

**JUDGE ARTEMIO R. ALIVIA, BRANCH 19, REGIONAL TRIAL COURT,
CAUAYAN, ISABELA, COMPLAINANT, VS. ELENA P. NIETO,
STENOGRAPHER III, BRANCH 19, REGIONAL TRIAL COURT,
CAUAYAN, ISABELA...**

A.M. No. P-95-1146. December 08, 1995

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

At the hearing on 25 July 1994 in Criminal Case No. 19-392[1] and Criminal Case No. 19-393[2] before Branch 19 of the Regional Trial Court (RTC) in Cauayan, Isabela, the prosecution presented Ernesto Guiuo. Respondent Elena P. Nieto was the stenographer on duty who took down the testimony of the said witness.

In a letter dated 2 November 1994 and filed with the trial court, the respondent reported to the Presiding Judge, herein complainant, that she lost the stenographic notes of the testimony of Ernesto and her earnest efforts to recover them have been futile and to no avail. In her affidavit attached to the letter, she explained that in her desire to transcribe the notes "immediately," she brought home the stenographic notes on 7 September 1994. The following morning she took a tricycle to the office. She carried with her a bag where she placed the stenographic notes. Unfortunately, when she arrived at her office she noticed that her bag was missing. She tried in vain to recover it and the stenographic notes contained therein. She even had such loss broadcast by a local radio station but the result was still negative.

On 8 November 1994, Judge Artemio Alivia required the respondent to explain within seventy-two hours why she should not be recommended for dismissal for (a) violating Circular No. 24-90 of this Court requiring stenographers to attach their stenographic notes to the record of the case, and (b) bringing home the stenographic notes without prior permission from the trial court.

In her explanation dated 10 November 1994, the respondent reiterated what she stated in her letter of 2 November 1994 and affidavit in support thereof as to how she lost the stenographic notes. In an effort to explain the necessity of the immediate transcription of the stenographic notes which compelled her to bring the said notes home, she asserted that after the hearing the Judge and the lawyers for the parties asked her about the transcripts. She further alleged that it is a matter of judicial notice that in all courts the stenographic notes are not attached to the records of the cases because they could easily get lost; and that in some instances where stenographic notes or transcripts are lost, appellate courts usually direct the lower courts to retake the evidence; in any event, the Judge and the prosecutor had also taken some notes of Ernesto's testimony.

Unsatisfied with the explanation, Judge Alivia conducted on 7 March 1995 an investigation on the loss of the stenographic notes in question. The respondent took the witness stand and testified thereon.

On 13 March 1995, Judge Alivia submitted to the Office of the Court Administrator a report on the foregoing incidents and formally indorsed the case to it for appropriate action in view of the seriousness of the offense

committed by the respondent. He further stated therein that on 24 August 1994 witness Ernesto Guiuo "was presented as a witness for the defense where he recanted his July 25, 1994 testimony [hence,] [u]nder this circumstance, there is no possibility any more of re-taking his testimony."

In the resolution of 6 September 1995, this Court noted the respondent's letter of 19 July 1995 wherein she stated that she will submit this case on the basis of the explanation she submitted to Judge Alivia. The said resolution further referred this case to the Office of the Court Administrator for evaluation, report, and recommendation.

In its Memorandum of 24 October 1995, the Office of the Court Administrator made the following findings and evaluation:

Judge Alivia conducted an investigation on the matter on 7 March 1995 (Transcript of Stenographic Notes, Annex "F", Rollo, pp. 9-18). The investigation disclosed that Mrs. Nieto reported the matter of the loss of the stenographic notes on 2 November 1994 and submitted her affidavit (Annex "B", Rollo, p. 4) setting forth the circumstances attendant to the loss. The loss of the transcript allegedly occurred on 8 September 1994. Mrs. Nieto brought home the transcripts on 7 September 1994 at 5:00 o'clock P.M. to enable her to immediately transcribe the same. She claims that she had only partially transcribed them in draft form. The transcripts written on bond papers were then inserted in the stenographic notes and the notes were placed inside a bag. The notes were lost when she accidentally left her bag in a tricycle that brought her to court from her residence.

She admitted that she did not ask permission to bring home the notes, being unaware of the standing regulation that stenographers cannot bring home their notes.

Under paragraph 2 (a) and (b) of Supreme Court Administrative Circular No. 24-90 on the "Revised Rules on Transcription of Stenographic Notes and their Transmission to Appellate Courts", stenographers are required to transcribe all stenographic notes and to attach the transcripts to the record of the case not later than twenty (20) days from the time the notes are taken. They are also required to accomplish a verified monthly certification as to compliance with this duty. In the absence of such certification or for failure and/or refusal to submit it, their salary will be withheld.

It is worthy to note that Mrs. Nieto took down the lost stenographic notes on 25 July 1994 and brought them home for transcription only on 7 September 1994 or about forty-four (44) days after she had taken them, in clear violation of Circular No. 24-90 requiring the transcription of notes and their attachment to the records not later than twenty (20) days after their taking. The loss allegedly occurred on 8 September 1994 but she reported the loss to Judge Alivia on 4 November 1994 only or almost two (2) months thereafter. Necessary assistance could have extended to her in locating the transcript had she immediately reported the loss to Judge Alivia. Besides, she should have gone to the radio station on the very day she learned about the loss and not the following day. This is a clear neglect of duty on the part of Nieto.

Nieto's defense that she is not aware of any regulation prohibiting stenographers from bringing home stenographic notes of court proceedings is inexcusable. It is incumbent upon her to be aware of such a prohibition and to exercise utmost care and prudence in the custody of her transcripts.

As a result of respondent Nieto's negligence, undue damage and prejudice to the prosecution has resulted considering that witness Guiuo recanted his testimony of 24 August 1994 in both criminal cases involving serious offenses.

It then recommended:

In view of the foregoing, it is respectfully recommended that Mrs. Elena P. Nieto, Stenographic Reporter III,

RTC, Branch 19, Cauayan, Isabela be SUSPENDED without pay for a period of three (3) months from notice for neglect of duty for the loss of the transcript of stenographic notes on 25 July 1994 hearing in Criminal Cases Nos. 19-392 and 19-393 and for the delay in the transcription thereof, with STERN WARNING that a repetition of the same or similar offense will be dealt with more severely.

The Court agrees with the finding of a violation of subparagraphs (a) and (b), paragraph 2 of Administrative Circular No. 24-90 and of negligence. But, there are more to these in this case. For instance, the respondent has deliberately violated Section 17, Rule 136 of the Rules of Court which provides:

SEC. 17. Stenographer. — It shall be the duty of the stenographer who has attended a session of a court either in the morning or in the afternoon, to deliver to the clerk of court, immediately at the close of such morning or afternoon session, all the notes he has taken, to be attached to the record of the case; and it shall likewise be the duty of the clerk to demand that the stenographer comply with said duty. The clerk of court shall stamp the date on which notes are received by him. When such notes are transcribed the transcript shall be delivered to the clerk, duly initialed on each page thereof, to be attached to the record of the case.

Under paragraph 1 of Administrative Circular No. 24-90, clerks of court and stenographers "are enjoined to faithfully comply with" this Section 17. It is clear from the aforequoted Section 17 that stenographic notes are official documents. They are to form part of the record of a case. They cannot be removed therefrom without an order of the court. Section 14 of Rule 136 expressly provides:

SEC. 14. Taking of record from the clerk's office. — No record shall be taken from the clerk's office without an order of the court except as otherwise provided by these rules. However, the Solicitor General or any of his assistants, the provincial fiscal or his deputy, and the attorneys de oficio shall be permitted, upon proper receipt, to withdraw from the clerk's office the record of any cases in which they are interested.

Article 226 of the Revised Penal Code likewise makes liable for infidelity in the custody of documents any public officer who removes, destroys, or conceals documents or papers officially entrusted to him. "The removal by a public officer of any official document from its usual place of safekeeping for an illicit purpose, such as to tamper with it or to otherwise profit by it, or do in connection therewith an act which could constitute a breach of trust in his official care thereof constitutes infidelity in the custody of public documents." [3]

When the respondent further lost the stenographic notes under circumstances which this Court finds to be incredulous, she became, at the very least, guilty of gross negligence.

In sum then, the respondent is not only liable for gross neglect of duty for non-compliance with Section 17, Rule 136 of the Rules of Court and with paragraph 1 and subparagraphs (a) and (b), paragraph 2 of Administrative Circular No. 24-90, but also for grave misconduct or conduct prejudicial to the best interest of the service for the violation of Section 14 of Rule 136 and for infidelity in the custody of the stenographic notes, and for gross negligence for "losing" under highly suspicious circumstances the stenographic notes.

This Court stresses once more that 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 and serve them with utmost responsibility, integrity, loyalty, and efficiency. [4] It condemns and would never countenance any conduct, act, or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and would diminish or even just tend to diminish the faith of the people in the Judiciary. [5]

The penalty recommended by the Office of the Court Administrator is not commensurate with the gravity of the

infractions the respondent had committed. A suspension from office for six (6) months without pay with a stern warning that the commission of the same or similar acts in the future would be dealt with more severely is more appropriate.

WHEREFORE, for gross neglect of duty, grave misconduct and conduct prejudicial to the best interest of the service and for gross negligence, respondent ELENA P. NIETO is hereby SUSPENDED from office for SIX (6) MONTHS, without pay, and sternly warned that the commission of the same or similar acts in the future shall be dealt with more severely. This suspension shall take effect immediately upon her receipt of a copy of this decision which the Office of the Court Administrator shall cause to be personally served.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Illegal Possession of Firearms Resulting to Double Murder.

[2] Multiple Frustrated Murder.

[3] R.C. AQUINO, 2 The Revised Penal Code, 490 (1987 ed.).

[4] Section 1, Article XI, 1987 Constitution.

[5] Sy vs. Academia, 198 SCRA 705 [1991].

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