

**MARGARITA E. SIAN, COMPLAINANT, VS. MA. NENA MAGDALUYO,
CLERK OF THE CFI OF NEGROS OCCIDENTAL, BRANCH
VI-HIMAMAYLAN, RESPONDENT.**

A.M. No. P-276. March 31, 1980

Ponente: GUERRERO, J.

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GUERRERO, J.:

The complainant, Margarita E. Sian, Court Stenographer of the Court of First Instance of Negros Occidental, Branch VI stationed at Himamaylan, charges the respondent Ma. Nena Magdaluyo, Clerk of the same court, with the following charges: A. Falsification of public document and/or perjury; B. Gross inefficiency; C. Negligence; and D. Habitual tardiness, committed as stated in her letter-complaint dated June 4, 1974 to the Supreme Court which reads:

"That in her preparation or filing of her information sheets which is described and sworn to an oath, she stated therein among other things that she is a Post Graduate of B.S.E., which is not true and correct. Attached hereto is a certification from the school wherein she allegedly is a post graduate of B.S.E., which is self-explanatory;

That there were many instances wherein she mailed Orders of this Court very late, causing lawyers and parties not to receive their notices on time inspite of the fact that said Orders had already long been signed by the Honorable Judge;

That on many occasion she sent Orders, notices, etc. to wrong parties or lawyers, which negligence is very harmful, not only to the Judge, but also to the employees of this Court. I will cite one Order or Notice which was sent to one, Atty. Romeo Perez, who is not a lawyer to a case but said Order was sent to him; and the right party whose notice is supposed to be sent has not received any, which is detrimental and vital in the performance of her duties;

That most of the time she is reporting in the office very late, and oftentimes went out from the office to sell Beautifont products, and if ever she is in the office and told or requested to do some work, she always excused herself or reason out not to do said work for it is not her duty to do so; thus leaving her works usually unfinished." [1]

On June 26, 1974, the above letter-complaint was referred to the respondent for comment by the Executive Officer of this Court [2] through the Presiding Judge, Court of First Instance, Branch VI, Himamaylan, Negros Occidental. The respondent, in a third endorsement dated August 15, 1974 to the Court, answered the letter-complaint of Margarita Sian and submitted substantially the following comment:

As to charge (A), she cannot recall whether she had stated in her information sheet that she is a post graduate of B.S.E. or not; she could very well remember that she stated in said information sheet that she is an A.B. graduate which is indicated in her appointment (Civil Service Form No. 33 issued by the Civil Service). She claims she did not commit falsification of public document and/or perjury. If she did state that she was a B.S.E. graduate, it was not done with malice or fraud because her eligibility as a Second Grade qualifies her for the position to which she was appointed.

As to charge (B), she vehemently denies the charges; on the contrary, she mails the Orders of the court as early as possible to the persons concerned within a reasonable time.

As to charge (C), she claims that the same is without basis; that the allegations that she on many occasions had sent orders, notices, etc. to wrong parties or lawyers is unfounded and untruthful. If ever she did commit error, it is an isolated one which is commonly committed in public and private services or establishments; that court personnel are human beings subject to excusable mistakes or negligence. There is nothing in the records that parties or lawyers had been prejudiced or damage caused to them by her errors and that granting an error had been committed, there was no malice on her part, the same being merely an honest mistake.

As to charge (D), the same is without a bit of truth in it. The logbook in the office as well as her daily time record would bear out that she has been regularly attending office works on time.

Respondent, however, makes the counter-charge that complainant and her father, Francisco Encarnacion, had demanded a percentage of respondent's monthly salary in consideration of the early approval of her appointment.[3]

Complainant, in another letter to this Court dated August 16, 1974 listed the cases wherein respondent had committed mistakes,[4] and subsequently, in a fifth endorsement dated August 22, 1974, she made the following comment in answer to that of the respondent:

"Firstly, undersigned respectfully and vehemently denies her allegation that her deceased father, Mr. Francisco Encarnacion, Sr., and undersigned are insinuating to Ma. Nena Magdaluyo a cut of her salary. The truth of the matter is that, she is employing a diversionary tactic to lessen the impact of the gravity and seriousness of the charge of falsification and/or perjury, negligence, inefficiency, etc. I have filed against her, which in truth and in fact she committed, and of which I am ready to prove in a formal investigation.

