

FIRST DIVISION

[A.M. No. P-13-3153 (Formerly A.M. No. 13-9-88-MeTC), October 14, 2013]

**ATTY. VLADIMIR ALARIQUE T. CABIGAO, COMPLAINANT, VS.
NEPTALI ANGELO V. NERY, SHERIFF III, BRANCH 30,
METROPOLITAN TRIAL COURT, MANILA, RESPONDENT.**

R E S O L U T I O N

REYES, J.:

This resolves the administrative complaint filed by Atty. Vladimir Alarique T. Cabigao (complainant) against Sheriff Neptali Angelo V. Nery (Nery), Sheriff III of the Metropolitan Trial Court (MeTC) of Manila, Branch 30.

The complainant is the counsel of Vision Automotive Technology, Inc. (Vision Automotive), the plaintiff in Civil Case No. 01785-SC entitled *Vision Automotive Technology, Inc. v. Sound and Beyond Autoworks* which was then pending before the MeTC of Manila, Branch 30. On March 15, 2012, the complainant sent a letter-complaint^[1] to the Presiding Judge of the MeTC of Manila, Branch 30, alleging that Nery called Vision Automotive and asked for money to cover the transportation expenses in serving the summons to the defendant in New Manila, Quezon City.

He claimed that, on February 20, 2012, Vision Automotive deposited the amount of One Thousand Pesos (P1,000.00) in the account of Nery with the Land Bank of the Philippines under account number 1987-1141-90.^[2] However, despite receipt of the money deposited by Vision Automotive, Nery still failed to serve the summons to the defendant in Civil Case No. 01785-SC.

The complainant furnished the Office of the Court Administrator (OCA) with a copy of his letter-complaint. On March 30, 2012, then Assistant Court Administrator^[3] Thelma C. Bahia directed Nery to comment on the allegations contained in the complainant's letter-complaint.^[4]

In his comment^[5] dated May 9, 2012, Nery denied that he asked for money from Vision Automotive. He averred that Civil Case No. 01785-SC was raffled to their branch on January 13, 2012; that a month after it was filed, Vision Automotive has yet to coordinate with him as regards the service of summons to the defendant. He admitted having called a representative of Vision Automotive, but clarified that he only did so to request Vision Automotive to defray the transportation expenses for the service of summons as it was burdensome to withdraw the amount of P1,000.00 from the Sheriff's Trust Fund. He claimed that it was the representative of Vision Automotive who insisted on depositing the amount of P1,000.00 in his bank account to defray the expenses in serving the summons on the defendant.

Nery further claimed that he never intended to tarnish the image of the judiciary when he accepted the money from Vision Automotive; that there were instances in the past when he used his own money in order to expedite court processes. Nery likewise claimed that the complainant had already manifested to the OCA that he is already withdrawing his complaint.^[6] He further alleged that he had already served the summons to the defendant in Civil Case No. 01785-SC on March 16, 2012. After which, Nery returned the remaining balance of the P1,000.00 given by Vision Automotive to defray the expenses in serving the summons.

On August 6, 2013, the OCA issued its evaluation and recommendation on the case.^[7] In its evaluation, the OCA found that there is sufficient evidence to hold Nery administratively liable, pointing out that the latter did not categorically deny having asked and received money from Vision Automotive. The OCA further opined that Nery should have served the summons to the defendant in Civil Case No. 01785-SC within fifteen (15) days from his receipt thereof pursuant to the 2002 Revised Manual for Clerks of Court; that his failure to do so constituted simple neglect of duty.

As regards Nery's demand and subsequent receipt of money from Vision Automotive, the OCA found him liable for less serious dishonesty, pointing out that only the payment of sheriff's fees can be lawfully received by a sheriff and the acceptance of any other amount is improper even if it were to be applied for a lawful purpose. Accordingly, the OCA recommended that:

RECOMMENDATION: It is respectfully recommended for the consideration of the Honorable Court that:

1. the instant complaint against Neptali Angelo V. Nery, Sheriff, Branch 30, Metropolitan Trial Court, Manila, be **DOCKETED** as a regular administrative matter; and
2. respondent Nery be found **GUILTY** of less serious dishonesty and be **FINED** in an amount equivalent to his six (6) months salary to be paid to the Court within thirty (30) days from notice.^[8]

After a careful review of the records of this case, the Court adopts the findings and recommendation of the OCA albeit with modification as regards the sanction to be imposed.

Summons to the defendant in a case shall forthwith be issued by the clerk of court upon the filing of the complaint and the payment of the requisite legal fees.^[9] Once issued by the clerk of court, it is the duty of the sheriff, process server or any other person serving court processes to serve the summons to the defendant efficiently and expeditiously. Failure to do so constitutes simple neglect of duty, which is 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.^[10]

It took Nery more than two months to serve the summons to the defendant in Civil Case No. 01785-SC from the time the same was raffled to their branch. Civil Case

No. 01785-SC was raffled to the MeTC of Manila, Branch 30, on January 13, 2012; Nery was only able to serve the summons on the defendant therein only on March 16, 2012.

Explaining the delay in the service of the summons, Nery claims that Vision Automotive, from the time it deposited the P1,000.00 in his bank account, no longer coordinated with him as regards the service of the summons. Nery's reasoning is flawed. The supposed lack of coordination on the part of Vision Automotive would not hinder the service of the summons to the defendant in Civil Case No. 01785-SC. To stress, once issued by the clerk of court, it becomes the duty of the sheriff, process server or any other person serving court processes to promptly serve the summons on the defendant in a case.

There being no sufficient justification for his delay in serving the summons on the defendant in the said case, Nery clearly disregarded his duty to promptly serve the summons on the defendant in Civil Case No. 01785-SC and should thus be held liable for simple neglect of duty.

It is likewise improper for Nery to ask and actually receive money from Vision Automotive, even if the money would be used to defray the expenses in serving the summons to the defendant in Civil Case No. 01785 SC. "Sheriffs are not allowed to receive any payments from the parties in the course of the performance of their duties. They cannot just unilaterally demand sums of money from the parties without observing the proper procedural steps."^[11]

Section 10, Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC, outlines the procedure to be observed in defraying the actual travel expenses in serving summons, viz:

Sec. 10. Sheriffs, Process Servers and other persons serving processes. –

(a) For serving summons and copy of complaint, for each defendant, Two Hundred ([P]200.00) Pesos;

x x x x

In addition to the fees hereinabove fixed, the amount of One Thousand ([P]1,000.00) Pesos shall be deposited with the Clerk of Court upon filing of the complaint to defray the actual travel expenses of the sheriff, process server or other court-authorized persons in the service of summons, subpoena and other court processes that would be issued relative to the trial of the case. In case the initial deposit of One Thousand ([P]1,000.00) Pesos is not sufficient, then the plaintiff or petitioner shall be required to make an additional deposit. The sheriff, process server or other court authorized person shall submit to the court for its approval a statement of the estimated travel expenses for service of summons and court processes. Once approved, the Clerk of Court shall release the money to said sheriff or process server. After service, a statement of liquidation shall be submitted to the court for approval. After rendition of judgment by the court, any excess from the deposit shall be returned to the party who made the deposit.

Accordingly, the plaintiff in a case is required to deposit the amount of P1,000.00 with the clerk of court, which would be used to defray the actual travel expenses in serving the summons. The sheriff, process server or any other person authorized to serve court processes would then submit to the court a statement of estimated travel expenses for the service of the summons. Once the court approves the statement of estimated travel expenses, the clerk of court shall release the money to the sheriff, process server or any other person authorized to serve court processes.

Nery failed to follow the foregoing procedure and, instead, opted to ask Vision Automotive to defray the actual travel expenses that would be incurred in serving the summons to the defendant. His failure to strictly comply with the provisions of Section 10, Rule 141 of the Rules of Court warrants the imposition of disciplinary measure. Considering that Nery demanded from Vision Automotive only the amount needed to actually defray his actual travel expenses, the Court agrees with the OCA that he should be held administratively liable for less serious dishonesty.

The Court "cannot overemphasize that the conduct required of court personnel must always be beyond reproach and circumscribed with the heavy burden of responsibility as to let them be free from any suspicion that may taint the judiciary. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage. As a court employee, it therefore behooves respondent sheriff to act with more circumspection and to steer clear of any situation, which may cast the slightest suspicion on his conduct."^[12]

"Sheriffs, as officers of the court and agents of the law, play an important role in the administration of justice. They are in the forefront of things, tasked as they are to serve judicial writs, execute all processes, and carry into effect the orders of the court."^[13] As a front-line representative of the judicial system, sheriffs must always demonstrate integrity in their conduct for once they lose the people's trust, they also diminish the people's faith in the entire judiciary.^[14]

Section 50 of the Revised Rules on Administrative Cases in the Civil Service^[15] (RRACCS) mandates that:

Sec. 50. Penalty for the Most Serious Offense.—If the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances.

The most serious charge against Nery is less serious dishonesty, which merits the penalty of suspension of six (6) months and one (1) day to one (1) year for the first offense.^[16] The offense of simple neglect of duty shall be taken as an aggravating circumstance against Nery.

"However, while this Court is duty-bound to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, this Court also has the discretion to temper the harshness of its judgment with mercy."