

CRISOSTOMO M. PLOPINIO, COMPLAINANT, VS. ATTY. LIZA ZABALA-CARIÑO, CLERK OF COURT, REGIONAL TRIAL COURT, BRANCH 29, LIBMANAN, CAMARINES SUR, RESPONDENT.

A.M. No. P-08-2458 (Formerly OCA IPI No. 08-2755-P). March 22, 2010

Ponente: PEREZ, J.

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PEREZ, J.:

The instant administrative case stemmed from a Letter[1] dated 20 January 2007 of Crisostomo M. Plopinio (complainant), informing the Court that he had charged Atty. Liza D. Zabala-Cariño (respondent Atty. Cariño), Clerk of Court, Regional Trial Court (RTC), Branch 29, Libmanan, Camarines Sur, criminally and administratively before the Office of the Ombudsman, for violation of Section 4(c), Republic Act No. 6713 and Section 3(e), Republic Act No. 3019 on 10 February 2006 and 22 March 2006. These were docketed as OMB-L-A-06-0072-A and OMB-L-C-06-0110-A, and OMB-L-C-02-98-C and OMB-L-A-06-0212-C, respectively.

Complainant stated that respondent Atty. Cariño may not have disclosed to the Supreme Court, in the course of her application as Clerk of Court, her pending administrative and criminal cases before the Ombudsman.

In an Indorsement[2] dated 8 May 2007, the Office of the Court Administrator (OCA) directed respondent Atty. Cariño to give her comment on the letter.

In her Comment[3] dated 24 May 2007, respondent Atty. Cariño vehemently denied the allegations against her. She claimed that she was just being truthful when she answered "No" to item number 37(a) of her Personal Data Sheet (PDS) which states: "Have you ever been formally charged?" She admitted that she was aware of the two (2) complaints filed against her and her former Regional Election Director before the Ombudsman. She, however, pointed out that these cases are still in the preliminary investigation and pre-charge stages, since probable cause has yet to be determined by the investigating officers and as such, should not be considered as formal charges yet.

Acting on the recommendation of the OCA, the Court issued a resolution[4] re-docketing the complaint as a regular administrative matter against respondent Atty. Cariño and referred the matter to the Executive Judge of RTC, Libmanan, Camarines Sur, for investigation, report and recommendation within sixty (60) days from receipt of the record.

On 4 February 2009, the Court issued a Resolution[5] noting the undated letter of complainant stating that Judge-Designate Lore V. Bagalacsa is respondent Atty. Cariño's godmother at her wedding and in one of complainant's cases, SP Civil Action No. L-03-06, Judge Bagalacsa "exhibited ill-feelings" against him when he questioned why she was still hearing his cases. The Court referred the matter to Executive Judge Jaime E. Contreras, RTC, Naga City, for investigation, report and recommendation.

In his Report and Recommendation[6] dated 29 June 2009, Investigating Judge Contreras stated that the complaint warrants disciplinary action against respondent Atty. Cariño. The Investigating Judge found respondent

liable for her failure to properly understand the import of the question "Have you ever been formally charged?" He contends that as a lawyer, respondent Atty. Cariño should have known that such kind of query was intended to dig into her personal background; whether administrative or criminal cases were filed against her regardless of whatever stages these may be.

Finding no deliberate intent on the part of respondent Atty. Cariño to withhold information about her pending Ombudsman cases, the Investigating Judge recommended that she be admonished to be more circumspect and prudent in answering her PDS, with a stern warning that a repetition of the same or similar act shall be dealt with more severely. The Investigating Judge further recommended that the question in the PDS, which reads: "Have you ever been formally charged?" be modified, in order to avoid any erroneous interpretation, to read as follows: "Have you ever been charged criminally or administrative (sic) in any forum? What is the stage now?"

The OCA adopted the findings and conclusions of the Investigating Judge but recommended that respondent Atty. Cariño be suspended for a period of one (1) month without pay, with a stern warning that a repetition of the same offense or commission of a similar offense in the future, shall be dealt with more severely.[7] It concluded that it was not a simple case of misconstruction of the term "formally charged" that could justify the non-disclosure of the Ombudsman cases filed against her. As a lawyer, she is expected to understand the essence of the question. Moreover, the OCA noted that respondent Atty. Cariño has been in the government service for a period of eighteen (18) years, hence, she is presumed to have gained familiarity with the questions in the PDS.

We disagree with the findings and recommendation of the OCA.

Respondent Atty. Cariño is charged with dishonesty for allegedly falsifying her PDS. Dishonesty is defined as "intentionally making a false statement in any material fact, or practicing or attempting to practice any deception or fraud in securing his examination, registration, appointment or promotion." It is also understood to imply a "disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray." [8]

Thus, dishonesty, like bad faith, is not simply bad judgment or negligence. Dishonesty is a question of intention. In ascertaining the intention of a person accused of dishonesty, consideration must be taken not only of the facts and circumstances which gave rise to the act committed by the petitioner, but also of his state of mind at the time the offense was committed, the time he might have had at his disposal for the purpose of meditating on the consequences of his act, and the degree of reasoning he could have had at that moment.[9]

The intention to falsify or misrepresent, as found by the Investigating Judge, is absent on the part of respondent Atty. Cariño when she answered the question "Have you ever been formally charged?" When she filled-up her PDS, she had in mind the Uniform Rules on Administrative Cases in the Civil Service, which states, among others:

Section 8. Complaint. - A complaint against a civil service official or employee shall not be given due course unless it is in writing and subscribed and sworn to by the complainant. However, in cases initiated by the proper disciplining authority, the complaint need not be under oath.

x x x x

The complaint should be written in a clear, simple and concise language and in a systematic manner as to apprise the civil servant concerned of the nature and cause of the accusation against him and to enable him to intelligently prepare his defense or answer.

The complaint shall contain the following:

- full name and address of the complainant;

- full name and address of the person complained of as well as his position and office of employment;
- a narration of the relevant and material facts which shows the acts or omissions allegedly committed by the civil servant;
- certified true copies of documentary evidence and affidavits of his witnesses, if any; and
- certification or statement of non-forum shopping.

In the absence of any one of the aforementioned requirements, the complaint shall be dismissed.

x x x x

Section 16. Formal Charge. - After a finding of a prima facie case, the disciplining authority shall formally charge the person complained of. The formal charge shall contain a specification of charge(s), a brief statement of material or relevant facts, accompanied by certified true copies of the documentary evidence, if any, sworn statements covering the testimony of witnesses, a directive to answer the charge(s) in writing under oath in not less than seventy-two (72) hours from receipt thereof, an advice for the respondent to indicate in his answer whether or not he elects a formal investigation of the charge(s), and a notice that he is entitled to be assisted by a counsel of his choice.

If the respondent has submitted his comment and counter-affidavits during the preliminary investigation, he shall be given the opportunity to submit additional evidence.

The disciplining authority shall not entertain requests for clarification, bills of particulars or motions to dismiss which are obviously designed to delay the administrative proceedings. If any of these pleadings are interposed by the respondent, the same shall be considered as an answer and shall be evaluated as such.

x x x x

Section 34. Effect of the Pendency of an Administrative Case. - Pendency of an administrative case shall not disqualify respondent from promotion or from claiming maternity/paternity benefits.

For this purpose, a pending administrative case shall be construed as follows:

- When the disciplining authority has issued a formal charge; or
- In case of a complaint filed by a private person, a prima facie case is found to exist by the disciplining authority.

Respondent Atty. Cariño's non-disclosure of her pending Ombudsman cases was by reason of her interpretation of what a formal charge meant as distinguished from a complaint. She banked on the distinction of these terms as defined under the Uniform Rules on Administrative Cases in the Civil Service. She correctly argued that the term "formal charge" in the PDS must find its meaning in the Uniform Rules on Administrative Cases in the Civil Service. For after all, both the Uniform Rules on Administrative Cases in the Civil Service and the CS Form 212 (Revised 2005), otherwise known as the "Personal Data Sheet," had been promulgated and revised by the Civil Service Commission itself.

It is not correct to say that this is a simple case of misconstruction of the term "formally charge" and that as a lawyer, respondent Atty. Cariño is expected to understand the essence of such question. For in reality, the question is subject to varied interpretations.

In criminal cases, the determination of whether a person is considered formally charged is found in Rule 112 of the Revised Rules of Criminal Procedure, to wit:

Section 4. Resolution of investigating prosecutor and its review. - If the investigating prosecutor finds cause to

hold the respondent for trial, he shall prepare the resolution and information. He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.

Within five (5) days from his resolution, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the Sandiganbayan in the exercise of its original jurisdiction. They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.

No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy.

Where the investigating prosecutor recommends the dismissal of the complaint but his recommendation is disapproved by the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy on the ground that a probable cause exists, the latter may, by himself, file the information against the respondent, or direct another assistant prosecutor or state prosecutor to do so without conducting another preliminary investigation.

If we but look at the attachments to the complaint itself, it is evident that at the time respondent Atty. Cariño was applying for the position of Clerk of Court, she had not yet been "formally charged" administratively or criminally.

In the Orders[10] dated 10 February 2006 in OMB-L-A-06-0072-A and OMB-L-C-06-0110-A, the Deputy Ombudsman for Luzon directed respondent Atty. Cariño and her Regional Election Director, Atty. Zacarias C. Zaragosa, Jr., to submit their counter-affidavit/s, affidavit/s of their witnesses, if any, and such other controverting evidence, with proof of service of copies upon the complainant within ten (10) days from receipt of the orders. The orders further state that "[T]hereafter, the case will be considered submitted for final disposition or taking of further action as may warranted x x x."

Clearly, there were no final dispositions of the cases yet. In fact, the complainant even stated in his Complaint[11] that those cases were not yet resolved by the Ombudsman.

Thus, it is only after the issuance of the resolution finding probable cause and filing of the information in court that she can be considered formally charged. In fact, the reckoning point is the filing of the information with the written authority or approval of the Ombudsman.

To rule otherwise would subject herein respondent, or any civil servant for that matter, to extreme hardships considering that a government official or employee formally charged is deprived of some rights/privileges, i.e., obtaining loans from the Government Service Insurance System or other government-lending institutions, delay in the release of retirement benefits, disqualification from being nominated or appointed to any judicial post[12] and, in some instances, prohibition to travel.

To summarize, a person shall be considered formally charged:

(1)

In administrative proceedings - (a) upon the filing of a complaint at the instance of the disciplining authority; or (b) upon the finding of the existence of a prima facie case by the disciplining authority, in case of a complaint filed by a private person.

(2)

In criminal proceedings - (a) upon the finding of the existence of probable cause by the investigating prosecutor and the consequent filing of an information in court with the required prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy; (b) upon the finding of the existence of probable cause by the public prosecutor or by the judge in cases not requiring a preliminary investigation nor covered by the Rule on Summary Procedure;^[13] or (c) upon the finding of cause or ground to hold the accused for trial pursuant to Section 13 of the Revised Rule on Summary Procedure.^[14]

WHEREFORE, in the light of foregoing, the instant administrative complaint against Atty. Liza D. Zabala-Cariño, Clerk of Court, RTC, Branch 29, Libmanan, Camarines Sur is hereby DISMISSED for lack of merit.

The Office of the Court Administrator is DIRECTED to cause the dissemination of the guidelines set forth herein.

SO ORDERED.

Carpio, (Chairperson), Brion, Del Castillo, and Abad, JJ., concur.

[1] Rollo, p. 3.

[2] Id. at 25.

[3] Id. at 26-27.

[4] Id. at 28-29.

[5] Id. at 33-34.

[6] Id. at 100-104.

[7] Id. at 128-133.

[8] *Wooden v. Civil Service Commission*, G.R. No. 152884, 30 September 2005, 471 SCRA 512, 526.

[9] *Millena v. Court of Appeals*, 381 Phil. 132, 142-143 (2000).

[10] Rollo, pp. 16-17.

[11] Id. at 3.

[12] Rule 4, Section 5, The Rules of the Judicial and Bar Council.

[13] Rule 112, Section 8, The Revised Rules of Criminal Procedure.

[14] The Revised Rule on Summary Procedure provides:

SEC. 13. Arraignment and trial. "Should the court, upon a consideration of the complaint or information and the affidavits submitted by both parties, find no cause or ground to hold the accused for trial, it shall order the dismissal of the case, otherwise, the court shall set the case for arraignment and trial.

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