

SECOND DIVISION

[A.M. NO. P-05-2067 (FORMERLY OCA IPI NO. 04-1851-P), August 31, 2005]

**SPS. RAYMUND AND JULIE ANN MIÑOSO, COMPLAINANTS, VS.
FREDDIE PAMULAG, CLERK OF COURT, MTCC-BRANCH 4, ILOILO
CITY, RESPONDENT.**

DECISION

CHICO-NAZARIO, J.:

The instant administrative case arose from the affidavit-complaint^[1] of Spouses Raymund and Julie Ann De Los Santos-Miñoso, charging Freddie Pamulag, Clerk of Court, Municipal Trial Court in Cities (MTCC) of Iloilo City, Branch 4, with usurpation of authority, partiality and conduct unbecoming of a public officer.

The records of the case disclose that Julie Ann De Los Santos-Miñoso (Miñoso) is the private complainant in Criminal Case No. 581 (99) entitled, "People v. Desiree Espino," for violation of Batas Pambansa Blg. 22, pending before MTCC, Branch 4, Iloilo City.

Private complainant Miñoso alleged that at about 9:30 a.m. of 08 September 2003, respondent called her by phone and told her to proceed to MTCC, Branch 4, Iloilo City. Instead of going alone, Miñoso took her husband with her and proceeded directly to MTCC, Branch 4. Upon arrival, accused Desiree Espino greeted them. Respondent approached and told them to follow him to the judge's chambers. Thinking that he was the judge, complainants followed.

While inside the judge's chambers, respondent requested the court personnel to leave. He sat on the judge's chair while complainant Raymund greeted him "Good Morning Judge." Respondent did not say anything but appeared seemingly satisfied and elated. He was addressed as "Judge" repeatedly about four (4) times by the complainant with nary any resistance from the respondent. Respondent then tried to convince complainant (Miñoso) and accused to settle their case immediately and sign right away an amicable settlement, as basis for dismissing the complaint.

Complainants claimed that by posing as the trial judge, and intervening in the settlement of their case, respondent committed serious misconduct, usurpation of authority, conduct unbecoming of a public officer and bias and partiality.

In his comment, respondent denied the allegations against him. He alleged that Criminal Case No. 581 was filed on 18 February 1999, prior to his appointment as Clerk of Court in November 2000. He further averred that he was properly introduced as the Clerk of Court of Branch 4, thus, it was impossible to have mistaken him as the presiding judge. He claimed that he was at the chambers of the judge because he was then conducting the inventory of records. He denied that

accused was his neighbor. As Clerk of Court, he said that it is his duty to assist the parties in the management of court dockets.

On 24 June 2004, the Office of the Court Administrator (OCA) recommended^[2] that the case be referred to the Executive Judge of MTCC, Iloilo City, for investigation, report and recommendation.

On 10 January 2005, Executive Judge Amalik P. Espinosa, Jr., after investigation, submitted his report,^[3] pertinent portions of which read:

From the foregoing, the incident was brought forth when the accused, Desiree Espino was arrested and brought to Branch 4, MTCC-Iloilo City in the morning of September 8, 2003, and as a result thereof, said accused contacted through telephone, the private complainant for the criminal case, Julie Ann Minoso, and the respondent, Freddie Pamulag, invited her to come over to their Office that same morning, for which the complaining spouses, came over. Since the respondent most of the time, stays inside the Chamber (sic) of the Presiding Judge, and that at that day, the Acting Presiding Judge has not yet reported to Office, he took liberty of inviting the opposing parties inside the Judge's Chamber (sic), and there conducted the negotiation for possible settlement of the case, since he believes it is his responsibility and obligation also, even as a Branch Clerk of Court, to actively try to settle the case, because it is a disposal of case for the Court.

It is of this situation that indeed, the complaining spouses presumed and believed that the respondent was the Presiding Judge, since he had the liberty even to sit on the swivel chair of the Judge, and the negotiation took place while they were seated at the other end of the table where the respondent sat.

Even though, the respondent was addressed as Judge, he seem (sic) to like it, as he even tried to reason out that he identified himself as the Branch Clerk of Court, this could be an afterthought, for even when the parties were done with their negotiation, the parting words of the complaining Spouses was, "Good bye Judge". It is but sure, the respondent acted well on his part as a Judge.

More so, the partiality of the respondent towards the accused, Desiree Espino is but apparent and clear, as shown by his assistance given to her, who being arrested on the basis of a bench warrant, was able to file, process and have a bail bond approved that morning, and was released, even knowing of the fact that his Presiding Judge will be reporting that day, yet he have (sic) the bail bond processed and signed by the Pairing Judge. He also admitted that he knew by the nature of a bench warrant issued, it is only the issuing judge himself who can approve the release of the accused. All these circumstances simply show his partiality to the accused.

Is settlement of a case a judicial act? By all circumstances, Yes, and a Branch Clerk of Court is not clothed with authority to initiate such activity, more so in this particular case, when the other party was made

to believe that he was the Presiding Judge of the Court where the negotiation was made.

"There is usurpation of judicial function when a person who is not a Judge attempts to perform an act, the authority to which the law has vested only upon the Judge." (Elena Pace vs. Rene M. Leonardo, etc., A.M. No. P-03-1675, August 6, 2003).

Furthermore, the actuations of the respondent in using the Judge's Chamber in undertaking his continuous inventory of cases, which he stated to be about 2,000 cases, more or less, is but a lame excuse, since, a Supreme Court Circular provides time to conduct the same, which is twice a year. When he acted freely inside the Court's Chamber, by sitting on the swivel chair reserved for exclusive use of the Presiding Judge and conducted the negotiation while in front of Judge's desk/table, such action defiles the Court's Chamber. The Court's Chamber, even without the presence of the Judge must be given due respect, since by itself the room exudes authority and power attached to the Office of the Judge in dispensing justice. The actions taken by the respondent defiled said Court's Chamber, as such is considered and tantamount to conduct unbecoming of a Public Officer.

"Each of us is called upon to act with utmost circumspection for any misbehavior, whether true or only perceived, on the part of the Court personnel would most certainly reflect never kindly on the judiciary." (Recca, et al. vs. Mario C. Baculi, etc. et al., A.M. No. P-02-1627, August 7, 2003)

Furthermore, what fueled the sentiments of the complaining Spouses to file this case was the loss of the copy of the Information in the records of Criminal Case No. 581(99), which caused the postponement of the arraignment of the accused on September 10, 2003, but eventually the accused, Desiree Espino, is no longer available and an Order of Arrest was issued anew, but the case is pending, and the complaining Spouses failed to get justice.

All the foregoing, the undersigned, most respectfully recommends for an administrative sanction against the respondent, for One (1) Month and One (1) Day suspension, without pay, with a stern warning that a repetition of similar misconduct will be dealt with more severity.

On 03 May 2005, the OCA submitted its Evaluation Report adopting the findings and recommendation of Executive Judge Espinosa.

We sustain the findings and recommendations of both the Investigating Judge and the Court Administrator that, indeed, respondent usurped the function of the judge by steering the parties into an amicable settlement especially pressuring complainants to amicably settle in favor of accused and that such acts also demonstrated partiality in favor of the accused in the case which acts constituted conduct unbecoming of a public official.

A Clerk of Court is an essential and a ranking officer of our judicial system who