

**JUDGE EVELYN GAMOTIN NERY, COMPLAINANT, VS. MELLARDO C. GOMOLO, PROCESS SERVER, MCTC, OPOL-EL SALVADOR, MISAMIS ORIENTAL, RESPONDENT.**

*A.M. No. P-01-1508 (Formerly OCA-IPI No. 00-1012-P). February 07, 2003*

Ponente: QUISUMBING, J.

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**QUISUMBING, J.:**

In an office memorandum[1] dated 24 October 2000, Judge Evelyn Gamotin Nery of the Municipal Circuit Trial Court (MCTC) of Opol-El Salvador, Misamis Oriental, imposed a five-day suspension on respondent Mellardo Gamolo, Process Server of said court, for neglect of duty in the return of service of summons and for failure to comply with Judge Nery's memorandum[2] dated 11 October 2000 requiring him to show cause why he should not be administratively sanctioned for neglect of duty. The pertinent portions of the aforesaid memorandum[3] read:

xxx

WHEREAS, MELLARDO C. GAMOLO, Process Server was required per Memorandum dated October 11, 2000 to make returns of several summons received for service and to show cause why no administrative sanction be not imposed on him for his failure to do so, despite consistent follow-up from the Clerk of Court;

WHEREAS, the Clerk of Court certified on October 16, 2000 that MELLARDO C. GAMOLO still failed to make returns of service of summons issued in six (6) cases to wit:

CASE NO. DATE RECEIVED

CASE NO.

DATE RECEIVED

Civil Case # 2000-08-011 August 23, 2000

Civil Case # 2000-08-013 September 18,2000

Civil Case # 2000-08-014 September 18,2000

Civil Case # 2000-08-015 September 18,2000

Civil Case # 2000-08-016 September 18,2000

Civil Case # 2000-08-017 September 18,2000

Nor did he show cause why he should not be administratively sanctioned, despite receipt of the Memorandum of October 11, 2000;

WHEREAS, Atty. John Aldrich Bonete, counsel for the Plaintiff in Civil Case No. 2000-08-011 filed a Motion on October 18, 2000 on the long inaction of Process Server and prayed that the Court require Process Server Gamolo to perform his duties diligently;

ALL THE FOREGOING CONSIDERED, and the fact that the Court has, on several occasions, reprimanded Mellardo C. Gamolo for late returns of service, and pursuant to SC Resolution En Banc dated February 26, 1991 as quoted in OCA Circular No. 30-91 dated September 30, 1991, the hereunder Presiding Judge hereby orders SUSPENSION of Mellardo C. GAMOLO for five (5) days without pay.

x x x[4]

Judge Nery furnished a copy of the said memorandum to the Office of the Court Administrator (OCA), which initially found the imposition of the penalty to be improper.[5] According to the OCA, Circular No. 30-91 dated 30 September 1991 provides that a presiding judge's power to discipline court personnel is limited only to light offenses. Considering that the offense for which Judge Nery suspended respondent i.e., neglect of duty, is a less grave offense as classified under the Civil Service Law, the OCA opined that the case should have been referred to the Supreme Court for appropriate action.

Adopting the recommendation of the Office of the Court Administrator this Court on 13 August 2001 resolved to:

1)

REQUIRE Judge Evelyn Gamotin Nery to explain within ten (10) days from notice, why she immediately imposed a penalty of five (5) days suspension on Mellardo Gamolo when the matter concerning the latter's neglect of duty should have been first referred to the Court as set forth in Circular No. 30-91 dated 30 September 1991.

2)

TREAT the memorandum dated 24 October 2000 as an administrative complaint against Process Server Mellardo Gamolo for gross neglect of duty;

3)

REQUIRE Mellardo C. Gamolo to comment on aforesaid memorandum dated 24 October 2000.

4)

CONSIDER the suspension imposed upon Mellardo Gamolo as mere PREVENTIVE SUSPENSION pending the final adjudication of this case. [6]

In her 1[st] Indorsement[7] dated 23 September 2001, Judge Evelyn Gamotin Nery explains:

- The Memorandum of October 11, 2000, is only one of the many that this court has issued. It covered two common grounds/infractions: habitual absenteeism and failure to serve and/or make a report on the processes of this court. Copies thereof are hereto attached as Annexes "A" - "A-2";

- Mindful of the need to be firm and painfully aware at the same time of the dire need to hold on to one's job as a means of one's livelihood, the hereunder Presiding Judge treated merely as a light offense the infraction referred to in the Memorandum of October 24, 2001;

- The indifference with which Mr. Gamolo treated the memorandum and the sanction as can be gleaned from his failure to explain and/or comply was made explicit in the subsequent memorandum of October 30, 2001 (Exh. "B").

According to the complainant, if she did not follow to the letter the rules as set forth in OCA Circular No. 30-91,

she had done so as “to jolt Mr. Gamolo to his senses and make him try to be more conscious of his responsibility and concomitant accountability.”[8]

Appended to Judge Nery’s 1[st] Indorsement were copies of the four (4) memoranda addressed to respondent previously calling his attention to his infractions. The first memorandum dated 3 October 1990 reads:

x x x

It has come to the attention of the undersigned that despite repeated verbal reminders and warnings, you have continued to incur unnecessary and/ or unauthorized absences, to the detriment of public service and interest.

The log book on the Daily Time Record of personnel of this Court shows that for the month of September, 1990 you have made eight (8) unauthorized absences and was on absence without leave (AWOL) for October 1-3, 1990. Returns made on Court processes would likewise indicate neglect of duty since returns are only made upon reminder of either the Clerk of Court or the undersigned.

In view thereof, you are hereby given seventy two (72) hours from receipt hereof, within which to explain under oath why no disciplinary action be taken against you for Violation of par. 3 and par. 14, Art. 36 B, Art. 9 of P.D. No. 807.

For strict compliance.

x x x[9]

In her second memorandum dated 14 October 1998, the complaining judge referred to respondent’s absences without official leave (AWOL), thus:

x x x

As borne by the records, you went on absence without leave on September 18, 25, 30, 1998. Today, you just entered your time of arrival in the logbook and failed to return the whole day.

The Clerk of Court likewise makes a report that despite the constant follow-up for the submission of the leave, you refused and/or ignored the reminders and failed to submit one until today.

ALL THE FOREGOING CONSIDERED, you are given three (3) days from receipt hereof within which to make your comments and to show cause why you should not be administratively disciplined/ sanctioned.

x x x[10]

In the third memorandum[11] dated 12 January 1999, Judge Nery was compelled to personally order respondent to make a return of summons in 12 cases. The fourth memorandum[12] dated 30 October 2000, ordered respondent to show cause and comply with the memoranda dated 11 October 2000 and 24 October 2000 issued by the judge.

In his letter-comment[13] dated 29 November 2001, respondent Mellardo Gamolo replied that the sanction imposed on him was triggered by the complaint of Atty. Bonete, counsel for plaintiff in Civil Case No. 2000-08-011, for which he allegedly failed to promptly serve summons. He explained that the delay was due to circumstances beyond his control as the person to be served summons in said civil case had moved to another place. As to the other cases mentioned in the memorandum dated 24 October 2000, respondent claimed that despite the delayed service of summons, he has not received a single complaint from any of the parties in these cases. He added that a representative of plaintiffs were always with him during the serving of processes in these cases. Respondent ended his letter with an apology and begged for compassion from this Court. He promised to faithfully perform his duties, given another chance.

In a resolution dated 13 February 2002, this Court referred the instant case to the OCA for evaluation, report and recommendation.

