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SECOND DIVISION

[A.M. No. P-09-2648. March 26, 2014]
(Formerly A.M. No. 09-4-181-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **ATTY. LEAH ESPERA MIRANDA, CLERK OF COURT V; and MS. JOCELYN H. DIVINAGRACIA, CLERK III, both of the RTC, Br. 38, Iloilo City,** *respondents.*

[A.M. No. P-13-3174. March 26, 2014]
(Formerly OCA I.P.I. No. 09-3128-P)

ATTY. REX G. RICO, *complainant, vs.* **CLERK OF COURT V LEAH ESPERA MIRANDA and CLERK III JOCELYN H. DIVINAGRACIA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; GRAVE MISCONDUCT; EXPLAINED AND DISTINGUISHED FROM SIMPLE MISCONDUCT.— As defined, misconduct is a transgression of some established or definite rules of action, or more particularly, an unlawful behavior on the part of a public officer or employee. Grave misconduct implies wrongful intention and not a mere error of judgment. The misconduct must also have a direct relation to and be connected with the performance of his official duties amounting either to maladministration or willful, intentional neglect or failure to discharge the duties of the office. 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 manifested. Corruption as an element of grave misconduct consists in the act of an official or employee who unlawfully or wrongfully uses her station or character to procure some benefit for herself or for another, contrary to the rights of others. x x x Grave misconduct is classified as a grave offense punishable by

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dismissal even for the first offense, pursuant to Section 52(A) of the Uniform Rules on Administrative Cases in the Civil Service.

2. ID.; ID.; ID.; ID.; KNOWINGLY ALLOWING THE TAMPERING OF THE RECORDS OF A CASE TO MAKE IT APPEAR THAT THE NOTICE OF APPEAL HAS COMPLIED WITH THE REQUIREMENTS OF THE RULES CONSTITUTES GRAVE MISCONDUCT.— We find no merit in Miranda and Divinagracia's explanation. Their involvement was not confined to the routinary process of receiving the Notice of Appeal and checking if it complied with the requirements. ***They knowingly allowed the tampering of the Notice of Appeal to make it appear that it complied with Section 11, Rule 13 of the 1997 Rules of Civil Procedure.*** Moreover, during the proceedings on Atty. Rico's Motion to Expunge the Notice of Appeal, neither Miranda nor Divinagracia informed Judge Patricio about the circumstances leading to the insertion of the written explanation on the Notice of Appeal. Their silence on the matter casts doubts on the veracity of their statements. x x x Miranda and Divinagracia's act of allowing the tampering of the records of Special Civil Action No. 02-27326 to make it appear that the Notice of Appeal filed by private respondents complied with the requirements constitutes grave misconduct.

3. ID.; ID.; ID.; ID.; CULPABILITY WAS MITIGATED FOR LACK OF EVIDENCE OF MALICE; FINE, IMPOSED.— [I]n the absence of evidence showing that the tampering of the records was done with malice or for financial consideration, we consider their culpability mitigated. x x x [T]he Court finds respondents Atty. Leah Espera Miranda, Clerk of Court V, and Jocelyn H. Divinagracia, Clerk III, both of the Regional Trial Court, Branch 38, Iloilo City, **GUILTY** of **GRAVE MISCONDUCT**. They are individually fined the amount of ₱40,000.00, with **WARNING** that their repetition of the same or similar offense in the future shall be dealt with more severely.

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D E C I S I O N

BRION, *J.*:

This decision relates to administrative matters arising from the letter-complaint dated October 5, 2004 that Atty. Rex G. Rico (counsel for the plaintiffs in Special Civil Action No. 02-27326) filed with the Regional Trial Court (*RTC*), Branch 38, Iloilo City. The complainant asked the Office of the Court Administrator (*OCA*) to conduct an investigation on the alleged tampering of case records by personnel of that court. Atty. Rico likewise file a complaint dated March 30, 2009, arising from the same incident, against Clerk of Court V Leah Espera Miranda and Clerk III Jocelyn H. Divinagracia, both of the same court.

In a Resolution[1] dated July 8, 2009, the two complaints were consolidated, since both cases involved the same parties and the same matter.

The complaints trace their roots from the decision[2] dated May 26, 2003 of Judge Roger B. Patricio of the RTC of Iloilo City, Branch 38, declaring null and void the order dated August 1, 2002 issued by the Municipal Trial Court in Cities, Iloilo City, in Civil Case No. 99 (109) for Unlawful Detainer (entitled *Ledesma Do, et al. v. Avenido Paderna, et al.*). The questioned order allowed the private respondents, Avenido Paderna, *et al.*, to redeem the property involved in that case, which property had been levied and sold at public auction to satisfy the judgment in favor of the petitioners, Valerie Ledesma-Do, *et al.*

On June 11, 2003, the private respondents, through their counsel Atty. Roberto F. Castillon, filed a Notice of Appeal.[3] On June 24, 2003, the RTC approved the appeal and directed

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[1] *Rollo* (A.M. No. P-13-3174), pp. 618-619.

[2] *Id.* at 23-29.

[3] *Id.* at 30.

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the forwarding of the records of the case to the Court of Appeals.[4] On the same date, the petitioners, through Atty. Rico, moved to expunge the Notice of Appeal from the records of the case and to declare the decision final and executory, on the ground that a petition for review, not an appeal, is the proper remedy.[5]

On July 8, 2003, Atty. Castillon filed his comment on Atty. Rico's motion to expunge, arguing that the proper remedy from the RTC decision is an ordinary appeal to the Court of Appeals under Section 2, Rule 41 of the 1997 Rules of Civil Procedure, not a petition for review.[6]

On July 21, 2003, Atty. Rico filed a supplement to his motion to expunge, this time alleging that the Notice of Appeal should, just the same, be expunged from the records as it lacked a written explanation why its service or filing was not done personally,[7] as required by Section 11, Rule 13 of the 1997 Rules of Civil Procedure.

On September 23, 2003, Atty. Rico filed a Second Supplement to the motion to expunge notice of appeal and to declare the decision of May 26, 2003 final and executory.[8] He insisted that compliance with the requirement of Section 11, Rule 13 of the 1997 Rules of Civil Procedure is mandatory. In an order dated October 22, 2003, Judge Patricio found Atty. Rico's contention meritorious and declared the decision of May 26, 2003 final and executory.[9]

On November 5, 2003, Atty. Castillon filed a motion for reconsideration, admitting that indeed he committed an error when the second page of the Notice of Appeal, containing the written explanation, was omitted during printing due to

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[4] See Order dated October 22, 2003; *id.* at 43.

[5] *Id*. at 31-33.

[6] *Id*. at 35-37.

[7] *Id*. at 38-40.

[8] *Id*. at 41-42.

[9] *Id*. at 43-46.

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inadvertence. He prayed that the appeal be allowed on grounds of equity and justice.[10]

On November 10, 2003, another motion for reconsideration[11] was filed by the private respondents, through another lawyer, Atty. Felix O. Loredo, Jr., who claimed that Atty. Castillon had withdrawn as counsel for the private respondents on July 16, 2003 and that he filed his Notice of Appearance as the private respondents' counsel on August 11, 2003. He alleged that the private respondents were consolidating the two motions for reconsideration and that they were not inconsistent with, but were supplementary or complimentary to, each other.[12]

Atty. Lodero further alleged that a perusal of the private respondents' one-page Notice of Appeal shows that it has a written explanation at the right-hand corner below that reads, "[c]opy of this Notice of Appeal was served upon counsel for plaintiff by reg. mail due to distance."[13] He asserted that Atty. Rico's supplement and second supplement were misleading, were "based on fallacious assertion,"[14] and that Judge Patricio's ruling (that the Notice of Appeal failed to comply with Section 11, Rule 13 of the 1997 Rules of Civil Procedure) was arbitrary, capricious, whimsical or a despotic exercise of judgment.[15]

Atty. Rico filed an Opposition dated November 19, 2003 to the motion for reconsideration filed by Atty. Lodero, alleging that the copy of the Notice of Appeal attached to his motion for reconsideration was a "clearly falsified document." He had checked with the records of the court shortly after he filed his Motion to Expunge Notice of Appeal and found that the required explanation did not exist and did not appear in the Notice of

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[10] *Id.* at 47-50.

[11] *Id.* at 51-64.

[12] *Id.* at 53-54.

[13] *Id.* at 116.

[14] *Ibid.*

[15] *Id.* at 67-72.

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Appeal attached to the court records. He further pointed out the "so called explanation" is a typewriter imprint, while the rest of the pleading is a computer printer imprint, showing that the explanation was printed/intercalated much later, not by the same computer printer that printed the Notice of Appeal but by a typewriter. He prayed that Atty. Lodero be required to show cause why he should not be punished for contempt for submitting a falsified document in evidence.[16]

Atty. Lodero filed a Manifestation and Reply dated January 20, 2004, explaining that Atty. Castillon prepared the Notice of Appeal dated June 11, 2003 legally complete and in order, but when his secretary went to the post office on June 17, 2003 to furnish counsel for the petitioners a copy and to file in court the Notice of Appeal, she inadvertently left behind the 2nd page thereof with the written explanation. When the secretary tendered the Notice of Appeal for filing, the court personnel noticed that it had no written explanation. The secretary called up Atty. Castillon, who pointed out that the 2nd page had been left behind and, pursuant to his direction, a written explanation was typed on the Notice of Appeal at the lower right hand side. Immediately thereafter, the court personnel accepted and duly received the Notice of Appeal which is now part of the record of the case at page 230.[17]

On March 27, 2004, Judge Patricio resolved both motions for reconsideration and issued an order setting aside his order dated October 22, 2003 (that expunged from the records of the case the Notice of Appeal and declaring the decision dated May 26, 2003 final and executory). He held that the typewritten explanation on the Notice of Appeal existed at the time of its filing but that he "overlooked it due to grave oversight" because it was written on the lower extreme right portion of the Notice of Appeal and was "covered by Registry Receipt No. 0092 showing that a copy of the Notice of Appeal was sent by registered mail to Atty. Rex Rico, stapled to the Notice of Appeal but

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[16] Manifestation and Reply to Petitioners' Opposition; *id.* at 73-76.

[17] *Ibid*. The Notice of Appeal was signed by Atty. Castillon.

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incidentally covering the subject explanation[.]" He ordered the reinstatement of his June 24, 2003 order giving due course to the private respondents' Notice of Appeal.[18]

Initially, the OCA referred Atty. Rico's letter of October 5, 2004 to the National Bureau of Investigation (*NBI*) for the discreet investigation of the alleged tampering of the records in Special Civil Action No. 02-27326. In a letter dated November 23, 2004, the NBI Western Visayas Regional Office identified the court personnel involved in the alleged tampering as Miranda and Divinagracia. However, the NBI found no misconduct or irregularity sufficient to establish a cause of action and to warrant criminal or administrative charges against them.[19]

Not satisfied with the NBI's report, the OCA referred the complaint to then Executive Judge Jose D. Azarraga, RTC, Iloilo City, for further investigation,[20] and the judge subsequently submitted his Report and Recommendation.

In a Resolution dated July 1, 2009, the Court redocketed the complaints as regular administrative matters and required the parties to manifest whether they were willing to submit the matter for resolution based on the pleadings filed.[21]

On July 29, 2009, Atty. Rico filed his compliance, manifesting his willingness to submit the cases for resolution on the basis of the pleadings filed.[22] Miranda and Divinagracia likewise complied in a joint manifestation[23] dated August 7, 2009.

Judge Azarraga, in his Report and Recommendation[24] dated April 10, 2007, confirmed that there had indeed been tampering

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[18] *Id.* at 116-117.

[19] *Id.* at 147-149.

[20] *Rollo* (A.M. No. P-09-2648), p. 297.

[21] *Id.* at 299-300.

[22] *Id.* at 301-302.

[23] *Id.* at 306-309.

[24] *Id.* at 11-32.

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of the records in Special Civil Action No. 02-27326. This was done through the intercalation of the explanation in the Notice of Appeal filed by the private respondents in the case. He found that Divinagracia had actively participated by causing the explanation to be typed by Arlene Baesa, Atty. Castillon's secretary. Divinagracia admitted calling Baesa's attention by pointing out to her the absence of the written explanation on the Notice of Appeal. She even provided Baesa with a typewriter for her use in typing the explanation.

Judge Azarraga further reported that Miranda was aware that the lacking written explanation was supplied while at her office using the court's facilities. During the investigation, Miranda confirmed that she saw Divinagracia receive the Notice of Appeal and take the records of the case from their record room. She attached a copy of the Notice of Appeal with the written explanation to the records of the case and handed it to her. Miranda admitted that the copy sent to Atty. Rico did not contain a written explanation.

Judge Azarraga concluded that, "The facts on record – the admission of the parties, particularly in the documents which are the pleadings attached to the record, the transcript of the investigation proceedings as well as the arguments in their respective memoranda provided substantial evidence to establish that Mrs. Jocelyn Divinagracia, Clerk III of Branch 38, Regional Trial Court, Iloilo City, allowed and abetted the tampering and falsification of court records, for which disciplinary sanctions are in order."[25] He recommended that Miranda and Divinagracia be reprimanded for falsification and dishonesty.

In an Agenda Report[26] dated April 17, 2009, the OCA emphasized that when a pleading is filed in court, the main concern of a receiving clerk is to receive it. She has no authority or discretion to determine whether or not the pleading complied with the Rules of Court as this authority belongs to the presiding

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[25] *Id*. at 32.

[26] *Id*. at 1-6.

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judge. The fact that the Notice of Appeal sent to the petitioners was different from that filed in court was not the concern of Miranda and Divinagracia. The OCA recommended that they be admonished to be more circumspect in the discharge of their functions as court employees.

We find sufficient evidence to conclude that the tampering of the Notice of Appeal was made after the Notice had already been filed on June 17, 2003 and had been made part of the records of Special Civil Action No. 02-27326. The evidence and the conflicting statements of the parties involved, including Judge Patricio, clearly show that there was no written explanation in the Notice of Appeal at the time it was filed, specifically:

1. According to Atty. Rico, the copy of the Notice of Appeal served upon him did not contain the required written explanation. After he filed his motion to expunge the Notice of Appeal,[27] he went to the court and looked at the records of the case and saw for himself that there was no written explanation in the Notice of Appeal[28] on file.

2. Atty. Castillon, in his motion for reconsideration of the order dated October 22, 2003, admitted that indeed there was no written explanation at the time the Notice of Appeal was filed as it was omitted during printing. He asked for "the indulgence of this Honorable Court, for the lapses in the observance of the required explanation under Sec. 11 of Rule 13 of the 1997 Rules of Civil Procedure, by reason of inadvertence and excusable lapses of memory, thus the failure to comply with the required formality in the service of the pleadings."[29] However, during the investigation, Atty. Castillon testified that the Notice of Appeal was filed on "that very day" he prepared it and that the written explanation was also typed on "that very day" which was June 11, 2003. Records show that the Notice of Appeal was dated

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[27] *Id*. at 67.

[28] *Id*. at 54.

[29] *Id*. at 166.

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June 11, 2003 but it was filed on June 17, 2003, or six days after it was prepared.[30]

On the other hand, Atty. Lodero, in his motion for reconsideration of the resolution of November 10, 2003, presented to the court a one-page copy of the Notice of Appeal with a written explanation at the lower right-hand corner that reads, "[c]opy of this Notice of Appeal was served upon counsel for plaintiffs by reg. mail due to distance."[31]

3. Judge Patricio, in his order dated October 22, 2003 granting Atty. Rico's Motion to Expunge the Notice of Appeal, found that the Notice of Appeal did not contain the required written explanation. However, in his order[32] dated March 27, 2004, Judge Patricio reversed and set aside his order of October 22, 2003, this time ruling that the typewritten explanation existed at the time the Notice of Appeal was filed but he overlooked it due to oversight.

4. The Notice of Appeal itself shows that it was computerized but the written explanation was typewritten.

In their joint manifestation filed in compliance with the Court's Resolution dated July 1, 2009, Miranda and Divinagracia denied conniving with the secretary of Atty. Castillon in completing the Notice of Appeal. They claimed that it has been a long standing court procedure for them to examine any pleading being filed with their court to see if the pleading complies with the necessary requisites in the filing of pleadings. Whenever there are lacking requisites, they call the attention of the persons filing so they can completely comply with the requirements. All pleadings in all cases filed in their court are first examined before being received. Miranda further states that she acted in good faith in allowing the secretary to use the office typewriter. It was her belief that being in a public office, it is her duty to

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[30] TSN, February 5, 2004, pp. 17-20.

[31] *Supra* note 12.

[32] *Supra* note 18.

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serve the public "in whatever way and to whoever."[33] It never entered her mind that giving the secretary the permission to use her typewriter involved giving favor, showing bias to the defendants or doing any injustice to the plaintiffs.

We find no merit in Miranda and Divinagracia's explanation. Their involvement was not confined to the routinary process of receiving the Notice of Appeal and checking if it complied with the requirements. ***They knowingly allowed the tampering of the Notice of Appeal to make it appear that it complied with Section 11, Rule 13 of the 1997 Rules of Civil Procedure.*** Moreover, during the proceedings on Atty. Rico's Motion to Expunge the Notice of Appeal, neither Miranda nor Divinagracia informed Judge Patricio about the circumstances leading to the insertion of the written explanation on the Notice of Appeal. Their silence on the matter casts doubts on the veracity of their statements.

The Code of Conduct for Court Personnel reminds court personnel, in performing their duties and responsibilities, to serve as sentinels of justice. Any act of impropriety they commit immeasurably affects the honor and dignity of the Judiciary and the people's confidence in the Judiciary.[34] "They are, therefore, expected to act and behave in a manner that should uphold the honor and dignity of the Judiciary, if only to maintain the people's confidence in the Judiciary."[35] A court employee is not prohibited from helping individuals in the course of performing his official duties, but his actions cannot be left unchecked when the help extended places the integrity of the Judiciary in a bad light. Indeed, court employees are strictly instructed not to use their official duties to secure unwarranted benefits, privileges or exemptions for themselves or for others.

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[33] *Supra* note 23.

[34] 4th Whereas Clause.

[35] *Guerrero v. Ong*, A.M. No. P-09-2676, December 16, 2009, 608 SCRA 257, 263.

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"The evident purpose of the instruction is precisely to free the court from suspicion of misconduct."[36]

As defined, misconduct is a transgression of some established or definite rules of action, or more particularly, an unlawful behavior on the part of a public officer or employee.[37] Grave misconduct implies wrongful intention and not a mere error of judgment. The misconduct must also have a direct relation to and be connected with the performance of his official duties amounting either to maladministration or willful, intentional neglect or failure to discharge the duties of the office. 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 manifested.[38] Corruption as an element of grave misconduct consists in the act of an official or employee who unlawfully or wrongfully uses her station or character to procure some benefit for herself or for another, contrary to the rights of others.[39] Miranda and Divinagracia's act of allowing the tampering of the records of Special Civil Action No. 02-27326 to make it appear that the Notice of Appeal filed by private respondents complied with the requirements constitutes grave misconduct.

Grave misconduct is classified as a grave offense punishable by dismissal even for the first offense, pursuant to Section 52(A) of the Uniform Rules on Administrative Cases in the Civil Service. However, in the absence of evidence showing that the tampering of the records was done with malice or for financial consideration, we consider their culpability mitigated.

While we could not presume that Judge Patricio had any knowledge or tried to cover-up the tampering of the records committed by his employees, we cannot at this point take any further action against him as he had already been separated

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[36] *Id*. at 264.

[37] *Ibid*.; and *Mendoza, Jr. v. Navarro,* 533 Phil. 8, 17 (2006).

[38] *Guerrero v. Ong, supra* note 28, at 264-265.

[39] *Id*. at 265.

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from the service when he filed his disability retirement on June 3, 2008.

The Attorney's Oath mandates a lawyer, among other duties: (a) to do no falsehood; (b) nor consent to the doing of the same in court; and (c) to conduct himself as a lawyer to the best of his knowledge and discretion with all good fidelity to the court. ***Having this in mind, Atty. Castillon and Atty. Lodero's involvement in the tampering of the records, and in the filing of a falsified document, should be fully investigated to determine if their actions merit disciplinary action.***

WHEREFORE, the Court finds respondents Atty. Leah Espera Miranda, Clerk of Court V, and Jocelyn H. Divinagracia, Clerk III, both of the Regional Trial Court, Branch 38, Iloilo City, **GUILTY** of **GRAVE MISCONDUCT**. They are individually fined the amount of ₱40,000.00, with **WARNING** that their repetition of the same or similar offense in the future shall be dealt with more severely.

The Court further resolves to **DIRECT** the **Integrated Bar of the Philippines** to determine whether the involvement of **Atty. Roberto F. Castillon** and **Atty. Felix O. Lodero, Jr**. in the tampering of the records of Special Civil Action No. 02-27326 merits disciplinary action. The Office of the **Bar Confidant** is hereby directed to docket the matter as an administrative complaint against Atty. Roberto F. Castillon and Atty. Felix O. Lodero, Jr.

SO ORDERED.

Carpio (Chairperson), Peralta,[*] *del Castillo,* and *Reyes,*[**] *JJ.,* concur

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[*] Designated as Acting Member in lieu of Associate Justice Estela M. Perlas-Bernabe per Special Order No. 1650-A dated March 13, 2014.

[**] Designated as Acting Member in lieu of Associate Justice Jose Portugal Perez per Raffle dated March 17, 2014.