



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

RE: MISSING EXHIBITS AND
COURT PROPERTIES IN
REGIONAL TRIAL COURT,
BRANCH 4, PANABO CITY,
DAVAO DEL NORTE

A.M. No. 10-2-41-RTC

Present:

CARPIO, J., Chairperson,
DEL CASTILLO,
PEREZ,
MENDOZA,* and
PERLAS-BERNABE, J.J.

Promulgated:

FEB 27 2013

H.M. Cabalag for J. Carpio

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RESOLUTION

CARPIO, J.:

This administrative case arose from a letter¹ dated 7 May 2009 and sent by Atty. Jacquelyn A. Labustro-Garcia (Atty. Labustro-Garcia), Clerk of Court V, Regional Trial Court (RTC), Judicial Region 11, Branch 4, Panabo City, to the Office of the Court Administrator (OCA).

On 16 February 2009, Atty. Labustro-Garcia assumed her position as clerk of court in the RTC. She conducted an inventory using, among others, the acknowledgment receipt² for equipment issued by Mr. Gil T. Tribiana, Jr. (Mr. Tribiana, Jr.), Chief Judicial Staff Officer, Property Division, OCA, and discovered some missing items. In a letter³ dated 27 February 2009, she required Attys. Mariecris B. Colon-Reyes and Mary Francis Manug-Daquipil (Attys. Colon-Reyes and Manug-Daquipil), Court Stenographer Arden O. Ferolino, Legal Researchers Boyd James Bacaltos and Edgar Casalem, Court Interpreter Helen Basa, and Clerk III Marianne G. Baylon to

* Designated acting member per Special Order No. 1421 dated 20 February 2013.

¹ Rollo, pp. 11-12.

² Id. at 93-101.

³ Id. at 103.

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attend an investigation scheduled on 27 March 2009.

Atty. Labustro-Garcia sent a letter⁴ dated 18 March 2009 to Mr. Tribiana, Jr., together with the signed acknowledgment receipt and a report on the missing and unserviceable items. She also sent a letter⁵ dated 13 April 2009 to Atty. Giselle Talion of the Office of the Clerk of Court to inquire whether Attys. Colon-Reyes and Manug-Daquipil deposited any money submitted to the RTC.

In the 7 May 2009 letter which she sent to the OCA and which gave rise to this administrative case, Atty. Labustro-Garcia asked for advice on the proper action to take regarding the missing items. She stated that:

I am writing directly to you because I need your advice as to what steps should I undertake to address the problem of our sala. This is in relation to the court exhibits and to the properties issued in [sic] our sala.

I assumed my duties as Clerk of Court V of the Regional Trial Court, Branch 4, Panabo City only on 16 February 2009. I made an inventory as to the only exhibits and property bonds (titles) existing at the time I assumed my duties as Clerk of Court. I found these exhibits and property bonds (titles) inside the four steel cabinets at [sic] our stockroom. I also conducted physical inventory on [sic] the properties issued by the Supreme Court based on the 9-page Acknowledgment Receipt sent by Ms. Herminia B. Advincula (Chief, Records Section, Property Division, OCA). After inventory, I discovered that there were missing exhibits and properties. I reported the matter to the presiding judge and I sent a letter-reply together with the list of the missing and unserviceable properties to Ms. Herminia S. Advincula. The presiding judge merely told me that I am not liable for those lost items.⁶

In a memorandum⁷ dated 29 June 2009, Deputy Court Administrator Nimfa C. Vilches (DCA Vilches) directed Presiding Judge Jesus L. Grageda (Judge Grageda) of the RTC and Atty. Labustro-Garcia to (1) furnish the OCA with a list of the missing exhibits and properties; (2) conduct an audit and inventory of criminal cases; (3) conduct an inventory of court properties; (4) investigate the circumstances of the missing exhibits and properties; and (5) take necessary measures to prevent a similar occurrence. Atty. Labustro-Garcia and Judge Grageda replied to DCA Vilches' memorandum through their 31 July⁸ and 30 September⁹ 2009 letters, respectively.

⁴ Id. at 40-42.

⁵ Id. at 104.

⁶ Id. at 11.

⁷ Id. at 133-134.

⁸ Id. at 19-25.

⁹ Id. at 214-215.

On 25 November 2009, Judge Grageda compulsorily retired. In her 9 February 2012 letter,¹⁰ Marina B. Ching, Chief of Office, Court Management Office, recommended the release of Judge Grageda's terminal leave benefits.

