

SECOND DIVISION

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

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

DECISION

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

<u>CASE NO.</u>	<u>DATE RECEIVED</u>
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-	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 1st Indorsement^[7] dated 23 September 2001, Judge Evelyn Gamotin Nery explains:

1. 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";

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*;
3. 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 1st 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