JUDGE REUBEN P. DE LA CRUZ, COMPLAINANT, VS. ATTY. ANNA LIZA M. LUNA, RESPONDENT.

A.M. NO. P-04-1821. August 02, 2007

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PER CURIAM:

At bar are consolidated cases filed against respondent Atty. Anna Liza M. Luna, clerk of court of the Regional Trial Court (RTC), Branch 18 of Tagaytay City, for grave misconduct and dishonesty for falsifying court documents and for her failure to properly account for court collections amounting to over P12 million.

In A.M. No. P-04-1281, complainant Judge Reuben de la Cruz, assisting judge of the RTC, alleged that respondent issued a decision and an order making it appear that they were duly issued by the trial court. On May 20, 2004, he submitted to us copies of documents[1] issued by respondent which were as follows:

> - copy of the trial court order dated January 22, 2004 dismissing the petition for the issuance of the owner's certificate of title filed by one Oscar Grande in PET TG No. 1050 [petition for issuance of owner's duplicate of titles];
>
> - copy of a fictitious judgment issued on the same date in PET TG No. 1050; and,
>
> - copy of a certification dated March 9, 2004 issued by respondent certifying to the effect that the fictitious judgment had already become final and executory.

Judge de la Cruz added that a certain Zenaida vda. de la Vega had also furnished him a copy of her demand letter[2] to respondent for the return of P50,000 which the latter solicited for the issuance of a new owner's copy of a transfer certificate of title.

On May 31, 2004, respondent tendered her resignation.

On June 8, 2004, the Court issued a resolution[3] treating Judge de la Cruz's complaint against respondent as a regular administrative complaint for grave misconduct. We also (1) referred it to the Office of the Court Administrator (OCA) for investigation, report and recommendation; (2) required respondent to file her comment to the complaint; (3) placed her under suspension pending the outcome of the investigation and (4) directed the OCA to immediately conduct a judicial audit.

Subsequently, OCA's audit team conducted a financial audit which showed a cash shortage of over P12 million. In its report, it made the following recommendations:

> - This report be DOCKETED as a regular administrative matter against [respondent] and consolidated with A.M. No. P-04-1821...
>
> - [Respondent] be DIRECTED to RESTITUTE shortages incurred in the Judiciary Development, Special Allowance for the Judiciary Fund, Clerk of Court General Fund, Sheriffs General Fund and Sheriffs Trust Fund amounting to P8,269,307.76, P5,176.46, P1,435,131.18, P93,108.13 and P2,437,750.00, respectively or a total of P12,240,473.53.

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- Hold Departure Order be ISSUED against [respondent] to prevent her from leaving the country without settling the shortages found.

- The LEGAL OFFICE be DIRECTED to file appropriate criminal charges against [respondent].[4]

In a resolution,[5] we adopted OCA's recommendation. The audit report was then docketed as A.M. No. P-05-2018 and consolidated with A.M. No. P-04-1821.

Later, the OCA audit team submitted an amended report incorporating therein a new computation of the respondent's cash shortages. The amended report read:

Based on the records presented, the following are our significant audit findings/observations with [regard] to extra-judicial foreclosure of mortgage cases:

- There was a total shortage of TWELVE MILLION EIGHTY-FIVE THOUSAND EIGHT HUNDRED THIRTY ONE PESOS and 61/600 (P12,085,831.61).

Cash shortages were incurred due to the following:

- Non-collection/under-collection of filing fees on some extra-judicial foreclosure cases in the amount of Three Million Seven Hundred Thirty-Four Thousand Seven Hundred Forty-Six Pesos and 99/100 (P3, 734,746.99). OCA Circular No. 1-2000 provides that all applications for extra-judicial foreclosure of mortgage whether under the direction of the Sheriff or Notary Public...shall be filed with the Executive Judge, through the Clerk of Court who is also the Ex-Officio Sheriff . The [Office of the Clerk of Court] was further directed to collect the filing fees...and issue the corresponding [o]fficial [r]eceipt.

Audit disclosed that[,] [respondent] failed to collect the filing fees on twenty-three (23) foreclosure cases which would amount to [P3,363,280.90].

It was also evidently observed that the basis used in the computation of the filing fee was not consistent. Other cases were based only on the principal amount of the mortgage secured, excluding interest and other charges...[w]hile in cases wherein the total amounts of indebtedness were not higher than [P1 million], interest, penalties and other charges were included in the computation as this would not affect the amount of filing fee to be paid which is peg at P2,000. Non-inclusion of interests and other charges in the computation resulted to [an] under-collection of filing fees in the total amount of [P371,466.07].

- Non-collection of advertising fee in the total amount of Nineteen Thousand Four Hundred Fifty (P19,450.00).

As provided for under Section 9(h) of ...Rule 141 [of the Rules], for advertising a sale, besides cost of publication, [P50.00] shall be collected upon filing a case. Advertising fee is to be allocated to the Judiciary Development Fund [JDF] and the General Fund [GF]...

Although not properly allocated to the JDF and GF funds, the Court collected an advertising fee every case filed thereat from...1999 onwards. However, from CY 1995-1998, there was no showing that an advertising fee of P50.00 per case has ever been collected, which translates to [the] non-collection of P19,450.00...

- Non-remittance of posting fee amounting to Six Hundred Seventy-Seven Thousand Seven Hundred Fifty Pesos (P677,750.00).

As evidenced by [a]cknowledgment [r]eceipt found in some case folders, [respondent] collected posting fee of P250.00 per case for the year[s] 1996-1996 and a minimum of P500.00 per case from 1997 onwards, depending on the location where the "NOTICE OF EXTRA-JUDICIAL SALE" will be posted. During her accountability period, [respondent] could have collected a total of no less than P677,750.00 as posting fee without issuing [o]fficial [r]eceipt...

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> - Non-collection/under-collection of sheriff's commission in the total amount of Five Million Eight Hundred Sixty-Six Thousand Five Hundred Eighty-Four Pesos and 62/100 (P5,866,584.62).
>
> Based on the documents presented, there [was] a total of 949 foreclosure cases filed...from 1995-2002...Of this total, 603 were found to have been either disposed or withdrawn as evidenced by the Certificate of Sale (COS) issued and the corresponding sheriff's commissions collected by the Clerk of Court...However, it was noted that there were a total of 125 cases which [have] already been disposed...but there was no proof that [the] sheriff commission in the total amount of P3,159,541.34...was collected.
>
> Moreover, due to the unsystematic [record-keeping], the [OCA] Team considered as disposed those [extra-judicial foreclosure] cases with incomplete set of documents, for it is irrational to consider them as pending since the cases were filed a long time ago and that there was no Letter of Withdrawal of petition attached to the case [folders]. But in the absence of the [COS], instead of bid price, we use the amount of indebtedness as basis in the computation of [the] sheriff commission and arrived at an uncollected amount of P2,603,399.00...
>
> - Non-collection of Entry Fee on 91 [extra-judicial foreclosure cases] in the amount of Twenty-Seven Thousand Three Hundred Pesos (P27,300.00).
>
> As provided for under Section 20 (d) of Rule 141, for application for and entries of Certificates of Sale (COS) and final deeds of sale in extra-judicial foreclosures and mortgages, the [Clerk of Court] is mandated to collect P300.00. Non-collection of entry fee on 91 [extra-judicial foreclosure] cases resulted to under collection of P27,300.00...in the Judiciary Development Fund.
>
> - Non-remittance of sheriffs fees in the amount of One Million Seven Hundred Sixty Thousand pesos (P1,760,000.00).
>
> As evidenced by acknowledgement receipts attached to some case folders, [respondent] used to collect from the winning bidder a minimum of P5,000 every case disposed as sheriff's fee. For the years 2000-2002 alone, she could have collected a total of P1,760,000.00 (352 cases x P5,000) by issuing only an acknowledgement receipt. Such collection should have been deposited to the Sheriff's Trust Fund account to be later dispensed with, subject to the disbursement of all the expenses incurred in administering and executing the process. But what [respondent Clerk of Court] did was she handled the money and directly paid the sheriff who executed the process...[6]

The Court later on designated retired Justice Romulo S. Quimbo as hearing officer in the investigation of the allegations in A.M. No. P-04-1281. During the investigation, respondent admitted issuing the spurious court documents. After the hearings were concluded, Justice Quimbo found respondent guilty not only of grave misconduct but also of dishonesty.

In its report[7] to the Court, the OCA echoed Justice Quimbo's findings and stated further that respondent's act was covered by Article 171 of the Revised Penal Code defining falsification of public documents by a public officer. According to the OCA, "the issuance in an authenticated form of a document purporting to be a copy of an original document when no such original exists, or including in such copy a statement contrary to, or different from, that of the original"[8] was a violation of the penal provision.

