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THIRD DIVISION

[A.M. No. RTJ-98-1416. August 6, 1999]

REYNALDO V. ABUNDO, *complainant, vs.* **Judge GREGORIO E. MANIO JR., Regional Trial Court, Branch 40, Daet, Camarines Norte,** *respondent.*

SYNOPSIS

Acting upon an order to investigate a verified complaint against respondent judge for: (1) partiality; (2) fraternizing with a party-litigant and lawyer who had a pending case before him; and (3) ignorance of the basic rules of procedure, Court of Appeals Justice Marina L. Buzon recommended that respondent be found guilty on the allegation of partiality and be made to pay a fine, and reprimanded for failure to comply with Administrative Circular 20-95.

The Court agreed with the findings of Justice Buzon. In denying complainant's Motion to Defer Arraignment but granting his opponent's similar motion in another criminal case filed by complainant, respondent showed his bias and partiality. Respondent's refusal to issue a warrant of arrest against complainant's opponent casted suspicion on his fairness. The fact that the record of the fiscal's preliminary investigation was not submitted to the trial judge is not an excuse. Respondent, on his own initiative could have ordered its production.

As to complainant's contention that respondent frequently fraternized with complainant's opponent in respondent's house, court chambers and public places, the court ruled that the evidence against respondent on this point was insufficient. As provided for in the Canons of Ethics: it is not necessary to the proper performance of judicial duty that judges should live in retirement or seclusion.

Respondent's act of issuing a TRO without notice and hearing was not just ignorance of the prevailing rule. To a large extend, it was misconduct, prejudicial to the proper administration of justice and grave abuse of authority. However, to be punishable, an act constituting ignorance of the law must not only be contradictory to existing law and jurisprudence but must also be motivated by bad faith, fraud, dishonesty or corruption. The

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complainant failed to make such allegation and, more important, to offer convincing proof.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; WARRANT OF ARREST; ISSUANCE OF WARRANT ADDRESSED TO SOUND DISCRETION OF COURT.** — The issuance of a warrant of arrest is addressed to the sound discretion of the court. The judge determines whether there is a necessity for placing the accused under immediate custody in order not to frustrate the ends of justice. Such discretion is, however, limited by this constitutional proscription: "[N]o warrant of arrest shall issue except upon probable cause to be determined *personally* by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce x x x."

2. **ID.; ID.; ID.; PROCEDURE IN ISSUANCE THEREOF.** — In *Ho v. Sandiganbayan*, the Court laid down the proper procedure: "(1) The judge personally evaluates the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (2) if on the basis thereof he finds no probable cause, he may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause.

3. **ID.; ID.; PRELIMINARY INVESTIGATION; FISCAL MAY BE ORDERED TO PRODUCE RECORD THEREOF.** — That the record of the fiscal's preliminary investigation was not submitted to the trial judge is not an excuse, as respondent on his own initiative could have ordered its production under Section 8, Rule 112. This was the duty which the respondent refused to perform, thereby casting suspicion on his fairness.

4. **LEGAL ETHICS; ATTORNEYS; *AMICUS CURIAE*; ALLOWING BIASED COUNSEL TO APPEAR AS SUCH IMPROPER.** — The impropriety of allowing Atty. Pajarillo to participate in an action in which he was neither a party nor a counsel is explained by Justice Buzon in this manner: "Section 36, Rule 138 of the Rules of Court provides that experienced and impartial attorneys may be invited by the court to appear as *amicus curiae* to help in the disposition of issues submitted to it. However, Atty. Pajarillo may not be considered an impartial lawyer who deserves to be invited as *amicus curiae* in Civil Case No. 6681 considering

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that complainant is one of the respondents in said case. It should be noted that Atty. Pajarillo is the complaining witness against complainant in Criminal Case No. 8145 and that complainant is the offended party in Criminal Case No. 8632 for libel against Atty. Pajarillo. All of said cases are pending before the court presided over by respondent, so that the latter must be aware of the existing enmity between complainant and Atty. Pajarillo.

5. JUDICIAL ETHICS; JUDGES; SHOULD NOT ALLOW FAMILY, SOCIAL OR OTHER RELATIONSHIPS TO INFLUENCE JUDICIAL CONDUCT. — A judge should not allow family, social, or other relationships to influence judicial conduct or judgment. A judicial office should not be used to advance the private interests of others. Neither should a judge convey or allow others to create the impression that some people are in a special position to influence him.

6. ID.; ID.; ID.; NOT COMPLIED WITH BY PARTIALITY IN FAVOR OF FRIEND.— Based on the foregoing, it is evident that the respondent allowed his close friendship with Atty. Pajarillo, a former colleague, to influence his actions. He denied the Motion to Defer filed by the complainant, despite the latter's plea that the arraignment could render moot and academic his appeal with the justice secretary. Yet, respondent deferred the arraignment of his colleague, who was faced with a similar situation. He also inordinately delayed for a flimsy reason the issuance of a warrant of arrest against Atty. Pajarillo. His actuations in these cases betrayed his bias and partiality in favor of his friend.

