

FIRST DIVISION

[A.M. No. MTJ-01-1347, September 18, 2003]

BENJAMIN TUDTUD, COMPLAINANT, VS. JUDGE MAMERTO Y. COLIFLORES, RESPONDENT.

RESOLUTION

AZCUNA, J.:

Benjamin Tudtud filed before this Court a complaint dated July 11, 1999 charging respondent Judge Mamerto Y. Coliflores, of the Municipal Trial Court in Cities, Cebu City, Branch 1, with delay in the disposition of Civil Case No. R-34915, entitled "*Benjamin Tudtud and Albertina Tudtud v. Spouses Benjamin and Leonidesa Suan.*"

It was alleged therein that on December 26, 1995, an Order was issued by respondent Judge dismissing the aforesaid case on the ground of lack of jurisdiction. This was reversed on appeal and the records were remanded to respondent on January 14, 1998. Hence, complainant filed a Motion to Set the Case for Hearing on February 27, 1998. Despite the said motion, however, the case was set for preliminary conference on August 11, 1998, a good five months after the date requested in the motion. On the day of the said preliminary conference, only the complainant and his counsel appeared. An Order was, thereafter, issued directing the parties to file their respective position papers within ten days from receipt of the Order. The Order was dated August 11, 1998. Complainant submitted his position paper on August 27, 1998, without waiting for the service of the Order upon his counsel. The said Order was only served upon his counsel on November 16, 1998.

Despite complainant's submission of his position paper as early as August 27, 1998, respondent Judge did not act upon the case. Hence, this administrative complaint was filed.

On August 27, 1999, the Office of the Court Administrator (OCA) referred the complaint to respondent Judge for his comment.

In a letter dated September 14, 1999, respondent Judge wrote that Civil Case No. R-34915 was not yet submitted for decision. He reasoned that although complainant had already submitted his position paper, the Order of the court dated August 11, 1998, directing the parties to file their position papers, had not yet been received by the defendants in that case. He further alleged therein that the said Order of the court was finally served upon the defendants together with a new Order dated September 14, 1999, giving the defendants a period of ten days within which to file their position paper.^[1]

On February 19, 2001, this Court issued a Resolution referring this case to the Executive Judge of the Regional Trial Court of Cebu City for investigation, report,