

DY TEBAN HARDWARE & AUTO SUPPLY CO.. COMPLAINANT, VS. HON. LAURO L. TAPUCAR, DISTRICT JUDGE OF THE COURT OF FIRST INSTANCE OF AGUSAN DEL NORTE AND BUTUAN CITY, RESPONDENT.

A.M. No. 1720. January 31, 1981

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

The above-entitled three cases are Administrative Complaints against Hon. Lauro L. Tapucar, District Judge of the Court of First Instance of Agusan del Norte and Butuan City, Branch I. The three cases are being resolved in this consolidated Decision.

Administrative Case No. 1720

On September 30, 1977, Dy Teban Hardware & Auto Supply Co., a duly registered partnership (Complainant Partnership, for brevity), through counsel, filed the instant Complaint seeking the removal of respondent Judge, Lauro L. Tapucar, of the Court of First Instance of Agusan del Norte and Butuan City, Branch I, for serious misconduct and inefficiency. Assailed were respondent Judge's actuations in connection with the case entitled "Restituta Gindoy vs. Hon. Lauro L. Tapucar and Heirsof Dy Teban represented by Florante Dy" decided by this Court in G.R. No. L-43257 (75 SCRA 31 [1977]).

The aforementioned case, which was for Illegal Detainer, originated from the City Court of Butuan, Branch II (CC No. 992 entitled "Restituta Gindoy vs. Heirs of Dy Teban, represented by Florante Dy"). It involved three apartments leased by Restituta Gindoy originally to Dy Teban, now deceased, and subsequently to his heirs, one of whom is Florante Dy. The leased spaces were occupied by Complainant Partnership. Judgment was rendered by the City Court in favor of the Heirs of Dy Teban granting them a new period of seven years to continue occupying the leased premises. On appeal to the Court of First Instance, presided by respondent Judge, the latter affirmed en toto the City Court's Decision (CC No. 1779). However, upon review on Certiorari by this Court (G.R. No. L-43257), we reversed the Decision and ordered the Heirs of Dy Teban to vacate the leased premises, to pay damages in the sum of P1,000.00 a month until they vacated the property, plus P3,000.00 as attorney's fees. Our Decision became final on June 24, 1977,[1] and we remanded the records to the Court of First Instance on June 28, 1977.[2]

On June 1, 1977, or before the finality of the Decision, respondent Judge issued a Writ of partial execution, upon Restituta Gindoy's Motion, and on July 6, 1977, a final Writ of Execution. Gindoy's Urgent Motion for Final Execution was filed only the day before, or, on July 5, 1977.

On August 11, 1977, an Urgent Motion for the examination of the Heirs of Dy Teban and of Complainant Partnership was filed by Restituta Gindoy on the ground that the heirs were concealing or fraudulently transferring their properties to Complainant Partnership to prevent their being levied upon.

On August 12, 1977, respondent Judge issued an Order authorizing the Sheriff to seize and garnish the assets, bank deposits and other interests of Complainant Partnership. Garnished was the amount of P108,482.00, which the Sheriff turned over to Restituta Gindoy.

On August 17, 1977, Complainant Partnership filed a Petition for Certiorari with a prayer for Restraining Order before ' the Court of Appeals, which was pending at the time the present Complaint was filed.

In his Report, dated October 5, 1980, the Investigator, Associate Justice Edgardo L. Paras of the Court of Appeals, summarized the Complaint and the Comment of respondent Judge as follows.

"The complainant herein alleges among other things that when Judge Tapucar received the records from the Supreme Court, he should have remanded the same to the City Court for execution, instead of ordering the partial execution himself. The question posed is therefore this: under the premises, which Court can order the execution — the City Court or the Court of First Instance? Corollary charges include the following: that the motion for execution was not served on the adverse party and consequently violates the three-day rule; that the partnership whose property was ordered seized was not a party to the case; and that finally that the judgment debtors should have been examined first before the bank deposit of complainant herein was garnished.

