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FIRST DIVISION

[A.M. No. P-13-3153. October 14, 2013]
(Formerly A.M. No. 13-9-88-MeTC)

ATTY. VLADIMIR ALARIQUE T. CABIGAO, *complainant, vs.* **NEPTALI ANGELO V. NERY, SHERIFF III, BRANCH 30, METROPOLITAN TRIAL COURT, MANILA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFF; DUTY TO SERVE SUMMONS TO THE DEFENDANT EFFICIENTLY AND EXPEDITIOUSLY, REQUIRED; FAILURE TO DO SO CONSTITUTES SIMPLE NEGLECT OF DUTY.— Summons to the defendant in a case shall forthwith be issued by the clerk of court upon the filing of the complaint and the payment of the requisite legal fees. Once issued by the clerk of court, it is the duty of the sheriff, process server or any other person serving court processes to serve the summons to the defendant efficiently and expeditiously. Failure to do so constitutes simple neglect of duty, which is the failure of an employee to give one's attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference.

2. ID.; ID.; ID.; ID.; FAILURE TO COMPLY WITH THE PROCEDURE TO BE OBSERVED IN DEFRAYING THE ACTUAL TRAVEL EXPENSES IN SERVING SUMMONS WARRANTS DISCIPLINARY MEASURE; PRESENT IN CASE AT BAR.— "Sheriffs are not allowed to receive any payments from the parties in the course of the performance of their duties. They cannot just unilaterally demand sums of money from the parties without observing the proper procedural steps." Section 10, Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC, outlines the procedure to be observed in defraying the actual travel expenses in serving summons. x x x Accordingly, the plaintiff in a case is required to deposit the amount of ₱1,000.00 with the clerk of court, which would

Supreme Court E-Library

be used to defray the actual travel expenses in serving the summons. The sheriff, process server or any other person authorized to serve court processes would then submit to the court a statement of estimated travel expenses for the service of the summons. Once the court approves the statement of estimated travel expenses, the clerk of court shall release the money to the sheriff, process server or any other person authorized to serve court processes. Nery failed to follow the foregoing procedure and, instead, opted to ask Vision Automotive to defray the actual travel expenses that would be incurred in serving the summons to the defendant. His failure to strictly comply with the provisions of Section 10, Rule 141 of the Rules of Court warrants the imposition of disciplinary measure. Considering that Nery demanded from Vision Automotive only the amount needed to actually defray his actual travel expenses, the Court agrees with the OCA that he should be held administratively liable for less serious dishonesty.

3. ID.; ID.; ID.; ID.; SHERIFFS MUST ALWAYS DEMONSTRATE INTEGRITY IN THEIR CONDUCT; RATIONALE.— The Court "cannot overemphasize that the conduct required of court personnel must always be beyond reproach and circumscribed with the heavy burden of responsibility as to let them be free from any suspicion that may taint the judiciary. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage. As a court employee, it therefore behooves respondent sheriff to act with more circumspection and to steer clear of any situation, which may cast the slightest suspicion on his conduct." "Sheriffs, as officers of the court and agents of the law, play an important role in the administration of justice. They are in the forefront of things, tasked as they are to serve judicial writs, execute all processes, and carry into effect the orders of the court." As a front-line representative of the judicial system, sheriffs must always demonstrate integrity in their conduct for once they lose the people's trust, they also diminish the people's faith in the entire judiciary.

4. ID.; ID.; ID.; ID.; WHEN GUILTY OF TWO OR MORE OFFENSES; IMPOSABLE PENALTY, DISCUSSED; APPLICATION IN CASE AT BAR.— The most serious charge against Nery is less serious dishonesty, which merits

Supreme Court E-Library

the penalty of suspension of six (6) months and one (1) day to one (1) year for the first offense. The offense of simple neglect of duty shall be taken as an aggravating circumstance against Nery. "However, while this Court is duty-bound to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, this Court also has the discretion to temper the harshness of its judgment with mercy." x x x Factors such as the respondent's length of service, the respondent's acknowledgement of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, respondent's advanced age, among other things, have had varying significance in the determination by the Court of the imposable penalty." x x x Length of service and the fact that this is Nery's first offense are considered mitigating circumstances under Section 48(l) and (n), Rule 10 of the RRACCS. Under the peculiar circumstances of this case, the complainant's withdrawal of his letter complaint, taken together with the fact that this is his first offense in his more than ten (10) years of service in the judiciary, serves to temper the penalty to be imposed on Nery.

5. ID.; ID.; ID.; ID.; THE PENALTY OF FINE MAY BE IMPOSED IN LIEU OF SUSPENSION FROM OFFICE IF THE SHERIFF IS ACTUALLY DISCHARGING FRONTLINE FUNCTION; SUSTAINED IN CASE AT BAR.— It bears stressing that Nery, as a sheriff, is actually discharging frontline functions. Under Section 47(1)(b), Rule 10 of the RRACCS, the penalty of fine may be imposed in lieu of suspension from office if the respondent is actually discharging frontline functions. x x x Accordingly, considering that Nery is performing frontline functions and that there is a great probability that his work would be left unattended by reason of his suspension, and considering that this is his first offense in his more than ten (10) years of service in the judiciary, the Court deems it proper to impose the straight penalty of fine against Nery in the amount of Twenty Thousand Pesos (₱20,000.00) in lieu of the penalty of suspension from office.

Supreme Court E-Library

R E S O L U T I O N

REYES, *J.*:

This resolves the administrative complaint filed by Atty. Vladimir Alarique T. Cabigao (complainant) against Sheriff Neptali Angelo V. Nery (Nery), Sheriff III of the Metropolitan Trial Court (MeTC) of Manila, Branch 30.

The complainant is the counsel of Vision Automotive Technology, Inc. (Vision Automotive), the plaintiff in Civil Case No. 01785-SC entitled *Vision Automotive Technology, Inc. v. Sound and Beyond Autoworks* which was then pending before the MeTC of Manila, Branch 30. On March 15, 2012, the complainant sent a letter-complaint[1] to the Presiding Judge of the MeTC of Manila, Branch 30, alleging that Nery called Vision Automotive and asked for money to cover the transportation expenses in serving the summons to the defendant in New Manila, Quezon City.

He claimed that, on February 20, 2012, Vision Automotive deposited the amount of One Thousand Pesos (₱1,000.00) in the account of Nery with the Land Bank of the Philippines under account number 1987-1141-90.[2] However, despite receipt of the money deposited by Vision Automotive, Nery still failed to serve the summons to the defendant in Civil Case No. 01785-SC.

The complainant furnished the Office of the Court Administrator (OCA) with a copy of his letter-complaint. On March 30, 2012, then Assistant Court Administrator[3] Thelma C. Bahia directed Nery to comment on the allegations contained in the complainant's letter-complaint.[4]

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[1] *Rollo,* pp. 6-7.

[2] *Id.* at 8.

[3] Now Deputy Court Administrator.

[4] *Id.* at 10.

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In his comment[5] dated May 9, 2012, Nery denied that he asked for money from Vision Automotive. He averred that Civil Case No. 01785-SC was raffled to their branch on January 13, 2012; that a month after it was filed, Vision Automotive has yet to coordinate with him as regards the service of summons to the defendant. He admitted having called a representative of Vision Automotive, but clarified that he only did so to request Vision Automotive to defray the transportation expenses for the service of summons as it was burdensome to withdraw the amount of ₱1,000.00 from the Sheriff's Trust Fund. He claimed that it was the representative of Vision Automotive who insisted on depositing the amount of ₱1,000.00 in his bank account to defray the expenses in serving the summons on the defendant.

Nery further claimed that he never intended to tarnish the image of the judiciary when he accepted the money from Vision Automotive; that there were instances in the past when he used his own money in order to expedite court processes. Nery likewise claimed that the complainant had already manifested to the OCA that he is already withdrawing his complaint.[6] He further alleged that he had already served the summons to the defendant in Civil Case No. 01785-SC on March 16, 2012. After which, Nery returned the remaining balance of the ₱1,000.00 given by Vision Automotive to defray the expenses in serving the summons.

On August 6, 2013, the OCA issued its evaluation and recommendation on the case.[7] In its evaluation, the OCA found that there is sufficient evidence to hold Nery administratively liable, pointing out that the latter did not categorically deny having asked and received money from Vision Automotive. The OCA further opined that Nery should have served the summons to the defendant in Civil Case No. 01785-SC within fifteen (15) days from his receipt thereof pursuant to the 2002 Revised Manual for Clerks of Court; that his failure to do so constituted simple neglect of duty.

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[5] *Id.* at 12-14.

[6] *Id.* at 9.

[7] *Id.* at 1-5.

Supreme Court E-Library

As regards Nery's demand and subsequent receipt of money from Vision Automotive, the OCA found him liable for less serious dishonesty, pointing out that only the payment of sheriff's fees can be lawfully received by a sheriff and the acceptance of any other amount is improper even if it were to be applied for a lawful purpose. Accordingly, the OCA recommended that:

> **RECOMMENDATION:** It is respectfully recommended for the consideration of the Honorable Court that:
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> 1. the instant complaint against Neptali Angelo V. Nery, Sheriff, Branch 30, Metropolitan Trial Court, Manila, be **DOCKETED** as a regular administrative matter; and
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> 2. respondent Nery be found ***GUILTY*** of less serious dishonesty and be ***FINED*** in an amount equivalent to his six (6) months salary to be paid to the Court within thirty (30) days from notice.[8]

After a careful review of the records of this case, the Court adopts the findings and recommendation of the OCA albeit with modification as regards the sanction to be imposed.

Summons to the defendant in a case shall forthwith be issued by the clerk of court upon the filing of the complaint and the payment of the requisite legal fees.[9] Once issued by the clerk of court, it is the duty of the sheriff, process server or any other person serving court processes to serve the summons to the defendant efficiently and expeditiously. Failure to do so constitutes simple neglect of duty, which is the failure of an employee to give one's attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference.[10]

It took Nery more than two months to serve the summons to the defendant in Civil Case No. 01785-SC from the time the

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[8] *Id.* at 5.

[9] RULES OF COURT, Rule 14, Section 1.

[10] See *Atty. Laguio, Jr. v. Amante-Casicas*, 537 Phil. 180, 185 (2006), citing *Dr. Dignum v. Diamla*, 522 Phil. 369, 378 (2006); *Collado-Lacorte v. Rabena*, A.M. No. P-09-2665, August 4, 2009, 595 SCRA 15, 22.

Supreme Court E-Library

same was raffled to their branch. Civil Case No. 01785-SC was raffled to the MeTC of Manila, Branch 30, on January 13, 2012; Nery was only able to serve the summons on the defendant therein only on March 16, 2012.

Explaining the delay in the service of the summons, Nery claims that Vision Automotive, from the time it deposited the ₱1,000.00 in his bank account, no longer coordinated with him as regards the service of the summons. Nery's reasoning is flawed. The supposed lack of coordination on the part of Vision Automotive would not hinder the service of the summons to the defendant in Civil Case No. 01785-SC. To stress, once issued by the clerk of court, it becomes the duty of the sheriff, process server or any other person serving court processes to promptly serve the summons on the defendant in a case.

There being no sufficient justification for his delay in serving the summons on the defendant in the said case, Nery clearly disregarded his duty to promptly serve the summons on the defendant in Civil Case No. 01785-SC and should thus be held liable for simple neglect of duty.

It is likewise improper for Nery to ask and actually receive money from Vision Automotive, even if the money would be used to defray the expenses in serving the summons to the defendant in Civil Case No. 01785 SC. "Sheriffs are not allowed to receive any payments from the parties in the course of the performance of their duties. They cannot just unilaterally demand sums of money from the parties without observing the proper procedural steps."[11]

Section 10, Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC, outlines the procedure to be observed in defraying the actual travel expenses in serving summons, *viz*:

Sec. 10. *Sheriffs, Process Servers and other persons serving processes.*—

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[11] *Hofer v. Tan*, 555 Phil. 168, 179 (2007), citing *Judge Tan v. Paredes*, 502 Phil. 305, 313 (2005).

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(a) For serving summons and copy of complaint, for each defendant, Two Hundred ([₱]200.00) Pesos;

x x x x x x x x x

In addition to the fees hereinabove fixed, the amount of One Thousand ([₱]1,000.00) Pesos shall be deposited with the Clerk of Court upon filing of the complaint to defray the actual travel expenses of the sheriff, process server or other court-authorized persons in the service of summons, subpoena and other court processes that would be issued relative to the trial of the case. In case the initial deposit of One Thousand ([₱]1,000.00) Pesos is not sufficient, then the plaintiff or petitioner shall be required to make an additional deposit. The sheriff, process server or other court authorized person shall submit to the court for its approval a statement of the estimated travel expenses for service of summons and court processes. Once approved, the Clerk of Court shall release the money to said sheriff or process server. After service, a statement of liquidation shall be submitted to the court for approval. After rendition of judgment by the court, any excess from the deposit shall be returned to the party who made the deposit.

Accordingly, the plaintiff in a case is required to deposit the amount of ₱1,000.00 with the clerk of court, which would be used to defray the actual travel expenses in serving the summons. The sheriff, process server or any other person authorized to serve court processes would then submit to the court a statement of estimated travel expenses for the service of the summons. Once the court approves the statement of estimated travel expenses, the clerk of court shall release the money to the sheriff, process server or any other person authorized to serve court processes.

Nery failed to follow the foregoing procedure and, instead, opted to ask Vision Automotive to defray the actual travel expenses that would be incurred in serving the summons to the defendant. His failure to strictly comply with the provisions of Section 10, Rule 141 of the Rules of Court warrants the imposition of disciplinary measure. Considering that Nery demanded from Vision Automotive only the amount needed to actually defray his actual travel expenses, the Court agrees with the OCA that

Supreme Court E-Library

he should be held administratively liable for less serious dishonesty.

The Court "cannot overemphasize that the conduct required of court personnel must always be beyond reproach and circumscribed with the heavy burden of responsibility as to let them be free from any suspicion that may taint the judiciary. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage. As a court employee, it therefore behooves respondent sheriff to act with more circumspection and to steer clear of any situation, which may cast the slightest suspicion on his conduct."[12]

"Sheriffs, as officers of the court and agents of the law, play an important role in the administration of justice. They are in the forefront of things, tasked as they are to serve judicial writs, execute all processes, and carry into effect the orders of the court."[13] As a front-line representative of the judicial system, sheriffs must always demonstrate integrity in their conduct for once they lose the people's trust, they also diminish the people's faith in the entire judiciary.[14]

Section 50 of the Revised Rules on Administrative Cases in the Civil Service[15] (RRACCS) mandates that:

> Sec. 50. *Penalty for the Most Serious Offense*.— If the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances.

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[12] See *Macinas v. Arimado*, 508 Phil. 161, 165 (2005), citing *Balajadia v. Gatchalian*, 484 Phil. 27, 32 (2004), and Republic Act No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees), Section 4(B).

[13] *LBC Bank v. Marquez*, 514 Phil. 352, 361 (2005).

[14] See *Geronca v. Magalona*, 568 Phil. 564, 570 (2008), citing *Visitacion, Jr. v. Ediza*, 414 Phil. 699 (2001).

[15] Promulgated by the Civil Service Commission through Resolution No. 1101502 dated November 18, 2011.

Supreme Court E-Library

The most serious charge against Nery is less serious dishonesty, which merits the penalty of suspension of six (6) months and one (1) day to one (1) year for the first offense.[16] The offense of simple neglect of duty shall be taken as an aggravating circumstance against Nery.

"However, while this Court is duty-bound to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, this Court also has the discretion to temper the harshness of its judgment with mercy."[17] "In several jurisprudential precedents, the Court has refrained from imposing the actual administrative penalties prescribed by law or regulation in the presence of mitigating factors. Factors such as the respondent's length of service, the respondent's acknowledgement of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, respondent's advanced age, among other things, have had varying significance in the determination by the Court of the imposable penalty."[18]

The complainant already retracted his allegations against Nery, pointing out that this case simply arose from miscommunication between Vision Automotive and Nery.[19] The Court also notes that this is Nery's first offense in his more than ten (10) years in the service, having been initially appointed as Court Interpreter on May 23, 2002.[20] Length of service and the fact that this is Nery's first offense are considered mitigating circumstances under Section 48(l) and (n), Rule 10 of the RRACCS.[21] Under

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[16] RRACCS, Rule 10, Section 46(B)(1).

[17] *Baculi v. Ugale*, A.M. No. P-08-2569, October 30, 2009, 604 SCRA 685, 689, citing *De Leon-Dela Cruz v. Recacho*, 554 Phil. 490, 499 (2007).

[18] *Office of the Court Administrator v. Aguilar*, A.M. No. RTJ-07-2087, June 7, 2011, 651 SCRA 13, 25.

[19] *Rollo*, p. 9.

[20] *Id.* at 4.

[21] Sec. 48. *Mitigating and Aggravating Circumstances*.— In the determination of the penalties to be imposed, mitigating and/or aggravating circumstances attendant to the commission of the offense shall be considered.

Supreme Court E-Library

the peculiar circumstances of this case, the complainant's withdrawal of his letter- complaint, taken together with the fact that this is his first offense in his more than ten (10) years of service in the judiciary, serves to temper the penalty to be imposed on Nery.

It bears stressing that Nery, as a sheriff, is actually discharging frontline functions. Under Section 47(1)(b), Rule 10 of the RRACCS, the penalty of fine may be imposed in lieu of suspension from office if the respondent is actually discharging frontline functions, *viz*:

Sec. 47. *Penalty of Fine*.— The following are the guidelines for the penalty of fine:

1. **Upon the request of the head of the office or the concerned party and when supported by justifiable reason/s**, the disciplining authority may allow payment of fine in place of suspension if any of the following circumstances are present:

    a. When the functions/nature of the office is impressed with national interest such as those involved in the maintenance of peace and order, health and safety, education; or

    b. When the respondent is actually discharging frontline functions or those directly dealing with the public and the personnel complement of the office is insufficient to perform such functions; and

    c. When the respondent committed the offense without utilizing or abusing the powers of his/ her position or office.

x x x x x x x x x (Emphasis ours)

The following circumstances shall be appreciated:

x x x x x x x x x

l. First offense;

x x x x x x x x x

n. length of service; or

x x x x x x x x x

Supreme Court E-Library

In *Mariñas v. Florendo*,[22] the Court imposed the penalty of fine in lieu of suspension from office, declaring that:

> While the recommended penalty of one-month suspension is reasonable, the same is not practical at this point, **considering that his work would be left unattended by reason of his absence**. Furthermore, he may use his suspension as another excuse to justify his inaction and inefficiency in other matters pending before his office. Instead of suspension, we impose a fine equivalent to his one-month salary, so that he can finally implement the subject writs and perform the other duties of his office.[23] (Citation omitted and emphasis ours)

Accordingly, considering that Nery is performing frontline functions and that there is a great probability that his work would be left unattended by reason of his suspension, and considering that this is his first offense in his more than ten (10) years of service in the judiciary, the Court deems it proper to impose the straight penalty of fine against Nery in the amount of Twenty Thousand Pesos (₱20,000.00) in lieu of the penalty of suspension from office.[24]

WHEREFORE, respondent Neptali Angelo V. Nery, Sheriff III of the Metropolitan Trial Court of Manila, Branch 30, is found **GUILTY** of less serious dishonesty, and is hereby ordered

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[22] A.M. No. P-07-2304, February 12, 2009, 578 SCRA 502.

[23] *Id.* at 511.

[24] Section 47(2) of the RRACCS provides that:

> Section 47. *Penalty of Fine*.— x x x
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> x x x x x x x x x
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> 2. The payment of penalty of fine in lieu of suspension shall be available in Grave, Less Grave and Light Offenses where the penalty imposed is for six (6) months or less at the ratio of one (1) day suspension from the service to one (1) day fine; Provided, that in Grave Offenses where the penalty imposed is six (6) months and one (1) day suspension in view of the presence of mitigating circumstance, the conversion shall only apply to the suspension of six (6) months. Nonetheless, the remaining one (1) day suspension is deemed included therein.
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> x x x x x x x x x

Supreme Court E-Library

to pay a **FINE** in the amount of Twenty Thousand Pesos (₱20,000.00). Neptali Angelo V. Nery is **STERNLY WARNED** that a repetition of the same or similar acts in the future shall be dealt with more severely. Let a copy of this Resolution be attached to his personal record.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 162826. October 14, 2013]

NARCISO DEGAÑOS,[1] *petitioner, vs.* **PEOPLE OF THE PHILIPPINES**, *respondent.*

SYLLABUS

1. CIVIL LAW; AGENCY; A CONTRACT OF AGENCY IS CREATED WHEN THE TRANSACTION WAS A CONSIGNMENT UNDER THE OBLIGATION TO ACCOUNT FOR THE PROCEEDS OF SALE, OR TO RETURN THE UNSOLD ITEMS; CASE AT BAR.— Based on the express terms and tenor of the *Kasunduan at Katibayan*, Degaños received and accepted the items under the obligation to sell them in behalf of the complainants ("*ang mga hiyas (jewelries) na natatala sa ibaba nito upang ipagbili ko sa kapakanan ng nasabing Ginang*"), and he would be compensated with the overprice as his commission ("*Ang bilang kabayaran o pabuya sa akin ay ano mang halaga na aking mapalabis na*

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[1] Also spelled as Deganos in the original records.