

EXEC. JUDGE DAVID C. NAVAL, NAGA CITY AND DSWD SECRETARY CORAZON ALMA DE LEON, COMPLAINANTS, VS. JUDGE JOSE R. PANDAY, RTC, BRANCH 27, NAGA CITY, JUDGE SIMON D. ENCINAS, RTC, BR...

A.M. No. RTJ-95-1283. July 21, 1997

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PER CURIAM:

In a letter dated 5 August 1994, Executive Judge David C. Naval of the Regional Trial Court, Naga City, Branch 21, informed the Office of the Court Administrator (OCA) that Judge Jose R. Panday, Presiding Judge of Branch 27, same court, was a suspect in an alleged rape incident which was reported by the local media. Attached to Judge Naval's letter were copies of two (2) local newspapers, namely, "Bicol Standard" and "Iyo 'Ni" dated 24 July and 28 July 1994, respectively, which published news reports about the alleged rape incident.

The OCA indorsed the aforesaid letter of Judge Naval to Judge Panday for comment. In his letter-compliance dated 23 September 1994, Judge Panday admits that he is one of the respondents in a criminal complaint for rape filed by fifteen (15) year old girl named Cecile Buenafe y Ledesma. The case is pending preliminary investigation before the Municipal Circuit Trial Court of Tigaon-Sangay, Camarines Sur. Judge Panday claims complete innocence of the crime and believes that the filing of the complaint was merely intended to harass and possibly to extort money from him.

On 17 November 1994, the Court received a letter from the then Secretary of the Department of Social Welfare and Development (DSWD), Hon. Corazon Alma G. de Leon, confirming the report of the alleged rape of Cecile Buenafe by Judge Panday. Secretary de Leon informed the Court that Cecile's father, Regino Buenafe, has entrusted her to the care and custody of the DSWD Center for girls in Sorsogon. On the basis of reports received by her office from the DSWD Field Director of Region V, Secretary de Leon further alleged that Judge Panday had attempted to settle the case by offering to pay the father of Cecile the amount of one hundred fifty thousand pesos (P150,000.00) and that on 16 October 1994, MTC Judge Rica H. Lacson and RTC Judge Simon D. Encinas, together with Regino, pressured Cecile into signing an Affidavit of Desistance without the presence of the head or any social worker of the Center.

In a Resolution dated 6 December 1994, the Court resolved to treat the letter of Executive Judge David C. Naval dated 5 August 1994 and the letter of DSWD Secretary Corazon Alma de Leon dated 14 November 1994, as an Administrative Matter against Judge Jose R. Panday required him to comment thereon within ten (10) days. The Court further resolved to treat the letter of Secretary de Leon as an Administrative Matter against Judge Rica H. Lacson and Judge Simon D. Encinas and also required them to comment thereon.

On 27 December 1994, Cecile Buenafe and the DSWD, Regional Office No. V, represented by its Director IV, Ma. Suzette M. Agcaoili, filed with the Court an Administrative Complaint charging-

"1. Judge Panday with (1) "immorality" for the sexual abuse of Cecile, a minor, in violation of Republic Act No. 7610 ("Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act"), the

same being also subject matter of People vs. Judge Jose R. Panday, Criminal Case No. 2990 for Rape pending preliminary investigation by the Municipal Circuit Trial Court of Tigaon-Sangay, Camarines Sur, (2) "gross misconduct" and "conduct unbecoming a member of the judiciary" for the aforesaid sexual abuse and for attempting to bribe the father of the victim to settle the case, (3) "abuse of judicial authority" and "deliberate obstruction of justice" for filing unnecessary motions and/or petitions to delay the criminal proceedings, and; (4) "partiality", "ignorance of the law" and "knowingly rendering an unjust judgment" for dismissing Criminal Case No. 94-5566 for Rape entitled "People versus Luciano Matias."

2. Judge Encinas and Judge Lacson with "gross misconduct", "conduct unbecoming members of the judiciary", "abuse of judicial authority" and "deliberate obstruction of justice" for entering the premises of the Center for Girls in Pangpang, Sorsogon, Sorsogon, without authority and for pressuring Cecile, who was temporarily residing thereat, into signing an Affidavit of Desistance to procure the dismissal of the criminal case for rape against Judge Panday." [1]

The Court in a Resolution dated 18 February 1995, referred the present Administrative Matter to Justice Romero J. Callejo of the Court of Appeals for investigation, report and recommendation. Pending the outcome of the investigation by Justice Callejo, the court resolved to suspend Judge Panday from office.

During the investigation proceedings conducted by Justice Callejo, complainants and respondents presented their respective witnesses. The victim Cecile Buenafe, her father Regino, Dr. Chona Cuyos-Belmonte, a psychiatrist, Maria Salve Jamon, a houseparent at the Center for Girls, and Ma. Suzette Agcaoili of the DSWD Regional Office No. V, were presented as witnesses for the complaints. Their testimonies, taken together, allege the following facts:

On the afternoon of 20 July 1994, Cecile Buenafe, then fifteen (15) years old, together with her friends Cynthia Banks and Maribel Rivero, went to the house of Estephen Florence, their homosexual friend in San Isidro Norte, Lagonoy, Camarines Sur, to redeem the ring owned by Cecile which was pawned by Estephen upon her request. Estephen accompanied the three (3) girls to Sabang, San Jose, Camarines Sur, where they proceeded to the house of Nonie Ollete, the person to whom the ring was pawned. However, they were unable to get the ring back because Nonie was not then in her house. The group forthwith returned to Estephen's house. At around 8:00 in the evening of that same day, Cecile's suggested to Estephen that they go back to Sabang. By then, Cecile's friends had already gone to their respective homes leaving her alone with Estephen. [2]

While Cecile and Estephen were waiting by the roadside for a ride going to Sabang, an owner-type, stainless, red-colored jeep driven by Roderic Odiamar, stopped in front of them. On board the jeep, aside from Odiamar, were brothers Beng, Jr. and Ronaldo Ponso and Edwin Valencia. Estephen told Cecile that they will just ride with Odiamar so that they will not have to take the public transportation. Cecile agreed and boarded the jeep of Odiamar. [3] Instead of taking them to Sabang, however, Odiamar took Cecile and Estephen to the Pilapil Beach Resort at Telegrafo, San Jose, Camarines Sur. It was then about 10:00 in the evening. Odiamar and his group rented an open hut and begun drinking liquor. They forced Cecile to drink with them and blew cigarette smoke to her face. After having drank several shots of liquor, Cecile become weak and dizzy. [4]

While the other members of the group were drinking, Odiamar dragged Cecile to a cottage about fifteen (15) meters away from the hut. Inside the cottage, Odiamar forced Cecile to lie down. He held her two (2) hands with his right hand while his left hand was on her knee. Cecile tried to put up a struggle by pushing Odiamar away from her but to no avail. Odiamar undressed Cecile as well as himself and thereafter succeeded in having sexual intercourse with her against her will. [5] After he was finished with the sexual act, Odiamar fell asleep. Cecile then put on her clothes and rushed out of the cottage. She found Estephen and the companions of Odiamar sleeping. She saw the security guard of the beach resort and told him that she was raped. The security guard merely

answered that he could not do anything about it.[6]

At around 2:00 in the morning of 21 July 1994, Estephen brought Cecile to his house in San Isidro after she pleaded to him to take her home. Later in the morning of that same day, they boarded a passenger bus and alighted at San Jose, Camarines Sur. They strolled along the beach in Sabang, San Jose, until 4:00 in the afternoon. They went back to Estephen's house after their stroll.[7] Estephen then left Cecile in his house in order to buy her a t-shirt, a pair of jogging pants and panties.[8] After Cecile had change into the new clothes purchased by Estephen, they left his house anew and returned to the beach in Sabang. They stayed there overnight. On 22 July 1994, at about 5:00 in the afternoon, Estephen brought Cecile to the house of one Cesar Dizon. He left her there but would return to Dizon's house to see her from time to time.[9]

