

FIRST DIVISION

[**A.M. NO. MTJ-07-1672 (FORMERLY OCA I.P.I. NO. 04-1600-MTJ), July 09, 2007**]

CAPT. SALVADOR BERNALDEZ (RET.), COMPLAINANT, VS. JUDGE HENRY B. AVELINO AND CLERK OF COURT GUILLERMO E. ACOLOLA, MUNICIPAL CIRCUIT TRIAL COURT OF PANAY-PONTEVEDRA, PONTEVEDRA, CAPIZ, RESPONDENTS.

R E S O L U T I O N

CORONA, J.:

This is an administrative complaint^[1] for abuse of authority against respondents Judge Henry B. Avelino and clerk of court Guillermo E. Acolola, both of the Municipal Circuit Trial Court of Panay-Pontevedra in Pontevedra, Capiz (MCTC-Pontevedra).

On December 2, 1997, complainant Capt. Salvador Bernaldez (ret.)^[2] filed a case for unlawful detainer, docketed as Civil Case No. 371, against Castor Calinao, Jr. in the MCTC-Pontevedra.^[3] On January 2, 1998, Calinao asked for the dismissal of the action,^[4] contending that the MCTC lacked jurisdiction over the subject matter.^[5]

A preliminary conference was held on January 27, 1998.^[6] Respondent judge, finding a semblance of an agrarian dispute, referred the matter to the Department of Agrarian Reform (DAR)^[7] for it to determine whether the case was appropriate for trial or not.^[8]

On April 21, 1998, the provincial agrarian reform officer advised respondent judge that pursuant to Section 76 of the Comprehensive Agrarian Reform Law:^[9]

[T]he court can take cognizance of the case for the purpose of determining whether or not it has jurisdiction to try [this] case because of the defense of tenancy interposed by the defendant.^[10]

Certain that the MCTC had jurisdiction over the subject matter, respondent clerk of court scheduled a preliminary conference^[11] on June 19, 1998. The complainant filed an urgent motion for postponement due to unavailability of counsel.^[12] The motion was granted and the preliminary conference was moved to August 28, 1998.^[13] But on that date, the complainant moved for another postponement because of the unavailability of counsel.^[14] The motion was again granted and respondent clerk of court rescheduled the preliminary conference on October 9, 1998,^[15] and again on November 13, 1998.^[16] Complainant filed an urgent motion to postpone it because his attorney-in-fact had to go to Manila.^[17] The motion was again granted, for the third time.

The preliminary conference was repeatedly postponed and rescheduled several more times in the following years.^[18]

On July 3, 2000, respondent judge denied Calinao's motion to dismiss.^[19] The case was once more set for preliminary conference on August 21, 2000 and April 24, 2001 but both (scheduled) preliminary conferences did not push through.^[20] Thereafter, no further proceedings took place and the case remained dormant for almost two years.

On January 28, 2003, the complainant moved to set the case for preliminary conference.^[21] Acting on the motion, respondent clerk of court scheduled one on March 4, 2003^[22] but respondent judge postponed it due to an illness.^[23] No subsequent preliminary conference was scheduled and the case again remained idle.

On July 5, 2004, the complainant filed this complaint in the Office of the Court Administrator (OCA). He alleged that respondents abused their authority in inordinately delaying the resolution of Civil Case No. 371^[24] which was governed by the Rule on Summary Procedure (the rule). Despite the specific mandate of the rule to dispense with cases falling under its scope^[25] within a specified period,^[26] Civil Case No. 371 remained unresolved for almost 10 years.

Respondents denied the complainant's allegation.

According to respondent judge, the delay in resolving Civil Case No. 371 was not his fault. He claimed that the complainant filed numerous motions for postponement (of the scheduled preliminary conferences) which delayed the case. ^[27] He, on the other hand, cancelled only one preliminary conference (due to an illness) and ordered the respondent clerk of court to inform the parties beforehand of its postponement.^[28] Hence, the delay was attributable to the complainant. Moreover, aside from being the presiding judge of MCTC- Pontevedra, respondent judge was assigned to other courts due to vacancies and/or the inhibition of other judges.^[29] These additional assignments made it difficult for him to decide his cases within the prescribed period.^[30]

Respondent clerk of court reiterated the arguments of respondent judge and added that the complainant should have simply called his attention (and informed him that he wanted to present evidence) instead of filing this case.^[31]

After considering the respective contentions of the complainant and respondents, the OCA concluded that, because the complainant asked for the postponements, the delay could not solely be due to respondents. Respondent judge's leniency in granting postponements did not amount to patent and gross abuse of power since he neither evaded nor refused to perform his legal duty. Nevertheless, respondent judge still could not evade liability since the case had been pending for almost a decade despite the fact that it involved relatively simple summary proceedings. Hence, according to the OCA, he was liable for undue delay in disposing of his cases.^[32]

Undue delay in the disposition of cases is a less serious charge.^[33] Section 11(B) of Rule 140 of the Rules of Court provides:

B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed:

1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or,
2. A fine of more than P10,000.00 but not exceeding P20,000.

The records of OCA reveal that, in 2005, respondent judge was administratively sanctioned for his failure to decide cases within the reglementary period.^[34] Since this complaint involved a similar offense, the OCA recommended that the maximum fine of P20,000 be imposed and that respondent judge be directed to immediately decide the case.^[35]

With regard to the respondent clerk of court, the OCA found that he faithfully performed his administrative duty as clerk of court by scheduling preliminary conferences in Civil Case No. 371.^[36] For this reason, the OCA recommended that respondent clerk of court be exonerated.^[37]

We adopt the findings of the OCA with modifications.

RESPONDENT JUDGE DESERVES A MORE SEVERE SANCTION

Delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute. ^[38] Article III, Section 16 of the 1987 Constitution provides that:

All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial and administrative bodies.

Pursuant to this mandate, Section 5, Canon 6 of the Code of Judicial Conduct instructs judges to "perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness."^[39] Similarly, the Code of Judicial Ethics holds that a judge should be "prompt in disposing of all matters submitted to him, remembering that justice delayed is often justice denied."^[40]

Civil Case No. 371 was an unlawful detainer case. Its prompt resolution was a matter of public policy as unlawful detainer cases^[41] are subject to summary procedure. The rule was adopted to enforce the constitutional rights of litigants to the speedy disposition of cases.^[42] Hence, it is disappointing when it is the judge himself who causes the delay.^[43]

Respondent judge could have facilitated the prompt disposition of Civil Case No. 371. He could have denied the motions for postponement since he had full control of the proceedings. He could have even dismissed the action for failure to prosecute.^[44] Instead, he allowed the case to remain pending for years.

Moreover, his additional assignments were no excuse for the delay in resolving the case. We have held that the designation of a judge to preside over another sala is an insufficient reason to justify delay in deciding a case.^[45]

As noted by the OCA, this was not the first time respondent judge failed to act promptly on matters pending in his court. He was sanctioned for gross inefficiency in 2005.^[46] For this reason, we find that the recommended fine of P20,000 is not sufficient. He should also be suspended from office for three months without pay.

RESPONDENT CLERK OF COURT IS LIABLE FOR SIMPLE NEGLIGENCE OF DUTY

Branch clerks of court are administrative assistants of presiding judges. Their duty is to assist in the management of the calendar of the court and all other matters not involving the exercise of discretion or judgment of judges. Clerks of court must diligently supervise and manage court dockets and records.^[47] The 2002 Manual of Clerks of Court provides:

1. CLERK OF COURT^[48]

1.1. Office of the Clerk of Court

xxx

1.1.1. Adjudicative Functions

xxx

c. Prepares and signs monthly report of cases.^[49]

1.1.2. Non-Adjudicative Functions

xxx

i. Studies and recommends to the Executive Judge ways and means to improve both adjudicative and administrative support;

xxx^[50]

Indeed, clerks of first level courts share in the duty to efficiently manage the court system. For this reason, they are expected to act promptly on their assigned tasks to prevent the clogging of cases in court and to assist in the administration of justice without delay.^[51]

While clerks of court are not guardians of a judge's responsibility, they are expected to assist in the speedy disposition of justice.^[52] Thus, as an administrative assistant, respondent clerk of court should have reminded respondent judge that Civil Case No. 371 had been pending for almost 10 years and that it called for immediate action, being summary in nature. He should have noted these on the monthly reports^[53] he submitted to respondent judge.^[54] Moreover, he should have adopted a system whereby long-standing cases could be given priority over more recent ones. Because Civil Case No. 371 remained undecided for an unreasonable length of time, respondent clerk of court obviously failed to perform what was expected of him.

We thus find him liable for simple neglect of duty. But since this is his first offense, he deserves some leniency.

WHEREFORE, Judge Henry B. Avelino is hereby found **GUILTY** of violating Section 9(1), Rule 140 of the Rules of Court, Section 5, Canon 6 of the Code of Judicial Conduct, and the provision on promptness (no. 6) of the Code of Judicial Ethics. Accordingly, he is **SUSPENDED** from office without salary and benefits for three months^[55] effective upon notice hereof and ordered to pay a fine of P20,000.00. He is warned that a repetition of the same or similar offense shall be dealt with more severely. He is also directed to promptly dispose of Civil Case No. 371.

Clerk of court Guillermo E. Acolola is found **GUILTY** of simple neglect of duty and is hereby **SUSPENDED** from office without salary and benefits for three months.^[56] He is warned that a repetition of the same or similar offense shall be dealt with more severely.

Let a copy of this resolution be attached to the personal records of respondents in the Office of Administrative Services, Office of the Court Administrator.

SO ORDERED

*Puno, C.J., (Chairperson), Azcuna, and Garcia, JJ., concur.
Sandoval-Gutierrez, J., on leave.*

[1] Dated July 5, 2004.

[2] Complainant appointed his sister, Elda Vigo, as his attorney-in-fact.

[3] *Rollo*, pp. 2-4.

[4] *Id.*

[5] *Id.*, p. 26. The first page of the paper Calinao filed is missing. It is not known if the paper he filed was an answer or a motion to dismiss. Based on the records, respondent judge did not issue an order resolving the matter.

[6] Notice dated January 12, 1998, *id.*, p. 24.

[7] Reply of Provincial Agrarian Reform Officer, *id.*, p. 22.

[8] Respondent judge's comment, *id.*, p. 94.

[9] RA 6657, Sec. 76. The provision states that:

Section 76. *Repealing Clause.* Section 35 of Republic Act Number 3844, Presidential Decree Number 316, the last two paragraphs of Section 12, Presidential Decree Number 1038 and all other laws, decrees, executive orders, rules, regulations, issuances or parts thereof inconsistent with this act are hereby repealed or amended according.