746 PHIL. 1

SECOND DIVISION

[A.M. No. P-14-3271 [formerly OCA IPI No. 11-3640-P], October 22, 2014]

ATTY. ALAN A. TAN, COMPLAINANT, VS. ELMER S. AZCUETA, PROCESS SERVER, REGIONAL TRIAL COURT, BRANCH 22, IMUS, CAVITE, RESPONDENT.

R E S O L U T I O N

BRION, J.:

For resolution of the Court is the present affidavit-complaint[1] dated May 4, 2011, filed by Atty. Alan A. Tan (*Atty. Tan*) against Elmer S. Azcueta (*respondent*), Process Server, Regional Trial Court (*RTC*), Branch 22, Imus, Cavite, for gross negligence in the performance of his duty.

This administrative case stemmed from the complaint dated November 4, 2010 filed by complainant Atty. Tan, counsel for Jennelyn Yabut-Gopole, plaintiff in Civil Case No. 4263-10, with the RTC of Imus, Cavite, Branch 22, for Damages with prayer that defendant Felomina F. Cayabyab (*defendant*) be made liable for grave oral defamation.

Atty. Tan alleged that summons was issued by the RTC against the defendant on November 18, 2010. However, up to the date of the filing of the present administrative case, the summons remained unserved on the defendant. The oral defamation case has not yet been heard because the defendant has not filed his answer to the complaint for damages.

Required to comment on the administrative complaint, the respondent vehemently denied the accusations against him. He alleged that he tried to serve the summons on the defendant four times but on all occasions she was not around at her given address. To prove his allegations, he attached to his comment/answer as annexes "1," "2," "3," and "5" the Returns of Summons[2] he submitted to the court dated January 4, 2011, February 25, 2011, April 26, 2011 and May 27, 2011. Further, he alleged that due to his heavy workload as Process Server and as Special Sheriff, it took him sometime to complete the service of summons to the defendant. He stressed that he attended to the service of summons issued by the court with earnest efforts and utmost diligence. He also allotted appropriate time and effort to the other equally urgent and important matters not only to the case handled by the complainant. He prayed that the case against him be dismissed outright for lack of merit.

On recommendation of the Office of the Court Administrator (*OCA*), the Court, to determine the veracity of the summons submitted by the respondent, issued a resolution dated November 25, 2013 referring the case to the Executive Judge of the RTC, Imus, Cavite, for investigation, report and recommendation.

Executive Judge Norberto J. Quisumbing, Jr. (*Investigating Judge*) set the case for hearing twice but on both occasions, Atty. Tan did not appear despite notice. Only the respondent appeared and presented his evidence with the assistance of his lawyer. The respondent testified that on the dates he went to the residence of the defendant to serve the summons, he was always met only by a minor who told him that the defendant was not in the house.[3] He was able to make a substituted service only on his fourth attempt on May 27, 2011, when he chanced upon one Jennylee Catalan who resides in the place.[4]

In an Administrative Investigation Report dated March 27, 2014, the Investigating Judge found that from the evidence submitted by the respondent, it is not true that he did not serve the summons as alleged by Atty. Tan. He served the summons on three different dates but unfortunately the defendant was not in her house on those dates. He was able to make substituted service only on the fourth attempt on May 27, 2011 by leaving the summons to one Jennylee Catalan. The Investigating Judge felt the intervals between the dates the services were effected were very long. Although he had many other cases to attend to as process server and special sheriff, still, he should have exerted extra effort in effecting the service of summons as early as possible so as not to delay the speedy administration of justice.

The Investigating Judge recommended that the respondent be suspended from office for one (1) month without pay, with warning that a repetition of the same or similar act will be dealt with more severely.

The Court agrees with the Investigating Judge's finding that the intervals between the dates the summons were served were very lengthy. The first service was made on January 4, 2011, the second service was on February 25, 2011 after a period of 52 days. The third attempt was on April 26, 2011 after a period of 60 days and the last service was on May 27, 2011 after a period of 31 days.

The duty of a process server is vital to the machinery of the justice system. His primary duty is to serve court notices, which precisely requires utmost care on his part by seeing to it that all notices assigned to him are duly served upon the parties. Having a heavy workload is not a compelling reason to justify failure to perform one's duties properly. Otherwise, every government employee charged with negligence and dereliction of duty would always proffer a similar excuse to escape punishment, to the prejudice of the government service.

We are not unmindful of the widespread and flagrant practice whereby the defendants actively attempt to frustrate the proper service of summons by refusing to give their names, rebuffing request to sign for or receive documents, or eluding officers of the courts.[5] However, although sheriffs are not expected to be sleuths and cannot be faulted when the defendants themselves engage in deception to thwart the orderly administration of justice, they must be resourceful, persevering, canny and diligent in serving the process on the defendant.[6] Although the respondent had many other cases to attend to as process server and special sheriff, still, the respondent should have exerted extra effort to effect the service of summons as possible so as not to delay the speedy administration of justice.

Atty. Tan had lost interest in pursuing his administrative complaint against the