

OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS. CLERK OF COURT FE P. GANZAN, MCTC, JASAAN-CLAVERIA, MISAMIS ORIENTAL RESPONDENT.

A.M. No. P-05-2046 (Formerly No. 05-6-159-MCTC). September 17, 2009

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PER CURIAM:

This administrative case arose from the Report dated 15 June 2005, submitted by an Audit Team of the Office of the Court Administrator (OCA), containing the results of its financial audit of the 5[th] Municipal Circuit Trial Court (MCTC) of Jasaan-Claveria, Misamis Oriental, conducted on 11 March 2005. The said financial audit covered the accountability period of Clerk of Court II Fe P. Ganzan (Ganzan) from July 1994 to 28 February 2005.

The OCA Audit Team made the following recommendations in its Report:

- This report be docketed as a regular administrative matter against Clerk of Court Fe P. Ganzan;
- Clerk of Court Fe P. Ganzan be DIRECTED within ten (10) days from notice to:
- Pay and Deposit to the respective account the following amounts incurred as shortages, and Submit to this office the validated deposit slips as proof of payment of the same;

FUND

AMOUNT

SEE SCHEDULES

Special Allowance for the Judiciary

P 4,351.10

A

General Fund

5,039.80

B

Judiciary Development Fund

108,639.35

C

Fiduciary Fund

138,500.00

D

Total

256,530.25

- Explain why she should not be held accountable for the uncollected/unreported fines enumerated in Annex "B" amounting to P50,050.00 and cash bonds of undetermined amount on cases enumerated in Annex "E." The amount was not part of the reported collections.

- Account for the missing Official Receipts which were not presented for inventory as neither unissued nor included in the Monthly Reports as issued:

9590551

9590600

9590701

9590750

9590901

9590950

9590951

9591000

- Submit the triplicate copies of the following official receipts issued for the particular collections.

From

To

Explanation

5378101

5378118

Included in the Monthly Reports but the triplicate copies were not presented in audit.

5378119

53781150

Not included in the Monthly Reports and the triplicate copies were likewise not presented in audit.

GENERAL FUND

Period

From

To

Jan. 6 to Jan. 21, 2005

20248201

20248250

May 5 to June 20, 2003

17843801

17843850

JUDICIARY DEVELOPMENT FUND

Period

From

To

Jan. 6 to Jan. 21, 2005

20248201

20248250

May 5 to June 20, 2003

17843801

17843850

Mar. 1991 to July 1994

7863201

7863500

- Submit the original and duplicate copies of cancelled Official Receipts Nos. 4264861, 20247681 and 20247454 or proofs that the same were submitted with the Monthly Reports to the Accounting Division-OCA.

- Pending resolution of this administrative matter, Ms. Fe P. Ganzan be **SUSPENDED** in order to prevent her from interfering with the court transactions as well as to avoid the commission of similar infraction in the future;

- A Hold Departure Order be issued against Clerk of Court Fe P. Ganzan to prevent her from leaving the country.

- The designated Officer-in-Charge be **DIRECTED** to:

- Withdraw all fiduciary fund collections still deposited with the Municipal Treasurer's Office and deposit/transfer the same to the Fiduciary Fund LBP Savings Account No. 0151-1096-91 pursuant to SC Circular No. 50-95.

- Withdraw the net interest earned from the Fiduciary Fund Account in the amount of P1,153.34 and deposit the same with the JDF Account.

- Presiding Judge, MCTC, Jasaan, Misamis Oriental, be **DIRECTED** to strictly monitor the designated Officer-in-Charge and Collecting officer in the strict adherence to the circulars and issuances of the Court particularly in the handling of judiciary funds.

On 15 June 2005, then Court Administrator, now Supreme Court Associate Justice Presbitero J. Velasco, Jr. issued a Memorandum adopting the recommendations of the OCA Audit Team, and recommending to the Court the approval of the same recommendations.

The Court, in a Resolution[1] dated 27 July 2005, approved and adopted the recommendations of the Court

Administrator.

Ganzan filed on 24 August 2005 a Manifestation[2] in which she prayed for the Court to order the OCA to furnish her with copies of the Schedule/Annex "A" and Schedule/Annex "C" of the Audit Report, and to give her an extension of at least 60 days, reckoned from her receipt of copies of said schedules, within which to file her explanation for the same, as she had a hard time looking for a lawyer to represent her in the case, given her financial constraints.

Acting on Ganzan's Manifestation, the Court issued a Resolution[3] on 5 December 2005 ordering the OCA to furnish Ganzan copies of the documents she prayed for and granting her a 60-day extension for the filing of her explanation. Although she was already duly furnished copies of the pertinent schedules/annexes of the Audit Report, Ganzan failed to comply with the Resolution dated 27 July 2005 of this Court requiring her to submit her explanation, accounting, and receipts. Thus, the Court issued another Resolution dated 12 March 2007, requiring Ganzan to show cause why she should not be held in contempt of court for such failure and to comply with the earlier Resolution dated 27 July 2005, both within 10 days from notice.

Ganzan, however, still failed to submit to the Court the explanation, accounting, and receipts required by the Resolution dated 27 July 2005, as well as to comply with the show-cause directive under the Resolution dated 12 March 2007. Consequently, the Court issued a Resolution dated 16 January 2008 imposing upon Ganzan a fine of P500.00 and again requiring her to comply with the Resolution dated 27 July 2005 within 10 days from notice.

In the interim, Honorable Marites Filomena Rana-Bernales (Judge Rana-Bernales), Presiding Judge, 5th MCTC of Jasaan-Claveria, Misamis Oriental, wrote the Court a Letter dated 18 March 2008, relaying her perception that Ganzan, based on the latter's actuations, had no intention at all to comply with the Resolutions of the Court. In the same Letter, Judge Rana-Bernales also requested the early resolution of the instant administrative case, since Ganzan had been on preventive suspension since July 2005, and the interest of justice required a regular Clerk of Court to already be appointed in Ganzan's place. The Court noted Judge Rana-Bernales' aforementioned letter.

For Ganzan's continued failure to comply with its directives, the Court issued yet another Resolution[4] dated 9 July 2008 imposing upon her a fine of P1,000.00, in addition to the fine of P500.00 previously imposed upon her under the Resolution dated 16 January 2008. Ganzan was further ordered to comply with the Resolution dated 16 January 2008, with a warning that should she still fail to pay the fines imposed and comply with the directives of the Court, she would be ordered arrested and detained by the National Bureau of Investigation (NBI) until her compliance or until such time as the Court may order.

On 30 March 2009, the Court referred to the OCA the matter of Ganzan's non-compliance with the Resolution dated 9 July 2008 and required the said office to submit its Report within 30 days from notice.[5]

The OCA submitted its Report[6] on 4 June 2009, bearing the following recommendations:

IN VIEW OF ALL THE FOREGOING, it is most respectfully recommended for the consideration of the Honorable Court as follows:

a) Respondent FE P. GANZAN, Clerk of Court, Municipal Circuit Trial Court of Jasaan, Misamis Oriental be found GUILTY of DISHONESTY and the penalty of DISMISSAL from the service with forfeiture of all retirement benefits except leave credits and disqualification for re-employment in any government office including government-owned or controlled corporations be imposed upon her;

b) Respondent be ordered to RESTITUTE the following amounts incurred as shortages within thirty (30) days from notice:

FUND

AMOUNT

Special Allowance for the Judiciary

P 4,351.10

General Fund

5,039.80

Judiciary Development Fund

108,639.35

Fiduciary Fund

138,500.00

or a total of Two Hundred Fifty-Six Thousand Five Hundred Thirty Pesos and Twenty-five centavos (P256,530.25) plus additional amount of Fifty Thousand And Fifty Pesos (P50,050.00) representing the uncollected/unreported fines;

c) Respondent be ORDERED to PAY the fines of P500.00 and P1,000.00 per Court Resolutions dated 16 January 2008 and 9 July 2008, respectively, within ten (10) days from notice hereof;

d) The Fiscal Management Office, OCA be ORDERED to compute whatever benefits due to the Respondent including the money value of her leave credits dispensing with the usual documentary requirements and apply the same to the shortages in the following order of preference: Fiduciary Fund, Judiciary Development Fund, Special Allowance for the Judiciary and Court General Fund; and

e) The Office of the Court Administrator be DIRECTED to coordinate with the prosecuting arm of the government for the filing of the appropriate criminal action against respondent Fe P. Ganzan.

The Court has already given Ganzan more than enough opportunity to explain her side. It granted Ganzan's motion for extension of time to comply with the Resolution dated 27 July 2005 ordering her to submit her explanation, accounting, and receipts, but Ganzan still failed to comply with the directive of the Court during the extended period. Ganzan persistently ignored the subsequent Resolutions of this Court, i.e., the Resolution dated 12 March 2007, which directed her to show cause why she should not be held in contempt for her non-compliance with the Resolution dated 27 July 2007 and to finally comply therewith; the Resolution dated 16 January 2008, which imposed upon her a fine of P500.00 for her failure to comply with the Show-Cause Resolution of 16 January 2008; and the Resolution dated 9 July 2008, which imposed upon her an additional fine of P1,000.00 for continuing to disregard the Resolution dated 16 January 2008. Ganzan has managed to drag this case for over four years now.

Up until the resolution of the instant administrative case against her, Ganzan has not complied with any of the Resolutions of the Court.

With her obstinate defiance and incessant refusal to submit her compliance to this Court, despite the latter's repeated directives and stern admonitions, Ganzan exposed her insolence and disrespect for the lawful orders of the Court. A resolution of the Supreme Court should not be construed as a mere request, and should be complied with promptly and completely. Such failure to comply betrays, not only a recalcitrant streak in character, but also a disrespect for the lawful order and directive of the Court.[7] Furthermore, this contumacious conduct of refusing to abide by the lawful directives issued by the Court has likewise been considered as an utter lack of interest to remain with, if not contempt of, the system.[8] Ganzan's transgression is highlighted even more by the fact that

she is an employee of the Judiciary, who, more than an ordinary citizen, should be aware of her duty to obey the orders and processes of the Supreme Court without delay.[9] Her willful disobedience to and disregard for the Resolutions of this Court constitute grave and serious misconduct,[10] which cannot be tolerated.

The Court shall no longer wait for Ganzan, who has clearly forfeited her chance to be heard on the charges against her. It must now proceed to resolve this administrative case against her based on the present contents of the record, the most significant of which are the report and recommendations of the Audit Team and their annexes, as adopted by the OCA.

Clerks of Court are important officers in our judicial system. Their office is the nucleus of all court activities, adjudicative and administrative. Their administrative functions are as vital to the prompt and proper administration of justice as their judicial duties.[11]

Clerks of Court perform a very delicate function as the custodians of the funds and revenues, records, property, and premises of the court. Being the custodians thereof, they are liable for any loss, shortage, destruction, or impairment of said funds and property.[12]

Supreme Court Circulars No. 13-92 and No. 5-93 provide the guidelines for the proper administration of court funds. Supreme Court Circular No. 13-92 mandates that all fiduciary collections "shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized depository bank." In Supreme Court Circular No. 5-93, the Land Bank was designated as the authorized government depository.

In *Office of the Court Administrator v. Fortaleza*,[13] the Court expounded on the responsibility and accountability of Clerks of Court for the collected legal fees in their custody, thus:

Clerks of Court are the chief administrative officers of their respective courts; with regard to the collection of legal fees, they perform a delicate function as judicial officers entrusted with the correct and effective implementation of regulations thereon. Even the undue delay in the remittances of amounts collected by them at the very least constitutes misfeasance. On the other hand, a vital administrative function of a judge is the effective management of his court and this includes control of the conduct of the court's ministerial officers. It should be brought home to both that the safekeeping of funds and collections is essential to the goal of an orderly administration of justice and no protestation of good faith can override the mandatory nature of the Circulars designed to promote full accountability for government funds.

The Court, in *Office of the Court Administrator v. Galo*,[14] pointed out that it had always reminded Clerks of Court that, as custodians of court funds and revenues, they have the duty to immediately deposit the various funds received by them with the authorized government depositories, for Clerks of Court are not supposed to keep funds in their custody.

Ganzan's refusal to face head-on the charges against her is contrary to the principle that the first impulse of an innocent person, when accused of wrongdoing, is to express his/her innocence at the first opportune time.[15] Ganzan's silence and non-participation in the present administrative proceedings, despite due notice and directives of this Court for her to submit documents in her defense, i.e., a written explanation, an accounting, and missing receipts, strongly indicate her guilt. Moreover, the failure of a public officer to remit funds, upon demand by an authorized officer, shall be prima facie evidence that the public officer has put such missing funds or property to personal use.[16] In the total absence of rebutting or contrary evidence, then the Court can only conclude that Ganzan has misappropriated the unaccounted/unremitted court funds in her care and custody.

The conduct or behavior of all court personnel is circumscribed with the heavy burden of responsibility.[17] Time and again, the High Court affirms the practical reality that the image of the court as a true temple of justice is mirrored by the conduct of everyone who works therein, from the judge to the lowest clerk.[18] It is therefore

imperative that those involved in the administration of justice must live up to the highest standard of honesty and integrity in the public service.[19]

On court employees who have fallen short of their accountabilities, particularly, Clerks of Court who are the custodians of court funds and properties, the Court has not hesitated to impose the ultimate penalty. This Court has never tolerated or condoned any conduct that would violate the norms of public accountability and diminish, or even tend to diminish, the faith of the people in the justice system.[20]

Ganzan's failure to remit her collections, amounting to P256,530.25 and to report/collect fines totaling P50,050.00, constitutes gross neglect of duty, dishonesty, and grave misconduct.[21] She has transgressed the trust reposed in her as cashier and disbursement officer of the Court.[22] Therefore, the Court is left with no other recourse but to declare Ganzan guilty of dishonesty and gross misconduct.

Under Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and other pertinent Civil Service Laws, dishonesty and grave misconduct are considered grave offenses, for which the penalty of dismissal is prescribed even at the first instance. Section 9 of said Rules additionally provides: "The penalty of dismissal shall carry with it cancellation of eligibility and retirement benefits, and the disqualification of re-employment in the government service. This penalty is without prejudice to criminal liability of the respondent."

WHEREFORE, the Court finds respondent Fe P. Ganzan, Clerk of Court II, 5th Municipal Circuit Trial Court of Jasaan-Claveria, Misamis Oriental, GUILTY of gross dishonesty and grave misconduct and imposes on her the penalty of DISMISSAL from the service with FORFEITURE of retirement benefits, except her accrued leave credits, and with prejudice to re-employment in any government agency, including government-owned and controlled corporations. The Civil Service Commission is ordered to cancel her civil service eligibility, if any, in accordance with Section 9, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292.

The Court further orders:

1. Respondent Fe P. Ganzan to RESTITUTE the following amounts incurred as shortages within thirty (30) days from notice:

FUND

AMOUNT

Special Allowance for the Judiciary

P 4,351.10

General Fund

5,039.80

Judiciary Development Fund

108,639.35

Fiduciary Fund

138,500.00

or a total of Two Hundred Fifty-Six Thousand Five Hundred Thirty Pesos and Twenty-five Centavos (P256,530.25), plus the additional amount of Fifty Thousand and Fifty Pesos (P50,050.00) representing the

uncollected/unreported fines;

2. Respondent Fe P. Ganzan to PAY the fines of P500.00 and P1,000.00 per Court Resolutions dated 16 January 2008 and 9 July 2008, respectively, within ten (10) days from notice hereof;

3. The Fiscal Management Office of the Office of the Court Administrator to COMPUTE whatever benefits are due to Ganzan including the money value of her leave credits, dispensing with the usual documentary requirements, and APPLY the same to the shortages in the following order of preference: Fiduciary Fund, Judiciary Development Fund, Special Allowance for the Judiciary and Court General Fund; and

4) The Office of the Court Administrator to COORDINATE with the prosecution arm of the government for the filing of the appropriate criminal action against respondent Fe P. Ganzan.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, De Castro, Brion, Peralta, Bersamin, Del Castillo, and Abad, JJ., concur.

Quisumbing and Carpio, JJ., on official leave.

[1] Rollo, pp. 39-41.

[2] Id. at 42-43.

[3] Id. at 44.

[4] Id. at 57.

[5] Id. at 59.

[6] Id. at 60-72.

[7] *Tugot v. Judge Coliflores*, 467 Phil. 391, 402-403 (2004).

[8] *Parane v. Reloza*, A.M. No. MTJ-92-718, 7 November 1994, 238 SCRA 1, 4.

[9] *Teopicio Tan v. Salvacion D. Sermonia*, Clerk of Court IV, MTCC, Iloilo City, A.M. No. P-08-2436, 4 August 2009.

[10] *Longboan v. Polig*, A.M. No. R-704-RTJ, 14 June 1990, 186 SCRA 557, 561.

[11] *Re: Report on the Financial Audit Conducted in the RTC, Br. 34, Balaoan, La Union*, 480 Phil. 484, 492 (2004), citing *Dizon v. Bawalan*, 453 Phil. 125, 133 (2003).

[12] *Office of the Court Administrator v. Fortaleza*, 434 Phil. 511, 522 (2002), citing *Office of the Court Administrator v. Bawalan*, A.M. No. P-93-945, 24 March 1994, 231 SCRA 408, 411.

[13] Id. at 522.

[14] 373 Phil. 483, 491 (1999).

[15] *Re: Report on the Financial Audit Conducted in the Regional Trial Court, Branch 34, Balaoan, La Union*, supra note 11; *Office of the Court Administrator v. Bernardino*, 490 Phil. 500, 531 (2005).

[16] *Office of the Court Administrator v. Besa*, 437 Phil. 372, 380 (2002).

[17] Re: Dropping from the Rolls of Ms. Carolyn C. Arcangel, A.M. No. 2005-27-SC, 31 March 2006, 486 SCRA 27, 30.

[18] Mutia v. Pacariem, A.M. No. P-06-2170, 11 July 2006, 494 SCRA 448, 454-455.

[19] Reyes v. Cabrera, A.M. No. P-05-2027, 27 January 2006, 480 SCRA 257, 263.

[20] Office of the Court Administrator v. Galo, *supra* note 14.

[21] Re: Report on the Judicial and Financial Audit of RTC-Br. 4, Panabo, Davao del Norte, 351 Phil. 1, 20 (1998).

[22] Office of the Court Administrator v. Clerk of Court Bernardino, *supra* note 15.

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