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The above guidelines were evidently missed by the IBP in proceeding with the administrative case. Considering the serious nature of the charges against respondents, it should have behooved the IBP to conduct a formal hearing of the case and only thereafter could its decision or recommendation, as the case may so be, be handed down.

In complaints for disbarment, a formal investigation is a mandatory requirement except in such extreme situations as when respondent fails to appear at the hearing despite reasonable notice.

WHEREFORE, the instant administrative case is REMANDED to the Integrated Bar of the Philippines for further proceedings, and it is directed to act on this referral with dispatch.

SO ORDERED.

Melo (Chairman), Panganiban, Sandoval-Gutierrez, and *Carpio, JJ.,* concur.

FIRST DIVISION

[A.M. No. RTJ-99-1453. December 14, 2001]

FR. MICHAEL SINNOTT, ERLINDA PEDRANO PINGKIAN, ROSITA PEDRANO-LOPEZ, ALFREDO PEDRANO, ANTONIO PEDRANO, CARINO PEDRANO, CORAZON MENDOZA, VIRGINIA BALING-PESTAÑAS, *complainants, vs.* **JUDGE RECAREDO P. BARTE, Regional Trial Court, Branch 29, Zamboanga del Sur,** *respondent.*

SYNOPSIS

An administrative complaint for bias and partiality was filed against Judge Recaredo P. Barte for the acquittal of Nenito Gadonan, an accused in two murder cases tried in his *sala*.

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Complainants attributed respondent judge's bias and partiality to his rumored special personal relationship with the daughter of the accused. In his comment, respondent judge denied the charges against him and alleged, among others, that he was willing to inhibit himself from hearing the said cases had there been any motion filed by complainants, but then from arraignment to promulgation, no such motion was filed. Due to the seriousness of the charges, the Court referred this case to the National Bureau of Investigation (NBI). After investigation, the NBI confirmed the illicit relationship of the respondent judge with Richel Gadunan, and that out of that relationship, they begot a daughter that was registered in the Civil Registry of Pagadian City in the name of Mary Ruth Gadunan Barte. Subsequently, this case was referred to Justice Marina L. Buzon for investigation, report and recommendation. After hearing, Justice Buzon recommended the dismissal of the case for insufficiency of evidence.

The Court, however, after examination of the evidence on record, found respondent judge guilty of immoral conduct. It was undisputed that respondent was a married man and was a member of the judiciary. The NBI was able to procure a certified true copy of the birth certificate of the offspring of respondent judge and Richel Gadunan, a woman not his wife. Respondent's intimate relationship with a woman other than his wife shows his moral indifference to the opinion of the good and respectable members of the community.

However, it did not appear that respondent judge, in his decision to acquit the accused, showed partiality. The mere fact that the judge acquitted the accused did not signify that he was biased towards the accused, in the absence of any proof of bad faith, malice and corrupt purpose.

Thus, for conduct unbecoming of a magistrate, the Court imposed on respondent judge a fine of ten thousand pesos.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; ONLY SUBSTANTIAL EVIDENCE IS NEEDED IN ADMINISTRATIVE PROCEEDINGS. — In administrative proceedings, the complainant has the burden of proving, by

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substantial evidence, the allegations in the complaint. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

2. **ID.; ID.; CREDIBILITY OF WITNESSES; UNREALISTIC FOR A MISTRESS TO TESTIFY AGAINST HER LOVER.** — True, the woman alleged to be respondent's lover did not testify regarding such illicit relations. She merely gave a sworn statement to the NBI. Generally, the submission of mere affidavit is self-serving and must be followed by testimonial evidence where the affiant can be subjected to cross-examination. However, it would be unrealistic to ask that she testify against her lover, knowing that at present, she still depended on him for financial support for her child.

3. **LEGAL AND JUDICIAL ETHICS; ADMINISTRATIVE CHARGES AGAINST JUDGES; IMMORALITY; PRESENT IN CASE AT BAR.** — In this case, substantial evidence supported the allegation that respondent judge had sexual relations with a woman other than his wife. It was undisputed that respondent was a married man and was a member of the judiciary. The NBI was able to procure a certified true copy of the birth certificate of the offspring of respondent judge and Richel Gadunan, a woman not his wife. x x x Various letters were obtained from Richel, which she identified to be in respondent judge's handwriting. A former employee of respondent judge likewise identified the writing of respondent and confirmed that there were letters delivered by him between the respondent and Richel.

4. **ID.; CODE OF JUDICIAL CONDUCT; AVOIDANCE OF APPEARANCE OF IMPROPRIETY; VIOLATED BY A JUDGE WHO MAINTAINED AN INTIMATE RELATIONSHIP WITH A WOMAN OTHER THAN HIS WIFE.** — Respondent's intimate relationship with a woman other than his wife shows his moral indifference to the opinion of the good and respectable members of the community. A judge, in order to promote public confidence in the integrity and impartiality of the judiciary, must behave with propriety at all times, in the performance of his judicial duties and in his everyday life. No position exacts a greater demand on moral righteousness and uprightness of an individual than a seat in the judiciary. Canon 3 of the Canons of Judicial Ethics solemnly mandates that the judge's official conduct

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should be free from the appearance of impropriety and his personal behavior, not only upon the bench and the performance of judicial duties but also in his everyday life, should be beyond reproach. Canon 2 of the Code of Judicial Conduct provides that a judge should avoid impropriety and the appearance of impropriety in all activities. Thus, respondent judge failed to live up to the exacting standards of judicial conduct and integrity. "For the judicial office circumscribes the personal conduct of a judge and imposes a number of restrictions thereon, which he has to observe faithfully as the price he has to pay for accepting and occupying an exalted position in the administration of justice."

5. ID.; ADMINISTRATIVE CHARGES AGAINST JUDGES; BIAS AND PARTIALITY; JUDGE'S INHIBITION ON THE BASIS THEREOF SHOULD BE TIMELY RAISED; NOT PRESENT IN CASE AT BAR. — Noticeably, complainants did not take any action to inhibit respondent from the case at the time of the trial. The question of a judge's inhibition on the basis of bias and partiality should be timely raised in the first instance, for a litigant cannot be permitted to speculate upon the action of the court and raise an objection on this ground after a decision unfavorable to him has been rendered. Since the guarantee of an impartial judge involves procedural due process, any defect therein may be waived and is subject to the curative effect of filing a motion for reconsideration or other applicable judicial remedy. In this case, no motion to inhibit judge was filed before the trial court during the proceedings in the case. Complainants waited until after the decision has been promulgated before taking action. This is evidence that they found nothing in respondent's conduct of the trial to arouse any suspicion that he was biased towards accused. It was only when complainants learned about the special personal relationship of respondent judge and a daughter of the accused Nenito Gadonan after the trial of the criminal cases that they speculated on the partiality of respondent judge.

6. ID.; ID.; ID.; MERE SUSPICION THAT A JUDGE IS PARTIAL IS NOT ENOUGH. — Mere suspicion that a judge is partial is not enough. There should be clear and convincing evidence to prove the charge of bias and partiality. Extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose, in addition to the palpable error that may be inferred

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from the decision or order itself. "Although the decision may seem so erroneous as to raise doubts concerning a judge's integrity, absent extrinsic evidence, the decision itself would be insufficient to establish a case against the judge. The only exception to the rule is when the error is so gross and patent as to produce an ineluctable inference of bad faith or malice."

7. **ID.; ID.; ID.; MERE FACT THAT THE JUDGE ACQUITTED AN ACCUSED DID NOT SIGNIFY THAT HE WAS BIASED IN THE ABSENCE OF ANY PROOF OF BAD FAITH, MALICE OR CORRUPT PURPOSE.** — In this case, it does not appear that respondent judge, in his decision to acquit the accused, showed partiality. The mere fact that he acquitted accused did not signify he was biased towards the accused, in the absence of any proof of bad faith, malice or corrupt purpose. In fact, as found by the investigating justice, "complainants appear to have faulted the trial prosecutor for not presenting rebuttal evidence despite their having informed the latter of the availability of witnesses for that purpose, as well as for his failure to clarify evidence and adequately conduct cross-examination, and that complainants regretted not having engaged the services of a private prosecutor."

8. **ID.; ID.; NOT A SUBSTITUTE FOR OTHER JUDICIAL REMEDIES AVAILABLE TO THE COMPLAINANTS.** — It must be emphasized that in an administrative case, the Court can only pass upon the administrative liability of the respondent. The case cannot be used as a remedy to challenge the assailed decision rendered by respondent. An administrative complaint cannot be a substitute for other judicial remedies available to the complainants, such as a motion for reconsideration or a special civil action for *certiorari*. Using such other remedies, complainants must establish that the judgment of acquittal resulted from a mistrial; otherwise, the retrial of the criminal cases would place the accused in double jeopardy. The rule on double jeopardy provides that when a person is charged with an offense and the case is terminated either by acquittal or conviction or in any other manner without the consent of the accused, the latter cannot again be charged with the same or identical offense.

9. **ID.; ID.; COURT CANNOT REVIEW OR REVERSE THE DECISION OF RESPONDENT JUDGE.** — Regrettably, in this administrative

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case, we cannot review or reverse the decision of respondent judge acquitting accused Nenito Gadonan. It is beyond the objective of an administrative proceeding to do so.

10. ID.; ID.; IMMORALITY; PENALTY; FINE OF ₱10,000 FOR A JUDGE WHO RETIRED DURING THE PENDENCY OF THE CASE. — [W]e find substantial evidence showing respondent judge's reproachable conduct for consorting with a woman not his wife. Respondent had reached the compulsory age of retirement during the pendency of the case. Nevertheless, respondent may still be meted out the appropriate penalty for his misconduct. Thus, for conduct unbecoming of a magistrate, we impose upon respondent a fine of ten thousand (₱10,000.00) pesos.

RESOLUTION

PARDO, *J.*:

The case under consideration is an administrative complaint against Judge Recaredo P. Barte, Regional Trial Court, Zamboanga del Sur, Branch 29 for bias and partiality for the acquittal of Nenito Gadonan, accused in a double murder case in the *sala* of respondent judge.

In the early morning of February 25, 1992, Demetria Pedrano, a lay leader of the Roman Catholic Church in Barrio Laperian, Zamboanga del Sur, left her house in Laperian to pay her land taxes in Poblacion, San Miguel. When she returned to her house that afternoon, she was shot in the mouth by one of three men waiting for her at her residence. The other inhabitant in the house, Basilia Pedrano, mother of Demetria, was hacked to death. Lolita Pedrano Pingkian, seven-year-old niece of Demetria, living in the same house for a few days, survived by running away when the killings began.[1]

Subsequently, state prosecutors filed with the Regional Trial Court, Zamboanga del Sur, two murder charges against Nenito

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[1] *Rollo*, p. 2.

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Gadonan for the killing of Demetria Pedrano and her mother, Basilia Pedrano. The criminal cases were raffled to the Regional Trial Court, Branch 29, presided over by Judge Recaredo P. Barte.[2]

On January 20, 1995, the trial court promulgated a joint decision of the criminal cases acquitting accused Nenito Gadonan of two counts of murder on reasonable doubt.[3]

On March 29, 1995, the sisters and brothers of Demetria Pedrano, namely: Erlinda Pedrano Pingkian, Rosita Pedrano Lopez, Alfredo Pedrano, Gaspar Pedrano, Antonio Pedrano and Carino Pedrano, together with Fr. Michael Sinnot, SSC, Parish Priest of Our Lady of Lourdes Parish, San Miguel, Zamboanga del Sur, Corazon Mendoza, a parish worker, and Virginia Baling Pestañas, TFDP-Pagadian Unit Worker, Diocesan Pastoral Center, Balangasan, Pagadian City, filed with the Office of the Court Administrator, Supreme Court, a letter-complaint on the conduct of the trial of Criminal Case Nos. 0474 and 0475. In their letter-complaint, they voiced their concern over the apparent bias and partiality of Judge Barte for accused Nenito Gadonan. The complainants claimed that there was overwhelming evidence that accused Gadonan killed Basilia Pedrano and Demetria Pedrano, but the respondent judge deliberately ignored or did not to give weight to such evidence. The complainants attributed Judge Barte's bias and partiality to his rumored special personal relationship with a daughter of accused Nenito Gadonan and the fact that Gadonan's other daughter was Judge Barte's house helper. Thus, Judge Barte should have inhibited himself from trying the cases, knowing his personal relationship with the accused's family. Complainants prayed that a mistrial be declared and that a retrial of the criminal cases be conducted.[4]

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[2] Docketed as Criminal Cases Nos. 0474 and 0475.

[3] *Rollo*, pp. 8-33.

[4] *Rollo*, pp. 1-7.

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On June 21, 1995, the Supreme Court required respondent judge to file his comment on the administrative complaint against him.[5]

On September 1, 1995, respondent judge filed his comment.[6] He alleged that he would have willingly inhibited himself from hearing the case had there been a motion filed by complainants for him to inhibit himself from the case. Yet, from arraignment to promulgation, no motion to inhibit was filed. Respondent denied any bias or partiality in favor of the accused. He admitted that a daughter of accused Nenito Gadonan was once his househelper; said daughter had left his household before the criminal cases were raffled to him. Respondent denied the complainants' claim that he had a special relationship with another daughter of accused Gadonan, and averred that the accusations were wild rumors and were unsupported by testimony from any person as to its veracity. Respondent revealed that he was suffering from a sexually debilitating disease called the enlargement of the prostate gland, greatly affecting his ability to attain an erection or reach orgasm. He alleged that the filing of an administrative case was not the proper remedy of complainants to seek a retrial of the case, and complainants or the prosecution neglected to take action when the cases were still pending or when the period for filing a motion for reconsideration was still available. He commented that the state prosecutors, as admitted by complainants, failed to present vital witnesses or rebuttal evidence and omitted to propound clarificatory questions that would have proven the guilt of the accused. He did not give credence to the prosecution's eyewitness, Lolita Pedrano Pingkian, because of major inconsistencies in her testimony.

On September 11, 1995, the Court received a letter from Fr. Sinnott who alleged threats to his life and attached an affidavit of Vicente Gerebise.[7] In the affidavit dated August 9, 1995,

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[5] *Rollo*, p. 34.

[6] *Rollo*, pp. 35-46.

[7] *Rollo*, pp. 97-98.

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Vicente A. Gerebise, Process Server of the Regional Trial Court, Zamboanga del Sur, Branch 29, alleged that sometime in the final week of July 1995, Judge Recaredo P. Barte called him up from Manila,[8] and in the course of their telephone conversation, requested him to look for hired killers to assassinate a foreign priest and other human rights activists who filed an administrative case against him. On August 9, 1995, at 6:00 in the morning, Judge Barte called him up again from Manila and inquired from him whether he found the hired killers he requested. He replied that he had not. Process server Gerebise admitted in his affidavit that he did not refuse Judge Barte's request because the respondent was his former boss at the Regional Trial Court, Branch 29; however, he did not comply with such request. He was familiar with the voice of respondent.[9] In his letter to the Supreme Court, Fr. Sinnott also attached a photocopy of letters written to respondent Judge Barte allegedly from Michelle "Ging-Ging" Gadunan, rumored lover of respondent.

On November 13, 1995, the Court received a reply from Fr. Sinnott on the comment filed by respondent judge.[10] Fr. Sinnott stated that there were many people willing to testify to respondent's special relationship with the daughter of Nenito Gadonan, but these people came forward after the trial of the criminal cases. They were just waiting for someone to take their testimony. They were also requesting for an investigator to go to Pagadian City to take evidence because the witnesses were not willing to submit written evidence to the Supreme Court because they believed this was available to Judge Barte, who still had the power to block appointments in Branch 29. One of the witnesses has died, Rosita Lopez, the sister of Demetria Pedrano.

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[8] Respondent was then detailed in Manila at the Judiciary Planning Development and Implementation Office, Supreme Court.

[9] Affidavit, *Rollo*, p. 99.

[10] *Rollo*, pp. 104-105.

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Due to the seriousness of the charges, the Supreme Court requested the National Bureau of Investigation to conduct an investigation. In a Disposition Report of the National Bureau of Investigation (NBI), dated March 24, 1997,[11] it revealed that in July 1994, respondent judge, while executive judge of the Regional Trial Court, Zamboanga del Sur, was introduced to one Richel Gadunan. Richel Gadunan submitted a sworn statement to the NBI alleging that respondent, with the use of power, money and trickery, succeeded in making sexual advances on her and an illicit relationship ensued. On May 16, 1996, she gave birth to a child at the Pasay City General Hospital. The birth certificate of the child indicated that respondent judge was the father, and that he married Richel Gadunan in Pagadian City on June 13, 1994. The NBI was able to procure a certified true copy of the birth certificate of Mary Ruth Gadunan Barte, daughter of Richel Gadunan and respondent Judge Barte.[12] Upon further investigation, the NBI reported that no marriage certificate of respondent judge and of Richel Gadunan was filed with the civil registry of Pagadian City. In conclusion, the disposition report of the NBI recommended that an administrative case for immorality and grave misconduct, as well as a petition for disbarment, be filed against respondent judge. The NBI, however, found no proof that respondent judge attempted to hire killers to assassinate Fr. Sinnott and other human rights activists responsible for the filing of the administrative case against him.

On July 1, 1998, the Court referred the case to Associate Justice Marina L. Buzon of the Court of Appeals for investigation, report and recommendation.[13]

On October 12, 1998, the Court denied Associate Justice Buzon's motion to inhibit herself from investigating the case and denied the motion of respondent Judge praying for the disqualification of Associate Justice Buzon, for copies of

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[11] Exhs. "H" and "H-1", Folder of Exhibits.

[12] Exh. "E", Folder of Exhibits.

[13] *Rollo*, p. 131.

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complainants' evidence and for the resetting of the hearing of the case. The Court also authorized investigating Associate Justice Buzon to designate the Executive Judge, Regional Trial Court, Pagadian City to receive the evidence for complainants.[14]

On July 19, 1999, the Court denied the motion of respondent to resume the investigation of the case in the Court of Appeals, Manila. The Court resolved to continue the reception of evidence for the complainant at Pagadian City, and to direct the Executive Judge, Regional Trial Court, Pagadian City to finish the investigation with utmost dispatch in order to prevent undue expense by both parties to the case.[15]

On April 10, 2000, the investigating justice informed the Court that on March 10, 2000, she received the record of the case, with transcripts of stenographic notes and documentary evidence of complainants forwarded by the executive judge of the Regional Trial Court, Pagadian City.[16]

The testimonies of the following witnesses were taken in Pagadian City: Ricardo Pajardo, Virginia Pestañas, Vicente Gerebise, Fr. Michael Sinnott, and Larry Dominguez.

Ricardo Pajardo, sheriff, Regional Trial Court, Branch 29, San Miguel, Zamboanga del Sur, stated that Mrs. Barte, wife of respondent, occasionally went to the office of respondent judge. On February 9, 1995, Mrs. Barte entered the office of respondent judge and demanded confirmation of the news that her husband was having an affair with another woman. Mrs. Barte scolded one of the members of the staff, calling him "*bugaw*" and berating him for not telling her about the activities of her husband.[17]

Virginia Pestañas, human rights worker, was given a letter dated February 13, 1995 allegedly of Richel Gadunan for

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[14] *Rollo*, pp. 143-144.

[15] *Rollo*, pp. 219-221.

[16] *Rollo*, p. 245.

[17] TSN, January 21, 1999, pp. 14-20.

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respondent judge, asking respondent to meet her at Socran Hotel. Later, Pestañas received a photocopy of another letter of Richel Gadunan dated February 1, 1995 to respondent judge, asking the latter to buy the medicine she needed. After the trial of the criminal cases, Pestañas informed Fr. Michael Sinnott of the relationship between respondent judge and a daughter of Nenito Gadonan, as revealed to her by one of the staff members in respondent judge's office.

Vicente Gerebise, former process server, Regional Trial Court, Branch 29, San Miguel, Zamboanga del Sur, stated that Richel Gadunan was his neighbor.[18] He remembered giving a letter to respondent judge from Richel, though he did not read the contents of the letter. He denied knowing the exact status of the relationship of respondent judge and Richel, but admitted that the two parties exchanged letters twice a week and that he acted as letter carrier to both of them.[19]

Fr. Michael Sinnott testified that on two occasions, respondent judge and his wife approached him to convince him to withdraw the administrative complaint. Mrs. Barte told him that Richel had other boyfriends and was two-timing respondent judge.[20] Respondent judge asked Fr. Sinnott to desist from pursuing the case and offered to help Fr. Sinnott charge Nenito Gadonan with illegal possession of firearms. Fr. Sinnott obtained a picture from the NBI showing Richel Gadunan giving her sworn statement at the NBI office in Pagadian City. He also submitted a photocopy of the birth certificate of Mary Ruth Gadunan Barte, obtained from the NBI.[21]

Larry Dominguez, NBI special agent, interviewed Richel Gadunan regarding her relationship with respondent.[22] Richel admitted having a sexual relationship with respondent, and even

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[18] TSN, October 19, 1999, p. 8.

[19] TSN, October 19, 1999, pp. 10-11.

[20] TSN, October 20, 1999, p. 16.

[21] TSN, October 20, 1999, p. 14.

[22] TSN, November 23, 1999, pp. 15-16.

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stated that they were married with a child. Richel gave letters written to her by respondent judge, writing under the pseudonym Nards Jiz.[23] Richel stated that she received financial support from respondent for their child, but not on a regular basis. Dominguez went to the Civil Registrar of Pasay City, the city where Richel said she gave birth to respondent's child. Dominguez was able to procure a certified true copy of a birth certificate of Mary Ruth Gadunan Barte.[24] He proceeded to confirm the allegation of a marriage between respondent judge and Richel. He found no record of marriage registered in the Civil Registry of Pagadian City.

