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SECOND DIVISION

[A.M. No. MTJ-98-1173. December 15, 1998]

CARLITOS D. LAZO, *complainant, vs.* **JUDGE ANTONIO V. TIONG, Municipal Trial Court, Bolinao, Pangasinan,** *respondent.*

SYNOPSIS

Complainant Lazo is the private complainant in Criminal Case No. 4384 for falsification and use of falsified document, which was assigned to respondent Judge. Lazo alleged, among others, that respondent Judge did not inhibit himself from the case until after two months despite the fact that respondent Judge and the accused are related within the fourth degree of affinity. The Office of the Court Administrator recommended that the respondent Judge be severely reprimanded for his failure to inhibit himself from the case.

The Court found the report of the Court Administrator well taken.

The prohibition under Sec. 1, Rule 137, Rules of Court is not limited to cases in which a judge hears the evidence of the parties but includes as well cases in which he acts by resolving motions and issuing orders as respondent judge has done in the subject criminal case. The purpose of the prohibition is to prevent not only a conflict of interest but also the appearance of impropriety on the part of the judge. A judge should take no part in a proceeding where his impartiality might reasonably be questioned and he should administer justice impartially and without delay.

Contrary to this Rule, Judge Tiong acted in Criminal Case No. 4384 from November 5, 1996 to January 3, 1997. He inhibited himself from further consideration of the case only on the latter date, despite the fact that the complainant filed a motion seeking his inhibition on November 14, 1996.

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SYLLABUS

1. **JUDICIAL ETHICS; DISQUALIFICATION OF JUDGES; RULE 137, SEC. 1 OF RULES OF COURT, ELUCIDATED.** — Under Rule 137, Sec. 1 of the Rules of Court, a judge who is related within the sixth degree of consanguity or affinity to a party in a case is disqualified from sitting in the case without the consent of all parties, expressed in writing, signed by them, and entered upon the record. This prohibition is not limited to cases in which a judge hears the evidence of the parties but includes as well cases in which he acts by resolving motions and issuing orders as respondent judge has done in the subject criminal case. The purpose of the prohibition is to prevent not only a conflict of interest but also the appearance of impropriety on the part of the judge. A judge should take no part in a proceeding where his impartiality might reasonably be questioned and he should administer justice impartially and without delay.

2. **ID.; ID.; FAILURE OF JUDGE TO INHIBIT HIMSELF FROM A CASE DESPITE MOTION FOR INHIBITION OF COMPLAINANT IN CASE AT BAR; PROPER PENALTY.** — Judge Tiong acted in Criminal Case No. 4384 from November 5, 1996 to January 3, 1997, He inhibited himself from further consideration of the case only on the latter date, despite the fact that the complainant filed a motion seeking his inhibition on November 14, 1996. Respondent justifies his failure to inhibit himself from the case on the ground that he was hoping he could make complainant and the accused settle their dispute amicably considering that they are brothers and the wife of the accused is his first cousin. Respondent's efforts... cannot justify the disregard of the law. At the first sign that complainant was not willing to listen to respondent's counsel, the latter should have recused himself from the case without further delay. He cannot sacrifice the integrity of the judicial office on the chance that complainant might relent and agree at last to settle the matter with his brother. A period of two (2) months is more than enough for respondent to make use of his good office. After a reasonable time trying his ability to bring the parties to an amicable settlement and using his moral influence on them without success, he should have inhibited himself from the case and continued his peace efforts in a private capacity. On the other hand, because there is no showing that respondent's

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failure to inhibit himself from the case within a reasonable time was due to malice or any corrupt motive, the Court thinks that reprimand would be an appropriate penalty.

DECISION

MENDOZA, *J.*:

This refers to the complaint against respondent Judge Antonio V. Tiong of the Municipal Trial Court of Bolinao, Pangasinan for grave misconduct and abuse of authority.

Complainant Carlitos Lazo is the private complainant in Criminal Case No. 4384, entitled *People of the Philippines vs. Danilo D. Lazo*, for falsification and use of falsified document, which was assigned to respondent judge. In his sworn complaint, dated December 13, 1996,[1] Carlitos Lazo alleged that respondent scheduled the arraignment of the accused on November 14, 1996, which was a Thursday, when he knew full well that no proceedings could be had on that date because the trial prosecutor assigned to respondent judge's sala was available only on Fridays. Complainant said that because of the cancellation of the arraignment, his time and efforts were wasted considering that he came all the way from Las Piñas, Metro Manila. Furthermore, he claimed that the warrant of arrest was not served on the accused, although it had been issued much earlier, until the prosecutor called attention to this fact. In addition, complainant charged that respondent did not inhibit himself from the case until after two (2) months despite the fact that respondent judge and the accused are related within the fourth degree of affinity, the wife of the accused being the first cousin of the judge.

In his comment, dated August 7, 1997,[2] respondent stated:

That the parties in the criminal case in an information filed by the provincial prosecutor's office is between two brothers, the complainant Carlitos D. Lazo and Danilo D. Lazo.

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[1] *Rollo*, pp. 1-2

[2] *Id.*, pp. 8-11.

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That before Court can commence initial proceedings and/or early stage, the complainant knowing as indeed correctly stated in his letter complaint, the undersigned to be the first cousin of the wife of the accused, the complaint appealed to the undersigned for his intercession in the settlement of their case, probably on the assumption of moral ascendancy to the accused both in his private capacity and as official capacity as a presiding judge of the court of Bolinao.

That attempts for the settlement of their case failed, and consequently under normal court processes and in line with the rules on criminal procedure, after issuance of a warrant of arrest by the court with the posting of the bailbond by the accused the amount fixed by the court, the case was to be set for arraignment of the accused of which the practice (SOP) of the court is for the clerk of court to set the initial proceedings of cases filed and pending before the court, personally at his own sound discretion if only to show trust and confidence to the clerk by the undersigned presiding judge, as it this case between Carlitos D. Lazo and Danilo D. Lazo.

That accordingly, the case was set by the clerk of court for November 14, 1996, at 8:30 o'clock, with subpoena to the complainant dated October 28, 1996, for the arraignment of the accused, not Friday the official day schedule of the Provincial Prosecutor in attending criminal cases before the Municipal Trial Court of Bolinao, Bolinao, Pangasinan, and probably an oversight of the clerk of court without knowledge of the undersigned.

That on the scheduled arraignment of the accused on November 14, 1996, both the complainant and the accused were present in court, duly represented by their respective legal counsels and when the calendar of the court was read, accused counsel manifested that they are filing a motion to quash, praying for the deferment of the scheduled arraignment until the resolution of the court of the said motion to quash they are to file, within (5) day but with no motion filed within the said period, the arraignment of the accused was reset by the court to November 29, 1996, in the morning which was nevertheless cancelled due to motion for postponement filed by the accused.

That the proceedings of November 14, 1996, in the morning, set for the arraignment of the accused, despite the absence of the provincial prosecutor, to the humble and honest opinion of the undersigned has a semblance of propriety and regularity considering that the purpose of arraignment only, it can proceed since the

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complainant and the accused who are present in court are both represented by counsel of records, which nonetheless was deferred by the court for reasons abovestated.

That notwithstanding the doubtful application in a mandatory character to the undersigned after a careful perusal of the language and examination of the provisions of Section 1, Rule 137, Rules of Court, but if only to give the benefit of the doubt in favor of the complainant for their full satisfaction have earlier announced in open court, to hold in abeyance the self inhibition of the undersigned on or before the accused have been arraigned. An early inhibition before the arraignment may the presiding judge be interpreted to be remised or shrinked from the performance of his duties and obligations attached to his office knowing pretty well, as it does, that the evil to be avoided which is suspicion of partiality and biasness finds its vital role only during the trial on the merits of a case. However, on January 3, 1997, before the filling of much said and awaited motion, in order to put to rest the issue of Inhibition, an order of self inhibition of the presiding Judge was finally issued.

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The accused Danilo D. Lazo is a government employee whose office is opposite the court house across a street just a few meters apart. Time and again from the time of knowledge of the case filed against him has frequented the court inquiring status of his case and manifested before hand his readiness to file his bailbond as he in fact informed the court that he has already prepared his bailbond and further told the court of his desired posting of the said bailbond in the amount fixed and recommended by the office of the provincial prosecutor's office even without first the issuance of a warrant of arrest having been issued by the court. In all bailable offenses the right of an accused is both a constitutional and statutory right can be available of anytime of the day during office hours. To deny an accused of the right is a violation of human rights. . . . The accused Danilo D. Lazo simultaneously filed bailbond on the same day the warrant of arrest was issued by the court who of course like anybody, finds it detestable of being arrested even a moment and jailed especially the accused is a government employee, a law abiding citizen of good social standing. The posting by the accused of his bailbond in connection of the case against him was all accordance with all.

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The matter was referred to the Office of the Court Administrator which on November 5, 1998, submitted a report, the pertinent portion of which reads:

1. The allegation that respondent Judge scheduled the arraignment of the case on Thursday knowing fully well that the Public Prosecutor assigned in the case appears only in his court every Fridays, was denied by the respondent. He claims that it was his Clerk of Court who scheduled the arraignment on said day without his knowledge. Respondent Judge explains that when it comes to initiatory proceedings such as arraignment and pre-trial, he gave his Clerk of Court the discretion to calendar or schedule the cases if only to show his trust and confidence [on] him.

We opined that there is nothing wrong in adjudicating the function of scheduling the cases to the Clerk Court. A Clerk of Court is the administrative assistant of the Presiding Judge whose duty is to assist in the management of the calendar of the court and in all other matters not involving the exercise of discretion or judgment of the judge (Re: Report on the Judicial Audit Conducted in the RTC, Branches 61, 134 and 137, Makati, Metro, Manila 248 SCRA 25 [1995]; *Mejia vs. Justice Pamaran, et al.,* 160 SCRA 457 [1988]).

Although a judge has direct supervision over his court personnel, he is more expected to perform his juducial functions, hence, on matters not involving the exercise of discretion such as scheduling of cases, the rule provides that the Clerk of Court shall prepare or cause to be prepared a daily court calendar which may include, at the discretion of the Presiding Judge, cases scheduled for pre-trial, arraignment, trial, hearing on motions or incidents and other matters (Sec. Q on Manual for Clerks of Court, p. 59; Section 1, Rule 20, 1997 Rules of Civil Procedure).

In conjunction with this, a Clerk of Court can issue under the seal of the Court all ordinary writs and processes incident to pending cases, the issuance for (*sic*) which does not involve the exercise of functions appertaining to the Court or Judge only, and may under the discretion of the Court or judge, make out and sign letters of administration, appointment of guardians, trustees and receivers and all writs and processes issuing from the Court (Section 4, Rule 136, Revised Rules of Court)

While the Clerk of Court may have erred in calendaring the case on a Thursday (instead of Friday) which resulted to the non-appearance

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of the Public Prosecutor, who has direct control in the prosecution of criminal cases, it appears that the private complainant (complainant herein) was not denied his right to counsel as he was duly represented by his *counsel de parte*. . . . From the circumstances above, it can be said that no substantial rights of the complainant were prejudiced.

2. On the allegation that it was only upon the Prosecution's motion that respondent caused the issuance of the warrant of arrest and required the accused to post bail, it is noted from the comment of respondent Judge that there was an attempt to settle the case between the two brothers upon the prodding of the accused. Nevertheless, upon failure to arrive at an amicable settlement, respondent issued the warrant of arrest and the accused promptly posted bail. Therefore, the delay, if there is any, in the issuance of the warrant is not entirely the fault of the respondent judge.

3. On the issue of inhibition, respondent Judge admits that he is the first cousin of the wife of the accused. Section 1, Rule 137, Rules of Court, on disqualification of Judges, provides that: No judge or judicial officer shall sit in any case in which he, *inter alia*, is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree computed according to the rules of the civil law. Under this provision, the Presiding Judge is mandated to disqualify himself from sitting in a case. He cannot exercise his discretion whether to inhibit himself or not. In the case at bar, respondent Judge falls squarely within the above provision. Being the first cousin of the wife of the accused to whom he is related in the fourth civil degree by consanguinity he is related to the accused in the same degree by affinity. At the outset, it was therefore mandatory for him to inhibit himself from the case if only to avoid any doubt or suspicion of bias and partiality in favor of the accused.

WHEREFORE, FOREGOING CONSIDERED, it is respectfully recommend[ed] that respondent Judge Antonio V. Tiong be absolved of any liability as to the charges for lack of merit except on the charge that he failed to timely inhibit himself from the case for which this office recommends that he be SEVERELY REPRIMANDED for his failure to inhibit himself from the case at the outset.

The Court finds the report to be well taken. Under Rule 137, § 1 of the Rules of Court, a judge who is related within the sixth degree of consanguinity or affinity to party in a case

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is disqualified from sitting in the case without the consent of all parties, expressed in writing, signed by them, and entered upon the record. This prohibition is not limited to cases in which a judge hears the evidence of the parties but includes as well cases in which he acts by resolving motions and issuing orders as respondent judge has done in the subject criminal case. The purpose of the prohibition is to prevent not only a conflict of interest but also the appearance of impropriety on the part of the judge.[3] A judge should take no part in a proceeding where his impartiality might reasonably be questioned[4] and he should administer justice impartially and without delay.[5]

Contrary to this Rule, Judge Tiong acted in Criminal Case No. 4384 from November 5, 1996 to January 3, 1997. He inhibited himself from further consideration of the case only on the latter date, despite the fact that the complainant filed a motion seeking his inhibition on November 14, 1996.

Respondent justifies his failure to inhibit himself from the case on the ground that he was hoping he could make complainant and the accused settle their dispute amicably considering that they are brothers and the wife of the accused is his first cousin. Respondent's efforts, praiseworthy though they may be, cannot justify the disregard of the law. At the first sign that complainant was not willing to listen to respondent's counsel, the latter should have recused himself from the case without further delay. He cannot sacrifice the integrity of the judicial office on the chance that complainant might relent and agree at last to settle the matter with his brother. A period of two (2) months is more than enough for respondent to make use of his good office. After a reasonable time trying his ability to bring the parties to an amicable settlement and using his moral influence on them without success, he should have inhibited himself from the case

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[3] Re: Inhibition of Judge Eddie R. Rojas, RTC-Br. 39, Polomolok, South Cotabato in Criminal Case No. 09-5668, A.M. No. 98-6-185-RTC, October 30, 1998.

[4] Code of Judicial Conduct, Canon 3, Rule 3.12.

[5] Canon 1, Rule 1.02.

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and continued his peace efforts in a private capacity. On the other hand, because there is no showing that respondent's failure to inhibit himself from the case within a reasonable time was due to malice or any corrupt motive, the Court thinks that reprimand would be an appropriate penalty.

WHEREFORE, respondent Judge Antonio V. Tiong is hereby REPRIMANDED with WARNING that repetition of the same or similar act or omission will be dealt with more severely.

SO ORDERED.

Bellosillo (Chairman), Puno, and *Martinez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 103533. December 15, 1998]

MANILA JOCKEY CLUB, INC. AND PHILIPPINE RACING CLUB, INC., *petitioners, vs.* THE COURT OF APPEALS AND PHILIPPINE RACING COMMISSION, *respondents.*

SYNOPSIS

Manila Jockey Club, Inc. (MJCI) and Philippine Racing Club, Inc. (PRCI) were granted franchises to operate race tracks for horse racing by virtue of RA 6631 and 6632. They were allowed to hold horse races with bets on Saturdays, Sundays and some official holidays, and allocation of "breakages" to specified beneficiaries were provided. Later, the Philippine Racing Commission (PHILRACOM) was created and it was given exclusive jurisdiction over every aspect of the conduct of horse racing including the scheduling of races. When races were scheduled on Wednesdays, PHILRACOM opined that the "breakages" on said day belonged to the racing clubs concerned. Later, PHILRACOM also authorized the holding of races on