7. ID.; ID.; NOT PRECLUDED FROM SOCIALIZING. — We agree with Justice Buzon's finding that the evidence against respondent frequently fraternizing with Atty. Pajarillo was insufficient, *viz.*: "On the other hand, the admission of respondent that he attended two public functions where Atty. Pajarillo was also present; that Atty. Pajarillo had been in his house twice or thrice and used his telephone; and that he receives lawyers, including Atty. Pajarillo, and litigants inside his chambers, the door to which is always open so that the staff could see that no under the table transactions are taking place, is not proof that he is fraternizing with Atty. Pajarillo. A judge need not ignore a former colleague and friend whenever they meet each other or when the latter makes requests which are not in any manner connected with cases pending in his court. (Canon 30 of the Canons of Judicial Ethics)

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8. REMEDIAL LAW; PROVISIONAL REMEDIES; TEMPORARY RESTRAINING ORDER; CAN BE ISSUED *EX PARTE*. — A TRO can be issued *ex parte* if the matter is of such extreme urgency that grave injustice and irreparable injury will arise unless it is issued immediately. Under such circumstance, the executive judge shall issue the TRO effective only for seventy-two (72) hours from its issuance. The executive judge is then required to summon the parties to a conference, during which the case should be raffled in their presence. Before the expiry of the seventy-two hours, the presiding judge to whom the case was raffled shall conduct a summary hearing to determine whether the TRO can be extended for another period until a hearing on the pending application for preliminary injunction can be held.

9. JUDICIAL ETHICS; JUDGES; FAILURE TO SUMMON PARTIES ON APPLICATION FOR TRO CONSTITUTES NOT ONLY IGNORANCE OF PREVAILING RULE BUT TO A LARGE EXTENT MISCONDUCT. — Obviously, respondent intended to delay the conduct of the summary hearing. This is reprehensible. The Petition filed July 2, 1996 already contained a Motion for the issuance of a TRO, so his duty to send the Notice did not begin the following day. Had he sent the Notices on time, he could have set the summary hearing on July 5. However, he blatantly refused to discharge this duty. In *Golangco v. Villanueva*, it was held that the judge's disregard of the Supreme Court's pronouncement on temporary restraining orders was not just ignorance of the prevailing rule; to a large extent, it was misconduct, conduct prejudicial to the proper administration of justice, and grave abuse of authority. However, to be punishable, an act constituting ignorance of the law must not only be contradictory to existing law and jurisprudence, but must also be motivated by bad faith, fraud, dishonesty or corruption. The complainant failed to make such allegation and, more important, to offer convincing proof.

10. ID.; ID.; SHOULD NOT ONLY BE IMPARTIAL BUT SHOULD ALSO APPEAR IMPARTIAL. — Well-known is the judicial norm that "judges should not only be impartial but should also appear impartial." Jurisprudence repeatedly teaches that litigants are entitled to nothing less than the cold neutrality of an impartial judge. The other elements of due process, like notice and hearing, would become meaningless if the ultimate decision is rendered by a partial or biased judge. Judges must not only

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render just, correct and impartial decisions, but must do so in a manner free of any suspicion as to their fairness, impartiality and integrity. This reminder applies all the more sternly to municipal, metropolitan and regional trial court judges like herein respondent, because they are judicial front-liners who have direct contact with the litigating parties. They are the intermediaries between conflicting interests and the embodiments of the people's sense of justice. Thus, their official conduct should remain "free from any appearance of impropriety" and "should be beyond reproach."

11. ID.; ID.; SHOULD PROMOTE PUBLIC CONFIDENCE IN INTEGRITY AND IMPARTIALITY OF THE JUDICIARY. — A judge must promote public confidence in the integrity and impartiality of the judiciary. These stringent standards are intended to assure parties of just and equitable decisions and of a judiciary that is capable of dispensing impartial justice in every issue in every trial.

APPEARANCES OF COUNSEL

Jose F. Manacop for complainant.
David C. Naval for respondent.

D E C I S I O N

PANGANIBAN, *J.*:

Judges are the visible representations of law and justice. They are required not only to be objective, but also to appear objective; indeed, every litigant is entitled to nothing less than the cold neutrality of an impartial judge. Due process would be meaningless if the ultimate decision in a controversy is rendered by a partial or biased judge.

The Case

On December 10, 1996, the Office of the Court Administrator received a verified Complaint[1] dated November 20, 1996, filed

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

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by Reynaldo V. Abundo charging Judge Gregorio E. Manio Jr., (Regional Trial Court, Branch 40, Daet, Camarines Norte) with (1) partiality, (2) fraternizing with a party-litigant and lawyer who had a pending case before him, and (3) ignorance of the basic rules of procedure.

After respondent submitted his Comment on the Complaint, the Court in its Resolution of September 16, 1998, referred the matter to Court of Appeals Justice Marina L. Buzon for investigation, report and recommendation.[2] After conducting an investigation and receiving the Memoranda of the parties, she filed her Report dated April 30, 1999.

The Antecedent Facts

From the pleadings and the documentary evidence submitted in this case, Justice Buzon relates the factual antecedents of this case as follows:[3]

"Complainant Reynaldo V. Abundo was the General Manager of Camarines Norte Electric Cooperative, Inc. (CANORECO for brevity). On February 18, 1994, an Information for falsification of public document, docketed as Criminal Case No. 8145, was filed against complainant before the Regional Trial Court, Branch 40, Daet, Camarines Norte, presided over by respondent Judge Gregorio E. Manio. Complainant was charged with having falsified the 1992 Summary Reports of the annual meeting of CANORECO.

"On April 4, 1994, complainant filed a motion to defer his arraignment scheduled on April 5, 1994, in view of the pendency of the petition for review he filed with the Department of Justice. At the hearing on April 5, 1994, complainant reiterated his motion but the same was opposed by the public prosecutor and the complaining witness, Atty. Jose D. Pajarillo. Respondent denied the motion in open court and ordered the arraignment of complainant, who then entered a plea of not guilty to the charge against him.

"The petition for review filed by complainant was given due course by the Department of Justice, which subsequently directed the

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[2] Resolution dated September 16, 1998; *rollo*, p. 122.

[3] Report, pp. 1-8.

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provincial prosecutor to move for the dismissal of Criminal Case No. 8145. However, respondent denied the motion to dismiss filed by the provincial prosecutor in an Order dated May 5, 1995.

"On October 20, 1995, an Information for libel, docketed as Criminal Case No. 8632, was filed against Atty. Jose D. Pajarillo for having allegedly uttered defamatory remarks against the complainant. Said case was raffled to the court presided over by respondent. In an Order dated December 4, 1995, respondent suspended the proceedings in said case in order not to render moot and nugatory the action that might be taken by the Department of Justice on the appeal of Atty. Pajarillo. Another Order dated March 29, 1996 was issued by respondent reiterating his earlier Order opting to await the resolution of the Department of Justice before proceeding with Criminal Case No. 8632.

"A petition for injunction and damages, docketed as Civil Case No. 6681, was filed on July 2, 1996 by the members of the board of directors of CANORECO against complainant and other employees of CANORECO. Said case was raffled to the court presided over by respondent. On July 3, 1996, the petition was amended. On the same date, respondent issued a temporary restraining order enjoining complainant and his co-respondents in said case from performing any act pertaining to the office of the General Manager of CANORECO or any other act pertaining to any other office thereat. The hearing on the petition for preliminary mandatory injunction was set on July 22, 1996.

"On November 27, 1996, complainant filed a complaint against respondent for partiality, fraternizing with Atty. Jose D. Pajarillo, a party litigant, and ignorance of the rules on civil procedure.

"Complainant claims that respondent and Atty. Jose D. Pajarillo are very close friends considering that the latter was a former judge in Naga City and the two used to ride the same car in going to and from Daet and Naga City; that respondent frequently receives Atty. Pajarillo in his chambers and in his house and that they are always seen together in public places; that respondent displayed bias and partiality in favor of Atty. Pajarillo when the former granted the latter's motion to defer the proceedings in Criminal Case No. 8632 by reason of the pendency of a petition for review before the Department of Justice, but denied his (complainant's) motion to defer his arraignment in Criminal Case No. 8145 on the same ground, and in allowing Atty. Pajarillo to participate in the hearing on the petition for preliminary

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mandatory injunction in Civil Case No. 6681 although the latter [was] not a party litigant or counsel in said case; that respondent fraternizes with Atty. Pajarillo, who is the accused in Criminal Case No. 8632 and the complaining witness in Criminal Case No. 8145, both pending before the court presided over by the former, and that respondent issued the temporary restraining order in Civil Case No. 6681 without complying with the provisions of Administrative Circular No. 20-95 which require that the complaint should be raffled only after notice to the adverse party and that a summary hearing should be conducted before issuing a temporary restraining order.

"Required to comment on the complaint, respondent explained that he denied complainant's motion to defer his arraignment in Criminal Case No. 8145 in view of the objection of the prosecution on the grounds that said motion was a sham pleading for non-compliance with the three-day notice rule and there was no restraining order coming from the appellate court enjoining the arraignment of complainant; that he deferred the proceedings in Criminal Case No. 8632 against Atty. Jose D. Pajarillo because the Information [was] not accompanied by copies of the resolution on the preliminary investigation as well as affidavits or documents, for him to determine whether probable cause exist[ed] to justify the issuance of a warrant of arrest, so that he decided to await the action of the Department of Justice on the appeal of Atty. Pajarillo. He denied having fraternized with Atty. Pajarillo, although he admitted that when the latter was still a Judge of Naga City, they rode together in his car going to and from Daet and Naga City but Atty. Pajarillo shared in the expenses for gasoline. He further claimed that he met Atty. Pajarillo only in two public functions, *i.e.* during the IBP elections when the latter was elected President of the IBP Camarines Norte and when he administered the oath of office of the Governor and Congressman of Camarines Norte, the latter being a brother-in-law of Atty. Pajarillo. He admitted having engaged in light banter with Atty. Pajarillo, other lawyers and party litigants whenever they meet in the court premises and that Atty. Pajarillo had gone to his house on two or three occasions when the latter used his direct dial telephone in making emergency calls to his children in Metro Manila to avoid the inconvenience of lining up for several hours at the old Camarines Norte Telephone Company in order to make long distance calls.

"In a Resolution dated September 16, 1998, the Supreme Court (First Division) referred this case to the undersigned for investigation, report and recommendation.

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"At the hearing on January 7, 1999 for the presentation of the evidence for complainant, only the latter's counsel appeared and manifested that he was dispensing with the presentation of testimonial evidence in view of the admissions made by respondent in his Comment. The counsel for complainant submitted the following evidence, to wit:

'Exhibit 'A' — Information for falsification of public document against complainant in Criminal Case No. 8145;

'Exhibit 'B'— Transcript of stenographic notes taken during the hearing on April 5, 1994 on complainant's motion to defer his arraignment in Criminal Case No. 8145;

'Exhibit 'C' — Order dated May 5, 1995 denying complainant's motion to dismiss in Criminal Case No. 8145;

'Exhibit 'D' — Information for libel against Atty. Jose D. Pajarillo in Criminal Case No. 8632;

'Exhibit 'E' — Order dated March 29, 1996 deferring proceedings in Criminal Case No. 8632 to await the resolution of the Department of Justice on the petition for review filed by Atty. Pajarillo;

'Exhibit 'F' — Amended Petition in Civil Case No. 6681;

'Exhibit 'G' — Transcript of stenographic notes taken during the hearing on July 22, 1996 on the petition for the issuance of the writ of preliminary mandatory injunction in Civil Case No. 6681;

'Exhibit 'H' — Temporary Restraining Order in Civil Case No. 6681.

"Respondent interposed no objection to the admission of the exhibits for complainant, except for the purposes for which they were offered. In view thereof, all the exhibits of complainant were admitted and the latter rested his case.

"At the presentation of his evidence on January 15, 1999, respondent likewise dispensed with the presentation of testimonial evidence and submitted the following documentary evidence, to wit:

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'Exhibit 'I' — Same as Exhibit "B";

'Exhibit '1-a' to '1-K' — Pages 2-12 of the transcript of stenographic notes;

'Exhibit '2' — Order dated March 9, 1994 of Judge Wenifredo A. Armenta denying complainant's motion to defer proceedings in Criminal Case No. 8145 and directing the issuance of a warrant of arrest against complainant;

'Exhibit '2-a' — Motion To Defer Proceedings in Criminal Case No. 8145;

'Exhibits '3' and '3-a' — Motion To Defer Arraignment Other Proceedings in Criminal Case No. 8145

'Exhibit '3-b' — Order dated April 5, 1994 denying the motion to defer arraignment in Criminal Case No. 8145;

'Exhibit '4' — Same as Exhibit 'C';

'Exhibit '4-a' — Cases cited in the Order;

'Exhibit '4-b' — Motion To Dismiss in Criminal Case No. 8145;

'Exhibit '5' — Same as Exhibit 'E';

'Exhibit '5-a' — Order dated December 4, 1995 in Criminal Case No. 8632;

Exhibit '5-b' — Manifestation of Acting Provincial Prosecutor Eugenio L. Abion in Criminal Case No. 8632;

'Exhibits '6' '6-a' to '6-c' — Same as Exhibit 'H';

'Exhibit '6-d' — July 5 to 11, 1996 issue of Bicol Post;

'Exhibit '6-d-1' — Article entitled "Security Guard Killed in CANORECO Mess;

'Exhibit '6-d-2'— Article entitled "CANORECO shooting Incident . . . Who is to blame?

'Exhibits '7 '7-a', '7-a-1' '7-c', '7-d' and '7-e' — dated July 26, 1996 in Civil Case No. 6681;

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'Exhibit '7-b' — *Ex-Parte* Motion To Lift or Quash Restraining Order;

'Exhibit '7-c-1' — Minutes of Special Raffle of Case on July 2, 1996;

'Exhibit '7-d-1' — Certification of the Branch Clerk of Court, RTC, Branch 19, Naga City that respondent held sessions therein from July 8-12 and 15-19, 1996;

'Exhibits '7-d-2' to '7-d-11' — Certified true copies of the Court calendar of RTC, Branch 19, Naga City;

'Exhibits '7-f' — Certification of Emmanuel S. Dipasupil, Court Interpreter, RTC, Branch 41, Daet, Camarines Norte stating that Judge-Designate Emmanuel S. Flores conducted hearing only up to June 25, 1996 and resumed hearing on July 15, 1996;

'Exhibit '8' '8-a', '8-a-1' '8-b' to '8-b-5'; '8-c' to '8-c-4' — TSN dated July 22, 1996 in Civil Case No. 6681 (Exhibit 'G")

"All the documentary evidence of respondent were admitted, except Exhibits '6-d', '6-d-1' and '6-d-2' for being hearsay.

"On February 12, 1999, complainant presented rebuttal evidence consisting of the following documents, to wit:

'Exhibit 'I' — Petition for Injunction in Civil Case No. 6681;

'Exhibit 'J' — Amended Petition For Injunction;

'Exhibits 'K' 'L', 'M' — Court Calendar dated July 2, 3 and 5, 1996, respectively, of RTC, Branch 40, Daet, Camarines Norte;

'Exhibit 'N' — Order dated July 26, 1996 in Civil Case No. 6681.'

"All the exhibits on rebuttal were admitted. On the other hand, respondent did not present sur-rebuttal evidence.

"Thereafter, the parties submitted their respective memoranda."

Justice Buzon recommended that respondent "be found guilty of partiality in favor of Atty. Jose D. Pajarillo and be made to

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pay a fine of ₱10,000; and that he be reprimanded for failure to comply with Administrative Circular 20-95 x x x."

The Court's Ruling

After careful deliberation, the Court agrees with the findings of Justice Buzon.

First Charge:
Bias and Partiality

Denying the Complainant's Motion to Defer Arraignment in Criminal Case No. 8145, But Granting Atty. Pajarillo's Similar Motion in Criminal Case No. 8632

Respondent argues that the Motion to Defer complainant's arraignment was "absolutely and completely without merit" for the following reasons:

(1) Complainant's earlier motion to defer proceedings[4] pending the appeal with the justice secretary was denied by Executive Judge Winefredo A. Armenta in his Order dated May 9, 1994.[5]

2) The public prosecutor objected to the Motion because it was filed only on April 4, 1994, a day prior to the scheduled arraignment in violation of the three-day-notice rule.

(3) Private Prosecutor Pajarillo also vehemently objected to the Motion, contending that it was a rehash of the previous Motion which had already been acted upon in the Order dated March 9, 1994.

(4) Section 4 of Department of Justice Circular 223 prohibits appeals of resolutions finding probable cause, which have been issued by the chief state prosecutor or regional state prosecutor, provincial or city prosecutor.

(5) Counsel's excuse that he was ill was not substantiated.

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[4] Annex C; *rollo*, p. 12.

[5] Annex B; *rollo*, p. 11.

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The foregoing arguments are unacceptable. We agree with Justice Buzon's disquisition in her Report, which tackled the above items as follows:[6]

"It is true that complainant's motion to defer arraignment and other proceedings in Criminal Case No. 8145 was filed only a day before the scheduled arraignment of complainant on April 5, 1994. However, Section 4, Rule 15 of the Rules of Court allows the court, for good cause, to hear a motion on shorter notice, especially on matters which it may dispose of on its own motion. When the complainant reiterated his motion to defer his arraignment at the hearing on April 5, 1994, the prosecution objected thereto on the grounds that the motion was a sham pleading for non-compliance with the three-day notice requirement and that no restraining order had been issued by the appellate court. In view thereof, respondent denied the motion to defer arraignment.

"Respondent tried to justify his denial of the motion to defer arraignment on the grounds that the Executive Judge denied a similar motion filed by complainant in the same case and that the prosecution interposed an objection thereto. However, the Order dated March 2, 1994 of Executive Judge Wenifredo A. Armenta denying complainant's motion to defer proceedings in Criminal Case No. 8145 was not in connection with the arraignment of complainant, in view of the fact that the latter had not yet been arrested when said motion was filed. Thus, with the denial of complainant's motion to defer proceedings, Executive Judge Armenta merely directed the issuance of a warrant of arrest [of the] complainant. The mere fact that an objection to the motion to defer arraignment was interposed by the prosecution does not warrant the denial of said motion without taking into consideration the merits of the same. It is interesting to note that the private prosecutor who joined the public prosecutor in objecting to the motion was Atty. Jose D. Pajarillo. As correctly pointed out by complainant, he could not have secured a restraining order from the appellate court enjoining his arraignment because the motion to defer arraignment had to be resolved first by respondent before the matter could be brought to the appellant court. The absence of a restraining order, therefore, does not justify respondent's denial of the motion to defer arraignment filed by complainant. Moreover, it was the first time that complainant sought a deferment of his arraignment.

[6] Report, pp. 8-10.

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"On the other hand, respondent suspended the proceedings in Criminal Case No. 8632 and he did not even issue a warrant of arrest against Atty. Pajarillo in order to await the action of the Department of Justice on the petition for review filed by the latter for the reason that what was filed by the public prosecutor in said case was only the Information. x x x."

Refusing to Issue a Warrant of Arrest Against Atty. Pajarillo

Respondent contends that he did not issue a warrant of arrest in Criminal Case No. 8632, because the acting provincial prosecutor, Eugenio L. Abion, manifested that he had not yet determined the existence of probable cause in the case; that he was waiting for the resolution of Atty. Pajarillo's appeal with the justice secretary; but that he nonetheless filed the Information in order to forestall the prescription of the offense.[7] Moreover, he did not have in his possession the prosecutor's Report or any supporting documents finding the existence of probable cause.

His explanation is unsatisfactory. Its tenability is disputed by the investigating justice in this manner:[8]

"x x x Respondent argued that the absence of the resolution and record of the preliminary investigation prevented him from determining the existence of probable cause as basis for the issuance of a warrant of arrest against Atty. Pajarillo. It is noteworthy that respondent has the power to require the public prosecutor to submit the record of the preliminary investigation in order for him to determine whether there is probable cause to justify the issuance of a warrant of arrest against Atty. Pajarillo. It does not appear that respondent required the production of the record of the preliminary investigation of the case against Atty. Pajarillo. In the order dated March 29, 1996 in Criminal Case No. 8632, respondent stated that "the right to speedy trial is accorded to the accused and not to the prosecutor and considering that an accused stands alone against the prosecutory might of the state, the Court must concede to the accused (Atty.

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[7] Annex D; *rollo*, pp. 25-27.

[8] Report, p. 10.

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Pajarillo) his right to exhaust all remedies to avoid miscarriage of justice or the use of the oppressive capability of the prosecution to spare him from unnecessary expense and humiliation." However, respondent did not apply the same principle to complainant when the latter moved to defer his arraignment in Criminal Case No. 8145. Moreover, respondent's claim that the investigating officer did not find a *prima facie* case against Atty. Pajarillo is contradicted by the Manifestation filed by State Prosecutor II Eugenio L. Abion stating that he found the existence of probable cause against Atty. Pajarillo, although he initially opted to wait for the results of the appeal pending before the Department of Justice to afford Atty. Pajarillo the chance to seek remedy but the Revised Rules on appeal from resolutions in preliminary investigation provide that such appeal shall not hold the filing of the information in court."

The issuance of a warrant of arrest is addressed to the sound discretion of the court.[9] The judge determines whether there is a necessity for placing the accused under immediate custody in order not to frustrate the ends of justice.[10] Such discretion is, however, limited by this constitutional proscription: "[N]o warrant of arrest shall issue except upon probable cause to be determined *personally* by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce x x x." In *Ho v. Sandiganbayan*, the Court laid down the proper procedure:

"(1) [The judge] personally evaluates the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (2) if on the basis thereof he finds no probable cause, he may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause."[11]

That the record of the fiscal's preliminary investigation was not submitted to the trial judge is not an excuse, as respondent

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[9] Section 6, Rule 112 of the Rules of Court, provides: "The Regional Trial Court may issue a warrant for the arrest of the accused."

[10] *Ho v. Sandiganbayan*, GR No. 106632, October 9, 1997, pp. 15-16.

[11] *Ibid.*, p. 8.

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on his own initiative could have ordered its production under Section 8, Rule 112. This was the duty which the respondent refused to perform, thereby casting suspicion on his fairness.

Allowing Atty. Pajarillo, Who Was Neither a Party nor a Counsel, "to Speak in Civil Case No. 6681"

Respondent allowed Atty. Pajarillo to participate in Civil Case No. 6681 on the following grounds: (1) that said lawyer could help the trial court understand the issues involved; (2) that, Attys. Pajarillo and Jose Lapak, who were consumers themselves, appeared as *amici curiae,* because "consumers [were] affected by the troubles existing in x x x CANORECO," which was the local power distributor in Camarines Norte; and (3) that counsel for complainant did not interpose any objection thereto.

The impropriety of allowing Atty. Pajarillo to participate in an action in which he was neither a party nor a counsel is explained by Justice Buzon in this manner:[12]

"Section 36, Rule 138 of the Rules of Court provides that experienced and impartial attorneys may be invited by the court to appear as *amicus curiae* to help in the disposition of issues submitted to it. However, Atty. Pajarillo may not be considered an impartial lawyer who deserves to be invited as *amicus curiae* in Civil Case No. 6681 considering that complainant is one of the respondents in said case. It should be noted that Atty. Pajarillo is the complaining witness against complainant in Criminal Case No. 8145 and that complainant is the offended party in Criminal Case No. 8632 for libel against Atty. Pajarillo. All of said cases are pending before the court presided over by respondent, so that the latter must be aware of the existing enmity between complainant and Atty. Pajarillo."

Based on the foregoing, it is evident that the respondent allowed his close friendship with Atty. Pajarillo, a former colleague, to influence his actions. He denied the Motion to Defer filed by the complainant, despite the latter's plea that the arraignment could render moot and academic his appeal

[12] Report, p. 11.

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with the justice secretary. Yet, respondent deferred the arraignment of his colleague, who was faced with a similar situation. He also inordinately delayed for a flimsy reason the issuance of a warrant of arrest against Atty. Pajarillo. His actuations in these cases betrayed his bias and partiality in favor of his friend. A judge should not allow family, social, or other relationships to influence judicial conduct or judgment. A judicial office should not be used to advance the private interests of others. Neither should a judge convey or allow others to create the impression that some people are in a special position to influence him.[13]

Second Charge:
Fraternizing with Litigants

Fraternizing Frequently with Atty. Pajarillo in Respondent's House, Court Chambers and Public Places

Respondent admits that he and Atty. Pajarillo became close friends in 1989 when they were both RTC judges stationed in Naga City. Since they both resided in Camarines Norte, Atty. Pajarillo hitched rides with respondent to Daet, Camarines Norte in the latter's car.

In his Comment, respondent claims that he leaves the door to his chambers open to lawyers or parties with official court business, whose requests and complaints regarding their cases he listens to in full view of his staff, who are witnesses to his transparency and honesty in conducting such dialogues. He also admits that Atty. Pajarillo has been to his house on several occasions, but only to make emergency long-distance calls to his children in Metro Manila. He, however, denies that he and Atty. Pajarillo were frequently seen eating and drinking together in public places.

We agree with Justice Buzon's finding that the evidence against respondent on this point was insufficient, *viz.*:[14]

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[13] *Gallo v. Cordero*, 245 SCRA 219, 226, June 21, 1995.

[14] Report, pp. 12-13.

