



**Republic of the Philippines
Supreme Court
Manila**

FIRST DIVISION

**GERLIE M. UY and MA.
CONSOLACION T. BASCUG,**
Complainants,

- versus -

**JUDGE ERWIN B. JAVELLANA,
MUNICIPAL TRIAL COURT, LA
CASTELLANA, NEGROS
OCCIDENTAL,**
Respondent.

A.M. No. MTJ-07-1666
(Formerly A.M. OCA I.P.I. No. 05-1761-MTJ)

Present:

SERENO, C.J.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, JJ.

Promulgated:

05 SEP 2012

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DECISION

LEONARDO-DE CASTRO, J.:

This administrative case arose from a verified complaint¹ for “gross ignorance of the law and procedures, gross incompetence, neglect of duty, conduct improper and unbecoming of a judge, grave misconduct and others,” filed by Public Attorneys Gerlie² M. Uy (Uy) and Ma. Consolacion

¹ Rollo, pp. 2-24; received by the Court’s Docket and Clearance Division on August 22, 2005.

² “GIRLIE” in some parts of the *rollo*.

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T. Bascug (Bascug) of the Public Attorney's Office (PAO), La Carlotta District, against Presiding Judge Erwin³ B. Javellana (Javellana) of the Municipal Trial Court (MTC), La Castellana, Negros Occidental.

Public Attorneys Uy and Bascug alleged the following in their complaint:

First, Judge Javellana was grossly ignorant of the Revised Rule on Summary Procedure. Public Attorneys Uy and Bascug cited several occasions as examples: (a) In Crim. Case No. 04-097, entitled *People v. Cornelio*, for Malicious Mischief, Judge Javellana issued a warrant of arrest after the filing of said case despite Section 16 of the Revised Rule on Summary Procedure; (b) In Crim. Case No. 04-075, entitled *People v. Celeste, et al.*, for Trespass to Dwelling, Judge Javellana did not grant the motion to dismiss for non-compliance with the *Lupon* requirement under Sections 18 and 19(a) of the Revised Rule on Summary Procedure, insisting that said motion was a prohibited pleading; (c) Also in *People v. Celeste, et al.*, Judge Javellana refused to dismiss outright the complaint even when the same was patently without basis or merit, as the affidavits of therein complainant and her witnesses were all hearsay evidence; and (d) In Crim. Case No. 02-056, entitled *People v. Lopez, et al.*, for Malicious Mischief, Judge Javellana did not apply the Revised Rule on Summary Procedure and, instead, conducted a preliminary examination and preliminary investigation in accordance with the Revised Rules of Criminal Procedure, then set the case for arraignment and pre-trial, despite confirming that therein complainant and her witnesses had no personal knowledge of the material facts alleged in their affidavits, which should have been a ground for dismissal of said case.

³"EDWIN" in some parts of the *rollo*.

Second, Judge Javellana gave the impression that he was a co-agent in a surety company with a certain Leilani “Lani” Manunag (Manunag). Judge Javellana had conveyed to the public on several occasions that Manunag was in a special position to influence him in granting provisional liberty to the accused.⁴ In different cases, Judge Javellana (a) instructed the wife of an accused to file the Motion to Reduce Bond prepared by the PAO with Manunag, leading the wife to believe that Manunag was a court personnel, hence, said Motion was never filed with the MTC and, instead of the cash bond the accused intended to post, the accused was released on a surety bond issued by Manunag’s company for which the accused still had to pay premium;⁵ (b) reduced the bail from ₱40,000.00 to ₱30,000.00, consistent with the reduced bail amount Manunag instructed the representative of the accused to seek, not to ₱10,000.00 as prayed for by the PAO in the Motion for Reduction of Bail or to ₱20,000.00 as recommended by the Chief of Police;⁶ (c) did not warn Manunag against getting involved in court processes as she was engaged in surety insurance and did not even question a counter-affidavit of an accused prepared by “Lani;”⁷ (d) instructed the relatives of the accused to go to Manunag who knew how to “process” an affidavit of desistance, and when said relatives did approach Manunag, the latter charged them fees;⁸ (e) did not set the Motion to Reduce Bail for hearing but granted the same because it was filed by “the intimate friend of judge who is an agent of surety” and took cognizance of the amount of premium for the surety bond in determining the amount of bail;⁹ (f) denied the Motion to Extend Time to File Counter-Affidavit for violation of the three-day notice rule, but granted the Motion to Reduce Bail facilitated by

⁴ Rollo, pp. 6-7.

⁵ Id. at 7; Crim. Case No. 05-030, entitled *People v. Mesias*.

⁶ Id. at 7-8; Crim. Case No. 02-061, entitled *People v. Javier*.

⁷ Id. at 8-9; Crim. Case No. 03-097, entitled *People v. Bautista*.

⁸ Id. at 9; Crim. Case No. 04-097, entitled *People v. Cornelio*.

⁹ Id.; Crim. Case No. 03-108, entitled *People v. Panaguiton*.

Manunag even when it was filed in violation of the same rule;¹⁰ and (g) issued warrants of arrest under questionable circumstances, more particularly described in the immediately succeeding paragraph, in which cases, the bail bonds of the accused were facilitated by Manunag.

Third, Judge Javellana violated Section 6(b), Rule 112 of the Revised Rules of Criminal Procedure and issued warrants of arrest without propounding searching questions to the complainants and their witnesses to determine the necessity of placing the accused under immediate custody. As a result, Judge Javellana issued warrants of arrest even when the accused had already voluntarily surrendered or when a warrantless arrest had been effected.

Fourth, Judge Javellana failed to observe the constitutional rights of the accused as stated in Section 12(1), Article III of the Constitution. Judge Javellana set Crim. Case No. 03-097, entitled *People v. Bautista*,¹¹ for preliminary investigation even when the accused had no counsel, and proceeded with said investigation without informing the accused of his rights to remain silent and to have a counsel.

Fifth, Judge Javellana was habitually tardy. The subpoena in Civil Case No. 05-001, entitled *Villanueva v. Regalado*,¹² only stated that the hearing would be “in the morning,” without indicating the time. Judge Javellana failed to arrive for the pre-trial of the case set in the morning of April 14, 2005. Judge Javellana was still a no-show when the pre-trial was reset in the morning of April 15, 2005 and May 3, 2005. Finally, anticipating Judge Javellana’s tardiness, the pre-trial was rescheduled at 1:30 in the afternoon of another date.

¹⁰ Id. at 10; Crim. Case No. 03-011, entitled *People v. Bandon*.

¹¹ Id. at 12-13.

¹² Id. at 13.

Sixth, Judge Javellana whimsically or inconsistently implemented laws and rules depending on stature of the parties, persons accompanying the parties, lawyers of the parties, and his personal relations with the parties/lawyers. Judge Javellana, in several cases,¹³ denied or refused to receive Motions for Extension of Time to File Counter-Affidavits signed only by the accused, yet in other cases,¹⁴ granted such motions. In another case,¹⁵ Judge Javellana denied the Motion to Extend Time to File Counter-Affidavit for violation of the three-day notice rule, but granted the Motion to Reduce Bail, which was in violation of the same rule. Judge Javellana's inconsistent and irregular ruling could be due to the fact that the former motion was filed by Public Attorney Bascug, with whom Judge Javellana had an axe to grind, while the latter motion was facilitated by Manunag.

Seventh, Judge Javellana also adopted the mantra that the "litigants are made for the courts" instead of "courts for the litigants." In Crim. Case No. 03-104, entitled *People v. Fermin*, the accused, assisted by Public Attorney Uy, pleaded guilty to the crime of attempted homicide. The accused filed a Petition/Application for Probation, prepared by the PAO but signed only by the accused. Judge Javellana refused to accept said Petition/Application and required the father of the accused to return the Petition/Application all the way from the MTC in La Castellana to the PAO in La Carlota, despite the great distance between these two cities. The PAO already adopted the practice of preparing the motions for extension of time to file counter-affidavit, motions for release of minor, or applications for probation, but letting the accused themselves or their parents (in case the accused were minors) sign the motions/applications, thus, enabling the PAO

¹³ Id. at 14; Crim. Case No. 03-090, entitled *People v. Earnshaw* and Crim. Case No. 04-092, entitled *People v. Estubo*.

¹⁴ Id.; *People v. Javier*; *People v. Lopez, et al.*; and Crim. Case No.05-002, entitled *People v. Seguiza*.

¹⁵ *People v. Bandon*.

to serve as many clients as possible despite the lack of lawyers. Such practice is not prohibited considering that under Rule 138, Section 34 of the Rules of Court, a party may conduct his litigation in a municipal court “in person, with an aid of an agent or friend appointed by him for the purpose or with aid of an attorney.”¹⁶

Eighth, Judge Javellana did not observe the proper procedure in airing his complaints against public attorneys. Judge Javellana rebuked the public attorneys in the Orders he issued. In one such Order,¹⁷ Judge Javellana misleadingly stated that Public Attorney Uy “has already express[ed] her desire not to attend today’s hearing,” when Public Attorney Uy actually waived her personal appearance at said hearing as she had to attend the hearing of a criminal case at the MTC of Pontevedra. In another Order,¹⁸ Judge Javellana reported, prior to confirmation, that the PAO lawyer refused to prepare the motion for extension of time to file counter-affidavit, thus, prompting the accused to hire a special counsel. Additionally, Judge Javellana improperly filed his complaints against the public attorneys appearing before his court with the Department of Justice or the District Public Attorney (DPA) of Bacolod City, instead of the appropriate authorities, namely, the DPA of La Carlota City or the PAO Regional Director. Moreover, Judge Javellana had required Public Attorney Bascug to explain why she allowed the accused in Crim. Case No. 03-090, entitled *People v. Earnshaw*, to sign the Motion for Extension of Time to File Counter-Affidavits, even when she was the one who prepared said Motion. Judge Javellana did not verify first whether it was indeed Public Attorney Bascug who prepared the Motion in question, thus, violating her right to due process. Also, Judge Javellana was already encroaching upon the domain of the PAO. It is the concern of the PAO and not the court “[a]s to how the

¹⁶ Rollo, pp. 15-16.

¹⁷ Id. at 148; dated April 29, 2005, in *People v. Mesias*.

¹⁸ Id. at 146; dated January 31, 2003, in *People v. Bandon*.

Public Attorney's Office will be managed, specifically, what policies to use in the acceptance of cases brought to its Office, how one could avail of its legal services, at what point in time one is considered a client of said Office x x x [.]"¹⁹

Lastly, to support their complaint, Public Attorneys Uy and Bascug attached a hand-written note²⁰ relating the observations of an anonymous member of Judge Javellana's staff, *viz*:

[Page One]

1. Honorable Judge reports to duty at past 11:00 A.M. and hurriedly conducts preliminary investigations or preliminary examinations after making party litigants wait from 8:00 A.M. until 11:00 A.M. There had been occasions when litigants became impatient for waiting for several hours for the Judge's arrival and would leave the court. Judge then would forego the examination.

2. Judge spends more time conversing in cafeterias than stay in the court. Litigants who are in a hurry to go home would bring the affidavits to the cafeteria for Judge's signature.

3. Most of the time, in Court, in front of litigants as audience and even while solemnizing civil marriage Judge would keep repeating these remarks:

I am a criminal lawyer.

I did not come from the DAR or the COMELEC.

I am an intelligent Judge.

I am the counsel of the famous Gargar-Lumangyao and Spider Hunter cases and I have caused the execution of Col. Torres.

I am not under the Mayor or the Chief of Police.

and other remarks as if he is the only intelligent, credible and qualified judge in the whole world.

4. Judge tolerates the negligence of duty of his court utility [w]orker. Said utility worker never reports to open or close the court; he never cleans the courtroom; most of the time he stays in his Karaoke bar which is some few meters away from the MTC of La Castellana. As a matter of fact the MTC of La Castellana is the dirtiest of all the courtrooms in the whole province.

¹⁹ Id. at 20.

²⁰ Id. at 150-152; Exh. "PP."

[Page Two]

5. Motion for Extension of Time to File Counter Affidavit in CC 03-090-Pp. vs. Efraim Earnshaw made by Atty. Bascug was denied by Judge on the ground that it was the accused who signed the Motion and Atty. Bascug was ordered to explain. Other motions had been denied for not meeting the 3-day rule but others were granted.

6. Motion to Reduce Bail received by court on January 7, 2004 was not set for hearing but was ordered granted because it was filed by the intimate friend of the judge who is an agent of Surety. This did not meet the 3-day rule CC 03-108 Pp. vs. Lowell Panaguiton for "Homicide."

[Page Three]

1. Criminal Case No. 03-102- Julius Villanueva "Frustrated Homicide" Urgent Motion to Stay Transfer to Provincial Jail - Filed 1/21/2004 was not heard but order was issued January 21, [20]04 also.

2. Criminal Case No. 03-090- Efraim Earnshaw "Less Serious Physical Injuries" January 26, 2004 - Scheduled for arraignment but upon order of Judge on affidavit of Desistance of Melanie Pabon and Motion to Dismiss was filed and case dismissed.

3. Deonaldo Lopez Case - Motion for Extension of Time to File Counter Affidavit dated 10-3-02 was signed by accused namely Deonaldo Lopez, Jojo Balansag, Junnel Jorge, and Bernie Bello - granted by judge.²¹

Based on the foregoing, Public Attorneys Uy and Bascug prayed that Judge Javellana be removed from the MTC of La Castellana.

In his Comment²² on the complaint against him, Judge Javellana discounted the allegations of Public Attorneys Uy and Bascug as "baseless, untruthful, intrigues, malicious and a harassment tending to intimidate [him]," and countered as follows:

First, Judge Javellana asserted that he was not grossly ignorant of the rules of procedure and explained his actions in particular cases: (a) In *People v. Cornelio*, Judge Javellana issued a warrant of arrest for the two accused

²¹ Id.

²² Id. at 165-190; received by the OCA on October 28, 2005.

charged with Malicious Mischief in the exercise of his judicial discretion, and the necessity of holding the accused in detention became evident when it was revealed during trial that the same accused were wanted for Attempted Homicide in Crim. Case No. 04-096; (b) In *People v. Celeste, et al.*, Judge Javellana insisted that referral of the dispute (involving an alleged Trespass to Dwelling) to the *Lupong Tagapamayapa* was not a jurisdictional requirement and the Motion to Dismiss on said ground was a prohibited pleading under the Revised Rule on Summary Procedure; (c) Still in *People v. Celeste, et al.*, Judge Javellana refused to dismiss outright the complaint as prayed for by Public Attorney Uy as the Judge had to accord due process to the complainant in said case; and (d) In *People v. Lopez, et al.* another case for Malicious Mischief, Judge Javellana reiterated that a motion to dismiss is a prohibited pleading under the Revised Rule on Summary Procedure and added that he could not dismiss the case outright since the prosecution has not yet fully presented its evidence.

Second, Judge Javellana denied acting as the co-agent of Manunag. Manunag was an Authorized Surety Bond Agent of Commonwealth Insurance and Surety Bond Company, a bonding company duly accredited by the Office of the Court Administrator (OCA). The relationship between Judge Javellana and Manunag was “purely on official business.” That Manunag influenced Judge Javellana in fixing the amount of bail in several cases was a malicious and deliberate lie, based on mere speculation and suspicion. Judge Javellana had consistently granted the reduction of the amount of bail to only 75%, and not as low as 25%, of the amount stated in Department Circular No. 89 dated August 29, 2000 of the Department of Justice (DOJ). Judge Javellana even chided Public Attorneys Uy and Bascug that as officers of the court, said public attorneys were duty bound not to demand outrageous reduction of bail. In addition, Judge Javellana could not warn Manunag to stay away from “the processes (sic) premises in

the Court” because “everybody are allowed to attend Court proceedings unless otherwise the attendance of the public is prohibited.”²³ Judge Javellana likewise stated that he could not interfere with the processing of surety insurance and bond for such was a private matter between the insurance and bonding company and its authorized agents. Referring to case records, Judge Javellana pointed out that he only granted the motions to reduce bail that complied with the three-day notice rule.

Third, Judge Javellana claimed to have conducted preliminary examination, asking the complainants and their witnesses searching questions, before issuing warrants of arrest. According to Judge Javellana, he would sign the official form of the warrant of arrest right after the preliminary examination. In some cases, Judge Javellana was not aware that the accused had already voluntarily surrendered or was already taken into custody by virtue of a warrantless arrest because police officers did not timely inform the court of such fact.

Fourth, Judge Javellana did not violate the constitutional rights of the accused in *People v. Bautista*. Judge Javellana argued that while a judge can ask clarificatory questions during the preliminary investigation, a preliminary investigation is mandatory only when the law imposes the penalty of imprisonment of at least four years, two months, and one day. Judge Javellana further averred that he always advised litigants to secure the services of a counsel or that of a public attorney from the PAO. However, even when the public attorney failed or refused to appear before the court, Judge Javellana still proceeded with his clarificatory questions since there was yet no full blown trial for which the accused already needed the services of a competent lawyer.

²³

Id. at 173.

Fifth, Judge Javellana explained his failure to arrive for the pre-trial in *Villanueva v. Regalado* scheduled on April 14, 2005. Judge Javellana averred that he had been suffering from diabetes, as evinced by his medical records from the Supreme Court Health and Welfare Plan, and on said date, his blood sugar rose to 300, which caused him to be lethargic, weak, and drowsy.

Sixth, Judge Javellana repudiated the allegation that he applied the law and ruled whimsically and inconsistently. Judge Javellana asserted that he “applied the law and the rules according to what he believes is fair, just and equitable in the exercise of his judicial discretion.”²⁴ Judge Javellana never favored Manunag and in all criminal cases involving homicide, he had granted the reduction of bail to ₱30,000.00 (75% of the recommended bail of ₱40,000.00).

Seventh, Judge Javellana admitted not accepting petitions, applications, and motions prepared by the PAO but signed only by the accused, asseverating that public attorneys should affix their signatures and state their Roll of Attorneys number in every pleading they file in court. Judge Javellana asked that “if all courts admits (sic) any pleading filed by any litigant then what will happen to the practice of law?”²⁵

Eighth, Judge Javellana emphasized that government lawyers, such as Public Attorneys Uy and Bascug, are paid with people’s money, so they should be sincere and dedicated to their work and, whenever possible, go the extra mile to serve poor litigants. Thus, Judge Javellana reported Public Attorneys Uy and Bascug to higher PAO officials to guide said public attorneys and not to interfere with the performance of their functions.

²⁴ Id. at 178.

²⁵ Id. at 180.

And ninth, Judge Javellana identified the member of his staff who wrote the note containing more allegations against him as Mr. Ray D. Pineda (Pineda), Process Server. Judge Javellana described Pineda as “very abnormal, eccentric and queer in his relationship with his fellow staff as shown by his quarrelsome attitude and fond of inciting litigants to criticize the Clerk of Court and other personnel and most of all his loyalty to the Official of the Municipality rather than to this Court x x x.”²⁶ Judge Javellana clarified that he often mentioned the *Gargar-Lumangyao Kidnapping with Double Murder Case* and the *Spider Hunters Multiple Murder and Multiple Frustrated Murder Case* not to boast but to relay the impression that he meant business as Presiding Judge. These cases were dubbed as the “Case of the Century” by then Executive Judge Bernardo Ponferrada of the Regional Trial Court of Bacolod City (who later became Deputy Court Administrator) because the same involved big time personalities. Judge Javellana mentioned the said cases even when solemnizing marriages because he would then be reading the Holy Scriptures and he had to highlight that he survived the trials and threats to his life because of the Holy Bible. Judge Javellana also did not have a Court Aide who owned a Karaoke Bar whose negligence the judge was tolerating. Pineda was just “jealous” because he was not designated by Judge Javellana as Acting Docket Clerk in lieu of Mr. Vee Caballero who was already on terminal leave prior to retirement. Judge Javellana further narrated that he had reprimanded Pineda several times, even in open court. In one of these instances, it was because Pineda submitted a falsified information sheet to the Supreme Court Personnel Division, stating therein that he had never been charged with a criminal offense, when in truth, he was previously charged with “Physical Injury.” Judge Javellana advised Pineda to rectify

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Id. at 180-181.

the latter's records by executing an affidavit to be submitted to the Supreme Court Personnel Division, but Pineda did not heed the same.

In the end, Judge Javellana stressed that the charges against him were baseless and malicious; and the acts being complained of involved judicial discretion and, thus, judicial in nature and not the proper subject of an administrative complaint. Judge Javellana hinted about a conspiracy between the Municipal Mayor, on one hand, and Public Attorneys Uy and Bascug, on the other. The Municipal Mayor was purportedly angry at Judge Javellana because the latter caused the arrest of and heard the cases against the former's supporters and employees; while Public Attorney Bascug was suffering from a "Losing Litigant's Syndrome" and "Prosecution Complex," and was influencing Public Attorney Uy, a neophyte lawyer.

Consequently, Judge Javellana sought the dismissal of the instant complaint against him.

