Supreme Court E-Library

EN BANC

[A.M. No. RTJ-98-1402. April 3, 1998]

ONOFRE A. VILLALUZ, *complainant, vs.* **JUDGE PRISCILLA C. MIJARES, REGIONAL TRIAL COURT, BRANCH 108, PASAY CITY,** *respondent.*

SYNOPSIS

Retired Justice Onofre A. Villaluz charged Judge Priscilla C. Mijares of the RTC, Pasay City, Branch 108, with dishonesty, corrupt practices, grave misconduct and immorality, allegedly committed as follows: (1) In Consignation Case No. 0940, Judge Mijares placed the plaintiff association's rental deposits in her private bank account, instead of turning them over as she should have done, to the City Treasurer; and (2) Judge Mijares decided Special Proceedings No. 3946, a petition for correction of entry in the birth record of her grandson, notwithstanding such close relationship. There was no justification for respondent in not requiring the Clerk of Court to collect the rental deposits and in allowing instead her OIC Branch Clerk of Court to make the collection. She explained that if the rentals were deposited with the Clerk of Court, who would in turn deposit them with the City Treasurer, it would take 21 signatures to have the deposits withdrawn in the event a settlement would be reached by the parties who were then in the process of negotiation. However, her motive cannot be rationalized in the face of the strict requirement of a Supreme Court Circular relative to the optimum protection of deposits which are fiduciary funds.

Relative to Special Proceedings No. 3946, respondent is clearly disqualified from trying the case under Section 1, Rule 137 of the Rules of Court and also under Rule 3.12(d), Canon 3 of the Code of Judicial Conduct. Being related within the sixth degree of consanguinity to one of the parties, it was mandatory for respondent to have inhibited herself from hearing the case. What is violated in Section 1 of Rule 137 is not that respondent or her daughter has no pecuniary interest in the case but her taking cognizance of the case despite her relationship to a party within the sixth degree of consanguinity or affinity.

Supreme Court E-Library

Respondent Judge was found guilty of grave misconduct and was imposed a fine for the first and second charges.

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; CONSIGNATION; HIGHLY IRREGULAR FOR RESPONDENT TO HAVE PLACED RENTAL DEPOSITS IN HER PRIVATE ACCOUNT.** — There was no justification for respondent in not requiring the Clerk of Court to collect the rental deposits and in allowing instead her OIC Branch Clerk of Court to make the collection. She explained that if the rentals were deposited with the Clerk of Court, who would in turn deposit them with the City Treasurer, it would take 21 signatures to have the deposits withdrawn in the event a settlement would be reached by the parties who were then in the process of negotiation. However, her motive cannot be rationalized in the face of the strict requirement of a Supreme Court Circular relative to the optimum protection of deposits which are fiduciary funds.

2. **ID.; DISQUALIFICATION OF JUDGES; SECTION 1, RULE 137 OF THE RULES OF COURT; RULE 3.12(D), CANON 3, CODE OF JUDICIAL CONDUCT.** — Relative to Special Proceedings No. 3946, respondent is clearly disqualified from trying the case under Section 1, Rule 137 of the Rules of Court and also under Rule 3.12(d), Canon 3 of the Code of Judicial Conduct. Being related within the sixth degree of consanguinity to one of the parties, it was mandatory for respondent to have inhibited herself from hearing the case. What is violated in Section 1 of Rule 137 was her taking cognizance of the case despite her relationship to a party within the sixth degree of consanguinity or affinity.

APPEARANCES OF COUNSEL

Natividad T. Perez for complainant.

D E C I S I O N

KAPUNAN, *J.*:

Through a verified letter-complaint dated 12 September 1995, retired Justice of the Court of Appeals Onofre A. Villaluz charged Judge Priscilla C. Mijares, incumbent Judge of the Regional Trial Court of Pasay City, Branch 108, with dishonesty, corrupt

Supreme Court E-Library

practices, grave misconduct and immorality, allegedly committed as follows:

1. In Consignation Case No. 0940, "Tengco Homeowners' Association *vs.* Susana Realty, Inc.," assigned to and tried in her Branch, Judge Mijares placed the plaintiff association's rental deposits in her private bank account, instead of turning them over as she should have done, to the City Treasurer; only sometime in September, 1989 when some members of the association sought a certification that they had in fact been depositing rentals in Court, did she turn over to the City Treasurer the accumulated amount of ₱222,377.18 by way of UCPB Cashier's Check No. 0996682 dated September 14, 1989; Judge Mijares kept for herself the interests earned by said deposits while they were in her personal bank account.

2. Judge Mijares took cognizance of and decided Special Proceedings No. 3946, a petition for correction of entry in the birth record of her grandson, Joshua Anthony M. Gurango, the child of her daughter Ma. Pilita M. Gurango, notwithstanding such close relationship; and this notwithstanding the fact that even if said petition had regularly been raffled off to her sala, a sense of propriety, if not the letter and spirit of the Code of Judicial Ethics, should have made her refuse the assignment and procure the transfer of the case to any of the five other branches of the Court equally qualified to take over and decide the case; and to compound and aggravate the corrupt practice of taking on and deciding the case of a very close relative, she also dispensed with the required publication of the petition which sought to correct the entry of the subject's citizenship from the stated "Filipino" to "American."

