

EN BANC

[A.M. Nos. P-13-3116 & P-13-3112, November 12, 2013]

OFFICE OF THE COURT ADMINISTRATOR COMPLAINANT, VS. MS. ROSA A. ACAMPADO, CLERK OF COURT II, MUNICIPAL TRIAL COURT, TAFT, EASTERN SAMAR RESPONDENT.

RESOLUTION

PER CURIAM:

"Those charged with the dispensation of justice, from the justices and judges to the lowliest clerks, should be circumscribed with the heavy burden of responsibility."^[1] Court personnel are expected to act in a manner free from reproach. Medical treatment of a sick husband does not excuse the actions of the respondent who repeatedly deceived this Court by misusing court funds, falsifying public documents, and failing to comply with orders.

For resolution are two consolidated administrative cases where the respondent is charged with failing to submit the documents required by the Fiscal Monitoring Division of this Court; failing to remit her collections on time; and submitting falsified bank deposit slips. A.M. No. P-13-3116 (*Formerly* A.M. No. 07-11-299-MTC) pertains to the Report on the Non-compliance of respondent Rosa A. Acampado, Clerk II, Municipal Trial Court, Taft, Eastern Samar, to submit additional documents for financial audit. A.M. No. P-13-3112 (*Formerly* A.M. OCA IPI No. 09-3164-P) pertains to the Report on the Financial Audit conducted on the books of account of Rosa A. Acampado and Jean Gladys N. Lobina of the Municipal Trial Court, Taft, Eastern Samar.

Then Senior Deputy Court Administrator Zenaida N. Elepaño in her Memorandum^[2] informed this Court that Rosa A. Acampado, Clerk II, failed to submit to the Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator, the additional documents required to finalize the audit examination of her books of accounts.^[3] Respondent Acampado failed to comply despite several warnings and follow-up communications sent by the Office of the Court Administrator.^[4] Senior Deputy Court Administrator Elepaño then requested that the salaries, allowances, and other monetary benefits of respondent Acampado be withheld until compliance is made.^[5]

Consequently, in a Resolution dated December 12, 2007, this Court withheld respondent Acampado's salaries, allowances, and other monetary benefits until compliance was duly effected as an exception to Administrative Circular No. 2-2000^[6] to avoid misuse of government funds and to protect this Court's interest. This Court also noted the Memorandum dated October 31, 2007 of the Office of the Court Administrator.^[7]

In a Memorandum dated February 19, 2009, the Financial Audit Team headed by Ms. Cielo D. Calonia submitted a report to then Court Administrator and now Associate Justice of this Court, Jose P. Perez.^[8] The audit team found that Clerk of Court II, Ms. Rosa Acampado, who was then in charge of the collections of the court, incurred cash shortages in her books of accounts and falsified or tampered bank deposit slips. The team found shortages amounting to One Hundred Thousand Four Hundred Seventy-eight Pesos and Thirty-Three Centavos (P100,478.33).^[9] According to the audit team:

It is clear that she committed gross neglect of duty and gross dishonesty and even malversation of public funds when she failed to turn over on time her collections (JDF, SAJF, MF, Fiduciary fund) and altered/tampered deposit slips and official receipts to cover-up collections. x x x.

x x x x

There is no question that Ms. Rosa A. Acampado committed the act of dishonesty in unreported collections of cash bond under Official Receipt Numbers 5581801 to 5581823 totalling to Sixty-Five Thousand Five Hundred Sixty Pesos (P65,560.00) and altering deposit slips and official receipts during her accountability period.^[10]

In a Resolution dated April 15, 2009, this Court treated the Memorandum dated February 19, 2009 of the Office of the Court Administrator as an administrative charge for gross neglect of duty and dishonesty.^[11] This Court also consolidated A.M. No. 09-3-41-MTC (*Report on the Financial Audit Conducted on the Books of Account of Ms. Rosa A. Acampado and Ms. Jean Gladys N. Lobina of the Municipal Trial Court, Taft, Eastern Samar*) with A.M. No. 07-11-299-MTC (*Report on the Non-Compliance of Ms. Rosa A. Acampado, Clerk of Court II, Municipal Trial Court [MTC], Taft, Eastern Samar to Submit Additional Documents for Financial Audit*).^[12] In the same Resolution, Hon. Chita A. Umil, Presiding Judge of the Municipal Trial Court, Taft, Eastern Samar, was directed to: (1) investigate the extent of respondent Acampado's responsibilities in relation to the tampered deposit slips and falsification of official receipts for Fiduciary Fund and submit her report and recommendation within thirty (30) days from receipt of notice; and (2) monitor and advise the Officer-in-Charge to strictly follow the Supreme Court Circulars on the proper handling of Judiciary funds.^[13]

Respondent Acampado's salaries and allowances were withheld from February 2008 to April 15, 2009 but were subsequently released by this Court for humanitarian considerations.^[14] The release was subject to the condition that Fifty Thousand Pesos (P50,000.00) would be "retained/set aside" to answer for whatever penalty this Court may impose upon her.^[15]

In a Letter dated June 10, 2009, Judge Umil asked that she be relieved from the task of investigating respondent Acampado to maintain the harmonious atmosphere in her office and to maintain neutrality.^[16] After granting Judge Umil's request to inhibit herself, this Court referred the matter to Judge Renato Noel C. Echague,

Metropolitan Trial Court, Can-avid, Eastern Samar, for investigation, report, and recommendation. Judge Echague then submitted his Findings and Recommendations dated July 15, 2010 to the Office of the Court Administrator.^[17]

The Office of the Court Administrator submitted its evaluation, report, and recommendation on Judge Echague's findings on February 9, 2011.

In an Indorsement dated September 3, 2012, the Deputy Ombudsman for the Visayas resolved to refer for appropriate action the case against respondent Acampado for Malversation of Public Funds^[18] and deemed the case closed and terminated in so far as the Office of the Ombudsman was concerned.

The issues for resolution in this case are:

- I. Whether respondent Acampado is guilty of gross misconduct and gross neglect of duty;
- II. Whether respondent Acampado should be dismissed from service; and
- III. Whether mitigating circumstances should be considered in this case.

Findings and Recommendations of the Investigating Judge

Judge Echague found that respondent Acampado incurred the following cash shortages in her collections: (1) P23,712.53 for the Judiciary Development Fund; (2) P58,285.80 for the Special Allowance for the Judiciary Fund; and (3) P5,000.00 for the Mediation Fund, amounting to a total of Eighty-six Thousand Nine Hundred Ninety-eight Pesos and Thirty-three Centavos (P86,998.33).^[19]

After hearing respondent Acampado's admission that she under-remitted Judiciary funds and falsified bank deposit slips, Judge Echague found her guilty of gross misconduct and gross neglect of duty punishable by dismissal from service for failing to turn over cash on time. She is also guilty of dishonesty and falsification of public documents for falsifying bank deposit slips. For failing to submit the additional documents, she is guilty of simple neglect of duty.

However, in view of mitigating circumstances, such as respondent Acampado's admission, remorse, length of service, and the fact that this is her first administrative case, Judge Echague recommended that she be given the following penalties:

1. In A.M. No. 07-11-299-MTC (Failure of Ms. Acampado to submit additional documents needed for financial audit), she is guilty of simple neglect of duty. Accordingly, it is recommended that she be fined Five Thousand Pesos (P5,000.00).
2. In A.M. No. OCA I.P.I. No. 09-3164-P (Report on the Financial Audit on the books of account of MTC, Taft, Eastern Samar), Ms. Acampado is guilty of gross misconduct and gross neglect of duty for her failure to

remit on time her collections. Ms. Acampado is likewise guilty of dishonesty and falsification of public documents for falsifying bank deposit slips. Accordingly, it is respectfully recommended that for these two infractions, she be fined an amount equivalent to six (6) months of her salary to be deducted from her retirement benefits.^[20]

Respondent's Arguments

In the hearing which she requested^[21] and in lieu of her Comment, respondent Acampado asked this Court for forgiveness. She explained that the shortages were due to under-remittance. She was tempted to use the money for the medical check-ups and medication of her husband who was insulin-dependent due to diabetes and who had been undergoing dialysis treatment.^[22]