The Office of the Court Administrator (OCA), in its report²⁷ dated January 2, 2006, found Judge Javellana liable for gross ignorance of the law or procedure when he did not apply the Revised Rule on Summary Procedure in cases appropriately covered by said Rule; and (2) gross misconduct when he got involved in business relations with Manunag, implemented the law inconsistently, and mentioned his accomplishments for publicity. The OCA thus recommended that:

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Id. at 307-320; received by the Court on January 4, 2007.

1. The instant administrative complaint be REDOCKETED as a regular administrative matter; and
2. Judge Edwin B. Javellana, MTC, La Castellana, Negros Occidental be SUSPENDED from office without salary and other benefits for three (3) months with a STERN WARNING that repetition of the same or similar acts in the future shall be dealt with more severely.²⁸

In a Resolution²⁹ dated February 5, 2007, the Court re-docketed the complaint as a regular administrative matter and required parties to manifest their willingness to submit the case for resolution on the basis of the pleadings filed.

On separate dates,³⁰ the parties manifested their willingness to submit the case for resolution based on the pleadings already filed.

We agree with the findings and conclusions of the OCA, except for the penalty imposed.

I

Gross Ignorance of the Law

The Revised Rule of Summary Procedure shall govern the following criminal cases:

SECTION 1. *Scope.* – This Rule shall govern the summary procedure in the Metropolitan Trial Courts, the Municipal Trial Courts in Cities, the Municipal Trial Courts, and the Municipal Circuit Trial Courts in the following cases falling within their jurisdiction.

²⁸ Id. at 319-320.

²⁹ Id. at 321-322.

³⁰ Id. at 323, 325-327. Respondent manifested in an undated letter received by the OCA on March 26, 2007. Complainants' manifestation on the other hand was received on April 17, 2007.

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B. *Criminal Cases:*

- (1) Violations of traffic laws, rules and regulations;
- (2) Violations of the rental law;
- (3) Violations of municipal or city ordinances;
- (4) Violations of Batas Pambansa Bilang 22 (Bouncing Checks Law).

(5) All other criminal cases where the penalty prescribed by law for the offense charged is imprisonment not exceeding six months, or a fine not exceeding one thousand pesos (P1,000.00), or both, irrespective of other imposable penalties, accessory or otherwise, or of the civil liability arising therefrom: *Provided, however, That in offenses involving damage to property through criminal negligence, this Rule shall govern where the imposable fine does not exceed ten thousand pesos (P10,000.00).* (Emphasis supplied.)

The cases *People v. Cornelio*³¹ and *People v. Lopez, et al.*³² pending before Judge Javellana were both for malicious mischief.

The crime of malicious mischief is committed by any person who deliberately causes damage to the property of another through means not constituting arson.³³ There are special cases of malicious mischief which are specifically covered by Article 328 of the Revised Penal Code, which provides:

ART. 328. *Special cases of malicious mischief.* – Any person who shall cause damage to obstruct the performance of public functions, or using any poisonous or corrosive substance; or

³¹ Id. at 307, Criminal Case No. 04-097.

³² Id. at 308, Criminal Case No. 02-056.

³³ REVISED PENAL CODE, Article 327.

spreading any infection or contagion among cattle; or who causes damage to the property of the National Museum or National Library, or to any archive or registry, waterworks, road, promenade, or any other thing used in common by the public, shall be punished:

1. **By *prision correccional* in its minimum and medium periods, if the value of the damage caused exceeds 1,000 pesos;**

2. By *arresto mayor*, if such value does not exceed the above- mentioned amount but is over 200 pesos; and

3. By *arresto menor*, if such value does not exceed 200 pesos. (Emphasis ours.)

All other cases of malicious mischief shall be governed by Article 329 of the same Code, which reads:

ART. 329. *Other mischiefs.* – The mischiefs not included in the next preceding article shall be punished:

1. **By *arresto mayor* in its medium and maximum periods, if the value of the damage caused exceeds 1,000 pesos;**

2. By *arresto mayor* in its minimum and medium periods, if such value is over 200 pesos but does not exceed 1,000 pesos; and

3. By *arresto menor* or fine of not less than the value of the damage caused and not more than 200 pesos, if the amount involved does not exceed 200 pesos or cannot be estimated. (Emphasis ours.)

Without any showing that the accused in *People v. Cornelio* and *People v. Lopez, et al.* were charged with the special cases of malicious mischief particularly described in Article 328 of the Revised Penal Code, then Article 329 of the same Code should be applied. If the amounts of the alleged damage to property in *People v. Cornelio* and *People v. Lopez, et al.*, ₱6,000.00³⁴ and ₱3,000.00,³⁵ respectively, are proven, the appropriate

³⁴ *Rollo*, pp. 25-33; Exhibits “A” to “E.”

³⁵ *Id.* at 43; Exhibits “I.”

penalty for the accused would be *arresto mayor* in its medium and maximum periods which under Article 329(a) of the Revised Penal Code, would be imprisonment for two (2) months and one (1) day to six (6) months. Clearly, these two cases should be governed by the Revised Rule on Summary Procedure.

Judge Javellana's issuance of a Warrant of Arrest for the accused in *People v. Cornelio* is in violation of Section 16 of the Revised Rule on Summary Procedure, categorically stating that "[t]he court shall not order the arrest of the accused except for failure to appear whenever required." Judge Javellana never claimed that the accused failed to appear at any hearing. His justification that the accused was wanted for the crime of attempted homicide, being tried in another case, Crim. Case No. 04-096, is totally unacceptable and further indicative of his ignorance of law. *People v. Cornelio*, pending before Judge Javellana's court as Crim. Case No. 04-097, is for malicious mischief, and is distinct and separate from Crim. Case No. 04-096, which is for attempted homicide, although both cases involved the same accused. Proceedings in one case, such as the issuance of a warrant of arrest, should not be extended or made applicable to the other.

In *People v. Lopez, et al.*, Judge Javellana conducted a preliminary investigation even when it was not required or justified.³⁶

The Revised Rule on Summary Procedure does not provide for a preliminary investigation prior to the filing of a criminal case under said Rule. A criminal case within the scope of the Rule shall be commenced in the following manner:

³⁶

Id. at 50; Exhibit "J."

SEC. 11. *How commenced.* – The filing of criminal cases falling within the scope of this Rule shall be either by complaint or by information; *Provided, however,* That in Metropolitan Manila and in Chartered Cities, such cases shall be commenced only by information, except when the offense cannot be prosecuted *de officio*.

The complaint or information shall be accompanied by the affidavits of the complainant and of his witnesses in such number of copies as there are accused plus two (2) copies for the court's files. If this requirement is not complied with within five (5) days from date of filing, the case may be dismissed.

SEC. 12. *Duty of Court.* –

(a) *If commenced by complaint.* – On the basis of the complaint and the affidavits and other evidence accompanying the same, the court may dismiss the case outright for being patently without basis or merit and order the release of the accused if in custody.

(b) *If commenced by information.* – When the case is commenced by information, or is not dismissed pursuant to the next preceding paragraph, the court shall issue an order which, together with copies of the affidavits and other evidence submitted by the prosecution, shall require the accused to submit his counter-affidavit and the affidavits of his witnesses as well as any evidence in his behalf, serving copies thereof on the complainant or prosecutor not later than ten (10) days from receipt of said order. The prosecution may file reply affidavits within ten (10) days after receipt of the counter-affidavits of the defense.

SEC. 13. *Arraignment and trial.* – Should the court, upon a consideration of the complaint or information and the affidavits submitted by both parties, find no cause or ground to hold the accused for trial, it shall order the dismissal of the case; otherwise, the court shall set the case for arraignment and trial.

If the accused is in custody for the crime charged, he shall be immediately arraigned and if he enters a plea of guilty, he shall forthwith be sentenced.

Section 1, Rule 112 of the Revised Rules of Criminal Procedure only requires that a preliminary investigation be conducted before the filing of a complaint or information for an offense where the penalty prescribed by law is at least **four (4) years, two (2) months and one (1) day** without regard to the fine. As has been previously established herein, the maximum penalty imposable for malicious mischief in *People v. Lopez, et al.* is just **six (6) months**.

Judge Javellana did not provide any reason as to why he needed to conduct a preliminary investigation in *People v. Lopez, et al.* We stress that the Revised Rule on Summary Procedure was precisely adopted to promote a more expeditious and inexpensive determination of cases, and to enforce the constitutional rights of litigants to the speedy disposition of cases.³⁷ Judge Javellana cannot be allowed to arbitrarily conduct proceedings beyond those specifically laid down by the Revised Rule on Summary Procedure, thereby lengthening or delaying the resolution of the case, and defeating the express purpose of said Rule.

We further agree with the OCA that Judge Javellana committed a blatant error in denying the Motion to Dismiss filed by the accused in *People v. Celeste, et al.* and in insisting that said Motion was a prohibited pleading, even though the case was never previously referred to the *Lupong Tagapamayapa* as required by Sections 18 and 19(a) of the Revised Rule on Summary Procedure.

The pertinent provisions of the Revised Rule on Summary Procedure read:

³⁷ *Sevilla v. Judge Lindo*, A.M. No. MTJ-08-1714, February 9, 2011, 642 SCRA 277, 284-285.

Sec. 18. *Referral to Lupon.* — Cases requiring referral to the Lupon for conciliation under the provisions of Presidential Decree No. 1508 where there is no showing of compliance with such requirement, shall be **dismissed without prejudice**, and may be revived only after such requirement shall have been complied with. This provision shall not apply to criminal cases where the accused was arrested without a warrant.

Sec. 19. *Prohibited pleadings and motions.* — The following pleadings, motions, or petitions shall not be allowed in the cases covered by this Rule:

(a) Motion to dismiss the complaint or to quash the complaint or information **except** on the ground of lack of jurisdiction over the subject matter, or **failure to comply with the preceding section**.[.] (Emphases ours.)

We see no ambiguity in the aforequoted provisions. A case which has not been previously referred to the *Lupon Tagapamayapa* shall be dismissed without prejudice. A motion to dismiss on the ground of failure to comply with the *Lupon* requirement is an exception to the pleadings prohibited by the Revised Rule on Summary Procedure. Given the express provisions of the Revised Rule on Summary Procedure, we find irrelevant Judge Javellana's argument that referral to the *Lupon* is not a jurisdictional requirement. The following facts are undisputed: *People v. Celeste, et al.* was not referred to the *Lupon*, and the accused filed a Motion to Dismiss based on this ground. Judge Javellana should have allowed and granted the Motion to Dismiss (albeit without prejudice) filed by the accused in *People v. Celeste, et al.*

The Revised Rule on Summary Procedure has been in effect since November 15, 1991. It finds application in a substantial number of civil and criminal cases pending before Judge Javellana's court. Judge Javellana cannot claim to be unfamiliar with the same.

Every judge is required to observe the law. When the law is sufficiently basic, a judge owes it to his office to simply apply it; and anything less than that would be constitutive of gross ignorance of the law. In short, when the law is so elementary, not to be aware of it constitutes gross ignorance of the law.³⁸

In *Agunday v. Judge Tresvalles*,³⁹ we called the attention of Judge Tresvalles to Section 2 of the Revised Rule on Summary Procedure which states that a “patently erroneous determination to avoid the application of the [Revised] Rule on Summary Procedure is a ground for disciplinary action.” We went on further to interpret said provision as follows:

Although the said provision states that "patently erroneous determination to avoid the application of the [Revised] Rule on Summary Procedure is a ground for disciplinary action," **the provision cannot be read as applicable only where the failure to apply the rule is deliberate or malicious.** Otherwise, the policy of the law to provide for the expeditious and summary disposition of cases covered by it could easily be frustrated. Hence, requiring judges to make the determination of the applicability of the rule on summary procedure upon the filing of the case is the only guaranty that the policy of the law will be fully realized. x x x.⁴⁰ (Emphasis ours.)

Resultantly, Judge Javellana cannot invoke good faith or lack of deliberate or malicious intent as a defense. His repeated failure to apply the Revised Rule on Summary Procedure in cases so obviously covered by the same is detrimental to the expedient and efficient administration of justice, for which we hold him administratively liable.

³⁸ *Almojuela, Jr. v. Judge Ringor*, 479 Phil. 131, 137-138 (2004).

³⁹ 377 Phil. 141, 153 (1999).

⁴⁰ *Id.* at 153-154.

As for Judge Javellana's refusal to dismiss *People v. Lopez, et al.* and *People v. Celeste, et al.*, however, we exonerate him of the administrative charges for the same. Judge Javellana is correct that the appreciation of evidence is already within his judicial discretion.⁴¹ Any alleged error he might have committed in this regard is the proper subject of an appeal but not an administrative complaint. We remind Judge Javellana though to adhere closely to the Revised Rule on Summary Procedure in hearing and resolving said cases.

II Gross Misconduct

Judges are enjoined by the New Code of Judicial Conduct for the Philippine Judiciary⁴² to act and behave, in and out of court, in a manner befitting their office, to wit:

Canon 2

INTEGRITY

Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

SECTION 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

SECTION 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

X X X X

⁴¹ *Rollo* p. 315, OCA Report.

⁴² A.M. No. 03-05-01-SC, April 27, 2004.

*Canon 3***IMPARTIALITY**

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

SECTION 1. Judges shall perform their judicial duties without favor, bias or prejudice.

SECTION 2. Judges shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

X X X X

*Canon 4***PROPRIETY**

Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

SECTION 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

SECTION 2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office.

X X X X

SECTION 8. Judges shall not use or lend the prestige of the judicial office to advance their private interests, or those of a member of their family or of anyone else, nor shall they convey or permit others to convey the impression that anyone is in a special position improperly to influence them in the performance of judicial duties.

X X X X

SECTION 14. Judges shall not knowingly permit court staff or others subject to their influence, direction or authority, to ask for, or accept, any gift, bequest, loan favor in relation to anything done or to be done or omitted to be done in connection with their duties or functions.

X X X X

Canon 5

EQUALITY

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

X X X X

SECTION 2. Judges shall not, in the performance of judicial duties, by words or by conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.

X X X X

SECTION 2. Judges shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.

SECTION 3. Judges shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

X X X X

Canon 6

COMPETENCE AND DILIGENCE

Competence and diligence are prerequisites to the due performance of judicial office.

X X X X

SECTION 5. Judges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

SECTION 6. Judges shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others with whom the judge deals in an official capacity. Judges shall require similar conduct of legal representatives, court staff and others subject to their influence, direction or control.

Judge Javellana had violated the aforequoted canons/standards in several instances.

Judge Javellana did not admit having a business relationship with Manunag, contrary to the finding of the OCA. What Judge Javellana stated in his Comment was that his relationship with Manunag was “purely on official business,” since Manunag was a duly authorized agent of a credited bonding company. Nonetheless, Judge Javellana, by referring the accused who appeared before his court directly to Manunag for processing of the bail bond of said accused, gave the impression that he favored Manunag and Manunag’s bonding company, as well as the reasonable suspicion that he benefitted financially from such referrals. Judge Javellana should remember that he must not only avoid impropriety, but the “appearance of impropriety” as well.

Moreover, Judge Javellana was conspicuously inconsistent in granting⁴³ or denying⁴⁴ motions for extension of time to file pleadings which were signed only by the accused. Judge Javellana reasoned in his Comment that the PAO lawyers who prepared the motions should have signed the same as counsels for the accused, but this only explained Judge Javellana’s

⁴³ Crim. Case Nos. 02-061 (*People v. Javier*), 02-056 (*People v. Lopez, et al.*), and 05-002 (*People v. Seguiza*).

⁴⁴ Crim. Case Nos. 03-090 (*People v. Earnshaw*) and 04-092 (*People v. Estubo*).

denial of said motions. It did not address why, in other cases, Judge Javellana had granted similar motions signed only by the accused. Without any satisfactory basis for the difference in his ruling on these motions, Judge Javellana had acted arbitrarily to the prejudice of the PAO lawyers.

Judge Javellana himself admitted that he often mentioned his previous accomplishments as counsel in big and controversial cases, claiming that he only did so to impress upon the parties that he meant business and that he relied greatly upon God to survive the trials and threats to his life. We are not persuaded.

