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SO ORDERED.

Davide, Jr., C.J., Puno, Pardo, and *Ynares-Santiago, JJ.,* concur.

SECOND DIVISION

[A.M. No. MTJ-99-1213. October 2, 2000]

FRANK LAWRENCE A. CARIÑO @ "FRANKIE CARIÑO", *complainant, vs.* **JUDGE JONATHAN S. BITENG,** *respondent.*

SYNOPSIS

An administrative complaint was filed charging the respondent judge with gross ignorance of the law and gross incompetence for having ordered complainant arrested and detained for indirect contempt following the sheriff's report that complainant refused to vacate the Cariño ancestral home in Candon, Ilocos Sur, in disobedience to an amended writ of execution.

The Executive Judge, to whom the case was referred for evaluation, report and recommendation, recommended the dismissal of the complaint because respondent Judge Biteng had already retired.

The OCA, disagreed, citing cases where administrative cases against judges did not become moot and academic simply because they had retired or resigned. The OCA found respondent Judge Biteng liable for gross ignorance of the law and incompetence because he did not give complainant the opportunity to be heard before citing complainant with indirect contempt, and ordering his arrest and detention.

The Supreme Court agreed with OCA's evaluation and recommendation and found respondent Judge, Jonathan S.

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Biteng, guilty of gross ignorance of the law and incompetence and fined the amount of ₱25,000.00.

SYLLABUS

LEGAL AND JUDICIAL ETHICS; JUDGES; ADMINISTRATIVE COMPLAINT AGAINST JUDGES; GROSS IGNORANCE OF THE LAW AND INCOMPETENCE; CITING CONTEMNOR WITH INDIRECT CONTEMPT, WITHOUT GIVING HIM OPPORTUNITY TO BE HEARD, A CASE OF; CASE AT BAR. — The aforecited rule and the jurisprudence on the instant complaint against Judge Biteng leave us no recourse but to agree with OCA's evaluation and recommendation. Unlike in a case of direct contempt, where the contemnor may summarily be adjudged in contempt, in indirect contempt the Rules require that a written charge be filed and opportunity be given to the accused to be heard by himself or counsel before the accused may be punished for contempt.

RESOLUTION

QUISUMBING, *J.*:

Frank Lawrence A. Cariño, *a.k.a* Frankie Cariño, in a letter date November 24, 1997 charged Judge Jonathan S. Biteng with gross ignorance of the law and gross incompetence relative to Civil Case No. 624 entitled *The President of the Manila Mission of the Church of Jesus Christ of Latter Day Saints, Inc. vs. Otilla A. Legaspi, for unlawful detainer.*

Complainant says he is the appointed administrator of the Cariño ancestral home in Candon, Ilocos Sur. He alleges that on the basis of an order dated November 6, 1997 issued by Judge Biteng, he was cited and ordered arrested and detained for indirect contempt following the sheriff's report that he refused to vacate the ancestral home in disobedience to an amended writ of execution dated September 23, 1997,[1] issued against Otilla Legaspi who was defendant in Civil Case No. 624, already

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[1] *Rollo*, p. 26.

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decided with finality. A first writ dated August 14, 1997[2] was amended to include all others staying in the premises under authority derived from and acting for and in behalf of Legaspi. Complainant avers that he was not a party at all in said case. He complains that the order dated July 28, 1997 of Judge Biteng merely directed Legaspi to vacate the premises without pronouncement as to the payment for the reasonable use of the property for lack of evidence to determine the amount. In contrast, the amended writ dated September 23, 1997, markedly different from the first, ordered the sheriff to eject Legaspi and all others staying in the premises under Legaspi's authority and was apparently issued to favor plaintiff therein and to "railroad" the writ of execution.[3] In his complaint, Cariño prays that Judge Biteng be made to recall the order of complainant's arrest and that disciplinary action be meted on Judge Biteng.

In his Answer, Judge Biteng admitted to issuing the order to arrest complainant for indirect contempt, but since said order was not implemented by the PNP of Candon, Ilocos Sur, due to absence of complainant, the latter suffered no harm and damage. Judge Biteng claims that he acted honestly and lawfully in implementing the writ of execution and in turn he asks that he be granted reliefs for the unwarranted and malicious suit of complainant that has caused him great anxiety and sleepless nights which although incapable of pecuniary estimation amount to not less than ₱500,000.00.

This Court referred the case to the Executive Judge Gabino B. Balbin, Jr., for evaluation report and recommendation. Judge Balbin recommended dismissal of the complaint against Judge Biteng because even if the allegations against him were true he could no longer be held liable because he had already retired.

The OCA disagreed with Judge Balbin's recommendation to dismiss the complaint against Judge Biteng. The OCA, citing

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[2] *Id.* at 20.

[3] *Id.* at 2.

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a string of cases,[4] pointed out that an administrative case against a judge does not become moot and academic simply because he had retired or resigned.

The OCA also brought to this Court's attention that on August 18, 1998, Judge Biteng's application for optional retirement was approved with a directive to the OCA Fiscal Management Officer to withhold ₱25,000.00 from Judge Biteng's retirements benefits pending the outcome of the instant complaint against him.

Conformably with Section 3, Rule 71 of the Revised Rules of Court[5] and our decision in *Castaños vs. Escaño, Jr. 251 SCRA 174 (1995)*, the OCA found that Judge Biteng did not give complainant the opportunity to be heard as a matter of due process of law before citing complainant with indirect contempt, and ordering his arrest and detention, and concluded that this failure of the judge constitutes gross ignorance of the law and incompetence. Not to be disregarded too according to OCA, is a past case involving respondent judge, *Administrative Matter, No. MTJ-95-1018, Sule vs. Biteng, 243 SCRA 524 (1995)*, in which Judge Biteng was fined with P20,000.00 for gross ignorance of the law and incompetence and warned that a repetition of the same offense, ignorance of the law, would be dealt with severely.

The aforecited rule and the jurisprudence on the instant complaint against Judge Biteng leave us no recourse but to agree with OCA's evaluation and recommendation. Unlike in

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[4] Citing *Perez vs. Abiera*, 64 SCRA 302 (1975); *Pesole vs. Rodriguez*, 81 SCRA 208 (1978); *Zarate vs. Judge Romanillos* citing *People vs. Valenzuela,* 135 SCRA 712 (1985) and *Pera vs. Abiera*, 64 SCRA 302 (1975).

[5] Section 3. Indirect Contempt to be punished after charge and hearing. After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

(b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court . . .

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a case of direct contempt, where the contemnor may summarily be adjudged in contempt, in indirect contempt the Rules require that a written charge be filed and opportunity be given to the accused to be heard by himself or counsel before the accused may be punished for contempt.[6]

WHEREFORE, Judge Jonathan S. Biteng is found guilty of gross ignorance of the law and incompetence and is hereby *FINED* the amount of ₱25,000.00, to be taken from the amount earlier withheld from his retirement benefits. The Order dated February 6, 1997 issued by Judge Biteng directing the arrest of Frankie Cariño is declared *NULL AND VOID* and *LIFTED*.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Buena, and *De Leon, Jr., JJ.*, concur.

SECOND DIVISION

[A.M. No. RTJ-99-1469. October 2, 2000]
(Formerly OCA IPI No. 97-484-RTJ)

JULIUS N. RABOCA, *complainant, vs.* **JUDGE ALEJANDRO M. VELEZ, Regional Trial Court, Cagayan de Oro City, Branch 20,** *respondent.*

SYNOPSIS

An administrative complaint was filed charging respondent Judge with gross negligence, inefficiency, incompetence, serious

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[6] *Lim vs. Domagas*, 227 SCRA 258, 262 (1993); *Wicker vs. Arcangel*, 252 SCRA 444, 451 (1996).