

## SECOND DIVISION

[ **A.M. No. P-07-2394 (Formerly OCA-IPI No. 07-2571-P), February 19, 2008** ]

**EDGARDO C. RIVERA, Complainant, vs. DANVER A. BUENA, Clerk of Court, MeTC, Branch 38, Quezon City, Respondent.**

### RESOLUTION

**TINGA, J.:**

A clerk of court's office is the hub of activities, and he or she is expected to be assiduous in performing official duties and in supervising and managing the court's dockets. Negligence in the performance of these duties warrants disciplinary action.

[1]

In a sworn Complaint<sup>[2]</sup> dated 29 March 2007, Edgardo C. Rivera (complainant) charged Danver A. Buena (respondent), Branch Clerk of Court of the Metropolitan Trial Court (MeTC) of Quezon City, Branch 38, with gross neglect of duty, inefficiency and incompetence and conduct prejudicial to the best interest of the service. Complainant claims that he is the private complainant in a criminal case which was filed sometime in October 1996. After the prosecution made its formal offer of evidence on 15 April 2004, it rested its case. When it was the turn of the defense to present its evidence, the accused failed to appear and thus the defense rested its case. On 17 August 2004, the trial court issued an order declaring the case submitted for decision.

On 29 April 2005, or eight (8) months after the case was submitted for decision, counsel for complainant filed an *Ex Parte* Motion for Early Resolution<sup>[3]</sup> of the case. His motion was not acted upon. Consequently, on 06 November 2006, complainant wrote the Court Administrator, requesting the early resolution of the case. The matter was referred to Judge Catherine Manondon, then acting presiding judge of Branch 38.

On 18 January 2007, complainant received a copy of the Order<sup>[4]</sup> dated 11 September 2006 which reads:

When this case was called for hearing, none of the parties appeared. A perusal of the record shows that this case was submitted for decision on August 17, 2004 without offer of evidence by the prosecution.

Accordingly, the prosecution, thru the private prosecutor is given ten (10) days from receipt hereof to offer its evidence, failing which it will be deemed to have waived its right to do so, and this case be submitted for judgment.<sup>[5]</sup>

Knowing that he had already filed his formal offer of evidence, complainant's counsel personally went to the MeTC Branch 38 to verify the matter. It was discovered that the Formal Offer of Evidence was missing and that the trial court had already issued an Order dated 30 June 2006 declaring that the prosecution had waived its right to formally offer its evidence.<sup>[6]</sup> The order reads:

The Prosecution having failed to file any Formal Offer of Evidence, it is deemed to have waived its right to do so.

Accordingly, let the reception of defense evidence be held on September 11, 2006 at 2:00 o'clock in the afternoon.

Notify all parties.

SO ORDERED.<sup>[7]</sup>

Complainant was also surprised when in the afternoon of 5 February 2007 he received a notice of hearing setting the case for hearing at 2:00 in the afternoon of the same date. Complainant was unable to attend the hearing on account of the late receipt of the notice. However, he filed on 21 February 2007 an Omnibus Motion<sup>[8]</sup> (i) stating the reason for his non-appearance at the 5 February hearing; and (ii) asking the trial court to reconsider its 30 June 2006 Order. Even though the omnibus motion was requested to be set for hearing on 23 February 2007, the trial court set the hearing three months after the motion was filed.<sup>[9]</sup>

According to complainant, he finds it suspicious that respondent did not bother to inform him or his counsel that his formal offer of evidence was missing so that they could remedy the situation. In fact, as of the date of the complaint, respondent had not yet furnished him a copy of the 30 June 2006 Order.<sup>[10]</sup>

For his part, respondent avers that sometime in February 2006, in the course of scrutinizing the records of undecided civil and criminal cases pending adjudication, he discovered that complainant's case was submitted for decision on 17 August 2004 and that the prosecution failed to offer its documentary evidence. He allegedly instructed several court personnel to look for the formal offer of evidence filed by the prosecution but despite diligent efforts, they failed to locate the same. Nevertheless, he admits that based on office records, specifically the transmittal of pleadings that the prosecution had filed, it appears that complainant's formal offer of evidence was received by the trial court on 26 April 2004. According to respondent, custody of the records went through the hands of several personnel who, during his inquiry, denied having anything to do with the incorporation of the formal offer of evidence in the case files.<sup>[11]</sup>

Respondent also claims that complainant did not receive a copy of the Order of the Court dated 30 June 2006 because the clerk in charge of the records neglected to mail the same. He also blames the same clerk for failure to attach to the records of the case complainant's Omnibus Motion dated 21 February 2007. The motion was allegedly attached only on 15 May 2007, thus the belated setting of hearing thereon.<sup>[12]</sup>

Respondent argues that he has a voluminous workload because he had to divide his