

**JUVY N. COSCA, EDMUNDO B. PERALTA, RAMON C. SAMBO, AND
APOLLO A. VILLAMORA, COMPLAINANTS, VS. HON. LUCIO P.
PALAYPAYON, JR., PRESIDING JUDGE, AND NELIA B.
ESMERALDA-BAROY, CLERK...**

A.M. No. MTJ-92-721. September 30, 1994

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PER CURIAM:

Complainants Juvy N. Cosca, Edmundo B. Peralta, Ramon C. Sambo, and Apollo Villamora, are Stenographer I, Interpreter I, Clerk II, and Process Server, respectively, of the Municipal Trial Court of Tinambac, Camarines Sur. Respondents Judge Lucio P. Palaypayon, Jr. and Nelia B. Esmeralda-Baroy are respectively the Presiding Judge and Clerk of Court II of the same court.

In an administrative complaint filed with the Office of the Court Administrator on October 5, 1992, herein respondents were charged with the following offenses, to wit: (1) illegal solemnization of marriage; (2) falsification of the monthly reports of cases; (3) bribery in consideration of an appointment in the court; (4) non-issuance of receipt for cash bond received; (5) infidelity in the custody of detained prisoners; and (6) requiring payment of filing fees from exempted entities.[1]

Pursuant to a resolution issued by this Court respondents filed their respective Comments.[2] A Reply to Answers of Respondents was filed by complainants.[3] The case was thereafter referred to Executive Judge David C. Naval of the Regional Trial Court, Naga City, for investigation, report and recommendation. The case was however transferred to First Assistant Executive Judge Antonio N. Gerona when Judge Naval inhibited himself for the reason that his wife is a cousin of respondent Judge Palaypayon, Jr.[4]

The contending versions of the parties regarding the factual antecedents of this administrative matter, as culled from the records thereof, are set out under each particular charge against respondents.

1. Illegal solemnization of marriage.

Complainants allege that respondent judge solemnized marriages even without the requisite marriage license. Thus, the following couples were able to get married by the simple expedient of paying the marriage fees to respondent Baroy, despite the absence of a marriage license, viz.: Alano P. Abellano and Nelly Edralin, Francisco Selpo and Julieta Carrido, Eddie Terrobias and Maria Gacer, Renato Gamay and Maricris Belga, Arsenio Sabater and Margarita Nacario, and Sammy Bocaya and Gina Bismonte. As a consequence, their marriage contracts (Exhibits B, C, D, F, G, and A, respectively) did not reflect any marriage license number. In addition, respondent judge did not sign their marriage contracts and did not indicate the date of solemnization, the reason being that he allegedly had to wait for the marriage license to be submitted by the parties which was usually several days after the ceremony. Indubitably, the marriage contracts were not filed with the local civil registrar. Complainant Ramon Sambo, who prepares the marriage contracts, called the attention of respondents to the lack of marriage licenses and its effect on the marriages involved, but the latter opted to proceed with the celebration of said marriages.

Respondent Nelia Baroy claims that when she was appointed Clerk of Court II, the employees of the court were already hostile to her, especially complainant Ramon Sambo who told her that he was filing a protest against her appointment. She avers that it was only lately when she discovered that the court had a Marriage Register which is in the custody of Sambo; that it was Sambo who failed to furnish the parties copies of the marriage contract and to register these with the local civil registrar; and that apparently Sambo kept these marriage contracts in preparation for this administrative case. Complainant Sambo, however, claims that all file copies of the marriage contracts were kept by respondent Baroy; but the latter insists that she had instructed Sambo to follow up the submission by the contracting parties of their marriage licenses as part of his duties but he failed to do so.

Respondent Judge Palaypayon, Jr. contends that the marriage between Alano P. Abellano and Nelly Edralin falls under Article 34 of the Civil Code, hence it is exempt from the marriage license requirement; that he gave strict instructions to complainant Sambo to furnish the couple a copy of the marriage contract and to file the same with the civil registrar, but the latter failed to do so; that in order to solve the problem, the spouses subsequently formalized their marriage by securing a marriage license and executing their marriage contract, a copy of which was filed with the civil registrar; that the other five marriages alluded to in the administrative complaint were not illegally solemnized because the marriage contracts were not signed by him and they did not contain the date and place of marriage; that copies of these marriage contracts are in the custody of complainant Sambo; that the alleged marriage of Francisco Selpo and Julieta Carrido, Eddie Terrobias and Maria Emma Gaor, Renato Gamay and Maricris Belga, and of Arsenio Sabater and Margarita Nacario were not celebrated by him since he refused to solemnize them in the absence of a marriage license; that the marriage of Samy Bocaya and Gina Bismonte was celebrated even without the requisite license due to the insistence of the parties in order to avoid embarrassment to their guests but that, at any rate, he did not sign their marriage contract which remains unsigned up to the present.

2. Falsification of monthly report for July, 1991 regarding the number of marriages solemnized and the number of documents notarized.

It is alleged that respondent judge made it appear that he solemnized seven (7) marriages in the month of July, 1992, when in truth he did not do so or at most those marriages were null and void; that respondents likewise made it appear that they have notarized only six (6) documents for July, 1992, but the Notarial Register will show that there were one hundred thirteen (113) documents which were notarized during that month; and that respondents reported a notarial fee of only P18.50 for each document, although in fact they collected P20.00 therefor and failed to account for the difference.

