

EN BANC

[A.M. No. P-16-3530 [Formerly A.M. No. 16-08-306-RTC], March 06, 2018]

**HON. JOSEPHINE ZARATE-FERNANDEZ, EXECUTIVE JUDGE AND
PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH
76, SAN MATEO, RIZAL, COMPLAINANT, VS. RAINIER M.
LOVENDINO, COURT AIDE OF THE REGIONAL TRIAL COURT,
BRANCH 76, SAN MATEO, RIZAL, RESPONDENT.**

DECISION

PER CURIAM:

Before this Court is the Letter-Complaint^[1] dated August 15, 2016, filed by Hon. Josephine Zarate-Fernandez (*complainant*), Executive Judge and Presiding Judge of the Regional Trial Court, Branch 76 of San Mateo, Rizal (*RTC*) against Rainier M. Lovendino (*respondent*), Court Aide of the same court, before the Office of the Court Administrator (*OCA*), for the unlawful taking of drug specimens stored in the court's vault.

The Antecedents

Complainant alleged that in the case of *People v. Jonathan Ursaga* docketed as Crim. Case No. 12817-12818, pending before the RTC, for violation of Sections 5 and 11 of Republic Act (R.A.) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*, the presentation of the prosecution's evidence was re-opened upon a motion filed by the prosecution to allow its witness P02 Ruel Romanillos to testify and identify several drug specimens. During the hearing, the RTC ordered that the specimens be brought out for identification.

In spite of a diligent and prolonged search by Pamela Cantara (*Cantara*), Clerk-In-Charge for Criminal Cases and court appointed evidence custodian, she could not find the said specimens. Cantara was the custodian of the vault where the evidences of the criminal cases were stored. As such, she keeps the key to the padlock of the vault. Cantara then searched the box supposedly containing the envelope where the specimens of the case was placed and noticed that the envelopes were in disarray and were no longer filed in the previously arranged order.

Due to the unusual condition of the envelopes, Cantara began opening each one and she discovered that they no longer contain the specimens consisting of *shabu* and marijuana in numerous cases. Based on the Inventory List^[2] prepared by Cantara, twenty (21) cases before the RTC had missing drug specimens and were apparently stolen. Complainant immediately sought the assistance of the Philippine National Police San Mateo (*PNP San Mateo*), as well as the Scene of the Crime Operatives (*SOCO*) stationed in Tikling, Taytay, Rizal.

Complainant alleged that she is convinced that respondent was responsible for the unlawful taking of the illegal drugs stored in the vault. She explained that respondent, as court aide, cleans the area of the RTC and was the only one who fixes the court records stored at the bodega located at the ground floor of the San Mateo Hall of Justice. During the court disposal month in July 2016, respondent became more familiar with the status of the cases as he was the one in-charge of arranging the records at the storage area. Notably, most of the cases with the missing specimens were already decided by the court.

Complainant added that respondent had a key to her chambers where he could access the courtroom and the vault of the court. She averred that respondent could have taken the missing specimens by rigging the padlock of the vault after office hours when there was no staff left in the courtroom. Complainant underscored that only respondent had access to the courtroom during the weekend because he was in-charge of cleaning the room.

Complainant also mentioned that respondent is included in the List^[3] of the Barangay Anti-Drug Abuse Council (BADAC) as a pusher and user of illegal drugs; that he had been previously indicted for the crime of frustrated homicide^[4] but eventually settled with the victim by payment of the civil aspect; that a certain Estellita Manec filed a case of robbery-extortion against respondent when the latter, while armed with a gun and misrepresenting himself as a police officer, barged inside her residence demanding the amount of P6,000.00; and that a certain Jong confessed to a police officer that respondent also stole .38 caliber revolvers from the court's vault, which the latter intended to sell.

Complainant emphasized that respondent is a highly dangerous man who even carried a gun while reporting for work. She added that after the discovery of the unlawful taking of the drugs, respondent had stopped reporting for duty. He also refused to make known his whereabouts as his family hurriedly left the house he was renting. Complainant concluded that respondent could have fled to avoid criminal prosecution. Attached in the letter-complaint are the Sworn Statements^[5] of Joni Año and Meliber Belarmino, Court Stenographer and Clerk-In-Charge of Civil Cases, respectively, of the RTC.

In a Supplemental Letter^[6] dated August 19, 2016, complainant informed the OCA that respondent was arrested in an entrapment operation conducted by the PNP San Mateo. It was reported therein that on August 16, 2016, around 7:00 o'clock in the afternoon, respondent was caught selling a .38 caliber Smith and Wesson revolver without a serial number. Also confiscated from him were four (4) pieces of .38 caliber live ammunition and seven (7) pieces of small transparent plastic sachets containing white crystalline substance suspected to be *shabu*. It was later found that the revolver was one of the missing exhibits in Criminal Case No. 15108, entitled *People v. Dave Narag y Laor*, pending before the RTC.

