

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS.
JUDGE OCTAVIO A. FERNANDEZ, MUNICIPAL CIRCUIT TRIAL
COURT, GENERAL M. NATIVIDAD-LLANERA, RESPONDENT.**

A.M. No. MTJ-03-1511. August 20, 2004

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

This case has its origin in A.M. No. 99-6-81-MTCC,[1] where the Court, in a Resolution dated June 3, 2003, directed among others, the Office of the Court Administrator to investigate Judge Octavio A. Fernandez on his involvement in the anomalous collection of an additional cash bond in “People of the Philippines v. Florentino Marcelo,” docketed as Criminal Cases Nos. 505-506, for Reckless Imprudence Resulting in Serious Physical Injuries, originally pending before the Municipal Trial Court in Cities of Palayan City.

Per judicial audit conducted at the MTCC, Palayan City, formerly presided by Judge Marciano C. Mauricio, Sr., it was discovered that upon motion of the accused in Criminal Cases Nos. 505-506, the bail bond was reduced from P6,000.00 to P2,000.00. At 5:15 p.m. of July 2, 1996, accused Marcelo accompanied by a warrant officer, went to the residence of Judge Mauricio for the purpose of posting bail but the latter had left for Manila. Hence, they went to see respondent Judge Octavio A. Fernandez of the 2nd Municipal Circuit Trial Court of Gen. Natividad-Llanera, Nueva Ecija. Upon receipt of the cash bond of P2,000.00, Judge Fernandez ordered the release of accused in an Order which stated “that he is (sic) already deposited to this Court the required cash bond.”

It was only sometime in March 1999 that a copy of the Order of Release dated July 2, 1996 was received by Rosita L. Bagan, the Clerk of Court of the MTCC of Palayan City. On March 23, 1999, she requested Judge Fernandez for the receipt of the cash bond and other pertinent papers related to the above-mentioned cases. Respondent judge replied that the original receipt of the cash bond had been sent to the MTCC of Palayan City through Teresita Esteban, Clerk of Court II of the MCTC of Gen. Natividad-Llanera. However, Clerk of Court Bagan allegedly has not received the said original receipt of the cash bond.

Respondent judge, by way of defense, alleged that it was Judge Mauricio who received the cash bond; hence, the request of Clerk of Court Bagan should have been directed to Judge Mauricio.

The case was thereafter referred to the Office of the Court Administrator, which found respondent judge guilty of grave misconduct in office and recommended that he be fined P20,000.00, with stern warning that a repetition of the same or similar offense will be dealt with more severely.

During the pendency of this proceeding, respondent judge optionally retired on January 2, 2004.

Cessation from office of respondent judge because of death or retirement does not warrant the dismissal of the administrative complaint filed against him while he was still in the service or render the said administrative case moot and academic.[2] The jurisdiction that was this Court’s at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased in office during the

pendency of his case.[3] Indeed, the retirement of a judge or any judicial officer from the service does not preclude the finding of any administrative liability to which he shall still be answerable.[4]

The primordial question to be resolved is who between Judge Mauricio and respondent Judge Fernandez actually received the cash bond of P2,000.00 from the accused in Criminal Cases Nos. 505-506.

It appears from the records that it was respondent judge who actually received the P2,000.00 cash bond. The Order in Criminal Case No. 505 dated July 2, 1996 states:

At 5:15 o'clock in the afternoon this day, Florentino P. Marcelo who is the accused in Criminal Case No. 505 for Reckless Imprudence before the MTCC Palayan City, came to this Court accompanied by a warrant officer of Palayan City alleging that said accused went to the residence of Hon. Marciano C. Mauricio, Sr., Presiding Judge of MTCC Palayan City for the purpose of posting his cashbond. The accused declared that Judge Mauricio left for Manila a few minutes before the arrival of the accused and police officer. The said accused requested the undersigned Presiding Judge to accept and receive the amount of P2,000.00 as cashbond.

WHEREFORE, in fairness and in justice to the said accused and considering that he is (sic) already deposited to this Court the required cashbond, it is hereby ordered the released (sic) from custody, unless he is detained for some other cause or causes.

Let copy of this order be furnished the Presiding Judge of MTCC Palayan City.[5]

Respondent judge violated the provisions of Rule 114 of the Rules of Criminal Procedure by receiving the cash bond instead of directing the accused or any person acting in his behalf to deposit the cash with the nearest collector of internal revenue, provincial, city or municipal treasurer. In *Agulan, Jr. v. Fernandez*,[6] it was held:

The rules specify the persons with whom a cash bail bond may be deposited namely: the collector of internal revenue, or the provincial, city or municipal treasurer. Section 14 of Rule 114 of the Revised Rules of Criminal Procedure (effective December 1, 2000) provides:

SEC. 14. Deposit of Cash as Bail – The accused or any person acting in his behalf may deposit in cash with the nearest collector of internal revenue or provincial, city or municipal treasurer the amount of bail fixed by the court, or recommended by the prosecutor who investigated or filed the case. Upon submission of a proper certificate of deposit and of a written undertaking showing compliance with the requirements of section 2 of this Rule, the accused shall be discharged from custody. The money deposited shall be considered as bail and applied to the payment of fine and costs while the excess, if any, shall be returned to the accused or to whoever made the deposit.

A judge is not one of those authorized to receive the deposit of cash as bail, nor should such cash be kept in the office of the judge.

However, we take exception to the finding of OCA that respondent judge is guilty of gross misconduct in office.

In *Yap v. Inopiquez, Jr.*,[7] 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. It generally means wrongful, improper, unlawful conduct motivated by a premeditated, obstinate or intentional purpose. The term, however, does not necessarily imply corruption or criminal intent. On the other hand, the term "gross" connotes something "out of all measure; beyond allowance; not to be excused; flagrant; shameful."

For administrative liability to attach it must be established that the respondent was moved by bad faith, dishonesty, hatred or some other like motive. 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. It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill-will for ulterior purposes. Evident bad faith connotes a manifest deliberate intent on the part of the accused to do wrong or cause damage. (Citations omitted)

Indubitably, respondent judge is guilty of simple misconduct for violating the rules on bail. There is no showing that such violation was moved by evident bad faith, dishonesty or hatred so as to merit any sanction for serious charges. The records show that accused Marcelo deposited the cash bond with respondent judge at 5:15 in the afternoon, when the clerk of court have already left the office.

Section 9(4), Rule 140 of the Revised Rules of Court, as amended, classifies violations of the Supreme Court rules, directives, and circulars as less serious charges punishable by any of the sanctions enumerated in Section 11(B) of the same Rule, viz.:

SEC. 11. Sanctions. –

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B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed:

- Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or
- A fine of more than P10,000.00 but not exceeding P20,000.00.

In view of the foregoing, the fine of P20,000.00 recommended by OCA is well-taken as the penalty of suspension may no longer be imposed since respondent judge optionally retired on January 2, 2004.

In addition, respondent judge is ordered to immediately remit to the MTCC of Palayan City the sum of P2,000.00 which he received as cash bond on Criminal Cases Nos. 505-506.

WHEREFORE, respondent Judge Octavio A. Fernandez is found GUILTY of SIMPLE MISCONDUCT and is FINED Twenty Thousand Pesos (P20,000.00) which shall be deducted from whatever benefits may be due him. Further, he is ordered to REMIT to the MTCC of Palayan City the sum of P2,000.00 representing the amount of the cash bond paid by accused Florentino Marcelo in Criminal Cases Nos. 505-506.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Quisumbing, Carpio, and Azcuna, JJ., concur.

[1] Report on the Judicial Audit Conducted in the Municipal Trial Court in Cities of Palayan City.

[2] Mañozca v. Domagas, A.M. OCA-IPI No. 95-62-RTJ, 29 September 1995, 248 SCRA 625; Apiag v. Cantero, 335 Phil. 511 [1997]; Tuliao v. Ramos, 348 Phil. 404 [1998]; Secretary of Justice v. Marcos, Adm. Case No. 207-J, 22 April 1977, 76 SCRA 301; Sy Bang v. Mendez, 350 Phil. 524 [1998].

[3] Flores v. Sumaljag, 353 Phil. 10 [1998].

[4] Lilia v. Fanuñal, 423 Phil. 443 [2001].

[5] Order dated July 2, 1996, People v. Florentino Marcelo, Criminal Case No. 505.

[6] A.M. No. MTJ-01-1354, 4 April 2001, 356 SCRA 162.

[7] A.M. No. MTJ-02-1431, 9 May 2003, 403 SCRA 141, 151.

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