

EN BANC

[**A.M. No. P-18-3791 (Formerly OCA IPI No. 15-4447-P), January 29, 2019**]

**MILAGROS P. MALUBAY, LEGAL RESEARCHER II, REGIONAL TRIAL COURT, BRANCH 270, VALENZUELA CITY, COMPLAINANT,
VS. HONORIO RAUL C. GUEVARA, CLERK III, SAME COURT.
RESPONDENT.**

DECISION

PER CURIAM:

A court employee who fails to exercise diligence in performing his duties and repeatedly disregards the directives and instructions of his superiors for him to do so is a disgrace to the Judiciary, and should be dismissed from the service. His name should be stricken out from the roll.

The Case

We hereby consider and resolve the administrative complaint charging herein respondent Clerk III of Branch 270 in the Regional Trial Court (RTC) in Valenzuela City with **gross neglect of duty** and **gross disobedience to the directives and instructions of his superiors**.

Antecedents

On June 2, 2015, Milagros P. Malubay, the Officer-in-Charge (OIC) Branch Clerk of Court of Branch 270 of the RTC, initiated the administrative complaint,^[1] alleging that the respondent had received two consecutive "unsatisfactory" performance ratings in the periods from July to December 2014 and from January to June 2015^[2] and that he had also continuously disobeyed the instructions contained in several memoranda issued by her^[3] by Presiding Judge Evangeline M. Francisco, and by Clerk of Court Atty. Maribel M. Fernandez, namely:

- (1) Memorandum dated December 6, 2012 directing the respondent to index the records of Criminal Case No. 835-V-10 (*People of the Philippines v. Raymond A. de Jesus*) for subsequent transmittal to the Court of Appeals (CA);
- (2) Memorandum dated January 7, 2013 of Atty. Fernandez directing the respondent to submit in writing his report on the mishandling of Criminal Case No. 590-V-10 (*People of the Philippines v. Singh, et al.*), because he had insisted that he submitted the records of the case to Judge Francisco but a massive search revealed that the records were hidden in his filing cabinet;

- (3) Memorandum dated January 16, 2013 of Atty. Fernandez updating Judge Francisco that as of date, the respondent had failed to comply with the January 7, 2013 directive to explain the mishandling of records;
- (4) Memorandum dated March 10, 2014 of Atty. Fernandez directing the respondent to explain in writing why he had received documents from the Bureau of Jail Management and Penology (BJMP) in connection with Criminal Case Nos. 226-V-14 to 227-V-14 (*People of the Philippines v. Ivan Yanong*) despite being unauthorized to do so;
- (5) Memorandum dated April 25, 2014 of Atty. Fernandez requiring the respondent to explain in writing why he had failed to prepare the records relevant to appealed cases docketed as Criminal Cases Nos. 5-V-12 (*People of the Philippines v. Ronald L. Calarabal*) and 753-V-II (*People of the Philippines v. Dean J. Martin*) for transmittal to the CA;
- (6) Memorandum of the complainant directing the respondent to submit the necessary data to complete the monthly reports on or before 10th day of the month;
- (7) Memorandum of the complainant regarding the respondent's failure to update the criminal dockets;
- (8) Memorandum dated July 3, 2014 of the complainant directing the respondent to prepare the list of cases and their statuses subject of the semestral inventory for the period of June 2014;
- (9) Memorandum dated July 7, 2014 of the complainant instructing the respondent to individually prepare the notices to produce and to attach the corresponding receipts of the case records;
- (10) Memorandum dated July 10, 2014 of the complainant instructing the respondent and two other employees to ensure that all cases scheduled for hearing were included in the court's calendars;
- (11) Memorandum dated July 25, 2014 of the complainant prohibiting the respondent from preparing notices or subpoenas without the directive from the Presiding Judge or from the complainant because of the inaccuracies in the court's calendars regarding several criminal cases;
- (12) Memorandum dated September 29, 2014 of the complainant instructing the respondent to stitch the transcript of stenographic notes (TSNs) to the case records immediately upon receipt; and
- (13) Memorandum dated October 3, 2014 of the complainant regarding the loss of four TSNs in Criminal Case No. 1350-V-

13 (*People of the Philippines v. Cecille Octubre*).

The complainant further alleged that Judge Francisco had relieved the respondent from his duties as the clerk-in-charge for criminal cases following the discovery of the loss while under his custody of TSNs in Criminal Case No. 1350-V-13 (*People of the Philippines v. Cecille Octubre*).^[4]

Barely a month after the complainant initiated her complaint, Judge Francisco sent a letter to Court Administrator Jose Midas P. Marquez formally requesting that the respondent be dropped from the rolls on account of his two consecutive unsatisfactory ratings.^[5]

On October 20, 2015, the Office of the Court Administrator (OCA) required the respondent to file his comment.^[6]

The respondent complied by submitting a letter dated February 1, 2016 whereby he denied the allegations, and manifested instead that the complainant had the propensity to abuse her authority; that the matters raised in the memoranda and notices previously issued to him, despite being already answered and explained by him, were still being used by the complainant as a ground to dismiss him constructively; and that he had followed and complied with the instructions of the complainant despite the same being complex and difficult to comply with.^[7]

OCA's Findings and Recommendation

According to its report dated November 8, 2017,^[8] the OCA found that the respondent was liable for **gross neglect of duty** and for **gross insubordination**.

Pertinent portions of the report of the OCA read as follows:

Respondent's assertion that he did not submit an explanation on the memorandum to him regarding the "lost" record of Criminal Case No. 590-V-10 as he was not told to do so is belied by the 07 January 2013 Memorandum of Atty. Fernandez which he received and signed on the same date it was issued. He was directed to immediately explain in writing the reason for the mishandling of the said record as the case was due for promulgation the following day and yet was nowhere to be found. He insisted that the record was submitted to Judge Francisco but after a diligent search, it was found hidden in his cabinet. This shows his prevarication and disobedience to his superior.

On the missing TSNs in Criminal Case No. 1350-V-13, the reason proffered by respondent is unacceptable. He admitted losing two (2) TSNs but not four (4). Regardless of the number of lost TSNs, this shows his negligence and unreasonable response to an allegation. In justifying the missing TSNs, it baffles us why respondent mentioned the lost record of Criminal Case No. 1393-V-13 (*People of the Philippines vs. Ralph De Leon*) which was imputed to him but for which he was not made to account by way of memorandum. Is this his way of asserting that simply because there was no memorandum issued to him, he should not feel responsible or concerned for its loss or that he should not do anything to

recover the record?

When respondent failed to prepare Criminal Cases No. CRC-5-V- 12 and CRC 753-V-11 for transmittal to the Court of Appeals despite several reminders to him by Atty. Fernandez, he apologized and explained that the delay was due to the long weekend during the holy week, heavy workload, stitching of records and the non-functioning of their photocopying machine. It was only then that he stated that he would give immediate attention and priority to appealed cases which shows that he had no sense of urgency and priority on matters that required immediate action.

On the directive for him to constantly update the criminal records, to stitch all orders and other processes of the cases assigned to him, and to turn over the dockets and the records stitched to the OIC/BCC at the end of office hours everyday to give him a chance to improve his performance rating for the first semester of 2015, respondent explained that he was "in contemplation that the docketed records might be mixed with the other records in my area." Complainant's (sic) reason is flimsy and totally unacceptable. *Firstly*, there is a standing Memorandum dated 26 January 2015 for his strict compliance. *Secondly*, there is no possibility that the records could be mixed with the other records because there is enough space. *Thirdly*, three (3) other court personnel religiously turned over the case records to complainant and, notably, none of them refused to turn over the records just because there was not enough space in the area or they could be mixed with other records. *Fourthly*, there was never an instance since 26 January 2015 when respondent approach and asked complainant where he could put the docketed records so they could not be placed with the other records. Further, only seven (7) to eight (8) records were being docketed by him in an eight (8)-hour daily work. Thus, the number of records are not that much to occupy a huge space and be mixed with other records. His adamant refusal to turn over the docketed records to complainant is a clear defiance of the 26 January 2015 Memorandum.

Anent the other concerns/issues cited above by complainant, respondent did not offer any explanation to rebut the same.

On respondent's performance ratings, we are convinced that he failed miserably to perform the duties and tasks assigned to him. Aside from the two (2) *unsatisfactory* semestral performance ratings from 01 July 2014 to 30 June 2015, he merely obtained satisfactory ratings during the previous years which demonstrate his lack of industry, efforts, enthusiasm, and determination to attain at least a very satisfactory rating. He gave unreasonable and unacceptable alibis for his poor performance but did not endeavor to really change and improve his work attitude and ethic.^[9]

The OCA recommended that the respondent be dismissed from the service with forfeiture of all benefits, except accrued leave credits.^[10]

Issue