3. In Special Proceedings No. 90-54652, Regional Trial Court of Manila, Branch 26, entitled: "In Re: Petition for Declaration of Presumptive Death of Primitivo Mijares," where Judge Mijares was the petitioner, she falsely declared her residence to be at No. 2247 Coral St., San Andres Bukid, Manila, which in fact is the residence of Teresita Arceo, formerly employed at Branch 7 of the Metropolitan Trial Court of Manila, which was at one time presided by her (Judge Mijares); and this, to illegally vest jurisdiction over the petition in the proper Manila Regional Trial Court, rather in Quezon City where she actually resides for decades;

Supreme Court E-Library

4. Judge Mijares made a false declaration of her residence as at No. 869 Pestañas Street, Pasay City, in her application for Marriage License No. 0572927 accomplished as of December 20, 1993, on the strength of which she contracted a sham marriage with me, solemnized by Judge Myrna Lim Verano of Carmona, Cavite, a former trial fiscal in her sala; her purpose in procuring such sham "marriage" with me, was to use the same as a defense to charges of immorality brought against her by one Joseph Ligorio Naval before the Supreme Court.[1]

In a resolution dated 14 February 1996, the Court directed the respondent to comment on the letter-complaint.

On 16 May 1996, respondent filed her Comment on the aforequoted charges in this wise:

On the first charge, respondent denied any participation in the collection of deposits from the Tengco Homeowners Association claiming that the accusation was the concoction of her disgruntled employees, Joseph Ligorio Naval and Anita Domingo, who had a falling-out with her. Specifically, respondent maintained that:

x x x. [I]t is never the duty of a Presiding Judge to collect from litigants any money or amount for deposit with the court. It is, as always, the duty of the Branch Clerk of Court or the Officer-in-Charge (OIC) for that matter. The reason why the Branch Clerk or the OIC is provided with a cabinet-safe vault is to safeguard the loss of properties/evidence, whether money or otherwise, in his/her custody. Anita Domingo was then the property and records custodian as well as OIC when the Tengco Homeowners deposited with her. The individual collections were duly receipted by her as reflected in Annexes "A", "B", "C", "D" & "E" (samplings of receipts Anita Domingo issued). In no occasion did the respondent receive money and/or issue receipts to any litigants, and particularly in this case where the Homeowners individually paid their dues regularly or once in every month with Anita Domingo (as reflected in the Joint Affidavit [See Annex "F"]). On request of Cris Agtuca, she issued a certification (See Annex "G") that the deposit was made with her.

---

[1] *Rollo*, pp. 2-3.

Supreme Court E-Library

Respondent, upon receipt of the copy of the letter complaint of Villaluz, took time out to secure from the UCPB Holiday Plaza Branch, a certification regarding a Cashier's Check as indicated in the complaint and UCPB Holiday Plaza Branch obliged and delivered to respondent the CERTIFICATION requested (See Annex "H"). The certification clearly states as follows:

"TO WHOM IT MAY CONCERN:

"This is to certify that our branch (nor UCPB) does not issue an instrument named 'CASHIER'S CHECK.' The name of the instrument we issue is a 'MANAGER'S CHECK.' Moreover, check number 996682 is not in our branch manager's check (MC) number series.

"We further certify that our branch has no record of the issuance of a 'Cashier's Check No. 996682 on September 14, 1989.'

"This certification is issued upon request of (Judge) Priscilla C. Mijares for whatever purpose it may serve her.

AUTHORIZED SIGNATURES:

(Sgd.) Illegible	(Sgd.) Illegible
FERDINAND C. MUYARGAS	RAMON B. HENSON, JR.
Asst. Manager/BOO	AVP & Branch Head"[2]

On the second charge, respondent asserted that the rule on disqualification of judges under Sec. 1, Rule 137 of the Rules of Court does not apply since the proceedings called simply for the clarification and correction of an erroneous entry in the birth certificate of Joshua Anthony M. Gurango regarding his father's nationality. Respondent averred that:

The attendant/clerk who testified admitted that she really committed a big mistake when she placed "Filipino" as the nationality of the father of minor Joshua Anthony Gurango. The passport (Annex "I") very clearly showed the real nationality, that of a citizen of the "United States of America." Both in her sworn statement (Annex "J") and her open court testimony, the clerk, Liza A. Peñano, admitted her mistake. Her apologetic attitude was reflected in both words and action while testifying as witness in the case.

---

[2] *Id.*, at 22-23.

Supreme Court E-Library

Regarding the publication, respondent granted the exemption after considering the nature of the case. The publication fee of from ₱4,000.00 to ₱6,000.00 was saved by the spouses (parents of the minor) who are just starting to have a family.[3]

Anent the third accusation, respondent staunchly denied that she made a false declaration regarding her residence in the proceedings she filed for the declaration of presumptive death of her husband Primitivo Mijares. She explained, thus:

"Regarding Coral Street, the same was the former residence of complainant's husband, Primitivo Mijares. This fact is not known to respondent. And considering too the service of complainant for the City of Manila from 1957 to 1986, as employee, as Fiscal and later as Judge, including the services of her own children in PGH, Manila Doctors, COMELEC and Manila Hotel, nobody could refute complainant's statement that she is a Manila resident. It is also a place where complainant may be served with summons."[4]

As to the last imputation, respondent declared that she considers Pasay City her second home for the following reasons:

Complainant's appointment to RTC Pasay dated as far back as 1986 after the EDSA Revolution. Add to this fact her stay in the same place since graduation from High School in 1953. Even until now complainant's letters addressed to 869 Pestañas Street are delivered to her by her cousins as a lasting arrangement.[5]

On 4 September 1996, the Court resolved to refer the instant case to Justice Salvador J. Valdez of the Court of Appeals for investigation, evaluation, report and recommendation.

On 13 May 1997, Justice Salvador J. Valdez submitted to the Court the results of his investigation and the following recommendation:

WHEREFORE, it is most respectfully recommended that JUDGE PRISCILLA C. MIJARES be found guilty of grave misconduct under

---

[3] *Id.*, at 24.

[4] *Ibid.*

[5] *Id.*, at 25.

Supreme Court E-Library

Charges No. 1 and No. 2, and that she be DISMISSED from the service with forfeiture of all leave credits and retirement benefits and privileges, and with prejudice to reinstatement in any branch of the Government service, whether pertaining to the national or local Government, including government-owned and/or controlled corporations, instrumentalities and agencies.[6]

It is regrettable that the instant case be clothed in so much personal enmity. However, shorn of its emotional trappings, the Court concurs with the report of Justice Valdez but finds the recommended penalty of dismissal from service to be too severe.

We shall deal with the imputed misdeeds *in seriatim.*

I

Reproduced hereunder are the testimonies and evidence adduced by the parties regarding the first charge as succinctly summarized by Justice Valdez in his Report and Recommendation:

The parties agreed to the reproduction of the testimony of Anita Domingo in the earlier administrative complaint initiated by Joseph S. Ligorio Naval, Jr.

Anita Domingo had therein testified that she used to be the "court officer-in-charge" and "property custodian" of Judge Mijares of Branch 108 of the Regional Trial Court of Pasay City. She declared that in the consignation case in their court involving the Tengco Homeowners Association, the petitioners offered to deposit with her office the rentals falling due but she referred them to the Clerk of Court because she was not tasked with receiving such deposits. However, the Clerk of Court refused to receive the rental deposits since there was no order to that effect from the presiding judge. Thereafter, Judge Mijares gave instruction to her (Anita Domingo), and to other employees in her Branch, like Mrs. Gatdula and Mrs. Villamater, to receive and receipt for the rental deposits, and turn over the money to her (Judge Mijares). Once deposits were thus made, they were given to Judge Mijares who, in turn, asked Mrs. Villamater

---

[6] Report and Recommendation, pp. 29-30.

Supreme Court E-Library

to deposit them, in her (Judge Mijares') personal account with the United Coconut Planters Bank, Holiday Plaza Branch. Anita Domingo claimed that on February 14, 1990, the rental deposits accumulated in the aggregate amount of ₱222,377.18. Judge Mijares turned over the amount to the Clerk of Court in the form of a check, which the latter, then deposited with the City Treasurer of Pasay City. In this connection, the complainant presented in evidence these documents, to wit:

Exhibit "E"— Official Receipt No. 1204413, dated February 14, 1990, issued by the Clerk of Court, RTC, Pasay City, for the payment of ₱222,377.18 in the form of UCPB Check No. FB-11-014578 dated 2-14-90 (Exhibits "E-1" and "E-2").

"F" — Report of Collections for Fiduciary Fund Deposited with the City Treasurer, Pasay City for the Period from February 13 & 14, 1990 which includes the ₱222,377.18 (Exhibit "E-1").

"G" — Cashier/Treasurer's Report of the Daily Collections & Deposits, February 14, 1990.

"H" — Voucher No. 401-9002-269 dated February 14, 1990.

"J" — Certification issued by Anita Domingo on August 18, 1989 that the rental deposits in the total amount of ₱222,377.18 has been deposited with the Court.

In the affidavit of respondent Judge Mijares, which the parties stipulated to constitute her direct testimony, she stated by way of defense, *viz*:

"That in 1986, November, upon respondent's assumption as Presiding Judge of Branch 108, RTC, Pasay City, Anita Domingo, who was OIC, continued her designation and worked as administrative head of the Branch;

"That as OIC and concurrent property custodian, she was the Chief of all employees and keeper of all evidence and other valuable properties deposited with the Court;

"That the case of Tengco Homeowners Association was one of the cases then pending in Branch 108, and the case being

Supreme Court E-Library

civil in nature, respondent tried to intervene in the hope that the suit will end in a compromise agreement;

"That the parties' intended compromise was reflected in the Order of then Judge Manuel Valenzuela dated February 22, 1984 (Annex "C"); the Order of March 29, 1984 (Annex "D"); the Order of May 24, 1984 (Annex "E"); the Order of Judge Baltazar Dizon dated February 18, 1986 (Annex "F"); the Order dated March 5, 1987; (Annex "G"); the Order dated September 3, 1987 (Annex "H"); the Order dated October 11, 1988 (Annex "I"); the Order dated October 18, 1988 (Annex "I-1");

"That a copy of the Compromise Agreement (Annex "J") was submitted to this Court on October 18, 1988;

"That on October 27, 1988, the Officers and members of the Tengco Homeowners Association were directed to appear to thresh out whatever problem/s there will be in connection with the proposed Compromise Agreement (Annex "L");

"That the Tengco Homeowners requested that their money be deposited in Court for immediate turn-over to Susana Realty the moment the compromise agreement is signed.

"That the pleading of the homeowners was granted and Anita Domingo, as OIC and property custodian, received their money. Receipts were issued to the members duly signed by Anita Domingo (Annex "K", "K-1" up to "K-4"), and as in all other courts, she kept the money in the cabinet/safe where she keeps the evidence and other properties of the Branch;

"That on February 14, 1990, Atty. Antonio Rosales submitted a Manifestation Motion (Annex "M"), but by midday of February 14, 1990, the Court was informed confidentially by one of the Homeowners that the negotiation failed;

"That on the same day, February 14, 1990, this respondent, also Presiding Judge of Branch 108, directed Anita Domingo to turn-over the money of the homeowners to the Clerk of Court;

"That on the same day, February 14, 1990, after she counted the money entrusted to her by the homeowners, Anita Domingo told respondent that there were salary checks included with the cash;

"That respondent told Anita Domingo that the solution is to have one check delivered to the Clerk of Court, and

Supreme Court E-Library

respondent issued one check for the amount of ₱222,377.18 dated February 14, 1990;

"That Anita Domingo delivered respondent's check to the OCC on the same date in exchange for the cash and check, which circumstance account for the issuance of the voucher, and the preparation of the Official Receipt (OR) in the name of Tengco Homeowners' Association, and the Official Receipt (OR) is dated February 14, 1990 (Annex "N");"

Supplementing her affidavit, Judge Mijares testified that she first issued her personal check for the ₱222,377.18, but since it was not accepted by the Clerk of Court, Mrs. Lucia Villamater, a social worker in her staff and her liaison with the United Coconut Planters Bank, Libertad Branch, ran to the bank and purchased a manager's check with the Judge's personal check. It was this manager's check that was used to cover the ₱222,377.18.

Lucia Villamater corroborated Judge Mijares.

The parties further stipulated on the truth of the contents of the affidavit of Isabel Gabriel, a member of the Tengco Homeowners Association, that during the negotiations for the amicable settlement of the consignation case, they requested that they be allowed to deposit the rentals due from them with the court presided over by the respondent Judge and that Anita Domingo had since been receiving their deposits.

By way of rebuttal, Anita Domingo deposed that Judge Mijares' order for her to accept the subject rental deposits was verbal and never reduced into writing; that she never kept the rental deposits in her safety cabinet because that was not intended for money but only for evidence such as titles, guns and other documents; that she never changed any salary checks of her co-employees as she did not keep cash from any source, whether "in trust" or otherwise; and that she never delivered Judge Mijares' personal check for ₱222,377.18 to the Office of the Clerk of Court but the said check passed through her when their cashier, Mrs. Marina Garcia, returned it because they do not accept a personal check and, besides, the Clerk of Court was demanding payment of the commission due on the rental deposits, plus legal research fees, which deposits she had all turned over to Judge Mijares on the very same days that she had received them.

Supreme Court E-Library

But on sur-rebuttal, Felicisima Gatdula, a court stenographer of Judge Mijares, insisted that Anita Domingo presumably kept the rental deposits in her safety cabinet and that she had never seen Anita giving the rentals to Judge Mijares.[7]

On the basis of the foregoing, Justice Valdez did not find credence in respondent's evidence that she did not take possession of the rental deposits and used them for her personal benefit. He pertinently pointed out the following:

1. There was a "marked variance" between respondent's comment and rejoinder on one hand, and her affidavit which served as her direct testimony and her testimony during cross-examination, on the other. In the former, respondent denied any involvement in the rentals deposited by the Tengco Homeowners Association with Anita Domingo. Particularly in her rejoinder, respondent stated that "she never had the chance to order Anita Domingo to receive or issue receipt for the deposits made by the members of Tengco Homeowners." However, in her affidavit and during her cross-examination, respondent admitted that she ordered Domingo to receive and issue receipts for said rental deposits. Further, in her affidavit, respondent disclosed that it was her personal check for ₱222,377.18, representing the accumulated rental deposits, that was first transmitted to the Clerk of Court and when it was refused, respondent had it replaced with a manager's check;[8]

2. It was highly irregular for respondent to have issued her own check for the rental deposits. Assuming *arguendo* that salary checks of the other court employees got mixed with the deposits, respondent should have issued her check only for the amount of said salary checks;[9]

3. The safety cabinets provided the Branch Clerks of Court are meant for exhibits and other important documents and are not fit for keeping cash, especially big sums of money.[10]

---

[7] *Id.*, at 9-15.

[8] *Id.*, at 15-16.

[9] *Id.*, at 17.

[10] *Id.*, at 18.

Supreme Court E-Library

4. There was no justification for respondent in not requiring the Clerk of Court to collect the rental deposits and in allowing instead her OIC Branch Clerk of Court to make the collection. She explained that if the rentals were deposited with the Clerk of Court, who would in turn deposit them with the City Treasurer, it would take 21 signatures to have the deposits withdrawn in the event a settlement would be reached by the parties who were then in the process of negotiation. However, her motive cannot be rationalized in the face of the strict requirement of a Supreme Court Circular relative to the optimum protection of deposits which are fiduciary funds.

We quote the relevant portion of Justice Valdez's conclusions on the matter:

Truly, except for the testimony of Anita Domingo, there is no direct and hard evidence that Judge Mijares got and made personal use of the rental deposits before they were turned over to the Clerk of Court. However, the proofs on hand produce a moral certainty that she did so. For why did she issue her personal check for the deposits? Her explanation that that was the solution she had thought of when Anita Domingo disclosed that there were salary checks of her co-employees that were included in the cash deposits in her possession, won't wash for if that were the situation she (Judge Mijares) could have issued her check only for the amount of the salary checks. After all, Lucia Villamater, her social worker, bank liaison and witness, testified that Anita Domingo encashed the salary checks of her co-employees but once and that could have amounted to only about ₱15,000.00 to ₱20,000.00, or, the salary checks could have easily been encashed with the drawee bank, instead of Villamater buying a manager's check for ₱222,377.18, the aggregate amount of the rental deposits. Besides, the so-called safety cabinets provided the Branch Clerks of Court are not really fit for keeping cash, especially such big sums as hundreds of thousands of pesos; these cabinets are meant only for exhibits and other important papers and documents. So, it is more likely that Anita Domingo had really been turning over her collections to Judge Mijares, following the latter's instruction. Then, too, Judge Mijares' initial false claim that "she never had the chance to order Anita Domingo to receive or issue receipt for the deposits," can not but bring to light her lack of sincerity to tell the truth, if not an insidious ploy to conceal her hand that had been in the cookie jar. Had not the complainant been able to track down

Supreme Court E-Library

her manager's check, in all probability she would have forever kept mum about the matter.

In other words, the alleged bias of Anita Domingo, assuming it to be true, can not alter the fact that it was the manager's check which Judge Mijares caused to be bought with her own personal check that was turned over to the Clerk of Court instead of the cash rental deposits. Where had the cash been all along? Why did she have to buy the manager's check with her own personal check?[11]

In any case, Justice Valdez opined that respondent violated certain circulars of this Court specifically, Circular No. 9 dated March 29, 1977 and Circular No. 5 dated November 25, 1982:

What is more, under Supreme Court Circular No. 9, dated March 29, 1977, it is the Clerk of Court who has been constituted as cashier and disbursing officer; and as such, he/she receives by himself/herself, or through a duly appointed cashier, deposits, fines, and dues. Judge Mijares violated Circular No. 9 in ordering Anita Domingo, who was then merely her Branch Clerk of Court OIC, to collect and receipt for the rental deposits. She tried to cover this up by not reducing her order into writing although the case was for consignation.

Also, before the revocation of Circular No. 5 dated November 25, 1982 by Circular No. 13-92 dated March 1, 1992, all collections of funds of fiduciary character, including rental deposits, were to be deposited immediately upon receipt thereof by the Clerk of Court concerned with the City, Municipal or Provincial Treasurer where his/her Court is located. There was, therefore, no justification for Judge Mijares in not ordering the Clerk of Court to do the collection and in allowing instead her OIC Branch Clerk of Court to collect and, worse, keep the rental deposits in her safety cabinet, if this is true, for such a long period of time from 1986 or 1987 to February 14, 1990. She offered the explanation that the parties were then in the thick of negotiations for an amicable settlement and if the rentals were deposited with the Clerk of Court who would, in turn, deposit them with the City Treasurer, it would take 21 signatures to have the deposits withdrawn in the event that settlement was reached; and so to help the parties cut the red tape, she ordered her OIC Branch Clerk of Court to accept and keep the rental deposits. But the

---

[11] *Id.*, at 17-18.

Supreme Court E-Library

explanation flies in the face of the rationale behind the Supreme Court Circular which was to provide the optimum protection to the integrity of the deposits as fiduciary funds.[12]

We affirm the above findings of Justice Valdez which, after an exhausting review, we find to be amply supported by the evidence on record. However, we take note of Justice Valdez's own admission that "except for the testimony of Anita Domingo, there is no direct and hard evidence that Judge Mijares got and made personal use of the rental deposits before they were turned over to the Clerk of Court."[13] Despite the foregoing statement, his conclusion that respondent deposited the rentals in her private bank account and kept for herself the interests earned is based, nonetheless, on circumstantial evidence. In *Dia-Añonuevo v. Bercallo,*[14] we made a pronouncement that:

> While the court does not make a categorical finding that respondent made use of the money deposited with him, nonetheless We hold that by his actuations, respondent placed his honesty and integrity *under serious doubt.*

and consequently penalized the erring judge.

In addition, we find Anita Domingo to have been remiss in her duties as acting Branch Clerk of Court. She should have strictly adhered to the clear and mandatory procedure under Circular No. 5 (before it was replaced by Circular No. 13-92) regarding the collection and deposit of rentals with the court. Being a responsible officer of the court she should not have swayed to do otherwise.

II

Relative to Special Proceedings No. 3946 involving a petition for correction of entry in the birth record of her grandson, respondent claims that she was not disqualified under Section

---

[12] *Id.*, at 18-19.

[13] *Id.*, at 17.

[14] 68 SCRA 81 (1975).

Supreme Court E-Library

1, Rule 137 of the Rules of Court from taking cognizance of and deciding said case ratiocinating that: (a) she, her daughter, son-in-law and grandson do not have pecuniary interest in the case; (b) the case was not controversial in nature and; (c) with respect to respondent's dispensing with the requirement of publication of the petition which would have cost ₱4,000.00 to ₱6,000.00, the amount was "unnecessary expense on the part of the petitioner that will not inure to the benefit of the government, anyway."[15]

Respondent's conduct is inexcusable.

Section 1, Rule 137 of the Rules of Court provides:

SECTION 1. *Disqualification of judges.* — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniary interested as heir, legatee, creditor or otherwise, or in which he 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, or in which he has been executor, administrator, guardian, trustee or counsel, or which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

Respondent is clearly disqualified from trying the case under the aforequoted section and also under Rule 3.12 (d), Canon 3 of the Code of Judicial Conduct.[16] Being related within the

---

[15] *Rollo*, pp. 848-849.

[16] DISQUAILFICATION.

Rule 3.12.— A judge should take no part in a proceeding where the judge's impartiality might reasonably be questioned. These cases include, among others, proceedings where:

x x x x x x x x x.

(d) the judge is related by consanguinity or affinity to a party litigant within the sixth degree or to counsel within the fourth degree;

x x x x x x x x x.

Supreme Court E-Library

sixth degree of consanguinity to one of the parties (petitioner) in Special Proceedings No. 9346, it was mandatory for respondent to have inhibited herself from hearing the case. While respondent or her daughter may not have pecuniary interest in the case as heir, legatee, creditor or otherwise, which is her contention for her exculpation, what is violated in Section 1 of Rule 137 was her taking cognizance of the case despite her relationship to a party within the sixth degree of consanguinity or affinity.

Apart from the rules already cited, respondent violated Rule 2.03, Canon 2 of Code of Judicial Conduct which states that: "A Judge shall not allow family, social or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge."

In *Garcia v. De la Peña,*[17] we expounded on the rationale behind the rule on compulsory disqualification of judges in this wise:

> The rule on compulsory disqualification of a judge to hear a case where, as in the instant case, the respondent judge is related to either party within the sixth degree of consanguinity or affinity rests on the salutary principle that no judge should preside in a case in which he is not wholly free, disinterested, impartial and independent. A judge has both the duty of rendering a just decision and the duty of doing it in a manner completely free from suspicion as to its fairness and as to his integrity. The law conclusively presumes that a judge cannot objectively or impartially sit in such a case and, for that reason, prohibits him and strikes at his authority to hear and decide it, in the absence of written consent of all parties concerned. The purpose is to preserve the people's faith and confidence in the courts of justice.

Respondent contends that the petition for correction of entry of the birth record of her grandson does not involved controversial matters such as those relating to civil status, citizenship or nationality, but merely pertain innocuous or clerical errors and,

---

[17] 129 SCRA 767 (1994); see also *Marfil v. Cuachon*, 107 SCRA 41 (1981) and *Geotina v. Gonzales*, 41 SCRA 66 (1971).

Supreme Court E-Library

therefore, the correction can be done through summary proceedings under Article 412 of the Civil Code[18] in relation to Rule 108 of the Rules of Court.

Even on the assumption that the petition for correction of entry of respondent's grandson is not controversial in nature, this does not detract from the fact that she cannot be free from bias or partiality in resolving the case by reason of her close blood relationship to him. In fact, bias was clearly demonstrated when she waived the requirement of publication of the petition on the dubious ground of enabling the parents of the minor (her daughter and son-in-law) to save the publication fee as they were then just "starting to have a family."

In any case, notice and publication of the hearing of the petition under Rule 108 of the Rules of Court is mandatory and cannot be waived, particularly Sections 3,4 and 5 thereof:

SEC.3 *Parties.* — When cancellation or correction of entry in the civil register is sought, the civil registrar and all persons who have or claimed any interest which would be affected thereby shall be made parties to the proceeding.

SEC. 4 *Notice and publication.* — Upon the filing of the petition, the court shall, by an order, fix the time and place of the hearing of the same, and cause reasonable notice thereof to be given to the person named in the petition. The court shall also cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province.

SEC. 5. *Opposition.* — The civil registrar and any person having or claiming any interest under the entry whose cancellation or correction is sought may, within fifteen (15) days from notice of the petition, or from the last date of publication of such notice, file his opposition thereto.

Even if the proceedings contemplated in Rule 108 are not controversial in nature, they are still essentially adversarial, hence,

---

[18] Art. 412. No entry in a civil register shall be changed or corrected without a judicial order.

Supreme Court E-Library

the need of notice and publication of the hearing. As the Court in *Republic v. Valencia*[19] elucidated:

> The court's role in hearing the petition to correct certain entries in the Civil Registry is to ascertain the truth about the facts recorded therein. Under our system of administering justice, truth is best ascertained or approximated by trial conducted under the adversary system.

Being properly an adversary proceeding, respondent's flawed logic that her relationship to the petitioner does not disqualify her from deciding the case because there are no opposing parties is untenable.

Respondent has neither the authority nor the discretion to dispense with the publication of the notice of hearing of the petition as provided in the aforequoted Section 4, Rule 108 of the Rules of Court. Respondent knows or ought to know that said requisite is mandatory, without which the court acquires no jurisdiction over the case. How the case was raffled to the sala of respondent in the Regional Trial Court of Pasay when the petition should have been filed in the Regional Trial Court of Manila, where the civil registry involved is located is baffling enough. But for the respondent to waive with the required publication to enable the parents of the minor "who are just starting to have a family" to save the publication fee does not speak well of respondent's grasp of the law. We agree with Justice Valdez in his observation that:

> The relationship could account for the alacrity of Judge Mijares in favorably acting on the petition although the civil register was not impleaded who, in this case, should have been the Civil Registrar of Manila since the minor Joshua Anthony M. Gurango, whose birth certificate was sought to be corrected, was born and registered in Manila, and although the petition was erroneously filed with her court as it should have filed with the Regional Trial Court of Manila, pursuant to Section 1 of Rule 108 which directs that such a petition shall be filed "with the Court of First Instance (now RTC) of the province where the corresponding civil registry is located." The relationship

---

[19] 141 SCRA 662 (1986).

Supreme Court E-Library

furthermore led her to dispense with the publication requirement, which is jurisdictional, just to enable the parents of the minor (her daughter and son-in-law), "who are just starting to have a family" to save the publication fee of ₱4,000.00 to ₱6,000.00. Any of these flaws should have, instead, caused the outright dismissal of the petition.

> "The necessary consequence of the failure to implead the civil registrar as an indispensable party and to give notice by publication of the petition for correction of entry was to render the proceeding of the trial court, so far as the correction of entry was concerned, null and void for lack of jurisdiction both as to party and as to the subject matter."[20]

The Court, once again, earnestly reminds judges to be extra prudent and circumspect in the performance of their duties for "(a) judge owes it to the public and to the legal profession to know the factual basis of the complaint and the very law he is supposed to apply to a given controversy. He is called upon to exhibit more than cursory acquaintance with the statutes and procedural rules. Party litigants will have greater faith in the administration of justice if judges are not cursorily excused of apparent deficiency in the analysis of the facts of the case and in the grasp of the legal principles. For service in the judiciary means a continuous study and research of the law from beginning to end (*Roa vs. Imbing,* 231 SCRA 58 [1994]; *Wingarts vs. Mejia,* 242 SCRA 436 [1995]). A member of the bench must continuously keep himself abreast of legal and jurisprudential developments because the learning process in law never ceases."[21]

III

Alleging that Quezon City is respondent's actual residence, complainant accused respondent of falsely declaring her residence (in the latter's petition for declaration of presumptive death of her husband Primitivo Mijares) to be at No. 2247 Coral

---

[20] Report and Recommendation, pp. 24-25.

[21] *Naldoza v. Lavilles, Jr.*, 254 SCRA 293 (1996).

Supreme Court E-Library

St., San Andres Bukid, Manila, in order, allegedly, to lay the venue over said petition in the Regional Ttrial Court of Manila, instead of Quezon City.

Complainant's charge has not been sufficiently substantiated. We find adequate respondent's testimony that it was at this address that her husband Primitivo Mijares resided and this was where respondent and her husband established their family residence after getting married and before the latter's unfortunate disappearance.

IV

Finally, we find to be similarly baseless complainant's last charge that respondent falsely stated in her application for marriage license (with herein complainant) filed on 20 December 1993 that her residence was at No. 869 Pestañas St., Pasay City. We adopt *in toto* the findings of Justice Valdez, thus:

On the other hand, when she testified Judge Mijares maintained that she has three places of residence, to wit: No. 869 Pestañas St., Pasay City, the house of the older sister of her mother, where she had resided for more than 20 years since graduation from high school in 1953; and No. 72, Road 3, Project 6, Quezon City, where she migrated. But she went to Pasay City in November 1986, when she assumed office as RTC Judge in the City. She also considered No. 2447 Coral Street, San Andres Bukid, Manila, as her third place or residence because it was the residence of her husband, Primitivo Mijares, and he brought her there. However, in 1990, when she filed her petition for the declaration of the presumptive death of her husband, she was no longer residing there. In fact, the place has already been demolished but before that, Teresita Arceo, a member of her (Judge Mijares') staff when she was yet a Judge of the Metropolitan Trial Court of Manila, had also resided there.

Through Wilfredo Rejano, chairman of Barangay 69, Zone 09, which encompasses Pestañas Street in Pasay City, the complainant endeavored to show that No. 869 Pestañas Street and, for that matter, No. 185 T. Pestañas Street, are non-existent.

However, Virginia Pestañas-Victa belied the claim of Rejano. She said that T. Pestañas St., Pasay City, was named after her grandfather Tomas Pestañas, the father of her father. She was born on October

Supreme Court E-Library

20, 1928 at No. 185 T. Pestañas, as indicated in her marriage contract dated October 30, 1955. Her oldest son, Virgilio Pestañas, was born there. Her mother Emilia de Villa Pestañas, and her sister, Victoria Pestañas, likewise lived there. Subsequently, the place was re-numbered 163 T. Pestañas, then 169 T. Pestañas, but that she had mistakenly told Judge Mijares that the number is 869 T. Pestañas. So, that explain why Judge Mijares indicated No. 869 Pestañas Street, Pasay City, as her residence both in her application for a marriage license and in her marriage contract with the complainant.

As between Wilfredo Rejano, who claimed that there is no such address as No. 869 or No. 185 T. Pestañas Street, Pasay City and Virginia Pestañas, who declared that there had been No. 185 T. Pestañas Street but subsequently re-numbered No. 163 and, presently, 169 T. Pestañas Street; and that No. 869 T. Pestañas Street was just her honest mistake, the undersigned readily gives credence to the latter. The former was only 31 years old when he testified on January 8, 1997, so he must have been born in 1966, and could not be familiar with the full history of Pestañas Street, Pasay City. On the other hand, the latter was 68 years old and was born at 185 T. Pestañas Street on October 20, 1928, an address which she maintained up to her marriage on October 30, 1955, and even thereafter. She claimed, without contradiction, that the street was named after her grandfather, Tomas Pestañas, and that Judge Mijares, her niece, used to live with them there.

The falsities attributed to Judge Mijares in these charges have not, therefore, been substantiated. The complainant has not refuted her assertion that she considered Manila as her residence at one time because that was where her husband established their family residence. She treats Pasay City and Quezon City as her present places of residence since the former is where she has been working up to now as a judge and where she had lived when still a student, and the latter is where she goes home after her work. In this connection, in distinguishing domicile from residence, it has been held that, "It is xxx quite perfectly normal for an individual to have different residence in various places." So, she could have acted in utmost good faith in filing her petition for the declaration of the presumptive death of her husband with the Regional Trial Court of Manila for it was in Manila where her husband established their conjugal residence. After her husband was declared presumptively dead, she could no longer consider Manila as a place of residence; hence, when she applied for a marriage license to marry the complainant, she filed it with Pasay

Supreme Court E-Library

City where she works and which she presently treats as a place of residence aside from Quezon City.[22]

WHEREFORE, in view of the foregoing, the Court finds respondent guilty of grave misconduct and resolves that:

(1) Under the first charge, respondent Judge Priscilla C. Mijares is hereby *FINED* in the amount of ₱20,000.00.

(2) Under the second charge, respondent Judge Mijares is hereby *FINED* ₱10,000.00 for violating Section 1, Rule 137 of the Rules of Court.

(3) Respondent Judge is further *WARNED* that the commission of the same or a similar offense shall be dealt with more severely.

Further, the OCA is instructed to institute appropriate administrative charges against Anita Domingo, former Acting Branch Clerk of Court, Regional Trial Court, Pasay City, Branch 108.

SO ORDERED.

Regalado, Davide, Jr., Bellosillo, Melo, Puno, Vitug, Mendoza, Panganiban, Martinez, Quisumbing, and *Purisima, JJ.,* concur.

Narvasa, C.J., no part. Close relation to a party.

Romero, J., no part. Closely associated with respondent.

---

[22] *Id.,* at 26-29.