

## SECOND DIVISION

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

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

### DECISION

**PEREZ, J.:**

The instant administrative case stemmed from a Letter<sup>[1]</sup> 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<sup>[2]</sup> 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<sup>[3]</sup> 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<sup>[4]</sup> 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<sup>[5]</sup> 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<sup>[6]</sup> 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.<sup>[7]</sup> 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."<sup>[8]</sup>

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.<sup>[9]</sup>

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.

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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:

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

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

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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.