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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.*

SYNOPSIS

Complainant Ricardo dela Cruz filed with the Regional Trial Court, Branch 25, Tagudin, Ilocos Sur, 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 Commission on Elections (COMELEC), docketed therein as SPR No. 13-95. However, the same was dismissed for lack of merit. In her comment, respondent judge admitted 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 the Supreme Court instead of the COMELEC. On September 18, 1998, Judge Pascua compulsorily retired. After an investigation, then Court Administrator Alfredo Benipayo found respondent judge negligent and recommended that she be meted a fine in the amount of ₱10,000.00 to be deducted from her retirement benefits.

The Supreme Court affirmed the findings and recommendation of the Court Administrator. According to the Court, while it is true that both intervenors showed her a copy of their "Petition by Appeal on *Certiorari*," what respondent judge should have done was to read it carefully and ascertain where it was filed. Had she done so, she should have known that it was not elevated to the Supreme Court, but to the COMELEC. The Court also ruled that respondent judge should not have issued the challenged orders because the case is not among those instances where a judge may order that a civil case be archived pursuant to Administrative Circular No. 7-A-92, as amended. By issuing the said orders, respondent judge was negligent in her duties, tantamount to

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inefficiency, which, in turn, caused the undue delay in the disposition of complainant's election protest.

SYLLABUS

1. **SUPREME COURT; SUPREME COURT ADMINISTRATIVE CIRCULAR NO. 7-A-92; INSTANCES WHEN A JUDGE MAY ORDER THAT A CIVIL CASE BE ARCHIVED.—** Respondent judge admits in her comment that both intervenors showed her a copy of their "Petition by Appeal on *Certiorari.*" What she should have done was to read it carefully and ascertain where it was filed. Had she done so, she should have known that it was not elevated to this Court, but to the COMELEC. We are aware though that by reason of her "courtesy to this Court," she issued the assailed twin orders postponing the hearing indefinitely of the election protest and directing that the case be archived. It bears stressing, however, that even if the intervenors' "Petition" was brought to this Court, respondent judge should not have issued the challenged orders. Pursuant to this Court Administrative Circular No. 7-A-92, as amended, a judge may order that a civil case be archived only in the following instances: "a) When the parties are in the process of settlement, in which case the proceedings may be suspended and the case archived for a period not exceeding ninety (90) days. The case shall be included in the trial calendar on the day immediately following the lapse of the suspension period. b) When an interlocutory order or incident in the civil case is elevated to, and is pending resolution/decision for an indefinite period before a higher court which has issued a temporary restraining order or writ of preliminary injunction. c) When defendant, without fault or neglect of plaintiff, cannot be served with summons within six (6) months from issuance of original summons."

2. **POLITICAL LAW; ELECTION LAWS; COMMISSION ON ELECTIONS; COMELEC RULES OF PROCEDURE; RULE 35 THEREOF VIOLATED IN CASE AT BAR.—** By issuing the said orders, respondent judge was negligent in her duties, tantamount to inefficiency, which, in turn, caused the undue delay in the disposition of complainant's election protest. Her conduct violates Section 17(1), Rule 35 of the COMELEC Rules of Procedure which provides: "The court shall decide the election contest within thirty (30) days from the date it is submitted for

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decision, but in every case within six (6) months after its filing, and shall declare who among the parties has been elected, or in a proper case, that none of them has been legally elected. The party who in the judgment has been declared elected shall have the right to assume the office as soon as the judgment becomes final."

3. **JUDICIAL ETHICS; JUDGES; CODE OF JUDICIAL CONDUCT; CANON 3 THEREOF, CONSTRUED.**— Canon 3 of the Code of Judicial Conduct mandates, among others, that a judge should perform his official duties with DILIGENCE. The same Canon specifically provides that a judge should maintain professional competence and decide cases within the required periods.

4. **POLITICAL LAW; PUBLIC OFFICERS; JUDGES; INEFFICIENT JUDGES ARE EQUALLY IMPERMISSIBLE IN THE JUDICIARY AS THE INCOMPETENT AND DISHONEST ONES.**— This Court has ruled that inefficient judges are equally impermissible in the judiciary as the incompetent and dishonest ones. Any of them tarnishes the image of the judiciary or brings it to public contempt, dishonor or disrespect and must then be administratively dealt with and punished accordingly.

5. **ID.; ID.; ID.; INEFFICIENCY; RESPONDENT JUDGE GUILTY THEREOF IN CASE AT BAR.**— The period that complainant's protest was dormant can be reckoned from August 28, 1995, when respondent judge issued her order postponing the hearing of the election protest, up to February 8, 1996, when she ordered that the records be retrieved from the archives and that the election protest be revived. Clearly, the hearing of the election protest was delayed for almost six months, all because of respondent judge's negligence in the performance of her duties which bears on her efficiency. All told, this Court views the conduct of respondent judge improper and censurable. She should have remembered that she is presumed to be conscious of her duties under the Code of Judicial Conduct. Indeed, as a member of the Bench, she should be the embodiment of competence and assiduousness in her responsibilities. Unfortunately, respondent judge failed to live up to this standard. By issuing the orders in question, she evidently manifested inefficiency and overtly transgressed basic mandatory rules adopted to assure the expeditious resolution of cases.

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APPEARANCES OF COUNSEL

Bravo & Associates for complainant.

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

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by delaying the disposition of his election protest. On December 26, 1995, she issued an order directing *motu propio* 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

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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 such a petition pending because she had been shown by the intervenors a copy of such petition.

Be that as it may, respondent judge was negligent when she issued the two Orders referred to above. Her reliance of the word of the intervenors who showed her a copy a copy of an alleged petition was clearly uncalled for. She should have waited for a notice from the Supreme Court and in the absence of any restraining order, she should have tried the election case with dispatch until its termination.

Election protest are cases which by their nature necessitate reasonable speed in order that the electorate may discover what their will truly was. To postpone the consideration of such cases would result in empty victories, should the protestant be finally declared the winner. This most probably resulted in the present case.

Because of the failure of the respondent to take the necessary precaution to ascertain the fact that a case was actually pending before

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the Supreme Court before she decided to indefinitely postpone the continuation of the case by sending the same to the archives, she deserves a certain measure of punishment.

As regards the allegation that respondent had falsified the Order retrieving the case from the archives, we believe that respondent has satisfactorily explained her action."

and recommended that respondent judge be meted a fine in the amount of ₱10,000.00 to be deducted from her retirement benefits.

After reviewing the records of the case, we are in accord with the findings and recommendation of then Court Administrator Benipayo.

Respondent judge admits in her comment that both intervenors showed her a copy of their "Petition by Appeal on *Certiorari*." What she should have done was to read it carefully and ascertain where it was filed. Had she done so, she should have known that it was not elevated to this Court, but to the COMELEC. We are aware though that by reason of her "courtesy to this Court," she issued the assailed twin orders postponing the hearing indefinitely of the election protest and directing that the case be archived. It bears stressing, however, that even if the intervenors' "Petition" was brought to this Court, respondent judge should not have issued the challenged orders. Pursuant to this Court Administrative Circular No. 7-A-92, as amended, a judge may order that a civil case be archived only in the following instances:

"a) When the parties are in the process of settlement, in which case the proceedings may be suspended and the case archived for a period not exceeding ninety (90) days. The case shall be included in the trial calendar on the day immediately following the lapse of the suspension period.

b) When an interlocutory order or incident in the civil case is elevated to, and is pending resolution/decision for an indefinite period before a higher court which has issued a temporary restraining order or writ of preliminary injunction.

c) When defendant, without fault or neglect of plaintiff, cannot be served with summons within six (6) months from issuance of original summons."

