

MALACANAN PALACE  
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 369

EXONERATING ATTY. GUILLERMO ESPIRITU, BRANCH CLERK OF COURT, BRANCH X, COURT OF FIRST INSTANCE OF RIZAL

This refers to an administrative case filed by Atty. Sabino Padilla Jr. against Atty. Guillermo Espiritu, Branch Clerk of Court, Branch X, Court of First Instance of Rizal, for serious misconduct and dishonesty in the performance of duties.

The complainant, who was the counsel for the defendants in Civil Case No. 15178, entitled "G. S. Masangkay and Sons, Inc., plaintiff, versus Telesforo Masangkay and Cipriano Masangkay, defendants," charged respondent with serious misconduct and dishonesty in the performance of duties, committed as follows:

1. Failure to keep proper custody of the records of Civil Case No. 15178 pending in his branch, by -
  - (a) Failing to attach to the expediente the transcript of stenographic notes of the proceedings in said case;
  - (b) Tampering or allowing the tampering of the records in the above-mentioned civil case resulting in the loss of a Writ of Preliminary Injunction previously issued.
2. Releasing copies of orders to one party ahead of another with the obvious intention of prejudicing the latter as shown hereunder:
  - (a) A copy of the order of December 15, 1971, was served on the plaintiff sometime before December 29, 1971, while service thereof was made on the other party by registered mail only on January 13, 1972; and
  - (b) It was made to appear that both parties were served simultaneously on March 15, 1972, with the order of March 13, 1972, when in truth and in fact the plaintiff already had a copy thereof two days earlier.

The case was formally investigated by Judicial

Supervisor Pedro B. Arao of the Department of Justice.

Mrs. Violeta Ilar, the stenographer who took down the stenographic notes of the hearing on January 22, 1972, in Civil Case No. 15178, testified that it was the practice of stenographers in Branch X to keep a separate file of all the originals of their transcripts until her attention was called to a circular of the Department of Justice requiring stenographers to attach their transcripts to the expediente. The failure of the stenographer to attach her transcripts with the records of this civil case cannot, therefore, be attributed to the respondent. Moreover, the records of Civil Case No. 15178 had been transmitted to the Department of Justice before the transcripts were made available by the stenographer.

As regards the charge of "tampering or allowing the tampering of the records resulting in the loss of the writ of preliminary injunction previously issued," the records show that the court granted the prayer for the issuance of the writ of preliminary injunction on December 15, 1972, conditioned upon the filing of a bond in the amount of P10,000.

Respondent contended that the writ of preliminary injunction was actually issued only on January 17, 1972, and the same was served on the defendants on January 19, 1972, as per return of the deputy sheriff. It seems indeed that in view of the numerous incidents in this case, the writ could not have been issued earlier than January 17, 1972. An examination of the expediente of this case shows that the papers are consecutively numbered and not one page is missing.

There being no satisfactory proof that such a writ was issued prior to January 17, 1972, and that the same was made to disappear from the records by the respondent or that he caused its disappearance, this charge is believed without merit.

There is no doubt that the questioned order of December 15, 1972, was dictated by the Presiding Judge to stenographer Celestino Simon who prepared the same without coursing it through the respondent. Said order does not bear the initials of the respondent; it is only the initial of stenographer Simon that appears at every page thereof. As complainant himself averred, Simon is the brother-in-law of the Presiding Judge and so it could be presumed that he enjoyed the confidence of the Judge.

It is not uncommon to find judges who directly deal with subordinate personnel of, their confidence, sometimes to the exclusion of the Clerk of Court or Branch Clerk of Court. That Simon enjoyed the confidence of the presiding judge is apparent. Due to the many incidents in this civil case which was heard closely one after the other, wherein the records moved from the judge to the stenographer, then to the clerk-in-charge of civil cases, then back to the judge for another incident, and considering further the intervening Christmas and New Year holidays, it was not strange that the mailing of the orders to counsel suffered some delay; and there being no evidence presented by the complainant that such delay was due to the negligence or inefficiency of the respondent or that the same was done deliberately to favor one party against the other, respondent, therefore, cannot be held liable.

The last charge against the respondent is that the order dated March 13, 1972, was served earlier on counsel for the plaintiff than on the counsel for defendants. Atty. Manuel Singson, counsel for plaintiff in Civil Case No. 15178, testified for the respondent and declared that he moved for the cancellation of the notice of lis pendens and when the court issued the order cancelling said notice on March 13, 1972, he immediately requested herein respondent to serve the order on the Register of Deeds of Quezon City. He did not even bother to get his copy of this order. It was enough for him that the notice of lis pendens was ordered cancelled by the court. It is true that this order was served on the complainant only on March 15, 1972, but this practice of one lawyer obtaining a copy of an order ahead of the other is not uncommon. A movant for an affirmative relief has to be constantly on the watch for the resolution on his pleading by the court and usually follows up these petitions and/or motions with the Clerk of Court or other court personnel. If one lawyer receives the order ahead of the other, it is not irregular per se. Here, there is no evidence presented by the complainant showing that the respondent acted with malice or to the prejudice of the complainant. Hence, the respondent should likewise be absolved from this charge.

For failure of the complainant to substantiate his charges, the Investigator recommends that respondent be exonerated therefrom. The Undersecretary of Justice adopts the findings and recommendation of the Investigator.

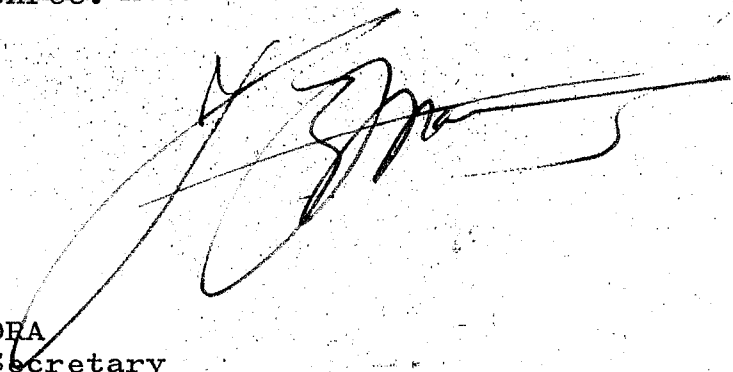
Wherefore, and as recommended by the Undersecretary of Justice and the investigator, Guillermo Espiritu, Branch Clerk of Court, Branch X, Court of First Instance of Rizal, is hereby exonerated from the charges against him.

Done in the City of Manila, this 5th day of September in the year of Our Lord nineteen hundred and seventy ~~three~~ five.

By the President :

RONALDO B. ZAMORA  
Assistant Executive Secretary

RV/LCB

A large, stylized handwritten signature in black ink, appearing to read 'R. Zamora', is written over the typed name and title of the Assistant Executive Secretary.