

LOURDES PRESADO, COMPLAINANT, VS. HON. JUDGE MANUEL C. GENOVA, RESPONDENT.*A.M. No. RTJ-91-657. June 21, 1993*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a5c72bc8c32e/>**PER CURIAM:**

Seven (7) administrative complaints against respondent Judge Manuel C. Genova ("respondent Judge"), Presiding Judge of the Regional Trial Court, Branch 44, Masbate, Masbate, were filed with this Court and subsequently consolidated and referred to Associate Justice Gloria C. Paras of the Court of Appeals for investigation of, and report and recommendation on, the charges therein.[1]

On 29 July 1992, Associate Justice Gloria C. Paras ("Investigating Justice") commenced formal investigation proceedings, giving notice to all the complainants and to respondent Judge, and issuing the necessary subpoenae to the persons who could have information relevant to the charges filed against respondent Judge. To facilitate the investigation proceedings, depositions were taken, by authority of this Court, at Masbate, Masbate, before Judge Florente A. Cirpres, of the Regional Trial Court, Branch 46.

On 29 January 1993, the Investigating Justice, after holding multiple hearings where the several parties concerned were present, submitted to the Court a Report and Recommendation on five (5) of the seven (7) consolidated administrative cases against respondent judge, namely, A.M. No. RTJ-91-657; A.M. No. RTJ-91-721; A.M. No. RTJ-91-746; A.M. No. RTJ-91-767; and A.M. No. RTJ-92-816.[2] The Report and Recommendation on the two (2) remaining administrative cases against respondent Judge, namely A.M. No. RTJ-91-704 and A.M. No. RTJ-92-823, were submitted to the Court on 8 February 1993.[3]

I

Re: A.M. No. RTJ-91-657 (Lourdes Presado v. Judge Manuel C. Genova) for "Violation of Sec. 3 [b] R.A. No. 3019 [Anti-Graft & Corrupt Practices Act]."

Lourdes Presado, in her verified complaint dated 26 March 1991, averred that:[4]

- a) Sometime in 1990, after a petition for adoption of Norlin Mondoniedo was filed by one Phoebe Dizon before the respondent Judge's sala, respondent's wife Emerenciana Genova allegedly demanded and received from the adopting parents the aggregate amount of P15,000.00 through one Mrs. Celeste Asilum;
- b) Sometime in 1990, respondent Judge, through his wife Emerenciana, received an undetermined amount from one Adela Du, who also had a pending case with respondent;
- c) On another occasion, respondent Judge allowed his wife to receive the amount of P20,000.00 from one Aida Valencia, who then had a pending case before his sala;
- d) Sometime in December 1989, a certain Emma Diaz Hao, who was a party to a case pending before respondent judge, at the instance of respondent's wife Emerenciana, treated both respondent Judge and wife to a very sumptuous meal, after which the unconsumed food was wrapped up and given to respondent and wife, at the prodding of the latter;

e) Respondent Judge is permitting his employee Amy Gaballo to front for his wife's usurious loan transactions, to the direct or indirect benefit of respondent Judge.

Respondent Judge filed an answer alleging:[5]

a) that neither he nor his wife could have made any demands, financial or otherwise, in the petition for adoption of Norlin Mondoniedo considering that the petition was resolved without any opposition. Attached to the Answer were the affidavit of the adopting parents denying the allegation of having paid respondent judge or his wife, and of Celeste Asilum denying any participation with the said adoption proceedings;

b) that neither he nor his wife demanded or received any monies from one Adela Du. Attached to the Answer is the affidavit of Adela Du stating that she "never paid any amount to" respondent judge nor his wife;

c) that he never allowed nor had his wife ever received from Aida Valencia, a party-litigant in Civil Case No. 2999 an action for partition, the amount of P20,000.00. That Civil Case No. 2999 was affirmed by the Court of Appeals only shows that the decision was decided on the merits. The affidavit of Aida Valencia in support of respondent Judge's denial was attached to the Answer;

d) that the alleged "sumptuous meal" was not arranged by one "Emma Diaz Hao" for respondent Judge and his wife Emerenciana, but was in fact an ordinary meal hosted by Presiding Judge Silvestre Aguirre of the Municipal Circuit Trial Court of Mandaon-Balid on the occasion of the judicial visit of the then Presiding Judges of Masbate, including respondent Judge;

e) that the allegation that his wife Emerenciana has been engaged in usurious loan transactions is false. That while his wife may have lent some money to his employees, the same was interest free, and in fact, complainant herself and her relatives have benefitted from such "loans" which to date have remained unpaid.

At the investigation proceedings, complainant Presado filed two (2) Manifestations, dated 10 August 1992[6] and 9 September 1992,[7] stating that she had lost interest in prosecuting the present complaint and other administrative complaints against respondent Judge due to financial constraints, filial obligations,[8] and "change of heart." In her second Manifestation, complainant stated that she had become associated with certain charismatic organizations of the Catholic Church prompting her to "condone all those who wronged her", including respondent Judge and his wife.

In the meantime, evidence for respondent Judge consisting of testimony from persons mentioned in the present complaint, was presented before the Investigating Justice.

The Investigating Justice submitted the following recommendation in respect of Presado's complaint:[9]

"Considering that in the instant administrative case, there is no evidence to prove the charges alleged therein in view of the lack of interest of the complainant to prosecute her complaint, and [that] the persons who allegedly paid or gave money or served [the] sumptuous meal to the respondent or his wife, in consideration of a judgment by the respondent judge in their favor in their respective cases, were presented before the undersigned Investigator, and had affirmed the statements in their respective affidavits that no such money was ever paid nor a sumptuous meal served to the respondent judge or his wife [in effect, testifying to the falsity of the charges alleged by the complainant], THE UNDERSIGNED RECOMMENDS THAT THE COMPLAINT IN THIS ADMINISTRATIVE CASE NO. RTJ-[91-] 657 BE DISMISSED." (Underscoring supplied)

As a rule, the Court does not, as a matter of course, dismiss administrative complaints (especially those charging offenses as serious as those here charged) against members of the Bench on account of withdrawal of the charges or desistance of the complainant from prosecuting the complaint. The Court, however, in the complaint at bar, has very little choice save to adopt the recommendation of the Investigating Justice to dismiss A.M. No. RTJ-91-657; the desistance of the complainant, for reasons satisfactory to herself,[10] left the charges against respondent Judge

unsubstantiated.[11]

II

Re: A.M. No. RTJ-91-704 (Dominador Sia v. Hon. Judge Manuel C. Genova) for "Serious Misconduct, Dishonesty, and Conduct Prejudicial to the Best Interest of the Service."

