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FIRST DIVISION

[A.M. No. P-225. March 23, 1975]

JUAN L. NASSR, JR., DIB, ODETTE and EMILY all surnamed NASSR., represented by their guardian JUAN D. NASSR, SR., *complainants, vs.* **ARTHUR MOLTIO,** *respondent.*

SYLLABUS

CRIMINAL LAW; PUBLIC OFFICERS AND EMPLOYEES; FAILURE OF SHERIFF TO SERVE COURT ORDER IS HIGHLY CENSURABLE. — Where a deputy sheriff was able to serve copies of a court order upon the other parties, but failed to do so upon complainants' counsel whose office was just in front of the courthouse, such failure was considered by the Supreme Court to be deliberate, intentional and calculated to forestall any possible action on the part of complainants to oppose or seek a reconsideration of the order, and highly censurable. His assertion of failure to recollect whether he had served the order or not is an admission not only of gross negligence and inefficiency in the performance of duties but also of possible collusion with the other parties.

RESOLUTION

MUÑOZ PALMA, *J.*:

Respondent Arthur Moltio, Deputy Sheriff of the Court of First Instance of Baguio and Benguet detailed with Branch IV, is charged with "misconduct in office, neglect of duty, inefficiency and incompetence in the performance of official duties, conduct prejudicial to the best interest of the service," with Juan L. Nassr, Jr. and others, as complainants.

In the month of December, 1973, there was pending before the above-mentioned court a complaint for Injunction, docketed as Civil Case 2589, entitled: "*Juan L. Nassr, Jr., et al. vs. Enelea Sta. Maria-Naluz, et al.*" in which a writ of preliminary

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injunction had been issued. On the 12th of December, respondent sheriff received an "Order to Dissolve Writ of Preliminary Injunction" for service to the parties. (p. 15, *rollo*)

On December 13, respondent furnished copies of said order to Atty. Teopisto Rondez, counsel of the defendants surnamed Sta. Maria, and to the City Legal Officer, both of whom had their offices at the City Hall, the former being then incumbent councilor. On December 15, respondent sent by registered mail a copy of the order to Atty. Manolo Kimpo, counsel of defendants Laperal.

No service was made however to Atty. Constante Pimentel, the lawyer of the plaintiffs Nassr, now complainants, not until *January 2, 1974*, notwithstanding the fact that his address was just across the City Hall. (pp. 12, 15, *ibid.*).

Due to the failure of respondent sheriff to notify promptly Atty. Pimentel, complainants herein were deprived of their opportunity to oppose or seek a reconsideration of the aforesaid order. As a result, the Sta. Marias were able to operate the Session Theatre in Baguio City from December 22, 1973, that is, during the Christmas holidays, a matter which precisely was in dispute in the injunction case.

In answer to this complaint filed against him, respondent offers the excuse that he could not remember if he had served copy of the order of the court to Atty. Constante Pimentel, or, if he did, the receipt must have been lost or misplaced by him. He claims that there was no intention to delay the service of the order, and denies any collusion between him and the Sta. Marias, or that he was bribed by the latter.

The actuation of respondent in the instant case is highly censurable. Respondent's failure to promptly serve the herein complainants through their counsel with a copy of the trial court's order dissolving the writ of preliminary injunction was We believe deliberate, intentional, and calculated to forestall any possible action on the part or the Nassrs to oppose or seek a reconsideration of the aforementioned order and enable the Sta. Marias to operate the Session Theatre during the peak of

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the Christmas season. For there was no reason or excuse at all why respondent could not send a copy of the order to Atty. Pimentel whose office was just in front of the City Hall where the courthouse is located, when he was able to serve copies of the order on the city legal officer and the lawyer of the Sta. Marias on December 13, 1973, and mail to the lawyer of the Laperals the latter's copy, on the 15th. Respondent's assertion that he cannot now remember if he served a copy of the order on Atty. Constante Pimentel, or that if he had served it he must have lost or misplaced the proof of service, is a plain admission not only of gross negligence and inefficiency in the performance of his duties, but of possible collusion with the adverse parties of the Nassrs.

IN CONCLUSION, We hereby find respondent guilty of the charge of negligence, incompetence, and wilful obstruction to a speedy and efficient service of the trial court's processes. In view of the fact, however, that respondent is no longer in the service as his temporary appointment as a deputy sheriff expired on February 23, 1974, no disciplinary action can be taken against him. Let Our findings, however, be spread on his personal record on file with this Court, for future reference.

So Ordered.

Castro (Chairman), Teehankee, Makasiar, and *Esguerra, JJ.*, concur.