

**JUDGE RENATO A. FUENTES, REGIONAL TRIAL COURT, BRANCH 17,
DAVAO CITY, COMPLAINANT, VS. ATTY. ROGELIO F. FABRO,
BRANCH CLERK OF COURT, AND OFELIA SALAZAR, CLERK III,
RESPONDENTS.**

A.M. No. P-10-2791 (formerly A.M. No. 10-3-91-RTC). April 17, 2013

Ponente: BRION, J.

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BRION, J.:

In a letter[2] dated July 17, 2009, addressed to the Office of the Court Administrator (OCA), Judge Renato A. Fuentes of the Regional Trial Court, Branch 17, Davao City, reported that Atty. Rogelio F. Fabro, Branch Clerk of Court, and Ofelia Salazar, both of the same court, committed gross negligence of duty when they failed to elevate to the Court of Appeals (CA), Cagayan de Oro City, the records of Civil Case No. 29,019-2002, entitled *Medardo E. Escarda v. Celso E. Escarda, et al.*, within the prescribed period.[3] The records were forwarded to the CA only after more than two (2) years.[4]

In the same letter, Judge Fuentes mentioned that on May 19, 2009, he first reported the failure of Atty. Fabro and Salazar to transmit to the CA the records of Civil Case No. 29, 537-2003, entitled *Heirs of Teodoro Polinar, et al. v. Hon. Antonio D. Laolao, Sr., et al.* The records were forwarded to the CA only after more than six (6) years.

CIVIL CASE NO. 29,537-2003

(*Heirs of Teodoro Polinar, et al. v.*

Hon. Antonio D. Laolao, Sr., et al.)

It appears from the records that in a 1[st] Indorsement dated July 24, 2009,[5] then Deputy Court Administrator Nimfa C. Vilches required Atty. Fabro to comment on the May 19, 2009 report of Judge Fuentes. In his comment submitted on August 8, 2009,[6] Atty. Fabro denied knowledge that the records of Civil Case No. 29,537-2003 were not transmitted to the CA and put the blame on Salazar, the personnel in charge of the records of civil cases. Salazar admitted that the records, already bundled and ready for transmittal to the CA, were filed and kept in the storeroom of old and archived cases, instead of being forwarded to the CA. Asked to explain by Judge Fuentes in a memorandum dated May 7, 2009,[7] Salazar explained that: (1) she had already prepared the records for transmittal to the CA, but they could have been unintentionally mishandled by others and placed in the files of archived and old cases; and (2) the huge workload in her office might have been the major reason why such unfortunate incident happened.

On November 6, 2009,[8] then Deputy Court Administrator Vilches wrote Atty. Fabro, absolving him of any culpability on the non-transmittal of the records of Civil Case No. 29,537-2003. The pertinent portion of the letter reads –

After careful review, this Office finds the explanation to be well taken and the same is duly noted. You are hereby reminded to be more circumspect in the performance of your duty as Clerk of Court and in the supervision of your staff in RTC, Branch 17, Davao City in order to avoid the occurrence of similar

incidents.[9]

CIVIL CASE NO. 29,019-2002

(Medardo E. Escarda v. Celso E. Escarda, et al.)

Judge Fuentes reported that the records of Civil Case No. 29,019-2002 have not been transmitted to the CA for more than two (2) years. He approved the Notice of Appeal filed by defendants Celso E. Escarda, et al. on April 10, 2007 and directed Atty. Fabro to elevate the entire records of the case to the CA, Cagayan de Oro City. He further reported that “conformably to their previous notorious negligence and chronic blunders,” Atty. Fabro and Salazar failed to perform their duties and functions, and committed serious dereliction of their duties and responsibilities, “but were not formally reported, for lack of formal complaint.”[10]

Atty. Fabro and Salazar were required to comment on Judge Fuentes’ letter-report. In his compliance[11] dated November 6, 2009, Atty. Fabro manifested that he is adopting his comment dated August 8, 2009 on the first letter-report of Judge Fuentes, and reiterated the grounds and reasons why and how the delay of transmitting the records of the cases happened.

The OCA recommended that: (1) the matter be formally docketed as an administrative complaint against Atty. Fabro, and (2) he be fined in the amount of Five Thousand Pesos (P5,000.00) for the delay in transmitting the records of Civil Case No. 29,019-2002 and Civil Case No. 29,537-2003, with a warning that repetitions of the same or similar act in the future shall be dealt with more severely.

In a Decision[12] dated April 6, 2011, the Court found Atty. Fabro guilty of gross negligence of duty and was imposed a fine of P20,000.00, with a warning that a repetition of the same or similar act in the future shall be dealt with more severely. The Court further directed the OCA to inform the Court of the action taken against Salazar.

In compliance, the OCA submitted its Agenda Report recommending that Salazar be impleaded as respondent in the present complaint. The OCA found Salazar also guilty of negligence in the non-transmittal to the CA of the records of Civil Case No. 29-019-2002 and of Civil Case No. 29-537-2003. The OCA stressed, “[a]lthough the Rule delegates the responsibility of transmitting the records of an appealed case to the Court of Appeals, to the Clerk of Court, it cannot be denied that Salazar, who is in charge of the records of civil cases, is also remiss of her duty to assist Clerk of Court Fabro in forwarding the records of said case to the Court of Appeals, Cagayan de Oro City. Her failure to transmit the records of Civil Case No. 29,537-2003 to the Court of Appeals, Cagayan de Oro City constitutes negligence and warrants disciplinary action.”[13]

The parties (Judge Fuentes and Salazar) were required to manifest whether they were willing to submit the case for decision on the basis of the pleadings/records filed and submitted.[14] Both submitted their compliance.[15]

Section 1, Canon IV of the Code of Conduct for Court Personnel commands court personnel to perform their duties properly and with diligence at all times. The administration of justice is an inviolable task and it demands the highest degree of efficiency, dedication and professionalism. Salazar admitted neglecting her duty, giving as reason the “huge workload” in her office. Her explanation is no excuse. Salazar’s neglect of her duties did not occur only once. She also neglected to transmit to the CA the records of Civil Case No. 29-019-2002. According to Judge Fuentes, there were other occasions when Salazar and Atty. Fabro failed to perform their duties, but remained unreported due to lack of any complainant.

The Court is not unaware of the heavy workload of court personnel, given the number of cases filed and pending before it. However, unless proven to exist in an insurmountable degree, this circumstance cannot serve as an “excuse to evade administrative liability; otherwise, every government employee faced with negligence and

dereliction of duty would resort to that excuse to evade punishment, to the detriment of the public service.”[16]

Clearly, Salazar is guilty of simple neglect of duty, which is defined as the failure to give proper attention to a task expected of an employee, thus signifying a disregard of a duty resulting from carelessness or indifference.[17] Under Section 52B(1) of the Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty is classified as a less grave offense. It is punishable by suspension for one (1) month and one (1) day to six (6) months for the first offense and dismissal from the service for the second offense.

In the determination of the penalties to be imposed, mitigating, aggravating and alternative circumstances attendant to the commission of the crime shall be considered.[18] The Court has mitigated imposable penalties for various special reasons. We have considered length of service in the judiciary, acknowledgement of infractions, remorse and family circumstances, among others, in determining the applicable penalty.[19] In this case, while Salazar is a second time offender for simple neglect of duty, her long years of service in the judiciary and the admission of her negligence are circumstances to mitigate her culpability. Thus, instead of dismissal (the prescribed penalty for second time offenders), we find it proper to impose upon Salazar a fine of Forty Thousand Pesos (P40,000.00).

WHEREFORE, the Court hereby finds respondent Ofelia Salazar, Clerk III, Regional Trial Court, Branch 17, Davao City, GUILTY of simple neglect of duty and imposes upon her the fine of Forty Thousand Pesos (P40,000.00), with a WARNING that a repetition of the same or similar offense shall be dealt with more severely.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, Perlas-Bernabe, and Leonen,[*] JJ., concur.

[*] Designated as Additional Member in lieu of Associate Justice Jose Portugal Perez, per raffle dated April 17, 2013.

[1] Impleaded as additional respondent.

[2] Rollo, pp. 20-21.

[3] See Section 10, Rule 41 of the Rules of Court.

[4] See the letter of Atty. Santos E. Torreña, Jr., counsel for Medardo E. Escarda, plaintiff in Civil Case No. 29,019-2002; rollo, p. 22.

[5] Id. at 12.

[6] Id. at 12-14.

[7] Id. at 16.

[8] Id. at 40.

[9] Ibid.

[10] Id. at 20.

[11] Id. at 4-11.

[12] Id. at 50-54.

[13] Id. at 56.

[14] Resolution dated August 3, 2011; *id.* at 66.

[15] *Id.* at 67 and 69.

[16] *Marquez v. Pablico*, A.M. No. P-06-2201, June 30, 2008, 556 SCRA 531, 537.

[17] *Contreras v. Monge*, A.M. No. P-06-2264, September 29, 2009, 601 SCRA 218, 224; and *Juario v. Labis*, A.M. No. P-07-2388, June 30, 2008, 556 SCRA 540, 544.

[18] Uniform Rules on Administrative Cases in the Civil Service, Section 53.

[19] *Re: Habitual Absenteeism of Mr. Erwin A. Abdon, Utility Worker II*, A.M. No. 2007-13-SC, April 14, 2008, 551 SCRA 130, 134; and *Tan v. Sermonia*, A.M. No. P-08-2436, August 4, 2009, 595 SCRA 1, 11.

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