

IN RE: PARTIAL REPORT ON THE RESULTS OF THE JUDICIAL AUDIT CONDUCTED IN THE MTCC, BRANCH 1, CEBU CITY.

A.M. No. MTJ-05-1572 (Formerly A.M. No. 04-8-208-MTCC). January 30, 2008

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PER CURIAM:

EXPOSED in this administrative case are several instances of anomalous conduct that had been occurring in the Municipal Trial Court in Cities (MTCC), Cebu City. The irregularities uncovered were perpetrated and made possible by members and personnel of the judiciary of varying ranks.

This provides a reminder that everyone in the judiciary, from the presiding judge to the lowliest clerk, bears a heavy responsibility in the proper discharge of one's duty. It behooves each one to steer clear of any situation in which the slightest suspicion might be cast on his conduct.[1]

Professionalism, respect for the rights of others, good manners and right conduct are expected of all judicial officers and employees, because the image of the judiciary is necessarily mirrored in their actions.[2]

In mid-June of 2004, an audit was conducted in the MTCC, Branch 1, Cebu City. To enable the Court to immediately address the anomalies found, the judicial audit team[3] submitted a partial report on July 23, 2004 to the Office of the Court Administrator (OCA), recommending that:

- Judge Mamerto Y. Coliflores (Retired), former Presiding Judge, MTCC, Br. 1, Cebu City, be DIRECTED to submit a written explanation to the Court within fifteen (15) days from notice of his acts in:

(a)

imposing a penalty beyond the jurisdiction of his court upon accused Jimmy Pepito Digawan in Crim. Case No. 118324-R;

(b)

promulgating two (2) decisions on the same day, i.e. December 4, 2002, in Crim. Case No. 117409-R, in which he imposed two conflicting penalties upon accused Dennis Bugwat Guerrero;

(c)

deciding Crim. Case No. 108731-R, entitled *People v. Capin*, on March 18, 2003 despite the absence of [1] the records in the court, and [2] scheduled hearing on said date;

(d)

either granting the petitions for bail or in ordering the confinement and rehabilitation of drug dependents or in ordering the release of drug dependents from the drug rehabilitation center in the following cases even if said petitions were not raffled and assigned to Branch 1 as required under Circular No. 7, dated September 23, 1974, and over which his court has no jurisdiction;

Docket No.

Title/Nature

Date Decided

Sp. Proc. No. 01-99

People v. Rico Caja, et al.

Feb. 12, 1999

Sp. Proc. No. 18

Urgent Petition to Post Bail

Sep. 30, 1999

Sp. Proc. No. 04

Petition for Voluntary Submission of Drug Dependent Aljoe Mari Loquinario

Dec. 22, 1999

Sp. Proc. No. 5

Petition for Voluntary Submission of Drug Dependent Ernesto Palanca

Dec. 21, 2000

Sp. Proc. No. 9

Petition for Voluntary Rehabilitation of Mary Annelynne Dungog Abella

June 29, 2001

Sp. Proc. No. 06

Petition for Voluntary Rehabilitation of Drug Dependent Jimmy Escalante Duarte

July 4, 2001

Sp. Proc. No. 10

Petition for Voluntary Rehabilitation of Leo Nick Del Mar

July 5, 2001

Sp. Proc. No. 11

Petition for Voluntary Rehabilitation of Jose Cecil Lim Ormoc

July 6, 2001

Crim. Case 117249

People v. Villaceran

July 10, 2002

Sp. Proc No. 6 (sic)

Petition for Voluntary Rehabilitation of Drug Dependent Roderick Pakson

March 1, 2003

- Judge Anastacio S. Necesario of the Municipal Trial Court in Cities, Branch 2, Cebu City be DIRECTED to submit a written explanation to the Court within fifteen (15) days from notice of his acts in granting the petition for voluntary rehabilitation of drug dependent Eduardo T. Sia in Sp. Proc. No. 18 (sic) and in ordering the release of drug dependent Froilan W. Sentones in Sp. Proc. No. 16, which cases were taken cognizance of by Branch 1 in violation of Circular No. 7, dated September 23, 1974, and over which Branch 1 has no jurisdiction;

- Mr. Jose A. Legazpi, Branch Clerk of Court, MTCC, Br. 1, Cebu City, be DIRECTED to SHOW CAUSE within fifteen (15) days from notice why no disciplinary sanction should be taken against him for his:

(a)

willful disregard of Circular No. 7, dated September 23, 1974, requiring all cases filed with the court in multi-sala stations to be assigned or distributed to the different branches by raffle, and which provides that no case may be assigned to any branch without being raffled, when he received and docketed the following cases:

Docket No.

Title/Nature

Date Filed

Sp. Proc. No. 18

Urgent Petition to Post Bail

Sep. 30, 1999

Sp. Proc. No. 04

Petition for Voluntary Submission of Drug Dependent Aljoe Mari Loquinario

Dec. 22, 1999

Sp. Proc. No. 5

Petition for Voluntary Submission of Drug Dependent Ernesto Palanca

Dec. 21, 2000

Sp. Proc. No. 9

Petition for Voluntary Rehabilitation of Mary Annelynne Dungog Abella

June 29, 2001

Sp. Proc. No. 06

Petition for Voluntary Rehabilitation of Drug Dependent Jimmy Escalante Duarte

July 4, 2001

Sp. Proc. No. 10

Petition for Voluntary Rehabilitation of Leo Nick Del Mar

July 5, 2001

Crim Case 117249

People v. Villaceran

July 10, 2002

Sp. Proc. No. 6 (sic)

Petition for Voluntary Rehabilitation of Drug Dependent Roderick Pakson

March 1, 2003

Sp. Proc. No. 18

Petition for Voluntary Rehabilitation of Drug Dependent Eduardo T. Sia

Sp. Proc. No. 16

Petition for Voluntary Rehabilitation of Drug Dependent Froilan W. Sentones

(b)

his acts in preparing and subscribing the counter-affidavit of accused Perla Rivera in Crim. Case Nos. 125530-R to 125545-R, despite his knowledge that said cases were at the time pending in Branch 1;

(c)

his failure to present to the judicial audit team the cases mentioned in No. 1(d) in the course of the judicial audit on March 21 to 26, 2003;

- Ms. Romnie Fernan-Rota, Clerk II, and Mr. Roldan Artes, Court Sheriff III, both of MTCC, Br. 1, Cebu City, be DIRECTED to SHOW CAUSE why no disciplinary action should be taken against them within fifteen (15) days from notice for their acts in receiving the petitions in Sp. Proc. No. 01-99, entitled People v. Caja, et al. on February 12, 1999 and Sp. Proc. No. 11, entitled Petition for Voluntary Rehabilitation of Jose Cecil Lim Ormoc on July 6, 2001, respectively, in violation of Circular No. 7, dated September 23, 1974, requiring all cases filed with the court in multi-sala stations to be assigned or distributed to the different branches by raffle, and which provides that no case may be assigned to any branch without being raffled;

- this matter be treated as an administrative complaint against former Judge Mamerto Y. Coliflores, Judge Anastacio S. Necesario, Mr. Jose A. Legazpi, Ms. Romnie Fernan-Rota and Mr. Roldan A. Artes; and

- the detail of Mr. Jose A. Legazpi at the Library of the Regional Trial Court, Cebu City be extended until further orders from this Court.[4]

In its November 24, 2004 Resolution, the Court resolved to take the recommended course of action, directing those implicated to show cause why no disciplinary action should be taken against them. Respondents Judge Mamerto V. Coliflores (now retired), Judge Anastacio S. Necesario, Mr. Jose A. Legazpi, Ms. Romnie Fernan-Rota and Mr. Roldan A. Artes, all submitted their respective comments.

On March 28, 2005, the Court referred the administrative matter to the OCA for evaluation. Under date of March 27, 2007, the OCA submitted its report. In said report, the OCA found that the evidence did, indeed, point to the existence of the alleged irregularities and that respondents were responsible for them. It thus recommended the following courses of action:

- Judge Mamerto Coliflores, former presiding judge, Municipal Trial Court in Cities, Branch 1, Cebu City, (a) be FOUND GUILTY of gross ignorance of the law and grave misconduct, and (b) that his retirement benefits be FORFEITED, except his accrued leave credits;
- Judge Anatalio S. Necessario, Municipal Trial Court in Cities, Branch 2, Cebu City, (a) be FOUND GUILTY of violating a Supreme Court rule, and (b) be FINED in the amount of P11,000.00 with WARNING that a repetition of the same or similar act will be dealt with more severely;
- Mr. Jose A. Legazpi, clerk of court, Municipal Trial Court in Cities, Branch 1, Cebu City, (a) be FOUND GUILTY of grave misconduct, and (b) be DISMISSED from the service with forfeiture of all benefits, excluding leave credits, and with prejudice to re-employment in any branch or agency of the government including government-owned or controlled corporations;
- Ms. Romnie Fernan-Rota, clerk II, and Mr. Roldan A. Artes, Court Sheriff, both of the Municipal Trial Court in Cities, Branch 1, Cebu City are EXONERATED from any administrative liability. They are, however, ADMONISHED to be more circumspect in the performance of their duties to avoid committing acts that are inconsistent with existing laws and procedures as well as with good records management; and
- (a) The request of Judge Monalila S. Tecson, Municipal Trial Court in Cities, Branch 1, Cebu City, to recall the detail of Mr. Jose A. Legazpi at the RTC Library be DENIED; and (b) Judge Tecson be ADVISED to cause the recall of the detail of Ms. Romnie Fernan-Rota at the Office of the Clerk of Court, MTCC, Cebu City, and to designate an acting branch clerk of court from among her staff members.[5]

Except for some modifications on sanctions to be imposed, We are in accord with the OCA findings. We shall extrapolate from these findings in the discussion below.

Judge Mamerto Coliflores

Now retired Judge Coliflores has been alleged to have committed the following acts:

- 1.)
Imposing a penalty beyond the jurisdiction of his court;
- 2.)
Promulgating two decisions for the same case on the same day with two conflicting penalties;
- 3.)
Deciding a case in the absence of the records and hearing;
- 4.)
Granting several petitions for the confinement and rehabilitation or the release of drug dependents even when their cases had not been raffled to his court, hence, without jurisdiction.

Imposing penalty beyond jurisdiction

Under Section 32(2) of Batas Pambansa Blg. 129, as amended, first level courts have exclusive jurisdiction over all offenses punishable with imprisonment not exceeding six (6) years. Judge Coliflores promulgated a sentence in Criminal Case No. 118324-R imposing a penalty of six (6) months and one (1) day of prision correccional to six (6) years and one (1) day imprisonment upon the accused. This is a clear violation of the law.

In his letter of June 11, 2004, Judge Coliflores admitted that it was patent error for his court to impose such a penalty beyond its jurisdiction. Further, when required by the Court to comment, he said it was "patent error of

judgment duly corrected," adding that then Acting Presiding Judge Econg had already amended his erroneous sentence.

That such an error was subsequently put to right is no defense whatsoever. When the law is sufficiently basic, a judge owes it to his office to know and to simply apply it. Anything less would be constitutive of gross ignorance of the law.[6]

Even newly-appointed judges are required to have a working knowledge of the law on jurisdiction before they assume their judicial function. As is natural and in the course of accumulated experience spanning several years, judges become more conversant with it, which they frequently apply in court. Thus, it is completely inexcusable for an experienced judge, such as Judge Coliflores, to ignore basic law, already well-ingrained through constant usage.

Promulgating two decisions with two
conflicting penalties in same case

Further demonstrating his incompetence, Judge Coliflores issued two (2) decisions in Criminal Case No. 117409-R on the same day, imposing conflicting penalties upon the accused. In one decision, he imposed a straight penalty of "THREE (3) YEARS of pricion (sic) correccional" upon the accused. In another, he imposed an indeterminate penalty upon the same accused, thus:

WHEREFORE, applying the Indeterminate Sentence Law, the accused is hereby meted the penalty of 6 months and 1 day as MINIMUM to 3 years, 6 months and 20 days as MAXIMUM Indeterminate Penalty.[7]

He failed to deny these divergent actions. Instead, when required by the Court to comment, he merely stated that "the open court sentence should prevail, and the Indeterminate Sentence Law will not apply." He made it worse. It should be the written decision, not the one dictated in open court, that should prevail. Besides, a straight penalty is imposable only if it does not exceed one year of imprisonment.

Deciding case in absence of records and hearing

Not only did Judge Coliflores display gross ignorance of the law and procedure, he was also less than candid in explaining the circumstances surrounding the promulgation of his decision in Criminal Case No. 108731-R. The judicial audit team found that he decided the case on March 18, 2003 despite the absence of its records and a scheduled hearing on that date.

It was established that the records were inadvertently attached to the records of Criminal Case No. 108730-R, which was decided by Judge Coliflores on September 12, 2000. On February 6, 2003, the case folder of Criminal Case No. 108730-R was brought for safekeeping, without knowing that the records of Criminal Case No. 108731-R were attached to it. It was only on May 27, 2004 that the records of Criminal Case No. 108731-R were retrieved from the Office of the Clerk of Court after a futile search in the premises of Branch 1.

In his June 11, 2004 letter, Judge Coliflores admitted that he decided Criminal Case No. 108731-R even though the case "was not included in the calendar for that date, March 18, 2003, by the Interpreter due to the fact that the calendar of the court was prepared three (3) days ahead of schedule, but on the said date the record was discovered."

However, in his comment dated January 6, 2005, he stated that he decided the case "with the duplicate copy of the original records as certified by the affidavit of REBECCA L. ALESNA, Court Interpreter of MTCC, Br. 1, Cebu City x x x." A close examination of said affidavit reveals that Alesna merely attested to the circumstances surrounding the promulgation of judgment in Criminal Case No. 108731-R without categorically stating that the

proceeding was undertaken with the duplicate copy of the original records at hand. Moreover, the fact that there was no scheduled hearing on March 18, 2003 and the absence of the minutes of the supposed proceeding render the decision highly questionable.

Taking cognizance of petitions without jurisdiction

Judge Coliflores likewise failed to satisfactorily explain his acts of (a) granting petitions for bail; (b) ordering the confinement and rehabilitation of drug dependents; and (c) ordering the release of drug dependents from the drug rehabilitation center, although these cases had not been assigned by raffle to his court, as required under Circular No. 7 dated September 23, 1974. Hence, he again acted without jurisdiction.

Under Section 30 of Republic Act (R.A.) No. 6425, otherwise known as the Dangerous Drugs Act of 1972 (the law in force at the time most of the subject cases were filed), the matter of voluntary submission to confinement, treatment and rehabilitation in a center of a drug dependent was subject to the approval of the Dangerous Drugs Board. However, if the drug dependent was a minor, his confinement, treatment and rehabilitation in a center would be upon order, after due hearing, by the Regional Trial Court (RTC) of the province or city where the minor resides. Similarly, pursuant to Section 54 in relation to Section 90 of R.A. No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 (the law now in force), the RTC has jurisdiction over drug-related cases.

Judge Coliflores' explanation neither confirmed nor denied the judicial findings. At best, it was evasive, as he declared that:

x x x where petition for bail release granted by this Court, it should be noted, that all persons in custody shall be entitled to bail, before or after conviction by the Metropolitan Trial Court; x x x with respect to the rehabilitation of drug dependents if they have pending case in court, they may asked (sic) for suspension of hearing and be rehabilitated before hearing x x x with respect to non-raffled cases, it was the voluntary petition of the parents, even if no cases are filed.[8]

Summary of Judge Coliflores' violations

The actions of Judge Coliflores on Criminal Cases Nos. 118324-R and 17409-R, as well as on the cases involving drug dependents and a person seeking approval of bail, undoubtedly betray his gross ignorance of law and procedure. His admission of imposing a penalty beyond the jurisdiction of his court demonstrates his lack of professional competence. The same can be said as regards his inability to satisfactorily explain his conflicting decisions in one case.

His taking cognizance of cases not assigned to his court by raffle, as required under Circular No. 7, and over which his court has no jurisdiction, does not only demonstrate his professional incompetence, but also casts serious doubt on his motives. It bears stressing that a disregard of Court directives constitutes grave or serious misconduct.[9]

As a magistrate of long standing, he is expected to be conversant with such fundamental and basic legal principles as jurisdiction and the Indeterminate Sentence Law. His behavior and conduct must also reaffirm the people's faith in the integrity of the judiciary. He failed, however, to live up to these standards. Judges owe it to the public to be knowledgeable. Hence, they should have more than just a modicum of acquaintance with the statutes and procedural rules. When the law is so elementary, not to know it constitutes gross ignorance of the law, the mainspring of injustice.[10]

In sum, Judge Coliflores should be held liable for gross ignorance of the law or procedure and grave or gross

misconduct, which under Section 8, Rule 140, as amended, of the Rules of Court, are considered serious charges. For these, any of the following penalties may be imposed: (a) 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 forfeiture of benefits shall in no case include accrued leave credits; (b) suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or (c) a fine of more than P20,000.00 but not exceeding P40,000.00.[11]

Previous offenses

Notably, Judge Coliflores had already been penalized by the Court on four (4) past occasions. In *Harayo v. Coliflores*,^[12] he was found to have gratuitously signed marriage contracts in utter disregard of their legal effects. Hence, he was ordered suspended for one (1) month and to pay a fine equivalent to two (2) months salary.

In *Tudtud v. Coliflores*,^[13] he was fined P1,000.00 for gross inefficiency resulting from his act of tolerating the neglect of his process server, who, for one (1) year, failed to serve a court order upon the defendants directing the latter to submit their position paper.

In *Tugot v. Coliflores*,^[14] he was fined P20,000.00 for negligence and violation of a Supreme Court Rule and directive when he failed to demonstrate the required competence in administering an ejectment case. He had, in this instance, erroneously applied the provision on pre-trial (Rule 18) under the Rules of Court instead of the provisions under the Rule on Summary Procedure, thereby causing undue delay in the disposition of the case.

In *Betoy, Sr. v. Coliflores*,^[15] he was fined P20,000.00 for gross ignorance of the law resulting from his failure to make a probing and exhaustive examination of the applicant for search warrant and his (the applicant's) witnesses. He also failed to conduct a judicial inquiry as to the whereabouts of the seized firearms and ammunitions.

As Judge Coliflores had compulsorily retired from the service on August 17, 2003, the penalty of dismissal or suspension can no longer be applied. Nevertheless, considering his past infractions of similar nature and the gravity of his infractions as established by the judicial audit team, he deserves another penalty of fine in the maximum amount allowed by the Rules.

Judge Anatalio S. Necessario

It appears that Judge Necessario of Branch 2 also took cognizance of, and granted, a petition for voluntary rehabilitation of a drug dependent, which was filed directly with Branch 1 without raffle. He likewise issued an order in another case directing the release of a drug dependent from the rehabilitation center.

Respondent branch clerk of court Mr. Jose A. Legazpi tried to absolve Judge Necessario from administrative liability. In his affidavit of June 15, 2004, he admitted that he continued the practice of Judge Coliflores in the issuance of orders concerning drug dependents and that it was he who penned the questioned orders. Judge Necessario merely signed said orders upon his request. Mr. Legazpi, in his affidavit, declared that Necessario had no knowledge of the irregularity of said orders. These statements do not serve to absolve Judge Necessario's liability.

Under Section 1, Rule 36 of the Rules of Court, judges are mandated to directly prepare a judgment or final order determining the merits of the case, stating clearly and distinctly the facts and law on which it is based. This requirement is an assurance to the parties that, in reaching judgment, judges do so through the process of legal reasoning. The Court beseeches judges to take pains in crafting their orders, stating clearly and comprehensively

the reasons for their issuances, which are necessary for the full understanding of the action taken.[16]

Judge Necessario obviously failed to strictly follow the foregoing mandate when he signed the questioned orders in Special Proceedings Nos. 16 and 18, which were crafted by Mr. Legazpi, the clerk of court of Branch 1. He merely relied on the representation of Mr. Legazpi and did not even bother to read the case records before signing the questioned orders.

He should have known that first level courts have no jurisdiction over petitions for voluntary rehabilitation of drug dependents. He should have refrained from signing said orders. Instead, he relied on the false assurance made by Mr. Legazpi that the petitions were merely ancillary to cases pending in Branch 1, and blamed the latter afterwards for the blunder. That Mr. Legazpi subsequently executed an affidavit taking responsibility for the issuance of the questioned orders in an attempt to absolve him is of no moment. As a judge, who holds a position of responsibility, he cannot hide behind the irresponsibility of Mr. Legazpi because the latter is not the guardian of his responsibilities.

Verily, Judge Necessario is guilty of violating a Supreme Court rule, which is classified as a less serious charge,[17] the imposable penalty for which ranges from a fine of more than P10,000.00 but not exceeding P20,000.00 to suspension from office without salary and other benefits for not less than one (1) month nor more than three (3) months.[18] The OCA recommended that a fine of P11,000.00 be imposed. The Court, however, finds that P20,000.00 is a more appropriate amount, with the warning that a repetition of the same or similar act will be dealt with more severely.

Mr. Jose A. Legazpi

Mr. Legazpi, branch clerk of court of MTCC, Branch 1, Cebu City, is charged with grave misconduct for the commission of the following acts:

1.)

Willful disregard of Circular No. 7 when he received and docketed several cases without their being raffled, and even acted upon said cases, exercising functions of a judge;

2.)

Preparing and subscribing a counter-affidavit of an accused despite his knowledge that the cases were pending at his branch; and

3.)

Failure to present to the judicial audit team the records of the cases involved in the judicial audit.

Exercise of judicial functions and
willful disregard of Circular No. 7

Clerks of court are essential judicial officers who perform delicate administrative functions vital to the prompt and proper administration of justice.[19] However, while an officer of the court, a public officer and an "officer of the law," the position of clerk of court is not that of a judicial officer, nor is it synonymous with the court. The office is essentially a ministerial one.[20]

The results of the judicial audit show that Mr. Legazpi went beyond the ministerial duties of the office of the clerk of court, as he exercised functions that belong to a judge.

While he attributes the practice of granting petitions for rehabilitation of drug dependents to Judge Coliflores'

concern for the welfare of drug dependents, as well as for the safety of their parents, it is obvious that Mr. Legazpi principally contrived the practice.

After personally accepting petitions for voluntary rehabilitation of drug dependents from the petitioners, he would prepare the orders and would have them signed by Judge Coliflores. After the latter's compulsory retirement, he continued the practice of accepting such petitions, and had the orders signed by Judge Necessario of Branch 2, the pairing judge of Branch 1.

The petitions were directly filed with Branch 1, and knowing that, being initiatory pleadings, these should have been filed with the MTCC, Cebu City, through the Office of the Clerk of Court, for raffle or distribution among its different branches, Mr. Legazpi accepted them just the same.

Judge Econg, who also served as acting presiding judge of Branch 1, confirmed the illegal activities. In her Affidavit dated January 18, 2005, Judge Econg declared that sometime in March 2004, Mr. Legazpi approached and asked her to sign a prepared order in a petition entitled "In re: Petition for Voluntary Rehabilitation of Drug Dependent, Jerome Bonita." She did not, however, sign the order since she was aware that the Municipal Trial Court (MTC) has no jurisdiction over petitions of such nature. Further, the petition was not even docketed in Branch 1.

That Mr. Legazpi illegally exercised the function properly belonging to a judge was likewise proven when he admitted before the judicial audit team that he prepared one of Judge Coliflores' decision in Criminal Case No. 117409-R. Mr. Legazpi had penned the version which applied the Indeterminate Sentence Law, claiming that the first decision, which was given in open court by Judge Coliflores was erroneous, as it did not take the Indeterminate Sentence Law into consideration despite the fact that the penalty imposed was imprisonment for more than one (1) year. He even boasted that Judge Coliflores could have been charged with ignorance of the law had he proceeded with the imposition of a straight penalty.

Mr. Legazpi's lame excuse that he could not have caused the raffle of the petitions for voluntary rehabilitation of drug dependents because he was not in charge of the raffle of cases is an admission that he indeed received and acted on said petitions in violation of Supreme Court Circular No. 7 dated September 23, 1974. The Circular mandates, among others, that "(a)ll cases filed in stations or groupings where there are two or more branches shall be assigned or distributed to the different branches by raffle," and "(n)o case may be assigned to any branch without being raffled."

The importance of the raffle of cases cannot be overemphasized. It is intended to ensure the impartial adjudication of cases by protecting the integrity of the process of distributing or assigning cases to judges.

The acts of Mr. Legazpi - from personally receiving the petitions for voluntary rehabilitation of drug dependents directly from petitioners, to their resolution and disposition, with judges merely affixing their signatures on the orders or resolutions - grossly disregarded established rules.

Preparing & subscribing a counter-affidavit of an accused despite his knowledge that the cases were pending at his branch

Mr. Legazpi's explanation for his act in preparing and subscribing to the counter-affidavit of accused Perla Rivera in Criminal Case Nos. 125530-R to 125545-R does not satisfy the Court. Mr. Legazpi claims that he merely typed the counter-affidavit after the Public Attorney's Office refused to assist Rivera in its preparation. He, however, admitted to the judicial audit team that he prepared and "subscribed" the counter-affidavit. And at the hearing of

the cases on April 29, 2004, then Acting Presiding Judge Econg confronted Mr. Legazpi about it. He admitted preparing and "subscribing" the same.

By "subscribing," the Court takes it to mean that he allowed the accused to sign (and swear) before him. This is normally done by the investigating or trial prosecutor. Verily, by preparing and "subscribing" the counter-affidavit of the accused in a case pending in a sala, of which he is the clerk of court, Mr. Legazpi seriously compromised the integrity of the court as he invited suspicion of the court's bias for the accused.

Failure to present records of cases for judicial audit

Moreover, Mr. Legazpi was less than candid in his explanation of his failure to present to the judicial audit team the records of the petitions for voluntary rehabilitations of drug dependents,[21] a petition for bail[22] and Criminal Case No. 117249. He tried to evade the issue by falsely asserting that he had already mailed said records to the OCA prior to the retirement of Judge Coliflores. He could not, however, present the photocopy of the transmittal as the same was allegedly lost when then Acting Presiding Judge Econg conducted a "clean up operation" on his office table and cabinet where the copy of the transmittal was kept.

Mr. Legazpi was never required to submit to the OCA the records of the subject cases, which were already pending during the first judicial audit conducted in Branch 1. It is unbelievable why he would send them to OCA. It was only during the second judicial audit that these records were discovered, necessitating an explanation from him. Thus, failure to give a satisfactory explanation shows that he purposely hid the records from the judicial audit team.

