

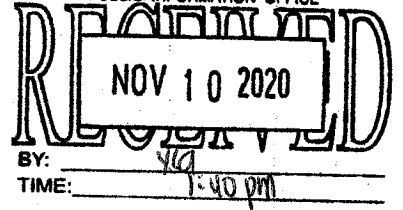


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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **June 17, 2020**, which reads as follows:

“A.M. No. P-20-4083 [Formerly OCA IPI No. 17-4722-P] (*Office of the Court Administrator vs. Francisco E. Amascual, Process Server, Branch 30, Regional Trial Court, Basey, Eastern Samar*). – The Court **NOTES** the Report dated September 4, 2019 of the Office of the Court Administrator (OCA) on the Complaint-Affidavit dated June 1, 2017 against Francisco E. Amascual, Process Server, Branch 30, Regional Trial Court, Basey, Eastern Samar, for gross dishonesty, gross negligence, conduct prejudicial to the best interest and infidelity in the custody of court records and **RE-DOCKETS** the instant administrative complaint as a regular administrative matter.

This Court resolves the Complaint-Affidavit against Francisco E. Amascual (Amascual), a court process server whom the Office of the Court Administrator recommended¹ to be found guilty of simple neglect of duty for losing court records.

Lilio J. Ocier (Ocier) filed before the Office of the Court Administrator a Complaint-Affidavit² for gross dishonesty, gross negligence, conduct prejudicial to the best interest of the service, and infidelity in the custody of court records against Amascual, who works at Branch 30 of the Regional Trial Court, Basey, Samar.

Ocier accused Amascual of conduct prejudicial to the best interest of the service for his allegedly obstinate refusal to pay his loan despite repeated demands.³ He narrated that on September 16, 2014, he lent ₱10,000.00 to Amascual, who in turn executed a promissory note entitled “Good For”⁴ with a due date on October 16, 2014. When the deadline passed, Ocier repeatedly demanded payment, but Amascual allegedly failed to pay.⁵

¹ Rollo, pp. 91–95. The September 4, 2019 Report and Recommendation was signed by Deputy Court Administrators Raul Bautista Villanueva and Jenny Lind R. Aldecoa-Delorino.

² Id. at 1–5.

³ Id. at 91.

⁴ Id. at 1.

⁵ Id. at 6.

On May 10, 2017, Ocier sent Amascual a Demand Letter⁶ via registered mail, but Amascual still allegedly refused to pay.⁷

Ocier also accused Amascual of gross negligence and infidelity in the custody of court records for losing the records of a civil case involving Ocier, entitled *Lilio Ocier v. Julian Casio Jr.* As proof, he presented Amascual's Affidavit⁸ stating the circumstances of the loss of records.⁹

In the Affidavit, Amascual narrated that aside from being a process server, he was also a record custodian at his court branch. On June 14, 2016, he went to the Regional Trial Court of Tacloban City, Branch 8 to get orders in cases where his presiding judge inhibited.¹⁰ Allegedly, Atty. Aurorita Bangoy (Atty. Bangoy), that branch's clerk of court, gave him the case records mistakenly sent to their sala.¹¹ When Amascual returned to his own branch, he kept the records in the stockroom but failed to report their transmittal to Atty. Dherlee H. Rivas (Atty. Rivas), his branch's clerk of court, because of his busy schedule and old age. The records were lost as the stockroom was undergoing repairs from super typhoon Yolanda. Amascual maintained that the loss was not due to "malicious intent or bad faith" but purely "inadvertence" on his part. He even exerted efforts to reproduce the records by going to the parties' counsels, to no avail.¹²

Ocier alleged that the Affidavit contradicted Atty. Bangoy's certification stating that she had transmitted the records through Atty. Rivas. Amascual supposedly made it appear that there was no protocol in receiving and transmitting case records, when he simply failed to report the receipt of the records. He was allegedly negligent in storing the records in the stockroom when it was undergoing repairs.¹³ As proof, Ocier presented a certification from the municipal engineer that the stockroom was undergoing construction from February 22, 2016 to July 25, 2016.¹⁴

On August 18, 2017, the Office of the Court Administrator issued an Indorsement of Ocier's Complaint and required Amascual to comment.¹⁵

On September 25, 2017, Amascual sent a letter stating that pages 3 and 4 of the Complaint were missing; thus, he would need additional time from the service of a complete copy to file his comment. This motion was granted on October 3, 2017.¹⁶

⁶ Id. at 7.

⁷ Id. at 2.

⁸ Id. at 9.

⁹ Id. at 2 and 91.

¹⁰ Id. at 9.

¹¹ Id. at 9 and 19.

¹² Id. at 9.

¹³ Id. at 3.

¹⁴ Id. at 10.

¹⁵ Id. at 14.

¹⁶ Id. at 15-17.

On November 9, 2017, Amascual filed his Comment.¹⁷ On the first allegation, he admitted the existence of the loan and promissory note, but claimed that he, through his wife, had paid Ocier in full.¹⁸

As proof, he presented the Affidavit¹⁹ executed by his wife, Jocelyn Amascual (Jocelyn), stating that in October 2014, she had given ₱6,000.00 to Felcon Cajarop (Cajarop), Ocier's common law wife.²⁰ Cajarop allegedly did not issue an acknowledgment receipt but promised to note the payment at the back of the promissory note. On April 27, 2017, Jocelyn returned to pay Ocier an additional ₱5,000.00, this time with an acknowledgement receipt prepared by Amascual. However, Ocier refused to sign it without talking to Cajarop to verify the first payment.²¹

Amascual clarified in his Comment that his wife saw Cajarop annotate the back of the promissory note for her first payment.²²

Amascual also pointed out that they had gone to the barangay to settle the issue on payment, but Ocier refused to present the original promissory note, saying that it was in the Supreme Court.²³ Amascual attached in his Comment the minutes of the mediation proceedings in the barangay.²⁴

On the charge of infidelity in the custody of court records, Amascual reiterated that there was no bad faith on his part when he lost the records. He also stated that it was the first time in his 27 years of service that it happened. He added that Ocier was not prejudiced by this, as the presiding judge immediately ordered the reconstruction of the records and eventually adjudged the case in his favor.²⁵

On December 4, 2017, Ocier filed his Reply,²⁶ denying that Amascual paid him. He attached a notarized machine copy²⁷ of the original promissory note to show that no annotations were made on its back. Moreover, he submitted an Affidavit²⁸ executed by Cajarop, denying that she had received money from Jocelyn.

¹⁷ Id. at 18-20.

¹⁸ Id. at 18.

¹⁹ Id. at 21-22.

²⁰ Id. at 21.

²¹ Id.

²² Id. at 18-A.

²³ Id. at 19.

²⁴ Id. at 49-52.

²⁵ Id. at 19-20.

²⁶ Id. at 68-71.

²⁷ Id. at 72.

²⁸ Id. at 73.

In his Rejoinder,²⁹ Amascual maintained that he was not negligent in storing the records because other than the storage room, there was no other room where the records could be stored without being damaged.³⁰

On September 4, 2019, the Office of the Court Administrator released a Report and Recommendation,³¹ opting that Amascual be found guilty of simple neglect of duty.

On the nonpayment charge, the Office of the Court Administrator held that there was doubt on whether Amascual willfully refused to pay his debt. Further, it held that the factual issue of whether the debt was still outstanding would be best determined by a trial court.³²

The Office of the Court Administrator, however, found Amascual to be guilty of simple neglect for the loss of records. It pointed out that as a process server, Amascual should have performed the duties assigned to him, which meant that he should have not only received the records, but also turned them over to Atty. Rivas, his superior. In failing to do as instructed, he failed to discharge this duty, which counted as simple neglect of duty.³³

Due to Amascual's compulsory retirement on April 30, 2018, the Office of the Court Administrator did away with the penalty of suspension and recommended a fine of ₱5,000.00 to be deducted from his accrued benefits.³⁴

The issues for this Court's resolution are the following:

First, whether or not respondent Francisco E. Amascual is guilty of willful failure to pay a just debt; and

Second, whether or not he is guilty of simple neglect and liable to pay a fine of ₱5,000.00.

This Court adopts the recommendation of the Office of the Court Administrator.

I

Nonpayment of a just debt is a ground for disciplinary action under the Administrative Code:

²⁹ Id. at 82-84.

³⁰ Id. at 83.

³¹ Id. at 91-95.

³² Id. at 93.

³³ Id. at 93-94.

³⁴ Id. at 94.

SECTION 46. *Discipline: General Provisions.* — (a) No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process.

(b) The following shall be grounds for disciplinary action:

....

(22) Willful failure to pay just debts or willful failure to pay taxes due to the government[.]

A just debt includes “[c]laims adjudicated by a court of law” or “[c]laims the existence and justness of which are admitted by the debtor.”³⁵ It “is classified as a light offense, with the corresponding penalty of reprimand for the first offense.”³⁶ This Court has held that “the gravamen of the offense is the unwillingness to pay a just obligation,”³⁷ which forms conduct unbecoming a public official. In *Tan v. Sermonia*:³⁸

Indeed, when Sermonia backtracked on her promise to pay her debt, such act already constituted a ground for administrative sanction, for any act that would be a bane to the public trust and confidence reposed in the judiciary shall not be countenanced. Sermonia’s unethical conduct has diminished the honor and integrity of her office, stained the image of the judiciary and caused unnecessary interference, directly or indirectly, in the efficient and effective performance of her functions. Certainly, to preserve decency within the judiciary, court personnel must comply with just contractual obligations, act fairly and adhere to high ethical standards. Like all other court personnel, Sermonia is expected to be a paragon of uprightness, fairness and honesty not only in all her official conduct but also in her personal actuations, including business and commercial transactions, so as to avoid becoming her court’s albatross of infamy.

The gravamen of Sermonia’s offense is her unwillingness to pay a just obligation. The penalty imposed by the law is not directed at Sermonia’s private life, but at her actuation unbecoming a public official.³⁹ (Citations omitted)

The Office of the Court Administrator correctly observed that respondent’s allegation of loan payment negates a finding of unwillingness. Respondent repeatedly said in his pleadings that, through his wife, he had paid complainant. He even instituted mediation proceedings in the barangay to prove that he had paid the loan.⁴⁰ Thus, he is not guilty of willful refusal to pay a just debt.

³⁵ RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (2017), Rule 10, sec. 50(F)(9).

³⁶ *Tordilla v. Amilano*, 753 Phil. 23, 28 (2015) [Per J. Perlas-Bernabe, First Division] citing *Manaysay v. Samaniego*, 519 Phil. 244, 246 (2006) [Per J. Tinga, Third Division].

³⁷ *Id.* at 29.

³⁸ 612 Phil. 314 (2009) [Per J. Chico-Nazario, Third Division].

³⁹ *Id.* at 322.

⁴⁰ *Rollo*, p. 54.

This Court agrees with the Office of the Court Administrator that whether the loan was paid is an issue properly resolved by a trial court. The best evidence of the promissory note is the original itself.⁴¹ As far as this administrative case is concerned, the issue is whether respondent unwillingly refused to pay his obligation to complainant. We rule that he did not.

II

On the charge of infidelity in the custody of court records, this Court finds the recommendations of the Office of the Court Administrator well taken.

In *Reyes v. Publico*,⁴² a process server who was unable to serve mail matters was found guilty of simple neglect of duty for failing to give proper attention to a required task:

According to the Manual for Clerks of Court, the process server —

... serves court processes such as subpoena, *subpoena duces tecum*, summons, court order and notices; prepares and submits returns of service of court process; monitors messages and/or delivers court mail matters received and dispatched by him; and performs such other duties as may be assigned to him.

The role of the process server is indispensable in the machinery of the justice system, where the constitutional mandate of the speedy disposition of cases entails an efficient means of communication between the courts and the litigants. Due to respondent's failure to observe his duties diligently, the trial court encountered problems in the service of its court processes, the most obvious consequence of which is the delay in the progress of cases. Complainant's evidence adequately established that proceedings in several cases heard before the trial court, such as hearings for the taking of witnesses' testimony and for promulgation of judgment, were postponed because the parties did not appear for lack of notice.

....

We agree with the finding of the OCA that respondent is guilty of simple neglect of duty, which is the failure of an employee to give proper attention to a required task. Simple neglect of duty signifies "disregard of a duty resulting from carelessness or indifference." The Court cannot countenance neglect of duty, for even simple neglect of duty lessens the people's confidence in the judiciary, and, ultimately, in the administration of justice. However, the recommended penalty of reprimand does not correspond to the range of penalties under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service. Simple

⁴¹ RULES OF COURT, Rule 130, sec. 3.

⁴² 538 Phil. 10 (2006) [Per J. Carpio, Third Division].

neglect of duty, if committed for the first time, is punishable by suspension of one month and one day to six months.⁴³ (Citations omitted)

In this case, respondent was entrusted with the custody of case records mistakenly sent to the Regional Trial Court of Tacloban. Atty. Bangoy, Branch 8's clerk of court, instructed him to deliver them to his superior, Atty. Rivas; yet, he admittedly failed to comply with this instruction. His old age and busy schedule cannot excuse his failure to discharge his duties.

Respondent's negligence was even more apparent when, instead of notifying Atty. Rivas, he simply stored the records in the stockroom without regard for their safety, given the repairs and influx of workers then. The absence of other places for storing records, and the alleged inefficiency of the filing system, cannot excuse his failure to properly turn over the records to Atty. Rivas. In failing to do so, he also prevented Atty. Rivas, the branch clerk of court, from performing her duty of safekeeping the court records.⁴⁴ The case records' loss can be directly attributed to respondent's failure to report to Atty. Rivas. Thus, the Office of the Court Administrator properly found that respondent is guilty of simple neglect of duty.

Rule 10, Section 50(D)(1)⁴⁵ of the 2017 Rules on Administrative Cases on Civil Service penalizes simple neglect of duty with suspension from service from one month and one day to six months for the first offense, and dismissal for the second offense. However, due to his compulsory retirement on April 30, 2018, respondent can no longer serve the penalty of suspension. Thus, as recommended by the Office of the Court Administrator, this Court imposes a fine of ₱5,000.00 to be deducted from his retirement benefits under Section 52(1)(d)⁴⁶ of the 2017 Rules.

WHEREFORE, this Court resolves to **ADOPT** and **APPROVE** the findings and recommendations of the Office of the Court Administrator in its September 4, 2019 Report and Recommendation.

⁴³ Id. at 19-20.

⁴⁴ See *Re: Loss of Court Exhibits at RTC, Br. 136, Makati City*, 343 Phil. 510 (1997) [Per J. Padilla, En Banc].

⁴⁵ RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (2017), Rule 10, sec. 50(D)(1) provides:
SECTION 50. *Classification of Offenses*. — Administrative offenses with corresponding penalties are classified into grave, less grave and light, depending on their gravity or depravity and effects on the government service.

.....
D. The following less grave offenses are punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense; and dismissal from the service for the second offense:

1. Simple Neglect of Duty[.]

⁴⁶ RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (2017), Rule 10, sec. 52(1)(d) provides:

SECTION 52. *Penalty of Fine*. — The following are the guidelines for the penalty of fine:

1. The disciplining authority may allow payment of fine in place of suspension if any of the following circumstances is present:

.....
d. When the respondent has already retired or otherwise separated from government service and the penalty of suspension could not be served anymore, the fine may be sourced from the accumulated leave credits or whatever benefits due the respondent.

Respondent Francisco E. Amascual is found **GUILTY** of simple neglect of duty. His accrued benefits are ordered to be **RELEASED IMMEDIATELY**, subject to a **DEDUCTION of ₱5,000.00** as penalty for simple neglect of duty.

SO ORDERED.” (Zalameda, J., on wellness leave.)

Very truly yours,

Misael Domingo C. Battung III
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court
1/10/14/2020

Mr. Lilio J. Ocier
Complainant
Barangay Mercado, Basey
6720 Western Samar

Mr. Francisco E. Amascual
Respondent
Barangay Lawa-an Basey
6720 Western Samar

Hon. Tarcelo A. Sabarre, Jr.
The Presiding Judge
REGIONAL TRIAL COURT
Branch 30, Basey
6720 Samar

Hon. Jose Midas P. Marquez
Court Administrator
OFFICE OF THE COURT ADMINISTRATOR
Supreme Court, Manila

Hon. Raul Bautista Villanueva
Hon. Jenny Lind R. Aldecoa-Delorino
Hon. Leo T. Madrazo
Deputy Court Administrators
OFFICE OF THE COURT ADMINISTRATOR
Supreme Court, Manila

Hon. Lilian C. Barribal-Co
Hon. Maria Regina Adoracion Filomena M. Ignacio
Assistant Court Administrators
OFFICE OF THE COURT ADMINISTRATOR
Supreme Court, Manila

JUDICIAL AND BAR COUNCIL
Supreme Court, Manila

PHILIPPINE JUDICIAL ACADEMY
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(Atty. Ruby E. Garcia)
Cash Collection & Disbursement
Office of Administrative Services
(Atty. Caridad A. Pabello)
Court Management Office
(Atty. Marina B. Ching)
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