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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.M. No. MTJ-99-1188. July 2, 2001]

JOSE E. GURAY, *complainant, vs.* **JUDGE FABIAN M. BAUTISTA, Municipal Trial Court, Balaoan, La Union,** *respondent.*

SYNOPSIS

Complainant Jose E. Guray is the private complainant in Criminal Case No. 2092, pending before the sala of respondent Judge Fabian M. Bautista in Luna, La Union. This case involved complainant's 11-year old son Eugenser who was hit in the eye by a stone thrown by Edmar Nebrida. Edmar was charged with serious physical injuries. However, complainant moved to upgrade the offense to frustrated murder. In relation thereto, respondent judge allegedly agreed to upgrade the charge, but for a consideration of ₱5,000.00, payable within a week. Complainant reported the matter to the NBI the following day. The NBI prepared an entrapment operation. Complainant produced several money bills amounting to ₱4,000.00 which the NBI marked with invisible crayon and dusted with fluorescent powder. On March 30, 1998, complainant met respondent judge at the parking lot of the Balaoan Municipal Hall, La Union, and he gave the money to respondent judge who pocketed it immediately. NBI agents then arrested the respondent judge. However, at the NBI office, he refused to submit to tests to determine the presence of fluorescent powder on his

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hands. On the following day, respondent judge was charged with violation of Section 3(e) of R.A. 3019 and direct bribery. In his comment to the letter-complaint before the Office of the Court Administrator (OCA), respondent judge stated that the charges against him were untrue. He added that he would not sacrifice his position for a mere pittance that is only equivalent to his monthly representation and transportation allowance. However, he refused to comment on the merits of the complaint. Pending OCA's investigation into this case, complainant filed an affidavit of desistance. Thereafter, the report of the OCA stated, among others, that complainant's earlier affidavit charging respondent with extortion "has a better ring of truth" than the affidavit of desistance that he later executed.

The Court was in full accord with the findings of the OCA. Indeed, it seemed unusual that respondent judge chose to remain silent when asked to comment on the complaint against him. If his concern was to clear his name, with more reason that he should rush to disprove the charges against him. Further, the Court looks with disfavor at affidavits of desistance filed by complainants, especially if done as an afterthought. Contrary to what the parties might have believed, withdrawal of the complaint does not have the legal effect of exonerating respondent from any administrative disciplinary sanction. It does not operate to divest the Court of jurisdiction to determine the truth behind the matter stated in the complaint. The Court's disciplinary authority cannot be dependent on or frustrated by private arrangements between parties.

Judge Fabian M. Bautista was ordered DISMISSED from the service.

SYLLABUS

1. **LEGAL AND JUDICIAL ETHICS; JUDGES; UNUSUAL FOR RESPONDENT JUDGE TO REMAIN SILENT ON COMPLAINT AGAINST HIM.**— [I]t seemed unusual that respondent judge chose to remain silent when asked to comment on the complaint against him. If his concern was to clear his name, with more reason that he should rush to disprove the charges against him.

2. **REMEDIAL LAW; EVIDENCE; HESITANCE OF JUDGE TO CONTINUE HEARING WITHOUT COMPLAINANT'S**

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AFFIDAVIT OF DESISTANCE; CASE AT BAR.— During the hearings before the OCA, he [Judge] did not want to continue the hearing held on February 15, 2000 because complainant was absent. According to respondent judge, said absence may cause problems. The OCA is of the view, considering the circumstances, that respondent judge was hesitant to continue because he had not yet obtained complainant's affidavit of desistance. We note that complainant himself admitted, in the same affidavit of desistance, that respondent judge persisted in asking him to execute such an affidavit

3. **JUDICIAL ETHICS; JUDGES; TWO YEARS IS A LONG TIME FOR COMPLAINANT TO RECANT THE CHARGES AGAINST JUDGE.**— Complainant went to the NBI to report respondent judge's alleged extortion attempt on March 17, 1998. He executed his affidavit of desistance nearly two years later, on March 13, 2000. If the filing of the complaint against respondent judge were an error, two years is such a long time to wait to recant the charges. Indeed, it is entirely possible that during that period, respondent judge endeavored to obtain an affidavit of desistance from complainant who was left with no choice since the case regarding the blinding of his son was still pending in respondent judge's sala.

4. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; COMPLAINANT'S AFFIDAVITS CHARGING RESPONDENT JUDGE WITH EXTORTION MORE TRUTHFUL THAN HIS AFFIDAVIT OF DESISTANCE.**— Even as late as February 15, 2000, complainant did not show any inclination to have the case withdrawn. He failed to attend the scheduled hearing but sent the investigating officer a note stating the reason for his absence. The hearing was reset to March 14, 2000. On that day, complainant was present but he filed his affidavit of desistance, which notably was executed only the day before, March 13, 2000. This raises the suspicion that there is something other than a bothered conscience behind the said affidavit. If the reason for complainant's desistance was that his conscience bothered him, we would have expected him to exonerate respondent judge sooner. However, he put his conscience in check for almost two years and was suddenly enlightened implausibly only on the eve of the next scheduled hearing. We agree with the OCA that complainant's earlier affidavits executed before the NBI appear to be more truthful than his affidavit of desistance.

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5. **ID.; ID.; FAILURE OF JUDGE TO PRESENT HIS CLERK OF COURT AS WITNESS, NOTED.**— We share the OCA's curiosity at respondent judge's failure to present his clerk of court as witness, to corroborate his claims about their alleged conversation regarding money. Ordinarily, respondent judge would have been expected to present each piece of evidence and every witness to bolster his arguments. However, as earlier stated, he chose to let his clerk remain silent.

6. **JUDICIAL ETHICS; ADMINISTRATIVE CASE AGAINST JUDGES; SUPREME COURT LOOKS WITH DISFAVOR AT AFFIDAVITS OF DESISTANCE FILED BY COMPLAINANTS; CASE AT BAR.**— This Court looks with disfavor at affidavits of desistance filed by complainants, especially if done as an afterthought. Contrary to what the parties might have believed, withdrawal of the complaint does not have the legal effect of exonerating respondent from any administrative disciplinary sanction. It does not operate to divest this Court of jurisdiction to determine the truth behind the matter stated in the complaint. The Court's disciplinary authority cannot be dependent on or frustrated by private arrangements between parties. An administrative complaint against an official or employee of the judiciary cannot simply be withdrawn by a complainant who suddenly claims a change of mind. Otherwise, the prompt and fair administration of justice, as well as the discipline of court personnel, would be undermined. This is especially true in this case where the respondent is a judge, who is expected to be the embodiment of competence, integrity, and independence.

7. **ID.; CODE OF JUDICIAL CONDUCT; DUTY TO PROMOTE PUBLIC CONFIDENCE IN THE JUDICIARY; VIOLATED IN CASE AT BAR.**— A judge has the avowed duty to promote public confidence in the judiciary. In this, respondent judge miserably failed. He likewise failed to uphold the mandate of the Code of Judicial Conduct to avoid impropriety, even the appearance of impropriety, in all his activities. His action was not merely improper; it could bring the judiciary into a state of grave disrepute and widespread distrust.

8. **ID.; CHARGES AGAINST JUDGES; SERIOUS MISCONDUCT; PENALTY; DISMISSAL FROM SERVICE.**— The OCA's recommendation that respondent be dismissed from the service, with forfeiture of benefits and with prejudice to reemployment in government is well-founded and in order. Its findings deserve

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full faith and credence. The belated affidavit of desistance by complainant does not wash clean the odious taint of respondent's serious misconduct in judicial office.

D E C I S I O N

***PER CURIAM*:**

In a letter-complaint[1] received by the Office of the Court Administrator on April 15, 1998, complainant Jose E. Guray charged respondent Judge Fabian M. Bautista with violation of R.A. No. 3019, the Anti-Graft and Corrupt Practices Act, for allegedly extorting money from him in relation to a criminal case pending before respondent judge's sala. Complainant asks that respondent be disbarred and dismissed from the service.

From the records, it appears that complainant is the private complainant in Criminal Case No. 2092, pending before respondent judge's sala in Luna, La Union.[2] This case involves complainant's 11-year-old son Eugenser who was hit in the eye by a stone thrown by one Edmar Nebrida. Eugenser went blind, and Edmar, sometime in January 1998, was consequently charged with serious physical injuries. Complainant moved to upgrade the charge to frustrated murder, alleging that his son could have died from his injury had he not received timely medical attention.

On March 16, 1998, respondent judge met with complainant in his courtroom. He allegedly agreed to upgrade the charge, but for a consideration of ₱5,000.00,[3] payable within a week. Complainant reported the matter to the NBI the following day. He told the NBI that he did not hold a grudge against respondent judge, but he wanted to put a stop to the latter's extortion schemes, particularly since he had been hearing about such activities from other people.

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[1] *Rollo*, p. 1.

[2] Respondent judge is also the acting judge in the MTC-Luna and MTC-Santol, both in La Union.

[3] *Rollo*, pp. 14-15.

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The NBI prepared an entrapment operation against respondent judge. Complainant produced several money bills amounting to ₱4,000.00 which the NBI marked with invisible crayon and dusted with fluorescent powder.[4] The original plan was to entrap respondent judge on March 25, 1998, but he was not in his office at that time.

Finally, on March 30, 1998, complainant met respondent judge at the parking lot of the Balaoan municipal hall and told him that he already had the money. Complainant gave the money to respondent judge who pocketed it immediately. NBI agents then arrested respondent judge and brought him to the provincial prosecutor's office for inquest. At the NBI office, respondent judge refused to submit to tests to determine the presence of fluorescent powder on his hands.

On March 31, 1998, respondent judge was charged with violation of Section 3(e) of R.A. 3019 before the Regional Trial Court, Balaoan, La Union.[5] On October 7, 1998, respondent judge was also charged before the Sandiganbayan with direct bribery under Article 210 of the Revised Penal Code.[6]

On February 24, 1999, we required respondent judge to comment on the administrative complaint against him.

In a letter dated June 7, 1999, respondent judge stated that the charges against him are untrue. He added that he would not sacrifice his position for a mere pittance that is only equivalent to his monthly representation and transportation allowance. He refused to further comment on the merits of the complaint, saying that he did not want to reveal his defense to complainant who should prove his case through his own evidence. Respondent judge asked, instead, that the complaint be dismissed since the RTC had earlier dismissed the criminal complaint against him for violation of R.A. 3019, upon motion of the prosecution.[7] He cited as authority

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[4] Exhibit "E".

[5] *Rollo*, p. 21.

[6] *Id.*, at 25.

[7] On October 21, 1998. *Rollo*, pp. 41-42.

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our ruling in the case of *Llorente, Jr. v. Sandiganbayan*, 287 SCRA 382 (1998), which was also cited in the order of the RTC dismissing the case.[8]

On November 17, 1999, we directed the court administrator to refer this case to any of the OCA consultants for investigation, report, and recommendation.

On March 13, 2000, while the OCA's investigation into this case was ongoing, complainant filed an affidavit of desistance.[9] He made a complete turnaround and claimed that respondent judge never demanded money from him in exchange for a favorable resolution of the motion to charge the proper offense that complainant had earlier filed in connection with Criminal Case No. 2092, involving his son. According to complainant, what actually happened was that he went to the courtroom of respondent judge to inquire about the status of his motion. While there, he overheard respondent judge borrowing ₱5,000.00 from his clerk of court and saying that he badly needed the money. Respondent was, however, told that his clerk of court did not have any money.

When complainant inquired about the status of his motion, respondent judge told him he had not yet acted on it due to the volume of work he was handling. Respondent judge told complainant to come back on March 25, 1998, since he might have the resolution ready by then.

Complainant allegedly mistook this series of exchanges as respondent judge's subtle way of asking him for money. Because he disliked the idea, he reported the matter the next day to the NBI. An entrapment operation against respondent judge was, thus, laid out for March 25, 1998 when complainant was supposed to return to respondent's courtroom. The operation was reset to March 30, 1998 when respondent judge did not appear on March 25.

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[8] *Rollo*, pp. 39-40.

[9] Exhibit "I". This affidavit was presented to the OCA hearing officer during the hearing on March 14, 2000. TSN, March 14, 2000, p. 3.

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Complainant stated in his affidavit of desistance that on March 30, 1998, he met respondent judge at the parking lot of the municipal hall of Balaoan, La Union, as the latter was about to go to his courtroom. Respondent judge invited complainant to go inside with him but the latter refused, having in mind the entrapment plan set against respondent judge. Instead, complainant told respondent judge that he was in a hurry and asked if they could talk at the parking lot instead. Respondent judge agreed. Complainant then inquired about the status of his motion and respondent judge replied that the resolution was not yet ready since he still did not have time to attend to it. At this point, complainant gave a signal to the NBI agents who were watching nearby, then immediately placed the marked money inside respondent judge's pocket. He told the latter more money was coming. Respondent judge reached into his pocket, saying "*teka, teka* (wait, wait)", but it was then that the NBI agents pounced upon him and arrested him.

Also in his affidavit of desistance, complainant narrated that after administrative and criminal cases were filed against respondent judge, the latter continued pleading with him, through emissaries, to file an affidavit of desistance since it was not true that he was demanding money from complainant.

Complainant said he was bothered by his conscience since, indeed, respondent judge did not ask money from him directly. He only thought that respondent judge was asking for money when he overheard the latter borrowing money from his clerk of court. Complainant added that respondent judge did not personally receive the marked money on March 30, 1998. Instead, it was he who placed it in respondent judge's pocket. Respondent judge reached into his pocket to get the money and return it to complainant, but NBI agents immediately nabbed him.

Complainant stated that he was no longer interested in pursuing the charges against respondent judge, and that he believed the latter to be innocent of such charges. Complainant said he would no longer testify against respondent judge and asked that the cases against the latter be dismissed.

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During one of the hearings conducted by the OCA, complainant also declared that he mistakenly assumed that respondent judge was demanding money from him.[10]

In its report dated May 15, 2000 and received by this Court on May 19, 2000, the OCA stated that complainant's earlier affidavit charging respondent with extortion "has a better ring of truth"[11] than the affidavit of desistance that he later executed. Complainant was unequivocal in his earlier affidavit, where he clearly stated that respondent had demanded money from him in exchange for favorable action on his motion, to be paid within a week. On the other hand, complainant's statement in the latter affidavit, that he overheard respondent judge borrowing money from his clerk of court and mistook it as a demand for money from him, is too contrived to inspire belief, according to the OCA.

The OCA pointed out that recantations or retractions by witnesses are rarely given probative value, since they can easily be obtained through intimidation or for a consideration. The OCA surmised that complainant executed an affidavit of desistance to obtain a favorable ruling in the criminal case involving his son, which was still pending in respondent judge's sala at the time of the investigation.

The OCA recommended that respondent judge be dismissed from the service, with forfeiture of all benefits and with prejudice to reemployment in any government branch or instrumentality. It likewise recommended that complainant be investigated and prosecuted for perjury or such other crime as the evidence may warrant.

We are in full accord with the above findings of the OCA. Indeed, it seemed unusual that respondent judge chose to remain silent when asked to comment on the complaint against him. If his concern was to clear his name, with more reason that he should rush to disprove the charges against him. During the hearings before the OCA, he did not want to continue the hearing

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[10] TSN, March 14, 2000, p. 6.

[11] OCA Report dated May 15, 2000, p. 10.

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held on February 15, 2000 because complainant was absent. According to respondent judge, said absence may cause problems.[12] The OCA is of the view, considering the circumstances, that respondent judge was hesitant to continue because he had not yet obtained complainant's affidavit of desistance. We note that complainant himself admitted, in the same affidavit of desistance, that respondent judge persisted in asking him to execute such an affidavit.

Certainly, it taxes our credulity that complainant, a civil engineer[13] and contractor,[14] would have mistaken what, if true, was a simple conversation about borrowing money between respondent judge and the latter's clerk of court, to be a demand for money from him in exchange for a favor from respondent judge. We have carefully read complainant's affidavit of desistance and found absolutely nothing in his narration that could have led him to make his allegedly mistaken conclusion.

Complainant went to the NBI to report respondent judge's alleged extortion attempt on March 17, 1998. He executed his affidavit of desistance nearly two years later, on March 13, 2000. If the filing of the complaint against respondent judge were an error, two years is such a long time to wait to recant the charges. Indeed, it is entirely possible that during that period, respondent judge endeavored to obtain an affidavit of desistance from complainant who was left with no choice since the case regarding the blinding of his son was still pending in respondent judge's sala.

Even as late as February 15, 2000, complainant did not show any inclination to have the case withdrawn. He failed to attend the scheduled hearing but sent the investigating officer a note stating the reason for his absence. The hearing was reset to March 14, 2000. On that day, complainant was present but he filed his affidavit of desistance, which notably was executed only the day

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[12] TSN, February 15, 2000, p. 3; OCA Report dated May 15, 2000, p. 9.

[13] *Rollo*, p. 15.

[14] *Id.*, at 5.

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before, March 13, 2000. This raises the suspicion that there is something other than a bothered conscience behind the said affidavit.

If the reason for complainant's desistance was that his conscience bothered him, we would have expected him to exonerate respondent judge sooner. However, he put his conscience in check for almost two years and was suddenly enlightened implausibly only on the eve of the next scheduled hearing.

We agree with the OCA that complainant's earlier affidavits executed before the NBI[15] appear to be more truthful than his affidavit of desistance.

We share the OCA's curiosity at respondent judge's failure to present his clerk of court as witness, to corroborate his claims about their alleged conversation regarding money. Ordinarily, respondent judge would have been expected to present each piece of evidence and every witness to bolster his arguments. However, as earlier stated, he chose to let his clerk remain silent.

This Court looks with disfavor at affidavits of desistance filed by complainants, especially if done as an afterthought. Contrary to what the parties might have believed, withdrawal of the complaint does not have the legal effect of exonerating respondent from any administrative disciplinary sanction.[16] It does not operate to divest this Court of jurisdiction to determine the truth behind the matter stated in the complaint.[17] The Court's disciplinary authority cannot be dependent on or frustrated by private arrangements between parties.[18]

An administrative complaint against an official or employee of the judiciary cannot simply be withdrawn by a complainant who suddenly claims a change of mind. Otherwise, the prompt

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[15] *Rollo*, pp. 15-16.

[16] *Caseñares v. Almeida, Jr.*, 324 SCRA 388, 396 (2000).

[17] *Farrales v. Camarista*, 327 SCRA 84, 94 (2000).

[18] *Ibid.*

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and fair administration of justice, as well as the discipline of court personnel, would be undermined.[19] This is especially true in this case where the respondent is a judge, who is expected to be the embodiment of competence, integrity, and independence.[20]

A judge has the avowed duty to promote public confidence in the judiciary.[21] In this, respondent judge miserably failed. He likewise failed to uphold the mandate of the Code of Judicial Conduct to avoid impropriety, even the appearance of impropriety, in all his activities.[22] His action was not merely improper; it could bring the judiciary into a state of grave disrepute and widespread distrust.

The OCA's recommendation that respondent be dismissed from the service, with forfeiture of benefits and with prejudice to reemployment in government is well-founded and in order. Its findings deserve full faith and credence. The belated affidavit of desistance by complainant does not wash clean the odious taint of respondent's serious misconduct in judicial office.

WHEREFORE, respondent Judge Fabian M. Bautista, Municipal Trial Court, Balaoan, La Union, is hereby found *GUILTY* of grave misconduct. He is ordered *DISMISSED* from the service, with forfeiture of all benefits and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations and their subsidiaries.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, De Leon, Jr., and *Sandoval-Gutierrez, JJ.*, concur.

Ynares-Santiago, J., on official leave.

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[19] *Supra*, note 16.

[20] CODE OF JUDICIAL CONDUCT, Canon 1, Rule 1.01.

[21] *Contreras v. Solis*, 260 SCRA 572, 581 (1996).

[22] *Ibid.*, Canon 2.