

**FELOMINO D. MENDOZA, JR. AND FELO JANE M. MARGATE,
COMPLAINANTS, VS. ANNALEE C. NAVARRO, UTILITY WORKER,
MUNICIPAL TRIAL COURT, ASUNCION, DAVAO DEL NORTE,**

A.M. NO. P-05-2034 (FORMERLY OCA I.P.I. NO. 04-1930-P). September 11, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a Complaint[1] with an attached Joint Affidavit[2] executed by Felomino D. Mendoza, Jr. and Felo Jane M. Margate charging Annalee C. Navarro, Utility Worker, Municipal Trial Court (MTC) of Asuncion, Davao del Norte with Dishonesty and Conduct Prejudicial to the Best Interest of the Service.

The allegations of complainants, as contained in their Joint Affidavit, are as follows:

That on September 09, 2003, a certain Analie Navarro, regular Utility Worker assigned at Municipal Trial Court of the Local Government Unit of Asuncion, Davao del Norte, collected from us the amount of two hundred pesos (P200.00) as payment for Joint Affidavit and Affidavit of Support for our mother, Virginia D. Mendoza who had been confined at Alegre Medical Clinic, Kapalong, Davao del Norte;

That when we asked the official receipt for the said sworn statements, she furnished us the receipt for Joint Affidavit bearing number 17232702 in the amount of twenty four pesos (P24.00); and Affidavit of Support bearing number 17232652 in the amount of one peso (P1.00);

That when we informed one of her colleagues about what she had done to us, he said that she had been doing this for quite a long time;

That we executed this affidavit to inform the authorities concerned of the facts above stated and for whatever legal purpose it may serve us best.[3]

The complaint was originally filed with the Office of the Ombudsman for Mindanao. In his 1st Indorsement dated March 25, 2004, Deputy Ombudsman Antonio E. Valenzuela forwarded the records of the case to then Court Administrator Presbitero J. Velasco, Jr. for appropriate action.[4] On May 21, 2004 the Office of the Court Administrator (OCA) directed respondent to file her Comment to the Complaint.[5]

In her Comment[6], respondent denied the charges imputed by complainants against her, contending as follows:

x x x x

- It is not true that I received from the complainants the amount of P200.00 because what they actually gave me and which I actually received from them was only the amount of P25.00;
- As requested by them, I issued a receipt for the Joint Affidavit P24.00 for the JDF and P1.00 for the GF receipt or a total of P25.00, because I learned that this rate or fee for preparation of affidavits prevailing in the municipality;
- I immediately prepared the affidavits requested by the complainants in the sincere belief that I was helping

them, hence, instead of filing a case against me, complainants should be thankful that I immediately accommodated their request for preparation of affidavits prevailing in the municipality;

- That I understand that preparation of affidavits is the practice in all courts throughout the country in municipalities where there are no law offices or no notaries public, like in Asuncion, Davao del Norte;

- That in all candor, I prepared the affidavits knowing that there is nothing wrong with it, as it is being done by employees in other courts, as well as to supplement the very low income which I am receiving from the court as a Utility Worker in the Municipal Trial Court of Asuncion, Davao del Norte;

- That I am the only breadwinner of the family with five (5) children and my husband is not gainfully employed;

- That after having been operated for Breast Cancer and underwent Chemotherapy I have been on continuous medication since then up to the present; copies of my medical records are hereto attached;

- That I request this Honorable Office to dismiss the complaint against me as I believe that I have not done anything wrong. However, if this Honorable Office would consider wrong and as an offense the preparation of the affidavits and my charging of fees, then I respectfully plead to this Honorable Court to be lenient to me and be compassionate to my plight and to my family, especially that this is my first offense as an employee of the Municipal Trial Court of Asuncion, Davao del Norte.[7]

Upon recommendation of the OCA,[8] the Court, in separate Resolutions, dated July 11, 2005, re-docketed the complaint as a regular administrative matter and referred the same to the Executive Judge of the Regional Trial Court (RTC), Tagum, Davao del Norte for investigation, report and recommendation.[9]

