

JUDGE TEODORO L. DIPOLOG, COMPLAINANT, VS. CLERK OF COURT II DARRYL C. MONTEALTO, COURT INTERPRETER I PEDRO RIO G. BATION, COURT STENOGRAPHER I FE O. PAO, COURT STENOGRAPHER I B...

A.M. No. P-04-1901 (Formerly OCA-IPI No. 00-1019-P). November 23, 2004

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TINGA, J.:

This administrative matter arose from a Memorandum dated July 4, 2000 issued by respondent Darryl C. Montealto (Montealto), Clerk of Court II of the 2nd Municipal Circuit Trial Court (MCTC) of Sapang Dalaga-Concepcion, Misamis Occidental to the personnel of said court regarding their failure to accomplish Daily Time Records (DTRs) on time and/or falsification thereof and non-observance of prescribed office hours.[1]

In view of the gravity of the allegations in the Memorandum, Judge Paulino L. Conol, Jr. (Judge Conol), then Executive Judge of the Regional Trial Court (RTC), Calamba, Misamis Occidental, indorsed the same to Acting Presiding Judge Teodoro L. Dipolog (Judge Dipolog) for investigation.[2]

After investigating the matter, Judge Dipolog issued a Resolution dated August 28, 2000, stating that Montealto issued the Memorandum as a reminder to the court personnel concerned; that after the issuance thereof, the MCTC personnel started observing punctuality; and that the irregularities referred to by Montealto in the Memorandum may have been a product of differences between himself and the employees concerned. Since the averments in the Memorandum were not supported by substantial evidence, and the DTRs in question were certified to be correct by Montealto himself, Judge Dipolog deemed it unnecessary to investigate the matter further. Judge Dipolog, however, recommended that Montealto and the other respondents, namely: Court Interpreter I Pedro Rio G. Bation (Bation), Court Stenographer I Fe O. Pao (Pao), Court Stenographer I Brillo B. Portacion (Portacion), Clerk II Phebe A. Velez (Velez), Junior Process Server Cesario E. Alumbro (Alumbro) and Utility Worker I Zaldy V. Pamatong (Pamatong) be reprimanded for having failed to maintain a harmonious relationship among the employees in the MCTC.[3]

In their Joint Comment dated May 4, 2001, respondents Bation, Pao, Alumbro, Portacion, Velez and Pamatong generally agreed with the findings of Judge Dipolog in his August 28, 2000 Resolution. They averred that there was no longer any need to reprimand Montealto because they had already settled their differences with him.[4]

Montealto filed a separate comment. In his letter dated May 4, 2001, he argued that he should not be named a respondent to the case because he was not a party to the falsification of the DTRs. According to Montealto, he did not intend his Memorandum to be an administrative complaint against the other respondents, although he would not hesitate to file charges against them in the future should the other respondents commit similar offenses in the future.[5]

On March 13, 2002, the Court, adopting the recommendation of the Office of the Court Administrator (OCA), issued a Resolution referring the matter to then Executive Judge Paulino L. Conol, Jr. (Judge Conol) for investigation, report and recommendation in view of the gravity of the offenses alleged by Montealto and the

possibility of collusion among the other respondents.[6]

In view of the retirement of Judge Conol on November 9, 2002, Ms. Vivian I. Berioso, Officer-in-Charge and Court Stenographer III, requested that another RTC Judge from Oroquieta City be assigned to investigate the matter. Thus, on January 22, 2003, the Court issued another Resolution referring the case for investigation to Executive Judge Ma. Nimfa Penaco-Sitaca (Judge Sitaca) of the RTC, Branch 13, Oroquieta City.