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None of the above instances is present in this case.

By issuing the said orders, respondent judge was negligent in her duties, tantamount to inefficiency, which, in turn, caused the undue delay in the disposition of complainant's election protest. Her conduct violates Section 17(1), Rule 35 of the COMELEC Rules of Procedure which provides:

"The court shall decide the election contest within thirty (30) days from the date it is submitted for decision, but in every case within six (6) months after its filing, and shall declare who among the parties has been elected, or in a proper case, that none of them has been legally elected. The party who in the judgment has been declared elected shall have the right to assume the office as soon as the judgment becomes final."

The period that complainant's protest was dormant can be reckoned from August 28, 1995, when respondent judge issued her order postponing the hearing of the election protest, up to February 8, 1996, when she ordered that the records be retrieved from the archives and that the election protest be revived.

Clearly, the hearing of the election protest was delayed for almost six months, all because of respondent judge's negligence in the performance of her duties which bears on her efficiency.

Canon 3 of the Code of Judicial Conduct mandates, among others, that a judge should perform his official duties with DILIGENCE. The same Canon specifically provides that a judge should maintain professional competence and decide cases within the required periods.

This Court has ruled that inefficient judges are equally impermissible in the judiciary as the incompetent and dishonest ones. Any of them tarnishes the image of the judiciary or brings it to public contempt, dishonor or disrespect and must then be administratively dealt with and punished accordingly.[1]

All told, this Court views the conduct of respondent judge improper and censurable. She should have remembered that she

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[1] *Yu-Aensi vs. Villanueva*, 322 SCRA 255 (2000), citing *Re: Report on the Judicial Audit, RTC, Branches 4 and 23, Manila,* 291 SCRA 10 (1998).

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is presumed to be conscious of her duties under the Code of Judicial Conduct. Indeed, as a member of the Bench, she should be the embodiment of competence and assiduousness in her responsibilities. Unfortunately, respondent judge failed to live up to this standard. By issuing the orders in question, she evidently manifested inefficiency and overtly transgressed basic mandatory rules adopted to assure the expeditious resolution of cases.

In *Cui vs. Madayag*,[2] this Court held:

"The case of respondent Judge should be no different. For judges are called to exhibit more than just a cursory acquaintance with statutes and procedural laws. They are not "common men and women, whose errors men and women forgive and time forgets. Judges sit as the embodiment of the people's sense of justice, their last recourse where all other institutions have failed." Most importantly, respondent Judge is required by Canon 3, Rule 3.01 of the Code of Judicial Conduct to be faithful to the law and maintain professional competence. As we held in one case, there will be faith in the administration of justice only if there be a belief on the part of the litigant that the occupants of the bench cannot justly be accused of deficiency in their grasp of legal principles."

WHEREFORE, Judge Herminia M. Pascua is found guilty of inefficiency and is fined in the amount of ₱10,000.00, the same to be deducted from her retirement benefits.

SO ORDERED.

Melo (Chairman), Vitug, Panganiban, and *Gonzaga-Reyes, JJ.,* concur.

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[2] 245 SCRA 1 (1995), citing *Office of the Court Administrator v. Bartolome,* Adm. Matter No. RTJ-90-446; *Medina v. Bartolome*, Adm. Matter No. RTJ-90-494; *Office of the Court Administrator v. Bartolome*, Adm. Matter No. RTJ-90-504; Ramon Tulfo's Column "On Target," Adm. Matter No. 90-1-021 RTC; and, Letter-Request dated July 24, 1990 of Provincial Governor Leonardo B. Roman, Bataan-Seeking the Transfer of Judge Jose T. Bartolome to another Station, Adm. Matter No. RTC-90-8-1909-RTC, all prom. on 7 November 1991, 203 SCRA 328, 337; *Libarios vs. Dabalos*, Adm. Matter No. RTJ-89-286, 11 July 1991, 199 SCRA 48, 56.