

THIRD DIVISION

[A.M. No. P-07-2369 [Formerly OCA IPI No. 06-2444-P], November 16, 2011]

CONCERNED CITIZEN, COMPLAINANT, VS. MARIA CONCEPCION M. DIVINA, COURT STENOGRAPHER, REGIONAL TRIAL COURT, BRANCH 3, BALANGA CITY, BATAAN, RESPONDENT.

DECISION

MENDOZA, J.:

This disposition addresses the administrative complaints against respondent, Maria Concepcion M. Divina (Divina), Court Stenographer of the Regional Trial Court of Balanga City, Bataan, Branch 3 (*RTC*), to wit: 1] an undated anonymous letter-complaint^[1] filed by a "Concerned Citizen" charging her with Gross Misconduct for her alleged attempt to extort P20,000.00 in exchange for the Transcript of Stenographic Notes (*TSN*) of their case; 2] a letter-complaint^[2] dated August 24, 2005 of Atty. Teodoro O. Camacho III (*Atty. Camacho*) for her alleged arrogant behavior; and 3] a complaint-affidavit^[3] filed by Ricardo M. Ricardo (*Ricardo*) charging her with extortion and inefficiency.

As synthesized by the Office of the Court Administrator (OCA) in its September 14, 2010 Memorandum,^[4] the facts of the case are as follows:

Records show that sometime in 2005, an anonymous complaint was filed by a "Concerned Citizen" against Maria Concepcion M. Divina, Court Stenographer, Regional Trial Court, Branch 3, Balanga City, Bataan, for Grave Misconduct. According to the letter-sender, respondent demanded Twenty Thousand Pesos (P20,000.00) from them in exchange for the Transcript of Stenographic Notes of their case. Respondent allegedly threatened them that if they failed to give her money, she would not prepare the Transcript of Stenographic Notes (*TSN*) they were requesting, which would result in the delay in the disposition of their case.

On December 8, 2005, the matter was referred to Honorable Remigio M. Escalada, Jr., Executive Judge, Regional Trial Court, Balanga City, Bataan, for discreet investigation. On March 2, 2006, Judge Escalada submitted his investigation report. He claimed that he could not ascertain the identity of the letter-writer. However, one court litigant executed a sworn statement alleging that respondent demanded money from him when he asked for a copy of *TSN*. Integrated Bar of the Philippines (IBP) Bataan Chapter President, Atty. Teodoro O. Camacho III, likewise complained about the arrogance of respondent when he requested for a *TSN*, which respondent failed to submit on time. When Judge Escalada conducted an

inventory of the docket folders, he discovered that respondent had a backlog of untranscribed stenographic notes as far back as 2001.

On March 6, 2006, the anonymous complaint was referred to respondent for comment. Ms. Divina denied that she demanded Twenty Thousand Pesos (P20,000.00) from a court litigant, and that she had been delaying the release of the TSN of cases assigned to her. She maintained that most of the time, TSNs were given for free because majority of the litigants in their court are indigents and her townmates. She even had to bring home some of her work so that she can finish transcribing them and she reports for work even on her birthdays and when her children were in the hospital, just to finish her work.

Considering the gravity of the charges against the respondent and in order to afford her a chance to answer the accusations against her, the Court, in its Resolution of October 11, 2006, referred the complaint to Judge Escalada, for a full-blown investigation. The Clerk of Court of Regional Trial Court, Branch 3, Balanga City, Bataan, was likewise required to conduct an inventory of all untranscribed stenographic notes of respondent.

In compliance with the October 11, 2006 Resolution, Judge Escalada reported that respondent faces three (3) charges; (1) extortion and delay in submitting the Transcript of Stenographic Notes in Civil Case No. 7400; (2) delay in submitting the TSN covering the proceeding in other cases; and (3) belligerent attitude exhibited against Atty. Teodoro O. Camacho III.

In the investigation conducted by Judge Escalada, Mr. Ricardo M. Ricardo, petitioner in Civil Case No. 7400, for annulment of marriage, testified that he was not the author of the anonymous complaint and his "Sinumpaang Salaysay," dated January 16, 2006, was the only complaint he filed against respondent for the delay in the submission of Transcript of Stenographic Notes. He alleged that on the day he took the witness stand, respondent waved her hand at him while he was still outside the courtroom, and after the hearing, respondent told him to secure the TSN of his testimony in order that the psychologist/expert witness may review the same. Respondent asked money from him and he gave her One Hundred Pesos (P100.00), the only money he could spare. Before the date of the hearing wherein he would present the psychologist, he approached the respondent and asked her about the transcript, but he was told by respondent that, "Marami pa akong ginagawa at marami pang nakapila, kaya di ko pa magawa." He followed up his request for the TSN for several times, but he felt that respondent was making it difficult for him to get the transcript. Thus, the next time respondent asked money from him, he readily gave her Five Hundred Pesos (P500.00), although he was aware that the transcript costs only Ten Pesos (P10.00) per page. In August 2005, he went again to respondent to ask for the transcript, but respondent failed to give him the TSN.

Atty. Camacho's complaint stemmed from a verbal row he had with respondent on August 18, 2005 at the lawyer's table while a hearing was

going on. Atty. Camacho testified that, on August 18, 2005, he was at the sala of Regional Trial Court, Branch 3, Balanga City, Bataan, as counsel of one of the accused, and waiting for his case to be called. He was then holding the TSN of the case, where Atty. Eliodoro S. Baluyot was the counsel of the other accused. He told Atty. Baluyot that he could ask for a copy of the said TSN from respondent. When respondent heard what he had advised Atty. Baluyot, respondent arrogantly asked him, with piercing eyes, "Gusto mo ngayon ko kukunin?" Complainant claimed that it was not his intention to direct respondent to rise from her seat and get the TSN from the staff room. According to complainant, prior to the incident, he had repeatedly requested for the TSN from respondent who promised to give him a copy few days before the scheduled hearing. When he eventually got the TSN, respondent even retorted, "Hindi ko naman dinagdagan yan and in 20 years na pagtatrabaho ko dito, tama ang aking ginagawa." Complainant realized that the reason why respondent was slow in finishing the transcripts, especially for IBP Legal Aid cases, was because she would not be paid, due to previous arrangement of the IBP with court stenographers to give the TSN for free to lawyers rendering services pro bono.^[5]

In his Investigation Report^[6] dated March 12, 2007, Judge Remigio M. Escalada, Jr. (Judge Escalada) found Divina liable for violation of Section 11 of Rule 141 due to her unauthorized collection of payments from complainant Ricardo for the TSN in Civil Case No. 7400. Judge Escalada also found her liable for unjustified delay in preparing the TSN in Civil Case No. 7400 despite repeated demands of Ricardo and for failure to timely submit the TSN due from her in other cases. The Investigating Judge, however, accorded Divina the benefit of the doubt on Ricardo's allegation of extortion in the light of his ambiguous testimony on the matter. In the absence of sufficient proof, Judge Escalada absolved Divina of the extortion charge by the "Concerned Citizen," whose identity had remained unknown even until the investigation was over.

Anent the charge of belligerent attitude by Atty. Camacho, Judge Escalada opined that it was not sufficiently established, although evidence on this score all the more showed how inefficient and ineffective Divina had become as a stenographer. For her infractions, Judge Escalada recommended that Divina be suspended from service for not less than six (6) months without pay. Further, he suggested that, after serving her suspension penalty, Divina be transferred to any first-level court in Bataan as she could not cope with the more demanding work in the second-level court.

The Court referred the investigation report of Judge Escalada to the OCA for evaluation, report and recommendation as per Resolution^[7] dated March 28, 2007.

In the Memorandum^[8] dated August 22, 2007, the OCA echoed the findings of Judge Escalada and agreed that Divina was guilty of inefficiency in the performance of duty and violation of Section 11, Rule 141 and Section 17, Rule 136 of the Rules of Court, and Administrative Circular No. 24-90 dated July 12, 1990. The OCA said, however, that it could not adopt the penalty recommended by Judge Escalada considering the numerous TSNs that Divina failed to timely transcribe which definitely contributed to the delay in the administration of justice. The OCA also

noted the "Unsatisfactory" performance rating she was given for the period from July to December 2006. It recommended instead, a penalty of suspension from service for one (1) year without pay.

In the Resolution^[9] dated September 10, 2007, the Court resolved to: 1) re-docket the complaint as a regular administrative matter; 2) direct the Clerk of Court of the RTC to properly monitor the Stenographic Reporters under her supervision; and 3) order Judge Escalada to review the performance rating of Divina for the period from January to June 2007, pursuant to Circular No. 172-2003 dated December 2, 2003 and to submit his recommendations to this Court through the Performance Evaluation Committee (PERC), OCA.

In compliance with the directive, Judge Escalada submitted a letter^[10] dated October 30, 2007 informing the Court that he gave Divina a "Satisfactory" rating for her work performance from January to March 2007. Judge Erasto D. Tanciangco (*Judge Tanciangco*), Presiding Judge of the 1st Municipal Circuit Trial Court of Dinalupihan Hermosa, Bataan (*MCTC*), where Divina was detailed from April to September 2007, gave her a "Very Satisfactory" rating for the period April to June 22, 2007. Instead of six (6) months suspension, Judge Escalada recommended that the Court impose upon Divina the penalty of suspension from the service for two (2) months, without salary and with warning, considering that Divina's work performance had improved.

In the Resolution^[11] dated January 21, 2008, the Court again referred this October 30, 2007 letter of Judge Escalada to the OCA for evaluation, report and recommendation.

Pursuant thereto, the OCA issued its Memorandum^[12] dated July 11, 2008 stating that Divina's improvement in her work performance would not exonerate her from her culpability for inefficiency and violation of the Code of Conduct for Court Personnel, particularly, Section 4, Canon 1 which prohibits court personnel from accepting any fee or remuneration beyond what they receive or are entitled to in their official capacity. The OCA recommended that Divina be found guilty of gross violation of the Code of Conduct for Court Personnel for demanding money over and above the fees of TSN as provided for in the Rules and recommended that she be dismissed from service with forfeiture of all salaries and benefits, except accrued leave credits to which she may be entitled, and with disqualification from reinstatement or appointment to any public office, including government-owned and controlled corporation.

On October 28, 2009, the Court issued its Resolution^[13] requiring the parties to manifest if they were willing to submit the case for decision/resolution on the basis of the pleadings filed. On January 14, 2010, Divina filed her Manifestation and Motion^[14] (With Explanation for the Late Filing of the Same) praying for the reopening of the case for further investigation and reception of evidence. On the other hand, Atty. Joe Frank Zuniga (*Atty. Zuniga*), counsel for Ricardo, filed his Compliance^[15] dated December 9, 2009 wherein he expressed his desire to submit the case for resolution based on the pleadings on record.

In the Resolution^[16] dated April 5, 2010, the Court referred Atty. Zuniga's

December 9, 2009 Compliance and January 13, 2010 Manifestation to the OCA. On September 14, 2010, the OCA issued its Memorandum^[17] where the following recommendations were submitted for the consideration of the Court: 1) to deny Divina's motion to reopen the case; and 2) to mete the penalty of suspension for one (1) year without pay against Divina for inefficiency in the performance of duty and violation of Section 11, Rule 141 and Section 17, Rule 136 of the Rules of Court and Circular No. 24-90 dated July 12, 1990, with a caveat that a repetition of the same or similar acts in the future shall be dealt with more severely.^[18]

After a judicious review of the records, the Court finds that this case can be decided based on the pleadings filed by the parties and the reports submitted by the Investigating Judge and the OCA. Divina's motion for further investigation and presentation of evidence is denied considering that she was already afforded sufficient opportunity to controvert and refute the accusations against her through her comment and testimony during the full-blown investigation conducted by Judge Escalada.

The issue to be resolved now is whether or not Divina is guilty of the charges hurled against her. In this regard, the Court determines that the findings of the OCA in its September 14, 2010 Memorandum, are well-taken.

In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such evidence as a reasonable mind may accept as adequate to support a conclusion. The complainant has the burden of proving by substantial evidence the allegations in the complaint.^[19]

In the present case, there is no sufficient, clear and convincing evidence to hold Divina administratively liable for Gross Misconduct as charged in the undated anonymous letter. As found during the investigation, apart from the allegation of the "Concerned Citizen," not a scintilla of evidence was proffered to establish that she demanded and solicited the amount of P20,000.00 from a party in a pending case before the RTC in exchange for the prompt preparation of the TSN. It bears to point out that the author of the undated anonymous letter never came out in the open to testify before the Investigating Judge to support his claim that Divina had engaged in an illegal activity to make money out of a case pending before the RTC.

Accusation is not synonymous with guilt. This brings to fore the application of the age-old but familiar rule that he who alleges a fact has the burden of proving it for mere allegation is not evidence. Reliance on mere allegation, conjectures and suppositions will leave an administrative complaint with no leg to stand on.^[20] The allegation of "Concerned Citizen" that Divina attempted to extort ₱20,000.00 has remained as such and, thus, cannot be admitted as evidence, let alone given evidentiary weight. As it stands, this charge of attempted extortion has remained unsubstantiated and, hence, should be dismissed.

The charge of belligerent/arrogant behavior against Divina must likewise fail. A circumspect scrutiny of the records has revealed that the testimony of Atty. Camacho is inadequate to establish his claim and to hold her liable for misconduct. The Court fully subscribes to the findings of the Investigating Judge whose observation deserves to be quoted at length, thus: