



Republic of the Philippines  
**Supreme Court**  
Manila

EN BANC

**MARIE ROXANNE G.  
RECTO,**

Complainant,

**A.M. No. RTJ-17-2508**

[Formerly OCA IPI No. 06-2416-RTJ]

Present:

SERENO, *C.J.*,  
CARPIO,  
VELASCO, JR.,\*  
LEONARDO-DE CASTRO,\*  
PERALTA,  
BERSAMIN,  
DEL CASTILLO,\*  
PERLAS-BERNABE,\*  
LEONEN,  
JARDELEZA,\*\*  
CAGUIOA,  
MARTIRES,  
TIJAM, and  
REYES, JR.,\*\*\*  
GISMUNDO, *JJ.*

- versus -

**HON. HENRY J. TROCINO,  
REGIONAL TRIAL COURT,  
BRANCH 62, BAGO CITY,  
NEGROS OCCIDENTAL,**  
Respondent.

Promulgated:

November 7, 2017

X -----X

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\* On official leave.  
\*\* On leave.  
\*\*\* No part.

## DECISION

### PER CURIAM:

Before the Court is an administrative complaint<sup>1</sup> against Judge Henry J. Trocino (*Judge Trocino*), former Executive Judge and Presiding Judge, Regional Trial Court, Branch 62, Bago City (*RTC*), filed by Marie Roxanne G. Recto (*Complainant*) for bias and partiality, ignorance of the law, grave oppression, and violation of the Code of Judicial Conduct for issuing an *ex parte* Temporary Protection Order (*TPO*) in relation to Civil Case No. 1409, a case for Child Custody under the Family Code.

#### *Antecedents:*

The controversy stemmed from a petition<sup>2</sup> for Child Custody with Prayer for Protection Order under A.M. No. 04-10-11-SC<sup>3</sup> in relation to A.M. No. 03-04-04-SC<sup>4</sup> and damages filed by Magdaleno Peña (*Peña*) on December 20, 2005 against complainant, entitled *Magdaleno M. Peña, for himself and in behalf of his minor son, Julian Henri "Harry" R. Peña v. Marie Roxanne G. Recto*. The petition was raffled to the RTC-Branch 62.

On December 23, 2005, the RTC issued, *ex parte*, a Temporary Protection Order (*TPO*),<sup>5</sup> granting, among others, the temporary custody of their fifteen (15) month - old child, Julian Henri "Harry" R. Peña (*Henri*), to her former live-in partner, Magdaleno Peña (*Peña*). Specifically, the December 23, 2005 Order reads:

WHEREFORE, finding the petition to be sufficient in form and substance, the court hereby directs the Clerk of Court to issue Summons which

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<sup>1</sup> *Rollo*, pp. 1-12.

<sup>2</sup> Annex "A" of the Complaint, *rollo*, pp. 13-29.

<sup>3</sup> Entitled "Rule on Violence against Women and their Children" effective October 19, 2004.

<sup>4</sup> Entitled "Rule on Custody of Minors and Writ of Habeas Corpus in relation to Custody of Minors" effective April 22, 2003.

<sup>5</sup> Annex "B" of the Complaint, *rollo*, pp. 46-54.

*Ms. Magdaleno-Drano*

shall be served, together with copy of the petition and its annexes thereto, personally to the respondent.

TEMPORARY CUSTODY OVER JULIAN HENRI "HARRY" R. PEÑA IS HEREBY VESTED UPON THE PETITIONER MAGDALENO M. PEÑA; AND FOR THIS PURPOSE, THE PNP-CIDG (NCR) IS ORDERED TO ASSIST THE SHERIFF OF THIS COURT IN [TAKING CUSTODY] OF JULIAN HENRI "HARRY" R. PEÑA WHEREVER HE MIGHT BE FOUND WHO SHALL THEREAFTER BE IMMEDIATELY TURNED OVER TO HIS FATHER, THE HEREIN PETITIONER.

A protection order, which shall be effective for thirty (30) days from service upon respondent Marie Roxanne G. Recto, is hereby issued as follows:

1. prohibiting the respondent from threatening to commit or committing, personally or through another, acts of violence against the offended party;
2. prohibiting the respondent from harassing, annoying, contacting or otherwise communicating in any form with the offended party, either directly or indirectly;
3. removing and excluding the offended party from the residence of the respondent or from any other place where said offended party may be found;
4. requiring the respondent to stay away from the offended party and any designated family or household member at a distance of two hundred (200) meters;
5. requiring the respondent to stay away from the residence, or any specified place frequented regularly by the offended party and any designated family or household member;
6. prohibiting the respondent from carrying or possessing any firearms or deadly weapon, and ordering her to immediately surrender the same to the court for proper disposition; and

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7. directing the respondent to put up a bond of ONE MILLION PESOS (₱1,000,000.00) to keep the peace and to present two sufficient sureties who shall undertake that respondent shall not commit any of the acts of violence on the offended party and/or the petitioner or violate the protection order.

Lastly, pursuant to Section 16 of A.M. No. 03-04-04-SC (Rule on Custody of Minors) a HOLD DEPARTURE ORDER is hereby issued for the purpose of preventing the minor child from being brought out of the country without prior order from the court, during the pendency of the petition.

Accordingly, the Bureau of Immigration and Deportation is directed NOT to allow the departure of the minor child from the Philippines without the court's permission. Likewise, the Department of Foreign Affairs is ordered NOT to issue any passport to said minor without the prior authority of this court.

For the guidance of said government entities, hereunder are the pertinent information about the subject of the Hold Departure Order:

X X X

Furnish copies of this order the Department of Foreign Affairs, the Bureau of Immigration and Deportation within twenty four (24) hours hereof and through the most expeditious means of transmittal.

Likewise furnish copies hereof the petitioner and counsel.

SO ORDERED.<sup>6</sup>

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<sup>6</sup> Rollo, pp. 52-54.

*79/12/17/17-2508*

The Complaint

In vehement protest, complainant filed this administrative complaint against Judge Trocino alleging that he (1) exhibited bias and gross ignorance of the law; (2) acted with grave oppression; and (3) violated the Code of Judicial Conduct when he issued the TPO, *ex parte*, vesting immediate custody of Henri to Peña based on hypothetical assumptions. Specifically, the complainant alleged as follows:

9. Respondent judge is biased, ignorant of the law, and acted with grave oppression when he issued the TPO based on a complaint for child custody. Respondent judge, in full disregard of the law and rule of the Supreme Court on Custody (A.M. No. 03-04-04-SC), issued ex-parte the so called "TPO" **without giving herein complainant Recto opportunity to file her answer, enter into Pre-trial, and without social worker's case study report.** This conduct of the respondent judge manifests patent bias in favor of Peña, who is a resident of Negros Occidental. Moreover, Peña is not the natural guardian of Julian Harry, being an illegitimate child.

10. Respondent judge **deliberately did not apply the Rule on Custody but instead erroneously used R.A. 9262 to support his order** giving temporary custody of minor Harry Peña to Magdaleno Peña, to the prejudice of herein complainant;

11. Respondent Judge inappropriately issued the so called "TPO" considering that the case filed by Magdaleno Peña is for Child Custody. **The Rule on custody should have been observed by the respondent judge and not the Rule on Anti-Violence against Women and their Children.** A TPO cannot be issued in favor of a man because only women and their children are protected by R.A. 9262. Moreso, respondent's Order giving temporary child custody to Magdaleno Peña has no legal leg to stand on because **in custody cases, only provisional orders for custody is issued after an Answer is filed and after Pre-trial is conducted and a DSWD Social Worker Case Study Report is filed.** Thus, the Temporary Protection Order used by respondent Judge is not proper and patently illegal and void;

*Magdaleno Peña*

12. Respondent's obvious bias is further shown by the fact that he was aware that a TPO was previously issued against Magdaleno Peña who is a respondent in a Petition for Temporary and Permanent Protection Order in the RTC of Mandaluyong City, yet he issued the so called "TPO" by **deliberately mis-applying the provisions of R.A. 9262**. The so called "TPO" of respondent judge was **not a product of innocent error in judgment**. x x x

13. Likewise, it is gross ignorance of the law on the part of respondent judge in awarding temporary custody of minor Harry to Magdaleno Peña based on hypothetical assumptions. Respondent judge in justifying his unfounded order said, and we quote:

x x x x

14. Under Section 15 of A.M. No. 04-10-11-SC, the Court may issue an ex-parte TPO where there is reasonable ground to believe that an imminent danger of violence against women and their children exists or is about to recur. There is complete absence of allegation to this effect in the petition. Clearly, the basis of the so called "TPO" is hypothetical and not factual. Thus, respondent issued the so called "TPO" without legal basis;

15. There is no legal basis to award custody of minor Harry (an illegitimate child) to Magdaleno Peña, based on the Preamble of the United Nations Convention on the Rights of the Child in the light of **Article 213 of the Philippine Family Code that clearly state: "No child under seven years of age shall be separated from the mother, unless the court finds compelling reasons to order otherwise."** Moreover, **illegitimate children shall be under the sole parental authority of the mother** (*Briones vs. Miguel*, 440 SCRA 455);

16. The averments in the Petition for Child Custody are not compelling reasons to immediately award custody of the minor child to Magdaleno Peña to overcome Article 213 of the Family Code and the ruling in the case of *Briones vs. Miguel*. Not to be ignored is Article 213 of the Family Code is the caveat that, generally, no child under seven years of age shall be separated from the mother, except when the court

*Magdaleno Peña*

finds cause to order otherwise. Only the most compelling reasons, such as the mother's unfitness to exercise sole parental authority, shall justify her deprivation of parental authority and the award of custody to someone else (*Briones vs. Miguel*, Ibid). It is elementary that basic Philippine Law has greater weight than any international law;

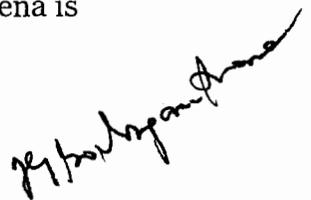
17. Likewise, Respondent Judge committed grave, whimsical and capricious abuse of discretion in the exercise of his judicial function in taking cognizance over the petition despite apparent lack of jurisdiction and in issuing the so called "Temporary Protection Order" against complainant;

