

FIRST DIVISION

[A.M. No. P-00-1370, September 18, 2003]

**ALEJANDRO PAREDES, AND EDWIN PADILLA, COMPLAINANTS,
VS. JERRY MARCELINO, RESPONDENT.**

RESOLUTION

AZCUNA, J.:

The present administrative case stemmed from a sworn letter-complaint^[1] filed on December 19, 1997 by Alejandro Paredes and Edwin Padilla charging Branch Clerk of Court Elisabess R. Luarca-Domingo and Sheriff III Jerry^[2] Marcelino, both of the Metropolitan Trial Court (MeTC) of Pasig City, Branch 71, with grave misconduct, gross inefficiency, and grave abuse of discretion in connection with Criminal Case No. 23663 entitled "People of the Philippines vs. Alejandro Paredes and Edwin Pinlac y Padilla," for Attempted Qualified Theft.

The two complainants, who were the accused in the aforecited criminal case, alleged that on August 9, 1997, the trial court ordered the issuance of a warrant of arrest against prosecution witness Larry Lazaro to compel his attendance for cross-examination in a hearing scheduled on October 9, 1997. On the fixed date of the hearing, however, complainants came for trial only to find out that their case was not included in the day's trial calendar. Upon inquiry with respondent Marcelino, the then acting clerk-in-charge of criminal cases, they learned that their case was excluded because there was no return yet of the warrant issued against witness Lazaro. Even if the hearing did not push through that day, they were compelled to pay their counsel an appearance fee of P2,000.

Complainants further allege that in an order dated December 2, 1997, the trial court required the Public Prosecutor to submit a formal offer of evidence in writing within five days from said date and set the next hearing on December 10, 1997. On the scheduled hearing, they were dismayed to discover that, again, their case was not included in the court calendar. Upon verification with respondent Marcelino, the latter replied, "*Hindi namin isinama talaga ito dahil sa wala pang formal offer of evidence ang piskal.*" Complainants' counsel countered that this notwithstanding, the case should be included in the calendar as it is not within the authority of respondent Marcelino to cancel the scheduled hearing. Respondent Marcelino replied, "*Ayaw ni Judge ang may additional sa calendar.*" Again complainants were compelled to pay their counsel his appearance fee even without any court hearing.

For the foregoing, the present administrative complaint was filed against respondent Marcelino and respondent Luarca-Domingo, as the former's immediate supervisor, praying that both respondents be penalized with suspension.

Respondent Marcelino, by way of Comment,^[3] admitted the allegations with justification. He alleged that in 1997, he was the acting criminal case officer-in-

charge and explained that he was still then in the process of familiarizing himself with the procedure in criminal cases. He admitted not having included the complainants' case in the court calendar on the two alleged dates. With respect to the October 9, 1997 hearing, he concluded that there was no need to include the case for calendar as he assumed that the prosecution witness scheduled to be cross-examined that day was not duly notified, given that there was yet no return of the warrant issued against the latter. As to the December 10, 1997 hearing, he decided not to include the case as the prosecution's formal offer of evidence had yet to be resolved. He maintained that the foregoing acts were done in good faith, without any intention of causing harm to the complainants.

Respondent Luarca-Domingo, for her part, denied the charges against her. In her Comment,^[4] she claimed that she was not aware of the present complaint until she was furnished a copy thereof. She stressed that neither the complainants nor respondent Marcelino called her attention regarding the incident. She maintained that had she been promptly informed thereof, she could have acted on it at the soonest possible time, or referred it to the Presiding Judge.

In a resolution dated March 1, 2000,^[5] this Court cleared respondent Luarca-Domingo from any administrative responsibility. The case proceeded against respondent Marcelino alone.

Subsequently, the complainants filed a motion to dismiss and an Affidavit of Desistance.^[6] This Court, however, on August 21, 2000, denied the same.^[7] Respondent Marcelino filed a Motion for Reconsideration^[8] of said denial resolution, which this Court, on September 27, 2000, denied for lack of merit.^[9]

On October 23, 2000, respondent Marcelino manifested his willingness to submit the case for resolution on the basis of the records submitted.^[10] As recommended by the OCA, the case was referred to Executive Judge Edwin Villasor of the Regional Trial Court of Pasig City, for investigation.

On April 25, 2000, Judge Villasor submitted his Report,^[11] recommending that respondent Marcelino be fined P1,000. The OCA thereafter filed its Report, dated May 7, 2002,^[12] subscribing to the Investigating Judge's finding and recommending that respondent Marcelino be fined in the amount of P1,000 and sternly warned that a repetition of the same or similar infraction will be dealt with more severely.

The recommendation is well taken. This Court finds no merit in the explanation of respondent Marcelino in excluding the complainant's case from the court calendar. As correctly found by the OCA:

In this particular case, the records bear that no hearing took place in Criminal Case No. 23663 on its scheduled hearing dates on 09 October 1997 and 10 December 1997. Admittedly, he took it upon himself to exclude said case in the court trial calendar for the reason that there was no return on the warrant of arrest issued against the prosecution witness and that the formal offer of evidence of the prosecution has yet to be resolved. If respondent was not sure if he should include complainant's case in the trial calendar, he should have informed the judge about the