"Upon the other hand, Respondent Judge, in his Comment, states that since it was his decision (affirming the City Court) that was reversed by the Supreme Court, it is the Court of First Instance (to which Court the records were transmitted) that must issue the partial order of execution; that since the decision of the Supreme Court had already become final and executory there was no need for the motion for execution to be served on the adverse party nor for the motion to comply with the 3-day rule; that the complainant (partnership) is actually owned and managed by the judgment debtors, and therefore the partnership was really a party to the case; that at any rate this question of alleged premature execution is now pending before the Court of Appeals — *Dy Teban Hardware and Auto Supply Co. v. Hon. Lauro L. Tapucar et al.* (CA G.R. No. 06975). Upon verification, the records of the Appellate Court show that said Case (CA-G.R. No. 06975) was dismissed by the Tenth Division in a Decision promulgated December 29, 1977 (with Justice Vicente G. Ericta, ponente, and Justices Ameurfina Melencio-Herrera and Simeon M. Gopengco, concurring) on the theory that since only legal questions were involved it was the Supreme Court, not the Court of Appeals, that had jurisdiction over the same. Entry of judgement was on January 29, 1978."

Justice Paras then recommended:

"Be that as it may, in the hearing of this case (August 26, 1980) before the undersigned investigator, counsel for complainant manifested that the principal head of the partnership is already dead, and that all the heirs would like to WITHDRAW the complaint in view of their lack of interest in prosecuting the same. One of the heirs Mrs. Dy Piakhon was actually present and she confirmed counsel's manifestation that indeed said heirs are WITHDRAWING the complaint. Counsel for complainant asked that he be given ten (10) days within which to submit a written manifestation of such WITHDRAWAL. The ten-day period having long since lapsed, it is respectfully recommended that this case be DISMISSED for utter lack of interest on the part of the complainant, and because the alleged ignorance of the law does not appear to be indubitable."

We agree that dismissal of the Complaint is called for. If respondent Judge had committed error in issuing the partial Writ of Execution on the ground of prematurity, or the final Writ of Execution for lack of the 3-day notice for hearing Motions, or in holding that Complainant Partnership was the successor-in-interest of the Heirs of Dy Teban, or in ordering the garnishment of Complainant Partnership's assets, when it was not a party to the case, the

proper remedy was to elevate the matter to the appropriate Appellate Tribunal. Judges may not be held administratively accountable for every erroneous ruling.[3] Mere errors in the appreciation of law by a Judge may not be visited with a penalty rather severe in character, such as dismissal from the service.[4] And, as held in the leading case of *In re Impeachment of Hon. Antonio Horilleno*, penned by a distinguished jurist, Justice George A. Malcolm,[5] for serious misconduct to exist, there must be a clear showing that the act complained of was corrupt or inspired by an intention to violate the law or was in persistent disregard of well known legal principles. These criteria are absent herein.

The Complaint should be dismissed.

ADMINISTRATIVE MATTER No. 1911

In a verified letter-complaint, dated May 4, 1978, Melecia Monteroso charged respondent Judge Lauro L. Tapucar of the Court of First Instance of Agusan del Norte and Butuan City, Branch I, with delay in the administration of justice, misconduct, dishonesty, and partiality in connection with Civil Cases Nos. 1292, 1332 and 1681 pending before his Court. Complainant also specifically alleged that respondent is "scandalously living with a mistress by the name of Helen Peña in Aupaga, Nasipit, Agusan del Norte."

In an Indorsement, dated June 30, 1978, respondent Judge essentially denied all charges as baseless, unfair and uncalled for.[6]

On June 4, 1979, this Court (Second Division) resolved to dismiss the complaint for lack of showing of a prima facie case in so far as charges for alleged delay in the administration of justice, misconduct, dishonesty and partiality in connection with aforementioned cases were concerned, but referred the immorality charge against respondent to Justice Guillermo Villazor of the Court of Appeals for investigation, report and recommendation.[7]

On August 14, 1980, we designated Justice Edgardo Paras of the Court of Appeals to take the place of Justice Villazor, who requested to be relieved of his duties as Investigator for reasons of health.

Hearings were conducted by Justice Paras on September 16, 29, 1980 and on October 7-8, 1980.

On September 2, 1980, respondent Judge moved to dismiss the Complaint on the ground that the charge of immorality against him had already been resolved in Administrative Matter No. 1740 (*Tranquilino Calo, Jr. vs. Judge Lauro Tapucar*) on April 11, 1980 where he was meted by this Court (2nd Division) the penalty of six (6) months' suspension without pay, for immorality; and that this case is but a rehash of the same charge of immorality in Administrative Matter No. 1786 (*Loreta Ederango vs. Hon. Ladro Tapucar*), which was dismissed by this Court, on the ground of duplication, in a Resolution dated May 15, 1979.[8] Respondent further alleged that Atty. Tranquilino Calo, whom he suspended from the practice of law, is the counsel of both complainant Loreta Ederango and herein complainant Melecia Monteroso and are mere tools of said lawyer in his scheme to harass and prosecute respondent.[9]

On September 30, 1980, Investigating Justice Paras denied respondent's Motion to Dismiss on the ground that, in this case, counsel for complainant Monteroso alleged that the acts of immorality previously charged in Administrative Matter No. 1740 were continuing, with respondent Judge allegedly living together up to now with a certain Helen Pefia as his mistress. Justice Paras thus allowed testimony on that continued cohabitation. The pertinent portion of his Resolution reads:

"x x x considering The fact that this is an Administrative case against a Judge for alleged immorality testimony on events transpiring after May 4, 1978, the date of the letter complaint, should be and is hereby ALLOWED.

A judge must not only be innocent like the wife of Caesar, he must also be beyond suspicion. Moreover, if as alleged, acts of cohabitation with a woman not one's wife, continue, a serious violation of judicial ethics would appear to have been committed."[10]

As complainant's witnesses, Atty. Tranquilino Calo, Carlos Repaso, Mayor Pedrito Carmona and Benjamin Jaramillo testified. Complainant Melecia Monteroso herself did not appear because of her financial inability to bring her witnesses to Manila but manifested that she was reproducing, by way of reference, all the evidence which had been presented in Administrative Matter No. 1740.[11]

Atty. Tranquilino Calo, 56, married, Mayor of Carmen, Agusan del Norte, and counsel for complainant, testified that he personally knows respondent and Helen Pena, the latter having requested him to recommend her as midwife at the Provincial Health Office; that at a party of the Integrated Bar at Agusan del Norte, Helen Pena was introduced to him by respondent Judge as his wife; that respondent's legal wife is Remedios Ramirez, residing at Butuan City; that on July 16, 1977, when respondent and Helen were at his house and he noticed that she was pregnant, he asked who the father was and she answered "who else, of course Lauro"; that said relationship continued as they were seen together attending parties, shopping and marketing as husband and wife; that whenever he passed by Helen's house, respondent's car would be parked in front of said house, that even up to September and October 1980. respondent Judge and Helen were still living together and that the acts of immorality and cohabitation previously complained of in Administrative Matter No. 1740-CFI were continuing; that they transferred around 1979 to a house near the School of Arts and Trade at Nasipit, Agusan del Norte, where his client, complainant Monteroso also lives;[12] that respondent Judge has a child with Helen Pena born more than a year ago[13] and that respondent Judge's actuations are of public knowledge in Butuan City and have dishonored both the Judiciary and the administration of justice.[14]

On cross-examination, Atty. Calo admitted that he was once a Municipal Judge of Agusan del Norte, and that he was dismissed in 1957 due to electioneering and ignorance of the law.[15]

Carlos Repaso, 25, telephone technician of Nasipit, Agusan del Norte, testified that he was a neighbor of respondent Judge and Helen in the vicinity of the School of Arts and Trade; that when he jogs early in the morning he passes by said house and sees them; that he saw Helen pregnant; that he used to see respondent and Helen kissing and embracing at the beach sometime in September or October 1978, on Saturdays and Sundays.[16]

On cross-examination, the witness admitted that he stays with Atty. Calo in Manila and that they conferred before the hearing.[17]

Mayor Pedrito Carmona, 41, married, and Mayor of Punta, Nasipit, testified that he has known respondent since 1976; that he knew Helen since she was his neighbor; that starting in 1977 respondent and Helen resided at Dagonoy, Trianggulo, and moved in the middle part of said year to Boy Dypungco's place at Punta, Nasipit, where they became neighbors; that he concluded that Helen was respondent's "second wife" as he used to join them at Helen's house; that he used to see respondent put his arms around Helen when he would dine with the two of them and that at around 11:00 o'clock in the evening both would retire to Helen's room; that respondent and Helen now reside at the house of Mr. Topaz at Punta, Nasipit; that respondent calls Helen "darling"; that he sees them together every day and that the last time he saw both together was on October 4, 1980; that respondent told him that he was not married to his first wife; that when the witness was appointed Mayor on October 18, 1979, he admonished respondent Judge to be careful as people were complaining of his immoral acts but respondent answered that he was not alone in said kind of life, and that even top-ranking government officials were doing it so there was no reason for him to be singled out; that the witness reported to the President respondent's electioneering for the opposition as well as his corrupt, and immoral acts; that respondent's immorality has

become "an issue in the province"; and that he and the other Mayors of Agusan del Norte signed and presented to President Marcos a petition for respondent Judge's removal on the ground of immorality, graft, and dishonesty.[18]

On cross-examination, Mayor Carmona admitted that it was only the preceeding week that Atty. Calo asked him to testify in this case.[19]

Benjamin Jaramillo, the last witness, 34, married, President of the Philippine Transport Organization No. 1004 (Agusan del Norte Chapter), a labor union, corroborated the testimonies of the aforementioned witnesses.[20]

Testifying on his own behalf, respondent Judge essentially denied illicit relations with Helen Pena stating that this is the third charge of immorality brought against him involving the same woman, all of which constituted acts of persecution of Atty. Tranquilino Calo or his clients, and all because respondent Judge had suspended him from the practice of law before his Court; that aside from Atty. Calo nobody has charged him with immorality and that out of more than 100 lawyers in Butuan City, only Atty. Calo has filed a complaint like this against him.

On cross-examination, respondent Judge declared that he con-sidered the Resolution of this Court suspending him for six months in Administrative Matter No. 1740 as "a matter of blessing because that is a tacit admission of the Supreme Court that I am the incumbent Judge"[21] (instead of his appointed successor, Atty. Famador).

On October 15, 1980, Investigating Justice Paras submitted his Report with the following Findings and Recommendation:

"From the evidence presented in this case, the undersigned investigator finds that respondent Judge Tapucar while married to Remedies Ramirez Tapucar is still living with Helen Pena as his wife, in fact even after the receipt by Judge Tapucar of the Resolution of April 11, 1980 of the Supreme Court suspending him from office for six months without pay.

"It should be noted that the complaint although dated May 4, 1978 charges that respondent Judge is living with Helen Pena, suggesting a continuity of relationship. Thus, evidence of such continuing relationship was admitted. Besides, the image of a judge must at all times remain untarnished.

"It stands to reason of course that Atty. Calo could have been interested in the case because respondent Judge had suspended him from the practice of law in his court. But this does not deter from the fact that according to the evidence, the alleged immorality is still being committed. Even if we were to disregard Atty. Calo's testimony, the testimony of complainant's three other witnesses indicates that respondent and Helen Pena are living together as husband and wife in a house fronting the school of arts and trade at Nasipit, Agusan del Norte and this romantic though illicit liaison is existing for around three years now (1977-1980). The precise location of the house cannot be a mere figment of the imagination of these witnesses; nor can Tapucar and Pena's constant companionship in social affairs including the late hours of the evening and the early morning hours spent in the house above-adverted to and his introduction of her to others as "his wife" be shrugged off as mere inventions of the witnesses minds."