On 24 July 1994, a Sunday, at about 2:00 in the afternoon, Estephen arrived in Dizon's house. He told Cecile to dress up as they were going to a party in Goa, Camarines Sur. Cecile dressed up as told and left Dizon's house with Estephen. While waiting for a ride going to Goa, a yellow car stopped in front of them. Estephen told Cecile to get inside the car because they were going to the party in said car. The driver of the car introduced himself as Judge Jose Panday. Estephen and Judge Panday talked with each other during the ride. Cecile learned that they were going to Tigaon, Camarines Sur. Upon their arrival in Tigaon at around 2:30 in the afternoon, Judge Panday drove his car to "Bodega Tigaon," a pension house owned by Tomas Melchor. Estephen and Cecile alighted from the car. Together, they entered the pension house. Estephen led Cecile to one of the rooms in the second floor. Once inside the room, Estephen closed the door. Cecile seated herself on the bed. Five (5) minutes later, there was a knock on the door. Estephen opened the door and Judge Panday entered the room. Estephen hurriedly went out as Judge Panday closed the door behind him. Cecile asked Judge Panday to open the door but instead he pulled her by holding her clothes towards him. Judge Panday undressed Cecile after which he also undressed himself. He then made Cecile lie down on the bed as he sat on top of her. He held Cecile's two (2) hands over her head while one of his knees was wedged between her legs. Judge Panday then inserted his private organ into her private parts.[10]

After twenty (20) minutes, Judge Panday laid down on the bed. Cecile then hurriedly dressed, left the room and went down to the ground floor. She met Estephen at the bottom of the stairs and he was laughing as he handed to her the two hundred pesos (P200.00). Shortly, Judge Panday also came down the stairs. Estephen informed Cecile that they will be going back to San Jose in the car of Judge Panday. During the ride back, Estephen instructed Cecile to alight from the car at San Jose Elementary School and wait for him there. The car then sped off towards the direction of Sabang, San Jose. It was already 4:50 in the afternoon. Cecile waited for Estephen at the school as instructed. After more than an hour, Estephen arrived to fetch her. The two (2) returned to Estephen's house by public transportation.[11]

Cecile continued to stay with Estephen until on 25 July 1994, she learned from his mother that he was in the custody of the police. Cecile hurriedly left Estephen's house and proceeded to Maribel Rivero's house. Cecile narrated to Maribel the events of the past few days. Thereafter, she returned to Estephen's house to get her things and at 10:00 in the evening of that same day, she went to the house of her grandmother and related to the latter every thing that happened to her the past few days. Cecile slept at her grandmother's house that night and the following morning, her grandmother recounted to Annabel, Cecile's sister, what Cecile told her.[12] Cecile and Annabel's parents were then not living with them. Their mother, Emelita, was working as an overseas contract worker in Saudi Arabia while their father, Regino, was working as a driver in Manila.

The following day, Regino, who was then in Sta. Mesa, Manila, received a message asking him to return to San Ramon, Lagonoy, Camarines Sur immediately as something had happened to her daughter, Cecile. When he arrived at their house in San Ramon the next day, Regino confronted Cecile but the latter did not respond. Regino

observed that Cecile looked pale and scared. Regino decided to report the matter to the Mayor of Lagonoy who referred him to the local office of the DSWD. The DSWD extended financial assistance to Regino in the amount of three thousand pesos (P3,000.00). Regino likewise went to the Lagonoy police station to report the incident of rape in the police blotter.[13]

On 27 July 1994, Dr. Josephine Decena, an obstetrician-gynecologist at Bicol Medical Center, examined Cecile in connection with her complaint for rape. The medical report prepared by Dr. Decena showed the following findings:

“P.E.

Multiple old hymenal laceration; vagina admits 2 finger with ease (-) bleeding (-) discharge

Gram Staining Result:

- gram (+) bacilli = many
- - pus cells = moderate
- epithelial cells = many

Note: Gram-stained smear show absence of spermatozoa”[14]

On 2 August 1994, Cecile filed with the Minicipal Trial Court of Tigaon, Camarines Sur, a criminal complaint for rape against Judge Panday and Estephen docketed as Criminal Case No. T-2990. A few days later, on 5 August 1994, Regino entrusted Cecile to the care and custody of the DSWD Center for girls at Pangpang, Sorsogon, Sorsogon.

While in the custody of the DSWD, Cecile was referred to Dr. Chona Cuyos-Belmonte, a physician-psychiatrist, for examination on account of Cecile’s sleeplessness, her refusal to communicate and to eat. Dr. Belmonte conducted psycho-therapeutic sessions with Cecile. Dr. Belmonte observed that Cecile was depressed and at times was even contemplating on committing suicide. Dr. Belmonte prescribed anti-depressant drugs for her. Cecile’s psychological condition showed signs of improvement only after a month of increased medication.[15]

In the meantime, the MTC in the criminal case issued a subpoena to Judge Panday and Estephen. They were required to submit their respective counter-affidavits. Judge Panday twice moved for an extension to file his counter-affidavit. He subsequently filed a “manifestation and motion” to the effect that he was waiving his right to file a counter-affidavit. Appended to said motion was on the ground that complaints failed to adduce proof of probable cause for the crime of rape.[16]

On 9 October 1994, Regino was visited by a relative, Pending Lucero, at his house in San Ramon. Pending told Regino that Mrs. Anita Panlilio, a very close friend of Judge Panday, wanted to talk with him. Regino agreed to see her. He and Pending left for Manila where they stayed at the latter’s son’s house, Atty. Ike Lucero, in Las Piñas. Regino also wanted to consult Atty. Lucero about Cecile’s case. When they arrived in Las Piñas, Pending immediately contacted Mrs. Panlilio by telephone. Mrs. Panlilio could not go to Las Piñas herself so Regino and Pending went to see her residence in Miguelin St., Sampaloc near the University of Santo Tomas. Mrs. Panlilio told Regino that Judge Panday wanted to settle the case filed by Cecile against him. Regino manifested to Mrs. Panlilio his willingness to settle the case in consideration of one hundred fifty thousand pesos (P150,000.00). Mrs. Panlilio explained that she will have to inform Judge Panday about Regino’s suggested amount. Mrs. Panlilio excused herself to go to the second floor of the house. After a few minutes she came down and informed Regino that she just talked to Judge Panday on the phone and he was amenable to paying the amount asked by Regino.

Mrs. Panlilio instructed Regino to remain in Las Piñas while Judge Panday prepared the affidavit of desistance in Naga City. The next day, Regino was handed the affidavit of desistance to be signed by Cecile. He showed the affidavit to Atty. Lucero who said that it will do.[17]

On 15 October 1994, Regino and Judge Panday met at the back of the Colegio de Sta. Isabel in Naga City to discuss the signing of the affidavit of desistance. They agreed to have it signed by Cecile in Sorsogon the following day. Thus, as agreed upon by them, Regino and Judge Panday met in front of the CASURECO (Camarines Sur Electric Cooperative) in Goa, Camarines Sur on 16 October 1994 at around eight o'clock in the morning. They proceeded to Sorsogon on board Judge Panday's car which was then being driven by Ely Belleza, the driver of RTC Judge Jose Penas, Jr. When they arrived in Sorsogon, they headed straight to the Hall of Justice building because Judge Panday wanted to see Judge Simon D. Encinas. Judge Encinas, however, was not in the building so they proceeded to the house of Judge Rica H. Lacson. They likewise failed to reach Judge Lacson at her house so they went back to the Hall of Justice building. Judge Panday finally saw Judge Lacson and the two (2) conferred inside the latter's office. Meanwhile, upon instruction of Judge Panday, Regino went to the Center for Girls on board the former's car to see Cecile. Regino tried to convince Cecile to agree to an amicable settlement of the case so she can go home already. Cecile did not respond. Regino then asked Mrs. Crescencia Deri, head of the Center, to allow him to bring Cecile back to their house. Mrs. Deri refused saying that Cecile still needed medical treatment. Regino returned to the Hall of Justice building just as Judge Panday and Judge Lacson had finished their talk. Judge Lacson subsequently went home to have lunch while Regino and Judge Panday ate at a nearby place.[18]

