

THIRD DIVISION

[A.M. NO. P-05-2061 (FORMERLY OCA I.P.I. NO. 03-1590-P), August 19, 2005]

MARCIAL GALAHAD T. MAKASIAR, COMPLAINANT, VS. FE L. GOMINTONG, CLERK III, RESPONDENT.

D E C I S I O N

CARPIO MORALES, J.:

By verified complaint^[1] dated March 11, 2003, Marcial Galahad T. Makasiar (complainant), Clerk of Court V of the Regional Trial Court (RTC) of Quezon City, Branch 89, charged of gross neglect of duty Clerk III Fe L. Gomintong (respondent) of the same court.

The antecedents of the case are as follows:

On January 7, 2003, Branch 89 of the Quezon City RTC rendered a decision^[2] in Civil Case No. Q-01-43766, "*Jun-Jun Conol v. Lelita Conol*" (*Conol* case), declaring the nullity of the marriage of the parties.

The Office of the Solicitor General timely filed a Notice of Appeal^[3] of the decision on account of which the trial court issued on January 28, 2003 an Order^[4] for the elevation of the entire records of the case to the Court of Appeals.

On February 5, 2003, the petitioner in the *Conol* case filed a "MOTION FOR REMARKING"^[5] of exhibits. The motion was granted by Order^[6] dated February 6, 2003 and the Clerk of Court V was "ordered to effect the remarking."

On March 3, 2003, complainant inquired from respondent about the transmittal of the records of the *Conol* case upon which respondent informed him that all the transcript of stenographic notes (TSNs) of the case were missing.

By complainant's account, during the initial investigation of the missing TSNs on March 5, 2003 by the Presiding Judge, it surfaced that as early as the first week of February 2003, respondent, who is charged with filing and taking custody of all TSNs of all cases, knew that the TSNs were already missing but that she did not report the same; during the investigation held on March 7, 2003, respondent admitted that the missing TSNs were not placed in a separate folder, despite the availability of supplies thereof and his continuing instruction that all TSNs should be placed in a folder maintained separately from the main record of each pending case; as of the time of the filing (on March 11, 2003) of the instant complaint, he could not transmit the entire records of the *Conol* case because all the TSNs remained missing despite diligent efforts to locate them; and he has instructed the stenographers of the court to re-transcribe their stenographic notes in the *Conol*

case.

By Indorsement^[7] dated March 19, 2003, the Office of the Court Administrator (OCA) directed respondent to file her comment on the complaint.

Complainant later filed a request for withdrawal of his complaint,^[8] received by the OCA on March 20, 2003, "out of compassion," the TSNs in the *Conol* case having already been re-transcribed.

In her Comment^[9] filed on May 19, 2003, respondent gave the following submissions:

While she was preparing the records of the *Conol* case for transmittal to the Court of Appeals, she noticed that the original TSNs were not with the records, prompting her to ask two of her co-employees to look for them inside the chambers of the judge as the same could not be found in the staff room. On February 19, 2003, she informed complainant about the missing TSNs, suggesting to him that that she herself transcribe the notes but he turned the suggestion down. She thus just waited for the stenographers to finish the transcription. Upon completion of the TSNs on March 18, 2003, she immediately mailed the records of the *Conol* case to the Court of Appeals.

Respondent invited attention to the fact that in her 20 years of service at Branch 89 of the RTC, this is the first time that loss of TSNs occurred.

On the directive of complainant that TSNs must be placed in separate folders, respondent claimed that it is impossible of compliance due to shortage of folders, and even mailing envelopes, paste, carbon paper, as well as filing cabinets for proper storage. She thus instead fastened TSNs to the corresponding records of cases.

Finally, respondent suggested that the loss of the TSNs could have occurred in the process of the remarking of the petitioner's exhibits in the *Conol* case which entailed "untying and revising" of the records.

In fine, respondent conceded that "there was error" but that it was unintentional and "not solely due to negligence" on her part.

By Report^[10] dated September 24, 2003, the OCA found that the loss of the TSNs was, contrary to complainant's claim, unintentional, there being no proof that respondent "deliberately [caused their loss] to favor or prejudice any of the parties [to the *Conol*] case."

The OCA, however, found that respondent was remiss in the discharge of her duties. And it too found that complainant, a Branch Clerk of Court who has control and supervision over all court records including exhibits, properties and supplies, was remiss in the performance of his duties; and that the loss of the TSNs reflects an inefficient and disorderly system of keeping case records and the lack of close supervision by complainant over his subordinate personnel in the performance of their duties.