"Finding respondent Judge Lauro Tapucar while married to Remedios Ramirez as still living with Helen Pena as his wife, it is hereby recommended that he be separated from the service."[22]

We adopt the recommendation.

Apparently, the penalty of suspension of six months without pay meted out by this Court to respondent Judge in Administrative Matter No. 1740 on April 11, 1980 has not been sufficient to deter him from continuing with his illicit liaison. On the contrary, he has haughtily construed such suspension as a "blessing", it being "a tacit admission of the Supreme Court that I am the incumbent Judge" instead of his appointed successor, Atty. Famador.

Neither have the three successive administrative charges for immorality filed against him been heeded by him as the "hand-writing on the wall", or at least as a warning to mend his ways. Instead, he has merely made a blanket denial of the charges, notwithstanding the overwhelming evidence, and labelled them as "acts of persecution."

Between the Court's Resolution of April 11, 1980 suspending him from office, and the investigation of this case in October, 1980, he has continued to defy and offend the community's sense of decency and morality. Justice Paras, therefore, as Investigator, committed no error in receiving evidence, over respondent Judge's objection, of his continuing grossly immoral conduct. In fact, this Court may *motu proprio* investigate a Judge for his continuing, grossly immoral conduct.[23]

The personal and official actuations of every member of the Bench must be beyond reproach and above suspicion. The faith and confidence of the public in the administration of justice cannot be maintained if a Judge who dispenses it is not equipped with the cardinal judicial virtue of moral integrity, and if he obtusely continues to commit an affront to public decency. In fact, moral integrity is more than a virtue; it is a necessity in the Judiciary. This Court, speaking through Mr. Justice Ramon Aquino, in *Leynes vs. Veloso* (supra), stated in no uncertain terms:

"A judge suffers from moral obtuseness or has a weird notion of morality in public office when he labors under the delusion that he can be a judge and at the same time have a mistress in defiance of the mores and sense of morality of the community. The absence of criminal liability does not preclude disciplinary action by reason of his highly unconventional and censurable behavior."

Respondent Judge merits dismissal.

Administrative Matter No. 2300-CFI

Addressing herself to the Chief Justice, Mrs. Erna Uy, in a verified letter-complaint dated October 2, 1979, charged respondent Judge with immoral, malicious, lascivious and indecent acts committed on her person in connection with Civil Case No. 2224 entitled "*Mercado, et al vs. Erna Uy, et al.*", pending before respondent Judge's Sala. We referred the case to Hon. Edgardo L. Paras, Associate Justice of the Court of Appeals, for investigation, report and recommendation. He held hearings on September 29 and October 8, 1980.

In her letter, which was under oath, complainant narrated the incident as follows:

"On September 3, 1979 at 10:30 A.M. a Sheriff Officer named Bayani Gratifilo came in the drug store and brought the Order. He told me to get a bond.

"In the afternoon at 3:30 p.m. while my husband and I were in the Country Bankers and Calo Insurance Office to get a bond, Bayani Gratifilo called over the phone and asked our salesclerk our whereabouts and she was

told that we are at Calo's Insurance Office. Bayani Gratifilo was able to get in touch with us and talk with my husband and told him to stop securing the bond instead we will just go directly to the Office of the Judge because Judge Lauro Tapucar wants to talk with us personally. Upon arrival .in the Office at Capitol, the Judge met us at his office door and told my husband to wait outside because he only wants to talk with me alone in his office room. The Judge locked the door. Then he let me sit down and ask what kind of help I want from him and I answered it's up to you Sir.

"The Judge told me to narrate about my case with Mercado and I told him everything. He asked me who is my lawyer. I told him it is Atty. Tranquilino O. Calo. He said, "Why did you get him? He will never win in my court I suspended him from the practice of law. Get another lawyer, like Atty. Cataluna. But I told him that Atty. Calo was already my lawyer ever since I was a child when Atty. Calo was still a judge in Carmen. According to the Judge I'll just charge it to experience and prepare the money of P15,000.00 on Saturday, so that the case will be dismissed. I told him I will not pay because it is the Mercados' who owe me, so he said he will help me. Afterwards he came near me and suddenly carressed and kissed me. I kept away from him and resisted. I was shocked and startled. I ran towards the door but he prevented me and began to say that if I will consent to be his mistress he will give me plenty of money. But I told him I do not like and I will shout and began to cry. Before I left his office he told me that if I will leave my husband we will go to Cebu and he will give me everything luxurious existing in this world and he will dismiss my case, or considered it as dead case. I never came back to see him but instead I and my husband went to see Atty. Calo so that he can prepare all the papers so that my case can be dismissed and the judge can be removed from his office. Atty. Calo was not able to prepare the papers at once because he said he will go to Australia but upon his return he will make the papers.

"What is worse is that after we have filed a bond in order that the attachment can be discharged he has not acted on our motion and Deputy Sheriff Bayani Gratifilo went to the car dealer in order to get our Volkswagen car worth not less than P40,000.00

“... “

Complainant herself could not testify before the Justice-Investigator as she was abroad at the time. Her husband, Norberto David, however, testified

"that he is 30 years old and that he knows Judge Lauro Tapucar; that on September 3, 1979 at about 10:30 o'clock in the morning he and his wife were in their drugstore in Butuan City when a certain deputy sheriff named Bayani Gratifilo and a policeman arrived and informed them that they had a writ concerning the attachment of their (Norberto's and Erna's) properties; that to counteract the same they had to obtain a counterbond; that they proceeded to an insurance company, but because it was already noontime, they were unable to contact the Manager of said company, and so they were told to go back at 2:00 o'clock in the afternoon (tsn pp. 2-6, Sept. 29, 1980); that at 2:00 o'clock p.m. the deputy sheriff told them that Judge Tapucar wanted to see them in his office; that they immediately proceeded to said office; that when the Judge opened the door to his chambers and he (Norberto) was about to enter, the Judge told him he wanted to talk with the wife alone, and asked him to stay outside; that several minutes later he saw his wife go out of the chambers crying, and he asked her why; that his wife told him that the Judge had kissed and embraced her, and had even told her to abandon him (Norberto) because he (Norberto) was a poor man and because he (the Judge) wanted to make Erna his mistress; that upon hearing this he wanted to go to the chambers for a

confrontation with the Judge, but his wife would not allow him for that would only mean trouble (t.sn. pp.6-8, Sept. 29, 1980); that they then went to Atty. Calo to ask for legal advise; that the next time he saw Judge Tapucar was about the first week of December, 1979 at the Narra Restaurant in Butuan City; that the respondent Judge asked for forgiveness and told him in the vernacular —

'pasensya ka na, tao lamang tayo, hinihiling ko na ang bagay na nangyari';

that he and his wife told Judge Tapucar that they had been given advise by Atty. Calo; and that their present decision is to continue the charges against the Judge so that he may be dismissed from the service; that his wife is now in Toronto, Canada to visit her brother, and to have a little vacation; that the wife had left for Toronto on August 28, 1980 (tsn. p. 8, pp. 10-12, Sept. 29, 1980)."[24]

For his part, in his Indorsement, dated November 16, 1979, as well as in his testimony before the Investigator, respondent Judge: denounced complainant's imputations as a malicious scheme of complainant's lawyer, Atty. Tranquilino Calo, who had allegedly embarked on a campaign of villification against respondent specifically denied the charges of having committed indecent acts against, and having made immoral proposals to complainant, contending that they are "downright lies and perjured concoctions"; belied that he made overtures for a monetary consideration in return for the dismissal of the case; denied that he had apologized to the David spouses; admitted that the David spouses had gone to see him regarding a Writ of Attachment issued by him in Civil Case No. 2224 seeking his advice for the discharge of the attachment, but, as with other cases, he advised them to settle the case and to get a lawyer to undertake the defense alleged that complainant's Motion for Discharge of Attachment was denied by him in view of complainant's as well as her counsel's non-appearance on scheduled hearings for four consecutive times;[25] manifested that no return had yet been made on the Writ of Attachment and that the implementation of the Writ is addressed to the Sheriff; averred that an administrative case is not the proper remedy to question the propriety of a judicial Writ; presented the Affidavit of Dr. Berido to the effect that it was at the instance of the David spouses, who wanted advice regarding their case, that he had invited respondent Judge to dinner, during which the latter advised the spouses to file the necessary counterbond but that he never heard respondent Judge apologize to the spouses; submitted the Affidavit of Sheriff Bayani S. Gratifilo, who stated essentially that he was never asked by respondent Judge to bring the Uy spouses to his chambers; that at 3:00 o'clock P.M. of September 3, 1979, he was in front of respondent Judge's chambers conversing with Complainant's husband for about ten minutes; that the conversation stopped when Complainant emerged from respondent Judge's chambers; and that she joined them in the conversation and pleaded for his help in connection with the Writ of Attachment, after which Complainant and her husband left.

In his Report dated October 15, 1980, Justice Edgardo Paras made the following findings and recommendation:

"The evidence, in the mind of this Investigator, is clear that Judge Tapucar committed the indecent acts and proposals adverted to in the complaint. Firstly, there was no denial on his part that in his chambers he talked with Erna Uy ALONE- for ten minutes. Now then, considering the fact that he knew that the husband had come along with her, and was in fact waiting in the hallway while both the judge and Erna were in the former's chambers, why did he not ask the husband to step inside? Why did he have to converse with Erna all alone? Surely, the case involving as it did a mere question of attachment, could not have required a private conversation between the Judge and the complainant, and even if a private tete-a-tete was demanded why should Erna's husband be EXCLUDED? No prudent Judge, under the circumstances, would risk the talk that might follow after such a conversation. Secondly, it is inconceivable that the door leading to the hallway would

remain open or unlocked, after the husband had been asked to remain outside. To maintain the secrecy that was ostensibly desired, logic demanded the closing and locking of the door. The contention of Judge Tapucar that high or loud voices (or even ordinary conversation) could penetrate to the hallway thus appear to be far-fetched, for if so, why still exclude the husband from the chambers? Thirdly, the testimony of the husband as to [he physical countenance of his wife after the scene-in-chambers (including the crying of the woman) is direct and believable evidence; even his testimony as to what his wife then and there recounted to him is admissible as part of the *res gestae* (the crying of Erna as she was leaving the chambers being a startling occurrence). Fourthly, it is difficult to give credence to Exh. 1 — the affidavit of Dr. Berido because he was not presented for confrontation and cross-examination. Besides, the very admission of Judge Tapucar that he had gone to the Narra Restaurant, upon the invitation of the Beridos, to discuss the predicament of the couple (Erna Uy and husband) re an attachment case in his own court does not look well insofar as the image of impartial justice is concerned. It is easy to believe that the apology referred to by the husband of the complainant was indeed made. Fifthly the affidavit of deputy sheriff Gratifilo (Exh. 2) is likewise difficult to believe for he would not have been pinpointed as the person concerned had the matter related by the husband been untrue. Besides no reason has been given as to why the urgings by the deputy sheriff had been made unless they were true.

PREMISES CONSIDERED it is the humble opinion of this Investigator that in the light of the evidence adduced, the respondent Judge is guilty as charged. Considered in connection with Adm. Matter No. 1911-CFI (Monteroso vs. Tapucar) it is believed that the penalty of separation from the service is warranted."[26]

The recommendation must be accepted.

That complainant was alone with respondent Judge for about ten minutes in the latter's chambers is supported by (he Affidavit of Deputy Sheriff Gralifilo. which respondent Judge himself presented. Thus, the Sheriff stated:

"That on Sept. 3, 1979, at about 3:00 o'clock in the afternoon, I was at the lobby of the Capitol of Agusan del Norte, just in front of the main doors of the Provincial Fiscal's Office and the chamber of Judge Tapucar conversing with Mr. Norberto David, husband of Erna Uy, whom I met for the second time, the first being when I served a writ of attachment upon them;

"That our conversation by the door of the Judge's chamber lasted for about ten minutes and was stopped when Erna Uy emerged from the door of Judge Tapucar's chamber, followed a little later by Casiano A. Angchangco, Jr.;

"That Erna Uy, upon coming out of the chamber, joined us in the conversation, pleaded for my help about the writ of attachment, and after a while, she and Mr. David left;

"... "[27]

The foregoing also confirms that complainant's husband was, in fact, excluded by respondent Judge from his chambers while he had complainant inside with him, otherwise, the husband would not be waiting outside the chambers door. That complainant was in tears when she left respondent Judge's chambers, as related by her husband, lend credence to her charges of lascivious and indecent acts and proposals on respondent Judge's part.

The latter's apology to the spouses at the Berido dinner would have been unnecessary if no untoward incident had occurred in his chambers. What makes the wrongdoing complained of particularly condemnable is that respondent Judge was capitalizing on complainant's case before him to make her succumb to his immoral advances. Such brazen and despicable actuation by respondent Judge towards a party litigant, who happened to be a woman, cannot but deserve severe reprobation. It is personal behavior such as his that tarnishes the image of members of the Bench in the eyes of the public and make the latter lose faith and trust in their uprightness and their capacity to be fair and honest with themselves and with litigants alike.

In this particular case, respondent Judge also merits dismissal.

ALL THE FOREGOING CONSIDERED, although we have found no justification in upholding the Complaint in Administrative Case No. 1720, we find that respondent Judge Lauro L. Tapucar, is unfit to continue in his exalted office in Administrative Matters Nos. 1911 and 2300-CFI, and hereby ordered him separated from the service.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos and De Castro, JJ., concur.

[1] Annex "A", p. 14, Rollo.

[2] Annex "B", p. 15, *ibid*.

[3] *Gamat vs. Cruz*, 76 SCRA 333 (1975).

[4] *Lopcz vs. Corpus*, 78 SCRA 374 (1977).

[5] 43 Phil. 212 (1922).

[6] pp- 6-10, Rollo.

[7] p. 11, *ibid*

[8] 90 SCRA 124 (1979).

[9] pp. 64-68, Rollo.

[10] p. 73, *ibid*.

[11] 75, *ibid*.

[12] t.s.n., Sept, 16, 1980, pp. 10-20.

[13] t.s.n., Sept. 16, 1980, pp. 37-38.

[14] t.s.n., Sept. 16, 1980, p. 29.

[15] t.s.n., Oct. 8, 1980, p. 3,

[16] t.s.n., Sept. 29, 1980, pp. 18-22.

[17] t.s.n., Sept. 29, 1980, pp. 33-34.

[18] t.s.n., Oct. 7, 1980, pp. 3-11.

- [19] t.s.n., Oct. 8, 1980, p. 1.
- [20] t.s.n., Oct. 7, 1980, pp. 12-14.
- [21] t.s.n., Oct. 8, 1980, p.26.
- [22] pp. 13-14, Report.
- [23] Leynes vs. Veloso, 82 SCRA 325 (1978).
- [24] Justice-Investigator's Report, pp. 9-10.
- [25] Annex 3, p. 12, Rollo.
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- [27] t.s.n., Oct. 8, 1980, pp. 6-8.

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