

## SECOND DIVISION

[ A.M. NO. P-05-1987, February 10, 2006 ]

**DR. EDWIN FONGHE AND MAHARLIKA CANATA, COMPLAINANTS,  
VS. CYNTHIA BAJARIAS-CARTILLA, CLERK OF COURT II,  
MUNICIPAL TRIAL COURT, DALAGUETE, CEBU, RESPONDENT.**

### DECISION

**AZCUNA, J.:**

On February 20, 2003, a verified Affidavit-Complaint<sup>[1]</sup> was filed by Dr. Edwin Fonghe and Maharlika Canata against respondent Cynthia Bajarias-Cartilla, Clerk of Court II of the Municipal Trial Court (MTC) of Dalaguete, Cebu for Infidelity in the Custody of Records, Dishonesty, Grave Misconduct and Neglect of Duty in connection with three criminal cases filed by complainants against Peter Bejarasco, Jr., to wit:

- (a) Criminal Case No. R-4246 entitled "People of the Philippines vs. Peter Bejarasco, Jr. and Chernovel Bejarasco" for less serious physical injuries;
- (b) Criminal Case No. R-4187 entitled "People of the Philippines vs. Peter Bejarasco, Jr." for light threats; and,
- (c) Criminal Case No. R-4188 entitled "People of the Philippines vs. Peter Bejarasco, Jr." for light oral defamation.

It appears that the records of the cases were transferred to MTC-Argao, Cebu and then subsequently to MTC-Sibonga, Cebu before finally being returned on September 3, 2001 to MTC-Dalaguete, Cebu from where the records originated.<sup>[2]</sup>

By that time, a decision convicting the accused had been rendered in Criminal Case No. R-4246. Accused thereafter filed his notice of appeal on July 29, 2002. On the other hand, Criminal Case Nos. R-4187 and R-4188 have not yet been decided. All three cases had been submitted for decision as early as June 29, 1999.

The facts of the present case are summarized by the Office of the Court Administrator (OCA) in its Report<sup>[3]</sup> dated March 7, 2005, as follows:

According to the complainants, accused appealed the decision in Criminal Case No. R-4246 on 29 July 2002. However, as of January 3, 2003, respondent has not transmitted the records of the case to the appellate court. Every time complainants follow this up with respondent, she always claims that the records are still incomplete or that some are missing. This is also respondent's reason why Criminal Case Nos. R-4187 and R-4188 which were submitted for decision since June 29, 1999 have not been decided. Suspecting that respondent deliberately conceals the

records of the case, to delay conviction of the accused who is respondent's nephew, complainants called the attention of Judge Thelma N. delos Santos [of] MTC-Dalaguete, Cebu, on the matter. The judge directed respondent to explain and search for the missing records.

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As directed by Judge delos Santos on January 20, 2003, respondent submitted her Explanation dated January 24, 2003 where she passed the blame to Mrs. Leonisa B. Gonzales, Court Stenographer of MTC-Argao, who took down the notes of the proceedings. She claimed that Gonzales failed to submit the transcript of stenographic notes (TSN).

In her Comment<sup>[4]</sup> dated May 15, 2003 filed with the OCA, respondent explained that she was not able to make a timely transmittal of the records of Criminal Case No. R-4246 to the appellate court because most of the transcripts of stenographic notes (TSNs) on file had been mere duplicate or carbon copies. In addition, the TSNs for the hearing where the testimony of the accused and witnesses Baluncao and Caritero were taken had also been submitted to her only on January 14 and 17, 2003 by court stenographer Leonisa B. Gonzales of MTC-Argao. Thus, she was only able to transmit the records of Criminal Case No. R-4246 on January 23, 2003. Respondent likewise denied that she deliberately concealed and removed the records of Criminal Case Nos. R-4187 and R-4188. She posited that the delay in the resolution of the cases was due to the fact that the records received by the court allegedly contained discrepancies and were only completed when Ms. Gonzales transmitted to them the TSN dated March 17, 1999 on January 17, 2003.

Court Administrator Presbitero J. Velasco, Jr. found that respondent's failure to transmit the records to the appellate court within the 5-day reglementary period constituted negligence warranting disciplinary action. Moreover, although the charge of deliberate concealment of the records with respect to Criminal Case Nos. R-4187 and R-4188 was not substantiated, the belated discovery that the records were missing, incomplete or incorrect, upon the prompting of complainants at that, reflected an inefficient and disorderly system of keeping case records. Thus, he recommended that respondent "be FINED in the amount of Three Thousand Pesos (P3,000.00) for the delay in the transmittal of the records of a case to the appellate court and ADMONISHED to be more diligent and circumspect in the performance of her duties with [a] WARNING that repetition of the same or similar act in the future shall be dealt with more severely."<sup>[5]</sup>

The Court agrees with the recommendation. The Rules state that the clerk of the court with whom the notice of appeal was filed is responsible for transmitting to the clerk of court of the appellate court the complete record of the case, together with the notice within five days from the filing of the notice of appeal.<sup>[6]</sup> Compliance with this duty is strictly mandated, especially in criminal cases where any unnecessary delay could constitute a violation of the party litigant's right to due process.

In the present case, the reason cited by respondent as to why she incurred a delay, that is, because certain TSNs had not yet been completed or submitted, is untenable. In *Villanueva v. Pollentes*,<sup>[7]</sup> this Court held: