

SECOND DIVISION

[**A.M. NO. P-05-1986 (FORMERLY A.M. OCA IPI NO. 02-1522-P), April 15, 2005**]

ATTY. GENEROSO LEGASPI, JR., COMPLAINANT, VS. ATTY. J. ROGELIO T. MONTERO III, CLERK OF COURT, MUNICIPAL TRIAL COURT IN CITIES, SAN JOSE DEL MONTE CITY, BULACAN, RESPONDENT.

DECISION

CALLEJO, SR., J.:

The instant administrative case arose when Atty. Generoso Legaspi, Jr. filed a verified Affidavit-Complaint dated November 20, 2002 charging Atty. J. Rogelio T. Montero III, Clerk of Court, Municipal Trial Court in Cities (MTCC), San Jose del Monte City, Bulacan, with grave misconduct and infidelity in the custody of documents relative to Criminal Case No. SJ-1203-2000 entitled "*People of the Philippines v. Rizalina Sasamori, et al.*"

The complainant alleged that Rizalina Sasamori procured his services as counsel in the above criminal case on October 16, 2000. Consequently, on October 30, 2000, he entered his appearance before the MTCC of San Jose del Monte City, Bulacan, where the said case was pending for preliminary investigation. The trial court then set the submission of the counter-affidavits at 1:30 p.m. of November 13, 2001.

At about 10:00 a.m. of November 13, 2001, the complainant submitted the required counter-affidavits and other pleadings in compliance with the court's Order^[1] of October 30, 2000. However, when his client and her witnesses were already supposed to affirm the allegations in their respective counter-affidavits, Atty. Rogelio Montero, Sr., the respondent's father, appeared and manifested that he was representing Ms. Sasamori as the new hired counsel. The complainant politely called the attention of the court that it was not proper for Ms. Sasamori to change her lawyer without prior notice, and equally unethical for Atty. Montero to enter his appearance as counsel, knowing that he (the complainant) had not yet withdrawn from the case. Thereafter, the counter-affidavits and other pleadings submitted by the complainant disappeared under mysterious circumstances. In fact, Acting Clerk of Court Rodelio E. Marcelo of the MTCC of San Jose del Monte City, Bulacan, issued a Certification^[2] dated October 25, 2002, stating that it had no records of the pleadings submitted by him. The complainant noted that the custodian of the said missing documents was no other than the respondent clerk of court.

According to the complainant, his "travails" did not end there, as Ms. Sasamori filed an administrative case against him on November 29, 2000 for reimbursement of attorney's fees and alleged grave misconduct before the Integrated Bar of the Philippines (IBP). He claimed that the disappearance of the pleadings he submitted before the Court was "done with malice and ill will" in order to lend credence to Ms.

Sasamori's claim that he did not perform the services for which he was hired. The IBP Commission on Bar Discipline, however, recommended that the complaint be dismissed for lack of merit through its Resolution^[3] dated August 3, 2002. He further claimed that, as an offshoot of the filing of the administrative case against him, he was subjected to "undeserved ridicule and malicious gossip." Moreover, the confidence of his previous clients with respect to his competence as a lawyer was put in doubt; would-be clients, likewise, harbored suspicions that he was not one to be trusted to handle their cases.

Finally, the complainant alleged that under the Manual for Clerks of Courts, no record shall be taken from the Office of the Clerk of Court without a court order except as otherwise provided by the Rules of Court. Considering that there was no court order directing that the pleadings submitted by the complainant be withdrawn, the respondent should be held administratively liable for the mysterious disappearance thereof. Even granting that there was such an order, the said pleadings should not have been removed from the official files of the court. The complainant claimed that the "mysterious absence" of such pleadings from the official court files resulted in undue prejudice and suffering on his part.^[4]

The respondent denied the allegations against him in his comment.^[5] He pointed out that the documents which the complainant claimed to be missing were, in fact, intact and available from the court files. He, likewise, questioned the complainant's motive for filing the instant case against him considering that it was filed two years after the alleged incident of submission of the filing of the affidavits, about the same time his (complainant's) services were dispensed with by his client Ms. Sasamori. He further explained, thus:

The fact also remains that after Ms. Sasamori has decided to engage the services of another lawyer (a right the exercise of which was her sole discretion) and after she demanded the refund of the P20,000.00 she has paid to Atty. Legaspi which was followed by a complaint for his disbarment, said lawyer took it in a bad light and suspected that his former client's moves were initiated by (or at the instance of) my father, Atty. Rogelio O. Montero, Sr., which, of course, is absolutely not true because I know for sure that my father has never dipped his finger into the complaint for disbarment lodged by [Ms.] Sasamori against Atty. Legaspi. In fact, when my father learned of it, he tried to dissuade [Ms.] Sasamori from pursuing it as he then considered Atty. Legaspi as a brother(?) lawyer and close friend. This probably explains the reason why Mrs. Sasamori has not appeared anymore in the proceedings before the Commission on Bar Discipline of the IBP. Yet, Atty. Legaspi is basking under the deceptive euphoria of the dismissal of the disbarment complaint against him completely oblivious, however, of the fact that the complaint was dismissed not on its merits but on the ground that the complainant did not pursue actively (in fact, she never showed up in the proceedings of the IBP) her complaint. ...

...

Had my father been the lawyer of [Ms.] Sasamori in the disbarment complaint, he should have actively appeared for her and could have

immediately sought for the reconsideration of the order or resolution of dismissal. His not participating in any stage of the disbarment proceedings is a clear indicia that he has had no role at all even in its filing.^[6]

In a Resolution^[7] dated November 19, 2003, the Court referred the instant administrative case to Executive Judge Guillermo P. Agloro, Regional Trial Court (RTC), Malolos City, Bulacan, for investigation, report and recommendation.

After due hearing and presentation of evidence, the Executive Judge submitted his Final Report dated April 1, 2004, where he made the following findings:

Aside from the general rule (Sec. 7, Rule 136 of the Rules of Court) that the Branch Clerk of Court of a first level court of a single *sala* station shall secure all court records, papers, files, exhibits, and public property committed to his charge, it is, likewise, his obligation to receive and keep necessary papers of a case in their corresponding files. (1.2.6, D Chapter VI of the 2002 Revised Manual for Clerks of Courts). It appears that respondent J. Rogelio Montero III failed to perform his obligation.

Respondent J. Rogelio Montero III admitted during the investigation that he is aware that the said *Sinumpaang Kontra Salaysay* filed by complainant, Atty. Generoso O. Legaspi is still part of the court files, and yet, respondent chose to separate said document from the case folder and "safely keep it inside his cabinet together with other important papers, documents, and the like." (TSN, February 16, 2004, pp. 45-59)

Further, it appears that during the preliminary investigation of Criminal Case No. SJ-1203-2000 held at MCTC, San Jose del Monte, Bulacan, on November 13, 2000 at 1:30 p.m., the Court did not rule that the documents were withdrawn as the order of the court was simply for the withdrawal of appearance of Atty. Legaspi as counsel on record. Consequently, absent any ruling on the matter, said document should still form part of the record and should be included in the case folder; and, respondent does not have the right, nor the authority to remove the same. There are rules governing the disposal and/or destruction of court records, papers and exhibits pertaining to court cases terminated for at least fifteen (15) years (Administrative Order No. 13).

The undersigned believes that it is the complainant who has the option to withdraw the documents submitted before the court, upon the appropriate request and consequent approval by the court. Respondent's task, on the other hand, is merely to see to it that all documents received by the court should be placed in their proper case folder irregardless of whether the same was unsubscribed and unsigned.^[8]

The Executive Judge then concluded that there was basis for the filing of the present administrative case for gross misconduct and infidelity in the custody of documents against the complainant.

We agree with the findings of Executive Judge Agloro and rule that the respondent was remiss in his duty as branch clerk of court.