On 20 March 2002, the OCA found the explanation of Judge Evelyn Gamotin Nery in suspending respondent Gamolo for five (5) days to be satisfactory. The OCA explained that “said penalty is well within the penalties prescribed for light offenses under the Civil Service Law over which a presiding judge can properly impose upon his erring employees.” This we find understandable. For her part, Judge Nery had explained that she was “mindful of the need to be firm” but she was also “painfully aware at the same time” of the employee’s “dire need to hold on to one’s job.” Hence, her treatment of his infraction only as a light offense. However, it later appeared that respondent Gamolo treated her memorandum and sanction with indifference.

As to respondent Process Server Gamolo, the OCA found that the evidence on record indicates that on many occasions, he has been advised and warned by Judge Nery of his repeated neglect of duty. The OCA found that respondent’s failure to heed these warnings justified the sanction imposed upon him by complainant. As earlier noted, such sanction was considered only as mere “preventive suspension” pending final adjudication. The OCA now recommends that respondent Gamolo be slapped a penalty of suspension for fifteen (15) days for neglect of duty. On this point, we are in agreement, except as to the proper penalty to be imposed on respondent employee.

In *Philippine Retirement Authority vs. Rupa*,<sup>[14]</sup> this Court defined simple neglect of duty as:

... signifies a disregard of a duty resulting from carelessness or indifference. The Court has decided the following, inter alia, as constituting the less grave offense of Simple Neglect of Duty: delay in the transmittal of court records, delay in responding to written queries, and delay of more than one (1) year and seven (7) months in furnishing a party with a copy of the court’s decision. As can be gleaned from the foregoing cases, mere delay in the performance of one’s function has been consistently considered as a less grave offense of simple neglect of duty, punishable by suspension without pay for one (1) month and one (1) day to six (6) months.

In this case, the evidence on record indicates that on many occasions, respondent Gamolo had been previously admonished by the complaining judge for delaying returns of service of summons. It is likewise clear that respondent, in his comment, failed to sufficiently explain why he failed to comply with Judge Nery’s memorandum dated 11 October 2000, subject of the present case.

We are unable to agree with respondent that the delay in the returns of summons should be considered “reasonable” since none of the litigants or their counsels had complained about it. Respondent’s apparent insouciance as to the effect of his infractions is indicative of a disturbing attitude in connection with his duties. Respondent appears to lose sight of the vital importance of his job as a process server.

In *Musni vs. Morales*,<sup>[15]</sup> this Court held that a process server is duty-bound to serve summons, writs and other court processes promptly. An unjustified delay in performing this task constitutes neglect of duty, which warrants the imposition of administrative sanctions. Among the responsibilities of a process server are:

- to serve Court processes such as subpoenas, subpoenas duces tecum, summonses, Court orders and notices;
- to prepare and submit returns of service of processes, monitors messages and/or delivers Court mail matters;
- to keep in custody and maintain a record book of all mail matters received and dispatched by the Court; and to perform such other duties as may be assigned by the Presiding Judge/Clerk of Court.<sup>[16]</sup>

It bears emphasizing that the process server’s duty is vital in the administration of justice because it is through him that defendants learn of the action brought against them by the complainant. More important, it is also through the service of summons by the process server that the trial court acquires jurisdiction over the defendant.

It is therefore crucial that summons, writs and other court processes be served expeditiously,[17] consonant with the mandate of speedy dispensation of justice stressed by the Constitution.

Given the nature of respondent's transgressions, complainant judge's action of suspending him from service is well grounded. As administrator of her court, she is responsible for its conduct and management. She has the duty to supervise her court personnel to ensure prompt and efficient dispatch of business in her court.[18] Judge Nery's order was issued in the context of enforcing disciplinary measures in her court, with no trace of any palpable bad faith on her part, while at same time being mindful of the employee's employment needs.

The order of suspension of Judge Nery likewise finds support in Rule 3.10 of the Code of Judicial Conduct, which provides that, "A judge should take or initiate appropriate disciplinary measures against lawyers or court personnel for unprofessional conduct which the judge may become aware of." The acts of a judge, which pertain to her judicial capacity, are not subject to our power to discipline subordinate officials, unless they are committed with fraud, dishonesty, corruption and bad faith.[19] For having issued in good faith and for good cause the order of respondent's suspension, the complaining judge may not be held administratively liable.

We are mindful of Supreme Court Circular No. 30-91, which provides that the suspension of a court employee charged with grave or less grave offenses shall be referred to the Supreme Court for appropriate action.[20] Nonetheless, in our resolution dated 31 August 2001, we stamped validity on the suspension imposed by Judge Nery upon respondent by considering the same as a mere preventive suspension pending the final adjudication of this case.[21] Seen in that light, her action is consonant to Section 19 of the Civil Service Commission (CSC) Memorandum Circular No. 19 s. of 1999, otherwise known as the Revised Uniform Rules on Administrative Cases in the Civil Service, to wit:

Section 19. Preventive Suspension. - Upon petition of the complainant or motu proprio, the proper disciplining authority may issue an order of preventive suspension upon service of the Formal Charge, or immediately thereafter to any subordinate officer or employee under his authority pending an investigation, if the charge involves:

- dishonesty
- oppression;
- grave misconduct;
- neglect in the performance of duty; or
- if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service.

xxx. (Emphasis supplied.)

As to the imposable penalty on respondent, we find the Office of the Court Administrator's recommendation of 15-day suspension to be below the range of penalties prescribed under CSC Memorandum Circular No. 19 s. 1999. Simple neglect of duty is therein classified as a less grave offense, punishable by suspension without pay for one (1) month and one (1) day to six (6) months, for the first offense.[22] Here, we find that respondent had been subject of the complaining judge's repeated memoranda for conduct detrimental to public service, including absences without official leave (AWOL). However, respondent has tendered apologies for his infractions and he has promised to faithfully perform his duties, if given another chance. Moreover, in the present case, it has not been shown that respondent's failure to make the returns of service of summons was malicious. Hence, we find that the suspension of respondent for one (1) month and one (1) day without pay would be a sufficient penalty for

his offense.

WHEREFORE, this Court finds respondent MELLARDO C. GAMOLO, Process Server, MCTC, Opol-El Salvador, Misamis Oriental GUILTY of simple neglect of duty. He is hereby SUSPENDED without pay for a period of one (1) month and one (1) day, with a stern warning that a repetition of the same or similar acts in the future shall be dealt with more severely.

**SO ORDERED.**

Bellosillo, (Chairman), Mendoza, Austria-Martinez, and Callejo, Sr., JJ., concur.

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[1] Rollo, pp. 1-2.

[2] Ibid.

[3] Id. at 12.

[4] Id. at 1.

[5] Id. at 5-6.

[6] Rollo, p. 7.

[7] Id. at 9.

[8] Ibid.

[9] Id. at 10.

[10] Rollo, p. 11.

[11] Id. at 12.

[12] Id. at 13.

[13] Id. at 16-17.

**[14] 363 SCRA 480, 487 (2001).**

**[15] 315 SCRA 85, 86 (1999).**

[16] Id. at 90, citing Manual for Clerks of Court, p. 33.

[17] Tolentino v. Galano, 160 SCRA 372, 378 (1988); San Pedro v. Resurreccion, 113 SCRA 543, 545 (1982).

[18] Office of the Court Administrator v. Sumilang, 271 SCRA 316, 321 (1997).

[19] Re: Suspension of Clerk of Court Rogelio R. Jacobo, Branch 16, Naval, Biliran, 294 SCRA 119,131 (1998); Manlavi v. Gacott, Jr., 244 SCRA 50, 54 (1995).

[20] Judge Diamante v. Alambra, A.M. No. P-99-1289, September 21, 2001, p. 8.

[21] Rollo, pp. 7-8.

[22] De la Victoria v. Mongaya, 352 SCRA 12, 18 (2001).

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