

## **FIRST DIVISION**

**[ A.M. No. MTJ-04-1520, January 27, 2004 ]**

**ROMEO T. ZACARIAS, COMPLAINANT, VS. JUDGE MARTONINO R. MARCOS, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 2, TARLAC CITY; AND SHIRLEY M. VISAYA, CLERK OF COURT, MUNICIPAL CIRCUIT TRIAL COURT, GERONA, TARLAC, RESPONDENTS.**

**IN RE: COMPLAINT AGAINST JUDGE MARTONINO MARCOS AND CLERK OF COURT SHIRLEY VISAYA, MUNICIPAL TRIAL COURT, GERONA, TARLAC.**

### **DECISION**

**PANGANIBAN, J.:**

The actions of judges and judicial personnel must not only be proper at all times, but also appear to be so. This axiom is necessary, because the image of the judiciary is mirrored in the conduct, official or otherwise, of the men and women who compose it. Failure to adhere steadfastly to this strict standard of conduct is a ground for administrative sanctions.

#### **The Case and the Facts**

This administrative matter arose from a Complaint<sup>[1]</sup> filed by Romeo T. Zacarias and an undated Anonymous Complaint<sup>[2]</sup> of a concerned citizen of Gerona, Tarlac. These Complaints identically charged Judge Martonino R. Marcos (Formerly of the Municipal Trial Court in Cities, Branch 2, Tarlac City) and Clerk of Court Shirley M. Visaya (of the 5<sup>th</sup> Municipal Circuit Trial Court of Gerona, Tarlac) with immoral conduct and illegal solicitation from litigants.

The Complaint of Zacarias was referred by the Office of the Court Administrator (OCA) to Executive Judge Arsenio P. Adriano of the Regional Trial Court (RTC) of Tarlac City, Branch 63, for discreet investigation;<sup>[3]</sup> and subsequently for formal investigation, report and recommendation.<sup>[4]</sup>

The anonymous Complaint was likewise referred to Executive Judge Adriano for discreet investigation on March 13, 2001.<sup>[5]</sup> After conducting the investigation, he stated in his April 16, 2001 Report to the OCA that a court insider had confirmed the illicit relationship of respondents. He then recommended the filing of formal charges against them.

Upon the recommendation of the OCA,<sup>[6]</sup> the matter was re-assigned to Judge Adriano, this time for formal investigation, report and recommendation. The two administrative Complaints were consolidated on September 23, 2002,<sup>[7]</sup> upon

respondents' motion.<sup>[8]</sup>

In view, however, of the appointment/promotion of respondent judge as the presiding judge of the RTC of Tarlac City (Branch 64), the Court, pursuant to its Resolution in AM No. 01-8-10-SC,<sup>[9]</sup> thereafter referred the matter to Associate Justice Josefina Guevara-Salonga of the Court of Appeals (CA) for investigation, report and recommendation.<sup>[10]</sup>

Justice Guevara-Salonga summarized the factual antecedents of the matter as follows:

"In an unsworn and undated letter-complaint filed before the Office of the Court Administrator, the complainant [Romeo T. Zacarias] charged respondents with immorality and graft and corruption. Complainants averred that he is the accused in x x x[C]riminal [C]ase [No. 6000-99]. Allegedly, he went to the Municipal Circuit Trial Court of Gerona, Tarlac, to secure a clearance but was informed that he had already been convicted in the criminal case pending before the said court. According to the complainant, the respondent clerk summoned him to the chambers of the respondent judge. While inside the judge's chambers, respondents allegedly tried to extort money from him, or in the words used by the complainant, *'there[, ] she and Judge Martonino Marcos [were] asking money from me so that there will be some changes in the decision before it will be promulgated.'*

"Complainant confirmed that he was not able to attend the promulgation of the decision in the criminal case against him but stressed that he did not receive any notice of said hearing. Consequently, a warrant of arrest was issued against him 'to serve sentence.' At the hearing, he was surprised [when] the respondent clerk x x x asked him to post a cash bond in the amount of one thousand pesos (P1,000.00) for his provisional liberty despite the fact th[at] he was arrested specifically to serve his sentence. Beleaguered, complainant posted the cash bond and an Order of Release signed by the respondent Judge was issued in his favor. Complainant claimed that the respondent clerk again asked for money, which he, however, declined to give. The complainant further aired his confusion since regardless of the cash bond that he posted, he still served his sentence for fifteen (15) days at the Gerona Municipal Jail.

