EXECUTIVE JUDGE JOSE R. ASTORGA, COMPLAINANT, VS. NICOLASITO S. SOLAS, CLERK OF COURT, MUNICIPAL TRIAL COURT IN CITIES, ILOILO CITY, RESPONDENT.

A.M. No. P-01-1484 (Formerly OCA IPI No. 96-194-P). July 17, 2001

Ponente: VITUG, J.

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VITUG, J.:

In a letter-complaint, dated 05 July 1996, former Executive Judge Jose R. Astorga of the Municipal Trial Court in Cities ("MTCC"), Iloilo City, charged respondent Clerk of Court, Nicolasito Solas, of MTCC, Iloilo City, with various irregularities in the performance of his duties.

Complainant averred that, on 25 June 1996, a voucher for payment or withdrawal of cash bond deposit, along with an accomplished Land Bank of the Philippines Check No. 17728546, was presented to him for his signature and release. Noticing that the voucher was signed by Judge Nelida Medina only on 25 June 1996 but that the check was by then already signed on and dated 18 June 1996 by respondent, Judge Astorga disapproved the voucher and the release of the check. The check (of 18 June 1996) was thereafter canceled and, on 01 July 1996, replaced by a new check. Complainant also stated that respondent unduly acted as a Notary Public; attached to the complaint were photocopies of private documents notarized by respondent. Complainant said that he had called the attention of respondent several times on this matter but the latter still continued to notarize documents not related to his official functions.

In his comment, respondent denied having committed any irregularity in signing LBP Check No. 17728546 prior to the preparation of the voucher. He maintained that he did not falsify the check and that no one was prejudiced by his action. Respondent claimed that the complaint was filed merely to favor the assistant clerk of court, Ma. Theresa Zerrudo, a close associate of complainant. He denied having improperly acted in occasionally administering oaths which he considered to be part of his functions under the Manual for Clerks of Court.

The Court, in its Resolution of 19 November 1997, referred the case to Executive Judge Severino C. Aguilar of the Regional Trial Court of Iloilo City, Branch 35, for investigation, report and recommendation.

During the pendency of the case, the Integrated Bar of the Philippines ("IBP"), Iloilo City, through its Board of Directors, filed on 19 January 1998 a Petition before the Office of the Court Administrator to enjoin respondent from notarizing and administering oaths on documents that had no relation to his official duties. In the "1st Indorsement" of Deputy Court Administrator Zenaida Elepaño, the petition of the IBP was referred to Judge Aguilar for inclusion in his investigation of "OCA-IPI No. 96-194-P, entitled `Judge Jose R. Astorga vs. Nicolasito Solas.'"

After a series of conferences, the investigating judge recommended, in his "order" of 30 July 1998, to have the instant administrative matter considered closed and terminated, with a warning that a repetition by respondent of his questioned conduct could warrant a drastic action from the Office of the Executive Judge. In his order, the investigating judge took into account the letter, dated 08 July 1998, of respondent expressing remorse over an

"honest mistake" in signing the check even prior to the preparation of the voucher. Respondent apologized for the inconvenience he had caused Judge Astorga. The order contained the conformity of complainant and his acceptance of respondent's apology. The investigating judge explained that he issued the order as being a move to restore cordial relationship between Judge Astorga and respondent.

Relative to the petition of the IBP, the investigating judge issued an order, dated 19 February 1998, to the effect that based on an agreement with the Iloilo City IBP, represented by its President Atty. Von Lovel Bedina, respondent would discontinue his practice of notarizing documents and administering oaths on matters not related to his official function as a clerk of court. Thus, he felt, no sanction need yet be imposed on respondent.

The Office of the Court Administrator ("OCA"), in its memorandum, of 11 December 2000, gave its own assessment of the case.

On the issue of the premature signing of Land Bank Check No. 17728546, the OCA found that indeed respondent had acted in good faith and that, in any case, there was no prejudice that resulted to anyone.

