

SECOND DIVISION

[A.M. No. MTJ-04-1545, May 27, 2004]

**SATURNINO OBAÑANA, JR., COMPLAINANT, VS. JUDGE
ARMANDO R. RICAFORT, MUNICIPAL TRIAL COURT, SIATON,
NEGROS ORIENTAL, RESPONDENT.**

R E S O L U T I O N

AUSTRIA-MARTINEZ, J.:

Before this Court is a complaint filed against Judge Armando R. Ricafort of the Municipal Trial Court of Siaton, Negros Oriental, in his capacity as then Clerk of Court of the Regional Trial Court of Dumaguete City, Branch 44, for his failure to transmit to the Court of Appeals the records of Civil Case No. 11437, within the period prescribed in Section 10, Rule 41 of the Rules of Court.

The following facts are undisputed.

Complainant is the plaintiff in Civil Case No. 11437, entitled "Saturnino Obañana et al. vs. Dumaguete Rural Bank, Inc., et al." for the annulment of a foreclosure sale plus damages with a request for preliminary injunction and restraining order,^[1] filed on October 3, 1995 before the Regional Trial Court, Branch 44, Dumaguete City (RTC for brevity). On September 15, 1997, complainant received a copy of the RTC's decision dismissing his complaint. Complainant filed a notice of appeal on September 22, 1997 which was approved by the RTC on September 23, 1997 in its Order, to wit:

Plaintiffs, having seasonably filed their notice of appeal dated September 22, 1997, to the Court's Order dated September 15, 1997, the same is hereby GRANTED.

Considering that the entire records of this case are still with the Court of Appeals, Manila by virtue of another pending incident, this Court will transmit said records back to the Court of Appeals, as soon as it arrives.

SO ORDERED.^[2] (*Emphasis supplied*)

However, the records of Civil Case No. 11437 were elevated to the Court of Appeals only on February 6, 2002 or after a lapse of almost five years from the date the Notice of Appeal was approved.^[3] Thus, the herein complaint against Judge Alvin L. Tan, as the then presiding judge of the RTC and Judge Armando Ricafort of MTC, Siaton, Negros Oriental, as then Clerk of Court of the same RTC.

In view of the death of Judge Alvin L. Tan, the administrative complaint against to him is considered closed and terminated.^[4]

In his Comment dated July 21, 2003, respondent Judge Ricafort admits that the delay in the transmittal of the records of Civil Case No. 11437 to the Court of Appeals was due to his negligence in the supervision of his subordinates. He claims however that the delay in the transmittal of the records is only two years, reckoned from the time the records were returned to the trial court, and not five years as claimed by complainant. He also maintains that he had no malicious intent or any ulterior motive in delaying the transmittal of said records and that this is the first time that this ever happened to him. He promises not to let this happen again.^[5]

In detail, respondent narrates that: on November 7, 1996, as then Branch Clerk of Court of the RTC, he transmitted the entire records of Civil Case No. 11437 to the Court of Appeals in Manila because of a petition for certiorari filed with the appellate court pending the finality of the trial court's proceedings; on September 22, 1997, complainant filed a Notice of Appeal from the decision rendered by the RTC which was approved the following day with the qualification that the entire records will be transmitted as soon as the RTC receives the same from the appellate court; on September 30, 1999, the records of the case were returned and received by one of the personnel of the RTC but was not immediately brought to the attention of respondent until sometime in January, 2000 when complainant asked for the records of the case; this prompted respondent to call his staff assistant and instruct the latter to pull out the records from the files and prepare the paging and the table of contents thereof; several months passed and complainant followed up the case again; to respondent's surprise, the records were still not transmitted to the Court of Appeals; the staff assistant reasoned that her volume of work and the non-submission of some stenographers of their transcripts prevented her from preparing the records; respondent also claimed that he was kept busy by his many tasks in court; in the meantime, respondent signed many communications transmitting records to the Court of Appeals and to the Supreme Court which led him to believe that there are no more records left in their Branch for transmittal, until February 6, 2002, when the staff assistant presented to him the transmittal letter for Civil Case No. 11437 for signing and mailing to the Court of Appeals.^[6]

Respondent expresses his apology to complainant and the Court Administrator for his negligence in said case.^[7]

In its evaluation, the Office of the Court Administrator (OCA) opines:

Section 10, Rule 41 of the Rules of Court mandates that among the duties of the Clerk of Court in cases of appeal is to transmit the records of the case to the appellate court within thirty (30) days from perfection of the appeal. Here, respondent transmitted the records of the case way beyond the period required by the rules.

The Court held time and again that the failure of the Clerk of Court to transmit the records of the case constitutes negligence that warrants disciplinary action. Prompt transmittal of the records of appealed cases to the appellate court is necessary to ensure the speedy disposition of the case, especially in criminal cases.

In A.M. No. 97-9-278-RTC (Re: Report on the Judicial Audit Conducted in

RTC, Branch 29 and 59, Toledo City, July 8, 1998), the Court imposed a fine in the amount of P1,000.00 with admonition and warning on a Branch Clerk of Court who failed to transmit timely the records of two (2) criminal cases and two (2) civil cases subject of appeal. In *OCA vs. Atty. Marie Yvette Go (A.M. No. P-01-1485, November 29, 2001)*, the Court admonished a Branch Clerk of Court for failing to follow-up with the Court Stenographer the submission of the required stenographic notes in a case subject of an appeal, thus, delaying the transmittal of the records of the case to the appellate court.

In the case at hand, the respondent not only acknowledges that the delay in the transmittal of the records of the case was his fault, he also expresses remorse over the consequence of his omission. The explanation he offers only shows that the omission attributable to him is not tainted with any malice or bad faith. Considering however the long delay in the transmittal of the records of the case, the respondent should be penalized with a fine.^[8]

and recommends that respondent Judge, in his capacity as then Clerk of Court of the RTC be ordered to pay a FINE of P5,000.00.^[9]

After reviewing the records of this case, we approve the findings and recommendation of the OCA.

Section 10, Rule 41 of the Rules of Court explicitly provides:

Sec. 10. *Duty of clerk of court of the lower court upon perfection of appeal.*---Within thirty (30) days after perfection of all the appeals in accordance with the preceding section, it shall be the duty of the clerk of court of the lower court:

(a) To verify the correctness of the original record or the record on appeal, as the case may be, and to make a certification of its correctness;

(b) To verify the completeness of the records that will be transmitted to the appellate court;

(c) If found to be incomplete, to take such measures as may be required to complete the records, availing of the authority that he or the court may exercise for this purpose; and

(d) To transmit the records to the appellate court.

If the efforts to complete the records fail, he shall indicate in his letter of transmittal the exhibits or transcripts not included in the records being transmitted to the appellate court, the reasons for their non-transmittal, and the steps taken or that could be taken to have them available.

The clerk of court shall furnish the parties with copies of his letter of transmittal of the records to the appellate court. (Emphasis supplied)

Section 12 of the same rule also states that: