

## SECOND DIVISION

**[ A.M. No. P-14-3253, August 19, 2015 ]**

**NICETAS TANIEZA-CALAYOAN, COMPLAINANT, VS. ELMER JERRY C. CALAYOAN, PROCESS SERVER, REGIONAL TRIAL COURT, BRANCH 2, BANGUED, ABRA, RESPONDENT.**

### **R E S O L U T I O N**

**CARPIO, J.:**

#### **The Case**

Before the Court is an administrative complaint for Disgraceful and Immoral Conduct filed by Nicetas Tanieza-Calayoan (Nicetas) against her husband, Elmer Jerry C. Calayoan (Elmer Jerry), a Process Server of Branch 2, Regional Trial Court (RTC), Bangued, Abra.

#### **The Antecedent Facts**

Nicetas and Elmer Jerry were married on 18 March 1993 and they subsequently had two children, Michael Jessie T. Calayoan (Michael Jessie) and Jenny Ann T. Calayoan (Jenny Ann). In a sworn Letter-Complaint dated 15 August 2005,<sup>[1]</sup> Nicetas alleged that Elmer Jerry abandoned her and their children since 18 May 2005 and that he was having an illicit affair with Rina Balboa (Rina). Nicetas further alleged that on 5 August 2005, she and her daughter Jenny Ann saw Elmer Jerry and Rina in Angono, Rizal, where the latter admitted to Nicetas that she was then three months pregnant.<sup>[2]</sup>

In his Comment dated 18 January 2006,<sup>[3]</sup> Elmer Jerry denied that he had any illicit relations with Rina and maintained that Rina was simply a neighbor. Elmer Jerry insisted that the complaint filed by Nicetas was merely a result of her jealousy and suspicion. He further denied the allegation that he was seen with Rina in Angono, Rizal on 5 August 2005 because on this date, a Friday, he was on duty at Branch 2, RTC, Bangued, Abra. To support his claim, Elmer Jerry submitted a certified photocopy of his Daily Time Record (DTR).<sup>[4]</sup> Elmer Jerry also denied the allegation that he has abandoned his wife and children. On the contrary, Elmer Jerry claimed that he was still living in their family home in Barangay Deet, Tayum, while his wife and children left him to live in Bangued.<sup>[5]</sup>

On 10 October 2005, a criminal complaint for Concubinage<sup>[6]</sup> was filed against Elmer Jerry and Rina in the Municipal Trial Court of Tayum-Penarrubia, Abra. This, however, was subsequently dismissed on a technicality as the criminal complaint was improperly filed.<sup>[7]</sup> No other criminal complaint for Concubinage was filed against Elmer Jerry and Rina.<sup>[8]</sup>

In a letter dated 7 February 2006,<sup>[9]</sup> Nicetas wrote to the Office of the Court Administrator (OCA), reiterating her allegation that (1) she and her daughter saw Elmer Jerry and Rina in Angono, Rizal on 5 August 2005; (2) when Elmer Jerry and Rina found out that Nicetas had filed an administrative complaint, they transferred to live in the family home of Rina's mother in Bagalay, Tayum, Abra; (3) when Elmer Jerry and Rina became aware of the criminal complaint for Concubinage that was filed against them, they moved back to the house of Rina in Turod, Tayum, Abra, where it was of common knowledge that they were cohabiting as husband and wife; (4) Rina gave birth to a baby girl on 21 January 2006; and (5) Elmer Jerry had had several other illicit relations, one of which was with Rosemarie Jacquias (Rosemarie), a nursing student of Abra Valley Colleges. In support of the allegation that Elmer Jerry had illicit relations with Rosemarie, Nicetas attached the Minutes of Meeting dated 15 June 2000 between the school officials of Abra Valley Colleges, and Rosemarie and her parents.<sup>[10]</sup> Nicetas also attached Rosemarie's promissory note wherein she promised to stop her "illicit relationship with Jerry Calayoan."<sup>[11]</sup>

In his Comment dated 11 September 2006,<sup>[12]</sup> Elmer Jerry again insisted that his alleged illicit relationships with other women, including that with Rosemarie, were all imaginary and merely the suspicions of his wife Nicetas. As to the picture of Elmer Jerry and Rina, which Nicetas attached to her letter to the OCA, Elmer Jerry explained that it was a simple group picture taken when he was attending a wedding during which Rina was also present as a godmother for a baptism. Finally, as to the daughter of Rina, Elmer Jerry alleged that he had "no knowledge sufficient to form a belief about this fact" and that Nicetas was merely speculating that he sired the child.

