

NARITA RABE, COMPLAINANT, VS. DELSA M. FLORES, INTERPRETER III, RTC, BRANCH IV, PANABO, DAVAO, RESPONDENT.

A.M. No. P-97-1247 (Formerly A.M. OCA I.P.I. No. 95-71-P). May 14, 1997

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PER CURIAM:

In an administrative complaint for "Conduct Unbecoming a Government Employee, Acts Prejudicial to the Interest of the Service and Abuse of Authority" dated August 18, 1995, Complainant Narita Rabe,[2] by counsel, charged Respondent Delsa M. Flores, Interpreter III at the Regional Trial Court, Branch IV, Panabo, Davao, as follows:[3]

"(Mrs.) Flores took advantage of her position as a court employee by claiming a stall at the extension of the Public Public (sic) Market when she is (sic) not a member of our client's association and was never a party to Civil Case No. 89-23. She herself knows (sic) that the stalls in the said area had already been awarded to our client's members pursuant to the decision of the court on October 30, 1991. Worse, she took the law into her hands when she destroyed the stall of our client and brought the materials to the police station of Panabo, Davao."

After respondent filed her answer, the Court issued a Resolution dated January 17, 1996, absolving her of the charge. In the same resolution, however, the Court required respondent to explain why she should not be administratively dealt with for the following:[4]

"x x x a) why she obtained a certification dated June 18, 1991 issued by Atty. Victor R. Ginete, Clerk of Court, same court, that she started performing her duties as (an) interpreter on May 16, 1991 when (1) according to a certification dated June 17, 1991 issued by Mr. Jose B. Avenido, Municipal Treasurer, Panabo Davao, she was employed in the office of the Municipal Assessor as Assessment Clerk I since February 1, 1990 to June 3, 1991 with her last salary being paid by said office on June 3, 1991; and (2) she took her oath of office before Judge Mariano C. Tupas only on June 17, 1991;

b) why she did not report said business interest in her sworn statement of Assets, Liabilities and Net Worth, Disclosure of Business Interests and Financial Connections, and Identification of Relatives in the Government Service for the years 1991, 1992, 1993, and 1994;

c) why she has not divested herself of her interest in said business within sixty (60) days from her assumption into (sic) office; and

d) why she has indicated in her DTRs for August 1995 that she worked on August 15-18, 21, 23-25 and 28-31 and for September, 1995 that she worked for all its twenty one (21) working days when her Contract of Lease with the Municipal Government of Panabo for the market stall in its Section 7 clearly states that she has to personally conduct her business and be present at the stall otherwise the same would be canceled as per its Section 13.

Respondent Flores, in a letter dated February 13, 1996, explains that, as stated in the certification of Atty. Ginete, she assumed her job in the Regional Trial Court, Branch IV, Panabo, Davao on May 16, 1991, in compliance with the directive from this Court for her to start working on the said date. Respondent further states that "even prior to

said date (May 16, 1991)" she already reported to the court in order to familiarize herself with the scope of her duties.[5]

Respondent Flores also admits that she had received from the municipality a salary for the period May 16 1991 — May 31, 1991, notwithstanding her transfer to the judiciary on May 16, 1991. She submits, however, the following justification:[6]

"I admit that I received my last salary in the amount of One Thousand and 80/100 (P1,000.80) Pesos from the Local Government Unit from May 16-31, 1991 but farthest from my mind is the intent to defraud the government. It was my desire all the time to refund the amount the moment my salary is received from the Supreme Court, unfortunately more often than not (the salary) is received three or four months after assumption of office.

As we all know the month of May and June is the time we enroll our children in school thus the money I got that month from the Local Government Unit came handy in defraying registration expenses of my four children. The passage of time coupled with some intervening events, made me oblivious of my obligation to refund the money. However, when my attention was called on the day I received the copy of the resolution, I took no time in refunding the same."

Respondent alleges that the certification of Municipal Treasurer Jose V. Avenido is inaccurate because it was on January 25, 1990 that she was appointed as Assessment Clerk I.[7] According to respondent, she took her oath on June 17, 1991, simply because it was on that date that she received a copy of her oath form.[8]

Respondent avers that she did not divulge any business interest in her Sworn Statement of Assets and Liabilities and Financial Disclosure for the years 1991-1994 because she "was never engaged in business during said period although I had a stall in the market." [9]

Respondent further avers that her Daily Time Record indicated that she held office on August 15, 18, 21, 23 to 25 and 28, 31 and all the working days of September, 1995 "because in truth and in fact x x x (she) did hold office on those days." This was because her contract of lease with the Municipal Government of Panabo was never implemented as it became the subject of "Civil Case No. 95-53 -- Panabo Public Market Vendors Assn. Inc. and Pag-ibig Ng Gulayan Ass. Inc. Vs. Municipality of Panabo, et al., for Declaration of Nullity of Mun. Ord. No. XLV, Series of 1994." [10]

The Court referred the matter to the Office of the Court Administrator for evaluation, report and recommendation. In its report, the OCA found respondent guilty of dishonesty and failure to report her business interest, and recommended that the penalty of dismissal be imposed on her. The Court finds that the report and recommendation of the OCA is in accord with the evidence and the law. We hold the explanation of respondent unsatisfactory. Respondent's misconduct is evident from the records.

By her own admission, respondent had collected her salary from the Municipality of Panabo for the period of May 16-31, 1991, when she was already working at the RTC. She knew that she was no longer entitled to a salary from the municipal government, but she took it just the same. She returned the amount only upon receipt of the Court Resolution dated January 17, 1996, or more than five (5) years later. We cannot countenance the same. Respondent's conduct is plain dishonesty.

Her explanation, as observed earlier, is unsatisfactory. Her overriding need for money from the municipal government, aggravated by the alleged delay in the processing of her initial salary from the Court, does not justify receipt of a salary not due her. We sympathize with respondent's sad plight of being the sole breadwinner of her family, with her husband and parents to feed and children to send to school. This, however, is not an acceptable excuse for her misconduct. If poverty and pressing financial need could justify stealing, the government would

have been bankrupt long ago. A public servant should never expect to become wealthy in government.

But there is really more to respondents' defense of poverty. If respondent was just driven by dire pecuniary need, respondent should have returned the salary she had obtained from the Municipal Government of Panabo as soon as she obtained her salary from the court. However, she returned the money only after receipt of the Court's Resolution dated January 17, 1996, saying that she forgot all about it. Forgetfulness or failure to remember is never a rational or acceptable explanation.

In *Macario Flores vs. Nonilon Caniya, Deputy Sheriff, RTC, Imus, Cavite*,^[11] this Court ruled that a sheriff who failed to issue an official receipt for the money entrusted to him for the purpose of satisfying a judgment debt, "had really wanted to misappropriate the said amount." Inevitably, he was dismissed from service with forfeiture of all retirement benefits and accrued leave credits, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

It is well to stress once again the constitutional declaration that a "(p)ublic office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives."^[12]

We have repeatedly held that although every office in the government service is a public trust, no position exacts a greater demand for moral righteousness and uprightness from an individual than in the judiciary. Personnel in the judiciary should conduct themselves in such a manner as to be beyond reproach and suspicion, and free from any appearance of impropriety in their personal behavior, not only in the discharge of their official duties but also in their everyday life. They are strictly mandated to maintain good moral character at all times and to observe irreproachable behavior so as not to outrage public decency.^[13]

This Court, in *JPDIO vs. Josephine Calaguas, Records Officer, OCC, MTCC, Angeles City*,^[14] held:

"The Court must reiterate that a public office is a public trust. A public servant is expected to exhibit, at all times, the highest degree of honesty and integrity and should be made accountable to all those whom he serves."

Respondent's malfeasance is a clear contravention of the constitutional dictum that the State shall "maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption."^[15]

Under the Omnibus Rules Implementing Book V of EO No. 292 known as the "Administrative Code of 1987" and other pertinent Civil Service Laws, the penalty for dishonesty is dismissal, even for the first offense.^[16] Accordingly, for respondent's dishonesty in receiving and keeping what she was not lawfully entitled to, this Court has the duty to impose on her the penalty prescribed by law: dismissal.

Apart from the above finding, we also note the contradiction between the certification issued by Municipal Treasurer Jose Avenido stating that respondent had worked as an assessment clerk in his office up to June 3, 1991, and the certification of Clerk of Court Victor Ginete stating that respondent started working as an interpreter on May 16, 1991. Although specifically asked by the Court to explain this contradiction, respondent could only state that the certification of the treasurer is inaccurate because she assumed her position as Assessment Clerk on January 25, 1990 and not on February 1, 1990 as written in the said certification. Respondent, however, failed to explain the gravamen of the inquiry, i.e., that she was certified to be still connected with the Municipal Government of Panabo on June 3, 1991, notwithstanding her assumption of her post in the Regional Trial Court as early as May 16, 1991. To the mind of the Court, respondent's inability to explain this discrepancy is consistent with her failure to satisfactorily explain why she knowingly received and kept a

salary she was not entitled to. Worse, it may be indicative of a conscious design to hold two positions at the same time.

Aside from dishonesty, however, respondent is also guilty of failure to perform her legal obligation to disclose her business interests. Respondent herself admitted that she "had a stall in the market." The Office of the Court Administrator also found that she had been receiving rental payments from one Rodolfo Luay for the use of the market stall. That respondent had a stall in the market was undoubtedly a business interest which should have been reported in her Sworn Statement of Assets and Liabilities. Her failure to do so exposes her to administrative sanction.

Section 8 of Republic Act No. 6713 provides that it is the "obligation" of an employee to submit a sworn statement, as the "public has a right to know" the employee's assets, liabilities, net worth and financial and business interests. Section 11 of the same law prescribes the criminal and administrative penalty for violation of any provision thereof. Paragraph (b) of Section 11 provides that "(b) Any violation hereof proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public official or employee, even if no criminal prosecution is instituted against him."

In the present case, the failure of respondent to disclose her business interest which she herself admitted is inexcusable and is a clear violation of Republic Act No. 6713.

The respondent's claim that her contract of lease of a market stall was never implemented because it became the subject of a civil case, fails to convince us. We agree with the finding of the OCA on respondent's guilt for this separate offense. It is a finding, which further supports its recommendation for respondent's dismissal, to wit:[17]

"The case respondent is referring to was filed in 1995. This can be seen from the number of the case which is 95-93. Earlier than the filing of the case, respondent was already collecting rentals -- as early as February 22, 1991 -- from one Rodolfo Luay who was operating a business without the necessary license.

Respondent should have, therefore, indicated in her 'Sworn Statement of Assets, Liabilities and Net Worth, Disclosure of Business Interests and Financial Connections, and Identification of Relatives in the Government Service' for the years 1991, 1992, 1993, 1994 and 1995 that she had a market stall in the Public market of Panabo, Davao.

She admits that she never indicated such in her sworn statements.

As this Office had earlier stated in its Memorandum dated November 10, 1995 filed in connection with the instant complaint:

'Such non-disclosure is punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand (P5,000.00) pesos, or both. But even if no criminal prosecution is instituted against the offender, the offender can be dismissed from the service if the violation is proven. Respondent 201 file speaks for itself.

Furthermore, respondent should have divested herself of her interest in said business within sixty (60) days from her assumption into (sic) office. She has not. The penalty for non-disclosure of business interests and non-divestment is the same.'" (Citations omitted.)

In her explanation, respondent maintains the position that she has no business interest, implicitly contending that there is nothing to divulge or divest from. As discussed above, respondent had a business interest. We do not find her administratively liable, however, for failure to divest herself of the said interest. The requirement for public officers, in general, to divest themselves of business interests upon assumption of a public office is prompted by the need to avoid conflict of interests.[18] In the absence of any showing that a business interest will result in a conflict of interest, divestment of the same is unnecessary. In the present case, it seems a bit far-fetched to

imagine that there is a conflict of interest because an Interpreter III of the Regional Trial Court has a stall in the market. A court, generally, is not engaged in the regulation of a public market, nor does it concern itself with the activities thereof. While respondent may not be compelled to divest herself of her business interest, she had the legal obligation of divulging it.

WHEREFORE, in conformity with the recommendations of the Office of the Court Administrator, Interpreter III Delsa M. Flores is hereby DISMISSED from service with FORFEITURE of all retirement benefits and accrued leave credits and with PREJUDICE to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno Vitug, Kapunan, Mendoza, Francisco, Hermosisima, Jr., Panganiban, and Torres, Jr., JJ., concur.

[1] Office of the Court Administrator, Informal Preliminary Inquiry.

[2] In Complainant Rabe's separate affidavit, she made the following allegations:

"x x x x x x x x

That on August 14, 1995 at around 4:00 o'clock in the afternoon, Mrs. Delsa Flores, a Court Interpreter at the Regional Trial Court of Panabo, Davao, went to the stall I occupied and while there, she made several defamatory utterances against me in a very menacing, arrogant and threatening manner and in the visayan dialect, as follows:

'Putang ina mo ka, akua nin pwesto, wala kay ulaw, wala kay batasan, mangingilog ug pwesto'

That Mrs. Flores attempted to inflict injury upon me by scratching my face but I was able to evade and with the timely intervention of Mr. Espiridion Vivas;

That Mrs. Flores made the foregoing remarks and other remarks of the same import for several times in a very loud voice while walking to and fro;

That Mrs. Flores challenged me to a fist fight and destroyed the stall I occupied by removing the wooden fence and the GI sheets with the help of her husband; loaded the materials on a motor vehicle; and brought them to the police station of Panabo;

That Mrs., Flores committed the aforementioned acts during office hours and in such conduct unbecoming a government employee;

x x x x x x x x"

[3] Rollo, p. 2.

[4] Ibid., p. 25.

[5] Ibid., p. 38.

[6] Ibid., p. 39.

[7] Ibid.

[8] Ibid.

[9] Respondent's explanation, p. 2; rollo, p. 50.

[10] Ibid.

[11] A.M. No. P-95-1133, April 26, 1996.

[12] Section 1, Article XI, 1987 Constitution.

[13] Legaspi vs. Garrete, 242 SCRA 679, 701, March 27, 1995 citing Montemayor vs. Collado, Adm. Matter No. 2519-MJ, September 10, 1981, 107 SCRA 258, 264; Association of Court Employees of Panabo, Davao vs. Tupas, Adm. Matter No. RTJ-87-141, July 12, 1989, 175 SCRA 292, 296; Leynes vs. Veloso, Adm. Matter No. 689-MJ and Virrey vs. Veloso, Adm. Matter No. 809-MJ, the two latter cases promulgated on April 13, 1978, 82 SCRA 352, 328.

[14] A.M. No. P-95-115, May 15, 1996.

[15] Section 27, Article II, 1987 Constitution.

[16] Section 23 (a), Rule XIV, Omnibus Rules Implementing Book V of EO No. 292 Known as the "Administrative Code of 1987" and other Pertinent Civil Service laws.

[17] Pages 6-7 of the Memorandum of the Court Administrator dated November 27, 1996. on this case.

[18] Section 9 of RA 6713 provides: "A public official or employee shall avoid conflicts of interest at all times. When a conflict of interest arises, he shall resign from his position in any private business enterprise within thirty (30) days from his assumption of office and or divest himself of his shareholdings or interest within sixty (60) days from such assumption."

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