

JESSICA A. NOYNAY-ARLOS, COMPLAINANT, VS. RODOLFO SEL. CONAG, CLERK OF COURT II, MUNICIPAL TRIAL COURT, PALOMPON, LEYTE, RESPONDENT.

A.M. NO. P-01-1503. January 27, 2004

Ponente: VITUG, J.

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VITUG, J.:

The image of a court of justice, as it has so often been heard, is aptly shown by the conduct, official or otherwise, of the men and women who occupy the office. It is not thus difficult to see that men and women in the Judiciary service render themselves constantly accountable for their acts or omissions, a price they must learn to accept.

In Administrative Matter No. P-01-1511, Rodolfo Sel. Conag, Clerk of Court of the Municipal Trial Court (MTC) of Palompon, Leyte, charged, in his sworn letter-complaint of 02 August 1999, Jessica A. Noynay-Arlos, the court stenographer, with "Gross Negligence, Dishonesty, Immorality, Dereliction of Duty, Misconduct and Falsification of Official Documents." In another sworn complaint, dated 24 September 1999, Conag accused Noynay-Arlos of falsifying her daily time record for the month of August 1999. The complaint drew a response from Noynay-Arlos who, in her own sworn complaint of 24 January 2000 under Administrative Matter No. P-01-1503, charged Rodolfo Sel. Conag with "Gross Negligence, Immorality, Abuse of Authority, Grave Misconduct, Dereliction of Duty, Usurpation of Authority, Malversation, Incompetence, Corruption, Dishonesty and Drunkenness."

The two court officials filed their respective comments on the complaints.

On 29 August 2001, however, a "Joint Affidavit of Desistance" was filed by the parties with the Office of the Court Administrator. On even date, the Court, in its resolution of 29 August 2001, resolved to consolidate the two cases which it then referred to the Executive Judge of the Regional Trial Court of Palompon, Leyte, for investigation, report, and recommendation within ninety (90) days from receipt of the records.

On 29 May 2002, Judge Eric F. Menchavez, Regional Trial Court, Branch 17, of Palompon, Leyte, submitted his report, recommending the dismissal of the administrative cases in view of the affidavits of desistance executed and submitted by the parties. In a resolution, dated 14 August 2002, the Court indorsed the matter to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.

In its Memorandum, dated 28 January 2003, the OCA has submitted its report; its evaluation deserves to be quoted at length; viz:

"The withdrawal of a complaint or the desistance by a complainant does not necessarily warrant the dismissal of an administrative complaint. In *Dionisio vs. Gilera*, 312 SCRA 287, the Court categorically ruled that 'the overriding need to maintain the faith and confidence of the people in the judiciary demands that erring personnel be sanctioned, notwithstanding the withdrawal of the complaint. The issue in administrative cases is not whether the complainant has a cause of action against the respondent, but whether the employees have breached the norms and standards of the judiciary. Clearly, this Court has the duty to root out misconduct among its employees regardless of the parties' desistance.'

"In the case at bar, the desistance of Clerk of Court Rodolfo Sel. Conag and Court Stenographer Jessica N. Arlos of their charges and countercharges against each other does not justify the dismissal of these administrative cases. The records of the cases provide sufficient basis for the determination of their liabilities.

"We find the complaint of Clerk of Court Conag against Court Stenographer Arlos for violation of Administrative Circular No. 24-90 meritorious.

"Administrative Circular No. 24-90 provides that:

'2. (a) All 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. The attaching may be done by putting all said transcripts in a separate folder or envelope, which will then be joined to the records of the case.

(b) The stenographer concerned shall accomplish a verified monthly certification as to compliance with his duty. In the absence of such certification or for failure and/or refusal to submit it, his salary shall be withheld.'

"In her Comment dated 11 October 1999 in A.M. No. P-01-1511, Mrs. Arlos claimed that she failed to submit the required monthly certifications because she was unaware of the existence of Administrative Circular No. 24-90. She cannot feign ignorance of the Circular which took effect on 1 August 1990 since as a court employee, it is incumbent upon her to update herself of pertinent issuances and pronouncements of the Court relevant to the performance of her official duties.

"Court Stenographer Arlos also claimed that she failed to submit her transcripts of stenographic notes within the time prescribed in the Administrative Circular because stenographers had an internal arrangement with their judge that they have to prioritize the transcription of the stenographic notes of cases submitted for decision. This is a poor excuse that will not exculpate the employee from administrative liability.

"Failure to comply with Administrative Circular No. 24-90 constitutes dereliction of duty and hampers expeditious resolution of cases. Thus, in the case of Anatolia A. Juntilla vs. Branch Clerk of Court Teresita J. Calleja and Court Stenographer Salome A. Montezon, 262 SCRA 291, the Court fined the respondent stenographer Three Thousand Pesos (P3,000.00) for failure to transcribe her stenographic notes within the required period.

"Stenographer Arlos should also be held administratively liable for falsification of her time records. An examination of her daily time records showed that she made it appear in her DTR that for the whole month of August 1999, she arrived in the office at exactly 8:00 o'clock in the morning and left at exactly 5:00 o'clock in the afternoon. The office logbook however disclosed that she timed-in at 8:40 A.M. on 24 August 1999 and at 8:35 A.M. on 25 August 1999. Also, on 29 April 1999, she reported for work at 8:40 o'clock in the morning but she indicated in her DTR that her time of arrival was 8:00 A.M. Mrs. Arlos cannot seek shelter in what she alleged as actual practice in their court that staff members were allowed to come late provided they render overtime work.

"Furthermore, Arlos made it appear that the reason for her absences on 26 to 28 May 1999 was she was sick on those days. However, this was contradicted by a Resloution issued by Barangay Secretary Marie P. Olorvida stating that on 26 May 1999, the parties in Barangay Case No. 012 entitled 'Jessica N. Arlos vs. Elizabeth Nicol, et al.' have reached an amicable settlement during a confrontation held at the barangay hall of Barangay Central II, Palompon. This means that Arlos was not sick but was attending to a personal matter outside of her residence.

"While Arlos rightly claimed that a Supreme Court Circular (Administrative Circular No. 31-90) authorized the stenographers to retain one-half (1/2) of the amount paid for their transcripts of stenographic notes, she nevertheless failed to present any proof that she remitted to the court one-half (1/2) thereof. The non-remittance of this amount deprived the court and the government of their much needed funds.

"The other charges imputed to Stenographer Arlos were not substantiated and perforce, must be dismissed.

"On the other hand, we find sufficient proof that Conag was negligent in the performance of his duties as Clerk of Court. He failed to send subpoenas to parties and/or to counsels causing re-setting of scheduled hearings, as evidenced by the numerous orders of Judge Delia N. Bertulfo requiring the Clerk of Court to explain why no sanction should be imposed upon him for his failure to send summonses, subpoenas and other court processes to parties and/or counsels.

"The service of orders, subpoenas and other court processes is the ministerial function of the Clerk of Court. As such, he is obliged to see to it that all court orders and other processes are duly served to the parties. He shall likewise see to it that all returns of notices are attached to the corresponding records and that all notices of orders and decisions are duly served on the parties (The Revised 2002 Manual for Clerks of Court).

"Conag's lack of dedication to his work was best reflected in an Order dated 11 September 1998 in Criminal Case No. 7249 entitled 'People vs. Warwin Martinez,' wherein Judge Bertulfo warned Clerk of Court Conag to be circumspect in the performance of his duties, otherwise she would be constrained to impose disciplinary sanctions upon him. Judge Bertulfo issued this Order after Conag sent subpoenas to the Provincial Prosecutor and Assistant Provincial Prosecutor instead of furnishing them a copy of the judge's Order dated 14 August 1998.

"Records also disclosed that Conag usually filed his Officer's Return of Service more than one (1) year after the issuance of the summons. In so doing, he ignored the mandatory provision of Section 4, Rule 14 of the 1997 Rules of Civil Procedure, to wit:

"Section 4. Return.- When the service has been completed, the server shall, within five (5) days therefrom, serve a copy of the return, personally or by registered mail, to the plaintiff's counsel, and shall return the summons to the clerk who issued it, accompanied by proof of service.'

"We also find the charge of usurpation of judicial function meritorious. The contention of Clerk of Court Conag that the resetting of the case referred to by Arlos was with the consent of their judge is not true. On the contrary, Judge Bertulfo issued an Order dated 29 September 1999 directing Conag to explain why no disciplinary action should be taken against him for resetting Civil Case No. 426 without authority from the court.

"Clerk of Court Conag likewise acted imprudently in administering oaths on matters alien to his official duties. While Republic Act No. 6788 authorized all Clerks of Court regardless whether they are Clerks of Court of MeTC, MTC and MCTC, to administer oaths, the authority is limited only to matters involving official business.

"In the case of Executive Judge Jose R. Astorga vs. Clerk of Court Nicolasito S. Solas, 361 SCRA 240 [2001], the Court held that 'Clerks of Court are notaries public ex-officio, and may thus notarize documents or administer oaths but only when the matter is related to the exercise of their official functions.'

"A perusal of the Affidavit dated 28 July 1999 of Ernesto T. Camay, former President/Manager of the Rural Bank of Villaba confirmed the allegation of Arlos that Clerk of Court Conag does not issue official receipts for payment of filing fees and other legal fees. That the party making payment agreed to non-issuance of receipt does not relieve Conag from administrative liability.

"On the alleged relationship of Conag with a certain Feliciano Dagsa-an and his unauthorized use of the court's letter head, the Court, in its decision dated 13 May 1998 in A.M. No. P-98-1269 (Feliciano Dagsa-an vs. Rodolfo Sel. Conag) admonished Clerk of Court Conag for using the court's letterhead to improperly obtain information against complainant. However, Dagsa-an's allegation that she had an illicit relationship with Conag and that the latter took advantage of her moments of weakness and lack of education in obtaining a loan was dismissed for lack of evidence.

"The complaint of Mrs. Arlos that Conag prepared deeds of sale and affidavits for a fee during office hours using office supplies was not sufficiently proved. She failed to produce copies of the documents which the Clerk of Court allegedly anomalously prepared. No affidavits of persons with whom Conag had transacted were shown.

"Mrs. Arlos also failed to prove her other charges against Clerk of Court Conag, thus, the same should be dismissed.

"As a Clerk of Court, Mr. Conag should be an officer of competence, honesty and probity. He should safeguard the integrity of the court and its proceedings, and should uphold the confidence of the public in the administration of justice. He should serve as a model for the court employees to act speedily and with dispatch on their assigned tasks to avoid clogging of cases in court and thereby assist in the administration of justice without undue delay.

"It is apparent that Clerk of Court Conag is liable for conduct grossly prejudicial to the best interest of the service, which under Rule XIV, Section 23(t) is penalized with suspension for six (6) months and one (1) day to one (1) year for first offense and dismissal for second offense. Considering that Conag has not been previously found guilty of such offence, he should be meted a suspension of six (6) months and one (1) day.

"Under the Civil Service Law and Rules (Book V of Executive Order 292 and Omnibus Rules), falsification of official document is classified as a grave offense which warrants the penalty of dismissal. Thus, in the case of Atty. Antonio G. Mirano vs. Stenographer Marilyn O. Saavedra, 225 SCRA 77, the Court dismissed the respondent for falsifying her daily time records.

"With respect to Court, Stenographer Arlos, while the penalty of dismissal is imposed by the CSC Rules for falsification of daily time records, the records of the Docket and Clearance Division, OCA, However, reveal that Stenographer Arlos has not been charged administratively in her more than nine (9) years of service in judiciary. This may be considered a mitigating circumstance in her favor. Thus, we believe that a suspension of six (6) months without pay should instead be imposed on Stenographer Arlos.

"The Court looks upon with great disfavor any display of animosity by court employees which necessarily affects the morale of their co-workers and undermines their efficiency. Court personnel must, at all times, act with strict propriety and proper decorum so as to earn the public's regard for the judiciary."

The Court agrees with, and accepts the findings of, the OCA.

The withdrawal of a complaint, or the desistance by a complainant, does not necessarily warrant the dismissal of an administrative complaint. The overriding need to maintain the faith and confidence of the people in the judiciary demands that the judiciary must do its duty to root out any misconduct among its employees as long as there is sufficient basis therefor. In *Baikong Akang Camsa vs. Judge Aurelio Rendon, etc., et al.*[1] the Court has said:

"An affidavit of desistance by a complainant does not divest the Supreme Court of its jurisdiction to investigate and ascertain the truth of the matter alleged in a complaint against a court personnel (*Farrales vs. Judge Camarista*, A.M. No. MTJ-99-1184, 02 March 2000, 327 SCRA 84). The Court has an interest in the conduct and behavior of all officials and employees of the judiciary and in ensuing at all times the proper delivery of justice to the people. Its efforts in that direction cannot be frustrated by any private arrangement of the parties (*Caña vs. Santos*, A.M. No. 93-10-1269-RTC, 08 July 1994, 234 SCRA 17)."

The complaint against Jessica A. Noynay-Arlos for violation of Administrative Circular No. 24-90 is substantiated. Her explanation,[2] that she has failed to comply with Administrative Circular No. 24-90 because of her being unaware thereof, as well as because of an internal arrangement among them and the judge that they have to prioritize the transcription of the stenographic notes of cases submitted for decision, is a poor excuse.

Arlos additionally should be held administratively liable for falsifying her daily time record (DTR). Arlos would seek shelter, rather flimsy, by alleging that it has been an actual practice in their office to allow staff members to come in late provided they would then render overtime work.

Relative to the complaint against Clerk of Court Rodolfo Sel. Conag, the OCA found sufficient basis to hold respondent liable for negligence in the performance of his duties. He failed to send subpoenas and other processes to parties and/or to counsel causing the re-setting of scheduled hearings and prompting Judge Delia N. Bertulfo to repeatedly issue orders requiring Conag to explain why no sanction should be imposed upon him. For instance, in an order, dated 11 September 1998, Conag was given this warning:

"It has come to the attention of this Court that the Clerk of Court of this Court has become negligent and indiscriminate in the issuance of court processes. The Clerk of Court is hereby warned to be circumspect in the performance of the functions of his office, otherwise this Court will be constrained to impose disciplinary sanctions upon him." [3]

Respondent Conag has also acted imprudently in notarizing documents alien to his official duties. Clerks of court are notaries public ex-officio, but they may only notarize documents or administer oaths in matters pertinent to the exercise of their official functions. Clerks of court should not, in their ex-officio capacity, take part in the execution of private documents unrelated to the proper discharge of their official duties. [4]

The Clerk of Court is an important functionary of the judiciary and the hub of adjudicative and administrative orders, processes and like concerns. His responsibilities are vital to the prompt and sound administration of justice. He cannot be allowed to slacken on his work. A Clerk of Court should be an officer of competence; he should safeguard the integrity of the court and its proceedings; he should uphold the confidence of the public in the administration of justice; he should help ensure that the cause of justice is done without undue delay; and he should also serve as a model for the court employees in his conduct and actuations.

WHEREFORE, the Court finds Rodolfo Sel. Conag, Clerk of Court II of the Municipal Trial Court in Palompon, Leyte, guilty of conduct grossly prejudicial to public interest and of abuse of authority. He is hereby suspended for three (3) months, without pay, and additionally ordered to pay a fine of Five Thousand Pesos (P5,000.00). Likewise, the Court finds Jessica A. Noynay-Arlos guilty of falsification of official records and dereliction of duty. She is hereby suspended for two (2) months, without pay, and further directed to pay a fine of Three Thousand Pesos (P3,000.00). Respondents are both warned that a repetition of the same or similar acts in the future shall be dealt with most severely.

SO ORDERED.

Sandoval-Gutierrez, Corona, and Carpio-Morales, JJ., concur.

[1] A.M. No. MTJ-02-1395, 28 March 2003.

[2] See Comment of 11 October 1999.

[3] Rollo, p. 78.

[4] *Astorga vs. Solas*, 361 SCRA 240.

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