The OCA further ratiocinated:

> In the face of the evidence which respondent did not contest, it is evident that she is guilty of the most serious misconduct in office for which she deserves the maximum penalty that may be imposed in an administrative case. The Investigating Justice recommends that respondent be dismissed from the service for dishonesty and grave misconduct, with forfeiture of all her benefits and with prejudice to re-employment in any branch of the government, including government-owned or controlled corporation.

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> It is also recommended that the records of this case be referred to the Bar Confidant and require the respondent to show cause why she should not be disbarred from the practice of law.
>
> It is recommended further that the records of this case be referred to the Ombudsman for possible criminal prosecution.
>
> We agree with the observation as well as the recommendation of the Investigating Justice.
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> xxx xxx xxx
>
> WHEREFORE, in view of all the foregoing, respectfully submitted for the consideration of the Court are our recommendations that:
>
> - Respondent Ana Liza M. Luna, Clerk of Court, RTC-Branch 18, Tagaytay City be DISMISSED from the service with forfeiture of all retirement benefits except accrued leave and with prejudice to re-employment in any branch of the government, including government-owned or controlled corporations; and
>
> - The records of this case be referred to the Bar Confidant and require the respondent to show cause why she should not be suspended, disbarred or otherwise disciplinarily sanctioned as a member of the Bar for issuing falsified court orders; and
>
> - The Ombudsman be furnished with certified true copies of the records of this case for possible criminal prosecution.[9] (underscoring supplied)
>
> We adopt the OCA's findings and recommendations.

In A.M. No. P-04-1821, respondent improperly and brazenly clothed herself with judicial authority by issuing a fake court judgment and order. There is a clear usurpation of a judicial function when a person who is not a judge performs an act the authority for which has been vested only upon a judge.[10] Without doubt, respondent's actuation constituted grave misconduct because the act complained of was inspired by an intention to violate the law or constituted flagrant disregard of well-known legal rules.[11]

She was also guilty of dishonesty, meaning "a disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."[12] Moreover, in falsifying court documents to favor litigants for a fee, she likewise behaved like an extortionist.

Respondent deserves no place in the judiciary. Respondent should have known that her office did not only require competence or efficiency but also integrity, honesty and uprightness. The men and women who work in the judiciary should always act with propriety for the image of the courts is mirrored in the conduct of its personnel.[13] They should be role models in the faithful observance of the constitutional canon that public office is a public trust.[14] Respondent miserably failed to live up to all these standards.

In A.M. No. P-05-2018, this Court finds that the cash shortage was respondent's accountability. As designated custodian of court funds and properties, she was liable for any loss or shortage thereof.[15]

Clerks of courts 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.[16] As such, respondent was duty-bound to use skill and diligence in the performance of her officially designated functions. She was the accountable officer vested with the serious responsibility of collecting and depositing the money belonging to the Court.[17]

In the OCA audit report,[18] respondent not only failed to collect required legal fees such as filing fees on

extra-judicial foreclosure cases, advertising fees (including cost of publication, for foreclosure sales), sheriff's commissions and entry fees on 91 extra-judicial foreclosure cases,[19] but also did not remit or immediately deposit the sheriffs' fees and posting fees she collected. Under Supreme Court Circular No. 50-95, respondent should have deposited all her collections within 24 hours with the Land Bank of the Philippines.

Respondent's repeated failure to remit court funds, as well as to give a satisfactory explanation for this failure, constitutes grave misconduct, dishonesty and even malversation.[20] Clerks of court, being next in rank to judges, are constantly warned that dishonesty which amounts to malversation of public funds will not be countenanced as they definitely reduce the image of courts of justice to mere havens of thievery and corruption.[21]

In sum, we find that respondent is guilty of grave misconduct and dishonesty both in A.M. No. A.M. No. P-04-1821 and A.M. No. P-05-2018. In both instances, the penalty of dismissal from service with forfeiture of all retirement benefits and disqualification from re-employment in any branch of the government, including government-owned or controlled corporations, ought to be imposed.[22]

In addition, pursuant to A.M. No. 02-9-02-SC,[23] we deemed these administrative cases as disciplinary proceedings for disbarment as well. Respondent, as an attorney and officer of the court, may be disbarred (or suspended) not only for violation of her lawyer's oath but also on the statutory grounds enumerated in Section 27, Rule 138 of the Rules of Court, namely (1) deceit; (2) malpractice, or other gross misconduct in office and (3) grossly immoral conduct.

Under the same rule, respondent "may forthwith be required to comment on the complaint and show cause why (she) should not also be suspended, disbarred or otherwise disciplinary sanctioned as member of the Bar." Considering, however, that said comment is not mandatory, that respondent has categorically admitted that she falsified a court decision/order and that the investigation of Justice Quimbo showed her guilt beyond the shadow of doubt, we are constrained to disbar her.

Gross misconduct and dishonesty put a lawyer's moral character in serious doubt and render her unfit to continue in the practice of law. Possession of good moral character is not only a prerequisite to admission to the bar but also a continuing requirement to the practice of law.[24] If the practice of law is to remain an honorable profession and attain its basic ideals, those enrolled in its ranks should not only master its tenets and principles but should also accord continuing fidelity to them. The requirement of good moral character is of much greater import, as far as the general public is concerned, than the possession of legal learning.[25]

Lastly, the criminal prosecution of respondent is likewise called for by the circumstances.

WHEREFORE, respondent Atty. Anna Liza M. Luna is hereby found GUILTY of Grave Misconduct and Dishonesty both in A.M. No. P-04-1821 and in A.M. No. P-05-2018. Accordingly, she is (1) DISMISSED from the service with forfeiture of all retirement benefits, and with prejudice to re-employment in any branch of the government, including government-owned or controlled corporations; (2) DISBARRED from the practice of law and (3) ORDERED to restitute the cash shortage in the Regional Trial Court, Branch 18 of Tagaytay City, amounting to P12,085,831.61.

Let the records of this case be forwarded to the Ombudsman for the filing of the appropriate criminal charge(s) against Atty. Anna Liza M. Luna.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Garcia, Velasco, Jr., and Nachura, JJ., concur.

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[1] Rollo (A.M. No. P-04-1821), pp. 4-6.

[2] Id., p. 7.

[3] Id., p. 8.

[4] Report dated April 14, 2005. Rollo, (A.M. No. P-05-2018), p. 1.

[5] Dated June 7, 2005. Id., pp. 72-73.

[6] The OCA Audit Team Report dated January 26, 2006. Id., pp. 84-95.

The OCA audit team report also indicated that (1) the RTC did not maintain a docket book for application for extra-judicial foreclosure of mortgages in violation of the OCA Circular No. 7-2002; (2) the assignment of docket number on extra-judicial foreclosure cases was disorganized in violation of A.M. No. 99-10-05-0; (3) the certificate of sale did not bear the original/authentic signature of the judge in violation of OCA Circular 7-2002; (4) the excess bid amount over the amount of indebtedness was not immediately turned over to the mortgagors; (5) respondent committed unjustifiable delay in the release of redemption money (P600,000) in one case; (6) several foreclosure cases of the Home Development Mutual Fund (PAGIBIG) remained not acted on and (7) foreclosure cases documents were not being kept systematically.

[7] Rollo (A.M. No. P-04-1821), pp. 61-66.

[8] Id., pp. 66-67.

[9] Id., pp. 64-65.

[10] Miñoso v. Pamulag, A.M. No. P-05-2067, 31 August 2005, 468 SCRA 407.

[11] Salazar v. Barriga, A.M. No. P-05-2016, April 19, 2007.

[12] OCA v. Ibay, 441 Phil. 474 (2002) citing BLACK'S LAW DICTIONARY, Sixth Ed., 1990.

[13] Aquino v. Miranda, A.M. No. P-01-1453, 27 May 2004, 429 SCRA 230.

[14] Id.

[15] Report on the Financial Audit Conducted at the MCTC-Mabalacat, Pampanga, A.M. No. P-05-1989, 20 October 2005, 473 SCRA 456.

[16] Report on the Financial Audit in the RTC, General Santos City, 384 Phil. 155 (2000).

[17] Id.

[18] Supra, at note 5.

[19] Rollo (A.M. No. P-05-2018), pp. 88-89.

[20] See Concerned Citizen v. Gabral, Jr., A.M. No. P-05-2098, 15 December 2005, 478 SCRA 13.

[21] Id.

[22] Uniform Rules in Administrative Cases in the Civil Service. See also Concerned Citizen v. Gabral, Jr., supra.

[23] Re: Automatic Conversion of Some Administrative Cases Against Justices of the Court of Appeals and the Sandiganbayan; Judges of Regular and Special Courts; and Court Officials Who are Lawyers as Disciplinary

Proceedings Against Them Both as Such Officials and members of the Bar.

[24] Heck v. Santos, A.M. No. RTJ-01-1657, 23 February 2004, 423 SCRA 329.

[25] Ferancullo v. Ferancullo, A.C. No. 2714, November 30, 2006.

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