

JUDGE RODERICK A. MAXINO, COMPLAINANT, VS. HERMOLO B. FABUGAIS, PROCESS SERVER, MUNICIPAL TRIAL COURT IN CITIES, DUMAGUETE CITY, BRANCH 2, RESPONDENT.

A.M. NO. P-05-1946 (FORMERLY A.M. OCA IPI NO. 03-1720-P). January 31, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

In a verified Letter[1] dated April 22, 2003 addressed to the Court Administrator, respondent Hermolo B. Fabugais, Process Server, Municipal Trial Court in Cities (MTCC), Dumaguete City, Branch 2, requested his temporary detail or transfer from his present assignment, alleging that he was making the request as he could “no longer stand the harassment and oppression being imposed on him” by Presiding Judge Roderick A. Maxino.

The respondent pointed out that two previous acting judges of the court gave him “satisfactory” ratings, while Judge Maxino rated his performance as “unsatisfactory.” He also alleged that the judge asked him to voluntarily resign; otherwise, an administrative complaint for unsatisfactory performance would be filed against him seeking his dismissal from the service. The respondent stated that Judge Maxino was being unfair, unjust and oppressive, and that his attention should have been called first to warn him of lapses in his performance. The respondent stated that he had already referred the matter to some of the judges who were willing to accommodate him upon favorable approval of the Court Administrator. He added that Judge Maxino had been evaluating the rating of his staff, a function which, to his knowledge, belonged to the Clerk of Court.

In a Letter dated June 20, 2003, Judge Maxino admitted that he personally advised the respondent to voluntarily resign from the service rather than face an administrative complaint before the Civil Service Commission (CSC) as a consequence of his unsatisfactory performance. The judge clarified that the respondent’s attention had been called for failing to serve the court’s processes and was required to explain his lapses in writing. The judge claimed that the respondent ignored the directive, but for reasons of compassion, no disciplinary action was meted on the latter.

According to Judge Maxino, the following entries in the court’s logbook would disprove the respondent’s claim of satisfactory performance:

Case No.

Date summons/ Subpoena issued

Date

summons/

subpoena

taken by

Fabugais

Date summons/ subpoena served by Fabugais

Crim.Case L-27 Feb. 21, 2001 July 21, 2001

Civil Case 2001-058 June 29, 2001 July 7, 2001 Sept. 12, 2001

Civil Case 95-387 July 19, 2001 July 20, 2001 Jan. 24, 2002

Civil Case 2000-164 July 25, 2001 Dec. 3, 2001

Civil Case 97-117 Aug. 3, 2001 Jan. 3, 2002[2]

Judge Maxino further narrated, thus;

In one occasion, Mr. Fabugais returned a subpoena informing the court that the named person is nowhere to be found at the given address but on the date the case was called for trial, the person subpoenaed appeared and asked the court why she was not informed of the court's setting. The nearest conclusion why such event takes place is the fact that Mr. Fabugais returned the subpoena without actually serving the same to the person subpoenaed. This is just one of those times that the court was placed in an embarrassing situation which incidents Mr. Fabugais said he could not recall, [and I] quote: "I cannot recall a single incident where my attention was called because of a complaint made by the lawyers and other parties who have a case in the court where I am working. Court orders and notices are delivered to counsel and parties on time." If none of the parties personally complained to him, it is because counsels and parties [raise] the issue of "no notice" in open court and the court in saving its face, directs the process server to explain in writing why he failed to serve the court processes on time or upon the parties. If we were able to continue to hear cases despite his shortcomings, it is all because of the client's lawyer's efforts to inform them of the court's setting. Mr. Fabugais[s] receipt of annexes "A," "B," "C," "D," "E," "F" and "G" makes his statement above-quoted untrue.[3]

Judge Maxino averred that the respondent's acts constitute inefficiency and recommended the latter's immediate dismissal from the service.

The respondent was directed to comment on Judge Maxino's Letter in a 1st Indorsement dated August 1, 2003.

The respondent explained that he was the only process server assigned at the MTCC, Dumaguete City, Branch 2, while other MTCCs have two process servers in their courts. He narrated the reason for problems encountered in serving processes, such as numerous summonses, incorrect addresses, parties who changed their addresses without notifying the court, difficulty in locating such parties, and refusal of others to cooperate.[4] He alleged that he had already explained these difficulties to Judge Maxino, and insisted that he could not understand why the judge was now demanding his immediate dismissal from the service.

In its Report dated May 25, 2004, the Office of the Court Administrator (OCA) recommended that the June 20, 2003 Letter of Judge Maxino be treated as an administrative complaint against the respondent for neglect of duty. It was, likewise, recommended that the respondent be fined in the amount of P1,000.00 for inefficiency.

In a Resolution dated August 9, 2004, the matter was referred to Executive Judge Araceli S. Alafriz, Regional Trial Court, Dumaguete City, for investigation, report and recommendation.

In his Report dated November 10, 2004, the Executive Judge made the following findings:

At the hearing of the case on September 16, 2004, respondent Fabugais was given a period of fifteen (15) days within which to submit his supplemental answer to the complaint. Meanwhile, the logbook containing the entries on service of summons was brought to the Court for comparison with the entries earlier submitted and for marking. The same entries were submitted by the respondent as part of his evidence, to show that he had, in

fact, served the summons on the parties and their witnesses before its scheduled date of hearing. As admitted by the respondent, he served the summons not on or about the date of its issuance but on a monthly basis.

Thus, in 2001, respondent served summons/notices only on the following dates –
For the month of February:

February 14, 20, 21, 22, 23, 24 (Saturday), 25 (Sunday), 26, 27 and 28.

TOTAL NUMBER OF SUBPOENAS/NOTICES SERVED – 102

For the month of June:

June 1, 4, 5, 6, 7, 8, 11, 14, 18, 20, 21, 25, 26, and 28.

TOTAL NUMBER OF SUBPOENAS/NOTICES SERVED – 163

For the month of July:

July 1-6, 9-14, 16-20, 26, 27, 30 and 31, 2001

TOTAL NUMBER OF SUBPOENAS/NOTICES SERVED – 351

For the month of August 2001:

August 1, 2, 3, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 20, 21, 22, 23, 24, 27, 29, 30, 31, 2001.

TOTAL NUMBER OF SUBPOENAS/NOTICES SERVED – 332

...

EVALUATION

The specific duties of a Process Server, as embodied in Chapter VII, Section B, Paragraph 2 (2.1.24) of the Revised Manual for Clerks of Court are as follows:

2.1.24.1 Serves court processes such as subpoenas, subpoenas duces tecum, summons, Court order and notice;

2.1.24.2 Prepares and submits returns of court processes;

Administrative Circular No. 3-2000 requires each court personnel to submit the list of actual duties performed by him, as well as the targets, performance standard and the time allotted for each function. The MTCC, Dumaguete City, is unaware of said circular. As such, the target dates of performance of respondent cannot be ascertained.

However, since Process Servers are regular employees of the Court, it is presumed that their duty to serve court processes is as they come or are issued and not as they want, as in this case.

As shown above, respondent Fabugais served the notices of hearings several months after the same were issued by the Court. Respondent's asseverations, therefore, that he could not locate the parties or that he overlooked the notices are lame excuses that cannot be countenanced for had he been diligent in his work as required of him, he would have had sufficient time to serve the notices with zero errors. Furthermore, two (2) to five (5) months of delay in the service of notices is [extraordinarily] long so as to diminish the faith of the public in the ability of the courts to discourage postponement of cases.[5]

The Executive Judge concluded that the respondent is guilty of simple neglect of duty and recommended that he be suspended for a period of one (1) month and one (1) day with a warning that a repetition of the same or similar acts shall be dealt with more severely.

The findings of the Executive Judge are well taken. The respondent's bare claim that "court orders and other notices are delivered to counsel and parties on time," presumably by him, is belied by the documents submitted by Judge Maxino, by the respondent's own admission in his Letter[6] dated September 15, 2003, and by the findings of the Executive Judge. The records show that Judge Maxino issued several orders[7] re-setting scheduled hearings as the parties did not receive the notices thereon. Branch Clerk of Court Epifania P. Ramada even issued Office Memorandum No. 4,[8] requiring the respondent to explain in writing why he failed to cause the service of notices for specified civil cases pending before the court.

It bears emphasizing that the process server plays a vital role in the administration of justice.[9] As we had the occasion to reiterate in *Ulat-Marrero v. Torio, Jr.*:[10]

A process server should be fully cognizant not only of the nature and responsibilities of his task but also of their impact in the speedy administration of justice. It is through the process server that a defendant learns of the action brought against him by the complainant. More importantly, it is through the service of summons of the process server that the trial court acquires jurisdiction over the defendant. As a public officer, the respondent is bound *virtute officii* to bring to the discharge of his duties the prudence, caution and attention which careful men usually exercise in the management of their affairs. Relevant in the case at bar is the salutary reminder from this Court that the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel – hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a true temple of justice.[11]

Thus, conformably to the mandate of speedy dispensation of justice stressed by the Constitution, it is crucial that summons, writs and other court processes be served expeditiously and without delay.[12] Furthermore, judicial personnel are expected to be living examples of uprightness in the performance of official duties to preserve at all times the good name and standing of the courts in the community.[13]

Indeed, judges, as administrators of their respective courts, are responsible for the conduct and management of the affairs therein. Judges have the duty to supervise court personnel to ensure prompt and efficient dispatch of business in their courts.[14] As such, judges are authorized to "take or initiate appropriate disciplinary measures against lawyers or court personnel for unprofessional conduct" of which they may have become aware.[15]

The respondent is guilty of simple neglect of duty, which has been defined as the failure of an employee to give one's attention to a task expected of him.[16] Under CSC Memorandum Circular No. 19, Series of 1999, simple neglect of duty is classified as a less grave offense, punishable by suspension without pay for one (1) month and one (1) day to six months, for the first offense.[17]

Anent the respondent's request for temporary detail or transfer to another court, we agree with the following observation of the OCA:

As to Fabugais's request for detail to another sala, this should have been referred to the Executive Judge of the MTCC of Dumaguete City for action and disposition, in accordance with the provisions of Section 6, Chapter VII of the "Guidelines on the Selection and Appointment of Executive Judges and Defining their Powers, Prerogatives and Duties." However, in view of the statement by Judge Maxino that the respective wives of Fabugais and MTCC Executive Judge Antonio T. Esconing are sisters – a fact not controverted by Fabugais in his letter of 15 September 2003 – it is best that such request be resolved by this Office.[18]

Hence, if the respondent still intends to pursue his request for detail/transfer to another sala, he should make the proper request to the OCA. It must be stressed that the respondent's application for transfer to the sala of other courts, without securing the permission of the Court Administrator as the proper office to act thereon, is highly improper.

WHEREFORE, Respondent Hermolo B. Fabugais is hereby adjudged GUILTY of simple neglect of duty and is SUSPENDED for two (2) months effective immediately. He is STERNLY WARNED that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Rollo, pp. 10-11.

[2] Id. at 179.

[3] Id. at 15.

[4] Id. at 33.

[5] Investigation Report and Recommendation, pp. 24-25.

[6] Rollo, pp. 33-34.

[7] Annexes “A” to “G,” Id. at 16-22.

[8] Annex “H,” Id. at 23.

[9] See Cañete v. Manlosa, 412 SCRA 580 (2003).

[10] 416 SCRA 177 (2003).

[11] Id. at 183.

[12] See Nery v. Gamolo, 397 SCRA 110 (2003).

[13] Soliman, Jr., v. Soriano, 410 SCRA 225 (2003).

[14] Office of the Court Administrator v. Sumilang, 271 SCRA 316 (1997).

[15] Rule 3.10 of the Code of Judicial Conduct, now Section 3, Canon 2 of the New Code of Judicial Conduct for the Philippine Judiciary (A.M. No. 03-05-01-SC) which took effect on June 1, 2004.

[16] Philippine Retirement Authority v. Rupa, 363 SCRA 480 (2001).

[17] De la Victoria v. Mongaya, 352 SCRA 12 (2001).

[18] Report and Recommendation, p. 4; Rollo, p. 181.

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