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THIRD DIVISION

[A.M. No. P-09-2726. August 28, 2013]
(Formerly OCA IPI No. 08-2923-P)
[A.M. No. P-10-2884. August 28, 2013]
(Formerly OCA IPI No. 08-2750-P)

JUDGE ROBERTO P. BUENAVENTURA, Metropolitan Trial Court, Branch 63, Makati City, *complainant, vs.* **FE A. MABALOT, Clerk of Court III, Metropolitan Trial Court, Branch 63, Makati City,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; QUALIFIED BRIBERY; TO BE LIABLE THEREFOR, THE OFFENDER MUST BE A PUBLIC OFFICER ENTRUSTED WITH LAW ENFORCEMENT WHO REFRAINS FROM ARRESTING OR PROSECUTING AN OFFENDER IN CONSIDERATION OF ANY PROMISE, GIFT OR PRESENT; THE COMPLAINANT MUST PRESENT A PANOPLY OF EVIDENCE TO SUPPORT AN ACCUSATION FOR BRIBERY FOR BARE ALLEGATION IS NOT SUFFICIENT TO HOLD A PERSON LIABLE THEREFOR. — As correctly opined by the Investigating Judge, Mabalot cannot be criminally liable for either direct or indirect bribery penalized under the RPC, there being no evidence that she did in fact accept or receive anything from Atty. Gaviola in connection with the election protest of his wife pending in their branch. As can be gleaned from the subject text message, the "something" offered by Atty. Gaviola was intended not for her, but for De Sesto. She cannot be liable for qualified bribery either as this crime requires that the offender be a public officer entrusted with law enforcement who refrains from arresting or prosecuting an offender in consideration of any promise, gift or present. As settled, an accusation of bribery is easy to concoct but difficult to prove. The complainant must present a panoply of evidence in support of such an accusation. Bare allegation would not suffice to hold Mabalot liable. Here, no direct and convincing evidence, other than the text message, was presented which

Supreme Court E-Library

can prove her alleged bribery. Hence, she cannot be held guilty of said charge.

2. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; BRANCH CLERK OF COURT; SERVES AS A SENTINEL OF JUSTICE AND ANY ACT OF IMPROPRIETY ON HER PART IMMEASURABLY AFFECTS THE HONOR AND DIGNITY OF THE JUDICIARY AND THE PEOPLE'S CONFIDENCE IN IT.— This does not mean, however, that Mabalot is relieved of any liability. Her defense that her text message was only a query as to De Sesto's receipt of whatever Atty. Gaviola intended to give him cannot exonerate her from administrative liability. The Court agrees with the view of the Investigating Judge that she committed misconduct. A perusal of the said text message reveals that Mabalot acted contrary to the norms of conduct required of her position. As Branch CoC, she serves as a sentinel of justice and any act of impropriety on her part immeasurably affects the honor and dignity of the Judiciary and the people's confidence in it. As the highest ranked court personnel next to the presiding judge, she should have prevented or deterred Atty. Gaviola from giving something to De Sesto. She knew very well that such offer was improper for, otherwise, she would not have added the following phrase in her text message, "*don't worry d worry di malalaman ni Judge*…"

3. ID.; ID.; ID.; ID.; A PUBLIC SERVANT MUST EXHIBIT THE HIGHEST SENSE OF HONESTY AND INTEGRITY FOR NO LESS THAN THE CONSTITUTION MANDATES THAT A PUBLIC OFFICE IS A PUBLIC TRUST AND PUBLIC OFFICERS AND EMPLOYEES MUST AT ALL TIMES BE ACCOUNTABLE TO THE PEOPLE, SERVE THEM WITH UTMOST RESPONSIBILITY, INTEGRITY, LOYALTY AND EFFICIENCY, ACT WITH PATRIOTISM AND JUSTICE, AND LEAD MODEST LIVES.— Mabalot should be reminded that a public servant must exhibit the highest sense of honesty and integrity for no less than the Constitution mandates that a public office is a public trust and public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives. This constitutionally-enshrined principles, oft-repeated in our case law, are not mere rhetorical flourishes or idealistic

Supreme Court E-Library

sentiments. They should be taken as working standards by all in the public service.

4. ID.; ID.; ID.; ID; CHARGE OF MISCONDUCT; MISCONDUCT, EXPOUNDED; FAILURE TO PREVENT AN ILLICIT OFFER OR A CORRUPT ACT IS VIOLATIVE OF THE NORM OF DECENCY AND DIMINISHES THE PEOPLE'S RESPECT FOR THOSE IN THE GOVERNMENT SERVICE, WHICH CONSTITUTES MISCONDUCT; IN THE ABSENCE OF THE ELEMENT OF CORRUPTION OR WRONGFUL MOTIVE, THE RESPONDENT-EMPLOYEE CAN BE HELD GUILTY ONLY OF SIMPLE MISCONDUCT.— Mabalot's failure to prevent the illicit offer or corrupt act of Atty. Gaviola undoubtedly violates the norm of decency and diminishes or tends to diminish the people's respect for those in the government service. Indeed, such act constitutes misconduct. To constitute misconduct, the act or acts must have a direct relation to, and be connected with, the performance of her official duties. Misconduct in office has been authoritatively defined by Justice Tuazon in *Lacson v. Lopez* in these words: "Misconduct in office has a definite and well-understood legal meaning. By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer x x x It is settled that misconduct, misfeasance, or malfeasance warranting removal from office of an officer must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office x x x. The Court further defines misconduct as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." The misconduct is gross if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be proven by substantial evidence. As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in a charge of grave misconduct. Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who

Supreme Court E-Library

unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others. In the present case, there was no evidence to show that Mabalot unlawfully or wrongfully used her official function as Branch CoC for her own benefit or personal gain. Her text message to De Sesto reads in part "x x x *pinabibigay sa akin pero pinadidiretso ko sa yo*." It is clear from the said message that the "something" offered by Atty. Gaviola, in connection with the pending election protest, was not intended for her but for De Sesto. No corrupt or wrongful motive can be attributed on her part because she did not receive or accept that "something." As the qualifying element of corruption was not established, the Investigating Judge was correct in giving her the benefit of the doubt and finding her guilty of simple misconduct only.

5. ID.; ID.; ID.; ID.; ID.; CATEGORICAL ADMISSION OF UTTERING THREATENING WORDS AGAINST A SUPERIOR PREVAILS OVER DEFENSE OF DENIAL; THREATENING THE LIFE OF A SUPERIOR DEMONSTRATES LACK OF RESPECT.— With respect to the utterance of a grave threat, in her Judicial Memorandum, Mabalot admitted that she talked to Soller on May 6, 2008 and told her about the case involving their 56-hectare family property; the stress she experienced in seeing her family members fighting in court, and the extreme stress brought about by this case, which caused her three blocked arteries requiring an open heart surgery. She denied having made any threatening remarks against the life of Judge Buenaventura as narrated in the affidavit, to wit, "*If our lot will be foreclosed, I will commit suicide but before I kill myself I will kill Buenaventura.*" During the pre-hearing conference between the parties on March 7, 2011, however, Mabalot admitted that she uttered those words out of depression but without intention to make good such threat. The Court believes that such categorical admission prevails over her negative allegation that she did not utter threatening words against Judge Buenaventura. It is settled that denial is inherently a weak defense. To be believed, it must be buttressed by a strong evidence of non-culpability; otherwise, such denial is purely self-serving and without evidentiary value. As correctly concluded by the Investigating Judge, Mabalot's earlier denial crumbles in the light of her own admission that she indeed uttered threats to kill Judge

Supreme Court E-Library

Buenaventura. Her act of threatening the life of her superior certainly demonstrated lack of respect.

6. ID.; ID.; ID.; ID.; ID.; THE ACT OF THREATENING THE LIFE OF A SUPERIOR CANNOT BE CONSIDERED AS MISCONDUCT, NOT BEING RELATED TO THE DISCHARGE OF THE EMPLOYEE'S OFFICIAL FUNCTIONS.— The Court, however, agrees with the Investigating Judge that the act committed by Mabalot cannot be considered as "misconduct," not being related to the discharge of her official functions. There is no proof that her act of threatening Judge Buenaventura through words and text messages were related to, or performed by taking advantage of, her position as Branch CoC. In administrative proceedings, the burden of proving the acts complained of, particularly the relation to the official functions of the public officer, rests on the complainant. In this regard, Judge Buenaventura failed to prove such relation. The Investigating Judge was, therefore, correct in concluding that Mabalot acted in her private capacity. Thus, she cannot be held liable for misconduct, much less for gross misconduct.

7. ID.; ID.; ID.; ID.; CHARGE OF GROSS INSUBORDINATION; INSUBORDINATION IS A WILLFUL OR INTENTIONAL DISREGARD OF THE LAWFUL AND REASONABLE INSTRUCTIONS OF THE EMPLOYER; NOT APPLICABLE. — The Investigating Judge likewise was correct when he recommended that Mabalot be absolved from the charge of gross insubordination. Insubordination is defined as a refusal to obey some order, which a superior officer is entitled to give and have obeyed. The term imports a willful or intentional disregard of the lawful and reasonable instructions of the employer. In this case, there was no order or directive issued by Judge Buenaventura that was willfully or intentionally disregarded or not complied with by Mabalot so as to constitute gross insubordination.

8. ID.; ID.; ID.; ID.; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; REFERS TO ACTS OR OMISSIONS THAT VIOLATE THE NORM OF PUBLIC ACCOUNTABILITY AND DIMINISH – OR TEND TO DIMINISH – THE PEOPLE'S FAITH IN THE JUDICIARY, AND THE SAME NEED NOT BE RELATED OR CONNECTED TO A PUBLIC OFFICER'S OFFICIAL

Supreme Court E-Library

FUNCTIONS; UTTERANCES AND TEXT MESSAGES OF THREATS TO GET EVEN DEMONSTRATED CONDUCT UNBECOMING OF A COURT PERSONNEL.— [T]he complained act constituted conduct prejudicial to the best interest of the service which, as held in *Largo v. Court of Appeals*, need not be related or connected to a public officer's official functions. The rules do not enumerate the acts constituting conduct prejudicial to the best interest of the service. In *Ito v. De Vera*, the Court wrote that it referred to acts or omissions that violate the norm of public accountability and diminish — or tend to diminish — the people's faith in the Judiciary. x x x. In the case at bench, Mabalot's utterances and text messages of threats to get even indeed demonstrated conduct unbecoming of a court personnel. Doubtless, such acts tarnished not only the image and integrity of her public office but also the public perception of the very image of the Judiciary of which she was a part. The Investigating Judge, thus, correctly adjudged her guilty of conduct prejudicial to the best interest of the service.

9. ID.; ID.; ID.; ID.; ID.; THE IMAGE OF A COURT OF JUSTICE IS MIRRORED BY THE CONDUCT, OFFICIAL OR OTHERWISE, OF ITS PERSONNEL – FROM THE JUDGE TO THE LOWEST OF ITS RANK AND FILE – WHO ARE ALL BOUND TO ADHERE TO THE EXACTING STANDARD OF MORALITY AND DECENCY IN BOTH THEIR PROFESSIONAL AND PRIVATE ACTIONS.— Time and again, this Court has declared that the image of a court of justice is mirrored by the conduct, official or otherwise, of its personnel — from the judge to the lowest of its rank and file — who are all bound to adhere to the exacting standard of morality and decency in both their professional and private actions. In the case of *Consolacion v. Gambito*, quoting the pronouncement in *Hernando v. Bengson*, the Court stressed that: The conduct of every court personnel must be beyond reproach and free from suspicion that may cause to sully the image of the Judiciary. They must totally avoid any impression of impropriety, misdeed or misdemeanor not only in the performance of their official duties but also in conducting themselves outside or beyond the duties and functions of their office. Court personnel are enjoined to conduct themselves toward maintaining the prestige and integrity of the Judiciary for the very image of the latter is

Supreme Court E-Library

necessarily mirrored in their conduct, both official and otherwise. They must not forget that they are an integral part of that organ of the government sacredly tasked in dispensing justice. Their conduct and behavior, therefore, should not only be circumscribed with the heavy burden of responsibility but at all times be defined by propriety and decorum, and above all else beyond any suspicion.

10. ID.; ID.; ID.; ID.; SIMPLE MISCONDUCT AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; PROPER PENALTY.— As regards the imposition of the proper penalty, the Civil Service Rules classifies conduct prejudicial to the best interest of the service as a grave offense. Under Section 52(A)(20), Rule IV of the said Civil Service Rules, it is punishable by suspension for six (6) months and one (1) day to one year, for the first offense, and by dismissal for the second offense. On the other hand, Section 52(B)(2), Rule IV of the same Rules classifies simple misconduct as a less grave offense punishable with a corresponding penalty of suspension for one (1) month and one (1) day to six (6) months for the first offense, and by dismissal for the second offense. In this case, Mabalot was found guilty of two civil service offenses, simple misconduct and conduct prejudicial to the best interest of the service. Section 55, Rule IV of the Civil Service Rules provides that in cases where the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge, with the rest considered as aggravating circumstances. Thus, Mabalot's conviction for the two (2) offenses merits the imposition of the penalty of suspension of six (6) months and one (1) day to one year without pay, which is the penalty for the more serious charge of conduct prejudicial to the best interest of the service with simple misconduct as aggravating circumstance. The rules allow the consideration of mitigating and aggravating circumstances and provide for the manner of imposition of the proper penalty. x x x In the case under consideration, Mabalot's health condition, with her having undergone bypass operation and her long years in government service are appreciated as mitigating factors in her favor. Taking into consideration these mitigating circumstances and the aggravating circumstance of simple misconduct, paragraph (d) of Section 54 applies. Accordingly, the minimum penalty of suspension for six (6) months is the appropriate penalty for

Supreme Court E-Library

her administrative transgression. Considering Mabalot's compulsory retirement on October 6, 2012, however, the penalty of suspension is no longer feasible. Thus, in lieu of suspension, the penalty of fine in the amount of Forty Thousand Pesos (₱40,000.00) would be appropriate under the circumstances.

11. ID.; ID.; ID.; WHEN AN OFFICER OR EMPLOYEE IS DISCIPLINED, THE OBJECT IS THE IMPROVEMENT OF THE PUBLIC SERVICE AND THE PRESERVATION OF THE PUBLIC'S FAITH AND CONFIDENCE IN THE GOVERNMENT.— [T]his Court cannot tolerate Mabalot's actuations which indubitably fell short of the standard of conduct required of her as a civil servant in the court of justice. Her retirement notwithstanding, she should and must be held accountable. When an officer or employee is disciplined, the object is the improvement of the public service and the preservation of the public's faith and confidence in the government.

D E C I S I O N

MENDOZA, *J.*:

This pertains to the Integrated Report and Recommendation,[1] dated June 15, 2012, of Executive Judge Benjamin T. Pozon *(Judge Pozon)*, Regional Trial Court, Makati City, in the above entitled administrative matters, submitted through the Office of the Court Administrator *(OCA)*, finding that respondent Fe A. Mabalot *(Mabalot)* had committed simple misconduct and conduct prejudicial to the best interest of the service.

The Facts

OCA I.P.I. No. 08-2750-P (Now A.M. No. P-10-2884)

In a letter,[2] dated December 12, 2007, Judge Roberto P. Buenaventura *(Judge Buenaventura)*, Presiding Judge, Metropolitan Trial Court, Branch 63, Makati City *(MeTC)*, requested the transfer of Mabalot, Clerk of Court *(CoC)* III of

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[1] *Rollo* (A.M. No. P-09-2726), pp. 178-192.

[2] *Rollo* (A.M. No. P-10-2884), p. 9.

Supreme Court E-Library

the same branch, for Conduct Prejudicial to the Best Interest of the Service and Act Violative of Section 3(a) of Republic Act *(R.A.)* No. 3019 or the Anti-Graft and Corrupt Practices Act.

Judge Buenaventura learned about a text message sent by Mabalot to Felipe De Sesto, Jr. *(De Sesto)*, one of his staff assigned as Chairman of the Committee on Revision, in an election case, "*Gaviola v. Torres*," pending in his sala. The text message intimated that she personally knew Atty. Gaviola, the husband of the protestant in the said case. It concerned the delivery of something to De Sesto from Gaviola's husband, who was the former boss of Mabalot. Its tenor suggested a bribery which Mabalot was trying to mediate relative to the case. The text message reads:

Manong Jun nabigay ba sa yo yong pinabibigay ni Atty. Gaviola dating boss ko sa Landbank asawa ng protestant ni Torres dagdagan daw sa pasko don't worry dworry di malalaman ni Judge pinabibigay sa akin pero pinadidiretso ko sa yoo sa yo.[3]

Judge Buenaventura averred that the said matter caused grave concern on his part considering that the credibility of the whole process of the election protest pending in his sala was at stake. For said reason, he stated that he had lost his trust and confidence in Mabalot. There was, therefore, a need for her immediate transfer to protect the integrity of his office.

On December 13, 2007, the said letter-request was endorsed as a complaint by MeTC Executive Judge Henry Laron *(Judge Laron)* to the OCA, for appropriate action and disposition, with a manifestation that Mabalot had already been detailed to the Office of the Clerk of Court, MeTC, Makati City, per Memorandum, dated December 13, 2007.[4] The said administrative complaint was docketed as OCA IPI No. 08-2750-P.

In her Comment,[5] dated February 1, 2008, Mabalot denied the allegation that she was involved in a bribery or corrupt act

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[3] *Id.* at 10.

[4] *Id.* at 8.

[5] *Id.* at 1-5.

Supreme Court E-Library

alluded to in the said text message. She argued that had it been true that she intended to favor the protestant, she could have simply taken the keys to the padlocks of the ballot boxes which were left by Grace Beltran in the chambers during the recount of votes. Analyzing the text message, she pointed out that the message sender "had not a hand in the bribery" as the text message was only a query if De Sesto had received whatever Atty. Gaviola gave and it was not even clear from the message what he would give. She categorically denied that she was the author of the text message which could be the doing of some individuals who took the opportunity of using her cellular phone when she left the said phone on her table.

She further claimed, among others, that in her long years of government service, she had performed her duties with utmost responsibility and efficiency, guided by the principle that "public office is a public trust;" that in her entire service, it was the first time that she was charged with an administrative offense which was obviously motivated by personal ire; and that as she was nearing her mandatory retirement age, she would not risk her long years of government service by peddling a bribe from a party in a case. Confirming the manifestation of Judge Laron, she added that inasmuch as she could no longer work effectively with Judge Buenaventura, considering the strained relations, she requested to be detailed to another position where she could serve her salary's worth.[6]

Pursuant to the recommendation of the OCA, the Court in a Resolution,[7] dated March 4, 2009, referred the matter to then Executive Judge Maria Cristina J. Cornejo of RTC, Makati City, for investigation, report and recommendation within sixty (60) days from notice. The latter, however, recused herself and the case was referred to then Vice Executive Judge Pozon, Presiding Judge, RTC, Makati.

On October 9, 2009, the pre-hearing conference was held and the parties agreed to dispense with a formal hearing and

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[6] *Id.* at 4.

[7] *Id.* at 16.

Supreme Court E-Library

presentation of witnesses or other evidence, and considered the matter closed and submitted for resolution.

As agreed upon, the only issue was whether or not Mabalot had some participation in the suspected bribery.

On October 12, 2009, Judge Buenaventura furnished the Investigating Judge with a copy of his Reply to Mabalot's Comment, which he had filed with the OCA on October 17, 2008, but was not included in the records endorsed by the Court.

Thereafter, Judge Pozon submitted his Report and Recommendation,[8] dated November 13, 2009. In the said Report, it was established that the subject text message was sent from a cellular phone with number 0928-7787724 belonging to Mabalot. Nonetheless, the facts showed that Mabalot did not accept any offer or promise or receive a gift or present. Thus, some elements of the crime of direct bribery under Article 210 of the Revised Penal Code (RPC) were lacking.

The report concluded that Mabalot could not be criminally liable for direct bribery. Neither could she be liable for indirect bribery, as defined and penalized under the RPC, as what was offered by Atty. Gaviola was not intended for her but for De Sesto. Judge Pozon, however, found Mabalot liable for violation of the Code of Conduct for Court Personnel. "[I]nstead of suggesting to Atty. Gaviola to directly give that 'something' to Felipe De Sesto as [she] should have discouraged, if not totally reject or decline the said offer intended for De Sesto. Being the Branch CoC, she should be the first among the court employees to zealously guard the public trust character of her office."[9] Mabalot's acts, according to Judge Pozon, constituted misconduct.

OCA IPI No. 08-2923-P (Now A. M. No. P-09-2726)

In his letter-complaint,[10] dated May 19, 2008, Judge Buenaventura reported to Judge Laron the disturbing actuations

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[8] *Id.* at 26-32.

[9] *Id.* at 31.

[10] *Rollo* (A.M. No. P-09-2726), p. 6.

Supreme Court E-Library

of Mabalot. In his Affidavit,[11] dated May 22, 2008, Judge Buenaventura claimed, among others, that on May 6, 2008, Mabalot went to his chamber, rudely accused him of being the cause of all her miseries and threatened to harm or kill him; and that, in the presence of other staff members of Branch 63, she hurled insulting words at him, mocking even his religious practice of praying regularly; that sensing that she was not in her right frame of mind, he avoided any discussion with her and just let what she wanted to say until she left his chambers; that after she left his office, she made a threat, in the presence of other court personnel, that she was going to kill him; that this threat was confirmed by Rowena Soller *(Soller)*, Branch COC, MeTC, Branch 65, who reported that she (Mabalot) stated in her presence that she was going to kill Judge Buenaventura and then kill herself afterwards; and that a series of text messages to him then followed, threatening that she would get even with him by destroying him and his family.

Judge Buenaventura averred that Mabalot's actuations in making threats against his life and her attempts to "blackmail" him were not only acts unbecoming of a court personnel but should be given serious attention in the light of judicial-related killings where a number of judges had already been killed.

Judge Buenaventura observed that Mabalot appeared to be very mentally disturbed and suggested that an evaluation of her mental capacity or fitness to carry out court duties and responsibilities be conducted.

In her Affidavit and Counter-Affidavit,[12] dated June 2, 2008, Mabalot alleged, among others, that on May 6, 2008, she went to MeTC, Branch 63, to get her own personal law books and to talk to Judge Buenaventura to tell him that her illegal detail was about to expire as well as her intention to report her situation to the Chief Justice as advised by some judges who were her friends; that she was also to tell Judge Buenaventura to stop Liza Pamittan from spreading the rumor that she was being

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[11] *Id.* at 7-8.

[12] *Id.* at 24-29.

Supreme Court E-Library

dismissed from the service; that she was, however, unprofessionally driven away by Judge Buenaventura as he was busy with the election cases; that in tears, she asked Judge Buenaventura if he felt fulfillment, having ruined her career, dignity and life.

Mabalot also claimed that on the same day, she went to Soller for the approval and signature of the MeTC Executive Judge on her leave application; that she was so desperate and hopeless because her salary had been withheld since March 2008 and she was surviving with only ₱500.00 allowance a week from her sister; that in addition, she was being required to refund the excess of the Sheriff's Trust Fund in the amount of ₱59,000.00; that she was heavily indebted due to her sister's operation and incurred relocation expenses when she transferred to Quezon City; and that with all these problems, she thought of dying and eliminating the source of all her miseries which, according to her, was just a normal human reaction, but remote to happen as she had always been a practicing Catholic.

Mabalot also admitted that she texted Judge Buenaventura as he arrogantly refused to talk to her.

On July 16, 2008,[13] Judge Laron referred to the OCA the Resolution,[14] dated July 8, 2008, of the Employee Grievance Committee, MeTC, Makati City, finding that the said complaint was not an appropriate subject of the grievance body and that the case should be resolved in accordance with the Revised Uniform Rules on Administrative Cases in the Civil Service (Civil Service Rules) as the actuations described by Judge Buenaventura amounted to grave misconduct, gross insubordination and conduct prejudicial to the best interest of the service.

Mabalot, in her Comment,[15] dated September 19, 2008, insisted that the Employee Grievance Committee was the proper body to handle the complaint as the issue pertained to matters about

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[13] *Id.* at 1.

[14] *Id.* at 2-5.

[15] *Id.* at 47-48.

Supreme Court E-Library

employee dissatisfaction and discontentment. She denied and refuted the accusations and charges against her.

In his Reply to Comment,[16] Judge Buenaventura insisted that Mabalot's disclosure of her intention to kill and exact revenge against him was not merely an employee dissatisfaction which should be taken lightly. He asserted that Mabalot's actuations were directly related to his previous complaint against her involving a bribery charge which was the subject of a pending administrative case, OCA IPI No. 08-2750-P.

Considering that the issues in the two cases were intertwined, and that Mabalot had adopted the pleadings she filed in that case as her comment in this case, the OCA, in its Report,[17] dated October 26, 2009, recommended the consolidation of the two cases.

On December 7, 2009, the Court re-docketed this administrative complaint as a regular administrative matter, A.M. No. P-09-2726 and consolidated it with OCA IPI No. 08-2750-P, which had not been re-docketed yet as an administrative matter.[18]

According to the OCA, prior to the issuance of the resolution ordering the consolidation of the two cases, the Investigating Judge had concluded the investigation and had submitted his Report and Recommendation in OCA IPI No. 08-2750-P on November 20, 2009. Notwithstanding the termination of the investigation and the submission of the report and recommendation, the OCA, however, reiterated its view that the issues therein were intertwined with those of A.M. No. P-09-2726, inasmuch as Mabalot adopted the pleadings she had filed in the earlier case as her comment in the latter case.

On December 15, 2010, the Court resolved to re-docket A.M. OCA IPI No. 08-2750-P, as a regular administrative matter, (now A.M. No. P-10-2884) and to forward the records of both

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[16] *Id.* at 71.

[17] *Id.* at 78-80.

[18] *Id.* at 83-84.

Supreme Court E-Library

cases to Judge Pozon for the investigation of the issues raised in A.M. No. P-09-2726 and the submission of an integrated report and recommendation on the two (2) consolidated cases within sixty (60) days from receipt of the records.

On March 7, 2011, the pre-hearing conference was held and attended by Judge Buenaventura and Mabalot without the assistance of counsel. Both parties agreed not to present any testimonial evidence and adopted all the relevant pleadings filed in connection with A.M. No. P-10-2884. Thus, Judge Pozon dispensed with the formal hearing and presentation of witnesses, and considered the matter closed and submitted for resolution. He limited the issue on whether Mabalot was guilty of gross misconduct, gross insubordination, and conduct prejudicial to the best interest of the service.

On March 25, 2011, Mabalot filed her Judicial Memorandum.[19] Judge Buenaventura then submitted his Position Paper on March 31, 2011. Mabalot's Comment to Judge Buenaventura's position paper was thereafter filed on April 19, 2011.

In its Memorandum,[20] dated June 26, 2012, the OCA submitted for the Court's consideration the Integrated Report and Recommendation of Judge Pozon, dated June 15, 2012.

Judge Pozon, in the said report, adopted the statement of proceedings, findings of fact and conclusions of law of the Report and Recommendation he submitted in A.M. No. P-10-2884.

As regards A.M. No. P-09-2726, Judge Pozon found that Mabalot indeed made threats to kill Judge Buenaventura, but opined that the said act did not constitute "misconduct" as it was not directly related to, or connected with, the performance of her official duties as Branch CoC, citing *Manuel v. Calimag, Jr.*[21] It was, thus, concluded that Mabalot, having acted in her private capacity, could not be liable for misconduct. Neither could she be held liable for gross insubordination as there was

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[19] *Id.* at 144-149.

[20] *Id.* at 175.

[21] 367 Phil. 162 (1999).

Supreme Court E-Library

no order issued by Judge Buenaventura which she willfully or intentionally disregarded or disobeyed. Judge Pozon, however, found that the acts complained of constituted conduct prejudicial to the best interest of the service. He cited, as basis for her liability, the Code of Conduct and Ethical Standards for Public Officials and Employees, which enunciates, *inter alia*, the State policy of promoting high standard of ethics and utmost responsibility in the public service. He quoted Section 4(c) of the Code which commands, that "[public officials and employees] shall at all times respect the rights of others and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest." By uttering threatening remarks towards Judge Buenaventura, Mabalot failed to live up to such standard.

Based on these findings, Judge Pozon came up with the following recommendation. Thus:

> In view of the foregoing findings in both administrative cases, the undersigned is of the opinion that respondent Clerk of Court Fe Mabalot has committed simple misconduct in A.M. No. P-10-2884 and conduct prejudicial to the best interest of the service in A.M. No. P-09-2726, and hereby recommends that Fe A. Mabalot, who is now 64 yrs. old and is about to retire in less than 1 year, be suspended from office.
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> Considering her health condition, that she has undergone bypass operation and her thirty two (32) years (now 34 years) of service in the government, the undersigned hereby considers the same in recommending the proper penalty to be imposed upon the respondent. Likewise, pursuant to Section 55 of Rule IV of the Civil Service Commission Memorandum Circular No. 19, series of 1999, which provides that if the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances, the undersigned hereby recommends the **suspension of six (6) months and 1 day to one (1) year without pay** pursuant to Section 52 of the said Rule, the penalty for the more serious charge of conduct prejudicial to the best interest of the service.[22]

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[22] *Rollo* (A.M. No. P-09-2726), pp. 191-192.

Supreme Court E-Library

The Court's Ruling

The Court adopts the findings of the Investigating Judge as contained in his Integrated Report and Recommendation.

As can be inferred from the tenor of Judge Buenaventura's letter-complaint and as agreed upon by the parties during the preliminary conference, Judge Buenaventura charged Mabalot with possible bribery on the basis of a text message sent by her to De Sesto.

As correctly opined by the Investigating Judge, Mabalot cannot be criminally liable for either direct or indirect bribery penalized under the RPC, there being no evidence that she did in fact accept or receive anything from Atty. Gaviola in connection with the election protest of his wife pending in their branch. As can be gleaned from the subject text message, the "something" offered by Atty. Gaviola was intended not for her, but for De Sesto. She cannot be liable for qualified bribery either as this crime requires that the offender be a public officer entrusted with law enforcement who refrains from arresting or prosecuting an offender in consideration of any promise, gift or present.

As settled, an accusation of bribery is easy to concoct but difficult to prove. The complainant must present a panoply of evidence in support of such an accusation.[23] Bare allegation would not suffice to hold Mabalot liable. Here, no direct and convincing evidence, other than the text message, was presented which can prove her alleged bribery. Hence, she cannot be held guilty of said charge.

This does not mean, however, that Mabalot is relieved of any liability. Her defense that her text message was only a query as to De Sesto's receipt of whatever Atty. Gaviola intended to give him cannot exonerate her from administrative liability. The Court agrees with the view of the Investigating Judge that she committed misconduct. A perusal of the said text message reveals that Mabalot acted contrary to the norms of conduct required of her position. As Branch CoC, she serves as a sentinel of justice

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[23] *Atty. Valdez, Jr. v. Judge Gabales*, 507 Phil. 227, 235 (2005).

and any act of impropriety on her part immeasurably affects the honor and dignity of the Judiciary and the people's confidence in it.[24] As the highest ranked court personnel next to the presiding judge, she should have prevented or deterred Atty. Gaviola from giving something to De Sesto. She knew very well that such offer was improper for, otherwise, she would not have added the following phrase in her text message, "*don't worry d worry di malalaman ni Judge…*"

Mabalot should be reminded that a public servant must exhibit the highest sense of honesty and integrity for no less than the Constitution mandates that a public office is a public trust and public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives. This constitutionally-enshrined principles, oft-repeated in our case law, are not mere rhetorical flourishes or idealistic sentiments. They should be taken as working standards by all in the public service.[25] Mabalot's failure to prevent the illicit offer or corrupt act of Atty. Gaviola undoubtedly violates the norm of decency and diminishes or tends to diminish the people's respect for those in the government service.[26] Indeed, such act constitutes misconduct. To constitute misconduct, the act or acts must have a direct relation to, and be connected with, the performance of her official duties.

Misconduct in office has been authoritatively defined by Justice Tuazon in *Lacson v. Lopez* in these words: "Misconduct in office has a definite and well-understood legal meaning. By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer x x x It is settled that misconduct, misfeasance, or

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[24] Fourth Whereas clause, Code of Conduct for Court Personnel, A.M. No. 03-06-13-SC, April 23, 2004.

[25] *Civil Service Commission v. Cortez*, G.R. No. 155732, June 3, 2004, 430 SCRA 593, 607.

[26] *Santos v. Rasalan*, 544 Phil. 35, 44 (2007).

Supreme Court E-Library

malfeasance warranting removal from office of an officer must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office x x x.[27]

The Court further defines misconduct as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."[28] The misconduct is gross if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be proven by substantial evidence. As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in a charge of grave misconduct. Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.[29]

In the present case, there was no evidence to show that Mabalot unlawfully or wrongfully used her official function as Branch CoC for her own benefit or personal gain. Her text message to De Sesto reads in part "x x x *pinabibigay sa akin pero pinadidiretso ko sa yo*." It is clear from the said message that the "something" offered by Atty. Gaviola, in connection with the pending election protest, was not intended for her but for De Sesto. No corrupt or wrongful motive can be attributed on her part because she did not receive or accept that "something." As the qualifying element of corruption was not established, the Investigating Judge was correct in giving her the benefit of the doubt and finding her guilty of simple misconduct only.

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[27] *Largo v. Court of Appeals*, 563 Phil. 293 (2007), citing *Manuel v. Judge Calimag, Jr.*, 367 Phil. 162, 166 (1999).

[28] *Office of the Court Administrator v. Lopez*, A.M. No. P-10-2788, January 18, 2011, 639 SCRA 633, 638, citing *Arcenio v. Pagorogon*, A.M. Nos. MTJ-89-270 and MTJ-92-637, 5 July 1993, 224 SCRA 246, 254.

[29] *Office of the Court Administrator v. Lopez*, A.M. No. P-10-2788, January 18, 2011, 639 SCRA 633.

Supreme Court E-Library

With respect to the utterance of a grave threat, in her Judicial Memorandum, Mabalot admitted that she talked to Soller on May 6, 2008 and told her about the case involving their 56-hectare family property; the stress she experienced in seeing her family members fighting in court, and the extreme stress brought about by this case, which caused her three blocked arteries requiring an open heart surgery. She denied having made any threatening remarks against the life of Judge Buenaventura as narrated in the affidavit,[30] to wit, "*If our lot will be foreclosed, I will commit suicide but before I kill myself I will kill Buenaventura*."

During the pre-hearing conference between the parties on March 7, 2011, however, Mabalot admitted that she uttered those words out of depression but without intention to make good such threat. The Court believes that such categorical admission prevails over her negative allegation that she did not utter threatening words against Judge Buenaventura. It is settled that denial is inherently a weak defense. To be believed, it must be buttressed by a strong evidence of non-culpability; otherwise, such denial is purely self-serving and without evidentiary value.[31] As correctly concluded by the Investigating Judge, Mabalot's earlier denial crumbles in the light of her own admission that she indeed uttered threats to kill Judge Buenaventura. Her act of threatening the life of her superior certainly demonstrated lack of respect.

The Court, however, agrees with the Investigating Judge that the act committed by Mabalot cannot be considered as "misconduct," not being related to the discharge of her official functions. There is no proof that her act of threatening Judge Buenaventura through words and text messages were related to, or performed by taking advantage of, her position as Branch CoC. In administrative proceedings, the burden of proving the acts complained of, particularly the relation to the official functions of the public officer, rests on the complainant.[32] In

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[30] Exhibit "D", *rollo* (A.M. No. P-09-2726), p. 9.

[31] *Largo v. Court of Appeals, supra* note 27, at 302, citing *Judge Salvador v. Serrano*, A.M. No. P-06-2104, 516 Phil. 412, 426 (2006).

[32] *Id.* at 304.

Supreme Court E-Library

this regard, Judge Buenaventura failed to prove such relation. The Investigating Judge was, therefore, correct in concluding that Mabalot acted in her private capacity. Thus, she cannot be held liable for misconduct, much less for gross misconduct.

The Investigating Judge likewise was correct when he recommended that Mabalot be absolved from the charge of gross insubordination. Insubordination is defined as a refusal to obey some order, which a superior officer is entitled to give and have obeyed. The term imports a willful or intentional disregard of the lawful and reasonable instructions of the employer.[33] In this case, there was no order or directive issued by Judge Buenaventura that was willfully or intentionally disregarded or not complied with by Mabalot so as to constitute gross insubordination.

Nevertheless, the complained act constituted conduct prejudicial to the best interest of the service which, as held in *Largo v. Court of Appeals*,[34] need not be related or connected to a public officer's official functions.

The rules do not enumerate the acts constituting conduct prejudicial to the best interest of the service. In *Ito v. De Vera*,[35] the Court wrote that it referred to acts or omissions that violate the norm of public accountability and diminish — or tend to diminish — the people's faith in the Judiciary.[36]

Time and again, this Court has declared that the image of a court of justice is mirrored by the conduct, official or otherwise, of its personnel — from the judge to the lowest of its rank and file — who are all bound to adhere to the exacting standard of morality and decency in both their professional and private actions.[37]

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[33] *Dalmacio-Joaquin v. Dela Cruz*, A.M. No. P-07-2321, April 24, 2009, 586 SCRA 344, 349.

[34] *Supra* note 27.

[35] 540 Phil. 23, 33 (2006).

[36] *Consolacion v. Gambito*, A.M. Nos. P-06-2186/P-12-3026, July 3, 2012, 675 SCRA 452, 463, citing *Toledo v. Perez*, A.M. Nos. P-03-1677 and P-07-2317, July 15, 2009, 593 SCRA 5, 11-12.

[37] *Re: Deceitful Conduct of Ignacio S. del Rosario, Cash Clerk III, Records and Miscellaneous Matter Section, Checks Disbursement Division,*

Supreme Court E-Library

In the case of *Consolacion v. Gambito*,[38] quoting the pronouncement in *Hernando v. Bengson*,[39] the Court stressed that:

> The conduct of every court personnel must be beyond reproach and free from suspicion that may cause to sully the image of the Judiciary. They must totally avoid any impression of impropriety, misdeed or misdemeanor not only in the performance of their official duties but also in conducting themselves outside or beyond the duties and functions of their office. Court personnel are enjoined to conduct themselves toward maintaining the prestige and integrity of the Judiciary for the very image of the latter is necessarily mirrored in their conduct, both official and otherwise. They must not forget that they are an integral part of that organ of the government sacredly tasked in dispensing justice. Their conduct and behavior, therefore, should not only be circumscribed with the heavy burden of responsibility but at all times be defined by propriety and decorum, and above all else beyond any suspicion.

In the case at bench, Mabalot's utterances and text messages of threats to get even indeed demonstrated conduct unbecoming of a court personnel. Doubtless, such acts tarnished not only the image and integrity of her public office but also the public perception of the very image of the Judiciary of which she was a part. The Investigating Judge, thus, correctly adjudged her guilty of conduct prejudicial to the best interest of the service.

As regards the imposition of the proper penalty, the Civil Service Rules classifies conduct prejudicial to the best interest of the service as a grave offense. Under Section 52(A)(20), Rule IV of the said Civil Service Rules, it is punishable by suspension for six (6) months and one (1) day to one year, for the first offense, and by dismissal for the second offense. On the other hand, Section 52(B)(2), Rule IV of the same Rules classifies simple misconduct as a less grave offense punishable with a corresponding penalty of suspension for one (1) month and one (1) day to six (6) months for the first offense, and by dismissal for the second offense.

FMO-OCA, A.M. No. 2011-05-SC, September 6, 2011, 656 SCRA 731, 738, citing *Floria v. Sunga*, 420 Phil. 637, 650 (2001).

[38] *Supra* note 36, at 465.

[39] A.M. No. P-09-2686, March 28, 2011, 646 SCRA 439.

Supreme Court E-Library

In this case, Mabalot was found guilty of two civil service offenses, simple misconduct and conduct prejudicial to the best interest of the service. Section 55, Rule IV of the Civil Service Rules provides that in cases where the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge, with the rest considered as aggravating circumstances. Thus, Mabalot's conviction for the two (2) offenses merits the imposition of the penalty of suspension of six (6) months and one (1) day to one year without pay, which is the penalty for the more serious charge of conduct prejudicial to the best interest of the service with simple misconduct as aggravating circumstance.

The rules allow the consideration of mitigating and aggravating circumstances and provide for the manner of imposition of the proper penalty. Section 54 of the Civil Service Rules provides:

Section 54. *Manner of imposition*. When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:

a. The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.

b. The medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present.

c. The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.

d. Where aggravating and mitigating circumstances are present, paragraph (a) shall be applied where there are more mitigating circumstances present; paragraph (b) shall be applied when the circumstances equally offset each other; and paragraph (c) shall be applied when there are more aggravating circumstances.[40] (Underscoring supplied)

In the case under consideration, Mabalot's health condition, with her having undergone bypass operation and her long years in government service are appreciated as mitigating factors in

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[40] *Civil Service Commission v. Cortez*, *supra* note 25, at 602-603.

Supreme Court E-Library

her favor. Taking into consideration these mitigating circumstances and the aggravating circumstance of simple misconduct, paragraph (d) of Section 54 applies. Accordingly, the minimum penalty of suspension for six (6) months is the appropriate penalty for her administrative transgression.

Considering Mabalot's compulsory retirement on October 6, 2012, however, the penalty of suspension is no longer feasible. Thus, in lieu of suspension, the penalty of fine in the amount of Forty Thousand Pesos (₱40,000.00)[41] would be appropriate under the circumstances.

On a final note, this Court cannot tolerate Mabalot's actuations which indubitably fell short of the standard of conduct required of her as a civil servant in the court of justice. Her retirement notwithstanding, she should and must be held accountable. When an officer or employee is disciplined, the object is the improvement of the public service and the preservation of the public's faith and confidence in the government.[42]

WHEREFORE, Fe A. Mabalot, formerly Clerk of Court III, MeTC, Branch 63, Makati City, is hereby declared **GUILTY** of simple misconduct and conduct prejudicial to the best interest of the service and is hereby ordered to pay a **FINE** of ₱40,000.00, to be deducted from her retirement benefits.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Leonen, JJ.,* concur.

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[41] See *Toledo v. Perez,* A.M. Nos. P-03-1677 and P-07-2317, July 15, 2009, 593 SCRA 5.

[42] *Santos v. Rasalan*, 544 Phil. 35, 44 (2007), citing *Civil Service Commission v. Cortez,* G.R. No. 155732, June 3, 2004, 430 SCRA 593, citing *Bautista v. Negado,* 108 Phil. 283, 289 (1960).