At 2:00 in the afternoon, Judge Lacson returned to the Hall of Justice building and together with her son who drove their car and her stenographer, Marilyn Basilan, proceeded to the Center for Girls. Judge Lacson and Marilyn went inside and were met by the security guard who referred them to Maria Salve Jamon, the houseparent on duty at that time. Judge Lacson informed Maria Salve that she was there to administer the oath of Cecile in connection with her affidavit of desistance. Maria Salve ushered Judge Lacson and Marilyn inside a room. Regino had arrived by then and was also allowed to enter the room. Maria Salve then called for Cecile.[19] When Cecile joined the group, Judge Lacson explained to her and to Regino that they were going to subscribe before her the truthfulness and veracity of the contents of the affidavit of desistance. Judge Lacson instructed Cecile to stand up for the purpose of swearing. After Cecile was sworn, Judge Lacson propounded a few questions to her. When asked if she was going to sign the affidavit of desistance which states that she is no longer interested in filing the case against Judge Panday, Cecile answered in the affirmative.[20] Judge Lacson was reading the contents of the affidavit of desistance to Cecile when Judge Simon D. Encinas, who was then clad in tennis shorts and t-shirt, arrived and in a loud voice told the group: "pagusgusin na an (hurry up the proceeding), bata ko si Judge Panday. Hindi puwedeng pabaya an iyan." [21] Cecile subsequently signed the affidavit of desistance. Regino likewise affixed his signature thereon after he was sworn by Judge Lacson. The affidavit of desistance read as follows:

"AFFIDAVIT OF DESISTANCE[22]

I, CECILE L. BUENAFE, 15 years of age, single, Filipina, a resident and with postal address at San Ramon, Lagonoy, Camarines Sur, after having been duly sworn in accordance with law, and assisted by my undersigned father Regino Buenafe, hereby depose and state that:

1. I filed a criminal complaint against Judge Jose Panday docketed as Criminal Case No. T-2990.
2. After I have re-examined the facts, events and occurrences surrounding the commission of the offense and after a soul-searching and self re-examination, I hereby confirm that the one who molested me on July 24, 1994 as alleged in the said complaint is not Judge Jose Panday, and the filing of the said complaint against him as a case of mistaken identity.

3. In view of the foregoing and in the spirit of justice and fairness, I hereby execute this Affidavit of Desistance to cause the dismissal of said criminal complaint against Judge Jose Panday.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 16th day of October 1994 at Lagonoy, Camarines Sur.

(sgd) CECILE L. BUENAFE

Affiant

Attested by:

(sgd) REGINO BUENAFE

Affiant's Father"

Thereafter, the group left the Center. Regino again rode with Judge Panday in the latter's car on the way back to Naga City. During the ride, Judge Panday instructed Regino to go to Las Piñas the next day to get the settlement money. Regino did as told. When he claimed the money from Pending in Las Piñas, however, the latter gave him seventy thousand pesos (P70,000.00) only. Regino asked Pending why the amount was only seventy thousand pesos (P70,000.00) when the agreed amount was one hundred fifty thousand pesos (P150,000.00). Pending called up Mrs. Panlilio who immediately came to Atty. Luceros' house. Mrs. Panlilio explained to Regino that only said amount was given to her by Judge Panday. Mrs. Panlilio then called up Judge Panday and let Regino speak with him. Judge Panday told Regino:

"Noy, itoy usapan lalaki sa lalaki. Fifty thousand (P50,000.00) lang ang kunin mo diyan, pagkatapos ang twenty thousand (P20,000.00) ibalik mo kay Mrs. Panlilio.

Dismayed, Regino decided to return the money to Mrs. Panlilio. He went back to San Ramon and executed a sworn statement narrating the events and circumstances which led to the signing of the affidavit of desistance.[23]

On 15 November 1994, Cecile, assisted by the DSWD field Director, filed with the office of the Provincial Prosecutor of Camarines Sur a complaint against Odiamar for violation of Republic Act No. 7610. On 18 November 1994, Cecile filed with same office separate complaints against Judge Panday and Estephen also for violation of R.A. No. 7610. These complaints were transmitted to the Office of the Regional State Prosecutor for preliminary investigation. A subpoena was issued to Judge Panday for the preliminary investigation set on 2 December 1994. A "motion to remand case to the MTC of Tigaon-Sangay, Camarines Sur" was filed by Judge Panday but the same was denied in an order issued by State Prosecutor Romulo Tolentino during the preliminary investigation.

On 6 December 1994, Judge Panday filed with the RTC of Naga City a "petition for certiorari, prohibition and mandamus" to enjoin the Regional State Prosecutor from proceeding with the investigation. A temporary restraining order was issued. In the meantime, on 19 December 1994, the Secretary of Justice issued Administrative Order No. 372 designating Senior State Prosecutor Hernani Barrios as Acting Provincial Prosecutor of Camarines Sur and Prosecuting Attorney Milagros Robles as Assisting Prosecutor in the prosecution of Criminal Case No. T-2990, the criminal case for rape filed by Cecile against Judge Panday and Estephen pending with the MTC of Tigaon-Sangay, Camarines Sur.

On 23 February 1995, State Prosecutor Tolentino recommended the filing of separate informations against Odiamar, Estephen and Judge Panday. Accordingly, the following criminal cases were filed with the RTC of Camarines Sur:

1. People versus Estephen Florece, Criminal Cases Nos. T-1457 to 1460 (For: Violation of Republic Act 7610)
2. People versus Roderick Odiamar, Criminal Case No. 1417 (For: Rape)
3. People versus Roderick Odiamar, Criminal Case No. 1462 (For: Violation of Republic Act 7610)
4. People versus Judge Jose R. Panday, Criminal Case No. T-1461 (For: Violation of Republic Act 7610).

For this part, Judge Panday interposes the defense of alibi in the present Administrative Matter. The testimonies of retired RTC Judge Roberto Ranola, Mr. Jesus Almero, Jr., Mr. Dante Magat and Mr. Dominador Dy all support Judge Panday's claim that on 24 July 1994, the date of his alleged sexual abuse of Cecile, he was still in Sampaloc, Manila, and that at around 7:30 in the evening of said date, he boarded the Sarungbanggi bus in Ermita going back to Naga City. The bus allegedly arrived in Naga City in the early morning of 25 July 1994, hence, Judge Panday claims that he could not have committed the acts imputed to him by Cecile. Judge Panday denies that he promised to pay Regino the amount of one hundred fifty thousand pesos (P150,000.00) in consideration for the execution by Cecile of the affidavit of desistance. Judge Panday maintains that Regino and Cecile voluntarily signed the affidavit of desistance without having been compelled or coerced into doing so by him or by any one.

According to Judge Panday, the criminal charges against him are concocted by some people who are out to extort money from him. With respect to the charges of abuse of judicial authority or deliberate obstruction of justice, Judge Panday states that his filing of the petition for certiorari, prohibition and mandamus to enjoin the Office of the Regional State Prosecutor from proceeding with the investigation should not be taken against him as said course of action is a procedural remedy available to him under the law.

Finally, Judge Panday defends his dismissal of Criminal Case No. 94-5566 for rape entitled People vs. Luciano Matias asserting that the order of dismissal was issued by him upon filing by the prosecutors, both public and private, of a motion to withdraw and/or dismiss which was based on a joint affidavit of desistance freely and voluntarily executed by the alleged offended girl and her parents. Nothing in his aforesaid action in said case allegedly shows any "bias", "partiality", "ignorance of the law", or "knowingly rendering an unjust judgment." Judge Panday concludes that complainants in the present Administrative Matter have failed to prove by substantial evidence their charges against him.[24]

For herself, respondent Judge Lacson denies the allegation that she, together with Judge Encinas, forced Cecile into signing the affidavit of desistance. She claims that she was requested by Judge Panday and Regino to administer the oaths of Cecile and Regino in connection with the execution of an affidavit of desistance. As she found nothing wrong with the request, she (Judge Lacson) agreed to do it. According to Judge Lacson, administering oaths is part of her duties as a municipal judge and she administered the oaths of Cecile and Regino on the belief that they were executing the affidavit of desistance voluntarily. Before she let them actually sign the affidavit, Judge Lacson propounded question and explained to Cecile and Regino in the dialect they understood the legal consequences of their act. Judge Lacson maintains that her participation in the execution of the affidavit of desistance was not attended by any improper or irregular conduct on her part.[25] Attached to Judge Lacson's Comment are the minutes taken down by her stenographer Marilyn Basilan during the clarificatory examination by Judge Lacson of Cecile and Regino.

Like Judge Lacson, respondent Judge Encinas also denies that he pressured Cecile into signing the affidavit of desistance. He explains that he just finished playing tennis on that Sunday of 16 October 1994 when he met Judge Panday at the Hall of Justice Building. He learned from him about the signing of the affidavit of desistance. Allegedly purely out of curiosity and because Judge Panday is his friend, Judge Encinas decided to go to the

Center to watch the proceedings. He arrived at the Center while Judge Lacson was propounding questions to Cecile. Judge Encinas claims that he just stood by the door and watched as Cecile and Regino signed the affidavit of desistance. He allegedly never spoke a word to either Regino or Cecile. After a few minutes, (Judge Encinas) left the Center.[26]

After termination of the investigation in this Administrative Matter, complainants and respondents having presented all their witnesses and submitted their documentary evidence, Justice Romeo J. Callejo submitted to the Court his Report dated 4 October 1996 detailing his findings and recommending that:

“IN THE LIGHT OF ALL THE FOREGOING, we find and so recommend to the Supreme Court that:

Re: CRIMINAL CASE NO. 2990

1. Respondent Panday is administratively liable for immorality for having sexual intercourse, with Cecile, a 16 [should be 15] year old girl, on July 24, 1994, and for obstruction of justice. He should be dismissed from the service with forfeiture of all monetary benefits except the monetary value of his accrued leaves;
2. Complainants failed to prove the charges against Lacson. Accordingly, said charges should be dismissed. However, Lacson should be warned not to administer oaths in cases not related to her official functions as Judge;
3. Encinas is administratively liable for gross misconduct unbecoming of a member of the judiciary and should be meted a fine of one (1) month salary with a warning that a repetition of the same acts will merit more drastic action against him.

ANENT CRIMINAL CASE NO. 94-556[6]

1. Panday is administratively liable for ignorance of the law for his dismissal of Criminal Case No. 94-556[6] based on an express pardon and should be meted a fine in the amount of P20,000.00.[27]

After a careful consideration of the entire records of the present Administrative Matter, the Court is persuaded to adopt, with modifications, the foregoing recommendations of the Investigating Justice. The findings and conclusions of the Investigating Judge are found by the Court to be substantially supported by the evidence on record and in accord with applicable legal principles. We discuss below these findings and conclusions vis-à-vis the defenses raised by respondent judges particularly Judge Panday.

As mentioned earlier, Judge Panday absolutely denies the charges against him and interposes the defense of alibi. He relies on the testimonies of his witnesses, namely, (a) Police Chief Inspector Domingo P. Agravante, Chief of Police of Tigaon Municipal Police station, and Police Superintendent Angel S. Per, also of said police station, that per police blotter of the Tigaon police station, no incident of rape or any other crime involving sexual abuse was reported to said police station on 24 July 1994 or as having been committed on said date,[28] (b) Wilfredo Bolalin and Domingo Pasibe, that on 24 July 1994, from 1:00 o'clock to 6:00 o'clock in the afternoon, they were having a drink in the compound of the Tigaon pension house and that they did not see anybody, particularly Judge Panday or Cecile, check-in at the pension house,[29] (c) Delia Cea, receptionist of the Tigaon pension house, that she did not see Judge Panday at the pension house on 24 July 1994 or on any other day during the month of July 1994 and that based on their logbook, no one checked-in at the pension house on 24 July 1994,[30] and (d) Dr. Josephine Decena, who conducted the physical examination of Cecile, that the latter told her that the rape incidents occurred on separate dates of 20 July 1994 and 24 July 1994 at 8:00 in the evening in Telegrafo, San Jose, Camarines Sur.[31]

These testimonies, however failed to convince the Investigating Justice and the Court likewise is not convinced by them. The absence of any entry in the blotter of the police station of Tigaon regarding any report or complaint of

rape or of any other crime involving sexual abuse on 24 July 1994 is not conclusive proof that no such incident occurred in said locality on that date. In any event, records show that what happened to Cecile was in fact brought to the attention of the local authorities of Lagonoy. It is not disputed that upon his arrival from Manila after he learned about what happened to his daughter, Regino immediately sought the help of the Mayor of Lagonoy. Thereafter, Regino caused to be entered in the blotter of the police station of Lagonoy on 28 July 1994, a report or complaint quoted as follows:

“ILLEGAL DETENTION WITH RAPE: CECILE BUENAFE Y LEDESMA, 15 years old, single, student of San Ramon, Lagonoy, Camarines Sur, reported to this station that on July 20, 1994, at around 3:00 o'clock in the afternoon, she allegedly went to the house of Estephen Florece at San Isidro Norte, this Municipality, to redeem her pawned ring but she did [sic] not able to redeem it to [sic] one Nonie Ollete. And that at around 8:00 o'clock in the evening of same date, Estephen Florece advised her to go to Sabang, San Jose allegedly Nonie was there but while at the intersection of San Isidro, Roderick Odiamar and company riding in an owner jeep arrived and they were allegedly been [sic] accompanied to Sabang instead to said place. They brought her to Pilapil Beach Resort at Barangay Telegrafo, San Jose, this province where she was allegedly forced to smoke cigarettes believed to be marijuana resulted to [sic] her headache and said Roderick Odiamar brought her to cottage room where she was allegedly abused and burned by a cigarette light her right side part of her stomach. Further reported that on July 21, 1994, at around 4:00 o'clock a.m. said Estephen accompanied the latter with threats at Cesar Dizon's house at Sabang, San Jose where she kept her for two (2) days. Also reported that on July 24, 1994, at around 2:00 o'clock in the afternoon again Estephen Florece fetched her at Dizon's where she [was] allegedly kept and forced her to go with Estephen at Goa, Camarines Sur, to attend a party but instead to a party they were allegedly picked up by a yellow car driven by Judge Jose Panday and she was allegedly brought to Tigaon, Camarines Sur, at the house with rope word “BODEGA” and there she was allegedly forced by said Judge Jose Panday to have sex contact with him against her will, then after the incident the two (2), Estephen and Judge Jose Panday, proceeded to Sabang, San Jose and they dropped [her] at San Jose proper.

This excerpt of the police blotter is issued upon the request of the Municipal Mayor of Lagonoy, Hon. Ferdinand B. Melgarejo for record and reference.

(sgd.)Camilo A. Batulan

P/S Insp. PNP

Chief of Police”[32]

Moreover, the testimonies of Wilfredo Bolalin, Domingo Pasibe and Delia Cea to the effect that they did not see Judge Panday at the Tigaon pension house on 24 July 1994 constitute negative testimonies which cannot prevail over Cecile's positive testimony that she was there with him on said date. Testimony is negative when the witness states that he did not see or know the occurrence of a fact and positive when the witness affirms that a fact did or did not occur.[33] A positive testimony, such as Cecile's is stronger than a negative one. The former has more value than the latter for the reason that he who denies a certain fact may not remember exactly the circumstances on which he bases his denial.[34]

Delia Cea's claim that based on their logbook for July 1994, no one checked-in at Bodega Tigaon on July 24, 1994, cannot be relied upon by Judge Panday to support his denial. Cea herself admitted, in response to the clarificatory questions of the investigating Justice, that there were occasions when the names of the customers of the pension house were not recorded in the logbook upon request of the customers themselves:

“JUSTICE CALLEJO:

Are you saying that there were times when you did not follow the instructions of the owner of the pension

house?

WITNESS:

No, sir I usually follow the instructions but there are times the customers request to me not to sign their names anymore since they knew each other anyway.

