

## EN BANC

**[ A.M. No. P-16-3527 (Formerly OCA IPI No. 12-3987-P), November 21, 2017 ]**

**ATTY. RENATO E. FRADES, CLERK OF COURT VI, REGIONAL TRIAL COURT, GAPAN CITY, NUEVA ECIJA, COMPLAINANT, V. JOSEPHINE A. GABRIEL, CLERK III, OFFICE OF THE CLERK OF COURT, REGIONAL TRIAL COURT, GAPAN CITY, NUEVA ECIJA, RESPONDENT.**

### DECISION

#### PER CURIAM:

For resolution is the complaint<sup>[1]</sup> dated October 25, 2012 filed by Atty. Renato E. Frades (Frades), Clerk of Court VI, in the Office of the Clerk of Court (OCC), Regional Trial Court (RTC), Gapan City, Nueva Ecija, against Ms. Josephine A. Gabriel (Gabriel), Clerk III, in the OCC, RTC, Gapan City, Nueva Ecija, for grave misconduct, dishonesty, gross insubordination, abandonment of work and conduct prejudicial to the best interest of the service.

Frades averred that Gabriel, as Cash Clerk, failed to remit payments made to the Sheriffs Trust Fund from September 2009 up to an unspecified date in 2010.<sup>[2]</sup> Frades discovered the omission after Atty. Gilda A. Sumpo, Chief Judicial Staff Officer of the Accounting Division of the Office of the Court Administrator (OCA), Supreme Court, sent a letter addressed to Frades, requesting their office to furnish the OCA a copy of the Statement of Unwithdrawn Sheriffs Trust Fund for reconciliation process.<sup>[3]</sup> Frades alleged that Gabriel admitted to him that she failed to remit the payments made to the Sheriff's Trust Fund for a year because that was what her co employee taught her.<sup>[4]</sup> Frades thereafter verbally instructed Gabriel to submit copies of the report of Unwithdrawn Sheriff Trust Fund within seven (7) days.<sup>[5]</sup> However, instead of complying with the said verbal order, Gabriel was absent from May 15 to 18, 21, 24, 25 and 28, 2012, without filing an application for leave.<sup>[6]</sup>

Frades asserted that it has been the practice of Gabriel, even during the time of her former superior, Atty. Hermenegildo M. Linsangan, Frades' predecessor, in excluding her Daily Time Records (DTRs) from those transmitted to the OCA, in order to manipulate some of her absences, made without the appropriate application for leave.<sup>[7]</sup> This matter was the subject of Memorandum Order No. 01-2001 dated January 26, 2001 issued by Atty. Linsangan against Gabriel. Years later, the co-employees of Gabriel also confirmed Gabriel's practice of excluding her DTRs from those transmitted to the OCA.<sup>[8]</sup>

Frades further stated that Gabriel attended the National Convention of Philippine Association of Court Employees (PACE) held in Puerto Princesa City, Palawan from May 8-12, 2012, without the corresponding travel order. He added that Gabriel used

a falsified identification card, making it appear that she was a certain Lea<sup>[9]</sup> De Guzman (De Guzman), in order to use De Guzman's plane ticket to board the plane.<sup>[10]</sup>

Frades further alleged that while he was on leave on September 10, 2012, Gabriel distributed the checks for the salaries and allowances of court personnel of RTC-Branches 34, 36, 87 and OCC, Gapan City in violation of OCA Circular No. 15-1997-A dated April 24, 1997 and Memorandum Circular on Administrative Supervision of Courts dated May 5, 1998.<sup>[11]</sup>

Frades thereafter issued Office Memorandum No. 01-12 dated September 11, 2012, directing Gabriel to explain why no disciplinary action should be taken against her for opening and distributing the envelope containing checks for salaries and allowances of Judges and Court personnel without proper authority.<sup>[12]</sup>