Summary of Mr. Legazpi's misconduct

As clerk of court, Mr. Legazpi cannot be said to be unaware of the requirement of raffle for the distribution of cases in multi-sala court stations and the jurisdiction of the court to which he is assigned. By purposely hiding from the judicial audit team the records of cases which were directly filed with Branch 1 by petitioners, Mr. Legazpi had shown his willful intention to disregard said requirement and limit of jurisdiction. He also cannot feign innocence of the unsavory consequence of a court employee preparing a counter-affidavit for an accused.

In sum, Mr. Legazpi should be held liable for grave misconduct. Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence of a public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be established by substantial evidence.[23]

Under the Civil Service Law and its implementing rules,[24] grave misconduct is punishable by dismissal from the service with forfeiture of all benefits, excluding leave credits, if any, and with prejudice to re-employment in any branch or agency of the government, including government-owned or controlled corporations.[25]

Parenthetically, Mr. Legazpi was meted on January 20, 1995 the penalty of fine equivalent to his salary for three (3) months in *Tan v. Coliflores*[26] for negligence resulting from his failure to transmit the original records of a criminal case to the RTC within the prescribed period after the notice of appeal from the judgment of the court was given due course. He was likewise admonished on November 7, 2005 in Administrative Matter No. P-04-1827 entitled *Oral v. Legazpi* for dereliction of duty in the custody of court records and documents.

Taken together with his past infractions, the degree of the offenses committed by Mr. Legazpi, as established by the judicial audit team, warrants his dismissal from the service.

Ms. Romnie Fernan-Rota and Mr. Roldan A. Artes

Ms. Romnie Fernan-Rota, Clerk II, and Mr. Roldan A. Artes, court sheriff, both of Branch 1, played their part in

the rampant violation of Circular No. 7, when they received petitions directly filed with their branch, without raffle. Their defense that they were merely following the orders and that it was the usual practice in their branch, while deserving some consideration, do not fully absolve them of liability.

The principle is that when an officer or employee is disciplined, the object sought is not the punishment of such officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in the government.[27] Hence, good faith is no defense and violation of a Supreme Court Circular holds the offender administratively liable.

Hence, while the OCA recommends that Ms. Fernan-Rota and Mr. Artes be exonerated from any administrative liability, with a mere admonition to be more circumspect in the performance of their duties in the future, We find it befitting that they, at the very least, be reprimanded and warned that repetition of the same or similar acts will be dealt with more severely.

This Court has always valued high standards in judicial service. Time and time again, We have said that the behavior of all officials and employees involved in the administration of justice is circumscribed with a heavy burden of responsibility. Their conduct should, at all times, embody propriety, prudence, courtesy and dignity in order to maintain public respect and confidence in the judicial service.[28]

The Supreme Court cannot countenance, tolerate or condone any conduct, act or omission that would violate the norm of public accountability or that would diminish or tend to diminish the faith of the people in the Judiciary.[29]

Other relevant matters

In a letter dated January 2, 2007, Judge Monalila S. Tecson, incumbent presiding judge of the MTCC, Branch 1, Cebu City, requests the recall of the detail of Mr. Legazpi at the RTC Library, as ordered by the Court in its Resolution of November 24, 2004, and to resume his functions as branch clerk of court of Branch 1.

Judge Tecson stated that her court is currently undermanned as Carmel M. Bautista, the branch clerk of court detailed at Branch 1, is presently on leave and had signified her intention to resign soon. Moreover, another staff member of Branch 1, Ms. Romnie F. Rota, Clerk II, is presently detailed at the Office of the Clerk of Court of MTCC, Cebu City, while one of its stenographers, Ursulina Legaspi, had transferred to MTC, Minglanilla, Cebu. Hence, the request.

In light of the sanctions We are imposing now, particularly the dismissal of Mr. Legazpi with prejudice to re-employment in the government, We must necessarily deny Judge Tecson's request. Instead, she should cause the recall of the detail of Ms. Rota at the Office of the Clerk of Court, MTCC, Cebu City, and to designate an acting branch clerk of court from among her able staff members.

WHEREFORE, premises considered, the Court finds and orders as follows:

- Judge Mamerto Coliflores, retired presiding judge, MTCC, Branch 1, Cebu City is hereby found GUILTY of gross ignorance of the law and grave misconduct and is ordered to pay a FINE of P40,000.00 to be deducted from his retirement benefits;
- Judge Anatalio S. Necessario, MTCC, Branch 2, Cebu City is found GUILTY of violating SC Circular No. 7 (September 23, 1974) and is ordered to pay a FINE in the amount of P20,000.00 with a WARNING that a repetition of the same or similar act will be dealt with more severely;
- Mr. Jose A. Legazpi, clerk of court, MTCC, Branch 1, Cebu City is found GUILTY of grave misconduct and is hereby DISMISSED from the service with forfeiture of all benefits, excluding leave credits, with

prejudice to re-employment in any branch or agency of the government including government-owned or controlled corporations;

- Ms. Romnie Fernan-Rota and Mr. Roldan A. Artes, Clerk II and court sheriff, respectively, at the MTCC, Branch 1, Cebu City are REPRIMANDED with a WARNING that a repetition of the same or similar act will be dealt with more severely; and

- The request of Judge Monalila S. Tecson, MTCC, Branch 1, Cebu City, to recall the detail of Mr. Jose A. Legazpi at the RTC Library is DENIED. Judge Tecson is ORDERED to cause the recall of the detail of Ms. Romnie Fernan-Rota at the Office of the Clerk of Court, MTCC, Cebu City, and to designate an acting branch clerk of court from among her able staff members.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Nachura, Reyes, and Leonardo-De Castro, JJ., concur.

Chico-Nazario, J., on official leave.

Velasco, Jr., J., no part.

[1] Racasa v. Collado-Calizo, A.M. No. P-02-1574, April 17, 2002, 381 SCRA 151.

[2] In re: Ms. Edna S. Cesar, RTC, Br. 171, Valenzuela City, A.M. No. 00-11-526-RTC, September 16, 2002, 388 SCRA 703.

[3] Composed of Atty. Rullynn S. Garcia, Judicial Supervisor, as team leader, with Eric S. Fortaliza, Ester Melody E. Masangcay, Liberty A. Runez, Ma. Teresa P. Olipas and May Jingle M. Villocero, as members.

[4] Partial Report on Judicial Audit Conducted in the MTCC, Br. 1, Cebu City, July 23, 2004, pp. 11-13.

[5] Report and Recommendation, pp. 23-24.

[6] Creer v. Fabillar, A.M. No. MTJ-99-1218, August 14, 2000, 337 SCRA 632.

[7] OCA Report and Recommendation, p. 11.

[8] Explanation dated January 6, 2005.

[9] Tugot v. Coliflores, A.M. No. MTJ-00-1332, February 16, 2004, 423 SCRA 1.

[10] Genil v. Rivera, A.M. No. MTJ-06-1619, January 23, 2006, 479 SCRA 363.

[11] Rules of Court, Rule 140, Sec. 1(a), as amended.

[12] A.M. No. MTJ-92-710, June 19, 2003, 404 SCRA 381.

[13] A.M. No. MTJ-01-1347, September 18, 2003, 411 SCRA 221.

[14] Supra note 9.

[15] A.M. No. MTJ-05-1608, February 28, 2006, 483 SCRA 435.

[16] Lu Ym v. Nabua, G.R. No. 161309, February 23, 2005, 452 SCRA 298.

[17] Rules of Court, Rule 140, Sec. 9(4), as amended.

[18] Id., Sec. 11(b).

- [19] Report on the Judicial Audit Conducted in the Regional Trial Court, Branch 8, Cebu City, A.M. No. 05-2-101-RTC, April 26, 2005, 457 SCRA 1.
- [20] Revised Manual for Clerk of Court (2002), Vol. I, p. 4.
- [21] Special Proceedings Nos. 1-99, 4, 5, 6, 9, 10, 11 and 16.
- [22] Special Proceedings No. 18.
- [23] Civil Service Commission v. Ledesma, G.R. No. 154521, September 30, 2005, 471 SCRA589.
- [24] Civil Service Law, Subtitle A, Title I, Book V of E.O. 292, otherwise known as the Administrative Code of 1987, Omnibus Civil Service Rules and Regulations dated December 27, 1991, amended by the Uniform Rules on Administrative Cases in the Civil Service dated August 31, 1999.
- [25] Baquerfo v. Sanchez, A.M. No. P-05-1974, April 6, 2005, 455 SCRA 13.
- [26] Adm. Matter No. MTJ-94-972, January 20, 1995, 240 SCRA 303.
- [27] Remolona v. Civil Service Commission, G.R. No. 137473, August 2, 2001, 362 SCRA 304.
- [28] See note 2.
- [29] Sarmiento v. Salamat, AM-P No. 01-1501, September 4, 2001, 364 SCRA 301; Re: Absence Without Official Leave (AWOL) of Ms. Lilian B. Bantog, Court Stenographer III, RTC, Br. 168, Pasig City, A.M. No. 00-11-521-RTC, June 20, 2001, 359 SCRA 20.

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