JUSTICE CALLEJO:

Is it also possible, or where [sic] there instances where the customers request you that they will not be required to sign anymore because the girl that they were with are not their wives?

WITNESS:

Yes, sir.

JUSTICE CALLEJO:

So there were customers who would like their identities to be unknown, not to be recorded and sometimes you acceded to the request, is that correct?

WITNESS:

Yes, your Honor.”[35]

Hence, the fact that Judge Panday’s name was not recorded in the logbook kept by the Tigaon pension house does not prove that he was not there on 24 July 1994. As it was, the logbook failed to negate Cecile’s testimony that she was there with Judge Panday and that they had sexual intercourse in Room 6 thereof in the afternoon of 24 July 1994.

Judge Panday cannot also rely on the testimony of Dr. Josephine Decena that Cecile allegedly told her that the “rape” incidents occurred on 20 July 1994 and 24 July 1994 at 8:00 in the evening in Telegrafo, San Jose. Judge Panday claims that this prior statement allegedly made by Cecile to Dr. Decena was inconsistent with her claim that she was sexually abused by Judge Panday on 24 July 1994 at 2:00 in the afternoon at the pension house. Section 13, Rule 132 of the Revised Rules of Evidence, however, states that-

“How witness impeached by evidence of inconsistent Statement.-Before a witness can be impeached by evidence that he has made at other times statements inconsistent with his present testimony, the statements must be related to him, with the circumstances of the times and places and the persons present, and he must be asked whether he made such statements, and if so, allowed to explained them. If the statements be in writing they must be shown to the witness before any question is put to him concerning them.”

The Investigating Justice noted that the aforesaid testimony of Dr. Decena was not related to Cecile during cross-examination and she was never asked to explain the purportedly inconsistent statement, hence the same cannot be used to discredit her entire testimony.

Judge Panday, as earlier noted, interposed the defense of alibi but there are indications that the same was merely an afterthought. If there was indeed truth to his claim that he was in Manila on 24 July 1994 and that at around 7:30 in the evening of said date, he boarded in Ermita the Sarungbanggi bus bound for Naga City and travelled the whole night until the bus arrived in Naga City in the early morning of 25 July 1994, then he should have raised this alibi at the earliest opportunity given to him. It may be recalled that the MTC of Tigaon required Judge Panday to submit his counter-affidavit in connection with Cecile’s complaint for rape. Judge Panday filed several motions for extension of time to file his counter-affidavit. In the end, however, he never filed the same. He chose to waive his right to file his counter-affidavit and instead filed a memorandum which moved for the dismissal of

the complaint. The memorandum merely averred by way of defense that complainants failed to adduce evidence to prove that Judge Panday used force, violence and intimidation in committing the offense charged.[36]

Even in his Letter-Reply dated 23 September 1994 to the Deputy Court Administrator, Judge Panday never mentioned anything about him being in Manila at the time of the sexual abuse of Cecile. Judge Panday's failure to interpose the defense of alibi at these preliminary stages certainly raises doubts as to its veracity.

As observed by the Investigating Justice, even the affidavits of Judge Panday's witnesses, namely, retired RTC Judge Roberto Ranola, Mr. Jesus G. Almero, Jr., Mr. Dante I. Magat and Mr. Dominador Dy, whose testimonies all support Judge Panday's alibi, appear to have been belatedly secured. The affidavits of Judge Ranola and Mr. Almera stating that they were co-passengers of Judge Panday on the Sarungbanggi bus which traveled from Manila to Naga City in the evening of 24 July 1994 were executed only on 13 January 1995[37] and 22 February 1995,[38] respectively. Although it appears that Mr. Magat's certification attesting that he saw Judge and Mrs. Panday during the mass at the Nazarene Chapel in Sampaloc, Manila, in the morning of 24 July 1994 was dated 3 August 1994,[39] it was notarized only on 27 January 1995.

The certification issued by Mr. Dy, manager of the Sarungbanggi Bus Lines, stating that their manifest showed that Judge Panday was a passenger in their bus bound for Naga City from Manila on 24 July 1994, was dated only 3 February 1995.[40] Inexplicably, Judge Panday never submitted to the MTC of Tigaon these affidavits to counter Cecile's allegations in her complaint for rape. This omission certainly puts Judge Panday's defense of alibi under serious question. At any rate, it is well-settled that alibi is a weak defense and cannot prevail over Cecile's positive and clear identification of Judge Panday as the offender.[41] Alibi is a weak defense because it is easy to fabricate and concoct between relatives, friends and even those not related to the offender.[42]

Judge Panday cannot also capitalize on the affidavit of desistance executed by Cecile and attested to by Regino, her father. Just because one has executed an affidavit of retraction does by no means imply that what has been previously said is false or the latter is true. On the contrary, affidavits of retraction can be easily secured from poor and ignorant witnesses, usually for financial considerations and such being the case, said retractions are exceedingly unreliable for there is always the probability of their repudiated subsequently.[43] In Cecile's case, she signed the affidavit of desistance upon her father's insistence after the latter was offered the sum of one hundred fifty thousand pesos (P150,000.00) by Judge Panday. As explained by Cecile:

ATTY. MORALEDA:

Q: Did you sign the affidavit of desistance?

A: Yes, sir.

Q: Why did you sign it?

A: I was pressured to sign.

Q: Why were you pressured to sign?

A: My father told me that if I will not sign Panday will file counter charges against us.

Q: Did you really sign the affidavit of desistance upon instruction of your Father?

A: No, I did not.

Q: Why?

ATTY. SANTOS:

Already answered.

INVESTIGATOR:

Witness may answer.

DIRECT EXAMINATION OF COMPLAINANT CECILE BUENAFE CONTINUED:

A: I did not want the case dismissed

Q: Why did you ultimately sign the affidavit of desistance?

A: Because I was already frightened because my father told me to sign because we might face countercharges by Judge Panday and also Judge Encinas arrived.

Q: What did Judge Encinas do, if any?

A: He was walking back and forth, scratching his head and saying “Gusgusin an” (hurry up”)[44]

In his findings and conclusions, the Investigating Justice admitted at the outset that he found certain claims made by Cecile in her testimony not quite worthy of credence. For example, she claimed that she was detained by Estephen in his house against her will after she was allegedly raped by Odiamar on 20 July 1994. The Investigating Justice, however, pointed out that Cecile had several opportunities to escape from Estephen had she really wanted to but she continued to stay with him. The Investigating Justice believed that Cecile voluntarily stayed with Estephen because, as she herself admitted, he was her friend. With respect to the incident on 24 July 1994 involving Judge Panday, the Investigating Justice observed during the ocular inspection that the Tigaon pension house is located near residential huts such that Cecile could have easily shouted for help when she was brought there by Estephen and Judge Panday and the people nearby would have heard her considering that it was still early in the afternoon. According to the Investigating Justice, the fact that Cecile was not heard to have cried for help negates her claim that she was forcibly brought to the Tigaon pension house by Estephen and Judge Panday. In addition, on their way back to San Jose from the pension house, Cecile had another opportunity to escape from Estephen and Judge Panday when they dropped her at the San Jose Elementary School. Left alone there, Cecile could have immediately proceeded to a nearby police station and report the alleged rape incident or at least, she could just have gone home. Instead, she stayed there at the San Jose Elementary School and obediently waited for Estephen to return for her.

The Court agrees with the Investigating Justice that the foregoing circumstances belie Cecile’s claim that she was forcibly raped by Judge Panday. However, as correctly asserted by the Investigating Justice, Cecile’s false or erroneous claim that she was raped by Judge Panday does not render her entire testimony unworthy of credence. The Court is not compelled to reject the entire testimony of a witness if it finds portions thereof to be incredible. Like trial courts in criminal proceedings, the Investigating Justice tasked by the Court to investigate the present Administrative Matter had the discretion to accept portions of the testimony of a witness as he deemed credible and reject those which he believed to be false. The maxim *falsus in uno, falsus in omnibus* is not a positive rule of law and is in fact rarely applied in modern jurisprudence.[45] Before this maxim can be applied, the witness must be shown to have willfully falsified the truth on one or more material points. Even then, where he is found to have done so, this does not make his entire testimony totally incredible. The Court, or the Investigating Justice in this case, may still admit and credit those portions worthy of belief depending upon the corroborative evidence and the probabilities and improbabilities of the case.[46]

The Investigating Justice believed that Cecile was indeed at the Tigaon pension house on 24 July 1994. During the ocular inspection at the Tigaon pension house, the Investigating Justice observed that Cecile spontaneously and unhesitatingly walked to Room 6 of the pension house and unequivocally pointed to it as the room where she was brought to on 24 July 1994. Upon clarificatory questions by the Investigating Justice, Cecile spontaneously averred that the bed was then on the left wall of the room with its headboard near the door and its opposite end near the windows. She further averred that there was a mirror in the middle of the left wall and that there was a

wood crane near the window. The walls were allegedly not yet painted then and that there were no lights along the corridor.[47] According to the Investigating Justice, there was no doubt in his mind that, indeed, Cecile was brought to Room 6 of the pension house on 24 July 1994, as testified to by her.[48]

The Investigating Justice was likewise convinced that, as claimed by Cecile, the man with her in Room 6 of the Bodega Tigaon on 24 July 1994 was Judge Panday. In his Memorandum, Judge Panday contends that Cecile allegedly failed to make a categorical declaration that Judge Panday and the man who introduced his name to Cecile as “Judge Panday” on 24 July 1994 and who subsequently brought her to the Bodega Tigaon are one and the same.[49] This contention is not well taken. There is no question that when Cecile spoke of Judge Panday during her testimony, she was not referring to an unidentified person but was undoubtedly referring to herein respondent Judge Panday. His identity as the man who was with Cecile on 24 July 1994 at the Bodega Tigaon and who was charged with “raping” her was sufficiently established when, at the start of her testimony, Cecile positively identified him in this manner:

“DIRECT EXAMINATION OF COMPLAINANT CECILE BUENAFE:

Q: Madam Witness, are you the same Cecile Buenafe who is the complainant in a rape case filed against Judge Jose Panday in Tigaon, Camarines Sur?

A: Yes, sir

Q: How old are you, Madam Witness:

A: 16 years old.

Q: Do you have any proof to show that you are 16 years old?

A: Yes sir.

Q: What document is that?

A: Birth Certificate

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Q: Do you know respondent Jose Panday in this case?

A: Yes, sir.

Q: If you happen to see him again will you be able to identify him?

A: Yes sir.

Q: Will you kindly look around the court and see if respondent Panday is present this afternoon?

A: Yes sir.

DIV. CLERK OF COURT:

Witness pointing to a man wearing a light blue long sleeved barong, wearing eye-glasses, when asked answer to the name of....

JUDGE PANDAY:

Jose Panday.”[50]

Judge Panday also makes capital of the fact that Cecile described him in her sworn statement as “around 5’5” in height, FAIR COMPLEXION, wearing eyeglasses, medium built and about more or less 55 years of age.” Judge Panday insist that his complexion is on the dark side or brown. The Investigating Justice correctly dismissed this erroneous description of Judge Panday’s complexion in Cecile’s sworn statement as insignificant. Affidavits, being ex-parte, are almost always incomplete and often inaccurate but do not really detract from the credibility of

witnesses.[51] In the same manner, Cecile's failure to mention to Dr. Chona Cuyos-Belmonte during her psycho-therapeutic sessions the name of Judge Panday as one of those whom she was afraid of does not, in any way, discredit her testimony to the effect that she had sexual intercourse with Judge Panday. As testified to by Dr. Belmonte, Cecile was suffering from severe depression at that time, hence, she could not be expected to give Dr. Belmonte a detailed and accurate account of what she had undergone.

The investigating Justice believed and the Court finds no reason to believe otherwise that 24 July 1994, at the Tigaon pension house, Cecile and Judge Panday had consensual sexual intercourse after the latter was procured by Estephen, who acted as Cecile's pimp, to have sexual intercourse with her. Cecile herself admitted that when she rushed down to the ground floor of the pension house after her liaison with Judge Panday, Estephen was waiting with two hundred pesos (P200.00) for her.[52] It was aptly observed by the Investigating Justice that:

"Moreover, the evidence on record shows that Panday and Cecile were complete strangers to each other when they met in the afternoon of July 24, 1994. There is no morsel of evidence on record, and Panday adduced none, to prove that Cecile had any ill or devious motive to concoct the charge against Panday and tergiversate her testimony. Cecile was just a third year high school student. She was made to believe by Panday that he was a Judge. Considering her youth and lowly station in life, she would not have dared concoct and fabricate her claim that it was Panday, a Judge no less, who had sexual intercourse with her in the Tigaon Bodega unless it was true. It cannot be denied that, despite intermittent assaults by media against the judiciary, the Judges, in the province, are still looked upon with awe and respect by the citizenry by virtue of their lofty positions in government. We cannot believe that Cecile could muster courage to implicate Panday, a Judge no less, unless her claims were true. Absent any ill motive, the testimony of Cecile that it was Panday who had intercourse with her must be accorded credence and full probative weight." [53]

The same can be said of Regino, Cecile's father, and his testimony regarding Judge Panday's attempt to settle the case by offering him the sum of one hundred fifty thousand pesos (P150,000.00). Judge Panday alleges that Regino, along with Cecile and certain members of the Lagonoy PNP, concocted the charges against him to extort money from him knowing that he is about to retire from government service and receive his retirement benefits. This allegation is just too far-fetch and improbable. The Investigating Justice pointed out correctly that Regino is a mere passenger jeepney driver while his daughter is just a third year high school student. It was not shown that they were even aware that Judge Panday is due to retire from government service or that they know how much he is to receive by way of retirement benefits.

The Court does not also believe that Regino would use his daughter Cecile for such an ignoble purpose, especially if it will subject her to embarrassment and even stigma. Moreover, Anita Panlilio's denial of her participation in brokering the agreement between Judge Panday and Regino cannot prevail over Regino's positive and categorical testimony. In fine, Judge Panday has failed to convincingly show any ill-motive on the part of Cecile and Regino to testify falsely and to impute to him such charges. It is well-settled that "where there is no evidence, and nothing to indicate that the principal witnesses for the prosecution were actuated by any improper motive, the presumption is that they were not so actuated and their testimonies are thus entitled to full faith and credence." [54]

In sum, the Court concurs with the Investigating Justice in holding that complainants were able to muster the requisite quantum of evidence to prove their charges against Judge Panday. By having sexual intercourse with Cecile, who was then only fifteen (15) years old, Judge Panday violated the trust reposed on his high office and utterly failed to live up to the noble ideals and strict standards of morality required of members of the judiciary. In addition, his subsequent act of offering Cecile's father a substantial amount of money in consideration for the withdrawal of their charges against him is considered, by law, an obstruction of justice.[55] The Code of Judicial Conduct provides that:

Canon I

Rule 1.01: A judge should be the embodiment of competence, integrity and independence.

Canon II

Rule 2.00: A judge should avoid impropriety and the appearance of impropriety in all activities.

Rule 2.01: A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.

The Court has repeatedly reminded members of the judiciary to so conduct themselves as to be beyond reproach and suspicion, and be free from any appearance of impropriety in their personal behavior, not only in the discharge of their official duties but also in their every day life. For no position exacts a greater demand on moral righteousness and uprightness of an individual than a seat in the judiciary.[56] Judges are mandated to maintain good moral character and at all times expected to observe irreproachable behavior so as not to outrage public decency.[57]

The rationale for requiring judges to possess impeccable moral integrity has been explained by the Court thus:

“The personal and official actuations of every member of the judiciary must be beyond reproach and above suspicion. The faith and confidence of the people in the administration of justice cannot be maintained if a judge who dispenses it is not equipped with the cardinal judicial virtue of moral integrity and if he obtusely continues to commit affront to public decency. In fact, moral integrity is more than a virtue; it is a necessity in the judiciary.”[58]

It has also been stressed that:

“The code of Judicial Ethics mandates that the conduct of a judge must be free of [even] a whiff of impropriety not only with respect to his performance of his judicial duties, but also to his behavior outside his sala and as a private individual. There is no dichotomy of morality: a public official is also judged by his private morals. The Code dictates that a judge, in order to promote public confidence in the integrity and impartiality of the judiciary, must behave with propriety at all times. As we have very recently explained, a judge’s official life can not simply be detached or separated from his personal experience. Thus:

Being the subject of constant public scrutiny, a judge should freely and willingly accept restrictions on conduct that might be viewed as burdensome by some ordinary citizen.

A judge should personify integrity and exemplify honest public service. The personal behavior of a judge, both in the performance of his official duties and in private life should be above suspicion.”[59]

Sadly, Judge Panday fell far short of these exacting standards. Accordingly, the Court believes that the dismissal of Judge Panday from the service with forfeiture of all retirement benefits and accrued leaves, is proper and justified.

Anent the charges against respondent Judge Rica H. Lacson, the Investigating Justice was convinced that Judge Lacson merely acceded to the request of Judge Panday to have the affidavit of desistance of Cecile and Regino sworn to and subscribed by them before her in her capacity as MTC Judge of Sorsogon, Sorsogon. According to the Investigating Justice, there was no evidence to show that Judge Lacson forced her way into the premises of the Center for Girls or that she coerced or threatened Cecile into signing the affidavit of desistance. The minutes taken down by the stenographer during the proceedings ostensibly showed that Judge Lacson propounded clarificatory questions to Cecile and Regino and explained to them the contents of the affidavit of desistance as well as its legal effects.

Unlike the Investigating Justice, however, the Court is not fully convinced that the foregoing circumstances completely absolve Judge Lacson of the charges against her. As correctly observed by the Investigating Justice himself, Judge Lacson should have refrained from administering the oaths of Cecile and Regino considering that not only was it then a Sunday but more importantly, the affidavit of desistance sought to be sworn to and subscribed before her had no relation whatsoever to her duties as municipal judge of Sorsogon. Municipal judges are enjoined from engaging in notarial work except as notaries public ex-officio, in which case they may notarize documents connected with the exercise of their official functions. [60] Surely, there must be other notaries public in Sorsogon, Sorsogon. Moreover, the affidavit of desistance executed by Cecile and Regino pertained to a criminal case pending before the Municipal Circuit Trial Court of Tigaon, Camarines Sur and no criminal case involving Judge Panday and/or Cecile was pending before the sala of Judge Lacson. Thus, Judge Lacson could have validly refused Judge Panday's request for her to administer the oaths of Cecile and Regino.

As regards the charges against respondent Judge Simon D. Encinas, the Investigating Justice found the same to be substantiated by the evidence on record. Indeed, the explanation submitted by Judge Encinas, i.e. that he went to watch Regino and Cecile subscribe their affidavit of desistance before Judge Lacson merely "out of curiosity", is unsatisfactory and fails to convince the Court. Granting as Judge Encinas claims that he never uttered a word and he just stood by the door when the proceedings before Judge Lacson took place, still the Court believes that he had no business being there. Judge Encinas should have been more prudent and stayed away from the proceedings. By attending the proceedings at the Center for Girls, Judge Encinas wrongfully lent the prestige of his office to Judge Panday. Moreover, the Court is more inclined to believe Cecile when she testified that Judge Encinas was more than just a passive spectator when she and her father subscribed their affidavit of desistance. Cecile testified as follows:

"DIRECT EXAMINATION OF COMPLAINANT CECILE BUENAFE CONTINUED:

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Q: Why did you ultimately sign the affidavit of desistance?

A: Because I was already frightened because my father told me to sign because we might face countercharges by Judge Panday. And also Judge Encinas arrived.

Q: What did Judge Encinas do, if any?

A: He was walking back and forth, scratching his head and saying "gusgusin na" ("hurry up")

xxx xxx xxx

Q: When Judge Encinas stated that "gusgusin na" to whom was he referring or directing those words?

A: To me, sir.

Q: When you signed that affidavit of desistance how did you feel?

A: I was crying because I did not want to sign that affidavit of desistance.

Q: After signing that affidavit of desistance what happened next?

A: They already left.

Q: Who took possession of that affidavit of desistance?

A: Judge Lacson, sir."[61]

The conduct of Judge Encinas was undoubtedly improper and cannot be countenanced by the Court. He failed to observe the tenets of decorum and propriety expected of judges. It cannot be overemphasized that "a judge's official conduct should be free from appearance of impropriety, and his personal behavior, not only upon the bench and in the performance of official duties but also in everyday life, should be beyond reproach."[62]

Accordingly, the Court finds Judge Encinas administratively liable as charged.

A final word on Judge Panday. In this same Administrative Matter he has also been charged with “gross ignorance of the law” and “knowingly rendering an unjust judgment” for dismissing Criminal Case No. 94-5566, a criminal case for rape entitled *People vs. Luciano Matias*. Judge Panday issued the order of dismissal upon a motion to dismiss or withdraw information filed by the private prosecutor of said case with the written conformity of the Assistant Public Prosecutor in Naga City. Appended to said motion was an affidavit of desistance executed by the alleged victim, Jacqueline Yap, and her parents.

According to the Investigating Justice, under the law, for the express pardon (Judge Panday stated in order of dismissal that the affidavit of desistance operates as an express pardon of the offender) to divest the court of its jurisdiction to try the case, the pardon must occur before the institution of the criminal action. In criminal Case No. 94-5566, the alleged victim and her parents executed their affidavit of desistance after the institution of the criminal case against Luciano Matias. Thus, the order of dismissal issued by Judge Panday based on the purported express pardon was found by the Investigating Justice to be contrary to law. The Investigating Justice recommended that Judge Panday be held liable for “gross ignorance of the law” for erroneously dismissing Criminal Case No. 94-5566 and be correspondingly fined the amount of twenty thousand pesos (P20,000.00).

The Court disagrees with the Investigating Justice on this point. To constitute gross ignorance of the law, the acts complained of must not only be contrary to existing law and jurisprudence, but were motivated by bad faith, fraud, dishonesty and corruption.[63] It was not shown that Judge Panday was thus motivated when he ordered the dismissal of Criminal Case No. 94-5566 upon the filing by the public and private prosecutors of a motion to withdraw and/or dismiss which was based on the affidavit of desistance executed by the alleged victim and her parents. Likewise, in order to hold a judge liable for knowingly rendering an unjust judgment, it must be shown beyond reasonable doubt that the judgment is unjust and that it was made with conscious and deliberate intent to do an injustice.[64] Again, complainants have failed to show that in dismissing Criminal Case No. 94-5566 under the circumstances therein, Judge Panday rendered an unjust judgment knowingly. Thus, insofar as the conduct of Judge Panday in Criminal Case No. 94-5566 is concerned, the Court absolves him of the charges of “gross ignorance of the law” and “knowingly rendering an unjust judgment.” Accordingly, the Court deems it proper to forego the fine of twenty thousand pesos (P20,000.00) recommended by the Investigating Justice to be imposed on Judge Panday.

IN LIGHT OF THE FOREGOING, the Court RESOLVES as follows:

1. Judge Jose R. Panday is found administratively liable for immorality and obstruction of justice. Accordingly, he is DISMISSED from the service, with forfeiture of all retirement benefits and accrued leaves, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned and controlled corporations;
2. Judge Rica H. Lacson is found administratively liable for engaging in notarial services in connection with cases unrelated to her official functions as municipal judge of Sorsogon. Accordingly, she is meted a FINE of Ten Thousand Pesos (P10,000.00) with warning that a repetition by her of similar acts will be dealt with more severely;
3. Judge Simon D. Encinas is found administratively liable for improper conduct or conduct unbecoming a judge. Accordingly, he is meted a FINE of Twenty thousand Pesos (P20,000.00) with warning that a repetition of similar acts of impropriety on his part in the future will be dealt with more severely.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza,

Francisco, and Panganiban, JJ., concur.
Hermosisima, Jr., and Torres Jr., JJ., on leave.

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- [1] Rollo, pp.75-77.
- [2] TSN testimony of Cecile Buenafe, 28 April 1995, pp. 43-50.
- [3] Id., p. 52.
- [4] Id., pp. 53-56.
- [5] Id., pp. 97-105.
- [6] Id., pp. 108-112.
- [7] Id., p. 71.
- [8] Id., p. 94.
- [9] Id., p. 72.
- [10] Id., pp. 8-16.
- [11] Id., pp. 17-20.
- [12] Sworn Affidavit of Cecile Buenafe, 29 July 1994, p. 8; Rollo, p 84.
- [13] TSN, testimony of Regino Buenafe, 16 June 1995, pp. 7-12.
- [14] Rollo, p. 86.
- [15] TSN, testimony of Dr. Chona Belmonte, 16 June 1995, pp. 12-22.
- [16] Rollo, pp. 3-11.
- [17] TSN, testimony of Regino Buenafe, 16 June 1995, pp. 24-34.
- [18] Id., pp. 35-44.
- [19] TSN, testimony of Judge Rica H. Lacson, 4 September 1995, pp. 6-9.
- [20] Id., pp. 20-23.
- [21] TSN, testimony of Regino Buenafe, 16 June 1995, p. 51.
- [22] Exhibit "I-Panday", Folder of Exhibits, p. 93.
- [23] Id., pp 62-69.
- [24] Memorandum of Judge Jose R. Panday, pp. 6-40; pp. 617-651.
- [25] Comment of Judge Rica H. Lacson pp. 1-3; Rollo pp. 59-61.
- [26] Comment of Judge Simon D. Encinas, pp. 1-3; Rollo, pp. 125-128.
- [27] Report of Justice Romeo J. Callejo, 4 October 1996, pp. 67-68.
- [28] TSN, testimony of Domingo P. Agravante, 25 March 1996, pp. 27-30; TSN, testimony of Angel S. Per, 25 March 1996, p. 104.

- [29] TSN, testimony of Wilfredo Bolalin, 11 October 1995, p. 39; TSN testimony of Domingo Pasibe, 11 October 1995, p. 76.
- [30] TSN, testimony of Delia Cea, 25 March 1996, pp. 120-146.
- [31] TSN, testimony of Dr. Josephine Decena, 7 November 1995, pp. 50-52.
- [32] Exhibit “L”, Folder of Exhibits, p. 54.
- [33] *Tanola vs. National Labor Relations Commission*, 252 SCRA 314 (1996); *Revilla vs. Court of Appeals*, 217 SCRA 583 (1993).
- [34] *People vs. Dones*, 254 SCRA 696 (1996); *People vs. Mendoza*, 236 SCRA 666 (1994); *People vs. Acuna*, 248 SCRA 668 (1995).
- [35] TSN, testimony of Delia Cea, 24 March 1996, pp. 170-171.
- [36] Rollo, pp. 8-9.
- [37] Exhibit “7-Panday”, Folder of Exhibits, p. 12.
- [38] Exhibit “9-Panday”, folder of Exhibits, p. 13.
- [39] Exhibit “10-Panday”, Folder of Exhibits, p. 14.
- [40] Exhibit “26-Panday”, Folder of Exhibits, p. 46.
- [41] *People vs. Cabresos*, 244 SCRA 362 (1995); *People vs. Remoto*, 244 SCRA 506 (1995); *People vs. Quinevista, Jr.*, 205 SCRA 783 (1992); *People vs. Dinola*, 183 SCRA 493 (1990).
- [42] *People vs. Retuta*, 234 SCRA 645 (1994); *People vs. Cadag*, 208 SCRA 781 (1992); *People vs. Orongan*, 168 SCRA 586 (1988); *People vs. Gapasin*, 145 SCRA 178 (1986); *People vs. Romero*, 119 SCRA 234 (1982).
- [43] *People vs. Liwag*, 225 SCRA 46 (1993); *People vs. Bernardo*, 220 SCRA 31 (1993); *People vs. Mindac*, 216 SCRA 558 (1992); *People vs. Mangulabnan*, 200 SCRA 611 (1991); *People vs. Clamor*, 198 SCRA 642 (1991).
- [44] TSN, testimony of Cecile Buenafe, 28 April 1995, pp. 30-31.
- [45] *People vs. Pacis*, 130 SCRA 450 (1984); *People vs. Surban*, 123 SCRA 218 (1983).
- [46] *Lagunsad vs. Court of Appeals*, 229 SCRA 596 (1994); *People vs. Medina*, 213 SCRA 52 (1992); *People vs. Arbonte*, 203 SCRA (1991); *People vs. Osias*, 199 SCRA 574 (1991).
- [47] TSN, Ocular Inspection, 27 March 1996, pp. 5-8.
- [48] Report of Justice Romeo J. Callejo, p. 29.
- [49] Memorandum for Judge Panday, p. 14; Rollo, p. 625.
- [50] TSN, testimony of Cecile Buenafe, 28 April 1995, pp. 7-8.
- [51] *People vs. Cruza*, 237 SCRA 410 (1994); *People vs. Parangan*, 231 SCRA 683 (1994); *People vs. Villanueva*, 215 SCRA 22 (1992); *People vs. Padilla*, 213 SCRA 631 (1992); *People vs. Molina*, 213 SCRA 52 (1992).
- [52] Report of Justice Romeo J. Callejo, p. 24.
- [53] *Id.* p. 38.

[54] *People vs. Camat*, 256 SCRA 52 (1996); *People vs. Lua*, 256 SCRA 539 (1996); *People vs. Prado*, 254 SCRA 531 (1996); *People vs. Villanueva*, 242 SCRA 47 (1995).

[55] See Section 1, paragraph (a) Presidential Decree No. 1829.

[56] *Legaspi vs. Garrete*, 242 SCRA 679 (1995); *National Intelligence and Security Authority vs. Tablang*, 199 SCRA 766 (1991); *Association of Court Employees of Panabo, Davao vs. Tupas*, 175 SCRA 293 (1989); *Montemayor vs. Collado*, 107 SCRA 258 (1981); *Dia-anonuevo vs. Bercacio*, 68 SCRA 81 (1975).

[57] *Legaspi vs. Garrete*, supra; *Imbing vs. Tiongson*, 229 SCRA 690 (1994); *Leynes vs. Veloso*, 82 SCRA 325 (1978).

[58] *Talens-Dabon vs. Arceo*, A.M. No. RTJ-96-1336, 25 July 1996; *Dy Teban Hardware and Auto Supply Co. vs. Tapucar*, 102 SCRA 493 (1981).

[59] *Talens-Dabon vs. Arceo*, supra; *Junio vs. Rivera, Jr.* 225 SCRA 688 (1993); *Castillo vs. Calang Jr.*, 199 SCRA 75 (1991).

[60] *Tabao vs. Asis*, 252 SCRA 58 (1996); *Balayon, Jr. vs. Ocampo*, 218 SCRA 13 (1993)

[61] TSN, testimony of Cecile Buenafe, 28 April 1995, pp. 30-31.

[62] *Marcos vs. Arcangel*, A.M. No. RTJ-91-712, 9 July 1996; *Perez vs. Suller*, 249 SCRA 665 (1995); *Marcelino vs. Singson*, 243 SCRA 685 (1995); *Panganiban vs. Guerrero*, 242 SCRA 11 (1995).

[63] *Heirs of the Late Nasser D. Yasin vs. Felix*, 250 SCRA 545 (1995); *Alvarado vs. Laquindanum*, 245 SCRA 501 (1995); *De la Cruz vs. Concepcion*, 235 SCRA 597 (1994).

[64] *Wingarts vs. Mejia*, 242 SCRA 436 (1995); *Basbacio vs. Office of the Secretary, Department of Justice*, 238 SCRA 5 (1994); *Vuitton S.A. Villanueva*, 216 SCRA 121 (1992).

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