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FIRST DIVISION

[Adm. Mat. No. P-2448. June 29, 1981]

JUDGE AMANTE PURISIMA, complainant, *vs.* ROGELIO ABELLO, Process Server, respondent.

SYNOPSIS

Failing to serve notice of a pre-trial to plaintiff's counsel in a civil case due to having inserted the notice in a folder containing his personal papers, respondent process server was cited for contempt by the presiding judge of the sala where the case was pending. Instead of punishing respondent, however, the judge forwarded the case to the Court Administrator for whatever disciplinary action he may deem appropriate. During the investigation, respondent alleged that his failure to serve the notice was without the least intention of delaying the administration of justice or causing prejudice to the parties as the same was due to honest mistake and excusable negligence; stating further that this was the first time he had ever failed to perform his duty in the whole fifteen years of his service in the Office of the Sheriff.

Considering the unblemished service record of respondent for more than fifteen years and the fact that he promised to be more careful in the future, the Supreme Court imposed a fine of ₱50.00 on respondent with a warning that a repetition of similar act in the future will be sternly dealt with.

SYLLABUS

CONSTITUTIONAL LAW; ADMINISTRATIVE SUPERVISION OF COURTS; ADMINISTRATIVE COMPLAINT AGAINST A COURT PERSONNEL; FAILURE OF PROCESS SERVER TO SERVE NOTICE OF PRE-TRIAL; PENALIZED WITH FINE AND STERN WARNING AGAINST REPETITION OF SIMILAR ACT.— Considering his unblemished service record for more than fifteen years and the fact that he promises to be more careful in the future, a process server who failed to serve notice of a pre-trial to plaintiff's counsel in a civil case due to having inserted the notice in a folder containing his personal papers instead of in the folder marked "For Service" where he usually kept court processes, is fined ₱50.00 with a stern warning that a repetition of similar act in the future would be sternly dealt with.

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DECISION

GUERRERO, *J.*:

Respondent is a process server in the Office of the Sheriff in the City of Manila. On June 10, 1980, respondent received a notice setting for pre-trial on June 30, 1980 in Civil Case No. 128607 entitled "Insurance Company of North America *vs.* Allied Banking Corporation," for service upon the plaintiff's counsel, together with other court processes.

The above-mentioned notice was somehow inserted in a folder containing respondent's personal papers and not in the folder marked "For Service" where court processes were usually kept by him. All other court processes assigned to the respondent that day were duly served except that notice which was placed in his personal file.

On July 8, 1980 while respondent was sorting his personal file, he discovered the above-mentioned notice of pre-trial. Upon discovering the notice among his personal papers, he immediately went to see the plaintiff's counsel, Atty. Rodolfo C. Adajar, to apologize to him. The counsel did not believe that the giving of the notice of pre-trial would be of any use to him so the respondent left said notice to the counsel's secretary with a word of apology to be conveyed to her boss.

Judge Amante Purisima, the presiding judge of the Court of First Instance, Branch VII to whose sala the case earlier mentioned was assigned, issued an order on July 22, 1980 requiring respondent to show cause why he should not be cited for contempt of court for failure to effect service of the notice of the pre-trial.

Respondent filed a manifestation alleging that the failure to serve the notice was due to reasons and circumstances not of his fault, considering the fact that the notice was misplaced. Respondent further alleged that he had no intention whatsoever not to serve the notice nor to delay the administration of justice.

On November 20, 1980, Judge Purisima issued an order that the explanation of the respondent in his manifestation was not

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satisfactory; that it amounts to a confession of guilt; that what is worse, it smacks of indifference to duty and irresponsibility on the part of the process server, irresponsibility, because misplacing the notice shows lack of due care in the handling and keeping of processes or other documents entrusted to him by law, and indifference to duty, because knowing that the date of the pre-trial having long passed, he still served the notice instead of returning it to the Court.

Instead of punishing process server Rogelio Abello for contempt of Court, the Court directed in the dispositive portion, that copy of the order be forwarded to the office of the Honorable Judicial Administrator for whatever disciplinary action he may find appropriate to impose the former, and for such remedial measures as may be adopted to him to preclude similar happening in the future.

Upon receipt of the records of this case, Court Administrator Lorenzo Relova assigned Judge Jose C. Colayco to investigate, report and recommend action on the offical actuation of process server Rogelio Abello. The hearing of this case was set on February 6, 1981. Only the respondent was present. The case was reset to another date wherein respondent was given ten (10) days within which to submit true copy of his explanation.

In a memorandum submitted on March 27, 1981, respondent alleged that the failure to serve the Notice of Pre-trial was made in good faith and without the least intention of delaying the administration of justice or causing prejudice to the parties to the case. Respondent further alleged that such failure was due to an honest mistake and excusable negligence which ordinary prudence could not have guarded against and for which he should be absolved from punitive responsibilities.

Respondent stated that he had been in the Office of the Sheriff of the City of Manila for fifteen (15) years and that through all those years up to the present, he has been rendering an efficient, honest, dedicated and loyal service to the courts, the lawyers and the party litigants in all the cases assigned to him.

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This is the only time, respondent alleged, that he has ever failed to perform his duty to the satisfaction of the court and the party plaintiff. Respondent begs the kindness of the Court not to consider his honest mistake and excusable negligence as an indifference in the performance of his duties. Respondent has no other means of livelihood and for that matter, he could not be indifferent to the job which provides him and his family their daily bread. Likewise, respondent submits that the long continued service he had already rendered without any complaint against him but for this case, is a testimony that he is not irresponsible in the performance of his assigned duties, for if he is so, he could not have lasted for even one week in his job.

In view of the contrite attitude of the respondent, it is recommended by Judge Colayco with the approval of the Court Administrator that a nominal fine of ₱50.00 with a stern warning be imposed upon him as a lesson.

The Court, considering the unblemished service record of the respondent for more than fifteen (15) years and the fact that he promises to be more careful in the future, finds no reason to disagree with the recommendation of the investigating judge.

WHEREFORE, in the light of the foregoing, a fine of ₱50.00 is imposed on Rogelio Abello with a stern warning that a repetition of similar act in the future would be sternly dealt with.

SO ORDERED.

Teehankee (Chairman), Makasiar, Fernandez and *Melencio-Herrera, JJ.*, concur.

FIRST DIVISION

[No. L-24780. June 29, 1981]

THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, *vs.* RAYMUNDO ARAJA and RODING ARAJA, defendants-appellants.