18. Magdalena M. Peña has no standing to institute an action in behalf of complainant's 15 month old child because being illegitimate, **only complainant has parental authority on Julian Henri "Harry" being the natural guardian**, and yet with such knowledge, the respondent judge abused his power with full disregard for the law and the right of complainant in order to favor Magdalena Peña;

19. The respondent judge could not have innocently missed the fact that the court had no jurisdiction because Magdalena M. Peña in filing for himself has no cause of action against herein complainant (Marie Roxanne G. Recto), and avail of TPO [under] RA 9262 because the remedies of the law could not be availed of by a man;

20. Likewise clearly alleged in the petition is that Peña is bringing the action for and in behalf of the offended party JULIAN HENRI (HARRY R. PEÑA) - his minor illegitimate son [with complainant]. As such, it is manifest that the real petitioner is minor Harry Peña who is a resident of Mandaluyong City. Under Sec. 9 of A.M. No. 04-10-11-SC, **the verified petition for Temporary Protection Order may be filed with the Family Court of the place where the offended party resides**. Accordingly, the petition must be filed before the Family Court of Mandaluyong City;

21. Respondent Judge is fully aware of this defect of jurisdiction in the petition considering that the alleged offended party Julian Henri "Harry" R. Peña is



**not within his territorial jurisdiction.** His awareness of wrong venue is manifested in his order stating in page 9 paragraph a) that **“Harry” lives in Mandaluyong City and not in Negros.** We quote the following:

X X X X

22. Respondent judge blindly issued the so called “TPO” without serious and judicious assessment of the contents of and averments in the petition filed by Peña. This is an obvious fact because **the hypothetical approach in the petition for custody was based on psychological incapacity for annulment of marriage and not incapacity to rear a child.** The documents speak for themselves;

23. Apparently, respondent has no jurisdiction to take cognizance of the petition before him and to issue the so called “Temporary Protection Order” yet, he did so. In so doing, respondent judge committed grave abuse of jurisdiction. Accordingly, the so called “TPO” issued is null and void;

24. Respondent blindly assumed jurisdiction because respondent Judge Trocino and petitioner Peña were in connivance. Complainant has personal knowledge that respondent judge was working under the dictates of Peña. On several occasions, while complainant and Peña were still live-in partners, she has full personal and direct knowledge that respondent judge was dictated upon by Peña to decide on cases at the desire of Peña in her presence. **Aside from the personal knowledge of complainant, the close relationship of Judge Trocino and Peña is evident in the case entitled Eric L. Lee vs. Hon. Henry J. Trocino, et al., under GR No. 164648 x x x before the Supreme Court, where respondent and Judge Trocino and Magdaleno Peña are co-respondents;**<sup>7</sup> [Emphases supplied]

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<sup>7</sup> Rollo, pp. 5-11.

*Magdaleno Peña*

Respondent's Position

In his Comment,<sup>8</sup> Judge Trocino denied the allegations and pointed out that the TPO was sanctioned by Sections 11<sup>9</sup> and 15<sup>10</sup> of A.M. No. 04-

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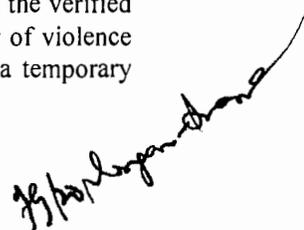
<sup>8</sup> *Rollo*, pp. 81-99.

<sup>9</sup> SEC. 11. *Reliefs available to the offended party.* - The protection order shall include any, some or all of the following reliefs:

- (a) Prohibiting the respondent from threatening to commit or committing, personally or through another, acts of violence against the offended party;
- (b) Prohibiting the respondent from harassing, annoying, telephoning, contacting or otherwise communicating in any form with the offended party, either directly or indirectly;
- (c) Removing and excluding the respondent from the residence of the offended party, regardless of ownership of the residence, either temporarily for the purpose of protecting the offended party, or permanently where no property rights are violated. If the respondent must remove personal effects from the residence, the court shall direct a law enforcement agent to accompany the respondent to the residence, remain there until the respondent has gathered his things and escort him from the residence;
- (d) Requiring the respondent to stay away from the offended party and any designated family or household member at a distance specified by the court;
- (e) Requiring the respondent to stay away from the residence, school, place of employment or any specified place frequented regularly by the offended party and any designated family or household member;
- (f) Directing lawful possession and use by the offended party of an automobile and other essential personal effects, regardless of ownership, and directing the appropriate law enforcement officer to accompany the offended party to the residence of the parties to ensure that the offended party is safely restored to the possession of the automobile and other essential personal effects;
- (g) Ordering temporary or permanent custody of the child/children with the offended party, taking into consideration the best interests of the child. An offended party who is suffering from Battered Woman Syndrome shall not be disqualified from having custody of her children. In no case shall custody of minor children be given to the batterer of a woman who is suffering from Battered Woman Syndrome;
- (h) Directing the respondent to provide support to the woman and/or her child, if entitled to legal import. Notwithstanding other laws to the contrary, the court shall order an appropriate percentage of the income or salary of the respondent to be withheld regularly by his employer and to automatically remit it directly to the offended party. Failure to withhold, remit or any delay in the remittance of support to the offended party without justifiable cause shall render the respondent or his employer liable for indirect contempt of court;
- (i) Prohibiting the respondent from carrying or possessing any firearm or deadly weapon and ordering him to surrender the same to the court for appropriate disposition, including revocation of license and disqualification to apply for any license to carry or possess a firearm. If the respondent is a law enforcement agent, the court shall order him to surrender his firearm and shall direct the appropriate authority to investigate him and take appropriate action thereon;
- (j) Directing the DSWD or any appropriate agency to prepare a program of intervention for the offended party that provides advocacy, temporary shelter, crisis intervention, treatment, therapy, counseling, education, training and other social services that the offended party may need;
- (k) Requiring the respondent to receive professional counseling from agencies or persons who have demonstrated expertise and experience in anger control, management of alcohol, substance abuse and other forms of intervention to stop violence. The program of intervention for offenders must be approved by the court. The agency or person is required to provide the court with regular reports of the progress and result of professional counseling, for which the respondent may be ordered to pay; and
- (l) Awarding the offended party actual damages caused by the violence inflicted, including, but not limited to, property damage, medical expenses, childcare expenses and loss of income; and compensatory, moral, and exemplary damages, subject to Sections 26a and 35 of this Rule.

The court may grant such other forms of relief to protect the offended party and any designated family or household member who consents to such relief.

<sup>10</sup> SEC. 15. *Ex parte issuance of temporary protection order.* - (a) If the court is satisfied from the verified allegations of the petition that there is reasonable ground to believe that an imminent danger of violence against women and their children exists or is about to recur, the court may issue ex parte a temporary



10-11-SC in relation to Section 32<sup>11</sup> thereof as an ancillary remedy incident to the petition for custody filed by Peña for himself and in behalf of his minor son. Judge Trocino asserted that the *ex parte* TPO was issued after a careful evaluation not only of the material allegations in the petition but all other circumstances relevant to the welfare and best interest of the minor offended party, and that it was issued judiciously in complete good faith, devoid of any grave, whimsical and capricious abuse of discretion.

Judge Trocino explained that the December 23, 2005 TPO was a temporary order in contemplation of A.M. No. 04-10-11-SC and not an order of temporary custody pursuant to A.M. 03-04-04-SC which requires the prior filing of an answer, pre-trial, and a social worker's study report. Judge Trocino insisted that the TPO was properly issued considering that Civil Case No. 1409 was a case for child custody with ancillary prayer for the issuance of a protection order under Section 32 of A.M. No. 04-10-11-SC and that said provision of the law authorizes an application for protection order as an incident in criminal or civil actions.

Judge Trocino contended that the issuance of the TPO was not based on hypothetical assumptions but was made after a thorough evaluation of the allegations set forth in the petition and its supporting documents, and after assessment, he believed in good faith that the TPO was legal and necessary for the protection of the minor offended party. Judge Trocino insisted that his act was a *bonafide* exercise of judicial discretion, the paramount consideration of which was the interest of the minor child. And even assuming that the TPO was erroneously/improperly issued, the proper

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protection order which shall be effective for thirty days from service on the party or person sought to be enjoined.

(b) The temporary protection order shall include notice of the date of the preliminary conference and hearing on the merits. The following statements must be printed in bold-faced type or in capital letters on the protection order issued by the court:

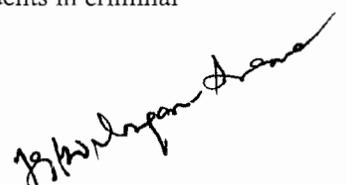
"VIOLATION OF THIS ORDER IS PUNISHABLE BY LAW."

"IF THE RESPONDENT APPEARS WITHOUT COUNSEL ON THE DATE OF THE PRELIMINARY CONFERENCE AND HEARING ON THE MERITS ON THE ISSUANCE OF A PERMANENT PROTECTION ORDER, THE COURT SHALL NOT RESCHEDULE OR POSTPONE THE PRELIMINARY CONFERENCE AND HEARING BUT SHALL APPOINT A LAWYER FOR THE RESPONDENT AND IMMEDIATELY PROCEED WITH SAID HEARING."

"IF THE RESPONDENT FAILS TO APPEAR ON THE DATE OF THE PRELIMINARY CONFERENCE AND HEARING ON THE MERITS DESPITE PROPER NOTICE, THE COURT SHALL ALLOW EX PARTE PRESENTATION OF EVIDENCE BY THE PETITIONER AND RENDER JUDGMENT ON THE BASIS OF THE PLEADINGS AND EVIDENCE ON RECORD. NO DELEGATION OF THE RECEPTION OF EVIDENCE SHALL BE ALLOWED."

(c) The court shall likewise order the immediate issuance of a notice requiring the respondent to file an opposition within five days from service. It shall further order service of (1) the notices to file opposition and of dates of the preliminary conference and hearing, (2) the protection order, and (3) copy of the petition, upon the respondent by the court sheriff, or any person authorized by the court, who may obtain the assistance of law enforcement officers.

<sup>11</sup> SEC. 32. *Applicability to applications for protection orders filed as incidents in civil or criminal cases.* - The foregoing provisions shall also apply to applications for protection orders filed as incidents in criminal or civil actions.



remedy lies with the proper court as the matter was judicial in nature, and not with Office of the Court Administrator (*OCA*) by means of an administrative complaint.

On the issue of jurisdiction, Judge Trocino asserted that the petition for child custody and damages was within the competence and jurisdiction of the RTC pursuant to Section 19 of *Batas Pambansa Blg. 129* otherwise known as the *Judiciary Reorganization Act of 1980* and A.M. No. 03-04-04-SC. Judge Trocino argued that the petition substantially complied with the requirements on non-forum shopping and that there was nothing in the Verification and Certification against Non Forum Shopping that would indicate that the parties raised a similar issue or cause of action in another court, tribunal or agency.

As to the allegation that he worked under the dictates of Peña, Judge Trocino vehemently denied the same and asserted that he never allowed anyone to either influence or dictate on him in the discharge of his official functions; and the fact that he and Peña were co-respondents in a particular case filed before the Court was not an indication that he worked under Peña's whims.

Meanwhile, on January 27, 2006, Judge Trocino voluntarily inhibited himself from hearing the petition.<sup>12</sup>

Complainant likewise questioned the December 23, 2005 TPO before the CA, docketed as CA-G.R. SP No. 01394.<sup>13</sup>

### **Report and Recommendation of the OCA**

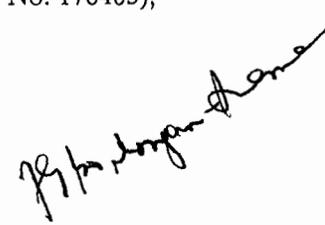
In a Resolution,<sup>14</sup> dated July 17, 2017, the OCA found no basis to hold Judge Trocino liable for bias and partiality and grave oppression. It, however, found him liable for gross ignorance of the law for issuing an *ex parte* TPO pursuant to A.M. No. 04-10-11-SC in relation to R.A. No. 9262 and recommended that he be fined in the amount of Sixty Thousand Pesos (₱60,000.00) considering that Judge Trocino compulsorily retired from the service on July 15, 2006 and was previously found administratively liable of

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<sup>12</sup> Order, *rollo*, pp. 141-144.

<sup>13</sup> Promulgated on September 15, 2006. Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Arsenio J. Magpale and Antonio L. Villamor, concurring. *Rollo* (G.R. No. 176403), pp. 32-46.

<sup>14</sup> *Rollo*, pp. 148-156.



undue delay in rendering a decision in A.M. No. RTJ-05-1936<sup>15</sup> and A.M. No. RTJ-07-2057<sup>16</sup>.

### The Ruling of the Court

Upon review of the records, the Court agrees with the findings and recommendation of the OCA that Judge Trocino acted with gross ignorance of the law when he issued, *ex parte*, the December 23, 2005 TPO pursuant to A.M. No. 04-10-11-SC in relation to R.A. No. 9262, which granted, among others, the temporary custody of the minor child to Peña and issued a protection order against complainant effective for thirty (30) days. He deliberately ignored the provisions of the Family Code, A.M. No. 03-04-04-SC otherwise known as the *Rule on Custody of Minors and Writ of Habeas Corpus in relation to Custody of Minors* and A.M. No. 04-10-11-SC or the *Rule on Violence against Women and their Children*.

Gross ignorance of the law is the disregard of the basic rules and settled jurisprudence.<sup>17</sup> A judge owes it to his office to simply apply the law when the law or a rule is basic<sup>18</sup> and the facts are evident.<sup>19</sup> Not to know it or to act as if one does not know it constitutes gross ignorance of the law.<sup>20</sup>

### *On Child Custody*

Article 176 of the Family Code explicitly confers the sole parental authority of an illegitimate child to the mother. This preference favoring the mother is reiterated in Article 213 of the Family Code which provides that no child under seven years of age shall be separated from the mother. Only the most compelling of reasons, such as the mother's unfitness to exercise sole parental authority, shall justify her deprivation of parental authority and the award of custody to someone else.<sup>21</sup> The mother's fitness is a question of fact to be properly entertained in the special proceedings before the trial court.<sup>22</sup>

<sup>15</sup> *Office of the Court Administrator v. Judge Henry J. Trocino, et al.*, 551 Phil. 258 (2007).

<sup>16</sup> *Galanza v. Judge Trocino*, 556 Phil. 52 (2007).

<sup>17</sup> *Department of Justice v. Misleng*, A.M. No. RTJ-14-2369 & RTJ-14-2372, July 26, 2016, 798 SCRA 225, 234.

<sup>18</sup> *Office of the Court Administrator v. Flores*, 758 Phil. 30, 56 (2015).

<sup>19</sup> *Lim v. Judge Dumlaog*, 494 Phil. 197 (2005).

<sup>20</sup> *Id.*

<sup>21</sup> *Briones v. Miguel*, 483 Phil. 483, 493 (2004).

<sup>22</sup> *Tonog v. Court of Appeals*, 427 Phil. 1, 10 (2002).

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*On Provisional Custody*

A.M. No. 03-04-04-SC is instructive. Specifically, Section 13 thereof provides:

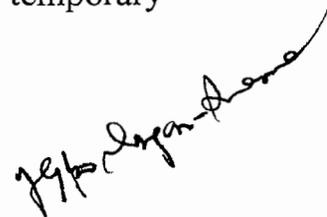
Section 13. *Provisional order awarding custody.* - **After an answer has been filed or after expiration of the period to file it, the court may issue a provisional order awarding custody of the minor.** As far as practicable, the following order of preference shall be observed in the award of custody:

- (a) Both parents jointly;
- (b) Either parent, taking into account all relevant considerations, especially the choice of the minor over seven years of age and of sufficient discernment, unless the parent chosen is unfit;
- (c) The grandparent, or if there are several grandparents, the grandparent chosen by the minor over seven years of age and of sufficient discernment, unless the grandparent chosen is unfit or disqualified;
- (d) The eldest brother or sister over twenty-one years of age, unless he or she is unfit or disqualified;
- (e) The actual custodian of the minor over twenty-one years of age, unless the former is unfit or disqualified;  
or
- (f) Any other person or institution the court may deem suitable to provide proper care and guidance for the minor. [Emphasis supplied]

Clearly, a court is not authorized to issue a provisional order awarding custody of a minor child until after an answer to the petition has been filed or when the period to file the same have expired and no such answer was filed in court.

*Temporary Protection Order*

Judge Trocino's contention that the TPO was a temporary protection order pursuant to A.M. No. 04-10-11-SC, and not an order of temporary custody as contemplated in A.M. No. 03-04-04-SC, is not tenable.



Section 15 of A.M. No. 04-10-11-SC provides:

SEC. 15. *Ex parte issuance of temporary protection order.* - (a) If the court is satisfied from the verified allegations of the petition that **there is reasonable ground to believe that an imminent danger of violence against women and their children exists or is about to recur**, the court may issue ex parte a temporary protection order which shall be effective for thirty days from service on the party or person sought to be enjoined.

x x x. [Emphasis supplied]

Section 11 of Republic Act (R.A.) No. 9262 further provides:

SEC. 11. *How to Apply for a Protection Order.*  
– **The application for a protection order must be in writing, signed and verified under oath by the applicant.** It may be filed as an independent action or as an incidental relief in any civil or criminal case the subject matter or issues thereof partakes of a violence as described in this Act. A standard protection order application form, written in English with translation to the major local languages, shall be made available to facilitate applications for protection orders, and shall contain, among others, the following information:

(a) names and addresses of petitioner and respondent;

(b) description of relationships between petitioner and respondent;

(c) **a statement of the circumstances of the abuse;**

(d) description of the reliefs requested by petitioner as specified in Section 8 herein;

(e) request for counsel and reasons for such;

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(f) request for waiver of application fees until hearing; and

(g) an attestation that there is no pending application for a protection order in another court.

**If the applicant is not the victim, the application must be accompanied by an affidavit of the applicant attesting to (a) the circumstances of the abuse suffered by the victim and (b) the circumstances of consent given by the victim for the filing of the application.** When disclosure of the address of the victim will pose danger to her life, it shall be so stated in the application. In such a case, the applicant shall attest that the victim is residing in the municipality or city over which court has territorial jurisdiction, and shall provide a mailing address for purposes of service processing.

An application for protection order filed with a court shall be considered an application for both a TPO and PPO.

Barangay officials and court personnel shall assist applicants in the preparation of the application. Law enforcement agents shall also extend assistance in the application for protection orders in cases brought to their attention.[Emphasis supplied]

A protection order is issued to prevent further acts of violence against women and their children, their family or household members, and to grant other necessary reliefs.<sup>23</sup> It is issued for the purpose of safeguarding the offended party from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life.<sup>24</sup> A protection order may be issued *ex parte* if the court finds that there is danger of domestic violence to the offended party. This provisional protection order, however, may be issued only if the court finds that the life, limb or property of the offended party is in jeopardy and there is reasonable ground to believe that the order is necessary to protect the victim from the immediate and imminent danger of violence or to prevent such violence, which is about to recur.<sup>25</sup> If after examining the verified petition and its accompanying affidavits the court is satisfied that there is, indeed, a reasonable ground to believe that an

<sup>23</sup> *Garcia v. Judge Drilon*, 712 Phil. 44, 104 (2013).

<sup>24</sup> Section 8 of R.A. No. 9262.

<sup>25</sup> *Garcia v. Judge Drilon*; supra note 23, at 105.

*Handwritten signature:* Judge Drilon

imminent danger of violence against the offended party exists or is about to recur, it may issue a TPO *ex parte*.<sup>26</sup>

In the case at bar, a reading of the petition for child custody filed by Peña would show that no specific allegation of violence or abuse, whether physical, emotional or psychological was committed or was about to be committed against Henri. Not even the affidavits of witnesses attached to the petition supported his positions. The averments in the petition that complainant was suffering from personality disorder, that she subjected Henri to psychological violence as she would always shout at the helpers, and that complainant always leave Henri to the *yaya*, to name a few, are not sufficient bases to issue the TPO.

Moreover, a perusal of the Verification with Certification of Non-forum Shopping<sup>27</sup> attached to the petition for child custody would reveal that a similar case for protection order and child custody, docketed as Civil Case No. MC05-2779, was filed by complainant against Peña before the RTC-Mandaluyong City. Considering that there was such a declaration, it behooves upon Judge Trocino to inquire first about the nature and the status of the said pending case before taking cognizance of the case and eventually issue the TPO.

In fact, the December 23, 2005 TPO was eventually annulled and set aside by the CA in its Decision<sup>28</sup> dated September 15, 2006. In the same decision, Civil Case No. 1409 was likewise dismissed for lack of jurisdiction over the petition for protection order and child custody. The CA held that Judge Trocino gravely abused his discretion when he issued the December 23, 2005 TPO awarding the custody of parties' common child to Peña. It ruled that since the RTC-Mandaluyong City had already taken cognizance of the petition for protection order and child custody, it exercises jurisdiction thereon to the exclusion of all other courts. Hence, the RTC-Mandaluyong City has exclusive jurisdiction over said petition and no other petition involving the same subject matter may be filed before any other court. The CA decision was affirmed by the Court in a Resolution,<sup>29</sup> dated June 20, 2007.

The Court has always reminded judges to be extra prudent and circumspect in the performance of their duties. This exalted position entails a lot of responsibilities, foremost of which is proficiency in the law.<sup>30</sup> Though not every judicial error bespeaks ignorance of the law and that, if

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<sup>26</sup> Section 15 of A.M. No. 04-10-11-SC.

<sup>27</sup> *Rollo*, p. 29.

<sup>28</sup> See note 13.

<sup>29</sup> Docketed as G.R. No. 176403 entitled *Peña v. Recto*, *rollo*, pp. 319-320.

<sup>30</sup> *Enriquez v. Judge Caminade*, 519 Phil. 781, 787-788 (2006).

committed in good faith, does not warrant administrative sanction, the same, nonetheless, applies only in cases within the parameters of tolerable misjudgment.<sup>31</sup> Where the procedure is so simple and the facts so evident as to be beyond permissible margins of error, to still err thereon amounts to ignorance of the law.<sup>32</sup> In the case of *Bautista v. Causapin Jr.*,<sup>33</sup> the Court explained thus:

Where the law involved is simple and elementary, lack of conversance therewith constitutes gross ignorance of the law. 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. The mistake committed by respondent Judge is not a mere error of judgment that can be brushed aside for being minor. The disregard of established rule of law which amounts to gross ignorance of the law makes a judge subject to disciplinary action.<sup>34</sup>

Given the foregoing, Judge Trocino's actions cannot be considered a mere error in judgment that can be easily ignored. His act of issuing the questioned TPO is not a simple lapse of judgment but a blatant disregard of the basic rules on child custody and the rule on the issuance of a protection order. As held by the Court in a number of cases, a patent disregard of the basic legal commands embodied in the law and the rules constitutes gross ignorance of the law from which no one may be excused, not even a judge.<sup>35</sup>

Verily, the Code of Judicial Conduct requires a judge to be the embodiment of competence, integrity and independence.<sup>36</sup> A judge owes it to himself and his office to know by heart the basic legal principles and relevant doctrines.<sup>37</sup> It is highly imperative that he be conversant with them because when a judge displays an utter lack of familiarity with the laws and rules, he erodes the confidence of the public in the courts.<sup>38</sup>

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<sup>31</sup> *Department of Justice v. Mislang*, A.M. No. RTJ-14-2369, July 26, 2016, 798 SCRA 225, 234 (2016).

<sup>32</sup> *Office of the Court Administrator v. Judge Estrada*, 654 Phil. 638, 648 (2011).

<sup>33</sup> 667 Phil. 574 (2011).

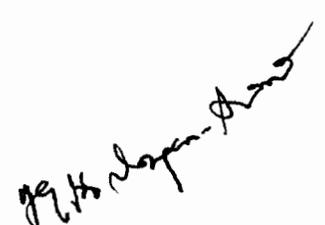
<sup>34</sup> *Id.*, at 589.

<sup>35</sup> *Ogka Benito v. Balindong*, 599 Phil 196, 201 (2009); *Herminio v. Judge Calimag*, 417 Phil. 778, 785 (2001).

<sup>36</sup> Rule 1.01 Canon 1 of the Code of Judicial Conduct.

<sup>37</sup> *Lucero v. Judge Bangalan*, 481 Phil. 140, 146 (2004).

<sup>38</sup> *Office of the Court Administrator v. Judge Vestil*, 561 Phil. 142, 166 (2007).



*Previous Record; Penalty*

Under Section 8, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, gross ignorance of the law is a serious charge, punishable by dismissal from service, suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months, or a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.<sup>39</sup> In the consolidated cases of *Department of Justice v. Judge Mislang*<sup>40</sup> and *Home Development Mutual Fund v. Judge Mislang*,<sup>41</sup> the respondent judge was found guilty of gross ignorance of the law and was dismissed from the service considering that he was previously found administratively liable in two cases. The Court held that despite previous warnings that a repetition of the same or similar acts shall be dealt with more severely, he still continued to transgress the norm of judicial conduct.

Similarly, the records show that Judge Trocino was previously found administratively liable on two (2) cases for undue delay in rendering judgments. In A.M. No. RTJ-05-1936,<sup>42</sup> Judge Trocino was suspended for three (3) months; while in A.M. No. RTJ-07-2057,<sup>43</sup> he was fined in the amount of Twenty Thousand Pesos (₱20,000.00).

Doubtless, Judge Trocino's infraction on this instance would have warranted the ultimate penalty of dismissal had he not compulsorily retired from the service effective July 15, 2006.

Consequently, considering the past infractions of Judge Trocino, the Court finds that the OCA's recommended penalty of fine in the amount of Sixty Thousand Pesos (₱60,000.00) is disproportionate to the present charge which he was found guilty of.

**WHEREFORE**, the Court finds respondent Ret. Judge Henry J. Trocino, Regional Trial Court, Branch 62, Bago City, Negros Occidental, **GUILTY** of Gross Ignorance of the Law. In lieu of dismissal from the service, the Court imposes the penalty of **FORFEITURE** of all his retirement benefits except accrued leave credits.

**SO ORDERED.**

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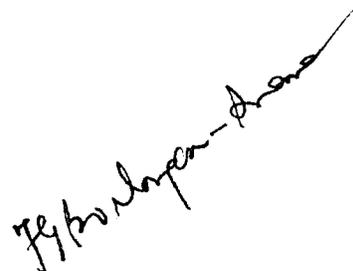
<sup>39</sup> Section 11, Rule 140, as amended by A.M. No. 01-8-10-SC (2001).

<sup>40</sup> A.M. No. RTJ-14-2369, July 26, 2016, 798 SCRA 225.

<sup>41</sup> A.M. No. RTJ-14-2372, July 26, 2016, 798 SCRA 225.

<sup>42</sup> *Office of the Court Administrator v. Judge Henry J. Trocino, et al.*, 551 Phil. 258 (2007).

<sup>43</sup> *Galanza v. Judge Trocino*, 556 Phil. 52 (2007).





**MARIA LOURDES P. A. SERENO**  
Chief Justice



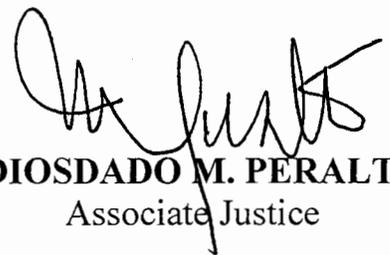
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Associate Justice

(On Official Leave)

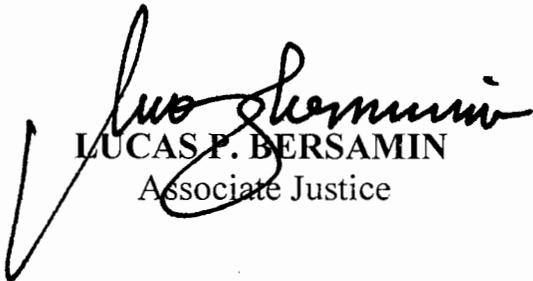
**PRESBITERO J. VELASCO, JR.**  
Associate Justice

(On Official Leave)

**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice



**DIOSDADO M. PERALTA**  
Associate Justice



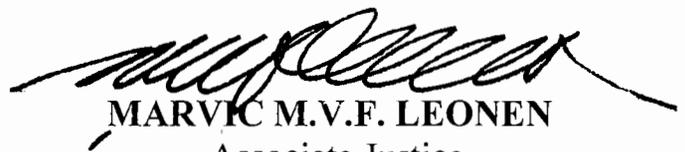
**LUCAS P. BERSAMIN**  
Associate Justice

(On Official Leave)

**MARIANO C. DEL CASTILLO**  
Associate Justice

(On Official Leave)

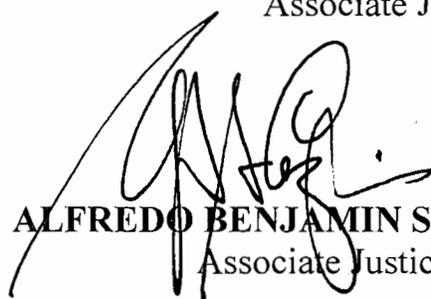
**ESTELA M. PERLAS-BERNABE**  
Associate Justice



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

(On Leave)

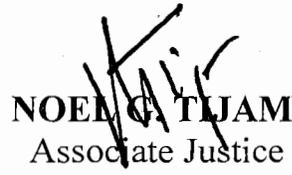
**FRANCIS H. JARDELEZA**  
Associate Justice



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



**SAMUEL R. MARTIRES**  
Associate Justice

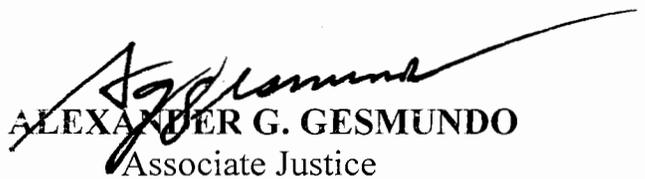


**NOEM G. TIAM**  
Associate Justice

(NO PART)

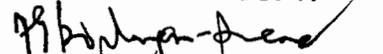


**ANDRES B. REYES, JR.**  
Associate Justice



**ALEXANDER G. GESMUNDO**  
Associate Justice

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CLERK OF COURT, EN BANC  
SUPREME COURT