

EN BANC

[A.M. No. MTJ-99-1238, January 24, 2003]

**ENGR. EDGARDO R. TORCENDE, COMPLAINANT, VS. JUDGE
AGUSTIN T. SARDIDO, MUNICIPAL TRIAL COURT IN CITIES,
KORONADAL CITY, SOUTH COTABATO, RESPONDENT.**

RESOLUTION

PER CURIAM:

Time and again the Court has reminded all those who don the judicial robe that a judge should be the embodiment of competence, integrity and independence.^[1] He should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary,^[2] and to avoid impropriety and the appearance of impropriety in all activities.^[3] Along the same vein, judges are expected to be restrained and sober in their speech. Restraint is, in fact, a trait desirable in those who administer justice.^[4] Their language, both written and spoken, must be guarded and measured lest the best of intentions be misconstrued.^[5] Intemperate speech detracts from the equanimity and judiciousness that should be the constant hallmarks of a dispenser of justice.^[6]

The Court is once again called upon to reiterate these dicta in the instant administrative matter.

Complainant is the accused in two (2) criminal cases for Violation of *Batas Pambansa Blg. 22*, docketed as Criminal Cases Nos. 3422^[7] and 1010,^[8] filed by Judith Duremdes. At the time of the filing of the complaints, jurisdiction was vested in the regional trial courts. The accused was arraigned on October 11, 1993 for Criminal Case No. 3422 before Branch 24, and on November 11, 1993 in Criminal Case No. 1010 before Branch 25, both of the Regional Trial Court of Koronadal, South Cotabato. When Republic Act No. 7691 took effect on April 15, 1994 expanding the jurisdiction of Metropolitan, Municipal and Municipal Circuit Trial Courts, Criminal Case No. 3422 was transferred to the Municipal Trial Court of Koronadal, South Cotabato presided by respondent Judge. At the three (3) consecutive hearings scheduled by respondent, accused Torcende and counsel appeared but the private complainant, as well as the private and public prosecutors did not. Meanwhile, the accused submitted a "Motion to Quash" on the ground that the criminal case is violative of the constitutional prohibition against imprisonment for debt. At the hearing on February 29, 1996, the accused accompanied by a representative of his counsel arrived late. Respondent ordered the arrest of the accused and the cancellation of his bail bond, and ordered his counsel to explain in writing within five (5) days why he should not be cited for indirect contempt of court,^[9] for failure to personally appear at the hearing. On an urgent motion by the accused, the respondent judge recalled the warrant of arrest and reinstated the bail bond.^[10] On March 20, 1996, respondent judge denied the "Motion to Quash."

At the scheduled hearing on May 9, 1996, the accused again appeared without his counsel. He filed an Omnibus Motion to: (a) bar the appearance of a private prosecutor; (b) seek a reconsideration of the order denying the "Motion to Quash"; (c) postpone the proceedings pending resolution of the motions. Respondent denied the Omnibus Motion for lack of notice of hearing and imposed a fine on counsel for accused for failure to appear and for violating the rule on motions. Accused Torcende was also ordered to reimburse the expenses incurred by private complainants in attending the hearings.^[11]

On May 21, 1996, accused filed with this Court an Affidavit-Complaint charging respondent judge with serious misconduct, oppression, corruption, falsification of public document, violation of constitutional rights and arbitrary detention. He further charged respondent with manifest partiality in the discharge of his official functions by giving unwarranted benefits, advantage or preference to both the private complainant and the prosecutors, in violation of Section 3 (e) of R.A. No. 3019, the Anti-Graft Law.^[12] More specifically, complainant Torcende alleged that respondent did not actually conduct an examination in writing and under oath of the private complainant and witnesses in the course of the preliminary investigation, as required by Rule 112 of the Revised Rules of Court. He merely issued a certification to this effect which became the basis for filing the informations; that he wrongfully and unlawfully took cognizance of Criminal Cases Nos. 3422 and 1010; and that the Order dated May 9, 1996 was falsified because respondent Judge made it appear that the accused and his counsel violated the rule on filing motions, when in fact they served a copy of the motion on the prosecution thirteen (13) days before the scheduled hearing. Moreover, the order was oppressive in that defense counsel was fined One Thousand Pesos (P1,000.00) for his failure to appear, while the accused was ordered to reimburse the expenses of private complainant. The accused explained that he and his counsel were present at all previous scheduled hearings, but they arrived late at the hearing on February 29, 1996 because their car had a flat tire. Although his counsel failed to appear on May 9, 1996, he nevertheless sent a representative who filed an Omnibus Motion.

Respondent was required to file a comment on the complaint.^[13] In his Comment,^[14] respondent explained that he conducted an examination in writing under oath of complainant and witnesses, as borne out by the written preliminary examination report submitted to the OCA; that Criminal Case No. 3422 was remanded to his court from the Regional Trial Court of Koronadal, South Cotabato, Branch 24 pursuant to R.A. No. 7691; that the order for the arrest of the accused and the cancellation of bail bond was recalled and the bail bond reinstated upon urgent motion of the accused; that the order dated May 9, 1996 was neither oppressive nor falsified but appropriate under the circumstances, considering that the omnibus motion was filed on the scheduled day of hearing without service to the public prosecutors; that counsel for accused had the perennial habit of filing motions on the very date set for trial but antedates them to make it appear that they complied with the three-day notice rule; that he did not impose sanctions on the prosecutors for their previous absences because their motions for postponement were properly filed; and that the accused was not compelled to pay the fine and to pay the expenses incurred by private complainant.

In a Resolution dated December 9, 1998,^[15] respondent was required to manifest

whether he is submitting the case on the basis of the pleadings already filed. Thereafter, respondent judge filed a "Compliance" manifesting his conformity to have the case submitted for resolution on the basis of the pleadings filed.

After evaluation, the Office of the Court Administrator (OCA) recommended that respondent be fined Twenty Thousand Pesos (P20,000.00) payable in four (4) monthly installments of Five Thousand Pesos (P5,000.00) each for having acted with bias, partiality and grave abuse of discretion in the performance of his functions.

Before addressing the issue on respondent's administrative culpability, it must be pointed out that he cannot be faulted for taking cognizance of Criminal Case No. 3422. The said case fell within the exclusive original jurisdiction of Municipal Trial Courts with the passage of R.A. No. 7691^[16] which amended B.P. Blg. 129 otherwise known as the "Judiciary Reorganization Act of 1980" by expanding the jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts. Section 2 of R.A. No. 7691 provides that-

SEC. 2. Section 32 of the same law is hereby amended to read as follows:

SEC. 32. Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial courts. - Except in cases falling within the exclusive original jurisdiction of Regional Trial Court and of the Sandiganbayan, the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts shall exercise:

(1) Exclusive original jurisdiction over all violations of city ordinances committed within their respective territorial jurisdictions; and

(2) Exclusive original jurisdiction over all offenses punishable with imprisonment not exceeding six (6) years irrespective of the amount of fine, and regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value or amount thereof: *Provided, however,* That in offenses involving damage to property through criminal negligence, they shall have exclusive original jurisdiction thereof.

The records disclose that pursuant to the provisions of the above-cited law, Criminal Case No. 3422 was remanded to the sala of respondent by the Regional Trial court of Koronadal, South Cotabato, Branch 24 in an Order dated October 17, 1994.^[17]

The manner in which respondent conducted the proceedings in Criminal Case No. 3422, however, leaves much to be desired. Indeed, the inordinate haste in which he denied outright the Omnibus Motion of the complainant exposes him to suspicion. In denying complainant's motion, respondent cited the provisions of Rule 15, Section 4 of the Rules of Court which provides that:

Notice of a motion shall be served by the applicant on shall be served by the applicant to all parties concerned, at least three (3) days before the hearing thereof, together with a copy of the motion, and of any affidavits

and other papers accompanying it. The court, however, for good cause may hear a motion on shorter notice, [e]specially on matters which the court may dispose on its own motion.^[18]

The Omnibus Motion^[19] filed by complainant sought: 1.] to bar the appearance of private prosecutor; 2.] for reconsideration of the court's order of March 20, 1996; and 3.] to postpone the initial hearing of the case set for May 9, 1996. While it was served on the public and private prosecutors on May 9, 1996, the day of the initial hearing itself, previous motions to bar appearance of the private prosecutor and for reconsideration of the March 20, 1996 Order were served thirteen (13) days before the scheduled hearing, which was way beyond the period required by the Rules.

Admittedly, complainant's motion to postpone trial was filed on the very day of the hearing. The prosecutors, however, had likewise earlier filed urgent motions for postponement on three (3) successive hearings scheduled where they did not appear, which motions for continuance were all granted. These incidents should have been considered by respondent together with the fact that the motion for postponement was the *first* filed by the accused in court. Fundamental dictates of fairness should have prompted respondent to give complainant the same measure of liberality he accorded the prosecution.

The grant or denial of a motion for postponement is addressed to the sound discretion of the court, which should always be predicated on the consideration that more than the mere convenience of the courts or of the parties in the case, the ends of justice and fairness should be served thereby. After all, postponements and continuances are part and parcel of our procedural system of dispensing justice."^[20] When no substantial rights are affected and the intention to delay is not manifest with the corresponding motion to transfer the hearing having been filed accordingly, it is sound judicial discretion to allow the same to the end that the merits of the case may be fully ventilated.^[21] Unless grave abuse of discretion is shown, such discretion will not be interfered with either by mandamus or appeal.^[22]

With regard to the matter of contempt, it must be remembered that the power to punish for contempt is inherent in all courts so as to preserve order in judicial proceedings as well as to uphold the administration of justice.^[23] The courts must exercise the power of contempt for purposes that are impersonal because that power is intended as a safeguard not for the judges but for the functions they exercise.^[24] Thus, judges have time and again been enjoined to exercise their contempt power judiciously, sparingly, with utmost restraint and with the end in view of utilizing the same for correction and preservation of the dignity of the court, not for retaliation or vindication.^[25]

In the case at bar, the fine imposed on counsel for complainant as well as the order for him to reimburse the expenses of private complainant are unjust because both he and his counsel were not given an opportunity to explain their side. In short, respondent *summarily* imposed the sanctions on complainant and counsel. Such conduct of respondent is highly improper and only too deserving of reproof for the following reasons:

First, the Code of Judicial Conduct enjoins judges to "be faithful to the law and

maintain professional competence.”^[26] Respondent judge owes it to the public and to the legal profession to know the law he is supposed to apply in a given controversy.^[27] Indeed –

A judge is called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules; it is imperative that he be conversant with basic legal principles and [be] aware of well-settled authoritative doctrines. He should strive for excellence exceeded only by his passion for truth, to the end that he be the personification of justice and the Rule of Law.^[28]

The Court has repeatedly impressed on judges that they should be diligent in keeping abreast with developments in law and jurisprudence as well as to regard the study of law as a never ending and ceaseless process.^[29]

In this case, respondent judge displayed a deplorable deficiency in his grasp of the basic principles governing contempt. Contempt is defined as “[a] disobedience to the court by setting up an opposition to its authority, justice and dignity.”^[30] Indirect contempt is one committed out of or not in the presence of the court that tends to belittle, degrade, obstruct or embarrass the court and justice.^[31] On the other hand, direct contempt consists of or is characterized by “misbehavior committed in the presence of or so near a court or judge as to interrupt the proceedings before the same” within the meaning of Section 1, Rule 71.^[32]

There is no question that disobedience or resistance to a lawful writ, process, order, judgment or command of a court or injunction granted by a court or judge constitutes indirect contempt.^[33] Section 3, Rule 71, of the Revised Rules of Court provides for the mode of commencing proceedings for indirect contempt, to wit:

SEC. 3. *Indirect contempt to be punished after charge and hearing. - After charge in writing has been filed, and an opportunity given to the accused to be heard by himself or counsel,* a person guilty of any of the following acts may be punished for contempt:

(a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;

(b) Disobedience of or resistance to a lawful writ, process, order, judgment, or command of a court, or injunction granted by a court or judge. . . (Emphasis and italics supplied)

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Nazareno v. Barnes^[34] interpreted a “written charge” to mean that either: 1.] an order requiring the person to be charged with contempt to show cause why he should not be punished for contempt, be issued by the court; or 2.] a petition for contempt by way of a special civil action under Rule 71 be initiated in order for contempt proceedings to prosper:

At the outset, let it be stated that the contempt proceeding against the petitioner was wrongly initiated. The nature thereof being that of indirect