In a memorandum¹¹ dated 18 April 2012, the OCA found that there is no sufficient proof of missing items in the RTC. However, it found Judge Grageda liable for a different offense. The OCA stated that:

x x x The inventories submitted by both parties present conflicting findings on the alleged missing exhibits and court properties. While Atty. Garcia claimed that there were missing exhibits and court properties, Judge Grageda reported that based on the inventory conducted by the court staff, there were no missing court furniture and equipment, books or publications, or lost exhibits in the RTC, Branch 4, Panabo City. The court properties allegedly unaccounted for were reported as either extant/existing, or unserviceable, or with the Office of the Clerk of Court, or returned to the Supreme Court for replacement, while the listed court exhibits were likewise reported as either attached to the records, or in the custody of the prosecution/defense, or confiscated by the government.

It is noted that before the retirement of Judge Grageda on 25 November 2009, a judicial audit was conducted on 17 to 26 November 2009 in the RTC, Branch 4, Panabo City. Based on the Report dated 08 March 2010, the audit team significantly found/reported no missing or lost exhibits and/or court property thereat.

Nevertheless, the Report of the Clerk of Court on the alleged missing exhibits and court properties should have prompted Judge Grageda to conduct an investigation on the matter, or at the very least, to report to the Court any action taken to verify or of any measures adopted to prevent loss of exhibits and court properties. The veracity of the reported missing exhibits and court properties should not have been taken lightly or ignored by Judge Grageda. As then Presiding Judge of the RTC, Branch 4, Panabo City, he had direct supervision and control over his personnel. The importance of a prompt investigation on the alleged loss was in fact conveyed to Judge Grageda in the OCA Memorandum dated 29 June 2009. As Presiding Judge, Judge Grageda should have initiated an immediate investigation on the allegations without waiting for a directive from the Court. In this regard, Judge Grageda was remiss in his duties.¹²

The OCA recommended that Judge Grageda be held liable for violation of Supreme Court rules, directives and circulars, and be fined ₱20,000.

¹⁰ Id. at 289.

¹¹ Id. at 290-300. Signed by Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Antonio M. Eugenio, Jr.

¹² Id. at 296-297.

The Court disagrees with the OCA's recommendations.

The Court notes that the OCA submitted its memorandum to then Acting Chief Justice Antonio T. Carpio on 10 July 2012 — more than two years and seven months after Judge Grageda compulsorily retired. During his incumbency, Judge Grageda was never given the chance to explain the alleged violation of Supreme Court rules, directives and circulars. Up to the present, the OCA has not commenced any formal investigation or asked Judge Grageda to comment on the matter. Thus, the complaint against Judge Grageda must be dismissed.

In *Office of the Court Administrator v. Mantua*,¹³ the Court dismissed the complaint against a judge because the OCA submitted its memorandum to then Chief Justice Reynato S. Puno more than four months after the judge's retirement and because the judge was never given a chance to explain. The Court held that:

It should be noted that the judicial audit team submitted their report to DCA Vilches five days after Judge Mantua's retirement. **The OCA, in turn, submitted their Memorandum to CJ Puno on 12 May 2009, or a little over four months after Judge Mantua's retirement. During his incumbency, Judge Mantua was never given a chance to explain the results of the judicial audit report.** With the knowledge that the judicial audit report will be submitted only after Judge Mantua's retirement, the judicial audit team's recommendations were directed only to Atty. Mape, the Acting Clerk of Court and Legal Researcher II of Branch 17, and Judge Maraya, Acting Presiding Judge of Branch 17 at the time of the report's submission. In its Memorandum, the OCA recommended that Judge Mantua be fined for gross incompetency and inefficiency.

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This Court concedes that there are no promulgated rules on the conduct of judicial audit. However, the absence of such rules should not serve as license to recommend the imposition of penalties to retired judges who, during their incumbency, were never given a chance to explain the circumstances behind the results of the judicial audit. Judicial audit reports and the memoranda which follow them should state not only recommended penalties and plans of action for the violations of audited courts, but also give commendations when they are due. To avoid similar scenarios, manual judicial audits may be conducted at least six months before a judge's compulsory retirement. **We recognize that effective monitoring of a judge's observance of the time limits required in the disposition of cases is hampered by limited resources. These limitations, however, should not be used to violate Judge Mantua's right to due process.**¹⁴ (Boldfacing supplied)

¹³ A.M. No. RTJ-11-2291, 8 February 2012, 665 SCRA 253.

¹⁴ Id. at 261-265.

In order for the Court to acquire jurisdiction over an administrative case, the complaint must be filed during the incumbency of the respondent. Once jurisdiction is acquired, it is not lost by reason of respondent's cessation from office. In *Office of the Court Administrator v. Judge Hamoy*,¹⁵ the Court held that:

Respondent's cessation from office x x x does not warrant the dismissal of the administrative complaint filed against him while he was still in the service nor does it render said administrative case moot and academic. The Court's jurisdiction at the time of the filing of the administrative complaint is not lost by the mere fact that the respondent had ceased in office during the pendency of the case.¹⁶

In the present case, Judge Grageda's compulsory retirement divested the OCA of its right to institute a new administrative case against him **after** his compulsory retirement. The Court can no longer acquire administrative jurisdiction over Judge Grageda by filing a new administrative case against him after he has ceased to be a public official. The remedy, if necessary, is to file the appropriate civil or criminal case against Judge Grageda for the alleged transgression. In *Office of the Ombudsman v. Andutan, Jr.*,¹⁷ the Court held that:

Although the Ombudsman is not precluded by Section 20(5) of R.A. 6770 from conducting the investigation, **the Ombudsman can no longer institute an administrative case against Andutan because the latter was not a public servant at the time the case was filed.**

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x x x We disagree with the Ombudsman's interpretation that 'as long as the breach of conduct was committed while the public official or employee was still in service a public servant's resignation is not a bar to his administrative investigation, prosecution and adjudication.' If we agree with this interpretation, any official — even if he has been separated from the service for a long time — may still be subject to the disciplinary authority of his superiors, *ad infinitum*. We believe that this interpretation is inconsistent with the principal motivation of the law — which is to improve public service and to preserve the public's faith and confidence in the government, and not the punishment of the public official concerned. Likewise, **if the act committed by the public official is indeed inimical to the interests of the State, other legal mechanisms are available to redress the same.**

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Lastly, **the State is not without remedy against Andutan or any public official who committed violations while in office, but had**

¹⁵ 489 Phil. 296 (2005).

¹⁶ Id. at 301.

¹⁷ G.R. No. 164679, 27 July 2011, 654 SCRA 539.

already resigned or retired therefrom. Under the ‘threefold liability rule,’ the wrongful acts or omissions of a public officer may give rise to civil, criminal and administrative liability. Even if the Ombudsman may no longer file an administrative case against a public official who has already resigned or retired, the Ombudsman may still file criminal and civil cases to vindicate Andutan’s alleged transgressions.¹⁸ (Boldfacing supplied)

Moreover, aside from the bare allegation in Atty. Labustro-Garcia’s 7 May 2009 letter that, “The presiding judge merely told me that I am not liable for those lost items,” there is no other proof that Judge Grageda violated any Supreme Court rule, directive, or circular. In fact, in its 18 April 2012 memorandum, the OCA found that, contrary to Atty. Labustro-Garcia’s allegation, there is actually no missing item. The OCA stated that, “Based on the Report dated 08 March 2010, the audit team significantly found/reported no missing or lost exhibits and/or court property thereat.”

In order to hold Judge Grageda liable, there must be substantial evidence that he committed an offense. Otherwise, the presumption is that he regularly performed his duties. In *Concerned Lawyers of Bulacan v. Villalon-Pornillos*,¹⁹ the Court held that:

The burden of substantiating the charges in an administrative proceeding against court officials and employees falls on the complainant, who must be able to prove the allegations in the complaint with substantial evidence. In the absence of evidence to the contrary, the presumption that respondent regularly performed her duties will prevail. Moreover, in the absence of cogent proof, bare allegations of misconduct cannot prevail over the presumption of regularity in the performance of official functions. In fact, an administrative complaint leveled against a judge must always be examined with a discriminating eye, for its consequential effects are, by their nature, highly penal, such that the respondent stands to face the sanction of dismissal and/or disbarment. The Court does not thus give credence to charges based on mere suspicion and speculation.²⁰

In *Go v. Judge Achas*,²¹ the Court held that, “In the absence of evidence to the contrary, the presumption that the respondent has regularly performed his duties will prevail. Even in administrative cases, if a court employee or magistrate is to be disciplined for a grave offense, the evidence against him should be competent.”²²

WHEREFORE, the complaint against Judge Jesus L. Grageda is **DISMISSED**. The Financial Management Office of the Office of the Court Administrator is **DIRECTED** to release the retirement pay and other

¹⁸ Id. at 549-557.

¹⁹ A.M. No. RTJ-09-2183, 7 July 2009, 592 SCRA 36.

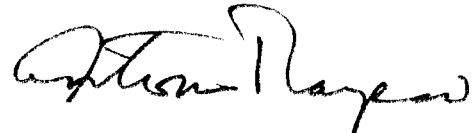
²⁰ Id. at 50-51.

²¹ 493 Phil. 343 (2005).

²² Id. at 349.

benefits due Judge Grageda unless withheld for some other lawful cause.

SO ORDERED.



ANTONIO T. CARPIO
Associate Justice

WE CONCUR:



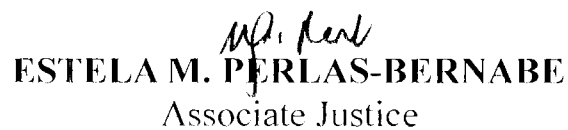
MARIANO C. DEL CASTILLO
Associate Justice



JOSE PORTUGAL PEREZ
Associate Justice



JOSE C. MENDOZA
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice