

SECOND DIVISION

[**A.M. No. RTJ-08-2101 (Formerly OCA-I.P.I. No. 07-2763-RTJ), July 23, 2008**]

EMIL J. BIGGEL, COMPLAINANT, VS. JUDGE FERNANDO VIL. PAMINTUAN, REGIONAL TRIAL COURT, BRANCH 3, BAGUIO CITY, RESPONDENT.

R E S O L U T I O N

TINGA, J.:

This is an administrative complaint against respondent judge Fernando Vil. Pamintuan of the Regional Trial Court of Baguio City, Branch 3, for manifest partiality, gross misconduct, ignorance of the law and unjust and malicious delay in the resolution of incidents in Criminal Case No. 25383-R entitled "*People of the Philippines v. Emil Biggel*," a case for estafa

In a verified Complaint ^[1] dated 5 September 2006, complainant narrated that after the complaint for estafa had been filed against him, the assistant city prosecutor issued a resolution, subsequently approved by the city prosecutor, recommending the filing of an information in court with a recommended bail of P60,000.00. Complainant stated that this was made without the benefit of a preliminary investigation and a subpoena sent to him as the Assistant City Prosecutor had relied on the bare assertions of private complainant's counsel in the criminal case that complainant had no address on record. Thereafter, the recommended bail was increased to P600,000.00 by the City Prosecutor allegedly on request.

Thus, complainant's counsel filed a motion for reinvestigation before the sala of respondent judge which was set for hearing on 13 January 2006, praying that the criminal case be remanded to the Prosecutor's Office of Baguio City for the conduct of the requisite preliminary investigation. On 9 January 2006, respondent judge issued an order directing Public Prosecutor Raymond Tabangin to file his comment on the motion. He also rescheduled the hearing of the motion to 25 January 2006. On the rescheduled date of hearing, in view of Public Prosecutor Tabangin's failure to file a comment, respondent judge reset the hearing to 1 March 2006 as well as gave Public Prosecutor Tagudar, who was new in the case, time to file her comment.

On 21 February 2006, complainant's counsel filed a manifestation and motion praying that his motion for reinvestigation be deemed submitted for resolution as Public Prosecutor Tagudar failed to file the required comment. On 1 March 2006, complainant's counsel again manifested that since the prosecution had failed to file its comment, the motion should be deemed submitted for resolution. The parties were then brought inside the judge's chambers and upon respondent judge's prodding, complainant's counsel agreed to the request of Public Prosecutor Tabangin, who had reappeared in the case, that he be given another period of five (5) days or until 6 March 2006 to file his comment. Complainant was likewise given

the same period of time to file his reply upon receipt of the comment.

On 6 March 2006, Public Prosecutor Tabangin filed his comment which complainant received on 10 March 2006. In said comment, the public prosecutor contended that there was no legal infirmity in the certification issued by Assistant City Prosecutor Centeno which stated that the accused's (complainant in this administrative matter) "not (being) a permanent resident of the Philippines tends to indicate that the address so given was only a temporary one" and that "therefore with that basis it could be assumed that accused cannot be subpoenaed." [2] The public prosecutor likewise contended that the certification issued by the Assistant City Prosecutor that a preliminary investigation had been conducted should be presumed correct pursuant to the well-entrenched presumption of regularity in the performance of official duties.

Immediately thereafter, on 7 March 2006, respondent judge issued an order denying the motion for reinvestigation without awaiting complainant's reply to the comment. In view of this incident, on 23 March 2006, complainant filed a motion for inhibition and motion for reconsideration of the order denying the motion for reinvestigation. On 17 April 2006, respondent judge denied the motion for his inhibition and directed Public Prosecutor Tabangin to file his comment to the motion for reconsideration.

On 11 May 2006, complainant filed a manifestation and motion praying that his motion for reconsideration be deemed submitted for resolution in view of the failure of the public prosecutor to file his comment. On 26 May 2006, complainant filed a motion for early resolution of his motion for reconsideration. However, despite several inquiries into the status of said motion, the motion remained unresolved, for which reason complainant filed on 19 June 2006 a motion reminding the court that his motion for reconsideration had not been acted upon.

On 24 July 2006, complainant filed a motion to lift the hold departure order/resolve the motion for reconsideration. On 26 July 2006, complainant received a copy of the Order dated 14 July 2006 granting his motion for reconsideration and directing the public prosecutor to conduct the reinvestigation within thirty (30) days.

On 4 August 2006, complainant received the Public Prosecutor's comment on his motion to lift the hold departure order, [3] complainant's reply to which was filed on 16 August 2006. On 29 August 2006, complainant filed a motion to resolve to no avail.

In his Comment [4] dated 9 November 2006, respondent judge pointed out that he had already voluntarily inhibited himself from the criminal case on 26 September 2006, or before receipt of the instant administrative complaint. He moreover stated that it was his pairing judge who had issued the warrant of arrest in the criminal case as he was on leave at the time. In addition, he claimed that he was not responsible for the increase of the amount of bail but rather for its reduction to P300,000.00, and that upon his return to office on 19 December 2006, he set the arraignment of complainant on 25 January 2007.

Anent complainant's motion for reinvestigation, respondent judge explained that Public Prosecutor Tabangin appeared in court only on behalf of Public Prosecutor Tagudar who was then on an extended leave. Naturally, he stated, as Public