

NELIA GARCIANO, COMPLAINANT, VS. JUDGE JOSE R. SEBASTIAN, RESPONDENT.*A.M. No. MTJ-88-160. March 30, 1994*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/7a6b28bfaf9d/>**PER CURIAM:**

JUDGE JOSE R. SEBASTIAN, Metropolitan Trial Court, Br. 78, Parañaque, is charged administratively as follows: (1) in A.M. No. MTJ-88-160, for gross ignorance of the law, abuse of authority, serious misconduct and irregularity in the performance of official duties relative to the issuance and enforcement of the writ of execution in Civil Case No. 7342; (2) in A.M. No. MTJ-88-244, for partiality, oppression and abuse of discretion relative to Civil Case No. 7611; (3) in A.M. No. MTJ-89-322, for partiality and failure to decide Crim. Case No. 68688 within the 90-day reglementary period; (4) in A.M. No. MTJ-89-344, for serious misconduct; (5) in A.M. No. MTJ-90-416, for dishonesty, misconduct and ignorance of the law relative to Civil Case No. 3591; (6) in A.M. No. MTJ-92-661, for falsification of public document and direct bribery; and, (7) in A.M. No. MTJ--89-4-371, for misappropriation of public funds, dismissal of a criminal case for pecuniary benefit without approval of the Fiscal, falsification of public document, acting both as judge and prosecutor in a certain case, illegal exaction, immorality and misconduct.

On 19 July 1990, the Court resolved to consolidate A.M. No. MTJ-90-416 (*Gavia v. Sebastian*) with A.M. No. MTJ-88-160 (*Garciano v. Sebastian*), A.M. No. MTJ-88-244 (*Lopez v. Sebastian, et al.*), A.M. No. MTJ-89-322 (*Vilbar v. Sebastian*), A.M. No. MTJ-89-344 (*Lopez v. Sebastian*), and A.M. No. MTJ-89-4-371 (*Administrative Complaint of MeTC Personnel, Br. 78, Parañaque v. Sebastian*), and to refer the cases to Executive Judge Santiago J. Ranada, Jr., RTC, Makati, for investigation, report and recommendation considering that A.M. No. MTJ-89-4-371 was previously referred to him in the Resolution of 14 November 1989.[1]

On 28 July 1992, the Court consolidated A.M. No. MTJ-92-661 (*Office of the Court Administrator v. Sebastian*), a later case, with the rest of the administrative cases against respondent judge.[2] The Office of the Court Administrator through Deputy Court Administrator Juanito A. Bernad in a letter dated 15 September 1992 referred the case to Judge Job B. Madayag, the new Executive Judge, for inclusion in the investigation, report and recommendation, as the other six (6) administrative cases had already been previously referred to then Executive Judge Ranada.[3]

However, it appears that upon the expiration of the term of Judge Ranada, Jr., as Executive Judge, these cases were raffled to the judges in the RTC at Makati: Judge Josefina Guevarra-Salonga had the records of A.M. Nos. MTJ-88-160, MTJ-88-244, MTJ-89-322, MTJ-89-344; Judge Julio R. Logarta, the records of A.M. No. MTJ-89-4-371; and Judge Job B. Madayag, the records of MTJ-92-661. Upon being advised of the raffle of the consolidated cases to different RTC judges in Makati, the Office of the Court Administrator in a Memorandum dated 16 November 1992 informed this Court of these developments and that only Judge Logarta was able to conduct the investigation of the case assigned to him. It then recommended that considering that these administrative cases were consolidated, they should be assigned to only one judge for investigation, report and recommendation.[4]

On 3 December 1992, the Court referred all the seven (7) administrative cases to Judge Julio R. Logarta, RTC, Br. 63, Makati, for investigation, report and recommendation within ninety (90) days from receipt of the records and recalled the records of A.M. Nos. MTJ-88-160, MTJ-88-244, MTJ-89-322 and MTJ-89-344 from Judge Josefina Guevarra-Salonga and A.M. No. MTJ-92-661 from Judge Job Madayag to be forwarded to Judge Julio R. Logarta.[5]

Meanwhile, Judge Logarta had terminated the investigation in A.M. No. MTJ-89-4-371 and submitted his report dated 22 February 1993 finding respondent judge culpable of charges Nos. 1, 3, 6, and 7, thus -

FINDINGS ON:

CHARGE NO. 1 - Misappropriation of Public Funds (sic) Alias Writ of Execution dated November 11, 1987 for Forfeiture of bonds in more than ten (10) criminal cases. Complainants cite the affidavit executed by the clerk of court of the Metropolitan Trial Court of Parañaque, Jose Ison (Annexes "I" and "I-1" of Reply of complainants) to the effect that out of the P12,000.00 paid by Interworld Assurance Corporation for the confiscation of bonds in ten (10) criminal cases, Judge Sebastian, thru Remedios de Leon, paid only P6,000.00 to the Judiciary Development Fund, and that after the payment, the balance of P6,000.00 was not paid by Judge Sebastian or Remedios de Leon. This was also testified to by Jose Ison in open Court (t.s.n. pp. 11-18, Oct. 21, 1992), affirming his affidavit of August 17, 1989, (Annex "I"). Respondent judge in his Rejoinder dated October 31, 1989, attempted to refute such charge by presenting the affidavits (Exhs. "23" and "24") of officers of the payor of P12,000.00 check, Interworld Assurance Corporation, which affidavits state that they actually paid only P6,000.00 out of the P12,000.00 liability they had incurred while Interworld's motion for reduction of bail bond was still pending resolution before the sala of respondent judge. The Court notes that no verification can be made as to the truth of said affidavits (Exhs. "23" and "24") that they (officers of Interworld) only paid P6,000.00, and not their entire liability of P12,000.00 since the records, vouchers and motions for bonds of Interworld 'solicited before Courts' were nowhere to be found per certification (Exh. "22") of Mercedita Jaca of Interworld. It cannot be shown beyond doubt that indeed Interworld paid only P6,000.00, as the records of Interworld are no longer available. Thus, the testimony of Jose Ison vis-a-vis the said affidavits of the officers of Interworld is more credible.

x x x

CHARGE NO. 3 - Falsification of Public Documents. Falsification of public document referred to in this charge is the act of respondent judge in making it appear that the trial fiscal participated in the dismissal of criminal cases numbers 65628-30 when the minutes for hearing of November 10, 1988 shows that no party appeared in the hearing (Annex "G" of complainant). The trial fiscal Rodolfo Tuazon, on February 28, 1989, filed a manifestation (Annex "I" of the complaint) saying that he was not 'aware and have not participated nor have any knowledge that the case was dismissed' citing the minutes of November 10, 1988.

In his Answer, respondent judge contended that 'it was a judgment call on his part since he already called for the fiscal but the latter did not come.' This investigating judge believes that notwithstanding these allegations of respondent judge, it cannot be denied that there was misrepresentation on his part in stating in his Order of November 10, 1988, that there was no objection on the part of the trial fiscal, when in truth and in fact, as manifested by said fiscal, he was not aware nor did not participate in such proceeding.

x x x

CHARGE NOS. 6 and 7: (These charges are discussed simultaneously as they concern the same subject - common fund.)

No. 6 - He collected the amount of P200.00 up to P1,500.00 for civil marriages he conducted and pocketed the said money for himself.

No. 7. - He used his office employees to collect from litigants certain amounts which he calls Common Fund but after the litigant had paid and is (sic) gone, he solely appropriated for himself the said money.

Respondent judge in his answer denied charge No. 6 and presented the affidavit of one Miss Ligaya P. Orogo, (Exh. "10") attesting to the fact that respondent judge did not exact or charge any fee for solemnizing marriages. However, the testimony of respondent's witness, Paz Zialcita, belies this, to wit:

Q Is it not a fact Miss Witness that whenever Judge Sebastian conducted marriages in Court, at times he collects fees from the parties?

A No, sir. The money to be paid is given voluntarily.

Q You said, he collects?

A Actually he does not collect, because for instance, a couple is getting married in our branch, now when they asked us how much is the pay, we tell them voluntarily, you just give whatever amount you want to give.

Q To whom is the amount given, Miss Witness?

A To one of the staff, sir.

Q Who?

A It's either Charito or Imelda. (tsn, dated Feb. 12, 199[2], p. 5)

Anent Charge No. 7, for collecting monies from litigants to be placed in a common fund, the testimony of respondent's witness, Paz Zialcita, is relevant, to wit:

Q And what happened to the money given as fees?

A The respondent judge put it in our common funds.

Q And what happened to your common fund?

A The common funds was [sic] divided into [sic] employees who are low salaried employees. (tsn, dated Feb. 12, 199[2], p. 5)

Another is the affidavit (Exh. "11") executed by Paz Zialcita, Josephine Junsay, Remedios de Leon, and Eulalia Meris attesting that there indeed is a common fund which they collect, including respondent judge and divided among the low salaried employees. Also, in the same Exh. "11" it was stated, 'that the common fund was thought of by Judge Sebastian; that it was at the instance and request of Judge Sebastian.' Moreover, in Exh. "3," the affidavit executed by spouses Apolinario and Milagros Sebastian, pars. 12 and 13 thereof, states as follows:

12. That as a gesture of appreciation for his assistance in going to the bank, we gave Mr. Jose Co the amount of P200.00 and offered Judge Sebastian the amount of P500.00 which he firmly declined;

13. That we were very insistent in giving this amount of P500.00. Judge Sebastian called in an employee whose name we heard as Lalaine and instructed her to receive the amount and allot P200.00 for the common fund and P300.00 for the replenishment of kitchen supplies;

Considering that these affidavits (Exh. "3" and Exh. "11", Vol. I, pp. 95 and 105, respectively) were marked as exhibits by respondent judge in his Answer (Vol. I - Record, p. 72, par. No. 13) in order to support his denial of the charge, his adoption of said affidavits as part of his Answer is in effect an admission of the charges Nos. 6 and 7, re: existence of a common fund.[6]

However, the investigating judge withheld his recommendation on the penalty "as more cases against the same

respondent judge are assigned to (him) for investigation,"

On 15 October 1992, we issued a resolution suspending respondent judge from the service, thus -

x x x It appearing that Judge Jose Sebastian has been administratively charged in Administrative Matter No. MeTC 89-4-371 and criminally charged for falsification of public documents in Criminal Case No. 17271 and direct, bribery in Criminal Case No. 17272 before the First Division of the Sandiganbayan, the Court Resolved, in the interest of justice and a fair and expeditious disposition of said cases, to SUSPEND Judge Jose Sebastian from the service, effective immediately, until the final outcome of the administrative and criminal cases pending against him.[7]

In the resolution of 4 May 1993, the Court directed Judge Logarta to submit his report and recommendation on these administrative cases within one (1) month in view of the length of time they have been pending resolution.[8]

On 16 June 1993, the investigating judge submitted his report -

This is in compliance with the Resolution of the Honorable Supreme Court En Banc dated May 4, 1993 directing this investigating judge to submit his report and recommendation within one (1) month from receipt of said Resolution on the following cases:

1. A.M. No. MTJ-88-160

Nelia Garciano vs. Judge Jose R.

Sebastian, MTC, Br. 78, Parañaque, M.M.;

2. A.M. No. MTJ-88-244

Alejo Lopez vs. Judge Jose R. Sebastian, et al.;

3. A.M. No. MTJ-89-322

Efigenio Vilbar, et al. vs. Judge Jose R. Sebastian;

4. A.M. No. MTJ-90-416

Numeriano Gavia vs. Judge Jose R. Sebastian;

5. A.M. No. MTJ-92-661

Office of the Court Administrator vs.