Secondly, her denial of my accusation against her of being grossly negligent and inefficient, I would like to cite the following cases which she terms as an isolated negligence, the truth of the matter that it is unexcusable and repeated negligence, to wit:

- Criminal Case No. 310 - People of the Philippines versus Ramon Villegas. Notice of hearing dated April 3, 1974, was sent to a different lawyer, not the lawyer on record;

- Criminal Case No. 307 - People of the Philippines versus Gaudencio Pedrosa, page 75 of the records, notice of hearing dated April 14, 1974 sent again to a lawyer not connected in this case;

- Civil Case No. 752 - Antonio de Asis versus Francisco Verde, pages 27 and 28 of the records, the return card was both in the name of one lawyer, Atty. Plaridel Katalbas when it should be Atty. Rinaldo Remitio; and

- Civil Case No. 538 - Vicente Mission versus Gregorio Guerrero, Sr., et al., notice of hearing was set on a Sunday, page 102 of the records setting the case to September 15, instead of September 5. Atty. Agcaoili wired to this effect for verification;

- One Job Liboon, a clerk in the office of Guance & Antiquiera Law Office, Binalbagan, Negros Occidental, complained also that in some instances he received notices, the envelope of which are addressed to their office, but the return card is in somebody's name and also he received notices addressed to them, but the contents are not among the cases handled by their office. This Job Liboon will attest to these facts.

- One lawyer, by the name of Atty. Romeo Perez, whose office address is at Lacson Lizares, Bacolod City, has experienced the same and in fact has come to our office to verify the matter. The envelope and the return card sent to him was re-turned personally by Atty. Romeo Perez to Mrs. Magdaluyo.

Inefficient, in the sense that everytime she is requested by Mrs. Socorro Gavarán, our civil clerk, to help her in releasing orders, notices, etc., and to do some typing works, she always complains that it is not her duty to do so.

Mrs. Gavaran will attest to these facts."[5]

Thereafter, complainant, in her letter of June 27, 1975, forwarded a xerox copy of the information sheet filed by respondent, stating, among other things that she is a B.S.E. graduate but in truth and in fact she is only a 3rd year B.S.E., for which reason complainant filed a case of falsification of public document against respondent with the Fiscal's Office.[6]

In a Resolution of this Court dated July 27, 1976, the Court resolved to dismiss the charge of falsification of public document and/or perjury and give due course to the charges of gross inefficiency, negligence and habitual tardiness and to refer the same to the Executive Judge of the Court of First Instance of Negros Occidental, for investigation, report and recommendation. The records were thus transmitted to Judge Ostervaldo Emilia, Executive Judge, CFI, Branch VI, Himamaylan, Negros Occidental. Judge Emilia, however, sought to inhibit himself from investigating the case on the ground that he has been living and is presently living in the house of complainant, which inhibition was approved by this Court in the Resolution of October 5, 1976 which designated instead Judge Oscar Victoriano, Executive Judge of CFI at Bacolod City, to conduct the investigation. The records were then forwarded to Judge Oscar Victoriano on October 25, 1976.[7]

Pursuant to said Resolution, the Honorable Oscar Victoriano, Executive Judge, CFI of Negros Occidental, conducted a formal investigation of this administrative case, specifically on the charges of (1) gross inefficiency; (2) negligence; and (3) habitual tardiness as against respondent Ma. Nena Magdaluyo, and the latter's countercharge against the complainant Margarita E. Sian as contained in her Answer to the complaint. The investigation started on December 7, 1976 and the same was finished on January 6, 1977.

The findings of the Executive Judge submitted to this Court on January 19, 1977[8] show that on:

"Charges (B) and (C) on gross inefficiency and negligence, respectively: Atty. Romeo Perez a practicing lawyer in Bacolod City, declared that sometime in 1974, he received a copy of either a notice of hearing or an order from the Court of First Instance of Negros Occidental, Br. VI, notwithstanding the fact that he was not personally connected with the case, Criminal case No. 307, People vs. Gaudencio Pedrosa, et al. Complainant also testified that respondent refused to comply with the instructions of the Presiding Judge to help employees in releasing notices of hearings and mailing them.

On the charge that respondent released copies of orders and notices of hearing late, complainant cited the following:

(1) Copy of the order dated April 4, 1974 (Exh. D) in People vs. Gaudencio Pedrosa, et al. (Crim. Case No. 307, for Theft) was released and sent by registered mail to the lawyers on April 18, 1974 or a delay of fourteen (14) days:

(2) Copy of the order (Exh. E), in Crim. Case No. 310 (People vs. Ramon Villegas) dated April 3, 1974 was sent by registered mail on April 18, 1974 or a delay of fifteen (15) days:

(3) Exhibit "K-31" - the date of the order is February 1, 1974, but the copy was released on February 7, or a delay of six (6) days;

(4) Exhibit "K-33" - copy of the order dated July 20, 1973 was mailed on July 23 or 26, 1973, or a delay of from three (3) to six (6) days;

(5) Exh. "K-34" - copy of the order dated February 1, 1974 was released on February 7, 1974 or a delay of six (6) days;

(6) Exhibit "K-35" - a copy of the order dated September 14, 1974 was released on September 19, 1973, or a delay of five (5) days;

(7) Exhibit "K-36" - copy of the order dated August 19, 1973 was released on August 21, 1973, or a delay of two (2) days;

(8) Exhibit "K-37" - copy of the order dated July 17, 1974 was released or mailed on July 22, 1974, or a delay of five (5) days;

(9) Exhibit "K-38" - copy of the order dated October 31, 1973 was mailed and released November 6, 1973, or a delay of six (6) days.

With respect to the charge of having sent copies of notices and orders to wrong parties or wrong lawyers, the following instances were cited:

(1) On the copy of the order (Exh. "D") in *People vs. Gaudencio Pedrosa, et al.*, Crim. Case No. 307, respondent allegedly crossed out the names of Atty. Ramon Garaygay and Atty. Romeo Perez, which were initially handwritten (Exh. "D-1");

(2) The copy of the order in Crim. Case No. 310 (*People vs. Ramon Villegas*) dated April 3, 1974 (Exh. "E") was sent by registered mail on April 18, 1974 to Atty. Moises Nifras and Artemio Balinas, but the name of the latter appears to have been crossed out.

Other instances of alleged negligence or inefficiency are cited as follows:

(1) On the original notice of hearing (Exh. "H") in Civil Case No. 538, entitled *Vicente Mission vs. Gregorio Guerrero, et al.* dated July 23, 1974 prepared by respondent, the date of hearing was placed as September 15, 1974, which was a Sunday, for which reason Atty. Agcaoili, counsel for the Director of Lands, sent to the Branch Clerk of Court a telegram (Exh. "H-I") inquiring for the correct date of the hearing inasmuch as September 15 was a Sunday. Hence, a new notice of hearing dated August 2, 1974 (Exh. "H-2") had to be sent correcting the mistake by stating the date of hearing as September 5, 1974.

(2) Respondent allegedly prepared subpoenas (Exhs. "I", "I-1", "I-2", "I-3" and "I-4") in *People vs. Jose Maria, et al.* (Crim. Case No. 536), in which the name of the accused was erroneously typed as Jose Torrevillo, when in truth the correct name of the said accused is Florentino Torrevillo, as borne out by the copy of the information (Exh. "I-5").

(3) On the notice of pre-trial hearing in Civil Case No. 824 (Exh. "K-30-A"), respondent typed the title of the case on the caption as "*People vs. Aurelio B. Vda. de Barrios, et al.*" (Exh. "K-30-A") when the plaintiff is not the "People" since this is a civil case.

(4) On the subpoenas prepared by respondent (Exhs. "J", "J-1", "J-2" and "J-3") the name of one of the accused was typed as "Jose Torrevillo" when the true name of the said accused is Florentino Torrevillo.

Charge (D) on habitual tardiness and selling of Beautifont products during office hours: Complainant testified that respondent appeared to be more interested in selling Beautifont products to employees in the Municipal Building for which reason she frequently reported to the office late. Certifications from Mrs. Felicidad J. Bayles (Exh. "L") dated January 3, 1977, and Mrs. Blanquita Lemoncito (Exh. "L-1"), dated January 4, 1977, Beautifont counsellor and supervisor of Beautifont, Inc., respectively, show respondent's purchases of Beautifont products beginning April 25, 1976 to September 29, 1976."

Respondent admits having committed a mistake in having sent copies of the return cards (Exhs. "F" and "G") to Atty. Plaridel Katalbas instead of sending it to Atty. Remitio who was the counsel of record connected with the case. She also admits having sent a copy of the order (Exh. "E") Crim. Case No. 310 to Atty. Artemio Balinas who was not connected with the case. The same is true with the copy of the order (Exh. "D") which respondent had sent to Atty. Romeo Perez who was not counsel of record. Atty. Perez did not file any complaint against her for this mistake; in fact, he simply placed it back in an envelope and returned it to the court. It also appears,

however, that this is a mistake shared also by clerk Socorro Gavarán.

The evidence apparently shows that even complainant herself, Margarita E. Sian, had not been exactly efficient in the performance of her duties as a stenographer for there were several instances of errors and discrepancies committed by her in the copies of orders typed or prepared by her.

Granting that complainant and other clerks in the Office of the Clerk of Court appear to have committed mistakes as pointed out above, which are similar to those now charged to respondent, this fact naturally does not constitute a valid defense and cannot justify her own inefficiency or negligence if indeed the evidence would so prove. But if there was an attempt on the part of the respondent to show similar errors or mistakes committed by the complainant and the other clerks performing similar duties as respondent, it was only for the purpose of reinforcing her claim that any one is likely to err, particularly in a situation where the volume of work is due to the clogged docket of the court.

Respondent apparently committed certain lapses which can be attributed to lack of attention and due care in the performance of her duties.

