

## EN BANC

[ A.M. No. P-01-1518, November 14, 2001 ]

**ANTONIO A. ARROYO, COMPLAINANT, VS. SANCHO L. ALCANTARA, CLERK OF COURT II, MUNICIPAL TRIAL COURT, GUINOBATAN, ALBAY, RESPONDENT.**

### DECISION

#### **MENDOZA, J.:**

This is an administrative complaint against Sancho L. Alcantara, Clerk of Court II of the Municipal Trial Court of Guinobatan, Albay, for oppression, misconduct, conduct prejudicial to the best interest of the service, and violations of §5(a) & (d) of R.A. No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees) and §3(e) of R.A. No. 3019 (Anti-Graft and Corrupt Practices Act).

The allegations in the complaint<sup>[1]</sup> are as follows:

On August 4, 1999, respondent issued a subpoena to Joaquin Opiana, Sr., complainant's father-in-law and a resident of Barangay Tandarora, Guinobatan, Albay, requiring him to appear before the Municipal Trial Court of Guinobatan, Albay. Ruben Olayres, Barangay Captain of Barangay Tandarora, Guinobatan, Albay, served the subpoena on Joaquin Opiana, Sr. It appears that complainant had an altercation with Olayres as the latter presented the subpoena in an arrogant manner. Joaquin Opiana, Sr. at the time had a serious illness such that service of the subpoena upon him distressed him, causing him to experience difficulty in breathing.

On August 13, 1999, complainant wrote a letter by registered mail to the office of respondent, requesting him for a copy of the alleged subpoena and a certification as to the facts surrounding the issuance of the same. Although respondent received the said letter on August 16, 1999, per Registry Receipt No. 476,<sup>[2]</sup> he failed to act on it.

On September 14, 1999, complainant wrote to respondent to follow up the request in his first letter.<sup>[3]</sup> However, respondent twice refused to receive the follow-up letter.<sup>[4]</sup> Complainant's subsequent request to examine the records of the Municipal Trial Court of Guinobatan, Albay also proved futile.

Complainant argues that the issuance of a subpoena on Joaquin Opiana, Sr., who was not a party in any case before the Municipal Trial Court of Guinobatan, Albay, hastened the latter's death on August 27, 1999. Complainant also alleges that respondent, by issuing the supposed subpoena, conferred undue benefit in favor of Olayres and caused the latter to file a criminal case for assault against complainant and his wife. Complainant seeks the preventive suspension of respondent pending investigation of the charges against him.

In his answer,<sup>[5]</sup> respondent claims that the document mistaken by complainant to be a subpoena was in reality just a letter, typed on an ordinary bond paper and addressed to Joaquin Opiana, Sr., requesting him to attend a meeting at the office of the Municipal Trial Court of Guinobatan, Albay. Respondent explains that he made such request in his personal capacity upon the insistence of Ruben Olayres, who thought that respondent's position as a clerk of court could be used to amicably settle the dispute among the heirs of Isaac Opiana, one whom was Joaquin Opiana, Sr., concerning a certain real property. Respondent attached to his answer the letter of Olayres, dated August 3, 1999, requesting him to mediate in the dispute.<sup>[6]</sup> Respondent also contends that the mistake as to the nature of the document which he prepared could be attributed to the one who thought that what he caused to be served was a "subpoena." Respondent claims that he was aware of the proper procedure regarding the issuance of a subpoena and he could not have allowed the barangay chairman to serve the same as the latter was not authorized by the rules to do so. According to respondent, complainant could not produce a copy of the supposed subpoena because there was none, the document involved being a letter written only in one copy intended to be given to the addressee thereof.

During the pendency of this case, respondent applied for retirement effective June 30, 2000. On December 8, 2000,<sup>[7]</sup> he wrote a letter to the Office of the Court Administrator, praying that his retirement benefits, less such amount as would be determined by the Court Administrator, be released to him considering that he had rendered judicial service for more than 36 years and that he was the sole breadwinner of his family.

Upon the recommendation of the Office of the Court Administrator, who found that this case involved factual matters which must be resolved after hearing, this Court referred the matter to Executive Judge Antonio C. Alfane, Regional Trial Court, Branch 9, Legazpi City for investigation, report, and recommendation.

Anent the respondent's request for partial release of his retirement benefits, the Court adopted the recommendation of the Office of the Court Administrator to release the same minus the amount of P100,000.00 pending the final resolution of this case.<sup>[8]</sup>

In his report, dated May 29, 2001, Executive Judge Antonio C. Alfane stated that respondent should be held liable for violation of R.A. No. 6713, §5 (a) and (d) but absolved from the other charges of oppression, misconduct, conduct prejudicial to the best interest of the service, and violation of R.A. No. 3019, §3 (e) on the ground of insufficiency of evidence. As penalty, Judge Alfane recommended that respondent be ordered to pay a fine equivalent to his salary for three months.

We find the recommendations of Executive Judge Alfane to be substantially well taken.

*First.* To prove his charge against respondent for violation of R.A. No. 3019, §3 (e), complainant presented as his witness Joaquin Opiana, Jr., who testified that respondent asked P5,000.00 from him during the meeting held at the behest of the latter. Joaquin Opiana, Jr. said that he was not able to pay the said amount because his family could not afford it.<sup>[9]</sup> Respondent, on the other hand, claimed that he merely advised Joaquin Opiana, Jr. to raise the money in order to pay the fees of the

geodetic engineer, who would conduct the survey on the disputed land of the Opianas. Respondent denied that he ever asked for money for himself as his fee for mediating the dispute.<sup>[10]</sup>

Executive Judge Alfane found that the evidence presented by complainant was insufficient to hold respondent liable for the charge.<sup>[11]</sup> We agree. To hold a person liable for violation of R.A. No. 3019, §3 (e), the concurrence of the following must be established: (1) the respondent is a public officer or a private person charged in conspiracy with the former; (2) the said public officer committed the prohibited acts in the performance of his official duties or in relation to his or her public positions; (3) he caused undue injury to any party, whether the government or a private party; and (4) the public officer acted with manifest partiality, evident bad faith, or gross inexcusable negligence.<sup>[12]</sup>

In this case, the element of undue injury, which has been consistently interpreted as actual damage,<sup>[13]</sup> has not been shown as complainant failed to prove that respondent indeed asked for and received money during the meeting. Complainant likewise failed to substantiate his charge of alleged unwarranted benefit bestowed upon respondent Olayres through manifest partiality, evident bad faith, or gross inexcusable negligence. The mere fact that Olayres filed a case against complainant and his wife for direct assault as a consequence of the fight that occurred during the service of the alleged subpoena does not prove that respondent indeed accorded unwarranted benefit in favor of Olayres. Furthermore, the fact that respondent tried to help Olayres reach an amicable settlement with the Opianas is insufficient basis for concluding that he exhibited manifest partiality and evident bad faith, much less inexcusable negligence.

*Second.* The pertinent provisions of R.A. No. 6713, for violation of which respondent was charged, read as follows:

*SEC. 5. Duties of Public Officials and Employees.* - In the performance of their duties, all public officials and employees are under obligation to:

(a) Act promptly on letters and requests. - All public officials and employees shall, within fifteen (15) working days from receipt thereof, respond to letters, telegrams or other means of communications sent by the public. The reply must contain the action taken on the request.

....

(d) Act immediately on the public's personal transactions. - All public officials and employees must attend to anyone who wants to avail himself of the services of their offices and must, at all times, act promptly and expeditiously.

It appears that respondent violated the abovesaid provisions when he, after receipt of complainant's first letter requesting for a copy of the alleged subpoena, deliberately failed to act on the said request and even refused to receive complainant's follow-up letter on the pretext that the contents of the second letter were the same as that of the first one. The law enjoins public officials, such as respondent, to extend prompt, courteous, and adequate service to the public, and, at all times, to respect the rights of others and refrain from doing acts contrary to