



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

HON. MARLO C. BRASALES,  
Complainant,

A.M. No. P-21-024  
[Formerly OCA IPI No. 18-  
4815-P]

Present:

- versus -

PERLAS-BERNABE, S.A.J,  
*Chairperson,*  
LAZARO-JAVIER,  
M. LOPEZ,  
ROSARIO, and  
LOPEZ, J.Y.,\* JJ.

MAXIMA Z. BORJA, CLERK OF  
COURT IV, MUNICIPAL TRIAL  
COURT IN CITIES (MTCC),  
KORONADAL CITY, SOUTH  
COTABATO,

Respondent.

Promulgated:

JUN 16 2021

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DECISION

M. LOPEZ, J.:

The Court once again exercises its exclusive power of discipline and supervision over all court personnel.

J

## ANTECEDENTS

The instant case stemmed from a Memorandum<sup>1</sup> dated May 2, 2017, issued by Judge Marlo C. Brasales (Judge Brasales), Acting Presiding Judge of the Municipal Trial Court in Cities (MTCC), Koronadal City, South Cotabato. The Memorandum charged Maxima Z. Borja (Maxima), Clerk of Court IV of the same court, with Abuse of Authority and Malfeasance for approving without authority the leave of absence applications of Court Stenographer II Rachel N. Dadivas (Rachel).

On April 7, 2017, Rachel noticed that her two (2) leave applications dated March 24, 2017 and March 27, 2017 were not signed by Judge Brasales.<sup>2</sup> Thus, in order to remedy the situation and not be the reason for the possible delay in the release of the salaries of all office staff, Rachel asked Maxima to sign another set of leave applications for the month of March 2017, which the latter acceded.<sup>3</sup>

On May 2, 2017, Judge Brasales issued a Memorandum<sup>4</sup> directing Maxima to explain why she should not be administratively charged with Abuse of Authority and Malfeasance for signing Rachel's leave applications without his authority to do so. Maxima allegedly defied Judge Brasales' verbal instruction and Supreme Court Administrative Circular (A.C.) No. 08-2017, dated February 2, 2017, requiring that applications for leave of absence of lower court personnel should bear the recommendation for approval or disapproval of the Presiding Judge, or the Clerk of Court, as delegated by the Presiding Judge, in writing. On April 17, 2017, Judge Brasales indorsed the "Memorandum and Explanation of Ms. Maxima Z. Borja" to the Office of the Court Administrator (OCA) for appropriate action.<sup>5</sup>

### *The Action and Recommendation of the OCA*

In its 1<sup>st</sup> Indorsement<sup>6</sup> dated July 31, 2017, the OCA directed Maxima to submit her comment within ten (10) days from receipt thereof.

In her comment,<sup>7</sup> Maxima asked for understanding and humanitarian consideration of the Court, citing the many tasks she has to perform as the Clerk of Court of a single-sala station, causing her to be forgetful at times of the limits of her authority. She claimed that she received a copy of A.C. No. 08-2017 on March 8, 2017, but she might have overlooked the circular and

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\* Designated additional member per Special Order No. 2822, dated April 7, 2021.

<sup>1</sup> *Rollo*, p. 6.

<sup>2</sup> *Id.* at 50.

<sup>3</sup> *Id.* at 65-66.

<sup>4</sup> *Id.* at 6.

<sup>5</sup> *Id.* at 9-10.

<sup>6</sup> *Id.* at 21.

<sup>7</sup> *Id.* at 55-59.



had not fully grasped the implication of the new guidelines, and the changes in the approval of applications for leave of absence when she signed Rachel's leave applications. Maxima avowed that her act of signing the applications for leave was a mere error of judgment without any intention of violating the law. She reiterated the contents of her letter<sup>8</sup> dated May 4, 2017, submitted to Judge Brasales, and highlighted that she first refused to sign the applications for leave but then acceded to the request after Rachel explained that unapproved applications for leave would delay the payment of their salaries as daily time records will not be submitted to the Court.<sup>9</sup>

On June 23, 2020, the OCA submitted to the Court its recommendation, thus:<sup>10</sup>

**RECOMMENDATION:** It is respectfully recommended for the consideration of this Honorable Court that:

1. the instant administrative complaint be **RE-DOCKETED** as a regular administrative matter; and
2. respondent Clerk of Court IV Maxima Z. Borja be found **GUILTY** of violation of reasonable office rules and regulations and be **SUSPENDED** from the service for **THIRTY (30) DAYS**, with a **STERN WARNING** that a repetition of the same or similar offense shall be dealt with more severely.<sup>11</sup> (Emphases in the original.)

The OCA found that Maxima knew that she was not authorized to sign the applications for leave since she ordered someone to bring them to Judge Brasales for signature, that initially, she refused to sign. Her fear of delay in the release of salaries did not justify her act of signing because Norala, South Cotabato is only an hour away from Maxima's station; thus, it was not difficult for her to send the applications for leave to Judge Brasales for signature. However, the OCA found no deliberate intent for Maxima to overstep her authority, and to defy Judge Brasales in accommodating Rachel. The act was a mere lapse in judgment about the appropriate action she should have taken when she discovered that the applications for leave were left unsigned by Judge Brasales. The OCA concluded that Maxima violated reasonable office rules and regulations classified under Section 50 (F) (3), Rule 10 of the 2017 Rules on Administrative Cases in the Civil Service (RACCS)<sup>12</sup> as a light offense punishable with reprimand for the first offense, suspension of one (1) day to 30 days for the second offense, and dismissal from service for the third offense.<sup>13</sup> In light of Maxima's previous offense of Simple Neglect of Duty in *In Re: Report on the Judicial and Financial Audit in MTC in Cities, Koronadal City*,<sup>14</sup> where she was fined ₱5,000.00, and directed to adopt a more efficient system of collecting docket fees and of taking care of court

<sup>8</sup> Id. at 30

<sup>9</sup> Id. at 65-66.

<sup>10</sup> Id. at 65-67.

<sup>11</sup> Id. at 67.

<sup>12</sup> Resolution No. 1701077, July 3, 2017.

<sup>13</sup> *Rollo*, p. 66.

<sup>14</sup> 496 Phil. 814 (2005).

exhibits, the OCA found the penalty of suspension for thirty (30) days, justified.

### RULING

The Court adopts the OCA's finding of guilt, but modifies the recommended penalty.

***Maxima is guilty of violation of reasonable office rules and regulations.***

A.C. No. 08-2017 is explicit that the clerk of court may approve applications for leave of absence of lower court personnel only with prior written authorization from the presiding judge. It is undisputed that Judge Brasales did not authorize Maxima to approve Rachel's leave applications. Yet, Maxima signed the two (2) leave applications, and attempted to excuse herself by blaming her duties as clerk of court, and her belated receipt of a copy of A.C. No. 08-2017.<sup>15</sup> Although Maxima only acted upon Rachel's plea for her to sign the subject applications so that their salaries will not be withheld, we cannot turn a blind eye on Maxima's infraction. We observe that the provision of A.C. No. 08-2017 on the approval process was lifted *verbatim* from Item IV of A.C. No. 08-2009<sup>16</sup> dated February 3, 2009 of this Court. Thus, even before receiving a copy of A.C. No. 08-2017, Maxima is expected to know that she cannot approve or disapprove applications for leave of absence without a written delegation from Judge Brasales. We have repeatedly held that unawareness of a circular is not an excuse for non-compliance.<sup>17</sup> Besides, a clerk of court is regarded as a role model for all court employees under her supervision,<sup>18</sup> and must, at all times, be accountable to the public for all her actions. Any conduct, act, or omission that violates the norm of public accountability, or diminishes, or tends to diminish the faith of the people in the judiciary will not be tolerated, condoned, or countenanced.<sup>19</sup> The OCA correctly found Maxima guilty of violating reasonable office rules and regulations, more specifically A.C. No. 08-2017.

We shall now discuss the applicable law in meting out the penalty on Maxima -- a court personnel.

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<sup>15</sup> *Rollo*, pp. 27-28.

<sup>16</sup> Entitled "Guidelines in Case of Prolonged Absences, Tardiness and Undertime, Filing of Applications for Leave and Availment of Rehabilitation Privilege" dated February 3, 2009

<sup>17</sup> *Office of the Administrative Services (OAS) - OCA v. Calucal*, 619 Phil. 1, 3 (2009). See also *Noynay-Arlos v. Conag*, 465 Phil. 849, 858 (2004); *Financial Audit of Books of Accounts of OIC Deseo*, 392 Phil. 122, 128 (2000); *Report on the Financial Audit in RTC, General Santos City*, 338 Phil. 13, 22-23 (1997).

<sup>18</sup> *Concerned Employees of the MTC of Meycauayan - Bulacan v. Paguio-Bacani*, 611 Phil. 630, 641 (2009).

<sup>19</sup> *Contreras v. Monge*, 617 Phil. 30, 36 (2009).



***Penalty.***

The Constitution grants the Supreme Court administrative supervision over all courts and its personnel.<sup>20</sup> Jurisprudence has characterized this authority as exclusive; only the Supreme Court can oversee the court employees' compliance with all laws, rules and regulations.<sup>21</sup> Moreover, only the Supreme Court can set the parameters concerning their discipline.<sup>22</sup> On this premise, the Court issued two sets of rules to govern judicial discipline cases, namely: (a) Rule 140 of the Rules of Court (Rules),<sup>23</sup> to apply to judges and justices of lower courts; and (b) the Code of Conduct for Court Personnel (CCCP),<sup>24</sup> "to apply to all judiciary personnel 'who are not justices or judges.'"<sup>25</sup> The Court explained the application of the rules in *Investment Corporation v. Gonzales (Boston Finance)*,<sup>26</sup> as follows:

In its present form, Rule 140 of the Rules of Court is entitled "Discipline of Judges of Regular and Special Courts and Justices of the Court of Appeals and the *Sandiganbayan*." As its titular heading denotes, **Rule 140 was crafted to specifically govern the discipline of judges and justices of the lower courts, providing therein not only a distinct classification of charges but also the applicable sanctions.** A perusal of the offenses listed therein shows that they are broad enough to cover all kinds of administrative charges related to judicial functions, as they even include violations of the codes of conduct for judges, as well as of Supreme Court directives. It is likewise apparent that the list of offenses therein includes even violations of the civil service rules, such as acts of dishonesty, gambling in public, and engaging in partisan political activities. **The Court therefore holds that violations of civil service laws and rules are subsumed under the charges enumerated in Rule 140 of the Rules of Court.** x x x:

x x x x

Hence, **in resolving administrative cases against judges or justices of the lower courts, reference need only be made to Rule 140 of the Rules of Court as regards the charges, as well as the imposable penalties.** If the respondent judge or justice is found liable for two (2) or more charges, separate penalties shall be imposed on him/her such that Section 50 of the RRACCS shall have no application in imposing sanctions.

<sup>20</sup> 1987 Constitution, Article VIII, Section 6.

SEC. 6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

<sup>21</sup> See *Re: COA Opinion on the Computation of the Appraised Value of the Properties Purchased by the Retired Chief/Assoc. of the SC*, 692 Phil. 147, 158 (2012). See also *Ampong v. Civil Service Commission*, 585 Phil. 289-300 (2008).

<sup>22</sup> *Boston Finance and Investment Corp. v. Gonzalez*, A.M. No. RTJ-18-2520 (Formerly OCA IPI No. 14-4296-RTJ), October 9, 2018.

<sup>23</sup> Amended by A.M. No. 01-8-10-SC entitled "DISCIPLINE OF JUDGES OF REGULAR AND SPECIAL COURTS AND JUSTICES OF THE COURT OF APPEALS AND THE SANDIGANBAYAN," dated September 11, 2001.

<sup>24</sup> A.M. No. 07-06-13-SC dated April 23, 2004.

<sup>25</sup> See *supra* note 21.

<sup>26</sup> *Id.*

On the other hand, **as regards other court personnel who are not judges or justices, the CCCP governs the Court's exercise of disciplinary authority over them.** It must be pointed out that the CCCP explicitly incorporates civil service rules, x x x:

x x x x

Hence, **offenses under civil service laws and rules committed by court personnel constitute violations of the CCCP, for which the offender will be held administratively liable. However, considering that the CCCP does not specify the sanctions for those violations, the Court has, in the exercise of its discretion, adopted the penalty provisions under existing civil service rules, such as the RRACCS, including Section 50 thereof.**<sup>27</sup> (Emphases supplied and citations omitted.)

The Court, nonetheless, pointed out that **the guidelines x x x are based on the prevailing legal framework in judicial discipline cases, which the Court may, in its discretion, eventually revise through a proper administrative issuance.** After all, the power of supervision over all judiciary personnel is exclusively vested in the Court.<sup>28</sup>

On October 2, 2018, the Court *en banc* issued A.M. No. 18-01-05-SC<sup>29</sup> which approved the creation of the Judicial Integrity Board and the Corruption Prevention and Investigation Office. The Court also approved the amendment to Rule 140 of the Rules which expanded the coverage to include **personnel of the lower courts.** The Court further amended Rule 140 on July 7, 2020, and clarified that the rule shall cover discipline of **personnel of the judiciary,** thus:

#### RULE 140

DISCIPLINE OF JUDGES OF REGULAR, SPECIAL OR *SHARFAH* COURTS, PRESIDING JUSTICES AND ASSOCIATE JUSTICES OF THE COURT OF APPEALS, THE SANDIGANBAYAN, COURT OF TAX APPEALS, AND *SHARFAH* HIGH COURT, COURT ADMINISTRATOR, DEPUTY COURT ADMINISTRATORS AND ASSISTANT COURT ADMINISTRATORS, AND **PERSONNEL OF THE JUDICIARY**

SEC. 1. *How Instituted.* **Proceedings for the discipline of the Presiding Justices and Associate Justices of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the *Shari'ah* High Court and Judges of the lower courts, including the *Shari'ah* District or Circuit Courts, and the officials and employees of the Judiciary, Court Administrator, Deputy Court Administrators, Assistant Court Administrators and their personnel, may be instituted, *motu proprio*, by the Supreme Court, in the Judicial Integrity Board.**<sup>30</sup> (Emphases supplied.)

<sup>27</sup> *Supra.*

<sup>28</sup> *Id.*, emphasis and underscoring supplied.

<sup>29</sup> Took effect on December 4, 2018, or 20 days from its publication in the *Philippine Daily Inquirer* on November 14, 2018.

<sup>30</sup> Amendments to Rule 140 of the Revised Rules of Court.

Accordingly, we will apply Rule 140 of the Rules in disciplining court personnel who are not judges or justices since it is the prevailing legal framework. The exception is when its application will be prejudicial, or will work injustice to the court employee, *i.e.*, the gravity of the offense will be increased, or a higher penalty for violation will be imposed.<sup>31</sup> In such instance, the civil service rules, which is the framework of rules prevailing at the time of the commission of the offense, will apply.<sup>32</sup> This is in line with the judicial policy patterned after criminal law that penal laws shall have retroactive effect if favorable to the accused.<sup>33</sup>

Maxima is the Clerk of Court of the MTCC Koronadal City, South Cotabato, who violated A.C. No. 08-2017 on April 7, 2017. Since the incident happened before the amendment of Rule 140 of the Rules by A.M. No. 18-01-05-SC dated October 2, 2018, Rule 140 will not apply to Maxima if its application will work injustice, or will be prejudicial to her. Instead, the penalty provisions in the Revised RACCS (2011 RRACCS),<sup>34</sup> the civil service rules in place at the time of commission of the offense of violation of reasonable office rules and regulations on April 7, 2017,<sup>35</sup> will apply.

We find the retroactive application of Rule 140 of the Rules, prejudicial to Maxima.

Section 46 (F) (3) of the 2011 RRACCS categorizes violation of reasonable office rules and regulations as a **light offense** punishable by reprimand for the first offense, suspension of one (1) day to thirty (30) days for the second offense, and dismissal from service for the third offense.<sup>36</sup> On the other hand, violation of Supreme Court rules, directives, and circulars is a **less serious charge** under Section 23,<sup>37</sup> Rule 140 of the Rules, as amended and modified by A.M. No. 18-01-05-SC dated October 2, 2018, is punishable by any of the following: (1) suspension from office without salary and other

<sup>31</sup> See *Dela Rama v. De Leon*, A.M. No. P-14-3240, March 2, 2021.

<sup>32</sup> See *id.*

<sup>33</sup> See REVISED PENAL CODE, Art. 22, cited in *Dela Rama v. De Leon*, *id.*

<sup>34</sup> CSC Resolution No. 1101502 dated November 8, 2011.

<sup>35</sup> While the 2017 RACCS took effect on August 17, 2017. Section 125 provides that it shall take effect fifteen days from the date of publication in the Official Gazette, or in a newspaper of general circulation; (the 2017 RACCS was published in *The Philippine Star* on August 2, 2017), Section 124 provides that “[t]he provisions of the existing RRACCS [*i.e.*, 2011 RRACCS] shall continue to be applied to all pending cases which were filed prior to the effectivity of [the 2017 RACCS], provided it will not unduly prejudice substantive rights.” Judge Brasales indorsed the Memorandum dated May 2, 2017, to the Office of the Court Administrator (OCA) for appropriate action on May 4, 2017, see *rollo*, p. 2.

<sup>36</sup> SEC. 46. *Classification of Offenses.* Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

x x x x

F. The following light offenses are punishable by reprimand for the first offense; suspension of one (1) to thirty (30) days for the second offense; and dismissal from the service for the third offense.

x x x x

3. Violation of reasonable office rules and regulations[.]

<sup>37</sup> SEC. 23. *Less Serious Charge.* Less serious charge include:

x x x x

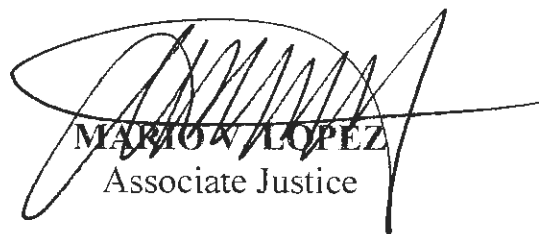
4. Violation of Supreme Court rules, directives, and circulars[.]

benefits for not less than one (1) month nor more than three (3) months; or (2) a fine of not [less] than ₱10,000.00 but not exceeding ₱20,000.00.<sup>38</sup> It is clear that Rule 140 is not favorable to Maxima; hence, the 2011 RRACCS will apply.

As to the penalty, applying the framework of the rules on the application of penalties under the 2011 RRACCS, Maxima's previous violation of Simple Neglect of Duty in *In Re: Report on the Judicial and Financial Audit in MTC in Cities, Koronadal City*,<sup>39</sup> for which she was penalized with a fine of ₱5,000.00 will not be counted as a "first offense" that will elevate the penalty of her present infraction of violation of reasonable office rules and regulations to the prescribed penalty for the "second offense." The previous and present infractions are not similar in nature or classification in terms of gravity, *i.e.*, grave, less grave, and light.<sup>40</sup> Also, the earlier infraction cannot aggravate the penalty for the current infraction because the two (2) infractions are differently classified.<sup>41</sup> Thus, the prescribed penalty for Maxima's violation of A.C. No. 08-2017 is a reprimand. Considering that reprimand is a straight penalty, any mitigating or aggravating circumstance attendant to its commission is of no moment.

**FOR THESE REASONS**, the complaint is **RE-DOCKETED** as a regular administrative matter. Maxima Z. Borja is **GUILTY** of violation of reasonable office rules and regulations under Section 46 (F) (3) of the 2011 Revised Rules on Administrative Cases in the Civil Service. She is hereby **REPRIMANDED** and **STERNLY WARNED** that a repetition of the same or similar offense will warrant a more severe penalty.

**SO ORDERED.**



MARIO W. LOPEZ  
Associate Justice

<sup>38</sup> A.M. No. 18-01-05-SC (Resolution), October 2, 2018, Section 25 (B). Under A.M. No. 21-03-17-SC, entitled "Amendments to the Fines Provided in Rule 140 of the Revised Rules of Court," dated March 16, 2021, the fine is now ₱35,000.00 but not exceeding ₱100,000.00.

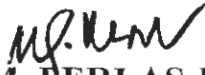
<sup>39</sup> *Supra* note 14.

<sup>40</sup> See Court of Appeals by: *COC Marigomen v. Manabat, Jr.*, 676 Phil. 157, 162 (2011). See also *Re: Anonymous Complaint Against Maza, Pedrosa and Dayap*, 563 Phil. 465, 469 (2007).

<sup>41</sup> Cf. *Espinosa v. Balisnomo*, A.M. No. P-20-4039, February 26, 2020, and *Pulgar v. Resurreccion*, 745 Phil. 693 (2014). In *Espinosa* the respondent clerk of court was previously found guilty of simple misconduct which is a less grave offense. Then, the respondent committed insubordination which is also a less grave offense. Both offenses were penalized under the same provisions of the civil service rules. Yet, the Court imposed only the maximum period of the prescribed penalty for the first offense for insubordination or suspension for six months without pay. In *Pulgar* the respondent stenographer was previously found guilty of simple neglect of duty, a less grave offense, and was fined given that it was her first offense. Thereafter, the Court held the respondent liable for simple dishonesty, also a less grave offense but penalized under a different provision in the civil service rules. The Court ruled that the "previous case is not a factor [in determining the penalty for the present offense] because of the dissimilarity of the offenses." Thus, the Court imposed upon the respondent the maximum period of the prescribed penalty for simple dishonesty committed for the first time, or suspension for six months without pay. In these cases, the Court considered the previous infractions as aggravating circumstances in imposing the penalty for the subsequent offenses because the previous infractions and subsequent offenses were of similar classification based on gravity (*id.* at 710-711.)



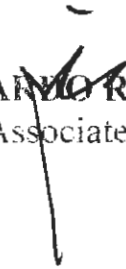
**WE CONCUR:**



**ESTELA M. PERLAS-BERNABE**  
Associate Justice  
Chairperson



**AMY C. LAZARO-JAVIER**  
Associate Justice



**RICARDO R. ROSARIO**  
Associate Justice



**JHOSEP LOPEZ**  
Associate Justice