

ANDRES SUCK, COMPLAINANT, VS. ROLANDO DIAZ, RESPONDENT.

A.M. No. P-147. August 29, 1975

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

Respondent Rolando Diaz, Clerk of Court, Branch III, Court of First Instance of Cavite City, is charged with incompetence, conduct highly unbecoming a court official, and coercion. The offended party is Mrs. Encarnacion Arciaga Soriño to whom We shall henceforth refer as the complainant for and in whose behalf the present complaint was filed by Andres Suck, a brother-in-law.

It is claimed by Mrs. Soriño that she filed an administrative case against her husband, Andres Soriño, an employee of Branch III, which was assigned to respondent for investigation, and notwithstanding the several subpoenas sent to her and her appearance pursuant thereto, no hearing was ever held by respondent under the pretext that she was not represented by counsel; she reasoned out with respondent that she had been advised by an official of the Civil Service Commission that it was not necessary to have a lawyer because her evidence was complete and mainly documentary but respondent insisted that she should have a counsel; on one occasion respondent shouted at her and slammed the door of his office to her face.

Denying that he ever shouted at complainant or acted discourteously, respondent nevertheless admitted that he required Mrs. Soriño to secure the services of a lawyer to assist her in prosecuting her complaint against her husband because he wanted to avoid any suspicion later on that he was partial in the conduct of the investigation against a subordinate in his office.

The present controversy stems mainly from the fact that respondent did not investigate and take action on the administrative complaint filed by Mrs. Soriño against her husband simply because he believed that it was indispensable for the complainant to be represented by counsel. We take the view that respondent's action was unwarranted.

From the record, We gather that Mrs. Soriño's charge against her husband was for negligence or dereliction of duty as a government employee because he continued to receive his salary as such although he was actually working in his farm in Mindoro. This matter could have very well been inquired into by respondent inasmuch as all that was needed was to check if his subordinate was indeed absent from his work and if his absence was on an authorized leave from the court. As argued and explained by Mrs. Soriño all her evidence was documentary, presumably based on the very records of the court to which respondent had access, he being the immediate superior of the employee concerned. There was therefore no necessity for Mrs. Soriño to undergo expense in securing the services of a lawyer for purposes of her complaint. In fact, respondent herein *motu proprio* should have investigated the complaint of Mrs. Soriño after his attention had been called to the alleged absence of Andres Soriño from work it being a matter which involved the efficiency of his office personnel.

Respondent's alleged apprehension that he may be suspected of partiality should he proceed with the investigation, is a strained one considering that the outcome of such investigation will be based on the records of

the court. All that was to be done was to verify if Mrs. Soriño's husband was on authorized leave of absence, with or without pay, and the grounds of such leave if any, and for respondent to submit a report to the Executive Judge of the Court on the result of his investigation. We cannot see under what circumstances respondent may be suspected of partiality unless of course he justifies the absence of any employee of the office notwithstanding the records of the court which speak to the contrary.

Although the Investigating Judge to whom this complaint was referred for investigation^[1] reports that there was no evil motive or malice on the part of respondent and recommends the dismissal of the case, still We hold that respondent's inaction warrants strong disciplinary measure against him; his lack of malice may only serve to mitigate his liability.

As a responsible, ranking official of a court of first instance, holding the position of clerk of court since 1965 and a member of the bar, respondent was called upon to assist the herein complainant in obtaining the relief she was seeking for in the most expeditious and simplified manner possible without seeing complexities in the case where there was none and setting up requirements which the nature of the complaint did not call for.

Respondent's refusal to proceed with the investigation of Mrs. Sorino's complaint unless the latter was represented by counsel constitutes under the circumstances, a serious neglect of duty and a callous disregard for the said plight of the complainant who claims to have been abandoned or neglected by her husband, a court employee under the direct supervision of respondent.

The other charges of discourtesy and conduct unbecoming of a public official have not been established according to the findings of the Honorable Investigator.

WHEREFORE, We hold respondent Rolando Diaz GUILTY of gross neglect of duty and order his SUSPENSION FROM OFFICE for a period of SIX (6) MONTHS effective immediately upon the finality of this Decision, with a warning that a repetition of similar conduct will merit a more severe disciplinary action against him.

The Judicial Consultant is directed to cause the investigation of the complaint of Mrs. Soriño against Andres Soriño, an employee in Branch III, Court of First Instance of Cavite, and to report to the Court the result of such investigation within ten (10) days from notice hereof. So ordered.

Castro, (Chairman), Teehankee, Makasiar, and Martin, JJ., concur.

Esguerra, J., took no part.

[1] In an Indorsement dated April 5, 1973, the complaint of Mrs. Sorino against respondent Diaz was referred by the Office of the Secretary of Justice of the Executive District Judge, Court of First Instance, Cavite City, for investigation, report and recommendation. (p. 10, Rollo)

On June 28, 1973, Executive Judge Amador T. Vallejos submitted his Report recommending dismissal of the complaint. (pp. 98-108, *ibid*)

On May 8, 1974, the record of the case was received by this Court from the Department of Justice for proper action.

Respondent Rolando Diaz, Clerk of Court, Branch III, Court of First Instance of Cavite City, is charged with incompetence, conduct highly unbecoming a court official, and coercion. The offended party is Mrs. Encarnacion Arciaga Soriño to whom We shall henceforth refer as the complainant for and in whose behalf the present

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