

THIRD DIVISION

[A.M. NO. P-01-1459, January 31, 2005]

MARITONI M. NIEVA, COMPLAINANT, VS. SATURNINA ALVAREZ-EDAD, BRANCH CLERK OF COURT, METROPOLITAN TRIAL COURT, BRANCH 32, QUEZON CITY, RESPONDENT.

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Nieva vs Alvarez-Edad : AM P-01-1459 : January 31, 2005 : J. Sandoval-Gutierrez :
For our resolution is the instant administrative complaint^[2] filed by Maritoni M. Nieva, former legal researcher of the Metropolitan Trial Court (MeTC), Branch 32, Quezon City, charging Saturnina Alvarez-Edad, Branch Clerk of Court, also of the same Branch, with the following administrative offenses:

- 1) Falsification of daily time records;
- 2) Dishonesty;
- 3) Demanding or receiving commissioner's fee for reception of evidence *ex-parte*;
- 4) Conduct prejudicial to the best interest of the service;
- 5) Issuing certified true copies of warrant of arrest without payment of the corresponding fees; and
- 6) Discourtesy in the conduct of official business.

Complainant's allegations in her complaint are:

Respondent falsified her daily time records (DTR). The entries therein of the time of her arrival in the office and departure therefrom vary from her entries in the logbook. To support her charge, complainant submitted xerox copies of respondent's DTR and the logbook showing such variance, thus:

Date	Daily Time Record	Office Log Book
April 6, 1998	7:20 sick leave	7:20-12:00 12:30-4:30
May 14, 1998	7:35-12:00 12:30-4:30	7:35-12:00 12:00-2:30
May 28, 1998	7:50-12:00 12:30	7:35-12:00 12:00-2:30
June 18, 1998	7:55-12:00	7:55-12:00 12:30-

	12:30-4:00	4:30
June 26, 1998	8:00-12:00 halfday (<i>sic</i>)	8:00-12:00 12:30- 4:30
August 6, 1998	8:00-4:00	8:00-12:00 12:30- 4:30
August 12, 1998	7:15-12:00 12:30-4:30	7:15-12:00 12:30- 4:00

Respondent demanded from one Billy Ranas, a messenger from Unifunds, the sum of P1,500.00 as commissioner's fee in connection with the *ex-parte* hearing in *Unifunds vs. Sps. Ann and Jose Aquino et al.* held on July 16, 1998. When Ranas followed up the case, he tried to hand P500.00 to respondent, but she rejected it because she was expecting to receive P1,500.00. In the presence of other court employees, she shouted at Ranas, "*Yuong hinihingi kong legal, iyang negosyo ninyo ang illegal dahil ang taas taas ng singil ninyo sa interest. Tapos hindi ninyo babayaran ang commissioner's fee!*"^[3] ("What I am asking for is legal, but your business is illegal because you charge usurious rates of interest. Now you can't even pay my commissioner's fee!") Respondent then threatened to delay the disposition of the case.

Eventually, respondent received P500.00 from Melinda De Guzman of Unifunds. Upon respondent's instruction, Judith Cueto, Stenographer II, prepared a receipt for P500.00 as payment for "stenographic notes." Respondent then signed the receipt for the P500.00 but kept P300.00 for herself and gave Cueto only P200.00.

Respondent harassed complainant and Helen Santiago, stenographer, in the following manner: On August 28, 1998, respondent indicated in the logbook that complainant attended office for only one half day.^[4] When complainant insisted that she was present the whole day and was sitting beside her (respondent) in the afternoon, respondent replied sarcastically that she did not see her that same afternoon.

One morning in November 1998, respondent prematurely closed the logbook at 8:20 A.M. by indicating therein that it was already 8:30 A.M. When Helen Santiago politely apprised respondent that it was still 8:20 A.M., respondent tauntingly remarked, "*Eh di ilagay mong 8:29.*" ("So write down 8:29."). Helen then reported the matter to the Presiding Judge who settled their dispute. However, respondent still issued a memorandum dated November 19, 1998 to Helen directing her to explain within 72 hours why no disciplinary action should be taken against her for her disrespectful and discourteous conduct.

Respondent allowed Lily Monteverde, accused in Criminal Case No. 90201, to post bail although she did not personally appear in court, in violation of the Rules of Court.

In August and December 1998, respondent issued certified true copies of warrants of arrest in Criminal Cases Nos. 052743-4, entitled "*People of the Philippines vs. Raquel 'Mana' Rodriguez,*" without requiring the requesting party to pay the corresponding fees.

Respondent displayed conduct unbecoming of a public servant by publicly humiliating complainant, the lawyers, the accused, and the members of her staff.

Respondent unjustly charged Danilo Dela Cruz, a utility worker, with insubordination.^[5] As a result, Dela Cruz was dismissed from the service per the Supreme Court *en banc* Resolution dated September 8, 1998.

Finally, complainant was forced to resign on September 22, 1998 as legal researcher of Branch 32 on respondent's "pretext" that she "did not live up to her expectations."

On April 5, 1999, then Court Administrator Alfredo L. Benipayo required respondent to comment on petitioner's complaint.

In her comment^[6] dated June 14, 1999, respondent denied all the charges against her. She submitted her DTR and the logbook showing the following entries:

Date	Office Log Book	Daily Time Record
April 6, 1998	7:20 sick leave	7:20-12:00 12:30-4:30
May 14, 1998	7:35-12:00 12:30-2:00 ^[7]	7:35-12:00 12:00-2:30
May 28, 1998	7:50-12:00 12:30	7:35-12:00 12:00-4:30
June 18, 1998	7:55-12:00 12:30-4:00	7:55-12:00 12:30-4:30
June 26, 1998	8:00-12:00 halfday (<i>sic</i>)	8:00-12:00 12:30-4:30
August 6, 1998	8:00-4:00	8:00-12:00 12:30-4:30
August 12, 1998	7:15-12:00 12:30-4:30	7:15-12(<i>sic</i>)12:30-4:30

On August 7, 2000, we issued a Resolution referring the case to the Executive Judge, MeTC, Quezon City, for investigation, report, and recommendation.

In his Report dated January 15, 2001, Executive Judge Gregorio D. Dayrit exonerated respondent from all the charges, except for dishonesty.

Investigating Judge Dayrit found that respondent demanded from the representative of Unifunds P1,500.00 as commissioner's fee and received P500.00 in the guise of payment for stenographic notes. She kept P300.00 for herself without the consent of Judith Cueto, a stenographer. Judge Dayrit then recommended that respondent be found guilty of two (2) counts of dishonesty and be suspended from the service for one (1) year without pay and be disqualified for promotion or from receiving any increase in salary during the pendency of the suspension, pursuant to Section 46 (b), Subtitle A, Title I, Book V of Executive Order 292;^[8] Section 22, Rule XIV, Omnibus Rules Implementing Book V of E.O. No. 292; and Section 7 of Republic Act No.6713.^[9]

In our Resolution dated November 12, 2001, we referred the Report of Executive Judge Dayrit to the Office of the Court Administrator (OCA) for evaluation, report

and recommendation.

On March 26, 2002, Deputy Court Administrator (DCA) Christopher O. Lock submitted to this Court his Evaluation and Recommendation reproduced hereunder:

"Evaluation and Recommendation of this Office

Except for the charge of dishonesty and misconduct for demanding & collecting commissioner's fee, this Office finds the foregoing findings and recommendation to be well-taken. Records show that complainant failed to prove by substantial evidence to hold respondent administratively liable. As found by the investigating judge, the other charges were not proven.

After a thorough evaluation of the voluminous records of this case inclusive of the transcript of stenographic notes, exhibits and pleadings filed by complainant and respondent, this Office departs from the findings of the investigating judge that the respondent is guilty of dishonesty for demanding and collecting commissioner's fee.

This Office believes that respondent did not commit dishonesty when she demanded commissioner's fee from the Unifunds. As shown by the evidence established by the complainant, it shows that respondent is actually guilty of Violation of the Manual for Clerks of Court, specifically under the following provisions: (a) Section B, Chapter II (p. 36), which states that: '**No Branch Clerk of Court shall demand and/or receive commissioner's fees for reception of evidence ex-parte;**' and (b) Section D.7, Chapter IV(p. 74), which states that: '**The Court shall allow the commissioner, other than an employee of the Court, such reasonable compensation as the circumstances of the case warrant to be taxed as costs against the defeated party, or apportioned, as justice requires.**' [underscoring ours]. For all intents and purposes, respondent is in reality collecting commissioner's fee when she demanded payment from Unifunds through messenger Billy Ranas and Documentation Officer Melinda De Guzman even though she issued a receipt in the guise of collecting payment for transcript of stenographic notes (TSN) in behalf of Court Stenographer Cueto. This Office surmised that when respondent gave Court Stenographer Judith Cueto the sum of P200.00 pesos, she is merely giving the latter her share for transcribing the stenographic notes of the case of Unifunds. Clearly, the intent or motive to gain out of Cueto's collectibles for the payment of TSN is totally absent. In fact, it was established during the investigation that respondent collected the sum of P500.00 in the presence of the other staff and especially Court Stenographer Judith Cueto. The latter, upon receipt of the P200.00 pesos, did not object or complain. Presumably, respondent and Court Stenographer had a previous understanding or some sort of an 'agreement' to this kind of arrangement, which they call it a 'package deal' when conducting ex-parte hearing. As testified by Court Stenographer Cueto, the normal fee for ex-parte hearing, as far as their court is concerned, is P1,500.00 pesos, with the following sharing scheme: P1,000.00 goes to the Branch Clerk, then PP500.00 goes to the Court Stenographer. Were it not for this kind of arrangement,

respondent could have pocketed everything instead of giving part of it to Cueto. Since respondent was able to collect PP500.00 pesos only, she gave Cueto the P200.00 and retained for herself the P300.00 pesos. Thus, the absence of an intent or motive to gain.

Respondent's defense that it was Presiding Judge Marquez who conducted the *ex-parte* hearing as evidenced by the Transcript of Stenographic Notes dated 16 July 1998 is of no consequence. Regardless of whether or not respondent was authorized by the presiding judge is beside the point. The above-cited provisions in the said Manual is very clear that a Branch Clerk is prohibited to demand commissioner's fee.

Besides, Section 9, Rule 30, 1997 Rules of Civil Procedure is very specific that: 'x x x **in default or *ex-parte* hearings, and in any case where the parties agree in writing, the court may delegate the reception of evidence to its clerk of court who is a member of the bar.** x x x.' As a Branch Clerk of Court who is a non-lawyer, she ought to know that under the said rule it is only a member of the bar who is authorized to receive evidence *ex-parte*. Records reveal that there is no order of the presiding judge showing that she was authorized to act as such. Respondent even committed further blunder when, aware of the existing rules and even without prior authority from the judge, she gave the appearance to the parties concerned that she is legally collecting commissioner's fee. This is based from the very words she uttered to Witness-Documentation Officer Melinda De Guzman when she said, '*Ang hinihingi naman namin is legal eh. Ang illegal ay yung pagcha-charge nyo ng mataas na interest sa mga kliyente ninyo*' in the presence of the rest of the staff including the complainant and witness Cueto.

To curb the appalling practice of the Branch Clerks of Court, then Acting Court Administrator Zenaida N. Elepaño issued Circular No. 50-2001 dated 17 August 2001, which states: '**Pursuant to the Resolution of 27 June 2001 in A.M. No. 01-4-222-RTC, Clerks of Court are not authorized to collect compensation for services rendered as commissioners in *ex-parte* proceedings.**'

In the case of *RTC Makati Movement Against Graft and Corruption versus Atty. Inocencio E. Dumlao, Acting Clerk of Court, Regional Trial Court, Valenzuela, Metro Manila* (A.M. No. P-93-800, 09 August 1995), it was held that:

'On the issue of Respondent's demanding and receiving so-called 'commissioner's fees,' we find the charges against Respondent meritorious. The Manual for Clerks of Court, which in essence is the 'Bible for Clerks of Courts,' specifically provides that:

"No Branch Clerk of Court shall demand and/or receive commissioner's fee for reception of evidence *ex-parte*.

... The Court shall allow the commissioner, *other than an*