

SECOND DIVISION

[A.M. NO. P-05-1961 [FORMERLY OCA I.P.I. NO. 04-1956-P], February 17, 2005]

**MANUELITO OCCIDA, COMPLAINANT, VS. JULIETA E. MALNEGRO,
COURT STENOGRAPHER, MCTC-BAYUGAN, AGUSAN DEL SUR,
RESPONDENT.**

R E S O L U T I O N

TINGA, J.:

The court stenographer who is the subject of the present administrative complaint admitted having lost certain stenographic notes of a trial, and although the notes were eventually recovered, she will have to face sanction for her negligence. Yet, this present complaint imputes more sinister motivations to Julieta E. Malnegro, Court Stenographer 1 of the Municipal Circuit Trial Court (MCTC) of Bayugan-Sibagat, Agusan del Sur, and accuses her of falsifying the stenographic notes to effect the attribution of erroneous statements to a witness who had taken the stand.

At the same time, it does not escape our attention that through the filing of this present case, complainant has succeeded, at least tentatively, in impugning testimony damaging to his position in a criminal case he had initiated. We can hardly sanction the underhanded bid to influence the outcome of a pending court action through the filing of a baseless administrative complaint. A more thorough disposition of this case is called for.

The facts follow.

Complainant Manuelito Occida filed a criminal case for grave coercion against Daniel Boter and a civil complaint against Boter and Eddie Subla, both arising from an incident that occurred on 15 July 1999.^[1] The cases were jointly heard by the MCTC, presided by Hon. Eliseo M. Campos. Boter was an employee of the Department of Environment and Natural Resources (DENR) while Subla was a policeman. It was alleged that on 15 July 1999, Boter and Subla forced Occida to unload bananas from his truck based on a suspicion that Occida was concealing illegal timber underneath the bananas. However, the search for illegal timber in Occida's truck proved fruitless, and subsequently, the cases were filed by Occida against Boter and Subla.^[2]

Trial ensued, and on 29 September 2003, Lazareto Estorque, an engineer of the DENR, testified as a witness for the prosecution. Estorque was the second witness to testify on that day. Direct examination was conducted by private prosecutor Atty. Ferdinand M. Bañosia, while Atty. Rustico A. Peñas cross-examined Estorque. The court stenographer who took down stenographic notes that day was the herein respondent, Malnegro.

Sometime after the 29 September 2003 hearing, the stenographic notes prepared by Malnegro were lost by her. She reported the loss to Judge Campos, who advised her to execute an affidavit of loss. In her *Affidavit of Loss* dated 10 November 2003, Malnegro stated that the stenographic notes were “unknowingly lost in [her] possession while on [her] way home sometime in the month of October 2003.”^[3] This *Affidavit of Loss* was likewise attached to a *Motion for Leave to Recall to the Witness Stand Lazarito Estorque* dated 24 November 2003, and filed by the private prosecutor.

The MCTC granted the motion of the private prosecutor, yet Estorque’s testimony could not immediately be reheard, allegedly due to Estorque’s failure to appear in court despite subpoena.^[4] Nonetheless, in May of 2004, the missing stenographic notes reemerged. According to Malnegro, the notes had been mislaid in the case folder of a different case. She discovered them only when the case in which folder the notes had been misplaced was called for trial in May of 2004.^[5] Malnegro informed Judge Campos and the Clerk of Court of the discovery and promptly prepared the transcription.

It is now alleged that when Occida and Estorque read the transcript of the 29 September 2003 hearing, they discovered therein erroneous statements attributed to Estorque that, in their estimation, would make Estorque criminally and civilly liable to Occida.^[6] In his *Complaint* dated 25 May 2004, **Occida cites portions of Estorque’s cross-examination** as reflected on the transcripts that he purports as erroneous.^[7] In reference to the cited portions of Estorque’s testimony during cross-examination, Occida claims that these contradict the averments in an affidavit executed by Estorque that he did not give the order to unload the bananas.^[8] Not surprisingly, Estorque executed his affidavit only on 25 May 2004, or after Occida and Estorque had examined the transcript prepared by Malnegro.^[9]

Other than the transcript itself and Estorque’s affidavit, no other evidence was presented in support of Occida’s claim that Malnegro had falsified the transcript.

Court Administrator Presbiterio J. Velasco, Jr., directed Malnegro to comment on the charges of Negligence, Grave Misconduct and Falsification.^[10] Malnegro admitted her loss and subsequent retrieval of the stenographic notes. She stressed that twenty-four (24) cases were heard on 29 September 2003, and that eight (8) of them were for trial and hearing proper. Due to the numerous cases she had to transcribe, she even brought home some of these stenographic notes to transcribe so that she would be able to meet the deadline. Unfortunately for her, when the time came to transcribe the notes on the hearing of Occida’s case, she could not locate the notes and eventually found them only in May of 2004.^[11] However, she vehemently denies having falsified the transcript, asserting that she had no motive to do so having no interest in the case or in any of the parties. She states that what was reflected in the transcript was the testimony of Estorque as she had heard it.

Moreover, in her *Comment*, **Malnegro cites portions of Estorque’s testimony during direct examination** on 29 September 2003 wherein Estorque, by using the word “we”, admitted that he, Subla and Boter were the ones who decided to unload the bananas from Occida’s truck.^[12] She points out that these statements in

Estorque's direct examination were in consonance with the portions of Estorque's cross-examination testimony which Occida had cited in his *Complaint* as erroneous. [13] Given these facts, Malnegro characterizes Estorque's later affidavit as just an afterthought, considering the import of Estorque's earlier testimony.

Malnegro also attached to her *Comment* a machine copy of her stenographic notes of 29 September 2003, for examination by the Court. [14]

After due investigation, the Office of the Court Administrator (OCA) rendered its report to the Court. For the OCA, the issue at hand is inextricably related to the issue raised in the civil and criminal cases filed against Boter. Resolution of this administrative case on the merits would compel as well a determination as to who ordered the unloading of the bananas, which is the very issue pending determination by the MCTC. The OCA also noted that correction of the transcript of stenographic notes is a matter properly addressed to the MCTC, and should not be done through the present administrative case; hence, the MCTC should remain as the proper forum to determine whether or not there was a discrepancy between the transcript and Estorque's actual statements.

The OCA likewise recommended that Malnegro be penalized with a reprimand for her loss of the stenographic notes. It deemed Malnegro's excuse as to the numerous cases heard on that day as not holding water, and that the considerable length of time the notes were missing should not be taken lightly. The OCA likewise cited the rule that the transcripts of stenographic notes should be submitted not later than twenty (20) days from the time these notes were taken, and Malnegro's failure to comply with the same due to the loss of the notes as basis for her recommended penalty of reprimand.

The parties having manifested that they are willing to submit the case for decision based on the pleadings filed, [15] the dispute is now ripe for resolution.

The Court readily accepts the OCA's recommendation as to Malnegro's liability for losing the stenographic notes. A court stenographer performs a function essential to the prompt and fair administration of justice, tasked with making an accurate and faithful record of the court proceedings as well as its honest and authentic reproduction in the transcript. [16]

Stenographic notes are deemed official documents which form part of the record of a case. [17] Great fidelity and care is required of the court stenographer in possession of these documents. Malnegro, by reason of her office, was expected not only to complete the transcription of her stenographic notes but account for their whereabouts as well. To such end, she should have exercised due care in keeping the stenographic notes. The fact that she eventually found the notes is creditable, yet it does not serve to obviate the reality that the trial on Occida's complaint was delayed as a result of the loss. Even if the delay in the trial was also due in part to Estorque's refusal to testify again in court, Malnegro cannot escape blame for the interruption, as it was her negligent act that caused it in the first place. Moreover, the loss of the stenographic notes would allow a cloud of suspicion to rest over the person in custody thereof, as what happened in this case. Court personnel must strive to be free from suspicion that may taint the judiciary. [18]