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FIRST DIVISION

[A.M. No. MTJ-98-1169. January 29, 2002]

CITY GOVERNMENT OF TAGBILARAN, represented by the City Administrator and Special Counsel, *complainant, vs.* **JUDGE AGAPITO HONTANOSAS, JR., Presiding Judge of Branch 1, MTCC of Tagbilaran City,** *respondent.*

SYNOPSIS

In a complaint signed by Atty. Victor De la Serna, who designated himself as Special Counsel, and verified by the City Administrator of Tagbilaran City, respondent was charged with open defiance of a lawful order of a superior court directing respondent's inhibition from a case; and open, notorious, and habitual gambling in the casinos of Cebu and in the cockpits of Bohol. Later, however, De la Serna manifested that they were no longer interested in pursuing the case because they felt that it would be futile to spend anymore time and effort and mailing cost on the case. The case was referred to the Office of the Court Administrator.

On the first charge, the Court affirmed the recommendation that the first charge should be dismissed for lack of merit. On the second charge, the Court found the same incredible and thus rejected the claim of respondent that he would sometimes travel all the way from Tagbilaran to Nivel Hills Casino in Cebu just to accompany his wife to play slot machines. The fair conclusion is that respondent also gambled in the casino, violating Sec. 5(3-b) of PD No. 1067-B and Paragraph 22 of the Canons of Judicial Ethics. At any rate, the Court ruled that mere presence in a casino is a violation of paragraph 3 of the Canons of Judicial Ethics quoted in Supreme Court Circular No. 4. Hence, respondent is also administratively liable for going to cockpits and placing bets in cockfights even if they were held on authorized days at licensed cockpits. Finally, the Court finds it necessary for De la Serna to explain his authority in filing and subsequently withdrawing the case, indicting even the capacity of the Court to render an impartial judgment.

Supreme Court E-Library

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; MERE PRESENCE THEREOF IN CASINOS AND COCKPITS, PROHIBITED.** — Having earlier reached the conclusion that respondent gambled in a casino, we find him to have violated Section 5(3-b) of P.D. No. 1067-B. Such transgression is also a violation of Paragraph 22 of the Canons of Judicial Ethics, which provides: "The judge should be studiously careful himself to avoid the slightest infraction of the law, lest it be a demoralizing example to others." Even granting *arguendo* that respondent did not gamble or personally play the slot machine, his mere presence in a casino constituted a violation of Circular No. 4 and, more specifically, Paragraph 3 of the Canons of Judicial Ethics. Respondent is also administratively liable for going to cockpits and placing bets in cockfights. The fact that the cockpits where he used to go were licensed and the cockfights were conducted on authorized days will not absolve him. While such gambling was not illegal, he openly and deliberately disregarded and violated Paragraph 3 of the Canons of Judicial Ethics quoted in Circular No. 4. Verily, it is plainly despicable to see a judge inside a cockpit and more so, to see him bet therein. Mixing with the crowd of cockfighting enthusiasts and bettors is unbecoming a judge and undoubtedly impairs the respect due him. Ultimately, the Judiciary itself suffers therefrom because a judge is a visible representation of the Judiciary. Most often, the public mind does not separate the judge from the Judiciary. In short, any demeaning act of a judge or court personnel demeans the institution he represents.

2. **ID.; ID.; VIOLATION OF SUPREME COURT CIRCULAR; GAMBLING; PENALTY.** — Under the amended Rule 140 of the Rules of Court, a violation of a circular issued by this Court, such as Circular No. 4, is a less serious charge (Sec. 4.4), while gambling in public is a light charge (Sec. 5). If found guilty of a less serious charge the respondent may be punished with a penalty of fine of not less than ₱10,000 but not exceeding ₱19,999 (Sec. 10-B.2); and for a light charge, he may be punished with a fine of not less than ₱1,000 but not exceeding ₱9,999 (Sec. 10-C.1). All told, the Court may impose on respondent Judge a fine of ₱12,000.

Supreme Court E-Library

3. **LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; DUTIES OF ATTORNEYS; DUTY OF COUNSEL TO PROTECT THE INTEGRITY OF THE COURTS; DUTY TO PROTECT A SERIOUS ACCUSATION.** — The Court must look into the act of Atty. Victor de la Serna in filing the complaint as *special_counsel* and in manifesting that he and City Administrator Arcadio Sarmiento were no longer interested in pursuing this case because they felt that it would be "futile to spend anymore time and effort and mailing cost on this case." Atty. De La Serna failed to refute respondent's affirmative defense that he had no legal authority to represent complainant City Government of Tagbilaran as its special counsel because the Sangguniang Panglungsod of Tagbilaran did not pass any resolution creating an office of Special Counsel and under the Charter of the City of Tagbilaran it is the City Prosecutor who is empowered to represent the city in all civil and criminal actions. Even assuming that Atty. De La Serna had been duly authorized by the complainant to represent it in this complaint, he has to explain why he, with the City Administrator, filed the aforementioned manifestation, which in effect amounted to a withdrawal of the complaint without the consent of the complainant. Moreover, the ground relied upon in the Manifestation appears *prima facie* to be an indictment against the capacity of this Court to render an impartial judgment in this case. As a lawyer, Atty. De la Serna is an officer of the court; as such, he should be the first to protect its integrity. It must be stressed that Atty. De la Serna succeeded in making the charges in the complaint appear to be serious and grave by the strong language he used. He even imputed on respondent the commission of graft and corruption. A lawyer who makes such serious accusation must be prepared to prove it. He even owes it to the justice system, the public, and the legal profession to prove such accusation. Atty. De la Serna should thus show cause why he should not be disciplined for the foregoing acts which, *prima facie*, amount to misconduct and violation of the Code of Professional Responsibility.

APPEARANCES OF COUNSEL

Victor dela Serna Special Counsel for City Gov't of Tagbilaran, Tagbilaran City.

Supreme Court E-Library

RESOLUTION

DAVIDE, JR., *C.J.*:

In a complaint filed on 29 May 1997 with the Office of the Court Administrator, complainant charges respondent Judge Agapito Hontanosas, Jr., Presiding Judge, Branch 1, Municipal Trial Court in Cities, Tagbilaran City,* with (1) open defiance of a lawful order of a superior court directing respondent's inhibition from a case; and (2) open, notorious, and habitual gambling in the casinos of Cebu and in the cockpits of Bohol.

On the first charge the complainant alleges as follows:

> In two criminal cases filed by the City Government against BARBARA ONG, for her habitual refusal to pay the correct amount of amusement taxes, the City asked for the inhibition of Judge Hontanosas. Respondent refused to inhibit himself, so the City of Tagbilaran filed a petition with the REGIONAL TRIAL COURT of Tagbilaran to compel inhibition.
>
> The RTC Branch I issued an Order requiring Judge Hontanosas to relinquish the cases. Instead of obeying the order of the Superior Court, Judge Hontanosas forced the Fiscal to rest the case, even before the prosecution could cross-examine the defense witnesses. Thereafter, Judge Hontanosas rendered a judgment of ACQUITTAL in favor of BARBARA ONG and all her other co-accused.
>
> Incidentally, Barbara Ong is the wife of the richest Chinese-Filipino businessman in Bohol, FREDERICK ONG.
>
> ...
>
> This is not IGNORANCE OF THE LAW. This is an open, premeditated and willful DEFIANCE OF THE LAW and all the accepted norms of judicial conduct. We can only surmise on the millions of reasons which motivated respondent Judge Hontanosas to act in such manner. If only the Bank Secrecy Law could be lifted, we would be able to determine the exact number of reasons behind the blatant, open, public, malicious, premeditated and despicable conduct which has completely eroded the public's perception of the judiciary in Tagbilaran City.

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* He is now the Presiding Judge of Branch 16 of the Regional Trial Court of Cebu City.

Supreme Court E-Library

Anent the second ground, complainant alleges, thus:

It is a matter of common knowledge among lawyers in Bohol and the general public in Tagbilaran that Judge Hontanosas goes to Cebu on the afternoon fast boat (90 minutes travel time) and comes back on the early trips from Cebu to Tagbilaran. He does this 3 to 4 times a week. He goes to the Casinos in Cebu and spends the whole night in the casinos, before going to Cebu pier to take the early trip back to Tagbilaran, arriving in Tagbilaran at 6:00 a.m. or 7:00 a.m.

Every Sunday, and in every so-called Derby cockfights, Judge Hontanosas is seen in the cockpits of Tagbilaran and the nearby towns.

...

We have talked to several lawyers and litigants who have appeared before Judge Hontanosas, and they have informed us that for as little as ₱500 and ₱5,000, you can secure a decision in your favor. Surely, none of these litigants and lawyers will come out to testify against Respondent Hontanosas. But we are stating this here in order to demonstrate the damage that Judge Hontanosas has done to the public perception of the judiciary in Tagbilaran City.

Complainant prays that the complaint be scheduled for formal investigation; that pending investigation respondent be suspended from office in view of the gravity of the charges; and that after investigation respondent be ordered removed from office and his name stricken off from the roll of attorneys.

The complaint was signed by Atty. Victor De la Serna, who designated himself as Special Counsel; and verified by Arcadio Sarmiento, City Administrator.

In a 1st Indorsement dated 21 January 1998, then Court Administrator Alfredo L. Benipayo required respondent to answer the complaint.

Respondent filed his Answer on 10 March 1998. As to the first charge, he maintains that the aforementioned order of the RTC was unlawful for lack of due notice and hearing and for failure to implead the real parties-in-interest; besides, the said order merely advised him to inhibit. Moreover, that order was issued in connection with a petition for *certiorari* which was a prohibited pleading, since the cases were covered by the Rules

Supreme Court E-Library

on Summary Procedure. As regards the second charge, he denies that he gambles in the casinos of Cebu, but admits that he would sometimes go to Nivel Hills Casino in Cebu to "accompany his wife who want[ed] to have some excitement and recreation in said casino playing only the slot machines." He also admits that he "goes to the cockpits during Sundays and holidays and even gamble a little on these occasions."

By way of affirmative defenses, respondent avers that the filing of the instant administrative complaint was purely an act of vengeance on the part of Atty. De la Serna for the former's verdict in Criminal Cases Nos. 7142 and 7143 which was unfavorable to the prosecution handled by the latter. Moreover, Atty. De la Serna had no legal authority to sign the complaint in behalf of the City Government of Tagbilaran because no resolution was ever passed creating said office and giving the Mayor the power to appoint a Special Counsel; under the Charter of Tagbilaran City, it is the City Fiscal (now City Prosecutor) who is empowered to represent the City in all civil and criminal cases.

In its resolution of 2 December 1998, the Court resolved to docket this case as a regular administrative matter and required the parties to inform the Court whether they were willing to submit this case for decision on the basis of the pleadings already filed.

Respondent answered in the affirmative in his Manifestation dated 19 January 1999. On the other hand, Atty. De la Serna and Mr. Sarmiento, in a Manifestation dated 21 January 1999, informed the Court that they were no longer interested in pursuing this case because they felt that it would be "futile to spend any more time and effort and mailing cost on this case." The Court thereafter referred the latter Manifestation to the Office of the Court Administrator for evaluation and report.

In his Memorandum dated 12 November 2001, the new Court Administrator, Justice Presbitero J. Velasco, Jr., points out that the Court does not, as a matter of course, dismiss administrative complaints against members of the Bench on account of the

Supreme Court E-Library

withdrawal of the charges or desistance of the complainant from prosecuting the complaint; otherwise its disciplinary power may be put to naught, thereby undermining the trust character of a public office and impairing the integrity and dignity of the Court as a disciplining authority. On the merits of the case, the Court Administrator recommended that the first charge be dismissed not because of the desistance of the complainant but because of patent lack of merit for the following reasons:

1. The inhibition of respondent from subject criminal cases is not mandatory under the circumstances. Paragraph I of Section 1, Rule 137 of the Rules of Court provides the instances when a judge is under obligation to inhibit himself from sitting in a case. Judge Hontanosas' case does not fall under any of those mentioned in said provision. His case therefore falls under the second paragraph of Section 1, Rule 137 which gives discretion to the judge whether or not to inhibit himself from a case, provided there are just or valid reasons therefor. Thus, the Regional Trial Court cannot interfere with Judge Hontanosas' exercise of his discretion. In this sense, therefore, the order of the RTC cannot be said to be "lawful" one which respondent is duty-bound to obey;

2. Plaintiff's Motion for Inhibition, on which the RTC Order is based, did not cite any reason or basis therefor. It merely stated: "complainant and counsel does (*sic*) not believe that the Presiding Judge can be impartial and dispassionate in hearing and deciding this case." As to why the movant believes that Judge Hontanosas cannot be impartial in the trial of this case, the motion did not say. It absolutely failed to raise any ground or justification for the call to inhibit;

3. Under Section 19(g) of the 1991 Revised Rule on Summary Procedure, a petition for *certiorari* against any interlocutory order is a prohibited pleading. Hence, the RTC should not have taken cognizance of the petition for lack of jurisdiction. This fact further affects the legitimacy of the RTC Order being invoked by complainant;