Respondent admits having committed an error in typing the name of the accused "Jose Torrevillo" instead of the true and correct name "Florentino Torrevillo" as appearing in the information (Exh. "I-5") on the sub-poenas (Exhs. "I", "I-1" to "I-4"). By way of explanation, she maintains that it was only the subpoena (Exh. "I") that was typed on her typewriter while the other subpoenas (Exhs. "I-1" to "I-4") were typed on the typewriter of Verzosa, suggesting that the error in the typing of the name of the accused Torrevillo had been originally committed by Verzosa himself which she simply carried over when she prepared the subpoena (Exh. "I").

Charge (D) that respondent used to report to the office late, going out to sell Beautifont products and that when requested to do some work, she would find excuses not to comply, is not supported by the evidence on record. On the basis of respondent's time record for the period from October, 1972 to November, 1976 (Exhs. 74, 74-A to 74-00) there being no evidence to impeach the genuineness and accuracy of these documents, their correctness must perforce be accepted, thereby showing that respondent had not incurred undertime or habitual tardiness as charged by complainant.

On the respondent's countercharge, the complainant denies the same and as there is no other corroborating circumstance to support respondent's claim, the evidence is not considered sufficient to support such counter-charge that complainant had in fact demanded from respondent a part of her salary. There is no showing that respondent actually had given any part of her salary in compliance with her promise.

The Investigating Judge submitted the following conclusions and recommendations:

"From the foregoing evidence and in the light of the factual environment existing in Branch VI of this Court, where the docket is admittedly congested such that the errors or mistakes attributed to respondent are equally shared to an appreciable degree not only by complainant herself but also by the very clerks specifically charged with the duty of preparing orders, notices of hearing and subpoenas in criminal and civil cases, the undersigned is not inclined to consider the lapses committed by respondent as amounting to gross inefficiency. Charge (B) therefore, not being supported by evidence, is recommended dismissed.

Granting that respondent admittedly committed a mistake in erroneously typing the word "People" as a party on the notice of pre-trial hearing in Civil Case No. 824 (Exh. "K-30-A") and in erroneously typing the date "September 15, 1974" which was a Sunday, as the date of hearing in Civil Case No. 538 (Vicente Mission vs. Gregorio Guerrero, et al.) as well as in erroneously typing the first name of the accused Torrevillo on the subpoenas (Exhs. "I", "I-1" and Exhs. "J-2" and "J-3") these may well be considered slight mistakes committed in good faith and did not in any way prejudice either the public interest or any private party.

Undoubtedly, these mistakes could be attributed to lack of attention or concentration in respondent's work and can certainly be avoided if she were to exercise greater care and diligence in the performance of her duties. That there is a slight negligence cannot be denied but a certain degree of allowance is warranted by the circumstances surrounding the present case. The undersigned recommends that in view of the slight negligence incurred by respondent insofar as charge (c) is concerned, a reprimand be administered to her with a stern warning that repetition of similar lapses will merit sterner disciplinary measure against her.

Charge (D) on habitual tardiness and selling of Beautifont products during office hours, not having been supported by con-vincing evidence, is recommended dismissed.

Respondent's countercharge is likewise recommended dismissed as there is no clear showing that complainant had in fact demanded a cut from respondent's salary in considera-tion of her and her father's assistance in expediting her appointment as clerk in Branch VI of the Court of First Instance of Negros Occidental."^[9]

We find the findings of the Investigating Judge, his conclusions and recommendations to be proper and correct, and We hereby AFFIRM the same. We are mindful of the congested nature of the court's docket and that since the respondent was merely assisting specified personnel who were specifically charged with the duty of preparing orders, notices of hearing and subpoenas in criminal and civil cases who themselves, including the complainant herself, have caused the same errors or mistakes attributed to the respondent, such lapses imputed to the respondent may well be considered unintentional and usual in the ordinary course of the heavy volume of official business, which lapses had not been shown to have prejudiced any party or counsel affected thereby. We agree with the Judge's recom-mendation that a reprimand would be sufficient dis-ci-plinary measure to compel more care and insure dili-gence in respondent's performance of her duties.

WHEREFORE, respondent Ma. Nena Magdaluyo, Clerk of Branch VI, Court of First Instance of Negros Occidental, is hereby reprimanded with a stern warning that a repetition of similar lapses will be treated with heavier disciplinary action against her.

Let a copy of this Resolution be spread in her personal file in the records of this Court.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, De Castro, and Melencio-Herrera, JJ., concur.

[1] Exhibit "A", p. 1, Records.

[2] p. 4, Records.

[3] Exh. 71, pp. 22-25, Records.

[4] Exh. "B", p. 15, Records.

[5] Exhibit "C", pp. 19-20, Records.

[6] p. 27, Records.

[7] p. 38, Records.

[8] Records, pp. 253-271.

[9] Records, pp. 272-273.

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