

EN BANC

[A.M. No. RTJ-08-2144 (Formerly OCA IPI No. 06-2417-RTJ), November 03, 2008]

ATTY. RAUL H. SESBREÑO, COMPLAINANT, VS. JUDGE IRENEO L. GAKO, JR., JUDGE, REGIONAL TRIAL COURT (RTC), BRANCH 5, CEBU CITY, AND MANUEL G. NOLLORA, CLERK OF COURT, RTC, BR. 5, CEBU CITY, RESPONDENTS.

DECISION

LEONARDO-DE CASTRO, J.:

This administrative case against Judge Ireneo L. Gako, Jr. and Clerk of Court Manuel G. Nollora, both of the Regional Trial Court (RTC), Branch 5, Cebu City, stemmed from a complaint^[1] filed by Atty. Raul H. Sesbreño charging Judge Gako with (a) violation of Rule 3.05, Canon 3, in relation to Rule 1.02, Canon 2 of the Code of Judicial Conduct for his delay in resolving a Motion for Reconsideration filed in Special Proceedings No. 916-R entitled "*Intestate Estate of Vito Borromeo*," (b) violation of Canon 2 of the said Code for acting on the said case after he had recused himself from the case, and (c) incompetence, together with Clerk of Court Nollora.

The complainant alleged that on June 27, 2003, he filed a motion for reconsideration of the Order^[2] dated June 2, 2003 in Special Proceedings No. 916-R which was considered submitted for resolution per the Order dated July 4, 2003. According to the complainant, respondent Judge Gako deliberately failed to resolve the motion within the ninety (90)-day period prescribed by the Constitution, and in clear violation of the Code of Judicial Conduct, particularly Rule 3.05, Canon 3, mandating a judge to dispose of the court's business promptly and to decide cases within the required periods, and Rule 1.02, Canon 2, requiring judges to administer justice without delay.

The complainant further alleged that on April 26, 2004, respondent judge issued an Order inhibiting himself from handling Special Proceedings No. 916-R. However, almost five (5) months after such inhibition, respondent judge still continued to act on the said case by issuing an Order dated September 3, 2004 granting the Motion for Clarification/ Reconsideration filed by the heirs of Patrocino Borromeo Herrera. This, according to the complainant, violated Canon 2 of the Code of Judicial Conduct, requiring a judge to avoid impropriety and the appearance of impropriety in all activities.

Complainant also charged respondent judge and his Clerk of Court of incompetence for failure to keep all the records of the case intact and for proceeding to resolve the case with incomplete records. Complainant asserted that respondents' incompetency is evident from the fact that when they turned over the records of the case to the RTC, Cebu City, Branch 9, only 16 out of the 72 volumes were accounted

for as shown by the receipts signed by Clerk of Court Christine Doller on June 17, 2005^[3] and August 11, 2005.^[4]

In his 1st Indorsement dated January 19, 2006, Court Administrator Presbitero J. Velasco, Jr.^[5] referred the letter-complaint to respondent judge for his comment within ten (10) days from receipt of the same. Respondent judge was likewise directed to comment on why no disciplinary action should be taken against him for violation of his professional responsibility as a lawyer pursuant to the resolution dated September 17, 2002 of the Court *En Banc* in A.M. 02-9-02-SC.^[6] Said letter-complaint was also referred to Clerk of Court Nollora who filed his comment on March 20, 2006.^[7]

When respondent judge failed to comply with the 1st Indorsement, then Court Administrator Velasco sent a 1st Tracer dated March 30, 2006 to respondent judge reiterating the directive for him to file his comment within five (5) days from receipt thereof, otherwise, the matter will be submitted to the Court without his comment.^[8] Again, respondent judge failed to comply.

For refusing to submit his comment despite the two (2) directives of the Office of the Court Administrator (OCA), the Court issued a Resolution^[9] directing respondent judge to show cause why he should not be administratively dealt with and to submit the required comment both within five (5) days from receipt thereof, with warning that in case of failure to comply, the Court shall take the necessary action against him and decide the administrative complaint on the basis of the record on hand.

On March 15, 2007, respondent judge finally filed his Compliance^[10] with an opening statement that he compulsorily retired from the service on September 20, 2006 and while working on his retirement papers, he suffered a mild stroke which necessitated his rehabilitation in his home.

Respondent judge explained that the instant administrative matter stemmed from his issuance of the Order dated June 2, 2003 denying Virginia Lim Sesbreño's claim for attorney's fees from the estate of Vito Borromeo. From the denial of his claim, complainant, Atty. Raul Sesbreño, filed a motion for reconsideration. According to respondent judge, he did not act on the said motion because he believed that Virginia Lim Sesbreño should be the person who should have filed the motion for reconsideration and not herein complainant. Subsequently, respondent judge issued an order voluntarily inhibiting himself from the case because complainant had already filed the instant administrative complaint against him.

With regard to his action on the motion filed by the heirs of Patrocino Borromeo Herrera despite his Order inhibiting himself from proceeding with the said case, respondent judge reasoned out that since the inhibition was voluntary on his part as the presiding judge, he felt then that it was also his discretion to disregard his Order.

Explaining on how he was able to resolve the motion/s filed in Special Proceedings No. 916-R, despite the incomplete records of the said case, respondent judge maintained that his resolutions were based on the pertinent records of the case that were forwarded to him.

On his part, respondent Clerk of Court Nollora admitted in his Comment^[11] dated February 6, 2006 that only 16 volumes of the records of the case were turned over by their sala (Branch 5) to Branch 9. However, he hastened to add that only 16 volumes were received by them from the Office of the Clerk of Court. According to Nollora, he did not ask for the other volumes because there was no order from the court and that the motions and incidents submitted for resolution can be resolved even without reference to the other records of the case. He added that the remaining volumes would only congest their already filled mini-bodega and steel cabinets.

Upon evaluation of the case, the OCA, in its Memorandum Report^[12] dated June 12, 2008, made the following recommendations:

(a) The instant administrative complaint be RE-DOCKETED as a regular administrative matter;

(b) Clerk of Court Manuel G. Nollora, Regional Trial Court, Branch 5, Cebu City be (a) found guilty of simple neglect of duty, (b) FINED in the amount equivalent to one (1) month salary, and (C) STERNLY WARNED that a repetition of the same or similar offense shall be dealt with more severely, and

(c) Former Presiding Judge Ireneo G. Gako, Regional Trial Court, Branch 5, Cebu City be (a) found guilty of undue delay in rendering a decision or order and of violating a Supreme Court Circular, (b) FINED in the amount of Forty Thousand Pesos (P40,000.00). Considering that respondent judge has already returned from the judicial service, let the same amount be DEDUCTED from his retirement benefits.

The Court agrees with the findings of the OCA.

The Constitution mandates all lower courts to decide or resolve cases or matters within three (3) months from their date of submission. Accordingly, Rules 1.02 of Canon 1 and 3.05 of Canon 3 of the Code of Judicial Conduct direct judges to administer justice impartially and without delay and to dispose of the court's business promptly and decide cases within the required periods.

In line with the foregoing, the Court has laid down administrative guidelines to ensure the prompt disposition of judicial business. Thus, SC Administrative Circular No. 13-87 provides:

3. Judges shall observe scrupulously the periods prescribed by Article VIII, Section 15 of the Constitution for the adjudication and resolution of all cases or matters submitted in their courts. Thus, all cases or matters must be decided or resolved within twelve months from date of submission by all lower collegiate courts while all other lower courts are given a period of three months to do so. x x x.

Furthermore, SC Administrative Circular No. 1-88 states:

- 6.1 All Presiding Judges must endeavor to act promptly on all motions and interlocutory matters pending before their courts. x x x.