

**RE: REPORT ON THE JUDICIAL AUDIT CONDUCTED IN THE RTC,
BRANCH 60, BARILI, CEBU***A.M. No. 04-7-373-RTC. December 17, 2004*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a-m-no-04-7-373/>**PER CURIAM:**

In anticipation of the forthcoming compulsory retirement of respondent Judge Ildefonso B. Suerte on January 23, 2005 and in response to newspaper reports questioning the alleged highly irregular handling by the same respondent of the murder case of Cedrick Devinadera, the self-confessed accessory in the killing of Alona Bacolod Ecleo, wife of Philippine Benevolent Missionaries Association supreme leader Ruben Ecleo, Jr., Deputy Court Administrator Christopher Lock recommended that a judicial audit be immediately conducted of the Regional Trial Court, Branch 60, Barili, Cebu. DCA Lock likewise recommended that an investigation be conducted to determine compliance by Judge Suerte with this Court's Administrative Order (AO) No. 36-2004, which specifically provides:

As Assisting Judge, Judge Cañete shall act on all newly filed cases in the Regional Trial Court, Branch 60, Barili, Cebu, as well as all civil and criminal cases in said court where pre-trial has not been terminated as of the date of the Administrative Order.

In a Memorandum dated June 4, 2004, the Honorable Chief Justice Hilario G. Davide, Jr. directed DCA Lock to immediately proceed to Cebu to conduct an inquiry into the matter and determine if Judge Suerte violated the aforecited AO in relation to the Devinadera case, as well as to other cases which Judge Suerte heard, tried or decided after the issuance of the AO. In the same Memorandum, the judicial audit team headed by Atty. Rullynn S. Garcia which was then in Cebu was likewise instructed to include Branch 60 of the Regional Trial Court in Barili, Cebu in their audit.

On July 9, 2004, the audit team submitted its report, which was summarized in this Court's en banc Resolution dated October 12, 2004, to wit:

- On Judge Ildefonso Suerte:

(1) He failed to act or take further action on 170 cases despite the lapse of considerable length of time since they were filed or since the last actions were taken thereon by the court, to wit:

Civil Cases Nos. SP-BAR-201, LRC-198, SP-BAR-192, LRC-188, SP-BAR-074, SP-BAR-174, SP-BAR-135, SP-BAR-125, SP-BAR-124, SP-BAR-104, SCA-BAR-010, 013, 077, 109, 154, 170, BRL-LRC-171, BRL-LRC 185, 189, 196, 198, 199, 200, 208, 209, 212, 212, 221, SP-BAR-227, CEB-BAR-227, SP-BAR-230, 230, 234, 239, 254, 270, 273, 275, 282, 286, 307, 314, 318, 319, 338, 342, 347, 359, 360, 361, 363. (51 in all)

Criminal Cases Nos. 831-A, 209, 210, 249, 273, 276, 277, 311, 376, 380, 381, 401, 404, 411, 421, 427, 436, 437, 438, 439, 443, 464, 507, 508, 513, 518, 531, 532, 559, 566, 572, 580, 581, 594, 602, 613, 621, 650, 652, 656, 659, 665, 687, 689, 694, 707, 711, 714, 732, 737, 739, 754, 776, 783, 787, 795, 810, 819, 821, 823, 824, 828, 831, 833, 837, 838, 839, 847, 856, 861, 867, 870, 871, 872, 873, 874, 875, 876, 878, 879, 886, 900, 906, 907, 953, 903, 909, 910, 912, 913, 918, 919, 921, 922, 923, 925, 930, 937, 940, 941, 942, 943, 944, 945, 957,

959, 964, 966, 975, 987, 989, 997, 998, 1023, 1025, 1040, 1043, 1044, 1047. (119 in all)

(2) He acted or took cognizance of the following cases in violation of Administrative Order No. 36-2004, dated March 3, 2004:

Civil Cases Nos. 365, 366, 367, 372, 373, 374, 376, 377, 378, 379, 380, 381, 382, 383, 384, 386, 387, SP-BAR-266.

Criminal Cases Nos. 1034, 1035, 1039.

(3) He failed to make a judicious assessment of the allegations contained in the petitions for declaration of nullity of marriage and annulment of marriage, particularly with respect to the addresses of petitioners, to wit:

9.1 There are indications which tend to show that the parties in some cases are not really residents of the places, which fall under the territorial jurisdiction of Branch 60, contrary to their claim or allegation in their petition. The act of Branch 60 in taking cognizance thereof despite the doubtful claims of petitioner as to their place of residence betrays its patent laxity in exercising its duty to make a judicious assessment of the allegations contained in the petition. For instance.

9.1.1 In CEB-BAR-377, entitled *Leyson, Jr. v. Bontuyan*, the given address of the petitioner as alleged in the petition is “c/o Virgilio Concepcion, Poblacion, Barili” while that of the respondent is “Hi-way 77, Talamban, Cebu City.” The use of the abbreviation “c/o” which means “care of,” connotes that petitioner is not an actual resident of said place; otherwise, there would be no more need for petitioner to identify himself with someone else who is a known resident of Barili, Cebu in the matter of establishing his address therein.

9.1.2 In CEB-BAR-380, entitled *Mitchell v. Mitchell*, the given address of the petitioner as alleged in the petition was changed from “San Roque, Quiot Pardo, Cebu City” to “Brgy. Tapon, Dumanjug, Cebu,” a municipality which falls under the territorial jurisdiction of Branch 60. The change of address was apparently effected to clothe Branch 60 with jurisdiction to try and decide the case.

9.1.3 In CEB-BAR-372, entitled *Tabarno v. Tabarno*, the given address of the petitioner as appearing in the certificate of non-forum shopping, which is an integral part of the petition, was changed from “Tisa, Cebu City” to “Barili, Cebu.” Again the change of address was apparently effected as an after thought to enable Branch 60 to exercise jurisdiction over the case.

9.1.4 In CEB-BAR-376, entitled *Caray v. Baruel*, the given address of petitioner as alleged in the petition is “c/o Dionisia Baruel Kaindoy, Poblacion, Barili, Cebu,” while that of the respondent is Surigao City. Again, the use of the abbreviation “c/o” raises doubt as to the veracity of petitioner being a genuine resident of the given address.

