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THIRD DIVISION

[A.M. No. MTJ-99-1218. August 14, 2000]

CARLOS B. CREER, *complainant, vs.* **CONCORDIO L. FABILLAR, Acting Judge, MCTC of Giporlos-Quinapundan, Province of E. Samar,** *respondent.*

SYNOPSIS

On March 29, 1993, complainant, the defendant in a grave coercion case handled by respondent MTC judge, was found guilty of the crime charged. Complainant appealed to the RTC which affirmed his conviction on February 20, 1998. Complainant thereafter filed a motion for reconsideration.

On March 10, 1998, however, respondent MTC judge acted on the plea of complainant's bondsmen for withdrawal of bondsmen by ordering the immediate arrest of complainant who was jailed until March 13, 1998. Complainant thereafter filed an application for probation, which was given due course by respondent judge. Respondent asked the probation officer to conduct a post sentence investigation, but complainant was subsequently denied probation due to the probation officer's disapproval of his application.

On November 26, 1998, the RTC gave due course to complainant's motion for reconsideration and reversed the judgment of conviction.

In this administrative complaint filed against the respondent MTC judge, the Supreme Court held respondent liable for Gross Ignorance of the Law for having acted on complainant's application for probation after an appeal had already been perfected, instead of outrightly denying the same as explicitly mandated by the law on probation. The Supreme Court also ruled that respondent should have referred the bondsmen's plea for withdrawal to the appellate court, for it is clear that bondsmen's obligation may be relieved only when the custody of the accused is first relinquished by them to the Court or proper authorities.

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SYLLABUS

1. **LEGAL AND JUDICIAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; ACTING ON AN APPEAL FOR PROBATION AFTER DEFENDANT HAS PERFECTED AN APPEAL, A CASE OF; CASE AT BAR.**— More than anything else, respondent Judge has shown either an utter disregard to, or total unawareness of, the basic provisions of the Law on Probation (P.D. No. 968, as amended by P.D. No. 1990). x x x Undisputedly, at the time complainant applied for probation, an appeal had already been perfected. Although respondent Judge eventually denied the application, the fact still remained that he had acted on it by asking the probation officer to conduct a post-sentence investigation instead of outrightly denying the same as so explicitly mandated by the law. The Investigating Judge likewise aptly opined that respondent should not have acted on the plea for withdrawal of the bondsmen but should have referred the matter to the appellate court. Clearly, bondsmen should not be relieved of their obligation unless the custody of the accused would have first been relinquished by them to the Court or proper authorities. Observance of the law, which he is bound to know and sworn to uphold, is required of every judge. When the law is sufficiently basic, a judge owes it to his office to know and to simply apply it; anything less than that would be constitutive of gross ignorance of the law.

2. **ID.; ID.; ID.; PROPER PENALTY IN VIEW OF PREVIOUS SIMILAR INFRACTION IN CASE AT BAR.**— The Office of the Court Administrator, upon its verification, reported that in A.M. No. MTJ-97-1128, entitled "*Florentino Bagunas vs. Judge Concordio Fabillar*," respondent Judge was previously held guilty of partiality, gross ignorance of the law and grave abuse of discretion for which he was suspended for three (3) months with a warning that a similar offense in the future would be dealt with severely. x x x The Court, after due deliberation, considers to be warranted a suspension of respondent Judge for six (6) months, without pay, as well as an imposition of a fine of ₱20,000.00, with a new warning of a most severe penalty for another infraction by respondent.

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DECISION

VITUG, *J.*:

Herein respondent Judge Concordio L. Fabillar, Acting Presiding Judge of the 9th Municipal Circuit Trial Court of Giporlos-Quinapundan, was administratively charged with "gross ignorance of the law, x x x dishonesty (and) abuse of official position" by complainant Carlos Creer, thusly:

"In view of the unjust and unwarranted acts of the respondent herein of having deprived the complainant herein of his constitutional right of freedom and liberty without due process of law, by his unwarranted baseless whims and caprices caused his imprisonment for a total period of two months and twenty days — that was from March 10 to March 13, 1998, and from May 22, 1998 to August 8, 1998, due to his gross ignorance of laws and rules, dishonesty, abuse of his official position to oppress the herein complainant by reason of illwill resentment and other evil motives which he personally harbored against him."[1]

The administrative charge was an offshoot of Criminal Case No. 1133 where complainant Carlos Creer was indicted for grave coercion. On 29 March 1993, respondent judge found complainant guilty of the crime and meted him a prison term of two (2) months and fifteen (15) days plus a fine of Two Hundred Fifty (₱250.00) pesos. Complainant seasonably appealed his conviction to the Regional Trial Court, Branch 3, at Guiuan, Eastern Samar. On 20 February 1998, the Regional Trial Court affirmed the judgment of conviction. Complainant filed a "Motion for Reconsideration."

