

SECOND DIVISION

[A.M. No. P-08-2578 [Formerly OCA I.P.I. No. 08-2924-P], July 31, 2009]

GASPAR R. DUTOSME, COMPLAINANT, VS. ATTY. REY D. CAAYON, RESPONDENT.

CARPIO MORALES, J.:

Gaspar R. Dutosme (complainant) charged Atty. Rey D. Caayon (respondent), Branch Clerk of Court, Regional Trial Court (RTC), Branch 61, Bogu, Cebu in an affidavit dated August 2, 2006, for soliciting and receiving the amount of P2,500 representing commissioner's and stenographer's fees and not issuing an official receipt therefor.

By complainant's claim, he went to Branch 61 of the RTC on May 9, 2006 to secure a copy of a decision in LRC Case No. 61-0053. He was able to secure a copy of the decision alright but only after respondent asked for and received Two Thousand Five Hundred (P2,500) Pesos representing what respondent told him to be commissioner's and stenographer's fees. And while respondent gave him a handwritten receipt of the amount, he did not issue an official receipt.

By 1st Indorsement of August 29, 2006^[1], the Office of the Court Administrator (OCA) required respondent to file his Comment to complainant's Affidavit.

In his Comment,^[2] respondent gave his version as follows: On May 9, 2006, complainant was looking for Belle Garrido (Belle), the stenographer who recorded the proceedings in the LRA case. Since Belle was unavailable as she was the stenographer on duty that day, he furnished complainant a copy of the Decision after which complainant tendered to him a handful of money with the request that the same be given to Belle. Albeit he refused to receive the money, complainant pleaded with him to accept it so, in good faith, he received the money and prepared the above-stated handwritten receipt.

Respondent went on to claim that on his instruction, complainant returned later that day so that Belle could issue a receipt, but when he asked for the handwritten receipt he had earlier issued so he could give him the receipt prepared by Belle, complainant replied that he had already sent it to his boss in Cebu City.

In support of his claim, respondent attached a Certification^[3] issued by Garrido and Modesto V. Cuico, both court stenographers of Branch 61, dated September 8, 2006, which stated that they received the amount of P2,500 from respondent representing payment for the TSNs in LRC Case No. 61-0053.

Complainant in his letter-reply,^[4] insisted that respondent received the P2,500 as commissioner's fee.

By Resolution of November 12, 2008,^[5] the parties were required by the Court to manifest whether they were willing to submit the matter on the basis of the pleadings. Not one of the parties complied.

By Report and Recommendation dated August 19, 2008,^[6] the OCA came up with the following Evaluation.

Atty. Caayon should be held responsible for exacting an amount from a party litigant.

Section B, Chapter II of the Manual for Clerks of Court provides: "*No Branch Clerk of Court shall demand and/or receive commissioner's fees for the reception of evidence ex-parte.*"

Despite his denial, we do not doubt that Atty. Caayon exacted an amount for commissioner's fee from Mr. Dutosme. This fact appears on the face of the acknowledgement receipt that he issued. It clearly indicates receipt of the amount of P2,500.00 "*representing payment of the **Commissioner's fee** and Transcript of Stenographic Notes in LRC Case No. 61-0063-LRC.*"

The comment which Atty. Caayon submitted cannot be given more weight that the affidavit executed by Mr. Dutosme, considering that the former was not executed under oath unlike the latter. Further, there was no showing of any motive on the part of Mr. Dutosme to fabricate charges against Atty. Caayon. On the other hand, the certification dated 8 September 2006 issued by Garrido and Cuico and the subsequent letter dated 18 December 2006 of Garrido taking full responsibility for the amount are but attempts to exonerate their superior. All these are self-serving and inconsistent with the tenor of the more convincing evidence - the acknowledgment receipt issued by Atty. Caayon.

x x x x

Evidently, Atty. Caayon violated the provisions of the Manual for Clerks of Court proscribing the collection of Commissioner's fee in ex-parte proceedings.

x x x x (Emphasis and italics in the original, underscoring supplied)

The OCA thereupon recommended that respondent be found liable for misconduct and suspended from the service for one (1) month without pay with a warning that a repetition of the same or similar offense shall be dealt with more severely.

The Court finds the Evaluation of the OCA well taken.

Respondent's claim of having received the P2,500 in trust for Belle representing stenographic fees is belied by the written acknowledgment receipt he himself issued to complainant stating that the amount was for "commissioner's and stenographer's fees."