



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

**RAQUEL L. BANAWA and
 SIMONE JOSEFINA L. BANAWA,**
Complainants,

A.M. No. MTJ-19-1927
(Formerly OCA IPI No. 15-2764-MTJ)

- versus -

Present:

HON. MARCOS C. DIASEN, JR.,
 then Presiding Judge,
VICTORIA E. DULFO,
 Clerk of Court III and
RICARDO R. ALBANO,
 Sheriff III, all of Branch 62,
 Metropolitan Trial Court,
 Makati City,
Respondents.

BERSAMIN, C.J.,
DEL CASTILLO,
JARDELEZA,
GESMUNDO, and
CARANDANG, JJ.

Promulgated:
JUN 19 2019

X-----X

DECISION

DEL CASTILLO, J.:

This administrative case is rooted on a Verified Affidavit¹ dated November 21, 2014 filed by complainants Raquel L. Banawa and Simone Josefina L. Banawa charging then Presiding Judge Marcos C. Diasen, Jr. (Judge Diasen), Clerk of Court III Victoria E. Dulfo (Dulfo), and Sheriff III Ricardo R. Albano (Albano), all of Branch 62, Metropolitan Trial Court (MeTC) of Makati City, with gross negligence and gross ignorance of the law in relation to Small Claims No. 12-3822, entitled “*Standard Insurance Co., Inc. v. Simone Josefina L. Banawa and Raquel L. Banawa.*”

In their Verified Affidavit, complainants alleged that: (a) they received summons by substituted service on January 13, 2013 directing them to file a verified response to the attached statement of claims filed by Standard Insurance Co., Inc. (Standard Insurance) in Small Claims No. 12-3822;² (b) although they filed their response on January 24, 2013, they were not notified

¹ *Rollo*, pp. 1-6.
² *Id.* at 1.

of the hearings apparently set on November 29, 2012, December 11, 2012, February 19, 2013, and March 19, 2013;³ (c) they were surprised when they received a copy of the Decision⁴ dated March 19, 2013 rendered by Judge Diasen finding them jointly and solidarily liable to pay Standard Insurance the amount of ₱30,445.93 with interest at 6% per annum until fully paid;⁵ and (d) upon verification, they discovered that Standard Insurance was able to send a representative during those scheduled hearings despite the lack of notice of hearing in the records of the case.⁶

Complainants claimed that Dulfo and Albano were both guilty of gross negligence and gross ignorance of the law as these two failed to properly serve the notice of hearing together with the summons.⁷ They further faulted Dulfo for allowing the case to be submitted for decision without the requisite hearing.⁸ As regards Judge Diasen, complainants averred that he failed to fulfill his judicial duty to ensure that all the parties to a case were afforded the fundamental opportunity to be heard.⁹

The Report and Recommendation of the Office of the Court Administrator

In its Report¹⁰ dated December 12, 2016, the Office of the Court Administrator (OCA) found Dulfo and Albano guilty of simple neglect of duty as it was clearly shown in the records in Small Claims No. 12-3822 that no notice of hearing was served upon complainants,¹¹ viz.:

Respondent Clerk of Court Dulfo ought to ensure that complainants receive the notices of hearing so as not to render inutile their right to have their day in court. Indeed, even assuming that she had prepared the notice of hearing and attached the same to the summons, still[,] she failed to exercise sufficient diligence to ascertain that Sheriff Albano expeditiously performed his duty to serve said court processes on complainants. As the officer of the court next in line to the Presiding Judge, it is incumbent upon respondent Clerk of Court Dulfo to regularly check not only the status of the cases, but also the prompt performance of functions by the other court personnel and employees under her supervision.¹² x x x

³ Id. at 2.

⁴ Id. at 14-16.

⁵ Id. at 1.

⁶ Id. at 2.

⁷ Id. at 3.

⁸ Id.

⁹ Id. at 4.

¹⁰ Id. at 53-60.

¹¹ Id. at 55-56.

¹² Id. at 56.

x x x x

As regards Sheriff Albano, he fell short of his mandate to diligently exert effort to serve the notice of hearing on complainants. Well aware that his initial attempts to serve the summons were unsuccessful, he should have been more assiduous in ascertaining that the notice of hearing and summons had been served as mandated under Section 10 of the [Rule] of Procedure for Small Claims Cases. His carelessness and incompetence betray his unconcern for the importance of court processes which he is expected to serve with utmost fidelity.¹³ x x x

The OCA, however, absolved Judge Diasen from the administrative charges of gross negligence and gross ignorance of the law as his act of immediately rendering judgment due to the non-appearance of complainants was allowed under Section 18 of the Rule of Procedure in Small Claims Cases, as amended.¹⁴ Nevertheless, the OCA found that Judge Diasen had failed to diligently discharge his judicial duties for “[h]ad he been more meticulous in examining the records, he could have been alerted by the lack of notice of hearing on the part of complainants and looked further into the matter.”¹⁵

The OCA thus recommended that:

- (1) the instant administrative complaint against Presiding Judge Marcos C. Diasen, Jr., Clerk of Court III Victoria E. Dulfo, and Sheriff III Ricardo R. Albano, all of Branch 62, Metropolitan Trial Court, Makati City, be **RE-DOCKETED** as a regular administrative matter;
- (2) respondents Clerk of Court Dulfo and Sheriff Albano be found **GUILTY** of simple neglect of duty and imposed a **FINE** in the amount of ₱5,000.00 each, payable within thirty (30) days from receipt of notice;
- (3) respondent Judge Diasen, Jr. be found **GUILTY** of violation of Supreme Court rules, directives, and circulars and imposed a **FINE** in the amount of ₱10,000.00, payable within thirty (30) days from receipt of notice; and
- (4) respondents Judge Diasen, Jr., Clerk of Court Dulfo and Sheriff Albano be **STERNLY WARNED** that a repetition of the same or similar offenses shall be dealt with more severely by the Court.¹⁶

¹³ Id. at 57.

¹⁴ Id. at 59.

¹⁵ Id.

¹⁶ Id. at 60.

The Court's Ruling

The 2002 Revised Manual for Clerks of Court defines the nature and scope of the work and specific function of Clerks of Court as follows:

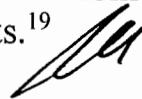
The Clerk of Court has general administrative supervision over all the personnel of the Court. As regards the Court's funds and revenues, records, properties and premises, said officer is the custodian. Thus, the Clerk of Court is generally also the treasurer, accountant, guard and physical plant manager thereof. The law also requires the Clerk of Court, in most instances, to act as *ex-officio* Sheriff and *ex-officio* Notary Public. In all official matters, and in relation with other governmental agencies, the Clerk of Court is also usually the liaison officer.

As to specific functions, the Clerk of Court attends Court sessions (either personally or through deputies), **takes charge of the administrative aspects of the Court's business** and chronicles its will and directions. The Clerk of Court **keeps the records** and seal, **issues processes**, enters judgments and orders, and gives, upon request, certified copies from the records. (Emphasis supplied)

Thus, Dulfo, as Clerk of Court, was responsible for the preparation of court processes, including notices of hearing, and for seeing to it that all returns of notices were attached to the corresponding case records. On the other hand, Albano, as Sheriff, was responsible for the service of the notices and other court processes assigned by the judge and/or the clerk of court.¹⁷

In this case, complainants were *not served* with the Notices of Hearing for the scheduled hearings on November 29, 2012, December 11, 2012, February 19, 2013, and March 19, 2013. Said Notices, too, were conspicuously *missing* from the records in Small Claims No. 12-3822. Although Dulfo presented a Notice of Hearing dated October 17, 2012,¹⁸ it was not shown that the same was actually served upon complainants, either by personal or substituted service, as the original copy of said notice bore no signature of a receiver as proof of receipt.

Clearly, both Dulfo and Albano were remiss in their respective duties as Clerk of Court and as Sheriff. And as Clerk of Court, Dulfo was chiefly responsible for the shortcomings of Albano to whom was assigned the task of serving said court processes to complainants.¹⁹



¹⁷ The 2002 Revised Manual for Clerks of Court, Section 17.7.

¹⁸ *Rollo*, p. 35.

¹⁹ See *Panaligan v. Valente*, 692 Phil. 1,11 (2012).

In light of these, the Court finds Dulfo and Albano guilty of **simple neglect of duty**, which is defined as “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.”²⁰

Pursuant to Section 46(D) of the Revised Rules on Administrative Cases in the Civil Service, the penalty for simple neglect of duty, a less grave offense, is suspension for a period of one (1) month and one (1) day, to six (6) months for the first violation. Section 48 of the same Rules provides the circumstances which mitigate the penalty, such as length of service in the government, physical illness, good faith, education, and/or other analogous circumstances.

The Court weighs, on one hand, the *serious* consequence of Dulfo’s and Albano’s negligence (a Decision was rendered against complainants without their having been able to defend themselves in court); and on the other, the *mitigating circumstance* in favor of Dulfo and Albano (this is their first offense), and deems suspension from office for two (2) months appropriate under the circumstances.²¹

As for the administrative liability of Judge Diasen, the Court agrees with the OCA that Judge Diasen’s act of immediately rendering judgment due to the non-appearance of complainants during the hearing in Small Claims Case No. 12-3822 did not constitute gross negligence or gross ignorance of the law as the same was authorized under Section 18,²² in relation with Section 12,²³ of the Rule of Procedure in Small Claims Cases, as amended. Nevertheless, the Court finds that Judge Diasen failed to comply with his administrative responsibilities under Rules 3.08 and 3.09 of the Code of Judicial Conduct which state:

²⁰ See *Dr. Dignum v. Diarla*, 522 Phil. 369, 378 (2006).

²¹ *Panaligan v. Valente*, supra note 19.

²² SEC. 18. *Non-appearance of Parties*. – Failure of the plaintiff to appear shall be cause for the dismissal of the claim without prejudice. The defendant who appears shall be entitled to judgment on a permissive counterclaim.

Failure of the defendant to appear shall have the same effect as failure to file a Response under Section 12 of this Rule. This shall not apply where one of two or more defendants who are sued under a common cause of action and have pleaded a common defense appears at the hearing.

Failure of both parties to appear shall cause the dismissal with prejudice of both the claim and counterclaim.

²³ SEC. 12. *Effect of Failure to File Response*. — Should the defendant fail to file his Response within the required period, and likewise fail to appear at the date set for hearing, the court shall render judgment on the same day, as may be warranted by the facts.

Should the defendant fail to file his Response within the required period but appears at the date set for hearing, the court shall ascertain what defense he has to offer and proceed to hear, mediate or adjudicate the case on the same day as if a Response has been filed.

RULE 3.08 – A judge should diligently discharge administrative responsibilities, maintain professional competence in court management, and **facilitate the performance of the administrative functions of other judges and court personnel.**

RULE 3.09 – A judge should **organize and supervise the court personnel to ensure the prompt and efficient dispatch of business**, and **require at all times** the observance of high standards of public service and fidelity. (Emphasis supplied)

It is settled that “[a] judge presiding over a branch of a court is, in legal contemplation, the head thereof having effective control and authority to discipline all employees within the branch.”²⁴ Consequently, Judge Diasen **shares accountability** for the administrative lapses of Dulfo and Albano in this case. As the OCA observed, had Judge Diasen meticulously examined the records in Small Claims No. 12-3822, he could have been prompted by the lack of Notice of Hearing therein to look further into the matter.²⁵

Accordingly, the Court finds Judge Diasen similarly guilty of simple neglect of duty. Given that Judge Diasen has already retired from the service on January 27, 2017, the Court imposes upon him a fine in the amount of ₱20,000.00, to be deducted from his retirement benefits.

WHEREFORE, the Court:

- (1) finds Clerk of Court III Victoria E. Dulfo and Sheriff III Ricardo R. Albano, Metropolitan Trial Court, Branch 62, Makati City, **GUILTY** of simple neglect of duty and imposes upon them the penalty of **SUSPENSION FROM OFFICE** for a period of two (2) months without pay, with a **STERN WARNING** that a repetition of the same or similar acts will be dealt with more severely; and,
- (2) finds Hon. Marcos C. Diasen, Jr., then Presiding Judge, Metropolitan Trial Court, Branch 62, Makati City, **GUILTY** of simple neglect of duty and orders him to pay a **FINE** in the amount of Twenty Thousand Pesos (₱20,000.00), the same to be deducted from his retirement benefits.



²⁴ *Amane vs. Atty. Mendoza-Arce*, 376 Phil. 575, 600 (1999).

²⁵ *Rollo*, p. 59.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


LUCAS P. BERSAMIN
Chief Justice


FRANCIS H. JARDELEZA
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice


ROSMARID. CARANDANG
Associate Justice