

SECOND DIVISION

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

JUDGE RENATO A. FUENTES, REGIONAL TRIAL COURT, BRANCH 17, DAVAO CITY, COMPLAINANT, VS. ATTY. ROGELIO F. FABRO, BRANCH CLERK OF COURT, AND OFELIA SALAZAR,^[1] CLERK III, RESPONDENTS.

DECISION

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 1st 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