9.1.5 In CEB-BAR-373, entitled *Ora v. Ora*, the given address of the petitioner as alleged in the body of the petition is “Poblacion, Dumanjug, Cebu.” However, his address as indicated in the verification of the petition is “Osmeña Blvd., Cebu City.” The variance of the address of the petitioner as appearing in the body of the petition and in the verification should have been looked into by Judge Suerte to determine which of the two is correct. He apparently did not.

(4) He acted on certain cases with undue haste in violation of the Rule on Declaration of Nullity of Void Marriages and Annulment of Voidable Marriages, which was approved by the Court on March 4, 2003 in A.M. No. 02-11-10-Honorable Supreme Court, resulting to the prejudice of respondents, to wit:

9.2.1 In CEB-BAR-278, entitled *Suarez v. Montenegro*, Judge Suerte, on May 6, 2004, allowed the ex parte presentation of petitioner’s evidence, after having declared that respondent and counsel “failed to appear despite notice” and submitted the case for decision.

Perusal of the records, however, revealed that the notice of hearing scheduled for May 6, 2004 was only mailed

to the respondent, “c/o Alma Borromeo, Langlad, Naga, Cebu,” on May 3, 2004, or three (3) days prior to the hearing. At the time the hearing was conducted on May 6, 2004, Branch 60 had not yet received the return of said notice. The declaration, therefore, of Judge Suerte that respondent and counsel “failed to appear despite notice” had no factual and legal bases.

9.2.2 In CEB-BAR-350, entitled *Cuesta v. Yanoc*, Judge Suerte submitted the case for decision less than two months from its filing.

The case was filed on January 29, 2004. The summons was issued on the same day, and the same was served upon the respondent through substituted service on February 3, 2004. On March 4, 2004, the Cebu Provincial Prosecution Office filed its Investigation Report. On the same day, Judge Suerte allowed petitioner to identify and mark her documentary exhibits to prove the jurisdictional facts of the case. The case was then set for trial on March 12, 2004. On said date, or less than two (2) months from its filing, the case was submitted for decision.

9.2.3 In CEB-BAR-293, entitled *Gaviola v. Rivera*, Judge Suerte declared in his Order of November 13, 2003 that respondent and counsel failed to appear “despite due notice” and submitted the case for decision after allowing petitioner to present evidence *ex parte*. The records of the case are bereft of any proof that respondent and his counsel were duly notified of the November 13, 2003 hearing.

The case was decided by Judge Suerte on January 13, 2004, or six (6) months since it was filed on July 4, 2003.

9.2.4 In CEB-BAR-348, entitled *Regis v. Litijio*, Judge Suerte decided the case less than four (4) months from the time it was filed on January 28, 2004 on the petitioner’s deposition upon oral examination, which was taken on February 19, 2004. The records do not show that respondent was duly notified of the taking of said deposition.

9.2.5 In CEB-BAR-329, entitled *Castro-Roa v. Roa*, Judge Suerte exhibited extraordinary fervor in deciding the case in a record time of sixty-seven (67) days from the time it was filed, and in surreptitiously bestowing finality thereto twenty-three (23) days later by issuing an Entry of Final Judgment himself.

(5) He rendered a decision in another case for declaration of nullity of marriage based on what appears to be a fabricated transcript of stenographic notes, thus:

In Civil Case No. CEB-BAR-250, entitled *Santos v. Santos*, which was filed on January 23, 2003, Judge Suerte made it appear in his decision that plaintiff Rechel Taborda Santos testified in open court, when, from all indications, no such testimony ever took place. The alleged testimony of the plaintiff, as recorded in the transcript of stenographic notes (TSN) of the supposed proceedings in this case on August 14, 2003, was substantially quoted in the decision, dated October 10, 2003, which declared the marriage between the plaintiff and defendant null and void.

There are factors, however, that cast doubt upon the authenticity of the TSN in question. First, the name of the stenographer who took down the stenographic notes of said proceedings does not appear in the TSN. This is contrary to the common practice in all courts in the Philippines whereby the names of the court stenographers who assisted in the proceedings are written on the first page of the TSN, along with the names of the presiding judge, prosecutor and private counsels. Second, the court stenographers of Branch 60, namely: Ma. Lydia B. Castro, Violeta Y. Causin, Estrellia A. Facturan and Corazon B. Labajo, issued a certification, dated June 9, 2004, which was attested to by clerk of court Atty. Razonable, declaring that they did not prepare the TSN in question. Third, 2nd Assistant Provincial Prosecutor Napoleon H. Alburo, the resident prosecutor of Branch 60, issued a certification, dated June 11, 2004, declaring that while he appeared and attended the scheduled hearing on all cases at Branch 60 on August 14, 2003, he denied having attended a hearing of this case on the date. Fourth, this case was not among the cases listed in the calendar of cases for Thursday, August 14, 2003.

Fifth, the TSN in question appears to have been prepared outside the premises of Branch 60, as it was stamped "RECEIVED" by Ms. Manila, the clerk-in-charge of civil and criminal cases. Besides, Ms. Manila admitted having received the TSN in question from someone who is not an employee of Branch 60, but she could not recall who that person was.

(6) He proceeded with Criminal Case No. CEB-BRL-1039 (People vs. Devinadera) and decided the same despite knowledge of the pendency of another case in RTC, Cebu City, docketed therein as Criminal Case No. CBU-62308, which involves the same subject matter;

(7) In SP-BAR-266, entitled In the Matter of Settlement of the Intestate Estate of the Late Jose Stockli of Lambug, Badian, Cebu, Judge Suerte ordered the appointment of a special administrator of the estate of the decedent one day following the filing of the petition:

Atty. Edgar Gica, who claims to be the trusted counsel and confidant of Swiss national Josef Stockli, single and a holder of a permanent resident Philippine visa, on June 1, 2004, filed a petition for issuance of letters of administration and appointment of a special administrator of the properties, consisting of real properties, vehicles, bank accounts and others, of the deceased Stockli. Atty. Gica claims that Stockli had no known heirs in the Philippines and abroad except her full blood sister, Elizabeth Blatter who is residing in Isliberg, Switzerland. Aside from the properties allegedly left by Stockli, Atty. Gica claims that the former had left unsettled liabilities.

On June 2, 2004, Judge Suerte issued an Order, declaring the prayer for the appointment of a special administrator to be impressed with merit. Hence, Atty. Gica was appointed special administrator of the estate of Stockli to serve with a bond of twenty thousand pesos (P20,000.00).

On the same day, Atty. Gica posted a surety bond in the amount of P20,000.00 in compliance with the above-mentioned order, through Intra State Assurance Corporation, whose address is listed in the court records as "Rm. 912, 9[th] Floor, Doña Narcisa Bldg., 8751 Paseo de Roxas, Makati City," The bond was duly approved by Judge Suerte.

Still on the same day, Branch 60, through its clerk of court, Atty. Rhoda S. Apquero-Razonable issued the appointment of Atty. Gica as special administrator of the estate of deceased Stockli.

Undoubtedly, the act of Judge Suerte in causing the issuance of the appointment of Atty. Gica as special administrator of the estate of deceased Stockli one day after the filing of the petition constitutes a gross violation of the procedural requirements of notice and hearing. Section 3, Rule 79, Rules of Court, provides that "(w)hen a petition for letters of administration is filed in the court having jurisdiction, such court shall fix a time and place for hearing the petition, and shall cause notice thereof to be given to the known heirs and creditors of the decedent, and to any other persons believed to have an interest in the estate, in the manner provided in sections 3 and 4 of Rule 76." The court shall then cause notice of such time and place to be published three (3) weeks successively, previous to the time appointed, in a newspaper of general circulation. The court shall also cause copies of the notice of the time and place fixed for hearing to be addressed to the designated or other known heirs, legatees, and devisees of the testator resident in the Philippines at their places of residence, and deposited in the post office with the postage thereon prepaid at least twenty (20) days before the hearing, if such places of residence be known.

Judge Suerte opted not to cause the issuance of notice of hearing, as he apparently relied on the allegation of Atty. Gica that Stockli had no known heirs in the Philippines. He failed, however, to consider the fact that Stockli had creditors, particularly his employees to whom he owed their salaries and wages, as well as the lessor of some of the real properties in his possession prior to his death, who are entitled to notice and hearing pursuant to Section 3, Rule 79, Rules of Court.

The requirements of notice and hearing imply that the appointment of a special administrator cannot be made

as a matter of course. Section 1, Rule 80 of Rules of Court even provides that it is only when there is delay in granting letters testamentary or of administration by any cause that the court may appoint a special administrator to take possessions and charge of the estate of the deceased until the questions causing the delay are decided. In the instant case, no delay can be reasonably attributed in the manner of the issuance thereof barely two days old when the appointment of the special administrator was made.

In ordering the appointment of a special administrator of the estate left by Stockli without the required notice of hearing to its creditors and in violation of Section 1, Rule 80 of the Rules of Court, Judge Suerte had unequivocally demonstrated his willful disregard of procedural rules, which amounted to grave misconduct.

Moreover, Judge Suerte, in taking cognizance of this case, which was filed on June 1, 2004, patently violated Administrative Order No. 36-2004, which divested him of the authority to act on all newly filed cases where pre-trial has not yet been terminated as of March 3, 2004. (Emphasis supplied.)

(8) In Criminal Case No. CEB-BRL-742 entitled *People vs. Conag*, for estafa, he ordered the dismissal of the case twice on the same ground, with the first order of dismissal having been issued over one year before the second order of dismissal was issued:

On March 4, 2004, accused Eddie Conag filed a motion to dismiss, attaching thereto the affidavit of desistance, which was executed by private complainant Jorge Villafuerte on the same date.

On April 22, 2004, Judge Suerte issued an Order granting the motion to dismiss.

Interestingly, another Order of dismissal, dated February 26, 2003, is attached to the expediente of this case stating, thus:

Before his Court is a Motion to Dismiss filed by accused through counsel on the ground that private complainant Jorge Villafuerte executed an affidavit of desistance.

Motion to Dismiss is hereby GRANTED and the case against Eddie Conag is ordered DISMISSED.

It bears emphasis that there is only one affidavit of desistance, which was executed by the private complainant, that is attached to the expediente, and that is the one he executed on March 4, 2004. Besides, it appears from the records that accused did not file any other motion to dismiss than the one filed on March 4, 2004. There was, therefore no legal and factual bases for the issuance of the February 26, 2003 Order of dismissal.

- On Judge Rosabella M. Tormis of MTCC, Branch 4, Cebu City:

14. Finally, in two criminal cases pending before Branch 60, namely: *Crim. Case Nos. CEB-BRL-783 and 922*, entitled *People vs. Mangyao, et al.* and *People vs. Aquino*, respectively, Judge Rosabella M. Tormis of the Municipal Trial Court in Cities, Branch 4, Cebu City, are (sic) shown to have inappropriately approved the bail posted by the accused therein and ordered their release from detention.

Section 17, Rule 114 of the Revised Rules on Criminal Procedure anticipates two situations where application for bail may be filed. First, the application for bail must be filed in the court where the case is pending. In the absence or unavailability of the judge thereof, the application for bail may be filed with another branch of the same court within the province or city. Second, if the accused is arrested in a province, city or municipality other than where the case is pending, bail may be filed with any Regional Trial Court of the place. If no judge thereof is available, then with any metropolitan trial judge, municipal trial judge or municipal trial judge therein.

Judge Tormis appears to have violated the above-mentioned Rules, particularly the second part, when she approved the bail of the accused in the criminal case pending before Branch 60, which is located outside Cebu City. The records of said cases are bereft of any showing of the unavailability of all RTC judges in Cebu City at the time of approval of the bail. Considering that there are twenty-two (22) branches of the Regional Trial Court

in Cebu City, it was highly improbable that no one among the judges thereof was available at the time the accused in said cases applied for bail.

- On Clerk of Court Atty. Rhoda S. Paquero-Razonable:

12.1 Case folders are not systematically filed. Consequently, case folders of pending and active cases are mixed with that of archived and terminated cases.

12.2 Case records, i.e., pleadings, orders, notices, documentary exhibits, and other documents pertaining to a case, are not chronologically and immediately attached to the case folders. This causes the court to lose track of the movements of the cases, and precludes it from immediately taking appropriate action on certain matters necessitating court's action, as evidenced by the big number of dormant cases therein.

12.3 There are instances when documents are inappropriately attached to the case folder or expediente.

12.3.1 A fabricated transcript of stenographic notes found its way into the expediente of Civil Case No. CEB-BAR-250 (Pls. see No. 9.3)

12.3.2 Two Orders of Dismissal anchored on the same ground were issued more than one year apart from each other in Crim. Case No. CEB-BRL-742, with the first Order having been attached to the expediente after the second Order. As stated in No. 10.3, the first Order was without any legal and factual bases.

13. Atty. Razonable likewise appears to have exceeded her authority in the matter of conducting ex-parte hearing. In LRC No. 200, entitled *Dela Cruz vs. Register of Deeds of the Province of Cebu*, where she was directed to receive the evidence for the petitioner ex-parte, she did not only rule on the formal offer of exhibits for the petitioner, as she also issued an order submitting the case for decision. The actuation of Atty. Razonable was in clear violation of Section 9, Rule 30 of the 1997 Rules of Civil Procedure, which provides that "(t)he clerk of court shall have no power to rule on objections to any question or to the admission of exhibits, which objection shall be resolved by the court upon submission of his report and transcripts within ten (10) days from termination of the hearing.

x x x

(En Banc Resolution dated October 12, 2004, pp. 1-8)

Via a Memorandum dated July 12, 2004, DCA Lock submitted his report to the Honorable Chief Justice. Pertinent portions of said memorandum are hereunder reproduced, as follows:

With the assistance of the Judicial Audit Team headed by Atty. Rullynn S. Garcia, the undersigned gathered the following information relative to the Devinadera case, to wit:

On 29 March 2004, Asst. Regional State Prosecutor Vicente T. Mañalac filed an information for Murder against Cedric Q. Devinadera and "John Doe" before the RTC, Branch 60, Barili, Cebu. The Information stated that accused Devinadera was detained at the NBI, Cebu City and that "no bail" was recommended for his temporary liberty. Prosecutor Mañalac certified that after he conducted "an ex-parte examination of the evidence on record, there is a reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof." The filing of the Information was approved by then Provincial Prosecutor Cezar R. Tajanlangit, now City Prosecutor of Cebu City.

Prosecutor Mañalac based his investigation solely on the Affidavit-Complaint dated 06 February 2004 of one Jaime Bacolod who is claiming to be the first cousin of the victim, Alona Bacolod-Ecleo. Jaime Bacolod was assisted and represented by a counsel de parte, Atty. Niel Nuñez. Said complaint in turn relied on the Sworn Extra-Judicial Confession dated 19 December 2003 of Cedric Q. Devinadera, which was executed before the CIDG in General Santos City with the assistance of counsel de parte Atty. Luis Salazar who formally entered his appearance as counsel on 12 April 2004. On 23 April 2004, accused Devinadera was arraigned and pleaded

“GUILTY” to the lesser offense as an accessory to homicide. Judge Suerte then set the reading of his judgment on 07 May 2004. However, on the said date, accused Devinadera was re-arraigned because he changed his plea of guilt from an accessory to homicide to an accessory to murder. Consequently, Judge Suerte issued his Judgment finding accused Devinadera guilty and penalized him with an imprisonment of 4 years, 2 months, and 1 day of prison correccional as minimum to 8 years and 1 day of prison mayor as maximum.

On 19 May 2004, the surviving brothers of Alona Bacolod-Ecleo, namely: Ricky, Angelito and Josebel, all surnamed Bacolod, filed a “Motion for Intervention and Motion for Reconsideration” alleging among others that they are the real offended party. Nonetheless, Judge Suerte issued an order dated 25 May 2004 denying the said motion on the ground of double jeopardy and that “the sentence has been partially or totally satisfied or served” by accused Devinadera under Section 7, Rule 120 of the Rules on Criminal Procedure. On the same day, the surviving brothers filed a Motion praying for the setting of the hearing of the earlier motion on 27 May 2004. It was on 08 June 2004 that the aforesaid motion was heard by Judge Suerte who did not resolve the same. Instead, he pronounced publicly that by virtue of Deputy Court Administrator Lock’s order, Judge Cañete would now handle the further proceedings of the case. Judge Cañete then set the hearing of the motion on 25 June 2004.

Connecting the Devinadera case to Administrative Order No. 36-2004 dated 03 March 2004, it is very clear that the said case should NOT have been handled by Judge Suerte. A.O. No. 36-2004 specifically states that Judge Leopoldo V. Cañete was designated as Assisting Judge of RTC, Branch 60, Barili, Cebu, to: “x x x act on all newly filed cases in the Regional Trial Court, Branch 60, Barili, Cebu, as well as all civil and criminal cases in said court where pre-trial has not been terminated as of the date of the Administrative Order”. Since the Devinadera case was filed on 29 March 2004, Judge Suerte should NOT have handled said case as he was already relieved from taking cognizance of all the newly filed civil and criminal cases effective 03 March 2004.

x x x

In his sworn statement, Teodoro F. Saranillo, Utility Worker, RTC, Branch 60, Barili, Cebu, stated that on 10 March 2004, he officially received the copy of the subject A.O. as evidence by the Registry Return Receipt of the post office. Judge Suerte received his personal copy of the subject A.O. on the same date.

Despite his knowledge and receipt, Judge Suerte ignored this mandatory order and continued to handle newly filed cases. It was only after pre-selection of newly filed cases that he assigned the rest of the newly filed cases to Judge Cañete.

In a sworn statement dated 07 June 2004, Judge Suerte admitted his knowledge and awareness of the subject A.O. Specifically, he admitted that sometime 3rd week of March 2004, Atty. Razonable had shown him the copy of the A.O. intended for the Office of the Clerk of Court. He also admitted that although the effective date of the subject A.O. was 03 March 2004, he decided to implement the same on 15 March 2004 since it was the date when he allegedly received the copy. He further admitted that he assigned to himself some of the newly filed cases in his desire to speedily try cases since the assigned public prosecutor in his sala only comes once or twice a week. Moreover, he has no pending case for decision and that he does not want to burden or overload Judge Cañete with many cases.

Lastly, Judge Suerte admitted that he was aware of the existence of the parricide case against Ruben Ecleo involving the same victim. Nonetheless, he still acted on the criminal charge for murder against Devinadera even if there is no other evidence against him except the latter’s extra-judicial confession. He believes that Devinadera had assumed responsibility for his admission of guilt and that he was not coerced or intimidated for doing so. During the hearing on the Motion for Reconsideration on 08 June 2004, he divested himself from further handling the Devinadera case in obedience to the Honorable Court’s order under the subject A.O. Thus, it is now Judge Cañete who would continue to handle the subject case.

In addition to the foregoing statements, Judge Suerte submitted to Your Honor a separate letter dated 24 June 2004 explaining in detail the reason why he handled the Devinadera case. He alleged that his sala validly acquired jurisdiction over the Devinadera case when the Office of the Public Prosecutor filed the criminal information with the corresponding certification of Prosecutor Vicente Mañalac that a preliminary investigation was conducted. His sala likewise acquired jurisdiction over the person of accused Devinadera when he voluntarily surrendered to the police authorities and appeared in his sala during arraignment on 23 April 2004. Thus, the decision he rendered was likewise valid as it was based on a plea of guilt after a plea bargaining agreement between the public prosecutor and the accused and his counsel. He believes that the tenor of the subject A.O. “is more of a limitation as what cases can be assigned to Judge Cañete x x x.” as he honestly thought that the subject A.O. did not prohibit him from handling other cases considering that he is the regular Presiding Judge of RTC, Barili. He did not have the slightest intention of violating the said A.O. If at all, he may have just erred in his interpretation. It is just his mere desire to speed up the disposition of criminal cases especially those involving detention prisoners. To do so, he has to maximize the appearance of the public prosecutor. So he requested the public prosecutor to appear in his sala in the morning and afternoon. He “then randomly pick five (5) criminal cases assignable to the assisting judge to be additionally handled by me in the morning with the rest of the criminal cases to be taken up by the assisting judge in the afternoon on the days when the public prosecutor is around. It was the Clerk of Court who randomly picked the cases. This (sic.), it was only coincidental that I got the Devinadera case for arraignment having been randomly picked by the Clerk of Court.” He honestly believes that by doing so, he is helping Judge Cañete in the speedy disposition of cases especially those with detention prisoners. In closing, Judge Suerte sincerely apologized to the Honorable Court and to the Office of the Court Administrator and to the judiciary as a whole for all the troubles, adverse comments and negative impressions that his wrong interpretation and action might have caused. He maintained his good faith out of his desire to help a fellow judge and for the speedy disposition of cases involving detention prisoners.

In a separate sworn statement dated 07 June 2004, Judge Cañete stated that he formally assumed his designation as Assisting Judge in RTC, Branch 60, Barili, Cebu on 23 January 2004. When he received his copy of A.O. 36-2004, he immediately noted its limitation and mandatory order that he would be handling newly filed cases and those where pre-trial has not been terminated effective 03 March 2004. He believes that it is no longer necessary to discuss the matter with Atty. Razonable and Judge Suerte as they both received copies of the A.O. He was not aware that the said A.O. was not being followed to the letter until such time that the local newspapers came out with the news regarding the Devinadera case. He opted not to discuss the matter with Judge Suerte as he “did not want anymore to add to his problem because he was already being crucified in the papers.”

Further verification and assessment of the records of the Devinadera case would show that there is more than meets the eye than the simple issue of violation of A.O. 36-2004. It appears that there is a grand conspiracy in this case in order to exculpate and acquit Ruben Ecleo in the parricide case pending before the RTC, Cebu City. Procedural lapses were uncovered during the preliminary investigation and hearing proper of the subject case.

x x x

Judge Suerte committed a very patent error when during the arraignment on 23 April 2004, the accused was not made to identify or authenticate in open court his extra-judicial confession. Likewise, Judge Suerte failed to propound the mandatory clarificatory questions to the accused to determine whether he has personal knowledge of the allegations contained in his extra-judicial confession and that he was not coerced, threatened or intimidated in the execution of his confession. Judge Suerte merely relied on the presence of Devinadera’s counsel de Parte, Atty. Luis Salazar. x x x.

During the plea bargaining agreement, Prosecutor Alburo’s participation was limited to his ceremonial appearance for the state/government and mere physical presence since the TSN for the hearing on 23 April

2004 and 07 May 2004 did not indicate his substantial participation. The same is true with respect to the alleged private complainant and his counsel. Even as to the supposed damages, which a typical aggrieved party may claim or waive were not even discussed or taken up during the hearing. Apparently, the physical presence or appearance of the public and private prosecutor as well as the private complainant was reduced to mere "spectators". Moreover, the offended party who claimed to be the victim's first cousin is not to be considered as the real "offended party" as defined under the Rules of Court. Judge Suerte knew too well that the victim has still 3 surviving brothers and a spouse. He cannot deny this fact as he himself admitted it in his sworn statement that he was aware of the parricide case against Ruben Ecleo. As against the alleged first cousin, it is the 3 surviving brothers or spouse who has the right to give consent during the plea bargaining agreement. Moreover, they are also the only ones who can waive or claim the damages from the accused.

Lastly, after the re-arraignment and plea bargaining agreement to a lesser offense of accessory to murder, Judge Suerte issued a "pro-forma" decision simply indicating the plea of guilt of the accused and the imposition of the corresponding penalty. x x x.

x x x

(Memorandum of DCA Christopher Lock to the Chief Justice Hilario G. Davide, Jr., dated July 12, 2004, pp. 2-6, 8-9)

In the same en banc Resolution of October 12, 2004, this Court ordered the following:

On Judge Ildefonso B. Suerte:

- SUSPENDED from the service, pending final resolution of herein administrative cases or until further orders from the Court.

- DIRECTED to show cause within fifteen (15) days from notice why he should not be dismissed from service for the following acts:

(a) Failure to act or take further action on cases listed under paragraph A(1) of the October 12, 2004 en banc Resolution,[1] despite the lapse of a considerable length of time since they were filed or since the last actions were taken thereon by the court;

(b) In taking cognizance of the cases under paragraph A(2) of the same resolution,[2] in violation of AO No. 36-2004, dated March 3, 2004;

(c) In failing to make judicious assessment of the allegations contained in the petitions for declaration of nullity of marriage and annulment of marriage, particularly with respect to the address of petitioners in the cases listed under paragraph A(3)[3] of the same resolution;

(d) In proceeding with undue haste in the trial of the cases listed in paragraph A(4)[4] of the same resolution, in violation of the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages, approved by the Court on March 4, 2003 in A.M. No. 02-11-10-Honorable Supreme Court, resulting to the prejudice of the respondents;

(e) In deciding Civil Case No. CEB-BAR-250 on the basis of what appears as a fabricated transcript of stenographic notes;

(f) In proceeding with Criminal Case No. CEB-BRL-1039 (People vs. Devinadera) and in deciding the same despite his knowledge of the pendency of another case in RTC, Cebu City, docketed therein as Criminal Case No. CBU-62308, which involves the same subject matter as in the former case;

(g) In causing the appointment of a special administrator in SP-BAR-266, without notice and hearing, one day after the filing of the Petition for Issuance of Letters Administration and Appointment of a Special

Administrator, in violation of Section 3, Rule 79, and Section 1, Rule 80 of the Rules of Court; and

(h) In issuing two Orders of Dismissal, to wit: dated February 26, 2003 and April 22, 2004, in Criminal Case No. CEB-BRL-742, with the first order having no factual and legal bases.

On Judge Rosabella M. Tormis:

- DIRECTED to SHOW CAUSE within fifteen (15) days from notice why no disciplinary action should be taken against her for approving the bail for the temporary liberty of the accused in Criminal Case Nos. CEB-BRL-783 and 922, entitled *People vs. Mangyao, et al.*, and *People vs. Aquino*, respectively, pending before the Regional Trial Court, Branch 60, Barili, Cebu, in clear violation of Sec. 17, Rule 114 of the Revised Rules on Criminal Procedure.

On Clerk of Court Atty. Rhoda S. Paquero-Razonable:

Required to SHOW CAUSE why she should not be disciplinarily dealt with for her failure:

(a) to ensure an orderly and efficient record management system in the court and supervise the personnel under her office to function effectively; and

(b) to strictly adhere to the provision of Section 9, Rule 30 of the Rules of Civil Procedure in the matter of the reception of evidence assigned to her by the court in LRC No. 200 entitled *Dela Cruz vs. Register of Deeds of the Province of Cebu*.

The records of the case reveal that despite the lapse of the period to file their answer or comment/explanation as required in this Court's October 12, 2004 en banc Resolution, as well as the extension which were sought by Judge Suerte and Judge Tormis, none of the respondents filed any. Hence, the Court now considers the case submitted for resolution without such answers or comments/explanations, the filing of which is hereby deemed waived.

The Court resolves the cases accordingly:

Judge Ildefonso B. Suerte is found guilty of gross misconduct in office, gross ignorance of the law, and incompetence which merits his DISMISSAL.

The facts of the case against Judge Suerte remind us of the earlier case of *Tabao vs. Judge Espina*, G.R. No. RTJ-96, June 29, 1999, where the penalty of dismissal from service was imposed on Judge Espina for granting bail without a hearing in Criminal Case No. 93-04-197, a case where the imposable penalty at that time was life imprisonment; and promulgating a decision in said case before the defense had rested without giving the prosecution a chance to present rebuttal evidence. The first charge was aggravated by his failure to file his comment thereon as directed by this Court. Says this Court in *Tabao*:

"A judge is called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules; it is imperative that he be conversant with basic legal principles and [be] aware of well-settled authoritative doctrines. He should strive for excellence, exceeded only by his passion for truth, to the end that he be the personification of justice and the Rule of Law." (*Conducto v. Monzon*, A.M. No. MTJ-98-1147, 2 July 1998, 291 SCRA 619, citing *Estoya v. Abraham-Singson*, 237 SCRA 1 1994, *Aducayen v. Flores*, 51 SCRA 78 [1973]; *Ajeno v. Insierto*, 71 SCRA 166 [1976]; *Ubongen v. Mayo*, 99 SCRA 30 [1980]; *Libarios v. Dabalos*, 199 SCRA 48 [1991]; *Lim v. Domagas*, 227 SCRA 258 [1993]; *Cuaresma v. Aguilar*, 226 SCRA 73 [1993].)

Confronted with the undisputed findings of the Court's judicial audit team which conducted the investigation from June 7-11, 2004, the Court cannot help but doubt the integrity of respondent Judge Suerte.

Firstly, the Court finds respondent judge guilty of gross violations of the express directive embodied in

Administrative Order No. 36-2004 which divested him of all authority "... to act on all newly filed cases in the Regional Trial Court, Branch 60, Barili, Cebu, as well as all civil and criminal cases in said court where pre-trial has not been terminated as of the date of the Administrative Order," i.e., effective March 3, 2004.

Included among those cases which, in the first place, should not have been taken cognizance of by said respondent are the following because they were filed after the effectivity of AO No. 36-2004 on March 3, 2004, where, incidentally, the Court's judicial audit team further found gross irregularities:

- Petitions for declaration of nullity of marriage and annulment of marriage.

- Leyson, Jr. v. Bontuyan, CEB-BAR-377

The given address of the petitioner therein as alleged in the petition is "c/o Virgilio Concepcion, Poblacion, Barili", while that of the respondent is "Hi-way 77, Talamban, Cebu City." This should have engendered suspicion on the part of Judge Suerte that the parties did not reside within the territorial jurisdiction of Branch 60. Besides, the Court also agrees with the observation of the judicial audit team that the use of the abbreviation "c/o" connotes that petitioner was not an actual resident of said place. Respondent Judge Suerte should have, at the very least, required petitioner to show cause why the petition should not be dismissed for lack of jurisdiction.

- Mitchell v. Mitchell, CEB-BAR-380

The given address of the petitioner as alleged in the petition therein filed was changed from "San Roque, Quiot Pardo, Cebu City" to "Brgy. Tapon, Dumanjug, Cebu," a municipality which falls under the territorial jurisdiction of Branch 60. This generates doubt as to the veracity of the new address, which apparently was effected to clothe Branch 60 with jurisdiction to try and decide the case.

- Tabarno v. Tabarno, CEB-BAR-372

The given address of the petitioner as appearing in the certificate of non-forum shopping, which is an integral part of the petition, was changed from "Tisa, Cebu City" to "Barili, Cebu." Again the change of address was apparently effected as an after-thought to enable Branch 60 to exercise jurisdiction over the case.

- Caray v. Baruel, CEB-BAR-376

The given address of petitioner as alleged in the petition is "c/o Dionisia Baruel Kaindoy, Poblacion, Barili, Cebu," while that of the respondent is Surigao City. Again, the use of the abbreviation "c/o" raises doubt as to the veracity of petitioner being a genuine resident of the given address.

- Ora v. Ora, CEB-BAR-373

The given address of the petitioner as alleged in the body of the petition is "Poblacion, Dumanjug, Cebu." However, his address as indicated in the verification of the petition is "Osmeña Blvd., Cebu City." The variance of the address of the petitioner as appearing in the body of the petition and in the verification should have been looked into by respondent Judge Suerte to determine which of the two is correct.

- Special Proceedings:

In the Matter of Settlement of the Intestate Estate of the Late Jose Stockli of Lambug, Badian, Cebu, SP-BAR-266

In this particular case, respondent Judge Suerte ordered the appointment of a special administrator of the estate of the decedent one day following the filing of the petition. Let alone the fact that respondent judge's actuation constitutes gross violation of AO 36-2004 because the petition was filed only on June 1, 2004, the same actuation is a blatant disregard of the rules on notice and hearing as provided for in Section 3, Rule 79 of the Rules of

Court. More than a mere ignorance of the law, respondent conduct is even a willful and malevolent disregard of procedural rules, which amount to grave misconduct.

- Criminal Case

People vs. Devinadera, Crim. Case No. CEB-BRL-1039

The Information in this case was filed on March 29, 2004, which is after the effectivity of AO No. 36-2004. Respondent Judge Suerte was clearly bereft of any authority to take cognizance of said case. Despite his awareness of AO No. 36-2004 and, worse, despite knowledge on his part of the pendency of another case in RTC, Cebu City, docketed therein as Criminal Case No. CBU-62308, which involves the same subject matter, respondent Judge Suerte convicted accused Devinadera on the sole basis of a sworn extra-judicial confession and sentenced him accordingly.

We may add that Deputy Court Administrator Christopher Lock, in his Memorandum dated July 12, 2004 to the Honorable Chief Justice, *supra*, noted several irregularities in the proceedings in the Devinadera case. For instance, the personality of the private complainant who was a mere cousin of the deceased victim, was highly questionable in view of the fact that victim, Alona Bacolod-Ecleo, was survived by her spouse, and three brothers in the persons of Ricky, Angelito and Josebel, all surnamed Bacolod.

During the arraignment of accused Devinadera, respondent Judge Suerte did not have the supposed extra-judicial confession identified or authenticated in open court. Respondent Judge Suerte also failed to propound the mandatory clarificatory questions to determine the voluntariness as well as the veracity of the allegations in the extra-judicial confession of the accused.

Secondly, the Court cannot avoid entertaining the suspicion that respondent Judge Suerte had personal interest in several cases wherein he rendered judgment on record time, despite the fact that his docket was clogged with 170 cases which remained dormant for a considerable length of time.

Ordinarily, there should be nothing wrong or illegal in deciding cases promptly and expeditiously. However, legality is one thing; propriety is another. "A judge's performance is to be measured not only by its conformity to the law but to propriety as well. He must avoid all appearance of partiality or interest. Such quality of detachment and disinterestedness must be nourished in fact and in appearance." (*Ignacio vs. Valenzuela*, G.R. No. 2252, January 18, 1982)

In the *Ignacio* case, respondent judge therein held a hearing in Civil Case No. 7159-P despite being on vacation, while cancelling the scheduled hearings of other cases. Respondent judge, therefore, in the *Ignacio* case opened himself to suspicion that he was personally interested in the case before him. There, the Court found it fit to exhort:

As the Supreme Court held in *Tan v. Gallardo*, 73 SCRA 306, 315 (1976) 'judges should not only be impartial but should also appear impartial ... [and] while judges should possess proficiency in law in order that they can competently construe and enforce the law, it is more important that they should act and behave in such a manner that the parties before them should have confidence in their impartiality.' This ruling was reiterated in *Fernandez v. Presbitero*, 79 SCRA 60 (1977), where a municipal judge was found guilty of grave misconduct, partiality, and oppression and ordered to pay a fine equivalent to two months salary for conducting a preliminary investigation of a criminal case at night and at the residence of a relative of the political opponent of the complainant's father, and thereafter issuing a warrant of arrest against the complainant knowing that the next days were holidays when government and private offices would be closed, thus precluding the timely filing of a bail bond.

Most glaring indication of personal interest by Judge Suerte is in the nullity of marriage case of Castro-Roa v. Roa, CEB-BAR-329, which he decided on record time of sixty-seven days. This decision became final twenty three days later when respondent Judge Suerte himself personally issued the Entry of Final Judgment.

Also obviously favored by Judge Suerte was Atty. Gica, who, in just one day after filing the petition for issuance of letters of administration In re: Stockli, SP-BAR-266, supra, was appointed by Judge Suerte as special administrator of the estate of the late Josef Stockli, a Swiss national, who allegedly died with no known heirs in the Philippines and abroad other than his full blood sister, Elizabeth Blatter, who is residing in Isliberg, Switzerland, but had left unsettled liabilities.

The case of Regis v. Litijio, CEB-BAR-348, on the other hand, was decided by respondent Judge Suerte less than four (4) months from the time it was filed on January 28, 2004 on the petitioner's deposition upon oral examination, which was taken on February 19, 2004. The records of this case, however, do not show that respondent therein was duly notified of the taking of said deposition.

The case of Gaviola v. Rivera, CEB-BAR-293, was decided by Judge Suerte on January 13, 2004, or six (6) months from the time it was filed on July 4, 2003. The Court notes an irregularity in this case when Judge Suerte declared in his Order of November 13, 2003 that therein respondent and counsel failed to appear "despite due notice" and deemed the case submitted for decision after allowing petitioner to present evidence ex parte. However, the records of that case are bereft of any proof that respondent therein and his counsel had in fact been duly notified of the November 13, 2003 hearing.

The case of Cuesta v. Yanoc, CEB-BAR-350, was declared submitted for decision by the respondent judge less than two months from its filing. This case was filed on January 29, 2004. The summons was issued on the same day, and served upon the respondent through substituted service on February 3, 2004. On March 4, 2004, the Cebu Provincial Prosecution Office filed its Investigation Report. On the same day, Judge Suerte allowed petitioner to identify and mark her documentary exhibits to prove the jurisdictional facts of the case. The case was then set for trial on March 12, 2004. Yet, surprisingly, the case was declared submitted for decision on that very same date, March 12, 2004.

The suspicion of the Court that Judge Suerte attached personal interest to the cases filed before his court is confirmed by the sworn statement of no less than his own clerk of court. To quote from the Memorandum dated July 12, 2004, supra, of DCA Lock to the Chief Justice:

In her sworn statement, Atty. Rhoda S. Paquera-Razonable, Clerk of Court VI, RTC, Branch 60, Barili, Cebu, stated that she immediately informed Judges Suerte and Cañete about the A.O. upon her receipt thereof. And in adherence to the said A.O., she placed all the case folders of the newly filed cases on Judge Cañete's table. Later on, she was informed by Judge Suerte that he would also handle newly filed cases. Thus, she was constrained to bring instead all of the newly filed cases to Judge Suerte who chooses what case/s he would handle and what case he would want to assign to Judge Cañete. Hence, Judge Suerte did not only assign himself the Devinadera case but also the other newly filed civil, criminal and other cases.[5]

The special interest shown by Judge Suerte in several cases filed before him constitutes grave misconduct. This is aggravated by the fact that such predilection for special cases demanding his special attention resulted in 170 other cases remaining dormant for a considerable length of time, to the prejudice of the affected parties therein.

Thirdly, in the estafa case entitled People v. Conag, CEB-BRL-742, Judge Suerte twice ordered the dismissal of said case on the same ground. What is highly irregular was that as early as February 26, 2003, the case was already dismissed on the alleged ground that complainant therein executed an affidavit of desistance. This Court's judicial audit team, however, found that the affidavit of desistance which was supposedly the basis of the

dismissal was executed only on March 4, 2004. Moreover, the record showed only one motion to dismiss dated March 4, 2004. Despite the order of dismissal of the court more than a year prior to March 4, 2004, Judge Suerte issued another order dismissing the same case for the second time, upon the same ground of desistance.

Besides, the Court finds grave misconduct on the part of respondent Judge Suerte for dismissing a criminal case, on the ground of the supposed desistance of the private complainant, even without any motion to dismiss on the part of the prosecution.

Lastly, in Civil Case No. CEB-BAR-250, entitled Santos vs. Santos, an action for declaration of nullity of marriage, Judge Suerte rendered a decision based on fabricated transcript of stenographic notes. This definitely constitutes grave misconduct which merits dismissal.

Respondent's conduct in said case not only mocked the entire judicial institution, but likewise breached the sanctity of judicial records, and ultimately the entire judicial process itself. The Court had consistently demanded respect from all members of the bar, who, as officers of the court, have the duty to protect and uphold its dignity. It is worse when such disrespect for the institution comes from a member of the bench no less. The natural instinct for the preservation of this institution leaves no room for such a corrupt member who, despite being at the threshold of his years of service in the Judiciary, shows very little, or maybe none at all, reverence and respect to the institution.

Judge Rosabella M. Tormis, MTCC Judge, Branch 4, Cebu City, is found guilty of gross violation of Section 17, Rule 114 for having approved the bail posted by the accused in Criminal Cases Nos. CEB-BRL-783 and 922, entitled People v. Mangyao and People v. Aquino, respectively, pending before RTC Branch 60, Barili, Cebu. The records of those cases are bereft of any showing of the unavailability of all RTC judges in Cebu City, whereat there are twenty-two branches of the RTC.

This infraction merits disciplinary sanction to ensure that judges will be more circumspect before taking any specific action in petitions to grant bail.

Atty. Rhoda S. Paquero-Razonable, Clerk of Court VI, RTC Branch 60, Barili, Cebu, is admonished to keep the integrity of the records of the court by conscientiously and systematically filing pleadings, orders, notices documentary exhibits, transcripts of stenographic notes, and other documents pertaining to a case, chronologically and immediately attaching them to the case folders. Respondent clerk of court's negligence in her duties contributed to the lack of movement of 170 cases in the court's docket.

As regards the conduct of ex-parte hearing by the same respondent in LRC Case No. 200, entitled Dela Cruz v. Register of Deeds of the Province of Cebu, where she was directed to receive ex-parte the evidence for the petitioner, she committed gross violation of the rules when she ruled on the formal offer of petitioner's exhibits and issued an order submitting the case for decision. Section 9, Rule 30 of the Rules of Civil Procedure explicitly provides:

The clerk of court shall have no power to rule on objections to any question or to the admission of exhibits, which objections shall be resolved by the court upon submission of his report and transcripts within ten (10) days from termination of the hearing.

Respondent clerk of court, is, therefore, also admonished to strictly adhere to the above-mentioned provisions of Section 9, Rule 30 in the matter of reception of evidence ex parte.

WHEREFORE, judgment is hereby rendered, as follows:

- Judge Ildefonso B. Suerte is hereby DISMISSED from the service, with forfeiture of all retirement benefits and

privileges, with prejudice to being reinstated in any branch of government service, including government-owned and controlled agencies or corporations;

- Judge Rosabella M. Tormis is hereby FINED in the amount of Five Thousand Pesos (P5,000.00), with stern warning that a repetition of the same act shall be dealt with more severely.

- Clerk of Court VI Atty. Rhoda S. Paquero-Razonable is ADMONISHED to ensure an orderly and efficient record system in the court and to supervise the personnel under her office to function more effectively, and to strictly adhere to the provision of Section 9, Rule 30 of the Rules of Civil Procedure in the matter of the reception of evidence assigned to her by the court, also with warning that a repetition of the same act shall be dealt with more severely.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.
Corona, and Callejo, Sr., JJ., on leave.

[1] See pp. 2-3, *supra*.

[2] See p. 3, *supra*.

[3] See pp. 3-4, *supra*.

[4] See pp. 5-6, *supra*.

[5] At p. 3 thereof.

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