The previous Code of Judicial Conduct specifically warned the judges against seeking publicity for personal vainglory.⁴⁵ *Vainglory*, in its ordinary meaning, refers to an individual's excessive or ostentatious pride especially in one's own achievements.⁴⁶ Even no longer explicitly stated in the New Code of Judicial Conduct, judges are still proscribed from engaging in self-promotion and indulging their vanity and pride by Canons 1 (on Integrity) and 2 (on Propriety) of the New Code.

We have previously strongly reminded judges in that:

Canon 2, Rule 2.02 of the Code of Judicial Conduct says in no uncertain terms that "a judge should not seek publicity for personal vainglory." A parallel proscription, this time for lawyers in general, is found in Rule 3.01 of the Code of Professional Responsibility: "a lawyer shall not use or permit the use of any false, fraudulent, misleading, deceptive, undignified, self-laudatory or unfair statement or claim regarding his qualifications or legal services." This means that lawyers and judges alike, being limited by the exacting standards of their profession, cannot debase the same by acting as if ordinary merchants hawking their wares. As succinctly put by a

⁴⁵ Rule 2.02.

⁴⁶ The Merriam-Webster Dictionary Home and Office Edition (5th ed. [1998]).

leading authority in legal and judicial ethics, "(i)f lawyers are prohibited from x x x using or permitting the use of any undignified or self-laudatory statement regarding their qualifications or legal services (Rule 3.01, Code of Professional Responsibility), with more reasons should judges be prohibited from seeking publicity for vanity or self-glorification. Judges are not actors or actresses or politicians, who thrive by publicity."⁴⁷

Judge Javellana's actuations as described above run counter to the mandate that judges behave at all times in such a manner as to promote public confidence in the integrity and impartiality of the judiciary.⁴⁸ We cannot stress enough that "judges are the visible representations of law and justice. They ought to be embodiments of competence, integrity and independence. In particular, municipal judges are frontline officers in the administration of justice. It is therefore essential that they live up to the high standards demanded by the Code of Judicial Conduct."⁴⁹

For his violations of the New Code of Professional Conduct, Judge Javellana committed gross misconduct. We have defined *gross misconduct* as a "transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer."⁵⁰

There is no sufficient evidence to hold Judge Javellana administratively liable for the other charges against him contained in the complaint. Yet, we call Judge Javellana's attention to several matters pointed out by the OCA, that if left unchecked, may again result in another administrative complaint against the judge: (1) notices of hearing issued by Judge Javellana's court must state the specific time, date, and place⁵¹; (2) in

⁴⁷ *Office of the Court Administrator v. Judge Florentino Floro*, 520 Phil. 590, 615 (2006).

⁴⁸ *Office of the Court Administrator v. Sayo, Jr.*, 431 Phil. 413, 436 (2002).

⁴⁹ *Agunday v. Judge Tresvalles*, supra note 39 at 154-155.

⁵⁰ *Almojuela, Jr. v. Judge Ringor*, supra note 38 at 139.

⁵¹ *Rollo*, p. 317, OCA Report.

case Judge Javellana is unable to attend a hearing for any reason, he must inform his Clerk of Court as soon as possible so that the latter can already cancel the hearing and spare the parties, counsels, and witnesses from waiting⁵²; and (3) he must take care in ascertaining the facts and according due process to the parties concerned before levying charges of incompetence or indifference against the PAO lawyers appearing before his court.⁵³

III Penalty

Gross ignorance of the law⁵⁴ and gross misconduct constituting violations of the Code of Judicial Conduct⁵⁵ are classified as serious charges under Rule 140, Section 8 of the Revised Rules of Court, and penalized under Rule 140, Section 11(a) of the same Rules by:

- 1) Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. *Provided*, however, that the forfeiture of benefits shall in no case include accrued leave credits;
- 2) Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or
- 3) A fine of more than ₱20,000.00 but not exceeding ₱40,000.00

The OCA recommended that Judge Javellana be suspended without salary and benefits for three months. Given the gravity and number of violations committed by Judge Javellana, we deem it appropriate to impose suspension without salary and benefits for a period of three months and one day.

⁵² Id.

⁵³ Id. at 318.

⁵⁴ RULES OF COURT, Rule 140, Section 8(9).

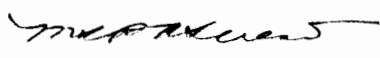
⁵⁵ Id., Rule 140, Section 8(3).

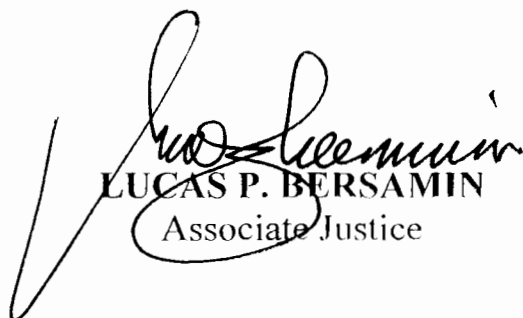
WHEREFORE, Judge Erwin B. Javellana is found **GUILTY** of gross ignorance of the law and gross misconduct. He is **SUSPENDED** from office without salary and other benefits for a period of three (3) months and one (1) day with a **STERN WARNING** that the repetition of the same or similar acts in the future shall be dealt with more severely. Let a copy of this Decision be attached to his records with this Court.

SO ORDERED.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson


LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


BIENVENIDO L. REYES
Associate Justice