"Complainant further alleged that upon some inquiries, he was informed that the respondent Judge does not approve bailbonds without bribe money and that the respondents are engaged in an illicit love affair which is x x x common knowledge to municipal and court personnel and as well as to the people of Gerona."<sup>[11]</sup>

In his Comment<sup>[12]</sup> dated May 25, 2001, respondent judge averred that the allegations of complainant lacked factual and legal basis. He claimed that the Complaint had been filed merely to harass him. He denied having ever demanded money from complainant, who had allegedly approached him for advice in the latter's criminal case.

According to the above-mentioned Comment, complainant might have misinterpreted as bribe the amounts he had paid for his cash bond and for the damages adjudged against him. Supposedly, he voluntarily posted on September 28, 2000, a cash bond for his provisional liberty after manifesting that he was applying for probation. Thereafter, he allegedly backtracked on his plans for probation, withdrew his application therefore, voluntarily returned to jail to serve his sentence, and at the same time paid the damages.

As to the charge of immorality, respondent judge averred that his hectic schedule hardly allowed him to indulge in illicit relations. He emphasized that on top of his duties as judge, he was also a lay minister and president of the Parish Pastoral Council of Ramos, Tarlac, as well as an active member of the freemasonry and the *cursillo* movements.

Finally, to prove his innocence, he submitted copies of the Warrant of Arrest<sup>[13]</sup> against complainant dated September 21, 2000; the Release Order<sup>[14]</sup> dated September 28, 2000; the Legal Fees Form<sup>[15]</sup> showing the posting of the cash bond and the Undertaking<sup>[16]</sup> attendant thereto; the Order<sup>[17]</sup> dated October 12, 2000, ordering the release of the cash bond to complainant; and the Receipt<sup>[18]</sup> for the latter's P1,000 payment for damages.

In her Comment,<sup>[19]</sup> on the other hand, respondent clerk denied having demanded money from complainant as a consideration for changing the court's Decision. She affirmed that he had taken up the case with respondent judge who, however, asked him to seek the advice of counsel. She vehemently denied having illicit relations with respondent judge, whom she described as kind, considerate and morally upright. In support of her defense, she adopted his Comment as well as the exhibits therein. She also submitted a Sworn Statement<sup>[20]</sup> executed by her co-employees, who vouched therein for her integrity and uprightness. Finally, she presented a certified true copy of the Official Receipt<sup>[21]</sup> that she had issued to complainant for the cash bond posted by him on September 28, 2000.

### **Evaluation and Recommendation of the Investigating Justice**

In her Report,<sup>[22]</sup> Justice Guevara-Salonga held that while complainant had failed to present any direct and positive evidence of his charges of graft and corruption against respondents, the records of the criminal case validated and confirmed his accusations. By and large, the following facts were established by the records: 1) he did not apply for probation; 2) although he had been arrested to serve his sentence, he posted a cash bond and was subsequently ordered released by respondent judge; 3) the Release Order of September 28, 2000, as well as the Undertaking attendant thereto, did not state that the posting of the bond was incident to complainant's application for probation; and 4) complainant fully served his sentence from September 27 to October 12, 2000. According to her, these matters of record attested to the fact that the cash bond had been arbitrarily required by respondents and unduly posted by complainant when all that he needed to do was serve his sentence.

Further, the investigating justice held that the inconsistencies in the statements of

respondents in their Comments and testimonies during the clarificatory hearing belied their claim that complainant had voluntarily posted the bond. In particular, continued the Report, respondent judge initially asserted in his Comment<sup>[23]</sup> that complainant had posted the cash bond without being told to do so, only to admit later during the hearing<sup>[24]</sup> that the former had required him to post bail. It will be recalled that respondent clerk admitted<sup>[25]</sup> that she had unilaterally required the bond.

Moreover, the investigating justice observed that nowhere in the records was it shown that complainant had applied for probation and withdrawn it. Assuming that he had done so, respondents should have immediately released the cash bond, because he had already served his sentence anyway. According to her, this fact was known to respondent judge, as shown by his October 12, 2000 Order<sup>[26]</sup> acknowledging the Certification<sup>[27]</sup> from the Gerona Police Station that complainant had served his sentence from September 27 to October 12, 2000. She held that the failure of respondent judge to issue a commitment order further militated against his claim that complainant had been released after posting bond.

Another discrepancy that supported complainant's allegation, according to Justice Guevara-Salonga, was respondent clerk's classification of the cash bond as part of the Judiciary Development Fund (JDF) instead of the Fiduciary Fund. She found this fact surprising; having been in service for 27 years, respondent clerk ought to have been aware of the latter's duty to check the forms and to collect the cash bond for the court.

The investigating justice concluded that the foregoing were telling proofs that the acts of respondents had been irregular, unlawful, anomalous and totally inconsistent with any claim of good faith in the performance of their judicial functions. As to the charge of immorality, she recommended that it be dismissed, as it was based only on vicious rumors and unverified reports.

Accordingly, she recommended that respondents be penalized with severe reprimand and suspension from office for a period of one (1) month for grave misconduct.

### **The Court's Ruling**

We affirm the findings of the investigating justice with some modifications, by increasing the penalty of respondents consistent with Rule 140 of the Revised Rules of Court and Civil Service Rules.

### **Administrative Liability**

Exacting standards of rectitude and propriety are demanded of respondent judge. As the epitome of integrity and justice, he should comport himself at all times in such a manner that his conduct, official or otherwise, can bear searching public scrutiny.<sup>[28]</sup> Such is the high price for the honor bestowed upon those who occupy exalted positions in the administration of justice.<sup>[29]</sup>

The Code of Judicial Conduct mandates that a magistrate "should avoid impropriety

and the appearance of impropriety in all activities”;<sup>[30]</sup> and “should be the embodiment of competence, integrity and independence.”<sup>[31]</sup> Since appearance and reality fuse in the performance of judicial functions, the judge -- like Caesar’s wife -- must not only be pure, but also be beyond suspicion.<sup>[32]</sup>

In this case, respondent judge’s September 28, 2000 Order<sup>[33]</sup> releasing complainant after he had been arrested “to serve sentence”<sup>[34]</sup> finds no support in the records. It must be noted that Section 4 of Rule 114<sup>[35]</sup> of the Rules of Court grants bail, as a matter of right, to all persons in custody even after conviction by the municipal trial court. Section 7 of Rule 120 of the Rules of Court, on the other hand, provides that “[a] judgment in a criminal case becomes final after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served, or the accused has expressly waived in writing his right to appeal, or the accused has applied for probation.”

On September 28, 2000, the reglementary period for filing an appeal<sup>[36]</sup> of a judgment of conviction had not yet lapsed. Under the circumstances, it cannot be said that complainant commenced serving his sentence when he was arrested and confined on September 27. Where the one accused has not voluntarily and knowingly commenced the service of one’s sentence, but has been confined merely by order of the court after the promulgation of judgment, such sentence cannot be considered final or the service thereof commenced.<sup>[37]</sup>

Complainant could have very well applied for probation, therefore, on September 28. Under Section 4 of the Probation Law,<sup>[38]</sup> such application must be filed by a qualified defendant, like complainant, within the period for perfecting an appeal.

Be that as it may, there is regrettably nothing in the records to show that an application for probation was filed by complainant.<sup>[39]</sup> Neither did the Release Order indicate that he had been discharged upon his application for probation.

Moreover, when complainant returned to jail to serve his sentence, respondent judge failed to substantiate the latter’s alleged issuance of a Commitment Order. Observed the investigating justice:

“x x x. Furthermore, respondent Judge’s omission in issuing a Commitment Order poses severe implications against their stance of innocence and compliant performance of duties. Surely, if we are to be impressed that the complainant was released and thereafter voluntarily returned to jail, the respondent Judge should have issued a Commitment Order to the jail warden. But then, the certification that complainant started to serve the sentence on 27 September 2000 is a clear indication that he was not released at all after his arrest.”<sup>[40]</sup>

Indeed, the actions of respondent judge were not free from all appearances of impropriety. His conduct lacked the meticulous care expected of one ever mindful of the image of the judiciary that one portrays. It is the kind of behavior for which he must be administratively dealt with, as it erodes public confidence in the judicial system.<sup>[41]</sup>