

**NICOLAS PACLIBAR, COMPLAINANT, VS. RENAN V. PAMPOSA,
CLERK OF COURT II, MUNICIPAL CIRCUIT TRIAL COURT, PASSI-SAN
ENRIQUE, ILOILO CITY, RESPONDENT.**

A.M. NO. P-03-1737 (FORMERLY OCA IPI NO. 01-1250-P). November 16, 2006

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

In a verified letter-complaint[1] dated October 9, 2001, Nicolas Paclibar charged herein respondent, Renan V. Pamposa, clerk of court II of the Municipal Circuit Trial Court (MCTC), Passi-San Enrique, Iloilo City, with gross ignorance of the law and serious neglect of duty.

Complainant alleged that on February 7, 2000, he filed with the said MCTC a complaint for unlawful detainer against Carlos Benedicto, docketed as Civil Case No. 245. Two months thereafter, complainant and his counsel inquired from the trial court why they have not received an answer from defendant Benedicto. They found that on February 18, 2000, respondent clerk of court sent the summons[2] to Benedicto through registered mail, not by personal service, although the latter's residence is only two kilometers away from the court. Respondent's act constitutes gross ignorance of Section 6, Rule 14 of the 1997 Rules of Civil Procedure, as amended.

On June 2, 2000, respondent again served the summons[3] to Benedicto, but this time, by personal service.

When complainant requested his son to follow up the status of the case, he was shocked to learn that the records of Civil Case No. 245 were missing.

Without any order from the trial court, respondent requested Atty. Dennis L. Ausan, complainant's counsel, to furnish him copies of the court processes, pleadings and other pertinent documents for the purpose of reconstituting the records.

On December 5, 2001 and September 10, 2002, then Court Administrator Presbitero J. Velasco, Jr.[4] directed respondent to comment on the complaint. However, respondent failed to do so.

On July 2, 2003, then Court Administrator Velasco submitted his Report and Recommendation, stating in part:

Records of this Office show that per En Banc Resolution dated November 26, 2002, the Supreme Court resolved to (a) withhold the salaries and benefits of Renan V. Pamposa, Clerk of Court, MCTC, Passi, Iloilo; (b) drop his name from the rolls for having been absent without official leave (AWOL) since 3 December 2001; and (c) declare his position vacant.

EVALUATION: For being unchallenged or uncontradicted, the allegations in the verified complaint are deemed established, to wit:

- The respondent was ignorant of the law in sending the summons in Civil Case No. 245 of the MCTC, Passi-San Enrique, Iloilo by registered mail instead of serving it personally to the defendant whose residence is only about two (2) kilometers away from the Court, in violation of Section 6, Rule 14 of the Rules of Court;

and

- The respondent seriously neglected his duty by causing the loss of the records of said Civil Case No. 245.

RECOMMENDATION: Respectfully submitted for the consideration of the Honorable Court recommending that:

- the instant complaint be RE-DOCKETED as a regular administrative matter; and
- respondent Renan V. Pamposa be FINED in the amount of Five Thousand Pesos (P5,000.00) to be deducted from whatever salaries and benefits that may be due him.

On August 18, 2003,[5] the Court issued a Resolution ordering the re-docketing of the complaint as a regular administrative matter and requiring the parties to manifest whether they are submitting the case for resolution based on the records and pleadings filed.

However, the notice of the August 18, 2003 Resolution addressed to respondent was returned unserved with the postmaster's notation "RTS — addressee moved, left no forwarding address." Thus, in a Resolution dated December 8, 2003,[6] the Court resolved that the August 18, 2003 Resolution is deemed served on respondent.

Complainant failed to file the required manifestation, prompting the Court to issue a Resolution on October 18, 2004 directing him to show cause why he should not be disciplined for such failure.

On February 16, 2005, the Court issued a Resolution considering the instant case submitted for decision based on the records and pleadings filed.

On April 6, 2005, complainant belatedly filed his Explanation and Manifestation alleging that he received the October 18, 2004 Resolution on November 18, 2004; that he kept it without reading its contents because of his poor eyesight; that he only recalled having received the show cause Order when he inquired about the status of this case; and that he submitting this case for decision based on the pleadings/records filed.

Section 6, Rule 14 of the 1997 Rules of Civil Procedure, as amended, provides:

Sec. 6. Service in person on defendant.— Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.

The above provision requires personal service of summons upon the defendant "whenever practicable." Personal service means that a copy of the summons must be served upon the defendant in person, and if he refuses to receive and sign it, by tendering it to him.[7]

It is undisputed that defendant Benedicto's residence is only two kilometers away from the trial court. Hence, the most practicable mode of service of summons was by tendering a copy on him in person. However, respondent resorted to service by registered mail without any justification. Then, he requested complainant's counsel to furnish him copies of the pleadings, notices and other documents in order to reconstitute the records. Worse, he deliberately lost the records of Civil Case No. 245 to hide his misdeeds.

By serving summons personally upon defendant Benedicto in violation of the above-quoted Rule and by intentionally losing the records of Civil Case No. 245, respondent is guilty of gross misconduct.

In *Yap v. Inopiquez, Jr.*,[8] this Court explained the concept of gross misconduct, thus:

Misconduct is defined as any unlawful conduct on the part of a person concerned in the administration of justice prejudicial to the rights of parties or to the right determination of the cause (Black's Law Dictionary, Fourth Ed., p. 1150). It generally means wrongful, improper, unlawful conduct motivated by a premeditated,

obstinate or intentional purpose (Words and Phrases, Vol. 27, p. 466, citing Sewel v. Sharp, La App. 102 So 2d 259, 261). x x x. On the other hand, the term "gross" connotes something "out of all measure; beyond allowance; not to be excused; flagrant; shameful" (Black's Dictionary, Fourth Ed. P. 832).

For administrative liability to attach, it must be established that the respondent was moved by bad faith, dishonesty, hatred or some other like motive (Atty. Antonio T. Guerrero v. Hon. Adriano Villamor, A.M. No. RTJ -90-617, 25 September 1998, 296 SCRA 88). As defined –Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of a sworn duty through some motive or intent or ill will; it partakes of the nature of fraud (Spiegel v. beacon Participation, 8 NE 2[nd] Series, 895, 1007). It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes (Air France v. Carrascoso, 18 SCRA 155, 166-167 [1996]). Evident bad faith connotes a manifest deliberate intent on the part of the accused to do wrong or cause damage (Llorente, Jr. v. Sandiganbayan, 287 SCRA 382 [1998], citing Marcelo v. Sandiganbayan, 185 SCRA 346 [1990]).

Section 7, Rule 136 of the 1997 Rules of Civil Procedure, as amended, and Section A, Chapter II, of the Manual for Clerks of Court, provide that it is the clerk of court's duty to safely keep all records, papers, files, exhibits and public property committed to his charge. As court custodian, it is his responsibility to ensure that the records are safely kept and the same are readily available upon the request of the parties or order of the court. He must be diligent and vigilant in performing his official duties and in supervising and managing court dockets and records.[9]As an officer of the Court, respondent is expected to discharge his duty of safekeeping court records with diligence, efficiency and professionalism.[10] The conduct and behavior of everyone connected with an office charged with the dispensation of justice is circumscribed with the heavy burden of responsibility. This Court cannot countenance any act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the Judiciary.[11]

Under Rule IV, Section 52, paragraph A-3 of the Revised Uniform Rules of Administrative Cases in the Civil Service, gross misconduct is a grave offense punishable by dismissal from the service for the first offense.

Respondent can no longer be penalized by dismissal from the service since he has been dropped from the roll for having been AWOL since December 3, 2001. However, owing to the seriousness of his offense, the Court deems it proper to order the forfeiture of his retirement benefits, except his accrued leave credits.

WHEREFORE, Renan Pamposa, former clerk of court, MCTC, Passi-San Enrique, Iloilo City is declared GUILTY of GROSS MISCONDUCT. Whatever benefits still due him, except accrued leave credits, if any, are ordered FORFEITED. He 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 entered into respondent's personal file.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, Garcia, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 1-2.

[2] Annex "B," id., p. 12.

[3] Annex "C," id., p. 13.

[4] Now a Member of this Court.

[5] Id.

[6] Id., p. 66.

[7] Ancheta v. Ancheta, G.R. No.145370, March 4, 2004, 424 SCRA 726.

[8] G.R. No. MTJ-02-1431, May 9, 2003, 403 SCRA 141, citing Canson v. Garchitorena, 311 SCRA 268; Jerusalino v. Araos v. Judge Rosalina L. Luna-Pison, 378 SCRA 246; and Philippine Amusement and Gaming Corporation v. Rilloraza, 359 SCRA 525.

[9] Cresencio N. Bongalos v. Jose R. Monungolh, A.M. No. P-01-1502 (Formerly OCA-IPI No. 99-735-P), September 4, 2001, 364 SCRA 460; Daniel Cruz v. Carmen Tantay, A.M. No. P-99-1296, March 25, 1999, 305 SCRA 1999.

[10] Ibid.

[11] Re: Absence Without Official Leave of Mr. Gregorio Faraon, Admin.Officer IV, RTC-Office of the Clerk of Court, Manila, A.M. No. 04-12-691-RTC, February 18, 2005, 452 SCRA 12. .

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