Dominador Sia, in his verified complaint dated 25 July 1991, charged respondent Judge with "Serious Misconduct, Dishonesty, and Conduct Prejudicial to the Best Interest of the Service" committed as follows:[12]

"That in 1989, prior thereto and subsequent thereafter, Judge Manuel C. Genova of Regional Trial Court of the province of Masbate, Masbate, motivated by bias and moved by personal gain, repeatedly refused to allow herein complainant to present his documentary evidence, consisting of: [a] the decision of the Honorable Court of Appeals and that of the Honorable Supreme Court in Civil Case No. 163, in favor of herein complainant and for which reason, Civil Case No. 321 involving the same property, subject of Civil Case No. 163 was decided upon by respondent in favor of intervenors Heirs of Marcelino Aguirre, represented by Judge Silvestre Aguirre, brother-in-law, Mrs. Emma Diaz Hao, cousin and town-mate of respondent judge who hails from Magallanes, Sorsogon, [b] that Mrs. Emerenciana Genova acting as conduit for her husband [respondent herein,] solicited gifts and goods in kind from Mrs. Emma Hao in exchange/ consideration for a favorable decision in said Civil Case No. 321. That it is only now that this complaint is filed before this Honorable Court, in view of the sworn statement of Miss Lourdes Presado [complainant in AM No. RTJ-91-657] who was privy to all these facts, she being a relative of respondent judge and the latter having stayed in the house of the former for quite sometime during which all these unbecoming acts of serious misconduct and dishonesty took place." (Underscoring supplied)

The Court required respondent Judge to file a Comment, and he did. In his Comment, dated 17 January 1992, respondent Judge averred[13] that the orders assailed by the complainant, in connection with Civil Case No. 321, i.e. (i) Motion to Submit their Formal Offer of Evidence; (ii) Notice of Appeal; and (iii) Motions for Reconsideration, were denied because they were either filed out of time or lacked any merit. Respondent Judge explained that he had denied complainant's Formal Offer of Evidence because it was filed beyond the period granted by the court a quo; the Notice of Appeal was likewise denied because the decision had in the meantime attained finality; that the first Motion for Reconsideration was denied for lack of merit, and the second was rejected pursuant to the prohibition against second motions for reconsideration in B.P. Blg. 129. Respondent Judge called the Court's attention to the fact that in CA-G.R. SP No. 16299, his decision in Civil Case No. 321 was affirmed en toto by the Court of Appeals.

The Investigating Justice summarized the proceedings relevant to Civil Case No. 321 as follows:[14]

"[I]n the hearing of November 21, 1986 (in Civil Case No. 321), defendant Dominador Sia [complainant herein] identified a number of documentary exhibits marked as Exhibits 1 to 12, after which his counsel was granted by respondent judge five (5) days within which to formally submit documentary exhibits in writing which, however, the latter failed to do so for the alleged reason that the defendant brought along with him the exhibits when he went to Manila to follow up the pending case before the Court of Appeals.

On January 30, 1987, after the conclusion of the testimony of rebuttal witness in Civil Case No. 321, the respondent judge issued an Order directing the parties to submit their respective memoranda.

It was only on August 28, 1987 that counsel for the defendants filed a Motion to Admit Exhibits which motion was opposed by the plaintiff and the plaintiff-intervenor. The respondent judge denied said motion in his Order of September 17, 1987 as he found the delay in filing the same inexcusable.

On November 18, 1987, respondent judge rendered his Decision in Civil Case No. 321 (Exh. 'H', Sia) declaring

plaintiff and the Intervenor owners of the property in question. The decretal part of the decision (Exh. 'H-1' to 'H-3', Sia) reads:

x x x x x x x x

For failure of the defendants to make a timely appeal, the foregoing decision became final and executory. Upon motion of the plaintiff and the plaintiff-intervenor, the respondent judge issued the corresponding writ of execution, and denied the defendants' motion for reconsideration of his order granting such issuance of the said writ.

Thus, the defendants [complainants herein] in a petition for certiorari and prohibition and preliminary injunction (docketed as CA-G.R. SP No. 16299) sought before the Court of Appeals the setting aside of the (1) Order of September 17, 1987 denying their motion to admit documentary exhibits; (2) decision of November 18, 1987; and (3) orders granting execution and denying the defendants' motion for reconsideration.

The then Eighth Division of this Court [of Appeals] in its decision dated September 14, 1989 in said CA-G.R. SP No. 16299 found no grave abuse of discretion on the part of respondent judge in issuing the questioned orders and decision, and dismissed the petition for lack of merit as It Ruled:

'1) Re: The Order Refusing Admission of Petitioners' Belated Formal Offer of Documentary Exhibits:

The refusal to admit petitioners' formal offer of exhibits being one which was essential to the rendition of the judgment is deemed to have been finally settled with the finality of the judgment that was rendered in relation thereto.

2) Re: Decision in Favor of the Petitioners in Civil Case No. 163-II:

x x x x x x x x

As regards the petitioners [complainant and privies], they never invoked the proceedings in Civil Case No. 163 as a defense in Civil Case No. 321 against the intervenor despite the judgment in their (petitioners) favor as early as October 2, 1972. On the contrary, it was the other way around. Civil Case No. 321 was pleaded by the petitioners in abatement of Civil Case No. 163. When judgment was rendered in favor of the petitioners in Civil Case No. 163 on October 2, 1972, they did not amend their answer to the complaint in intervention in Civil Case No. 321, which was then pending to invoke the judgment in their favor in Civil Case No. 163, but instead went on full steam ahead in Civil Case No. 321. Significantly, the Formal Offer of Exhibits by petitioners in Civil Case No. 321 does not include the judgment in Civil Case No. 163 or even made any reference thereto. Pronouncement of a judgment in a former case would not necessarily preclude relitigation of the issues in a second case if res judicata is not invoked, since res judicata is a matter of defense and does not deprive the trial court of jurisdiction to act on a second suit between the parties on the same subject matter (*Kidpalos vs. Baguio Gold Mining Company*, 104 SCRA 913, 917) Defenses and objections not raised in an answer or a motion to dismiss [are] deemed waived (Section 2, Rule 9, Rules of Court) This is what happened in the present case.

When the petitioners as defendants submitted the merits of their claim to the land in question in Civil Case No. 321 and evidence in support thereof was adduced, they may be deemed to have waived the benefits of the judgment in Civil Case No. 163 and agreed instead to relitigate in Civil Case No. 321 the merits of their claim to the land in question. It was only after an adverse decision was rendered against them in Civil Case No. 321 and after the judgment had become final, that petitioners invoked for the first time the judgment in Civil Case No. 163. The rule is settled that if the doctrine of res judicata is not set up as a defense or ground of objection seasonably, it is deemed waived and cannot be asserted for the first time on appeal (*Alvarez, Jr. vs. Court of Appeals*, 158 SCRA 401).

3) Re: Orders Relating to the Execution of the Judgment in Civil Case No. 321.

Since the judgment in said Civil Case No. 321 has become final and executory, the issuance of the writ of execution became a ministerial duty compelled by mandamus (Aguilar vs. Blanco, G.R. No. 32392, August 31, 1988)'

On October 6, 1989, the aforesaid Court of Appeals decision became final and executory." (Underscoring supplied)

Evaluating the allegations and counter-allegations of complainant and respondent Judge, as well as the available evidence on record, the Court agrees with the recommendation of the Investigating Justice to exonerate respondent Judge from any liability arising from his Order denying complainant's Formal Offer of Evidence in Civil Case No. 321 in view of complainant's tardiness in filing the Formal Offer of Evidence and of complainant's failure to raise as a matter of defense, in a seasonable manner, the decision in Civil Case No. 163-II.

On the second charge, respondent Judge avers that his wife neither intervened in any case nor received gifts from any litigants before Branch 44, of which he is the Presiding Judge. He does not remember having attended any "victory" party in reference to Civil Case No. 321; but recalls attending a luncheon gathering hosted by Municipal Trial Circuit Court Presiding Judge Aguirre on the occasion of a judicial visit to Mandaon in 1990 by several Regional Trial Court Judges, including himself. It was apparently at this occasion when Judge Aguirre introduced to respondent Judge a certain Ms. Emma Diaz-Hao as his town-mate and schoolmate; but respondent Judge denies ever having confirmed any blood relation with said Ms. Emma Diaz-Hao.

Considering that the complainant herein had no personal knowledge of the facts constituting the second charge of his complaint, and presented no competent evidence thereof,[15] the Court is left without any alternative but to accept the recommendation of the Investigating Justice to dismiss administrative complaint A.M. No. RTJ-91-704 for lack of evidence.

III

Re: A.M. No. RTJ-91-721 (Jose de Jesus, Jr. v. Judge Manuel C. Genova) for "Serious Misconduct, Dishonesty, and Conduct Unbecoming and Prejudicial to the Best Interest of the Service."

In a verified complaint dated 1 August 1991, Jose de Jesus charged respondent Judge with "Serious Misconduct, Dishonesty, and Conduct Unbecoming, and Prejudicial to the Best Interest of the Service" committed in the following manner:[16]

"That on May 1991 and subsequent thereafter, Judge Manuel C. Genova of Regional Trial Court of Masbate, Branch 44, moved by personal gain without justifiable reason in scandalous manner and in an act debasing the dignity of the exalted position of an RTC Judge, did then and there, together with his wife, Emerenciana Genova, stayed and resided at his chambers, second floor of the Bulwagan ng Katarungan, Masbate, Masbate, utilizing the same as his and his wife's living and residential quarters, with the provincial government paying their electric bills thereby inviting public criticisms and as a matter of fact, such actuation of the respondent and his wife were seriously criticized in a local tabloid 'Panahon', copy of which is hereto attached, marked as Annex 'A' and denounced in a rally held in front of the Hall of Justice on July 22, 1991 as evidenced by pictures, hereto attached, marked as Annexes 'B', 'C', 'D', and 'E'." (Underscoring supplied)

In his affidavit attached to his complaint, Jose de Jesus stated, among other things, that he knew for a fact that respondent Judge and his wife were using his chambers as living and residential quarters since May 1991 and up to the time of execution of said affidavit on 25 July 1991. While respondent Judge denied this charge, he presented during the hearing before the Investigating Justice a written permit from the Governor of Masbate

allowing respondent Judge to stay overnight at the Bulwagan ng Katarungan "while he is working and as long as he remains the presiding judge of the Regional Trial Court, Branch 44, Masbate, Masbate." [17] The Investigating Justice found that they had "permanently stayed" in the Bulwagan, quoting from the testimony of respondent Judge himself:

"Court:

x x x x x x x x

What can you say about this charge of de Jesus that you were living at the Bulwagan ng Katarungan?

Witness (of respondent Judge):

You know, Your Honor, with the peace and order condition in Masbate that it is very fearsome to be walking at night, it is a little bit alright now but previously you cannot even find a tricycle or a trimobile at 7:00 o'clock in the evening, that you have to walk and expose to the elements and so I tried to request the Governor of Masbate who is the caretaker of the Bulwagan sometimes in the month of March, 1991, requesting that I be allowed to stay overnight if I am writing my decisions, thinking that if I have to go home and walk alone without bodyguards, just like what other judges in Masbate do, and the good Governor issued to me a permit to stay at the Bulwagan but previous to this although I would not like to place it on the record, with the permission of the Justice, when Justice Bellosillo was the Court Administrator, I asked permission.

Court:

You also asked permission.

Witness (of respondent Judge):

Yes, he permitted me, verbally.

Court:

Verbally.

Witness (of respondent Judge):

Verbally together with Justice Fernan. But when this case was filed, these 2 people (Justices) called for me and told me not to stay at the Bulwagan So. from the time on I was not permanently staying . . . (tsn, pp. 28, 29, Sept. 21, 1992)" [18] (Underscoring supplied)

The Investigating Justice concluded:

It need not be stated that government property is for official use only and not for the personal use of the official. The permit issued by the Provincial Governor of Masbate did not confer on the respondent judge the right to utilize his chambers as his living and residential quarters. The permit was only for those occasions where the respondent judge had to work overnight in connection with his official work." [19] (Underscoring supplied)

Respondent Judge did not try to prove his assertion that he had been given oral permission to use his chambers as his family and residential quarters.

The Court agrees with the above conclusion reached by the Investigating Justice and finds the respondent Judge guilty of serious misconduct and conduct prejudicial to the best interest of the service.

IV

Re: A.M. No. RTJ-91-746 (Marthie O. Zurbito v. Regional Trial Court Judge Manuel C. Genova) for "Gross Ignorance of the Law, Grave Abuse of Discretion and Dishonesty."

In her verified complaint, complainant Marthie Zurbito charged respondent Judge as follows:

"That on August 20, 1991, in the Municipality of Masbate, Province of Masbate, Philippines, within the jurisdiction of this Court, the respondent, being the Presiding Judge of Branch 44 of the Regional Trial Court of Masbate, Fifth Judicial Region, and knowing fully well that the accused Adonis Francisco, in Criminal Case No. 6184 for the Murder of Manuel Zurbito, complainant's husband, had pleaded guilty to the offense charged but had invoked only the mitigating circumstance of voluntary surrender and, therefore, under the law and in a long line of Supreme Court decisions, should have been convicted, instead, in gross ignorance of the law with deliberate abuse of discretion and dishonesty for making up or manufacturing 'facts' which were not found in the records, knowingly, willfully and feloniously rendered a decision of acquittal, thereby inflicting irreparable injustice to herein complainant and her family." [20] (Underscoring supplied)

In its Resolution of 30 January 1992, the Court required respondent Judge to comment on the above complaint. In his Comment, [21] he contended:

(i) that at the arraignment of the accused Adonis Francisco on 23 January 1991 in Criminal Case No. 6184 entitled People vs. Francisco, defense counsel moved to enter a plea of "guilty" for the accused, but the latter, with "tears" in his eyes, uttered "I killed him because he boxed me". Arraignment was thence postponed for 29 January 1991;

(ii) that at the rescheduled arraignment on 29 January 1991, a new defense counsel entered a plea of "guilty". When asked by the trial court, accused admitted having killed the victim, but reasoned that the victim repeatedly boxed him. A plea of "guilty" was nonetheless entered in the Minutes of the arraignment proceedings and Certificate of Arraignment;

(iii) that the prosecution merely presented circumstantial evidence which, unfortunately, was not sufficient to support the conviction of the accused;

(iv) that the defense, without any objection from the prosecution, presented evidence to support the statement of the accused that he killed the victim in self-defense;

(v) that weighing the evidence of the prosecution and of the defense, he gave credence to the self-defense proposition of the accused and ordered, on 5 August 1991, the acquittal of the latter of the charge in Criminal Case No. 6184.

(vi) that he is invoking the principle of judicial immunity, the presumption of regularity in the performance of his judicial functions, and that the error, assuming one was made, was one of judgment made in good faith.

Basically, complainant Marthie O. Zurbito charges that although the accused Adonis Francisco in Criminal Case No. 6184 for the murder of Manuel Zurbito, complainant's husband, had pleaded guilty to the charge of murder, respondent Judge nonetheless acquitted the accused.

As a general rule, a plea of guilty is sufficient to sustain a conviction without need of introduction of any further evidence, save such evidence as may be necessary to enable the court to fix the proper penalty. [22] Where the offense charged is a capital offense, the Rules of Court (Rule 116, Section 3) require the trial court to conduct "a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability."

The decision rendered by respondent Judge in Criminal Case No. 6184 was examined in detail by Deputy Court

Administrator Juanito A. Bernad who found the charges of Marthie O. Zurbito against respondent Judge to be meritorious. The Investigating Justice declared herself in agreement with the following findings of Deputy Court Administrator Juanito A. Bernad:

"X X X X X X X X

Three (3) things are enjoined of the trial court after a plea of guilty to a capital offense and this rule is mandatory (PP vs. Dayot, 187 SCRA 637). Sec. 3, Rule 116 of the 1985 Rules on Criminal Procedure provides:

'Sec. 3. Plea of guilty to a capital offense, reception of evidence. -- When the accused pleaded guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequence of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may also present evidence in his behalf.'

Admittedly, respondent judge failed to observe the first requisite although he complied with the second and third. Trial courts must exercise meticulous care in accepting a plea of guilty in a capital offense (PP v. Gonzaga, 127 SCRA 158).

Complainant refutes respondent's allegations in his assailed Decision that Atty. Amador gave the information that the accused surrendered to the police and that the doctor testified that the victim was bigger than the accused. As to the first allegation, respondent's stand is tenable that he did not state that Atty. Amador testified in court. As regard the second, nowhere does it appear on record that the doctor testified to that effect. Prudence dictates that respondent should have ascertained the veracity of his factual findings in his decision, especially in the questioned criminal case involving as it does a judgment of acquittal in a murder case.

What is more deplorable is that in the said decision, respondent acquitted the accused for the alleged failure of the prosecution to prove his guilt beyond reasonable doubt despite his plea of guilt, corroborated by the testimony of prosecution witness Jasmin Quintal. He even appreciated complete self-defense in favor of the accused although the facts of the case do not establish such a justifying circumstance. The two (2) essential requisites thereof, namely unlawful aggression and reasonableness of the means employed to repel it are not present. When an accused claims self-defense, the burden of proof is shifted to him. He must rely on the strength of his own evidence and not on the weakness of the prosecution, for even if the latter's evidence is weak, it could not be disbelieved after the accused himself admitted the killing (PP v. Rey, 172 SCRA 149). Besides, even if it was established that the accused stabbed the victim thrice at the back, he [respondent Judge] still asserts that the former had no intent to kill the latter.

Respondent's judge's defenses of judicial immunity and error of judgment made in good faith are unavailing. His unsubstantiated factual findings, non-observance of Sec. 3, Rule 116 of the 1985 Rules on Criminal Procedure, and misapplication of the theory of self-defense which is elementary in criminal law are far too glaring to ignore.

Judges may be excused only for occasional mistakes or errors of judgment, particularly when incurred on complex points of law or mitigated by hourly difficulties of increasing appellate decisions. Judges are expected to show more than a cursory acquaintance with elementary rules covering procedure and preliminary investigations and well-settled authoritative doctrines (Daplas vs. Judge Arquiza, 99 SCRA 141)."[23]

The Court has examined the decision rendered by respondent Judge in Criminal Case No. 6184 dated 5 August 1991. The pertinent portion of respondent Judge's decision reads as follows:

"During the presentation of the defense evidence, the accused and his wife testified. According to the accused, that morning he was going to the Magallanes Gate wherein he remembered that there was an Anonang Tree. He was going to get a bark of that tree which he will use as a medicine for his wife who has just given birth.

That while walking towards the place and passing by the public market he saw [the victim] Manuel Zurbito. Remembering that the latter was his manager at the Masbate Water Works District, he approached him for a loan of P100.00 which he will use to buy the medicines for his wife. That instead of giving him what he was requesting, Manuel Zurbito got angry and boxed him. He was hit on the face. At that time, he was bringing a knife in order to get the anonang bark and pulled it out. Seeing that the knife was pulled out, Manuel Zurbito [i.e. the victim] tried to run away but he was overtaken by the accused. With the stroke of the knife, he hit him in the spinal column causing [Zurbito's] death. According to him, he made three (3) stabs and then the victim fell down. Later on, he heard somebody shouting and this made him recover his senses that's why he started to run.

x x x x x x x x

During the cross-examination, the prosecution made the accused reveal that he was a plumber of the Masbate Water Works District. That he was employed there for his father was relieved, because of his illness [sic]. He was made to continue his father's work as a plumber. That while working, his services was terminated and it was through the order of Manuel Zurbito that he was terminated. According to the accused, he did not actually receive the memorandum. In fact, what he received was a notice of suspension. He denied that he harbored any bad feelings against Manuel Zurbito. In fact during that morning, he tried to make a loan and it was only that the deceased got angry so he tried to stab him.

x x x x x x x x

Was the accused justified in stabbing Manuel Zurbito? The weapon used and submitted as an exhibit has a blade of around four inches in length and it is not a weapon which is used purposely to commit crime. It appears that it has been used for a long time in the service of the kitchen. It is eroded on its blade and not even sharp. The edge of the weapon shows that it has been used for quite sometime. It is stained with dirt, showing that it is not only dirty but it is almost black. This only shows that the accused did not purposely bring the knife in order to attack somebody.

x x x x x x x x

Analyzing the foregoing, it shows that the accused did not actually mean to kill Manuel Zurbito. If his purpose was to kill him, he should have been stabbed in another part of the body. The testimony of the doctor was very clear that the knife was not really fully embedded. It had only a depth of two inches. The wound at the back explains that the victim was running away.

x x x x x x x x

From this presentation, nobody saw what really happened except what the accused says. The Court believes that the prosecution failed to prove the case beyond reasonable doubt and for insufficiency of evidence, the case against the accused should be dismissed. The accused prove exculpatory evidence which must result to his acquittal even if he pleaded guilty. "[24] Underscoring added)

After examination of the decision rendered by respondent Judge and the record of Criminal Case No. 6184, this Court, like Deputy Court Administrator Bernad and the Investigating Justice, is convinced that the prosecution's evidence against the accused Adonis Francisco constituted proof beyond reasonable doubt, that the acquittal of the accused by respondent Judge was rendered in gross ignorance of the law and tainted with grave abuse of discretion.

