

## EN BANC

[ **A.M. No. RTJ-07-2087 (Formerly OCA I.P.I. No. 07-2621-RTJ), June 07, 2011** ]

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS.  
JUDGE MA. ELLEN M. AGUILAR, REGIONAL TRIAL COURT,  
BRANCH 70, BURGOS, PANGASINAN, RESPONDENT.**

### DECISION

This case stemmed from (1) the undated letter <sup>[1]</sup> of Ramon Ona-Ligaya (Ligaya) of Olongapo City, addressed to then Chief Justice Artemio V. Panganiban, and the Judicial and Bar Council (JBC), expressing disappointment over the appointment of Ma. Ellen Aguilar (Aguilar) as judge of the Regional Trial Court (RTC) of Burgos, Pangasinan, since she had been charged with several criminal offenses involving moral turpitude; and (2) the Indorsement letter <sup>[2]</sup> dated December 4, 2006 of the Office of the City Legal Officer of Olongapo City, referring to the Office of the Court Administrator (OCA) for appropriate action the decision of the Deputy Ombudsman for Luzon in OMB-L-A-03-0718-G, <sup>[3]</sup> which imposed upon Atty. Aguilar, formerly City Legal Officer of Olongapo City, a fine equivalent to one month salary.

For the antecedent factual background of the charges, we refer to the report of Associate Justice Teresita Dy-Liacco Flores (Dy-Liacco Flores) of the Court of Appeals, who was later tasked by the Court to investigate the present administrative matter against Judge Aguilar. Investigating Justice Dy-Liacco Flores found that:

Sometime on July 2, 1998, while [Atty. Aguilar] was still the Legal Officer of Olongapo City, mortgagor Lourdes Sison and mortgagee Angelina Cuevas came to her office together, asking her to notarize a prepared real estate mortgage contract. The document showed that it was a security for a loan of P120,000.00. [Atty. Aguilar] acceded. Later, Sison and Cuevas returned with a different document. It was obviously the same real estate mortgage contract between the parties but the amount of the loan was now raised to P140,000.00. The parties explained that this is the real agreement between them. [Atty. Aguilar] notarized it in replacement of the previous document, deeming the first cancelled. Hence, the second document carried the same entries like document number, book number and the like as the first document. Either by oversight or inattentiveness, the secretary of Atty. Aguilar put the two documents together.

Sometime in 2002, Arnel Sison, the son of mortgagor Lourdes Sison, discovered the existence of the two documents with different amounts but one notarial document number. Furious, he went to see then Atty. Aguilar. She explained to him the circumstances under which both documents were notarized. Unappeased, Arnel Sison filed complaints for Falsification of Public Document, Perjury and Estafa against Atty. Aguilar

and Angelina Cuevas before (1) the Office of the Regional State Prosecutor of Bataan **AND** (2) the Office of the Ombudsman. [4]

The complaint for Falsification of Public Document, Perjury and Estafa against Atty. Aguilar and Angelina Cuevas was filed by Arnel Sison before the Regional State Prosecutor, and was docketed as I.S. Nos. 03-S-2282 to 03-S-2284. After preliminary investigation, Angelito V. Lumabas, Acting City Prosecutor of Olongapo City, issued a Resolution [5] dated March 2, 2004, dismissing the complaint for lack of probable cause.

Meanwhile, proceedings on Arnel Sison's complaint for Dishonesty and Misconduct against Atty. Aguilar, filed before the Ombudsman and docketed as OMB-L-A-03-0718-G, continued. Atty. Aguilar filed her counter-affidavit therein on October 2, 2003.

Following her retirement as City Legal Officer of Olongapo City effective December 13, 2003, Atty. Aguilar, through a letter [6] dated September 3, 2004, addressed to the JBC Chairman, applied for the position of judge, preferably at the RTC Branch 71, of Iba, Zambales. In support of her application, Atty. Aguilar accomplished and submitted a Personal Data Sheet (PDS), which consisted of four pages. Question No. 23 of the PDS asked: "*Is there any pending civil, criminal or administrative (including disbarment) case or complaint filed against you pending before any court, prosecution office, any other office, agency or instrumentality of the government, or the Integrated Bar of the Philippines?*" [7] In answer to said question, Atty. Aguilar wrote "None." [8] The PDS was notarized in September 2004.

Atty. Aguilar was appointed as RTC Judge of Burgos, Pangasinan, on October 15, 2005.

After her appointment to the Judiciary, the Deputy Ombudsman for Luzon rendered a Decision [9] in OMB-L-A-03-0718-G on November 29, 2005, finding no liability on Atty. Aguilar's part for dishonesty but only for misconduct, as follows:

After a careful evaluation of the facts and evidence adduced by both parties, the undersigned finds [Atty. Aguilar] guilty of misconduct. Records disclose that two (2) deeds of Real Estate Mortgage were notarized on July 2, 1998, by Atty. Aguilar. However, based on the certification dated July 3, 2003 issued by the Office of the Clerk of Court of the Regional Trial Court of Olongapo City, it appears that [Atty. Aguilar] was commissioned as notary public in the year 1999 up to the present. Evidently, [Atty. Aguilar] was not yet commissioned as notary public when she notarized the aforesaid documents. As to the claim of [Atty. Aguilar] that she is a notary public ex-officio, as such she may perform her functions only in the notarization of documents connected with the exercise of her official functions. She may not, as notary public ex-officio, undertake the preparation and acknowledgement of private documents, contracts and other acts of conveyances which bear no direct relation to the performance of her functions as City Legal Officer. [10]

For her misconduct, the Deputy Ombudsman for Luzon imposed upon Atty. Aguilar the penalty of one month suspension. Atty. Aguilar filed a motion for

reconsideration, arguing that she could no longer be held administratively liable as she had already retired from her position as Legal Officer of Olongapo City as of December 13, 2003. The Deputy Ombudsman for Luzon, in an Order [11] dated January 31, 2006, [12] denied Atty. Aguilar's motion for reconsideration, but modified the penalty imposed upon her from one month suspension from service to a fine of one month pay. The City Mayor and the Office of the City Legal Officer of Olongapo City were furnished with copies of the Decision dated November 29, 2005 and Order dated January 31, 2006 of the Deputy Ombudsman for Luzon in OMB-L-A-03-0718-G, for immediate implementation.

Atty. Aguilar assumed her judicial position on February 8, 2006. She accomplished another PDS for submission to the Supreme Court on March 6, 2006. In the more recent PDS, the following questions were asked:

37. a. Have you ever been formally charged?  
b. Have you ever been guilty of any administrative offense?
38. Have you ever been convicted of any crime or violation of any law, decree, ordinance or regulation by any court or tribunal? [13]

Judge Aguilar answered "No" [14] to all the aforementioned questions.

On March 6, 2006, the Office of the Chief Justice (OCJ) received Ligaya's undated letter, bringing to the attention of said office two criminal cases still pending against Judge Aguilar, particularly: (1) Criminal Case No. 523-04, for Estafa thru Falsification, pending before the RTC of Olongapo City, Branch 74; and (2) Criminal Case No. 844-04, for Falsification, pending before the Municipal Trial Court in Cities of Olongapo City. Ligaya sought the recall of Judge Aguilar's appointment. Then Chief Justice Panganiban endorsed Ligaya's letter to the JBC. [15]

Given Atty. Aguilar's retirement as City Legal Officer of Olongapo City and her subsequent appointment as RTC judge, the Office of the City Legal Officer of Olongapo City believed that it no longer had the authority to implement the Deputy Ombudsman for Luzon's Decision dated November 29, 2005 and Order dated January 31, 2006 in OMB-L-A-03-0718-G against now Judge Aguilar. Consequently, in its 1<sup>st</sup> Indorsement dated December 4, 2006, the Office of the City Legal Officer forwarded said decision and order of the Deputy Ombudsman for Luzon against Judge Aguilar to the OCA for pertinent action.

Atty. Wilhelmina D. Geronga (Geronga), OCA Chief of Staff, directed Judge Aguilar to comment on why she failed to disclose in her PDS the pendency of OMB-L-A-03-0718-G. Attached to the OCA directive was a copy of the Order dated January 31, 2006 of the Deputy Ombudsman for Luzon in OMB-L-A-03-0718-G, denying Judge Aguilar's motion for reconsideration of the Decision dated November 29, 2005.

In her Comment, Judge Aguilar avers that she only learned that her motion for reconsideration of the Decision dated November 29, 2005 in OMB-L-A-03-0718-G was denied by the Deputy Ombudsman for Luzon in an Order dated January 31, 2006, when she was furnished a copy of said order by the OCA on June 1, 2007. Judge Aguilar would have wanted to challenge the decision and order of the Deputy Ombudsman for Luzon before the Court of Appeals, but she desisted because of her

desire to have closure on the matter. Instead, Judge Aguilar already paid the fine, equivalent to one month salary, imposed upon her in OMB-L-A-03-0718-G on June 5, 2007.

Judge Aguilar further explains in her Comment that when she notarized the real estate mortgage contracts between Lourdes Sison and Angelina Cuevas, she was merely performing her duty to give free legal services to the people of Olongapo City who have no resources to avail themselves of the services of lawyers; and maintains that she did not charge or receive any consideration from the parties for the notarization.

Finally, Judge Aguilar apologizes for the inaccuracies in her PDS and promises to be more circumspect and accurate in her future submissions.

On July 11, 2007, Atty. Geronga issued a Memorandum [16] to then Court Administrator Christopher Lock recommending that the complaint against Judge Aguilar be docketed as a regular administrative matter and that Judge Aguilar be required to manifest whether she wanted to submit the case for resolution based on the pleadings or to have the matter formally investigated.

As Atty. Geronga recommended, Court Administrator Lock directed Judge Aguilar to manifest whether she wanted to submit the case for resolution based on the pleadings or to have the matter formally investigated. [17] In her letter [18] dated August 7, 2007, Judge Aguilar informed the OCA that she opted for a formal investigation of the charges against her.

On September 24, 2007, Court Administrator Lock recommended to the Court that the case against Judge Aguilar be re-docketed as a regular administrative matter and to refer the case to a consultant for investigation, report, and recommendation. [19]

The Court, in a Resolution [20] dated October 17, 2007, re-docketed the case as a regular administrative matter.

Upon the recommendation [21] of succeeding Court Administrator Zenaida N. Elepaño, the administrative matter was referred to the Court of Appeals on March 4, 2008, to be raffled among the Associate Justices for investigation, report, and recommendation. It was raffled to Investigating Justice Dy-Liacco Flores on June 2, 2008.

During the preliminary conference on September 4, 2008, Investigating Justice Dy-Liacco Flores encouraged the parties to focus on the core issues. She suggested that OMB-L-A-03-0718-G, which addressed Judge Aguilar's wrongful notarization of the deeds of Real Estate Mortgage between Lourdes Sison and Angelina Cuevas, should already be deemed closed since Judge Aguilar had already paid the fine imposed therein; and that the present investigation be limited to the purportedly inaccurate entries made by Judge Aguilar in her PDS.

After consideration of the documents and testimonies of the parties, Investigating Justice Dy-Liacco Flores submitted her report, pertinent portions of which read:

The undersigned Investigator finds [Judge Aguilar] guilty of dishonesty.

x x x x

[Judge Aguilar] explained that she thought her retirement as Legal Officer of Olongapo City on December 13, 2003 rendered *functus officio* the administrative case filed by Arnel Sison against her and the unusual penalties attendant to the administrative charges such as removal, suspension or censure had been mooted by her retirement. She claims that even if such belief is wrong, it is not entirely baseless.

[Judge Aguilar's] explanation fails to persuade. When she made said entry, she was not an ordinary layman ignorant of the intricacies of the law but an experienced lawyer who had served as City Legal Officer for more than sixteen (16) years. Also, [Judge Aguilar] always graduated at the top of her class in law school and in her liberal arts degree at a prestigious university. Thus, she is deemed to know the import of a simple question: "Is there any pending civil, criminal or administrative (including disbarment) case or complaint filed against you pending before any Court, prosecution office, or any other office, agency or instrumentality of the government or the Republic of the Philippines or the Integrated Bar of the Philippines?"

The simplicity of the question would have dawned on her right away that her belief about the effect of her resignation is irrelevant to the question. At any rate, in the case of *Pagano vs. Nazarro, et al.*, the Supreme Court stated thus:

(T)he precipitate resignation of a government employee charged with an offense punishable by dismissal from service does not render moot the administrative case against him. Resignation is not a way out to evade administrative liability when facing administrative sanction. The resignation of a public servant does not preclude the finding of any administrative liability to which he or she shall still be answerable.

A case becomes moot and academic only when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits of the case. The instant case is not moot and academic despite petitioner's [Judge Aguilar] separation from service. Even if the most severe of administrative sanctions - that of separation from service - may no longer be imposed on the petitioner, there are other penalties which may be imposed on her if she is later found guilty of administrative offenses charged against her, namely, the disqualification to hold any government office and the forfeiture of benefits.

[Judge Aguilar's] plea of good faith is controverted by the fact that the misrepresentation is so palpable that it could not have been missed or overlooked by a brilliant mind like that of [Judge Aguilar]. As a City