

## EN BANC

**[ A.M. No. P-11-3000 (formerly A.M. OCA I.P.I. No. 10-3524-P), November 29, 2011 ]**

**ARTHUR M. GABON, COMPLAINANT, VS. REBECCA P. MERKA,  
CLERK OF COURT II, MUNICIPAL TRIAL COURT, LILOAN,  
SOUTHERN LEYTE, RESPONDENT.**

### D E C I S I O N

#### PER CURIAM:

We resolve the administrative complaint against respondent Rebecca P. Merka, Clerk of Court II, Municipal Trial Court (MTC) of Liloan, Southern Leyte, for *Grave Misconduct*.

#### The Factual Antecedents

The antecedent facts, gathered from the records, are summarized below.

In his Complaint-Affidavit,<sup>[1]</sup> complainant Arthur M. Gabon charged the respondent with Grave Misconduct (1) for writing eight demand letters in 1993 in behalf of the Saint Ignatius Loyola Credit Cooperative, Inc.,<sup>[2]</sup> Simeon C. Maamo, Jr.<sup>[3]</sup> and Restituta Claridad<sup>[4]</sup> using the MTC's official letterhead and signing the same letters in her official capacity as the Clerk of Court of the MTC of Liloan, Southern Leyte; and (2) for administering oaths in five affidavits<sup>[5]</sup> and a *Kasabutan* (Agreement)<sup>[6]</sup> in 1995 and 2000 that had no relation with her official duties.

The Office of the Court Administrator (OCA) directed the respondent to comment on the complaint.<sup>[7]</sup>

In her Comment,<sup>[8]</sup> the respondent admitted the charge of using the MTC's official letterhead and signing the demand letters in her official capacity, but explained that she acted in good faith to aid in declogging court dockets. She insisted that she was duly authorized to administer oaths under Section M, Chapter VIII of the Manual for Clerks of Court and that she did not abuse the franking privilege of the court in sending the letters as these letters were in representation of the court. She averred that the complaint was a harassment suit because she committed the acts complained of 15 or 17 years ago.

The complainant filed a Reply-Affidavit,<sup>[9]</sup> arguing that the respondent acted like the counsel of a private party in writing the demand letters and that the respondent's authority to administer oaths extended only to cases filed or pending in her assigned court.

#### The OCA's Report and Recommendation

The OCA recommended that the present matter be redocketed as a regular administrative complaint. It found the respondent guilty of simple misconduct for (a) the unauthorized use of the letterhead of the court and her official designation in the demand letters she prepared in 1993, and (b) administering oaths in affidavits and a document executed in 1995 and 2000 on matters not involving official business. It recommended a penalty of suspension for one (1) month and one (1) day.<sup>[10]</sup>

The OCA also found the respondent guilty of violating Presidential Decree (PD) No. 26<sup>[11]</sup> for taking advantage of the franking privilege extended to courts in sending the demand letters. It recommended a fine of P500.00 for this offense.

The OCA noted that in 2009, the Court fined the respondent in the amount of P2,000.00 for abuse of authority for the 2007 notarization of a document not related to her official functions, but this previous offense cannot now be used to increase her penalty because the acts complained of in the present case predated the act penalized in the 2009 case.<sup>[12]</sup>

### **The Court's Ruling**

#### **We modify the findings and recommendation of the OCA.**

We have repeatedly stressed that all officials and employees involved in the administration of justice, from judges to the lowest rank and file employees, bear the heavy responsibility of acting with strict propriety and decorum at all times in order to merit and maintain the public's respect for, and trust in, the Judiciary. Simply stated, all court personnel must conduct themselves in a manner exemplifying integrity, honesty and uprightness.<sup>[13]</sup>

In this case, the respondent's use of the letterhead of the court and of her official designation in the eight demand letters she prepared in 1993 hardly meets the foregoing standard. She took advantage of her office and position to advance the interests of private individuals, acting as "counsel" and collecting agent for the Saint Ignatius Loyola Credit Cooperative, Inc., Simeon C. Maamo, Jr., and Restituta Claridad. Despite her good intentions, she gave private individuals an unwarranted privilege at the expense of the name of the court.<sup>[14]</sup>

The respondent also administered oaths in documents not involving official business, in violation of Section 41,<sup>[15]</sup> as amended by Section 2 of Republic Act No. 6733,<sup>[16]</sup> and Section 242<sup>[17]</sup> of the Revised Administrative Code, in relation with Sections G,<sup>[18]</sup> M<sup>[19]</sup> and N,<sup>[20]</sup> Chapter VIII of the Manual for Clerks of Court. Under these provisions, Clerks of Court are notaries public *ex officio*; they may notarize documents or administer oaths only when the matter is related to the exercise of their official functions. Thus, in their *ex-officio* capacity, clerks of court should not take part in the execution of private documents bearing no relation at all to their official functions.<sup>[21]</sup> The respondent administered oaths in five affidavits and a document bearing no relation at all to her official functions.

We note that the respondent also violated PD No. 26. The franking privilege granted by PD No. 26 extended only to judges and referred to official communications and

papers *directly connected* with the conduct of judicial proceedings which shall be transmitted in the mail free of charge.<sup>[22]</sup> The respondent was not a judge nor were the eight demand letters related to the discharge of judicial functions.

***We cannot tolerate the respondent's flagrant abuse and misuse of authority.***

Misconduct in office refers to "any unlawful behavior by a public officer in relation to the duties of his office, willful in character. The term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."<sup>[23]</sup> In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule must be manifest.<sup>[24]</sup> Corruption as an element of grave misconduct consists in the act of an official or employee who **unlawfully or wrongfully uses his station or character to procure some benefit for himself or for another, contrary to the rights of others,**<sup>[25]</sup> as in this case. By her repeated abuse and misuse of authority, the respondent exhibited an obvious lack of integrity expected of a court employee.

Grave misconduct is a serious offense punishable, under Section 52 of the Revised Uniform Rules on Administrative Cases in the Civil Service, with dismissal even for the first offense.

We are duty-bound to sternly wield a corrective hand to discipline errant employees and to weed out those who are found undesirable. The respondent failed to meet the strict standards set for a court employee; hence, she does not deserve to remain in the Judiciary.

**WHEREFORE**, respondent Rebecca P. Merka, Clerk of Court II, Municipal Trial Court of Liloan, Southern Leyte, is found **GUILTY** of Grave Misconduct. She is hereby **DISMISSED** from the service, with forfeiture of all benefits, except accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations and financial institutions.

**SO ORDERED.**

*Corona, C.J., Carpio, Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Sereno, Reyes, and Perlas-Bernabe, JJ., concur.*  
*Velasco, Jr., J., concur.*

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<sup>[1]</sup> Dated October 16, 2010; *rollo*, pp. 5-6.

<sup>[2]</sup> *Id.* at 21, 23, 25, 27, 29, and 33.

<sup>[3]</sup> *Id.* at 31.