

## SECOND DIVISION

[ A.M. No. RTJ-00-1557, April 25, 2002 ]

**ATTY. LETICIA E. ALA, COMPLAINANT, VS. JUDGE LEOCADIO H. RAMOS, JR., REGIONAL TRIAL COURT OF BURAUEN, LEYTE, BRANCH 15, RESPONDENT.**

### RESOLUTION

**DE LEON, JR., J.:**

Before us is an administrative complaint against Judge Leocadio H. Ramos, Jr., former acting presiding judge of the Regional Trial Court (RTC) of Tacloban City, Branch 8, and Atty. Irene T. Pontejos-Cordeta, clerk of court of said branch. The complainant, Atty. Leticia E. Ala, is counsel for the defendant in Civil Case No. 95-02-16, entitled "*Atty. Federico N. Triste v. Testate Estate of Spouses Francisco S. Apostol and Eugenia Yerro-Apostol*," an action for attorney's fees pending before Branch 8.

Atty. Ala alleges that when Judge Ramos was assigned to Branch 8 the pending incidents were:

- (a) plaintiff's Second Motion for Reconsideration of the Order dated May 22, 1998<sup>[1]</sup> which declared him non-suited;
- (b) defendant's Manifestation and Motion dated June 6, 1997 which sought to cite plaintiff and the City Assessor of Tacloban City for contempt of court; and
- (c) defendant's Omnibus Motion dated May 8, 1998 which, among others, sought to reduce the P300,000.00 bond posted in favor of plaintiff.

On December 8, 1998, Judge Ramos issued an order declaring all pending incidents submitted for resolution. However, up to the time he was re-assigned to the RTC of Manila, Branch 38, in April/May 1999, said pending incidents remained unresolved.

Atty. Ala further complains that during the incumbency of Judge Ramos, the records of the case disappeared. She makes reference to her letter dated September 6, 1999<sup>[2]</sup> to Judge Ramos, requesting the return of the records to Branch 8 in view of a scheduled hearing the following week. She recounted therein that Judge Ramos twice told her that the records were with him.<sup>[3]</sup> Atty. Ala ended by warning Judge Ramos that if the records were not located before the next hearing, she would be constrained to bring the matter to the Office of the Court Administrator (OCA). Atty. Ala states that up to the date she filed the instant administrative complaint, Judge Ramos has not replied to the aforesaid letter.

As for Atty. Cordeta, Atty. Ala narrates that in June 1999, plaintiff filed a Motion to Set Case for Hearing. Atty. Cordeta, however, failed to include the setting prayed for in the court's calendar. Then on July 30, 1999, Atty. Ala made her appearance in connection with plaintiff's second Motion to Set Case for Hearing. Having traveled all the way from Manila, she fumed when nobody could explain why the case was not included in the court's calendar. It was then 10:30 a.m. and Atty. Cordeta had not yet reported for work.

Upon the initiative of Atty. Cordeta, Atty. Ala was later summoned to the chambers of Executive Judge Frisco T. Lilagan. Plaintiff was likewise present, supposedly to attend the hearing of his motion. Atty. Ala contends that it was on this occasion that the records of Civil Case No. 95-02-16 were found to be missing<sup>[4]</sup> and Executive Judge Lilagan was first apprised of the motions which Atty. Cordeta did not include in the court's calendar. Atty. Ala maintains that neither were the parties nor their counsels notified of the missing records and/or the hearing dates for plaintiff's motions if the court was not inclined to hear them on the dates requested.

In his Comment,<sup>[5]</sup> Judge Ramos admits that plaintiff's Second Motion for Reconsideration was submitted for resolution on December 8, 1998. He, however, failed to resolve the same because he was assigned to hear a criminal case in Basey, Samar, another case in Oras, Eastern Samar, and later designated as acting judge of the RTC of Manila, Branch 38. Judge Ramos asserts that he left the records of Civil Case No. 95-02-16 with Branch 8, and that he had no hand in its loss.

For her part, Atty. Cordeta explains<sup>[6]</sup> that on June 2, 1999, plaintiff filed a Motion to Set Case For Hearing. The notice of hearing stated that it shall be submitted for the court's appropriate action on June 14, 1999 at 8:30 a.m. The motion was not included in the court's calendar for said date since Executive Judge Lilagan, who was designated as acting presiding judge of Branch 8, only started hearing the cases of said branch on June 21, 1999. In fact, on June 14, 1999,<sup>[7]</sup> neither Atty. Ala nor plaintiff made their appearances, indicating that they knew that there was no scheduled hearing for that day.

On July 19, 1999, plaintiff filed another Motion to Set Case for Hearing, praying that his Motion for Reconsideration of the order declaring him non-suited be set for hearing and argument on July 30, 1999. The notice of hearing stated that the motion shall be submitted for the court's appropriate action on July 22, 1999 at 8:30 a.m. This second Motion to Set Case for Hearing was not included in the court's calendar for July 22, 1999 as date requested fell on a Thursday, which was not a motion day. According to Atty. Cordeta, Executive Judge Lilagan instructed her that cases assigned to Branch 8 shall be heard on Mondays and Tuesdays, those from his permanent station in Branch 34 shall be on Wednesdays and Thursdays while motions from both branches shall be on Fridays. Atty. Cordeta asserts that both counsels were informed of this schedule such that plaintiff and Atty. Ala did not make their appearances on July 22, 1999. Instead, Atty. Ala appeared on July 30, 1999 when neither she nor plaintiff filed any motion or pleading which was set for hearing on that date. Records will show that no notices of hearing for July 30, 1999 were sent to the parties and their counsel. Neither did the court issue any order granting plaintiff's prayer in his second Motion to Set Case for Hearing that his Motion for Reconsideration be heard on July 30, 1999. Atty. Cordeta opined that Atty. Ala should not assume that all motions shall be automatically granted, or that

they shall be heard on the dates requested since the hearing of cases is always subject to the availability of the judge and the court's calendar.

Atty. Cordeta also points out that on July 29, 1999, Atty. Ala sent Atty. Edna Maceda, clerk of court of Branch 6, to inquire from Branch 8 whether plaintiff's motion<sup>[8]</sup> was included in the calendar for the next day. The court interpreter, Ms. Aurorita Bangoy, explained that it was not included in the calendar because the date stated in the notice of hearing was July 22, 1999, which was a Thursday. As such, plaintiff's request that his second Motion for Reconsideration be heard on July 30, 1999 was not granted.<sup>[9]</sup>

Atty. Cordeta denies that she had not yet reported for work by 10:30 a.m. She contends that she arrived at 9:00 a.m., and that shortly afterwards, Atty. Ala, accompanied by Atty. Tarcelo Sabarre, Jr., came barging into the office demanding an explanation why the motion of plaintiff was not included in the calendar. Ms. Bangoy vainly tried to explain but instead of listening, Atty. Ala allegedly threatened everyone with an administrative complaint and ordered everyone to reimburse her traveling expenses. To substantiate her claim, Atty. Cordeta attached the affidavits of Ms. Bangoy and the staff of Branch 8.<sup>[10]</sup>

With respect to the allegation that she did not send notices regarding the "missing" case records, Atty. Cordeta explains that since April 1999, Atty. Ala knew that they were in the custody and physical possession of Judge Ramos, who took them from the office without her knowledge. This is evident from Atty. Ala's letter dated September 6, 1999. The records were only declared missing on September 27, 1999 when counsels were allowed to reconstitute them in open court.<sup>[11]</sup> For Atty. Cordeta, to send out a notice, even when not required by the rules, would have been superfluous and unnecessary.

Atty. Ala counters the statements of Atty. Cordeta.<sup>[12]</sup> She asserts that when a court is not predisposed to hear a motion on the date requested, written notices to this effect must be sent to all parties. Atty. Cordeta, however, failed to issue such a notice. Atty. Ala claims that she was only informed of the hearing on July 30, 1999 through Atty. Maceda, stressing that notice of a hearing's cancellation should not be mere word of mouth. She further explains that she did not make her appearance on July 14, 1999 because she had moved to dispense with it, and as for the hearing on July 22, 1999, Atty. Maceda informed her of the same by phone.<sup>[13]</sup> Despite the absence of any formal notice therefor, she nonetheless attended the hearing on July 30, 1999 because she "wanted a stop to the court's inefficiency."<sup>[14]</sup>

Atty. Ala also refutes the claim of Atty. Cordeta that on July 30, 1999 she was already at the court by 10:30 a.m. She states that she walked in at 10:30 a.m., Atty. Sabarre was already in the staff room together with only three (3) members of the staff. She discounts the credibility of the affidavits submitted by Atty. Cordeta for being self-serving and merely executed at her behest.

Atty. Ala likewise maintains that Atty. Cordeta should have immediately gathered the records of the case when plaintiff filed his Motion to Set Case for Hearing on June 2, 1999, which were followed by other motions filed by plaintiff and herself. These motions should have alarmed Atty. Cordeta and led her to report the matter

to Executive Judge Lilagan. Even assuming that Judge Ramos took the records of the case without her knowledge and consent, Atty. Cordeta should have been detected this as early as June 1999. She also should have inventoried the records when Judge Ramos left Branch 8 considering that as official custodian thereof, missing records would be her responsibility.

Upon the endorsement of the OCA, this case was referred to one of its consultants for investigation, report and recommendation. In the meantime, however, Atty. Cordeta filed a Manifestation<sup>[15]</sup> with the OCA that the records of Civil Case No. 95-02-16 were deemed reconstituted on December 14, 1999.<sup>[16]</sup> Moreover, in an Order dated August 7, 2000,<sup>[17]</sup> Judge Salvador Y. Apurillo finally disposed of the case, rendering judgment in favor of the defendant. Atty. Cordeta added that plaintiff's appeal was already being processed for transmittal to the Court of Appeals. To this Manifestation, Atty. Ala filed a Vehement Opposition<sup>[18]</sup> but also prayed that the instant administrative complaint be decided with dispatch.

In a Memorandum dated May 18, 2001, Retired Justice Conrado M. Molina reported:

On the loss of the records of Civil Case No. 95-02-16, substantial evidence points to the respondent Judge Leocadio H. Ramos, Jr. as the one responsible. Respondent Cordeta stated that the respondent Judge took the records of the subject civil case from the office without her permission as was the Judge's practice of bringing records to his residence during weekends for decision-writing. In fact on August 27, 1999, even before the filing of this administrative complaint, she had written the respondent Judge in Branch 38, RTC, Manila to remind him about the records of the case which he had in his possession.

"x x x Since June 1999 when we conducted our semestral physical inventory of cases, we have been verbally requesting that said record be returned to this court. Instead of returning the said record, you instructed us to look for it in your chambers in Branch 15, Burauen, Leyte and in your house at V & O Subdivision, Tacloban City. After searching for it at least three (3) times in both places, the same proved fruitless." (Annex "C" to Manifestation, p. 127, *Id.*)

The complainant herself had also written to the respondent judge on September 6, 1999 about the missing records.

"It must be recalled that you told me twice (2 times) that the records were with you in your house, i.e., (a) you called me up at the Leyte Park Hotel before the Holy Week to inform me that the court records were in your house in Tacloban after could not be found in your office that day, and (b) you called me up again in my office in Manila on July 22, 1999 xxx to tell me once again that you still had the case records with you even as you apologized for not resolving it in your time." (p. 5, *Id.*)

The letter was delivered to and received in the office of Judge Ramos, Jr. at Branch 38, RTC, Manila on the same date, September 6, 1999. (p. 6,

*Id.*) He did not respond to both letters. His reaction came belatedly when he was asked by the Office of the Court Administrator to comment on the complaint and only by way of a cursory denial of the imputation.

“d) on the alleged loss of the records of civil case no. 95-02-16, the undersigned had no hand at all. The records were left with RTC, Branch 8, Tacloban City.” (p. 65, *Id.*)

Obviously, such perfunctory disavowal of responsibility for the loss cannot prevail over the positive assertions of the complainant and the respondent Branch Clerk of Court.

As to the complaint against the respondent branch clerk of court on her failure to schedule the hearing of the two (2) motions filed by plaintiff, the respondent acted within the bounds of her authority. Calendaring of cases is subject to the availability of the presiding judge and the court's calendar. The first motion filed on June 2, 1999 specified in the Notice of hearing that it would be submitted for action of the court on June 14, 1999. The respondent did not place the motion in the calendar for that day, and rightly so, since Branch 8 of RTC Tacloban City had no presiding judge yet. Respondent Judge Ramos, Jr. who used to preside over Branch 8 had been reassigned in Samar and Judge Frisco Lilagan of Branch 34, RTC, Tacloban City, started hearing the cases of Branch 8 only on June 21, 1999. Moreover, the records of the case were already missing and the complainant knew about it. In any event the parties were not inconvenienced by the omission as neither the plaintiff-movant nor the complainant appeared, knowing, presumably, that there was no scheduled hearings on that day.

The second motion filed on July 19, 1999 prayed that the case be set for hearing on July 30, 1999. The Notice of hearing requested the Clerk of Court to submit it for the action of the court on July 22, 1999. Again, the respondent did not put it on the court calendar because that day, July 22, 1999, was a Thursday, a non-motion day for Branch 8 and a trial day for Branch 34 of Judge Lilagan. Although the movant and the complainant came to court on July 30, 1999 only to find that the case was not in the court calendar their appearance was not entirely fruitless for they were able to discuss the case with Judge Lilagan in the chambers at the initiative of respondent Cordeta.

In fine, it is submitted that the respondent violated no rule or regulation for which she may be held administratively liable.

Justice Molina recommended that Judge Ramos be fined Five Thousand Pesos (P5,000.00) for losing the records of Civil Case No. 95-02-16, and the complaint against Atty. Cordeta be dismissed for lack of merit.

The findings of Justice Molina as to the liability of Judge Ramos for the missing case records are well taken. In her letter dated September 6, 1999,<sup>[19]</sup> Atty. Ala recounted that Judge Ramos told her before Holy Week and again on July 22, 1999 that he still had possession of the case records. In the affidavit of Ms. Bangoy dated September 17, 1999,<sup>[20]</sup> she stated, among others, that on July 29, 1999 she had