A claim of self-defense is, in principle, an admission that he had inflicted a fatal blow on the person of the victim, but that the injuries so inflicted were justified under the circumstances. It is incumbent, therefore, upon the accused to prove by clear and convincing evidence the unlawful unaggression on the part of the victim; the reasonableness of the necessary means he employed to prevent or repel the initial aggression of the victim; and

the absence of sufficient provocation on the part of the accused that could have precipitated the aggression by the victim. Even if the evidence of prosecution be "weak," the accused cannot escape criminal liability on that ground alone since he has the burden of justifying by clear and convincing evidence what would otherwise be a felonious act on his part.[25]

After a thorough review of the facts obtaining in Criminal Case No. 6184, the Court is unable to see how respondent Judge could have reasonably ruled that the accused Adonis Francisco, in killing the victim, acted in self-defense. The bare allegation of the accused that it was the victim, and not himself, who had provided provocation, was obviously self-serving. The only corroboration of that allegation was provided by the wife of the accused who could not be expected to be an unbiased witness and whose evidence was clearly hearsay in character since she did not see the incident herself but merely testified on what the accused had told her after the killing. Moreover, the testimony of the wife was offered merely to prove voluntary surrender on the part of the accused.

Moreover, even if the respondent Judge had found that the victim Zurbito had "boxed" the accused Adonis Francisco, the response of the accused against the victim was obviously excessive and unnecessary, considering that the victim fled from the accused who nonetheless chased him and inflicted three (3) stab wounds on the victim, the last one penetrating the back and the spine of the victim two (2) inches deep. The Forensic Examiner Dr. Artemio Capelan testified that he had difficulty extracting the knife from the body of the victim because it had been embedded through the vertebral column deep enough to have penetrated the back lateral and lower portion of the heart of the victim.[26] The accused must have delivered the stabbing blow with great force. There is here an obvious and total misapplication of the law on self-defense. The rule on self-defense is an elementary norm of law of which respondent Judge seemed totally unaware.

For the acts of respondent Judge in this case, the Investigating Justice recommended that he be suspended from office without pay for one (1) month.

V

Re: A.M. No. RTJ-91-767 (Delfin Ricarte v. Hon. Judge Manuel C. Genova) for "Incompetence, Grave Abuse of Discretion and Gross Ignorance of the Law."

In his verified complaint, Delfin Ricarte stated that he was the father of Edgar Ricarte, the murder victim in Criminal Case No. 5739 entitled "People of the Philippines v. Sonny Baruelo;" that the accused Sonny Baruelo was acquitted by respondent Judge for alleged failure of the prosecution to prove guilt beyond reasonable doubt; that in rendering that acquittal, respondent Judge was partial to the accused, considering that the defense had failed to discredit Bernito Alvarez, the prosecution eye-witness; that respondent Judge had discredited the prosecution eye-witness Alvarez by making assumptions in favor of the accused for which no factual basis had been established during the trial; that respondent Judge relied solely on his personal notes in deciding the case, disregarding completely the transcript of stenographic notes taken; that if respondent Judge had referred to the transcript, he would have found out that the defense witnesses had contradicted each other in their testimony in material respects; that the testimony of defense witness Ben Betonio contradicted that of the accused and his wife, but partly confirmed the testimony of prosecution eye-witness Alvarez that the victim had been killed outside of the house after having been overtaken by accused.

The Court required respondent Judge to file a Comment and there he stated that Criminal Case No. 5739 was a simple case where the accused had proved self-defense; that the victim who lived for sixteen (16) days after he was stabbed did not execute any affidavit; that the fact that defense counsel was his former Clerk of Court was not a sufficient reason for respondent Judge to inhibit himself from deciding the case.

The Investigating Justice examined in detail the decision rendered by respondent Judge in the Baruelo case and the evidence submitted to the trial court. After such examination, the Investigating Justice reached certain conclusions which may be summarized in the following terms:

(1) There are statements in the assailed decision of respondent Judge that "are not in accordance with the evidence adduced during the trial." [27]

(2) There were inconsistencies on "very substantial matters" between the testimony of defense witness Betonio on direct examination and his testimony on cross-examination; consequently, the credibility of his testimony was "questionable;" [28] and that the testimony of that defense witness had at least partially corroborated the testimony of prosecution eye-witness Alvarez that he saw the accused come from inside the house and stab the victim Edgar Ricarte who was walking in front of the accused's house.

(3) The claim of the accused of self-defense had not been convincingly proved:

"The number of stab wounds, 5 at that, inflicted on the victim by the accused [Sonny Baruelo] as well as the location of the same shows that it was more than mere repelling the alleged attack on the person of the accused Sonny Baruelo that caused him to stab the victim 5 times. Also, there was no physical proof of the alleged blows by Edgar Ricarte on the face, forearm and stomach of the accused;"

"The knife which the victim allegedly tried to stab the accused, with, was not produced before the court. It may be said that except for the self-serving testimony of the accused himself which was corroborated only by his wife, there is no clear and convincing evidence of the claim of self-defense." [29]

The basic conclusion reached by the Investigating Justice was that:

"While malice does not appear to have attended the inaccuracies found in the questioned decision, there certainly was misappreciation of the evidence and non-application of the settled rules on the matter by the respondent judge. There is no dispute that the respondent judge failed to draw up his decision with care and failed to make certain that the contents of his decision truly and accurately reflect what is on record. Thus, the respondent judge may be said to be grossly negligent which amounts to ignorance of the law in the rendition of the questioned decision." [30] (Underscoring supplied)

Accordingly, the Investigating Justice found respondent Judge guilty of gross negligence "which amounts to ignorance of the law," for which she recommended the penalty of suspension without pay for one (1) month.

After careful examination of the decision of respondent Judge in Criminal Case No. 5739 as well as the underlying records of that case, the Court agrees with the findings of fact of the Investigating Justice. There is in this case the same gross ignorance on the part of respondent Judge of the very basic substantive rules of self-defense that were obvious in A.M. No. RTJ-91-746 (*Zurbito v. Genova*) which law students learn in their first year in law school. There is also failure on the part of respondent Judge to take account of the facts as shown by the evidence made of record during the trial, such that some of the conclusions reached by the respondent Judge found no basis in the evidence of record.

VI

Re: A.M. No. RTJ-91-816 (*Deborah Perino v. Judge Manuel C. Genova*, Regional Trial Court, Branch 44, Masbate, Masbate) for "Ignorance of the Law."

The sworn complaint here relates, once again, to a decision rendered by respondent Judge in a criminal case for murder -- Criminal Case No. 442 --where, in a decision dated 17 December 1991, two (2) of the accused, Nicomedes Estorum and Joel Estorum, were acquitted of the charge of murder and that acquittal was rendered,

according to complainant Perino, notwithstanding the strong evidence against both accused and notwithstanding the fact that one of them, Joel Estorum, had not even been subjected to the jurisdiction of the trial court.

Respondent Judge was required by the Court to file a comment on the complaint, and in that comment, he maintained that his decision in Criminal Case No. 442 was based on the merits; that while it was true that the trial court did not acquire jurisdiction over the person of Joel Estorum, Joel was acquitted because of insufficiency of evidence and because, "in the interest of justice," the case against Joel Estorum "who [was] wrongly accused [should] be terminated," instead of being archived and serving as a sword of Damocles over the head of Joel Estorum.[31] In his memorandum, respondent Judge invokes the decision of the Supreme Court in *People v. Fernandez*,[32] where the Court held that when "the crime is not successfully proven, the judgment of acquittal affects the co-accused who jumped bail."

In Criminal Case No. 442, the evidence of the prosecution tended to establish the following as facts: that about 3:00 o'clock p.m. of 24 August 1989 at Barrio San Marco, Placer, Masbate, prosecution witness Marcos Perino and his son Elpidio Perino (victim in Criminal Case No. 442) where at the store of Sitas Estorum; that the victim Elpidio was invited by the accused Nicasio Estorum to join their group consisting of two (2) other Estorums and another person; that when the victim went along with Nicasio, the latter stabbed the victim at the back, while Joel Estorum stabbed the victim above the right waistline; that almost simultaneously, Nicomedes Estorum shot the victim on the right abdomen; that all three (3) accused Estorums fled after the slaying of Elpidio Perino; that only Nicomedes and Nicasio were arrested and later arraigned on 8 October 1990 and 14 August 1991, respectively; that co-accused Joel Estorum was never arrested and has remained since then a fugitive from the law.

The story presented by the defense in Criminal Case No. 442 was the following: that in the mid-afternoon of 24 August 1989, the victim was at the store of Sitas Estorum where accused Nicomedes' wife Florita was selling "tuba"; that the victim Elpidio Perino, appearing to be drunk, wanted to purchase some "tuba" on credit; that Florita refused to sell any to him on credit until the victim Elpidio shall have paid his previous debt of P80.00; that the victim Elpidio then pulled the hair of Florita; that Nicomedes, coming from behind the store, confronted the victim and demanded that he release his wife; that Elpidio then pulled out a gun and pointed it at Nicomedes; that accused Nicomedes then tried to wrest the gun from the victim; that co-accused Nicasio, seeing the commotion between his brother Nicomedes and the victim, and attempting to help his brother Nicomedes, pulled out a bolo which the victim had on a scabbard on his side and thereupon stabbed the victim with the bolo; that almost simultaneously, while Nicomedes and the victim Elpidio were wrestling for the possession of the latter's gun, the gun went off the bullet hitting Elpidio; that both Nicomedes and Nicasio subsequently escaped from the scene of the crime.

After trial, respondent Judge found Nicasio guilty of homicide with the mitigating circumstance of incomplete defense of his brother (co-accused) Nicomedes. Nicomedes was acquitted upon the ground of defense of relative (his wife) and the ground that gunshot wound was inflicted accidentally. Accused Joel Estorum, although never arraigned before the trial court, was acquitted because of lack of evidence against him.

In her Report, the Investigating Justice made the following observations:

"In the criminal case a quo, evidence is clear that the victim suffered two stab wounds. Logic dictates that since accused Nicasio testified that he stabbed the victim only once (tsn., p. 9; p. 12, October 8, 1991) someone else must have inflicted the second stab wound. There is therefore [a] need of determining how the second stab wound came about. The case as against accused Joel Estorum should thus not have been dismissed under the circumstances.

Witness for the prosecution, Marcos Perino, testified that after Nicasio Estorum stabbed the victim, the latter

was also stabbed by Joel Estorum (tsn., p. 4, Nov. 7, 1990) and the Municipal Health Officer Pio V. Corpus of Masbate testified that the victim suffered two stab wounds and 1 gunshot wound (tsn., p. 3, Jan. 14, 1991).

In the light of the foregoing, the respondent judge may be said to have been too precipitate to relieve accused Joel Estorum of any criminal liability.

x x x x x x x x

"The version recited by accused Nicomedes Estorum and Zaldy Francisco in their testimonies and which version was believed by the respondent judge is completely different from that appearing in their affidavits.

Such grave inconsistency and very substantial at that, between the statements of accused Nicomedes and defense witness Zaldy Francisco in their respective affidavits (which are part of the record) and their testimonies at the witness stand, should have cautioned the respondent judge in lending credence to the testimonies of the said witnesses. A judge should exercise due care in analyzing conflicting statements on record but also to reassure the litigants of his being fair and just.

For the aforesaid gross negligence which amounts to ignorance of the law committed by the respondent judge, the undersigned Investigator recommends that x x x x."[33] (Underscoring added)

We think that once again, in Criminal Case No. 442, respondent Judge showed unusual ignorance of the law concerning self-defense and defense of relatives as well as failure to examine the evidence presented during the trial with sufficient care.

Respondent Judge's invocation of *People v. Fernandez*[34] as basis for his acquittal of Joel Estorum, appears plainly unjustified. Even cursory examination of the decision of the Court in *Fernandez* shows that the co-accused Josefino Fernandez after having been admitted to bail, jumped bail, such that the trial court had already acquired jurisdiction over Fernandez's person when it convicted him and when the Supreme Court found the evidence against both accused insufficient and accordingly acquitted both. In the present complaint, Joel Estorum was never arrested nor arraigned, so that, as admitted by respondent judge, the trial court did not acquire jurisdiction of his person. Moreover, the evidence against Joel Estorum, as shown by the Investigating Justice, was very substantial and should have been more than sufficient to restrain respondent Judge's eagerness to acquit Joel Estorum.

The Investigating Justice found respondent Judge guilty of "gross negligence which amounts to ignorance of the law" and recommended the penalty of suspension from office without pay for one (1) month.

VII

Re: A.M. No. RTJ-92-823 (Rizalina Q. Valencia v. Judge Manuel C. Genova, Regional Trial Court, Branch 44, Masbate, Masbate) for "Accepting Bribe Money."

In her sworn statement, complainant Rizalina Q. Valencia stated that she is the legal spouse of Melchor Valencia, one of the defendants in a case entitled "*Pedro Valencia, et al. v. Melchor Valencia, et al.*", Civil Case No. 2999, Regional Trial Court, Masbate, Masbate, Branch 44, presided over by respondent Judge; that said case was a complaint for judicial partition; that a decision dated 2 June 1989 was rendered by respondent Judge in favor of plaintiffs Pedro Valencia, et al. which, among other things, allowed the heirs of the late Marcelo Valencia to share in the estate of the late Severino Valencia, and included certain heads of large cattle in the estate of Severino Valencia although the same was separate conjugal property of some of the defendants, and declared defendants non-suited; that that decision was tainted with "bias and irregularity;" that after the said decision was rendered, complainant Rizalina discovered that respondent Judge received from Aida Valencia, one of the children of Marcelo Valencia -- one of the plaintiffs -- the following amounts: (1) P2,000.00 -- on 13 February 1989; and (2)

P5,000.00 on 27 July 1989. Complainant attached xerox copies of two (2) vouchers of AVECO Company.

The xerox copies were described by the Investigating Justice[35] in the following manner:

"Exh. 'F' is a xerox copy of a voucher entitled in bold prints 'GENERAL VOUCHER.' All in handwriting are (1) 'Feb. 13, (19)89' (date); (2) 'Payment for Judge (EXPLANATION OF TRANSACTION); (3) P2,000 (AMOUNT); (4) 'Aida Valencia' (signature); (5) 'Cash Feb. 13 (19)89 (Check No.); (6) Aveco (Received from); and (7) TWO THOUSAND PESOS ONLY (the sum of).

Exh. 'G' is a xerox copy of a voucher also entitled in bold prints 'GENERAL VOUCHER.' All in handwriting are (1) 'July 27, 1989' (date); (2) 'Judge Manuel Genova' (appearing on the uppermost left hand corner of the voucher); (3) 'Payment for legal fees for the case' (EXPLANATION OF TRANSACTION); (4) P5,000 (AMOUNT); (5) 'Aida Valencia' (signature); (6) 'Professional Fee' (ACCOUNT); (7) 'Petty Cash fund' (CREDITS); (8) 'Cash' - 7-27 (19)89 (CHECK NO.); (9) 'Aveco Company' (Received from); and (10) 'Five Thousand Pesos Only' (the sum of)."[36]

In his comment on the complaint, respondent Judge denied receiving the amount of P7,000.00 from Aida Valencia. He also stated that the decision he rendered in Civil Case No. 2999 had been affirmed by the Court of Appeals in a decision rendered on 29 September 1991 which was brought to the Supreme Court on petition for review; that the petition for review was dismissed by the Supreme Court for lack of merit. Respondent Judge also stated that the vouchers attached to the complaint were fake and not the genuine vouchers of AVECO Company.

In respect of the vouchers showing the total amount of P7,000.00, the complainant testified before the Investigating Justice that she was given those vouchers by Evelyn Posadas, an accountant of Aida Valencia who had asked Evelyn to prepare the vouchers for respondent Judge.[37]

Evelyn Posadas, after initial failure to attend the hearings, did appear before the Investigating Justice and stated that her failure to attend the earlier hearings was due to "the respondent Judge threaten[ing] to file a case against her before the Professional Regulatory Commission." [38] The testimony of Evelyn Posadas was summarized by the Investigating Justice in the following manner:

"[Evelyn Posadas] testified that since July 29, 1992, in the residence of Aida Valencia, in Palmera Heights Subd., the respondent judge had threatened to file such administrative charge against her if she appears before the Investigator: that during the proceedings of this administrative case, the respondent judge told her to hide in the house of Aida Valencia in order that the process server could not serve on her the subpoena for the said hearings; that Aida Valencia told her that if ever she would testify, it would only cost Aida Valencia P100,000.00 - P50,000.00 for the judge and P50,000.00 for the police; that she (Evelyn Posadas) got the original copies of the said vouchers from the files of Aveco Export Co., had them photocopied and returned the original copies; that when she saw the said vouchers and asked Aida Valencia about them, the latter said that she used them 'sa paggapang sa Kaso ko sa lupa'; that the signatures in the said xerox vouchers are the genuine signatures of Aida Valencia for Evelyn Posadas is familiar with the same as Aida Valencia always sign in her presence; that sometimes, Evelyn prepared the checks for the professional fees and Aida Valencia signed them; that Aida Valencia gave her mother, Flora Guadayo, a Rolex wrist watch for the latter to appear in this administrative case in favor of the respondent judge and she (Evelyn Posadas) was given a Rolex wrist watch in order not to appear as the complainant's witness in the present administrative case; that her mother failed to attend the September 21, 1992 hearing because she went to Masbate for the hearing of a land entitled 'Valenzuela, et al v. Guadayo' before the sala of Judge Genova; that she appeared in this administrative case because she was already sick and tired of the grave threats against her by Aida Valencia and for public interest; that Aida Valencia made her sign a prepared affidavit in September 1992 right after the publication in the 'Panahon' of the bribery case involving the respondent judge; that when she stayed in the house of Aida Valencia with the respondent judge and his wife, he would ask money from Aida Valencia for transportation and other ordinary expenses, and the latter would put in his pocket, a P1,000.00 denomination bill: and that she

filed administrative cases for bribery against the judge and the Justices who rendered the decisions against her in the civil cases she filed before their respective courts (tsn, pp. 3-38, October 7, 1992, 1:30 p.m.)."[39] (Underscoring supplied)

Respondent judge contended that the testimony of Evelyn Posadas should not be believed considering that she was mentally ill, being a schizophrenic and being in and out of the mental hospital several times. In support of this assertion, Dr. Cecilia Alvaran of the National Center for Mental Health was presented and testified that Evelyn Posadas had been confined a number of times in that hospital with the diagnosis of "schizophrenia paranoid-type" and "schizophrenia undifferentiated-type." The Investigating Justice, however, noted that a court report dated 20 October 1992 by the National Center for Mental Health prepared by Carmelito Erespe and approved by Dr. Cecilia Alvaran contained the following recommendation:

"At present she (Evelyn Posadas) is deemed to be free of psychotic symptoms and is deemed fit to stand witness in court."[40]

Aida Valencia appeared as a defense witness at the investigation and there said that she never gave any money to respondent Judge nor prepared any vouchers for him; that the signatures on the xerox copies of the vouchers were not her signatures; that she would not pay respondent Judge legal fees because she had a lawyer, one Atty. Apaya; that she had indeed employed Evelyn Posadas as auditor of the company (AVECO) from 1990-1991 until Evelyn became a "mental case."

In the portion of her Second Report dealing with this complaint, the Investigating Justice stated that she was not convinced "that bribery took place between Aida Valencia as the giver and the respondent judge as the receiver."[41] The Investigating Justice submitted two (2) reasons for this conclusion: firstly, the Investigating Justice believes that Evelyn Posadas had a "fixation" that "every court victory has been attended by a bribe received by a judge from the winning litigant;"[42] and secondly, the Investigating Justice felt that the xerox copies of the vouchers did not constitute sufficient evidence of a bribe. She said:

"The xerox copies of the two vouchers in question likewise are not sufficiently convincing of the bribe alleged in this administrative case. In the first place, they are mere xerox copies and as such could easily be subject to insertions, additions or changes of matters not found in the original. Secondly, the data contained therein do not support the dishonest act involved. In Exhibit F, while there is the phrase 'payment for judge' the name of the judge is not indicated. It does not necessarily follow that because Aida Valencia is an heir of one of the plaintiffs in a case before the respondent judge, such payment was made to him.

In Exhibit G, the data contained therein regarding explanation of transactions and account are contradictory. While at the top, there are the words 'Judge Manuel Genova', in the box for 'Explanation of Transaction' is written 'payment for legal fees for the case' and in the box for account is written 'Professional fee.' Certainly, if the explanation of the transaction is payment for legal fees, then such payment is legitimate."[43]

While apparently dismissing the complaint of Rizalina Q. Valencia for lack of sufficient evidence, the Investigating Justice took respondent Judge to task for certain improprieties:

"An observation of the Investigator is that the respondent judge has utilized Flora Guadayo, a litigant in a civil case before his sala, as his witness in this administrative case, and that despite the fact that she has already testified for him, he has not inhibited himself from presiding over her case as of the date of the last hearing of this administrative case on November 11, 1992.

The Investigator is of the view that under the circumstances, the respondent judge has displayed lack of sound discretion for he has placed himself in a situation where the so-called cold neutrality of a judge can no longer be said of him for the litigant, Flora Guadayo, has done him a favor.

Also, on one occasion when the respondent judge went to the office of the stenographers in these administrative cases in order to have a copy of the transcript, it was Aida Valencia who paid for the transcript, although according to him, he paid her after. Such payment by Aida Valencia (although paid later by the respondent judge) is an act of impropriety considering that she won a case in his sala. It may be mentioned that a copy of the transcript could be sent to him even if there was no prior payment as was done with the transcript of the proceedings on October 7, 1992

Furthermore, the respondent judge, as shown in the earlier part of the proceedings, was trying to make it appear to the Investigator that Evelyn Posadas could not be a witness in this administrative case as she was allegedly so mentally sick and confined at the mental hospital (tsn, p. 65, Aug. 18, 1992, a.m.) when in fact, on the day that she was supposed to appear, he knew that she would not appear as instructed by Aida Valencia."^[44]

Having carefully reviewed the record, the Court finds that the evidence submitted against respondent Judge on this bribery charge is not insubstantial. The testimony of Evelyn Posadas cannot be disregarded as the meaningless babble of a mad woman, considering the certification issued by the National Center for Mental Health, and considering the clear and coherent manner in which she testified. Aida Valencia contradicted the testimony of Evelyn Posadas; that was, of course, to be expected. Considering all the testimony and other evidence submitted in this case, the balance of evidence appears to the Court to be just about at equipoise. The vouchers submitted by the complainant were photocopies only. The record does not show that efforts were made by complainant to secure production of the original vouchers by subpoena duces tecum. Photocopies could be faithful reproductions of the originals. Respondent Judge sought to suggest that the amounts indicated in the photocopies of the vouchers may have been amounts paid to the commissioners appointed in the partition case. This effort was not convincing. At the same time, however, the photocopied vouchers do not unequivocally state that the sums there set out were given to respondent Judge. Upon the other hand, if those sums had indeed been given to and received by respondent Judge, he would not, in realistic expectation, have given a receipt for them; to require submission of such a receipt in order to hold respondent guilty would be unreal and unreasonable. Finally, we note that if, in fact, one of the vouchers (Exhibit "G") was "payment for legal fees," such payment would not have been legitimate if made to respondent Judge; for he, an incumbent judge, obviously could not have legally practiced law and charged legal fees for legal services.

We hold that, on balance, and not without hesitation, the evidence submitted against respondent Judge in this seventh administrative case is not sufficient basis for finding him guilty of bribery.

Taking now a global view of all the seven (7) cases against respondent Judge, and considering more particularly the conclusions we reached in respect of the fourth, fifth and sixth cases (A.M. No. RTJ-91-746; A.M. No. RTJ-91-767; and A.M. No. RTJ-91-816) above, in conjunction with our conclusion in the third case (A.M. No. RTJ-91-721), the Court concludes that respondent Judge has been shown to be unfit to remain in the Judiciary and must accordingly, in the interest of the service, be removed from the service. In the fourth, fifth and sixth cases above, respondent Judge exhibited ignorance about basic principles of criminal law so gross and appalling as to compel the conclusions that he could not have been acting in good faith; that he is grossly incompetent as a judge; and that to allow him to remain a judge is to impose an intolerable risk of letting loose on our hapless society more persons who have committed crimes as serious as murder and who should be behind prison bars. In the third case, respondent Judge demonstrated that he is capable and willing to devote government property to private and family purposes, a demonstration which reinforces the Court's conviction concerning respondent Judge's unfitness to remain in the Judiciary.

WHEREFORE, the Court Resolved to DISMISS the respondent Judge for gross ignorance of the law amounting to gross incompetence and misconduct in office, and in the best interest of the service, with forfeiture of all

retirement privileges and benefits he might otherwise be entitled to, except accrued earned leave privileges or the money value thereof. This Resolution is immediately executory and respondent Judge shall vacate his position forthwith.

Narvasa, C.J., Cruz, Feliciano, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Melo, and Quiason, JJ., concur.

Padilla, J., On leave.

Bellosillo, J., No part.

[1] Resolution dated 14 May 1992, and again in the Resolution dated 13 August 1992.

[2] Hereafter, "First Report."

[3] Hereafter, "Second Report."

[4] Rollo of A.M. No. RTJ-91-657, pp. 1-2.

[5] Id., pp. 27-45.

[6] Id., p. 71.

[7] Id., p. 92.

[8] Complainant Presado stated that even if she had the financial resources to prosecute her complaint against respondent Judge, she would not be able to find any one to whom she could entrust her two (2) minor children during her trips to Manila in connection with the investigation of respondent Judge.

[9] First Report, p. 6.

[10] It appears that Lourdes Presado is a relative of respondent Judge and that the latter had stayed in her house for sometime; see below, footnote 12.

[11] *Banawa v. De Jesus*, 144 SCRA 505 (1982). See generally *Beltran v. Magsarili*, 79 SCRA 655 (1977); *de la Rama v. Dizon*, 72 SCRA 129 (1976).

[12] Rollo of A.M. No. RTJ-91-704, p. 1.

[13] Id., pp. 11-15.

[14] Second Report, pp. 6-8.

[15] Complainant Sia pointed to Lourdes Presado (complainant in A.M. No. RTJ-91-657) as his witness. As noted earlier, however, Presado suddenly "acquired religion" and withdrew her own complaint and the affidavit she had executed in Sia's case against respondent Judge.

[16] Rollo of A.M. No. RTJ-91-721, p. 1.

[17] First Report, p. 8.

[18] Id., pp. 8-9.

[19] Id., P. 9.

[20] Id., p. 15.

[21] Rollo of A.M. No. RTJ-91-746, pp. 49-57.

[22] Section 4, Rule 116, Revised Rules on Criminal Procedure. See also *Dempsey v. Regional Trial Court*, 164 SCRA 319 (1988).

[23] First Report, p. 17-18.

[24] Record of Criminal Case No. 6184, pp. 43-49.

[25] *People v. Arroyo*, 201 SCRA 616 (1991); *Guevarra v. Court of Appeals*, 187 SCRA 490 (1990); *People v. Rey*, 172 SCRA 149 (1989); *People v. Llamera*, 51 SCRA 48 (1973).

[26] TSN, Criminal Case No. 6184, dated 29 January 1991, pp. 12-13.

[27] First Report, p. 12.

[28] *Id.*, p. 13.

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

[30] *Id.*

[31] Rollo of A.M. No. RTJ-92-816, pp. 12-13.

[32] 186 SCRA 830 (1990).

[33] First Report, pp. 21-22.

[34] 186 SCRA 830 (1990).

[35] Second Report, p. 14.

[36] *Id.*

[37] *Id.*, p. 13.

[38] *Id.*, p. 16.

[39] *Id.*

[40] *Id.*, p. 17.

[41] *Id.*, p. 20.

[42] *Id.*

[43] *Id.*, p. 23.

[44] *Id.*, pp. 23-24.

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