Richel Gadunan was subpoenaed to testify during the hearings, but she failed to appear in court.[25]

On May 9, 2000, the investigating justice scheduled hearings for the reception of evidence of the respondent.[26]

Respondent judge gave his testimony in the Court of Appeals, Manila. He stated that on November 9, 1993, he was appointed judge of the Regional Trial Court, Branch 29, San Miguel, Zamboanga del Sur.[27] Thereafter, he was assigned on detail with the Judiciary Planning Development and Implementation Office of the Supreme Court in Manila. In 1997, he was transferred to the Regional Trial Court, Branch 31, Iloilo City. He returned to San Miguel, Zamboanga del Sur and held office in Pagadian City as trial court judge. He retired from judicial service on September 3, 1998, upon reaching the age of 70 years.[28]

Respondent testified that in Criminal Case Nos. 0474 and 0475, the trial of the cases lasted three hearing dates: November

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[23] TSN, November 23, 1999, pp. 23-24.

[24] TSN, November 23, 1999, p. 20.

[25] TSN, November 23, 1999, p. 3.

[26] *Rollo*, pp. 273-274.

[27] TSN, July 26, 2000, p. 15.

[28] TSN, July 26, 2000, p. 8.

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29, 1994; December 12, 1994; December 14, 1994, morning and afternoon. Then the case was deemed submitted for decision after the defense finished presenting evidence and rested its case.[29] He submitted a certified true copy of his decision in Criminal Cases Nos. 0474 and 0475, to show that it was based on the evidence presented during the trial. He also submitted a certification from Atty. Ma. Teresa P. Lingating, Clerk of Court VI, Office of the Clerk of Court, Regional Trial Court, Branch 29, San Miguel, Zamboanga del Sur that no motion for his inhibition, motion to present rebuttal evidence, motion for reconsideration, appeal or petition for *certiorari* was filed in the criminal cases by the prosecution or complaining witnesses. Up to the time he promulgated the decision on January 20, 1995, he received no motion from the prosecution to present additional evidence or any motion for the inhibition of the presiding judge.[30] He stated that he would have inhibited himself if there had been a motion filed for his inhibition in order to avoid suspicion that he had something to do with the case.[31]

On July 27, 2000, the day after respondent completed presentation of his evidence, the investigating justice issued an order giving the parties thirty days from July 26, 2000, within which to submit their respective memoranda.[32]

Incidentally, on August 7, 2000, the Supreme Court issued a resolution denying the request of Judge Barte for the release of 50% of his compulsory retirement benefits in view of the pendency of this administrative case.[33] The Court directed the

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[29] TSN, July 26, 2000, pp. 35-37.

[30] TSN, July 26, 2000, pp. 40-41.

[31] TSN, July 26, 2000, p. 29.

[32] *Rollo*, p. 348.

[33] In A. M. No. 10221-RET, entitled "*Re: Application for Compulsory Retirement of Hon. Recaredo P. Barte, Regional Trial Court, Branch 29, San Miguel, Zamboanga del Sur*," effective 02 September 1998. This case was later consolidated with the present administrative case (A. M. No. RTJ-99-1453).

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Chief, Finance Division, Office of the Court Administrator, to release in favor of Judge Barte the money value of his accumulated leave credits, if any, subject to the availability of funds.

Meanwhile, on October 9, 2000, the investigating justice submitted to the Court her report, recommending the dismissal of the administrative charges against respondent for insufficiency of evidence.[34]

After an examination of the evidence on record in this administrative case, we conclude that respondent judge is guilty of immoral conduct.

In administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in the complaint.[35] Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[36] In this case, substantial evidence supported the allegation that respondent judge had sexual relations with a woman other than his wife.

It was undisputed that respondent was a married man and was a member of the judiciary. The NBI was able to procure a certified true copy of the birth certificate of the offspring of respondent judge and Richel Gadunan, a woman not his wife. The birth certificate showed that the child, Mary Ruth Gadunan Barte, was born on May 16, 1996 at the Pasay City General Hospital.

Upon learning about the results of the NBI report, respondent did not deny the allegations regarding his illicit relationship. He merely attacked the moral integrity of the NBI investigator who conducted the investigation, citing newspaper reports.[37]

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[34] Report, p. 21.

[35] *Montes v. Bugtas*, A. M. No. RTJ-01-1627, April 27, 2001; *Lorena v. Encomienda*, 362 Phil. 248, 257 [1999].

[36] *Caña v. Gerbuson*, 329 SCRA 132, 145 [2000]; *Office of the Court Administrator v. Sumilang*, 338 Phil. 28, 38 [1997].

[37] TSN, July 26, 2000, pp. 54-60.

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Various letters were obtained from Richel, which she identified to be in respondent judge's handwriting. A former employee of respondent judge likewise identified the writing of respondent and confirmed that there were letters delivered by him between the respondent and Richel.

True, the woman alleged to be respondent's lover did not testify regarding such illicit relations. She merely gave a sworn statement to the NBI. Generally, the submission of mere affidavit is self-serving and must be followed by testimonial evidence where the affiant can be subjected to cross-examination. However, it would be unrealistic to ask that she testify against her lover, knowing that at present, she still depended on him for financial support for her child.

Respondent's intimate relationship with a woman other than his wife shows his moral indifference to the opinion of the good and respectable members of the community.[38] A judge, in order to promote public confidence in the integrity and impartiality of the judiciary, must behave with propriety at all times, in the performance of his judicial duties and in his everyday life. No position exacts a greater demand on moral righteousness and uprightness of an individual than a seat in the judiciary.[39] Canon 3 of the Canons of Judicial Ethics solemnly mandates that the judge's official conduct should be free from the appearance of impropriety and his personal behavior, not only upon the bench and the performance of judicial duties but also in his everyday life, should be beyond reproach.[40] Canon 2 of the Code of Judicial Conduct provides that a judge should avoid impropriety and the appearance of impropriety in all activities. Thus, respondent judge failed to live up to the exacting standards of judicial conduct and integrity. "For the judicial office circumscribes the personal conduct of a judge and imposes a number of restrictions thereon, which he has to observe faithfully

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[38] *Arciga v. Maniwang*, 193 Phil. 730, 735 [1981].

[39] *Securom v. Cantero*, 335 Phil. 511 [1997].

[40] *Huggland v. Lantin*, 326 SCRA 620, 639 [2000].

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as the price he has to pay for accepting and occupying an exalted position in the administration of justice."[41]

We are aware, though, that the main purpose of this administrative complaint is the retrial of accused Nenito Gadonan for double murder. Complainants contended that Criminal Case Nos. 0474 and 0475 in the Regional Trial Court, Zamboanga del Sur should be tried again because the presiding judge, herein respondent, was biased towards the accused. Complainants alleged that respondent judge's personal relationship with the daughter of accused Nenito Gadonan clouded respondent's judgment and, because of his bias and partiality towards accused, rendered a judgment of acquittal.

Noticeably, complainants did not take any action to inhibit respondent from the case at the time of the trial. The question of a judge's inhibition on the basis of bias and partiality should be timely raised in the first instance, for a litigant cannot be permitted to speculate upon the action of the court and raise an objection on this ground after a decision unfavorable to him has been rendered.[42] Since the guarantee of an impartial judge involves procedural due process, any defect therein may be waived and is subject to the curative effect of filing a motion for reconsideration or other applicable judicial remedy.[43] In this case, no motion to inhibit judge was filed before the trial court during the proceedings in the case. Complainants waited until after the decision has been promulgated before taking action. This is evidence that they found nothing in respondent's conduct of the trial to arouse any suspicion that he was biased towards accused.

It was only when complainants learned about the special personal relationship of respondent judge and a daughter of the accused Nenito Gadonan after the trial of the criminal cases that they speculated on the partiality of respondent judge.

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[41] *Alfonso v. Juanson*, 228 SCRA 239, 254-255 [1993].

[42] *Lao v. Court of Appeals*, 338 Phil. 191, 202 [1997].

[43] *People v. Galas*, 330 Phil. 948, 974 [1996].

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Mere suspicion that a judge is partial is not enough.[44] There should be clear and convincing evidence to prove the charge of bias and partiality.[45] Extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose, in addition to the palpable error that may be inferred from the decision or order itself.[46] "Although the decision may seem so erroneous as to raise doubts concerning a judge's integrity, absent extrinsic evidence, the decision itself would be insufficient to establish a case against the judge. The only exception to the rule is when the error is so gross and patent as to produce an ineluctable inference of bad faith or malice."[47]

In this case, it does not appear that respondent judge, in his decision to acquit the accused, showed partiality. The mere fact that he acquitted accused did not signify he was biased towards the accused, in the absence of any proof of bad faith, malice or corrupt purpose. In fact, as found by the investigating justice, "complainants appear to have faulted the trial prosecutor for not presenting rebuttal evidence despite their having informed the latter of the availability of witnesses for that purpose, as well as for his failure to clarify evidence and adequately conduct cross-examination, and that complainants regretted not having engaged the services of a private prosecutor."[48]

It must be emphasized that in an administrative case, the Court can only pass upon the administrative liability of the respondent. The case cannot be used as a remedy to challenge the assailed decision rendered by respondent. An administrative complaint cannot be a substitute for other judicial remedies

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[44] *People v. Court of Appeals*, 369 Phil. 150, 157 [1999]; *Flores v. Court of Appeals*, 328 Phil. 992, 1021 [1996]; *Lu v. Siapno*, 335 SCRA 181, 188 [2000].

[45] *Gohu v. Gohu*, G. R. No. 128230, October 13, 2000; *Te v. Court of Appeals*, G. R. No. 126746, November 29, 2000.

[46] *Webb v. People of the Philippines*, 342 Phil. 206, 216 [1997].

[47] *Ibid.*, pp. 216-217.

[48] Report, p. 20.

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available to the complainants,[49] such as a motion for reconsideration or a special civil action for *certiorari*.[50] Using such other remedies, complainants must establish that the judgment of acquittal resulted from a mistrial; otherwise, the retrial of the criminal cases would place the accused in double jeopardy.[51] The rule on double jeopardy provides that when a person is charged with an offense and the case is terminated either by acquittal or conviction or in any other manner without the consent of the accused, the latter cannot again be charged with the same or identical offense.[52]

Regrettably, in this administrative case, we cannot review or reverse the decision of respondent judge acquitting accused Nenito Gadonan. It is beyond the objective of an administrative proceeding to do so.

However, we find substantial evidence showing respondent judge's reproachable conduct for consorting with a woman not his wife. Respondent had reached the compulsory age of retirement during the pendency of the case. Nevertheless, respondent may still be meted out the appropriate penalty for his misconduct.[53]

Thus, for conduct unbecoming of a magistrate, we impose upon respondent a fine of ten thousand (₱10,000.00) pesos.[54]

WHEREFORE, the Court imposes on respondent Judge Recaredo P. Barte a fine of ten thousand (₱10,000.00) pesos, deductible from his retirement benefits withheld by the Court.

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[49] *Lumibao v. Panal*, 319 SCRA 149, 166 [1999].

[50] In a *certiorari* action, petitioners may allege that the respondent judge committed grave abuse of discretion amounting to lack of or excess of jurisdiction.

[51] *Soriano v. Angeles*, 339 SCRA 366, 374 [2000].

[52] *Manantan v. Court of Appeals*, G. R. No. 107125, January 29, 2001.

[53] *Huggland v. Lantin, supra,* Note 39, at p. 640; *Castillo v. Calanog, Jr.*, 199 SCRA 75, 83 [1991].

[54] Rule 140, Sections 10 and 11, Revised Rules of Court, as amended by A. M. No. 01-8-10-SC.

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The charges of bias and partiality are hereby dismissed.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Puno, Kapunan, and *Ynares-Santiago, JJ.,* concur.

SECOND DIVISION

[G.R. No. 119616. December 14, 2001]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARMANDO DEL VALLE, EDUARDO SERRANO and DIOSDADO DEL VALLE,** *accused,* **ARMANDO DEL VALLE,** *accused-appellant.*

SYNOPSIS

The Regional Trial Court of Pasay City convicted Armando del Valle of the crime of murder and sentenced him to suffer the penalty of life imprisonment. In this appeal, Armando questioned mainly the credibility of the prosecution witnesses.

The Court found that the alleged inconsistencies in the testimonies of the Aguares couple as eyewitnesses were minor, trivial and inconsequential. They pertained to surrounding incidents and not to the elements of the crime itself. Witnesses cannot be expected to remember all the details of the harrowing event which unfolded before their eyes. Minor discrepancies might be found in their testimony, but they do not damage the essential integrity of the evidence in its material whole, nor should they reflect adversely on the witnesses' credibility. In fact, they may even strengthen their credibility as they erase suspicion that the same was perjured.

As to the penalty to be imposed on appellant, the appropriate penalty is not life imprisonment as imposed by the trial judge, but *reclusion perpetua* as provided for in Article 248 of the Revised Penal Code.