

## THIRD DIVISION

[ A.M. No. MTJ-02-1403, February 03, 2003 ]

**BOBBY CARRIAGA, COMPLAINANT, VS. MUNICIPAL JUDGE  
ROMEO L. ANASARIO, RESPONDENT.**

### D E C I S I O N

**SANDOVAL-GUTIERREZ, J.:**

Before us is an administrative complaint filed by Bobby Carriaga against Municipal Judge Romeo Anasario of the 2<sup>nd</sup> Municipal Circuit Trial Court (MCTC) of Manjuyod-Bindoy-Ayungon, Negros Oriental for gross ignorance of the law and partiality.

In his verified letter-complaint filed with this Court on September 3, 1999, Bobby Carriaga alleged that he is the complainant in Criminal Cases Nos. B-21, B-22 and B-23 for estafa, less serious physical injuries and grave threats against jail guards Antonio Redula and Arsenio Tuanda.

In Criminal Cases Nos. B-22 and B-23, covered by the Revised Rule on Summary Procedure, respondent judge issued an order requiring the accused to submit their counter-affidavits and those of their witnesses within ten (10) days from notice. While the accused received the order on March 5, 1998, however, they submitted their counter-affidavits only after 130 days or late by 120 days. On August 31, 1998, respondent judge issued an order admitting the counter-affidavits.<sup>[1]</sup>

Apprehensive that respondent judge is biased in favor of the accused considering that he admitted their counter-affidavits, complainant filed a motion for inhibition. But it was denied in an order dated May 31, 1999, prompting him to file with this Court the instant administrative complaint.

In his comment<sup>[2]</sup> dated October 28, 1999, respondent judge denied the charges against him, contending that he has not admitted in evidence the accused's counter-affidavits. In fact, the cases were calendared only for arraignment and preliminary conference.<sup>[3]</sup> Moreover, the Rule requiring the submission of counter-affidavits within ten (10) days is merely directory, not mandatory.

In her Report dated January 8, 2002, Deputy Court Administrator Zenaida N. Elepaño made the following evaluation:

"x x x The Rule on Summary Procedure clearly and undoubtedly provides for the procedure and imperative duty of the court with regard to criminal cases falling under Summary Proceedings. Section 12 thereof provides:

'(a) *If commenced by complaint* – On the basis of the complaint and the affidavits and other evidence accompanying the same, the court may dismiss the case outright for being patently without basis or merit and

order the release of the accused if in custody.

'(b) *If commenced by information* – When the case is commenced by information, or is not dismissed pursuant to the next preceding paragraph, the court shall issue an order which together with copies of the affidavits and other evidence submitted by the prosecution, shall require the accused to submit his counter-affidavit and the affidavits of his witnesses as well as any evidence in his behalf, serving copies thereof on the complainant or prosecutor not later than ten (10) days from receipt of said order. The prosecution may file reply affidavits within ten (10) days after receipt of the counter-affidavits of the defense.'

"Based on the foregoing provisions, it is manifest that respondent has subverted the very nature of the Rule and defeated its objective of expediting the adjudication of cases.

"Respondent judge should have made a ruling immediately without waiting for 130 days to lapse considering that the accused failed to submit their counter-affidavits within the 10-day reglementary period prescribed. As aptly explained in *Gachon vs. Devera, Jr. (274 SCRA 540 [1997])*, the Rule on Summary Procedure was promulgated for the purpose of achieving 'an expeditious and inexpensive determination of cases.' If any of the parties fails to submit the evidence and other pleadings within the reglementary period, the court can not thereby extend its leniency and wait for an indefinite time for him to comply, otherwise, a party can derail the proceedings and defeat the purpose of the summary procedure by not filing the affidavits required. Hence, the justification posed by respondent judge that his act of admitting the counter-affidavits of accused despite being filed out of time does not contravene the spirit of summary procedure because the same are not yet formally offered as evidence for the trial, making complainant's objection thereof premature, is unequivocally a misapprehension of the rules." [4]

In the same Report, Deputy Court Administrator Elepaño recommended that respondent judge be fined in the sum of P1,000.00, with a warning that a repetition of the same act will be dealt with more severely.

In a Resolution dated February 27, 2002, this Court ordered that this case be re-docketed as an administrative matter and required the parties to manifest, within twenty (20) days from notice, whether they are submitting it for decision on the basis of the pleadings already submitted.

Both parties filed their respective manifestations that they are willing to have the case so decided. In his manifestation, respondent stated that "(t)he rule in summary procedure is that the court may allow the submission of affidavits and counter-affidavits even up to the time of the preliminary conference, and the requirement that the accused shall file a counter-affidavit in ten (10) days time is merely directory, not mandatory." [5] He stressed that he considered "what is substantial justice rather than mere technicalities" in admitting the counter-affidavits belatedly filed. [6] He also maintained that there is no rule that late counter-affidavits should