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"On the other hand, the admission of respondent that he attended two public functions where Atty. Pajarillo was also present; that Atty. Pajarillo had been in his house twice or thrice and used his telephone; and that he receives lawyers, including Atty. Pajarillo, and litigants inside his chambers, the door to which is always open so that [the] staff could see that no under the table transactions are taking place, is not proof that he is fraternizing with Atty. Pajarillo. A judge need not ignore a former colleague and friend whenever they meet each other or when the latter makes requests which are not in any manner connected with cases pending in his court. Thus, Canon 30 of the Canons of Judicial Ethics provides:

'30. *Social relations*

It is not necessary to the proper performance of judicial duty that judges should live in retirement or seclusion; it is desirable that, so far as the reasonable attention to the completion of their work will permit, they continue to mingle in social intercourse, and that they should not discontinue their interests in or appearance at meetings of members at the bar. A judge should, however, in pending or prospective litigation before him be scrupulously careful to avoid such action as may reasonably tend to waken the suspicion that his social or business relations or friendships constitute an element in determining his judicial course.'"

Third Charge:
Ignorance of the Rules on the Issuance of a Temporary Restraining Order

Issuing a TRO in Civil Case No. 6681 Without Notice and Hearing

Respondent cites circumstances surrounding the filing of the initiatory pleadings in Civil Case No. 6681 as reasons for his failure to conduct a summary hearing prior to the issuance of the contested Temporary Restraining Order (TRO). The amended Petition containing a prayer for a TRO was filed only at 2:00 p.m. on Wednesday, July 3, 1996. The following day was an official holiday; thus, he contends that Notices for the summary hearing could be issued to the parties only on Friday, July 5, 1996. The earliest date for summary hearing would

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have been Monday, July 8, 1996, but respondent was scheduled to preside over the Regional Trial Court of Naga City, Branch 19, for two weeks and to return to Daet, Camarines Norte on July 22, 1996. Hence, the Motion for the issuance of a writ of preliminary mandatory injunction was set for hearing only on July 22, 1996.

We note that respondent was the only judge who could have legally acted on the Motion for a restraining order. The Regional Trial Court of Daet, Camarines Norte, had only three branches. When a special raffle of Civil Case No. 6681 was held on July 2, 1996, Executive Judge Sancho Dames II inhibited himself from the case, and Pairing Judge Emmanuel Flores was still in Legazpi City.

Under such constraints, respondent claims that he had to issue the TRO even without the summary hearing required by Administrative Circular No. 20-95 in order to prevent "great and irreparable injury and damage," considering that a security guard had been shot to death inside the CANORECO compound.

Again, the investigating justice found the respondent's contentions untenable, as her Report indicates:[15]

"In view of the requirement in Administrative Circular No. 20-95 that records of the case shall be transmitted immediately after the raffle and, in the absence of proof to the contrary, the record of Civil Case No. 6681 must have been transmitted to Branch 40 also on July 2, 1996. Considering that all the parties in said case are connected with CANORECO located at Daet, Camarines Norte where the Court sits, notice of a summary hearing on the application for a temporary restraining order could have been issued and served on the parties on July 2, 1996 and a hearing could have been conducted on July 3, 1996. Record shows that respondent conducted trial of cases on July 3, 1996, as shown by the court calendar for said date. Granting that the Court did not have sufficient time to have the notice of summary hearing on the application for a temporary restraining order served on all the parties on July 2, 1996, respondent could have caused the service of the notice on July 3, 1996, and set the summary hearing on July 5, 1996, considering that July 4, 1996 was an official holiday.

[15] Report, pp. 17-18.

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Respondent was still in Daet, Camarines Norte on July 5, 1996, as shown by the court calendar for said date. However, it seems that there was no attempt at all on the part of respondent to comply with Administrative Circular No. 20-95 as no order setting a summary hearing on the application for temporary restraining order was caused to be issued by respondent for service to all the parties. Inasmuch as respondent had sufficient time to conduct a summary hearing on the application for a temporary restraining order, there was no valid reason for him not to comply with Administrative Circular No. 20-95. The holding of a summary hearing prior to the issuance of a temporary restraining order is mandatory, in view of the requirement that the application for a temporary restraining order shall be acted upon only after all parties are heard in a summary hearing after the records are transmitted to the branch selected by raffle. In other words, a summary hearing may not be dispensed with."

A TRO can be issued *ex parte* if the matter is of such extreme urgency that grave injustice and irreparable injury will arise unless it is issued immediately.[16] Under such circumstance, the executive judge shall issue the TRO effective only for seventy-two (72) hours from its issuance. The executive judge is then required to summon the parties to a conference, during which the case should be raffled in their presence. Before the expiry of the seventy-two hours, the presiding judge to whom the case was raffled shall conduct a summary hearing to determine whether the TRO can be extended for another period until a hearing on the pending application for preliminary injunction can be held.

Obviously, respondent intended to delay the conduct of the summary hearing. This is reprehensible. The Petition filed July 2, 1996 already contained a Motion for the issuance of a TRO, so his duty to send the Notice did not begin the following day. Had he sent the Notices on time, he could have set the summary hearing on July 5. However, he blatantly refused to discharge this duty.

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[16] Administrative Circular No. 20-95, par. 3; *Wack Wack Condominium Corp. v. Court of Appeals*, 215 SCRA 850, 857, November 23, 1992; *Ilaw at Buklod ng Manggagawa v. National Labor Relations Commission*, 198 SCRA 586, 600-601, June 27, 1991.

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In *Golangco v. Villanueva,*[17] it was held that the judge's disregard of the Supreme Court's pronouncement on temporary restraining orders was not just ignorance of the prevailing rule; to a large extent, it was misconduct, conduct prejudicial to the proper administration of justice, and grave abuse of authority. However, to be punishable, an act constituting ignorance of the law must not only be contradictory to existing law and jurisprudence, but must also be motivated by bad faith, fraud, dishonesty or corruption.[18] The complainant failed to make such allegation and, more important, to offer convincing proof. The investigating justice stressed this lapse in her Report:[19]

"Nonetheless, complainant has not shown that respondent acted in bad faith or with malice in issuing the temporary restraining order without a summary hearing. It has been held that in the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action even though such acts are erroneous."

Well-known is the judicial norm that "judges should not only be impartial but should also appear impartial."[20] Jurisprudence repeatedly teaches that litigants are entitled to nothing less than the cold neutrality of an impartial judge. The other elements of due process, like notice and hearing, would become meaningless if the ultimate decision is rendered by a partial or biased judge.[21] Judges must not only render just, correct and

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[17] 278 SCRA 414, 422-423, September 4, 1997.

[18] *De Vera v. Dames*, AM No. RTJ 99-1455, July 13, 1999, pp. 14-15; *Alvarado v. Laquindanum*, 245 SCRA 501, 504, July 3, 1995; *Bengzon v. Adaoag*, 250 SCRA 344, 348, November 28, 1995; *Naval v. Panday*, 275 SCRA 654, 694, July 21, 1997; and *Guillermo v. Reyes Jr.*, 240 SCRA 154, 161, January 18, 1995.

[19] Report, p. 18.

[20] *De Vera v. Judge Dames II, supra,* pp. 16-17; *Gallo v. Cordero, supra*, p. 225; *People v. Opida*, 142 SCRA 295, 298, June 13, 1986.

[21] *Webb v. People,* 276 SCRA 243, 252, July 24, 1997; *People v. Opida, supra,* p. 298.

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impartial decisions, but must do so in a manner free of any suspicion as to their fairness, impartiality and integrity.[22]

This reminder applies all the more sternly to municipal, metropolitan and regional trial court judges like herein respondent, because they are judicial front-liners who have direct contact with the litigating parties.[23] They are the intermediaries between conflicting interests and the embodiments of the people's sense of justice.[24] Thus, their official conduct should remain "free from any appearance of impropriety" and "should be beyond reproach."

"The courts exist to promote justice (Canon 2, Canons of Judicial Ethics); accordingly, the judge's official conduct should be free from appearance of impropriety, and his personal behavior, not only upon the bench and in performance of official duties, but also in his everyday life, should be beyond reproach (Canon 3, *id.*). He is the visible representation of the law and, more importantly, of justice (*Office of the Court Administrator v. Gines*, 224 SCRA 262 [1993]; *Inciong v. De Guia*, 154 SCRA 93 [1987]; *Dela Paz v. Inutan,* 64 SCRA 540 [1975). He should administer his office with due regard to the integrity of the system of the law itself, remembering that he is not a depositary [of] power, but a judge under the sanction of law(Canon 18, *id.*)."[25]

A judge must promote public confidence in the integrity and impartiality of the judiciary. These stringent standards are intended to assure parties of just and equitable decisions and of a judiciary that is capable of dispensing impartial justice in every issue in every trial.

WHEREFORE, the Court finds Judge Gregorio E. Manio Jr. *GUILTY* of partiality in favor of Atty. Jose D. Pajarillo, for

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[22] *Maliwat v. Court of Appeals,* 256 SCRA 718, 730, May 15, 1996.

[23] *Dawa v. Judge De Asa*, A.M. No. MTJ-98-1144, July 22, 1998, p. 24.

[24] *Marces Jr. v. Arcangel*, 258 SCRA 503, 517, July 9, 1996.

[25] *Guillen v. Judge Nicolas,* AM No. MTJ-98-1166, December 4, 1998, p. 10, per Davide Jr., *J.*, (now *CJ*).

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which he is hereby *SUSPENDED* for two (2) months without pay and ordered to *PAY* a *FINE* of ₱10,000. He is also *REPRIMANDED* for failure to comply with Administrative Circular No. 20-95. He is sternly warned that a commission of similar acts shall be dealt with more severely in the future. The charge of fraternizing is *DISMISSED* for insufficiency of evidence.

SO ORDERED.

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

Vitug, J., concurred in the result.

THIRD DIVISION

[G.R. No. 86963. August 6, 1999]

BATONG BUHAY GOLD MINES, INC. *petitioner, vs.* **HONORABLE DIONISIO DELA SERNA IN HIS CAPACITY AS THE UNDERSECRETARY OF THE DEPARTMENT OF LABOR AND EMPLOYMENT, ELSIE ROSALINDA TY, ANTONIO MENDELEBAR, MA. CONCEPCION Q. REYES, AND THE OTHER COMPLAINANTS* IN CASE NO. NCR-LSED-CI-2047-87; MFT CORPORATION AND SALTER HOLDINGS PTY. LTD.,** *respondents.*

SYNOPSIS

On February 5, 1987, private respondents who are employees of petitioner Batong Buhay Gold Mines, Inc. (BBGMI), filed a complaint against BBGMI for non-payment of basic pay and

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* Attachment "Q", *Rollo*, pp. 175-191.