EUSEBIO M. BARON, COMPLAINANT, VS. EMILADIE T. ANACAN, COURT STENOGRAPHER III, RTC-BRANCH 45, SAN JOSE OCCIDENTAL MINDORO, RESPONDENT.

A.M. NO. P-04-1816 (FORMERLY OCA-IPI NO. 03-1747-P). June 20, 2006

Ponente: TINGA, J.

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TINGA, J.:

The image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work thereat. Thus, the conduct of a person serving the judiciary must, at all times, be characterized by propriety and decorum and above all else, be above suspicion so as to earn and keep the respect of the public for the judiciary. The Court would never countenance any conduct, act or omission on the part of all those in the administration of justice, which will violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary.[1]

These were our words in a prior case also involving herein respondent where the Court admonished her to be more prudent in her dealings with others and sternly warned her that any similar infractions shall be dealt with more severely. This time, the Court, in keeping with its earlier admonition, imposes a penalty commensurate to the grossly reproachable conduct of respondent.

The facts of the case follow.

On 14 August 2003, complainant Eusebio M. Baron (complainant) filed before the Office of the Court Administrator (OCA) an Affidavit-Complaint[2] against Emiladie T. Anacan (respondent), Court Stenographer III of Regional Trial Court (RTC) Branch 45, San Jose, Occidental Mindoro, for grave misconduct and estafa.

Complainant alleged that he owned a parcel of land adjacent to the properties of his brother and his father. All these properties were expropriated by the Department of Public Works and Highways (DPWH) in line with its road widening project in Bubog, San Jose, Occidental Mindoro.

Complainant narrated that as he was following up the payment for the expropriated lands, he was approached by respondent who offered her services to expedite complainant's claim, as she supposedly had connections with the DPWH. Knowing respondent to be an employee of the RTC of San Jose, Occidental Mindoro, complainant consented to her proposition.

For the services of respondent, complainant agreed to pay her 40% of the total gross payment from the government for the lands expropriated as service fee. It was also agreed that respondent would in turn shoulder the expenses for the transfer of the title such as tax on capital gains, notarial fees, registration fees or transfer taxes, and the like.

Subsequently, the DPWH District Office of Mamburao released a check for P3,178,000.00 in favor of complainant. Respondent informed complainant of the check payment. As complainant encashed the check at the bank, respondent demanded P1,353,474.00, representing the 40% service fee per her computation. Despite his

protest, complainant was constrained to give the sums respondent had asked for as they were already creating a scene in the bank.

Months after, complainant received a letter from the Bureau of Internal Revenue (BIR) demanding payment of the capital gains tax for the sale of the three (3) properties to the government. Based on the letter, complainant recomputed the 40% share charged by the respondent and realized that respondent had overcharged him by P82,274.00. Complainant later on also learned that the charges incident to the transfer of the properties from the original owners, i.e. complainant, his brother and father, to the government had remained unpaid. As a result, he sent a letter[3] to respondent reminding her of the unpaid transfer charges and complaining of the overcharging she had made. Respondent sent a reply letter[4] acknowledging the receipt of the 40% service fee. In addition, respondent contended that she had already given half of the amount for the capital gains tax to complainant's wife. The latter denied having received the alleged remittance.[5]

Thus, the instant complaint. Complainant has also since filed a case of grave misconduct and estafa against respondent with the Office of the Ombudsman.

In her Comment,[6] respondent denied having approached the complainant. She maintained that it was through a certain Cecilia Gordovez that respondent knew about the need of complainant for her services to facilitate the processing of his claim of payment for the expropriated lands. Since at that time, respondent was also working for the payments of the lots of other persons, she accepted complainant's engagement of her services, with complainant voluntarily agreeing to give 40% from the gross payments of the three lots as commission or working fee. She claimed that the capital gains and transfer taxes, as well as the notarial fee, were not covered in the 40% commission.

