

EN BANC

[**A.M. No. P-06-2241 (Formerly OCA IPI No. 06-2422-P), July 10, 2012**]

**JUDGE PELAGIA DALMACIO- JOAQUIN, COMPLAINANT, VS.
NICOMEDES DELA CRUZ, PROCESS SERVER, MUNICIPAL TRIAL
COURT IN CITIES, SAN JOSE DEL MONTE, BULACAN,
RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:

This is an administrative complaint filed by Judge Pelagia Dalmacio-Joaquin (Judge Dalmacio-Joaquin) against Process Server Nicomedes Dela Cruz (Dela Cruz), both of the Municipal Trial Court in Cities, City of San Jose Del Monte, Bulacan, for Conduct Unbecoming of Court Personnel and Dishonesty.

Factual Antecedents

In her Complaint^[1] dated March 29, 2006, Judge Dalmacio-Joaquin alleged that Dela Cruz submitted belated and false returns of service of notice. In particular, she claimed that Dela Cruz received the Order dated November 25, 2005 relative to Criminal Case No. 5744-96 on December 9, 2005 but served the same to the parties only on March 23, 2006. She also alleged that Dela Cruz submitted false returns relative to Criminal Case Nos. 04-0488 and 04-0489, No. 04-0483 and No. 05-0213. According to Judge Dalmacio-Joaquin, Dela Cruz stated in his return of service in Criminal Case Nos. 04-0488 and 04-0489 that the accused therein was no longer residing at her given address. However, during pre-trial, this was denied by the accused herself who declared in open court that she has not transferred residence. Anent Criminal Case No. 04-0483, Dela Cruz likewise indicated in his return of service that therein accused is no longer residing at his given address and that the houses thereat have already been demolished. However, during the scheduled pre-trial, the complainant manifested that the accused who is her neighbor still resides at his given address and that his house is still standing thereon. Finally, as regards Criminal Case No. 05-0213, two of the accused therein manifested during their scheduled arraignment that they are still residing at their given address contrary to the report of Dela Cruz. Hence, the trial court *motu proprio* lifted their warrants of arrest.

Judge Dalmacio-Joaquin also alleged that notwithstanding receipt of three Orders dated March 10, 2006 relative to Criminal Case Nos. 04-0488 and 04-0489, No. 04-0483 and No. 05-0213, directing him to explain why no administrative action should be taken against him for submitting false returns, Dela Cruz still failed to submit any explanation or compliance thereon. According to Judge Dalmacio-Joaquin, the aforesaid acts of Dela Cruz were unbecoming, undesirable, dishonest and even more reprehensible, undermined the integrity of the court processes and tarnished the

trustworthiness of the court employees and of the judiciary.

In his Comment^[2] filed on May 30, 2006, Dela Cruz denied the allegation that he deliberately delayed the service of the November 25, 2005 Order relative to Criminal Case No. 5744-96. He claimed that the same was served to the parties concerned three days before the scheduled hearing. Anent the returns relative to Criminal Case Nos. 04-0488 and 04-0489, No. 04-0483 and No. 05-0213, Dela Cruz vehemently denied submitting false returns. He averred that as regards Criminal Case Nos. 04-0488 and 04-0489, he served the subpoena to Randy R. Masa, a *purok* leader in the area who told him that accused Cecilia Pareño was no longer residing at said address and has in fact transferred to another *barangay*. As regards Criminal Case No. 04-0483, Dela Cruz claimed that he personally went to the given address of the therein accused and was told by a certain Hilda Malabao that there were no longer residents thereat as the houses have already been demolished. As regards Criminal Case No. 05-0213, Dela Cruz narrated that the accused were not at their given address when he attempted to serve the court process. He averred that it was not his intention to submit incorrect or misleading returns. He also claimed that Judge Dalmacio-Joaquin only wanted to harass him as this is not the first administrative complaint she filed against him.

In view of the factual issues presented, we resolved to refer the matter to the Executive Judge of the Regional Trial Court, Malolos, Bulacan for investigation, report and recommendation.^[3]

Report of the Investigating Judge

On April 23, 2009, Executive Judge Herminia V. Pasamba (Investigating Judge) submitted her Report.^[4] The Investigating Judge found that service of the November 25, 2005 Order in Criminal Case No. 5744-96 was delayed for at least three months. As regards the returns relative to Criminal Case Nos. 04-0488 and 04-0489, No. 04-0483 and No. 05-0213, the Investigating Judge noted that although the same contained false entries, the same, however, were not deliberately or intentionally done as Dela Cruz merely relied on his sources. As regards the show cause order issued by Judge Dalmacio-Joaquin, the Investigating Judge noted that Dela Cruz did not file any explanation relative to said returns as directed. For reference, the Report of the Investigating Judge contained the following findings:

The submitted returns on the three (3) orders all dated March 10, 2005 run counter [to] the explanations given during the respective dates of hearing by the private complainant/accused/defense counsel in the said cases. Respondent, on being confronted, with the false returns offered as explanation his overwhelming job as the only process server in the Municipal Trial Court in Cities of San Jose del Monte City servicing fifty-nine (59) barangays and even produced his still unserved processes of about ninety-eight (98) orders as of the date of his examination. As regards the November 25, 2005 order in Criminal Case No. 5744-96, it was confirmed that the same was received on December 9, 2005 but served only some three months later, at least three (3) days before the scheduled hearing. No compliance however was filed on the orders

issued by the complainant Hon. Judge to the show cause [relative to] the false returns.^[5]

For the above infractions, the Investigating Judge recommended that Dela Cruz be suspended from employment for a period of one year.^[6]

In a Resolution^[7] dated November 16, 2009, we referred the Report of the Investigating Judge to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.

Report of the Office of the Court Administrator

In its Report,^[8] the OCA agreed with the Investigating Judge that Dela Cruz indeed submitted false returns which amounts to dishonesty, a grave offense punishable with the extreme penalty of dismissal from service with forfeiture of retirement benefits, except accrued leave credits, and with prejudice to re-employment in any branch or instrumentality of the government. Considering however that on June 10, 2008, Dela Cruz had already resigned from the service "which the Court accepted without prejudice to the continuation of his administrative cases,"^[9] the OCA recommended that Dela Cruz's benefits, except accrued leave credits, be forfeited, with prejudice to re-employment in any government instrumentality.

Our Ruling

As regards the November 25, 2005 Order in Criminal Case No. 5744-96, it is undisputed that it was belatedly served by Dela Cruz only on March 23, 2006, or three months and 14 days after he received the same on December 9, 2005. However, Dela Cruz maintains that he was not remiss in his tasks despite such delay considering his heavy workload and the fact that the parties received copies of the Order three days before the scheduled hearing.

"The duty of a process server is vital to the administration of justice. A process server's primary duty is to serve court notices which precisely requires utmost care on his part by ensuring that all notices assigned to him are duly served on the parties."^[10] "Unjustified delay in performing this task constitutes neglect of duty and warrants the imposition of administrative sanctions."^[11]

Dela Cruz adverted to "heavy workload" as the cause of the delay in the service of the Order. During the hearing before the Investigating Judge, he contended that he has "too many subpoenas and processes"^[12] to serve. He also alleged that he is the only Process Server assigned in the sala of Judge Dalmacio-Joaquin^[13] and that he is serving 59 *barangays* of San Jose Del Monte City.^[14]

We find such an excuse unsatisfactory. "All employees in the judiciary should be examples of responsibility, competence and efficiency."^[15] As Process Server, Dela Cruz ought to be aware of the importance to serve the court processes with dispatch. "It is through the process server that defendants learn of the action brought against them by the complainant. More important, it is also through the service of summons by the process server that the trial court acquires jurisdiction