

SECOND DIVISION

[A.M. No. 10-2-41-RTC, February 27, 2013]

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

RESOLUTION

CARPIO, J.:

This administrative case arose from a letter^[1] 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 receipt^[2] 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 letter^[3] 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 attend an investigation scheduled on 27 March 2009.

Atty. Labustro-Garcia sent a letter^[4] 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 letter^[5] 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 memorandum^[7] 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 July^[8] and 30 September^[9] 2009 letters, respectively.

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 memorandum^[11] 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 P20,000.

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.

x x x x

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