

EN BANC

[A.M. No. MTJ-94-1004, August 21, 1996]

**SANGGUNIANG BAYAN OF BATAAC, ILOCOS NORTE,
COMPLAINANT, VS. JUDGE EFREN F. ALBANO, RESPONDENT.**

DECISION

PER CURIAM:

Before us is Resolution No. 56 s. 1994 issued by the *Sangguniang Bayan* of Bataac, Ilocos Norte calling for the immediate investigation of Judge Efren F. Albano, of the Municipal Trial Court of Bataac, Ilocos Norte. The *Sanggunian* alleged that:

- (1) "the stay of Judge Albano in the Municipality of Batac as the Presiding Judge of its Municipal Trial Court has been marred by controversial decisions coupled with habitual absence from office which hampered speedy resolution of cases to the prejudice of (their) constituents," and
- (2) "there have been reported cases and complaints from (their) constituents that due to the indiscretion, inefficiency and incompetence of the incumbent Presiding Judge, it has clogged the dockets of the court, caused misery to litigants which resulted to the filing of certiorari cases against the Presiding Judge."^[1]

On November 3, 1994, we referred the *Sanggunian's* resolution to Judge Alejandrino C. Cabebe of the Regional Trial Court of Bataac, Ilocos Norte for investigation, report and recommendation.^[2]

Judge Cabebe summoned Mr. Da Vinci Crisostomo, Presiding Officer of the *Sanggunian*, to a conference to substantiate their charges against the respondent judge. Mr. Crisostomo pointed out several irregularities in the way respondent judge conducts preliminary investigations. Judge Cabebe then examined the criminal dockets of the Municipal Trial Court of Bataac, Ilocos Norte as well as the records of preliminary investigations conducted in said court.^[3]

In the course of his investigation, Judge Cabebe uncovered around **forty (40) criminal cases** dismissed after preliminary investigation.^[4] In all these cases, respondent judge failed to transmit the resolution and records to the provincial prosecutor upon conclusion of the proceedings. Respondent judge also archived two (2) cases when the police failed to arrest the suspects therein, in violation of Section 5 of Rule 112 of the Revised Rules of Court. In addition, Judge Cabebe discovered that respondent judge issued warrants of arrest without examining the complainant and his witnesses in writing and under oath, in violation of Section 6 (b) of Rule 112 of the Revised Rules of Court and Section 21, Article III of the Constitution. Judge Cabebe recommended the dismissal of respondent judge from the service with forfeiture of benefits.^[5] The Office of the Court Administrator made a similar

recommendation in a Memorandum dated May 23, 1996.^[6]

It is the stance of respondent judge that the cases cited by Judge Cabebe were all dismissed at the preliminary examination stage and did not reach the preliminary investigation proper. Respondent judge averred that before going to the preliminary investigation proper, he first conducted a preliminary examination to determine whether there is probable cause to issue a warrant of arrest. In the cases cited by Judge Cabebe, respondent judge found no probable cause for the issuance of a warrant, hence he did not proceed to the preliminary investigation proper. He argued that since there were no preliminary investigations conducted and concluded, there were no records to be forwarded to the provincial prosecutor for the filing of the corresponding information.^[7] Respondent judge further argued that "(he) may not be held liable for improper disposition of cases under preliminary investigation because the acts imputed against him pertains (sic) to his judicial capacity that are not subject to disciplinary power."^[8]

Respondent judge's stance clearly demonstrates his gross ignorance of the proper procedure in conducting a preliminary investigation.

Under the old rules, the preliminary investigation conducted by a municipal judge had two stages: (1) the preliminary examination stage during which the investigating judge determines whether there is reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof, so that a warrant of arrest may be issued and the accused held for trial; and (2) the preliminary investigation proper where the complaint or information is read to the accused after his arrest and he is informed of the substance of the evidence adduced against him, after which he is allowed to present evidence in his favor if he so desires.^[9] **Presidential Decree 911,^[10] upon which the present rule is based, removed the preliminary examination stage and integrated it into the preliminary investigation proper. Now, the proceedings consist only of one stage.^[11]**

Section 3 of Rule 112 of the Revised Rules of Court outlines the procedure for conducting a preliminary investigation:

Sec. 3. *Procedure.*-- Except as provided for in Section 7 hereof, no complaint or information for an offense cognizable by the Regional Trial Court shall be filed without a preliminary investigation having been first conducted in the following manner:

(a) The complaint shall state the known address of the respondent and be accompanied by affidavits of the complainant and his witnesses as well as other supporting documents, in such number of copies as there are respondents plus two (2) copies for the official file. The said affidavits shall 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 has personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

(b) Within ten (10) days after the filing of the complaint, the

investigating officer shall either dismiss the same if he finds no ground to continue with the inquiry, or issue a subpoena to the respondent attaching thereto a copy of the complaint, affidavits and other supporting documents. Within ten (10) days from receipt thereof the respondent shall submit counter-affidavits and other supporting documents. He shall have the right to examine all other evidence submitted by the complainant.

(c) Such counter-affidavits and other supporting evidence submitted by the respondent shall also be sworn to and certified as prescribed in paragraph (a) hereof and copies thereof shall be furnished by him to the complainant.

(d) If the respondent cannot be subpoenaed, or if subpoenaed does not submit counter-affidavits within the ten (10) day period, the investigating officer shall base his resolution on the evidence presented by the complainant.

(e) If the investigating officer believes that there are matters to be clarified, he may set a hearing to propound clarificatory questions to the parties or their witnesses, during which the parties shall be afforded an opportunity to be present but without the right to examine or cross-examine. If the parties so desire, they may submit questions to the investigating officer which the latter may propound to the parties or witnesses concerned.

(f) Thereafter, the investigation shall be deemed concluded, and the investigating officer shall resolve the case within ten (10) days therefrom. Upon the evidence thus adduced, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

Section 5 of the same rule specifies the duty of the investigating judge upon conclusion of the preliminary investigation:

Sec. 5. Duty of investigating judge.-- Within ten (10) days after the conclusion of the preliminary investigation, the investigating judge shall transmit to the provincial or city fiscal, for appropriate action, the resolution of the case, stating briefly the findings of facts and the law supporting his action, together with the entire records of the case, which shall include: (a) the warrant, if the arrest is by virtue of a warrant; (b) the affidavits and other supporting evidence of the parties; (c) the undertaking or bail of the accused; (d) the order of release of the accused and cancellation of his bail bond, if the resolution is for the dismissal of the complaint.

Should the provincial or city fiscal disagree with the findings of the investigating judge on the existence of probable cause, the fiscal's ruling shall prevail, but he must explain his action in writing furnishing the parties with copies of his resolution, not later than thirty (30) days from receipt of the records from the judge. If the accused is detained, the fiscal shall order his release.