

## THIRD DIVISION

**[ A.M. No. MTJ-09-1736 [FORMERLY OCA I.P.I. NO. 08-2034-MTJ], July 25, 2011 ]**

**ATTY. CONRADO B. GANDEZA, JR., COMPLAINANT, VS. JUDGE MARIA CLARITA C. TABIN, PRESIDING JUDGE, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 4, BAGUIO CITY. RESPONDENT.**

### DECISION

**PERALTA, J.:**

Before us is an administrative complaint <sup>[1]</sup> filed by complainant Atty. Conrado B. Gandeza, Jr. against Judge Maria Clarita C. Tabin, Presiding Judge, Municipal Trial Court in Cities (MTCC), Branch 4, Baguio City, for Gross Misconduct and Conduct Unbecoming a Judge.

The antecedent facts are as follows:

Complainant alleged that on November 20, 2007, around 9 o'clock in the evening, a Mitsubishi Galant with plate number UJB 799 driven along Marcos Highway, Baguio City by Guimba Digermo (Digermo), collided head on with a Ssangyong Musso Pick-Up with plate number XMW 135 driven by Marion Derez. The Mitsubishi Galant is owned by complainant and his wife, Atty. April B. Gandeza, while the Ssangyong Musso Pick-Up is owned by respondent Judge's nephew, Paul N. Casuga.

Complainant recalled that when he arrived at the accident site, he saw respondent Judge conferring with the police investigator. He claimed that respondent Judge approached him and in a harsh tone accused his driver to be the one at fault and was under the influence of liquor. Respondent also kept on reminding the police investigator to put in his report the alleged drunken condition of his driver despite complainant's request to respondent judge not to prejudge the situation.

Complainant claimed that at the hospital, while both drivers were being subjected to physical examination, respondent Judge, instead of accompanying her nephew's driver, opted to stand closely beside complainant's driver and kept on suggesting to the examining doctor that his driver was under the influence of liquor. He added that when respondent Judge came to know the "negative" result of the alcoholic breath examination of his driver, she protested and demanded another examination on his driver. Despite his protests and his driver's refusal to undergo a re-examination, respondent Judge's request prevailed. Later on, complainant alleged that a new medical certificate showing his driver was under the influence of liquor was issued upon respondent's insistence.

Complainant argued that respondent Judge has no personality to interfere with the police investigation and only the police investigator has the right to request for re-

examination.

Complainant likewise suspected that respondent Judge may have also facilitated the filing of the criminal complaint in court against his driver, since the complaint was filed in court barely a week after the collision. The investigating prosecutor even recommended an exorbitant sum of P30,000.00 for complainant's driver's liberty. Complainant believed that the processes have been railroaded to accommodate respondent Judge.

Moreover, complainant averred that his wife, a practicing lawyer in Baguio City, at one time saw an employee of the Municipal Trial Court of Baguio, Branch 2, carrying outside of the court premises, the folder of the criminal case filed against their driver. When asked as to why said staff was carrying the case record outside the court's premises, said employee informed her that she will bring it to the sala of respondent Judge as the latter requested for it.

In another incident, complainant added that when his wife went to the Philippine Mediation Center (PMC), Baguio City, to move for the postponement of the scheduled mediation of the subject criminal case, she was informed by the clerk that respondent Judge went there and inquired about the supposed mediation.

Complainant insisted that respondent's actions showed her interest in the criminal case without regard to proper decorum. She, in effect, abused her judicial position.

On July 11, 2008, the Office of the Court Administrator (OCA) directed Judge Tabin to submit her comment on the complaint against him. [2]

In her Comment [3] dated September 9, 2008, Judge Tabin denied that she exerted undue influence in the conduct of the investigation. While she admitted that she did request the police officer that complainant's driver should be subjected to an alcoholic breath test as done earlier to her nephew, she, however, insisted that she did not influence PO3 Jackson U. Pabillo and the doctor of the Baguio General Hospital into doing the same. [4] Judge Tabin also pointed out that she never made public the fact that she is a judge, albeit, she admitted that complainant and PO3 Pabillo knew her as such. [5]

Respondent Judge also disputed that she used her position in borrowing the records of the criminal case against Digermo. She explained that at that time, her sister did not have a lawyer, thus, she asked one of her staff to borrow the records of the criminal case as there may be developments in the case that her sister might not be aware of. Respondent added that she opted to borrow the case records instead, since she did not want to create the wrong impression that she was exerting her influence on the conduct of the criminal proceeding. Likewise, she explained her presence at the PMC by claiming that she merely accompanied her sister there as the latter did not know PMC's location.

Likewise, Judge Tabin denied that she had a hand in the filing of the case against Digermo. She disputed that she recommended the amount of P30,000.00 as bond for his provisional liberty, considering that the Prosecutor's Office is an independent office.

In a Memorandum [6] dated February 5, 2009, due to conflicting statements of the parties, the OCA recommended that the instant complaint be referred to the Executive Judge of the Regional Trial Court of Baguio City for investigation, report and recommendation.

On March 11, 2009, the Court directed the redocketing of the instant complaint as a regular administrative matter and referred the case to Executive Judge Edilberto T. Claravall of the Regional Trial Court of Baguio City, for investigation, report and recommendation. [7]

During the investigation conducted by the Investigating Judge, complainant failed to appear. [8] Later on, it appeared that the criminal case against complainant's driver was dismissed after the complainant settled his differences with respondent Judge.

On November 3, 2009, in his Report, [9] Judge Claravall recommended the dismissal of the complaint against Judge Tabin due to insufficient evidence to prove her guilty of gross misconduct and conduct unbecoming a judge.

Judge Claravall pointed out that the charges of Gross Misconduct and Conduct Unbecoming a Judge are penal in nature; thus, the same must be proven by convincing proof. The Investigating Judge observed that the act of Judge Tabin in borrowing the records of the criminal case was an exercise of her right to information. He is convinced that the actions of Judge Tabin were just normal reactions of any person who comes in defense and aide of a relative.

On March 26, 2010, the OCA, however, found Judge Tabin guilty of violation of Canon 4, Section 1 of the New Code of Judicial Conduct. The OCA reasoned that there was sufficient evidence showing that respondent Judge is liable for impropriety. Records show that Judge Tabin did not merely look after the safety of her nephew after the vehicular accident, but she likewise ascertained that the conduct of the investigation was in her nephew's favor. [10]

### ***RULING***

While we agree with the findings of the Investigating Judge that respondent Judge cannot be held liable for gross misconduct and conduct unbecoming of a judge due to lack of evidence of malice on the part of respondent Judge, we, however, agree with the findings of the OCA that Judge Tabin is guilty of impropriety.

As found by the OCA, it was inappropriate for respondent judge to direct that a second test be conducted on complainant's driver when the first test resulted in a "negative." Respondent judge cannot interfere in the conduct of the investigation. Inevitably, as a result of her interference, complainant suspected that she was influencing the outcome of the investigation as evidenced by complainant's alleged statement: "*Itong ospital na ito, pwede palang impluwensyahan ng huwes.*"

Even assuming that respondent Judge did not make public her position as a judge to the examining doctor or the investigating policeman, the fact that she knew that said police officer and the complainant had knowledge of her being a judge should have refrained her from further interfering in the investigation. She cannot act oblivious as to how and what the public will view her actions. She should have kept