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imprisonment to be served at the Headquarters of the National Bureau of Investigation, Taft Avenue, Manila, until further orders from this Court.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Quisumbing, and *Buena, JJ.,* concur.

SECOND DIVISION

[A.M. No. MTJ-99-1209. September 30, 1999]

FLAVIANO G. ARQUERO, *complainant, vs.* **ACTING PRESIDING JUDGE TERTULO A. MENDOZA, Municipal Trial Court, Guimba, Nueva Ecija,** *respondent.*

SYNOPSIS

Respondent was charged by complainant, president of the Sta. Ana Primary Multi-Purpose Cooperative, Inc. (SAPMPCI) with neglect of duty, inefficiency, abuse of authority and conduct prejudicial to the best interest of the service in connection with his handling of the cases for estafa and violation of B.P. Blg. 22 which it filed against Solita Santos, a member of the *Sangguniang Panlalawigan* of Nueva Ecija and raffled to his sala. Investigation by the Office of the Court Administrator (OCA) disclosed that arraignment of the accused was postponed nine times before it was finally held. Six of the postponements were for reasons attributable to Santos. She failed to appear for three times without notifying the trial court. For two times she appeared with new lawyers who both asked for postponement to allow them to study the case. She again failed to appear on another setting allegedly because she was ill. She, however, did not submit any medical certificate to support her claim. The OCA found that there was unreasonable delay in the

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arraignment of the accused and recommended that respondent Judge be fined in the amount of ₱5,000.00.

Rule 116, Section 8 of the Rules of Court provides that counsel *de officio* is given at least one hour to consult with the accused as to his plea before proceeding with the arraignment and this rule should be equally applied to a counsel *de parte* whose services have just been engaged by the accused.

The Court held that a judge should, at all times, remain in full control of the proceedings in his sala and should adopt a firm policy against improvident postponements. Respondent's grant of postponements of the arraignment of the accused who posted bail in the case at bar are not justified. Hence, respondent was found guilty of allowing groundless postponement and was imposed a fine of ₱5,000.00 with a stern WARNING that a repetition of the same or similar acts in the future will be dealt with more severely.

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; SHOULD, AT ALL TIMES, REMAIN IN FULL CONTROL OF PROCEEDINGS; STRICT POLICY ON POSTPONEMENT SHOULD BE OBSERVED.—** Administrative Circular No. 1, dated January 28, 1988, paragraph 2.2 states that "a strict policy on postponements should be observed to avoid unnecessary delays in court proceedings." In *Hernandez v. De Guzman* (252 SCRA 64 (1996)), this Court held that a judge should, at all times, remain in full control of the proceedings in his sala and should adopt a firm policy against improvident postponements.

2. **ID.; ID.; ID.; ID.; GRANT OF POSTPONEMENT WITHOUT SUFFICIENT BASIS IN CASE AT BAR.—** In the instant case, respondent judge failed to take the proper measures when Santos on three occasions did not appear for arraignment without notifying the trial court. As she was out on bail, she was bound to appear before the trial court whenever so required. Her failure to do so justified the forfeiture of her bond. However, respondent judge tolerated the unexplained absences of Santos. Furthermore, the fact that Santos hired new lawyers to represent her does not justify the postponement of the arraignment scheduled for November 5 and December 13, 1996 over the strong objection

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of the private prosecutor. Rule 116, Section 8 of the Rules of Court provides that "whenever a counsel *de officio* is assigned by the Court to defend the accused at the arraignment, he shall be given at least one hour to consult with the accused as to his plea before proceeding with the arraignment." There is no reason why a different rule should be applied to a counsel *de parte* whose services have just been engaged by the accused. There was absolutely no reason why counsel could not have been required to confer with the accused within a shorter period to prepare her for the arraignment. Finally, it seems that no documentary evidence such as a medical certificate was presented to support Santos' claim that she was too ill to attend the arraignment on January 24, 1997. We hold that respondent judge granted the postponement of the arraignment without sufficient basis. In *Hernandez v. De Guzman*, *supra*, this Court imposed a fine of ₱5,000.00 on the respondent judge for allowing frequent and groundless postponements of the hearings in a criminal case. Hence, the imposition of a fine of ₱5,000.00 on Judge Mendoza is reasonable.

APPEARANCES OF COUNSEL

T.J. Sumawang & Associates for complainant.

D E C I S I O N

MENDOZA, *J.*:

This is a complaint filed by the Sta. Ana Primary Multi-Purpose Cooperative, Inc. (SAPMPCI), through its president, Flaviano G. Arquero, against Judge Tertulo A. Mendoza of the Municipal Trial Court, Guimba, Nueva Ecija, for Neglect of Duty, Inefficiency, Incompetence, Abuse of Authority, and Conduct Prejudicial to the Best Interest of the Service in connection with his handling of Criminal Cases Nos. 12652, 12653, and 12654, entitled "*People of the Philippines v. Solita C. Santos*," for violation of B.P. Blg. 22.

The complaint alleges that Solita C. Santos, the accused in the criminal cases before Judge Mendoza, thrice purchased from SAPMPCI *palay* worth a total of ₱273,896.00 in November and December 1994. Santos failed to pay the said amount but,

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because of demands of SAPMPCI for payment, she issued in June 1995 Metro Bank Check No. 025261, postdated July 20, 1995, which was drawn against her checking account. However, when presented for payment, the check was dishonored on the ground that Santos' account in the bank had already been closed. As subsequent demands of SAPMPCI went unheeded by Santos, SAPMPCI filed a complaint for estafa and violation of B.P. Blg. 22 in the Office of the Provincial Prosecutor of Guimba, Nueva Ecija, which eventually filed an information for violation of B.P. Blg. 22 against Santos. The case was subsequently raffled to respondent judge, who ordered the arrest of the accused and set her arraignment.

The arraignment was originally set for August 15, 1996, but it was postponed nine times before it was finally held. Six of the postponements were for reasons attributable to Santos. She failed to appear on August 15, September 20, and October 11, 1996 without notifying the trial court. On November 8 and December 13, 1996, she appeared with new lawyers who both asked for postponement on the ground that their services had just been engaged and they needed time to study the case. She failed to appear on January 24, 1997 allegedly because she was ill.

SAPMPCI claims that "accused is a member of the *Sangguniang Panlalawigan* of Nueva Ecija and members of our cooperative are strongly suspecting that accused is using her said position and the influence inherent in said position, to . . . prolong the proceedings . . . We are wondering why . . . the Honorable Judge has liberally tolerated the series of postponements of the arraignment of the accused."

In his answer, dated September 1, 1997, Judge Mendoza denied the allegations against him and stated:

> While the complainant wants and invokes the right to speedy trial, the accused also has an equal and countervailing right to due process, to avail of all possible legal remedies or options grantable to her by law among these is the basic right to request for postponement under a valid and just reason.

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Opposing counsels too normally avail or resort to this legal remedy under the principle of due process to protect and advance the interest of their clients also for a just and valid reason.

The undersigned on the other hand carefully evaluates such requests for postponement and if so found meritorious grants the same. It is asserted here that in all the motions for postponement by the counsel for the accused the Court found merit in them (motions) and so were granted. There was no undue favor accorded to either side.

If there was delay, as indeed there was, it should be clear that it was not due to arbitrary or malicious tolerance, let alone connivance with the public prosecutor assigned in this case as implied in the letter-complaint.

The series of postponement as motioned to by counsel of the accused were carefully and judiciously evaluated by the Court and finding the reasons therefor valid and just, the Court as a matter of course has to grant the same.

This matter was referred to the Office of the Court Administrator, which, in its report, dated May 26, 1999, recommended that respondent judge be fined in the amount of ₱5,000.00 for the unreasonable delay in the arraignment of the accused in Criminal Cases Nos. 12652, 12653, and 12654.

The recommendation is well taken. Administrative Circular No. 1, dated January 28, 1988, paragraph 2.2 states that "a strict policy on postponements should be observed to avoid unnecessary delays in court proceedings." In *Hernandez v. De Guzman* (252 SCRA 64 (1996)), this Court held that a judge should, at all times, remain in full control of the proceedings in his sala and should adopt a firm policy against improvident postponements.

In the instant case, respondent judge failed to take the proper measures when Santos on three occasions did not appear for arraignment without notifying the trial court. As she was out on bail, she was bound to appear before the trial court whenever so required.[1] Her failure to do so justified the forfeiture of her

[1] Rules on Criminal Procedure, Rule 114, §2.

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bond.[2] However, respondent judge tolerated the unexplained absences of Santos.

Furthermore, the fact that Santos hired new lawyers to represent her does not justify the postponement of the arraignment scheduled for November 5 and December 13, 1996 over the strong objection of the private prosecutor. Rule 116, §8 of the Rules of Court provides that "whenever a counsel *de oficio* is assigned by the Court to defend the accused at the arraignment, he shall be given at least one hour to consult with the accused as to his plea before proceeding with the arraignment." There is no reason why a different rule should be applied to a counsel *de parte* whose services have just been engaged by the accused. There was absolutely no reason why counsel could not have been required to confer with the accused within a shorter period to prepare her for the arraignment.

Finally, it seems that no documentary evidence such as a medical certificate was presented to support Santos' claim that she was too ill to attend the arraignment on January 24, 1997. We hold that respondent judge granted the postponement of the arraignment without sufficient basis.

In *Hernandez v. De Guzman, supra*, this Court imposed a fine of ₱5,000.00 on the respondent judge for allowing frequent and groundless postponements of the hearings in a criminal case. Hence, the imposition of a fine of ₱5,000.00 on Judge Mendoza is reasonable.

WHEREFORE, judgment is hereby rendered imposing a FINE of ₱5,000.00 on Judge Tertulo A. Mendoza for the unreasonable delay in the arraignment of the accused in Criminal Cases Nos. 12652, 12653, and 12654, with the stern WARNING that a repetition of the same or similar acts in the future will be dealt with more severely.

SO ORDERED.

Bellosillo (Chairman), Quisumbing, and *Buena, JJ.*, concur.

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[2] *Id.*, §21.