

FIRST DIVISION

[A.M. No. MTJ-19-1927 (Formerly OCA IPI No. 15-2764-MTJ), June 19, 2019]

**RAQUEL L. BANAWA AND SIMONE JOSEFINA L. BANAWA,
COMPLAINANTS, VS. 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.**

D E C I S I O N

DEL CASTILLO, J.:

This administrative case is rooted on a Verified Affidavit^[1] 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 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 Decision^[4] dated March 19, 2013 rendered by Judge Diasen finding them jointly and solidarity liable to pay Standard Insurance the amount of P30,445.93 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 Report^[10] 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

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 P5,000.00 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 P10,000.00, 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]

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]

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