Frades likewise claimed that Gabriel was known to the court as a money lender for "5-6".<sup>[13]</sup> Her practice is to withhold the checks belonging to employees who borrow money from her.<sup>[14]</sup> Freddie F. Fernando, a process server in RTC-Branch 87, disclosed to Frades that in 2006, he borrowed fifteen thousand pesos (P15,000.00) from Gabriel.<sup>[15]</sup> They agreed that Fernando will pay his debt by giving to Gabriel his salary check for the first fifteen (15) days of every month.<sup>[16]</sup> On one occasion, Fernando asked Gabriel to spare his incoming salary check because he had prior financial problems to be settled first.<sup>[17]</sup> Notwithstanding his request, Gabriel withheld his check and tried to encash the same, prompting Fernando to personally ask the manager of Land Bank not to encash his check.<sup>[18]</sup>

Frades also recounted different instances<sup>[19]</sup> showing Gabriel's attitude problem and her inability to work harmoniously with her co-employees. Frades further averred that Gabriel was usually not in the office to perform her duty to docket criminal cases as she was always at RTC-Branch 87 and at the Municipal Trial Court in Cities (MTCC), Gapan City, Nueva Ecija, for no valid reason, and without even asking permission from Frades.<sup>[20]</sup> When asked what she was doing in the said offices, Gabriel arrogantly replied, "*Wala, nag-aaral mag-steno at saka nagpapaalam naman ako kay Noli*".<sup>[21]</sup> According to Frades, Gabriel was referring to Noli Garcia, the utility worker assigned to their office.<sup>[22]</sup> Gabriel never informed Frades, her superior, whenever she would take a leave of absence from work.<sup>[23]</sup>

Lastly, Frades reported that Gabriel hid a tape recorder on her table in their office for the purpose of recording the communication of her co-employees while she was away, in violation of Republic Act No. 4200, otherwise known as the Anti-Wire Tapping Act.<sup>[24]</sup>

Acting on the instant complaint, the OCA, in an Indorsement<sup>[25]</sup> dated November 6, 2012, directed Gabriel to file her Comment on the instant complaint.

#### Counter-Affidavit of Gabriel

In lieu of a Comment, Gabriel filed her Counter-Affidavit<sup>[26]</sup> dated January 7, 2013, wherein she denied failing to deposit payments for the Sheriffs Trust Fund, explaining that, in addition to her regular duties as Clerk III, she was designated as Cash Clerk to handle the Sheriff's Trust Fund account from September 2009 to

December 2011.<sup>[27]</sup> She asserted that she regularly and periodically deposited the fund to the Land Bank of the Philippines (Land Bank) under account number 1531-1013-12,<sup>[28]</sup> submitting, as proof thereof, copies of the Monthly Report of Collections of the Sheriff's Trust Fund from September 2009 to December 2011, containing the following: (1) cover letter signed by Frades himself; (2) monthly report of collections and withdrawals; and (3) cash deposit slips of Land Bank.<sup>[29]</sup> Gabriel claimed that these deposit slips prove that she regularly deposited the fund.<sup>[30]</sup> She added that having a background in accounting she also maintained a ledger book where she entered and recorded all the transactions she made in the Sheriff's Trust Fund.<sup>[31]</sup>

Gabriel also denied that her absences in May 2012 were without official leave. She averred that she was "*on official business*" from May 8 to 11, 2012 as she attended the PACE Convention in Puerto Princesa City, Palawan.<sup>[32]</sup> On May 17, 18, 21 and 28, 2012, she claimed that she was on "*official leave from work*" due to a medical check-up.<sup>[33]</sup> Gabriel asserted that her applications for leave on the above-mentioned dates were granted and approved by then Executive Judge Celso O. Baguio.<sup>[34]</sup>

Gabriel further denied that she failed to submit her DTRs for March, April and May 2012. She insisted that she submitted her DTRs for the said months to the OCC, RTC, Gapan City, Nueva Ecija. <sup>[35]</sup> She pointed out that she had no obligation to submit another copy of her DTR to the Leave Section, OCA because the responsibility of submitting a copy of her DTR is with the proper liaison officer of the OCC.<sup>[36]</sup>

Gabriel likewise denied impersonating De Guzman in order to use her plane ticket to Palawan to attend the PACE Convention. She claimed that such allegation is mere hearsay and not even supported by personal knowledge and documentary evidence.<sup>[37]</sup>

Gabriel explained that she opened the envelope containing the checks for the salaries and allowances of court employees for September 2012 and distributed them to the employees because, on September 10, 2012, almost half of the employees of the OCC, RTC, Gapan City, Nueva Ecija, including Frades, were on leave.<sup>[38]</sup> As a regular practice of the employees in their office, she took it upon herself to open and distribute the checks contained therein.<sup>[39]</sup>

Denying her alleged quarrelsome attitude, Gabriel maintained that such allegations were designed merely to harass her.<sup>[40]</sup> She posited that her conflicts with her co-employees should be best resolved by the Grievance Committee and should not have ripened into actual administrative proceedings, as in this case.<sup>[41]</sup>

In a Report<sup>[42]</sup> dated April 7, 2014, the OCA recommended that the instant administrative complaint against Gabriel be referred to Executive Judge Cielitolindo A. Luyun, RTC, Gapan City, Nueva Ecija, for investigation, report and recommendation within sixty (60) days from receipt of the records.<sup>[43]</sup> The said recommendation was adopted in a Resolution<sup>[44]</sup> dated July 2, 2014 by the First Division of this Court.

In view of the disability retirement of Executive Judge Luyun effective November 1, 2014, the instant administrative complaint was then referred to Vice Executive Judge Mildred V. Hernal (Investigating Judge Hernal), RTC, Gapan City, Nueva Ecija, for investigation, report and recommendation, pursuant to Resolution<sup>[45]</sup> dated February 25, 2015 issued by the Third Division of this Court.

During the preliminary conference before Investigating Judge Hernal, Frades manifested that he is withdrawing his complaint, averring that Gabriel has already reformed; the witnesses are no longer interested to testify; and some of the original copies of his supporting documents could no longer be found.<sup>[46]</sup> Notwithstanding Frades' plea to have the case dismissed, Investigating Judge Hernal proceeded with the investigation.<sup>[47]</sup>

#### Investigation Report dated July 1, 2015 by Investigating Judge Hernal

In the Investigation Report<sup>[48]</sup> dated July 1, 2015, Investigating Judge Hernal ruled that Gabriel satisfactorily explained her side in all the charges except in issues pertaining to her money lending activities and engaging in quarrels.<sup>[49]</sup>

Investigating Judge Hernal found that Gabriel extended loans and earned not only interest (could be considered usurious at 5% monthly interest) but enemies as well.<sup>[50]</sup> The quarrels and disputes with co-employees and her superior (the private complainant) stemmed from issues of indebtedness.<sup>[51]</sup>

Based on the accounts of witnesses, Investigating Judge Hernal found that Gabriel's rude and humiliating words and comments against her co-employees can be considered misconduct and conduct prejudicial to the best interest of the service.<sup>[52]</sup>

Gabriel's lack of respect to Frades was also manifest.<sup>[53]</sup> The disrespect or contempt was probably a result of the availment of loan by Frades from Gabriel.<sup>[54]</sup>

It was also found that both Frades and Gabriel failed to observe the Civil Service Rule on borrowing and lending money between superior and subordinate.<sup>[55]</sup> Under the said Rule, "[b]orrowing money by superior officers from subordinates or lending by subordinates to superior officers" is prohibited and may subject them both to disciplinary action.<sup>[56]</sup>

Based on the foregoing findings, Investigating Judge Hernal recommended that Gabriel be suspended for a period of thirty (30) days.<sup>[57]</sup>

#### OCA Report and Recommendation

In a Report<sup>[58]</sup> dated April 11, 2016, the OCA recommended the following: (a) the instant administrative complaint against Josephine Gabriel, Clerk III, OCC, RTC, Gapan City, Nueva Ecija, be re-docketed as a regular administrative matter; and (b) Gabriel be found guilty of serious dishonesty, loafing from duty during regular office hours, conduct prejudicial to the best interest of the service, lending money at usurious rates of interest, lending money to a superior officer, insubordination and violation of the reasonable office rules and regulations, and be dismissed from the service with forfeiture of retirement benefits, except accrued leave credits, and with prejudice to re-employment in the government service, including government-owned or -controlled corporations.<sup>[59]</sup>

The OCA found good reason to administratively charge Gabriel with conduct prejudicial to the best interest of the service, loafing during regular office hours, violation of reasonable office rules and regulations, simple misconduct and insubordination.<sup>[60]</sup>

*First.* On the issue of non-deposit of collections of the Sheriff's Trust Fund, Frades failed to substantiate his allegation.<sup>[61]</sup> To the contrary, Gabriel was able to present countervailing documents that she was not remiss in her duty.<sup>[62]</sup> As an accountable officer, she affirmed the veracity of her monthly reports and presented deposit slips relative to the deposit of her collections of the Sheriff's Trust Fund.<sup>[63]</sup>

*Second.* On the issue of non-submission or late submission of her DTR, Frades also failed to provide evidence to prove his allegation.<sup>[64]</sup> In fact, witness Jocelyn Pangilinan stated that there was never an instance when the salaries of the trial court's employees were withheld by the Court as a consequence of the late or non-submission of Gabriel's DTRs.<sup>[65]</sup> This would negate the allegation that Gabriel failed or belatedly submitted her DTRs to the Court.<sup>[66]</sup>

*Third.* On the issue of attending the PACE Convention without travel order and impersonating De Guzman, the OCA gave credence to the explanation of witness Roque that it is not necessary that an employee must first secure a travel authority in order to attend the PACE Convention.<sup>[67]</sup>

The OCA was however not convinced that Gabriel did not impersonate De Guzman when she used the latter's roundtrip ticket between Manila and Puerto Princesa.<sup>[68]</sup> If indeed Gabriel legally bought the airline reservation of De Guzman, as approved by the airline company, she should have a new printed boarding pass that is under her name.<sup>[69]</sup> In fact, it is of common knowledge and the strict practice of all airline companies that before a passenger can be allowed to board an airplane, a valid identification card should be first presented for comparison with the name in the boarding pass and/or itinerary.<sup>[70]</sup> Indeed, it taxes one's credulity on how Gabriel was able to travel to Palawan using the itinerary and boarding pass of De Guzman.<sup>[71]</sup> This could only have been accomplished through Gabriel's illegal impersonation of De Guzman.<sup>[72]</sup>

*Fourth.* On the issue of acceptance of the envelope and distribution of the checks/salaries of employees without authority, the OCA found Gabriel administratively liable for violating reasonable office rules and regulations.<sup>[73]</sup> While the acceptance by Gabriel of the envelope containing the checks can be justified due to the absence of most of the employees at the OCC, RTC, including Frades, nevertheless, the distribution of the checks was done by Gabriel without authority, in violation of the reasonable office rules and regulations.<sup>[74]</sup>

Under OCA Circular No. 15-1997-A, it is the Executive Judge, upon recommendation of the OCC-Clerk of Court, being the bonded officer, who shall designate a liaison officer who shall be authorized to receive the checks.<sup>[75]</sup> The Clerks of Court are accountable for every check/salary to be distributed to the employees and they shall immediately return all unclaimed checks to the Check Disbursement Division, OCA, stating the reason for their return.<sup>[76]</sup> Despite the fact that no checks were lost, the