ARTHUR M. GABON, COMPLAINANT, VS. REBECCA P. MERKA, CLERK OF COURT II, MUNICIPAL TRIAL COURT, LILOAN, SOUTHERN LEYTE, RESPONDENT.

A.M. No. P-11-3000 (formerly A.M. OCA I.P.I. No. 10-3524-P). November 29, 2011

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PER CURIAM:

We resolve the administrative complaint against respondent Rebecca P. Merka, Clerk of Court II, Municipal Trial Court (MTC) of Liloan, Southern Leyte, for Grave Misconduct.

The Factual Antecedents

The antecedent facts, gathered from the records, are summarized below.

In his Complaint-Affidavit,[1] complainant Arthur M. Gabon charged the respondent with Grave Misconduct (1) for writing eight demand letters in 1993 in behalf of the Saint Ignatius Loyola Credit Cooperative, Inc.,[2] Simeon C. Maamo, Jr.[3] and Restituta Claridad[4] using the MTC's official letterhead and signing the same letters in her official capacity as the Clerk of Court of the MTC of Liloan, Southern Leyte; and (2) for administering oaths in five affidavits[5] and a Kasabutan (Agreement)[6] in 1995 and 2000 that had no relation with her official duties.

The Office of the Court Administrator (OCA) directed the respondent to comment on the complaint.[7]

In her Comment,[8] the respondent admitted the charge of using the MTC's official letterhead and signing the demand letters in her official capacity, but explained that she acted in good faith to aid in declogging court dockets. She insisted that she was duly authorized to administer oaths under Section M, Chapter VIII of the Manual for Clerks of Court and that she did not abuse the franking privilege of the court in sending the letters as these letters were in representation of the court. She averred that the complaint was a harassment suit because she committed the acts complained of 15 or 17 years ago.

The complainant filed a Reply-Affidavit,[9] arguing that the respondent acted like the counsel of a private party in writing the demand letters and that the respondent's authority to administer oaths extended only to cases filed or pending in her assigned court.

The OCA's Report and Recommendation

The OCA recommended that the present matter be redocketed as a regular administrative complaint. It found the respondent guilty of simple misconduct for (a) the unauthorized use of the letterhead of the court and her official designation in the demand letters she prepared in 1993, and (b) administering oaths in affidavits and a document executed in 1995 and 2000 on matters not involving official business. It recommended a penalty of suspension for one (1) month and one (1) day.[10]

The OCA also found the respondent guilty of violating Presidential Decree (PD) No. 26[11] for taking advantage of the franking privilege extended to courts in sending the demand letters. It recommended a fine of P500.00 for this offense.

The OCA noted that in 2009, the Court fined the respondent in the amount of P2,000.00 for abuse of authority for the 2007 notarization of a document not related to her official functions, but this previous offense cannot now be used to increase her penalty because the acts complained of in the present case predated the act penalized in the 2009 case.[12]

The Court's Ruling

We modify the findings and recommendation of the OCA.

We have repeatedly stressed that all officials and employees involved in the administration of justice, from judges to the lowest rank and file employees, bear the heavy responsibility of acting with strict propriety and decorum at all times in order to merit and maintain the public's respect for, and trust in, the Judiciary. Simply stated, all court personnel must conduct themselves in a manner exemplifying integrity, honesty and uprightness.[13]

In this case, the respondent's use of the letterhead of the court and of her official designation in the eight demand letters she prepared in 1993 hardly meets the foregoing standard. She took advantage of her office and position to advance the interests of private individuals, acting as "counsel" and collecting agent for the Saint Ignatius Loyola Credit Cooperative, Inc., Simeon C. Maamo, Jr., and Restituta Claridad. Despite her good intentions, she gave private individuals an unwarranted privilege at the expense of the name of the court.[14]

The respondent also administered oaths in documents not involving official business, in violation of Section 41,[15] as amended by Section 2 of Republic Act No. 6733,[16] and Section 242[17] of the Revised Administrative Code, in relation with Sections G,[18] M[19] and N,[20] Chapter VIII of the Manual for Clerks of Court. Under these provisions, Clerks of Court are notaries public ex officio; they may notarize documents or administer oaths only when the matter is related to the exercise of their official functions. Thus, in their ex-officio capacity, clerks of court should not take part in the execution of private documents bearing no relation at all to their official functions.[21] The respondent administered oaths in five affidavits and a document bearing no relation at all to her official functions.

We note that the respondent also violated PD No. 26. The franking privilege granted by PD No. 26 extended only to judges and referred to official communications and papers directly connected with the conduct of judicial proceedings which shall be transmitted in the mail free of charge.[22] The respondent was not a judge nor were the eight demand letters related to the discharge of judicial functions.

We cannot tolerate the respondent's flagrant abuse and misuse of authority.

Misconduct in office refers to "any unlawful behavior by a public officer in relation to the duties of his office, willful in character. The term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."[23] In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule must be manifest.[24] Corruption as an element of grave misconduct consists in the act of an official or employee who unlawfully or wrongfully uses his station or character to procure some benefit for himself or for another, contrary to the rights of others,[25] as in this case. By her repeated abuse and misuse of authority, the respondent exhibited an obvious lack of integrity expected of a court employee.

Grave misconduct is a serious offense punishable, under Section 52 of the Revised Uniform Rules on Administrative Cases in the Civil Service, with dismissal even for the first offense.

We are duty-bound to sternly wield a corrective hand to discipline errant employees and to weed out those who are found undesirable. The respondent failed to meet the strict standards set for a court employee; hence, she does

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not deserve to remain in the Judiciary.

WHEREFORE, respondent Rebecca P. Merka, Clerk of Court II, Municipal Trial Court of Liloan, Southern Leyte, is found GUILTY of Grave Misconduct. She is hereby DISMISSED from the service, with forfeiture of all benefits, except accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations and financial institutions.

SO ORDERED.

Corona, C.J., Carpio, Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Sereno, Reyes, and Perlas-Bernabe, JJ., concur.
Velasco, Jr., J., concur.

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[1] Dated October 16, 2010; rollo, pp. 5-6.

[2] Id. at 21, 23, 25, 27, 29, and 33.

[3] Id. at 31.

[4] Id. at 34.

[5] Id. at 35-39.

[6] Id. at 40.

[7] Id. at 44.

[8] Dated December 13, 2010; id. at 46-55.

[9] Dated January 20, 2011; id. at 96-98.

[10] Memorandum dated April 19, 2011; id. at 115-119.

[11] Entitled “Extending Franking Privilege to Papers Connected with Judicial Proceedings.”

[12] Resolution dated May 20, 2009 in A.M. No. P-08-2460, entitled “Arthur M. Gabon v. Rebecca P. Merka, Clerk of Court, Municipal Trial Court, Liloan, Southern Leyte”; rollo, pp. 17-19.

[13] In Re: Improper Solicitation of Court Employees — Rolando H. Hernandez, Executive Assistant I, Legal Office, Office of the Court Administrator, A.M. No. 2008-12-SC (formerly A.M. No. 08-7-4-SC), April 24, 2009, 586 SCRA 325, 333.

[14] Section 1, Canon I of the Code of Conduct for Court Personnel, effective June 1, 2004, provides that "[c]ourt personnel shall not use their official position to secure unwarranted benefits, privileges or exemptions for themselves or for others.” The Code was not yet effective at the time the complained acts were committed.

[15] Sec. 41. Officers Authorized to Administer Oath. — The following officers have general authority to administer oaths: President; Vice-President; Members and Secretaries of both Houses of the Congress; Members of the Judiciary; Secretaries of Departments; provincial governors and lieutenant-governors; city mayors; municipal mayors; bureau directors; regional directors; clerks of courts; registrars of deeds; other civilian officers in the public service of the government of the Philippines whose appointments are vested in the President and are subject to confirmation by the Commission on Appointments; all other constitutional officers; and notaries public.

[16] An Act to Amend Section 21, Title I, Book I of the Revised Administrative Code of 1987, Granting Members

of Both Houses of the Congress of the Philippines the General Authority to Administer Oaths, and for Other Purposes.

[17] Sec. 242. Officers acting as notaries public ex officio. - Except as otherwise specially provided, the following officials, and none other, shall be deemed to be notaries public ex officio, and as such they are authorized to perform, within the limits of their territorial jurisdiction as hereinbelow defined, all the duties appertaining to the office of notary public.

(a) The Chief of the Division of Archives, Patents, Copyrights, and Trade-marks, the Clerk of the Supreme Court, the Clerk of the Court of First Instance of the Ninth Judicial District, the Chief of the General Land Registration Office, and the Superintendent of the Postal Savings Bank Division, Bureau of Posts—when acting within the limits of the City of Manila.

(b) Clerks of Courts of First Instance outside of the City of Manila, when acting within the judicial districts to which they respectively pertain.

(c) Justices of the peace, within the limits of the territory over which their jurisdiction as justices of the peace extends; but auxiliary justices of the peace and other officers who are by law vested with the office of justice of the peace ex officio shall not, solely by reason of such authority, be also entitled to act in the capacity of notaries ex officio.

(d) Any government officer or employee of the Department of Mindanao and Sulu appointed notary public ex officio by the judge of the Court of First Instance, with jurisdiction coextensive with the province wherein the appointee is stationed, and for a term of two years beginning upon the first day of January of the year in which the appointment is made.

[The Department of Mindanao and Sulu, as a special political division has been abolished by section 1 of Act 2878.]

The authority conferred in subsections (a) and (b) hereof may, in the absence of the chief or clerk of court, be exercised by an assistant chief, acting chief, or deputy clerk of court pertaining to the office in question.

[18] The provisions of Section G, Chapter VIII of the Manual for Clerks of Court are essentially the same as the provisions of Section 242 of the Revised Administrative Code.

[19] The provisions of Section M, Chapter VIII of the Manual for Clerks of Court are lifted from Section 41 of the Revised Administrative Code, as amended.

[20] Section N. DUTY TO ADMINISTER OATH. — Officers authorized to administer oaths, with the exception of notaries public, municipal judges and clerks of court, are not obliged to administer oaths or execute certificates save in matters of official business; and with the exception of notaries public, the officer performing the service in those matters shall charge no fee, unless specifically authorized by law.

[21] Exec. Judge Astorga v. Solas, 413 Phil. 558, 562 (2001).

[22] Martinez v. Lim, A.M. No. P-04-1795, March 25, 2009, 582 SCRA 340, 345; and Ramos v. Esteban, 510 Phil. 252, 261 (2005).

[23] Pascual v. Martin, A.M. No. P-08-2552, October 8, 2008, 568 SCRA 96, 106.

[24] Re: Anonymous Letter-Complaint against Hon. Marilou Runes-Tamang, Presiding Judge, MeTC Pateros, Metro Manila and Presiding Judge, MeTC San Juan, Metro Manila, A.M. No. MTJ-04-1558, April 7, 2010, 617 SCRA 428, 457.

[25] Ibid.

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