After conducting an investigation, Executive Judge Oscar G. Tirol submitted his Investigation Report, Evaluation and Recommendation dated November 11, 2005 with the following findings:

Respondent is the Utility Worker of the Municipal Trial Court of Asuncion, Davao del Norte, then presided over by now RTC Judge Justino G. Aventurado. She is married and has five children. She did not finish first year college and on November 1999 underwent mastectomy of her left breast.

x x x x

On September 9, 2003, the mother of complainants got admitted for asthma at the Alegre Medical Clinic in Kapalong, Davao del Norte. She was required, for Philhealth benefits purposes, to secure two affidavits: affidavit of lost birth certificate, and affidavit of two disinterested persons.

Since Felomino was at work on September 9, 2003, he directed Felojane to secure the affidavits required from the municipal [trial] court, there being no notary in Asuncion (TSN, p. 2)

On her way to court in the morning of September 9, Felojane obtained P200.00 from Felomino [for] the documents needed (TSN, p. 2 to 3).

At 11:00 A.M. when she arrived in court, three employees were present at the staff room, one of them the respondent seated at one of the tables. She approached respondent and inquired where she could secure the required affidavits and respondent replied she could prepare them (TSN, p. 3). Respondent, in reply to Felojane's question of how much the two affidavits would cost, said that at P100.00 per affidavit, the total cost would be P200.00 (TSN, p. 4).

Felojane made no attempt to haggle on the cost mentioned. Respondent directed her to gave [sic] the names of the "two disinterested persons." Two persons at the ground floor of the building whom Felojane knew agreed to sign the affidavit and their names were what she gave to respondent who then prepared the two affidavits (TSN. p. 8). It was already lunchtime when respondent finished typing the two affidavits, so after Felojane got

the signatures of the two disinterested persons, she was told by respondent to whom she gave P200.00, to leave the affidavits and be back at 2:00 P.M. since Judge Aventurado at that time would be back from MTC Kapalong (where he was also assigned as acting judge) for the notarization required (TSN, p. 4).

At 2:00 P.M., Felojane received the two affidavits which now appeared to be notarized by Judge Aventurado. Respondent also handed to her two official receipts which she did not bother to look at. Felojane did not ask for any change, believing the change [sic] was really P200.00 (TSN, p. 5 and 6).

When Felomino got hold of the receipts given to Felojane, he felt aggrieved seeing that the amounts therein reflected totaled only P25.00 when what respondent in fact received was P200.00. He also felt mad considering that he and respondent were even neighbors in the same building (TSN, p. 7).

A week after the transaction, Felomino met respondent and confronted her about her overcharging. Respondent replied that they used [the] rest of the money for "pasahe" and for snacks. This angered Felomino even more and was advised by the municipal administrator to sue respondent at the Ombudsman (TSN, p. 7).

x x x x

The respondent admitted preparing the two affidavits for Felojane Margate towards noon of September 9, 2003 since earlier that morning, the acting branch clerk of court Edgar Torres told Felomino who needed the affidavits to approach respondent for their preparation (TSN, p. 9).

x x x x

The respondent also admitted that she actually received the amount of P200.00 from Felojane Margate x x x.

x x x x

While respondent admittedly prepared the two affidavits that complainants needed, she did not go as far as notarizing them. The affidavits (no copy of which were submitted by complainants to the undersigned investigator) were notarized by Judge Aventurado himself when he returned to court in the afternoon of that day.

Respondent has been candid enough, and appeared contrite, when she admitted to the undersigned that she received P200.00, but issued receipts for P25.00 only, thus wittingly failing to return the balance of P175.00 to complainants. And while complainants did not at once demand return of the excess of P175.00, this circumstances [sic] does not make the scheme any less sordid for a court employee as respondent is.[10]

x x x x

Judge Tirol found respondent guilty of dishonesty. However, on the basis of the amount of money which respondent misappropriated, the investigating judge concluded that the offense may be considered as simple misconduct. Accordingly, he recommended a penalty of suspension for two months.[11]

In a Resolution dated February 27, 2006, the Court referred the investigation, report, evaluation and recommendation of Judge Tirol to the OCA for its own evaluation, report and recommendation.[12]

In its Memorandum of May 8, 2006, the OCA adopted the findings and recommendation of Judge Tirol.[13]

The Court sustains the conclusion of the OCA and the investigating judge that respondent is guilty of simple misconduct but modifies the recommended penalty.

Respondent admitted before the investigating judge that she prepared two affidavits for the complainants; that she received the amount of P200.00 from complainant Felo Jane but only issued two receipts in the amounts of P24.00 and P1.00; that she did not return Felo Jane's change of P175.00; and that she misappropriated a portion of

the said change.

Under the 2002 Revised Manual for Clerks of Court, the following are the functions of a Utility Worker:

2.2.7. Utility Worker

2.2.7.1. acts as courier of the Court

2.2.7.2. maintains and keeps custody of a record book on matters dispatched by him;

2.2.7.3. monitors messages received and/or delivers mail matter to court employees;

2.2.7.4. sews originals of records, pleadings/ documents as directed by the Branch Clerk of Court, docket clerk and-clerk-in-charge in the strict order of dates in which received and in the correct expediente, seeing to it that they are sewn straight, and that no letterings or parts thereof are stitched;

2.2.7.5 maintains cleanliness in and around the court premises; and

2.2.7.6. performs such other functions as may be assigned by the Presiding Judge and/ or Branch Clerk of Court.[14]

There is nothing in the above-enumerated functions that authorizes a utility worker of the court to perform clerical tasks such as the preparation of an affidavit.

Respondent declared before Judge Tirol that it was Judge Aventurado, then presiding judge of MTC, Asuncion, Davao del Norte, who encouraged her to learn to prepare affidavits in order for her to earn additional income and that it was the acting branch clerk of court who referred complainant Felomino to her. It is true that Sub-section 2.2.7.6 allows a utility worker to "perform such other functions as may be assigned by the Presiding Judge and/or Branch Clerk of Court. However, the Court cannot give credence to respondent's self-serving claims because these are mere allegations unsupported by convincing and credible proof.

Even granting, for the sake of argument, that respondent was indeed authorized by the presiding judge or the branch clerk of court to prepare affidavits requested from their office, she is not excused from asking P200.00 from complainants and thereafter issuing a receipt for the amount of P25.00 only without returning the change of P175.00.

The Court has consistently held that persons involved in the administration of justice ought to live up to the strictest standards of honesty and integrity in the public service.[15] The conduct required of court personnel, from the presiding judge to the lowliest clerk, must always be beyond reproach and circumscribed with the heavy burden of responsibility.[16] This Court cannot countenance any act or omission by all those involved in the administration of justice, where such act or omission would violate the norm of public accountability and diminish the faith of the people in the judiciary.[17]

In the present case, respondent's improper conduct subjected the court's image to distrust. For this, the Court finds respondent guilty of simple misconduct.

Misconduct is defined as a transgression of some established or definite rule of action; more particularly, it is an unlawful behavior by the public officer.[18] Respondent may not be held guilty of dishonesty because she issued receipts which accurately reflect the amount that should have been charged for the affidavits she prepared. She is only guilty of simple misconduct for her failure to return the change of complainant Felo Jane and of subsequently appropriating the same for her personal use.

Section 52(B)(2) of the Revised Rules on Administrative Cases in the Civil Service classifies simple misconduct

as a less grave offense punishable by suspension of one month and one day to six months for the first offense, and dismissal for the second offense.

However, in *Balajadia v. Gatchalian*[19], a court stenographer found guilty of simple misconduct was fined in the amount of P3,000.00 after the court took into consideration the fact that it was her first administrative offense. In addition, the Court in previous cases, found it proper to mitigate the administrative penalties imposed upon erring judicial officers and employees for humanitarian reasons coupled with other extenuating circumstances.[20] The court has also ruled that where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe.[21] It is not only for the law's concern for the workingman; there is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent on wage earners.

Thus, for humanitarian reasons, considering that respondent has five children and a husband who is not gainfully employed; that she is on continuous medication after having undergone operation and chemotherapy for breast cancer; that it appears on the records at hand that this is respondent's first offense; that she admitted her transgression during the investigation and that she appears contrite, as observed by the Investigating Judge, the Court finds it fit to impose the penalty of fine in the amount of P2,000.00.

The Court takes note of the following testimony of respondent during her investigation:

Q. Mrs. Margate, during her examination, said that you charged her P200.00 for the two affidavits when she asked you how much the affidavits would cost. Is this true?

A. Yes, sir.

Q. Is it also true when she said that she handed to you the P200.00 after both affidavits were typed already?

A. Yes, sir.

Q. She said you issued two (2) receipts -one for P24.00 and the other for P1.00. What can you say about this?

A. That is right, sir. The P24.00 covered by O.R. 17232702 was for the JDF and the P1.00 covered by O.R. 17232652 was for the general fund.

Q. How come you did not give the change of P175.00 when what you officially received was only P25.00?

A. When Judge Aventurado arrived, sir, I handed to him the P200.00. He instructed me to issue a receipt for one affidavit in the amount of P25.00. And this P25.00 is covered by both receipts when you total the P24.00 and the P1.00.

Q. Did you not ask the judge for the change of P175.00 to be returned to complainants?

A. I did not do that anymore, sir because it has been customary for us in that court to charge P100.00 for every affidavit that we prepare.

Q. When you say "us", who are you referring to?

A. Except for the process server, sir, who is always out of the office, all of us who are in that office charge P100.00 for every affidavit we prepare.

Q. Coming to this transaction, what happened to the P175.00 that was the excess after the charges for the affidavits?

A. Judge Aventurado kept the P100.00 and he handed to me the P75.00 because he pity me because I always need medicine for my breast cancer.[22]

The Court cannot simply brush aside respondent's abovementioned allegations of wrongdoing in the court where she serves, especially with respect to her claim that Judge Aventurado pocketed half of the amount paid by complainant Felo Jane for the affidavits which respondent prepared.

The Court also takes note of the findings of the Investigating Judge that what has been notarized by Judge Aventurado are an affidavit of lost birth certificate and an affidavit of two disinterested persons, both of which are sought to be secured for the purpose of enabling the mother of the complainants to avail of PHILHEALTH benefits. These are private documents which bear no direct relation with the exercise of Judge Aventurado's official functions and duties.

Under Supreme Court Circular No. 1-90, municipal trial court and municipal circuit trial court judges are empowered to perform the functions of notaries public ex-officio, subject to certain qualifications. The text of said Circular reads:

Municipal Trial Court (MTC) and Municipal Circuit Trial Court (MCTC) judges are empowered to perform the functions of notaries public ex-officio under Section 76 of Republic Act No. 296, as amended (otherwise known as the Judiciary Act of 1948) and Section 242 of the Revised Administrative Code. But the Court hereby lays down the following qualifications on the scope of this power:

MTC and MCTC judges may act as notaries public ex-officio in the notarization of documents connected only with the exercise of their official functions and duties [Borre v. Moya, Adm. Matter No. 1765-CFI, October 17, 1980, 100 SCRA 314; Penera v. Dalocanog, Adm. Matter No. 2113-MJ, April 22, 1981, 104 SCRA 193.] They may not, as notaries public ex-officio, undertake the preparation and acknowledgment of private documents, contracts and other acts of conveyances which bear no direct relation to the performance of their functions as judges. The 1989 Code of Judicial Conduct not only enjoins judges to regulate their extra-judicial activities in order to minimize the risk of conflict with their judicial duties, but also prohibits them from engaging in the private practice of law (Canon 5 and Rule 5.07).

However, the Court, taking judicial notice of the fact that there are still municipalities which have neither lawyers nor notaries public, rules that MTC and MCTC judges assigned to municipalities or circuits with no lawyers or notaries public may, in the capacity as notaries public ex-officio, perform any act within the competency of a regular notary public, provided that: (1) all notarial fees be charged for the account of the Government and turned over to the municipal treasurer (Lapeña, Jr. v. Marcos, Adm. Matter No. 1969-MJ, June 29, 1982, 114 SCRA 572); and, (2) certification be made in the notarized documents attesting to the lack of any lawyer or notary public in such municipality or circuit

In the present case, respondent alleged in her Comment that there are no law offices or notaries public in Asuncion, Davao del Norte. The records are bereft of any evidence to prove this allegation. Even if this allegation were true, which would have given Judge Aventurado the authority to notarize the subject affidavits, it would appear that there is still a possible violation of the above-quoted Circular because only a portion of the fees collected from and paid by Felo Jane was charged for the account of the government.

Under Section 6, Article VIII of the Constitution, the Supreme Court has administrative supervision over all courts and the personnel thereof. Such power of supervision carries with it the authority to order the conduct of investigation and impose sanction upon court officers and employees found to have committed an administrative offense. In consonance with this power, the Court directs the OCA to conduct an investigation to determine the possible liability of Judge Aventurado in the notarization of the abovementioned affidavits and his alleged appropriation for personal use of part of the sum paid for such affidavits; as well as on the possible liability of other personnel of the MTC, Asuncion, Davao del Norte in preparing affidavits not germane to their official functions and duties.

WHEREFORE, respondent Annalee C. Navarro is found GUILTY of SIMPLE MISCONDUCT. She is FINED in the amount of P2,000.00 with a STERN WARNING that a repetition of the same or similar act of misconduct would be dealt with more severely.

The Court Administrator is DIRECTED to conduct an investigation on the possible culpability of Judge Justino G. Aventurado and personnel in the collection of excessive fees for affidavits prepared while he was the presiding Judge of MTC, Asuncion, Davao del Norte; and to initiate the proper charges against the Judge and the MTC personnel, if warranted, under a separate docket number.

SO ORDERED.

Panganiban, C. J., (Chairperson), Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ. concur.

[1] Rollo, p. 6.

[2] Id. at 5.

[3] Id.

[4] Id. at 1.

[5] Id. at 9.

[6] Id. at 10.

[7] Id. at 10-11.

[8] Id. at 14-16.

[9] Id. at 17 and 18.

[10] Id. at 21-24.

[11] Id. at 25.

[12] Id. at 85.

[13] Id. at 86-89.

[14] Volume I, pp. 206-207.

[15] Office of the Court Administrator v. Duque, A.M. No. P-05-1958, February 7, 2005, 450 SCRA 527, 533.

[16] Id.

[17] Id.

[18] Miñoso v. Pamulag, A.M. No. P-05-2067, August 31, 2005, 468 SCRA 407, 418.

[19] A.M. No. P-02-1658, October 21, 2004, 441 SCRA 82, 87.

[20] In Re: Delayed Remittance of Collections of Teresita Lydia R. Odtuhan, OIC, RTC, Br. 117, Pasay City, 445 Phil. 220, 226-227 (2003); Tan v. Paredes, A.M. No. P-04-1789 and A.M. No. RTJ-04-1841, July 22, 2005, 464 SCRA 47, 58-59.

[21] Re: Habitual Absenteeism of Mr. Fernando P. Pascual, A.M. No. 2005-16-SC, September 22, 2005, 470

SCRA 569, 573.

[22] TSN, September 13, 2005, rollo, pp. 60-62.

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