

JUDGE VERONICA A. DONDIEGO, COMPLAINANT, VS. PETRONIO D. CUEVAS, JR., CLERK OF COURT, MUNICIPAL TRIAL COURT, TAMBULIG, ZAMBOANGA DEL SUR, RESPONDENT.

A.M. No. P-03-1681 (Formerly OCA I.P.I. No. 99-680-P). February 28, 2003

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PER CURIAM:

Judge Veronica A. Dondiego, the Municipal Trial Court (MTC) Judge of Tambulig, Zamboanga del Sur, sent a sworn letter-complaint, dated 22 June 1999, addressed to then Court Administrator Alfredo Benipayo, against Petronio D. Cuevas, Jr., Clerk of Court II, MTC, of Tambulig, Zamboanga del Sur, charging the latter with incompetence, dishonesty and gross neglect of duty.

Judge Dondiego is assigned to different salas in five municipalities and one city. In order to cope with her work, she has entrusted much of the supervision of administrative matters in each sala to the respective clerks of court. In her letter-complaint, Judge Dondiego stated that respondent Cuevas was most of the time either not in his office or absent from work even when the Judge would be in Tambulig. Once, a litigant complained to the Judge that the cash bond deposited with respondent could not be accounted for by the latter. When confronted by the Judge about it, respondent neither denied nor admitted having taken the amount. The Judge then instructed a member of her staff to obtain a certification and computerized bank statement from the Rural Bank of Bonifacio, Misamis Occidental, where the court was maintaining its account. It appeared from the bank statement of 01 February 1999, that the court's deposit of P20,936.55 did not tally with what had been posted by way of cash bonds per the court's records. Respondent thenceforth kept on evading the Judge. Sometime later, in May 1999, the Judge issued Office Order No. 01-99 requiring respondent to submit MCTC Savings Passbook Account No. 51-04063-4. When shown to her, Judge Dondiego was dumbfounded to see that as of 05 May 1999, there was a balance of only P8,093.77, as against the bonds posted with the court, totaling P25,800.00, still not withdrawn, to wit:

1) Criminal Case No. 1939

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P20,000.00

2) Criminal Case No. 1780

-

1,800.00

3) Criminal Case No. 1765

-

2,500.00

4) Criminal Case No. 1934

-

1,500.00

Total

P25,800.00

In Criminal Case No. 1910, the judge said, the court's resolution dismissing the case remained unserved and the cash bond posted by the accused in the case appeared to have been borrowed by respondent. The Judge additionally averred that respondent failed to remit on time judiciary development fund collections.

In its 1[st] Indorsement of 02 August 1999, the Office of the Court Administrator (OCA) referred and required respondent to submit his comment within ten (10) days from receipt of the letter-complaint of Judge Dondiego.

In his comment, dated 09 November 1999, respondent denied the charges and asserted that the accusations were malicious and baseless, contending that the complaint was motivated by a personal grudge of the Judge against him. He explained that the resolution in Criminal Case No. 1910, although served late, was nevertheless sent to the parties. He placed the blame on a clerk for not mailing it on time. Negating the claim that he borrowed the cash bond of the accused, respondent said that the money was actually put up by the bondsman, Municipal Mayor Eduardo C. Balaod, to whom he personally handed the money upon the request of the sister of the accused. Contradicting the Judge that he was always out or absent, respondent said that he absented himself from work only "once in a while" and "only whenever needed or necessary as any other employee would normally do." Finally, respondent asseverated that while there might have been some lapses in proper accounting reports on fund disbursements which resulted in inaccurate bank records vis-à-vis court records, he implored, however, the indulgence and compassion of this Court considering (a) his faithful thirty years of government service and (b) that this was the first time that a complaint had been lodged against him.

In a resolution, dated 17 January 2001, the Court referred the case to Executive Judge Camilo E. Tamin of the Regional Trial Court (RTC), Branch 23, of Molave, Zamboanga del Sur, for investigation, report and recommendation.

On 23 May 2001, Executive Judge Tamin issued an "ORDER" (should have been aptly titled, "REPORT and RECOMMENDATION"), recommending the dismissal of the charges against respondent; Judge Tamin explained:

"When this case was called for hearing on the charges against respondent for misappropriation of fiduciary funds, absenteeism and incompetence both the respondent and the complainant failed to appear.

"Present in today's proceedings is Lourderoma Lerasan, the Administrative Officer of the Rural Bank of Bonifacio, Bonifacio, Misamis Occidental.

"Filed with this Office is an affidavit of desistance of complainant Veronica A. Dondiego which states that she is withdrawing her administrative case against respondent Petronio Cuevas, Jr., Clerk of Court II, MCTC, Tambulig, Zamboanga del Sur.