On 06 March 1998, respondent Judge issued a subpoena commanding complainant and his bondsman to appear before his court on 10 March 1998. During the court session on 10 March 1998, as so scheduled, two of the three bondsmen appeared and submitted their "Withdrawal of Bondsmen," prompting respondent Judge to forthwith issue an order for the immediate apprehension of complainant and to fix the bail for his temporary

[1] Investigation, Report and Recommendation, p. 2.

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liberty at ₱10,000.00. In the afternoon of even date, complainant was arrested and jailed until 13 March 1998 by the Chief of Police of Giporlos, Eastern Samar.

Complainant averred that respondent Judge on 13 March 1998 induced him to affix his signature on an "Application for Probation" and an "Application for Release on Recognizance" to impress legality to the warrant of arrest he had issued and to make it appear that complainant had abandoned his motion for reconsideration. Complainant was also made to sign his conformity to be placed under the custody of Antonia C. Creer. Complainant alleged that he was constrained to sign all those documents due to his being under detention. Three orders were issued by respondent Judge on 13 March 1998, *one* giving due course to complainant's application for probation, *another* granting "temporary liberty upon recognizance of Antonia C. Creer," and the *last* directing the probation officer to conduct a post sentence investigation on the application for probation of complainant and ordering complainant to report once a week to the Clerk of Court.

On 05 May 1998, respondent Judge allegedly received from the probation officer a recommendation for the disapproval of complainant's petition for probation. On 22 May 1998, respondent Judge issued an order denying probation and revoking complainant's bail on recognizance.

Complainant was thereupon ordered arrested and confined for the second time from 22 May 1998 until 08 August 1998, the full term of his sentence. Complainant claimed that he was arrested and confined for the second time because of his persistence in pursuing his appeal and respondent Judge could not have been unaware that the judgment of conviction was not yet final. Indeed, the Regional Trial Court issued an order, only dated 23 May 1998, requiring the prosecution and respondent Judge to file their comment or opposition to the pending motion for reconsideration. In a decision, dated 26 November 1998, the Regional Trial Court gave due course to complainant's motion for reconsideration and reversed the judgment of conviction rendered by respondent Judge.

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The Court Administrator required respondent Judge Fabillar to comment on the complaint against him. In his comment, dated 18 December 1998, respondent Judge denied any wrongdoing.

The Court Administrator, following its evaluation, made these observations; *viz:*

"According to respondent, the Decision on Appeal dated February 29, 1998, was received by him on February 24, 1998 and after a reasonable period of time, he required complainant to appear in court in order to apprise him thereof so that he could take such action as he deemed fit in the premises. The complainant not only failed to appear in answer to his summons but he even refused to sign the subpoena served on him by the court's process server. Because the bondsmen could not produce the body of the accused at said hearing, respondent required them to do so within a period of thirty (30) days and to show why no judgment on their bond should be taken on account of their failure to perform their obligation under their bond. Respondent avers that all the bondsmen — Mrs. Inciso, Mrs. Macabutas and Julio Abrinzosa, announced their intention to withdraw as bondsmen for complainant but respondent advised them that they could only do so after they had produced the body of the accused in court.

"Respondent alleges further that on March 16, 1998, when complainant finally appeared in court, his bondsmen executed a written motion withdrawing as such bondsmen. This was granted by the court. Considering that complainant was already without any bailbond, respondent argues that he had no other recourse but to pursue his previous order to arrest the complainant when he failed to appear in court. Thus complainant was placed under custody because of his failure to file another bond.

"Respondent states that while complainant was under detention, he filed an application for probation. The court acted on the same issuing an Order on March 13, 1998 directing the Probation Officer to conduct a post sentence investigation. Complainant also file an application for release on recognizance which the court granted and he was ordered placed under the custody of his daughter-in-law, Ms. Antonia Creer, a public school teacher. A copy of the application for probation and all pertinent papers were transmitted by the Clerk

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of the Municipal Circuit Court to the Clerk of the Regional Trial Court.

"On May 5, 1998, respondent avers that he received from the Probation Officer, Jesse Montes, a recommendation for the disapproval of the petition for probation. Respondent issued, on May 22, 1998, the Order denying probation and revoking complainant's bail on recognizance.

"Respondent claims that before complainant filed his application for probation, he sent a hand-written note to respondent asking the latter's forgiveness.

"Respondent argues that appeals and probation are mutually exclusionary and that the Regional Trial Court overlooked this matter when it reversed its previous decision on appeal which confirmed respondent's judgment of conviction. He contends that complainant should have been deemed to have abandoned his appeal, as well as his motion for reconsideration upon the filing of his application for probation with respondent's court."[2]

The matter was referred by this Court to Judge Francisco D. Mazo of the Regional Trial Court at Guiuan, Eastern Samar, for investigation, report and recommendation. Judge Mazo, after an investigation, concluded that respondent was indeed guilty of the charge of ignorance of the law. The Office of the Court Administrator concurred with the Investigating Judge.

The Court agrees. More than anything else, respondent Judge has shown either an utter disregard to, or total unawareness of, the basic provisions of the Law on Probation (P.D. No. 968, as amended by P.D. No. 1990). Section 4 of the law provides:

"Sec. 4. Grant of Probation. — Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced a defendant, and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best; Provided, That no application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction."

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[2] *Rollo*, pp. 63-64.

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Undisputedly, at the time complainant applied for probation, an appeal had already been perfected. Although respondent Judge eventually denied the application, the fact still remained that he had acted on it by asking the probation officer to conduct a post-sentence investigation instead of outrightly denying the same as so explicitly mandated by the law. The Investigating Judge likewise aptly opined that respondent should not have acted on the plea for withdrawal of the bondsmen but should have referred the matter to the appellate court. Clearly, bondsmen should not be relieved of their obligation unless the custody of the accused would have first been relinquished by them to the Court or proper authorities.[3]

Observance of the law, which he is bound to know and sworn to uphold, is required of every judge.[4] When the law is sufficiently basic, a judge owes it to his office to know and to simply apply it;[5] anything less than that would be constitutive of gross ignorance of the law.[6]

The Office of the Court Administrator, upon its verification, reported that in A.M. No. MTJ-97-1128, entitled "*Florentino Bagunas vs. Judge Concordio Fabillar*,"[7] respondent Judge was previously held guilty of partiality, gross ignorance of the law and grave abuse of discretion for which he was suspended for three (3) months with a warning that a similar offense in the future would be dealt with severely.

Nevertheless, the Court finds the recommended penalty of dismissal from the service, with forfeiture of all leave credits and retirement benefits and with prejudice to reemployment in any branch of the government, including government owned and controlled corporations to be too severe. The Court, after due deliberation, considers it to be warranted a suspension of

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[3] Investigation, Report and Recommendation, p. 7.

[4] *Hermo vs. De la Rosa,* 299 SCRA 68.

[5] *Bacor vs. De Guzman*, 271 SCRA 328.

[6] *Cortes vs. Agacaoili,* 294 SCRA 423.

[7] Reported in 289 SCRA 383.

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respondent Judge for six (6) months, without pay, as well as an imposition of a fine of ₱20,000.00, with a new warning of a most severe penalty for another infraction by respondent.

IN VIEW WHEREOF, respondent Judge Concordio Fabillar is *SUSPENDED* from the service for six (6) months, without pay, effective upon his receipt of this decision, and *ORDERED* to pay a fine of ₱20,000.00, with a warning of a most severe penalty for another infraction by him.

SO ORDERED.

Melo (Chairman), Panganiban, Purisima, and *Gonzaga-Reyes, JJ.*, concur.

THIRD DIVISION

[A.M. No. RTJ-98-1403. August 14, 2000]

(Formerly OCA IPI No. 97-382-RTJ)

MAMERTO T. PACRIS, *complainant, vs.* **JUDGE ADRIAN N. PAGALILAUAN,** *respondent.*

SYNOPSIS

In disposing of Election Case No. 1807-S, an administrative complaint for gross ignorance of the law was filed against the respondent judge. After referring the case to the Court of Appeals for investigation, the Supreme Court agreed with the findings of the Investigator, Justice Abesamis, that the following acts of respondent constitute gross ignorance of the law, thus: he promulgated the decision without first setting the date therefor and without notice to the parties; he invalidated ballots with undetached upper stubs contrary to jurisprudence and the