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*Mis D C Batt*  
MISAEL DOMINGO C. BATTUNG III  
Deputy Division Clerk of Court  
Third Division

Republic of the Philippines  
Supreme Court  
Manila

OCT 17 2019

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE

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THIRD DIVISION

BY: 784  
TIME: 1:41

ATTY. MARSHA B. ESTURAS,  
*Complainant,*

A.M. No. RTJ-11-2281  
(Formerly OCA IPI-10-3372-RTJ)

Present:

- versus -

PERALTA, J., *Chairperson,*  
LEONEN,  
REYES, A., JR.,  
HERNANDO,\* and  
INTING, JJ.

JUDGE AGAPITO S. LU,  
REGIONAL TRIAL COURT,  
BRANCH 88, CAVITE CITY,  
*Respondent.*

Promulgated:

September 16, 2019

*Mis D C Batt*

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DECISION

INTING, J.:

Before the Court is an administrative Complaint<sup>1</sup> dated February 4, 2010 filed by complainant Atty. Marsha B. Esturas with the Office of the Court Administrator (OCA). In the Complaint, complainant charged respondent Judge Agapito S. Lu (now retired) with Conduct Unbecoming a Judge and Delay in the Disposition of a Case.

Complainant alleged that respondent was the Presiding Judge of the Regional Trial Court, Branch 88, Cavite City, before whose court

\* On leave.

<sup>1</sup> *Rollo*, pp. 10-13.

Civil Case No. N-8004, entitled "*MRS. AGNES RAFOLS-DOMINGO, Widow of ELIODORO S. DOMINGO and representative of the legal heirs MARIA ANGELA, JOHANNA, JOSEPH all surnamed Domingo, plaintiffs vs. FLORANTE GLORIANI and GLORIA G. REYEL, defendants,*" was pending. Complainant is plaintiffs' counsel in the civil case. Subsequent to the filing of plaintiff's complaint on February 4, 2009, defendants moved to dismiss it on the ground of improper mode of service of summons, among others. On June 10, 2009, plaintiff filed a Manifestation with Motion to Serve Summons by Publication. On October 26, 2009, plaintiff filed a Motion to Resolve Immediately the Motion to Serve Summons by Publication.

According to complainant, respondent had been delaying the proceedings of the case as plaintiff's motion to serve summons by publication had been pending for almost seven months as of the writing of the administrative complaint.

For his part, respondent alleged the following in his Comment and Counter-Complaint<sup>2</sup>:

Sometime during the last quarter of 2009, Atty. Marsha B. Esturas came to the office of undersigned's Branch Clerk of Court, Atty. Jordan J. Teaño and personally requested that action or resolution of the pending motions in Civil Case No. N-8004 entitled Mrs. Agnes Rafols-Domingo etc., et al. vs. Florante Gloriani, et al. for Specific Performance (obviously referring to the Motion to Dismiss filed by the defendants and the Motion to Serve Summons by Publication filed by her) be deferred or held in abeyance because she was then negotiating with Atty. Arnel G. Espiritu (counsel of would-be intervenors in the case) for a possible amicable settlement of the case.

X X X X

That because of the request for deferment made personally by Atty. Marsha B. Esturas, Branch Clerk of Court Atty. Jordan J. Teaño kept the records of the case in his possession while awaiting word from either Atty. Marsha B. Esturas or Atty. Arnel G. Espiritu as to the outcome of their negotiations for the amicable settlement of the case;

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<sup>2</sup> Id. at 37-40.

That during this period of waiting, my Branch Clerk of Court, Atty. Jordan J. Teaño did not submit the records of the case to me, hence I did not have the opportunity to resolve the pending motions;

That it was only on April 16, 2010, after Atty. Jordan J. Teaño received word from Atty. Arnel G. Espiritu that the negotiations for amicable settlement did not prosper; that the records of the case was submitted to me;

That the undersigned immediately resolved plaintiffs' motion and Atty. Jordan J. Teaño accordingly prepared new summons, however, neither the plaintiffs nor their counsel took any action until now to effect service of summons on the defendants[.]<sup>3</sup>

As a counter-charge, respondent sought the disbarment of complainant for violating Rule 1.01, Canon 1;<sup>4</sup> Rule 10.01, Canon 10;<sup>5</sup> and Rule 12.04, Canon 12<sup>6</sup> of the Code of Professional Responsibility.

Through the Notice<sup>7</sup> dated June 13, 2011, the Court resolved to re-docket the complaint as a regular administrative matter and refer it to the Presiding Justice of the Court of Appeals to be raffled among the associate justices for investigation, report, and recommendation.

Thereafter, the Investigating Justice, Associate Justice Agnes Reyes-Carpio, submitted her Report and Recommendation<sup>8</sup> finding merit in the Complaint. She was unconvinced of respondent's passing of blame on complainant and the Branch Clerk of Court, Atty. Jordan J. Teaño (Atty. Teaño). Moreover, the Investigating Justice found unmeritorious respondent's claim that complainant tried to negotiate the case with Atty. Arnel G. Espiritu (Atty. Espiritu) and his clients, the "would-be" intervenors, as the latter persons were not even parties thereto. The Investigating Justice further held that:

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<sup>3</sup> Id. at 37-38.

<sup>4</sup> Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

<sup>5</sup> Rule 10.01 – A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

<sup>6</sup> Rule 12.04 – A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes.

<sup>7</sup> *Rollo*, p. 80-81.

<sup>8</sup> Id. at 59-75.

In any event, even assuming that it was complainant herself who requested the deferment of the resolution of the motion, the same should have been placed on record. Ours is a court of record, and all its proceedings must be in writing. Had he advised complainant to put his request on writing, then he would not be facing this administrative charge. Assuming that the request was acceptable, then at least an order to the effect that the resolution of the case is deferred due to the verbal request of the complainant should have been made. No order was ever made, however, as admitted by Atty. Teaño.<sup>9</sup> (Citation omitted.)

The dispositive portion of the Investigating Justice's Report and Recommendation reads:

WHEREFORE, in view of the foregoing, it is recommended that respondent Judge Agapito S. Lu be FINED in the amount of Ten Thousand (P10,000.00) Pesos. The Branch Clerk of Court, Atty. Jordan J. Teaño be advised to be more circumspect in his duties as Branch Clerk of Court.

On the other hand, it is recommended that the Counter-Complaint against Atty. Marsha B. Esturas be referred to the Office of the Bar Confidant.<sup>10</sup>

The OCA, in its Memorandum<sup>11</sup> dated January 28, 2019, agreed with the findings of the Investigating Justice, except as to the counter-charge against complainant. Thus, it recommended as follows:

2. Respondent Judge Agapito S. Lu (Ret.), Branch 88, Regional Trial Court, Cavite City, Cavite, be found GUILTY of the less serious offense of undue delay in rendering a decision or order relative to Civil Case No. N-8004, entitled *Rafols-Domingo, et al. v. Gloriane, et al.*, and be FINED in the amount of Ten Thousand Pesos (P10,000.00);
3. Atty. Jordan J. Teaño, Branch Clerk of Court, Branch 88, Regional Trial Court, Cavite City, Cavite, be REMINDED to be more circumspect in the performance of his duties, with a

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<sup>9</sup> Id. at 68.

<sup>10</sup> Id. at 75.

<sup>11</sup> Id. at 89-92.

warning that the repetition of the same or any similar act will be punished more severely; and

4. the Counter-Complaint for disbarment of respondent Judge Agapito S. Lu against complainant Atty. Marsha B. Esturas be DISMISSED for lack of merit.<sup>12</sup>

### *Ruling of the Court*

We agree with the findings of the Investigating Justice with respect to the charge against respondent.

The Constitution “fixes a reglementary period of 90 days within which judges must resolve motions or incidents pending before them.”<sup>13</sup> Consonantly, “Rules 1.02<sup>14</sup> of Canon 1 and 3.05<sup>15</sup> of Canon 3 of the Code of Judicial Conduct direct judges to administer justice impartially and without delay and to dispose of the court's business promptly and decide cases within the required periods.”<sup>16</sup> In line therewith, Supreme Court Administrative Circular No. 1-88<sup>17</sup> provides:

- 6.1 All Presiding Judges must endeavor to act promptly on all motions and interlocutory matters pending before their courts.

In this case, respondent admitted to have incurred delay in resolving the Motion to Serve Summons by Publication filed by plaintiff on June 10, 2009 in the earlier mentioned civil case. Per Atty. Teaño's affidavit, which the Investigating Justice quoted in her report, the motion was resolved only on April 16, 2010.<sup>18</sup> We note that while there was an exchange of papers between the parties in the civil case subsequent to the filing of the subject motion, plaintiff finally filed on October 26,

<sup>12</sup> Id. at 92.

<sup>13</sup> *Request of Judge Gonzales-Asdala, RTC-Br. 87, Q.C. For Extension to Decide Civil Case No. Q-02-46950 & 14 Others*, 527 Phil. 20, 23 (2006).

Also, Section 15 (1), Article VIII of the 1987 Constitution states: All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts.

<sup>14</sup> Rule 1.02. A judge should administer justice impartially and without delay.

<sup>15</sup> Rule 3.05. A Judge shall dispose of the court's business promptly and decide cases within the required periods.

<sup>16</sup> *Atty. Sesbreño v. Judge Gako, Jr., et al.*, 591 Phil. 380, 388 (2008).

<sup>17</sup> Dated January 28, 1988.

<sup>18</sup> *Rollo*, p. 63.

2009 a Motion to Resolve Immediately the Motion to Serve Summons by Publication.<sup>19</sup>

By way of an excuse, respondent attributes the delay to complainant, whom he alleged to have been negotiating for the settlement of the case with Atty. Espiritu, and to his Branch Clerk, Atty. Teaño, whom he claimed to have kept the records of the case and failed to forward them to him.

Respondent's proffered excuse is not persuasive. Judges cannot be allowed to use their staff as shields to evade responsibility for mistakes or mismanagement committed in the course of the performance of their duties.<sup>20</sup> Court management is ultimately the judges' responsibility.<sup>21</sup>

Moreover, as held by the Investigating Justice, respondent could have, at least, issued an order deferring the resolution of plaintiff's motion on the basis of complainant's request to defer it. This way, he could have avoided being accused of delaying the resolution thereof. Even if it were true that the records of the case were not forwarded to him by his Branch Clerk, to our mind, however, this only shows that there was something irregular about the way respondent managed his court. This is bolstered by his own admission that during the inventory of cases before his court to check the statuses thereof, among others, he would sign the records, but scan them only "sometimes."<sup>22</sup>

The hearing in the administrative case further revealed respondent's failure to carry out the duty to manage efficiently and take control of the court proceedings as far as the civil case is concerned. As quoted by the Investigating Justice, and we herein reproduce:

Justice A. Reyes-Carpio:

The motion to resolve was filed when?

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<sup>19</sup> Id. at 60.

<sup>20</sup> *Request of Judge Gonzales-Asdala, RTC-Br. 87, Q.C. For Extension to Decide Civil Case No. Q-02-46950 & 14 Others, supra* note 13 at 24.

<sup>21</sup> Id.

<sup>22</sup> *Rollo*, pp. 71-72.

Branch Clerk of Court, Atty. Teaño:

October, but it was set by the movant on November 3, 2009.

Complainant Atty. Esturas:

October 26, 2009, your Honor.

Respondent Judge Lu:

The hearing on the motion was set on November 3.

Justice A. Reyes-Carpio:

And it was set on November 3?

Branch Clerk of Court, Atty. Teaño:

Yes, your Honor.

Justice A. Reyes-Carpio:

What was the order issued on November #3?

Branch Clerk of Court, Atty. Teaño:

There was no hearing that took place on that day.

Justice A. Reyes-Carpio:

Why?

Branch Clerk of Court, Atty. Teaño:

Because Atty. Esturas came to me and asked for the deferment of the motion.

Justice A. Reyes-Carpio:

Because of the alleged possibility of settlement?

Branch Clerk of Court, Atty. Teaño:

Yes.

Justice A. Reyes-Carpio:

But there was no order to that effect upon her motion or manifestation that her motion be deferred considering that there was a possibility of settlement? There was never an order to that effect?

Branch Clerk of Court, Atty. Teaño:

No.

Justice A. Reyes-Carpio:

It was only, let us say, an agreement between you. Atty. Espiritu and Complainant Atty. Esturas?

Branch Clerk of Court, Atty. Teaño:

Yes, your Honor.

Justice A. Reyes-Carpio:

And you never conveyed this matter to the Judge?

Branch Clerk of Court, Atty. Teaño:

I cannot remember.

Justice A. Reyes-Carpio:

Why can you not remember? This is your case.

Branch Clerk of Court, Atty. Teaño:

Yes, your honor.<sup>23</sup>

The following pronouncements in the case entitled "*Re: Compliance of Judge Maxwell S. Rosete*",<sup>24</sup> thus find relevance:

Truly, judges play an active role in ensuring that cases are resolved with speed and dispatch so as not to defeat the cause of the litigants. A judge should administer justice impartially and without delay. They must always be in control of proceedings to

<sup>23</sup> Id. at 68-70.

<sup>24</sup> 479 Phil. 255, 262 (2004).



ensure that the mandatory periods provided in the Rules of Court and several other rules promulgated by the Court are faithfully complied with. A judge shall dispose of the court's business promptly and decide cases within the required periods. It is in this connection that we reiterate the oft-repeated maxim that justice delayed is often justice denied. Thus, any delay in the administration of justice may result in depriving the litigant of his right to a speedy disposition of his case and will ultimately affect the image of the Judiciary. A delay in the disposition of cases amounts to a denial of justice, brings the court into disrepute, and ultimately erodes public faith and confidence in the Judiciary. Inability to decide a case within the required period or unreasonable delay of a judge in resolving a pending incident constitutes gross inefficiency and subjects the judge to administrative sanctions. (Citation omitted.)

It is true that the public's faith and confidence in the judicial system largely depend on the judicious and prompt disposition of cases and other matters pending before the courts.<sup>25</sup> The judges' "failure to do so decide a case or resolve a motion within [the] reglementary period constitutes gross inefficiency and warrants the imposition of administrative sanctions against the erring magistrate."<sup>26</sup>

Under Section 9, Rule 140 of the Rules of Court, undue delay in rendering a decision or order is a less serious charge. Under Section 11 of the same rule, the charge is punishable by either: (a) suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or (b) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. In light of the attendant facts of the case, it appearing that this is respondent's first infraction, and, more importantly, respondent had already retired from service, we hereby find the fine of ₱11,000.00 as sufficient sanction to be imposed on respondent.

With respect to respondent's Counter-Complaint for disbarment against complainant, we adopt the OCA's recommendation that it be dismissed for lack of merit. Indeed, considering the time that has already elapsed from the occurrence of the complained act, pursuing the case might be an exercise in futility. At any rate, there is nothing in the record that sufficiently supports the counter-charge against complainant.

<sup>25</sup> *Request of Judge Gonzales-Asdala, RTC-Br. 87, Q.C. For Extension to Decide Civil Case No. Q-02-46950 & 14 Others*, supra note 12 at 23.

<sup>26</sup> *Id.* at 23-24.

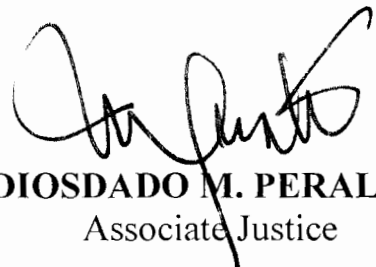
**WHEREFORE**, we find respondent Judge Agapito S. Lu **LIABLE** for undue delay in rendering decisions and orders and **IMPOSE** upon him a fine of ₱11,000.00 to be deducted from his retirement benefits.

The Counter-Complaint for disbarment against complainant Atty. Marsha B. Esturas is **DISMISSED** for lack of merit.

**SO ORDERED.**

  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

WE CONCUR:

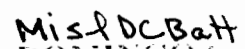
  
**DIOSDADO M. PERALTA**  
Associate Justice

  
**MARVIC M.V.F. LEONEN**  
Associate Justice

  
**ANDRES B. REYES, JR.**  
Associate Justice

(On leave)  
**RAMON PAUL L. HERNANDO**  
Associate Justice

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**MISAE L DOMINGOC BATTUNG III**  
Deputy Division Clerk of Court  
Third Division  
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