Complainant further averred that the remittance of the 40% fee was not obtained through force or intimidation and that she never used nor made as her "shelve" her status as a court employee.

Meanwhile, on 20 November 2003, the OCA received the 1[st] Indorsement Letter[7] from the Office of the Ombudsman referring/indorsing to said office Case Nos. OMB-L-C-03-1085-I and OMB-L-A-03-0900-I entitled "Eusebio M. Baron v. Emiladie T. Anacan" in consonance with the ruling in Caoibes v. Hon. Ombusdman.[8]

On 15 March 2004, the OCA submitted to this Court its Report[9] where it recommended the re-docketing of the Affidavit-Complaint as a regular administrative matter and the referral thereof to the Executive Judge, RTC of Occidental, Mindoro for investigation, report and recommendation.

In a Resolution dated 31 May 2004, the Court resolved to refer the present administrative matter to the Executive Judge of the RTC, Occidental Mindoro for investigation, report and recommendation, as proposed by the Court Administrator.

After investigating the case, the parties were required to file their respective position papers[10] but only complainant complied with the directive of the investigating judge.

On 3 March 2005, Executive Judge Ernesto P. Pagayatan, RTC of San Jose, Occidental Mindoro, submitted to this Court his Report and Recommendation,[11] finding the acts of respondent prejudicial to the best interest of the service and recommending the penalty of six (6) months' suspension. The OCA in a Memorandum[12] dated 12 January 2006 concurred with the findings and penalty recommendation of the investigating judge on respondent's failure to observe the rudiments of good conduct in her dealings with the public, with a stern warning that a repetition of the same or similar conduct in the future will be dealt with more severely to boot.

Respondent has had two other administrative complaints lodged against her.[13] One is still pending with the

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OCA. In the other, Prak v. Anacan,[14] the Court admonished respondent for conduct prejudicial to the service. Interestingly, that case likewise involved the assistance extended by respondent for the release of sums for just compensation from the DPWH in connection with an expropriation case involving a road-widening project in Barangay Bubog, San Jose, Occidental Mindoro. Respondent's uncle was the owner of one of the expropriated properties. She facilitated the payment of her uncle's claim.

The incident in Prak concerned a similar facilitation arrangement involving another property in the same locality which was expropriated for the same road-widening project. The Court observed then that while respondent's acts therein were not connected to her official duties she should have exercised prudence in dealing with people. The Court pertinently noted then that "employees of the judiciary must be wary, and should 'tread carefully' when assisting other persons, even if such assistance sought would call for the exercise of acts unrelated to their official functions," adding that "(s)uch assistance should not in any way compromise the public's trust in the justice system."[15]

The Court in Prak warned respondent that future similar violations on her part would be dealt with more severely.[16] There are indeed similarities between Prak and this case. The two cases share a common time frame and both involve expropriation resorted to for a road widening project in Barangay Bubog, San Jose, Occidental Mindoro. While there is no certainty on this point, it is highly likely that the properties in Prak and herein complainant's properties were subjected to the same order of expropriation. The relatively benign treatment accorded respondent in Prak might falsely imply tolerance on the part of the Court over respondent's activities before the DPWH. Yet in this case, the culpabilities established before us sufficiently warrant the imposition of the penalty of suspension for (1) one year, instead of six (6) months only as recommended both by the investigating judge and the OCA.

Generally, the Court frowns upon "moonlighting" activities of court employees. In Hipolito v. Mergas,[17] the Court called to task a sheriff for improperly facilitating an application for a small scale mining permit with the Bureau of Mines, such extraneous activities being tantamount to a failure "to observe and maintain that degree of dedication to the duties and responsibilities required of [therein respondent] as a deputy sheriff."[18] While "moonlighting" is not normally considered a serious misconduct, nonetheless, by the very nature of the position held, it amounts to a malfeasance in office.[19] In Benavidez v. Vega,[20] the Court suspended a court stenographer for one month for her moonlighting activities, which involved the facilitation of the issuance of permits from Quezon City Hall and the remittance of SSS premiums of a private business. As the Court noted therein, "securing a business permit, following up of SSS and BIR registration of a business, and remitting SSS contributions are not the functions of a court stenographer, and when these are done for compensation the practice can only be considered gross misconduct calling for sanctions against a court employee."[21]

Many "moonlighting" activities pertain to legal acts that otherwise would be countenanced if the actors were not otherwise employed in the public sector. Yet "moonlighting" as an administrative offense becomes a higher species of offense if the extra-official acts involved are likewise tainted with illegality.