4. Lastly, the subject Order neither required nor directed Judge Hontanosas to relinquish the subject cases. The dispositive portion of the Order specifically declared: "IN VIEW OF THE FOREGOING CONSIDERATIONS, it is the *opinion* of this

Supreme Court E-Library

> court that for respondent judge to hang on to hearing Criminal Case Nos. 7142 and 7143 against Barbara Ong is a step beyond the accepted norms of judicial conduct already. Respondent judge is *advised* to remand the cases to the Clerk of Court, xxx for assignment to Branch 2, MTCC, *immediately*." (Italics supplied). Clearly, aside from issuing a mere *obiter dictum*, the Order did not categorically impose upon Judge Hontanosas a duty to comply with the said order.

The Court Administrator, however, finds that for being present in casinos and for gambling in cockpits respondent Judge violated (1) Supreme Court Circular No. 4 dated 27 August 1980, which prohibits judges of inferior courts and court personnel from playing or being present in gambling casinos; and (2) Paragraph 3 of the Canons of Judicial Ethics, which requires that the judge's official conduct and personal behavior be free from the appearance of impropriety. He then recommends that respondent Judge be directed to refrain from frequenting casinos, cockpits and other gambling places.

The Court agrees *in toto* on the above findings and recommendation on the first ground of the complaint. It partly agrees with the Court Administrator on the second ground. The Court cannot lend credence to respondent's claim that he would sometimes go to Nivel Hills Casino in Cebu "to accompany his wife who want[ed] to have some excitement and recreation... playing only the slot machines." Slot machines are not placed in casinos for recreational purposes, but for gambling. A slot machine does not work unless a coin, which is the bet, is inserted into it. The Court finds it incredible for respondent to travel all the way from Tagbilaran City to Cebu City and spend his precious time just to watch his wife play the slot machines. If he did just that, respondent must have more than the patience of Job. It is fair and reasonable to conclude that respondent also gambled in the casino.

Circular No. 4 issued on 27 August 1980 by then Chief Justice Enrique M. Fernando reads as follows:

> The attention of the Court has been invited to the presence of some judges in gambling casinos operating under Presidential Decree

Supreme Court E-Library

No. 1067-B. This is clearly violative of Section 5(3-b) of said Decree. It reads as follows:

"(3-b) Persons not allowed to play —

(a) Government officials connected directly with the operation of the government or any of its agencies."

In accordance with law and pursuant to the Resolution of the Court *en banc* in Administrative Matter No. 1544-0, dated August 21, 1980, judges of inferior courts and the court personnel are enjoined from playing in or being present in gambling casinos.

Moreover, judges are likewise enjoined to keep in mind the Canons of Judicial Ethics, paragraph 3 of which provides:

"3. *Avoidance of appearance of impropriety.* — A judge's official conduct should be free from the appearance of impropriety, and his personal behavior, not only upon the bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach." (Italics supplied)

The prohibition imposed by the Circular refers to both actual gambling and mere presence in gambling casinos. The bases for such prohibition are Section 5(3-b) of P.D. No. 1067-B; the Resolution of the Court *en banc* in Administrative Matter No. 1544-0 dated 21 August 1980; and Paragraph 3 of the Canons of Judicial Ethics.

Having earlier reached the conclusion that respondent gambled in a casino, we find him to have violated Section 5(3-b) of P.D. No. 1067-B. Such transgression is also a violation of Paragraph 22 of the Canons of Judicial Ethics, which provides: "The judge should be studiously careful himself to avoid the slightest infraction of the law, lest it be a demoralizing example to others." Even granting *arguendo* that respondent did not gamble or personally play the slot machine, his mere presence in a casino constituted a violation of Circular No. 4 and, more specifically, Paragraph 3 of the Canons of Judicial Ethics.

Respondent is also administratively liable for going to cockpits and placing bets in cockfights. The fact that the cockpits where he used to go were licensed and the cockfights were conducted

Supreme Court E-Library

on authorized days will not absolve him. While such gambling was not illegal, he openly and deliberately disregarded and violated Paragraph 3 of the Canons of Judicial Ethics quoted in Circular No. 4. Verily, it is plainly despicable to see a judge inside a cockpit and more so, to see him bet therein. Mixing with the crowd of cockfighting enthusiasts and bettors is unbecoming a judge and undoubtedly impairs the respect due him. Ultimately, the Judiciary itself suffers therefrom because a judge is a visible representation of the Judiciary. Most often, the public mind does not separate the judge from the Judiciary. In short, any demeaning act of a judge or court personnel demeans the institution he represents.

Hence, respondent deserves more than a directive to refrain from frequenting casinos, cockpits and other gambling places, as recommended by the Court Administrator.

Under the amended Rule 140 of the Rules of Court, a violation of a circular issued by this Court, such as Circular No. 4, is a less serious charge (Sec. 4.4), while gambling in public is a light charge (Sec. 5). If found guilty of a less serious charge the respondent may be punished with a penalty of fine of not less than ₱10,000 but not exceeding ₱19,999 (Sec. 10-B.2); and for a light charge, he may be punished with a fine of not less than ₱1,000 but not exceeding ₱9,999 (Sec. 10-C.1). All told, the Court may impose on respondent Judge a fine of ₱12,000.

The imposition of the foregoing sanction does not put an end to this case. The Court must look into the act of Atty. Victor de la Serna in filing the complaint as *special counsel* and in manifesting that he and City Administrator Arcadio Sarmiento were no longer interested in pursuing this case because they felt that it would be "futile to spend anymore time and effort and mailing cost on this case."

Atty. De La Serna failed to refute respondent's affirmative defense that he had no legal authority to represent complainant City Government of Tagbilaran as its special counsel because the Sangguniang Panglungsod of Tagbilaran did not pass any resolution creating an office of Special Counsel and under the

Supreme Court E-Library

Charter of the City of Tagbilaran it is the City Prosecutor who is empowered to represent the city in all civil and criminal actions.

Even assuming that Atty. De La Serna had been duly authorized by the complainant to represent it in this complaint, he has to explain why he, with the City Administrator, filed the aforementioned manifestation, which in effect amounted to a withdrawal of the complaint without the consent of the complainant.

Moreover, the ground relied upon in the Manifestation appears *prima facie* to be an indictment against the capacity of this Court to render an impartial judgment in this case. As a lawyer, Atty. De la Serna is an officer of the court; as such, he should be the first to protect its integrity.

It must be stressed that Atty. De la Serna succeeded in making the charges in the complaint appear to be serious and grave by the strong language he used. He even imputed on respondent the commission of graft and corruption. A lawyer who makes such serious accusation must be prepared to prove it. He even owes it to the justice system, the public, and the legal profession to prove such accusation.

Atty. De la Serna should thus show cause why he should not be disciplined for the foregoing acts which, *prima facie*, amount to misconduct and violation of the Code of Professional Responsibility.

WHEREFORE, the Court hereby Resolves to (a) *DISMISS,* for want of merit, the charge against respondent Judge Agapito L. Hontanosas, Jr., of open defiance of a lawful order of a superior court; and (b) *IMPOSE* upon him a *FINE* of ₱12,000 for violation of Circular No. 4 dated 27 August 1980 and, more specifically, for violation of Section 5(3-b) of P.D. No. 1067-B and Paragraphs 3 and 22 of the Canons of Judicial Ethics. He is *STERNLY WARNED* that the commission of the same or similar acts shall be dealt with more severely.

The Court further resolves to *REQUIRE* Atty. VICTOR DE LA SERNA to *SHOW CAUSE*, within ten (10) days from notice of this Resolution, why he should not be administratively

Supreme Court E-Library

sanctioned for misconduct or violation of the Code of Professional Responsibility for his aforementioned acts.

SO ORDERED.

Puno, Kapunan, Pardo, and *Ynares-Santiago, JJ.*, concur.

FIRST DIVISION

[A.M. No. P-00-1401. January 29, 2002]

BALTAZAR LL. FIRMALO, *complainant, vs.* **MELINDA C. QUIERREZ, in her capacity as Clerk III, Regional Trial Court, Branch 82, Odiongan, Romblon,** *respondent.*

SYNOPSIS

Respondent clerk was charged with Gross Neglect of Duty and Gross Inefficiency. Initially, respondent was reprimanded and censured for insubordination and gross inefficiency. She failed to submit an inventory of cases and to schedule certain criminal cases in the court's calendar, in violation of memoranda addressed to her. Later, respondent was assigned to typing of court papers, but she also failed to perform the task efficiently. Respondent, in her Comment, averred that she had already submitted her explanation on the first issue against her, and on the second issue, she had already improved her typing since then.

While respondent may have already corrected and remedied her mistakes and shortcomings, the Court stressed that the requisite of competence and efficiency is a continuous obligation for so long as respondent serves in the judiciary. She was fined in the amount of ₱1,000.00.