Complainant further informed the OCA that she and her staff discovered that some cash and pieces of jewelry submitted before the court as evidence in other criminal cases were likewise missing. She stated they were still in the process of conducting an inventory of the evidence submitted in the other criminal cases. She prayed that respondent be immediately dropped from the service not only because of his act of stealing court exhibits but also because he received two (2) consecutive

"Unsatisfactory" ratings for the period July to December 2015 and January to July 2016. According to complainant, respondent is currently detained at the San Mateo Police Station.

The OCA Report and Recommendation

In its Memorandum^[7] dated August 22, 2016, the OCA found that there exists a strong *prima facie* case for Grave Misconduct, Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service against respondent. It held that the loss of the court exhibits consisting of *shabu* and marijuana had been properly documented through the inventory list of missing pieces of evidence and that the letter-complaint stated that respondent had access to these exhibits.

The OCA also highlighted that respondent had involvement in illegal drugs and was caught in possession of a firearm that was stolen from the RTC, along with live ammunition and white crystalline substance suspected to be *shabu*. It opined that respondent's failure to report for work after the discovery of the loss of exhibits and his sudden transfer of dwelling are indicia of his guilt. The OCA recommended that the letter-complaint be considered as a formal complaint against respondent; that the matter be redocketed as a regular administrative matter; that respondent be investigated; and that he be preventively suspended, without pay and other benefits, until further order from the Court. The recommendation of the OCA was adopted by the Court in its Resolution^[8] dated August 23, 2016.

In its Memorandum^[9] dated May 8, 2017, the OCA found that despite receipt of the two (2) directives to file his comment, respondent still failed to comply. It emphasized that non-compliance with its directive tantamount to insubordination to the Court itself. The OCA recommended that respondent be required to show cause why he should not be administratively dealt with for failure to submit his comment despite its two (2) directives and to submit the required comment within ten (10) days from receipt of notice. In its Resolution^[10] dated August 1, 2017, the Court adopted the recommendation of the OCA.

In its Memorandum^[11] dated September 15, 2017, the OCA informed the Court regarding the status of the different cases filed against respondent. Criminal Case No. 13262, entitled *People v. Marlyn Pocabo and Rainier Lovendino*, for frustrated homicide was provisionally dismissed; in Criminal Case Nos. 18094-16 to 18096-16, entitled *People v. Rainier Lovendino*, for violation of R.A. No. 10591, Sec. 11 of R.A. No. 9165, and qualified theft, the pre-trial conference was reset to September 6, 2017 because respondent had no counsel; and in Criminal Case No. 10294-016, entitled *People v. Rainier Lovendino*, for resistance and disobedience upon an agent of a person in authority, the Municipal Trial Court of Rodriguez, Rizal found that respondent had already served the maximum imposable penalty of the offense.

The OCA also stated that at present, respondent is detained at the San Mateo Municipal Jail due to the pending criminal cases relative to the stolen exhibits in the RTC.^[12]

In its Memorandum^[13] dated January 15, 2018, the Clerk of Court *En Banc* reported that the Court's resolution dated August 1, 2017 addressed to respondent was

personally received on August 30, 2017 per attached proof of service. However, respondent has yet to file his comment as required by the said resolution.

In its Resolution^[14] dated January 16, 2018, in view of respondent's failure to file comment, the Court resolved to consider as waived the right of respondent to file a comment on the complaint.

The Court's Ruling

The Court finds respondent administratively guilty of grave misconduct, serious dishonesty, conduct prejudicial to the best interest of the service and insubordination.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment.^[15]

The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established 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.^[16] 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.^[17]

Dishonesty, on the other hand, is the disposition to lie, cheat, deceive, defraud, or betray; unworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness.^[18] It is a malevolent act that makes people unfit to serve the Judiciary.

Conduct prejudicial to the best interest of service pertains to any conduct that is detrimental or derogatory or naturally or probably bringing about a wrong result; it 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.^[19]

Insubordination, meanwhile, 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.^[20]

In this case, complainant and her staff duly established in the inventory list that the drug specimens stored in the vault of the RTC were missing. An examination of the envelopes containing the evidence in the criminal cases showed that the drug exhibits of *shabu* and marijuana were gone. As properly alleged by complainant, the theft of the said pieces of evidence could only be perpetrated after office hours when all the staff have left the courtroom. Notably, it was only respondent as court aide, who had access to the courtroom, where the vault is located, after office hours and during the weekends. It is beyond cavil that respondent could easily enter the