

SECOND DIVISION

[A.M. No. RTJ-00-1542 (OCA I.P.I. No. 98-571-RTJ), March 16, 2000]

ROLANDO M. ODOÑO, COMPLAINANT, VS. JUDGE PORFIRIO G. MACARAEG, REGIONAL TRIAL COURT, BRANCH 110, PASAY CITY AND ATTY. EVA C. PORTUGAL-ATIENZA, BRANCH CLERK OF COURT, REGIONAL TRIAL COURT, BRANCH 110, PASAY CITY, RESPONDENTS.

DECISION

BUENA, J.:

In a verified complaint filed on June 11, 1998, complainant Rolando M. Odoño charged Honorable Judge Porfirio G. Macaraeg with Ignorance of the Law and Atty. Eva C. Portugal-Atienza, the Branch Clerk of Court of the Regional Trial Court at Pasay City, Branch 110 with Dereliction of Duty and Negligence in connection with Civil Case No. 97-1595 entitled "Composite Wing Savings and Loan Association, Inc. (CWSLAI) vs. Rolando M. Odoño."

The Court Administrator, Alfredo L. Benipayo, in his Indorsements dated September 7, 1998 referred the case to Judge Macaraeg and Atty. Portugal-Atienza through Judge Macaraeg and directed them to comment on the same.^[1]

Separate comments were filed by the respondents^[2] and a letter-reply to the comment of respondent Portugal-Atienza^[3] was likewise filed.

Culled from the pleadings submitted before this Court is the following:

In his complaint Rolando M. Odoño, the defendant in the above-entitled case, alleges that on April 21, 1998 a Motion to Declare Defendant in Default was filed by plaintiff. On May 12, 1998, defendant (herein complainant) was able to secure a photocopy of the summons as well as a copy of the complaint. He filed his answer the following day interposing the defense that no demand was made on him and it is premature for plaintiff to collect.

Despite an answer having been filed, respondent Judge still issued an Order dated May 22, 1998 declaring defendant Odoño in default and allowing the plaintiff to present its evidence ex-parte before respondent Branch Clerk of Court.

The issuance of the Order is alleged to be irregular considering that it was sent to defendant's lawyer by registered mail on May 19, 1998 - three (3) days before the date of the Order. Complainant came to the conclusion that the Order was already prepared before the actual date of hearing.

Respondent Judge in his comment alleged:

- that sometime during the last week of April 1998 he consulted his ophthalmologist regarding the failing vision of his left eye;
- that he was advised to undergo gas and laser treatments which however were unsuccessful thus surgery became indispensable;
- that he was scheduled to be operated on at the Cardinal Santos General Hospital on May 8, 1998;
- that in preparation for the said operation and in anticipation that he may not be able to read at once, he required respondent Branch Clerk of Court to give him all the cases, civil and criminal, with pending incidents due for resolution in the two weeks following the planned operation;
- that in compliance therewith, respondent Branch Clerk of Court gave him eight (8) records, including Civil Case No. 97-1595 wherein the plaintiff had filed a Motion to Declare Defendant in Default on May 5, 1998;
- that a scrutiny of the record of said case revealed that summons and a copy of the complaint were duly served upon the defendant (herein complainant) on January 5, 1998;
- that despite receipt thereof, defendant failed to file his answer within the reglementary period allowed by the Rules;
- that on May 13, 1998, defendant filed an answer acknowledging his "just and demandable obligation to plaintiff" and further stating that he is willing to settle the same by entering into a compromise agreement;
- that having found the motion of plaintiff to be meritorious, he (respondent Judge) dictated an order granting the same;
- that on May 8, 1998, before leaving for the hospital, he handed the record of the said case with the questioned Order, together with other records to respondent Branch Clerk of Court with the instruction to release them on the dates appearing on the Orders;
- that despite the fact that respondent Branch Clerk of Court has already segregated the record of the subject case from the others, Serafin Salazar, Branch Sheriff of the Regional Trial Court at Pasay City, Branch 110, inadvertently mailed it without being instructed by the former.

Judge Porfirio G. Macaraeg admitted that while the order of May 22, 1998 was prepared prior to its date it was made only after he had carefully and assiduously ascertained from the record its merit and added that he had no intention to unduly prejudice the cases before him by reason of his eye surgery.

Respondent Atty. Eva Portugal-Atienza, Branch Clerk of Court of the Regional Trial Court at Pasay City, Branch 110 filed her comment on September 28, 1998. Therein she explained that: