

**EXECUTIVE JUDGE ANNE BEATRICE G. AGUANA-BALMACEDA,
MUNICIPAL TRIAL COURT IN CITIES [MTCC], ILOILO CITY, ILOILO,
COMPLAINANT, VS. MARITE E. PENIERO, CLERK OF COURT III AND
SALVAC...**

A.M. No. P-21-4100 (Formerly: OCA IPI No. 19-4942-P). June 15, 2021

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PER CURIAM:

This case stemmed from a Report[1] dated 01 April 2019 by Executive Judge Anne Beatrice G. Aguana-Balmaceda (complainant), Municipal Trial Court in Cities (MTCC) of Iloilo City, wherein she disclosed the irregularities that were discovered in the cash collections in the Office of the Clerk of Court (OCC) of the same court.

Antecedents

As a brief background, complainant described the process for the cash collection and verification of their court. She explained that by the end of the business hours, the assigned cashier would turn over all cash collections for the day to respondent Marite E. Peniero (Peniero), Clerk of Court III and Officer-in-Charge. The following day at around 9:00 to 9:30 a.m., the Landbank of the Philippines (Landbank) representative would collect the same and stamp "deposited" on the deposit slips prepared by the OCC. The deposit slips are then submitted to complainant on the same day. At the end of the month, the court would receive the copies of the deposit slips with Landbank's validation indicating actual deposits to the court's account.[2]

On 12 February 2019, complainant discovered one (1) deposit slip prepared by the OCC in the amount of P50,000.00 bearing no "deposited" stamp by the Landbank. Instead, the deposit slip had the bank's validation stating that the same was deposited over the counter on 12 February 2019 thereby indicating it was not actually turned over to the Landbank representative in accordance with the usual procedure. Complainant noted that the said deposit slip was for the collection made on 08 February 2019 (Friday) and the same should have been given to the Landbank representative on 12 February 2019 (Tuesday) since 11 February 2019 was a local holiday.[3]

Finding the above discrepancy, complainant issued a Memorandum[4] on 14 February 2019 to Peniero directing her to explain why there had been a deviation from the court's procedure in depositing its collections. In her Letter[5] dated 18 February 2019, Peniero explained that in the afternoon of 8 February 2019, her co-employee and herein respondent Salvacion Sermonia (Sermonia) approached her and begged to borrow P47,000.00. Due to Sermonia's persistence, Peniero decided to lend her the amount needed, which was taken from the P50,000.00 cash collection. However, Sermonia failed to return the amount in the morning of 12 February 2019 thereby precluding Peniero to turn over the same to the Landbank representative. It was only at 1:00 p.m. of the same day when Sermonia directly deposited the P50,000.00 over the counter of the bank.[6]

In her Letters dated 18 February 2019[7] and 08 March 2019,[8] Sermonia admitted that she borrowed P47,000.00 due to an emergency family situation. She failed to return the same in the morning of 12 February 2019 since there was a delay in the remittance of money from her relatives. Nonetheless, she deposited the

P47,000.00 together with the remaining P3,000.00 directly to Landbank as at 1:00 p.m. of 12 February 2019 as evidenced by the validated deposit slip of the same date. This was affirmed by the Letter dated 18 February 2019 by Peniero where she explained how she was begged and persuaded to lend money to Sermonia.[9]

Further, on 04 March 2019, Peniero personally confessed to complainant that she did not remit the collection amounting to P54,751.00 to the Land bank representative on 28 February 2019 since she borrowed the P20,000.00 for her family emergency. Peniero then submitted to complainant a Letter[10] dated 05 March 2019 explaining she borrowed the amount for the hospitalization of her grandchild. The same was already returned and the P54,751.00 total cash collection was directly deposited to Land bank in the afternoon of 01 March 2019.[11]

Alarmed by Peniero's admissions, complainant recommended the filing of appropriate administrative and criminal charges against them in her Report[12] dated 01 April 2019. Complainant also relieved Peniero of her duties as Officer-in-Charge of the OCC and assigned her to Branch 2 to avoid any further illegal acts.[13]

In a Memorandum[14] dated 03 June 2019, the Office of the Court Administrator (OCA) Legal Office recommended to treat the complaint as an administrative complaint against Peniero and Sermonia (collectively, respondents), hence:

IN VIEW OF THE FOREGOING, it is respectfully recommended that:

(1) the Report dated 1 April 2019 of Executive Judge Anne Beatrice G. Aguana-Balmaceda be TREATED as an administrative complaint against Ms. Marite E. Peniero, Clerk of Court III, OCC, MTCC, Iloilo City, and Ms. Salvacion Sermonia, Clerk IV, same court, and accordingly be DOCKETED for purposes of an informal preliminary inquiry for Dishonesty and Grave Misconduct;

(2) Ms. Peniero and Ms. Sermonia be furnished a copy the foregoing report of Executive Judge Aguana-Balmaceda and that they be DIRECTED to COMMENT thereon within ten (10) days from notice; and

(3) the Fiscal Monitoring Division, Court Management Office, OCA, be DIRECTED to conduct a FINANCIAL AUDIT on the books of account of the OCC, MTCC, Iloilo City.[15]

Thus, the OCA, by 1st Indorsement dated 03 July 2019, directed respondents to comment on the Report dated 01 April 2019 submitted by complainant within ten (10) days from receipt thereof.[16]

In their Comments[17] both dated 01 April 2020, respondents admitted they committed the acts stated in complainant's report. However, they maintained they had no intention to defraud or steal from the government as shown by their act of returning the money. They were only forced to borrow money from court funds due to the emergency needs of their respective families. Hence, they begged for the forgiveness and compassion of the Court.

Report and Recommendation of the OCA

The OCA, through a Report[18] dated 03 December 2020, recommended for the instant administrative complaint to be re-docketed as a regular administrative matter, and for the conduct of a financial audit on the books of account of the OCC, MTCC, Iloilo City.

The OCA also found Peniero had indubitably failed to perform her duty as the custodian of court funds when she allowed Sermonia and herself to use the MTCC's cash collections for their personal needs. As employees of the judiciary, respondents are expected to know that public funds cannot be used for any personal interest or gain. Moreover, the return of the money they borrowed does not negate their use of court funds for personal interests. Thus, Peniero's act was found constitutive of gross neglect of duty, serious dishonesty, and grave misconduct warranting the penalty of dismissal from service, with forfeiture of all benefits except accrued leave credits and

perpetual disqualification from re-employment in any government instrumentality. As for Sermonia, who already retired, the OCA found her guilty of serious dishonesty and grave misconduct and recommended the imposition of the penalty of forfeiture of all retirement benefits, except accrued credits, as well as perpetual disqualification from re-employment in any government instrumentality.[19]

Ruling of the Court

We agree with the findings and recommendations of the OCA.

Liability of Peniero and Sermonia

Gross neglect of duty or gross negligence refers to negligence characterized by the glaring want of care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally with a conscious indifference to consequences with respect to other persons who may be affected. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.[20]

Section B, Chapter 1 of the 2002 Revised Manual for Clerks of Court[21] states:

The Clerk of Court has general administrative supervision over all the personnel of the Court. As regards the Court's funds and revenues, records, properties and premises, said officer is the custodian. Thus, the Clerk of Court is generally also the treasurer, accountant, guard and physical plant manager thereof. (Emphasis supplied)

Further, the duties of a Clerk of Court as cashier and disbursement officer consist of the following:

2.1.2.

As Cashier and Disbursement Officer

2.1.2.1. Duties

a.

Collects and receives, by himself or thru a duly appointed cashier, alimonies in payment of all legal fees;

b.

Receives, by himself or thru a duly appointed cashier, deposits, fines and dues;

c.

Prepares budget proposal and vouchers for funds appropriated by the local government subject to the conditions prescribed by the grant, as well as the existing accounting and auditing requirements; and

d.

Disburses funds allocated by the Supreme Court upon direction and approval of the Executive Judge.[22]

Hence, Peniero, as the custodian of court funds, is primarily accountable for all funds collected for the court whether personally received by her, or by a duly appointed cashier under her supervision. She is liable for any loss, shortage, destruction or impairment of these funds. Any shortage in the amounts to be remitted, as well as the delay in the actual remittance of these funds, constitutes gross neglect of duty. The Court has also ruled that a clerk of court who fails to timely deposit judiciary collections, as well as to submit monthly financial reports, is administratively liable for gross neglect of duty.[23]

Meanwhile, dishonesty, as an administrative offense, is defined as "the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duties. It is [a] disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray." [24] Under Section 3 of CSC Resolution No. 06-0538, [25] serious dishonesty comprises the following acts:

Sec. 3. The presence of any one of the following attendant circumstances in the commission of the dishonest act would constitute the offense of Serious Dishonesty:

- a. The dishonest act causes serious damage and grave prejudice to the government.
- b. The respondent gravely abused his authority in order to commit the dishonest act.
- c. Where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he is directly accountable and the respondent shows an intent to commit material gain, graft and corruption.
- d. The dishonest act exhibits moral depravity on the part of the respondent.
- e. The respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment.
- f. The dishonest act was committed several times or in various occasions.
- g. The dishonest act involves a Civil Service examination, irregularity or fake Civil Service eligibility such as, but not limited to, impersonation, cheating and use of crib sheets.
- h. Other analogous circumstances.

On the other hand, misconduct is a "transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is considered grave when it is accompanied by the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule." [26]

Peniero and Sermonia both admitted using court funds for their own personal interest or gain. They attempted to circumvent the court's process in order to use court funds for their personal benefit. They tried to conceal their acts by not immediately reporting and remitting the amount received by the court and later on depositing the money they used directly to the bank. Peniero even had the audacity to repeat her lapses after she had been earlier called out for lending court funds to Sermonia. As long-time court employees, they are expected to know that public funds cannot be used for their personal interests. Having access to these funds does not give them authority to use these for their own needs, and any reason proffered cannot justify their unauthorized use. Even the return of the money borrowed cannot exonerate them from liability. Their misappropriation of court funds and failure to follow the court's protocol for remittance of collections to conceal their acts constitute serious dishonesty and grave misconduct for which they should be held accountable.

Penalties imposed

On 02 October 2018, the Court promulgated A.M. No. 18-01-05-SC amending Rule 140 of the Rules of Court, the pertinent portion of which, reads:

Rule 140

Discipline of Judges of Regular and Special Courts, Justices of the Court of Appeals, the Sandiganbayan, Court of Tax Appeals, Court Administrator, Deputy Court Administrator and Assistant Court Administrator

x x x x

SECTION 21. Classification of Charges. — Administrative charges are classified as serious, less serious, or light.

SECTION 22. Serious Charges. — Serious charges include:

1. Bribery, direct or indirect;
2. Dishonesty and violations of the Anti-Graft and Corrupt Practices Law (R.A. No. 3019);
3. Gross misconduct constituting violations of the Code of Judicial Conduct;
4. Knowingly rendering an unjust judgment or order as determined by a competent court in an appropriate proceeding;
5. Conviction of a crime involving moral turpitude;
6. Willful failure to pay just debt;
7. Borrowing money or property from lawyers and litigants in a case pending before the court;
8. Immorality;
9. Gross ignorance of the law or procedure;
10. Partisan political activities; and
11. Alcoholism and/or vicious habits.

x x x x

SECTION 25. Sanctions. —

A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;
2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or
3. A fine of more than [P]20,000.00 but not exceeding [P]40,000.00.

x x x x[27] (Emphasis supplied)

On 07 July 2020, the Court issued a supplemental Resolution to A.M. No. 18-01-05-SC emphasizing the Court's administrative supervision over all courts and court personnel thereby amending portions of Rule 140 of the Rules of Court, hence:

Section 22. Serious Charges. — Serious charges include:

1. Bribery, direct and indirect;

2. Dishonesty and violations of the Anti-Graft and Corrupt Practices Law (R.A. No. 3019);
3. Gross misconduct constituting violations of the Code of Judicial Conduct or of the Code of Conduct for Court Personnel, and grave offenses under the Civil Service Laws and Rules;
4. Knowingly rendering an unjust judgment or order as determined by a competent court in an appropriate proceeding;
5. Conviction of a crime involving moral turpitude;
6. Willful failure to pay a just debt;
7. Borrowing money or property from lawyers and litigants in a case pending before the court;
8. Immorality;
9. Gross ignorance of the law or procedure;
10. Partisan political activities; and
11. Alcoholism and/or vicious habits, and use of illegal drugs or substance.[28] (Emphasis supplied)

Indeed, public service requires the utmost integrity and strictest discipline. As part of the judiciary, a public servant must exhibit at all times the highest sense of honesty and integrity. Even the Constitution declares a public office as a public trust and enjoins all public officers and employees to serve with the highest degree of responsibility, integrity, loyalty, and efficiency.[29] Hence, those involved in the administration of justice must live up to the strictest standard of honesty and integrity in public service as the image of a court is reflected in the conduct of the men and women who comprise it, from the judge to the personnel.[30]

In *OCA v. Dequito*,[31] the Court found the erring clerk of court guilty of serious dishonesty, grave misconduct and gross neglect of duty, and imposed upon him the penalty of dismissal with forfeiture of retirement benefits for misappropriating the court's funds for his own use.

Similarly, in *OCA v. Villanueva*,[32] therein respondent was found guilty of dishonesty, gross neglect of duty and grave misconduct for which he was penalized with dismissal from the service along with other accessory penalties.

Notably, the amended Rule 140 of the Rules of Court presents a different classification and nomenclature of penalties from that of the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS).[33] Nonetheless, grave offenses under the Civil Service Laws and Rules are clearly tantamount to gross misconduct under Rule 140.

The Court has not hesitated to impose the ultimate penalty of dismissal, even on the first instance, against those who have fallen short of their accountabilities. Those charged with the dispensation of justice are circumscribed with a heavy burden of responsibility. Their conduct, at all times, must not only be characterized by propriety and decorum but, above all else, must be beyond suspicion. Every employee should be an example of integrity, uprightness, and honesty.[34] Respondents failed in their responsibility and are therefore deserving of the ultimate penalties imposed by the rules. However, by reason of Sermonia's retirement, the alternative penalty of forfeiture of her retirement benefits, except accrued leave credits, if any, as well as perpetual disqualification from re-employment in any government instrumentality, including government-owned and controlled corporations, is deemed appropriate.

WHEREFORE, the Court rules as follows:

1.

Respondent Marite C. Peniero is found GUILTY of dishonesty and gross misconduct, and is DISMISSED from the service, with FORFEITURE of all benefits, except accrued leave credits, if any, and PERPETUAL DISQUALIFICATION from re-employment in any government instrumentality, including government-owned

and controlled corporations;

2.

Respondent Salvacion D. Sermonia is found GUILTY of dishonesty and gross misconduct, and is meted the penalty of FORFEITURE of all her retirement benefits, except accrued leave credits, if any, and PERPETUAL DISQUALIFICATION from re-employment in any government instrumentality, including government-owned and controlled corporations; and

3.

The Fiscal Monitoring Division, Court Management Office, Office of the Court Administration, is DIRECTED to conduct a FINANCIAL AUDIT on the books of account of the Office of the Clerk of Court, Municipal Trial Court in Cities, Iloilo City, Iloilo.

SO ORDERED.

Gesmundo, C.J., Perlas-Bernabe, Leonen, Caguioa, Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, M. Lopez, Delos Santos, Gaerlan, Rosario, and J. Lopez, JJ., concur.

[1] Rollo, pp. 8-10.

[2] Id. at 8.

[3] Id. at 8-9.

[4] Id. at 11.

[5] Id. at 13.

[6] Id. at 9.

[7] Id. at 15.

[8] Id. at 14.

[9] Id. at 9.

[10] Id. at 16.

[11] Id. at 9.

[12] Id. at 8-10.

[13] Id. at 10.

[14] Id. at 2-4.

[15] Id. at 4.

[16] Id. at 18.

[17] Id. at 29-33.

[18] Id. at 42-49.

[19] Id.

[20] See *Macaventa v. Nuyda*, A.C. No. 11087, 12 October 2020, citing *Cabas v. Atty. Sususco*, 787 Phil. 167, 173-174 (2016); see also *Office of the Court Administrator v. Viesca*, 758 Phil. 16 (2015).

[21] Entitled "RE: PROPOSED AMENDMENTS TO SECTION 5, RULE 110 OF THE REVISED RULES OF CRIMINAL PROCEDURE." approved on 10 April 2002.

[22] Id.

[23] *Office of the Court Administrator v. Dequito*, 799 Phil. 607, 618 (2016), citing *Office of the Court Administrator v. Acampado*, 721 Phil. 12, 29-30 (2013).

[24] *Soliva v. Tanggol*, G.R. No. 223429, 29 January 2020 [Per J. Carandang], citing *Field Investigation Office v. P/Director Piano*, 820 Phil. 1031, 1042 (2017).

[25] Otherwise known as the Rules on the Administrative Offense of Dishonesty.

[26] *Office of the Court Administrator F. Dequito*, supra note 23 at 617.

[27] Creating the Judicial Integrity Board and the Corruption Prevention and Investigation Office (Resolution), A.M. No. 18-01-05-SC, 02 October 2018.

[28] Entitled "Establishment of the Judicial Integrity Board (JIB) and the Corruption Prevention and Investigation Office (CPIO)," A.M. No. 18-01-05-SC, 07 July 2020.

[29] Section 1, Article XI of the 1987 Constitution.

[30] *Retazo v. Verdon*, 595 Phil. 610, 616 (2008).

[31] *Office of the Court Administrator v. Dequito*, supra note 23.

[32] 630 Phil. 248 (2010).

[33] 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS), CSC Resolution No. 1701077, 03 July 2017.

[34] *Office of the Court Administrator v. Zorilla*, 911 Phil. 505, 527 (2019), citing *In Re: Delayed Remittance of Collections of Odtuhan*, 445 Phil 220, 224 (2003); *Office of the Court Administrator v. Galo*, 373 Phil 483, 490-491 (1999); *Cosca v. Palaypayon, Jr.*, 307 Phil. 261, 286 (1994).

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