"Since no evidence has been adduced to substantiate any of the 'charges under investigation in this case, it is recommended that the administrative charges for misappropriation of fiduciary funds, absenteeism and incompetence be DISMISSED.'"[1]

The OCA, in its Memorandum of 28 August 2001, expressing dissatisfaction over the report and recommendation

of Executive Judge Tamin, gave this observation:

“Records reveal that the instant case was initially set for investigation on 08 and 09 May 2001. On 30 April 2001, complainant requested postponement of the hearing, which was granted by the court in an Order dated 03 May 2001. In his Order, Investigating Judge Tamin reset the hearing for 23 and 24 May 2001. However, at the hearing on 23 May 2001, complainant filed an Affidavit of Desistance. On the same day, Judge Tamin issued an order recommending the dismissal of the case on the basis of the affidavit of desistance executed by herein complainant.

“From the foregoing, it can be clearly seen that no earnest effort was exerted by herein investigating judge to determine why the present administrative case was filed in the first place, and why complainant supposedly suddenly lost interest in the case she initiated. The complainant should have been asked to explain why she was reversing her position and withdrawing her complaint. And, Judge Tamin should have delved into the basis of the charges.

“Considering the seriousness and gravity of the offense now sought to be withdrawn, an exhaustive investigation is necessary. The allegations in the pleadings should not be taken lightly but examined carefully and the parties concerned should be confronted with them. Judge Tamin should not have satisfied himself with the pro-forma affidavit of desistance of private complainant and her suspicious non-appearance during the hearing.”[2]

On 26 September 2001, the Court issued another resolution, this time referring the case to RTC Executive Judge Loreto C. Quinto of Branch 30, Aurora, Zamboanga del Sur, for a more exhaustive and extensive investigation, report and recommendation. Judge Quinto, following his investigation, submitted his report and recommendation thusly:

“1. The constant absence of the Respondent in office everytime Judge Dondiego will hold office. How will Judge Dondiego properly supervise the Respondent in such a situation? Why did Judge Dondiego [fail] to correct this when it is her duty to properly manage the Court? If that is the situation, the Respondent has an average absence of eight (8) days a month or ninety-six (96) days a year;

“2. There were delays by the Respondent in the remittances of his collections for the JDF, and General Fund. This was admitted by him but his reason that he might be absent when they will be prepared is unacceptable. The testimony of Mrs. Capirig is very credible because she based it on record when she conducted her audit on the Respondent. The Respondent was delayed in his remittances of JDF collections from September, 1989 to November, 1990 or a total of 15 months; from December 1990 to September, 1994 or a total of 46 months or a continuous non-remittance from September, 1989 to September, 1994 or a sum total of five (5) years and one (1) month; from February, 1997 to August, 1998 or a total of nineteen (19) months; from October, 1998 to March, 1999 or a total of six (6) months. The collections from April, 1999 to October 17, 2000 [are] not remitted;

“As to the collections for the General Fund, from February, 1997 to September, 1998, they were remitted but only on October, 1998; from January, 1999 to December, 1999, they were not remitted; and from January, 2000 to October, 2000, they were not remitted;

“3. The Respondent had failed for at least fifteen (15) times of cash bail bonds received by him which were duly receipted by official receipts but were not deposited by him in the Rural Bank of Bonifacio where the MTC had its Savings Account.

“4. The Respondent and the complainant have not observed Administrative Circular No. 50-95 for according to them they have not read it. The Investigator had found out that said circular was on file in the folder for Supreme Court Circulars.

“5. Perusing carefully, the Passbook of the Savings Account, there are withdrawals in amounts that do not coincide with the amounts deposited.”[3]

Judge Quinto, however, declined from making any recommendation on the proper penalty to be imposed on respondent, stating that respondent was his Clerk of Court when he was designated Acting Presiding Judge of MTC, Tambulig, Zamboanga del Sur, from 1977 to 1991 during which time, he added, no anomaly appeared to have been perpetrated by respondent. Judge Quinto asked this Court to consider the long service of respondent in the government.

In a resolution, dated 02 October 2002, the matter was indorsed by the Court to the OCA for evaluation, report and recommendation. In due time, that office submitted its findings and evaluation, it concluded:

“With respect to respondent, the latter admitted during the said hearing the late remittances he made as reflected in the above table of collections. The respondent further admitted that he cannot remember having received Circular No. 50-95 but heard about it. He said there are times that he failed to read some circulars of the Supreme Court because the court personnel who received these Circulars will immediately attach them to the files. In addition, he admitted that he was the only one who signed deposit slips but the withdrawal slips were signed by him and Judge Dondiego. Furthermore, he admitted that he did not withdraw the interests earned by the savings account. (transcript of stenographic notes - pp. 24-26, Hearing of March 7, 2002).

