

SECOND DIVISION

[A.M. No. P-04-1901 (Formerly OCA-IPI No. 00-1019-P), November 23, 2004]

JUDGE TEODORO L. DIPOLOG, COMPLAINANT, VS. CLERK OF COURT II DARRYL C. MONTEALTO, COURT INTERPRETER I PEDRO RIO G. BATION, COURT STENOGRAPHER I FE O. PAO, COURT STENOGRAPHER I BRILLO B. PORTACION, CLERK II PHEBE A. VELEZ, JUNIOR PROCESS SERVER CESARIO E. ALUMBRO, UTILITY WORKER I ZALDY V. PAMATONG, RESPONDENTS.

D E C I S I O N

TINGA, J,:

This administrative matter arose from a Memorandum dated July 4, 2000 issued by respondent Darryl C. Montealto (Montealto), Clerk of Court II of the 2nd Municipal Circuit Trial Court (MCTC) of Sapang Dalaga-Concepcion, Misamis Occidental to the personnel of said court regarding their failure to accomplish Daily Time Records (DTRs) on time and/or falsification thereof and non-observance of prescribed office hours.^[1]

In view of the gravity of the allegations in the *Memorandum*, Judge Paulino L. Conol, Jr. (Judge Conol), then Executive Judge of the Regional Trial Court (RTC), Calamba, Misamis Occidental, indorsed the same to Acting Presiding Judge Teodoro L. Dipolog (Judge Dipolog) for investigation.^[2]

After investigating the matter, Judge Dipolog issued a *Resolution* dated August 28, 2000, stating that Montealto issued the *Memorandum* as a reminder to the court personnel concerned; that after the issuance thereof, the MCTC personnel started observing punctuality; and that the irregularities referred to by Montealto in the *Memorandum* may have been a product of differences between himself and the employees concerned. Since the averments in the *Memorandum* were not supported by substantial evidence, and the DTRs in question were certified to be correct by Montealto himself, Judge Dipolog deemed it unnecessary to investigate the matter further. Judge Dipolog, however, recommended that Montealto and the other respondents, namely: Court Interpreter I Pedro Rio G. Bation (Bation), Court Stenographer I Fe O. Pao (Pao), Court Stenographer I Brillo B. Portacion (Portacion), Clerk II Phebe A. Velez (Velez), Junior Process Server Cesario E. Alumbro (Alumbro) and Utility Worker I Zaldy V. Pamatong (Pamatong) be reprimanded for having failed to maintain a harmonious relationship among the employees in the MCTC.^[3]

In their *Joint Comment* dated May 4, 2001, respondents Bation, Pao, Alumbro, Portacion, Velez and Pamatong generally agreed with the findings of Judge Dipolog in his August 28, 2000 *Resolution*. They averred that there was no longer any need to reprimand Montealto because they had already settled their differences with him.

[4]

Montealto filed a separate comment. In his letter dated May 4, 2001, he argued that he should not be named a respondent to the case because he was not a party to the falsification of the DTRs. According to Montealto, he did not intend his *Memorandum* to be an administrative complaint against the other respondents, although he would not hesitate to file charges against them in the future should the other respondents commit similar offenses in the future.[5]

On March 13, 2002, the Court, adopting the recommendation of the Office of the Court Administrator (OCA), issued a *Resolution* referring the matter to then Executive Judge Paulino L. Conol, Jr. (Judge Conol) for investigation, report and recommendation in view of the gravity of the offenses alleged by Montealto and the possibility of collusion among the other respondents.[6]

In view of the retirement of Judge Conol on November 9, 2002, Ms. Vivian I. Berioso, Officer-in-Charge and Court Stenographer III, requested that another RTC Judge from Oroquieta City be assigned to investigate the matter. Thus, on January 22, 2003, the Court issued another *Resolution* referring the case for investigation to Executive Judge Ma. Nimfa Penaco-Sitaca (Judge Sitaca) of the RTC, Branch 13, Oroquieta City.

In her Report dated June 30, 2003, Judge Sitaca observed that none of the respondents denied the charges made by Montealto in his July 4, 2000 *Memorandum*. They merely offered excuses for their absences on the dates when Judge Conol visited their branch and did not see them in the office.[7] They also explained that Montealto issued the *Memorandum* because he had personal differences with some of them.[8]

Judge Sitaca found that Pao, Alumbro, Portacion, Velez and Pamatong have, for over a period of four years,[9] repeatedly committed the acts mentioned by Montealto in his July 4, 2000 *Memorandum*, i.e., failure to fill out DTRs daily, failure to observe office hours, and accomplishing their DTRs for each month without indicating the days when they were absent during that period. The investigating judge also found that there was no record of the frequency with which the aforementioned respondents committed the acts. It was further stated by Judge Sitaca that Montealto lacked the courage to discipline the erring employees of the MCTC and that he would not have written the *Memorandum* had Judge Conol not demanded him to issue a written admonition to the employees. Thereafter, although Montealto issued the *Memorandum*, he tried to downgrade respondents' liability by saying that they committed the acts mentioned in the *Memorandum* "only once a month." He also certified to the correctness of respondents' DTRs even though he knew that they did not indicate their absences therein.[10]

Judge Sitaca recommended that Montealto be reprimanded for not having the courage to require the erring MCTC employees to indicate true and correct entries in their DTRs and for certifying to the correctness of their falsified DTRs; that respondents Pao, Portacion, Velez, Alumbro and Pamatong be dismissed from the service and that Bation be exculpated.[11]

In its *Memorandum* dated January 16, 2004, the OCA, citing the findings of Judge Sitaca, recommended that Montealto, Pao, Portacion, Velez, Alumbro and Pamatong be held liable for gross neglect of duty and be meted the penalty of suspension for six (6) months and one (1) day without pay with a stern warning that a repetition of the same or the commission of similar acts will be dealt with more severely. It also recommended that the complaint against respondent Bation be dismissed for lack of merit.^[12]

According to the OCA, by turning a blind eye to the dishonesty of Pao, Portacion, Velez, Alumbro and Pamatong and their falsification of the DTRs, Montealto in effect cooperated in their commission of the offenses. His issuance of the July 4, 2000 *Memorandum* cannot exonerate him because he did not issue said memorandum out of his own initiative. He was compelled to make such issuance by Judge Conol who made several surprise visits to the MCTC and discovered during those instances that Pao, Portacion, Velez, Alumbro and Pamatong were either loafing or frequently out of the office during office hours.^[13] Moreover, Montealto was remiss in his duty of keeping a reliable record of attendance of all officials and employees of the MCTC.^[14]

With respect to Pao, Portacion, Velez, Alumbro and Pamatong, the OCA noted that they made superficial denials regarding the charges against them and that their respective answers during the investigation were flimsy and not responsive. They failed to refute the charges against them in Montealto's July 4, 2000 *Memorandum*.

The OCA added that although the acts of dishonesty and falsification of Pao, Portacion, Velez, Alumbro and Pamatong are grave offenses which carry the penalty of dismissal, it recommended that the fact that they have never been administratively charged be considered as a mitigating circumstance pursuant to Section 53 of the Civil Service Commission Revised Uniform Rules on Administrative Cases (CSC Revised Uniform Rules) and that the penalty next lower to dismissal, i.e., suspension for six (6) months and one (1) day to one (1) year be imposed upon them.^[15]

The record supports the findings of Judge Sitaca and the OCA that respondents Pao, Portacion, Velez, Alumbro and Pamatong did not specifically deny the charges that they failed to comply with the requirement that they fill out their respective DTRs upon arrival at, and departure from, the office; that they were frequently out of the office during office hours and that they falsified their entries in their DTRs.^[16] Moreover, they failed to satisfactorily explain their disappearance from their respective work stations during the three instances when Judge Conol made surprise visits to the MCTC and saw for himself that the said respondents were not in the office. Their acts of loafing during official hours and incurring frequent unauthorized absences are penalized under the CSC Revised Uniform Rules with suspension for six (6) months and one (1) day to one (1) year for the first offense and with dismissal for the second offense.^[17]

Judge Sitaca and the OCA also found that Pao, Portacion, Velez, Alumbro and Pamatong also made false entries in their DTRs by indicating therein that they were present at work when in fact they were somewhere else. Unfortunately, the logbooks of the MCTC from 1996 to July 4, 2000 are not properly accomplished and therefore cannot establish which particular entries in the DTRs of the

aforementioned respondents are false. his notwithstanding, said respondents may still be held administratively liable for their acts of falsification which they did not deny nor disprove during the investigation conducted by Judge Sitaca on June 23, 2003 and in their Joint Comment dated May 4, 2001. It was established by substantial evidence that Judge Conol saw that they were not at their respective work stations during his three surprise visits to the MCTC and that because of their frequent loafing, Judge Conol directed Montealto to issue the July 4, 2000 *Memorandum* to call their attention to their transgressions.^[18] Their absence from the office, even for a few hours in one day, is certainly inconsistent with their declaration in their DTRs that they were present at work during those hours. Such declarations in the DTR undeniably amount to acts of falsification.

Falsification of an official document such as the DTR is considered a grave offense under the CSC Revised Uniform Rules and is penalized with dismissal for the first offense.^[19] It is also punishable as a criminal offense under Article 171 of the Revised Penal Code.

The Court has repeatedly held that everyone in the judiciary, from the presiding judge to the clerk, must always be beyond reproach and must be circumscribed with the heavy burden of responsibility as to let them be free of any suspicion that may taint the judiciary.^[20] As the Court explained in *Mirano v. Saavedra*:^[21]

Public service requires utmost integrity and strictest discipline. A public servant must exhibit at all times the highest sense of honesty and integrity. The administration of justice is a sacred task. By the very nature of their duties and responsibilities, all those involved in it must faithfully adhere to, hold inviolate, and invigorate the principle solemnly enshrined in the 1987 Constitution that a public office is a public trust; and all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency. The conduct and behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, should be circumscribed with the heavy burden of responsibility. Their conduct, at all times, must not only be characterized by propriety and decorum but, above all else, must be above suspicion. Indeed, every employee of the judiciary should be an example of integrity, uprightness and honesty.^[22]

It has also held that frequent unauthorized absences on the part of a court employee not only undermine his or her efficiency but can also adversely affect the prompt delivery of justice.^[23]

With respect to Montealto, the Court agrees with the OCA and Judge Sitaca that he cannot be exonerated from the charges against him because it was not he who made false entries in the DTRs of the other respondents. Contrary to Montealto's claim, he is liable for dishonesty because he certified to the correctness of the DTRs of the other respondents even though he knew that they were not always present as they claimed they were in their DTRs. Dishonesty is a grave offense which is penalized with dismissal under the CSC Revised Uniform Rules.^[24]

Montealto is also liable for gross neglect of duty^[25] for his failure to discipline the