

**JONATHAN A. REBONG, COMPLAINANT, VS. ELIZABETH R. TENGCO,
CLERK OF COURT, MUNICIPAL TRIAL COURT, STA. CRUZ, LAGUNA,
RESPONDENT.**

A.M. No. P-07-2338 (Formerly OCA IPI No. 06-2440-P). April 07, 2010

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PER CURIAM:

On June 24, 2005, complainant Jonathan A. Rebong and his mother Gloria Rebong filed separate complaints[1] for violation of Batas Pambansa Blg. 22 against Edwina and Ferdinand Dator before the Municipal Trial Court (MTC) of Sta. Cruz, Laguna where respondent Elizabeth R. Tengco was Clerk of Court. Upon inquiry by complainant on how much were the filing fees for the complaints they filed, respondent quoted to them the amount of P400,000.00 for the three (3) cases, which had been docketed as Criminal Case Nos. 32782-84. Since respondent was the clerk of court, complainant believed and trusted her and paid her the P400,000.00 in cash. Complainant was then issued photocopies of the following receipts supposedly representing the amount he paid, to wit:

Official Receipt

No.

Date

Amount

Fee Collected

0862613[2]

June 24, 2005

P 20,625.00

Filing fee in CC# 32782 and Misc. fee (SAJ[3])

0862614[4]

June 24, 2005

39,000.00 6,800.00

Filing fee in CC# 32783 Misc. fee (SAJ)

0862615[5]

June 24, 2005

5,700.00 3,400.00

Filing fee in CC# 32784 Misc. fee (SAJ)

17897618[6]

June 24, 2005

75,000.0025,000.00

Service fees in CC# 32782-32784 Legal fees

0862691[7]

June 27, 2005

104,270.00

Filing fee in CC# 32783 (JDF[8])

0862692[9]

June 27, 2005

69,649.00

Filing fee in CC# 32782 (JDF)

0862693[10]

June 24, 2005

50,556.00

Filing fee in CC# 32784 (JDF)

Complainant asked respondent why he was only being issued photocopies, but respondent replied that she needs to record them in the books and she will just send complainant the originals.

Several weeks passed but complainant did not receive the promised original copies of the receipts. So he went to respondent who told him that she lost the originals.

Sensing an anomaly, complainant went to the Regional Trial Court and other Municipal Trial Courts a few months later to ask for a computation of the filing fee for a case like his, where the claim was worth P5.5 million. It was only then that he found out that the filing fees he paid were very excessive.

Furious, complainant demanded from respondent copies of the original receipts. Respondent agreed to meet with him, but when they met, the former only presented a sheet of yellow paper[11] with a handwritten list of itemized expenses where his P400,000.00 allegedly went.

Thus, complainant, through counsel, sent demand letters to respondent at her place of work. They however later learned that respondent had stopped reporting for work at the MTC of Sta. Cruz, Laguna, since February 2006. They sent the demand letters to respondent's residence at Mabini Street, Sta. Cruz, Laguna, but said letters were also returned unserved because respondent has moved out from said address, without leaving a forwarding address.

Having failed to secure the receipts from respondent, complainant's counsel wrote the Officer-in-Charge of the MTC, Sta. Cruz, Laguna, requesting for certified photocopies of all the receipts evidencing payment of the legal fees for Criminal Case Nos. 32782-84.

On March 29, 2006, Leslie A. San Juan, Court Stenographer and Officer-in-Charge of the MTC of Sta. Cruz, Laguna, issued the following Certification:

This is to certify that the Court cannot provide the certified xerox copies of all the receipts evidencing payment corresponding [to] legal fees in Criminal Cases Nos. 32782, 32783 and 32784 for Violation of BP 22 considering that they [are] all in [the] possession of the Clerk of Court Ms. Elizabeth R. Tengco. What is on record, in Criminal Case No. 32782 are O.R. No. 0862692 (JDF) and O.R. No. 0862613 (SAJ) written on the front page; in Criminal Case No. 32783 are O.R. No. 0862691 (JDF) and O.R. No. 0862614 (SAJ) also written on the front page; and in Criminal Case No. 32784 are O.R. No. 0862693 (JDF) and O.R. No. 0862615 (SAJ) likewise written on the front page.

The Court has already issued a Memorandum to Ms. Tengco directing her to submit all the records of cases in her possession but up to now there is no response yet, including her explanation to the alleged wrong assessment of filing fees in the above criminal cases. x x x.

Today[,] in connection with this request, a Memorandum to her to surrender all the duplicate copies of all the receipts, mentioned in the said request was issued to Ms. Tengco, x x x.[12]

On April 11, 2006, complainant filed a Sinumpaang Salaysay[13] with the Office of the Court Administrator (OCA) charging respondent of grave misconduct, conduct prejudicial to the best interest of the service and dishonesty. The OCA required respondent to comment[14] on the complaint but to date, the OCA has not received any comment from respondent.

Upon evaluation of the complaint, the OCA opined that in order to afford respondent her right to due process and considering the gravity of the accusation leveled against her, it was best to have the issues ventilated in a full-blown investigation. The OCA accordingly recommended that the instant complaint be re-docketed as a regular administrative matter and the same be referred to the Executive Judge of the Regional Trial Court of Sta. Cruz, Laguna for investigation, report and recommendation.[15] Said recommendation was adopted by the Court in a Resolution[16] dated July 11, 2007.

Executive Judge Jaime C. Blancaflor conducted the hearings on the complaint. Respondent was duly notified[17] but failed to show up in all of the hearings. Thus, after complainant concluded the presentation of his evidence, the case was deemed submitted for resolution.

In his Report and Recommendation[18] dated June 27, 2008, Judge Blancaflor made the following findings:

Careful assessment of the evidence presented by the complainant shows that respondent indeed, committed grave misconduct which is grossly prejudicial to the administration of justice. She did not only use her position so as to exact tremendous amount from a complainant, a victim of infraction, but also misappropriated money intended for the government.

It is provided in the Manual for Clerks of Courts that all fees collected shall accrue to the general fund. The Clerk of Court deposit[s] everyday his collections to the nearest LBP Branch for the account of the Judiciary Fund, Supreme Court, Manila. This was violated by the respondent for failing to duly account her collected filing fees for the criminal cases filed by the complainant before the Municipal Trial Court of Sta. Cruz, Laguna.

x x x x

She also violated Sec. 3 of the Code of Conduct of Court Personnel prohibiting court personnel to alter, falsify, destroy or mutilate any record within her control. As clearly testified by the Officer-in-Charge, Leslie A. San Juan, the purported copies of Official Receipts issued by the respondent to the complainant do not actually exist. With this alone, respondent should be meted the severe administrative penalty of dismissal from service

in accordance with the Civil Service Law.

x x x x

By presenting a list of computation of the alleged expenses or fees paid by the complainant, respondent was so dishonest and the same constitute also a Grave Misconduct warranting her dismissal from service.[19]

By Resolution[20] dated August 6, 2008, this Court referred the above findings of Judge Blancaflor to the OCA for evaluation report and recommendation.

The OCA, in its Memorandum[21] dated July 13, 2009, found that respondent violated the Rules on Legal Fees and Supreme Court (SC) Circular No. 26-97 which mandates the issuance of official receipts for payments received. It likewise found respondent to have violated SC Administrative Circular No. 5-93[22] for keeping in her custody the fees received and failing to turn over and deposit the same to the authorized depository bank. According to the OCA, the failure of respondent clerk of court to turn over the funds in her possession, without adequate explanation, constitutes gross dishonesty, grave misconduct, and even malversation of public funds. The OCA accordingly recommended:

- 1) that Elizabeth R. Tengco, Clerk of Court, Municipal Trial Court, Sta. Cruz, Laguna, be FOUND GUILTY of Gross Dishonesty and Grave Misconduct;
- 2) that all retirement benefits accruing to respondent Tengco be FORFEITED;
- 3) that the Financial Management Office, Office of the Court Administrator be DIRECTED to process the terminal leave benefits of the respondent, dispensing with the documentary requirements, to REMIT the same to the following court (MTC, Sta. Cruz, Laguna) funds, in the amount of Fifty Thousand Three Hundred Pesos (P50,300.00) representing JDF and Twenty Five Thousand and Two Hundred Twenty-Five Pesos (P25,225.00) representing SAJ, in the total amount of Seventy Five Thousand and Five Hundred Twenty-Five Pesos (P75,525.00), and to PAY the remainder thereof, in the amount of One Hundred Three Thousand [Eighty] Pesos and 72/100 (P103,080.72), to complainant Rebong as partial restitution of respondent Tengco;
- 4) that respondent Tengco be DIRECTED to RESTITUTE complainant Rebong the remaining amount of Two Hundred Twenty- One Thousand Three Hundred Ninety-Four Pesos and 28/100 (P221,394.28);
- 5) that she be BARRED from future employment to any branch or instrumentality of the government, including government-owned or controlled corporation; and
- 6) that Legal Division, OCA, be DIRECTED to initiate appropriate criminal proceedings against respondent Tengco in light of the above findings.[23]

After a thorough evaluation of the records and taking into consideration the recommendations of the Investigating Judge and the OCA, we find respondent administratively liable.

First, contrary to the P400,000.00 assessment made by respondent, the complainant should have been assessed legal fees only amounting to P75,525.00,[24] based on SC Amended Administrative Circular No. 35-2004,[25] which was issued by the Court to serve as reference for Clerks of Court in the assessment of the legal fees to avoid any confusion.

Second, respondent violated SC Circular No. 26-97 dated May 5, 1997 for failing to issue the original receipts and merely furnishing complainant with photocopies of receipts. The said circular clearly directs all judges and clerks of court to:

- 1) Compel their collecting officials to strictly comply with the provisions of the AUDITING AND ACCOUNTING MANUAL, Art. VI, Sec. 61 and 113, to wit:

"ARTICLE VI - Accountable Forms"

"Sec. 61. Kinds of Accountable forms- (a) Official Receipts - For proper accounting and control of collections, collecting officers shall promptly issue official receipts for all monies received by them. These receipts may be in the form of stamps or officially numbered receipts xxx." (Underscoring supplied.)

"Sec. 113. Issuance of official receipt - for proper accounting and control of revenues, no payment of any nature shall be received by a collecting officer without immediately issuing an official receipt in acknowledgment thereof. [These] receipts may be in the form of stamps xxx or officially numbered receipts, subject to proper custody and accountability." (Underscoring supplied.)

That she allegedly needed to record the payments in the books as she explained to complainant was not a valid justification for her to disregard the above-quoted directive.

Third, respondent likewise violated SC Circular No. 22-94[26] which provides:

To achieve uniformity and consistency in the observance of audit procedures and for proper accounting and control of collections, this Office prescribes the following guidelines:

- The official receipts issued by the Supreme Court to all lower courts shall be used only for collections that will accrue to the National Government;

x x x x

- In cases of loss of official receipts, the Clerk of Court or the duly authorized representative must immediately report the incident to the Provincial/City/Municipal Auditor and then file an application for relief, if the circumstances warrant(s);

x x x x

- Official Receipts must be kept in safe custody. The Clerk of Court, as the person directly responsible for all court collections, must take all reasonable steps to minimize the risk of losses, defalcations and other types of irregularities.

Respondent herself admitted to complainant that the reason why she cannot anymore give the original receipts is that she lost them. Such loss is substantiated by the result of the Financial Audit[27] conducted by the OCA during respondent's period of accountability from April 2000 to February 28, 2006 showing that the receipts for the criminal cases filed by the complainant were among those missing. However, it appears that no steps were taken by respondent to report the loss as required by the circular.

Section 7, Rule 136 of the Rules of Court is explicit that the clerk of court shall safely keep all records, papers, files, exhibits and public property committed to her charge. The clerk of court performs a very delicate function, having control and management of all court records, exhibits, documents, properties and supplies. Being the custodian thereof, the clerk of court is liable for any loss, shortage, destruction or impairment of said funds and properties.[28] As the custodian of the official receipts, respondent's liability for their loss cannot be gainsaid.

More, as custodian of court funds and revenues, it was likewise respondent's duty to immediately deposit the funds received by her to the authorized government depositories.[29] SC Circular Nos. 13-92[30] and 5-93 provide the guidelines for the proper administration of court funds. SC Circular No. 13-92 directs that all fiduciary collections be deposited immediately by the clerk of court concerned, upon receipt thereof, with an authorized depository bank. Per SC Administrative Circular No. 5-93, the Land Bank of the Philippines is designated as the authorized government depository.

Clerks of Court have always been reminded of their duty to immediately deposit the various funds received by

them to the authorized government depositories for they are not supposed to keep fund in their custody.[31] In the above-mentioned financial audit, it was revealed that the time when complainant paid his filing fees was within the period when respondent failed to submit her monthly reports or proof of remittances for the JDF, SAJ Fund and General Fund.[32] We can only conclude that respondent kept in her custody the filing fees complainant had paid and misappropriated the same.

Respondent's case is not simply non-abidance with court circulars and directives. Complainant in good faith trusted respondent's word when the latter made an assessment of the fees he must pay. Unfortunately, respondent abused this trust and confidence reposed on her and used her position to extract exorbitant amounts from complainant under the guise of legal fees for her personal gain. A very obvious indication of respondent's dishonest motive is the huge difference in the amounts, P324,475.00 to be exact, which eliminates any possibility that respondent may have only made the wrong assessment in good faith. Worse, respondent is nowhere to be found and thus the amounts collected are still unaccounted for.

Under the circumstances, respondent is clearly guilty of gross dishonesty and grave misconduct which the Court cannot countenance. The Court will not tolerate any conduct, act or omission by any court employee violating the norm of public accountability and diminishing or tending to diminish the faith of the people in the Judiciary.[33] No less than the Constitution mandates that all public officers and employees should serve with responsibility, integrity and efficiency. Indeed, public office is a public trust. Thus, we have often stated that the conduct and behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, is circumscribed with the heavy burden of responsibility. The Judiciary expects the best from all its employees who must be exemplars in the administration of justice.[34]

Under Rule XIV, Section 22 of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, dishonesty and grave misconduct both warrant the penalty of dismissal even if committed for the first time. In view, however, of this Court's Resolution[35] dated August 15, 2007 in re: Judge Elpidio R. Calis v. Elizabeth R. Tengco[36] and Office of the Court Administrator v. Elizabeth R. Tengco,[37] wherein respondent was already dropped from the service and her position declared vacant, the penalty of dismissal can no longer be imposed. Instead, respondent's retirement benefits are forfeited and she is barred from future employment in any branch or instrumentality of the government, including government-owned or controlled corporations. The filing fees amounting to P75,525.00 for Criminal Case Nos. 32782-84 which respondent failed to remit should be deducted from her accrued leave credits to be processed for monetization by the OCA Financial Management Office.

Per certification of Atty. Caridad A. Pabello, Chief of Office, OCA Office of Administrative Services, respondent has a total of 230.082 leave credits (92.791 vacation leave credits and 137.291 sick leave credits)[38] as of February 26, 2006, which according to Atty. Lilian Barribal-Co, Chief of Office of the OCA Financial Management Office, has a monetary equivalent of P178,605.72.[39] Deducting from said amount the P75,525.00 for the unremitted filing fees, respondent has P103,080.72 worth of terminal leave benefits left. The Court, however, notes that respondent still has pending administrative cases with the Court. Thus, the Court deems it more prudent to hold the release of said amount in abeyance until final resolution of all respondent's cases rather than having it answer as partial restitution to complainant.

WHEREFORE, we find respondent Elizabeth R. Tengco liable for gross dishonesty and grave misconduct, and order the forfeiture of her retirement benefits. She is **BARRED** from future re-employment in any branch, agency or instrumentality of the government, including government-owned or controlled corporations.

The Financial Management Office, Office of the Court Administrator is hereby **DIRECTED** to process the

terminal leave benefits of respondent, dispensing with the documentary requirements, and REMIT to the Municipal Trial Court, Sta. Cruz, Laguna the amounts of P50,300.00 representing collections for the JDF and P25,225.00 representing collections for the SAJ Fund, or the total amount of P75,525.00. The release of the remaining P103,080.72 of the terminal leave benefits of respondent shall be held in abeyance pending the resolution of Judge Elpidio R. Calis v. Elizabeth R. Tengco^[40] and Office of the Court Administrator v. Elizabeth R. Tengco.^[41]

Respondent Tengco is hereby DIRECTED to PAY complainant Jonathan A. Rebong, the P324,475.00 excess fees she collected from the latter.

The Legal Division of the Office of the Court Administrator is likewise DIRECTED to INITIATE appropriate criminal proceedings against respondent Tengco, with deliberate dispatch.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Villarama, Jr., and Mendoza, JJ., concur.

Abad, J., on official business.

Perez, J., no part. acted on matter as Crt. Adm.

[*] Also referred to as Joey in some parts of the rollo.

[1] Rollo, pp. 16-19.

[2] Id. at 20.

[3] Special Allowance for the Judiciary Fund.

[4] Rollo, p. 22.

[5] Id. at 23.

[6] Id. at 21.

[7] Id. at 22.

[8] Judiciary Development Fund.

[9] Rollo, p. 20.

[10] Id. at 23.

[11] Id. at 38.

[12] Id. at 27.

[13] Id. at 7-15.

[14] Id. at 35 and 67.

[15] Id. at 100-100A.

[16] Id. at 108.

[17] Id. at 102.

[18] Id. at 138-141.

[19] Id. at 140-141.

[20] Id. at 172.

[21] Id. at 175-180.

[22] Dated April 30, 1993.

[23] Rollo, pp. 179-180.

[24] Id. at 127.

Criminal Case No.

Filing Fees (SAJ and JDF)

32782

P 24,025.00

32783

42,400.00

32784

9,100.00

TOTAL

P 75,525.00

[25] GUIDELINES IN THE ALLOCATION OF THE LEGAL FEES COLLECTED UNDER RULE 141 OF THE RULES OF COURT, AS AMENDED, BETWEEN THE SPECIAL ALLOWANCE FOR THE JUDICIARY FUND AND THE JUDICIARY DEVELOPMENT FUND. Dated August 20, 2004.

[26] Dated April 8, 1994.

[27] Rollo, p. 128.

[28] Office of the Court Administrator v. Ramirez, A.M. No. MTJ-03-1508, January 17, 2005, 448 SCRA 288, 295; Office of the Court Administrator v. Bawalan, A.M. No. P-93-945, March 24, 1994, 231 SCRA 408, 411.

[29] Office of the Court Administrator v. Varela, A.M. No. P-06-2113, February 6, 2008, 544 SCRA 10, 20.

[30] Dated March 1, 1992.

[31] Ilagan v. Amar, A.M. No. P-04-1858, August 16, 2004, 436 SCRA 535, 541.

[32] Rollo, pp. 129-130.

[33] Sabado, Jr. v. Jornada, A.M. No. P-07-2344, April 15, 2009, 585 SCRA 12, 16.

[34] Francisco v. Galvez, A.M. No. P-09-2636, December 4, 2009, p. 5.

[35] Rollo, pp. 116-117.

[36] A.M. No. P-07-2360.

[37] A.M. No. P-06-2253.

[38] Certification dated March 31, 2009, rollo, pp. 184.

[39] Memorandum dated April 15, 2009, id. at 181.

[40] A.M. No. P-07-2360.

[41] A.M. No. P-06-2253.

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