

ESTRELLA A. BARBA, COMPLAINANT, VS. JUDGE ROSITA B. SALAZAR, AND CLERK OF COURT II JOSEPH L. BRILLANTES, BOTH OF THE MCTC, LICUAN-BAAY, ABRA, RESPONDENTS

A.M. NO. MTJ-06-1630 (FORMERLY OCA I.P.I. NO. 04-1590-MTJ). March 31, 2006

Ponente: TINGA, J.

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TINGA, J.:

On 23 June 2004, the Office of the Court Administrator (OCA) received an undated Letter-Complaint[1] from Estrella A. Barba (complainant) against Judge Rosita B. Salazar (respondent judge), Presiding Judge, Metropolitan Circuit Trial Court (MCTC), Baay-Licuan, Abra for Conduct Unbecoming and/or Abuse of Discretion and Gross Dishonesty.

Complainant alleged that she is the mother of Rosette Rosario B. Pineda (Pineda), Clerk II of the MCTC, Baay-Licuan, Abra who resigned from her post effective 1 March 2004 to work abroad. Even after her resignation, Pineda's name remained in the payroll and several checks[2] were still issued in her favor. Complainant claimed that her daughter did not receive any of the checks. Yet three (3) of the checks were allegedly encashed by respondent judge.

Complainant related that the checks issued for Pineda were in the following amounts: midyear bonus for the year 2004 in the amount of P5,925.50; clothing allowance in the amount of P4,000.00; Judiciary Development Fund allowance for the month of April in the amount of P3,000.00; fiscal autonomy allowance for the year 2004 in the amount of P4,000.00; monthly salary for the months of March and April 2004; and Judiciary Development Fund allowance for March 2004.

It was later determined that the monthly salary checks for the months of March and April 2004 and the Judiciary Development Fund allowance for March 2004 were promptly returned to the Court. However, the four remaining checks representing the midyear bonus, clothing allowance, fiscal autonomy allowance, and the Judiciary Development Fund allowance for April 2004 remained unremitted.

After further inquiry, complainant learned that three (3) of the checks[3] were in the possession of respondent judge. To support her claim, complainant submitted photocopies of the payroll registry of two (2) of the three (3) checks where the signature of respondent judge may be seen opposite the name of Pineda, thus signifying that the checks were indeed received by respondent judge. The check for the Judiciary Development Fund allowance was eventually returned to the Court after some time.

A Supplemental Complaint[4] was filed by herein respondent implicating Joseph Brillantes (respondent clerk of court), Clerk of Court of the same MCTC, in the instant administrative case for non-feasance in view of his failure to perform his duty to return the checks of Pineda to the Court, thereby allowing respondent judge to take the checks.

On 23 September 2004, respondent clerk of court filed his Comment[5] averring that while it is true that he was

the addressee for all the checks for the court employees, the last checks he received under the name of Pineda were for her salary for the months of March and April 2004, and the Judiciary Development Fund allowance for March 2004. The others were obtained from the Philippine Postal Corporation on different dates by respondent judge herself.

Respondent clerk of court upon receipt of the checks for Pineda immediately returned the same to the Checks Disbursement Division of this Court. However, the checks taken by respondent judge were not returned as she herself volunteered to return them personally since she was supposedly going to the Supreme Court at that time.

Respondent judge in her Comment[6] admits taking the checks of Pineda representing the latter's midyear bonus, clothing allowance, and fiscal autonomy allowance from the post office. She states that she did so not for any immoral motive or sinister interest but for the sole and honest purpose of returning them herself to the Court. However, she discovered that the checks were missing from the book where she inserted them and her earnest efforts to locate them, to the point of castigating the members of her household, proved futile. Upon discovering the loss, respondent judge immediately informed the Court of such loss and requested the stoppage of payment of the checks through the Checks Disbursement Division.[7] Finally, respondent judge reiterates that the loss was completely beyond her perception.

On 7 December 2004, the OCA recommended that the instant administrative complaint be referred to the executive judge of the Regional Trial Court (RTC), Bangued, Abra for investigation, report and recommendation. In addition, the OCA, upon verification with the Land Bank of the Philippines, reported that two (2) of the three (3) missing checks[8] were already encashed/negotiated.

In a Resolution[9] dated 31 January 2005, the Court resolved to refer the case to the executive judge of RTC, Bangued, Abra.

After hearing and submission of the parties' respective pleadings, Executive Judge Charito B. Gonzales (investigating judge) found that the midyear bonus and clothing allowance checks were encashed at Lands Merchandising Store by respondent judge's son, James Salazar (Salazar). On the other hand, the fiscal autonomy allowance check was encashed at Co Chiok Department Store. The signature of respondent judge appeared on the dorsal portion of the said check.

During the investigation of the case, complainant, in her Memorandum presented a Certification[10] by Christine Co (Co), owner/manager of Co Chiok Department Store, which imputes that the check for Pineda was encashed by respondent judge. This was disputed by respondent judge who in turn presented Co's sworn statement saying that though the signature of respondent judge appeared at the back of the check, Co did not see respondent judge personally encashing the check and that it was encashed because she honored the name of respondent judge which appeared at the back of the check.[11]

The investigating judge filed her Report and Recommendation[12] recommending that the administrative complaint against respondent clerk of court be dismissed for lack of substantial evidence. The investigating judge reasoned that:

With respect to the charge against respondent Clerk of Court Joseph Brillantes the undersigned believes that there is no substantial proof to establish that he had any complicity in the loss and subsequent negotiation and encashment of the subject missing checks. In her memorandum[,] the complainant herself pinned all liabilities on the respondent Judge not even mentioning a bit of any administrative infraction on the part of respondent clerk of court. Respondent Clerk of Court was earlier included in the administrative complaint having allowed respondent Judge to take custody of the missing checks. The undersigned however believes that the mere passive act of the respondent clerk of court in allowing respondent Judge to take custody of the missing

checks, with the assurance that she would return them herself to the Supreme Court, does not amount to any administrative liability. Respondent Judge exercises administrative supervision over respondent clerk of court hence the latter cannot be faulted for trusting his superior. At this point, the undersigned concludes that respondent clerk of court should be absolved from any administrative charge pertaining to the missing checks.[13]

As to respondent judge, the investigating judge recommended that she be exonerated of the charges of gross dishonesty, conduct unbecoming of a judge, and abuse of discretion. The investigating judge concluded that, after taking pains in comparing respondent judge's signature in the records of the case and her purported signature on the check, she failed to arrive at any conclusion as to the purported signature's genuineness. However, it was recommended that respondent judge be held liable for simple neglect of duty for the loss of the checks, and that she be fined P10,000.00 and ordered restitution of the amount of the three (3) checks.

We agree in part with the recommendation of the investigating judge.

Respondent clerk of court should be reminded that he works not for respondent judge but for the Judiciary and as such, his responsibilities which this Court has prescribed should be fulfilled with keenness. The Court recognizes the fact that judges have the control and supervision of their court employees. However, with the irregularity respondent clerk of court saw in the acts of respondent judge, he should have been more circumspect in upholding his task in safeguarding the checks which, in the first place, should have been in his custody.

This notwithstanding, the Court absolves him of any liability in the loss and eventual encashment of the checks as respondent judge has already admitted that she kept the check before its alleged loss. Furthermore, it was respondent judge's assurance that she will personally return the checks that made respondent clerk of court cease reminding her of the need for the remittance of the check to the Checks Disbursement Division. Hence, respondent clerk of court acted within the bounds of his duties.

We cannot say the same for respondent judge. Her act of taking the three (3) checks, even if with honorable intentions, does not excuse her from the eventual consequences prejudicing Pineda and more importantly, the Judiciary. Respondent judge clearly overstepped her responsibilities when she went the extra mile to go to the post office on three separate occasions to claim Pineda's checks. That circumstance alone is already a cause for suspicion. In so doing, respondent judge violated Canon 2 of the Code of Judicial Conduct, which states that "[a] judge should avoid impropriety and the appearance of impropriety in all activities."

It should be noted that respondent clerk of court returned Pineda's checks on 26 April 2004.[14] Respondent judge, on the other hand, received Pineda's midyear bonus and clothing allowance checks on 12 May 2004 and 29 April 2004, respectively.[15] There is no record however of the date of receipt of the check for fiscal autonomy allowance. This would mean that the checks which respondent clerk of court received and returned were those issued by the Court prior to the issuance of the subject checks. Respondent judge executed an Affidavit of Loss and the request for stoppage of payment on 10 June 2004, or roughly a month after she took the checks of Pineda. She had sufficient time to return the checks. Her procrastination in the remitting the checks to the Court was the direct cause of the loss. Hence, there is negligence on the part of respondent judge in performing her duty to return the subject checks.

The Court has said time and time again that the conduct and behavior of everyone charged with the administration and disposition of justice "from the presiding judge to the lowliest clerk" should be circumscribed with the heavy burden of responsibility and free from any suspicion that may taint the well-guarded image of the judiciary. The conduct of judges and court personnel must not only be characterized by propriety and decorum at all times, but must also be above suspicion. Verily, the image of a court of justice is necessarily mirrored in the conduct, official

and otherwise, of the men and women, from the judge to the lowest employee, hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a true temple of justice. Thus, every employee of the court should be an exemplar of integrity, uprightness, and honesty.[16]

A magistrate of the law must comport himself at all times in such manner that his conduct, official or otherwise, can bear the most searching scrutiny of the public that looks up to him as the epitome of integrity and justice[.17]

In *SPO4 Manaois v. Judge Leomo*,[18] we ruled:

Canon 2 mandates that a judge should avoid impropriety, or even an appearance of impropriety in all his conduct as a magistrate.

It bears reiterating the dictum that, like Caesar's wife, a judge must not only be pure, but must also be above suspicion. He must conduct himself in a manner that gives no ground for reproach. This exacting standard of decorum is demanded from judges to promote public confidence in the integrity and impartiality of the judiciary.[19]

Respondent judge's irregular obtention of the three (3) checks, and their subsequent loss in her custody, stand as the proximate cause of the illegal encashment of these checks to the financial damage of the Supreme Court. Even if there is no substantial evidence establishing respondent's participation or acquiescence to the encashment of the checks, her negligence is sufficiently proved, and administrative sanction warranted.

Respondent judge, in her Memorandum, questioned the motives of complainant in instituting the instant case, as according to her, complainant or Pineda had no more right to the checks and thus, respondent judge had the authority to take custody of the checks. Furthermore, respondent judge admitted that her son Salazar, was hooked on illegal drugs and things of value in their house went missing and she never mentioned her son previously because it is "the tendency of every mother to protect her beloved child." [20]

Respondent judge has a misplaced appraisal of the situation. The ultimate victim in this case is neither complainant nor her daughter Pineda. The money was illegally extracted from the funds of the Court. Evidently, it is the Court which is prejudiced by the negligence of respondent judge since the money was given to someone who did not render service to the Court.

Had she prudently turned over the checks and not kept it in a book, she would not be administratively charged in the present case. She did not even have to sign the payroll registry and personally receive the checks of Pineda as she could have just simply returned them to the Checks Disbursement Division as soon as she found out that these were checks issued for a resigned employee. In the first place, it was not her responsibility to get the bulk of the checks from the Philippine Postal Corporation. The 2002 Revised Manual for Clerks of Court[21] states that it is the function of the Office of the Clerk of Court to distribute salary checks and other benefits, and not the judge's. For the act of keeping the checks alone, respondent judge may already be liable for administrative sanctions.

Thus, when the checks allegedly lost were encashed not by the person to whom it was issued, respondent judge's liability is compounded. Not only is she responsible for keeping the checks to which she is not entitled but she is also directly accountable for the loss and the encashment of these checks by no other than her son and another person whose signature appears to be hers.

Furthermore, having admitted that she had a problem with her son and that valuable belongings in her house had disappeared, she should have been put on guard and particularly careful with the checks, if truly respondent judge was committed to delivering the checks personally to this Court.

Complainant cannot be faulted in instituting this administrative complaint because her daughter was also prejudiced by the culpable acts of respondent judge. As stated in her Reply to the Memorandum of Respondent Judge,[22] because the checks were not returned to the Court, Pineda could not get a clearance and thus cannot claim her terminal leave, GSIS, and other benefits due her, which she would have used to pay for the loans she obtained from the Supreme Court Savings and Loans Association.

WHEREFORE, premises considered, the case against respondent Clerk of Court Joseph L. Brillantes is DISMISSED for lack of merit. Respondent Judge Rosita B. Salazar is hereby FINED Twenty Thousand Pesos (P20,000.00) and ORDERED to reconstitute the amount of Thirteen Thousand Nine Hundred Twenty Five and Thirty Centavos (P13, 925.30) taken from the Court.

The Office of the Court Administrator (OCA) is DIRECTED to institute appropriate criminal charges against James Salazar and all other persons responsible for the encashment of the three (3) checks.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, and Carpio Morales, JJ., concur.

[1] Rollo, pp. 1-10, with annexes.

[2] The checks issued from the period from March to April 2004 are:

1. Midyear Bonus for the year 2004
2. Clothing Allowance for the year 2004
3. Judiciary Development Fund Allowance for April 2004
4. Fiscal Autonomy Bonus for the year 2004
5. Salary for the months of March and April 2004
6. Judiciary Development Fund Allowance for March 2004

[3] For midyear bonus, clothing allowance and fiscal autonomy allowance.

[4] Rollo, p. 3.

[5]Id. at 13-14.

[6] Id. at 15-23, with annexes.

[7] Respondent judge filed with the Checks Disbursement Division her Affidavit of Loss and Request for Stoppage of Payment for all three checks in her possession; rollo, pp. 20-23.

[8]Check No. 1537507 for the midyear bonus, and Check No. 1526092 for the clothing allowance.

[9] Rollo, p. 32.

[10] Id. at 70. The Certification reads:

C E R T I F I C A T I O N

TO WHOM IT MAY CONCERN:

This is to certify that on May 31, 2004, Check No. 0000401275 for P4,000.00 in the name of Rosette Rosario B. Pineda was encashed in our store by Judge Rosita B. Salazar whose signature appears at the back of the Check.

Bangued, Abra
November 5, 2004

CO CHIOK DEPARTMENT STORE

Bangued, Abra

By:

(sgd.) CHRISTINE CO

[11] Rollo, p. 93.

[12] Id. at 95-101.

[13] Id. at 99.

[14] Id. at 6.

[15] Id. at 7-8.

[16] Anonymous Complaint Against Sheriff Sales T. Bisnar, RTC, Br. 78, Morong, Rizal, A.M. No. 05-7-458-RTC, 25 August 2005, 468 SCRA 17, 19, citing Astillazo v. Jamlid, 342 Phil. 219, 232-233; 276 SCRA 257, 269-270 (1997).

[17] Catbagan v. Barte, A.M. No. MTJ-02-1452, 6 April 2005, 455 SCRA 1, 11 citing Casimiro v. Judge Octavio Fernandez, et al., A.M. No. MTJ-04-1525, 29 January 2004, 421 SCRA 291.

[18] 456 Phil. 920 (2003).

[19] Id. at 931; citations omitted.

[20] Rollo, p. 92.

[21] Under Chapter VI, Section D 3.1.2.4 (c). The said chapter pertains to Regional Trial Court Clerks of Court. However in Chapter VII (referring to first level courts), Section D 1.2, it states that "[t]he Clerks of Court in single sala courts perform the same duties and responsibilities as the Clerks of Court III or the Assistant Clerks of Court in multiple sala courts," and the Office of the Clerk of Court in a multiple sala first level court performs the same functions as their counterparts in the RTC (Section 3.1.2, Chapter VII).

[22] Rollo, pp. 84-85.

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