On 17 July 2006, in accordance with the recommendation of the OCA dated 22 May 2006,<sup>[13]</sup> the Court referred the instant administrative matter to the Executive Judge of the RTC at Bucay, Abra for investigation, report and recommendation.<sup>[14]</sup>

Then Acting Presiding Judge Charito B. Gonzales (Judge Gonzales) initially presided over the investigation of this matter. Thereafter, upon appointment of Judge Elpidio C. Cablayan (Judge Cablayan) to Branch 58, RTC, Bucay, Judge Gonzales turned over this administrative matter to Judge Cablayan. Judge Cablayan, however, retired from the service without completing the investigation. Thus, in a Resolution dated 20 August 2008, the Court referred this case to Acting Presiding Judge Gabino B. Balbin, Jr. (Judge Balbin) for investigation, report and recommendation within sixty (60) days from notice thereof. This period lapsed without any report from Judge Balbin. In an Order dated 27 August 2010, Judge Balbin "relieved himself of any responsibility in trying and deciding" the case as Judge Jaime L. Dojillo, Jr. (Judge Dojillo) was appointed as the new presiding judge of Branch 58, RTC, Bucay. Judge Dojillo immediately set the case for presentation of evidence. Thereafter, Judge Dojillo began to hear the testimonies of the parties.

However, in a Resolution dated 28 February 2011, the Court directed Judge Balbin to continue with the investigation of the case and to decide the same with dispatch. On 23 March 2011, Judge Balbin filed a Motion to be Relieved as Investigating Judge. Pending resolution of this motion, Judge Balbin heard the testimonies of the parties, continuing from where Judge Dojillo left off. Judge Balbin was able to conclude the investigation and thereafter, he submitted his Findings and Recommendation to the Court. His Motion to be Relieved as Investigating Judge, which had become moot

and academic, was subsequently denied.

### **Report of Investigating Judge**

Judge Balbin submitted his Findings and Recommendation dated 10 November 2011,<sup>15</sup> recommending that Elmer Jerry be suspended for one (1) year without pay. While Judge Balbin found the DTR of Elmer Jerry a reasonable defense against the alleged sighting of Elmer Jerry and Rina in Angono, Rizal on 5 August 2005, he gave much credence to the testimony of Michael Jessie in finding that Elmer Jerry and Rina were indeed maintaining an illicit relationship, and thus guilty of disgraceful and immoral conduct:

However, the testimony of Michael Jessie Calayoan, the son of the complainant and the respondent, is too revealing to be ignored. He testified that on several occasions, his father, Jerry Calayoan, brought him and his sibling, Jenny Ann, to a house in Bagalay, Tayum, Abra where they ate lunch with Rina Balboa. Jerry Calayoan, Rina Balboa and their daughter, Elagerryn, are the occupants of the bungalow. **Jerry Calayoan told them that Rina Balboa is his wife and that, Elagerryn, is their daughter.** All of these gave him the impression that they are living together as a family.<sup>16</sup> (Emphasis and underscoring supplied)

Judge Balbin also took note of the name of the daughter of Rina, Elagerryn, which seemed to be derived from the names of Elmer Jerry and Rina:

Further, the birth certificate of Rina Balboa's child shows that the father's name was recorded as "unknown". There is no need to register name [sic] of the biological father. His name and Rina Balboa's name are all over the child's first name, which is a common practice among Filipino couples. The child's first name is "ELAGERRYN". "ELAGERRYN" was coined from the respondent's first name "ELMER JERRY", while "xxxRYN" was added thereto after "RINA", Rina Balboa's first name. That the respondent and Rina Balboa flaunted their illicit relationship by naming their child after them, even after a criminal complaint was filed against them, is the height of insensitivity, for which reason the maximum penalty for the offense should be imposed.<sup>[17]</sup>

### **The Recommendation of the OCA**

The OCA considered the findings of the Investigating Judge well-taken. In a Memorandum dated 3 March 2014, the OCA also relied heavily on the testimony of Michael Jessie in finding truth in Elmer Jerry and Rina's illicit relationship:

xxx Indeed the testimony of Michael Jessie is compelling enough to hold respondent administratively liable for the offense charged. Michael Jessie personally witnessed respondent and Rina living together as husband and