It is clear, from the facts of this case and in Prak, that respondent has been offering her assistance to property owners whose lands have been expropriated in obtaining their payment of just compensation from the government through the DPWH. It is not evident whether such activities are of long-standing habit on respondent's part, or in line with the road-widening project in Barangay Bubog in 2002-2003 due to which the property of respondent's uncle, among others, was expropriated. It may have occurred that respondent's initial interest was relatively innocuous-facilitating her uncle's claim for just compensation; and her facilitation of the other claims arose incidentally therefrom. Whatever the precise factual backdrop though, the particular acts highlighted in this case sufficiently establish respondent's conduct as prejudicial to the service.

Respondent in this case asked for a commission or working fee for her services, not only in one instance, but has done so regularly in several instances with several individuals as admitted by her. Thus, in her Comment/Answer,[22] she declared that the amount equivalent to 40% of the total payment made by the government to the complainant is a commission or a working fee, and that she was also working for the payments of the lots of Mrs. Tomasa and Augusto Nacar and the lots of Atty. Eriberto and Domingo Palomar.[23] Even in the case of Prak, the conflict was also DPWH payment facilitation by respondent. Hence, it would seem that respondent has made it an extra source of income to "fix" the DPWH payments for expropriated lands for a fee. Without a doubt, respondent has been engaging in "moonlighting," which is prohibited by the Court.

A couple of additional factors militates against respondent's cause. One is the enormous amount of commission given to her. The other is the display of her patent gross character by her not being content in receiving P1,271,200.00 but overcharging complainant by P82,274.00.

The Court likewise notes that respondent was not candid in relating her side of the case as she stated in her Comment/Answer that the 40% commission excluded the payment of expenses for the transfer of the titles from the name of complainant, his brother and father to the name of the government. However, complainant filed his Reply to Comment/Answer of Emiladie Anacan[24] attaching thereto a Sworn Statement by herein respondent who admitted receiving 40% share in the payment and recognizing her responsibility to pay all the necessary expenses for the transfer of the title as well as the incidental expenses such as representation cost for hotel and food bills.[25] In giving conflicting statements, respondent portrays lack of candor to this Court that is not only disrespectful but also insolent in the context of the power of this Court over its personnel.

The Court has repeatedly declared that the behavior of everyone connected in the dispensation of justice from the presiding judge to the lowliest clerk must always be beyond reproach and circumscribed with the heavy burden of responsibility. Failure to observe this rule is to erode the dignity and honor of the courts or to lay open to suspicion the official conduct of their personnel.[26] Thus, in Gotgotao v. Millora, we held:[27]

> The image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel-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. The conduct of court personnel at all times must not only be characterized by propriety and decorum but also be above suspicion. Thus all court personnel are enjoined and required to comport themselves in such manner as to avoid any taint of suspicion being cast on their actuations, official or private.[28]

Respondent has already been admonished and warned by this Court in her first administrative case. However, she shows no remorse and instead committed another act which not only affronted complainant but also disgraced the judiciary, of which she is a part. Her dishonest dealings with complainant; the conflicting statements she made in her Comment in the present case and the Sworn Statement in the Ombudsman case; the exorbitant commission she sought from complainant for the facilitation of the payment from DPWH; and her act in misappropriating the money which should have been used for the payment of capital gains and transfer taxes and other expenses for the transfer of title, if sufficiently proven, constitute the crime of estafa as defined in the Revised Penal Code. All the foregoing are aggravated by the fact that respondent was previously admonished by the Court for a similar behavior. Thus, respondent has clearly demonstrated conduct prejudicial to the best interest of the service.

