

[A.M. NO. MTJ-99-1191, August 31, 2000]

FEDERICO S. CALILUNG, COMPLAINANT, VS. JUDGE WILFREDO S. SURIAGA, MTC, ANGELES CITY, RESPONDENT.

[A.M. NO. RTJ-99-1437. AUGUST 31, 2000]

FEDERICO S. CALILUNG, COMPLAINANT, VS. JUDGE PHILBERT I. ITURRALDE, RTC, BRANCH 58, ANGELES CITY, RESPONDENT.

D E C I S I O N

PER CURIAM:

These consolidated administrative cases charge both respondent judges with irregular activities amounting to serious misconduct in office.

It appears from the record that on April 19, 1999, agents of the National Bureau of Investigation (NBI) conducted an entrapment operation involving Judge Wilfredo S. Suriaga., Presiding Judge of the Metropolitan Trial Court of Angeles City. The operation stemmed from an Affidavit Complaint dated April 16, 1999^[1] filed by Federico Calilung y Surla with the NBI. The complaint alleged that:

1. Calilung was the complainant in a case against one Emiliano D. Joven in an ejectment case docketed as Civil Case No. 98-116 pending before the MTC of Angeles City presided by Judge Suriaga.
2. While the case was still pending with him, Judge Suriaga approached Calilung soliciting the amount of Five Hundred Thousand Pesos (P500,000.00) in exchange for a favorable decision in Civil Case No. 98-116.
3. Calilung haggled with the judge and requested that the amount be lowered to Three Hundred Thousand Pesos (P300,000.00) as that was all he could afford, to which Judge Suriaga agreed.
4. Sometime thereafter in November 1998, Calilung delivered the money to Judge Suriaga at the latter's residence at Regina Street, Sta. Maria Village II, Balibago, Angeles City.
5. On December 4, 1998, Judge Suriaga rendered a decision in favor of Calilung.^[2]
6. Emiliano Joven eventually appealed the decision to the Regional Trial Court (RTC) sometime in January 1999, which appeal, now docketed as Civil Case No. 9314, was raffled to Branch 58 in Angeles City which was presided by respondent Judge Philbert Iturralde.
7. Thereafter, Judge Suriaga again approached Calilung and informed him that there will be no problem with the appeal, because Judge Iturralde assured him

of a favorable decision in consideration of the amount of Two Hundred Fifty Thousand (P250,000.00) Pesos.

8. Calilung made it appear that he agreed to Judge Suriaga's proposal. The latter then directed Calilung to prepare and deliver the money to him on Monday, April 9, 1999, at Judge Suriaga's residence.
9. Before the due date, Calilung approached the NBI requesting the Bureau to apprehend the two judges "while in the act of receiving the money xxx [to] cut short their illegal activities and to deter them from victimizing other litigants in the future."
10. Calilung was not able to talk to Judge Iturralde personally. It was his counsel, Atty. Marlon Lauder, who talked to Judge Iturralde regarding Calilung's case. According to Atty. Lauder, Judge Iturralde advised him to "talk to Judge Suriaga instead as they had already come to an agreement regarding the matter."

Acting on the complaint, the NBI formed a team composed of several NBI agents. The Joint Affidavit of Arrest^[3] outlined the plan and procedure which the team adopted in the entrapment of Judge Suriaga, viz:

Upon the receipt of the complaint, the NBI agents immediately proceeded to Angeles City for the surveillance and casing of the target area as well as to physically identify the subjects (Suriaga and Iturralde).

On April 18, 1999, the NBI agents prepared the money provided by Mr. Calilung to be used in the operation. It amounted to two hundred fifty thousand pesos (250,000.00) in two hundred fifty (250) one thousand peso (P1,000.00) bills. The NBI agents took down the serial numbers of the money^[4] and forwarded the same to the NBI-Forensic Chemistry Division for fluorescent powder dusting together with a brown envelope with initials "JCG" and the date.

It was agreed that Supervising Agent Julma Dizon-Dapilos (SA Dapilos) of the NBI-ACADED would act as the baby-sitter of Mr. Calilung's two-year old son, Marco. The NBI agents acted as back-up to SA Dapilos.

On the appointed date, the NBI agents stationed themselves along Katherine Street (near the house of Judge Suriaga). They waited for the warning signal of SA Dapilos. The signal came at around 3:00 p.m. When the NBI agents moved in, they found the envelope containing the marked money in Judge Suriaga's possession. Mr. Calilung also turned over to them the recording machine containing his conversation with Judge Suriaga as well as the latter's phone conversation with Judge Iturralde.

The NBI agents immediately proceeded to their Regional Office in San Fernando where they conducted a forensic/laboratory examination of the dorsal palmar and dorsal portion of Judge Suriaga's hands to determine the presence of fluorescent powder. The examination yielded a positive result. Consequently, they brought Judge Suriaga to the NBI Office for further interrogation after which he was booked, photographed and fingerprinted. Judge Suriaga did not however give any written testimony invoking his Constitutional rights.

In her affidavit dated 20th day of April 1999,^[5] SA Dapilos also recounted what transpired on April 19, 1999. She stated that at about 8:30 a.m., Mrs. Joselin Calilung, accompanied by SA Dapilos and baby Marco, went to Judge Suriaga's residence to tell Mrs. Suriaga that they would deliver the money at lunch time. Mrs. Calilung asked for the favorable decision of Judge Ituralde because the money would be given simultaneously with the delivery of a copy of Judge Ituralde's decision. Sometime in the afternoon at about 12:30 p.m., Mrs. Joselin Calilung talked to Judge Suriaga at the latter's house. SA Dapilos who was then nearby with the Calilung's two-year old son, Marco, heard their conversation. Judge Suriaga said: *"O, dalhin mo na ang asawa mo rito at ang pera. Naka-usap ko na si Judge Ituralde na ngayon na daw niya ire-release ang decision niya sa inyong kaso."*

At around 1:35 p.m. of the same day, Mr. Calilung together with his wife Joselin, their son Marco and SA Dapilos entered Judge Suriaga's residence to deliver the marked money. Judge Suriaga assured Mr. and Mrs. Calilung that Judge Ituralde would render a decision favorable to them upon delivery of the money. The complainants however insisted that they would wait for Judge Ituralde who promised that he would personally hand-carry the favorable decision to them. To convince the Calilung spouses that there was indeed an agreement between Judge Suriaga and Judge Ituralde, the former dialed the phone and called Judge Ituralde. The taped conversation from the end of Judge Suriaga went as follows:

"Hello, Branch 58? Nandiyan ba si Judge Ituralde? Puwede bang makausap? Si Judge Suriaga (Paused for a while.) Hello! Tuloy tayo sa golf. Oo, mag-go-golf tayo ha? O papaano, anong oras ka pupunta rito? Mamayang hapon? O, sige, ikaw na ang bahala diyan? Sa side mo ha? Tuloy na tuloy na tayo sa golf. May pambayad na ako sa caddie. Hindi na siguro. Pagkatapos ng hearing, puntahan mo ako rito alas kuwatro, alas singko. Alas kuwatro. Oo, oo, ngayon na. Ha, ha. Eh, nandito eh. Ha? Sige na, sige na. Sige na, ngayon na. O sige, Ayos na? Kopya? Isang ano? O, dalhin mo na ang isang kopya, para makuha na nila ang kopya. Oo. Hindi, hindi, hindi. O sige, sige sige. Hindi, computer naman. " At this point, Mr. Calilung butted in and told Judge Suriaga: "Judge, kahit draft lang para masaya naman kami. " Then, Judge Suriaga told Judge Ituralde: "Huwag kang magalit pare, huwag kang magalit. Sige, sige, computer naman yan eh. Kahit na ipa-follow up nila bukas. (Paused for a few seconds). O, sige, sige, sige, o sige, sige, sige. Oo. Masyadong halata? Masyadong halata? Pero siguradong, ano, pabor sa kanila. O sige, sige sige. Basta hihintaying kita rito ng four o'clock. Oo, sige. Mag-go-golf tayo. Okay, okay." Then Judge Suriaga turned to complainants and said: "Aayos na ayos na. Kaya lang, huwag ninyo lang ipa follow up doon baka mahalata. Sabi niya sa akin, ibibigay niya daw sa inyo yung kopya mamaya, pero mababasa ninyo lang hindi ninyo madadala." Mr. Calilung then said: "Oo, di bale, kahit punitin ang kopya okay lang sa akin." Then, Mrs. Calilung said: "Lalabas kaya yon on time?" To which Judge Suriaga replied: "antayin na lang namin dito." Judge Suriaga however said: "Hindi, huwag niniyong...kasi... maingat si Judge Ituralde. Andoon na, may date na I-me-mail sa inyo. I-me-mail sa inyo. Hintayin ninyong matanggap ninyo na. Meron na kaming...pero sigurado ko na yon. Ang ayaw niya lang, baka malaman na bakit alam ninyo kaagad na may desisyon na." Mr. Calilung then said: "Eh, siyempre magfa follow up kunwari." Judge Suriaga then said: "O, ano ngayon, Monday? Mga

Wednesday punta ka sa... (blurred). Pero huwag mong ipa follow up yung sa ano. Ang i-check mo sa Wednesday, sasabihin sa inyo, ah meron na ba kayong... ah, meron na ho ba? Oo, patay malisya. Huwag na huwag kayong... (blurred). Kasi medyo maingat din yun sa reputasyon niya eh, hi hi hi. " Complainant then said: "Akala ko magkakainan tayo. "Judge Suriaga said: "Eh, nagkainan na kami, wala kayo eh. Pero sigurado na iyon. Nagagalit nga eh. Wala silang tiwala, huwag na lang. Sabi ko naman, hindi, hindi, hindi, huwag. "

The Calilung spouses then decided to give the marked money to Judge Suriaga and not to wait for Judge Ituralde anymore. SA Dapilos then saw Mr. Calilung hand over the marked money to Judge Suriaga who was then standing by the main door. At that instance, SA Dapilos announced the entrapment and informed Judge Suriaga that he was under arrest for receiving the marked money in violation of the provisions of R.A. 3019. She also informed him of his constitutional rights after which she gave the warning signal to her back-up NBI agents. Judge Suriaga was thereafter placed under arrest and brought to the NBI Regional Office in San Fernando where an ultra-violet ray examination was conducted on him by Chemist Edwin Purificacion. The examination showed that Judge Suriaga was positive for specks of fluorescent powder on both his palmar and dorsal right and left hands.^[6]

On April 20, 1999, Director Santiago Y. Toledo of the NBI forwarded the findings of SRA Arnel B. Azul and company to the Inquest Prosecutor of the Department of Justice in Padre Faura, Manila.^[7] On the same day, two Informations were filed against Judge Suriaga by State Prosecutor Rosalina P. Aquino for "Corruption of Public Officials (Art. 212, RPC) [Criminal Case No. OMB-1-99-0726]" and for "Violation of Sec. 3(a) of R.A. No. 3019 otherwise known as the Anti-Graft and Corrupt Practices Act." [Criminal Case No. OMB-1-00-0727]."^[8] These were indorsed by Chief State Prosecutor Nilo C. Mariano to the Ombudsman on the same date "requesting approval for the filing of the corresponding informations and to direct the prosecutor of this Office to handle the prosecutions of the case."^[9]

Thereafter, in a Joint Review Action dated 21 April 1999,^[10] Graft Investigating Officer II Germain G. Lim recommended "that the subject Informations and the Resolutions dated 20 April 1999 rendered by the Department of Justice, National Prosecution Service, Manila be AFFIRMED and APPROVED en toto, finding the existence of probable cause against" Judge Suriaga as charged. On even date, this Joint Review Action was referred to the Office of the Ombudsman.^[11] Likewise on the same day, an Information docketed as Criminal Case No. 25244^[12] was filed before the Sandiganbayan accusing Judge Wilfredo Samson Suriaga of the crime of Corruption of a Public Official, defined and penalized under Article 212 of the Revised Penal Code:

"That on or about April 19, 1999, in Angeles City, Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, WILFREDO SAMSON SURIAGA, a public officer, being then a Judge of the Municipal Trial Court of Angeles City, Pampanga, did then and there willfully, unlawfully and feloniously demand and receive the amount of PESOS: TWO HUNDRED FIFTY THOUSAND (P250,000.00) from Spouses Federico and Joselin Calilung for the purpose of mediating, inducing and influencing Judge Philbert Ituralde, Regional Trial Court

Judge of Angeles City, into rendering a favorable decision for said spouses in Civil Case No. 98-116."

The entrapment operation that led to the arrest of Judge Suriaga was published in the Philippine Daily Inquirer's April 22, 1999 edition.^[13]

The Office of the Court Administrator (OCA), to which the cases were subsequently referred for evaluation and report, found the evidence sufficient to support the charges against respondent judges and recommended that: 1.] they be treated and docketed as a regular administrative matter; 2.] Judge Suriaga be required to answer the complaint dated April 16, 1999 as well as the criminal charges against him within ten (10) days from notice; 3.] Judge Iturralde be likewise required to answer the complaint dated April 16, 1999 within ten (10) days from notice; 4.] thereafter, the case be referred to an Associate Justice of the Court of Appeals or a consultant of the OCA for immediate investigation, report and recommendation; 5.] Judge Suriaga be placed immediately under suspension pending the resolution of the investigation and criminal charges against him; 6.] Judge Iturralde be likewise placed under suspension and until final orders from the Court; and 7.] the Court Administrator and/or the Spouses Calilung be authorized to institute criminal proceedings against Judge Iturralde.

The Court thereafter issued a Resolution dated May 4, 1999 adopting the foregoing recommendations of the OCA and referred the matter to Justice Pedro A. Ramirez for immediate investigation, report and recommendation within thirty (30) days from notice.

On May 31, 2000, Justice Ramirez submitted his Report exhaustively synthesizing the evidence of complainant and respondent judges thus:

EVIDENCE FOR THE COMPLAINANT

Complainant Federico S. Calilung's came to know respondent Judge Suriaga early in 1998 when he filed a case for unlawful detainer against a tenant which was assigned to Judge Suriaga's branch.^[14] Almost a year after the case was filed he went to court to verify its status. It was there that he met respondent Judge Suriaga whom he asked if there was already a decision in his case. Respondent Judge Suriaga answered there was "none yet" and told him, "your case has a problem. If you want let us talk and you go to my house" in Sta. Maria Village, Balibago, Angeles City.^[15] When he went to see respondent Judge Suriaga at his house, the latter told him that expenses that had to be incurred amounting to P500,000.00 "if you want to have a decision."^[16] The amount was to be given to him, respondent Judge.^[17] Told that he could not afford that much, respondent Judge Suriaga reduced the amount to P300,000.00.^[18] After raising the amount of P300,000.00 in November 1998, he went to respondent Judge Suriaga's house and gave the money to him (respondent Judge Suriaga). A few days thereafter the decision in his favor was released.^[19] He then went to see again respondent Judge Suriaga in his house to ask him about the writ of execution that he was supposed to issue in the case.^[20] Respondent Judge Suriaga told him, "Do not wait for the execution, anyway, they are going to appeal the case. I would take care of it in the RTC."^[21] The case was assigned in the