

EN BANC

[**A.M. No. 05-2002 (Formerly OCA I.P.I. No. 01-1245-P), December 17, 2008**]

**SANTIAGO B. BURGOS, COMPLAINANT, VS. VICKY A. BAES,
CLERK OF COURT II, MUNICIPAL CIRCUIT TRIAL COURT IN
CITIES, PRESIDENT ROXAS-PILAR, PRESIDENT ROXAS, CAPIZ,
RESPONDENT.**

D E C I S I O N

PER CURIAM:

In a letter dated March 7, 2001 addressed to then Acting Court Administrator Zenaida N. Elepaño,^[1] Santiago B. Burgos (*complainant*), in his capacity as representative of the "Balikatan at Aksyon Para sa Bayan, Inc.," reported the "notorious habitual absenteeism" of Vicky A. Baes (*respondent*), Clerk of Court II, Municipal Circuit Trial Court in Cities (*MCTC*), President Roxas-Pilar, President Roxas, Capiz. Attached to the complainant's letter was a copy of his letter addressed to Judge Geomer C. Delfin of the same court, showing the respondent's absences and tardiness which he monitored during the months of September and October, 2001. The attachment also showed that there were times when the respondent stayed only for a few hours in her office.

The complainant also asked for the investigation of the financial collections of the court, alleging that the respondent had brought home the used and unused Official Receipts so that only temporary receipts were issued to those who transacted business with the court. The complainant further claimed that a P40,000.00 cash bond posted by an accused in a criminal case was not deposited in the Fiduciary Fund account of the court.

In another letter dated April 10, 2001, also addressed to then Acting Court Administrator Elepaño, the respondent's co-employees made similar accusations against her. In support of their allegations, they submitted a certification issued by Rolly A. Balani, the court's "custodian of logbook." The certification stated that aside from being absent most of the time, the respondent usually came to the office late and would stay only for one (1) or two (2) hours. They claimed that the respondent's habitual absences and tardiness had made her notoriously undesirable, and was already prejudicial to the service because the nature of her work required her presence in the court most of the time.^[2]

The records also show that in a letter addressed to Executive Judge Julius L. Abela of the Regional Trial Court (*RTC*), Roxas City, the respondent's co-employees, together with municipal employees, municipal and *barangay* officials, litigants and other concerned residents of Roxas City, asked for her removal from office for "being an undesirable employee, undeservingly receiving Sixteen Thousand Four Hundred Sixty Four (P16,464.00) Pesos a month without rendering due services required of

her x x x."^[3]

The respondent resigned from the service effective April 2, 2001. Her resignation, however, did not render the complaints against her moot and academic^[4] pursuant to our ruling in *Gallo v. Cordero*^[5] where we held that:

This jurisdiction that was ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent public official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustice and pregnant with dreadful and dangerous implications. . . If innocent, respondent public official merits vindication of his name and integrity as he leaves the government which he has served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposing under the situation.

Thus, on September 18, 2001, we directed the respondent to comment on the complaint. After several extensions, the respondent filed her comment on November 29, 2002. She alleged that the charges of tardiness and absenteeism against her were baseless, malicious and intended merely to harass her. She explained the complainant's action as the result of a grudge against her because he was an accused in a robbery case in their court. She belied the complainant's accusation that the P40,000.00 posted by an accused in a criminal case was not deposited in the Fiduciary Fund account of the court, claiming that the deposit was reflected in the court's Land Bank passbook.

The respondent also claimed that her co-employees' complaints were in retaliation for the series of memoranda she issued requiring them to explain why complainant was allowed to look into the court's Daily Time Record logbook and other restricted court records. She further averred that some of her co-employees were in fact interested in her position as clerk of court.

On recommendation of the Office of the Court Administrator (OCA), we referred the complaint to Executive Judge Charlito F. Fantilanan of the RTC, Branch 18, Roxas City for investigation, report and recommendation. On November 10, 2004, Executive Judge Fantilanan submitted his report recommending the dismissal of the complaint because the respondent's resignation had already been accepted^[6] and because the complainant failed to overcome the presumption that the respondent regularly performed her duties.

In a resolution dated December 15, 2004, we referred Executive Judge Fantilanan's report to the OCA for further evaluation, report and recommendation.

On March 21, 2005, the OCA, through then Court Administrator, now Associate Justice Presbitero J. Velasco, Jr., submitted its evaluation report which states:

x x x

After a thorough study of the records, including the transcript of stenographic notes taken during the investigation hearing on the

evidence of the parties, we cannot simply concur with Executive Judge Fantilanan's recommendation to dismiss the instant administrative case partly because of the resignation being proffered by the respondent. In *Judge Jose C. Reyes, Jr., etc. v. Ricardo Cristi, etc.*, the Court categorically states that "*the fact that the respondent had already resigned from his position does not render the complaint against him moot and academic. x x x The jurisdiction over the respondent has already attached at the time of the filing of the letter-complaint, and was not lost by the mere fact that he resigned from his office during the pendency of the case against him.*"

Moreover, the Notice of Acceptance of Resignation dated 23 May 2002 by the Office of the Court Administrator succinctly states that it was *subject to the usual clearance requirements*. To date, as per verification from HRM Officer III Marylyn Falculan of the OCA-OAS, respondent still had not secured her clearance, hence, she is not considered resigned. Resignation should not be used either as an escape or as an easy way out to evade administrative liability by a court personnel facing administrative sanction. To deprive this Court of authority to pronounce her innocence or guilt in the charges against her is undoubtedly fraught with injustice and pregnant with dreadful and dangerous implications.

The records reveal that no less than the respondent filed on 19 April 2001 with the OCA-Leave Division two (2) separate DTRs for the months of January and February 2001. In her own handwriting, respondent took the liberty of supplying entries of her time of arrival and departure in court. **The DTRs prove that she was unable to observe the eight (8) hours work requirement per day.** Interestingly, she did file another set of DTRs covering the same months reflecting that she was on sick leave. This was the *gravaman* of her offense.

During clarificatory hearing conducted by the investigating Judge Fantilanan, respondent explained that she did file two different DTRs for said months because she was apprehensive of being declared absent without official leave (AWOL) since neither her Presiding Judge Delfin nor Executive Judge Gubaton signed her DTRs or Applications for Leave. This we find unavailing as **respondent's act itself constitutes GROSS DISHONESTY if not FALSIFICATION of ATTENDANCE RECORDS which is a public document.**

One need not emphasize that respondent had just filed her Application for Sick Leave for the period 28 October to 29 December 2000 on 02 January 2001, duly approved by Presiding Judge Geomer Delfin. If indeed she still needs to recuperate from her illness and go on extended sick leave, the matter should have been communicated to her judge or to her officemates. Nothing of this sort happened as she started to assume her work although intermittently. If at all, her filing of another set of DTRs for the months of January and February 2001 was a mere ploy to cover up her inadequacy to meet the demands of her job. Noteworthy at this instance is the fact that the time-in and out voluntarily supplied by the respondent on subject DTRs more or less tallies with the records of arrival and departure certified by Mr. Rolly Balani, custodian of the court's

logbook, who had been tasked by their judge to monitor such. Said authority when impugned by the respondent had been put to rest by the letter of Judge Delfin dated 08 October 2001 addressed to OCA Administrator Justice Presbitero J. Velasco, Jr., which states, *to wit*:

But when her attention was called and there was already a mounting clamor about her habitual absenteeism, I personally directed her co-worker to record her arrival and departure in the log book and in the calendar of the court. True enough that her other co-employees in court were able to record her attendance as evidenced by the record they attached in their complaint filed in your office dated 10 April 2001.

Respondent even included in her DTR for February 20-21, 2001 that she attended a seminar in Iloilo. Likewise, she was present in court on 15 March 2001 as evidenced by the Transcript of Stenographer Notes taken during the Staff Conference of the 1st MCTC President Roxas-Pilar, called by Presiding Judge Delfin. Incidentally, nothing on record shows that respondent submitted her DTR for March 2001 but she did file an application for sick leave for the period March 20-30, 2001. Foregoing considered, **respondent's act of filing an application for sick leave for the month of January to February 2001 was highly irregular as this does not reflect her true attendance in court. Obviously, she cannot be sick as attested by the medical certificates attached on her application when in fact she reported for work mostly at her own pleasurable time.**

To date, all the applications for sick leave filed by the respondent for the months of January-March 2001 remained unapproved. What has been approved by Executive Judge Salvador S. Gubaton was the Leave Application for the period "*April 2, 2001 up to approval of resignation,*" which was done with reservation as indicated in her Comment dated 31 August 2001, in answer to Mrs. Molo's Letter dated 21 August 2001.

Under Sec. 63, Rule XVI, of the Omnibus Civil Service Rules and Regulations:

Sec. 63 – Effect of absences without approved leave – An official or an employee who is continuously absent without approved leave for at least thirty (30) working days shall be considered on absence without official leave (AWOL) and shall be separated from the service or dropped from the rolls without prior notice. He shall, however, be informed at his address appearing on his 201 files, or at his last known written address, of his separation from the service, not later than five (5) days from its effectivity.

Still, under **Memorandum Circular No. 4, Series of 1991, of the Civil Service Commission**, an officer or employee in the civil service shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credits under the leave law for at least three (3) months in a semester or at least three (3)