“Anent the allegations of habitual tardiness and absenteeism, respondent admitted that he will hold office ONLY if Judge Dondiego is absent so that either one of them can accommodate people who will appear in their office. Respondent justifies the late remittances as the times when he will not report to office. With regard to the issue wherein he just ‘time-in the logbook’ and disappear, respondent admitted the same as true but attributes the same to his having an ‘important family problem’ that needs to be prioritized.

“x x x x x x x x

“Even far more serious than his untenable assertions of ignorance was respondent’s undue delay in depositing the collections for the Judiciary Development Fund for the period starting September 1989 to November 1990 but were remitted only on 14 December 1990 or after the lapse of fifteen (15) months. The collection for the same fund from December 1990 to September 1994 or a total of 46 months, was remitted only on 04 November 1994; from February 1997 to August 1998 or for a total of 19 months, was remitted only on 16 September 1998; from October 1998 to March 1999 or for a total of 6 months, the same was remitted only on 23 April 1999; and from April 1999 to 17 October 2000 or for a total of 17 months, no remittances were made. For the collections of the General Fund, from February 1997 to September 1998 or for a total of 20 months, it was remitted only on 16 October 1998; from January 1999 to December 1999 or for a total of 12 months, there was no remittance made, and from January 2000 to October 2000 or for a total of 10 months, there was likewise no remittance made.”[4]

The OCA recommended the dismissal from the service of respondent Petronio D. Cuevas, Jr., for “Dishonesty, Gross Neglect of Duty, Incompetence, Habitual Tardiness and Absenteeism, and Conduct Prejudicial to the Best Interest of the Service.”

Indeed, respondent Petronio D. Cuevas, Jr., has fallen much below the canon demanded of all Public Officials and Employees by the Code of Conduct and Ethical Standards. Public servants are called upon to uphold public interest over personal needs. Certainly, no less can be expected from those involved in the administration of justice. Everyone, from the highest official to the lowest-rank employee, must live up to the strictest norms of probity and integrity in the public service. A single act of impropriety is all that may take to compromise the good name and reputation of the entire institution. This Court has warned clerks of court in particular, being next in rank to judges in courts of justice, that dishonesty cannot be countenanced. Clerks of Courts are custodians of

court funds and revenues, and they are depended on in seeing to a fiduciary task; thus, they are often reminded that they are not supposed to personally keep entrusted funds but are obliged to immediately deposit the various amounts received by them in authorized government depositories. A failure to timely turn over cash deposited with them constitutes, not just gross negligence in the performance of their duty, but gross dishonesty, if not malversation.[5] Against those who have been unmindful of this responsibility or have ignored their accountabilities, this Court has not hesitated to impose the ultimate penalty.[6]

The investigation conducted would reveal that respondent has had an average absence of eight (8) days a month or ninety-six (96) days a year.[7] An employee's frequent unauthorized absences to attend to personal matters not only undermine his efficiency as a court personnel[8] but they also can have an enduring adverse effect in the prompt delivery of justice.

This Court is left with no choice but to declare respondent Clerk of Court Petronio D. Cuevas, Jr., guilty of dishonesty, gross neglect of duty, habitual tardiness and absenteeism, and conduct prejudicial to the best interest of the service. Dishonesty alone, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification for reemployment in the government service. This penalty accords with Section 52 and Section 58, Rule IV, of the Civil Service Commission Memorandum Circular No. 19, Series of 1999 (Revised Uniform Rules on Administrative Cases in the Civil Service).[9]

WHEREFORE, respondent Petronio D. Cuevas, Jr., having been found guilty of dishonesty, gross neglect of duty, habitual tardiness and absenteeism and conduct prejudicial to the best interest of the service, is **DISMISSED** from the service effective immediately, with **FORFEITURE** of all benefits, except accrued leave credits if any, with prejudice to his reemployment in any branch or service of the government including government-owned and controlled corporations.

The Court Management Office is **DIRECTED** to promptly conduct a financial audit of the Tambulig MTC of Zamboanga del Sur.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio Morales, Callejo, Sr., and Azcuna, JJ., concur.
Ynares-Santiago, and Corona, JJ., on leave.

[1] Rollo, p. 66.

[2] Memorandum, 09 December 2002, pp. 3-4.

[3] Report of Judge Quinto, 20 May 2002, pp. 16-17.

[4] Memorandum, 09 December 2002, pp. 6-9.

[5] Re: Report on Audit and Physical Inventory of MTC of Peñaranda, Nueva Ecija, 276 SCRA 257.

[6] Office of the Court Administrator vs. Galo, 314 SCRA 705.

[7] Report of Investigating Judge, p. 16.

[8] Castillo vs. Buencillo, etc., A.M. No. P-97-1241, 20 March 2001, 354 SCRA 641.

[9] Office of the Court Administrator vs. Magdalena G. Magno, etc., A.M. No. P-00-1419, 17 October 2001.

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