

ROLANDO M. ODOÑO, COMPLAINANT, VS. JUDGE PORFIRIO G. MACARAEG, REGIONAL TRIAL COURT, BRANCH 110, PASAY CITY AND ATTY. EVA C. PORTUGAL-ATIENZA, BRANCH CLERK OF COURT, REGIONAL TR...

A.M. No. RTJ-00-1542 (OCA IPI No. 98-571-RTJ). March 16, 2000

Ponente: BUENA, J.

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BUENA, J.:

In a verified complaint filed on June 11, 1998, complainant Rolando M. Odoño charged Honorable Judge Porfirio G. Macaraeg with Ignorance of the Law and Atty. Eva C. Portugal-Atienza, the Branch Clerk of Court of the Regional Trial Court at Pasay City, Branch 110 with Dereliction of Duty and Negligence in connection with Civil Case No. 97-1595 entitled "Composite Wing Savings and Loan Association, Inc. (CWSLAI) vs. Rolando M. Odoño."

The Court Administrator, Alfredo L. Benipayo, in his Indorsements dated September 7, 1998 referred the case to Judge Macaraeg and Atty. Portugal-Atienza through Judge Macaraeg and directed them to comment on the same.[1]

Separate comments were filed by the respondents[2] and a letter-reply to the comment of respondent Portugal-Atienza[3] was likewise filed.

Culled from the pleadings submitted before this Court is the following:

In his complaint Rolando M. Odoño, the defendant in the above-entitled case, alleges that on April 21, 1998 a Motion to Declare Defendant in Default was filed by plaintiff. On May 12, 1998, defendant (herein complainant) was able to secure a photocopy of the summons as well as a copy of the complaint. He filed his answer the following day interposing the defense that no demand was made on him and it is premature for plaintiff to collect.

Despite an answer having been filed, respondent Judge still issued an Order dated May 22, 1998 declaring defendant Odoño in default and allowing the plaintiff to present its evidence ex-parte before respondent Branch Clerk of Court.

The issuance of the Order is alleged to be irregular considering that it was sent to defendant's lawyer by registered mail on May 19, 1998 - three (3) days before the date of the Order. Complainant came to the conclusion that the Order was already prepared before the actual date of hearing.

Respondent Judge in his comment alleged:

- that sometime during the last week of April 1998 he consulted his ophthalmologist regarding the failing vision of his left eye;
- that he was advised to undergo gas and laser treatments which however were unsuccessful thus surgery became

indispensable;

- that he was scheduled to be operated on at the Cardinal Santos General Hospital on May 8, 1998;
- that in preparation for the said operation and in anticipation that he may not be able to read at once, he required respondent Branch Clerk of Court to give him all the cases, civil and criminal, with pending incidents due for resolution in the two weeks following the planned operation;
- that in compliance therewith, respondent Branch Clerk of Court gave him eight (8) records, including Civil Case No. 97-1595 wherein the plaintiff had filed a Motion to Declare Defendant in Default on May 5, 1998;
- that a scrutiny of the record of said case revealed that summons and a copy of the complaint were duly served upon the defendant (herein complainant) on January 5, 1998;
- that despite receipt thereof, defendant failed to file his answer within the reglementary period allowed by the Rules;
- that on May 13, 1998, defendant filed an answer acknowledging his "just and demandable obligation to plaintiff" and further stating that he is willing to settle the same by entering into a compromise agreement;
- that having found the motion of plaintiff to be meritorious, he (respondent Judge) dictated an order granting the same;
- that on May 8, 1998, before leaving for the hospital, he handed the record of the said case with the questioned Order, together with other records to respondent Branch Clerk of Court with the instruction to release them on the dates appearing on the Orders;
- that despite the fact that respondent Branch Clerk of Court has already segregated the record of the subject case from the others, Serafin Salazar, Branch Sheriff of the Regional Trial Court at Pasay City, Branch 110, inadvertently mailed it without being instructed by the former.

Judge Porfirio G. Macaraeg admitted that while the order of May 22, 1998 was prepared prior to its date it was made only after he had carefully and assiduously ascertained from the record its merit and added that he had no intention to unduly prejudice the cases before him by reason of his eye surgery.

Respondent Atty. Eva Portugal-Atienza, Branch Clerk of Court of the Regional Trial Court at Pasay City, Branch 110 filed her comment on September 28, 1998. Therein she explained that:

- sometime during the first week of May 1998, respondent Judge asked her to bring to his attention, cases with pending incidents due for resolution in the two weeks immediately following May 8, 1998, the date of his eye operation;
- she gave him the required records;
- thereafter respondent Judge caused the preparation of several Orders;
- in the afternoon of May 8, 1998, shortly before leaving for the hospital, respondent Judge returned the records of the cases with the corresponding signed Orders therein attached and directed her to release them on the dates indicated thereon;
- she segregated the Orders not yet due for release, placed them at her right side table, and arranged them in accordance with their dates while the rest were placed on the table of the clerks in charge for their release;
- since the clerk in charge of civil cases, Sonny Aquino, has not been reporting for work from May 13, 1998 to

May 18, 1998, the records of cases on his table were already accumulating;

- without her (respondent Branch Clerk of Court) knowledge and instruction, Serafin Salazar mailed all the Orders placed on Sonny Aquino's table as well as those on her table, including that of Civil Case No. 97-1595;
- it was only on May 20, 1998 when defendant Odoño went to her office that she discovered the inadvertent mailing of the Order dated May 22, 1998;
- Serafin Salazar, when confronted, explained that he got the records from her table thinking that all of them were due for release and that he did so to ensure their timely receipt by the parties.

In the affidavit of Serafin S. Salazar[4] he admitted that on May 18, 1998, he took the liberty of mailing the orders, notices, and other court processes/documents which were on the table of the clerk-in-charge of civil cases; that he even prepared the mailing of the documents contained in the records located on the desk of the Branch Clerk of Court (herein respondent) which he thought were ready to be mailed in order not to prejudice the rights of the litigants; that he did not notice that the Order in Civil Case No.97-1595 was not yet due for mailing.

Complainant Rolando M. Odoño, in his reply to the comment of respondent Branch Clerk of Court, pointed out that the latter did not mention whether any hearing was conducted before the issuance of the order of default. He therefore surmised that respondent Judge never scheduled any formal hearing on the motion of the plaintiff to declare him in default and that the order of default was prematurely signed. Complainant avers that the explanation proffered by respondent Branch Clerk of Court should never be allowed so as to cure the defect in the procedure. He likewise stated that since the Order of default deprived him of his right to present evidence the same should be considered as null and void.

Court Administrator Alfredo L. Benipayo in his agenda dated January 20, 2000[5] recommended, among others, that the respondents be reprimanded with a stern warning that commission of similar acts in the future would be dealt with more severely.

We find respondents guilty of the charges against them.

Respondent judge was charged with ignorance of the law for issuing an order declaring the defendant (complainant herein) in default in Civil Case No. 97-1595 without setting the motion for hearing.

Scouring the pleading filed by the parties there appears to be no hearing conducted by respondent Judge on the motion to declare defendant in default. By respondent Judge's own admission, he dictated and signed the questioned Order dated May 22, 1998 declaring the defendant in default on May 8, 1998 with the specific instruction to mail the same on the date indicated in the said Order. However the questioned Order was mailed by an employee of the court on May 18, 1998.

In the case of *Far Eastern Surety & Insurance Company, Inc. vs. Vda. De Hernandez*,[6] it was held that:

"(t)he purpose of giving notice of a motion is to bring the party into court at the time of the motion, or at least to inform him that a motion is to be made, thereby enabling him to appear and contest the motion if he desires to do so. Prior notice enables the adverse party to appear for his own protection and be heard before an order is made."

The purpose of notice is to afford the parties a chance to be heard. When respondent Judge issued the questioned Order and signed the same before the date of hearing stated in the motion to declare the defendant in default, in effect, he deprived the defendant (complainant Odoño) the opportunity to appear and resist the said motion. This we cannot allow because that would be depriving the defendant of due process.

On the other hand, respondent Branch Clerk of Court was charged with dereliction of duty and negligence for the inadvertent mailing of the Order dated May 22, 1998.

It is the duty of the Clerk of Court to safely keep all records, papers, files, exhibits and public property committed to her charge.[7] As custodian of judicial records, it was her duty to see to it that court orders were sent to the litigants, with dispatch.[8] It is incumbent upon her to ensure an orderly and efficient record management system in the court and to supervise the personnel under her office to function effectively.[9] She is chiefly responsible for the shortcomings of subordinates to whom administrative functions normally pertaining to them are delegated.[10]

Respondent Branch Clerk of Court is the person having control and supervision over all court records as well as the personnel under her office. We find that the circumspection needed for the job was lacking in this instance.

It is to be remembered that Serafin Salazar, the Branch Sheriff, took it upon himself to mail the court documents because the table of the clerk in charge of civil cases was already overflowing with records. The said clerk, Sonny Aquino, had been absent for some time and it was not known when he would report back to work.

The Branch Clerk of Court should have instilled in the personnel under her office the importance of informing her or their office mates the day or days they would be absent. Armed with the knowledge as to which of her staff would not be reporting for work she could have delegated the work load of the clerk who was absent. Needless to say, had this been done the inadvertent mailing of the questioned Order would have been avoided.

WHEREFORE, finding respondents Judge Porfirio G. Macaraeg and Branch Clerk of Court Atty. Eva C. Portugal-Atienza guilty as charged, they are hereby REPRIMANDED with a stern WARNING that commission of similar acts in the future would be dealt with more severely.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 6-7.

[2] Rollo, pp. 9 and 29.

[3] Rollo, p. 34.

[4] Rollo, p. 32.

[5] Rollo, p. 46.

[6] 67 SCRA 256.

[7] Canete vs. Rabosa, Sr., 278 SCRA 478.

[8] Solidbank Corporation vs. Capoon, Jr., 289 SCRA 9.

[9] Juntilla vs. Calleja, 262 SCRA 291; Re: Suspension of Clerk of Court Rogelio R. Jacobo, Regional Trial Court, Br. 16, Naval, Biliran, 294 SCRA 119.

[10] Panuncio vs. Icaro-Velasco, 297 SCRA 159.

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