

SHERYLL C. DELA CRUZ, COMPLAINANT, VS. PAMELA P. MALUNAO, CLERK III, REGIONAL TRIAL COURT, BRANCH 28, BAYOMBONG, NUEVA VIZCAYA, RESPONDENT.*A.M. No. P-11-3019. March 20, 2012*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/12379790121b/>**PER CURIAM:**

This administrative matter originated from a criminal complaint (I.S. No. 5519-E-2008) filed by complainant Sheryll C. Dela Cruz (Dela Cruz) against respondent Pamela P. Malunao (Malunao), Clerk III of Branch 28 of the Regional Trial Court of Bayombong, Nueva Vizcaya (Branch 28) for the crime of robbery with extortion. The Office of the Provincial Prosecutor of Bayombong, Nueva Vizcaya forwarded the records of the case to the Supreme Court since Malunao is a trial court employee under the exclusive administrative supervision of the Supreme Court.[1] The case was then docketed as A.M. OCA I.P.I. No. 08-2972-P with the Office of the Court Administrator.

The report of the National Bureau of Investigation dated 8 May 2008 summarizes the facts of the case as follows:

Investigation disclosed that on 06 May 2008, Subject PAMELA MALUNAO y PASCUA (Subject Malunao for brevity) through several calls and text messages informed Complainant SHERYLL DELA CRUZ y CEBALLOS (Complainant Dela Cruz for brevity) that ALAY KAPWA Cooperative had given bribe money in the amount of TWENTY THOUSAND PESOS (PHP20,000.00) to HONORABLE JUDGE FERNANDO F. FLOR JR. (JUDGE FLOR for brevity), Regional Trial Court, Branch 29, Bayombong, Nueva Vizcaya through an unidentified individual in exchange of fixing the case in favor of the said cooperative against ERNESTO ROXAS, a business partner of complainant.

Subject Malunao further informed Complainant DELA CRUZ that JUDGE FLOR was willing to return the money to ALAY KAPWA Cooperative if the latter will give THIRTY-FIVE THOUSAND PESOS (PHP35,000.00) to Judge Flor through the former (Subject Malunao). Subject Malunao also intimidated Complainant Dela Cruz that if the latter will not give the said amount to Judge Flor, the said judge will rule in favor of ALAY KAPWA Cooperative.

Intimidated of the heavy damage that will arise from losing the case against ALAY KAPWA, Complainant Dela Cruz agreed to pay the amount of THIRTY-FIVE THOUSAND PESOS (PHP35,000.00) but in installment basis. Subject Malunao demanded the amount of FIFTEEN THOUSAND PESOS (PHP15,000.00) to be paid on 2:00PM, 08 May 2008.

At about 10:00AM 08 May 2008, the Complainant, wanting to confirm whether or not the transaction brokered by Subject Malunao will push through, personally approached Judge Flor at the Hall of Justice parking lot. However, when asked by Complainant Dela Cruz regarding the amount of THIRTY-FIVE THOUSAND PESOS (PHP35,000.00) that Subject Malunao asked of her, Judge Flor denied any knowledge of said transaction.

Judge Flor referred Complainant Dela Cruz to the NBI-Bayombong District Office (NBI-BAYDO) in order for the latter to file the necessary complaint against the Subject Malunao.

At about 10:30AM, Judge Flor arrived at the NBI-BAYDO to make sure that Complainant Dela Cruz had already filed a complaint before this office and that an entrapment operation will be later on set up at 2:00PM 08 May 2008.

At about 1:00PM 08 May 2008, the operatives of the NBI-BAYDO proceeded to No. 45 Espino St., Brgy. Quirino, Poblacion South, Solano, Nueva Vizcaya, complainant's residence, to conduct an entrapment operation against Subject Malunao.

Upon Subject Malunao's receipt of the marked money, the entrapment operation was announced and Subject Malunao was arrested and informed of her constitutional rights.

Subject Malunao was brought to the NBI-BAYDO where she was booked, photographed and fingerprinted.

