

## SECOND DIVISION

[ A.M. No. CA-12-26-P, August 17, 2015 ]

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS.  
ANA MARIE ABARENTOS, RECORDS OFFICER IV, COURT OF  
APPEALS, CEBU CITY, RESPONDENT.**

### R E S O L U T I O N

**DEL CASTILLO, J.:**

This administrative complaint stemmed from an anonymous letter<sup>[1]</sup> dated February 9, 2011 addressed to Chief Justice Renato C. Corona charging respondent Anna Marie Abarintos, former Records Officer IV at the Judicial Records Division of the Court of Appeals, Cebu station, of tampering the date of receipt of the Petition for Review filed in CA-G.R. SP No. 05464.<sup>[2]</sup> Respondent allegedly made it appear that said pleading was timely filed on November 4, 2010 to favor her husband's *kumpadre* who filed it. In the same letter, respondent likewise accused of taking the ATM card of her officemate, Records Officer II Elizabeth Gilos (Gilos), and withdrawing therefrom P10,000.00 without the latter's knowledge and consent.

In her Comment,<sup>[3]</sup> respondent denied the accusations. She averred that the issue of tampering had already been clarified and that it did not prejudice the rights and interest of any of the parties in CA-G.R. SP No. 05464. With regard to the alleged unauthorized withdrawal, respondent explained that the same is a personal issue between two friends arising from a simple misunderstanding. According to respondent, the anonymous letter does not deserve the attention of this Court and that the same has caused undue stress and pain to her father-in-law, Associate Justice Pampio A. Abarintos, who was then the Chairperson of the Nineteenth Division of the Court of Appeals, Cebu station. Thus, on February 14, 2011 she resigned from the Court of Appeals.<sup>[4]</sup>

On December 3, 2012, upon recommendation of the Office of the Court Administrator (OCA), this case was re-docketed as a regular administrative matter and referred to the Court of Appeals, Cebu station for investigation, report and recommendation.<sup>[5]</sup>

Administrative hearings thereafter ensued.

On March 18, 2013, however, this Court modified its December 3, 2012 Resolution by referring the case to the Court of Appeals, Manila for investigation, report and recommendation.<sup>[6]</sup>

Thus, the new Investigating Justice in Manila set this case for hearing on January 10, 2014 for the reception of respondent's evidence.<sup>[7]</sup> But respondent instead filed a Manifestation Under Oath<sup>[8]</sup> stating that after consulting her family, she decided

not to present any controverting evidence other than those mentioned in her Comment.

### ***Recommendation of the Investigating Justice***

On April 15, 2014, the Investigating Justice submitted his Report and Recommendation,<sup>[9]</sup> finding the charge of tampering unsupported by substantial evidence. He based his conclusion on the testimony of Atty. Lucila C. Enjambre (Atty. Enjambre), Assistant Clerk of Court of the Court of Appeals, Cebu station, explaining that the Petition in CA-G.R. SP No. 05464 was actually filed and received by the Receiving Section of the Judicial Records Division on November 4, 2010. The date November 5, 2010 appearing thereon indicates the date the Office of the Division Clerk of Court received said pleading.

With respect to the charge of unauthorized withdrawal from the account of Gibs, however, the Investigating Justice found sufficient evidence to hold respondent liable therefor. Thus:

Elizabeth Gilos' identification of respondent in the CCTV recording and her testimony that respondent admitted the withdrawal and even paid her two thousand pesos (P2,000.00) as partial payment for the ten thousand pesos (510,000.00) that was withdrawn from her account conclusively prove that respondent committed the act of withdrawing money from her Land Bank deposit [account with the use of] her ATM card without her consent.<sup>[10]</sup>

The Investigating Justice categorized the unauthorized withdrawal as a grave misconduct and recommended the penalty of disqualification from holding public office for one year.

Thereafter, this case was referred to OCA for evaluation, recommendation and report.<sup>[11]</sup>

### ***Recommendation of the OCA***

In its Memorandum dated February 17, 2015, the OCA opined that respondent is guilty of conduct prejudicial to the best interest of the service for having received a pleading beyond office hours and without authority to do so. Anent the unauthorized withdrawal, it agreed with the Investigating Justice that respondent is guilty of grave misconduct, with the modification that the same also constitutes dishonesty. Since respondent had already resigned, the OCA recommended the penalty of P20,000.00 fine with forfeiture of retirement benefits, except accrued leave benefits, and perpetual disqualification from holding public office. Thus:

Section 50, Rule 10 of the RRACS provides that if the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances. However, considering

that respondent Abarintos already resigned from the service effective 14 February 2011, the penalty of dismissal can no longer be imposed. The penalty of fine is therefore deemed proper.

Furthermore, Section 52 of the same rule provides that the penalty of dismissal carries with it cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and [being] bar[red] from taking the civil service examination.

**RECOMMENDATION:** It is respectfully recommended for the consideration of the Honorable Court that:

1. Anna Marie Abarintos, former Records Officer FV, Court of Appeals (Cebu Station) be found GUILTY of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service, and be FFNED in the amount of Twenty Thousand Pesos (¥20,000.00) and with forfeiture of retirement benefits except accrued leave benefits, and perpetual disqualification from holding office in any branch or instrumentality of the government, including government-owned or controlled corporations; and

2. The Finance Management Office of the Court of Appeals be DIRECTED to DEDUCT the fine of P20,000.00 imposed against Anna Marie Abarintos from whatever sums are due to her as accrued leave credits, if sufficient.

[12]

### **This Court's Ruling**

#### ***The Court partially adopts the recommendation of the OCA.***

The charge of tampering is not supported by sufficient evidence.

In finding respondent liable for tampering the date of receipt of the Petition in CA-G.R. SP No. 05464, the OCA essentially relied on the following circumstances: it is not part of respondent's duty to receive pleadings as there are four (4) court personnel in the Receiving Section tasked to do the same; and, she received said pleading after office hours or at 5:10 in the afternoon of November 4, 2010.

At first blush, the circumstances enumerated by OCA are enough to raise a quizzical eyebrow. But administrative liability cannot rest on mere suspicion or speculation.

[13] There must be substantial evidence to support a finding that respondent is responsible for the reprehensible act imputed against her. "Substantial evidence in an administrative case consists of that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."<sup>[14]</sup>

In this case, respondent is being charged with tampering the date of actual receipt of the Petition in CA-G.R. SP No. 05464. Thus:

Sensing that the filing was out of the desired date, ANNA personally tampered the date at our receiving section to make it appear that the pleading was filed on time as November 4 instead of November 5, extrinsically a dismissible ground by technicality, x x x<sup>[15]</sup>

The aforesaid circumstances relied upon by the OCA do not, however, prove that respondent altered or intercalated the actual date of receipt of the Petition in CA-G.R. SP No. 05464 as appearing on the face thereof. There is no showing that said pleading was actually filed on November 5, 2010, but that through respondent's intervention or manipulation she changed the date and made it appear that the same was seasonably filed on November 4, 2010. On the contrary, Atty. Enjambre categorically declared under oath that said pleading was filed on November 4, 2010, viz.:

Q : Can you assist the Investigator with [regard] to this Petition for Review and show to me when this Petition for Review was received?

A : On page 16 of the rollo, Your Honor, we have the Petition for Review. On its face on page 16 there is a mark ["Received - November 4, 2010"] and this is the signature of Anna Marie Abarintos. This petition was supposedly received by her on November 4, 2010 at 5:10, Your Honor.

x x x

x

Q : So, Atty. Enjambre, you said that it was received on 4 November, right?

A : Appearing on page 1 of the Petition, Your Honor.

Q : Yes. There is a stamp here on the right side portion of the first page of the Petition for Review as mentioned November 4, but on the left side, Atty. Enjambre, there also appears a stamp ["Received - 19<sup>th</sup> Division, November 5, 2010"]. What is the significance of this other stamp Received?

A : From the Receiving Section, Your Honor, the same will be forwarded to the SP Section and then they will docket the case and then they will assign a docket number and then forward it to the Raffle Committee for raffle and after the raffle, the same will be forwarded to the Division Clerk of Court concerned.<sup>[16]</sup>

We also note that the CA's February 21, 2011 Resolution in CA-G.R. SP No. 05464 outrightly dismissed the petition for: (i) being patently without merit; (ii) lack of competent evidence of identity; and, (iii) failure of the notary public before whom the verification and certification was subscribed to indicate his/her notarial commission number. It did not include tardiness as one of the grounds for dismissing said petition.

As regards respondent's alleged lack of authority, no office order or memorandum was, however, cited or presented to establish that only the four court personnel in

the Receiving Section, to the exclusion of all others, are authorized to receive pleadings. Put differently, there is no proof that respondent, who is the head of the Judicial Records Division, is prohibited from receiving pleadings. On the other hand, *The 2002 Revised Manual for Clerks of Court* outlines the functions and duties of the Chief Judicial Staff Officer of Judicial Records Division as follows:

5.1. Adjudicative Support Functions:

5.1.1. Takes charge of docketing all cases received by the Court;

5.1.2. Receives and reports to the Divisions concerned all pleadings and communications relative to the cases already filed;

x x x x<sup>[17]</sup>

Since it has not been established that respondent is forbidden to receive pleadings, she should not be administratively held liable for doing so.

Furthermore, we cannot subscribe to the recommendation of the OCA that respondent's receipt of subject pleading several minutes after office hours raises a presumption that she used her office to extend a favor to a litigant. There is simply no such presumption that exists in the Rules on Evidence or in statute books. On the other hand, it is basic that court officials and personnel are presumed to have regularly performed their official duties.<sup>[18]</sup> At this point, it may not be amiss to state that the circulars issued by this Court pertaining to the observance of prescribed working hours<sup>[19]</sup> are intended to promote punctuality and prevent tardiness or absenteeism "if only to recompense the government and, ultimately, the people, who shoulder the cost of maintaining the Judiciary."<sup>[20]</sup> They are not intended to deny public service to the same people who come to court to transact business, even if they arrive a few minutes after the prescribed working hours, when there are still court personnel present who could serve them. Neither should they be construed as to prohibit dedicated court personnel to render genuine public service beyond the regular office hours. "Truly, public servants at times should share a part of their extra time and skills in order to facilitate swift delivery of service to the public."<sup>[21]</sup>

***The acts of respondent in taking the ATM card of Gilos and making an unauthorized withdrawal constitute grave misconduct and dishonesty.***

The Court adopts the recommendation of the OCA that the acts of respondent in taking the ATM card of her officemate and making an unauthorized withdrawal therefrom do not only constitute grave misconduct, but amount to dishonesty as well.

Misconduct has been defined "as 'a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public