

FIRST DIVISION

[**A.M. No. P-12-3036 (Formerly OCA I.P.I. No. 10-3384-P), June 20, 2012**]

**CLERK OF COURT ARLYN A. HERMANO, COMPLAINANT, VS.
EDWIN D. CARDEÑO, UTILITY WORKER I, MUNICIPAL TRIAL
COURT, CABUYAO, LAGUNA, RESPONDENT.**

D E C I S I O N

VILLARAMA, JR., J.:

Before us is an administrative complaint^[1] filed by Arlyn A. Hermano, Clerk of Court of the Municipal Trial Court (MTC) of Cabuyao, Province of Laguna, charging respondent Edwin D. Cardeño with three counts of grave misconduct.

Complainant summarized the charges and concomitant antecedent facts as follows:

A. First Count

On December 7, 2009, complainant reported for work and discovered that her Daily Time Record (DTR), the office attendance logbook, and the DTR of another office mate, Elvira B. Manlegro, were missing. Later that day, she was also told that the records of criminal cases scheduled for hearing on February 1, 2010 and the stenographic notes for a criminal case for slander were also missing. The incident was reported to the then Presiding Judge, Judge Conrado L. Zumaraga, and the Cabuyao Laguna Police Station. Then, complainant issued an Office Memorandum^[2] on December 8, 2009, requiring all court personnel to locate the missing records. The memorandum was received by all court personnel on the same day except by respondent who refused to receive it because according to him, he was on leave. Later in the afternoon, however, respondent returned all 20 missing court records.

On December 10, 2009, complainant issued a Memorandum^[3] to respondent requiring him to explain the reason for his possession of such court records, but respondent refused to receive the memorandum.

B. Second Count

On December 15, 2009, complainant discovered that the DTRs of seven court personnel were missing. She reported the incident to the presiding judge and the police and also ordered that the lock of the courtroom's main door be changed. An inventory of all case records was then conducted and it was found that the records of 36 criminal and civil cases, including some affidavits and documentary evidence, were missing. Six personnel documented the loss of their individual DTRs in a Joint Affidavit dated December 16, 2009 while Presiding Judge Zumaraga reported the loss of the court records on December 17, 2009 to the Court Administrator and their return by respondent on December 8, 2009.

Complainant further averred that on January 4, 2010, respondent returned all but one of the missing case records, as well as all the DTRs of the entire court staff for the period December 1-14, 2009. Only the case records of Criminal Case No. 9833, entitled *People v. Roberto Mendoza, et al.* for serious physical injuries, was not returned by respondent. She issued a memorandum^[4] to respondent on January 5, 2010 requiring respondent to explain why he was in possession of the missing court records without proper authorization from the complainant or the presiding judge. She likewise ordered respondent in Memorandum^[5] dated January 6, 2010, to explain why he failed to file the appropriate applications for leave for December 7, 8, 18, 21 to 23 and 28 to 29, 2009, when the DTRs for the said dates, which he earlier took and later returned, showed that he was absent on said dates and the attendance logbook showed that he reported for work in the morning of December 14 and 16, 2009 but did not punch out in the afternoon. She also pointed out to respondent that the office attendance logbook showed that he failed to log in and log out on December 1-4, 2009, but he did not file any leave application. Additionally, he tore his DTR for December 4, 2009.

Then, on January 11, 2010, she issued a third memorandum^[6] directing respondent to explain why he erased his attendance in the morning of December 14 and 16, 2009 from his DTR and his attendance on December 14, 2009 in the office logbook.

On January 14, 2010, respondent complied with complainant's directives and sent a letter^[7] explaining that he did not get the case records but only fixed them. He added that any conflict his actions may have caused has already been clarified with Judge Zumaraga and everything has been patched up. He likewise claimed that the records he returned on January 4, 2010 were just part of the records he returned on December 8, 2009 and that as far as he is concerned, all the records he returned on January 4, 2010 never left the court's premises. In fact, he claims that the court personnel even saw them before December 15, 2009 while they were doing the inventory that complainant had ordered.

C. Third Count

For the period July to December 2009, complainant gave respondent a rating of "Unsatisfactory" in view of the incidents mentioned above and his failure to perform his tasks and duties as Utility Worker II. Upon learning about such rating, respondent no longer cooperated in the office and began to misbehave. On March 19, 2010, complainant again discovered that the DTRs of all the court personnel and the records of 68 cases were missing. Complainant reported the incident to Acting Presiding Judge Josefina Siscar and requested for an investigation. Complainant also sought the assistance of the National Bureau of Investigation.

In addition to the above charges, complainant also mentioned in her Complaint-Affidavit that respondent sent to her the following two text messages:

"Ano oras ako pu2nta liv nko ng mtgal pasencya n d k nman gnusto to mgulo lng isip ko pasencya n uli."

Cel No. 09299593089

Date: 4/6/2010

Time: 10:21 pm

"Gud am. Ano b mngya2ri kng ibalik ko record"

Cel No. 09299593089

Date: 4/7/2010

Time: 5:22 am^[8]

Complainant added that respondent also approached her in the afternoon of April 7, 2010 and requested that his performance rating be changed. She then required respondent to return all the missing records but respondent paid no heed to her order and left the office.

On April 29, 2010, the Office of the Court Administrator (OCA) ordered respondent to file his comment. Respondent ignored the directive and resigned on August 9, 2010. Subsequently, however, he filed a comment dated November 15, 2010 upon receipt of a directive from the OCA reiterating its order for him to file his comment.

In his comment, respondent expressed surprise over having received the directive considering his resignation. Nonetheless, in response to the allegations in the complaint, he explained that his application for leave for the month of December 2009 was misplaced so it was filed out of time while his failure to file applications for leave for his absences from March to June 2010 was due to complainant's refusal to sign the same.

On December 2, 2011, the OCA found respondent liable for grave misconduct but recommended, among others, that respondent be penalized with a fine instead of dismissal in view of his resignation. The OCA recommended that

x x x x

2. a FINE of P10,000.00 be imposed against Mr. Edwin Cardeño, with forfeiture of his benefits except accrued leave, if any, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations;

3. Mr. Cardeño be DIRECTED to return the remaining court records still in his possession at the soonest time possible;

4. Ms. Arlyn A. Hermano, Clerk of Court of the same court, be ordered to SHOW CAUSE, within ten (10) days from notice of the Court Resolution, why no disciplinary action should be taken against her for failure to exercise due diligence as custodian of court records and to duly supervise the employees in her branch; and,

5. a judicial audit of cases be CONDUCTED to determine that all cases are properly accounted for.^[9]

We find the recommendations of the OCA to be well-taken.