Judge Jose R. Sebastian, MTC, Br. 78,

Parañaque, M.M.; and,

6. A.M. No. MTJ-89-344

Alejo Lopez vs. Judge Jose R. Sebastian.

Cases Nos. 1-6 above were dismissed on May 3, 1993 on motion of respondent for failure of complainants and their counsels (sic) to appear on two (2) scheduled hearings despite proper notices.

With respect to the remaining case A.M. No. MTJ--89-4-371, it will be recalled that on March 21, 1993, this investigating judge submitted an investigation report on the case thru the Office of the Court Administrator, copy of which is hereto attached for ready reference.

In that case (No. 89-4-371), the charges against respondent judge are the following: (1) Misappropriation of Public Funds; (2) Dismissing Criminal Case without the participation of the Trial Fiscal whether with or without his objection; (3) Falsification of Public Document; (4) He was the Judge and Prosecutor in the issuance of Search Warrants 014 to 019 and 21, commonly issued on February 7, 1989; (5) He used to collect a kickback or percentage from Zeny, a supplier, for office supplies used by the office of the Municipal Judge; (6) He collected the amount of P200.00 up to P1,500.00 for civil marriages he conducted and pocketed the said money for himself; (7) He used his office employees to collect from litigants certain amounts which he calls Common Funds but after the litigant had paid and is (sic) gone, he solely appropriated for himself the said money; (8) He deducted a certain amount including the salaries from Saturday, Sunday and Holidays of his various drivers whose salaries were being paid by the Municipal Government of Parañaque and keeps the deducted amount for himself; (9) He has collected or taken with him cash or goods from the following cases: a) Lorenzo Ona vs. Roberto Holt; b) Mario Tinitigan vs. Atty. Valdez; c) BPI cases; d) Delgado vs. Corpuz; (10) He is courting one lady employee of the Parañaque Municipal Court and out of fear, the lady got married; (11) x x x on several occasions, Judge Jose R. Sebastian brought women defendants after settling their cases to the Laguna Bay Lodge to have sex with him.

Of the above eleven charges, the undersigned found the respondent judge to be culpable of charges numbers 1, 3, 6, and 7, namely: (1) Misappropriation of Public Funds; (3) Falsification of Public Document; (6) He collected the amount of P200.00 up to P1,500.00 for civil marriages he conducted and pocketed the said money for himself; and, (7) He used his office employees to collect from litigants certain amounts which he calls Common Funds but after the litigant had paid and is (sic) gone, he solely appropriated for himself the said money.[9]

After dismissing the six (6) administrative cases against respondent judge for failure of complainants and their counsel to appear on two (2) scheduled hearings despite due notice, and on the basis of his findings in A.M. No. MTJ-89-4-371, the investigating judge recommended that respondent judge be suspended without pay for a period of six (6) months.[10]

We are not in complete agreement with the recommendations of the investigating judge.

First. The investigating judge has no authority to dismiss the six (6) administrative cases filed against respondent judge for failure of the complainants and their counsel to appear on two (2) scheduled hearings despite due notice. It is this Court alone that can dismiss the administrative charges against respondent judge. The only authority of the investigating judge is to recommend such appropriate action as may be proper on the basis of his findings.

Second. The investigating judge also erred in dismissing A.M. No. MTJ-92-661, "Office of the Court Administrator vs. Judge Jose R. Sebastian." If the investigating judge had taken a hard look at the records of this case, he would have discovered that all the charges in A.M. No. MTJ-89-4-371 were also the subject of a complaint filed with the Ombudsman, docketed as OMB-0-9-0974. On 8 February 1990, the Ombudsman issued a resolution[11] holding that a prima facie case for falsification of public document existed in charge No. 3, and for direct bribery involving an act not included in the complaint in A.M. No. MTJ-89-4-371.

The direct bribery case stemmed from an accusation that respondent Judge had asked P500.00 from parolee Leandro O. San Diego before the former would sign the latter's parole report. Later, the corresponding informations for falsification of public document and for direct bribery were filed with the Sandiganbayan, docketed as Crim. Cases Nos. 17271 and 17272, respectively.[12] In a decision dated 16 December 1992,[13] the Sandiganbayan acquitted respondent judge of the falsification charge in Crim. Case No. 17271. Anent the direct bribery charge in Crim. Case No. 17272, the same was provisionally dismissed on 14 October 1992 for failure of the prosecution to present its witnesses,[14] Leandro O. San Diego and Jose L. Co. Under the circumstances, the investigating judge should have gone deeper into the facts and compelled the attendance of witnesses considering

the observation of the Sandiganbayan that -

To the mind of this Court, accused's liability here, if at all, lies more within the threshold of a proper administrative proceeding where the question of whether he should be subjected to any disciplinary action for such a careless actuation or patent indiscretion as shown herein may be determined x x x [15]

Let it be emphasized that an investigating judge is not a mere hearing officer. From the nature of his office, he is tasked to look beyond the allegations of the parties and determine whether respondent judge has in fact committed administrative infractions that would adversely affect the administration of justice and the image of the judiciary as a whole.

Furthermore, we observe that the investigation report of 22 February 1993, which contains the findings of the investigating judge in A.M. No. MTJ-89-4-371, fails to refute respondent judge's argument that the complaint is insufficient in form and substance because the seven (7) original complainants disowned any knowledge that the document they signed was a complaint against respondent, as evidenced by their joint affidavit of April 18, 1989.[16] It is noteworthy that at the hearing, Ronald Javier, one of the complainants who signed the letter dated 19 April 1989 addressed to then Chief Justice Marcelo B. Fernan,[17] repudiated the statements therein contained thus -

Atty. Villamor:

This was previously marked as Exhibit 1 during the preliminary conference.

Q Will you please go over this letter and tell us if the contents of this letter are true?

A It is not true, sir.

Q What is it that it is not true in this letter?

A That we never charged him and there is no reason for us to do so since he is a very good judge.

Q What is not true about this?

A I only saw this letter now.

Q Why is it that you still appear on page 2 of this letter?

A I was not able to read the letter.

Q Even if you did not read you still signed?

x x x x

A I was just told to sign the letter.

x x x x

Q Who told you to sign?

A Judge Sebastian.

Q There is here a joint affidavit which you were confronted a while ago marked as Exhibit 2 of the respondent Judge, will you please go over this affidavit and tell us if the contents are true?

A I just saw this affidavit but I have not read the contents. I was just told to sign it.

Q Who told you to sign this affidavit?

A Judge Sebastian.

Q When did Judge Sebastian ask you to sign this affidavit and letter?

A Around April 1989.

Q Was this before or after the signing of the complaint?

A After.

Q Mr. Witness, do you recall having executed a joint affidavit with a certain Godofredo de Villa which you have attached in your reply to the answer of the respondent Judge? In that joint affidavit you complained that you were forced by Judge Sebastian to do so?

A Yes, sir.

Q There is a signature appearing above the typewritten name Ronald Javier whose signature is that?

A This is my signature.

Q When did you execute this affidavit, Mr. Witness?

Judge Sebastian.

Already answered.

Atty. Villamor:

Q Why did you execute this affidavit, Mr. Witness?

A Because we have a complaint against Judge Sebastian.

Q This affidavit says that: 'Every now and then you were made to sign documents by Judge Jose Sebastian the contents of which we were not allowed to read because if we show hesitation or eagerness to read the contents of the document he will raise his voice that if we will not sign the document' This affidavit speaks of documents, the documents that you are referring to in this affidavit are they the documents shown to you a while ago?

A Yes, sir.

x x x x

RE-CROSS EXAMINATION

BY JUDGE SEBASTIAN:

Judge Sebastian:

Q Do you know who prepared and typed the documents marked as Exhibits 1 and 2?

A No, sir.

Q You came to know that Mrs. Paz Zialcita and Mrs. Remedios de Leon were the ones who prepared and showed it to all of you?

A You were the one who showed it to me.[18]

As adverted to above, complainant Godofredo de Villa who reiterated his complaint against respondent judge in the same joint affidavit dated 3 May 1989 also deplored the harassment and pressure employed by

respondent.[19] Another complainant, Ma. Rosario Manalo, Staff II, same court, testified to the veracity of her complaint against respondent.[20]

The joint affidavit dated 18 April 1989 executed by the seven (7) original complainants becomes even more dubious in the light of the Memorandum for then Chief Justice Marcelo B. Fernan dated 3 May 1989 submitted by the late Court Administrator Meynardo A. Tiro reporting on the pressure exerted by respondent judge upon complainants to desist from pursuing their complaint -

Included in the Agenda - Report dated April 19, 1989, is the request of the complainants - employees for the preventive suspension of the respondent Judge. The former are allegedly subjected to pressure and harassment by the latter, creating an intimidating atmosphere of tension and anxiety in the office. The desperate complainants-employees have repeatedly reiterated their request to the undersigned for the preventive suspension of respondent Judge Jose R. Sebastian; as shown in the following instances.

1. April 21, 1989 - Complainant Jose Co, Court Aide (local hire) personally came to inform the undersigned that he did not sign any affidavit of desistance.
2. April 25, 1989 - Jose Co - Court Aide (local hire), Clarence Ramirez - Staff II, Ronald Javier - Court Aide, Imelda Lorenzo - Casual (local hire). The aforementioned personnel of respondent Judge Sebastian, together with other court personnel from Parañaque, personally came to inform the undersigned of the harassment and pressure exerted on them by the respondent to execute their affidavits of desistance regarding the case they filed in the Supreme Court.
3. April 27, 1989 - Paz Zialcita - Branch Clerk of Court, Remedios A. de Leon - Interpreter. The aforementioned personnel of respondent Judge Sebastian personally came to inform the undersigned that they are being pressured by the respondent Judge not to join those employees who are filing a complaint against him. They were not able to meet with the undersigned as he left for Cotabato to attend a conference.
4. April 28, 1989 - Telephone call from Judge Roberto Makalintal, MeTC, Branch 77, Parañaque, informing that the complainants-employees are seeking his assistance as they are being subjected by the respondent Judge Sebastian to pressure and harassment.
5. May 3, 1989 - Rosalinda Arnuelo, Stenographer, MeTC, Branch 77, Parañaque, and President of the Court Personnel Association, called to inform that respondent Judge terminated the services of complainant Jose Co and blames complainant Court Aide Ronald Javier for the alleged loss of certain records which, ironically, are the records of the cases which are the subject matter of the complaint against the respondent Judge.
6. May 3, 1989 - Jose Co - Court Aide (local hire), Ronald Javier - Court Aide. The aforementioned personnel of the respondent Judge personally came to confirm that, as earlier informed by Ms. Arnuelo, the respondent Judge terminated the services of Mr. Co and blames Mr. Javier for the loss of certain records in his sala. Mr. Javier likewise filed an affidavit-complaint dated May 3, 1989 against respondent Judge Jose R. Sebastian which this Office will report to the Court by way of Agenda.[21]

The moral ascendancy of respondent judge over his staff cannot be gainsaid. The reply dated 19 August 1989[22] filed by complainants Co and Javier to the answer of respondent judge proves this point. According to them, the employees of the MeTC drafted their complaint in secret. However, respondent judge discovered their secret before the complaint could be notarized. To ensure the filing of the complaint which could not be notarized, there being no lawyer who dared to do so, Co gave the same to Ms. Rosalinda Arnuelo, President of the Muntinlupa-Las Piñas-Parañaque Court Employees Association. The initial testimony of complainant Paz Zialcita, Branch Clerk of Court, MeTC, Br. 78, who turned hostile witness for complainants, unwittingly gave

credence to their allegations -

Atty. Villamor:

Q Do you know a certain Erlinda?

PAZ ZIALCITA:

A Yes, sir.

Q Who is she?

A Court Stenographer, sir.

Q Is it not a fact that x x x prior to the filing of this criminal complaint, there was an incident that involved the responding Judge and this Erlinda?

A Yes, sir.

Q What was that?

A No answer.

Q And what was the root cause of that incident?

A It was about a verbal order by Judge Sebastian.

Q What was the verbal order?

A Regarding a piece of paper which Judge Sebastian would like to get.

Q What was that piece of paper . . . is it not a fact that that piece of paper is the complaint Ms. Witness?

Your Honor, may I make it of record that the Judge is restrain to (sic) the witness, Your Honor.

JUDGE SEBASTIAN:

Your Honor, that is not true.

COURT:

Continue.

ATTY. VILLAMOR:

You said that it was about to recover that piece of paper in the possession of Erlinda Armuello?

A Yes, sir.

Q The very complaint?

A I have no idea, sir.

Q And you were just instructed by Judge Sebastian to get that piece of paper?

A Yes, sir, no more knowledge.

Q And this incident happened before the filing of the complaint . . . before you heard this on channel 7?

A Yes, sir.

Q As a matter of fact it happened after . . . by the way how many days before?

A I can no longer recall.

Q So, but after the incident you recall when?

A Yes, sir but I don't know the exact date.

Q So independently what you heard in channel 7 you already knew that a complaint was filed against Judge Sebastian?

A It was thru channel 7 when I came to know about that.

Q So, you are withdrawing your answer that you knew that this complaint was filed after you heard this on channel 7?

JUDGE SEBASTIAN:

Objection, Your Honor, there was no such statement, it's only a piece of paper.

COURT:

Let's see.

ATTY. VILLAMOR:

Q You testified that after . . . by the way when did you come to know this complaint?

A I came to know this complaint when I heard it on channel 7.

JUDGE SEBASTIAN:

It's about a piece of paper, Your Honor please.

COURT:

Continue.

ATTY. VILLAMOR:

Q Did you know of this case before it was televised, that is the question? . . . and she has stated that (s)he has knowledge before it was heard on the television?

A Yes, sir because of what transpired.

COURT:

She knows about it even before.

ATTY. VILLAMOR:

So that incident that transpired between Judge Sebastian and Erlinda Armuello has got something to do with the filing of the complaint?

A I don't know, sir.

Q But you came to know that a case was filed because of that incident?

JUDGE SEBASTIAN:

She came to know that a complaint was filed thru channel 7 . . .

COURT:

Witness may answer.

WITNESS:

A Come again . . .

ATTY. VILLAMOR:

Q In other words Ms. Witness, that the incident transpired between Judge Sebastian and Erlinda Armuello has got something to do with this case, is it not?

A Okay sir, it goes like this . . . when I was instructed by Judge Sebastian to get that piece of paper from Erlinda Armuello and Erlinda Armuello hesitated to give me that paper and that incident resulted to a heated argument between Judge Sebastian and Erlinda Armuello.[23]

Likewise, the testimony of Clerk of Court Jose C. Ison graphically illustrates the moral influence of respondent judge -

ATTY. VILLAMOR:

(To witness, JOSE C. ISON)

Q Mr. Witness, can you testify when you were asked whether or not you issued a receipt to Judge Sebastian and you testified that you did not make any receipt for it? My question now is: Why did you not make a receipt in the delivery of those checks?

ATTY. MATIC:

That is improper for redirect, Your Honor.

COURT:

Answer.

WITNESS:

A As a judge, Your Honor, and as we are his subordinates, I think it would be unethical for me to ask a receipt being his subordinate.[24]

These attendant circumstances prompt us to reject the plea of respondent judge that the complaint in A.M. MTJ-89-4-371 be considered as insubstantial because of the joint affidavit of some of the complainants dated 19 April 1993. We have always stressed that administrative actions are not made to depend upon the will of every complainant who may, for one reason or another, condone a detestable act, otherwise the supervisory power of this Court to discipline erring members of the judiciary will be put to naught.[25]

Respondent judge lays too much emphasis on the inability of complainant Jose L. Co to attest to the truthfulness of his complaint. Apparently, respondent judge forgets that at the hearings, Co's fellow complainants, Ronald Javier and Ma. Rosario Manalo, and Godofredo de Villa, in a joint affidavit of 3 May 1993, have affirmed the veracity of their complaint and their having voluntarily signed it.

Considering the need for a more thorough and in-depth examination of these administrative cases, we initially contemplated remanding the records to the investigating judge for further evaluation. Time constraints however prompted us to refer the re-evaluation of these cases to the Office of the Court Administrator instead.[26]

In a well-written and exhaustive memorandum of 8 December 1993, the Office of the Court Administrator submitted its findings holding respondent judge guilty of malversation, maintaining a common fund and

falsification of public document. Such findings being in accord with law and the evidence need no further amplification, Thus -

EVALUATION

What remains to be examined are the charges relating to malversation (A.M. No. MTJ-89-4-371), falsification of public document (A.M. No. MTJ-92-661 and A.M. No. MTJ-89-4-371), and of maintaining a common fund (A.M. No. MTJ-89-4-371). The records of the case had to be meticulously examined to ascertain the culpability of respondent judge.

The charge of malversation (A.M. No. MTJ-89-4-371)

This charge of malversation relates to four (4) Banco de Oro checks of P3,000.00 each for a total of P12,000.00 delivered by Interworld Assurance Corporation as satisfaction for the judgment against the bond liabilities in eleven (11) criminal cases. The inquest judge rejected the claim of respondent judge that initially, the insurance company delivered four (4) checks in the amount of P3,000.00 each; these checks were deposited in the personal savings account of respondent judge at BPI-Family Bank because this was found to be a convenient way of encashment of the checks, as allegedly, the Supreme Court office did not want to accept the checks as they are payable to the MeTC of Parañaque; that all the checks were dishonored and eventually, only the sum of P6,000.00 was paid by the insurance company.

Respondent judge thus deny the charge of Clerk of Court Jose Ison that he pocketed P6,000.00. The inquest judge rejected this posture because 'the records, vouchers and motions of Interworld were nowhere to be found.' The inquest judge found that there was no sufficient evidence that Interworld only paid P6,000.00.

When this charge was first ventilated, the respondent judge vehemently denied having received any checks from the Clerk of Court. Thus, in his Answer dated June 9, 1989, (p. 61 of Rollo, Adm. Case No. 89--4-371 MeTC), respondent judge, under oath, swore that he never had in his custody in any manner any money and fund that does not belong to him.

In a Rejoinder to Reply dated October 31, 1989 (p. 258, Rollo), respondent judge, under oath again categorically and absolutely denied the statement that Ison handed to respondent any postdated check. However, the Ombudsman discovered that these four (4) checks were actually deposited with the personal account of the respondent judge. This deposit was concealed by the respondent judge in his sworn answer to the charge.

Respondent judge has not explained even when he testified before the inquest judge why he concealed the fact of the deposit of these checks with his account. If two (2) of the checks totalling P6,000.00 were dishonored and Interworld did not replenish the checks, it has not been explained by respondent judge why no alias writ of execution was issued against Interworld and why he allowed to pass the final return of the sheriff, and even alleged in his answer that the matter of the four (4) checks "had been finally disposed.

The dishonor of the two checks issued by Interworld explains the fact that respondent judge was able to turn over only the amount of P6,000.00 to the Judiciary Development Fund.

We are, however, gravely concerned over the fact that the respondent judge lied to the investigator regarding his receipt of the Interworld checks and the deposit of these checks in his bank accounts. His Rejoinder dated October 31, 1989 whereby he presented the affidavits of Interworld officers stating that only P6,000.00 was actually paid out of the P12,000.00 liability betrays a deliberate effort to mislead the investigator and conceal the true circumstances surrounding the issuance of the checks. The respondent judge not only lied. He employed others to distort the truth. There was a clear violation of the oath that he took as a lawyer to 'do no falsehood nor consent to the doing of any in court.'

Moreover, while respondent judge may not be criminally liable, he violated Canon 2 of the Code of Judicial

Conduct, that '[a] judge should avoid impropriety and the appearance of impropriety in all activities.' If the checks in question were not issued in the name of the Supreme Court, then they should have been returned to Interworld with instructions that new checks be made payable to the Supreme Court. Respondent judge should not have taken it upon himself to cause the encashment of said checks. While he may not have benefitted in this particular instance, his action casts doubts as to the integrity of his judicial actions.

The charge of falsification of public document (A.M. No. MTJ-92-661 and A.M. No. MTJ-89-4-371)

As to the charge of falsification of public document, it appears that respondent judge did not intentionally falsify the Order of November 10, 1988, particularly, the portion thereof that states that the trial fiscal had voiced no objection in the dismissal of Criminal Cases Nos. 65628-30. As found by the Sandiganbayan in Crim. Case No. 17271, respondent judge had ordered his branch clerk of court, Mrs. Paz Zialcita, to prepare a dismissal order in said cases, using the prepared form of such an order. That respondent judge signed the Order of November 10, 1988, without checking the work done by his branch clerk of court, does not make him liable for falsification in the absence of malice or evil motive on his part.

At any rate, the Sandiganbayan noted that when the error was brought to the attention of the respondent judge in a motion for reconsideration filed by the prosecution, he immediately reinstated the case.

This Court is in full accord with the conclusion of the Sandiganbayan that the respondent judge did not maliciously intend to cause the dismissal of Crim. Case Nos. 65628-30. We also quote with approval the Sandiganbayan's observation regarding respondent judge's actuations in this case:

This lapse or indiscretion committed here by accused presiding judge is, of course, uncalled for and unbecoming of, one whose position as a magistrate of the law requires that he should always act with due care and circumspection in the discharge of his duties. In his hands lies the fate of litigants and parties whose liberty and properties are placed at stake before him. x x x

To the mind of the Court, accused's liability here, if at all, lies more within the threshold of a proper administrative proceeding(s) where the question of whether he should be subjected to any disciplinary action for such a careless actuation or patent indiscretion as shown herein may be determined. x x x (Decision in Crim. Case No. 17271, p. 13)

Respondent judge's failure to exert due diligence in handling Crim. Cases Nos. 65628-30 similarly constitutes a violation of the Code of Judicial Conduct, particularly the judge's duty to 'diligently discharge his administrative responsibilities' (Rule 3.08, Canon 3, Code of Judicial Conduct) and 'maintain professional competence in court management' (Id.).

The charge of maintaining a common fund (A.M. No. MTJ-89-4-371)

We also find respondent judge administratively liable as regards the charge that he has ordered his staff to collect money from litigants to be placed in a so-called common fund.

There is no doubt that such a common fund exists. The staff of Branch 78, MTC, Parañaque, attested to this fact in both their joint affidavit and their testimonies before the investigating judge. They claim that respondent judge had thought of the common fund to help the low-salaried employees of the court. The money that goes into the common fund comes from the 'extra fees' received by the sheriff and process servers, as well as the fees received by the court stenographers. The respondent judge also contributes to the common fund. At times, litigants and those married before respondent judge donate to the common fund.

The keeping of a fund, financed directly by litigants and other persons dealing with the Court and by 'extra fees' collected by the sheriffs and process servers, such fund being at the disposal of the judge for the private and personal benefit of the employees of his court, is, to say the least, condemnable. The respondent judge did

not only condone unlawful solicitation; he organized it as a part of the day's work and as a ready source of income. He thus defiled his noble office, indeed his entire Court, by infecting it with desire for private gain and profit. More tragic than that, Judiciary as a whole, before the people in respondent's town, was placed in disrepute. As observed in *Junio vs. Judge Rivera, Jr.*, A.M. No. MTJ-91-565, August 30, 1993, a municipal judge is the most visible living representation of the country's legal and judicial system. He is the judicial officer who on a day-to-day basis deals with the disputes arising among simple, rural people who comprise the great bulk of our population. He is the judicial officer who comes into closest and most frequent contact with our people. The judiciary as a whole and its ability to dispense justice are inevitably measured in terms of the public and private acts of judges in the 'grass roots' level.

We have previously dealt with acceptance by judges of benefits from litigants. In *'In Re: Solicitation of Donations By Judge Benjamin H. Virrey, MTC, Polillo, Quezon'*, Adm. Matter No. 90-7-1159-MTCC, October 15, 1991, we ordered the dismissal from the service of the respondent judge for having received a P3,000.00 'donation' for a 'Judiciary Welfare Fund' from an accused in an illegal fishing case. We found the respondent judge guilty of unlawful solicitation under provisions of Section 7(d) of R.A. 6714, which provides:

(d). Solicitation or acceptance of gifts. - Public Officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the cause of their official duties or in connection with any operation being regulated by or any transaction which may be affected by the functions of their office.

We found the act violative of Canons 1 and 2 of the Code of Judicial Conduct inspite of the justification, similar to that made in *Lecaroz vs. Garcia* (107 SCRA 557), that the amount will be used to refurnish respondent's office. In *Lecaroz*, we ruled that solicitation of donations for office equipment and furniture from private persons is violative of the proper norm of judicial behavior. And, in the consolidated decision in five administrative cases against Judge Luis D. Dictado, A.M. No. RTJ-86-50, A.M. No. RTJ-88-222, A.M. No. RTJ-88-224, A.M. No. RTJ-89-320, A.M. No. RTJ-89-389, June 28, 1993, we considered as grave misconduct the acceptance by the Judge of the benefits of free bus rides from a litigant. We have repeatedly stated the reasons why the Judge must be above suspicion and beyond reproach. As we said in *Ubarra vs. Judge Mapalad*, A.M. No. MTJ--91-622, March 22, 1993:

The Judiciary performs a very delicate function and a very sacred duty - that of administering justice. The Judicial Office demands that the incumbent should conduct himself in such a manner as to merit the respect, reverence and confidence of the people because a Judge is the visible representation of the law and, more importantly, of justice. For him, the people draw their will and awareness to obey the law. They see in him an intermediary of justice between two conflicting interests. In a larger sense, the Judge must be at the forefront of all efforts to preserve and enhance the public trust character of a public office. Anyone who cannot do so should not be allowed to stay a minute longer in any judicial seat.

The herein respondent judge did not just engage in a solitary instance of solicitation. He instituted a system of contribution by what he considered as his public, the very people who seek justice in his court, of money for the use, as unabashedly admitted, of the employees of the court. His act constituted an utter disregard of the public trust character of a public office.

We find respondent GUILTY:

1. In A.M. No. MTJ-89-4-371 (on malversation) of gross violation of his lawyer's oath and violation of Canon 2 of the Code of Judicial Conduct that [a] Judge should avoid impropriety and the appearance of impropriety in all activities;
2. In A.M. No. MTJ-92-661 and A.M. No. MTJ-89-4-371 of violation of Canon 3 of the Code of Judicial Conduct regarding the duty of a judge to 'diligently discharge his administrative responsibilities' and to

'maintain professional competence in court management;'

3. In A.M. No. MTJ-89-4-371 (maintaining a common fund) of gross misconduct and of violation of Section 7(d) of R.A. 6714 and of Canons 1 and 2 of the Code of Judicial Conduct.[27]

The Office of the Court Administrator recommends that appropriate disciplinary sanctions be imposed upon respondent judge as warranted by his misconduct. Significantly, it observes that violations of Canons 1 and 2 of the Code of Judicial Conduct are serious offenses punishable by dismissal from the service; and that the infractions of respondent taken together render him unfit to discharge the duties and functions of a judge. The Office of the Court Administrator also recommends that the charges in all the other administrative cases be dismissed for want of evidence.

We agree in toto with the findings and recommendations of the Office of the Court Administrator.

Additionally, there is one equally disturbing incident of misconduct committed by respondent judge in A.M. No. MTJ-89-4-31. In charge No. 2, he was accused of deriving pecuniary benefit from his dismissal of Crim. Case No. 71396 without approval of the Fiscal.[28]

In that case, complainant received a check in the amount of P35,000.00 as settlement of the civil liability of accused. Upon request of complainant's daughter, respondent judge readily deposited this check in his personal account. After having received the cash, the spouses contributed P500.00, P200.00 for the common fund and P300.00 for the replenishment of kitchen supplies in respondent's court. While there is no evidence to support the charge against him, we however note that respondent judge finds nothing unethical in his action.[29] He justified his behavior by claiming that complainants were barrio folks who urgently needed cash but could not deposit or encash the check because they did not have any bank account.

We are not persuaded. In a joint affidavit dated 13 April 1989, complainant Apolinario Sebastian and his wife, Milagros Sebastian, corroborated the statement of respondent judge that they were in immediate need of cash. But, they did not confirm his allegation that they did not have any bank account.[30] Be that as it may, compassion is undisputably a commendable trait. Yet, this sentiment should not be made to prevail at the expense of the integrity of the court. The Ombudsman correctly states that by reason of his duties and functions, respondent judge is supposed to possess utmost prudence and/or delicadeza in dealing with parties-litigants. He should have declined or refused the request of Mrs. Milagros Sebastian to avoid suspicion that he had some pecuniary interest in the case.[31] Granting that complainant did not have a bank account, respondent judge could have required the insurer of the vehicle who issued the check to pay complainant in cash or he could have advised them to open an account using the check as initial deposit. The affidavit of complainants reveals that they did not get the money immediately but had to go back to respondent judge after several days to get the cash.

While every office in the government service is a public trust, no position exacts a greater demand on moral righteousness and uprightness of an individual than a seat in the judiciary.[32] Hence, judges are strictly mandated to abide with the law, the Code of Judicial Conduct and with existing administrative policies in order to maintain the faith of our people in the administration of justice.

Respondent judge miserably failed to measure up to stringent judicial standards. His lack of candor, gross misconduct and careless discharge of his administrative duties, and worse, leading his subordinates to graft and corruption through unauthorized solicitations from litigants and private parties, constitute a serious liability to the administration of justice. As rightly perceived by the Office of the Court Administrator, his transgressions when considered together are grave and cannot be countenanced. In *Sulu Islamic Association of Masjid Lambayong v. Malik*[33] and in *In re Solicitation of Donations by Judge Benjamin H. Virrey*,[34] we held that violations of the Code of Judicial Conduct are serious offenses which call for dismissal from the service. Hence, we find no reason

to depart from this ruling. Respondent judge's breach of the provisions of the Code clearly manifests his unfitness to remain any minute longer in office.

WHEREFORE, for (1) his gross violation of the lawyer's oath and of Canon 2 of the Code of Judicial Conduct in A.M. No. MTJ-89-4-371; (2) his violation of Canon 3 of the Code of Judicial Conduct in A.M. Nos. MTJ-92-661 and MTJ-89-4-371; and, (3) his gross misconduct and violation of Sec. 7, par. (d), of R.A. 6714 and of Canons 1 and 2 of the Code of Judicial Conduct in A.M. No. MTJ-89-4-371, respondent JUDGE JOSE R. SEBASTIAN, Metropolitan Trial Court, Br. 78, Parañaque, is DISMISSED from the service with prejudice to reinstatement or appointment to any public office including government-owned or controlled corporations, with forfeiture of all retirement benefits and privileges.

Conformably with our ruling in *Office of the Court Administrator v. Gines*, A.M. No. RTJ-92-802, 5 July 1993, respondent JUDGE SEBASTIAN is ordered to VACATE IMMEDIATELY his position as such Presiding Judge of Branch 78 of the Metropolitan Trial Court of Parañaque as well as any other position in the judiciary to which he may be presently assigned, and to CEASE and DESIST from performing any further official function.

Except for the administrative cases where we find respondent judge guilty, all the rest of the charges are DISMISSED for want or insufficiency of evidence.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Vitug, and Kapunan, JJ., concur.

[1] Rollo, A.M. No. MTJ-90-416, p. 7.

[2] Rollo, A.M. No. MTJ-97-661, p. 47.

[3] *Id.*, p. 60.

[4] Rollo, A.M. No. MTJ-88-160, p. 92.

[5] *Id.*, p. 101.

[6] Rollo, A.M. No. MTJ-89-4-371, Vol. II, p. 712.

[7] Rollo, A.M. No. MTJ-92-661, p. 61.

[8] Rollo, A.M. No. MTJ-88-160, p. 127.

[9] Rollo, A.M. No. MTJ-89-4-371, Vol. II, p. 720.

[10] *Id.*, p. 723.

[11] Exh. "28," *Id.*, p. 589.

[12] Rollo, A.M. No. MTJ-92-661, pp. 8-12.

[13] Rollo, A.M. No. MTJ-88-160, p. 104.

[14] *Id.*, p. 71.

[15] Rollo, A.M. No. MTJ-88-160, p. 115.

[16] Exh. "2," p. 94.

[17] Exh. "1," p. 92.

[18] TSN, 9 May 1990, A.M. No. MTJ-89-4-371, Vol. II, pp. 507--510.

[19] Rollo, A.M. No. MTJ-89-4-371, Vol. I, p. 29; Affiant is now abroad, Id., Vol. II, p. 443.

[20] TSN, 9 May 1980, Id., Vol. II, pp. 489-492.

[21] Id., Vol. I, pp. 16-17.

[22] Id., p. 163.

[23] TSN, 12 February 1992, Rollo, A.M. No. MTJ-89-4-371, Vol. II, pp. 553-554. Erlinda Armuello referred to here is none other than Rosalinda Arnuello. In the answer of respondent judge and reply of complainants Co and Javier, the surname "Arnuello" is spelled with single letter "L" and double "LL", respectively.

[24] TSN, 21 October 1992, Id., p. 658.

[25] See *Ramirez v. Corpuz-Macandog*, Adm. Matter No. R-351-RTJ; *Samson v. Corpuz-Macandog*, Adm. Matter R-359-RTJ; *Torres v. Macandog*, Adm. Matter No. R-621-RTJ; *Lazaro v. Corpuz-Macandog*, Adm. Matter No. R-684-RTJ; *Alba v. Corpuz-Macandog*, Adm. Matter No. R-687-RTJ; Designation of an Acting Judge in Branch CXXI, RTC, Caloocan City, Adm. Matter No. 86-4-9987-RTJ, all promulgated on 26 September 1986, 144 SCRA 462, 476.

[26] En Banc Resolution of 31 August 1993, Rollo, A.M. No. MTJ--92-661, p. 92.

[27] Rollo, A.M. No. MTJ-92-661, p. 92.

[28] Rollo, A.M. No. MTJ-89-4-371, Vol. I, p. 2.

[29] Answer of respondent judge, Id., p. 71.

[30] Id., pp. 95-96.

[31] Rollo, A.M. No. MTJ-89-4-371, Vol. II, p. 595.

[32] *Montemayor v. Collado*, A.M. No. 2516-MJ, 10 September 1981, 107 SCRA 258, 264.

[33] A.M. No. MTJ-92-691, 10 September 1993,

[34] *Supra*, p. 29.

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