

## EN BANC

**[ A.M. No. P-06-2186 (Formerly A.M. OCA I.P.I. No. 05-2256-P), July 03, 2012 ]**

**FILOMENA B. CONSOLACION, COMPLAINANT, VS. LYDIA S. GAMBITO, COURT STENOGRAPHER, MUNICIPAL CIRCUIT TRIAL COURT, BINALONAN, PANGASINAN, RESPONDENT.**

**[A.M. NO. P-12-3026 (FORMERLY A.M. OCA I.P.I. NO. 05-2081-P)  
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**JUDGE EMMA S. INES-PARAJAS, COMPLAINANT, VS. LYDIA S. GAMBITO, COURT STENOGRAPHER, MUNICIPAL CIRCUIT TRIAL COURT, BINALONAN, PANGASINAN, RESPONDENT.**

## DECISION

### PER CURIAM:

This disposition concerns the consolidated report of the Office of the Court Administrator (OCA), contained in its November 4, 2011 Memorandum,<sup>[1]</sup> finding that respondent Lydia S. Gambito (*Gambito*) had committed acts constituting three (3) counts of conduct prejudicial to the best interest of the service.

The factual and procedural antecedents appear in the November 4, 2011 Memorandum of the OCA as follows:

### **A.M. No. P-06-2186**

In an Affidavit-Complaint dated July 25, 2005, which was filed with the OCA on August 1, 2005, complainant Filomena B. Consolacion charged respondent Ms. Lydia S. Gambito, a court stenographer at the Municipal Circuit Trial Court, Binalonan-Laoac, Pangasinan, with "**misrepresentation and unlawful acts.**" Complainant alleged that sometime in November 2002, respondent came to her house and convinced her to buy her (respondent's) "claimed tricycle," which she described as, "Honda (Make), KB503-022-019947E (Motor No.), KB503-022-19947 (Chassis No.), MC-AR-8213 (Plate No.)," for ₱65,000.00. Respondent allegedly needed the money for her son's "deployment for work abroad." As she wanted to help respondent and the latter's son, she agreed to buy the said tricycle after respondent promised her that she [respondent] would present to her [complainant] the documents evidencing her ownership of the tricycle. Respondent allegedly assured her that the said tricycle was not encumbered. She handed to respondent the amount of ₱65,000.00 after they executed a "Deed of Sale of a Motorized Tricycle," and respondent thereafter delivered and transferred

"her possession of the tricycle." Allegedly, respondent also promised her to deliver the "Original Certificate of Registration" of the tricycle" on or before January 31, 2003." Respondent, however, failed to make good her promise and, despite demands, she failed to deliver the said document. Complainant further claimed that her repeated efforts to meet with respondent at the latter's place of work was in vain, as respondent was always not around every time she would go there.

Complainant claimed that on July 14, 2005, "a Branch Manager of the PR Bank" in Urdaneta City, together with "a couple of policemen," came to her house and "took possession and control of the tricycle [she] bought from [respondent] "on the claimed ground that the said bank already owned it via foreclosure of the "Chattel Mortgage" supposedly executed by [respondent] over the tricycle." She insisted that respondent never informed her "about her [respondent's] mortgage transaction with said PR Bank." In fact, she claimed that had respondent told her at the beginning that the tricycle had been mortgaged, she would not have bought it despite respondent's "financial plea."

In her **Comment** dated January 30, 2006, respondent alleged that when her son applied for work abroad, she borrowed money for her son's placement fee from relatives and friends, including complainant to whom she gave the tricycle as a "security," assuring her "that her money [would] be returned after two months" following the arrival of her son abroad, "or deliver to her the certificate of registration also within that period." However, the recruitment agency failed to send her son abroad, and they were unable to get back the money they paid to the said agency, as its manager could no longer be found and the person who recruited her son had already died. She claimed to have suffered "trauma caused by the money taken away from [them] by the recruiter." Consequently, she "suffered complicated illness (sic), spending much for medications up to the present and causing [her] to be financially handicapped most of the time." She also claimed that it was not her intention "not to settle [her] obligation," but since she is the only breadwinner of her family, her meager salary is insufficient to meet all the needs of her family, as well as the payment of her obligations. She also informed the Court that there was "an ongoing conciliation with [complainant]," and if the latter would be amenable, she would pay her "installment term until [her] obligation will be fully paid."

In a Resolution dated June 28, 2006, the Court re-docketed the complaint against respondent as a regular administrative matter, and referred the same to the Executive Judge of the Regional Trial Court, Urdaneta City, Pangasinan for investigation, report and recommendation.

In her Report dated February 9, 2011, Executive Judge Tita Rodriguez Villarin, Regional Trial Court, Urdaneta City, Pangasinan, gave the following account, without any evaluation or the required recommendation, thus:

*On January 17, 2007, complainant testified before then Executive Judge Rodolfo G. Nabor. Her testimony is summarized as follows: In November 2002, respondent went to her house and offered to sell respondent's Honda motorcycle, colored red, with plate number MC-AR-8213. Respondent executed a Deed of Sale notarized by Atty. Garcia (Exhibit "A"). Respondent promised to deliver to the complainant the original certificate of registration of the motorcycle (Exhibit "B"-promissory note). Complainant paid the whole amount of the consideration of the sale. The motorcycle was delivered to the complainant. Respondent did not make good her promise to deliver the certificate of registration despite demands. On July 14, 2005, the manager of PR Bank, Urdaneta City and two armed men went to complainant's house and took the motorcycle. According to the PR Bank Manager, the motorcycle was mortgaged and the same was foreclosed. On verification, she found out that there was a chattel mortgage executed by respondent (Exhibit "C"). The motorcycle was brought to the police station and the incident was entered in the police blotter (Exhibit "D"). When the motorcycle was taken, she suffered damage because she paid Php65, 000.00 to buy said tricycle. She also lost daily income from the tricycle. She gathered the necessary documents and brought them to the Office of the Prosecutor. Thereat, she executed an affidavit-complaint (Exhibit "E"), which was the one submitted to the Court Administrator.*

*After complainant testified, this case was scheduled several times but were postponed on motion of the respondent because she has no lawyer and she was sick. The Court noted respondent was really very sick. She was so slim and always coughing.*

*On September 17, 2010, both respondent and complainant appeared and jointly manifested (that) they agreed to the withdrawal of the complaint.*

*In her affidavit of withdrawal executed before Prosecutor Francisville Asuncion, complainant Consolacion stated (that) she is withdrawing her complaint against respondent because they have already settled their differences.*

*On October 29, 2010, respondent submitted a letter informing the Court (that) she is not anymore presenting evidence because of the withdrawal of the complaint.*

Indeed, in her Affidavit of Withdrawal of Complaint dated September 17, 2010, complainant declared that she and respondent have "already settled [their] differences" and that she is "no longer interested to pursue said case against the respondent." She thus requests "that the said

administrative case be dismissed.”<sup>[2]</sup>

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#### **A.M. OCA IPI No. 05-2081-P**

In her letter dated November 16, 2004, complainant Judge Emma S. Ines-Parajas, then Presiding Judge of the Municipal Circuit Trial Court, Binalonan-Laoac, Pangasinan (now Presiding Judge of the Regional Trial Court, Branch 50, Tayug, Pangasinan), complained to the Court Administrator that she “discovered the [following] **misdeeds**” of respondent Ms. Lydia Gambito, a court stenographer of the said first level court, thus:

1. Respondent allegedly agreed to facilitate the issuance of a certificate of title in favor of Norma Billamanca for a fee of Php10,000.00, assuring Ms. Billamanca that complainant judge could help “facilitate the processing of the papers.” Respondent was even asking for an additional amount of P3,000.00 from Ms. Billamanca “to be paid to [complainant judge].” The latter claimed that respondent admitted to her in the presence of court stenographer Cristeta Magat on October 29, 2004 that she **used her [complainant judge’s] name** “to exact money from Ms. Billamanca.”

2. Complainant judge claimed that in the third week of October 2004, Lolita Erum of Balangobong, Binalonan, Pangasinan complained to her that respondent “**offered to help post**” the bail for her husband, Virgilio Erum, “who [was] an accused in a case pending before MTCC, Urdaneta City,” and “**received the amount of P9,000.00**” from Ms. **Erum, but “no bail was posted.”** Respondent reportedly “refused to return the amount despite several demands.”

3. The sister of Aboy Abellera of Capas, Binalonan, Pangasinan, who is an accused in Criminal Case No. 7480, also complained that respondent **received P10,000.00 “from the former for his bail.”** However, “**no bail was posted** and the accused is still languishing in jail.”

4. Peter Grey filed a **complaint for sum of money** against respondent before the Municipal Circuit Trial Court, Binalonan-Laoac, Pangasinan, which arose from the failure of respondent to pay her debt to Mr. Grey.

5. Jose Fiesta of Bued, Binalonan, Pangasinan reported to complainant judge that **respondent and her son failed to pay the rental of the house owned by Mr. Fiesta for the month of August 2004 as well as the electric bills** for the duration of their stay at the said house.

6. Similarly, Federico Fernandez of Yakal St., Villa Pozorrubio, Pozzorubio, Pangasinan also complained that respondent rented his house in Villa Pozzorubio after she left the house of Mr. Fiesta, but failed to pay her obligation of P13,837.00 “representing **unpaid rentals and unpaid loans.**”

7. Nancy Esguerra of Ipil St., Villa Pozorrubio also complained that the **son of respondent** "committed **estafa** against her and that [respondent] **denied that she knew the whereabouts of her son.**"

8. In 2003, **respondent allegedly collected the amount of P2,000.00** from the mother of Eduardo Dapreza of Sitio Orno, Sta. Maria Norte, Binalonan, Pangasinan, who is an accused in Criminal Case No. 7388, "as bail because a warrant of arrest has been issued against him." However, complainant judge pointed out that "the record of the **case does not show that a warrant of arrest was issued against the accused**, the case being covered by the Rules on Summary Procedure."

Complainant judge also reported that respondent "was **often absent without filing [an] application for leave in advance.**" She, thus, recommended "that pending investigation of the foregoing cases, [respondent] be suspended to prevent her from further using her position in [her] Court to exact money from other persons."

In her **letter-comment** dated June 4, 2005, respondent explained that her transaction with Ms. Billamanca involved two cases, an ejectment and a petition for issuance of lost title, for which she would spend P15,000.00. Instead of paying the said amount in full, Ms. Billamanca gave her "payment in installment." "The first was P3,000.00, then after a month, P2,000.00 then after several weeks, she gave P2,000.00 and a bracelet worth P1,800.00." She further explained that "the P15,000.00 was supposed to be used for publication, filing fee and Sheriff's fee," but since the full amount was not given, the cases were not filed in Court.

She admitted "the allegations in paragraph 2, with the justification that Mrs. Lolita Erum handed [her] in installment the amount of P9,000.00 supposedly for the bond of her husband with nine (9) cases. First, she gave P1,000.00, after several weeks, she gave P5,000.00." After several days, P2,000.00." She explained that as "the bailbond Surety Company did not accept [the said amount] and because [she] need[ed] medication and her daughter who is in college need[ed] money to buy her books, [she] used the money."

She likewise admitted the existence of a civil case for sum of money against her. She explained that the money she borrowed from the plaintiff was used by her son who applied for work abroad, but he was a victim of illegal recruitment. She claimed that they could no longer get back the money from the recruiter because the latter is already dead.

She branded the complaint of Mrs. Esguerra against her son to be "baseless, fabricated and lies." She also denied the allegation of Mrs. Fiesta as "[they] even sold [their] refrigerator" to enable them to pay their obligation to him.

Finally, she "vehemently den[ied] that she has not been filing her application for leave of absence, the truth [being] that [she] was sick during those times and [she] was not able to file [her] leave beforehand." She claimed to have filed her "leave," attaching thereto her medical