JUDGE ANATALIO S. NECESARIO, COMPLAINANT, VS. MYNER B. DINGLASA, PROCESS SERVER, RESPONDENT.

A.M. NO. P-07-2294 (FORMERLY OCA IPI NO. 04-2010-P). August 07, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a letter-complaint[1] dated June 8, 2004 filed by Judge Anatalio S. Necesario (complainant) against Myner B. Dinglasa (respondent), Process Server, Municipal Trial Court in Cities (MTCC), Branch 2, Cebu City, charging him with Absence Without Official Leave, Incompetence and/or Dereliction of Duty and Conduct Prejudicial to the Best Interest of the Service.

Complainant alleges that he issued Memorandum No. 01-04-30-2004[2] dated April 30, 2004 directing respondent to answer the complaints and reports against him (respondent) and to report to the Office of the Clerk of Court (OCC), MTCC, Cebu City, until further orders, effective immediately; and that respondent be considered absent without official leave (AWOL) for the month of April 2004 for his failure to show up or inform the office of his whereabouts.

The Office of the Court Administrator (OCA) in a 1st Indorsement dated September 22, 2004, required respondent to comment on the letter-complaint. A 1st Tracer was sent by the OCA on January 31, 2005 to respondent, reiterating its directive to comply with the 1st Indorsement; otherwise, the matter will be submitted to the Court without his comment.

Upon recommendation of the OCA in its Report dated September 1, 2005, the Court, in its Resolution of November 21, 2005, required respondent to show cause why he should not be administratively dealt with for refusing to submit his comment despite the two (2) directives from the OCA; and to submit the required comment, otherwise, the Court shall take the necessary action against him and decide the administrative complaint on the basis of the record at hand.

The show cause Resolution was returned to this Court with notation on the envelope "RTS-DISMISSED." In its Resolution of March 1, 2006, the Court referred the matter to the OCA for verification and report on the veracity of respondent's dismissal.

In its Memorandum dated May 23, 2006, the OCA reported, to wit:

> Records of this Office shows that in a resolution dated 19 September 2005 in A.M. No. 05-8-228-MTCC (Re: Absence Without Official Leave [AWOL] of Mr. Myner Dinglasa, Process Server, MTCC, Cebu City), Mr. Dinglasa was dropped from the rolls effective December 8, 2004 for having been on AWOL since said date in violation of Sec. 63, Rule XVI of the Omnibus Rules on Leave as amended by Resolution No. 99-1885 dated August 23, 1999, without prejudice to the outcome of OCA IPI No. 04-2010-P.
>
> It is worth mentioning at this point that, unlike dismissal from the service, dropping from the rolls is non-disciplinary in nature and does not result in the forfeiture of any benefits due on the part of the official or

> employee nor in disqualifying him from reemployment in the government. Dropping from the rolls is but a necessary consequence after an official or employee incurs unauthorized absences (Resolution dated 21 August 2002, A.M. No. 01-4-112-MTCC, Absence Without Official Leave of Bai Lucaya Mayasa-Mama, Clerk of Court, MTCC, Cotabato City). xxx[3]

In a Resolution dated February 5, 2007, the parties were required to manifest if they were willing to submit the case for resolution based on the pleadings filed. Complainant failed to comply therewith despite due notice. The directives and Resolutions of the Court were sent to respondent's personal address, but they were returned unserved with the notation "RTS Moved" appearing on the envelope. Respondent did not inform the Court of his change of address. Consequently, on November 29, 2006, the Court considered the filing of the comment as having been waived and resolved to decide the administrative complaint on the basis of the records on hand.[4]

The complaint must be dismissed. Well entrenched is the principle that in administrative proceedings, the complainant has the burden of proving by substantial evidence the allegations in his complaint.[5] The basic rule is that mere allegation is not evidence, and is not equivalent to proof.[6] If complainant fails to prove the allegations in the complaint by substantial evidence, the presumption that the respondent has regularly performed his duties will prevail.[7]

However, as regards the blatant refusal of respondent to comply with the Court's directives, through the OCA, we deem it to be an affront to the Court's authority over court personnel.

With respondent's obstinate defiance and refusal to submit his comment despite the two directives and stern admonitions of the OCA, he has to our mind, vividly exposed his propensity for ignoring the lawful directives of this Court, through the OCA. A complete disregard of the present proceedings against him is likewise manifested by his failure to notify the Court of his present address.

In Martinez v. Zoleta,[8] we find the need and occasion to rule that a resolution of the Supreme Court requiring comment on an administrative complaint against officials and employees of the judiciary should not be construed as a mere request from the Court. Nor should it be complied with partially, inadequately or selectively. Respondents in administrative complaints should comment on all accusations or allegations against them in the administrative complaints because it is their duty to preserve the integrity of the judiciary.[9] Moreover, the Court should not and will not tolerate future indifference of respondents to administrative complaints and to resolutions requiring comment on such administrative complaints. It constitutes gross insubordination as would warrant disciplinary sanction by the Supreme Court.[10]

ACCORDINGLY, in view of A.M. No. 05-8-228-MTCC, dropping Myner B. Dinglasa, Process Server, MTCC, Cebu City from the rolls effective December 8, 2004, the administrative complaint is DISMISSED for lack of merit. However, for Dinglasa's failure to comply with the lawful directives of the Court, he is FINED in the amount of TWO THOUSAND PESOS (P2,000.00) to be deducted from whatever benefits that may be due him from the Court.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, and Nachura, JJ., concur.

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[1] Rollo, p. 1.

[2] Id. at 2.

[3] Id. at 19.

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[4] Id. at 29.

[5] Id.

[6] Id.

[7] Urgent Appeal/Petition for Immediate Suspension and Dismissal of Judge Emilio B. Legaspi, RTC, Iloilo, Br. 22, 453 Phil. 459, 464 (2003).

[8] 374 Phil. 35 (1999).

[9] Josep v. Abarquez, 330 Phil. 352, 359 (1996).

[10] Mendoza v. Tiongson, 333 Phil. 508 514-515 (1996).

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