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motion to disqualify the respondent from hearing the said two cases. Moreover, the action of the respondent in dismissing the two cases appear to be well grounded in law."

WHEREFORE, it appearing that the recommendation of the Investigator, District Judge Alfredo Marigomen, for the dismissal of the instant administrative complaint is duly supported by the evidence of record, and is concurred in by Judicial Consultant Manuel B. Barcelona, the same is hereby approved. Case dismissed.

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

SECOND DIVISION

[A.M. No. 746-MJ. August 29, 1974]

SOLEDAD MORADO, *complainant, vs.* **JUDGE HERNANDO AGUILAR,** *respondent.*

SYLLABUS

JUDGES; ADMINISTRATIVE CASE AGAINST JUDGE DISMISSED ON ACCOUNT OF DEATH.— It appears, however, that the respondent judge is no longer in the service. According to the death certificate submitted to this Court, he died on April 28, 1974. In view of the death of the respondent, the administrative complaint filed against him is hereby dismissed.

RESOLUTION

FERNANDEZ, *J.*:

This is an administrative complaint for *immorality and failure* to give support filed by Soledad Morado against *Municipal Judge Hernando Aguilar of Baleno, Masbate*.

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This complaint was referred by the Department of Justice to the executive judge, CFI, Masbate, for "appropriate action." In a return 4th indorsement, CFI Judge Abraham R. Castañeda recommended "dismissal," for the complainant who was cited to appear "failed to come and refused to acknowledge the notice of hearing * * *." These same charges were previously ordered dismissed by CFI Judge Pedro Singson Reyes when the same complainant herein "withdrew her complaint."

In compliance with the directive in a 5th indorsement of the Department of Justice, directing a "full-dress investigation * * * considering the gravity of the charges * * *," CFI Judge Pedro C. Quitain, after the formal investigation, submitted his report dated December 12, 1972, containing his findings, on the basis of which be recommended that:

"WHEREFORE, it is respectfully recommended that:

1 — For having maintained an illicit relation with the complainant while the incumbent Municipal Judge of Baleno, Masbate, and being a married man, resulting in the complainant's having become a mother without being a wife, the respondent should be dismissed from the service. Considering the circumstance, however, that the respondent is soon retiring and the further circumstance that he must have tendered his resignation as required by the President, let the law be tempered with mercy and so let his resignation he recommended for acceptance without prejudice to all the retirement benefits that he might be entitled to under existing laws.

2 — As regards the children, the case should not be considered terminated. The innocent children must be helped and the help must be immediate taking into account the fact that the respondent is soon retiring. If there is a legal way of withholding his monetary retirement benefits let it be so withheld until the children, with the assistance of a duly appointed *Guardian Ad Litem* will have filed in Court such action as might be justified considering the best interest of the children."

In a 6th indorsement to the President of the Philippines dated January 4, 1973, the Secretary of Justice concurred with the findings and recommendation of the investigating judge.

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It appears, however, that the respondent judge is no longer in the service. According to the death certificate submitted to this Court, *he died on April 28, 1974.*

In view of the death of the respondent, the administrative complaint filed against him is hereby dismissed.

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

FIRST DIVISION

[G.R. Nos. L-18843 & 18844. August 29, 1974]

CONSOLIDATED MINES, INC., *petitioner, vs.* **COURT OF TAX APPEALS and COMMISSIONER OF INTERNAL REVENUE,** *respondents.*

[G.R. Nos. L-18853 & 18854.]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **CONSOLIDATED MINES, INC.,** *respondent.*

SYLLABUS

1. **TAXATION; GROSS INCOME; DEDUCTIONS FROM; DEPLETION; CONCEPT OF.**— The Tax Code provides that in computing net income there shall be allowed as deduction, in the case of mines, a reasonable allowance for depletion thereof which has been mined and sold during the year for which the return is made. As an income tax concept, depletion is wholly a creation of the statute — "solely a matter of legislative grace."

2. **ID.; ID.; ID.; ID.; BURDEN OF PROOF ON TAXPAYER TO SHOW JUSTIFICATION FOR DEPLETION ALLOWANCE.**— The taxpayer has the burden of justifying the allowance of any deduction claimed. As in connection