In support of our recommendation, we are submitting the following pieces of evidence, to wit:

- Complaint Sheet;
- Sinumpaang Salaysay ni Sheryll Dela Cruz y CEBALLOS;
- Affidavit of Arrest;
- Booking Sheet and Arrest Report;
- Photocopy of the marked money
- others to follow.[2]

On 23 May 2008, Malunao filed an Affidavit[3] denying the accusations against her. Malunao claimed that Dela Cruz framed her into making it appear that she committed the offense for which she is now being charged. Malunao claims that she personally knows Dela Cruz as an employee of the Rural Bank of Solano and a businesswoman connected with ER Agro-Trading.[4] Malunao and her mother-in-law purchased piglets from ER Agro-Trading and learned that Dela Cruz was engaged in the business of lending money.[5] When Malunao inquired from Dela Cruz about a loan, Dela Cruz asked how much she needed.[6] Malunao told Dela Cruz she needed P15,000.00 to pay for the tuition fee of her daughter.[7] When Malunao followed up the loan, Dela Cruz instructed her to come to her house on 8 May 2008 at 2:00 p.m.[8] When Malunao arrived, Dela Cruz invited Malunao inside the house and offered her a seat in the living room. Dela Cruz left the living room to get the money, and when she returned, gave Malunao P15,000.00.[9] After receiving the money, Malunao asked for the promissory note she needed to sign evidencing the loan.[10] However, a tall woman emerged from the kitchen and took her bag, announced "NBI ito." At the same time, two men entered the house, opened and took pictures of the contents of her bag, and arrested Malunao.[11] Malunao was then brought to the Office of the Provincial Prosecutor of Nueva Vizcaya where she was charged.[12]

Malunao further claims that Dela Cruz knows her as employed in Branch 28 with Judge Flor as presiding judge, and not in Branch 29, as stated in Dela Cruz's Sinumpaang Salaysay.[13] In addition, Dela Cruz knows that Malunao has been suspended from office since July 2007, long before Civil Case No. 6875 entitled *Alay Kapwa Multi-Purpose Cooperative, Inc. v. Engr. Nestor A. Gonzaga and Ernesto Roxas (E.R. Agro-Trading)* was filed and raffled on 24 January 2008 to Branch 28.[14] Malunao further emphasizes that from the time she was suspended, she has not gone inside the office of Branch 28.[15] For these reasons, Malunao denies the accusations against her and claims she was framed.[16]

On 14 August 2008, the Office of the Provincial Prosecutor issued a Joint-Resolution forwarding the records of the case to the Supreme Court since Malunao is a trial court employee under the exclusive administrative supervision of the Supreme Court.[17]

On 17 August 2009, the Court referred the instant administrative complaint to Executive Judge Merianthe Pacita M. Zuraek, Branch 29, Bayombong, Nueva Vizcaya for her investigation, report and recommendation.[18]

On 12 April 2011, Executive Judge Zuraek submitted her Report/Recommendation[19] recommending the dismissal of the case for clear lack of evidence, stating:

In the instant case, complainant Sheryll C. Dela Cruz testified on direct examination on December 3, 2009. Instead of returning for the continuation of her direct examination, she filed on August 16, 2010 a manifestation expressing her desire not to pursue her case on account of her sensitive medical condition, which to her, affects her capability to actively prosecute her complaint. According to her, she would not object to the eventual dismissal of the case for lack of evidence arising from her inability to testify and produce witnesses and other evidence.

Having sensed that complainant was merely having second thoughts and was finally ready to testify, since she testified as a witness in OCA IPI No. 08-2971 entitled Judge Fernando F. Flor, Jr. versus Pamela Malunao, the undersigned set the instant case for hearing on January 20, 2011 for her to continue her direct examination. This was resorted to since the two (2) cases arose from the same transaction, which is the extortion of money from complainant. However, complainant chose not to appear.