Respondent Baroy contends, however, that the marriage registry where all marriages celebrated by respondent judge are entered is under the exclusive control and custody of complainant Ramon Sambo, hence he is the only one who should be held responsible for the entries made therein; that the reported marriages are merely based on the payments made as solemnization fees which are in the custody of respondent Baroy. She further avers that it is Sambo who is likewise the custodian of the Notarial Register; that she cannot be held accountable for whatever alleged difference there is in the notarial fees because she is liable only for those payments tendered to her by Sambo himself; that the notarial fees she collects are duly covered by receipts; that of the P20.00 charged, P18.50 is remitted directly to the Supreme Court as part of the Judiciary Development Fund and P1.50 goes to the general fund of the Supreme Court which is paid to the Municipal Treasurer of Tinambac, Camarines Sur. Respondent theorizes that the discrepancies in the monthly report were manipulated by complainant Sambo considering that he is the one in charge of the preparation of the monthly report.

Respondent Judge Palaypayon avers that the erroneous number of marriages celebrated was intentionally placed by complainant Sambo; that the number of marriages solemnized should not be based on solemnization fees paid for that month since not all the marriages paid for are solemnized in the same month. He claims that there were

actually only six (6) documents notarized in the month of July, 1992 which tallied with the official receipts issued by the clerk of court; that it is Sambo who should be held accountable for any unreceipted payment for notarial fees because he is the one in charge of the Notarial Register; and that this case filed by complainant Sambo is merely in retaliation for his failure to be appointed as the clerk of court. Furthermore, respondent judge contends that he is not the one supervising or preparing the monthly report, and that he merely has the ministerial duty to sign the same.

3. Bribery in consideration of an appointment in the court.

Complainants allege that because of the retirement of the clerk of court, respondent judge forwarded to the Supreme Court the applications of Rodel Abogado, Ramon Sambo, and Jessell Abiog. However, they were surprised when respondent Baroy reported for duty as clerk of court on October 21, 1991. They later found out that respondent Baroy was the one appointed because she gave a brand-new air-conditioning unit to respondent judge.

Respondent Baroy claims that when she was still in Naga City she purchased an air-conditioning unit but when she was appointed clerk of court she had to transfer to Tinambac and, since she no longer needed the air conditioner, she decided to sell the same to respondent judge. The installation and use thereof by the latter in his office was with the consent of the Mayor of Tinambac.

Respondent judge contends that he endorsed all the applications for the position of clerk of court to the Supreme Court which has the sole authority over such appointments and that he had no hand in the appointment of respondent Baroy. He contends that the air-conditioning unit was bought from his co-respondent on installment basis on May 29, 1992, eight (8) months after Baroy had been appointed clerk of court. He claims that he would not be that naive to exhibit to the public an item which could not be defended as a matter of honor and prestige.

4. Cash bond issued without a receipt.

It is alleged that in Criminal Case No. 5438, entitled "People vs. Mendeza, et al.," bondswoman Januaria Decara was allowed by respondent judge to change her property bond to cash bond; that she paid the amount of P1,000.00 but was never issued a receipt therefor nor was it made to appear in the records that the bond has been paid; that despite the lapse of two years, the money was never returned to the bondswoman; and that it has not been shown that the money was turned over to the Municipal Treasurer of Tinambac.

Respondent Baroy counters that the cash bond was deposited with the former clerk of court, then turned over to the acting clerk of court and, later, given to her under a corresponding receipt; that the cash bond is deposited with the bank; and that should the bondswoman desire to withdraw the same, she should follow the proper procedure therefor.

Respondent judge contends that Criminal Case No. 5438 was archived for failure of the bondsman to deliver the body of the accused in court despite notice; and that he has nothing to do with the payment of the cash bond as this is the duty of the clerk of court.

5. Infidelity in the custody of prisoners.

Complainants contend that respondent judge usually got detention prisoners to work in his house, one of whom was Alex Alano, who is accused in Criminal Case No. 5647 for violation of the Dangerous Drugs Act; that while Alano was in the custody of respondent judge, the former escaped and was never recaptured; that in order to conceal this fact, the case was archived pursuant to an order issued by respondent judge dated April 6, 1992.

Respondent judge denied the accusation and claims that he never employed detention prisoners and that he has

adequate household help; and that he had to order the case archived because it had been pending for more than six (6) months and the accused therein remained at large.

6. Unlawful collection of docket fees.

Finally, respondents are charged with collecting docket fees from the Rural Bank of Tinambac, Camarines Sur, Inc. although such entity is exempt by law from the payment of said fees, and that while the corresponding receipt was issued, respondent Baroy failed to remit the amount to the Supreme Court and, instead, she deposited the same in her personal account.

Respondent Baroy contends that it was Judge-Designate Felimon Montenegro (because respondent judge was on sick leave) who instructed her to demand payment of docket fees from said rural bank; that the bank issued a check for P800.00; that she was not allowed by the Philippine National Bank to encash the check and, instead, was instructed to deposit the same in any bank account for clearing; that respondent deposited the same in her account; and that after the check was cleared, she remitted P400.00 to the Supreme Court and the other P400.00 was paid to the Municipal Treasurer of Tinambac.

On the basis of the foregoing contentions, First Vice-Executive Judge Antonio N. Gerona prepared and submitted to us his Report and Recommendations dated May 20, 1994, together with the administrative matter. We have perspicaciously reviewed the same and we are favorably impressed by the thorough and exhaustive presentation and analysis of the facts and evidence in said report. We commend the investigating judge for his industry and perspicacity reflected by his findings in said report which, being amply substantiated by the evidence and supported by logical illations, we hereby approve and hereunder reproduce at length the material portions thereof.

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The first charge against the respondents is illegal solemnization of marriage. Judge Palaypayon is charged with having solemnized without a marriage license the marriage of Sammy Bocaya and Gina Besmonte (Exh. A). Alano Abellano and Nelly Edralin (Exh. B), Francisco Selpo and Julieta Carrido (Exh. C), Eddie Terrobias and Maria Emma Gaor (Exh. D), Renato Gamay and Maricris Belga (Exh. F) and Arsenio Sabater and Margarita Nacario (Exh. G).

In all these aforementioned marriages, the blank space in the marriage contracts to show the number of the marriage license and the space to show the date when the marriage was solemnized as required by Article 22 of the Family Code were not filled up. While the contracting parties and their witnesses signed their marriage contracts, Judge Palaypayon did not affix his signature in the marriage contracts, except that of Abellano and Edralin when Judge Palaypayon signed their marriage certificate as he claims that he solemnized this marriage under Article 34 of the Family Code of the Philippines. In said marriages the contracting parties were not furnished a copy of their marriage contract and the Local Civil Registrar was not sent either a copy of the marriage certificate as required by Article 23 of the Family Code.

The marriage of Bocaya and Besmonte is shown to have been solemnized by Judge Palaypayon without a marriage license. The testimonies of Bocay himself and Pompeo Ariola, one of the witnesses of the marriage of Bocaya and Besmonte, and the photographs taken when Judge Palaypayon solemnized their marriage (Exhs. K-3 to K-9) sufficiently show that Judge Palaypayon really solemnized their marriage. Bocaya declared that they were advised by Judge Palaypayon to return after ten (10) days after their marriage was solemnized and bring with them their marriage license. In the meantime, they already started living together as husband and wife believing that the formal requisites of marriage were complied with.

Judge Palaypayon denied that he solemnized the marriage of Bocaya and Besmonte because the parties allegedly did not have a marriage license. He declared that in fact he did not sign the marriage certificate, there was no date stated on it and both the parties and the Local Civil Registrar did not have a copy of the marriage

certificate.

With respect to the photographs which show that he solemnized the marriage of Bocaya and Besmonte, Judge Palaypayon explains that they merely show as if he was solemnizing the marriage. It was actually a simulated solemnization of marriage and not a real one. This happened because of the pleading of the mother of one of the contracting parties that he consent to be photographed to show that as if he was solemnizing the marriage as he was told that the food for the wedding reception was already prepared, visitors were already invited and the place of the parties where the reception would be held was more than twenty (20) kilometers away from the poblacion of Tinambac.

The denial made by Judge Palaypayon is difficult to believe. The fact alone that he did not sign the marriage certificate or contract, the same did not bear a date and the parties and the Local Civil Registrar were not furnished a copy of the marriage certificate, do not by themselves show that he did not solemnize the marriage. His uncorroborated testimony cannot prevail over the testimony of Bocaya and Ariola who also declared, among others, that Bocaya and his bride were advised by Judge Palaypayon to return after ten (10) days with their marriage license and whose credibility had not been impeached.

The pictures taken also from the start of the wedding ceremony up to the signing of the marriage certificate in front of Judge Palaypayon and on his table (Exhs. K-3, K-3-a, K-3-b, K-3-c, K-4, K-4-a, K-4-b, K-4-c, K-4-d, K-5, K-5-a, K-5-b, K-6, K-7, K-8, K-8-a and K-9), cannot possibly be just to show a simulated solemnization of marriage. One or two pictures may convince a person of the explanation of Judge Palaypayon, but not all those pictures.

Besides, as a judge it is very difficult to believe that Judge Palaypayon would allow himself to be photographed as if he was solemnizing a marriage on a mere pleading of a person whom he did not even know for the alleged reasons given. It would be highly improper and unbecoming of him to allow himself to be used as an instrument of deceit by making it appear that Bocaya and Besmonte were married by him when in truth and in fact he did not solemnize their marriage.

With respect to the marriage of Abellano and Edralin (Exh. B), Judge Palaypayon admitted that he solemnized their marriage, but he claims that it was under Article 34 of the Family Code, so a marriage license was not required. The contracting parties here executed a joint affidavit that they have been living together as husband and wife for almost six (6) years already (Exh. 12; Exh. AA).

In their marriage contract which did not bear any date either when it was solemnized, it was stated that Abellano was only eighteen (18) years, two (2) months and seven (7) days old. If he and Edralin had been living together as husband and wife for almost six (6) years already before they got married as they stated in their joint affidavit, Abellano must ha(ve) been less than thirteen (13) years old when he started living with Edralin as his wife and this is hard to believe. Judge Palaypayon should ha(ve) been aware of this when he solemnized their marriage as it was his duty to ascertain the qualification of the contracting parties who might ha(ve) executed a false joint affidavit in order to have an instant marriage by avoiding the marriage license requirement.

On May 23, 1992, however, after this case was already filed, Judge Palaypayon married again Abellano and Edralin, this time with a marriage license (Exh. BB). The explanation given by Judge Palaypayon why he solemnized the marriage of the same couple for the second time is that he did not consider the first marriage he solemnized under Article 34 of the Family Code as (a) marriage at all because complainant Ramon Sambo did not follow his instruction that the date should be placed in the marriage certificate to show when he solemnized the marriage and that the contracting parties were not furnished a copy of their marriage certificate.

This act of Judge Palaypayon of solemnizing the marriage of Abellano and Edralin for the second time with a marriage license already only gave rise to the suspicion that the first time he solemnized the marriage it was only made to appear that it was solemnized under exceptional character as there was no marriage license and

Judge Palaypayon had already signed the marriage certificate. If it was true that he solemnized the first marriage under exceptional character where a marriage license was not required, why did he already require the parties to have a marriage license when he solemnized their marriage for the second time?

The explanation of Judge Palaypayon that the first marriage of Abellano and Edralin was not a marriage at all as the marriage certificate did not state the date when the marriage was solemnized and that the contracting parties were not furnished a copy of their marriage certificate, is not well taken as they are not any of those grounds under Article(s) 35, 36, 37 and 38 of the Family Code which declare a marriage void from the beginning. Even if no one, however, received a copy of the marriage certificate, the marriage is still valid (*Jones vs. H(ortiguella*, 64 Phil. 179). Judge Palaypayon cannot just absolve himself from responsibility by blaming his personnel. They are not the guardian(s) of this official function and under Article 23 of the Family Code it is his duty to furnish the contracting parties (a) copy of their marriage contract.

With respect to the marriage of Francisco Selpo and Julieta Carrido (Exh. C), and Arsenio Sabater and Margarita Nacario (Exh. G), Selpo and Carrido and Sabater and Nacario executed joint affidavits that Judge Palaypayon did not solemnize their marriage (Exh. 13-A and Exh. 1). Both Carrido and Nacario testified for the respondents that actually Judge Palaypayon did not solemnize their marriage as they did not have a marriage license. On cross-examination, however, both admitted that they did not know who prepared their affidavits. They were just told, Carrido by a certain Charito Palaypayon, and Nacario by a certain Kagawad Encinas, to just go to the Municipal building and sign their joint affidavits there which were already prepared before the Municipal Mayor of Tinambac, Camarines Sur.

With respect to the marriage of Renato Gamay and Maricris Belga (Exh. F), their marriage contract was signed by them and by their two (2) witnesses, Atty. Elmer Brioso and respondent Baroy (Exhs. F-1 and F-2). Like the other aforementioned marriages, the solemnization fee was also paid as shown by a receipt dated June 7, 1992 and signed by respondent Baroy (Exh. F-4).

Judge Palaypayon also denied having solemnized the marriage of Gamay and Belga allegedly because there was no marriage license. On her part, respondent Baroy at first denied that the marriage was solemnized. When she was asked, however, why did she sign the marriage contract as a witness she answered that she thought the marriage was already solemnized (TSN, p. 14; 10-28-93).

Respondent Baroy was, and is, the clerk of court of Judge Palaypayon. She signed the marriage contract of Gamay and Belga as one of the two principal sponsors. Yet, she wanted to give the impression that she did not even know that the marriage was solemnized by Judge Palaypayon. This is found very difficult to believe.

Judge Palaypayon made the same denial of having solemnized also the marriage of Terrobas and Gaor (Exh. D). The contracting parties and their witnesses also signed the marriage contract and paid the solemnization fee, but Judge Palaypayon allegedly did not solemnize their marriage due to lack of marriage license. Judge Palaypayon submitted the affidavit of William Medina, Vice-Mayor of Tinambac, to corroborate his testimony (Exh. 14). Medina, however, did not testify in this case and so his affidavit has no probative value.

Judge Palaypayon testified that his procedure and practice have been that before the contracting parties and their witnesses enter his chamber in order to get married, he already required complainant Ramon Sambo to whom he assigned the task of preparing the marriage contract, to already let the parties and their witnesses sign their marriage contracts, as what happened to Gamay and Belga, and Terrobas and Gaor, among others. His purpose was to save his precious time as he has been solemnizing marriages at the rate of three (3) to four (4) times everyday (TSN, p. 12; 2-1-94).

This alleged practice and procedure, if true, is highly improper and irregular, if not illegal, because the contracting parties are supposed to be first asked by the solemnizing officer and declare that they take each other as husband and wife before the solemnizing officer in the presence of at least two (2) witnesses before they are supposed to sign their marriage contracts (Art. 6, Family Code).

The uncorroborated testimony, however, of Judge Palaypayon as to his alleged practice and procedure before solemnizing a marriage, is not true as shown by the picture taken during the wedding of Bocaya and Besmonte (Exhs. K-3 to K-9) and by the testimony of respondent Baroy herself who declared that the practice of Judge Palaypayon has been to let the contracting parties and their witnesses sign the marriage contract only after Judge Palaypayon has solemnized their marriage (TSN, p. 53; 10-28-93).

Judge Palaypayon did not present any evidence to show also that he was really solemnizing three (3) to four (4) marriages everyday. On the contrary his monthly report of cases for July, 1992 shows that his court had only twenty-seven (27) pending cases and he solemnized only seven (7) marriages for the whole month (Exh. E). His monthly report of cases for September, 1992 shows also that he solemnized only four (4) marriages during the whole month (Exh. 7).

In this first charge of having illegally solemnized marriages, respondent Judge Palaypayon has presented and marked in evidence several marriage contracts of other persons, affidavits of persons and certification issued by the Local Civil Registrar (Exhs. 12-B to 12-H). These persons who executed affidavits, however, did not testify in this case. Besides, the marriage contracts and certification mentioned are immaterial as Judge Palaypayon is not charged of having solemnized these marriages illegally also. He is not charged that the marriages he solemnized were all illegal.

The second charge against herein respondents, that of having falsified the monthly report of cases submitted to the Supreme Court and not stating in the monthly report the actual number of documents notarized and issuing the corresponding receipts of the notarial fees, have been sufficiently proven by the complainants insofar as the monthly report of cases for July and September, 1992 are concerned.

The monthly report of cases of the MTC of Tinambac, Camarines Sur for July, 1992 both signed by the respondents, show that for said month there were six (6) documents notarized by Judge Palaypayon in his capacity as Ex-Officio Notary Public (Exhs. H to H-1-b). The notarial register of the MTC of Tinambac, Camarines Sur, however, shows that there were actually one hundred thirteen (113) documents notarized by Judge Palaypayon for the said month (Exhs. Q to Q-45).

