

OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS. JESUS VINCENT M. CARBON III, FORMERLY CLERK III, REGIONAL TRIAL COURT, ZAMBOANGA CITY, RESPONDENT.

A.M. No. P-10-2836 (from RTJ-07-2070). September 28, 2011

Ponente: BRION, J.

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BRION, J.:

We resolve in this Decision the administrative charge against Jesus Vincent M. Carbon III (respondent or Carbon III) made pursuant to the directive of the Court in its June 4, 2008 Resolution in A.M. No. RTJ-07-2070 (formerly A.M. OCA IPI No. 07-2613-RTJ).

Background

The case A.M. OCA IPI No. 07-2613-RTJ traces its roots to the affidavit-complaint of Joie Ramos against Judge Gregorio dela Peña III, Presiding Judge, Regional Trial Court (RTC), Branch 12, Zamboanga City, received by the Office of the Court Administrator (OCA) on February 28, 2007. Joie claimed that during the pendency of the case filed by Joie's wife, for partition against the heirs of Venancio Go (Special Civil Action No. 551), before the sala of Judge Dela Peña, the latter asked money from him, and that he gave the latter around P300,000.00. However, when Joie refused to give more money to Judge Dela Peña, the latter dismissed Special Civil Action No. 551 and denied the motion for reconsideration. In support of his allegations, Joie attached to his complaint the affidavit of respondent Carbon III.

The Court ordered Judge Dela Peña to comment. He duly complied and in this comment, he denied all of Joie's allegations.[1] On July 30, 2007, the Court issued a Resolution[2] redocketing the case as a regular administrative matter (A.M. No. RTJ-07-2070), and referred the case for investigation, report and recommendation.

In the investigation conducted by the assigned Justice of the Court of Appeals,[3] Judge Dela Peña appeared and testified, but neither Joie nor his witnesses appeared. In light of this development, the investigating Justice opined that the charges against Judge Dela Peña were not supported by the required quantum of evidence in administrative disciplinary proceedings.[4] The investigating Justice also noted Joie's statement in his affidavit that he never had any direct communication with Judge Dela Peña, all communications and transactions having been coursed through respondent Carbon III who acted as go-between. The investigating Justice recommended the dismissal of the administrative complaint against Judge Dela Peña, and the investigation of respondent Carbon III based on the latter's admissions in his affidavit.

The Court approved the recommendation and dismissed the administrative complaint against Judge Dela Peña in its June 4, 2008 Resolution,[5] and directed as well the Executive Judge of the RTC, Zamboanga City "to investigate the involvement of Jesus Vincent M. Carbon III, an employee of the RTC-OCC, Zamboanga City, in view of [the] admissions in his affidavit, and to submit a report and recommendation thereon within ninety (90) days from receipt of the records." We issued this Resolution pursuant to our authority to *motu proprio* investigate court personnel even in the absence of a direct complaint or of a complainant, and to discipline erring members

and employees after the observance of due process.[6]

Our Resolution of June 4, 2008, for the investigation of respondent Carbon III was driven by the respondent's affidavit[7] in the case against Judge Dela Peña which states:

I, Jesus Vincent M. Carbon III, of legal age, married, and a resident of Putik, Zamboanga City, Philippines, after being duly sworn in accordance with law, depose and state:

That I am an employee of the Regional Trial Court in Zamboanga City, particularly the Office of the Clerk of Court; I have been in the employ of the said government agency for more than thirteen (13) years now;

That, sometime early last year (2005), I became aware of the appointment of Gregorio dela Peña III, a local private law practitioner, as Presiding Judge of Regional Trial Court Branch 12;

That, my personal association with Judge dela Peña III began shortly after his assumption of office; said association went further by virtue of my employment as a court employee and the fact that I am the son of my father who is his fellow Judge;

That sometime middle of last year, I personally approached Judge dela Peña III to make a follow-up on the case of a friend which has been then pending before his Branch; that, the said case is the case filed by Natasha Dioquino, the wife of my friend Joie Ramos, against the heirs of Venancio Go for inheritance;

That after several follow-ups regarding the aforementioned case, Judge dela Peña III commented to me that the case is inherently weak. That such weakness can only be remedied, as he placed it, "kung meron tayo." Upon clarification, I came to understand that his phrase "kung meron tayo" came to mean as "money";

That as a result of such, Judge dela Peña III urged me several times to ask money from Joie Ramos, the husband of the (sic) Natasha Dioquino; that, on two separate occasions, I handed over to Judge dela Peña III the amounts of Php60000 and Php35000;

That I am executing this Affidavit to attest to the truth of the foregoing and in support of charges against Judge Gregorio dela Peña III of the Regional Trial Court[,] Branch 12 of Zamboanga City and for whatever other action that may be filed against him. [emphases ours]

The investigation of the respondent was assigned to Zamboanga City RTC Executive Judge Reynerio G. Estacio who scheduled the investigation for January 27 and April 17, 2009, and sent notices to respondent Carbon III at his known address, together with a copy of Joie's affidavit and his own affidavit. Respondent Carbon III, however, did not appear nor did he submit any evidence in his defense. The return of the first notice to him at his address of record shows that the notice was received for him by a certain Michelle Reyes, while the second notice was returned unserved for the reason "House Closed."

In fact, respondent Carbon III stopped reporting for work starting March 2007, without the benefit of any approved leave of absence. This was at about the time Judge Dela Peña was being asked by the Court to comment on the charges of Joie. Subsequently, Carbon III filed his resignation from office effective July 2007, but this resignation was never approved due to his failure to submit the required clearance. Parallel to this development, Joie wrote SC Administrator Christopher Lock on June 28, 2007 asking that the investigation against Judge Dela Peña be stopped because an unknown person sent him P300,000.00 cash to answer for the amount Judge Dela Peña borrowed. On October 8, 2007, Judge Dela Peña filed a Manifestation and Motion asking that Carbon III be compelled to state - under oath - the time, place and dates he allegedly gave the sums of P65,000.00 and P35,000.00 to Judge Dela Peña. Carbon III never resurfaced.

In A.M. No. 08-3-115-RTC (Dropping from the Rolls of Mr. Jesus Vincent Carbon III, Clerk III, RTC, Office of the Clerk of Court, Zamboanga City), the Court issued a Resolution on April 2, 2008[8] that reads:

The Court NOTES the Report dated 05 February 2008 of the Office of the Court Administrator [OCA] on the failure of Mr. Jesus Vincent Carbon III to submit his bundy cards from the month of March 2007 up to the present, submitting that he has not filed any application for leave; that Mr. Carbon III tendered his resignation effective 25 July 2007; and that, to date, he has not submitted the necessary clearances for his resignation.

Upon the recommendation of the OCA, the Court resolves to:

- (1) DROP FROM THE ROLLS the name of Mr. Jesus Vincent Carbon III effective 24 March 2007 for having been absent without official leave (AWOL);
- (2) DECLARE his position vacant; and
- (3) INFORM Mr. Carbon III of his separation from the service or dropping from the rolls at the address appearing in his 201 File, that is at B5 L7, A & N Subdivision, Sta. Barbara, Zamboanga City.

In his Report and Recommendation[9] of August 13, 2009, Judge Estacio found that the respondent's act of demanding and receiving money from a party litigant constituted grave misconduct in office - a grave offense punishable by dismissal from the service pursuant to Section 23, Rule IX of the Omnibus Rules Implementing Book V of Executive Order No. 292, and other pertinent Civil Service Laws. Judge Estacio recommended the respondent's dismissal from the service with prejudice to re-employment in any branch, instrumentality or agency of the government, including government-owned and controlled corporations, and forfeiture of all his benefits, except accrued leave credits.

The OCA, in its Report of March 23, 2010,[10] agreed with Judge Estacio's finding and recommendation. It cited Section 26, Rule 130 of the Rules of Court,[11] and our ruling in *Unchuan v. Lozada*[12] that "a man's acts, conduct, and declaration, wherever made, if voluntary, are admissible against him" because "it is fair to presume that they correspond with the truth, and it is his fault if they do not." As well, the OCA argued that the solicitation of money from a litigant in exchange for a favorable decision violates Sections 1 and 2, Canon I of the Code of Conduct for Court Personnel.[13] Thus, the OCA recommended that the case be redocketed as a regular administrative matter and that the respondent be found guilty of gross misconduct. Since the respondent had been dropped from the rolls, the OCA recommended that he be fined the amount of P40,000.00, with forfeiture of all the retirement benefits he is entitled to except accrued leave credits, if any, and that he be barred from re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations.

The Court's Ruling

As a preliminary matter, we note the unusual twists this case took, as the respondent was initially only a witness in another case - the investigation of Judge Dela Peña - where he had an active role and where he made incriminatory admissions that led, after investigation, to the docketing of a separate administrative case against him. At or about the time Judge Dela Peña was being investigated (in which investigation respondent Carbon III submitted his affidavit), the respondent stopped reporting to his office and subsequently submitted a resignation letter that the Court did not approve for lack of the required clearance. An unusual twist came when the Court, instead of directly disapproving his resignation letter and relating his resignation to the investigation in the case of Judge Dela Peña, simply dropped him from the rolls and considered him separated from the service.

To be sure, the OCA's recommendation and the subsequent Court action were unfortunate, but this lapse notwithstanding, we hold that, under the unique circumstances of this administrative matter, the respondent's absence without leave and dropping from the rolls did not place him outside our reach as he apparently intended; he cannot use his disappearance as a shield against liability for his actions while he was in office. We can likewise continue with the case against him as this case was brought while he was still an active employee of the Court.

After he has been heard through his affidavit and after giving him the opportunity to explain himself and to put up his defenses, he cannot now hide under the claim of denial of due process. Joie was clear in his complaint regarding the illegality complained about - bribery allegedly perpetrated by Judge Dela Peña through the respondent. Thus, it was a complaint, no less, against the respondent to which he responded with an admission that he indeed "followed up" the case and secured sums from Joie under the representation that these were to be given to Judge Dela Peña. In the ensuing formal investigation, the respondent failed to appear despite notice. Instead, he conveniently dropped out of sight. It was under these facts that we maintain our continuing jurisdiction to hold the respondent administratively liable as a court employee for an illegality committed while in the service.

On the merits, we agree with the OCA's finding that the respondent is guilty of gross misconduct as charged. He admitted in his affidavit that he followed up Natasha Dioquino's case with Judge Dela Peña and that he handed over to the latter, on two occasions, sums of money from Joie. While the case against Judge Dela Peña did not prosper for lack of evidence that he indeed demanded and received money in return for a favorable ruling on Natasha Dioquino's case, what remains uncontested is that money changed hands between Joie and the respondent on the understanding that these sums would be a consideration for receiving a favorable judgment on a case that the respondent "worked on." In plainer terms, what remained proven was a case-fixing activity where the respondent was a direct participant as the middleman and fixer between the decision maker and the litigant. Under these circumstances, that Judge Dela Peña might not have been a party to the nefarious arrangement is immaterial as what remained was the respondent's demand for a bribe that implicated a judge, in fact a colleague of his own father in the Judiciary.

Thus viewed, the respondent's flawed character and unfitness for a position in the Judiciary stand out, aggravated by his shallow scheme to escape liability by dropping out of sight to render him out of the reach of our processes. As we held in the case of *Office of the Ombudsman v. Uldarico P. Andutan, Jr.*,^[14] separation from the service renders a former employee out of the reach of the government's administrative processes with respect to the former employment, but this claim does not hold true if the separation from the service was in contemplation of and to escape administrative liability from an offense that took place and was investigated while the employee was still in the service.^[15]

Under Section 52(A)(3) of the Revised Uniform Rules on Administrative Cases in the Civil Service,^[16] grave misconduct carries the penalty of dismissal for the first offense. Since the respondent had earlier been declared dropped from the rolls, the penalty of dismissal is now ineffectual. In lieu of dismissal, we hereby impose an administrative fine of P40,000.00, with accompanying forfeiture of all the retirement or separation benefits he may be entitled to, except accrued leave credits. The P40,000.00 fine shall be deducted from any such accrued leave credits, with the respondent personally held liable for any deficiency which shall be directly payable to this Court. He is further declared disqualified from any future government service.

WHEREFORE, we find respondent Jesus Vincent M. Carbon III GUILTY of grave misconduct, and impose on him a FINE of Forty Thousand Pesos (P40,000.00) and the forfeiture of whatever retirement or separation benefits may be due him, except accrued leave credits, if any. The P40,000.00 fine shall be deducted from any remaining accrued leave credits he may have; otherwise, we hold him personally liable for the fine to be directly paid to this Court. The Fiscal Management and Budget Office is DIRECTED to compute the monetary value of the respondent's leave credits and to apply any remaining credit to the satisfaction of the fine imposed. We further declare him disqualified from re-employment in any branch, agency or instrumentality of the government, including government-owned and controlled corporations.

Let a copy of this Decision be furnished the Office of the Ombudsman for whatever action it may deem appropriate.

SO ORDERED.

Del Castillo,[**] Perez, Mendoza,[***] and Sereno, JJ., concur.
Brion,[*] (Acting Chairperson) J.

[*] Designated as Acting Chairperson of the Second Division in lieu of Associate Justice Antonio T. Carpio per Special Order No. 1083 dated September 13, 2011.

[**] Designated as Acting Member of the Second Division in lieu of Associate Justice Antonio T. Carpio per Special Order No. 1084 dated September 13, 2011.

[***] Designated as Acting Member of the Second Division in lieu of Associate Justice Bienvenido L. Reyes per Special Order No. 1107 dated September 27, 2011.

[1] Comment, filed on March 27, 2007.

[2] Rollo, pp. 391-392.

[3] Associate Justice Romulo V. Borja; investigation hearings conducted on October 25, November 13 and 20, 2007.

[4] Rollo, p. 541.

[5] Id. at 606-607.

[6] Constitution, Article VIII, Section 6; *Maceda v. Vasquez*, G.R. No. 102781, April 22, 1993, 221 SCRA 464; and *Bernardo v. Judge Fabros*, 366 Phil. 485, 493 (1999).

[7] Dated October 13, 2006 and attached to Joie's complaint against Judge Dela Peña; rollo, p. 13.

[8] Id. at 605B.

[9] Id. at 616-620.

[10] Id. at 645-649.

[11] The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.

[12] G.R. No. 172671, April 16, 2009, 585 SCRA 421, 435.

[13] SECTION 1. Court personnel shall not use their official position to secure unwarranted benefits, privileges or exemptions for themselves or for others.

SECTION 2. 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.

[14] G.R. No. 164679, July 27, 2011.

[15] *Pagano v. Nazarro, Jr.*, G.R. No. 149072, September 21, 2007, 533 SCRA 622.

[16] CSC Memorandum Circular No. 19-99.

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