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SO ORDERED.

Castro (Chairman), Teehankee, Makasiar, and *Muñoz Palma, JJ.,* concur.

SECOND DIVISION

[A.C. No. 269-MJ. November 13, 1974]

NARCISO P. BARBASO, *complainant, vs.* **HON. NICOMEDES A. CABASAG, Municipal Judge of Sibutad, Zamboanga del Norte,** *respondent.*

SYLLABUS

ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGES AGAINST JUDGE; DISMISSAL OF COMPLAINT; WHEN ALLOWED; CASE AT BAR.— (1) The Joint Motion to withdraw this administrative case, dated September 16, 1972, signed by complainant and respondent, confirmed "that the questioned judgment by default in Civil Case No. 17, upon proper motion filed by complainant and argued on May 30, 1972, was *reconsidered* after the attendant circumstances were viewed upon, and a *new and distinct judgment was rendered on September 4, 1972.*" This submission, therefore, set aside the previous judgment by default now the subject of this complaint. (2) In the same joint motion to withdraw the case, it was stated that "the complainant and respondent as gentlemen and responsible citizens, found out, to their satisfaction that there was a sort of misunderstanding as to their respective motives during the discussion of the issues involved" and added that after their sober moments and upon hearing each other's views, the parties have come to realize that each was acting in good faith, without any malice and ill-will and if the matter ripened into the filing of this instant case, the same was due to their misunderstood acts." (3) In a 4th Indorsement, dated September

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16, 1972, Judge Doroteo de Guzman, of the Court of First Instance of Zamboanga del Norte, City of Dipolog, stated "that the complaint is no longer interested in the proper prosecution of the case" and "recommends the immediate dismissal of the aforesaid case." (4) In a 5th Indorsement, dated November 14, 1972, the Secretary of Justice concurred with the recommendation of the Court of First Instance Judge to dismiss the aforestated case for the reason that complainant has lost interest." This was again reiterated in another indorsement, dated December 5, 1972, contents of which was earlier mentioned in this report.

D E C I S I O N

FERNANDEZ, *J.:*

A verified complaint, dated June 1, 1972, was filed by Atty. Narciso P. Barbaso, of Dipolog City, against Municipal Judge Nicomedes A. Cabasag of Sibutad, Zamboanga del Norte, for gross ignorance of the law and serious misconduct.

The following facts contained in a 5th Indorsement dated December 5, 1972,[1] of the Department of Justice to the President of the Philippines are reproduced *in toto*:

"Complainant alleged that respondent committed a grave error of law when the latter declared the defendants in default in Civil Case No. 17, wherein complainant is one of the attorneys for the said defendants, and proceeded to receive the evidence for the plaintiffs *ex-parte* despite the fact that an answer had been filed within the reglementary period; and that since said answer contained a counterclaim which must be answered by the plaintiffs within ten (10) days from receipt thereof, the defendants' appearance in court on March 7, 1972, the day following the filing of said answer, was not necessary.

"The non-appearance of herein complainant and his clients was considered by respondent as indicative of lack of interest. In view of the insistent demands of the plaintiffs for hearing, the court declared the defendants in default and forthwith received oral and documentary evidence of the plaintiffs. The court decided the case the following

[1] *Rollo*, p. 30.

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day, awarding the reliefs sought in the complaint. Five (5) days thereafter, the answer mailed by the defendants was received by respondent. There was, however, no action for postponement of the hearing on March 7, 1972, attached to it.

"Complainant further averred that respondent had mercilessly scolded him in open court, shouting unsavory remarks in a disrespectful and violent manner which actuation constitutes serious misconduct. Respondent denied the charge and alleged that he merely asked the latter in a conversational tone why he failed to notify the court of his non-appearance on the date of hearing, even with only a telegraphic motion.

"This case was set for hearing on September 13, 1972, but an urgent motion for postponement was filed by respondent with no objection being interposed by complainant, so the case was reset on September 23, 1972. On September 16, 1972, however, a joint motion withdrawing this case was filed by complainant and respondent stating that the filing of this case was due to a misunderstanding, and that they realized that they both acted in good faith, without malice and ill-will.

"The filing of the answer by mail within the reglementary period without, however, asking the court to postpone the scheduled date of hearing, does not excuse the non-appearance of complainant and his clients. As to the charge of serious misconduct, respondent had no intent to downgrade the honor or prestige of complainant. What transpired between them was merely an exchange of comments on the issues involved.

"WHEREFORE" in view of the desistance of complainant, this Department concurs in the recommendation of the investigating Judge dismissing this case."

We fully concur with the Department's recommendation for the following reasons:

1. The Joint Motion to withdraw this administrative case, dated September 16, 1972,[2] signed by complainant and respondent, confirmed "that the questioned judgment by default in Civil Case No. 17, upon proper motion filed by complainant and argued on May 30, 1972, was *reconsidered* after the attendant

[2] *Rollo*, pp. 17-18.

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circumstances were viewed upon, and a *new and distinct judgment was rendered on September 4, 1972."* This submission, therefore, set aside the previous judgment by default now the subject of this complaint.

2. In the same joint motion to withdraw the case, it was stated that "the complainant and respondent as gentlemen and responsible citizens, found out, to their satisfaction that there was a sort of misunderstanding as to their respective motives during the discussion of the issues involved" and added that after their sober moments and upon hearing each other's views, the parties have come to realize that each was acting in good faith, without any malice and ill-will and if the matter ripened into the filing of this instant case, the same was due to their misunderstood acts."

3. In a 4th Indorsement, dated September 16, 1972,[3] Judge Doroteo de Guzman, of the Court of First Instance of Zamboanga del Norte, City of Dipolog, stated "that the complaint is no longer interested in the proper prosecution of the case" and "recommends the immediate dismissal of the aforesaid case."

4. In a 5th Indorsement, dated November 14, 1972,[4] the Secretary of Justice concurred with the recommendation of the Court of First Instance Judge to dismiss the aforestated case for the reason that complainant has lost interest." This was again reiterated in another indorsement, dated December 5, 1972, contents of which was earlier mentioned in this report.

IN VIEW OF THE FOREGOING, the administrative case against respondent judge is hereby DISMISSED.

SO ORDERED.

Fernando (Chairman), Barredo, Antonio, and *Aquino, JJ.,* concur.

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[3] *Ibid.*, p. 13.

[4] *Ibid.*, p. 19.