

LIGAYA GONZALES-AUSTRIA, LEONILA FUERTES AND EDGARDO SERVANDO, COMPLAINANTS, VS. JUDGE EMMANUEL M. ABAYA, RTC, BR. 51, PUERTO PRINCESA CITY AND ANNABELLE CARDENAS, RESPONDENTS.

ADM. MATTER NO. R-705-RTJ. August 23, 1989

Ponente: FERNANDO, C.J.

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FERNANDO, C.J.:

In a complaint under oath dated July 21, 1986, docketed as Adm. Matter No. R-705-RTJ, Atty. Ligaya Gonzales-Austria, then Branch Clerk of Court of the Regional Trial Court (RTC), Branch 52, Puerto Princesa City,[1] Mrs. Leonila Fuertes and Mr. Edgardo Servando charged Judge Emmanuel M. Abaya, then Presiding Judge of RTC, Branch 51, Puerto Princesa City[2] with:

"1. Estafa through falsification of public or official documents, by verifying official hours rendered by one employee in the person of Miss Anabelle Cardenas who never reported for duty from August 1983 to May 1984 by encashing and receiving salaries of said Miss Cardenas through forgery of payee's signature in the treasury warrants, thus deceiving the government and defrauding the Government treasury of a big amount of money;

"2. Gross dishonesty and corruption by soliciting, demanding, receiving bribed (sic) money in exchange for favorable resolutions and decisions from different litigants in Branch 52, where said Judge use temporarily assigned from November 1984 to April 1986 and which one of the undersigned complainant (sic), LIGAYA GONZALES-AUSTRIA is the Branch Clerk of Court;

"3. Illegal exaction of portion of the salaries of his subordinate Edgardo Servando as part and condition of his continued employment in Branch 51, where Judge Abaya is the presiding judge."[3]

Judge Abaya denied all these charges in his comment dated August 29, 1986, filed in compliance with the Court Resolution of August 12, 1986. He asserted that these charges were concocted in retaliation against the administrative complaint docketed as Adm. Matter No. 698-P as earlier filed on July 18, 1986 against one of his accusers, Atty. Ligaya Gonzales-Austria for dishonesty and grave misconduct in having forged his signature in a probation order in Criminal Case No. 4995 of the RTC, Branch 52, Puerto Princesa, entitled "People of the Philippines vs. Leonardo Cruz, for attempted murder. Adm. Matter No. 698-P was followed by a petition dated August 5, 1986 docketed as Adm. Case No. 2909 for the disbarment of Atty. Ligaya Gonzales-Austria based on the same alleged offense.

After Atty. Ligaya Gonzales-Austria had filed her comment on the charges against her, the Court resolved to consolidate these related cases.

On October 28, 1986, the Court granted the motion of the complainants in Adm. Matter No. R-705-RTJ to amend their complaint by including Annabelle Cardenas as defendant in the charge of Estafa thru Falsification of Public Documents. It was averred therein that the initial exclusion was due to oversight and that it was never intended to

exclude her as a co-principal.

By resolution of December 11, 1986, the cases were referred to Court of Appeals Justice Oscar M. Herrera for investigation, report and recommendation. Based on the evidence presented by the parties, Justice Herrera finds the respondents guilty of the charges against them and thereby recommends:

- "1. The FORFEITURE of retirement benefits of Judge Abaya except earned leave credits;
- "2. The REMOVAL of Annabelle Cardenas from office as Court Stenographer;
- "3. A one-year SUSPENSION from office as Attorney of Atty. Ligaya G. Austria in AC-2909."[4]

We now consider these well-thought out recommendations.

I. ADMINISTRATIVE MATTER NO. R-705-RTJ:

a. Estafa thru Falsification of Public or Official Documents by Judge Abaya and Annabelle Cardenas. - The grave of this charge is that Annabelle Cardenas who was appointed as Stenographic Reporter of Branch 51, RTC, Palawan in August 1983 upon the recommendation of Judge Abaya as Presiding Judge therein, was a ghost employee from August 1983 to May 1984 as she never reported for work during said period, being then employed at Princesa Tours Rafols Hotel as a tourist guide. Notwithstanding, with her knowledge and consent, Judge Abaya verified as true and correct her daily time records as stenographic reporter purportedly showing that she rendered service and incurred no absences or tardiness from August 9 to September 30, 1983 and rendered service for the period from October 1, 1983 to May 31, 1984 and was granted leave of absence from March 14 to 30, 1984 and from April 23 to 27, 1984. Thus, she was paid her salaries corresponding to the periods allegedly worked. Some of the Treasury Warrants covering her salaries were, according to complainants, encashed by Judge Abaya by forging Annabelle Cardenas' signature.

Both Judge Abaya and Annabelle Cardenas vehemently denied the charges, countering that the latter worked as stenographic reporter from August 1983 to May 31, 1984.

We find the charges against Judge Abaya and Annabelle Cardenas to be supported by substantial evidence. Especially damaging to the pretensions of the respondents that Annabelle Cardenas rendered service as stenographic reporter during the period under consideration are the school records of the Holy Trinity College, showing that Annabelle Cardenas was attending school in the first semester of school year 1983-1984 from 2:00 P.M. to 8:15 P.M.[5] While she claimed to have been permitted by her teacher to attend her typing and stenography classes after office hours, the school records reveal that she has other subjects such as Business Organization and Management (3 units), Ten Commandments (3 units), Sining ng Pakikipagtalastas (3 units) and Accounting for Single Proprietorship (3 units), her attendance in which can be safely concluded from the passing grades she received in said subjects. Equally damaging to respondents' assertion are the Daily Time Records of Princess Tours[6] showing that Annabelle Cardenas acted as tourist guide on 43 working days when she was supposedly rendering service as stenographic reporter. Her explanation that her name was placed on the daily time record as team leader, although she did not actually conduct the tours reflected therein is too shallow to merit belief.

It is indeed quite intriguing that during the ten-month period under consideration, the court calendar for Branch 51 never once carried Annabelle Cardenas' name to signify her attendance at a court session. Moreover, she could not produce any single order, transcript or official stenographic notes that had been taken by her in any case, civil or criminal. All she presented were so-called practice notes.

Judge Abaya stated in his comment that it was Annabelle Cardenas who was collecting her salary "without

intervention from your respondent." [7] It was however proved that Judge Abaya collected Annabelle Cardenas' salaries on several occasions, as in fact, said Annabelle Cardenas even executed a special power of attorney in his favor authorizing him not only to collect the treasury warrants but to endorse and negotiate them as well. [8] Be that as it may, we find the evidence insufficient on the one hand to overthrow the explanation of respondents that Judge Abaya collected Annabelle Cardenas' salaries in Manila so that he could bring the same to Candon, Ilocos Sur for delivery to her mother, who is a good friend of the Judge; and on the other hand to support complainants' theory that Judge Abaya appropriated the money for himself.

b. Charges of Gross Dishonesty and Corruption by Soliciting, Demanding and Receiving Bribe Money against Judge Abaya.- The act complained of was allegedly committed by Judge Abaya while temporarily assigned to Branch 52, RTC-Palawan vice Judge Jose G. Ganilo, Jr., who was temporarily assigned to Batangas City. It must be recalled that complainant Atty. Ligaya Gonzales-Austria was then Branch Clerk of Court of Branch 52.

It was alleged that Judge Abaya denied the application for bail of the accused in Criminal Case No. 5304 entitled 'People vs. Henry Arias and Fernando Oniot' for murder, in consideration of the sum of P2,000.00 given by Mrs. Leonila Fuertes, complainant and mother of the victim in the aforesaid case.

Mrs. Leonila Fuertes, a school teacher, testified that she went to Branch 52 at about 5:00 P.M. on August 13, 1985 in response to a telephone call from court stenographer Nelly Vicente that Judge Abaya wanted to see her personally. Nelly Vicente referred her to Carmencita P. Baloco, the officer-in-charge who then called Judge Abaya from the other branch. Judge Abaya directed her to the adjoining courtroom where he told her, "Ang kaso ninyo ay medyo tagilid, 50-50 dahil walang eyewitness." (Your case is shaky with only 50-50 chance of winning because there is no eyewitness.) She retorted that there was an eyewitness but the Judge insisted that there was none because the supposed eyewitness had his back turned when her son was stabbed. Nonetheless, the Judge assured her that he would be able to do something about it ('Ngunit lahat ay magagawan ko ng paraan dahil ako ang nakakaalam sa mga decision dito'). When Mrs. Fuertes asked the Judge what he wanted, he told her that he has a problem. "Kailangan ko ng pera Limang Libo at idedeny ko ang bail ng mga acusado" (I need Five Thousand Pesos and I will deny bail to the accused). Mrs. Fuertes expressed puzzlement on why she had to give money when she was the aggrieved party, but the Judge cut her off by saying he needed the money badly before he leaves for Manila. Mrs. Fuertes answered that she would have to consult her brother-in-law about the matter. The Judge told her to see him at his house at 7:00 o'clock in the evening.

Mrs. Fuertes consulted her brother-in-law as well as the then prosecuting fiscal, new Judge Angel D. Miclat about the matter. Although they were against the idea of her according to the Judge's demand, she delivered the amount of P1,200.00 to Judge Abaya on August 15, 1985 in his chambers, telling him that that was all she could afford. Judge Abaya looked dissatisfied but said 'Never mind' and that he would just contact her at the next trial for the final judgment. [9]

Roselyn Teologo, stenographic reporter of Branch 52 corroborated that portion of Mrs. Fuertes' testimony relating to the phone call of Nelly Vicente to Mrs. Fuertes, the latter's arrival on August 13, 1985 at Branch 52 and Mrs. Fuertes having been closeted with Judge Abaya inside the courtroom for about 20 minutes. She further testified that Carmen Baloco who eavesdropped on the Judge and Mrs. Fuertes' conversation remarked, "Grabe ito, nanghihingi ng pera." (This is terrible, he is seeking money.) She added that then Judge Abaya emerged from the courtroom, he instructed her not to tell anybody that Mrs. Fuertes had been there. [10]

Additional corroborative evidence was given by Judge Angel R. Miclat, then acting City Fiscal for Puerto Princesa City handling Criminal Case No. 5304. He testified that Mrs. Fuertes came to him in August of 1986 to inform him that Judge Abaya was asking P5,000.00 from her so that the bail application of the accused would be

denied. While he advised her to file a complaint against Judge Abaya, he was informed later on that Mrs. Fuertes gave Judge Abaya not the amount being asked, but only about P1,200,00.[11]

Likewise submitted in evidence by the complainants were the entries in Mrs. Fuertes' diary, thus:

'August 13, 1985 called by Judge Abaya to see him after office hours. He asked me for my case was 50-50.'[12]

'August 15 I went to town to see Baby Francisco, gave P2,000 and I brought the money to Judge.'[13]

"July 2, 1986 Judge Abaya with companion Rufo Gonzales and Celia Fernandez. Purpose - they convinced me to sign my name in the affidavit stating that I will deny the previous affidavit I made stated that Judge asked from me certain amount and his request was granted. But I did not sign and asked me to see him in town at the residence of Menchie his niece personally nakiusap kay Baby upang maideny ang affidavit ko through Atty. Austria ay nakiusap pa rin. He is talking cay Nanette na idinay ko."[13-A]

Judge Abaya denied the solicitation as well as the receipt of money from Mrs. Fuertes. He alleged that the bail application of the accused in Criminal Case No. 5304 was denied, not because of any outside interference, but because the evidence of guilt was strong. He surmised that Mrs. Fuertes and Nelly Vicente had been pressured by Atty. Ligaya Gonzales-Austria into testifying against him out of sheer vindictiveness and that Mrs. Fuertes might have been blaming him for the delay in the resolution of the criminal case against her son's alleged killers.

We quote with approval Justice Herrera's perceptive reasons for giving full faith and credence to Mrs. Fuertes' testimony:

"We find no improper motive as to why Mrs. Fuertes a school teacher, would impute such a serious offense against a judge unless it be the truth. Mrs. Fuertes is not a disgruntled litigant. Judge Abaya having denied the petition for bail of the suspected killer of Mrs. Fuertes' son, she should, under normal circumstances be grateful to the Judge. Yet she charged him with a serious offense, and travelled all the way from Palawan to Manila to testify against the Judge. Under the circumstances, We cannot accept Judge Abaya's contention that Mrs. Fuertes perjured herself just to accommodate the vengeful ire of Atty. Austria against Judge Abaya. That would be contrary to the ordinary promptings of men.

"Upon the other hand, the testimony of Mrs. Fuertes is too rich in details brought out on cross-examination which cannot simply be swept aside as mere fabrications. They find support in collateral but highly significant circumstances pointed to by Mrs. Teologo, such as (1) the visible presence of Mrs. Fuertes in the courtroom in conference with Judge Abaya at 5:00 o'clock in the afternoon of August 15, (should be 13) 1985; and (2) the highly credible testimony of Judge Miclat on the report made to him by Mrs. Fuertes, as then acting City Fiscal, on the solicitation of Judge Abaya. It certainly cannot be said that Mrs. Fuertes merely concocted her story at the time regarding the solicitation of Judge Abaya in connection with the pending case of the suspected killers of her son. There was absolutely no motive for her to do so.[14]

c. Charge of Illegal Exaction against Judge Abaya.- It is alleged that Judge Abaya exacted portions of the salaries of two (2) employees in Branch 51 of the Palawan RTC as a condition, for their continued employment. Edgardo Servando, one of the complainants herein, and who was appointed stenographer on September 3, 1984 upon the recommendation of Judge Abaya, declared that such recommendation was made in consideration of his agreement to give Judge Abaya P1,000.00 from his initial salary and thereafter a monthly amount of P400.00, which undertaking he complied with. However, in December when the Judge before leaving for Manila for the Christmas vacation asked him for P1,000.00 from his fringe benefits, medical allowance and year-end bonus, he was unable to comply as he did not then have cash, the payment of said benefits having been in checks. A week later, he received a notice of termination effective at the close of business hours on December 31, 1984 from the Supreme Court upon the recommendation of Judge Abaya.[15]

Nilo Jamora, a former stenographer of Branch 51 testified that since his employment in said Branch, Judge Abaya had been exacting from him P350.00 every payday, which exaction ceased only in March 1986 when Atty. Ligaya Gonzales-Austria filed her charges against Judge Abaya. He further stated that when he refused to retract his charges against Judge Abaya before the Sangguniang Panlalawigan despite the Judge's offer of money, the latter demoted him to process server.[16]

Judge Abaya likewise denied this charge, labelling the same as sheer vindictiveness due to Servando's termination and Jamora's demotion, fanned by Atty. Austria's proddings. He insists that the personnel action taken on Servando and Jamora was due to their inefficiency.

While the investigating officer, Justice Herrera observed that both Servando and Jamora "testified in a natural and straightforward, albeit in an angry manner without attempting to conceal their contempt for Judge Abaya,"[17] he concluded that "the evidence in this regard would be unable to withstand judicial scrutiny for want of ample corroboration. It could simply be the word of one against a judge." [18]

We are in accord with this observation, for indeed, the charge if true is so demeaning to an RTC judge that it requires more than a bare allegation to sustain it. In this regard, we give respondent Judge the benefit of the doubt.

In summation, we find Judge Emmanuel M. Abaya guilty of grave and serious misconduct affecting his integrity and moral character which would have warranted his dismissal from the service had his resignation not been accepted.

The office of a judge exists for one solemn and – to promote justice by administering it fairly and impartially. In regarding justice as a commodity to be sold at a price, Judge Abaya betrayed the very essence of magistracy. In complicity with Annabelle Cardenas, he likewise abused the trust and confidence of the people, shortchanging them of services undoubtedly vital to the speedy administration of justice.

The Judge is the visible representation of the law and of justice. From him, the people draw their will and awareness to obey the law.[19] For him then to transgress the highest ideals of justice and public service for personal gain is indeed a demoralizing example constituting a valid cause for disenchantment and loss of confidence in the judiciary as well as in the civil service system.

By these acts, Judge Abaya has demonstrated his unfitness and unworthiness of the honor and perquisites attached to his office. As he had previously resigned, we hereby order the forfeiture of his retirement benefits, except earned leave credits, as recommended by the investigating officer Justice Herrera.

We further mete out to Annabelle Cardenas in consequence of her grave misconduct as above-described the penalty of removal from office as Court Stenographer with prejudice to her re-appointment to the Judiciary.

II. A.M. No. R-698-P and Adm. Case No. 2909

The complaints for dishonesty and grave misconduct in A.M. No. R-698-P and for disbarment in Adm. Case No. 2909 against Atty. Ligaya Gonzales-Austria, then Clerk of Court of Branch 52, RTC Palawan, stem from her act of having allegedly forged the signature of Judge Abaya in a probation order dated April 22, 1986 in Criminal Case No. 4999 of said court entitled "People of the Philippines vs. Leonardo Cruz" for attempted homicide.

Atty. Ligaya Gonzales-Austria admits to having signed the probation order and of having promulgated it, but explain that these were done with the knowledge and consent of Judge Abaya, who had asked her to prepare orders and decisions in Branch 52 to ease his load of presiding over two (2) branches. She adverts to Judge Abaya's order of November 4, 1985 which granted accused Leonardo Cruz' motion for reconsideration of the order denying probation. This order, which carried certain conditions, set the promulgation of the probation order

on January 16, 1986 at 8:00 o'clock in the morning. In the meantime, Judge Abaya requested Atty. Austria to prepare the probation order with the day and month in blank for the signature of the Judge.

On January 16, 1986, Judge Abaya was absent so the promulgation was reset to April 16, 1986. On the latter date, the provincial warden failed to bring the accused to court, hence the promulgation of the probation order was again reset to June 3, 1986, with Judge Abaya allegedly giving instructions before he left for Manila to promulgate said order even in his absence should the probationer Leonardo Cruz arrive in court.

On April 21, 1986, Leonardo Cruz came and begged that the probation order be promulgated the following day, April 18, 1986 as he had to leave for Coron in the same pumpboat that brought him to Puerto Princesa and he had no money to sustain him up to the time the Judge arrives from Manila. As requested, the promulgation was set on April 22, 1986, only for Atty. Austria to discover that Judge Abaya had neglected to sign the probation order. In view of the predicament of Leonardo Cruz and the authority granted to her by Judge Abaya, Atty. Austria Signed Judge Abaya's name to the probation order and promulgated it.

Atty. Austria justifies her action under the theory of agency (Art. 1881 of the Civil Code[20] in that having been granted full authority to promulgate the probation order, she necessarily had the authority to sign the Judge's name if the need arose. She further maintains that as Judge Abaya never complained about the alleged forgery, he is deemed to have ratified it and is now estopped from questioning her authority. Lastly, she compares the probation order to a writ of execution which is usually done by the Clerk of Court.[21]

Respondent's arguments are quite novel but unpersuasive. As thoroughly explained by Justice Herrera:

"x x x her explanation that she is the one preparing decisions and orders in Branch 52 with the knowledge and consent of Judge Abaya during the time that the latter was acting as Presiding Judge of said branch and that she was directed to promulgate the probation order in favor of Leonardo Cruz only to discover that the judge overlooked to sign the order, even if true, is not a valid justification for her to simulate the signature of Judge Abaya in the probation order. This is patently illegal. As a lawyer and branch clerk of court, she ought to know that under no circumstances is her act of signing the name of the judge permissible. She could have probably released the order with the statement that it is 'upon orders of the judge' or 'by authority of the Judge' but she could not under any circumstance make it appear as she did in this case that the Judge signed the order when in fact he did not. The duties of the clerk of court in the absence of any express direction of the Judge is well defined under Section 5, Rule 136 of the Rules of Court which reads:

"Sec. 5. Duties of the Clerk in the absence or by direction of the judge.- In the absence of the judge, the clerk may perform all the duties of the judge in receiving applications, petitions, inventories, reports, and the issuance of all orders and notices that follow as a matter of course under these rules, and may also, when directed so to do by the judge, receive the accounts of executors, administrators, guardians, trustees, and receivers, and all evidence relating to them, or to the settlement of the estates of deceased persons, or to guardianship, trusteeships, or receiverships, and forthwith transmit such reports, accounts, and evidence to the judge, together with his findings in relation to the same, if the judge shall direct him to make findings and include the same in his report."

'Signing orders in the name of and simulating the signature of the judge is not one of them.

'Atty. Austria's theory of agency that she lawfully acted as agent of the Judge is wholly devoid of merit. The judicial power vested in a judge and its exercise is strictly personal to the Judge because of, and by reason of his highest qualification, and can never be the subject of agency. That would not only be contrary to law, but also subversive of public order and public policy. Nor could her void act in signing the name of the judge be validly ratified by the latter. Judge Abaya himself is bereft of any power to authorize the clerk of court to sign his name in his official capacity in a matter pending adjudication before him. The issuance of the order in question is strictly

judicial and is exclusively vested in the judge which is beyond his authority to delegate.”[22]

Generally speaking, a lawyer who holds a government office may not be disciplined as a member of the bar for misconduct in the discharge of his duties as a government official.[23] However, if that misconduct as a government official is of such a character as to affect his qualification as a lawyer or to the moral delinquency, then he may be disciplined as a member of the bar on such ground.[24]

We find Atty. Austria's misconduct as Branch Clerk of Court to affect her qualification as a member of the bar, for precisely as a lawyer, she ought to have the illegality of the act complained of.

WHEREFORE, finding the respondents Judge Emmanuel M. Abaya, Annabelle Cardenas and Atty. Ligaya Gonzales-Austria guilty as charged, except that of illegal exaction against Judge Abaya, the Court hereby orders:

- In Adm. Matter No. R-705-RTJ, the FORFEITURE of the retirement benefits of Judge Emmanuel M. Abaya, except his earned leave credits; and the DISMISSAL from office of Annabelle Cardenas as Stenographic Reporter with prejudice to her reappointment to the Judiciary; and,

- In Adm. Matter No. R-698-P and Adm. Case No. 2909, the resignation of Atty. Ligaya Gonzales-Austria as Branch Clerk of Court is ACCEPTED as of December 31, 1987 and any and all benefits accruing during her government service are declared forfeited except her earned leave credits. Her SUSPENSION as a member of the Bar for a period of one year from the finality of this decision is further decreed.

Let copies of this resolution be furnished the Ombudsman for the filing of appropriate criminal charges against respondents if warranted.

Copies of this resolution shall be attached to the respondents' respective personal records.

Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea and Regalado, JJ., concur.

[1] Atty. Ligaya Gonzales-Austria resigned as Branch Clerk of Court Effective as of the end of December 1987.

[2] Judge Abaya's resignation was accepted on February 17, 1987.

[3] p. 1, Rollo in Adm. Case No. R-705-RTJ.

[4] p. 28, Report and Recommendation.

[5] Exhs. H-1 & H-2.

[6] Exh. L-1.

[7] p. 33, Rollo in Adm. Matter No. R-705-RTJ.

[8] Exh. 8.

[9] Tsn, February 3, 1988, pp. 12-18.

[10] Exh. B; tsn, February 3, 1988, pp. 33-38.

[11] tsn, February 1, 1988, pp. 12-13.

[12] Exh. A-1 Austria.

[13] Exh. A-2.

[13-A] Exh. A-3.

[14] pp. 22-23, Report and Recommendation.

[15] Exhibit D.

[16] Tsn, February 29, 1988, pp. 19-27.

[17] pp. 22-23, Report and Recommendation.

[18] Ibid.

[19] (Dela Paz v. Inutan, 64 SCRA 540; Canon 22 Canons of Judicial Ethics; Castillo v. Barsana, Adm. Case No. 77-Md, April 18, 1975.

[20] Art. 1881 states: "The agent must act within the scope of his authority. He may do such acts as may be conducive to the accomplishment of the purpose of the agency."

[21] pp. 7-19, Rollo in A.C. No. 2909.

[22] pp. 25-27, Report and Recommendation.

[23] In re Turrel, 2 Phil. 266; In re Santiago, 70 Phil. 66.

[24] In re Lanuevo, Adm. Case No. 1162, August 29, 1975.

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