

EN BANC

[A.M. NO. P-05-1945 (FORMERLY A.M. OCA IPI NO. 03-1605-P), January 31, 2005]

EVELYN T. HONCULADA, COMPLAINANT VS. VICTORIANO S. RAGAY, JR., COURT INTERPRETER, REGIONAL TRIAL COURT, BRANCH 41, DUMAGUETE CITY, RESPONDENT.

DECISION

PER CURIAM:

The Court has said time and again that all persons serving the Judiciary must at all times be circumspect in their conduct and observe the norms of public accountability to the end that the people's faith in this institution may not diminish. We have not hesitated to impose the ultimate penalty upon those who have fallen short of the standards of responsibility. Such is the case at bar.

In a letter^[1] dated March 12, 2003, complainant Evelyn T. Honculada charges respondent, Mr. Victoriano S. Ragay, Jr., Court Interpreter, Regional Trial Court (RTC), Branch 41, Dumaguete City, with Gross Misconduct relative to Civil Case No. 12932 entitled "Erle Dwight Tubat v. Glenda Tubat, et al." for Partition. Attached to the complaint is a letter^[2] dated December 17, 2002, addressed to complainant in which respondent allegedly demands money from complainant.

The Office of the Court Administrator (OCA) summarizes the facts as follows:^[3]

"Complainant, one of the defendant-heirs in the partition case, alleges that respondent, who was appointed as one of the commissioners to effect the partition, attempted to extort money from him and his other co-heirs in the amount of P3,000.00. This demand was made in a letter dated 17 December 2002 sent to him by respondent where he also acknowledged receipt of the sum of P9,000.00 from Mr. Erle Dwight Tubat, Wilma Sojor and Heirs of Jeseso Tubat. Complainant claims that the receipt by respondent of the amount of P9,000.00 and demanding P3,000.00 from him (*sic*) and his (*sic*) co-heirs were done without the express authority of Presiding Judge Araceli Alafriz.

In his comment, respondent explains that Mrs. Sojor, a defendant in the partition case, voluntarily gave the amount of P3,000.00 to the commissioners and a receipt was issued to her. The money was intended for gasoline or transportation expenses, fees in securing the necessary documents and construction expenses in building indicators to determine the boundaries of the involved properties.

Respondent avers that Mrs. Sojor suggested that a letter also be sent to her co-heirs to inform them that she already gave the amount of

P3,000.00 to the commissioners and that as co-heirs, they should also share in the cost of carrying out the partition. This was the reason why the 17 December 2002 letter was sent to complainant.

Respondent claims that his designation as the officer-in-charge ceased as early as 15 January 2003 when their Branch Clerk of Court reported back for work. Thus, he is not sure whether Erle Tubat and the heirs of the late Jeseso had given their share in the expenses to the commissioned surveyors.

In this Court's Resolution dated 3 September 2003, the administrative complaint was referred to the Executive Judge of RTC of Dumaguete City for investigation, report and recommendation.

Executive Judge Araceli S. Alafriz reported that during the investigation, respondent admitted that he was not the appointed Chairman of the Commission tasked to partition the properties but merely assumed its chairmanship as then designated OIC of Branch 41. Respondent has been with the court for 28 years, and he is aware that all Commissioners in a partition case are appointed by the court. As the OIC, however, he had to take over the responsibilities and functions of the Branch Clerk of Court who was then on leave of absence.

Respondent also admitted that he sent copies of the 17 December 2002 letter to the defendants in the partition case, but he did not consult the Presiding Judge nor did he attach copies of the letters to the records of the partition case.

Respondent admittedly received the amount of P3,000.00 from Mrs. Sojor, but he alleged that he gave the amount to the surveyors. He could not produce however the receipt which he alleged was with Mrs. Sojor."

In her *Investigation, Report and Recommendation*^[4] dated January 16, 2004, Judge Alafriz notes that in 1999, she filed Administrative Matter No. 99-769-P (Judge Araceli S. Alafriz v. Victoriano S. Ragay, Jr.) against respondent for a similar offense. However, the case was dismissed for being unsubstantiated.

Perhaps with this previous case in mind, Judge Alafriz asked respondent during the investigation of the case on October 29, 2003 if he would like her to inhibit herself from hearing the case. Respondent replied that he did not.^[5]

After due proceedings, Judge Alafriz now recommends that respondent be dismissed from the service based on her findings that respondent was aware that he was not the designated Chairman of the Commission appointed by the Court to partition the properties subject of litigation; he sent copies of the letter dated December 17, 2002 to the defendants in his capacity as OIC/Acting Branch Clerk of Court but did not attach copies thereof to the records of the case; he had not informed the Presiding Judge of Branch 41 of his actions; his allegation that the money was used for laborers, monuments and survey is unsupported by evidence; and no estimated cost of expenses had yet been given by the surveyors to justify the amounts requested by respondent.

Concurring with the findings of Judge Alafriz, the OCA recommends that respondent be dismissed from the service for improper solicitation and grave misconduct in office.

We agree with the OCA and Judge Alafriz that respondent's actuations constitute grave misconduct and warrant dismissal from the service.

In actions for partition, the court appoints commissioners to make the partition if the parties are unable to agree upon the partition.^[6] In the instant case, respondent was not appointed by the court as a commissioner, much less as Chairman of the Commission tasked to partition the litigated properties. He admittedly merely assumed chairmanship of the Commission because the Branch Clerk of Court of Branch 41 was then on leave of absence. This, in itself, is already highly irregular and improper especially as, Judge Alafriz correctly notes, respondent has been with the court for twenty-eight years and is aware that all commissioners in a partition case are appointed by the court.

Respondent testified:

Court: How long have you been working with the Court from the time you were appointed?

Mr. Ragay: 28 years.

Court: And so you were aware that all commissioners are appointed by the Court?

Mr. Ragay: Yes.

Court: And despite of (sic) that you assumed the chairmanship even if there was no order appointing you?

Mr. Ragay: I was of the belief that as Officer-in-Charge or Acting Branch Clerk of Court I also assumed the responsibility of the Branch Clerk of Court, all its functions and responsibilities.^[7]

What compounds respondent's offense is the fact that he "requested" complainant to "share" in the expenses to be incurred in effecting the partition and received the amount of P3,000.00 from one of the parties without authority from the court. According to him, he was only constrained, upon Mrs. Sojor's insistence, to write a letter to the defendants requesting them to contribute to the expenses for partition. He said:

Q: And you also mentioned in your letter to Mrs. Evelyn Honculada that this is pursuant to the Order of the Court dated October 16, 2002?

A: With regard to the sharing of the expenses, I place[d] there the quotation "pro-rata". I have no intention really of forcing them. Actually, as Officer-in-Charge I knew that all the money will be deposited to the Clerk of Court or to the Officer-in-Charge.

Q: How could you know how much the expenses would be when there was no amount given yet by the engineer appointed by the Court?

A: I was not thinking of any amount at that time but because of Mrs. Sojor who insisted that I should write a letter to the defendants, so I was constrained to heed to her request. When we started relocating the