

EN BANC

A.M. No. RTJ-11-2301 (formerly A.M. No. 11-3-55-RTC) OFFICE OF THE COURT ADMINISTRATOR, Complainant, v. JUDGE PERLA V. CABRERA-FALLER, OFFICER-IN-CHARGE OPHELIA G. SULUEN AND PROCESS SERVER RIZALINO RINALDI B. PONTEJOS, all of the RTC, Branch 90, Dasmariñas, Cavite, Respondents.

A.M. No. RTJ-11-2302 (formerly A.M. No. 11-7-125-RTC) OFFICE OF THE COURT ADMINISTRATOR, Complainant, v. PRESIDING JUDGE FERNANDO L. FELICEN, CLERK OF COURT V ATTY. ALLAN SLY M. MARASIGAN, SHERIFF IV ANSELMO P. PAGUNSAN, JR., COURT STENOGRAPHERS ROSALIE MARANAN and TERESITA P. REYES, COURT INTERPRETER IMELDA M. JUNTILLA, and PROCESS SERVER HIPOLITO O. FERRER, all of the RTC, Branch 20, Imus, Cavite; PRESIDING JUDGE NORBERTO J. QUISUMBING, JR., CLERK OF COURT ATTY. MARIA CRISTITA A. RIVAS-SANTOS, LEGAL RESEARCHER MANUELA O. OSORIO, SHERIFF IV FILMAR M. DE VILLA, COURT STENOGRAPHERS MARILOU CAJIGAL, WENDILYN T. ALMEDA and HELEN B. CARALUT, COURT INTERPRETER ELENITA T. DE VILLA, and PROCESS SERVER ELMER S. AZCUETA, all of the RTC, Branch 21, Imus, Cavite; PRESIDING JUDGE CESAR A. MANGROBANG, CLERK OF COURT VI ATTY. REGALADO E. EUSEBIO, CLERK OF COURT V ATTY. SETER M. DELA CRUZ-CORDEZ, LEGAL RESEARCHER DEVINA A. REYES BERMUDEZ, COURT STENOGRAPHERS PRISCILLA P. HERNANDEZ, NORMITA Z. FABIA, MERLY O. PARCERO, and JOYCE ANN F. SINGIAN, COURT INTERPRETER MICHELLE A. ALARCON, and PROCESS SERVER ELMER S. AZCUETA, all of the RTC, Branch 22, Imus, Cavite; EXECUTIVE JUDGE PERLA V. CABRERA-FALLER,

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CLERK OF COURT ZENAIDA C. NOGUERA, SHERIFF IV TOMAS C. AZURIN, OIC LEGAL RESEARCHER OPHELIA G. SULUEN, COURT STENOGRAPHERS JESUSA B. SAN JOSE, ROSALINA A. COSTUNA, and MARIA LOURDES M. SAPINOSO, COURT INTERPRETER MERLINA S. FERMA, and PROCESS SERVER RIZALINO RINALDI B. PONTEJOS, all of the RTC, Branch 90, Dasmariñas, Cavite, Respondents.

A.M. No. 12-9-188-RTC RE: ANONYMOUS LETTER-COMPLAINT AGAINST JUDGE PERLA V. CABRERA-FALLER, BRANCH 90, REGIONAL TRIAL COURT, DASMARIÑAS CITY, CAVITE, relative to CIVIL CASE NO. 1998-08

Promulgated:

January 16, 2018

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CONCURRING AND DISSENTING OPINION

LEONARDO-DE CASTRO, J.:

I concur with the majority opinion but dissent only insofar as the fine imposed on Judge Norberto J. Quisumbing, Jr. who should be exonerated as recommended by Justice Victoria Isabel A. Paredes (Justice Paredes) of the Court of Appeals who, after conducting her investigation, recommended the dismissal of the complaint against Judge Quisumbing. The pertinent portion of the Amended Report of Justice Paredes reads:

Exec. Judge Norberto J. Quisumbing, Jr., RTC, Branch 21, Imus, Cavite

The judicial audit examined 62 case records, of which 19, or 30% have indications of improper venue. In **Civil Case No. 2329-08** (*Cruz vs. De la Vega*), the petitioner therein claimed that she is a resident of Dasmariñas, Cavite, while the respondent is a resident of Valenzuela City; however, the verification portion stated that the petition is to be filed in the RTC of Pasay City which could only mean that the petitioner is a resident of Pasay City. In **Civil Case No. 2691-09** (*Quiamson vs. Quiamson*), the petitioner claims to be a resident of Dasmariñas, Cavite, but in the verification portion, the petitioner stated that she is a resident of Silang,

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Cavite, a place outside the jurisdiction of the court. Nine (9) cases had vague addresses albeit there is no indication that mail matters were “returned to sender”; while in eight (8) petitions, three (3) pairs showed that petitioners had the same addresses, and one (1) pair had respondents sharing the same address. In **Civil Case No. 3026-09** (*Ramales vs. Ramales*), the petition states that both parties are already based in Italy. The judicial affidavit of petitioner was allegedly taken before petitioner’s counsel in Salcedo Village, Makati City; however, verification from the Bureau of Immigration shows that petitioner left for abroad on July 18, 2002 with no record of having returned to the country thereafter. The judicial affidavit was admitted without the appearance of petitioner.

Exec. Judge Quisumbing, Jr. comments that three (3) cases were raffled to RTC-Branch 90 presided by Judge Faller. On the other hand, cases mentioned in pages 59-62 (Records, A.M. No. RTJ-11-2302, pp. 555-558) were those handled by his Branch (21).

Commenting on Civil Cases No. 2329-08, 2733-09, 2057-09 and 3441-10, Exec. Judge Quisumbing, Jr. claims that venue was properly laid as the petitioners were residents of Dasmariñas, Cavite, and respondents were duly notified either personally or by substituted service, and those who received the summons and copy of the petition indicated receipt with their signatures; moreover, none of the respondents or the public prosecutor questioned the venue. In Civil Case No. 2329-08, the audit team observed that the verification portion states that the petition is to be filed in Pasay City; however, the verification is not controlling; the address stated in the petition, as well as petitioner’s testimony in open court, is that she is a resident of Unit 142 Orchard Townhomes, Salawag, Dasmariñas, Cavite. In Civil Case No. 2691-09, the audit team observed that the verification portion shows that petitioner is a resident of Silang, Cavite; however, the petition states that petitioner is a resident of Dasmariñas, Cavite and the residence of the respondent is at 348 B. Ocullo St., Wakas I, Kawit, Cavite, which is within the territorial jurisdiction of the Imus, Cavite RTC courts. In Civil Case No. 2136-08, the audit team observed that petitioner gave a vague address – San Juan St., Dasmariñas, Cavite; however, at the given street address, houses thereat have no numbers.

With respect to **Civil Case No. 3026-09** (*Elizabeth Ramales vs. Aquilino Ramales*) where the petitioner swore to her judicial affidavit before the notary public who also happened to be her counsel, and that petitioner could not have testified in court for, per records of the BI, petitioner left on July 18, 2002 and has no record of travel back to the country, Exec. Judge Quisumbing, Jr. sees no irregularity in the execution of the judicial affidavit of petitioner for what is prohibited by the Rules is the lawyer who executes a judicial affidavit, signs it and notarizes it; in such a case, the affidavit must be notarized by another notary public. He disavows knowledge of the BI certification, but he knows that on July 19, 2010, a person who introduced herself as the petitioner, swore under oath and testified in open court; no one questioned her identity and the court cannot be required to look into the identity of each and every witness who testifies in court.

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The cases mentioned in pages 32-34, Table 2.2 of the OCA Memorandum (Records, A.M. No. RTJ-11-2302, pp. 528-30), pertain to cases handled by RTC-Branch 90 under Judge Faller; while the cases mentioned in pages 66-69 (Records, A.M. No. RTJ-11-2302, pp. 562-5) were handled by Judge Mangrobang of RTC-Branch 22. In **Civil Case No. 2329-08**, summons was received by respondent thru his mother, Shirley de la Vega, on October 15, 2008 as evidenced by her signature at the bottom of the summons; in **Civil Case No. 2733-09**, summons was served to the respondent thru his niece, Irene P. Siglos, on April 23, 2009 as evidenced by her signature at the bottom of the summons. In **Civil Case No. 2136-09**, the audit team observed that the petitioner's address at San Juan St., Dasmariñas, Cavite, is vague; however, the street really do not have house numbers, and the marriage certificate likewise states the same address for petitioner. In nos. 10-15, pp. 30-31 ((Records, A.M. No. RTJ-11-2302, pp. 526-27) of the OCA Memorandum, the audit team found the addresses in Cavite, vague; however, the addresses are by Block no. And Lot no., the way addresses in Cavite are stated. In nos. 16 and 17, p. 31 (Records, A.M. No. RTJ-11-2302, p. 527), referring to **Civil Case Nos. 3490-10** and **3558-10**, where petitioners allegedly reside at the same address, Exec. Judge Quisumbing, Jr. claims that there is a possibility that petitioners did live in the same address since they have the same action for declaration of nullity of their marriage, and they live separately from their spouses. In nos. 18-19, p. 31 (Records, A.M. No. RTJ-11-2302, p. 527), **Civil Case Nos. 3636-10** and **3786-10**, where the audit team observed that the petitioners bear the same address in these cases, since the address given does not bear a house number, it is possible that the petitioners lived in the same street but at different houses. In **Civil Case Nos. 2733-09** and **3208-09**, where respondents were observed to have the same address, Exec. Judge Quisumbing, Jr. explains that at one time, one of the petitioners may have lived in that address on a given date.

The investigation reports usually state that no collusion exists; however, in five cases where publication was resorted to in the service of summons, the investigation reports mentioned that the public prosecutor cannot determine whether collusion exists, but the public prosecutor undertakes to participate in the prosecution of the case; while in five (5) other cases, the public prosecutor only made reservations to actively prosecute the case. In 13 cases, no investigation report could be found.

The proceedings in the office of the Provincial Prosecutor are not under the direct control and supervision of the court; moreover, Section 9 of the Rule on Marriage does not provide any form or procedure in the conduct of the collusion investigation, and it does not provide the manner the investigation is conducted. And, although the Rule requires the public prosecutor to state the basis of his finding that collusion exists, it is silent if his finding is that no collusion exists. In his manifestation, the public prosecutor stated that: *He deems it best to pursue the investigation of this case by active participation in the hearing and trial of the case, this,*

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considering the inability of the respondent to file (a response to the petition).

Of the 62 cases examined, 15 cases or 24% of petitions were granted at extraordinary speed: 1 case was decided in a little over 2 months; 1 case decided in 3 months; and 1 case in 4 months; 7 cases in a little over 5 months; while 5 cases were decided in a little over 6 months. [The comparative finding of Justice Paredes on this matter states:]

In this case, the four (4) judges, to a man, although in varying percentages, granted petitions for the declaration of nullity of marriage in less than six (6) months. Judge Felicen was 77%; Exec. Judge Quisumbing, Jr. had 24%; Judge Mangrobang was 39%, and having the dubious title of granting a petition in 25 days from its filing [re: **Civil Case No. 2434-08** (*Olarte vs. Olarte*)]; finally, Judge Faller was 57%.¹

Executive Judge Quisumbing, Jr. finds nothing wrong with adhering to the exhortations of the Supreme Court for the speedy disposition of cases in order to unclog the court's dockets. He pleads that the alleged "irregularities" found by the audit team are neither gross, blatant nor flagrant, but more of inadvertence and oversight which could have been easily corrected; thus, he prays that he be accorded the presumption of regularity in the faithful performance of his duties, and the charge against him be dismissed.

With respect to the findings regarding the questionable raffling of cases, he disavows any participation in the issuance of summons as these pertain to the particular branches (RTC-Branch 20 for Judge Felicen, and RTC-Branch 90 for Judge Faller). As Executive Judge, he supervises the raffle of cases, sees to it that a report is made after the raffle, signs the minutes of raffle and oversees the transmittal of the cases to the concerned court. In **Civil Case No. 1852-08** (*Resco-Del Rosario vs. Del Rosario*), he admits that the stamp "February 24, 2008" was an oversight. The petition was filed with the OCC on February 1, 2008; and the official receipts showing payment of legal fees and other fees and dues were made on February 2, 2008; the additional number "4" in "24" is a clear case of oversight. **SP No. 680-09** (*In Re Petition for the Adoption of Minor Paulo Lebaste*) was mistakenly transmitted to RTC-Branch 20, instead of RTC-Branch 22 which has original and exclusive jurisdiction over family court cases; the Branch Clerk of Court (BCC) of RTC-Branch 20 sent a transmittal letter dated January 26, 2009 to the BCC of RTC-Branch 22; and although there is no stamp received on the face of the record, a notice of hearing was sent on March 5, 2009 by RTC-Branch 22.²

It bears to stress that the acts of a judge which pertain to his/her judicial functions are not subject to disciplinary power unless they are

¹ *Rollo* (A.M. No. RTJ-22-2302), p. 1825.

² *Id.* at 1785-1790.

committed with fraud, dishonesty, corruption or bad faith.³ As a matter of policy, in the absence of fraud, dishonesty or corruption, the acts of a judge in his/her judicial capacity are not subject to disciplinary action even though such acts are erroneous.⁴ Otherwise, a judicial office would be untenable, for “no one called upon to try the facts or interpret the law in the administration of justice can be infallible.”⁵ He/she cannot be subjected to liability - civil, criminal, or administrative - for any of his/her official acts, no matter how erroneous, as long as he/she acts in good faith. In such a case, the remedy of the aggrieved party is not to file an administrative complaint against the judge but to elevate the error to the higher court for review and correction,⁶ because an administrative complaint is not an appropriate remedy where judicial recourse is still available.⁷ The court has to be shown acts or conduct of the judge clearly indicative of arbitrariness or prejudice before the latter can be branded the stigma of being biased and partial.⁸ Not every error or mistake that a judge committed in the performance of his/her duties renders him/her liable, unless he/she is shown to have acted in bad faith or with deliberate intent to do an injustice.⁹ Otherwise, perhaps, no judge, however competent, honest or dedicated he/she may be, can ever hope to retire from the judiciary with an unblemished record.¹⁰

Regarding the improper service of summons, the same falls within the responsibility of Sheriff Wilmar M. de Villa of RTC-Branch 21, Imus, Cavite. Investigating Justice Paredes found Sheriff de Villa guilty of simple neglect of duty and abuse of authority and recommended that a fine of ₱5,000.00 be imposed on him for each of the charges with stern warning that a repetition of the same or similar offense shall be dealt with more severely.

Unlike in the case of Judge Fernando L. Felicen, Judge Cesar A. Mangrobang and Judge Perla V. Cabrera-Faller who were found by Investigating Justice Paredes to be guilty of grave abuse of authority, for which they should be administratively sanctioned, Executive Judge Quisumbing was recommended for exoneration as follows:

II. (Ret.) EXECUTIVE JUDGE NORBERTO J. QUISUMBING, JR., the complaint/charge in A.M. No. RTJ-11-2302 be **DISMISSED**.¹¹

³ *Quinto v. Vios*, 472 Phil. 877, 883 (2004).

⁴ *Daracan v. Natividad*, 395 Phil. 392, 368 (2000).

⁵ *Villanueva-Fabella v. Lee*, 464 Phil. 548, 563 (2004).

⁶ *Castaños v. Escaño, Jr.*, 321 Phil. 527, 549-550 (1995).

⁷ *Cepeda v. Cloribel-Purugganan*, 479 Phil. 365, 370 (2004).

⁸ *Abdula v. Guiani*, 382 Phil. 757, 769 (2000).

⁹ *Rallos v. Gako, Jr.*, 385 Phil. 4, 18 (2000).

¹⁰ *Guerrero v. Villamor*, 357 Phil. 90, 99 (1998).

¹¹ *Rollo* (A.M. No. RTJ-22-2302), p. 1839.

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There was no proof at all that Executive Judge Quisumbing was guilty of grave abuse of authority nor of fraud, dishonesty, corruption or bad faith to merit the extreme penalty of forfeiture of all his retirement benefits.

Moreover, it is unfair to hold Executive Judge Quisumbing who was the Executive Judge administratively liable for the offenses or infraction committed by Judges Felicen, Mangrobang, and Faller, over whom he had no control and supervision. The aforesaid Judges exercised jurisdiction over cases raffled to them independently of the Executive Judge. To hold Executive Judges administratively responsible for the conduct of Judges within their respective area will send a chilling effect on Executive Judges as it will go far beyond the official duties imposed on them by Supreme Court regulations.

WHEREFORE, I respectfully reiterate my opinion that as recommended by Investigating Justice Victoria Isabel A. Paredes the complaint/charge in A.M. No. 11-2302 against Executive Judge Norberto J. Quisumbing, Jr. be **DISMISSED**.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

CERTIFIED XEROX COPY:
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CLERK OF COURT, EN BANC
SUPREME COURT