

SECOND DIVISION

[A.M. No. P-04-1794 (formerly OCA IPI NO. 03-1626-P), April 14, 2004]

EUGENIO C. GONZALES, ET. AL., PETITIONERS, VS. MARIANO S. FAMILARA III, CLERK OF COURT, REGIONAL TRIAL COURT OF ROXAS (BRANCH 43), ORIENTAL MINDORO, RESPONDENT.

R E S O L U T I O N

AUSTRIA-MARTINEZ, J.:

In a letter dated April 23, 2003, Atty. Benjamin Relova, in behalf of Eugenio C. Gonzales, et al., charges Atty. Mariano S. Familara III, Clerk of Court of Branch 43, Regional Trial Court (RTC), Roxas, Oriental Mindoro of gross negligence, grave misconduct and gross dereliction of duty in the performance of his duty as clerk of court.

Atty. Relova alleges: In Civil Case No. C-351, entitled, "Diana Gonzales and Eugenio Gonzales vs. Mrs. Vera P. Quiazon, et al.," his client, Eugenio C. Gonzales, deposited for consignment before the said RTC, a manager's check dated 24 May 1999 in the amount of P300,000.00. Respondent did not deposit the check with a depository bank in violation of the Supreme Court Circular No. 13-92 dated 1 March 1992 which expressly directs that "all collections from bailbonds, rental deposits and other fiduciary collections, shall be deposited immediately by the Clerk of Court concerned upon receipt thereof, with an authorized government depository bank." Such inaction on the part of the respondent has not only deprived the National Treasury of interest which the check should have earned had it been deposited, but may have also caused prejudice to their client in terms of interest had the consignment been disapproved.

In his Comment, respondent explains, as follows: After some brainstorming with Presiding Judge Antonio M. Rosales, he was prevailed upon by the judge not to deposit the check for the time being for the reason that it would come in handy whenever the need arises for the check's presentation, identification, comparison and marking in the course of the proceedings. The check was ultimately marked by the plaintiff's counsel as their Exhibit "N" during the pre-trial conference, thus showing conformity with the suggestion of the Judge. As said check was marked in evidence, it already formed part of the record of the case and should stay therein until the propriety or impropriety of the consignment has been acted upon by the court. Such petition was bolstered by the ruling of the Court of Appeals in C.A. G.R. S.P. No. 57597, entitled, "Eugenio C. Gonzales, et al. vs. The Hon. Antonio M. Rosales, et al.," to wit:

As to petitioners' claim for interest which the check they had consigned may have earned if deposited with an authorized government depository bank in accordance with Supreme Court Circular No. 13-92 which took effect March 1, 1992 (p. 9, Motion for Reconsideration, p. 202, Rollo), it

is premature in the present petition for certiorari to claim any contingent interest which may accrue by reason of the consignment of the check in court for the reason that petitioners' main case below is for consignment, the propriety of which is yet to be determined on the merits by the court a quo.

Consequently, petitioners' prayer for the issuance of a temporary restraining order to restrain the lower court from proceeding with the hearing until after we shall have resolved the latter issue is without any valid basis.

WHEREFORE, petitioners' motions are denied for lack of merit.

He acceded to what his judge would like to do with the check tentatively because that is consistent with the latter's prerogative on the manner by which the hearing of a case should be conducted in conjunction with his power of control and supervision over his subordinates. The check became stale because the time to rule on it was wasted away, hampered by the many pleadings filed by plaintiff's counsel, such as several motions for postponement, reconsideration, inhibition, certiorari, etc., as can be borne out by the records itself which presently has become voluminous, comprising now of two volumes, each volume measuring eight inches in thickness. The case is yet in its initial stage.

Respondent prays for understanding and consideration in view of the absence of gain and ill motive on his part in not doing what complainant said he should have been done.

In his Reply, complainant contends: Circular Nos. 13-92 and 32-93 mandate that clerks of court should deposit fiduciary funds immediately with authorized government depository banks. There are no "ifs" or "buts" in the aforesaid issuances. There are no brainstorming necessary on the part of the Judge and the Clerk of Court because the matter simply involved the immediate deposit of all collections and deposits received. Respondent should have immediately deposited the check so that it could earn interest for the benefit of the employees of the judiciary. It would have been sufficient that the receipt for the deposit be marked in evidence and the check photocopied in order not to delay its deposit but respondent allowed years to pass without depositing the check until it became stale.

In his Answer to the Reply, respondent quoted the ruling of the Supreme Court in *Re: Deposit on the Financial Audit in RTC, General Santos City*, to wit:

Indeed, clerks of court are the chief administrative officers of their respective courts; with regard to COLLECTION OF LEGAL FEES, they perform a delicate function as judicial officers . . . [1]

He maintains that the cited ruling speaks of collection of legal fees which is distinct and totally different from consignment of checks; that when a petitioner files a petition for consignment of a check, he is required to pay a correspondent legal fee in accordance with the rules and that the payment collected from the petitioner or the payment received in the filing of a similar action is the one contemplated by the aforesaid ruling and not the check which is the subject matter of consignment.