

## EN BANC

**[ A.M. No. P-07-2338 (Formerly OCA IPI No. 06-2440-P), April 07, 2010 ]**

**JONATHAN\* A. REBONG, COMPLAINANT, VS. ELIZABETH R. TENGCO, CLERK OF COURT, MUNICIPAL TRIAL COURT, STA. CRUZ, LAGUNA, RESPONDENT.**

### DECISION

#### PER CURIAM:

On June 24, 2005, complainant Jonathan A. Rebong and his mother Gloria Rebong filed separate complaints<sup>[1]</sup> for violation of Batas Pambansa Blg. 22 against Edwina and Ferdinand Dator before the Municipal Trial Court (MTC) of Sta. Cruz, Laguna where respondent Elizabeth R. Tengco was Clerk of Court. Upon inquiry by complainant on how much were the filing fees for the complaints they filed, respondent quoted to them the amount of P400,000.00 for the three (3) cases, which had been docketed as Criminal Case Nos. 32782-84. Since respondent was the clerk of court, complainant believed and trusted her and paid her the P400,000.00 in cash. Complainant was then issued photocopies of the following receipts supposedly representing the amount he paid, to wit:

Official Receipt No.	Date	Amount	Fee Collected
0862613 <sup>[2]</sup>	June 24, 2005	P 20,625.00	Filing fee in CC# 32782 and Misc. fee (SAJ <sup>[3]</sup> )
0862614 <sup>[4]</sup>	June 24, 2005	39,000.00 6,800.00	Filing fee in CC# 32783 Misc. fee (SAJ)
0862615 <sup>[5]</sup>	June 24, 2005	5,700.00 3,400.00	Filing fee in CC# 32784 Misc. fee (SAJ)
17897618 <sup>[6]</sup>	June 24, 2005	75,000.00 25,000.00	Service fees in CC# 32782-32784 Legal fees
0862691 <sup>[7]</sup>	June 27, 2005	104,270.00	Filing fee in CC# 32783 (JDF <sup>[8]</sup> )
0862692 <sup>[9]</sup>	June 27, 2005	69,649.00	Filing fee in CC# 32782 (JDF)
0862693 <sup>[10]</sup>	June	50,556.00	Filing fee in

24, 2005	CC# 32784 (JDF)
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Complainant asked respondent why he was only being issued photocopies, but respondent replied that she needs to record them in the books and she will just send complainant the originals.

Several weeks passed but complainant did not receive the promised original copies of the receipts. So he went to respondent who told him that she lost the originals.

Sensing an anomaly, complainant went to the Regional Trial Court and other Municipal Trial Courts a few months later to ask for a computation of the filing fee for a case like his, where the claim was worth P5.5 million. It was only then that he found out that the filing fees he paid were very excessive.

Furious, complainant demanded from respondent copies of the original receipts. Respondent agreed to meet with him, but when they met, the former only presented a sheet of yellow paper<sup>[11]</sup> with a handwritten list of itemized expenses where his P400,000.00 allegedly went.

Thus, complainant, through counsel, sent demand letters to respondent at her place of work. They however later learned that respondent had stopped reporting for work at the MTC of Sta. Cruz, Laguna, since February 2006. They sent the demand letters to respondent's residence at Mabini Street, Sta. Cruz, Laguna, but said letters were also returned unserved because respondent has moved out from said address, without leaving a forwarding address.

Having failed to secure the receipts from respondent, complainant's counsel wrote the Officer-in-Charge of the MTC, Sta. Cruz, Laguna, requesting for certified photocopies of all the receipts evidencing payment of the legal fees for Criminal Case Nos. 32782-84.

On March 29, 2006, Leslie A. San Juan, Court Stenographer and Officer-in-Charge of the MTC of Sta. Cruz, Laguna, issued the following Certification:

This is to certify that the Court cannot provide the certified xerox copies of all the receipts evidencing payment corresponding [to] legal fees in Criminal Cases Nos. 32782, 32783 and 32784 for Violation of BP 22 considering that they [are] all in [the] possession of the Clerk of Court Ms. Elizabeth R. Tengco. What is on record, in Criminal Case No. 32782 are O.R. No. 0862692 (JDF) and O.R. No. 0862613 (SAJ) written on the front page; in Criminal Case No. 32783 are O.R. No. 0862691 (JDF) and O.R. No. 0862614 (SAJ) also written on the front page; and in Criminal Case No. 32784 are O.R. No. 0862693 (JDF) and O.R. No. 0862615 (SAJ) likewise written on the front page.

The Court has already issued a Memorandum to Ms. Tengco directing her to submit all the records of cases in her possession but up to now there is no response yet, including her explanation to the alleged wrong assessment of filing fees in the above criminal cases. x x x.

Today[,] in connection with this request, a Memorandum to her to surrender all the duplicate copies of all the receipts, mentioned in the said request was issued to Ms. Tengco, x x x.<sup>[12]</sup>

On April 11, 2006, complainant filed a *Sinumpaang Salaysay*<sup>[13]</sup> with the Office of the Court Administrator (OCA) charging respondent of grave misconduct, conduct prejudicial to the best interest of the service and dishonesty. The OCA required respondent to comment<sup>[14]</sup> on the complaint but to date, the OCA has not received any comment from respondent.

Upon evaluation of the complaint, the OCA opined that in order to afford respondent her right to due process and considering the gravity of the accusation leveled against her, it was best to have the issues ventilated in a full-blown investigation. The OCA accordingly recommended that the instant complaint be re-docketed as a regular administrative matter and the same be referred to the Executive Judge of the Regional Trial Court of Sta. Cruz, Laguna for investigation, report and recommendation.<sup>[15]</sup> Said recommendation was adopted by the Court in a Resolution<sup>[16]</sup> dated July 11, 2007.

Executive Judge Jaime C. Blancaflor conducted the hearings on the complaint. Respondent was duly notified<sup>[17]</sup> but failed to show up in all of the hearings. Thus, after complainant concluded the presentation of his evidence, the case was deemed submitted for resolution.

In his Report and Recommendation<sup>[18]</sup> dated June 27, 2008, Judge Blancaflor made the following findings:

Careful assessment of the evidence presented by the complainant shows that respondent indeed, committed grave misconduct which is grossly prejudicial to the administration of justice. She did not only use her position so as to exact tremendous amount from a complainant, a victim of infraction, but also misappropriated money intended for the government.

It is provided in the Manual for Clerks of Courts that all fees collected shall accrue to the general fund. The Clerk of Court deposit[s] everyday his collections to the nearest LBP Branch for the account of the Judiciary Fund, Supreme Court, Manila. This was violated by the respondent for failing to duly account her collected filing fees for the criminal cases filed by the complainant before the Municipal Trial Court of Sta. Cruz, Laguna.

x x x x

She also violated Sec. 3 of the Code of Conduct of Court Personnel prohibiting court personnel to alter, falsify, destroy or mutilate any record within her control. As clearly testified by the Officer-in-Charge, Leslie A. San Juan, the purported copies of Official Receipts issued by the respondent to the complainant do not actually exist. With this alone,

respondent should be meted the severe administrative penalty of dismissal from service in accordance with the Civil Service Law.

x x x x

By presenting a list of computation of the alleged expenses or fees paid by the complainant, respondent was so dishonest and the same constitute also a Grave Misconduct warranting her dismissal from service.

[19]

By Resolution<sup>[20]</sup> dated August 6, 2008, this Court referred the above findings of Judge Blancaflor to the OCA for evaluation report and recommendation.

The OCA, in its Memorandum<sup>[21]</sup> dated July 13, 2009, found that respondent violated the Rules on Legal Fees and Supreme Court (SC) Circular No. 26-97 which mandates the issuance of official receipts for payments received. It likewise found respondent to have violated SC Administrative Circular No. 5-93<sup>[22]</sup> for keeping in her custody the fees received and failing to turn over and deposit the same to the authorized depository bank. According to the OCA, the failure of respondent clerk of court to turn over the funds in her possession, without adequate explanation, constitutes gross dishonesty, grave misconduct, and even malversation of public funds. The OCA accordingly recommended:

- 1) that Elizabeth R. Tengco, Clerk of Court, Municipal Trial Court, Sta. Cruz, Laguna, be **FOUND GUILTY** of Gross Dishonesty and Grave Misconduct;
- 2) that all retirement benefits accruing to respondent Tengco be **FORFEITED**;
- 3) that the Financial Management Office, Office of the Court Administrator be **DIRECTED** to process the terminal leave benefits of the respondent, dispensing with the documentary requirements, to **REMIT** the same to the following court (MTC, Sta. Cruz, Laguna) funds, in the amount of Fifty Thousand Three Hundred Pesos (P50,300.00) representing JDF and Twenty Five Thousand and Two Hundred Twenty-Five Pesos (P25,225.00) representing SAJ, in the total amount of Seventy Five Thousand and Five Hundred Twenty-Five Pesos (P75,525.00), and to **PAY** the remainder thereof, in the amount of One Hundred Three Thousand [Eighty] Pesos and 72/100 (P103,080.72), to complainant Rebong as partial restitution of respondent Tengco;
- 4) that respondent Tengco be **DIRECTED to RESTITUTE** complainant Rebong the remaining amount of Two Hundred Twenty- One Thousand Three Hundred Ninety-Four Pesos and 28/100 (P221,394.28);
- 5) that she be **BARRED** from future employment to any branch or instrumentality of the government, including government-

owned or controlled corporation; and

- 6) that Legal Division, OCA, be **DIRECTED** to initiate appropriate criminal proceedings against respondent Tengco in light of the above findings.<sup>[23]</sup>

After a thorough evaluation of the records and taking into consideration the recommendations of the Investigating Judge and the OCA, we find respondent administratively liable.

*First*, contrary to the P400,000.00 assessment made by respondent, the complainant should have been assessed legal fees only amounting to P75,525.00, <sup>[24]</sup> based on SC Amended Administrative Circular No. 35-2004,<sup>[25]</sup> which was issued by the Court to serve as reference for Clerks of Court in the assessment of the legal fees to avoid any confusion.

*Second*, respondent violated SC Circular No. 26-97 dated May 5, 1997 for failing to issue the original receipts and merely furnishing complainant with photocopies of receipts. The said circular clearly directs all judges and clerks of court to:

- 1) Compel their collecting officials to strictly comply with the provisions of the AUDITING AND ACCOUNTING MANUAL, Art. VI, Sec. 61 and 113, to wit:

"ARTICLE VI - Accountable Forms"

"Sec. 61. Kinds of Accountable forms- (a) Official Receipts - For proper accounting and control of collections, collecting officers shall promptly issue official receipts for all monies received by them. These receipts may be in the form of stamps or officially numbered receipts xxx." (Underscoring supplied.)

"Sec. 113. Issuance of official receipt - for proper accounting and control of revenues, no payment of any nature shall be received by a collecting officer without immediately issuing an official receipt in acknowledgment thereof. [These] receipts may be in the form of stamps xxx or officially numbered receipts, subject to proper custody and accountability." (Underscoring supplied.)

That she allegedly needed to record the payments in the books as she explained to complainant was not a valid justification for her to disregard the above-quoted directive.

*Third*, respondent likewise violated SC Circular No. 22-94<sup>[26]</sup> which provides:

To achieve uniformity and consistency in the observance of audit procedures and for proper accounting and control of collections, this Office prescribes the following guidelines: