JUDGE JAIME L. DOJILLO, JR., COMPLAINANT, VS. CONCEPCION Z. CHING, CLERK OF COURT, MTC, MANAOAG, PANGASINAN, RESPONDENT.

A.M. No. P-06-2245 [Formerly OCA IPI NO. 06-2373-P]. July 31, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

By letter-complaint[1] of January 18, 2006, Judge Jaime L. Dojillo, Jr., (Judge Dojillo), presiding judge of the Municipal Trial Court (MTC) of Manaoag, Pangasinan, charged Concepcion Z.[2] Ching (Concepcion), MTC Clerk of Court, with gross misconduct, gross incompetence and inefficiency, violation of the Supreme Court Circular which prohibits smoking inside the office, violation of the Code of Ethics, conduct unbecoming of a public official, conduct prejudicial to the interest of public service, and gross dishonesty.

By 1st Indorsement[3] of February 2, 2006, the Office of the Court Administrator (OCA) directed Concepcion to comment on the letter-complaint within 10 days from notice, with which she complied by Comment[4] of March 13, 2006 with a prayer to consider it as a "counter complaint/charge" against Judge Dojillo.

Both complaints were referred to Executive Judge Rodrigo Nabor of the Regional Trial Court of Urdaneta City, Pangasinan, for investigation, report and recommendation. Instead of submitting their respective Comments pursuant to Judge Nabor's November 6, 2006 Order,[5] Judge Dojillo and Concepcion filed a joint Manifestation and Motion[6] of June 5, 2007 stating that the "charges and counter-charges involved were filed out of pure misunderstanding" and should thus be dismissed.

By Resolution of October 1, 2007,[7] the Court referred the complaints to the OCA for evaluation, report and recommendation.

By Memorandum of June 25, 2008,[8] the OCA synthesized Judge Dojillo's complaint as follows:

> A. GROSS MISCONDUCT
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> Complainant judge alleged that respondent Ching is a lesbian who is a well-known gossiper and troublemaker in the town of Manaoag,
>
> Pangasinan. Even her officemates were not spared of her daily food of venomous gossiping.
>
> Sometime in the year 1999, respondent gossiped that Ramon Paster, Court Stenographer, has an illicit relationship with Mrs. Erlinda L. Marmolejo, the Court Interpreter. Subsequently, respondent allegedly passed malicious information that the complainant judge and Mrs. Marmolejo had an ongoing illicit affair.
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> On December 20, 2005, while complainant was having lunch together with some of his staff, respondent banged the main door of the office, showing lack of civility, disrespect, discourtesy, insult and belligerent attitude towards the complainant as the presiding judge and towards respondent's officemates. Further, it was also alleged that respondent threatened with death the complainant via typewritten death threats purportedly

using the typewriter belonging to respondent's brother.

B. GROSS INCOMPETENCE AND INEFFICIENCY

Complainant judge averred that respondent was not personally doing most of her assigned tasks. She always passed the job to other members of the staff even if she was not doing anything. Further, she was always out of the office. She also refused to learn to type well and to use the computer issued to the court. These resulted in the delay in the preparation and issuance of writs of execution ordered by the court.

C. VIOLATION OF THE SUPREME COURT CIRCULAR BANNING SMOKING INSIDE THE OFFICE.

Respondent Ching, according to the complainant, is a well known chain smoker. She smoked inside the office to the detriment of the health of her officemates.

D. CONDUCT UNBECOMING OF A PUBLIC OFFICIAL AND CONDUCT PREJUDICIAL TO THE INTEREST OF THE SERVICE.

Aside from being a well known gossiper and troublemaker, it was also alleged that respondent was a bad-tempered, impatient, disrespectful and discourteous public employee. Instead of devoting the office hours for work, she was frequently seen loitering, wasting time and parading downstairs as if she is the boss, creating an impression to the public that she could do whatever she wants and pleases and thereby eroding the trust and confidence of the people in the judiciary.

E. VIOLATION OF THE CODE OF ETHICAL STANDARDS

With her malicious motive in mind, she intimidated and harassed Mrs. Erlinda Marmolejo by uttering unsavory and uncalled remarks in order to force the latter to transfer or to resign from work. Certification of
entries of incidents in the police blotter were attached to the complaint to prove that respondent indeed annoyed and harassed Marmolejo.

F. GROSS DISHONESTY

Respondent Ching was also charged for falsifying her Daily Time Record for the month of November 2003 to make it appear that she was present in the office on November 11, 2003 when in truth and in fact, she was not as she went to Manila on that day as evidenced by her application for leave. She also allegedly falsified her Daily Time Record for the month of December 2005 by making it appear that December 12, 2005 was a local holiday in Manaoag, Pangasinan, to make her absence on the aforesaid date excusable.[9]

The OCA summarized Concepcion's Comment with counter-complaint as follows:

x x x She denied the accusations hurled against her. She averred that it has been a long time time [sic] since she heard feedbacks relative to the unusual closeness of Judge Dojillo and Mrs. Marmolejo. She, herself, has witnessed their closeness. She stated that sometime on May 27, 2005, she saw Mrs. Marmolejo came out of the chambers of the complainant looking like she just woke up from sleep. To her shock, Judge Dojillo was also inside the chambers. Thus, she talked to Marmolejo in order to silence the increasing discomfort of the people around them. Marmolejo, however, denied her suspicions. Instead of distancing from one another, Judge Dojillo and Marmolejo were oftentimes seen arriving and leaving the office together. She further advised Marmolejo that if the latter could not stop what was going on between her and the judge, Marmolejo should save herself from destruction by going abroad.

She further averred that sometime in December of 2005, at around 8 in the morning, she went early in the office. She thought that she was all alone but to her surprise, she saw Marmolejo come out of the chambers of the complainant. When she peeked inside the chambers, Judge Dojillo was also there. She thus sternly warned Marmolejo to avoid incidents that would make their colleagues uncomfortable otherwise she will be forced to make the necessary action against her and the judge.

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> As to the charge of gross misconduct, she argued that she was a very warm person with strong convictions for propriety and decorum in office. She averred that she made the court accessible to people by immediately entertaining their concerns and advising them of the procedures in court. She also denied being a rumor monger and claimed that all the accusations of the witnesses for the complainant were fabrications in order to malign her person. She, moreover, denied having banged the door on December 20, 2005 claiming that she had to forcefully close the same since the door was bigger than the jamb.
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> Anent the charge of gross incompetence and inefficiency, she stated that as a clerk of court, her duties were administrative and supervisory. She made sure that all the cases were on file and calendared and that all the pleadings were referred to the complainant for proper action. These delicate tasks were performed by her and it was only the typing job that she delegates. She justified this by saying that it was necessary for her to delegate the typing to others who are faster than her.
>
> As to the allegation that she was always out of the office, her defense was that the nature of her job requires her to leave the office. These include the monthly submission of reports to RTC and to the Prosecutor's Office in Urdaneta City, depositing in bank of the Judiciary Development Fund and Special Allowance for the Judiciary and withdrawing of bonds from the bank whenever necessary. She handles these tasks herself as these are delicate tasks which could not be delegated to others. As to the alleged delay in the issuance of writs of execution, she attributes the delay to Judge Dojillo who fails to immediately release signed orders.
>
> With respect to her alleged violation of the circular regarding smoking ban, she claimed that she is not a chain smoker and she was not the only one smoking among the court employees. She thus could not fathom why she was singled out by complainant. As to the charge of dishonesty, she stood by her claim as to the truthfulness of her Daily Time Record. The reason why her application for leave on November 11, 2003 was not submitted for approval was because she decided not to proceed to Manila and instead choose to stay at the office. As to her DTR for the month of December 2005, she argued that December 12, 2005 was a rest day and in fact the Municipal Hall was closed on that day. Further, according to respondent, the court employees agreed to just state in their DTRs that such was a local holiday due to Galicayo Festival. Moreover, her DTRs were with the approval of the presiding judge. She thus prayed that the complaint against her be dismissed and that her comment be considered as a counter complaint against Judge Dojillo.[10]

The OCA, passing on the Manifestation and Motion of the parties for the dismissal of their respective charges, states that "the withdrawal of an administrative complaint or subsequent desistance of the complainant does not free the respondent from liability as the purpose of an administrative proceeding is to protect the public service, based on the time-honored principle that a public office i[s] a public trust."

The OCA goes on to state:

> The withdrawal of the complaint or the execution of an affidavit of desistance does not automatically result in the dismissal of the administrative case. x x x It will not divest the Supreme Court of its jurisdiction to investigate the matters alleged in the complaint. Thus, the manifestation and motion filed by the parties praying that the charges and counter-charges be dismissed should be denied.

Evaluating the charges and counter charges, the OCA reports as follows:

> Anent the complaint against Judge Dojillo, it bears stressing that in administrative cases, the burden devolves upon the complainant for him to prove by substantial evidence the allegations in the complaint. In the instant case, records are bereft of any evidence which would render Judge Dojillo guilty of immorality. Complainant Ching miserably failed to present any substantial evidence which will prove that Judge Dojillo is having an illicit affair with Ms. Marmolejo. It was also revealed that it was not only Ms. Marmolejo who enters the chambers of the judge. Even granting that it was only Ms. Marmolejo who enters the chambers of the judge, the same is purely due to work-related reasons since the computer is inside his chambers. It would thus be hasty to conclude that they were having an illicit affair. Moreover, the allegation that Ms. Marmolejo and

> Judge Dojillo were unusually early in the office deserves scant consideration. It was complainant Ching, herself, who admitted that she saw Marmolejo and Judge Dojillo at around 8 o'clock in the morning. It bears stressing that eight in the morning is no longer unusually early. In fact[,] it is already the start of the official office hours for all the personnel of the court. This Office also sees nothing wrong and unsuitable in the actuation of the judge in giving Marmolejo and her family a free ride in his car since the residence of Marmolejo is on the way to the judge's own residence. We find nothing immoral with that. Time and again, the Court will not hesitate to impose penalty to those who are guilty of any wrongdoing but it will likewise not hesitate to exonerate those charged of baseless and unfounded complaints.
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> Anent the complaint against Ching, the latter should be penalized for her acts. Misconduct is defined as any unlawful conduct on the part of a person concerned in the administration of justice prejudicial to the rights of the parties or to the right determination of the cause. It generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose. Her actuations in maliciously accusing her officemate of having an illicit affair with Judge Dojillo should not be countenanced especially in the instant case where it appears that the accusations made by her are baseless and unfounded. What is more alarming is the fact that she falsified the entries in her DTR in making it appear that December 12, 2005 was a local holiday when in fact it was not. Her claim that the aforesaid date was a local holiday was not corroborated by any other evidence. In fact, her co-employees attested to the fact that such day was a regular working day. In making it appear in her DTR that such day was a holiday only highlights her dishonesty x x x.
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> x x x x
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> There is no denying that respondent Ching committed misrepresentation when she made it appear in her DTR that she was present in the office while in fact she was not. Falsification of DTR is patent dishonesty. Dishonesty, being a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and with perpetual disqualification from re-employment in government service. Indeed, dishonesty is a malevolent act that has no place in the Judiciary. x x x
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> x x x x
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> Rule IV, Section 52 of the Uniform Rules on Administrative Cases in the Civil Service Commission provides that dishonesty and falsification are grave offenses which carries with it the penalty of dismissal even on the first offense. However, such an extreme penalty is not hastily inflicted upon an erring employee especially in cases where there exist mitigating circumstances that could alleviate the culpability. Inasmuch as this is respondent Ching's first offense, it is considered a mitigating circumstance in h[er] favor. Even if the law specifically states that the appreciation of the mitigating circumstance must first be invoked or pleaded by the proper party, the same may be considered even if not raised by the respondent in the interest of substantial justice.
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> In Re: Failure of Jose Dante E. Guerrero to Register His Time In and Out in Chronolog Time Recorder Machine on Several Dates, the Court imposed the penalty of six months suspension to an employee found guilty of dishonesty for falsifying his time records.[11] (Italics in the original; underscoring supplied)

Thus, the OCA recommends that

> x x x respondent Concepcion Ching, Clerk of Court, MTC, Manaoag, Pangasinan, be found guilty of falsification and dishonesty and be SUSPENDED for six (6) months with a STERN WARNING that a repetition of the same or similar acts x x x shall be dealt with more severely; [and]
>
> x x x the counter-charge against Judge Jaime L. Dojillo, Jr., MTC, Manaoag, Pangasinan x x x be DISMISSED for being barren of merit.[12] (Capitalization and emphasis in the original; underscoring supplied)

By Resolution of August 13, 2008,[13] the Court required the parties to manifest whether they were willing to submit the cases for resolution based on the pleadings filed, within 10 days from notice. By Joint Manifestation of

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September 29, 2008,[14] the parties answered in the affirmative and prayed that the cases be resolved "soonest."

In her Affidavit, Jenelyn Sernadilla (Jenelyn) of the Office of the Human Resource Management of Manaoag, Pangasinan stated that December 12, 2005 was a regular working day.[15] On the other hand, in his Affidavit, Municipal Consultant Sofronio L. Mangonon (Mangonon)[16] stated that on December 12, 2005, a Monday, the municipal hall where the court holds office was closed, for it was a rest day after the Galicayo Festival which ended on the preceding Sunday.

Between the two affidavits, that of Jenelyn's appears to be more credible, she being the officer in charge of the attendance of the employees. As Judge Dojillo pointed out, Mangonon, being a consultant, was not required to report to office daily as he, in fact, only reports during paydays. Parenthetically, Concepcion could have submitted the affidavits of employees or the photocopies of their Daily Time Record (DTR) to support her claim that December 12, 2005 was a local holiday.

Dishonesty is a serious offense which has no place in the judiciary.[17] Each false entry in the DTR constitutes falsification and dishonesty.[18] The falsification of a DTR constitutes fraud involving government funds. It bears stressing that the DTR is used to determine the salary and leave credits accruable for the period covered thereby. Falsifying one's DTR to cover up absences or tardiness automatically results in financial losses to the government because it enables an employee to receive salary and earn leave credits for services which were never rendered.[19]

Under the Uniform Rules on Administrative Cases in the Civil Service, dishonesty and falsification of official document are punishable with dismissal even for the first offense.[20] However, the Court, in certain instances, has not imposed the penalty of dismissal due to the presence of mitigating factors such as the length of service, acknowledgment of the infractions, and remorse by the respondent.[21]

Considering that this is the first administrative charge against Concepcion since she entered the government service in 1996 as a court interpreter, the recommended penalty of suspension for a period of six months is in order.

In the case of Judge Dojillo, he should be admonished to be more circumspect in his choice of words and use of gender-fair language.[22] There was no reason for him to emphatically describe Concepcion as a "lesbian"[23] because the complained acts could be committed by anyone regardless of gender orientation. His statements like "I am a true man not a gay to challenge a girl and a lesbian like her,"[24] "the handiwork and satanic belief of dirty gossiper,"[25] and "the product of the dirty and earthly imagination of a lesbian and gossiper"[26] were uncalled for.

Being called to dispense justice, Judge Dojillo must demonstrate finesse in his choice of words as normally expected of men of his stature.[27] His language, both written and spoken, must be guarded and measured lest the best of intentions be misconstrued.[28]

WHEREFORE, Concepcion Ching, Clerk of Court of the Municipal Trial Court of Manaoag, Pangasinan, is found GUILTY of dishonesty and falsification of official document, and is SUSPENDED for six months without salary and other benefits, with a STERN WARNING that a repetition of the same or similar acts shall be dealt with more severely.

The complaint against Judge Jaime L. Dojillo, Jr. is DISMISSED, but he is ADMONISHED to be more circumspect in his choice of words and use of gender-fair language.

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SO ORDERED.

Quisumbing, (Chairperson), Chico-Nazario,[*] Leonardo-De Castro,[**] and Peralta,[***] JJ., concur.

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[*] Additional member per Special Order No. 658.

[**] Additional member per Special Order No. 635.

[***] Additional member per Special Order No. 664.

[1] Rollo, A.M. No. P-06-2245, pp. 2-6.

[2] Sometimes "A" in the records.

[3] Rollo, A.M. No. P-06-2245, p. 50.

[4] Id. at 55-71.

[5] Id. at 188.

[6] Rollo, A.M. OCA IPI No. 06-1853-MTJ, p. 51.

[7] Id. at 53.

[8] Rollo, A.M. No. P-06-2245, pp.194-199.

[9] Id. at 194-195.

[10] Id. at 195-196.

[11] Id. at 196-199.

[12] Id. at 199.

[13] Id. at 204.

[14] Id. at 206.

[15] Affidavit of Jenelyn Sernadilla, rollo, A.M. No. P-06-2245, p. 134.

[16] Id. at 102.

[17] De Vera v. Rimas, A.M. No. P-06-2118, June 12, 2008, 554 SCRA 253, 259.

[18] Report on the Attendance in Office of Mr. Glenn B. Hufalar, MTCC, Br. 1, San Fernando City, La Union, A.M. No. 04-10-296-MTCC, July 28, 2008, 560 SCRA 14.

[19] Flores v. Hon. Layosa, 479 Phil. 1020, 1038 (2004).

[20] Civil Service Commission Resolution No. 99-1936 (August 31, 1999), Rule IV, Section 52 (A) (1) & (6).

[21] Re: Administrative Case for Falsification of Official Documents and Dishonesty against Randy S. Villanueva, A.M. No. 2005-24-SC, August 10, 2007, 529 SCRA 679, 687; Servino v. Adolfo, A.M. No. P-06-2204, November 30, 2006, 509 SCRA 42.

[22] Vide A.M. No. 03-05-01-SC (April 27, 2004), New Code of Judicial Conduct for the Philippine Judiciary, Canon 5.

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[23] Vide Judge Dojillo's letter-complaint, rollo, A.M. No. P-06-2245, p. 2, where he placed emphasis on the word "lesbian."

[24] Id. at 110.

[25] Id. at 107.

[26] Id. at 108.

[27] Vide Negros Grace Pharmacy, Inc. v. Judge Hilario, 461 Phil. 843, 851-852 (2003).

[28] De la Cruz v. Judge Bersamira, 402 Phil. 671, 678 (2001).

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