Judge Palaypayon claims that there was no falsification of the monthly report of cases for July, 1992 because there were only six (6) notarized documents that were paid (for) as shown by official receipts. He did not, however, present evidence of the alleged official receipts showing that the notarial fee for the six (6) documents were paid. Besides, the monthly report of cases with respect to the number of documents notarized should not be based on how many notarized documents were paid of the notarial fees, but the number of documents placed or recorded in the notarial register.

Judge Palaypayon admitted that he was not personally verifying and checking anymore the correctness of the monthly reports because he relies on his co-respondent who is the Clerk of Court and whom he has assumed to have checked and verified the records. He merely signs the monthly report when it is already signed by respondent Baroy.

The explanation of Judge Palaypayon is not well taken because he is required to have close supervision in the preparation of the monthly report of cases of which he certifies as to their correctness. As a judge he is personally responsible for the proper discharge of his functions (*The Phil. Trial Lawyer's Asso. Inc. vs. Agana, Sr.*, 102 SCRA 517). In *Nidera vs. Lazaro*, 174 SCRA 581, it was held that "A judge cannot take refuge behind the inefficiency or mismanagement of his court personnel."

On the part of respondent Baroy, she puts the blame of the falsification of the monthly report of cases on complainant Sambo whom she allegedly assigned to prepare not only the monthly report of cases, but the preparation and custody of marriage contracts, notarized documents and the notarial register. By her own admission she has assigned to complainant Sambo duties she was supposed to perform, yet according to her she never bother(ed) to check the notarial register of the court to find out the number of documents notarized in

a month (TSN, p. 30; 11-23-93).

Assuming that respondent Baroy assigned the preparation of the monthly report of cases to Sambo, which was denied by the latter as he claims that he only typed the monthly report based on the data given to him by her, still it is her duty to verify and check whether the report is correct.

The explanation of respondent Baroy that Sambo was the one in custody of marriage contracts, notarized documents and notarial register, among other things, is not acceptable not only because as clerk of court she was supposed to be in custody, control and supervision of all court records including documents and other properties of the court (p. 32, Manual for Clerks of Court), but she herself admitted that from January, 1992 she was already in full control of all the records of the court including receipts (TSN, p. 11; 11-23-93).

The evidence adduced in this case in connection with the charge of falsification, however, also shows that respondent Baroy did not account for what happened to the notarial fees received for those documents notarized during the month of July and September, 1992. The evidence adduced in this case also sufficiently show that she received cash bond deposits and she did not deposit them to a bank or to the Municipal Treasurer; and that she only issued temporary receipts for said cash bond deposits.

For July, 1992 there were only six (6) documents reported to have been notarized by Judge Palaypayon although the documents notarized for said month were actually one hundred thirteen (113) as recorded in the notarial register. For September, 1992, there were only five (5) documents reported as notarized for that month, though the notarial register show(s) that there were fifty-six (56) documents actually notarized. The fee for each document notarized as appearing in the notarial register was P18.50. Respondent Baroy and Sambo declared that what was actually being charged was P20.00. Respondent Baroy declared that P18.50 went to the Supreme Court and P1.50 was being turned over to the Municipal Treasurer.

Baroy, however, did not present any evidence to show that she really sent to the Supreme Court the notarial fees of P18.50 for each document notarized and to the Municipal Treasurer the additional notarial fee of P1.50. This should be fully accounted for considering that Baroy herself declared that some notarial fees were allowed by her at her own discretion to be paid later. Similarly, the solemnization fees have not been accounted for by Baroy considering that she admitted that even (i)n those instances where the marriages were not solemnized due to lack of marriage license the solemnization fees were not returned anymore, unless the contracting parties made a demand for their return. Judge Palaypayon declared that he did not know of any instance when solemnization fee was returned when the marriage was not solemnized due to lack of marriage license.

Respondent Baroy also claims that Ramon Sambo did not turn over to her some of the notarial fees. This is difficult to believe. It was not only because Sambo vehemently denied it, but the minutes of the conference of the personnel of the MTC of Tinambac dated January 20, 1992 shows that on that date Baroy informed the personnel of the court that she was taking over the functions she assigned to Sambo, particularly the collection of legal fees (Exh. 7). The notarial fees she claims that Sambo did not turn over to her were for those documents notarized (i)n July and September, 1992 already. Besides there never was any demand she made for Sambo to turn over some notarial fees supposedly in his possession. Neither was there any memorandum she issued on this matter, in spite of the fact that she has been holding meetings and issuing memoranda to the personnel of the court (Exhs. V, W, FF, FF-1, FF-2, FF-3; Exhs. 4-A (supplement(s), 5-8, 6-S, 7-S and 8-S).

It is admitted by respondent Baroy that on October 29, 1991 a cash bond deposit of a certain Decara in the amount of One Thousand (P1,000.00) Pesos was turned over to her after she assumed office and for this cash bond she issued only a temporary receipt (Exh. Y). She did not deposit this cash bond in any bank or to the Municipal Treasurer. She just kept it in her own cash box on the alleged ground that the parties in that case where the cash bond was deposited informed her that they would settle the case amicably.

Respondent Baroy declared that she finally deposited the aforementioned cash bond of One Thousand (P1,000.00) Pesos with the Land Bank of the Philippines (LBP) in February, 1993, after this administrative

case was already filed (TSN, pp. 27-28; 12-22-93). The Pass Book, however, shows that actually Baroy opened an account with the LBP, Naga Branch, only on March 26, 1993 when she deposited an amount of Two Thousand (P2,000.00) Pesos (Exhs. 8 to 8-1-a). She claims that One Thousand (P1,000.00) Pesos of the initial deposit was the cash bond of Dacara. If it were true, it was only after keeping to herself the cash bond of One Thousand (P1,000.00) Pesos for around one year and five months when she finally deposited it because of the filing of this case.

On April 29, 1993, or only one month and two days after she finally deposited the One Thousand (P1,000.00) Pesos cash bond of Dacara, she withdrew it from the bank without any authority or order from the court. It was only on July 23, 1993, or after almost three (3) months after she withdrew it, when she redeposited said cash bond (TSN, p. 6; 1-4-94).

The evidence presented in this case also show that on February 28, 1993 respondent Baroy received also a cash bond of Three Thousand (P3,000.00) Pesos from a certain Alfredo Seprones in Crim. Case No. 5180. For this cash bond deposit, respondent Baroy issued only an unnumbered temporary receipt (Exhs. X and X-1). Again Baroy just kept this Three Thousand (P3,000.00) Pesos cash bond to herself. She did not deposit it either (in) a bank or (with) the Municipal Treasurer. Her explanation was that the parties in Crim. Case No. 5180 informed her that they would settle the case amicably. It was on April 26, 1993, or almost two months later when Judge Palaypayon issued an order for the release of said cash bond (Exh. 7).

Respondent Baroy also admitted that since she assumed office on October 21, 1991 she used to issue temporary receipt only for cash bond deposits and other payments and collections she received. She further admitted that some of these temporary receipts she issued she failed to place the number of the receipts such as that receipt marked Exhibit X (TSN, p. 35; 11-23-93). Baroy claims that she did not know that she had to use the official receipts of the Supreme Court. It was only from February, 1993, after this case was already filed, when she only started issuing official receipts.

The next charge against the respondents is that in order to be appointed Clerk of Court, Baroy gave Judge Palaypayon an air conditioner as a gift. The evidence adduced with respect to this charge, show that on August 24, 1991 Baroy bought an air conditioner for the sum of Seventeen Thousand Six Hundred (P17,600.00) Pesos (Exhs. I and I-1). The same was paid partly in cash and in check (Exhs. I-2 and I-3). When the air conditioner was brought to court in order to be installed in the chamber of Judge Palaypayon, it was still placed in the same box when it was bought and was not used yet.

The respondents claim that Baroy sold it to Judge Palaypayon for Twenty Thousand (P20,000.00) Pesos on installment basis with a down payment of Five Thousand (P5,000.00) Pesos and as proof thereof the respondents presented a typewritten receipt dated May 29, 1993 (Exh. 22). The receipt was signed by both respondents and by the Municipal Mayor of Tinambac, Camarines Sur and another person as witness.

The alleged sale between respondents is not beyond suspicion. It was bought by Baroy at a time when she was applying for the vacant position of Clerk of Court (to) which she was eventually appointed in October, 1991. From the time she bought the air conditioner on August 24, 1991 until it was installed in the office of Judge Palaypayon it was not used yet. The sale to Judge Palaypayon was only evidenced by a mere typewritten receipt dated May 29, 1992 when this case was already filed. The receipt could have been easily prepared. The Municipal Mayor of Tinambac who signed in the receipt as a witness did not testify in this case. The sale is between the Clerk of Court and the Judge of the same court. All these circumstances give rise to suspicion of at least impropriety. Judges should avoid such action as would subject (them) to suspicion and (their) conduct should be free from the appearance of impropriety (*Jaagueta vs. Boncasos*, 60 SCRA 27).

With respect to the charge that Judge Palaypayon received a cash bond deposit of One Thousand (P1,000.00) Pesos from Januaria Dacara without issuing a receipt, Dacara executed an affidavit regarding this charge that Judge Palaypayon did not give her a receipt for the P1,000.00 cash bond she deposited (Exh. N). Her affidavit, however, has no probative value as she did not show that this cash bond of P1,000.00 found its way into the

hands of respondent Baroy who issued only a temporary receipt for it and this has been discussed earlier.

Another charge against Judge Palaypayon is the getting of detention prisoners to work in his house and one of them escaped while in his custody and was never found again. To hide this fact, the case against said accused was ordered archived by Judge Palaypayon. The evidence adduced with respect to this particular charge, show that in Crim. Case No. 5647 entitled *People vs. Stephen Kalaw, Alex Alano and Allan Adupe*, accused Alex Alano and Allan Adupe were arrested on April 12, 1991 and placed in the municipal jail of Tinambac, Camarines Sur (Exhs. O, O-1, O-2 and O-3; Exh. 25). The evidence presented that Alex Alano was taken by Judge Palaypayon from the municipal jail where said accused was confined and that he escaped while in custody of Judge Palaypayon is solely testimonial, particularly that of David Ortiz, a former utility worker of the MTC of Tinambac.

Herein investigator finds said evidence not sufficient. The complainants should have presented records from the police of Tinambac to show that Judge Palaypayon took out from the municipal jail Alex Alano where he was under detention and said accused escaped while in the custody of Judge Palaypayon.

The order, however, of Judge Palaypayon dated April 6, 1992 in Crim. Case No. 5047 archiving said case appears to be without basis. The order states: "This case was filed on April 12, 1991 and the records show that the warrant of arrest (was) issued against the accused, but up to this moment there is no return of service for the warrant of arrest issued against said accused" (Exh. O-4). The records of said case, however, show that in fact there was a return of the service of the warrant of arrest dated April 12, 1991 showing that Alano and Adupe were arrested (Exh. O-3).

Judge Palaypayon explained that his order dated April 6, 1992 archiving Crim. Case No. 5047 referred only to one of the accused who remained at large. The explanation cannot be accepted because the two other accused, Alano and Adupe, were arrested. Judge Palaypayon should have issued an order for the arrest of Adupe who allegedly jumped bail, but Alano was supposed to be confined in the municipal jail if his claim is true that he did not take custody of Alano.

The explanation also of Judge Palaypayon why he ordered the case archived was because he heard from the police that Alano escaped. This explanation is not acceptable either. He should ha(ve) set the case and if the police failed to bring to court Alano, the former should have been required to explain in writing why Alano was not brought to court. If the explanation was that Alano escaped from jail, he should have issued an order for his arrest. It is only later on when he could not be arrested when the case should have been ordered archived. The order archiving this case for the reason that he only heard that Alano escaped is another circumstance which gave rise to a suspicion that Alano might have really escaped while in his custody only that the complainants could not present records or other documentary evidence to prove the same.

The last charge against the respondents is that they collected filing fees on collection cases filed by the Rural Bank of Tinambac, Camarines Sur which was supposed to be exempted from paying filing fees under existing laws and that the filing fees received was deposited by respondent Baroy in her personal account in the bank. The evidence presented show that on February 4, 1992 the Rural Bank of Tinambac filed ten (10) civil cases for collection against farmers and it paid the total amount of Four Hundred (P400.00) Pesos representing filing fees. The complainants cited Section 14 of Republic Act 720, as amended, which exempts Rural Bank (from) the payment of filing fees on collection of sums of money cases filed against farmers on loans they obtained.

Judge Palaypayon, however, had nothing to do with the payment of the filing fees of the Rural Bank of Tinambac as it was respondent Baroy who received them and besides, on February 4, 1992, he was on sick leave. On her part Baroy claims that the bank paid voluntarily the filing fees. The records, however, show that respondent Baroy sent a letter to the manager of the bank dated January 28, 1992 to the effect that if the bank would not pay she would submit all Rural Bank cases for dismissal (Annex 6, comment by respondent Baroy).

Respondent Baroy should have checked whether the Rural Bank of Tinambac was really exempt from the

payment of filing fees pursuant to Republic Act 720, as amended, instead of threatening the bank to have its cases be submitted to the court in order to have them dismissed. Here the payment of the filing fees was made on February 4, 1992, but the Four Hundred (P400.00) Pesos was only turned over to the Municipal Treasurer on March 12, 1992. Here, there is an undue delay again in complying with her obligation as accountable officer.

In view of the foregoing findings that the evidence presented by the complainants sufficiently show that respondent Judge Lucio P. Palaypayon, Jr. had solemnized marriages, particularly that of Sammy Bocaya and Gina Besmonte, without a marriage license, and that it having been shown that he did not comply with his duty in closely supervising his clerk of court in the preparation of the monthly report of cases being submitted to the Supreme Court, particularly for the months of July and September, 1992 where it has been proven that the reports for said two (2) months were falsified with respect to the number of documents notarized, it is respectfully recommended that he be imposed a fine of TEN THOUSAND (P10,000.00) PESOS with a warning that the same or similar offenses will be more severely dealt with.

The fact that Judge Palaypayon did not sign the marriage contracts or certificates of those marriages he solemnized without a marriage license, there were no dates placed in the marriage contracts to show when they were solemnized, the contracting parties were not furnished their marriage contracts and the Local Civil Registrar was not being sent any copy of the marriage contract, will not absolve him from liability. By solemnizing alone a marriage without a marriage license he as the solemnizing officer is the one responsible for the irregularity in not complying (with) the formal requ(i)sites of marriage and under Article 4(3) of the Family Code of the Philippines, he shall be civilly, criminally and administratively liable.

Judge Palaypayon is likewise liable for his negligence or failure to comply with his duty of closely supervising his clerk of court in the performance of the latter's duties and functions, particularly the preparation of the monthly report of cases (*Bendesula vs. Laya*, 58 SCRA 16). His explanation that he only signed the monthly report of cases only when his clerk of court already signed the same, cannot be accepted. It is his duty to closely supervise her, to check and verify the records if the monthly reports prepared by his clerk of court do not contain false statements. It was held that "A judge cannot take refuge behind the inefficiency or incompetence of court personnel (*Nidua vs. Lazaro*, 174 SCRA 158).

In view also of the foregoing finding that respondent Nelia Esmeralda-Baroy, the clerk of court of the Municipal Trial Court of Tinambac, Camarines Sur, has been found to have falsified the monthly report of cases for the months of July and September, 1992 with respect to the number of documents notarized, for having failed to account (for) the notarial fees she received for said two (2) months period; for having failed to account (for) the solemnization fees of those marriages allegedly not solemnized, but the solemnization fees were not returned; for unauthorized issuance of temporary receipts, some of which were issued unnumbered; for receiving the cash bond of Dacara on October 29, 1991 in the amount of One Thousand (P1,000.00) Pesos for which she issued only a temporary receipt (Exh. Y) and for depositing it with the Land Bank of the Philippines only on March 26, 1993, or after one year and five months in her possession and after this case was already filed; for withdrawing said cash bond of One Thousand (P1,000.00) Pesos on April 29, 1993 without any court order or authority and redepositing it only on July 23, 1993; for receiving a cash bond of Three Thousand (P3,000.00) Pesos from Alfredo Seprones in Crim. Case No. 5180, MTC, Tinambac, Camarines Sur, for which she issued only an unnumbered temporary receipts (Exhs. X and X-1) and for not depositing it with a bank or with the Municipal Treasurer until it was ordered released; and for requiring the Rural Bank of Tinambac, Camarines Sur to pay filing fees on February 4, 1992 for collection cases filed against farmers in the amount of Four Hundred (P400.00) Pesos, but turning over said amount to the Municipal Treasurer only on March 12, 1992, it is respectfully recommended that said respondent clerk of court Nelia Esmeralda-Baroy be dismissed from the service.

It is provided that "Withdrawal of court deposits shall be by the clerk of court who shall issue official receipt to the provincial, city or municipal treasurer for the amount withdrawn. Court deposits cannot be withdrawn

except by order of the court, x x x." (Revised Manual of Instructions for Treasurers, Secs. 183, 184 and 626; p. 127, Manual for Clerks of Court). A circular also provides that the Clerks of Court shall immediately issue an official receipt upon receipt of deposits from party litigants and thereafter deposit from party litigants and thereafter deposit intact the collection with the municipal, city or provincial treasurer and their deposits can only be withdrawn upon proper receipt and order of the court (DOJ Circular No. 52, 26 April 1968; p. 136, Manual for Clerks of Court). Supreme Court Memorandum Circular No. 5, 25 November 1982, also provides that "all collections of funds of fiduciary character including rental deposits, shall be deposited immediately by the clerk of court concerned upon receipt thereof with City, Municipal or Provincial Treasurer where his court is located" and that "no withdrawal of any of such deposits shall be made except upon lawful order of the court exercising jurisdiction over the subject matter.

Respondent Baroy had either failed to comply with the foregoing circulars, or deliberately disregarded, or even intentionally violated them. By her conduct, she demonstrated her callous unconcern for the obligations and responsibility of her duties and functions as a clerk of court and accountable officer. The gross neglect of her duties shown by her constitute(s) a serious misconduct which warrant(s) her removal from office. In the case of Belen P. Ferriola vs. Norma Hiam, Clerk of Court, MTCC, Branch I, Batangas City, A.M. No. P-90-414, August 9, 1993, it was held that "The clerk of court is not authorized to keep funds in his/her custody; monies received by him/ her shall be deposited immediately upon receipt thereof with the City, Municipal or Provincial Treasurer, Supreme Court Circular Nos. 5 dated November 25, 1982 and 5-A dated December 3, 1982. Respondent Hiam's failure to remit the cash bail bonds and fine she collected constitutes serious misconduct and her misappropriation of said funds constitutes dishonesty." "Respondent Norma Hiam was found guilty of dishonesty and serious misconduct prejudicial to the best interest of the service and (the Court) ordered her immediate dismissal (from) the service.

xxx xxx xxx

We here emphasize once again our adjuration that the conduct and behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, should be circumscribed with the heavy burden of responsibility. His conduct, at all times, must not only be characterized by propriety and decorum but, above all else, must be beyond suspicion. Every employee should be an example of integrity, uprightness and honesty.[5] Integrity in a judicial office is more than a virtue, it is a necessity.[6] It is demanded, without qualification as to rank or position, from the judge to the least of its personnel, they being standard-bearers of the exacting norms of ethics and morality imposed upon a court of justice.

On the charge regarding illegal marriages the Family Code pertinently provides that the formal requisites of marriage are, inter alia, a valid marriage license except in the cases provided for therein.[7] Complementarily, it declares that the absence of any of the essential or formal requisites shall generally render the marriage void ab initio and that, while an irregularity in the formal requisites shall not affect the validity of the marriage, the party or parties responsible for the irregularity shall be civilly, criminally and administratively liable.[8]

The civil aspect is addressed to the contracting parties and those affected by the illegal marriages, and what we are providing for herein pertains to the administrative liability of respondents, all without prejudice to their criminal responsibility. The Revised Penal Code provides that "(p)riests or ministers of any religious denomination or sect, or civil authorities who shall perform or authorize any illegal marriage ceremony shall be punished in accordance with the provisions of the Marriage Law." [9] This is of course, within the province of the prosecutorial agencies of the Government.

The recommendation with respect to the administrative sanction to be imposed on respondent judge should, therefore, be modified. For one, with respect to the charge of illegal solemnization of marriages, it does appear that he had not taken to heart, but actually trifled with, the law's concern for the institution of marriage and the

legal effects flowing from civil status. This, and his undeniable participation in the other offenses charged as hereinbefore narrated in detail, approximate such serious degree of misconduct and of gross negligence in the performance of judicial duties as to ineludibly require a higher penalty.

WHEREFORE, the Court hereby imposes a FINE of P20,000.00 on respondent Judge Lucio P. Palaypayon, Jr., with a stern warning that any repetition of the same or similar offenses in the future will definitely be severely dealt with. Respondent Nelia Esmeralda-Baroy is hereby DISMISSED from the service, with forfeiture of all retirement benefits and with prejudice to employment in any branch, agency or instrumentality of the Government, including government-owned or controlled corporations.

Let copies of this decision be spread on their records and furnished to the Office of the Ombudsman for appropriate action.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quason, Puno, Vitug, Kapunan, and Mendoza, JJ., concur.

Cruz, J., no part. Did not participate in the deliberation.

Bidin, J., on leave.

[1] Original Record, 1.

[2] Ibid., 9 and 23.

[3] Ibid., 86.

[4] Ibid., 134.

[5] Annong vs. Vda. de Blas, A.M. No. P 91-602, October 15, 1991, 202 SCRA 635.

[6] Capuno, et al. vs. Jaramillo, Jr., A.M. No. RTJ 93-944, July 20, 1994.

[7] Article 3(2), Executive Order No. 209, as amended.

[8] Article 4, id.

[9] Article 352, Revised Penal Code, in relation to Section 39, Act No. 3613.

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