

ANONYMOUS, COMPLAINANT, VS. JESSICA MAXILINDA A. IBARRETA, SHERIFF IV, REGIONAL TRIAL COURT OF IRIGA CITY, CAMARINES SUR, BRANCH 36, RESPONDENT.

A.M. No. P-19-3916 (Formerly OCA IPI No. 17-4710-P). June 17, 2019

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

The instant administrative case arose from the letter indorsement[1] dated January 8, 2016 of Assistant Ombudsman Joselito P. Fangon (Assistant Ombudsman Fangon) and the undated anonymous complaint[2] charging respondent Jessica Maxilinda A. Ibarreta (respondent), Sheriff IV of the Regional Trial Court of Iriga City, Camarines Sur, Branch 36 (RTC) of: (a) acquiring ill-gotten wealth; and (b) engaging in lending business with high interest and devoting her official time in promoting her financial and propriety pursuit, respectively.

The-Facts

At around two (2) o'clock in the afternoon of January 7, 2016, the Office of the Ombudsman received an anonymous call reporting that respondent displays wealth which is disproportionate to her monthly wage, has a money lending business, and is a powerful and influential person because judges in the RTC always give special preference to her.[3] The Office of the Ombudsman, through Assistant Ombudsman Fangon, forwarded the complaint to the Office of the Court Administrator (OCA), which referred the matter to Executive Judge Timoteo A. Panga, Jr. (Judge Panga) of the RTC for investigation. After Judge Panga submitted his partial report,[4] Hon. Manuel M. Rosales (Judge Rosales) was designated as the new executive judge of the RTC, and as such, he took over the investigation of the case,[5] and thereafter, submitted his own report.[6]

In their reports, Judge Panga and Judge Rosales observed that: (a) respondent's marriage had been annulled; (b) she has two (2) college-level children who are both studying at a private university in Naga City; (c) she owns a house and two (2) vehicles, all of which are declared in her Statements of Assets, Liabilities, and Net Worth; (d) no adverse findings regarding her work performance as Sheriff was reported nor was there any complaints or accusation filed relative to her misuse of her office or any reports of harassment or oppression from any litigant or counsel; (d) she, however, runs a money lending business, locally known as "5-6," wherein she charges excessive interest rates of as much as ten percent (10 %) per month, which apparently is the source of her wealth; and (e) she personally conducts such money lending business even during office hours.[7]

In a Memorandum[8] dated May 24, 2017, the OCA found the charges of acquisition of ill-gotten wealth against respondent to be without merit. Nevertheless, it found *prima facie* evidence against respondent for simple misconduct, taking into account her acts of engaging in a money lending business during office hours and devoting her official time to foster her proprietary pursuits. Hence, the OCA recommended that the matter be docketed for purposes of preliminary inquiry and that respondent be made to comment.[9]

In her Comment,[10] respondent made a point-by-point refutation of the accusation on acquisition of ill-gotten wealth against her. Notably, however, as to the issue about her money lending business, she merely asserted that it

was the business of her late mother which was discontinued when she passed away.[11]

The OCA's Report and Recommendation

In a report and recommendation[12] dated November 6, 2018, the OCA recommended, among others, that: (a) respondent be found guilty of Simple Misconduct for violating Reasonable Rules and Regulation and Section 1, Canon IV of the Code of Conduct for Court Personnel,[13] and accordingly, fined in the amount of P5,000.00 payable within thirty (30) days from receipt of notice; and (b) she be directed to cease and desist from her money lending activities and be sternly warned that her failure to do so shall be dealt with more severely.[14]

Prefatorily, the OCA pointed out that as per their Memorandum[15] dated May 24, 2017, it already cleared respondent from the allegation of acquisition of ill-gotten wealth, and that she was only being made to answer for her money lending activities.[16] Despite this, respondent took more time in explaining the origins of her wealth and property, and only made an unconvincing and dismissive retort to address the latter charge. The OCA took this as an implicit admission that respondent is indeed engaging in a money lending business during office hours. The OCA held that respondent's acts violated: (a) Section 1, Canon IV of the Code of Conduct for Court Personnel which mandates that court personnel shall commit themselves exclusively to the business and responsibilities of their office during working hours; and (b) Administrative Circular No. 5 dated October 4, 1988, which prohibits all officials and employees of the Judiciary from engaging in, inter alia, money lending activities during office hours, and thus, constitutes Simple Misconduct for which she must be held administratively liable. Finally, the OCA recommended the imposition of a fine in lieu of suspension, considering respondent's first offense in her thirty (30) years of service, and that such imposition would prevent any adverse effect on the public service that would ensue if respondent, a Sheriff performing frontline functions, is suspended.[17]

The Issue before the Court

At the outset, the Court notes that as early as in the OCA's Memorandum dated May 24, 2017, respondent was already cleared of the charge of acquisition of ill-gotten wealth. As such, the sole issue for the Court's resolution is whether or not respondent should be held administratively liable for her alleged money lending business activities during office hours.

The Court's Ruling

After a judicious perusal of the records, the Court adopts the findings and recommendations of the OCA, except as to the amount of fine to be imposed on respondent.

Administrative Circular No. 5 dated October 4, 1988 reads in full:

TO: ALL OFFICIALS AND EMPLOYEES OF THE JUDICIARY SUBJECT: PROHIBITION TO WORK AS INSURANCE AGENT

In line with Section 12, Rule XVIII of the Revised Civil Service Rules, the Executive Department issued Memorandum Circular No. 17 dated September 4, 1986 authorizing heads of government offices to grant their employees permission to "engage directly in any private business, vocation and profession ... outside office hours."

However, in its En Bane resolution dated October 1, 1987, denying the request of Atty. Froilan L. Valdez of the Office of Associate Justice Ameurfina Melencio-Herrera, to be commissioned as a Notary Public, the Court expressed the view that the provisions of Memorandum Circular No. 17 of the Executive Department are not applicable to officials or employees of the courts considering the express prohibition in the Rules of Court and the nature of their work which requires them to serve with the highest degree of efficiency and responsibility, in order to maintain public confidence in the Judiciary. The same policy was adopted in Administrative Matter

No. 88-6-002-SC, June 21, 1988, where the court denied the request of Ms. Esther C. Rabanal, Technical Assistant II, Leave Section, Office of the Administrative Services of this Court, to work as an insurance agent after office hours including Saturdays, Sundays and holidays. Indeed, the entire time of Judiciary officials and employees must be devoted to government service to insure efficient and speedy administration of justice.

ACCORDINGLY, all officials and employees of the Judiciary are hereby enjoined from being commissioned as insurance agents or from engaging in any such related activities, and, to immediately desist therefrom if presently engaged thereat. (Emphases and underscoring supplied)

Verily, Administrative Circular No. 5 dated October 4, 1988 has prohibited all officials and employees of the Judiciary from engaging directly in any private business, vocation or profession, even outside their office hours. The prohibition is aimed at ensuring that full-time officers and employees of the courts render full-time service, for only then could any undue delays in the administration of justice and in the disposition of court cases be avoided. The nature of the work of court employees and officials demanded their highest degree of efficiency and responsibility, and they would not ably meet the demand except by devoting their undivided time to the government service. This explains why court employees have been enjoined to strictly observe official time and to devote every second or moment of such time to serving the public.[18] This is in line with Section 1, Canon IV of A.M. No. 03-06-13-SC, entitled the "Code of Conduct of Court Personnel," which reads:

CANON IV
PERFORMANCE OF DUTIES

Section 1. Court personnel shall at all times perform official duties properly and with diligence. They shall commit themselves exclusively to the business and responsibilities of their office during working hours.

Although many "moonlighting" activities were themselves legal acts that would be permitted or tolerated had the actors not been employed in the public sector, moonlighting, albeit not usually treated as a serious misconduct, can amount to a malfeasance in office by the very nature of the position held. In this case, respondent's act of engaging in a money lending business - an accusation which she failed to sufficiently rebut - while concurrently being a Sheriff of the RTC surely put the integrity of her office under so, much undeserved suspicion. She should have been more circumspect in her acts, knowing that sooner or later, it would be unavoidable that the impression that she had taken advantage of her position and abused the confidence reposed in her office and functions would arise. Undoubtedly, her activities greatly diminished the reputation of her office and of the courts in the esteem of the public.[19] As such, the OCA correctly found her administratively liable for Simple Misconduct.[20]

Anent the proper penalty to be imposed on respondent, Section 46 (D) (2), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service[21] (RRACCS) classifies Simple Misconduct as a less grave offense punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense. Nonetheless, in *Cabigao v. Nery*[22](*Cabigao*), the Court explained that it has the discretion to temper the harshness of the penalties imposed on erring officials and employees of the judiciary when warranted by the circumstances, to wit:

"However, while this Court is duty-bound to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, this Court also has the discretion to temper the harshness of its judgment with mercy." "In several jurisprudential precedents, the Court has refrained from imposing the actual administrative penalties prescribed by law or regulation in the presence of mitigating factors. Factors such as the respondent's length of service, the respondent's acknowledgement of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, respondent's advanced age, among other things, have had varying significance in the determination by the Court of the imposable penalty." [23] (Emphasis and underscoring supplied)

Here, considering the fact that this is respondent's first offense in her thirty (30) years of service, and that she is performing a frontline function as a Sheriff, the Court finds it proper to impose on her a fine equivalent to her salary for one (1) month and one (1) day, pursuant to Section 47 (1) (b) and (2)[24]of the RRACCS. This imposition also finds support in Cabigao where the Court held:

While the recommended penalty of one-month suspension is reasonable, the same is not practical at this point, considering that his work would be left unattended by reason of his absence. Furthermore, he may use his suspension as another excuse to justify his inaction and inefficiency in other matters pending before his office. Instead of suspension, we impose a fine equivalent to his one-month salary, so that he can finally implement the subject writs and perform the other duties of his office.[25]

As a final note, the Court emphasizes that the conduct required of court personnel must always be beyond reproach and circumscribed with the heavy burden of responsibility as to let them be free from any suspicion that may taint the judiciary. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage. Court employees should act with more circumspection and to steer clear of any situation, which may cast the slightest suspicion on their conduct.[26] Relatedly, "[s]heriffs, as officers of the court and agents of the law, play an important role in the administration of justice. They are in the forefront of things, tasked as they are to serve judicial writs, execute all processes, and carry into effect the orders of the court.' As a front-line representative of the judicial system, sheriffs must always demonstrate integrity in their conduct for once they lose the people's trust, they also diminish the people's faith in the entire judiciary." [27]

WHEREFORE, The Court finds respondent Jessica Maxilinda A. Ibarreta, Sheriff IV of the Regional Trial Court of Iriga City, Camarines Sur, Branch 36 GUILTY of Simple Misconduct. Accordingly, she is ordered to pay a FINE equivalent to her salary for one (1) month and one (1) day, and is STERNLY WARNED that a repetition of the same or similar acts in the future shall be dealt with more severely. Let a copy of this Decision be attached to her personal record.

SO ORDERED.

Carpio, (Chairperson), Caguioa, J. Reyes, Jr. and Lazaro-Javier, JJ., concur.

[1] Rollo, p. 7.

[2] Id. at 9.

[3] Id. at 1.

[4] See Report (on the alleged ill-gotten wealth of Sheriff Jessica Maxilinda A. Ibarreta) dated July 20, 2016; id. at 12-14.

[5] See id. at 1-3.

[6] See Report on the Alleged Ill-Gotten Wealth of Sheriff Jessica Maxilinda A. Ibarreta dated January 23, 2017; id. at 32-33.

[7] See id. at 12-14 and 32-33. See also id. at 2-4.

[8] Id. at 1-6. Penned by OCA Legal Office Chief Wilhelmina D. Geronga and approved by Court Administrator Jose Midas P. Marquez.

[9] See id. at 4-6.

[10] Dated August 4, 2017. Id. at 37-39.

[11] See id.

[12] Id. at 42-49. Signed by Deputy Court Administrator and Office-in-Charge Raul Bautista Villanueva.

[13] See A.M. No. 03-06-13-SC effective on June 1, 2004.

[14] Rollo, p. 49.

[15] Id. at 1-6.

[16] See id. at 42-45.

[17] See id. at 47-49.

[18] Re: Anonymous Letter-Complaint Against Lopez and Montalvo, 744 Phil. 541, 553-554 (2014).

[19] See id. at 554.

[20] "[M]isconduct is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior. To constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be manifest. Without any of these elements, the transgression of an established rule is properly characterized as simple misconduct only. Most importantly, without a nexus between the act complained of and the discharge of duty, the charge of grave misconduct shall necessarily fail." (Daplas v. Department of Finance, 808 Phil. 763, 772 [2017].)

[21] Promulgated on November 8, 2011.

[22] 719 Phil. 475 (2013).

[23] Id. at 484; citations omitted.

[24] Section 47 (1) (b) and (2) of the RRACCS reads:

Section 47. Penalty of Fine. -The following are the guidelines for the penalty of fine:

1. Upon the request of the head of office or the concerned party and when supported by justifiable reason/s the disciplining authority may allow payment of fine in place of suspension if any of the following circumstances are present:

xxxx

b. When the respondent is actually discharging frontline functions or those directly dealing with the public and the personnel complement of the office is insufficient to perform such function;

xxxx

2. The payment of penalty of fine in lieu of suspension shall be available in Grave, Less Grave, and Light Offenses where the penalty imposed is for six (6) months or less at the ratio of one (1) day of suspension from the service to one (1) day fine; Provided, that in Grave Offenses where the penalty imposed is six (6) months and one (1) day suspension in view of the presence of mitigating circumstance[s], the conversion shall only apply to the suspension of six (6) months. Nonetheless, the remaining one (1) day suspension is deemed included therein.

[25] Cabigao v. Nery, *supra* note 22, at 486, citing *Mariñas v. Florendo*, 598 Phil. 322, 331 (2009).

[26] See *id.* at 483, citing *Macinas v. Arimado*, 508 Phil. 161, 165 (2005).

[27] See *id.*; citations omitted.

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