

REPORT ON THE JUDICIAL AUDIT CONDUCTED IN THE MUNICIPAL CIRCUIT TRIAL COURT, GEN. M. NATIVIDAD-LLANERA, NUEVA ECIJA.

A.M. NO. 01-10-279-MCTC. October 15, 2007

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

On July 11 to 13, 2001, the judicial audit team of the Office of the Court Administrator (OCA) conducted an audit and inventory of cases in the Municipal Circuit Trial Court (MCTC) of Gen. M. Natividad-Llanera, Nueva Ecija. The purpose of the audit was to determine the veracity of reports that cash bonds posted for the provisional liberty of the accused in criminal cases were being paid directly to the presiding judge for which no official receipts were issued. The MCTC was then presided by Judge Octavio A. Fernandez.

On October 10, 2001, the judicial audit team submitted its findings to Deputy Court Administrator Jose P. Perez.

On December 5, 2001, the Court designated retired Sandiganbayan Justice Narciso T. Atienza, Consultant in the OCA, to conduct an investigation, report and recommendation on the findings of the audit team that:

a) Judge Octavio A. Fernandez

1)

disregarded the rule on the deposit of money as bail (Sec. 14, Rule 114, Revised Rules on Criminal Procedure);

2)

Misappropriated the cash bonds he directly received in Criminal Cases Nos. 2461-N (People v. Marthy Manliclic), No. 110-L (People v. Edgardo Balunes), No. 111-L (People v. Guiller Ferrer) and No. 135-L (People v. Rufino Casimiro) – all are MCTC, Gen. M. Natividad-Llanera cases, and Criminal Cases Nos. 505 and 506 (People v. Florentino Marcelo) – both MTCC, Palayan City cases; and

3)

Misappropriated the amount of P10,000.00 which was intended as a settlement of the civil aspect of Criminal Case No. 2443-N (People v. Danilo Rivera); and

b) Judge Fernandez and Clerk of Court Teresita S. Esteban misappropriated P65,000.00 from the P300,000.00 as full payment of the civil aspect covering the face value of the two (2) checks subject of Criminal Cases Nos. 2628-N and 2630-N (People v. Mercedita Santos).

On June 25, 2002, Justice Atienza submitted his Report and Recommendation which, in turn, was referred by the Court to the OCA for evaluation.

On August 26, 2003, the OCA submitted its Evaluation Report as follows:

In his Report to the Court, Justice Atienza stated that respondent's actuations constitute grave misconduct. He justified his conclusion based on the oral testimonies of the witnesses and the various documentary evidence attached to the records. He viewed the counter-affidavit of Judge Fernandez as hearsay but since the Rules on Evidence are not strictly followed in administrative proceedings, he nevertheless discussed it along with the other evidence adduced during the investigation. Hereunder are the findings of Justice Atienza, to wit:

x x x

As culled from the records of Criminal Cases Nos. 2461-N, 110-L, 111-L, 505 MTCC Palayan City, and 2443-N, respondent judge received the cash bail bond deposits of the accused and retained possession of the same in violation of Section 11, (Sec. 14 of the Revised Rules) Rule 114 of the 1985 Rules on Criminal Procedure x x x.

x x x

Respondent Judge also violated the law when he issued the orders of release of the accused who posted cash bonds without requiring the submission of a written undertaking showing compliance with Section 2 of Rule 114 x x x.

x x x

With respect to the alleged misappropriation of the P65,000.00, part of the P300,000.00 full settlement of the civil aspect of Criminal Cases Nos. 2628 and 2630-N, it appears that two (2) counts of Violation of BP 22 were filed by Ricardo Santos in the MCTC, Gen. Natividad-Llanera, Nueva Ecija against Mercedita Santos on May 14, 1999. The parties settled the cases amicably, and accused Mercedita Santos entrusted to Teresita Esteban, Clerk of Court of MCTC, Gen. Natividad-Llanera, Nueva Ecija, the amount of P300,000.00 for delivery to Ricardo Santos, in full settlement of the civil aspects of both cases. On September 3, 1999, Ricardo Santos executed a document denominated as "Sinumpaang Salaysay Tungkol sa Pag-uurong" which was sworn to before Judge Fernandez. In view of the desistance executed by the complainant, Judge Mallare directed the Clerk of Court to include both cases in the trial calendar for affiant to affirm the veracity of the contents of his affidavit of desistance. On the witness stand, complainant retracted his desistance because, according to him, he received only P235,000.00 from the Clerk of Court and not the entire amount of P300,000.00 as full settlement for both cases. This prompted Judge Mallare to issue an order dated October 27, 1999, stating, inter alia, that "upon inquiry made by the court, said Clerk of Court manifested in open court that Judge Octavio Fernandez took the Thirty Thousand (P30,000.00) Pesos as attachment bond". The Clerk of Court did not say what happened to the remaining P35,000.00.

x x x

Judge Octavio A. Fernandez and Clerk of Court Teresita S. Esteban of MCTC Gen. Natividad-Llanera, Nueva Ecija did not live-up to the standards of conduct demanded of court employees. They failed to act according to the responsibilities attached to their respective offices. A Judge should so behave at all times to promote public confidence in the integrity and impartiality of the judiciary and the Clerk of Court must be honest and competent.

x x x

THE RECOMMENDATION OF THIS OFFICE

This Office fully agrees with the extensive investigation and report of Justice Atienza regarding the administrative liability of Judge Fernandez and Clerk of Court Esteban. It is well taken but the penalty he recommended against Judge Fernandez appears to be disproportionate to the gravity of the offense. Respondent Judge Fernandez has been previously fined in the amount of P5,000.00 and sternly warned in A.M. No. MTJ-01-1354 dated April 4, 2000 that repetition of his mistakes, more so aggravation thereof, would be dealt with more severely. Apparently,

the warning did not work and we see no reason in employing it again for purposes of this disciplinary case. Public interest in an honest judiciary dictates that notice of future harsher penalties should not be followed by another forewarning of the same kind, ad infinitum, but by discipline through appropriate penalties. This understanding should leave no doubt that, unless completely absolved of the charges, respondent Judge faces a grimmer sentence than the P30,000.00 fine and warning recommended by Justice Atienza.

Respondent Judge Fernandez undeniably kept or retained in his possession the cash bonds submitted by the accused for their temporary liberty in the following criminal cases:

Criminal Case No.

Amount of Bail

Date of Payment

1. 2461-N P 4,000.00 February 3, 1988
2. 110-L 4,000.00 February 10, 1999
3. 111-L 10,000.00 January 26, 1999
4. 505 2,000.00 July 2, 1996

5. 2443-N

10,000.00

The pertinent provision on this matter is SC Circular No. 13-92 dated March 1, 1992, which reads:

x x x x x x x x

All collections from bail bonds, rental deposits and other fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government deposit bank.

x x x

As can be gleaned from the above-cited provision, clerks of court, not judges, are the custodians of all bail bonds, rental deposits and other fiduciary collections. Even in the ordinary course of proceedings, judges have nothing to do with the collections because clerks of court are officers mandated to deposit them with an authorized government depository bank. To repeat, the clerks of court are the ones responsible for such matters (Manual for Clerks of Court, pp. 123-128).

The proper procedure in the handling of cash submitted or given to the municipal court as bail bond is for the court to formally direct the clerk of court to officially receive the cash and to immediately deposit it with the municipal treasurer's office. The transaction must not only be properly receipted but should also appear in the records of the case (Daag v. Serrano, 118 SCRA 381; Aguilar, Jr. v. Judge Fernandez, A.M. No. MTJ-01-1354, April 4, 2001).

Even assuming for the sake of argument that Judge Fernandez pocketed the P30,000.00, one wonders why the three (3) checks (P10,000.00, P10,000.00 and P23,000.00, respectively) issued by Clerk of Court Esteban in favor of the complainant amounted to P43,000.00. There was an over-payment of P8,000.00 since she has only to pay the balance of P35,000.00. Be that as it may, it is clear that Clerk of Court Esteban misappropriated the funds held in trust by her – an act that needs to be condemned.

x x x

That “public office is a public trust” cannot be imprudently undermined for it is constitutionally enshrined. Public officers and employees are at all times accountable to the people; must serve them with utmost responsibility, integrity, loyalty and efficiency, and must lead modest lives (Section 1, Article XI, Philippine Constitution). The Code of Conduct and Ethical Standards for Public Officials and Employees (R.A. No. 6713) additionally provides that every public servant shall uphold public interest over his or her personal interest at all times (*Gano v. Leonen*, 232 SCRA 98, May 3, 1994, citing Section 2 of Republic Act No. 6713). Court personnel, from the presiding judge to the lowliest clerk, are further required to conduct themselves always beyond reproach, circumscribed with the heavy burden of responsibility as to free them from any suspicion that may taint the good image of the judiciary (*Ibid.*, citing re: *Josefina v. Palon, etc.*, 213 SCRA 219, September 2, 1992; *Medilo v. Asodisen*, 233 SCRA 68, June 13, 1994; *Mendoza v. Tiongson*, A.M. No. P-90-454, December 17, 1996). As this Court has recently pronounced, “(t)he nature and responsibilities of public officers enshrined in the 1987 Constitution and oft-repeated in our case law are not mere rhetorical words. Not to be taken as idealistic sentiments but as working standards and attainable goals that should be matched with actual deeds (*RTC Makati Movement Against Graft and Corruption v. Dumlao*, 247 SCRA 108, 117, August 9, 1995).

With these time-honored principles and the substantiated findings of Justice Atienza, we are constrained to conclude that the respondents are administratively guilty of gross misconduct.

VII.

THE PENALTY

Since respondent Judge Fernandez committed a serious offense, the appropriate penalty is found under Rule 140 of the Revised Rules of Court, which provides:

Sec. 11. Sanctions. – A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

- 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 corporation. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;
- Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or
- A fine of more than P20,000.00 but not exceeding P40,000.00.

The gravity of the offense merits a penalty of suspension for six (6) months as this is not the first time that respondent judge committed the same offense.

VIII.

THE RECOMMENDATION

WHEREFORE, in the light of the foregoing, the undersigned most respectfully submits to the Honorable Court the recommendations that:

x x x

- Judge Octavio A. Fernandez be **SUSPENDED** for six (6) months without pay;
- Clerk of Court Teresita Esteban be **FINED** in the amount of Twenty Thousand (P20,000.00) Pesos; and
- Both be **WARNED** that repetition of the same or similar offense shall be dealt with more severely.

Records of the Court show that on January 2, 2004, respondent judge opted to retire before he reached his compulsory retirement age. Thus, he can no longer be suspended or dismissed from the service.

It is well settled that the Court does not lose its jurisdiction over an administrative case by the mere fact that the respondent public official ceases to hold office during the pendency of his case.[1] In *Perez v. Abiera*,[2] we held:

In other words, the jurisdiction that was Ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased to be in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications. x x x If only for reasons of public policy, this Court must assert and maintain its jurisdiction over members of the judiciary and other officials under its supervision and control for acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public. If innocent, respondent official merits vindication of his name and integrity as he leaves the government which he served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.

Thus, even if respondent judge had retired from the service, he is still subject to the jurisdiction of the Court considering that his infractions were committed and investigated when he was still in the judiciary. In view of the gravity of his offense (grave misconduct) and considering that this is the second time he has been charged and convicted administratively, he should be meted a **FINE** of P40,000.00.[3]

Respondent Clerk of Court Esteban, having misappropriated the funds held in trust by her is found guilty of dishonesty, which is a grave offense punishable by dismissal from the service even if committed for the first time.[4] This is not respondent Clerk of Court Esteban's first offense. In A.M. No. P-04-1886,[5] she was found guilty of simple neglect of duty for mishandling the cash bond posted by the accused in Criminal Case No. 160-L of the MCTC of Gen. Natividad-Llanera, Nueva Ecija. She was suspended for one month and one day without pay and warned that a repetition of the same or similar offense shall be dealt with more severely.

ACCORDINGLY, Judge Octavio A. Fernandez, retired, is declared guilty of gross misconduct and is ordered to pay a **FINE** of P40,000.00 payable to this Court upon notice. The Court Administrator is directed to file the corresponding criminal complaint with the Office of the Provincial Prosecutor of Nueva Ecija, also upon notice.

For having committed dishonesty, and having been previously convicted administratively and warned of a more severe sanction, Clerk of Court Teresita S. Esteban is **DISMISSED** from the service with forfeiture of all benefits except earned leave credits. She is **BARRED** from reemployment in any branch or instrumentality in the government, including government-owned and controlled corporations.

Let a copy of this Decision be attached to respondents' personal file with this Court.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Austria-Martinez, Corona, Carpio-Morales, Tinga, Chico-Nazario, Garcia, Velasco, Jr., Nachura, and Reyes, JJ., concur.

Ynares-Santiago, and Azcuna, JJ., on official leave.

[1]Aquino v. Miranda, A.M. No. P-01-1453, May 27, 2004, 429 SCRA 230; How v. Ruiz, A.M. No. P-05-1932, February 15, 2005, 451 SCRA 320.

[2] Adm. Case No. 223-J, June 11, 1975, 64 SCRA 302, 306-307.

[3] Pursuant to Section 11(1), Rule 140 of the Revised Rules of Court earlier cited.

[4] Section 5 2(A)(1), Rule VI, Revised Uniform Rules on Administrative Cases in the Civil Service; How v. Ruiz, *supra*.

[5]Agulan, Jr. v. Esteban, December 9, 2004, 445 SCRA 566.

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