



Republic of the Philippines

Supreme Court

Manila

EN BANC

SUPREME COURT OF THE PHILIPPINES
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OFFICE OF THE COURT
ADMINISTRATOR,

Complainant,

- versus -

PRESIDING JUDGE HERMES
B. MONTERO, BRANCH
CLERK OF COURT ATTY. MA.
GAY A. ERNI-
PUENTENEGRA; and
PROCESS SERVER
ANNABELLE U. RODRIGUEZ,
ALL OF THE REGIONAL
TRIAL COURT, TOLEDO
CITY, CEBU, BRANCH 59,

Respondents.

A.M. No. RTJ-20-2582

(Formerly A.M. No. 20-06-74-RTC)

Present:

GESMUNDO, C.J.,
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.*
GAERLAN,
ROSARIO,
LOPEZ, J.
DIMAAMPAO,
MARQUEZ,**
KHO, JR., and
SINGH,*** JJ.

Promulgated:

August 16, 2022

X-----X

[Signature]

DECISION

PER CURIAM:

This administrative matter arose from the findings of two (2) judicial audits conducted by the complainant Office of the Court Administrator (OCA)

* On leave.
** No part.
*** On leave.

on the Regional Trial Court, Toledo City, Cebu, Branch 59 (RTC Toledo Br. 59), where Presiding Judge Hermes B. Montero (Judge Montero), Branch Clerk of Court Atty. Ma. Gay A. Erni-Puentenegro (Atty. Erni-Puentenegro),¹ and Process Server Annabelle U. Rodriguez (Rodriguez; collectively referred to as respondents) are stationed. The first judicial audit was conducted on July 9–11, 13, 2018 pursuant to Travel Order No. 88-2018 dated June 27, 2018; while the second judicial audit was held on May 23 to June 1, 2019 pursuant to Travel Order No. 75-2019 dated May 17, 2019.²

The Facts

Due to the unconfirmed reports from Cebu City that RTC Toledo Br. 59 is regarded as “friendly” to the parties of annulment of marriage/declaration of void marriage cases, the first judicial audit was conducted therein.³ As a result thereof, various irregularities were discovered, leading the OCA to direct the respondents to show cause as to why no disciplinary action should be taken against them, as follows:

(a) As against Judge Montero, for his procedural infractions in cases involving annulment of marriages and/or declaration of nullity of marriages, namely: (1) failure of trial court to acquire jurisdiction over the person of the respective respondent in those cases; (2) absence of returns on summonses; (3) grant of motions to take the depositions of the plaintiff prior to the receipt of the notice of appearance of the Office of the Solicitor General; (4) absence of an order directing the public prosecutor to investigate whether there was collusion between the parties; and (5) the absence of the collusion report. In addition, Judge Montero was directed to take appropriate action in thirty-seven (37) criminal cases and one (1) civil case where no action was taken since they were raffled to RTC Toledo Br. 59; twelve (12) criminal cases without further action for a considerable length of time; twenty-nine (29) pending motions in criminal cases and seven (7) in civil cases; and eighteen (18) civil cases already submitted for decision.⁴

(b) As against Atty. Erni-Puentenegro, for her procedural infractions in the aforementioned cases involving annulment of marriages and/or declaration of nullity of marriages. She was likewise directed to: (1) promptly apprise Judge Montero of the cases that require immediate action, including those with pending motions or incidents, and the cases submitted for decision; and (2) to take appropriate action on the mismanagement of various case records, including, among others, the stitching of all records/folders.⁵

¹ Referred to as “Atty. Puentenegro” in some parts of the *rollo*. (See *rollo*, pp. 1071 and 1103–1104).

² *Id.* at 1069.

³ *Id.*

⁴ *Id.* at 1069–1070.

⁵ *Id.* at 1071.

(c) As against Rodriguez, for immediately availing of substituted service of summons, and merely making general statements in her returns without indicating the various circumstances justifying a resort to substituted service. She was likewise directed to show proof of her travel to serve the summonses in seven (7) other cases.⁶

Complying with the aforementioned directive, Judge Montero wrote letters dated February 28, 2019⁷ and March 18, 2019⁸ where he admitted having committed procedural lapses. However, he reasoned that due to his heavy caseload, he merely relied on the returns of the summonses and failed to monitor its validity. Further, he was not aware of any procedural lapses because the judicial audit team did not call his attention thereto. He stated that he immediately complied with all the directives of the OCA after receipt of the Memorandum, and cured the procedural defects raised therein.⁹

For her part, Atty. Erni-Puentenegro wrote a letter¹⁰ dated February 18, 2019 explaining that: (a) summonses were personally served by the sheriff, and the service through publication was availed of only when personal service was unsuccessful; (b) annulment of marriage cases were only set for pre-trial once all of the documents were on hand, and the delays in the belated attachment of the registry receipts to the records were due to lack of manpower; and (c) she complied with the requests of the OCA, including the transmittal of summons and copy of the petition when the address of the respondents is beyond the territorial jurisdiction of the court.¹¹

Finally, Rodriguez sent a letter¹² dated September 10, 2019, explaining that she had been with the RTC Toledo Br. 59 since July 21, 1994 as a Utility Worker. While she was officially promoted to the position of Process Server only on March 1, 2020, she had already performing functions related to such position as early as November 2, 2016, after Sheriff Melvin Destura (Sheriff Destura) retired from service, and that it was Sheriff Destura who served the summons by publication in the questioned case, and she merely continued that practice.¹³ As regards the proof of travel, Ms. Rodriguez complied by attaching the copy of her flight tickets. Notably, either no boarding pass was attached or if a copy was attached, no details as to the name of the guest, place of departure, flight number, date and time of the boarding, were included.¹⁴

⁶ Id. at 1072–1073.

⁷ Id. at 367–391.

⁸ Date as mentioned in the OCA Report and Recommendation (id. at 1070).

⁹ See id. at 1070.

¹⁰ Id. at 294–303.

¹¹ Id. at 1071.

¹² See id. at 707–714.

¹³ See id. at 1073.

¹⁴ See id. at 1074–1076.

Meanwhile, the OCA conducted the second judicial audit, which uncovered further irregularities in Judge Montero's performance of his duties, particularly: (a) his failure to require the accused in at least 141 decided drug cases to undergo the required drug dependency examination under A.M. 18-03-16-SC¹⁵ before the rendition of decisions therein; and (b) his continued failure to act on cases pending before his *sala*. Thus, the OCA again directed him to show cause as to why no disciplinary action should be taken against him.¹⁶

In his defense, Judge Montero explained in his letter¹⁷ dated September 2, 2019 that there is only one accredited drug rehabilitation center in Cebu City, and the delay in the release of the drug dependency examination results as reported by the Bureau of Jail Management and Penology personnel would have made the accused to serve their sentence. As such, only when the accused is charged with a violation of Section 5, Article II of Republic Act No. 9165 would he require the accused to undergo drug testing. On the other hand, for those who are not subject of probation, he would issue warrants of arrest for the service of their sentence.¹⁸ Further, in a Joint Affidavit¹⁹ of Judge Montero, along with the public prosecutors assigned to RTC Toledo City Br. 59, the public prosecutors manifested that they were aware of the absence of the drug dependency examination requirement under the plea bargaining framework of drugs cases, however, such omission was not fatal since the convicted prisoners who applied for probation were required to undergo drug testing by the Parole and Probation Office. The affidavit submitted by the public attorneys assigned to the subject court substantially echoed the same statement.²⁰

The OCA Report and Recommendation

In a Memorandum²¹ dated February 20, 2020, the OCA recommended that respondents be found administratively liable, and consequently, penalized as follows: (a) as for Judge Montero, that he be found **guilty** of gross ignorance of the law, due to his willful disregard of the law and his undue delay in rendering decisions and resolving motions. While he should be **dismissed** from service, the OCA noted that since Judge Montero opted to retire from service effective November 1, 2019, such penalty of dismissal could no longer be imposed on him; and hence, he is instead meted with the accessory penalties of forfeiture of his retirement benefits, except accrued leave credits, and perpetual

¹⁵ Entitled "ADOPTION OF THE PLEA BARGAINING FRAMEWORK IN DRUGS CASES" (See Court Resolution dated April 10, 2018).

¹⁶ *Rollo*, p. 1076.

¹⁷ *Id.* at 814-829.

¹⁸ *Id.* at 1076-1077.

¹⁹ Not attached to the *rollo* (see *id.* at 1077).

²⁰ See *id.* at 1077.

²¹ See OCA Memorandum dated February 20, 2020, *id.* at 1069-1107.

disqualification from re-employment in any public agency, including government-owned or controlled corporation; (b) as for Atty. Erni-Puentenegro, that she be found **guilty** of simple neglect of duty and be **fin**ed in the amount of ₱262,671.00 to be paid within thirty (30) days from finality of the resolution of her administrative case; and (c) as for Rodriguez, that she be found **guilty** of neglect of duty and be **suspended** from office for a period of six (6) months, without salary and allowances, and **sternly warned** that a repetition of the same or similar acts shall warrant a more severe penalty.²²

In so recommending, the OCA found that Judge Montero blatantly violated A.M. No. 02-11-10-SC²³ when he repeatedly proceeded with the hearing of different cases involving annulment of marriage/declaration of nullity of marriages despite: (a) failing to acquire jurisdiction over the person of therein respondents (17 instances); (b) not having the required collusion report (13 instances); and/or (c) the Office of the Solicitor General (OSG) not being able to submit its Notice of Appearance yet (six [6] instances). Furthermore, the OCA also found that Judge Montero blatantly disregarded A.M. No. 18-03-16-SC when he decided numerous drug cases without directing therein accused the required drug dependency examination (five [5] instances). Finally, the OCA pointed out that Judge Montero failed to resolve various cases and incidents pending before his *sala* within the reglementary period provided under prevailing laws and rules (two [2] instances), thereby violating Section 15 (1), Article VIII of the 1987 Constitution. As such, the OCA concluded that the totality of Judge Montero's acts constitutes the offense of gross ignorance of the law for which he should be meted with the ultimate penalty of dismissal from service. However, in light of his supervening optional retirement during the pendency of the instant proceedings, the OCA recommended that in lieu of dismissal, Judge Montero should be meted with the accessory penalties of dismissal as enumerated above.²⁴

As to Atty. Erni-Puentenegro, the OCA found that she abjectly failed to monitor the returns of summonses, especially in cases involving annulment of marriage/declaration of nullity of marriages; to indorse summonses to the proper office of the clerk of court having territorial jurisdiction over the respondents in said cases; and to object to Rodriguez' acts of serving summonses outside of the territorial jurisdiction of RTC Toledo Br. 59. Furthermore, the OCA found that she allowed the aforementioned cases to proceed even before: (a) the RTC Toledo Br. 59 acquired jurisdiction over therein respondents due to defective service of summonses; (b) the OSG files its Notice of Appearance; and (c) the submission of the collusion reports in cases where no answer was received

²² Id. at 1106-1107.

²³ Entitled "RULE ON DECLARATION OF ABSOLUTE NULLITY OF VOID MARRIAGES AND ANNULMENT OF VOIDABLE MARRIAGES" (March 15, 2003).

²⁴ See *rollo*, pp. 1099-1103.

from therein respondents. According to the OCA, Atty. Erni-Puentenegro's failure to exercise due diligence in the performance of her administrative functions constitutes simple neglect of duty for which she should be meted with the penalty of suspension. However, in light of Atty. Erni-Puentenegro's supervening separation from the Judiciary due to her appointment as City Prosecutor of Toledo City, Cebu on August 29, 2019, the OCA recommended that she be meted instead with a penalty of a fine in the amount of ₱262,671.00, representing her salary in the Judiciary for three (3) months.²⁵

Finally, the OCA also found that Rodriguez committed acts constituting simple neglect of duty. Particularly, those acts pertain to Rodriguez' irregularities in the performance of her duties as process server when she: (a) immediately availed of substituted service without first complying with the requisites in order to resort to the same; and (b) served summonses even outside the territorial jurisdiction of RTC Toledo Br. 59. As such, the OCA recommended that Rodriguez be suspended for a period of six (6) months.²⁶

The Issue Before the Court

The issue for the Court's resolution is whether respondents should be held administratively liable for the acts complained of.

The Court's Ruling

The Court adopts the findings of the OCA with certain modifications, as will be explained below.

I.

At the outset, it is important to note that on February 22, 2022, the Court *En Banc* unanimously approved A.M. No. 21-08-09-SC, entitled "*Further Amendments to Rule 140 of the Rules of Court.*" On April 3, 2022, the publication requirement thereof had already been complied with;²⁷ hence, Rule 140, as further amended is already effective.

²⁵ Id. at 1103–1105.

²⁶ Id. at 1105–1106.

²⁷ Section 26 of the Rules reads:

SECTION 26. *Effectivity Clause.* – These Rules shall take effect following their publication in the Official Gazette or **in two newspapers of national circulation.** (emphasis and underscoring supplied)

In this relation, Section 24 of Rule 140, as further amended explicitly provides that it will apply to all pending and future administrative disciplinary cases involving Members, officials, employees, and personnel of the Judiciary, to wit:

SECTION 24. *Retroactive Effect.* – **All the foregoing provisions shall be applied to all pending and future administrative cases involving the discipline of Members, officials, employees, and personnel of the Judiciary**, without prejudice to the internal rules of the Committee on Ethics and Ethical Standards of the Supreme Court insofar as complaints against Members of the Supreme Court are concerned. (emphasis and underscoring supplied)

In view of the foregoing, the Court shall resolve this case under the framework of Rule 140, as further amended.

II-A.

At this juncture, it bears pointing out that during the pendency of this case, Judge Montero applied for and was granted optional retirement effective November 1, 2019.²⁸ This, however, will not preclude the Court from determining his administrative liability, pursuant to Section 2 (2) of Rule 140, as further amended, which provides that “once disciplinary proceedings have already been instituted, the respondent’s supervening retirement or separation from service shall not preclude or affect the continuation of the same x x x.” In this regard, case law instructs that “for the Court to acquire jurisdiction over an administrative proceeding, the complaint must be **filed during the incumbency** of the respondent public official or employee. This is because the filing of an administrative case is predicated on the holding of a position or office in the government service. However, once jurisdiction has attached, the same is not lost by the mere fact that the public official or employee was no longer in office during the pendency of the case.”²⁹ As such, the Court shall now proceed with the determination of Judge Montero’s administrative liability.

“[The] conception of good judges has been, and is, of men who have a mastery of the principles of law, who discharge their duties in accordance with law. Judges are the visible representations of law and justice, from whom the people draw the will and inclination to obey the law. They are expected to be circumspect in the performance of their tasks, for it is their duty to administer justice in a way that inspires confidence in the integrity of the justice system. Judges should exhibit more than a cursory acquaintance with the statutes and procedural rules, and should be diligent in keeping abreast with developments

²⁸ See *rollo*, p. 1103.

²⁹ See *OCA v. Fuensalida*, A.M. No. P-15-3290, September 1, 2020; emphasis supplied. See also *Baquerfo v. Sanchez*, 495 Phil. 10 (2005).

in law and jurisprudence. For, a judge who is plainly ignorant of the law taints the noble office and great privilege vested in him.”³⁰ Thus, a judge who disregards basic rules and settled jurisprudence may be held administratively liable for gross ignorance of the law or procedure. In *Philippine National Construction Corporation v. Mupas*,³¹ the Court elucidated on this administrative offense as follows:

Gross ignorance of the law is the disregard of basic rules and settled jurisprudence. A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence. Though not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, the same applies only in cases within the parameters of tolerable misjudgment. x x x **Where the law is straightforward and the facts so evident, failure to know it or to act as if one does not know it constitutes gross ignorance of the law. A judge is presumed to have acted with regularity and good faith in the performance of judicial functions. But a blatant disregard of the clear and unmistakable provisions of a statute, as well as Supreme Court circulars enjoining their strict compliance, upends this presumption and subjects the magistrate to corresponding administrative sanctions.**

For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive. Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in all good faith. Judicial competence requires no less. Thus, unfamiliarity with the rules is a sign of incompetence. Basic rules must be at the palm of his hand. **When a judge displays utter lack of familiarity with the rules, he betrays the confidence of the public in the courts. Ignorance of the law is the mainspring of injustice.** Judges owe it to the public to be knowledgeable, hence, they are expected to have more than just a modicum of acquaintance with the statutes and procedural rules; they must know them by heart. **When the inefficiency springs from a failure to recognize such a basic and elemental rule, a law or a principle in the discharge of his functions, a judge is either too incompetent undeserving of the position and the prestigious title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith, and in grave abuse of judicial authority. In both cases, the judge's dismissal will be in order.**³² (emphases and underscoring supplied)

As the OCA aptly found, Judge Montero exhibited a blatant and repeated disregard of even the most elementary rules of procedure in annulment and declaration of nullity of marriages cases, as well as drugs cases. Particularly, insofar as annulment and declaration of nullity of marriages cases are concerned, Judge Montero proceeded with the hearings

³⁰ See *Philippine National Construction Corporation v. Mupas*, A.M. No. RTJ-20-2593, November 10, 2020; citations omitted.

³¹ *Id.*

³² *Id.*, citing *Department of Justice v. Mislang*, 791 Phil. 219, 227–228 (2016).

thereof despite the presence of glaring, if not fatal, irregularities, such as failing to acquire jurisdiction over the person of therein respondents due to improper service of summonses, not having the required collusion report, and not waiting for the Notice of Appearance of the OSG. In this regard, the OCA is correct in giving scant consideration to Judge Montero's defense that he merely relied on the report of his staff regarding the validity of the service of summonses, considering that as a magistrate, he is expected to have a strong grasp and understanding of the law and rules of procedure, and he cannot pass the determination of the validity of summonses to rank-and-file personnel who are not legal experts.³³ On the other hand, insofar as drugs cases are concerned, records show that Judge Montero would resolve such cases even without making therein accused undergo the required drug dependency examination.

Verily, Judge Montero's repeated breaches of the express provisions of A.M. No. 02-11-10-SC and A.M. No. 18-03-16-SC are so glaring, egregious, and thoughtless, and hence, are already tantamount to bad faith and/or grave abuse of authority. As such, it is only proper that he be found administratively liable for gross ignorance of the law or procedure under Section 14 (j) of Rule 140, as further amended.

In addition to the foregoing, the OCA further noted that Judge Montero should be found administratively liable for Undue Delay in Rendering an Order, pointing out that: (a) in SPCA-T-06, the motion for the issuance of writ of possession, which was received by the RTC Toledo Br. 59 on July 16, 2014, remains unresolved despite the Order dated May 4, 2015 setting the case for possible settlement; and (b) Civil Case No. T-2553, an appealed case for ejectment is still unresolved despite the filing of the memorandum for the defendant-appellant therein on April 16, 2019.³⁴ While the Court agrees with the OCA's findings in this regard, it must be noted that under Rule 140, as further amended, the administrative offense of "Undue Delay in Rendering a Decision or Order, or in Transmitting the Records of the Case" has already been subsumed, either under "Gross neglect of duty in the performance or non-performance of official functions" under Section 14 (d), or "Simple neglect of duty in the performance or non-performance of official functions" under Section 15 (b), depending on the seriousness thereof, pursuant to case law on gross and simple neglect of duty.

In this relation, case law instructs that "[s]imple neglect of duty is defined as 'the failure to give proper attention to a task expected of an employee resulting from either carelessness or indifference.' However, when an employee's negligence displays want of even the slightest care or conscious indifference to the consequences or by flagrant and palpable breach of duty, the omission is regarded as gross neglect of duty. More precisely,

³³ See *rollo*, pp. 1100-1101.

³⁴ *Id.* at 1102.

there is gross neglect of duty when a public official or employee's negligence is characterized by the glaring want of care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected."³⁵

Given the foregoing jurisprudential definitions of the types of neglect of duty, and further considering that: (a) the aforementioned incident and case has already been pending for years; and (b) Section 15 (1), Article VIII³⁶ of the 1987 Constitution only gives him three (3) months to resolve the same, the Court finds Judge Montero also liable for gross neglect of duty in the performance or non-performance of official functions under Section 14 (d) of the Rules.

II-B.

Section 1, Canon IV of the Code of Conduct for Court Personnel³⁷ mandates that "[c]ourt personnel shall at all times perform official duties properly x x x." Proper performance of duty includes compliance with the rules issued by this Court. Noncompliance or violation constitutes negligence in the performance of duties.

As correctly recommended by the OCA, Atty. Erni-Puentenegro and Rodriguez should be found liable for "simple neglect of duty in the performance or non-performance of official functions" under Section 15 (b) of Rule 140, as further amended for their failure to comply with the existing rules on service of summons and the proper performance of their court functions as Branch Clerk of Court and Process Server, respectively.

The Branch Clerk of Court is the administrative officer of the court and has control and supervision over the branch.³⁸ As correctly observed by the OCA, "she is in charge with the **efficient recording, filing[,] and management of court records, besides having administrative supervision over court personnel.** Having administrative supervision over the sheriff and the process server, Atty. Erni-Puentenegro has the responsibility to monitor compliance with the rules and regulations governing the performance of their respective duties."³⁹

³⁵ See *OCA v. Toledo*, A.M. No. P-13-3124, February 4, 2020.

³⁶ Section 15 (1), Article VIII of the Constitution reads:

SECTION 15. (1) 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. (emphases and underscoring supplied)

³⁷ Entitled "CODE OF CONDUCT FOR COURT PERSONNEL." A.M. No. 03-06-13-SC, May 15, 2004.

³⁸ Manual for Clerks of Court, pp. 26 and 32. *Rollo*, p. 1103.

³⁹ *Id.* at 1103-1104; emphasis supplied.

Clearly, Atty. Erni-Puentenegro failed to give proper attention to a task expected of her and was remiss in her duties as a Branch Clerk of Court, *i.e.*, failure to monitor returns of summonses, her oversight in the indorsement of summonses to proper office of the clerk of court having territorial jurisdiction over the respondents, and not flagging Judge Montero about the defective summonses, and absence of collusion reports and notice of appearance of the OSG. Nevertheless, her act did not exhibit the want of slightest care or willfulness that would make her liable for gross neglect. Rather, it was the result of her carelessness. At this point, it must be stressed that the fact of Atty. Erni-Puentenegro's supervening separation from the Judiciary due to her appointment as City Prosecutor of Toledo City, Cebu on August 29, 2019⁴⁰ will not operate to moot the instant administrative disciplinary proceedings against her, in accordance with Section 2 (2) of Rule 140, as further amended as already discussed above.

Finally, as to Rodriguez, case law instructs that a process server "**serves court processes** such as *subpoena*, *subpoena duces tecum*, **summons**, court order and notices; prepares and **submits returns of service of court process**; monitors messages and/or delivers court mail matters received and dispatched by him; and performs such other duties as may be assigned to him."⁴¹ Thus, case law instructs that a process server who is unable to serve mail matters should be found guilty of simple neglect of duty for failing "to give proper attention to a required task"⁴² — such as what Rodriguez did here. Verily, Rodriguez' defense that she only followed the practice of former Sheriff Destura cannot be given any credence as the violation or non-observance of laws and rules shall not be excused by disuse, custom, or practice to the contrary.⁴³

III.

Since the respective administrative liabilities of respondents had already been established by substantial evidence — or "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion"⁴⁴ — the Court now goes to the proper imposable penalties on them.

As to Judge Montero, he is found liable for the administrative offenses of "gross ignorance of the law or procedure" and "gross neglect of duty in the performance or non-performance of official functions," both are serious

⁴⁰ Id. at 1104.

⁴¹ See *Reyes v. Publico*, 538 Phil. 10, 19 (2006), citing Manual for Clerks of Court, Vol. I, p. 203; emphasis and italics supplied.

⁴² See id. at 20; emphases supplied.

⁴³ See Article 7, CIVIL CODE.

⁴⁴ See *Tan v. Alvarico*, A.C. No. 10933, November 3, 2020, citing Section 6, Rule 133, 2019 Amendments to the 1989 Revised Rules on Evidence (A.M. No. 19-08-15-SC).

charges under the Rules⁴⁵ punishable by any of the following sanctions: (a) dismissal from service, forfeiture of all or part of the benefits as the Supreme Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or -controlled corporations. *Provided, however,* that the forfeiture of benefits shall in no case include accrued leave credits; (b) suspension from office without salary and other benefits for more than six (6) months but not exceeding one (1) year; or (c) a fine of more than ₱100,000.00 but not exceeding ₱200,000.00.⁴⁶ Furthermore, since Judge Montero is found liable for more than one (1) offense arising from separate acts or omissions in a single administrative proceeding, the Court shall impose on him separate penalties for each offense.⁴⁷

Finally, Section 18 of Rule 140, as further amended provides that if the respondent is found liable for an offense which merits the imposition of dismissal from the service but the same can no longer be imposed due to the respondent's supervening separation from service except of death, he or she may be meted with the following penalties in lieu of dismissal: (a) forfeiture of all or part of the benefits as the Supreme Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or -controlled corporations, except for accrued leave credits; and/or (b) a fine in the amount of more than ₱100,000.00 but not exceeding ₱200,000.00.

In view of the foregoing, and further considering that the penalty of dismissal from service could no longer be imposed on Judge Montero due to his supervening optional retirement, the Court penalizes him as follows: (a) for "gross ignorance of the law or procedure," he is meted out with the penalties of forfeiture of all the retirement and other benefits due him, except accrued leave credits, and disqualification from reinstatement or appointment to any public office, including government-owned or -controlled corporations, plus a fine in the amount of ₱200,000.00; and (b) for "gross neglect of duty in the performance or non-performance of official functions," he is meted out with the penalty of a fine, also in the amount of ₱200,000.00.

As for Atty. Erni-Puentenegro and Rodriguez, they are equally found liable for the administrative offense of "simple neglect of duty in the performance or non-performance of official functions," which is a less serious charge under the Rules⁴⁸ punishable by either: (a) suspension from office without salary and other benefits for not less than one (1) month nor more than six (6) months; or (b) a fine of more than ₱35,000.00 but not exceeding

⁴⁵ See Section 14 (d) and (j) of Rule 140, as further amended.

⁴⁶ See Section 17 (1) of Rule 140, as further amended.

⁴⁷ See Section 21 of Rule 140, as further amended.

⁴⁸ See Section 15 (b) of Rule 140, as further amended.

₱100,000.00.⁴⁹ Since Atty. Erni-Puentenegro has already separated from the Judiciary and hence, can no longer be suspended, she is meted out with a fine in the amount of ₱100,000.00. On the other hand, Rodriguez is meted out with a penalty of suspension from office without salary and other benefits for a period of six (6) months, as recommended by the OCA.

As a final note, it must be emphasized that “those in the Judiciary serve as sentinels of justice, and any act of impropriety on their part immeasurably affects the honor and dignity of the Judiciary and the people’s confidence in it. The Institution demands the best possible individuals in the service and it had never and will never tolerate nor condone any conduct which would violate the norms of public accountability, and diminish, or even tend to diminish, the faith of the people in the justice system. In this light, the Court will not hesitate to rid its ranks of undesirables who undermine its efforts towards an effective and efficient administration of justice, thus tainting its image in the eyes of the public,”⁵⁰ as in this case.

WHEREFORE, the Court rules as follows:

1. Respondent Judge Hermes B. Montero, then Presiding Judge of the Regional Trial Court of Toledo City, Cebu, Branch 59, is **GUILTY** of Gross Ignorance of the Law or Procedure, and accordingly, is meted with the penalties of **FORFEITURE** of all the retirement and other benefits due him, except accrued leave credits, and **DISQUALIFICATION** from reinstatement or appointment to any public office, including government-owned or -controlled corporations, plus a **FINE** in the amount of ₱200,000.00. He is also found **GUILTY** of Gross Neglect of Duty in the Performance or Non-Performance of Official Functions, and accordingly, is meted out with the penalty of a **FINE** in the amount of ₱200,000.00;


2. Respondent Atty. Ma. Gay A. Erni-Puentenegro, then Branch Clerk of Court of the Regional Trial Court of Toledo City, Cebu, Branch 59, is **GUILTY** of Simple Neglect of Duty in the Performance or Non-Performance of Official Duties, and accordingly, is meted out with the penalty of a **FINE** in the amount of ₱100,000.00; and

3. Respondent Annabelle U. Rodriguez, Process Server of the Regional Trial Court of Toledo City, Cebu, Branch 59 is **GUILTY** of Simple Neglect of Duty in the Performance or Non-Performance of Official Duties, and accordingly, is meted out with the penalty of **SUSPENSION** from office without salary and other benefits for a period of six (6) months.

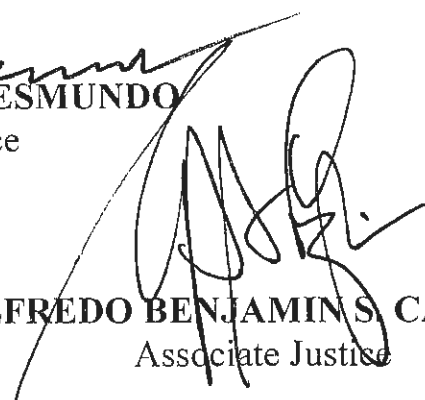
SO ORDERED.

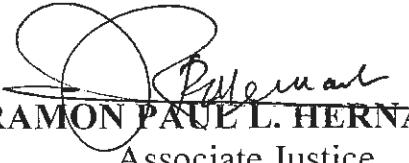
⁴⁹ See Section 17 (2) of Rule 140, as further amended.


⁵⁰ *OCA v. Viesca*, 718 Phil. 16, 28–29 (2015), citing *OCA v. Amor*, 745 Phil. 1, 11 (2014).


ALEXANDER G. GESMUNDO
Chief Justice

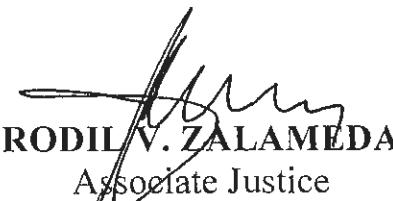

MARVIC M.V.F. LEONEN
Associate Justice


ALFREDO BENJAMINS S. CAGUIOA
Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice



RODIL V. ZALAMEDA
Associate Justice

On Leave
MARIO V. LOPEZ
Associate Justice


SAMUEL H. GAERLAN
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JHOSEP V. LOPEZ
Associate Justice


JAPAR B. DIMAAMPAO
Associate Justice

No Part
JOSE MIDAS P. MARQUEZ
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice

On Leave
MARIA FILOMENA D. SINGH
Associate Justice