its head flying into the air and almost hitting complainant. The respondent then slammed the table with his hand and then went inside his chambers. After a while, he came back with a holstered handgun and smashed it on the table, as he angrily shouted at complainant, "*Unsay gusto nimo? Yawa! Gahig ulo!*" (*What do you want? Devil! Hardheaded!*)

A lawyer, also attending the hearing and who was near the respondent's table, moved for a recess. A member of the respondent's staff then gave him a glass of water. The complainant apologized for causing the temper of the respondent to rise, but the respondent ignored him and called for the next case. At that point, the complainant asked for permission to leave.

The complainant regarded the respondent's act of challenging him inside the courtroom in the presence of many people as an act of impropriety under Section 6(3), Rule 140 of the Rules of Court, in relation with the Code of Judicial Conduct, Canons 2.01, 3.01 and 3.03. The complainant maintained that the conduct of the respondent inside the court not only tarnished the name of the judiciary he represents but constituted an insult to the law profession; that the respondent is not above the law; and that the gun is not an emblem of authority.

Additionally, complainant perceived the respondent to be biased in favor of the plaintiffs inasmuch as the respondent had been convincing him to agree to the plaintiffs' position.

In a 1<sup>st</sup> Indorsement dated April 24, 2006, the Office of the Court Administrator (OCA) referred the complaint to the respondent and required him to comment within ten (10) days from receipt of the indorsement. The OCA further required the respondent to comment on why no disciplinary action should be taken against him for violation of his professional responsibility.<sup>[3]</sup>

The respondent duly submitted his Comment dated May 18, 2006.<sup>[4]</sup> It was corroborated by the sworn statements of Atty. Nacua and Sandra A. Gloria (the court stenographer of RTC, Branch 21).<sup>[5]</sup>

The respondent explained that the complainant, while arguing at the hearing for his client, refused to stop talking even when signaled by the Court to stop. He told complainant that summons by publication was no longer proper because summons by personal service had already been effected on defendants. The complainant simply continued to argue and even became aggressive, belligerent and disrespectful, causing the respondent to flare up and bang his gavel.

The respondent denied that the gavel broke with its head almost hitting the complainant; the gavel is being used up to the present time and the complainant was never in danger of being hit. He simply refused to stop arguing until the atmosphere became so heated that one of the lawyers, Atty. Elias Espinosa, had to move for a recess. Thereupon, the respondent went inside his chambers, drank a glass of water to cool himself off, and reflected on what had just transpired. He sensed he had reason to fear for his life so he decided to equip himself with his licensed firearm and to place it on the table, preparing for the worst. He never pointed nor brandished the firearm at anyone, as it remained in its holster at all

times.

The respondent likewise denied that he had smashed the gun on the table as it could fire or otherwise could have been damaged. After he asked complainant "*what do you want?*" the lawyer apologized for causing him to raise his voice and to blow his top. He ignored the complainant despite the apology and considered the incidents submitted for resolution.

The respondent also denied the allegation of bias, as allegedly shown by the offer of his chambers to the parties for possible amicable settlement talks. He did so because the parties are members of the same family and a settlement would have been the most beneficial solution. If he blew his top at all, he was led to it by the complainant's disrespect and discourtesy to the court. It was only upon seeing the gun that the complainant calmed down, behaved, and apologized to the court. He sincerely believed that under the circumstances, he employed the means necessary to maintain order in the court.

Complainant filed a reply dated June 8, 2006<sup>[6]</sup> to respondent's comment essentially reiterating the allegations of the complaint.

### **The OCA Report/Recommendation**

In its submission dated August 25, 2006, the OCA found substantial evidence to support the conclusion that the respondent is administratively liable for conduct unbecoming a judge.<sup>[7]</sup> The OCA noted that the respondent admitted the following:

1. The aggressive, belligerent and disrespectful conduct of the complainant caused him to flare up or to blow his top and bang his gavel on the table; and
2. He equipped himself with his gun by bringing it outside and placing it on the table, as he asked complainant, "*what do you want?*"

With the foregoing admissions, the OCA found credible the complainant's allegations that the respondent uttered such statements as "*never mind mediation, walay hinundan na*" (*it's useless*), "*I said no publication period.*" "*Yawa! Gahig ulo.*" (*Devil, Hardheaded!*) in the course of his altercation with the complainant. It faulted the respondent for overstepping the norms of propriety demanded of a member of the bench by losing his cool and uttering intemperate language during the hearing. It opined that the belligerent, aggressive and disrespectful language of complainant was no excuse for what he said to the complainant.

The OCA also characterized as highly irresponsible and improper the respondent's acts of bringing his handgun into the courtroom, placing it on his table, and threateningly asking the complainant, "*what do you want?*" This reaction was uncalled for as the respondent has ample powers to address any hostile or unfriendly situation in his court.

The OCA recommended that the respondent be made liable for conduct unbecoming a judge and fined in the amount of P5,000.00, with a warning against the commission of the same or a similar infraction in the future.

### **The Court's Ruling**