In her Report dated June 30, 2003, Judge Sitaca observed that none of the respondents denied the charges made by Montealto in his July 4, 2000 Memorandum. They merely offered excuses for their absences on the dates when Judge Conol visited their branch and did not see them in the office.[7] They also explained that Montealto issued the Memorandum because he had personal differences with some of them.[8]

Judge Sitaca found that Pao, Alumbro, Portacion, Velez and Pamatong have, for over a period of four years,[9] repeatedly committed the acts mentioned by Montealto in his July 4, 2000 Memorandum, i.e., failure to fill out DTRs daily, failure to observe office hours, and accomplishing their DTRs for each month without indicating the days when they were absent during that period. The investigating judge also found that there was no record of the frequency with which the aforementioned respondents committed the acts. It was further stated by Judge Sitaca that Montealto lacked the courage to discipline the erring employees of the MCTC and that he would not have written the Memorandum had Judge Conol not demanded him to issue a written admonition to the employees. Thereafter, although Montealto issued the Memorandum, he tried to downgrade respondents' liability by saying that they committed the acts mentioned in the Memorandum "only once a month." He also certified to the correctness of respondents' DTRs even though he knew that they did not indicate their absences therein.[10]

Judge Sitaca recommended that Montealto be reprimanded for not having the courage to require the erring MCTC employees to indicate true and correct entries in their DTRs and for certifying to the correctness of their falsified DTRs; that respondents Pao, Portacion, Velez, Alumbro and Pamatong be dismissed from the service and that Bation be exculpated.[11]

In its Memorandum dated January 16, 2004, the OCA, citing the findings of Judge Sitaca, recommended that Montealto, Pao, Portacion, Velez, Alumbro and Pamatong be held liable for gross neglect of duty and be meted the penalty of suspension for six (6) months and one (1) day without pay with a stern warning that a repetition of the same or the commission of similar acts will be dealt with more severely. It also recommended that the complaint against respondent Bation be dismissed for lack of merit.[12]

According to the OCA, by turning a blind eye to the dishonesty of Pao, Portacion, Velez, Alumbro and Pamatong and their falsification of the DTRs, Montealto in effect cooperated in their commission of the offenses. His issuance of the July 4, 2000 Memorandum cannot exonerate him because he did not issue said memorandum out of his own initiative. He was compelled to make such issuance by Judge Conol who made several surprise visits to the MCTC and discovered during those instances that Pao, Portacion, Velez, Alumbro and Pamatong were either loafing or frequently out of the office during office hours.[13] Moreover, Montealto was remiss in his duty of keeping a reliable record of attendance of all officials and employees of the MCTC.[14]

With respect to Pao, Portacion, Velez, Alumbro and Pamatong, the OCA noted that they made superficial denials regarding the charges against them and that their respective answers during the investigation were flimsy and not responsive. They failed to refute the charges against them in Montealto's July 4, 2000 Memorandum.

The OCA added that although the acts of dishonesty and falsification of Pao, Portacion, Velez, Alumbro and Pamatong are grave offenses which carry the penalty of dismissal, it recommended that the fact that they have never been administratively charged be considered as a mitigating circumstance pursuant to Section 53 of the

Civil Service Commission Revised Uniform Rules on Administrative Cases (CSC Revised Uniform Rules) and that the penalty next lower to dismissal, i.e., suspension for six (6) months and one (1) day to one (1) year be imposed upon them.[15]

The record supports the findings of Judge Sitaca and the OCA that respondents Pao, Portacion, Velez, Alumbro and Pamatong did not specifically deny the charges that they failed to comply with the requirement that they fill out their respective DTRs upon arrival at, and departure from, the office; that they were frequently out of the office during office hours and that they falsified their entries in their DTRs.[16] Moreover, they failed to satisfactorily explain their disappearance from their respective work stations during the three instances when Judge Conol made surprise visits to the MCTC and saw for himself that the said respondents were not in the office. Their acts of loafing during official hours and incurring frequent unauthorized absences are penalized under the CSC Revised Uniform Rules with suspension for six (6) months and one (1) day to one (1) year for the first offense and with dismissal for the second offense.[17]

Judge Sitaca and the OCA also found that Pao, Portacion, Velez, Alumbro and Pamatong also made false entries in their DTRs by indicating therein that they were present at work when in fact they were somewhere else. Unfortunately, the logbooks of the MCTC from 1996 to July 4, 2000 are not properly accomplished and therefore cannot establish which particular entries in the DTRs of the aforementioned respondents are false. his notwithstanding, said respondents may still be held administratively liable for their acts of falsification which they did not deny nor disprove during the investigation conducted by Judge Sitaca on June 23, 2003 and in their Joint Comment dated May 4, 2001. It was established by substantial evidence that Judge Conol saw that they were not at their respective work stations during his three surprise visits to the MCTC and that because of their frequent loafing, Judge Conol directed Montealto to issue the July 4, 2000 Memorandum to call their attention to their transgressions.[18] Their absence from the office, even for a few hours in one day, is certainly inconsistent with their declaration in their DTRs that they were present at work during those hours. Such declarations in the DTR undeniably amount to acts of falsification.

Falsification of an official document such as the DTR is considered a grave offense under the CSC Revised Uniform Rules and is penalized with dismissal for the first offense.[19] It is also punishable as a criminal offense under Article 171 of the Revised Penal Code.

The Court has repeatedly held that everyone in the judiciary, from the presiding judge to the clerk, must always be beyond reproach and must be circumscribed with the heavy burden of responsibility as to let them be free of any suspicion that may taint the judiciary.[20] As the Court explained in *Mirano v. Saavedra*: [21]

Public service requires utmost integrity and strictest discipline. A public servant must exhibit at all times the highest sense of honesty and integrity. The administration of justice is a sacred task. By the very nature of their duties and responsibilities, all those involved in it must faithfully adhere to, hold inviolate, and invigorate the principle solemnly enshrined in the 1987 Constitution that a public office is a public trust; and all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency. The conduct and behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, should be circumscribed with the heavy burden of responsibility. Their conduct, at all times, must not only be characterized by propriety and decorum but, above all else, must be above suspicion. Indeed, every employee of the judiciary should be an example of integrity, uprightness and honesty.[22]

It has also held that frequent unauthorized absences on the part of a court employee not only undermine his or her efficiency but can also adversely affect the prompt delivery of justice.[23]

With respect to Montealto, the Court agrees with the OCA and Judge Sitaca that he cannot be exonerated from the

charges against him because it was not he who made false entries in the DTRs of the other respondents. Contrary to Montealto's claim, he is liable for dishonesty because he certified to the correctness of the DTRs of the other respondents even though he knew that they were not always present as they claimed they were in their DTRs. Dishonesty is a grave offense which is penalized with dismissal under the CSC Revised Uniform Rules.[24]

Montealto is also liable for gross neglect of duty[25] for his failure to discipline the other employees of the MCTC despite their brazen and repeated violations of civil service rules on attendance, observance of official time and submission of DTRs. The Court has previously held that Clerks of Court are the chief administrative officers of their respective courts. As such they must exhibit competence, honesty, and probity since they are charged with safeguarding the integrity of the court and its proceedings.[26]

Respondents Pao, Portacion, Velez, Alumbro and Pamatong are liable for two administrative offenses—first, for Loafing and/or Frequent Unauthorized Absences, and second, Falsification of Official Document. The first offense is penalized with suspension for six (6) months and one (1) day to one (1) year for the first infraction, while the second offense is penalized with dismissal even for the first offense. Section 17, Rule XIV of the CSC Omnibus Rules Implementing Book V of Executive Order No. 292[27] provides that when the respondent is guilty of two or more charges, the penalty for the most serious charge should be imposed and the other charges may be considered as aggravating circumstances.

Montealto, on the other hand, is liable for dishonesty and gross neglect of duty, both of which are grave offenses penalized with dismissal even for the first offense under the CSC Revised Uniform Rules.

However, the OCA recommends that the penalty of suspension for six (6) months and one (1) day be imposed upon respondents instead of dismissal because the fact that respondents have not been administratively charged prior to this case may be considered as a mitigating circumstance.[28]

The Court agrees with the recommendation of the OCA.

Section 53 of the CSC Revised Uniform Rules grants the disciplining authority the discretion to consider mitigating circumstances although not pleaded by the respondent.

The Court has, in several cases, refrained from imposing the extreme penalty of dismissal where the erring employee had not been previously charged with an administrative offense.[29] Inasmuch as the respondents in this case (except respondent Bation) have not been administratively charged prior to this case, the Court deems it proper to apply such mitigating circumstance in their favor and accordingly, to reduce the penalty imposable upon each of them to suspension for a period of six (6) months and one (1) day.

WHEREFORE, respondent Darryl C. Montealto, Clerk of Court II, is found guilty of Dishonesty and Gross Neglect of Duty and is hereby **SUSPENDED** for six (6) months and one (1) day without pay, with a stern warning that a repetition of a similar offense shall warrant a more severe penalty.

Respondents Fe O. Pao, Court Stenographer I; Brillo B. Portacion, Court Stenographer I; Phebe A. Velez, Clerk II; Cesario E. Alumbro, Junior Process Server; and Zaldy V. Pamatong, Utility Worker I, are found guilty of Falsification of Official Document and are hereby suspended for six (6) months and one (1) day without pay. Respondents are sternly warned that a repetition of a similar offense shall warrant a more severe penalty.

The charges against respondent Pedro Rio C. Bation, Court Interpreter I, are **DISMISSED** for lack of merit.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] The Memorandum reads in full:

July 4, 2000

MEMORANDUM TO:

All Court Personnel

MCTC, Sapang Dalaga, Misamis Occidental

FROM: The Clerk of Court

Subject: Conformity with ENTRY IN THE LOG BOOK and
ENTRY IN THE DAILY TIME RECORD

It has been observed that despite several admonitions made by the undersigned, the following irregularities are still habitually committed by some personnel of this Court, to wit:

1)

[N]on-filling up of DTR's (sic) daily. Some do not even fill up their DTR's (sic) despite reminders made and that the month has already ended;

2)

{N]on-observance of office hours. Some arrived very late, enter their names in the log book for TIME IN and disappeared without notice and no longer enter (sic) their names for TIME OUT which directly implies that they are absent;

3)

Worst, despite the fact that they have been absent for several days, their DTR's (sic) are filled up at the end of the month without absences;

Please be reminded that under the Civil Service Law, three (3) successive absences without leave (AWOL) is considered 'Habitual Absenteeism' and three (3) successive late in entrance to office is also considered 'Habitual Tardiness'. Both holds (sic) a penalty of ADMONITION FOR the first offense, SUSPENSION for the second offense, and DISMISSAL from the service for the third offense.

In line with the foregoing, effective immediately, the following OFFICE POLICY shall be strictly observed:

1) any personnel who enters his/her name in the log book for TIME IN and does not enter his/her name for TIME OUT (morning and afternoon) shall be considered absent. In the case of the process server who will be out on filed (sic) to serve subpoena or summon (sic), he shall specify in the log book for TIME IN (A.M.) the case number of subpoena/summon (sic) to be served and report accomplishment of the same the following morning if the service of same warrants the whole day;

2) all personnel (sic) shall fill up their Daily Time Records daily upon entering their names in the log-book;

3) entries in the DAILY TIME RECORDS shall conform with entries in the LOG BOOK which shall be supervised by the undersigned everyday. Any DTR whose entries do not conformed (sic) with the entries in the LOG BOOK shall not be included in the monthly report and will be a ground for withholding of salary.

FOR STRICT COMPLIANCE.

(Sgd.) DARRYL C. MONTEALTO

Clerk of Court II

[2] Rollo, p. 6.

[3] Id. at 1-3.

[4] Id. at 21-22.

[5] Id. at 23.

[6] Id. at 24-26.

[7] Judge Sitaca included the following excerpts from the testimonies of the respondents in her Report dated June 30, 2003:

... Mr. Montealto...declared:

- That he issued his memorandum of July 4, 2000 (p. 5, Record) in compliance with the order of RTC Judge Paulino Conol, then Presiding Judge of Branch 36, Calamba, Misamis Occidental, who had found, during three visits to the court in April, May and June 2000, that most of the court personnel were not around at the time of his visit.

- That although the memorandum was addressed to “All Court Personnel”, he specifically had in mind court stenographers Fe Pao, and Brillo Portacio, clerk Phebe Velez, process server Cesario Alumbro, and utility worker Zaldy Pamatong. “I think all, except the Court Interpreter” (tsn, p. 2)

- That the “misbehaviour” of his subordinates had started from the time Judge Velez left the court in 1996 to July 4, 2000. The aforementioned respondents had been doing the acts complained of – “habitual non-filling up of dtr’s daily, non-observance of office hours, and filling up of dtr’s without absences”, not successively but “sometimes off and on . . . They were only doing it once in one month” (p. 3, tsn).

- That despite the fact that the entries in respondents’ daily time records were not true, he signed and certified to their correctness “because of our good relationship, I don’t want to admonish them, I will always remind them to change their behaviour” (tsn, p. 5) and they changed their behaviour after he issued his July 4, 2000 memorandum.

- That he does not have a record of the time when the respondents were “misbehaving” from 1996 to July 4, 2000.

...

- Process Server Cesario Alumbro – “Judge Conol is very strict when it comes to time. There was one time he arrived exactly at 12:00 already and we were already going out but his watch is still 11:45”

- Utility Worker Zaldy Pamatong – “One time when Judge Conol came and I was not around, I was remanding records to the Prosecutor’s Office”.

- Stenographer Brillo Portacion – “One instance when Judge Conol went to our office it happened that I was in the assessor’s office to get a copy of the tax declaration and he got angry because during office hours, we were not allowed to go to another office, the assessor office, . . . just across our office at a distance of 5 meters”.

- Stenographer Fe Pao – “.. I just followed the advice of my lawyer regarding the memorandum”.

- Clerk Phebe Velez – “.. when Judge Conol came I was not in the office and when I returned to the office,

Judge Conol left (Id. at 60-61).

[8] Id. at 61.

[9] From 1996 to July 4, 2000 when the Memorandum was issued.

[10] Rollo, p. 62.

[11] Id. at 63.

[12] Id. at 130-131.

[13] Id. at 128-129.

[14] Id. at 130.

[15] Id.

[16] See Joint Comment dated August 28, 2000, Id. at 21-22; TSN, June 23, 2003, Id. at 46-51.

[17] Section 52.A.17, CSC Revised Uniform Rules.

[18] See Betguen v. Masangcay, A.M. No. P-93-822, December 1, 1994, 238 SCRA 475.

[19] Madrid v. Quebral, A.M. Nos. P-03-1744, P-03-1745, October 7, 2003, 413 SCRA 1; Villanueva v. Milan, 438 Phil. 560 (2002); Court Administrator v. Abdullahi, 429 Phil. 256 (2002); Galan v. Napase, A.M. No. P-90-417, April 10, 1992, 208 SCRA 1.

[20] Escleo v. Dorado, 434 Phil. 801 (2002); Joson v. Macapagal, 432 Phil. 980 (2002); Racasa, et al. v. Collado-Calizo, 430 Phil. 775 (2002).

[21] A.M. No. P-89-383, August 4, 1993, 225 SCRA 77.

[22] Id. at 85.

[23] Madrid v. Quebral, supra note 19, citing Dondiego v. Cuevas, A.M. No. P-03-1681, February 28, 2003, 398 SCRA 386.

[24] Section 52.A.1, CSC Revised Uniform Rules.

[25] Under Section 52.A.2, this offense is penalized with dismissal even for the first offense.

[26] Madrid v. Quebral, supra note 19; Separa v. Maceda, 431 Phil. 1.

[27] The Administrative Code of 1987.

[28] Rollo, p. 130.

[29] Re: Alleged Tampering of Daily Time Record of Sherryl B. Cervantes, Court Stenographer III, Branch 18, RTC, Manila, A.M. No. 03-8-463-RTC, May 20, 2004; Office of the Court Administrator v. Sirios, A.M. No. P-02-1659, August 28, 2003, 410 SCRA 35; Reyes-Domingo v. Morales, A.M. No. P-99-1285, October 4, 2000, 342 SCRA 6.

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