

EN BANC

[A.M. No. P-19-3972 (Formerly OCA I.P.I. No. 12 3971-P), July 09, 2019]

ATTY. LEANIE GALVEZ-JISON, COMPLAINANT, V. MAY N. LASPIÑAS^[*] AND MAE VERCILLE H. ^[] NALLOS, RESPONDENTS.**

DECISION

PER CURIAM:

This resolves the Complaint^[1] filed on August 3, 2012 by Atty. Leanie Galvez-Jison (complainant) against Legal Researcher May N. Laspiñas (Laspiñas) and Clerk III Mae Vercille A. Nallos (Nallos), both of Branch 40, Regional Trial Court (RTC), Silay City, Negros Occidental, for Serious Dishonesty and Grave Misconduct.

Antecedents

On August 3, 2012, complainant filed a letter-complaint for Serious Dishonesty and Grave Misconduct against Laspiñas and Nallos.^[2]

Complainant filed a Petition for Change of Gender and Correction of Certificate of Live Birth on November 17, 2011 in behalf of her client, Geno Adelantar Reyes (Reyes). Later on, the petition was docketed as Spec. Proc. Case No. 2034 and raffled to Branch 40, RTC, Silay City, Negros Occidental. Hence, she paid all the legal fees before the Office of the Clerk of Court (OCC), RTC, Silay City and apprised her client to wait for the issuance of the order for publication coming from the trial court. However, to the surprise of complainant, the trial court issued an Order dated March 6, 2012 directing the complainant's client, Reyes, to pay for the publication fee or risk the dismissal of the petition. This came as a surprise since complainant already paid the publication fee when she filed the petition. She averred that because of the Order of the court, her client thought that she pocketed the money given to her for the payment of the fees were it not for the acknowledgment receipt she had which was issued by the OCC.^[3]

After complainant conducted an investigation, she learned that Nallos claimed the publication fee from the OCC on December 1, 2011 by claiming that she was authorized to do so by former Branch Clerk of Court Karen Joy T. Gaston (former Branch Clerk Gaston [now a Judge at Branch 5, Municipal Trial Court in Cities, Bacolod City]. Nallos received the total amount of P3,520.00 and turned over the said amount to former Branch Clerk Gaston only in March 2012 when they discovered the trial court's Order dated March 6, 2012.^[4]

Complainant averred that former Branch Clerk Gaston did not authorize Nallos to claim the publication fee from the OCC and that it was another court employee, Laspiñas, who gave such instruction. It is the complainant's position that both

Laspiñas and Nallos should be administratively charged for their actions which prejudiced her client.^[5]

Respondents' Positions

Nallos vehemently denied the complainant's accusations against her. She claimed that she was under the impression that she can receive the publication fee paid to the OCC being the clerk-in-charge of special proceedings cases. Besides, it has been a practice in their court for her to deliver the publication fee and the corresponding court order to the publisher concerned. Since the court has not yet issued any order when she received the money from the OCC, complainant and her client were not prejudiced. She also stressed that when former Branch Clerk Gaston asked for the money, she was able to immediately produce it. She further denied the allegation that she only remitted the money after she discovered that the court had issued the Order dated March 6, 2012 threatening to dismiss the petition if the publication fee remains unpaid stating that she does not have access to court records and that it is Cheryl Luzarita, a local government employee, who releases the orders of the court in civil cases, special proceedings and cadastral cases.^[6]

Meanwhile, Laspiñas stressed that as a Legal Researcher, she had no participation in the publication fee anomaly paid by the complainant. She averred that handling of fees is different from her job description as a Legal Researcher and that she does not meddle in matters relating to civil cases, special proceedings and cadastral cases.^[7]

Laspiñas further denied the charge that she and Nallos only remitted the money after discovering the Order of the court dated March 6, 2012. She stressed that her name was not mentioned in the narration of facts of the complainant and that it was the name of Nallos which was consistently mentioned therein. She also refuted the allegation that she instructed Nallos to receive the money from OCC, stating that it was merely hearsay.^[8]

Furthermore, Laspiñas stated that the instant administrative complaint is malicious due to the fact that complainant Jison is a close friend of Judge Felipe G. Banzon, who is the respondent in an administrative case wherein she is the complainant.

The instant case was referred to Executive Judge Dyna Doll Chiongson-Trocio, (Judge Trocio) RTC, Silay City, for investigation, through a Resolution dated June 16, 2014.^[9]

In her Investigation Report^[10] dated April 6, 2015, Judge Trocio recommended the penalty of dismissal from service for Nallos, for patent act of dishonesty and grave misconduct. As for Laspiñas, Judge Trocio recommended the dismissal of the complaint finding that there is no direct evidence showing her participation in the receipt of the publication fee and misappropriation.^[11]

Atty. Eric B. De Vera, Clerk of Court VI, OCC, RTC, Silay City, Negros Occidental testified that he received the publication fees in Spec. Proc. Case No. 2034 in the amount of P3,520.00 which was subsequently received by respondent Nallos being the clerk-in-charge of Branch 40, RTC, Silay City, Negros Occidental.^[12]

Aileen Gamboa (Gamboa), the cashier at the OCC, testified that she issued a provisional receipt to the complainant for the paid publication fee. She further

testified that it is a common practice in the OCC to turn over the publication fees to the assigned branch on the same day, or within the week after the raffle of the petition. She narrated that she usually gives the publication fees to the branch clerks of courts or to the clerks-in-charge, in the absence of the former. Gamboa stated that for Branch 40, it was Nallos who was in-charge of special proceedings cases and to whom the publication fee in Spec. Proc. Case No. 2034 was delivered.
[13]

Another witness that was presented was former Branch Clerk Gaston. She testified that she did not authorize Nallos to get the publication fees from the OCC and that there was not an instance where Nallos was asked to do so. Former Branch Clerk Gaston also issued an Office Memorandum, directing Nallos to explain why she failed to remit the publication fees in a number of cases including Spec. Proc. Case No. 2034. Former Branch Clerk Gaston averred that Nallos admitted to her that she claimed the publication fees from the OCC. Nallos further admitted partially using the fees since her husband was unemployed at that time and pointed out that some of the amount went to Laspiñas for she was the one who instructed her to get the publication fees. Nallos also asked former Branch Clerk Gaston if she could repay the amounts on installment basis. Regarding the publication fee in Spec. Proc. Case No. 2034, the amount was returned only on March 20, 2012. Former Branch Clerk Gaston also stressed that Spec. Proc. Case No. 2034 was not the first and only time where the publication fee was not timely turned over to her by Nallos.
[14]

In their defense, Nallos testified that she did not withdraw the publication fee from the OCC and that it was voluntarily given to her by Gamboa. However, Nallos admitted that she did not immediately endorse the said amount to former Branch Clerk Gaston and instead kept it because she was the one in-charge of bringing the amount to the publisher. She anticipated that the publication fee would be given back to her by the branch clerk to be delivered to the publisher. Nallos also admitted that she did not inform former Branch Clerk Gaston about her receipt of the publication fee because she forgot to do so. She also confessed that she used the money for her family. She only returned the amount after the issuance of the memorandum by former Branch Clerk Gaston. Nallos also denied the allegation of former Branch Clerk Gaston that she told her that it was Laspiñas who directed her to receive the publication fee from the OCC.
[15]

OCA's Report and Recommendation

In the Memorandum dated August 16, 2015^[16] the Office of the Court Administrator (OCA) adopted the findings of Judge Trocio and recommended the penalty of dismissal from the service of Nallos and dismissal of the complaint for Laspiñas. To quote:

IN VIEW OF THE FOREGOING, it is respectfully recommended for the consideration of the Honorable Court that:

1. **OCA IPI No. 12-3971-P** be **RE-DOCKETED** as a regular administrative matter, and respondent Mae Vercille H. Nallos, Clerk III, Branch 69, Regional Trial Court, Silay City, Negros Occidental, be found **GUILTY** of grave misconduct and dishonesty, and be **DISMISSED** from the service effective immediately, with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to her re-employment in any branch or agency of the government, including