Insofar as the charge of notarizing documents and administering oaths unrelated to his office, respondent was recommended by the OCA to be sanctioned by an imposition of a P5,000.00 fine with a warning that a repetition of the same offense would be dealt with more severely, citing Section N, Chapter VIII, Manual for Clerk of Court -

> "DUTY TO ADMINISTER OATH - Officers authorized to administer oaths, with the exception of notaries public, municipal judges and clerks of court, are not obliged to administer oath or execute certificates save in matters of official business; and with the exception of notaries public, the offices performing the service in those matters shall charge no fee, unless specifically authorized by law."

The Court accepts the findings and recommendations of the OCA.

The OCA was convinced that the signing of Land Bank Check No. 17728546 prior to the preparation of the voucher was done in good faith and no one was prejudiced thereby. The Court, nevertheless, would still remind respondent to follow regular procedure in future transactions of this nature.

In respect to the other charge, respondent acted imprudently in notarizing documents and administering oath on matters alien to his official duties. The Resolution, dated 18 December 1990, of the Court En Banc on Administrative Matter No. 90-10-1498-MTC (Letter-query of Clerk of Court II, Bonifacio D. Paguirigan, MTC, Aparri, Cagayan) stated thusly:

> "This refers to an inquiry of Bonifacio D. Paguirigan on whether he as Clerk of Court of the Municipal Trial Court of Aparri, Cagayan can administer oath of affidavits of parties and witnesses which are to be filed in court. Under Section 21 of the Administrative Code of 1917, the general authority to administer oaths given to Clerks of Court was limited to Clerks of Court of the First Instance (now Regional Trial Court) and the Clerk of Court of the Supreme Court, Section 41 of the Administrative Code of 1987 amending Sec. 21 of the Administrative Code of 1917 was however, amended by Republic Act No. 6788 approved on July 25, 1989, to read:
> "'Sec. 41. Officers Authorized to Administer Oath. - The following officers have general authority to administer oaths: President; Vice-President; Members and Secretaries of both Houses of the Congress; Members of the Judiciary; Secretaries of Departments; Provincial governors and lieutenant-governors; city mayors; municipal mayors; bureau directors; regional directors; clerk of court; registrars of deeds; other civilian officers in public service of the government of the Philippines whose appointments are vested in the President and are subject to confirmation by the Commission on Appointments; all other constitutional officers; and notaries public.'

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"From the above quoted provision, the term `clerk of courts' is used as a general term. No specification was made as to the court to which said clerks of courts belong. The intention of the law is clear, to remove the limitation, and hence, to authorize all clerks of courts regardless of whether they are clerks of the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts, to administer oaths on matter involving official business."

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. Clerks of court should not in their ex-officio capacity take part in the execution of private documents bearing no relation at all to their official functions. The Court takes judicial notice of the fact that Iloilo City is a highly urbanized city and obviously not a far-flung municipality which has neither lawyers nor notaries public to possibly here warrant an exceptional rule.

The Court in a number of cases has sanctioned members of the Bench in notarizing documents unrelated to the proper discharge of their offices. In Tabao vs. Asis,[1] the Court imposed upon a judge a fine of P10,000.00 for notarizing a Special Power of Attorney; still, in another case, the Court fined a judge in the amount of P5,000.00 when he notarized a pleading filed before the Department of Agrarian Reform and Adjudication Board (DARAB).[2]

WHEREFORE, the Court, finding Nicolasito Solas, Clerk of Court of the Municipal Trial Court in Cities, Iloilo City, guilty of abuse of authority, hereby imposes the OCA recommended FINE of Five Thousand Pesos (P5,000.00) with a warning that a repetition of the same or similar act in the future will be dealt with severely.

SO ORDERED.

Melo, (Chairman), and Panganiban, JJ., concur.
Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., on leave.

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[1] 252 SCRA 581.

[2] Horst Franz Ellert vs. Judge Victorio Galapon, Jr., Administrative Matter No. MTJ-00-1294, 31 July 2000.

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