Conduct grossly prejudicial to the best interest of the service is a grave offense under Section 46, No. 27, Chapter 6, Subtitle A, Title I of Book V of the Administrative Code of 1987 (E.O. No. 292), Section 23 (t), Rule XIV of the Omnibus Rules Implementing Book V of E.O. No. 292, and Revenue Memorandum Circular No. 49-89, as incorporated in the Personnel Manual of the Supreme Court. The penalty for conduct grossly prejudicial to the

best interest of the service is suspension for six (6) months, one (1) day to one (1) year, for the first offense, and the penalty of dismissal for the second offense.[29]

As above discussed, the questionable character of respondent, and whether such is acceptable in a court employee, her act of overcharging and non-payment of expenses for the transfer of the titles of complainant, concern the Court. Under the circumstances, the Court is constrained to impose upon respondent the penalty of suspension for one (1) year.

WHEREFORE, premises considered, respondent is hereby declared GUILTY of conduct grossly prejudicial to the best interest of the service and SUSPENDED for a period of one (1) year, with a stern warning that the commission of similar or graver offense in the future shall be dealt with more severely.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, Chico-Nazario, and Garcia, JJ., concur.
Velasco, Jr., J., no part, due to prior action of OCA.

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[1] Prak v. Anacan, A.M. No. P-03-1738, 12 July 2004, 434 SCRA 110.

[2] Rollo, pp. 1-5, with annexes.

[3] Dated 25 March 2003, rollo, p. 4.

[4] Dated 8 July 2003, id. at 5.

[5] See Report and Recommendation of Executive Judge Ernesto P. Pagayatan, p. 2.

[6] Rollo, pp. 8-12, with annexes.

[7] Rollo, p. 23.

[8] In the case cited, the Court held that "the Ombudsman is duty bound to have all cases against judges and court personnel filed before it, referred to the Supreme Court for determination as to whether an administrative aspect is involved therein." 305 Phil. 717, 724 (2001).

[9] Rollo, pp. 32-34.

[10] Order dated 1 December 2004 by Executive Judge Ernesto P. Pagayatan, id. at 59.

[11] Rollo, pp. 45-47.

[12] Id. at 73-75.

[13] Three in all, namely: (1) A.M. No. P-04-1816 entitled Eusebio Baron v. Emiladie Anacan, the present complaint, (2) IPI-03-1776-P entitled Virginia Gordovez v. Emiladie Anacan pending in the Office of the Court Administrator for Evaluation Report and Recommendation, and (3) A.M. No. P-03-1738 entitled Prak v. Anacan promulgated on 12 July 2004.

[14] Supra note 1.

[15] Supra note 1 at 116.

[16] Id.

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[17] A.M. No. P-90-412, 11 March 1991, 195 SCRA 6.

[18] Id. at 10.

[19] Id. See also Biyaheros Mart Livelihood Association Inc. v. Cabusao, Jr., A.M. No. P-93-811, 2 June 1994, 232 SCRA 707, 712 and Cortez v. Soria, 434 Phil. 793 (2002).

[20] 423 Phil. 437 (2001).

[21] Id. at 441.

[22] Rollo, pp. 8-9.

[23] Id. at 8.

[24] Rollo, pp. 13-22 with annexes.

[25] Sworn Statement of respondent filed with the Office of the Ombudsman. id. at 16.

[26] Dino v. Dumukmat, 412 Phil. 748, 753 (2001).

[27] A.M. No. P-05-2005, 8 June 2005, 459 SCRA 340.

[28] Id at 345-346.

[29]Alday, et al. v. Cruz, Jr., A.M. No. RTJ-00-1530, 14 March 2001, 354 SCRA 322, 337.

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