

## THIRD DIVISION

**[ A.M. No. RTJ-11-2281 (Formerly OCA IPI- 10-3372-RTJ), September 16, 2019 ]**

**ATTY. MARSHA B. ESTURAS, COMPLAINANT, VS. JUDGE AGAPITO S. LU, REGIONAL TRIAL COURT, BRANCH 88, CAVITE CITY, RESPONDENT.**

### DECISION

**INTING, J.:**

Before the Court is an administrative Complaint<sup>[1]</sup> dated February 4, 2010 filed by complainant Atty. Marsha B. Esturas with the Office of the Court Administrator (OCA). In the Complaint, complainant charged respondent Judge Agapito S. Lu (now retired) with Conduct Unbecoming a Judge and Delay in the Disposition of a Case.

Complainant alleged that respondent was the Presiding Judge of the Regional Trial Court, Branch 88, Cavite City, before whose court Civil Case No. N-8004, entitled "*MRS. AGNES RAFOLS-DOMINGO, Widow of ELIODORO S. DOMINGO and representative of the legal heirs MARIA ANGELA, JOHANNA, JOSEPH all surnamed Domingo, plaintiffs vs. FLORANTE GLORIANI and GLORIA G. REYEL, defendants,*" was pending. Complainant is plaintiffs' counsel in the civil case. Subsequent to the filing of plaintiffs complaint on February 4, 2009, defendants moved to dismiss it on the ground of improper mode of service of summons, among others. On June 10, 2009, plaintiff filed a Manifestation with Motion to Serve Summons by Publication. On October 26, 2009, plaintiff filed a Motion to Resolve Immediately the Motion to Serve Summons by Publication.

According to complainant, respondent had been delaying the proceedings of the case as plaintiff's motion to serve summons by publication had been pending for almost seven months as of the writing of the administrative complaint.

For his part, respondent alleged the following in his Comment and Counter-Complaint<sup>[2]</sup>:

Sometime during the last quarter of 2009, Atty. Marsha B. Esturas came to the office of undersigned's Branch Clerk of Court, Atty. Jordan J. Teaño and personally requested that action or resolution of the pending motions in Civil Case No. N-8004 entitled Mrs. Agnes Rafols-Domingo etc., et al. vs. Florante Gloriani, et al. for Specific Performance (obviously referring to the Motion to Dismiss filed by the defendants and the Motion to Serve Summons by Publication filed by her) be deferred or held in abeyance because she was then negotiating with Atty. Arnel G. Espiritu (counsel of would-be intervenors in the case) for a possible amicable settlement of

the case.

X X X X

That because of the request for deferment made personally by Atty. Marsha B. Esturas, Branch Clerk of Court Atty. Jordan J. Teaño kept the records of the case in his possession while awaiting word from either Atty. Marsha B. Esturas or Atty. Arnel G. Espiritu as to the outcome of their negotiations for the amicable settlement of the case;

That during this period of waiting, my Branch Clerk of Court, Atty. Jordan J. Teaño did not submit the records of the case to me, hence I did not have the opportunity to resolve the pending motions;

That it was only on April 16, 2010, after Atty. Jordan J. Teaño received word from Atty. Arnel G. Espiritu that the negotiations for amicable settlement did not prosper; that the records of the case was submitted to me;

That the undersigned immediately resolved plaintiffs' motion and Atty. Jordan J. Teaño accordingly prepared new summons, however, neither the plaintiffs nor their counsel took any action until now to effect service of summons on the defendants[.]<sup>[3]</sup>

As a counter-charge, respondent sought the disbarment of complainant for violating Rule 1.01, Canon I;<sup>[4]</sup> Rule 10.01, Canon 10;<sup>[5]</sup> and Rule 12.04, Canon 12<sup>[6]</sup> of the Code of Professional Responsibility.

Through the Notice<sup>[7]</sup> dated June 13, 2011, the Court resolved to re-docket the complaint as a regular administrative matter and refer it to the Presiding Justice of the Court of Appeals to be raffled among the associate justices for investigation, report, and recommendation.

Thereafter, the Investigating Justice, Associate Justice Agnes Reyes-Carpio, submitted her Report and Recommendation<sup>[8]</sup> finding merit in the Complaint. She was unconvinced of respondent's passing of blame on complainant and the Branch Clerk of Court, Atty. Jordan J. Teaño (Atty. Teaño). Moreover, the Investigating Justice found unmeritorious respondent's claim that complainant tried to negotiate the case with Atty. Arnel G. Espiritu (Atty. Espiritu) and his clients, the "would-be" intervenors, as the latter persons were not even parties thereto. The Investigating Justice further held that:

In any event, even assuming that it was complainant herself who requested the deferment of the resolution of the motion, the same should have been placed on record. Ours is a court of record, and all its proceedings must be in writing. Had he advised complainant to put his request on writing, then he would not be facing this administrative charge. Assuming that the request was acceptable, then at least an order to the effect that the resolution of the case is deferred due to the verbal

request of the complainant should have been made. No order was ever made, however, as admitted by Atty. Teaño.<sup>[9]</sup> (Citation omitted.)

The dispositive portion of the Investigating Justice's Report and Recommendation reads:

WHEREFORE, in view of the foregoing, it is recommended that respondent Judge Agapito S. Lu be FINED in the amount of Ten Thousand (P10,000.00) Pesos. The Branch Clerk of Court, Atty. Jordan J. Teaño be advised to be more circumspect in his duties as Branch Clerk of Court.

On the other hand, it is recommended that the Counter-Complaint against Atty. Marsha B. Esturas be referred to the Office of the Bar Confidant.<sup>[10]</sup>

The OCA, in its Memorandum<sup>[11]</sup> dated January 28, 2019, agreed with the findings of the Investigating Justice, except as to the counter-charge against complainant. Thus, it recommended as follows:

2. Respondent Judge Agapito S. Lu (Ret.), Branch 88, Regional Trial Court, Cavite City, Cavite, be found GUILTY of the less serious offense of undue delay in rendering a decision or order relative to Civil Case No. N-8004, entitled *Rafols-Domingo, et al. v. Gloriane, et al*, and be FINED in the amount of Ten Thousand Pesos (P10,000.00);
3. Atty. Jordan J. Teaño, Branch Clerk of Court, Branch 88, Regional Trial Court, Cavite City, Cavite, be REMINDED to be more circumspect in the performance of his duties, with a warning that the repetition of the same or any similar act will be punished more severely; and
4. the Counter-Complaint for disbarment of respondent Judge Agapito S. Lu against complainant Atty. Marsha B. Esturas be DISMISSED for lack of merit.<sup>[12]</sup>

#### *Ruling of the Court*

We agree with the findings of the Investigating Justice with respect to the charge against respondent.

The Constitution "fixes a reglementary period of 90 days within which judges must resolve motions or incidents pending before them."<sup>[13]</sup> Consonantly, "Rules 1.02<sup>[14]</sup> of Canon 1 and 3.05<sup>[15]</sup> of Canon 3 of the Code of Judicial Conduct direct judges to administer justice impartially and without delay and to dispose of the court's business promptly and decide cases within the required periods."<sup>[16]</sup> In line therewith, Supreme Court Administrative Circular No. 1-88<sup>[17]</sup> provides:

6.1 All Presiding Judges must endeavor to act promptly on all motions and interlocutory matters pending before their courts.

In this case, respondent admitted to have incurred delay in resolving the Motion to Serve Summons by Publication filed by plaintiff on June 10, 2009 in the earlier mentioned civil case. Per Atty. Teaño's affidavit, which the Investigating Justice quoted in her report, the motion was resolved only on April 16, 2010.<sup>[18]</sup> We note that while there was an exchange of papers between the parties in the civil case subsequent to the filing of the subject motion, plaintiff finally filed on October 26, 2009 a Motion to Resolve Immediately the Motion to Serve Summons by Publication.<sup>[19]</sup>

By way of an excuse, respondent attributes the delay to complainant, whom he alleged to have been negotiating for the settlement of the case with Atty. Espiritu, and to his Branch Clerk, Atty. Teaño, whom he claimed to have kept the records of the case and failed to forward them to him.

Respondent's proffered excuse is not persuasive. Judges cannot be allowed to use their staff as shields to evade responsibility for mistakes or mismanagement committed in the course of the performance of their duties.<sup>[20]</sup> Court management is ultimately the judges' responsibility.<sup>[21]</sup>

Moreover, as held by the Investigating Justice, respondent could have, at least, issued an order deferring the resolution of plaintiff's motion on the basis of complainant's request to defer it. This way, he could have avoided being accused of delaying the resolution thereof. Even if it were true that the records of the case were not forwarded to him by his Branch Clerk, to our mind, however, this only shows that there was something irregular about the way respondent managed his court. This is bolstered by his own admission that during the inventory of cases before his court to check the statuses thereof, among others, he would sign the records, but scan them only "sometimes."<sup>[22]</sup>

The hearing in the administrative case further revealed respondent's failure to carry out the duty to manage efficiently and take control of the court proceedings as far as the civil case is concerned. As quoted by the Investigating Justice, and we herein reproduce:

Justice A. Reyes-Carpio:

The motion to resolve was filed when?

Branch Clerk of Court, Atty. Teaño:

October, but it was set by the movant on November 3, 2009.

Complainant Atty. Esturas:

October 26, 2009, your Honor.

Respondent Judge Lu:

The hearing on the motion was set on November 3.