

ETERIA T. TAN, COMPLAINANT, VS. JUDGE MAMERTO Y. COLIFLORES AND BRANCH CLERK OF COURT JOSE A. LEGASPI, BOTH OF MTCC, BRANCH I, CEBU CITY, RESPONDENTS.

Adm. No. MTJ-94-972. January 20, 1995

Ponente: MENDOZA, J.

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MENDOZA, J.:

In a letter-complaint dated April 4, 1994, Eteria T. Tan charged respondent Judge and Branch Clerk of Court of the Metropolitan Trial Court in the Cities (Branch I), in Cebu City, of "obviously intentional deferment and delaying tactics" in the transmission to the Regional Trial Court of the original records of Criminal Case No. 10781-R (People v. Alfonso Tan, et al.) for concubinage which she had filed against her husband, Alfonso Uy Tan, and the latter's supposed paramour, Audita Laurente.

Complainant alleged that the order of February 17, 1993 of respondent Judge, directing transmission of the records of the case to the RTC, was carried out by the Clerk of Court, Jose Legaspi, only on March 10, 1994 [1] and that "this branch [of the MTCC of Cebu City] has been inefficient for a long time in the discharge of their duties due to corrupt practices."

In his comment, respondent Judge alleged that after he had issued the February 17, 1993 order giving due course to the appeal, he reminded respondent Legaspi "of his bounden ministerial duty to transmit the record to the RTC on appeal [and that he was] of the belief that the order had already been complied with." On the other hand, respondent Legaspi denied being a friend of, or having received bribe from, complainant's husband (accused in the case). He blamed the delay in the forwarding of the records to the RTC to (a) the fact that Alfonso Tan's co-accused, Audita Laurente, had not been arrested; (b) the mix-up of the transcript of stenographic notes in the case with the records of other cases as a result of an inventory of cases he had conducted; and (c) a fire inside the Judge's chambers.

Rule 122, § 8 provides that the clerk or judge of the court with whom the notice of appeal has been filed must, within five (5) days after filing of the notice, transmit to the clerk of court to which the appeal is taken, the complete record in the case together with the notice of appeal.

As far as Judge Coliflores is concerned, we find him not liable for the year-long delay in the transmission of the records. While he has supervision of respondent Legaspi, respondent Judge cannot be expected to constantly check on the latter's performance of his duties since respondent Legaspi is presumed to be a responsible employee. To the contrary, respondent Judge had a right to expect that the Branch Clerk of Court would enforce his order.

We do not find respondent Legaspi's explanation for the delay to be persuasive. As the Branch Clerk of Court, he is responsible for seeing to it that the records of appealed cases are properly sent to the appropriate appellate court without delay. He has shown in this case want of diligence for which he should be held administratively liable. [2] He has failed to set an example of official integrity, responsibility and efficiency for others, especially those in his

staff. Respondent Legaspi deserves more than a stern reprimand. [3]

WHEREFORE, in accordance with the recommendation of the Office of the Court Administrator, the Court RESOLVED: (a) to DISMISS the charges against Judge Mamerto Y. Coliflores for lack of merit; and (b) to IMPOSE on respondent Branch Clerk of Court Jose A. Legaspi a fine equivalent to his salary for three (3) months for negligence in the performance of his official functions.

SO ORDERED.

Narvasa, C.J., Regalado, and Puno, JJ., concur.

[1] Respondent Legaspi alleges that he forwarded the records on March 7, 1994.

[2] *Jumalon v. Montes*, 113 SCRA 103 (1982).

[3] *Paa v. Remigio*, 88 SCRA 595 (1979).

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