She also admitted that she falsified 19 Land Bank of the Philippines deposit slips as well as additional 20 bank deposit slips.^[23] She prepared the bank deposit slips but failed to go to the bank. She was rattled by the presence of the audit team, and she just surrendered the falsified slips to the team. Respondent Acampado also stated that she already fully restituted the cash shortages in the amount of Eighty-six Thousand Nine Hundred Ninety-eight Pesos and Thirty-three Centavos (P86,998.33). On her non-compliance to submit additional records needed to finalize the audit, she explained that these records were damaged by water used to put out a fire that had gutted a portion of the municipal hall.^[24]

This Court referred the Findings and Recommendations dated July 15, 2010 of Judge Echague to the Office of the Court Administrator for evaluation, report, and recommendation.

Office of the Court Administrator's Report and Recommendations

The Office of the Court Administrator adopted the findings of the investigating judge with modification. According to the Office of the Court Administrator, a clerk of court's failure to make a timely turnover of cash deposited with him or her constitutes not only gross negligence in the performance of duty but also gross dishonesty, if not malversation.^[25] The Office of the Court Administrator said that misappropriation of Judiciary funds amounts to a serious misconduct. It is "a grave offense punishable by dismissal."^[26] Restitution of the total cash shortages will not erase his or her liability.^[27]

The Office of the Court Administrator also said that "falsification of bank deposit slips is patent dishonesty."^[28] Dishonesty, as 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."^[29]

However, the Office of the Court Administrator considered certain mitigating circumstances in this case. The Office of the Court Administrator noted how respondent Acampado readily acknowledged the offenses and offered her sincerest apologies. This is also the first time that she was charged with an administrative

case. Lastly, the length of service of respondent Acampado, which was more than thirty years (30), was also considered.

The Office of the Court Administrator recommended that:

x x x x

2. **respondent Rosa A. Acampado** be found **GUILTY** of simple neglect of duty in A.M. No. 07-11-299-MTC (failure of Ms. Acampado to submit additional documents needed for financial audit) and be **FINED** in the amount of Five Thousand Pesos (P5,000.00); and likewise be found **GUILTY** of: (a) gross misconduct and gross neglect of duty for her failure to remit on time her collections; and (b) dishonesty and falsification of public documents for falsifying bank deposit slips in A.M. OCA IPI No. 09-3164-P (Report on the Financial Audit on the books of account of MTC, Taft, Eastern Samar); that she be **FINED** in the amount equivalent to one (1) year of her salary to be deducted from her retirement benefits; and

3. the Presiding Judge of Municipal Trial Court, Taft, Eastern Samar, be **DIRECTED** to **MONITOR** all financial transactions of the court in strict adherence to the issuances of the Court on the proper finding of all judiciary funds, otherwise, he/she shall be equally liable for the infractions committed by the employees under his/her command and supervision.^[30]

We agree with the recommendations of the Office of the Court Administrator regarding respondent Acampado's liabilities. However, we disagree with the recommended penalty to be imposed on her.

This is not the first time that this Court has disciplined an erring and dishonest court employee for misappropriating Judiciary funds and falsifying public documents under his or her control. In *Rojas, Jr. v. Mina*,^[31] we found the respondent guilty of gross misconduct and dishonesty for stealing and encashing Special Allowance for Judges and Justices checks payable to several trial court judges without their consent. In *Office of the Court Administrator v. Elumbaring*,^[32] we held that the respondent was guilty of dishonesty for failing to remit the Judiciary Development Fund and Special Allowance for the Judiciary Fund collections in full and on time. Similarly, in *Court Administrator v. Abdullahi*,^[33] we said that falsification of Daily Time Records amounts to dishonesty, and dismissal from service is proper even if the offense was committed for the first time.

The Code of Conduct for Court Personnel^[34] prescribes the norms of conduct which are specific to personnel employed in the Judiciary.^[35] The specificity of these norms is due to "the special nature of [court personnel's] duties and responsibilities."^[36]

Respondent Acampado violated the following provisions of the Code: