

## THIRD DIVISION

[ **A.M. No. P-05-1970 (Formerly A.M.OCA I.P.I. No. 04-1962-P), May 30, 2011** ]

**AN ANONYMOUS COMPLAINT AGAINST ATTY. PORTIA DIESTA, BRANCH CLERK OF COURT, REGIONAL TRIAL COURT, BRANCH 263, PASIG CITY AND LUZ SANTOS-TACLA, CLERK III, SAME COURT.**

### RESOLUTION

**BRION, J.:**

We resolve in this Resolution the complaint against Atty. Portia Flores-Diesta, Branch Clerk of Court, and Luz Santos-Tacla, Clerk III, of the Regional Trial Court, Branch 263 (*Branch 263*), Pasig City.

#### **Background Facts**

On April 20, 2004, the Office of the Court Administrator (*OCA*) received an undated anonymous letter complaint<sup>[1]</sup> against Atty. Diesta and Tacla alleging dishonesty, conduct prejudicial to the best interest of the service, and violation of Republic Act No. 3019 (the Anti-Graft and Corrupt Practices Act).

In the letter, the anonymous writer charged Atty. Diesta of not reporting for work on time, of collecting commissioner's fees for *ex parte* hearings, of not subjecting to raffle the publication of cases and judicial notices, and of illegally practicing law by appearing in court for his practitioner-father. Tacla, on the other hand, was charged of being tardy and being frequently absent, of falsifying her entry in the attendance logbook and on her daily time record, and of acting as "runner" for Atty. Diesta. The supporting documents were attached to the letter-complaint.

The *OCA* required Atty. Diesta and Tacla to comment on this letter.<sup>[2]</sup> Atty. Diesta filed her comment on August 9, 2004,<sup>[3]</sup> while Tacla filed her comment on August 10, 2004.<sup>[4]</sup> Both Atty. Diesta and Tacla denied the allegations.

The *OCA*, after a review of the respondents' comments and the result of its discreet investigation, recommended that the case be redocketed as a regular administrative matter and referred the case to the Executive Judge of the Pasig City RTC for investigation, report and recommendation. On January 31, 2005, the Court issued a Resolution adopting the *OCA* recommendation.<sup>[5]</sup>

Pasig City RTC Executive Judge Edwin A. Villasor conducted several hearings. He summoned the two respondents, the staff of Branch 263, and Atty. Jaime del Rosario who was alleged to have been asked by Atty. Diesta for a commissioner's

fee. The two respondents (represented by their lawyers) and the court staff testified before Judge Villasor and were duly cross-examined. Atty. Del Rosario failed to appear.

In his October 19, 2005 exhaustive report to the OCA,<sup>[6]</sup> Judge Villasor summarized the allegations against Atty. Diesta, as follows:

- (1) always late in reporting for work, left the office early, and could not complete the whole week without being absent;
- (2) tolerated the infractions of the Clerk In-Charge of Criminal Cases who was allegedly the "runner" when there were transactions concerning bonds and publications;
- (3) publication of cases or judicial notices were not raffled, but, instead, were assigned to "the Courier";
- (4) appeared in cases, particularly in Quezon City and in San Mateo, Rizal, for her practitioner-father; and
- (5) asked for a commissioner's fee according to a Private Practitioner, Atty. del Rosario.

Judge Villasor reported that Atty. Diesta lost the attendance logbook of Branch 263 covering the dates relevant to the charges against her and Tacla, that she asked for a commissioner's fee from Atty. Del Rosario, and that she was amenable to receiving "token" amounts from lawyers.

He summarized the allegations against Tacla as follows:

- (1) that she was the "runner" of the Branch Clerk of Court when there were transactions concerning bonds and publications entered into by the former;
- (2) that her name did not appear in the attendance logbook, which meant that she did not report for work, but her DTR showed that she reported for work on the days concerned; and
- (3) that in the entry of September 2, 2003, she cheated on her time.

He found that Tacla falsified her entries in the attendance logbook.

Since the complaint was the first one for both Atty. Diesta and Tacla, Judge Villasor recommended that Atty. Diesta be reprimanded and admonished to exercise care in securing the attendance logbook and in performing her other official duties, and that Tacla be warned to be more careful in making entries in the official attendance logbook.

### **The OCA Report/Recommendation**

The OCA submitted its Report, dated February 10, 2006,<sup>[7]</sup> with the following findings:

Atty. Diesta denied that she was late or absent and alleged that she did not record her time of arrival to or departure from the office because she was not required to

do so. She admitted that the attendance logbook of Branch 263 for the period of September 2003 to September 2004 is missing. She admitted that she had custody of the logbook and that she kept it in the filing cabinet behind her desk; it remained missing despite efforts to find it. The OCA found that the loss of the attendance logbook while in Atty. Diesta's custody was an indication that she was careless in her duty to keep it safe.

The OCA noted the statement of Lourdes Puzon, Clerk III in charge of civil cases. Ms. Puzon claimed that when there was a need for publication, she prepared an order for signature by the pairing judge of Branch 263 and after the order was signed, she submitted it to Atty. Diesta. Ms. Puzon claimed that after her submission of the signed order, she had no more knowledge on how the publication was done. Atty. Diesta contradicted this claim and maintained that after she received, the signed order with the record of cases for publication, she gave it to the clerk-in-charge. She then presumed that the clerk would forward it to the Office of the Clerk of Court. According to the OCA, Atty. Diesta had the responsibility and duty as branch clerk of court to furnish the Office of the Clerk of Court with a copy of the signed order, citing Sections 10 and 11 of A.M. No. 01-1-07-SC.<sup>[8]</sup> The OCA also verified the records of the Office of the Clerk of Court and found that Branch 263 had not submitted for raffle any judicial notice or announcement for publication. The OCA found that Atty. Diesta violated A.M. No. 01-1-07-SC.

The OCA also stated that Ms. Puzon confirmed Atty. Del Rosario's manifestation before Judge Isagani Geronimo of Branch 263 that Atty. Del Rosario asked that the case be heard before the court, although it was set for *ex parte* hearing, because Atty. Diesta was charging him an amount that he could not justify to his client. This incident was corroborated by Julie Ann Berosil, former court interpreter of Branch 263.<sup>[10]</sup> An OCA investigator who interviewed Atty. Del Rosario also confirmed that the latter offered to pay Atty. Diesta Pi,500.00 instead of the P3,500.00 that she was asking for.<sup>[11]</sup> Atty. Diesta, on the other hand, asserted that the matter involving Atty. Del Rosario was an isolated one and had already been resolved.

On the alleged "token" voluntarily given by lawyers, Atty. Diesta admitted in her July 18, 2005 comment that "In fact, when lawyers ask about the 'commissioner's fee,'" they are simply told that [its] collection x x x is prohibited. Even the stenographers concerned have repeatedly stressed this information to the lawyers. It cannot be denied though that there are lawyers who insist that it is but a 'token' and that they have set aside a budget for the same. In these instances, the matter is left to the discretion of the lawyer concerned. But, whatever amount is handed out, it is strictly VOLUNTARILY given and in no way was anyone ever forced, coerced or intimidated to make payments in exchange for the reception of their evidence."<sup>[12]</sup> The OCA, finding these statements disturbing, said: "*As frontliners in the administration and dispensation of justice, respondent Diesta is duty bound to uphold the integrity of the court. She should avoid the practice of accepting or tolerating such tokens, as it will deteriorate (sic) the entire judiciary's integrity.*"<sup>[13]</sup>

On the matter of Tacla's alleged cheating on her time record, the OCA reported Tacla's claim that she did not intend to cheat on her entries in the attendance logbook and that her watch stopped causing her to indicate the wrong time of her arrival on September 2, 2003.<sup>[14]</sup> She also maintained that she was not gallivanting during the times she was out of the office but was actually doing official work. She