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JUDGES

- **Gross Ignorance of the Law and Procedure; Gross Inefficiency**

Indeed, in the present case, respondent judge should not have waited for the accused to file an omnibus motion for a judicial determination of probable cause. As this Court held in *Leviste v. Hon. Alameda,* "[t]o move the court to conduct a judicial determination of probable cause is a mere superfluity, for with or without such motion, the judge is duty-bound to personally evaluate the resolution of the public prosecutor and the supporting evidence." Thus, the failure of respondent judge to comply with this fundamental precept constituted gross ignorance of the law and procedure. His failure to heed this precept resulted in the said accused's arraignment, without the accused in custody of the law.

Likewise in point is this Court's teaching in *Guillen v. Judge Nicolas,* where it was stressed that:

> [B]y setting the cases for arraignment and trial, respondent judge must have found probable cause to hold the accused for trial. [The judge] should have proceeded to examine in writing and under oath the complainants and (the] witnesses by searching questions and answers. The records do not show that the [judge] set the case for, or conducted, such examination preparatory to issuing a warrant of arrest. Neither [was) there any subpoena or order requiring the complainants or [the] witnesses to appear in court for such examination. The inevitable conclusion is that the respondent judge skipped this procedure.

Needless to say, the failure of respondent judge to conduct a judicial determination of probable cause under Section 5, Rule 112 of the Rules of Court was exacerbated by his act in allowing the accused to go home (without bail) after arraignment. These acts were indicative of gross ignorance of the law and procedure for which respondent must be called to account.

In addition, respondent judge's failure to conduct a hearing on accused's Petition for Bail constitutes gross ignorance of the law. It is axiomatic that a bail hearing is a must, despite the prosecution's lack of objection to the same. In *Balanay v. Judge White,* we said:

> x x x Stressing the necessity of bail hearing, this Court pronounced that:
>
> > The Court has always stressed the indispensable nature of a bail hearing in petitions for bail. Where bail is a matter of discretion, the grant or the denial of bail hinges on the issue of whether or not the evidence on the guilt of the accused is strong and the determination of whether or not the evidence is strong is a matter of judicial discretion which remains with the judge. In order for the judge to properly exercise this discretion, [the judge] must first conduct a hearing to determine whether the evidence of guilt is strong. This discretion lies not in the determination of whether or not a hearing should be held, but in the appreciation and evaluation of the weight of the prosecution's evidence of guilt against the accused.
>
> > In any event, whether bail is a matter of right or discretion, a hearing for a petition for bail is required in order for the court to consider the guidelines set forth in Section 9, Rule 114 of

> the Rules of Court in fixing the amount of bail. This Court has repeatedly held in past cases that even if the prosecution fails to adduce evidence in opposition to an application for bail of an accused, the court may still require the prosecution to answer questions in order to ascertain, not only the strength of the State's evidence, but also the adequacy of the amount of bail.

Hence, it is altogether of no consequence that the Order granting bail "was made in the presence of the public prosecutor, and the latter made no objection or comment to the oral manifestation of the defense counsel."

We agree with the OCA's finding that respondent judge was inefficient in failing to resolve the motion for issuance of a hold departure order despite the lapse of 90 days. We find his contention, that "there is no need to issue an HDO order [sic] because a Hold Departure Order (HDO) is based on sound judgment and judicial discretion of a Judge," unmeritorious. While it is true that the law gives respondent judge considerable discretion whether to issue or not to issue a hold departure order, this grant of considerable discretion in no wise or manner means that respondent judge need not resolve at all the pending motion.

Respondent judge ought to know the difference between a judge's discretionary power to issue a hold departure order and his mandatory duty to resolve all kinds of motions within 90 days.

Respondent judge was found guilty of gross ignorance of the law and procedure and gross inefficiency and was ordered to pay a fine of P20,000 to be deducted from his retirement benefits. ***[A.M. No. RTJ-18-2523 (Formerly OCA I.P.I. No. 14-4353-RTJ), June 6, 2018]***

- **Violation of Supreme Court Rules and Directives**

After considering the allegations in the Complaint and respondent judge's Comment, the OCA agreed with complainant's assertion that the JAR does not require the inclusion of the offer or statement of the purpose of the witness' testimony nor does it impose a fine on a party for failure to include the same. The OCA noted that the contents of a judicial affidavit are those listed under Section 3 of the JAR, while Section 6 thereof provides that the party presenting the witness' judicial affidavit in place of direct testimony shall state the purpose of the same at the start of the presentation of the witness. Moreover, the OCA stressed that the fine under Section 10 of the JAR is only imposable in the following instances: (a) the court allows the late submission of a party's judicial affidavit; and (b) when the judicial affidavit fails to conform to the content requirements under Section 3 and the attestation requirement under Section 4. The OCA ratiocinated as follows:

> Basic is the rule that the imposition of a fine, being penal in nature, must strictly comply with the rule or law, calling for its imposition. Clearly, respondent judge had no authority to add to the list provided in Section 3 of the Judicial Affidavit Rule. Neither did he have the authority to impose a fine for failure of complainant to include the additional requirement he unilaterally imposed. Even if we were to assume that respondent judge reminded all lawyers to include an additional requirement in their judicial affidavits submitted in court, he still had no authority to impose the fine provided in the Rule for failure to comply with his own directive. In addition, the main purpose of the subject Rule is *"to reduce the time needed for completing the testimonies of witnesses in cases under litigation."* In arbitrarily prohibiting the verbal manifestation of the purpose of the witness' testimony, the proceedings were delayed for 120 more days. This delay could have been averted by simply allowing complainant to state the purpose of the testimony which would have taken just a few minutes at the most.

> It is also important to note that respondent judge was quick to impose a fine for the supposed failure to comply with his own directive. And yet, he now asks for *"mercy and compassion"* for failing to comply with the directive of this Office to submit his comment, pursuant to the First Indorsement dated February 3, 2014 and First Tracer dated September 8, 2014. In fact, he only submitted his Comment dated September 15, 2016, after he was directed by the Court pursuant to its Resolution dated July 20, 2016. In his comment, respondent judge claims that the filing of this case against him had caused him so much *"anguish and anxiety* x x x *that even the preparation of his answer was felt as a torture."*
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> x x x x

In view of the foregoing, the Court hereby adopts and approves the findings of facts and conclusions of law in the above OCA report and recommendation. Respondent judge was found guilty of violating the Supreme Court rules and directives for which he was fined in the amount of P20,000 with a warning that a repetition of the same infraction shall be dealt with more severely. ***[A.M. No. MTJ-17-1899 (Formerly OCA I.P.I. No. 14-2646-MTJ), March 7, 2018]***

SOCIAL WELFARE OFFICER

- **Simple Misconduct**

We agree with the investigating judge and with the OCA both of whom found respondent guilty of simple misconduct, in displaying improper deportment and reprehensible arrogance by officially meddling in a custody case which had been archived by the court, and in which she was not at all involved in any manner. Stress must be laid on the fact that respondent had not at all received any order from the court directing her to conduct any case study, and with which she had no connection at all.

x x x x

By definition, "[s]imple misconduct is a transgression of some established rule of action;" an unacceptable behavior that transgresses the established rules of conduct for public officers. "Any act deviating from the procedure laid down by the Rules is misconduct that warrants disciplinary action." Misconduct may be considered simple if the additional elements of corruption, willful intent to violate the law or to disregard established rules are not present.

In the case at bench, we find reprehensible respondent's acts of meddling or intervening in an otherwise archived custody case and in arrogantly flouting that the success of the said case rested upon the "tip of her ballpen." Such a conceited display of self-importance is a failure of circumspection that calls for disciplinary sanction by this Court. "The law does not tolerate misconduct by a civil servant." There is hardly any doubt that respondent had acted in such a way that is an assault upon the norm of decency, and diminishes the people's respect for those in the government service, particularly for those employed in the judiciary.

The Court found the respondent guilty of simple misconduct and was fined in the amount equivalent to her salary for one month. ***[A.M. No. P-18-3842 (Formerly OCA I.P.I. No. 12-3965-P), June 11, 2018]***

COURT STENOGRAPHER

- **Simple Neglect of Duty**

Administrative Circular No. 24-90 requires all stenographers "to transcribe all stenographic notes and to attach the transcripts to the record of the case not later than 20 days from the time the notes are taken."

The respondent showed that she was able to submit the TSNs and orders in question but she did not establish that her submission of the TSNs and orders was made within the prescribed period. Indeed, as noted by the Office of the Court Administrator (OCA), the issuance by the Acting Presiding Judge of the MTCC and by the complainant of their memoranda directing her to submit the TSNs and orders was proof that she did not comply with the circular. For instance, in Criminal Case No. XXXX-09*,* the Acting Presiding Judge issued to her the memorandum dated July 27, 2010 directing her to explain why she should not be subjected to administrative sanctions for failing to transcribe the order dated June 22, 2010. Although she replied in her comment that she had complied with the directive, she did not state the date when she had actually transcribed the order. The fact that the Acting Presiding Judge was subsequently constrained to issue to her another memorandum on July 27, 2010 was sufficient proof showing that she had not yet transcribed the order in question as of said date.

The Court cannot but stress the importance of the timely submission of the TSNs by the respondent. As reminded in *Absin v. Montalla,* a case where the respondent was a court stenographer of the RTC in ABC, every court stenographer should realize that "the performance of his duty is essential to the prompt and proper administration of justice, and his (respondent's) inaction hampers the administration of justice and erodes public faith in the judiciary." x x x

Nonetheless, although the respondent did not comply with her duty to submit her TSNs within the prescribed period, there is no showing that her failing to do so was habitual. Also, she ultimately submitted the TSNs and transcribed the orders. As such, she was liable for simple neglect of duty.

Finding respondent court stenographer guilty of simple neglect of duty, the Court imposed upon her a fine in the amount of P5,000 with a warning that her commission of the same or similar acts shall be dealt with more severely. ***[A.M. No. P-13-3154 (Formerly OCA I.P.I. No. 10-3470-P), March 7, 2018]***