

## THIRD DIVISION

[ A.M. No. RTJ-99-1461, June 26, 2001 ]

**RICARDO DELA CRUZ, COMPLAINANT, VS HON. HERMINIA M. PASCUA, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 25, TAGUDIN, ILOCOS SUR, RESPONDENT.**

### D E C I S I O N

**SANDOVAL-GUTIERREZ, J.:**

For this Court's resolution is the administrative complaint filed by Ricardo Dela Cruz, then a mayoralty candidate in the Municipality of Tagudin, Ilocos Sur, against Judge Herminia M. Pascua of the Regional Trial Court (RTC), Branch 25, Tagudin, same province, for falsification of public document and violation of Section 17 (par. 1), Rule 35 of the Rules of Procedure of the Commission on Elections (COMELEC).

The antecedent facts are:

On May 26, 1995, complainant Ricardo Dela Cruz filed with the same RTC, presided by respondent Judge Herminia M. Pascua, an **election protest** against Mayor Jose Bunoan, Jr., docketed as Sp. Proc. Case No. 0743-T. Thereafter, Nena Ocaña and Nelson Cuaresma lodged a motion for intervention which was denied by respondent judge for having been filed out of time. Thereupon, Ocaña and Cuaresma filed a **"Petition by Appeal on Certiorari"** with the COMELEC, docketed therein as SPR No. 13-95. However, the same was dismissed for lack of merit.

In the instant administrative complaint, filed with the Office of the Court Administrator (OCA), complainant Dela Cruz alleges that respondent judge committed falsification when she issued the order dated August 28, 1995 deferring the hearing of Sp. Proc. Case No. 0743-T until further orders. In her order, she stated that a "Petition by Appeal on Certiorari" was filed with this Court by Nena Ocaña and Nelson Cuaresma questioning her (respondent judge's) order denying their motion for intervention. According to them, they did not file such petition with this Court. Respondent judge must be referring to the appeal by certiorari of Ocaña and Cuaresma to the COMELEC.

Complainant also alleges that respondent judge violated Section 17 (par.1), Rule 35 of the Rules of Procedure of the COMELEC by delaying the disposition of his election protest. On December 26, 1995, she issued an order directing **motu proprio** that the election protest be archived, stating that "this Court cannot take action on this case because of the fact that Nena Ocaña and Nelson Cuaresma have gone to the Supreme Court xxx." Because the case was archived, there was a delay of more than six (6) months from the time the hearing was deferred on August 28, 1995 up to the time the records were retrieved from the archives and set again for hearing on February 29, 1996.

Complainant also avers that respondent judge ante-dated her order of February 8, 1996 retrieving the records from the archives and ordering that the election protest be revived. While complainant's "Motion to Retrieve the Case from the Archives and to Set Case for Hearing" was filed only on February 15, 1996, however, respondent judge issued her order much earlier or on February 8, 1996.

The OCA referred to Judge Pascua the instant administrative complaint for her comment.

In her comment, respondent judge explains that the continued pendency of the election protest was caused by both the protestant (complainant herein) and the protestee. She admits that she committed an "honest and innocuous error" when she stated in her order of August 28, 1995 (postponing the hearing of the election protest) that the intervenors interposed an appeal to this Court instead of the COMELEC. Convinced that the intervenors' appeal was elevated to this Court, she ordered on December 26, 1995 that the election protest be archived. She claims that despite the dismissal of the intervenors' appeal by the COMELEC, the protestant (complainant herein) and the protestee never moved for the resumption of the proceedings, leading her to believe that indeed the intervenors appealed to this Court.

On complainant's allegation that respondent judge ante-dated the order of retrieving the case from the archives, she claims that her order was prepared on February 8, 1996, but mailed on February 13, 1996. Complainant received his copy of the order on February 14, 1996, while his two lawyers received theirs on February 15, 1996. While complainant's motion to retrieve the case from the archives was dated February 6, 1996, however, it was filed with respondent's court only on February 15, 1996. Clearly, there was no "ante-dating."

Meanwhile, Atty. Maximo A. Maceren, complainant's counsel, in his letter dated December 22, 1997, informed the OCA that his client is withdrawing the election protest, which has been pending for two (2) years and six (6) months, for the reason that it "would only end up in an empty victory."

On September 18, 1998, Judge Pascua compulsorily retired.

In his report dated May 13, 1999, then Court Administrator Alfredo Benipayo, made the following evaluation:

"There is no denying the fact that the early conclusions of the election protest involved in this administrative matter was prevented by the actions of the respondent judge. Her Order canceling the scheduled hearings of August 28 and 29, 1995 and her Order of December 26, 1995, sending the case to the archives because of her perception, albeit unfounded and erroneous, that a petition for certiorari was pending in the Supreme Court, certainly resulted in the loss of a substantial period for the resolution of the election case which needed urgent attention.

However, there is no allegation nor proof in the complaint that the delays caused by respondent were motivated by any corrupt considerations. The averment in her comment is that she honestly believed that there was