To the mind of the undersigned, her failure to appear is a clear affirmation / confirmation of her lack of interest to prosecute her case.

x x x

In so far as the complainant is concerned, she was heard when she testified. However, the same is not true with the defendant, who because of the decision of the complainant not to appear any more, was not able to controvert her testimony by cross-examining her.

Since the testimony of the complainant was not covered by cross-examination, which is a fundamental and essential right of the respondent, the undersigned orders the evidence of complainant, both testimonial and documentary, expunged from the records. Moreover, documentary evidence to be appreciated should be formally offered in evidence. The complainant of her own volition, chose not to complete her presentation of evidence, which explains why there was no such formal offer. The rule is, evidence not offered is no evidence at all. Thus, to give it weight would be in violation of the defendant's right to due process and fair trial.

There being no evidence, the undersigned has nothing to evaluate vis a vis the facts of the case. As a result, it has no power to make conclusions of fact because it has not heard both parties.[20]

The Office of the Court Administrator (OCA), on the other hand, in its Memorandum dated 5 October 2011, recommended that: (a) the matter be re-docketed as a regular administrative matter; (b) Malunao be adjudged guilty of grave misconduct; and (c) the accrued leave credits of Malunao be forfeited, in lieu of dismissal from the service, should OCA's recommendation in A.M. OCA IPI No. 08-2974-P to dismiss her from the service be adopted by the Court.[21]

The OCA recommended the dismissal of Malunao with forfeiture of retirement benefits and accrued leave credits, contrary to the recommendation of the Executive Judge Zuraek, because technical rules of procedure and evidence, the legal basis of Executive Judge Zuraek's recommendation, should not be strictly applied in administrative proceedings.[22] Although Dela Cruz was not able to complete the presentation of her evidence before Executive Judge Zuraek, Dela Cruz's Sinumpaang Salaysay, the joint affidavit of arrest executed by the NBI agents, the Booking Sheet and Arrest Report, the photocopy of the marked money, the Complaint Sheet, and the photographs of Malunao entering Dela Cruz's house and the contents of Malunao's bag after receipt of the money, can all be considered in the appreciation of evidence to determine if there is substantial evidence to show

that Malunao committed the acts alleged in the administrative complaint.[23] Moreover, Malunao submitted an Affidavit contradicting the allegations of Dela Cruz.[24]

In addition, the OCA provided additional information that Malunao has three (3) other pending administrative matters against her, aside from the present case, namely: (a) A.M. No. P-09-2732 (Formerly OCA IPI No. 08-2971-P) for violation of R.A. No. 3019 and R.A. No. 6723; (b) OCA IPI No. 08-2974-P for Extortion and Grave Misconduct; and (c) A.M. No. P-07-2324 (Formerly OCA IPI No. 07-2-119-RTC) for Extortion and Illegal Solicitation. In fact, in A.M. No. P-07-2324, Malunao was placed under preventive suspension pursuant to the Court's Resolution dated 18 June 2007.[25]

The OCA recommended the dismissal of Malunao with forfeiture of retirement benefits and accrued leave credits, with prejudice to re-employment in any government office including government-owned and controlled corporations, contrary to the recommendation of Executive Judge Zuraek.[26]

We find the recommendation of the OCA in order.

The Uniform Rules on Administrative Cases in the Civil Service[27] govern the conduct of disciplinary and non-disciplinary proceedings in administrative cases. In Section 3, it provides that, "Administrative investigations shall be conducted without necessarily adhering strictly to the technical rules of procedure and evidence applicable to judicial proceedings."

In *Office of the Court Administrator v. Canque*,[28] the Court held:

The essence of due process is that a party be afforded a reasonable opportunity to be heard and to present any evidence he may have in support of his defense. Technical rules of procedure and evidence are not strictly applied to administrative proceedings. Thus, administrative due process cannot be fully equated with due process in its strict judicial sense. A formal or trial-type hearing is not required.

The weight of evidence required in administrative investigations is substantial evidence. In Rule 133, Section 5 of the Rules of Court, substantial evidence is defined:

In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable man might accept as adequate to justify a conclusion.

Consequently, in the hierarchy of evidentiary values, proof beyond reasonable doubt is at the highest level, followed by clear and convincing evidence, then by preponderance of evidence, and lastly by substantial evidence, in that order.[29]

For these reasons, only substantial evidence is required to find Malunao guilty of the administrative offense. In the hierarchy of evidentiary values, substantial evidence, or that amount of relevant evidence which a reasonable man might accept as adequate to justify a conclusion, is the lowest standard of proof provided under the Rules of Court. In assessing whether there is substantial evidence in administrative investigations such as this case, the Court is not bound by technical rules of procedure and evidence.

Dela Cruz, in her *Sinumpaang Salaysay* dated 8 May 2008, claimed that Malunao tried to extort money from her in exchange for a favorable resolution in the case pending before Judge Flor in Branch 28. In the entrapment operation conducted by the NBI, Malunao was arrested when she received P15,000.00 from Dela Cruz.

A criminal complaint for robbery with extortion was filed against Malunao with attached supporting documents such as the Complaint Sheet, *Sinumpaang Salaysay* of Dela Cruz, Affidavit of Arrest, Booking Sheet and Arrest Report, photocopy of the marked money, photos of Malunao entering the house of Dela Cruz and while in the

house of Dela Cruz, and photos of the contents of her bag after Malunao received the marked money. As a consequence of this case, Judge Flor filed a criminal complaint against Malunao for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019) and Section 7(d) of the Code of Conduct and Ethical Standards for Public Officials and Employees (R.A. No. 6713), which complaint was referred to this Court by the Office of the Provincial Prosecutor and now docketed as A.M. No. P-09-2732.

Malunao, on the other hand, claims that she was framed by Dela Cruz, and that she received P15,000.00 as a loan. Malunao, however, did not impute any ill-motive to Dela Cruz on why the latter would frame her.

Malunao has three administrative cases filed against her, aside from the present case, all alleging the same conduct of extortion and solicitation. In *Estabillo v. Malunao*, docketed as A.M. OCA IPI No. 08-2974-P, Estabillo, in her Affidavit, claims that Malunao, in July 2006, asked money from her in exchange for a favorable decision in a case pending before Judge Flor of Branch 28 where Estabillo was a defendant. Estabillo gave Malunao P10,000.00. On November 2007, Estabillo learned that an administrative case was filed against Malunao due to her practice of collecting money from litigants. After Estabillo confronted Malunao, Malunao promised to return the P10,000.00. However, the amount remains unpaid, so Estabillo filed the complaint against Malunao in A.M. No. OCA IPI No. 08-2974-P.

In *Office of the Court Administrator v. Malunao*, docketed as A.M. No. P-07-2324, Malunao was once again being investigated for alleged extortions and solicitations from litigants, which resulted in Malunao's preventive suspension in the Court's Resolution dated 18 June 2007.

The third case, *Judge Fernando F. Flor v. Malunao* (A.M. No. P-09-2732), is an offshoot of this case. Judge Flor of Branch 28 where Malunao is employed as Clerk III filed an administrative complaint against Malunao for soliciting money from Dela Cruz with the promise of a favorable decision from Judge Flor.

To date, none of these three administrative cases against Malunao has finally been resolved by this Court.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer.[30] The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules.[31] Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his position or office to procure some benefit for himself or for another person, contrary to duty and the rights of others.[32] Section 2, Canon 1 of the Code of Conduct for Court Personnel states: "Court personnel shall not solicit or accept any gift, favor or benefit based on any or explicit understanding that such gift, favor or benefit shall influence their official actions."

In Rule IV, Section 52(A)(11) of the Uniform Rules on Administrative Cases in the Civil Service, soliciting or accepting, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value which in the course of an employee's official duties may affect the functions of his office merits the penalty of dismissal for the first offense. Grave misconduct under Section 52(A)(3) of Rule IV is also punishable by dismissal for the first offense.

In the present case, Malunao solicited P35,000.00 and received P15,000.00 as first installment from Dela Cruz in exchange for a favorable decision in Civil Case No. 6875 entitled *Alay Kapwa Multi-Purpose Cooperative, Inc. v. Engr. Nestor A. Gonzaga and Ernesto Roxas (E.R. Agro-Trading)* pending before Judge Flor in Branch 28. Malunao was arrested in an entrapment operation upon receipt of the first installment of P15,000.00.

At the time of the solicitation, Malunao was already preventively suspended as Clerk III in Branch 28 by virtue of the Court's Resolution dated 18 June 2007 in another case, *Office of the Court Administrator v. Malunao* (A.M.

No. P-07-2324), due to allegations of the same conduct of extortion and solicitation. As a consequence of such solicitation from Dela Cruz, Judge Flor also filed a case against Malunao docketed as A.M. No. P-09-2732. In addition, Malunao has a pending administrative case in Estabillo v. Malunao docketed as A.M. OCA IPI No. 08-2974-P, where Estabillo, a defendant in a criminal case pending before Branch 28, alleges that Malunao solicited and received P10,000.00 in exchange for a favorable decision.

In the present case, Malunao clearly used her position as Clerk III in Branch 28 to solicit money from Dela Cruz with the promise of a favorable decision. This violation of Section 2, Canon 1 of the Code of Conduct for Court Personnel constitutes the offense of grave misconduct meriting the penalty of dismissal. Dela Cruz's Sinumpaang Salaysay, the joint affidavit of arrest executed by the NBI agents, the Booking Sheet and Arrest Report, photocopy of the marked money, the Complaint Sheet, and the photographs of Malunao entering Dela Cruz's house, and the contents of Malunao's bag after receipt of the money, all prove by substantial evidence the guilt of Malunao for the offense of grave misconduct.

What is more alarming and disconcerting is the fact that Malunao has continued to solicit money from litigants, even after she had been preventively suspended as Clerk III. Malunao has the propensity to abuse a position of public service and is not fit to remain in the civil service.

WHEREFORE, respondent Pamela P. Malunao, Clerk III of Branch 28 of the Regional Trial Court, Bayombong, Nueva Vizcaya is found GUILTY of GRAVE MISCONDUCT. She is hereby DISMISSED from the service, with forfeiture of retirement benefits except accrued leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations and financial institutions.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Bersamin, Abad, Villarama, Jr., Perez, Mendoza, Sereno, Reyes, and Perlas-Bernabe, JJ., concur.
Del Castillo, J., concur.

[1] Rollo, p. 3.

[2] Id. at 4-5.

[3] Id. at 46-49.

[4] Id. at 46.

[5] Id.

[6] Id.

[7] Id.

[8] Id. at 47.

[9] Id.

[10] Id.

[11] Id.

[12] Id.

- [13] Id. at 48.
- [14] Id.
- [15] Id.
- [16] Id. at 47.
- [17] Id. at 2-3.
- [18] Id. at 55.
- [19] Id. at 103-104.
- [20] Id.
- [21] Id. at 109-117.
- [22] Id. at 113.
- [23] Id. at 114.
- [24] Id.
- [25] Id. at 116.
- [26] Id. at 116-117.
- [27] CSC MC No. 19, s. 1999.
- [28] A.M. No. P-04-1830, 4 June 2009, 588 SCRA 226, 236.
- [29] Manalo v. Roldan-Confessor, G.R. No. 102358, 19 November 1992, 215 SCRA 808, 819.
- [30] Arcenio v. Pagorogon, A.M. Nos. MTJ-89-270 and MTJ-92-637, 5 July 1993, 224 SCRA 246, 254.
- [31] Roque v. Court of Appeals, G.R. No. 179245, 23 July 2008, 559 SCRA 660, 674.
- [32] Vertudes v. Buenaflor, 514 Phil. 399, 424 (2005).

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