

EN BANC

[A.M. No. 93-10-1296-RTC, August 12, 1998]

**RE: SUSPENSION OF CLERK OF COURT ROGELIO R. JOBOCO,
RTC, BRANCH 16 NAVAL, BILIRAN**

DECISION

MARTINEZ, J.:

This is a series of complaints and counter-complaints between Judge Bonifacio S. Maceda, then Acting Executive Judge of the Regional Trial Court, Br. 16, Naval, Biliran (now RTC Judge in Las Piñas, Metro Manila) and Atty. Rogelio R. Joboco, then Branch Clerk of Court of the same Regional Trial Court (now Assistant Prosecutor in Samar).

Judge Maceda charges Atty. Joboco of (1) Infidelity in the Custody of Case Records, (2) Dishonesty, (3) Sabotaging Judicial Reforms, (4) Grave Misconduct, Usurpation of Judicial Authority, Tampering of Subpoena, (5) Insubordination, (6) Falsification of Accomplishment of Certificate of Service, and (7) Agitating Workers to go on Mass Leave and Notorious Undesirability.

Atty. Joboco, on the other hand, alleges (1) Oppression, (2) Continuing Oppression, (3) Gross Ignorance of the Law, (4) Abuse of Position, (5) Gross Abuse of Discretion Using his Position, and (6) Conduct Unbecoming of a Judge.

This controversy between the judge and the clerk of court began when a suspension order dated September 3, 1993^[1] was issued by Judge Maceda against Atty. Joboco for Infidelity in the Custody of Case Records.^[2] The said order was based on an administrative complaint^[3] filed by a certain Atty. Gabino A. Velasquez against Clerk of Court Joboco following the latter's admission that the records in certain civil cases were missing and could not be accounted for.

Atty. Joboco denies personal liability for the loss of such records. He claims that Judge Maceda and Mr. Amante, a court personnel, had similar access to the records. He related that Judge Maceda borrowed the said records from him in order to conduct an inventory of the cases and then never returned the same to him.^[4] He also alleges that Mr. Amante borrowed the keys to the office to finish typing the transcript of stenographic notes.^[5]

He advances the theory that the complaint against him may have vindictive designs as complainant Atty. Velasquez is a law partner of then Judge Adriano Villamor, who was dismissed from the service in an administrative case where he (Atty. Joboco) was one of the witnesses.

Judge Maceda, on the other hand, contends that as Clerk of Court, Atty. Joboco was

personally liable for the missing case records and the responsibility thereto cannot be passed on to other court personnel who were his subordinates. He further states that Atty. Joboco, having misplaced case records in the past, should have taken precautionary measures to prevent its recurrence as he was so advised by this Court in A.M. No. P-87-83 and A.M. No. B-87-89.^[6] He added that when he assumed as Acting Presiding Judge, he required Atty. Joboco to account for all case records but the latter kept on evading the directive so much so that he was forced to conduct an inventory by himself which, unfortunately, he was unable to complete.^[7]

Maria P. Mercolita, Clerk III of the same court, filed a Manifestation and Motion^[8] explaining that as court clerk, she conducts the actual inventory of case records and that from such inventory came her knowledge of the missing records. She further states that every time she would remind Atty. Joboco of the missing case records, he would simply ask Court Aide Tirso Sabinay to look for them.

On September 9, 1993, Atty. Joboco filed with this Court a motion to lift/annul the suspension order^[9] alleging inter alia that it was issued in violation of Article VIII, Section 6 of the Constitution which states that "the Supreme Court shall have administrative supervision over all courts and the personnel thereof."

Before it was resolved, Judge Maceda motu proprio issued an order setting aside the preventive suspension, submitting the matter to this Court for resolution. Despite the withdrawal, this Court set aside/revoked it^[10] on the ground that the same is not within the ambit of Judge Maceda's administrative authority.

Judge Maceda alleged in his formal comment that the 60-day preventive suspension was issued pursuant to Administrative Order No. 6^[11] which reads:

"To recommend to the Supreme Court the imposition upon erring employees of such disciplinary sanctions as may be necessary and proper; and pending the administrative investigation or its review by the Supreme Court, to place respondent under preventive suspension in accordance with Civil Service rules and regulations furnishing the Supreme Court a copy of the order of suspension and grounds therefor without unnecessary detail."

He likewise denied that he was vindictive and that he holds a grudge against Atty. Joboco as he was merely fulfilling his duties under Rule 3.10 of the Code of Judicial Conduct, which provides to wit:

"A judge should take or initiate appropriate disciplinary measures against lawyers or court personnel for unprofessional conduct which the judge may become aware of."

On September 16, 1993, Judge Maceda issued a second suspension order^[12] against Atty. Joboco for Dishonesty. This time, it was for failure to disclose to the court information relative to the absence of an accused and his counsel at a hearing of Criminal Case No. 1582.

Atty. Joboco questioned the second suspension order saying that the same is based on his failure to disclose the fact that he met the accused by chance on August 18, 1993. He contends that due notice of hearing was served the accused through

counsel as corroborated in a motion for reconsideration^[13] filed by the counsel of accused. He also avers that he failed to inform the court of the chance meeting with the accused because he was merely asked whether due notice was served the accused to which he answered in the affirmative. He further states that due notice was given to accused's counsel and the bondsmen as required by the rules.

Judge Maceda, on the other hand, insisted that dishonesty and non-disclosure were intentional on Atty. Joboco's part. He asserts that Atty. Joboco knew that the information was vital and that without it the court would eventually issue a warrant of arrest. He cited Atty. Joboco's lack of candor and honesty expected of a lawyer and officer of the court as evidenced by his failure to disclose the aforementioned encounter with accused. Likewise, Judge Maceda alleges that the notices were erroneously served to counsel and bondsmen but not to accused.^[14]

Atty. Joboco also claims that he was ill-treated by Judge Maceda when the latter harshly scolded him and called him names like "dull" and "good for nothing" in the presence of the accused in the case of People vs. Geraldo.^[15]

Judge Maceda, in turn, charges Atty. Joboco for alleged sabotaging of judicial reforms^[16] he (Judge Maceda) introduced, like the orderly approval of property bonds, which resulted in his approval of irregular bail applications.

Atty. Joboco, in his Answer, denied the allegation, stating that he learned that accused had complied with all the requirements when he ushered him and his bondsmen inside the chambers of Judge Maceda. He narrated that on September 1, 1993 he gave the accused a list of requirements to be accomplished for posting a property bond. As he was attending court sessions that day, the accused was referred to a court clerk for assistance, with the instruction to come back after accomplishment of the requirements. At about noon of the following day, the accused arrived and thinking that the requirements were already verified by the clerk. Atty. Joboco ushered said accused inside the chamber of Judge Maceda. It was then that the latter scolded and berated him in a loud voice.^[17]

Judge Maceda disputes the allegation that he was overbearing with his court personnel. He mentioned the search for outstanding court employees which he initiated in Antique and the award given to him by the Antique court employees as proof of his harmonious relationship with his subordinates.^[18]

We now look into the respective culpability of the clashing parties on the foregoing charges.

On the charge of Infidelity in the Custody of Case Records, we find Atty. Joboco guilty thereof. As Clerk of Court, his positive duties include conducting periodic docket inventory and ensuring that the records of each case are accounted for. It is likewise his duty to initiate and cause the search of missing records. His failure to perform his duties despite a previous reminder by this Court that he should be vigilant as court custodian of records, constitutes manifest negligence which cannot be countenanced.

It is incumbent upon the Clerk of Court to ensure an orderly and efficient record management in the court and to supervise the personnel under her office to function

effectively.^[19] The fact that other court employees had access to the records does not exculpate him. As Clerk of Court, he is also the supervisor and hence, renders him accountable for the actions of his subordinates. His contention that the records were left inside the chamber of the judge does not absolve him considering that he could have continued and completed the inventory himself.

Joboco's reliance on alleged political harassment as a defense is likewise without merit for the motive behind the administrative complaint has no relevance to the undisputed fact that the records were in fact missing while in his custody.

Atty. Joboco was remiss in his responsibility as custodian of records and as officer of the court which is evidenced by his neglect to take precautionary measures to prevent loss or remedial steps to recover the missing records. Clerks of Court are the administrative officers of courts and have inter alia control and supervision over all court records.^[20]

As to the charge of *Dishonesty*, we hold that Atty. Joboco is not liable therefor. His manifestation that the accidental meeting with the accused bears no significance to the scheduled hearing should be accorded credence. It is not within the province of his functions to volunteer information which is irrelevant and unsolicited. He is under no obligation to plead for the accused and justify an absence on mere speculation or for any reason not on record.

For a court employee to be held liable for non-feasance, he should first have a positive duty to perform. In this case, Atty. Joboco was not bound to disclose information relating to the chance meeting especially when the same is not borne out by the records. The fact that notice was duly served the parties affirms the proper performance of his duty and negates the necessity of further proffering information.

With regard to the charge of Sabotaging Judicial Reforms, we find no culpability on the part of Atty. Joboco there being only an isolated case of erroneously implementing an approval of property bond application. Absent any showing of a blatant, malicious and deliberate effort to undermine or compromise such judicial reforms, he is deemed to have acted in good faith in carrying out the duties of his office.

The above-mentioned suspension orders and alleged harsh treatment by Judge Maceda form part of Atty. Joboco's charges of Oppression and Continuing Oppression. In this respect, we do not find any patently oppressive scheme or design on the part of Judge Maceda to weigh down Atty. Joboco. Although the second order of suspension for Dishonesty may have been erroneously and unjustly issued by Judge Maceda, this alone will not establish a contemptuous predisposition against Atty. Joboco upon which the charge of Oppression may be founded.

Judge Maceda's actuations were undertaken in the context of enforcing disciplinary measures in his court and untainted with any palpable bad faith on his part. As such, he may not be held administratively liable therefor. The acts of a judge which pertain to his judicial capacity are not subject to disciplinary power, unless they are committed with fraud, dishonesty, corruption and bad faith.^[21] It is a matter of public policy that in the absence of fraud, dishonesty or corruption, the acts of a

judge in his judicial capacity are not subject to disciplinary action even though such acts are erroneous.^[22] A judge may not be held administratively accountable for every erroneous order or decision he renders, and it is only when the error is gross or patent, when the judge acts fraudulently or with gross ignorance, that administrative sanctions are called for as an imperative duty of the Supreme Court.^[23]

Likewise, while scolding an employee in front of litigants may not have been the most appropriate course of action, it is well within the ambit of Judge Maceda's judicial prerogative to discipline his staff for negligence and/or mistake. Judge Maceda should, however, not make a habit of showing fits of temper and resorting to verbal abuse against erring employees. He should be mindful of the need to maintain professional and harmonious relations with his court personnel with a view to the speedy and efficient administration of justice.

On October 15, 1993, a third suspension order^[24] was issued by Judge Maceda against Atty. Joboco for Grave Abuse of Discretion, Usurpation of Judicial Authority to cancel hearing and Tampering of Subpoena in Criminal Case No. 1536.

Atty. Joboco claims that he was unjustly suspended for the third time because he added the words "this cancels September 9-10, 1993 setting" on the subpoena. According to him, he added the words to clarify and guide the witnesses in the readjusted schedule of hearing and not to usurp judicial authority, much less to confuse the parties. Moreover, it was supposedly the counsel for accused who requested that the trial date be moved from September 9-10, 1993 to September 3, 1993 on account of prior appointments.^[25]

In his formal comment,^[26] Joboco manifested that he was instructed by then Judge Asis to adjust the trial calendar as the latter was going on leave. On August 9, 1993 he was informed through a memorandum that Judge Maceda was again detailed to the sala of Judge Asis. The following day, counsel for accused in Criminal Case No. 1536 requested that the scheduled hearing on September 9 and 10 be moved to September 3, 1993. Accordingly, he directed a clerk to prepare another notice to which he added the assailed inscription.

For his part, Judge Maceda contended that Atty. Joboco issued the order under the authority of Judge Asis (former judge of said court) even if he (Judge Maceda) had already assumed the position therein. He added that the resetting of the case to September 3, 1993, caused undue confusion on the part of the accused, who came to court on said date, thinking that his case would be heard. He further maintained that the resetting unduly caused delay in the administration of justice.^[27]

A fourth suspension order,^[28] dated November 23, 1993 was issued by Judge Maceda for alleged Insubordination arising from Atty. Joboco's non-compliance with his order to turn over documents, exhibits and keys to the designated Officer-in-Charge of the Office of the Clerk of Court.

Atty. Joboco appealed the questioned order to this Court, claiming that he filed a motion to defer compliance of the order pending consultation with this Court's Chief Attorney and Court Administrator. He waited for the resolution of said motion, thinking that Judge Maceda would desist from issuing the suspension order.