

THIRD DIVISION

[**A.M. No. MTJ-04-1525 (Formerly A.M. OCA IPI No. 00-927-MTJ), January 29, 2004**]

RUFINO CASIMIRO, COMPLAINANT, VS. JUDGE OCTAVIO FERNANDEZ AND CLERK OF COURT TERESITA ESTEBAN, RESPONDENTS.

D E C I S I O N

CARPIO MORALES, J.:

In a sworn letter complaint^[1] dated August 2, 2000 addressed to the Office of the Court Administrator (OCA), complainant Rufino Casimiro charged respondents Judge Octavio Fernandez and Clerk of Court Teresita Esteban of the Municipal Circuit Trial Court (MCTC) of Gen. Natividad and Llanera, Nueva Ecija with Grave Misconduct and Dishonesty for refusing to return his P4,000.00 cash bond which he posted for his provisional liberty in Criminal Case No. 135-L, "*People of the Philippines v. Rufino Casimiro*," despite the MCTC November 8, 1999 Order dismissing the case.

By complainant's account in her letter-complaint, he gave the cash bond to respondent Judge who, in turn, handed it to respondent Clerk of Court with the directive that she issue the corresponding receipt. No receipt was issued to him, however.

As despite the order issued by then Acting Presiding Judge Efren B. Mallare, who was designated to preside at the sala of respondent Judge after the latter's reassignment, directing the respondent Clerk of Court to release complainant's cash bond, he failed to secure it, he filed the present complaint.

In her September 12, 2000 Comment,^[2] respondent Clerk of Court asserted that complainant did not post the cash bond with her as she did inform in her November 8, 1999 letter^[3] to Judge Mallare, in support of which she submitted a copy of an undated letter from Mrs. R. Fernandez,^[4] the wife of her herein co-respondent Judge, which she received on August 24, 2000, wherein Mrs. Fernandez stated that she had "sent [complainant] P4,000.00 [via] Allied [Bank] check addressed to Atty. [Lamberto] Magbintang."

Respondent Clerk of Court also submitted a copy of her December 8, 1999^[5] letter to complainant informing him that Release Orders prepared by her usually contain the Official Receipt Number, which the December 4, 1998 Order^[6] granting complainant's provisional liberty issued by her co-respondent Judge does not contain.

In his Comment-letter of September 26, 2000,^[7] respondent Judge informed the Office of the Court Administrator (OCA) that complainant's cash bond "was already

returned/remitted to his counsel," Atty. Magbitang, at the latter's law office address because complainant could no longer be contacted at his former residential address, he having changed it without informing the Office of the Clerk of Court.

By Resolution^[8] of January 16, 2002, this Court referred the case to the Executive Judge of the Regional Trial Court of Cabanatuan City for investigation, report and recommendation.

In a handwritten April 17, 2002 letter^[9] to then Executive Judge Johnson L. Ballutay, respondent Judge averred that "the cash bond of P4,000 of Mr. Rufino Casimiro was already received by him, when [he] personally sent him a check for refund thereof," in support of which he attached a photocopy of Allied Bank Check No. 1274234^[10] issued by Raquel A. Fernandez on August 18, 2000, payable to complainant, in the amount of P4,000.00 whereon were stamped the words "PAID and CANCELLED" after it was deposited to the account of the payee.

In his October 22, 2002 letter^[11] to the succeeding Executive Judge, Tomas B. Talavera, however, respondent judge espoused a different position. He therein averred that since complainant specifically stated in his letter-complaint that he handed his cash bond of P4,000.00 to him (respondent judge) and on the same occasion saw the latter hand the money to respondent Clerk of Court who was instructed to issue a receipt therefor, "which indeed was what actually happened," then complainant's letter-complaint against him should be dismissed, he adding that his wife issued her personal Allied Bank check on the mistaken belief that the cash bond was with respondent judge.

By letter of August 2, 2002,^[12] complainant informed the investigating judge of his desire to withdraw his complaint against respondents. Nevertheless, in obedience to the subpoena issued to him, complainant showed up at the hearing of the case before Judge Talavera on October 24, 2002 during which he testified that he gave his P4,000.00 cash bond to a lady court employee of the MCTC;^[13] and that while he was not issued a receipt, respondent Clerk of Court, on his verification, showed him a record showing that his cash bond was duly received by the trial court.

Admitting having received the check for P4,000.00 from Atty. Magbintang which he had already encashed,^[14] complainant reiterated his desire to withdraw his complaint, as he did so again during the subsequent hearing of November 11, 2002.
^[15]

By his Report of April 15, 2003,^[16] Judge Talavera recommended that both respondents be exonerated for lack of sufficient basis, he having found complainant to have made conflicting statements in his August 2, 2000 letter-complaint and during the hearings, and that the investigation could not proceed as complainant had already withdrawn from further testifying on the case. Judge Talavera also recommended that respondents be admonished to observe the correct procedure in the acceptance of cash bonds and issuance of orders of release thereof to avoid occurrence of similar incidents.

Executive Judge Rodrigo S. Caspillo, on whose term as Executive Judge the final disposition of the investigation of the case was lodged, adopted the recommendation

of Judge Talavera, no additional evidence having been adduced by the parties.^[17]

By Memorandum of September 11, 2003, the OCA submitted its Report^[18] finding that the evidence indicated that it was respondent Judge who took the cash bond and failed to observe the correct manner and procedure in the acceptance and issuance of order of release thereof. It accordingly recommended that, for Grave Misconduct, the penalty of fine in the amount of P5,000.00 be imposed upon him.

With respect to the complaint against respondent Clerk of Court, the OCA recommended its dismissal for lack of evidence.

The findings and recommendation of the Office of the Court Administrator merit approval.

The usual procedure for the acceptance of cash bail bonds and return thereof clearly charted in SC Circular No. 50-95 dated October 11, 1995 was not indeed followed. As provided therein, all collections from bail bonds, rental deposits and other fiduciary collections shall be deposited within 24 hours by the Clerk of Court concerned, upon receipt thereof, with the Land Bank of the Philippines, in the name of the court, with its Clerk of Court and the Executive Judge as authorized signatories; and every withdrawal thereof via withdrawal slips bearing the signature of the Executive/ Presiding Judge and countersigned by the Clerk of Court must be accompanied by a court order which indicates the amount to be withdrawn.

Upon the acceptance of complainant's cash bond then, respondents were bound by law to immediately turn it over to the custody of the official or bank authorized to receive them.^[19] Following proper procedure for the withdrawal of fiduciary funds, respondent Judge should have issued an order directing the withdrawal of the cash bond from the authorized depository bank and referred the matter to the authorized signatories.

While there is no direct and hard evidence that respondent Judge made personal use of the cash bond, his wife's issuance of her personal check to complainant in the amount of the cash bond, which check respondent judge even admitted in his letter of April 17, 2002 to have been drawn from an account which was treated as "a joint account" with his wife, indicates so. His subsequent justification for such issuance of a check by his wife - mistaken belief - is too shallow to merit persuasion.

By his actuations then respondent Judge placed his honesty and integrity under serious doubt.^[20]

The Code of Judicial Conduct dictates that a judge should avoid impropriety and the appearance of impropriety in all activities.^[21] And Rule 2.01 of Canon 2 of the Canon of Judicial Ethics mandates that a judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.

A judge should thus be above reproach and free from the appearance of impropriety, and should at all times conduct himself in such a manner as to be above suspicion.

As *Montemayor v. Collado*^[22] teaches: