

## EN BANC

**[ A.M. NO. P-06-2231, April 27, 2007 ]**

**CLERK OF COURT JUDITH RODRIGO-EBRON, MUNICIPAL  
CIRCUIT TRIAL COURT, MAGARAO- CANAMAN, CAMARINES SUR,  
COMPLAINANT, JERRY V. ADOLFO, JUNIOR PROCESS SERVER,  
MUNICIPAL CIRCUIT TRIAL COURT, MAGARAO-CANAMAN,  
CAMARINES SUR, RESPONDENT.**

### D E C I S I O N

#### PER CURIAM:

This is a complaint for conduct prejudicial to the best interest of the service, habitual absenteeism, tardiness, and inefficiency filed by complainant Judith Rodrigo-Ebron (complainant), Clerk of Court of the Municipal Circuit Trial Court of Magarao-Canaman, Camarines Sur (MCTC-Magarao-Canaman) against respondent Jerry V. Adolfo (respondent), Junior Process Server of the same court.

Complainant, in her letter-complaint dated 4 November 2004,<sup>[1]</sup> cited the following infractions allegedly committed by respondent:

1. HABITUAL ABSENTEEISM. There is no week that he never incur absences. Failed to submit advance application for leave and only submit at the end of the month for submission to the Leave Section;
2. TARDINESS and UNDERTIME. Always late in coming to work and leave the office early. He used office hours in taking to and fetching his daughter from school, thereby performance of his duties is greatly affected;
3. IRREGULARITY IN THE RETURN OF COURT PROCESSES. As usually done, subpoenas are received by him one month before the scheduled hearing, yet he only serve them one or two days before the hearing so much so that parties complained of such shortness of time for them to confer with their counsels. At most, failed to make a return on time so that cases are postponed for failure to serve to the parties thereby unduly delaying the early disposition of cases;
4. He never bother to enter in the daily time logbook and on the Process Server logbook to monitor his whereabouts. The pages of his logbook are empty and clean for no entry whatsoever inspite of the Office Memorandum by the Presiding Judge to him.<sup>[2]</sup>

Complainant asserted that respondent was repeatedly warned but he simply ignored the warnings. Respondent could not be relied upon whenever there were court processes to be served with dispatch since he was always absent. Even the presiding judge had deputized a member of the local Philippine National Police or one of his staff to do the job.

On 30 March 2005 , respondent filed his Comment<sup>[3]</sup> alleging that the complaint is not entirely correct and it is misleading. On the charge of habitual absenteeism, respondent claimed he was absent from time to time because he had a recurring bronchial asthma rendering him physically unfit and incapable of reporting to the office. On the charge of tardiness and undertime, he admitted there may have been times when he had to fetch his child for emergency reasons. On the charge of irregularity in the return of court processes, he admitted he failed to serve the subpoena to the witness in a case due to the fact that in the month of August 2004, he had a recurring attack of bronchial asthma rendering him incapable to perform his duty well. Respondent likewise averred that he never bothered to log in the daily time logbook because of the considerable number of court processes, orders, and subpoenas to be served. He claimed he sometimes forgot to log in because of his desire to immediately effect the service of court processes which he had failed to serve due to illness.

On 12 September 2005, this case was referred to Judge Pablo M. Paqueo, Jr. (investigating judge), the Executive Judge of the Regional Trial Court, Branch 23, Naga City, for investigation, report, and recommendation.

The investigating judge set the administrative case for hearing. The parties manifested that they would instead file their position papers or memoranda. However, only complainant filed her position paper.

On 9 January 2006, the investigating judge submitted his Report finding respondent to have committed the acts subject of the complaint. The investigating judge recommended that respondent, being a first offender, be suspended from work without pay for a period of six months with a stern warning that a repetition of any of the charges shall be dealt with more severely.

On 7 June 2006, the Court noted the Report of the investigating judge and referred the same to the Office of the Court Administrator (OCA) for evaluation, report, and recommendation.

The OCA stated that respondent had been previously found guilty of gross inefficiency, absenteeism, failure to serve summons and other court processes in A.M. No. P-01-1471<sup>[4]</sup> where he was fined one month's salary with warning that any repetition of these and similar acts in the future would be dealt with more severely.

In another administrative case, A.M. No. P-04-1823,<sup>[5]</sup> also for gross inefficiency and habitual absenteeism, respondent was likewise fined P20,000 with a stern warning that a repetition of the same or similar acts in the future would be dealt with more severely.

This present administrative case being respondent's third complaint filed against him, the OCA found respondent to be incorrigible and therefore has no business

working in the judiciary which requires of its employees utmost diligence, dedication to duty, and the strictest discipline. The OCA recommended that respondent be dismissed from the service with forfeiture of all benefits and privileges, except accrued leave credits, if any, with prejudice to reemployment in any branch or instrumentality of the government, including government-owned and controlled corporations and financial institution.

We agree with the OCA.

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.<sup>[6]</sup> The significance of the duties of a process server is enunciated in the case of *Musni v. Morales*,<sup>[7]</sup> as follows:

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 over the defendant. It is therefore important that summonses, other writs and court processes be served expeditiously.<sup>[8]</sup>

It appears from the records that even prior to this administrative case, respondent had not been reporting to the office regularly or if he reported, he would immediately leave with the excuse that he would serve court processes. It was for this reason that Municipal Circuit Trial Court Judge Eddie P. Monserate (Judge Monserate), the presiding judge of MCTC-Magarao-Canaman, issued Office Memorandum No. 01-2004 dated 29 July 2004<sup>[9]</sup> to monitor respondent's activities and directed him to comply with the following procedure:

1. That before serving of court processes, you are required to report to the office and indicate in the logbook the case title, the process to be served and the place where the subject person will be found; and -
2. That before the close of the office hours, report should be made to the Clerk of Court, indicating in the logbook the action taken.<sup>[10]</sup>

In the same memorandum, the Clerk of Court (complainant in the present case) was directed to provide a separate logbook for the Process Server.

Complainant herself, as Clerk of Court of MCTC-Magarao-Canaman, likewise issued Office Memorandum dated 17 August 2004<sup>[11]</sup> directing respondent to report for work and turn over to her all court processes issued and taken by respondent or in his possession, which were served or unserved. Respondent was further required to explain why he failed to report to the office on 11, 12, 13, and 16 August 2004 without proper application for leave.

Complainant further issued Office Memorandum dated 9 September 2004<sup>[12]</sup> requiring respondent to explain why he failed to return the subpoenas of three cases scheduled for hearing on 9 September 2004 that were postponed for failure of the parties to appear in court thereby delaying the early disposition of the cases.