

## FIRST DIVISION

[ A.M. No. MTJ-96-1109, April 16, 2001 ]

**JOVENAL OPORTO, JR., COMPLAINANT, VS. JUDGE EDDIE P. MONSERATE, RESPONDENT.**

### R E S O L U T I O N

**PARDO, J.:**

#### The Case

The case is an administrative complaint<sup>[1]</sup> charging Judge Eddie P. Monserate (hereafter, "Judge Monserate"), Municipal Circuit Trial Court, Magarao-Canaman, Camarines Sur with "ignorance of the law, harassment and grave abuse of discretion."

#### The Facts

On October 31, 1995, Ms. Lourdes A. Senar, the wife of the mayor of the town where the sala of Judge Monserate was located, filed a complaint against Sonny Rada and complainant, Jovenal Oporto, Jr. (hereafter, "Rada" and "Oporto") for "violation of Article 172<sup>[2]</sup> in relation to Article 173<sup>[3]</sup> of the Revised Penal Code." The complaint<sup>[4]</sup> was filed with the Municipal Circuit Trial Court, Magarao-Canaman, Camarines Sur and was docketed as Criminal Case No. 2811.<sup>[5]</sup> The complaint, however, was not under oath.<sup>[6]</sup> On November 10, 1995, Judge Monserate issued a warrant for the arrest of Oporto and co-accused Rada. He fixed bail at fourteen thousand pesos (P14,000.00) each.<sup>[7]</sup> On January 26, 1996, on the mistaken notion that the case fell within the jurisdiction of the Regional Trial Court, Judge Monserate conducted a preliminary investigation, declared that there was probable cause and ordered that the records of the case be forwarded to the Provincial Prosecutor Office, Camarines Sur, for appropriate action.<sup>[8]</sup> On February 28, 1996, the Provincial Prosecutor of Camarines Sur<sup>[9]</sup> found that the crime committed was not estafa but falsification, the penalty for which was *prision correccional* in its medium and maximum periods and a fine of not more than five thousand pesos (P5,000.00), and thus fell within the expanded jurisdiction of the Municipal Trial Courts and Municipal Circuit Trial Courts. According to the Provincial Prosecutor, there was no deceit, thus the crime was not "estafa through falsification of commercial documents" but for falsification only. He remanded the case to the court of origin for further proceedings.<sup>[10]</sup> On July 9, 1996, complainant Oporto filed with the Executive Judge, Regional Trial Court, Naga City, an administrative complaint charging Judge Monserate with "ignorance of the law, harassment and/or grave abuse of discretion."<sup>[11]</sup>

On July 18, 1996, Executive Judge David C. Naval (hereafter, "Judge Naval") found

the complaint to be sufficient in form and substance and required Judge Monserate to file a responsive pleading within fifteen (15) days from receipt of the order.<sup>[12]</sup> On August 16, 1996, Deputy Court Administrator Reynaldo L. Suarez wrote Judge Naval and requested him to forward to the Office of the Court Administrator, Supreme Court, the original of the administrative complaint considering that he charges against Judge Monserate "appear to be serious or perhaps less serious in nature."<sup>[13]</sup> On September 10, 1996, in compliance with the request, Clerk of Court Rosario B. Torrecampo forwarded the entire record of the case against Judge Monserate to the Office of the Court Administrator, Supreme Court.<sup>[14]</sup> On November 18, 1996, Deputy Court Administrator Reynaldo L. Suarez submitted the following recommendation to the Court:

"WHEREFORE, premises considered, the undersigned respectfully recommends that the above-entitled administrative case be given a regular docket number and respondent Judge Eddie Monserate, be given a SEVERE REPRIMAND for his failure to keep abreast with the latest laws, rulings and jurisprudence affecting his jurisdiction and for his failure to be more circumspect of (sic) his duty as a judicial officer with warning that a repetition of similar offense will be severely dealt with by the Court."<sup>[15]</sup>

On January 22, 1997, the Court resolved to refer the case to the Executive Judge, Regional Trial Court, Naga City for investigation, report and recommendation.<sup>[16]</sup> On July 7, 1997, Executive Judge Antonio N. Gerona submitted a report which stated that the case against complainant Oporto was dismissed on June 10, 1997, due to the prosecution's lack of interest and its failure to prosecute.<sup>[17]</sup> On February 11, 1998, the Court required the Office of the Court Administrator to submit its evaluation, report and recommendation with respect to the case against Judge Monserate.<sup>[18]</sup> On February 17, 1998, Deputy Court Administrator Reynaldo L. Suarez<sup>[19]</sup> again submitted a report reiterating his recommendation of November 18, 1996.<sup>[20]</sup> On March 29, 2000, the Court required the parties to manifest if they were willing to submit the case for resolution based on the pleadings already filed.<sup>[21]</sup> On April 14, 2000, Judge Monserate manifested that he was willing to submit the case for resolution on the basis of the pleadings already filed.<sup>[22]</sup> On June 28, 2000, the Court resolved to consider its resolution of March 29, 2000 as served upon complainant since it was returned "unserved."<sup>[23]</sup> Now, the merits.

### The Court's Ruling

At the outset, we dismiss the charges against Judge Monserate for "harassment." There is no basis for the charge. Complainant Oporto alleged that he was harassed by the clerk of court when the clerk referred him to a specific bonding company when he inquired as to the amount of his bail. It was the clerk of court who referred him to the bonding company, not Judge Monserate.

Complainant Oporto charged Judge Monserate with "gross ignorance of the law" for issuing a warrant of arrest against him despite the fact that, **First**, the criminal complaint against him was not under oath, and **Second**, the affidavits and sworn

statements of the prosecution witnesses were likewise not under oath and certified.

We agree with the Court Administrator that disciplinary action against Judge Monserate on this ground is warranted. We quote pertinent portions of the report:

[24]

"...It has been held, however, that if the complaint is not sworn to, the defect is merely one of form which cannot invalidate the judgment rendered thereon (U.S. vs. Bibal, 4 Phil. 369). However, respondent should have exercised diligent effort to read the complaint so that this minor problem should have been remedied immediately by merely calling the complainant and swearing said complaint to him.

"Moreover, had he endeavored to exert simple effort to read the complaint and made research on the latest jurisprudence and laws, he would not have gone through conducting a preliminary investigation on the case for the same falls exclusively within his court's jurisdiction under RA 7691 or the Expanded Jurisdiction of the MTCC's and MCTC's.

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"Even granting for the sake of argument that the case falls within the jurisdiction of the Regional Trial Court as a case for Estafa thru Falsification of Commercial document as respondent alleged when the case was first returned by the Office of the Provincial Prosecutor, he should have made the necessary corrections as to form to reflect the proper offense thus violated, to avoid any guesswork and to apprise the accused of the law he violated."

Rule 110, Section 3 of the Revised Rules of Criminal Procedure defines a complaint as, "*a sworn written statement* charging a person with an offense *subscribed* by the offended party, any peace officer or other public officer charged with the enforcement of the law violated." Rule 112, Section 3 (a) likewise requires that for purposes of preliminary investigation, the complaint and its accompanying affidavits and supporting documents be "**sworn to** before any fiscal, state prosecutor or government official authorized to administer oath, or in their absence or unavailability, a notary public, **who must certify** that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits (**emphasis ours**).\" The requirement is mandatory. Judge Monserate's oversight is deplorable.

We likewise deplore Judge Monserate's referral of the case to the Provincial Prosecutor on the mistaken opinion that the crime charged fell within the jurisdiction of the Regional Trial Court. We cite the report of the Provincial Prosecutor, to wit:

"In passing, while the Honorable Court believed that the crime committed was Estafa Through Falsification of Commercial Document, however, it did not say so in its Resolution relying that this Office will review the case anyway. Such action bespeaks of its indecisiveness prejudicial to the