

BAYANI VASQUEZ, COMPLAINANT, VS. JUDGE SEVERO MALVAR, RESPONDENT.

A.M. No. 884-CFI. August 31, 1978

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

A verified letter-complaint was filed by complainant Bayani Vasquez against Judge Severo Malvar of the Court of First Instance of Laguna (Branch VI, Calamba, Laguna), for alleged serious misconduct in office on six [6] counts, as follows:

- Actively intervening in his personal capacity, going to the bank himself, giving verbal instructions to bank personnel, causing the withdrawal of P20,000.00 from the account of complainant's stepmother, the late Maria Pelaez, without notice to the adverse parties in Sp. Proc. No. 29-C and/or Sp. Proc. 31-C of the Laguna Court of First Instance, and turning over the said amount to Atty. Pastor Timog, counsel for one set of oppositors in the former case, and counsel for petitioner in the latter case;
- In like manner as the foregoing, causing the withdrawal of the amount of P5,000.00 from the same account of Maria Pelaez with the Bay Rural Bank and turning over the said amount to a Chinese named Tan Ka Poe;
- In the same manner as hereinabove described, verbally authorizing in July, 1973 the withdrawal of P10,000.00 from the same bank account of Maria Pelaez for alleged burial expenses;
- Appointing his clerk of court, Atty. Demetrio Hilbero, as special administrator of the Intestate Estate of the late Maria Pelaez Vda. de Vasquez, despite -
 - a. The petition of practically all the parties in the above-named special proceedings that the PNB of Calamba, Laguna, be appointed as Special Administrator, and
 - b. Being repeatedly reminded by the attorneys of record of the ruling in *Medina vs. Court of Appeals* (53 SCRA 206) whereby courts are enjoined to desist from the practice of appointing their Clerk of Court or other employees as administrators or receivers of estates and the like;
- Repeatedly asking the parties to execute an extra-judicial partition of the properties "so that we will all be happy," although he knew that some parties were not related to the deceased Maria Pelaez, as shown by his warning: "Remember, I know all of you are not related to the deceased Maria Pelaez; Vasquez, yes, because he is a stepson, but he is claiming only that portion belonging to the half of his father"; and
- Issuing two orders, one dated December 19, 1974 and another dated December 21, 1974, directing the turnover to the heirs of all the properties of Pelaez, including some P100,000.00 in cash, although no copy of the motion to withdraw the petition for Letters of Administration was furnished complainant or his counsel, and respondent Judge knew that complainant would be adversely affected thereby.

After respondent submitted his comments on February 20, 1975, complainant submitted a Motion to Withdraw and/or Dismiss the Complaint, dated June 5, 1975, alleging that "after a more serious soul-searching" he was "no

longer interested in pressing his complaint against Judge Malvar on the ground that everything had been clarified" (p. 15, rec.).

After considering the verified complaint as well as respondent Judge's comments thereon, the First Division of this Court, on October 15, 1975, resolved to refer the complaint to Associate Justice Mariano Serrano of the Court of Appeals for investigation, report and recommendation.

In his report, dated October 21, 1976, the Investigating Justice made the following findings:

"COUNTS I, II and III

"These counts refer to three alleged withdrawals in the amounts of P20,000, P5,000 and P10,000 made in July 1973 from the deposit account of the late Maria Pelaez with the Rural Bank of Bay, Laguna, without any judicial order or notice to adverse parties in special proceedings No. 31-C, wherein it is claimed that respondent Judge:

"(a) Verbally authorized and

"(b) Actively intervened in his personal capacity, even personally going to the bank and giving verbal instructions to its personnel;

"(c) Personally saw to it that the amount of P20,000 was turned over to Atty. Pastor Timog who did not appear to have filed a written motion with the court, or if one was filed no copy was furnished the adverse parties [Count I];

"(d) Gave the amount of P5,000 to a Chinaman, Tan Ka Poe, supposedly for vigil purposes [Count II]; and

"(e) Turned over the amount of P10,000 to the same Chinaman purportedly for burial expenses [Count III].

"The evidence shows, and respondent admits, that he went to the bank twice (on July 30 and Aug. 1, 1973) in connection with three withdrawals from the joint deposit account of the deceased and Julian Padrid, her overseer. He did so upon the request and in the company of Atty. Artemio Elepaño, legal counsel and friend of the deceased Maria Pelaez, Atty. Timog, her godson and counsel for petitioner in special proceedings No. 31-C; Padrid; and Tan Ka Poe. He instructed the bank personnel to allow the withdrawals of P20,000, P5,000 and P5,000, or a total sum of P30,000, from said joint deposit account to meet expenses for the coffin and funeral services of the deceased and for the vigil while her remains lay in state for a week.

"The expenses for which the withdrawals had been made were accounted for -- P20,000 was paid to Funeraria Paz for the coffin and funeral services and P5,000 and another P5,000 were given to Tan Ka Poe who had advanced the expenses for the vigil, the construction of the tomb, etc.. The P20,000 was in the form of a bank draft drawn in favor of La Funeraria Paz, Inc. (Exh. 10, p. 68, folder of exhs., spec. proc. 31-C), which issued a receipt therefor (Exh. 11, p. 69, id.). A report of accounting on the P10,000, showing a total expenditure of P10,096.30, was submitted by Tan Ka Poe to the court (Exh. 7, p. 65, id.).

"Respondent personally saw to it that the P20,000 check was delivered to Atty. Timog because the latter, whom he trusted, was the one who receipted for the coffin from Funeraria Paz. Respondent disavowed any personal interest in the amounts withdrawn, claiming that his only interest in intervening in the withdrawals was to do justice to the old woman whom he did not want to be buried as a pauper, when she was rich.

"While there was nothing wrong with the withdrawals which appear to have been made with the approval of the parties to the guardianship proceedings, as admitted by complainant himself (p. 10, t.s.n.), the same being deemed necessary to give the deceased a decent burial and to meet expenses for a week-long vigil as wished by her when she was still alive, in keeping with her wealth and social position in the community, not to say in the province, what was being questioned was respondent's active intervention to the extent of going to the bank twice and giving verbal instructions to its personnel to allow the desired withdrawals.

"As to whether the withdrawals could have been effected by written orders, respondent said that what he had in mind was just the death of Maria Pelaez and that the guardianship proceedings had been terminated, adding that he could not have issued written orders because the non-withdrawal order of the court was oral.

"Respondent explained that he had to go to the bank because he had given an order in open court that no withdrawals from the deposit account of the late Maria Pelaez would be allowed without the court's approval and to see to it that only the amounts that were necessary were withdrawn for the protection of the estate, besides the bank might ask a lot of questions. He denied giving verbal instructions or orders at the bank, as he merely asked the bank manager if withdrawals could be made to which he received an affirmative answer.

"As against respondent's claim that he did not give orders in the rural bank, there is the testimony of his own witness P. Macajiat, the bank manager then, who confirmed that he did give such orders 'to honor the withdrawal' (p. 113, t.s.n.), corroborated by another witness of his former Judge Elepaño (p. 59, t.s.n.). There was no necessity for respondent Judge to go to the bank. According to the bank manager, a written order would have sufficed; all that was necessary was an order, verbal or written, from the Judge (p. 117, t.s.n.).

"Besides, respondent Judge having already gone to the bank once, the Investigator does not see the necessity for him to go there a second time. He could have given appropriate instructions as to future withdrawal or withdrawals when he went there the first time. He could have issued a written order for the subsequent withdrawal. Apparently, he was overly accommodating.

"The respondent Judge claims that no written order could be made, as his order forbidding withdrawal without court authorization was oral and the guardianship proceedings had been closed with the demise of the old woman, nor could withdrawals be presented under special proceedings No. 31-C which were just filed. The investigator feels otherwise. He believes that a written order coming from the court would have been enough and could have been legally issued. The withdrawals were for expenses properly chargeable against and deductible from the assets of the estate of the deceased before the same could be distributed to the heirs or persons entitled thereto (Sec. 1, Rule 90) for which the appointment of an administrator was sought in special proceedings No. 31-C filed in the morning of July 30, 1973, the same day that the initial bank withdrawals were made. Indeed in the order of respondent denying the bid for his disqualification, he conceded that 'withdrawal could be made from said bank deposit to be accounted as expenses for burial later, to be submitted to the administrator and then by him to the Court for its approval' (Exh. 13, p. 71, folder of exhs., spec. proc. 31-C). Besides, the guardianship proceedings had not been actually terminated until after the court issued an order on August 7 dismissing the case upon motion of the petitioner therein filed on August 3.

"Respondent professed that his intervention was official, not personal. That being the case, he could have given official written orders. If he wanted to see to it that only the necessary amounts were withdrawn for the protection of the estate, the same could have been achieved and determined in his office and appropriate orders thereafter issued.

"Much as respondent desired to give the deceased a decent funeral commensurate with her social standing in the community and in accordance with her expressed wishes, which the law (Arts. 306 and 307, new Civil Code) authorizes, yet he could have done so in a more discreet, rather the proper, way, by just issuing written orders or instructions to the bank. He could then have avoided, not only being misunderstood, but any suspicion of personal interest or partiality for which one of the parties sought his inhibition or disqualification in special proceedings No. 31-C.

"A judge should at all times be careful about his behavior to avoid suspicion or doubt as to his probable motives. A judge's conduct should be free from the appearance of impropriety (Castillo vs. Barsana, Adm. Matter No. 77-M, April 18, 1975, 63 SCRA 388; Jugueta vs. Boncaros, Adm. Matter No. 440+CFI, Sept. 30, 1974, 60 SCRA 27; Lague vs. Kayanan, L-26826, Aug. 29, 1969, 29 SCRA 165).

"The respondent Judge, in the Investigator's view, is liable for error of judgment and impropriety under these counts.

"Count IV

"This count relates to -

"(1) The appointment by respondent Judge of his Clerk of Court as special administrator in the intestate estate of

the late Maria Pelaez allegedly despite:

"(a) Petition by practically all the parties in the above-cited cases for the appointment of the Philippine National Bank branch at Calamba, Laguna, as special administrator; and

"(b) Repeated reminders by attorneys of record of the decision of the Supreme Court in the case of Medina vs. Honorable Court of Appeals (L-34760, Sept. 28, 1973, 53 SCRA 206), against the practice of probate courts of appointing the 'clerks of court or other court personnel as administrators or receivers of estates of deceased persons'; and

"(2) The alleged failure of said clerk of court to render any accounting of his administration despite the lapse of more than one year from his appointment.

"1. From the records of special proceedings No. 31-C it appears that oppositor Paul Pelaez, through Atty. David, in his manifestation and opposition filed on September 12, 1973, suggested the appointment of the PNB as special administrator (p. 15, folder of exhs., spec. proc. 31-C). The suggestion was adopted by oppositors Blanco et al. in their opposition filed on October 17 (p. 42, id.). However, the respondent Judge, as early as September 5, had already named the clerk of court as special administrator in view of the urgency for the appointment of one as sought by petitioner Negradas and oppositors Algarne in their separate motions (Exh. 14, p. 13; pp. 6, 8, id.). As elsewhere observed, counsel for the parties appear to have agreed to said appointment, or at least to have acquiesced in the same. Complainant had not then entered the picture, his joint opposition with his brother having been filed only on September 17 (p. 21, id.).

"Respondent in his testimony declared that he appointed the clerk of court as special administrator because the motion for such appointment was urgent, there being already deliveries of palay which were being loaded; that the appointment was the fastest and was to continue until the appointment of a regular administrator, which the parties asked to be delayed because they were doing their best to agree to an amicable settlement; that there was no reminder or admonition against the appointment of the clerk of court as special administrator, as everybody agreed to the appointment; that only two of the parties were for the appointment of the PNB branch as regular administrator; and that he did not know of the decision of the Supreme Court in the Medina case (pp. 82-87, t.s.n.). Atty. David testified that the appointment of the clerk of court as special administrator was unanimous among counsel for the parties (p. 137, t.s.n.).

"As above stated, Atty. Demetrio Hilbero, clerk of court, was appointed special administrator by respondent on September 5, 1973. The decision in Medina vs. Court of Appeals (L-34760, 53 SCRA 206) was handed down by the Supreme Court on September 28, 1973, where it ruled against the practice by probate courts of appointing clerks of court or other court personnel as administrators of estates of deceased persons and enjoined probate

courts to desist from such practice. It can be seen that the appointment of the clerk of court as special administrator was made before the promulgation of said decision. Hence, it could not be true that the appointment was made despite reminders or admonitions made by the attorneys of the decision in the Medina case.

"It appears that two orders of respondent Judge both dated October 22, 1973, copies of which were furnished complainant, touched on the appointment of Atty. Hilbero as special administrator, yet there was no comment from complainant on said appointment.

"2. The records of special proceedings No. 31-C also show that the clerk of court submitted a partial report dated November 15, 1973 (Exh. 22, p. 58, folder of exhs.; spec. proc. 31-C); an inventory of property of the deceased dated April 29, 1974 (Exh. 23, p. 116, id.); and another inventory of property dated December 19, 1974 (Exh. 24, p. 120, id.). The clerk of court has also submitted a final report of accounting of his administration of the intestate estate of Maria Pelaez (undated).

"Upon the evidence adduced, the Investigator finds this count against respondent Judge to be devoid of merit.

"Count V

"It is claimed under this count:

"(1) That in his chambers respondent Judge repeatedly asked the parties to execute (so 'we will all be happy,' said respondent) an extrajudicial partition of the properties subject of the judicial proceedings although he knew and was well aware of the following facts:

"(a) That petitioner Felicidad C. Negradas is not known to be related by blood or affinity, or had no relationship whatever, to the deceased Maria Pelaez (see par. 10 of the opposition dated Sept. 4, 1973, filed by Attys. Teodoro C. San Juan and Raymundo R. Carlos of the Citizens Legal Assistance Office (CLAO), Department of Justice, and par. 3 of opposition filed on Nov. 13, 1973, by Elias Pelaez assisted by Atty. Enrique Villanueva);

"(b) That petitioner Felicidad Negradas and her alleged brother Alejandro Negradas are not relatives of the deceased, much less her legal heirs (see opposition dated Aug. 24, 1973, filed by Paul Pelaez et al. through Atty. Porfirio C. David and opposition dated Oct. 12, 1973, filed by Atty. Jose L. Blanco for oppositors Blanco and Sepulveda); and

"(c) That Elias Pelaez is not related at all to the deceased;

“(2) That respondent even repeatedly warned the parties when they were haggling for a larger share in the properties, thus: 'Remember, I know all of you are not related to the deceased, Maria Pelaez; Vasquez, yes, because he is a stepson, but he is claiming only that portion belonging to the half of his father; and

“(3) That Judge Malvar, having been informed by formal pleadings and told in informal conversation of the doubtful claims of the Negradases, Pelaezes, Blancos and Sepulvedas, should have continued judicial proceedings to determine the authenticity of each claim.

"1. Respondent denied having said, in urging the parties to effect an extrajudicial partition of the properties, 'So we will all be happy,' as he would not be reckless to make that statement. He declared that he encourages the settlement of the case, for one purpose of pre-trial is to see the possibility for amicable settlement, if the parties would agree among themselves to partition the properties without going into expenses and trouble of intestate proceedings; that what he could have stated was, 'You try to settle among yourselves so that everybody will be happy,' but not to include himself because he was nearing 67 years, almost of retirement age; and that he has been in the judiciary for many, many years starting as municipal judge and his interest in a case is to do justice and he never allows personal motives to interfere in his official actuations.

"On cross-examination complainant recalled respondent to have said, 'Everybody will be happy,' something like that, as there were many complainants at that time; that what the Judge could have meant was that if the parties could come to an amicable settlement 'so everybody will be happy' (pp. 47-48, t.s.n.). From the testimony of the complainant it could be seen that by 'everybody being happy' with an amicable settlement of the case respondent meant or referred to all the parties or claimants in the case. That was also the tenor of the testimony of Atty. Porfirio David, counsel for Paul Pelaez in the two special proceedings (p. 135, t.s.n.).

"Atty. Arturo Mojica, former counsel of the complainant and who was cited at the investigator's initiative, stated that respondent called the parties in his chambers and told them, 'It would be better for all of you if you settle amicably.' In other words, amicable settlement would be better for all the parties, so it was in the interest of the parties themselves that they worked out an amicable settlement.

"2. As to the second paragraph of this count -- to the effect that respondent repeatedly warned the parties when they were haggling for a larger share in the properties, as follows: 'Remember, I know all of you are not related to the deceased, Maria Pelaez; Vasquez, yes, because he is a stepson, but he is claiming only that portion belonging to the half of his father' -- respondent denied ever making the statement, as it would be prejudging the case and the parties would not be able to understand him any more if he said that.

"Complainant in his testimony admitted that he did not personally hear respondent make the statement, claiming that it was relayed to him by his counsel, Atty. Mojica (p. 13, t.s.n.). The evidence is therefore hearsay.

"At any rate, Atty. Mojica denied having heard such statement from respondent Judge and having told

complainant Vasquez that respondent had warned the parties with the statement alluded to. According to him, respondent never said anything of that sort and that what he remembered having told Vasquez was that the Judge was trying to effect a settlement of the case, the Judge saying, 'It would be better for all of you if you settle amicably.' (pp. 22-23, t.s.n.). Atty. David did not remember respondent having uttered the statement although he believed he had attended all the conferences (p. 136, t.s.n.).

"3. Under the last paragraph of the same count, complainant claims that respondent Judge, having been informed by formal pleadings and told in informal conversations of the doubtful claims of the Negradases, Pelaezes, Blancos and Sepulvedas, should have continued the judicial proceedings to determine the authenticity of each claim.

"Respondent explained that as the petitioner herself had withdrawn the petition, attaching thereto a deed of extrajudicial partition, he considered it a ministerial duty on his part to grant the petition; that the dismissal was without prejudice to the oppositor's filing an appropriate action; that he believed a separate appropriate action was the proper one where all the parties could assert themselves; and that he required the signatories to the extrajudicial partition to file a bond for the protection of the oppositors or heirs who might have been left out or parties having any claim against the estate.

"In his comment on the complaint, respondent stated that if some of the parties in the amicable settlement were not heirs, that was not a matter for the court to look into; it was the lookout of the true heirs.

"I consider the explanation of respondent to be satisfactory and therefore find this count without merit.

"Count VI

"This last count has to do with two orders of respondent Judge, one dated December 19, 1974, directing the special administrator 'to turn over today the real as well as personal properties of the estate to the heirs including whatever cash he has in his possession,' and the other, dated December 21, amending the earlier one by requiring the signatories to the amicable settlement to post a P82,000 bond pursuant to Section 1, Rule 74 of the Rules of Court (Exhs. 27, 28, pp. 109, 114, folder of exhs., spec. proc. 31-C). It is claimed that the turnover was directed although no copies of the motion to withdraw (petition) dated December 11, 1974, had been furnished complainant's counsel or complainant himself and the respondent Judge very well knew that complainant would be adversely affected thereby.

"Respondent explained that with the termination of the proceedings for the appointments of an administrator, the special administrator, as a consequence, had to turn over the properties to the heirs of Maria Pelaez, but he saw to it that the other heirs who might have been left out in the extrajudicial settlement were protected by requiring the parties thereto to file the necessary bond pursuant to Section 1 of Rule 74. Moreover, he was of the opinion that parties could not be compelled to litigate when they had agreed on a settlement of the intestate with no more debts

to be settled, relying on *Utulo vs. Pasion vda. de Garcia* (66 Phil. 302). According to the respondent the fact that complainant filed a separate action for the annulment of the extrajudicial partition on May 9, 1975, docketed as Civil Case No. 243-C, in which the Algarnes have intervened and where the respective interests of the parties could be better protected than in the intestate proceedings, would tend to show the correctness of the questioned orders approving the extrajudicial partition.

"Respondent in his memorandum also cites the case of *Torres vs. Torres* (L-19064, Jan. 31, 1964, 10 SCRA 185) in which the Supreme Court held that where the decedent left no debts and the heirs or legatees are all of age, there is no necessity for the institution of special proceedings and the appointment of an administrator for the settlement of the estate, because the same can be effected either extrajudicially or through an ordinary action for partition, on the strength of Section 1, Rule 74 of the Rules of Court.

"The Investigator finds this count similarly devoid of merit" (pp. 45-60, Justice Serrano's Report).

After a study of the matter and a review of the records of the case, the Acting Judicial Consultant, in his memorandum to the Chief Justice of this Court on April 5, 1977, recommended that respondent be **REPRIMANDED**, and sternly warned that repetition of such misconduct in office will be more severely dealt with. The Investigating Justice of the Court of Appeals recommended that respondent be admonished to be more careful in his conduct in the future, with a warning that repetition of similar acts will be dealt with more severely.

WE have meticulously gone over the evidence, documentary and testimonial, submitted by the respondent to Justice Serrano. With the exception of Counts 4 and 5, found by the Investigating Justice to be devoid of merit, WE are satisfied that the observations and conclusions made and arrived at by him in his Report covering the other counts are amply supported by the evidence in the record.

This Court, therefore, concurs with Justice Serrano's finding of culpability with respect to Counts 1, 2 and 3, and also with his finding that Count 6 is devoid of merit.

However, with regards to Counts 4 and 5, WE find the same to have been sufficiently proved.

Coming now to Count 4, it appears that, on September 5, 1973, respondent Judge appointed his clerk of court, Atty. Demetrio L. Hilbero, as special administrator, "for the purpose of receiving and administering the harvests from the ricefields and coconut plantations of the estate until the hearing of this petition on September 17, 1973." On September 12, 1973, Paul Pelaez, through counsel, Atty. David, suggested the appointment of the Philippine National Bank as special administrator. But during the hearing of September 17, 1973, what transpired was the following:

"DAVID:

May we know if the present special administrator is going to continue?

"COURT:

His appointment is up to this date only. I want to consult you also. I did not extend further his appointment unless I have seen you. I have to appoint a neutral one, if you would agree. If you would agree to the extension of appointment of Atty. Hilbero not only as special administrator but as regular administrator, it could be better" (pp. 6-7, t.s.n., hearing of Sept. 17, 1973, Spl. Proc. No. 31-C; italics supplied).

Then, in the hearing of October 22, 1973, as the records show, the question of administration was again brought up by Atty. Jose Blanco, counsel for oppositors Jose Blanco, et al., in effect objecting to the appointment of Atty. Hilbero as regular administrator (Exh. 16, p. 48, Folder of exhs., Spl. Proc. No. 31-C). Resolving the question of administration brought up by Atty. Blanco, respondent Judge issued an order dated October 22, 1973, stating, *inter alia*, the following:

"x x x Considering that the parties now apparently no longer feel as the Court does in this matter of administration, this Court after careful reflection and deliberation has resolved to terminate the administration by Atty. Hilbero as early as possible, and proceed to the appointment of a regular administrator after due hearing" (p. 2, Exh. 16; p. 49, Folder of Exhs., Spl. Proc. No. 31-C; italics supplied).

Surprisingly, however, on the very same day -- October 22, 1973 -- respondent Judge issued another order, this time **EXTENDING, NOT TERMINATING**, as earlier pointed out, the appointment of his clerk of court as special administrator with full powers until the appointment of a regular administrator (Exh. 17, p. 51, *ibid*). On top of all these facts, not to mention OUR ruling in the Medina case on September 28, 1973, against the practice by probate courts of appointing clerks of court or other court personnel as administrators of estates of deceased persons and enjoining the probate courts to desist from such practice, and despite a Joint Motion for the Appointment of a Regular Administrator (Exh. 19, p. 85, *ibid*), dated January 18, 1974 and another Motion for Appointment of Regular (Joint) Administrators, dated October 15, 1974 [Exh. 20, p. 93, *ibid*], respondent allowed his clerk of court to act as special administrator up to December 19, 1974.

Upon all these disturbing facts, this Court feels that respondent did overlook and/or ignore this Court's injunction in the Medina case, for despite the lapse of more than one year from and after the promulgation of the decision in Medina, and notwithstanding the three motions of the parties, the first on September 12, 1973 which was heard on October 22, 1973, and those of January 18, and October 15 in 1974, respondent did not lift a finger to have his previous orders on the matter rescinded or revoked, which he could have done even without any motion to that effect. If the appointment of an administrator was urgent, he could have rescinded his order of September 5, 1973 as early as September 12, 1973 and/or upon knowing of the decision in the Medina case promulgated on September 28, 1973 without waiting for any motion therefor; and soon thereafter he should have appointed the Philippine National Bank branch in Laguna, as regular administrator, as he had already hinted that day, at least to forestall any of the parties-litigants from entertaining any wild suspicions as to his personal motives in the matter. It should be noted that on November 15, 1973, or over two months after, his clerk of court submitted his partial report as special administrator. Judges should be not only men of the highest integrity but they should also at all times conduct themselves in such a manner as to be above suspicion (*Li vs. Mijares*, 65 SCRA 167, 169). Besides, as a trial court judge, he should always keep himself abreast of the latest laws, rulings and jurisprudence affecting his jurisdiction [*Arpon vs. De la Paz*, 64 SCRA 157].

Coming back to Counts 1, 2 and 3, wherein the Investigating Justice found respondent guilty of impropriety, it appears that respondent went out of his way and gave verbal orders -- not only once but twice -- to bank personnel of the Bay Rural Bank, including its manager, to allow withdrawals from the savings account of the deceased Maria Pelaez. By these acts, respondent showed everybody that he was "all powerful" in that part of the country, contrary to the constitutional principle that in a democracy such as ours, no man, however high his position might

be in the government, is above the law, for ours is a government of laws and not of men. Besides, there was no motion for withdrawal from the savings account of the deceased filed by any of the litigants to justify respondent in ordering such withdrawal. And even granting that there was one such motion, respondent should know -- the same being elementary -- that all judgments and orders of a court of record must be in writing, signed by the judge, and any judgment or order given verbally is, therefore, without force and effect (*Cabarroguis vs. Hon. San Diego*, 116 Phil. 1184, 1187-1188 and *Binabay vs. People*, 37 SCRA 445, 448-449). For this act alone, respondent's removal from office may be justified, since his act seriously affected the public interest, involving as it does, the administration of justice. It is precisely for this reason why the motion to withdraw and/or dismiss the complaint filed by complainant before this Court will not justify the dismissal of this administrative case against respondent. Furthermore, to condition administrative actions upon the will of every complainant, who may, for one reason or another, condone a detestable act, is to strip this Court of its supervisory power to discipline erring members of the Judiciary.

Apropos is what WE said in *Queto vs. Catolico* (31 SCRA 52, 58-59), where this Court, speaking through then Mr. Chief Justice Makalintal, said:

"Judges, in their zeal to uphold the law, should not lose the proper judicial perspective, and should see to it that in the execution of their sworn duties they do not overstep the limitations of their power as laid down by statute and by the rules of procedure. If they arrogate unto themselves the authority allocated to other officials, there can be no consequence but confusion in the administration of justice and, in many instances, oppressive disregard of the basic requirements of due process."

WE cannot close this resolution without making an additional observation in connection with Count 6. If respondent Judge were really sincere when he claimed that he required the signatories to the extrajudicial partition to file a bond of P82,000.00 for the protection of the oppositors or heirs who might have been left out or parties having any claim against the estate of the deceased Maria Pelaez, he should have notified the Provincial Fiscal of Laguna and/or the Honorable, the Solicitor General to intervene in the case for the State, it appearing that he knew that the parties-litigants in special proceedings No. 31-C are not related to the deceased and considering further that the records of the case do not show that all the so-called heirs of Maria Pelaez are within the fifth degree of relationship in the collateral line from the decedent. The State could be the only intestate heir with respect to one-half of the estate left by the deceased. He should have first determined who are the intestate heirs of the decedent before approving the amicable settlement. This was his clear duty in order to protect the interest of the State regarding the payment of inheritance and estate taxes as well as a possible heir in intestacy. This will avoid multiplicity of suits, expenses and delay.

The records do not intimate that the estate and inheritance taxes were paid before the distribution of the estate and the closure of the proceedings.

Accordingly, WE find both recommendations -- the first for admonition by the Investigating Justice and the second for reprimand by the Acting Judicial Consultant -- rather too lenient.

It appears that respondent Judge Severo Malvar has already more than 40 years service in the government, and that he is now at the threshold of his automatic retirement age.

WHEREFORE, RESPONDENT JUDGE SEVERO MALVAR IS HEREBY FOUND GUILTY OF SERIOUS MISCONDUCT IN OFFICE AND IS HEREBY ORDERED TO PAY A FINE EQUIVALENT TO ONE MONTH SALARY.

LET A COPY OF THIS RESOLUTION BE ENTERED IN RESPONDENT'S PERSONAL RECORD, AND ANOTHER ONE FURNISHED THE SOLICITOR GENERAL, FOR SUCH ACTION AS HE MAY DEEM PROPER TO TAKE IN CONNECTION WITH REACTION TO ANNUL THE EXTRA-JUDICIAL PARTITION DOCKETED AS CIVIL CASE NO. 243-C OF THE COURT OF FIRST INSTANCE OF LAGUNA AND ENTITLED "BAYANI VASQUEZ AND SERGIO VASQUEZ, JR., PLAINTIFFS, VERSUS FELICIDAD NEGRADAS, ET AL., DEFENDANTS."

SO ORDERED.

Fernando, Teehankee, Concepcion, Jr., Santos, Fernandez, and Guerrero, JJ., concur.

Castro, C.J., Barredo, Antonio, and Aquino, JJ., no part.

Muñoz Palma, J., concurs in the result.

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