

MARIE DINAH TOLENTINO-FUENTES, COMPLAINANT, VS. MICHAEL PATRICK A. GALINDEZ, PROCESS SERVER, REGIONAL TRIAL COURT, PROMULGATED: BRANCH 33, DAVAO CITY, RESPONDENT.

A.M. No. P-07-2410. June 18, 2010

Ponente: CARPIO, J.

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CARPIO, J.:

This case involves a complaint for simple neglect of duty filed by Atty. Marie Dinah S. Tolentino-Fuentes (Atty. Tolentino-Fuentes) against Michael Patrick A. Galindez (Galindez), process server, Regional Trial Court (RTC), Branch 33, Davao City.

Atty. Tolentino-Fuentes and her law office had several cases pending before the RTC. Galindez is the RTC's process server.

Criminal Case No. 55248-04

A hearing for the case was set on 29 March 2005. In a notice[1] dated 15 March 2005, the RTC canceled the 29 March 2005 hearing. The RTC released the 15 March 2005 notice on 18 March 2005. However, Atty. Tolentino-Fuentes received a copy of the 15 March 2005 notice only on 4 April 2005. Consequently, Atty. Tolentino-Fuentes and her client attended the 29 March 2005 hearing, incurred expenses, and had their time wasted.

The RTC issued an open court order[2] dated 21 February 2006, canceling the hearings set on 6 and 14 March 2006. Atty. Tolentino-Fuentes was unable to attend the 21 February 2006 hearing. Galindez received a copy of the 21 February 2006 order on 7 March 2006. However, Atty. Tolentino-Fuentes received a copy of the 21 February 2006 order only on 29 March 2006. Consequently, Atty. Tolentino-Fuentes and her client attended the 6 March 2006 hearing, incurred expenses, and had their time wasted.

Civil Case No. 31148-2005

In an order[3] dated 8 November 2005, the RTC set the preliminary hearing on 18 November 2005. Atty. Tolentino-Fuentes' client received a copy of the 8 November 2005 order only on 7 December 2005. The envelope[4] containing the order was postmarked 5 December 2005.

In an order[5] dated 18 November 2005, the RTC set the formal offer of exhibits in evidence on 28 November 2005. Atty. Tolentino-Fuentes' client received a copy of the 18 November 2005 order only on 7 December 2005. The envelope[6] containing the order was postmarked 5 December 2005.

Because of the late receipt of the orders, Atty. Tolentino-Fuentes' client was unable to participate in the presentation of evidence and cross-examination of witness. As a result, he had to file with the RTC a motion[7] for reconsideration of the 18 November 2005 order for lack of due process.

Civil Case No. 22989-94

A hearing was set on 28 March 2006. In a notice[8] dated 10 March 2006, the RTC canceled the 28 March 2006 hearing. Galindez received a copy of the 10 March 2006 notice on 17 March 2006. However, Atty. Tolentino-Fuentes received a copy of the 10 March 2006 notice only on 29 March 2006. Consequently, Atty. Tolentino-Fuentes and her witness attended the 29 March 2006 hearing, incurred expenses, and wasted their time.

Civil Case No. 29418-2002

A hearing was set on 29 March 2006. In a notice[9] dated 14 March 2006, the RTC canceled the 29 March 2006 hearing. Atty. Tolentino-Fuentes received a copy of the 14 March 2006 notice only on 29 March 2006.

Atty. Tolentino-Fuentes filed with the Office of the Court Administrator (OCA) an affidavit-complaint[10] dated 30 March 2006, charging Galindez with simple neglect of duty. In its 1st Indorsement[11] dated 24 April 2006, the OCA directed Galindez to comment on the affidavit-complaint.

In motions dated 8 May,[12] 10 June,[13] 3 July,[14] 22 July,[15] and 5 August[16] 2006, Galindez prayed for extension of time to file his comment. In his comment[17] dated 22 August 2006, Galindez admitted Atty. Tolentino-Fuentes' accusations and gave as excuses that (1) he had a heavy workload, (2) the RTC had no vehicle, and (3) he was poor.

In its report[18] dated 18 October 2007, the OCA found Galindez guilty of inefficiency and incompetence in the performance of official duties and recommended that he be suspended for six months and one day. In a Resolution[19] dated 5 December 2007, the Court re-docketed the affidavit-complaint as a regular administrative matter. In their manifestations dated 16 January[20] and 18 June[21] 2009, Atty. Tolentino-Fuentes and Galindez, respectively, submitted the case for resolution based on the pleadings filed.

The Court finds Galindez liable for simple neglect of duty.

As a process server, Galindez has the duty to ensure that court notices are properly served to the parties. In Atty. Dajao v. Lluch,[22] the Court held that:

The duty of a process server is vital to the machinery of the justice system. His primary duty is "to serve court notices" which precisely requires utmost care on his part by seeing to it that all notices assigned to him are duly served upon the parties. Thus, respondent should have carefully examined each of the "voluminous notices" assigned to him, scanning and reading every page to ensure that every notice to the party concerned will be served properly.[23]

In the present case, Galindez failed to serve court notices properly: (1) Atty. Tolentino-Fuentes received a copy of the 15 March 2005 notice canceling the 29 March 2005 hearing only on 4 April 2005; (2) Atty. Tolentino-Fuentes received a copy of the 21 February 2006 order canceling the 6 and 14 March 2006 hearings only on 29 March 2006; (3) Atty. Tolentino's client received a copy of the 8 November 2005 order setting the preliminary hearing on 18 November 2005 only on 7 December 2005; (4) Atty. Tolentino's client received a copy of the 18 November 2005 order setting the formal offer of exhibits in evidence on 28 November 2005 only on 7 December 2005; (5) Atty. Tolentino-Fuentes received a copy of the 10 March 2006 notice canceling the 28 March 2006 hearing only on 29 March 2006; and (6) Atty. Tolentino-Fuentes received a copy of the 14 March 2006 notice canceling the 29 March 2006 hearing only on 29 March 2006. Because of Galindez's failure to serve court notices properly, Atty. Tolentino-Fuentes and her client incurred unnecessary expenses and had their time wasted. Also, Atty. Tolentino-Fuentes' other client was unable to participate in the presentation of evidence and cross-examination of witness.

Galindez's excuses for his failure to serve court notices properly are weak and unpersuasive. In *Seangio v. Parce*,[24] the Court held that having a heavy workload is not a compelling reason to justify failure to perform

one's duties properly. "Otherwise, every government employee charged with negligence and dereliction of duty [would] always proffer a similar excuse to escape punishment, to the great prejudice of public service." [25] And in *Rodrigo-Ebron v. Adolfo*, [26] the Court held that financial difficulty is solely the employee's problem and the court should not be burdened by it.

In *Collado-Lacorte v. Rabena*, [27] *Labis, Jr. v. Estayol*, [28] *Reyes v. Pablico*, [29] and several other cases, the Court found process servers liable for simple neglect of duty for failure to serve court notices properly. Simple neglect of duty is failure to give proper attention to a required task. It signifies disregard of duty due to carelessness or indifference. [30] Section 52(B)(1) of the Revised Uniform Rules on Administrative Cases in the Civil Service [31] classifies simple neglect of duty as a less grave offense punishable by one month and one day to six months suspension for the first offense. Section 54 states that the medium period of the penalty shall be imposed when there are no mitigating and aggravating circumstances.

WHEREFORE, the Court finds Michael Patrick A. Galindez, Process Server, Regional Trial Court, Branch 33, Davao City, GUILTY of simple neglect of duty. Accordingly, the Court SUSPENDS him from office for three (3) months without pay and STERNLY WARNS him that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

Carpio, J., Chairperson, Nachura, Leonardo-De Castro,* Peralta, And Abad, JJ.

[*] Designated additional member per Raffle dated 6 January 2010.

[1] Rollo, p. 40.

[2] Id. at 5.

[3] Id. at 11.

[4] Id. at 12.

[5] Id. at 13.

[6] Id. at 13.

[7] Id. at 14-15.

[8] Id. at 8.

[9] Id. at 9.

[10] Id. at 2-3.

[11] Id. 18.

[12] Id. at 19.

[13] Id. at 21-23.

[14] Id. at 26-28.

[15] Id. at 32-34.

[16] Id. at 37-39.

[17] Id. at 48-50.

[18] Id. at 127-129.

[19] Id. at 130.

[20] Id. at 133.

[21] Id. at 137.

[22] 429 Phil. 620 (2002).

[23] Id. at 624-625.

[24] A.M. No. P-06-2252, 9 July 2007, 527 SCRA 24, 35.

[25] Id.

[26] A.M. No. P-06-2231, 27 April 2007, 522 SCRA 286, 292.

[27] A.M. No. P-09-2665, 4 August 2009, 595 SCRA 15.

[28] A.M. No. P-07-2405, 27 February 2008, 547 SCRA 11.

[29] A.M. No. P-06-2109, 27 November 2006, 508 SCRA 146.

[30] Atty. Dajao v. Lluch, *supra* note 22 at 626.

[31] Promulgated by the Civil Service Commission through Resolution No. 99-1936 dated 31 August 1999 and implemented by CSC Memorandum Circular No. 19, Series of 1999.

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