

## THIRD DIVISION

**[ A.M. NO. P-05-1979, November 27, 2006 ]**

**JUDGE LEONARDO P. CARREON, COMPLAINANT, VS. ERIC ANTHONY S. ORTEGA, PROCESS SERVER, MUNICIPAL TRIAL COURT, ARGAO, CEBU, RESPONDENT.**

### DECISION

**CARPIO, J.:**

#### The Facts

In a letter-complaint<sup>[1]</sup> dated 9 January 2004, Judge Leonardo P. Carreon ("Judge Carreon") of the Municipal Trial Court of Argao, Cebu ("trial court") charged Eric Anthony S. Ortega ("respondent"), trial court process server, with gross misconduct and for absence without official leave.

According to Judge Carreon, he issued subpoenas for the prosecution witnesses in Criminal Case Nos. R-6283,<sup>[2]</sup> R-6030,<sup>[3]</sup> and R-6256.<sup>[4]</sup> The trial court logbook<sup>[5]</sup> ("logbook") showed that respondent received the subpoenas on 27 October 2003. However, respondent failed to serve any of the subpoenas such that the pre-trial conference for Criminal Case No. R-6283 could not proceed on 19 November 2003 because of the absence of the prosecution witnesses. For the same reason, the trial court reset the initial presentation of evidence for the prosecution in Criminal Case Nos. R-6030 and R-6256, scheduled on 19 November 2003 and 21 November 2003, respectively. In the two latter cases, the witnesses to be subpoenaed were police officers of the Argao Police Station, located a "few steps away from [the trial court]." <sup>[6]</sup>

After being asked to explain in writing why no administrative case should be filed against him, respondent did not report to work. Judge Carreon alleged that except for a few days in October and November 2003, respondent had been continuously absent and had not submitted his Daily Time Records (DTRs) up to the time of the filing of the complaint.

Judge Carreon further narrated that only two months before the filing of this complaint, respondent also failed to serve and make a return on a subpoena to the accused in Criminal Case No. R-6039.<sup>[7]</sup> When ordered by Judge Carreon to explain in writing, respondent claimed that he had misplaced the subpoena after failing to find the accused at the given address. At this point, respondent was very apologetic, asking for the trial court's consideration and promising to reform himself.

Judge Carreon claimed that he had lost count of the number of times he had verbally reprimanded respondent for his neglect. For every incident, respondent would make an apology but "return to his old ways in just a matter of days." During the period January to June 2003, respondent received an "unsatisfactory" rating in

his performance.

In its 1st Indorsement dated 20 February 2004, the Office of the Court Administrator (OCA) required respondent to file his Comment within 10 days from notice. As of 15 June 2004, respondent had not filed any comment. The OCA sent respondent another Indorsement dated 28 September 2004.

Respondent submitted his brief Comment on 13 October 2004, the full body of which we quote below:

I was really filing for my leave of absence for the period October 2003 until January 2004, but then it was disapproved by the Hon. Judge [Carreon] without any legal basis;

I admittedly failed to serve the subpoena/notices and other processes of the court due to my hypertension but then Memorandums pertinent to those were already answered;

I have already extended my sincerest apologies on the matter and I also promised to reform and to do my duties to the best that I can but because of the lack of transportation, there were times that subpoenas could not be served on time;

On November 19, 2003, all the subpoenas were personally received and were served by me but the returns were not attached by the clerk so the proceedings were delayed;

Subpoena for November 21, 2003 to Adonis Sayson [in Criminal Case No. R-6256] was served to Police Officer Abapo but prior to the date of the prosecution, the said officer had been transferred to another station so the police-witness no longer appeared.<sup>[8]</sup>

The records show that on learning of the filing of this complaint, respondent applied for early retirement, having been in the service for more than 18 years.<sup>[9]</sup> This Court approved respondent's application effective 16 March 2004, per Resolution dated 1 December 2004 of the Third Division.

On 3 January 2005, respondent sent a letter to then Chief Justice Hilario G. Davide, Jr. requesting for an early resolution of this administrative case to expedite the processing of his retirement. Respondent stated that he was "amenable to the withholding of P5,000 from his retirement benefits to answer for the case against [him] x x x."<sup>[10]</sup>

Upon the recommendation of the OCA through Memorandum<sup>[11]</sup> dated 16 February 2005, this Court resolved to (1) redocket the case as a regular administrative matter and (2) refer the matter to Executive Judge Maximo A. Perez ("Investigating Judge") of the Regional Trial Court (RTC) of Argao, Cebu for investigation, report and recommendation.<sup>[12]</sup>

### **Findings of the Investigating Judge**

After conducting three hearings on the case, the Investigating Judge submitted his Investigation Report<sup>[13]</sup> ("Report") to the OCA. The Report partly reads:

x x x x

[Judge Carreon] was able to establish the following facts: (1) That the respondent is the Process Server of the MTC-Argao, Cebu; (2) That the respondent received the subpoena for the witnesses in Criminal Case Nos. R-6283, R-6030, R-6256, R-6039; (3) That the respondent failed to serve the subpoenas in the aforementioned cases; (4) That the respondent failed to submit returns of service of subpoenas; (5) That the proceedings in said cases were postponed for failure of the witnesses to receive [the] subpoena, much less, to appear; (6) That [Judge Carreon] directed the respondent to explain why no administrative case should be filed against him; and (7) That the respondent did not explain but instead went on an unofficial leave instead.

The respondent miserably failed to controvert the charge filed against him. The respondent's explanation that he has indeed served some subpoenas is negated by the absence of the proof of return of service as well as by the fact that the Court cancelled the hearing[s], for failure of the witnesses to appear. Neither did the respondent present any corroborating evidence nor did he present documentary proof to substantiate his claim about accrued leave credits and about his x x x hypertension. If at all the respondent was indeed suffering from hypertension, he could have secured a medical certificate and he could [have] filed an official leave of absence, in order for the Court to find other ways and means to effect service of subpoena and other court processes.

x x x x<sup>[14]</sup>

The Investigating Judge recommended that the Court find respondent guilty of simple neglect of duty and fine him an amount equivalent to his salary for one month and one day, since he retired already on 16 March 2004.

### **Findings of the Court Administrator**

In a Memorandum dated 1 February 2006 addressed to Chief Justice Artemio V. Panganiban, the OCA expressed its agreement with the factual findings and recommendations of the Investigating Judge. The OCA stated that as a process server, respondent was "duty-bound to serve summons, writs and other court processes promptly." The OCA justified the finding of administrative liability against respondent as follows:

x x x Any delay or unjustified failure in performing [one's tasks] constitutes neglect of duty which warrants the imposition of administrative sanctions.

Respondent should be fully cognizant not only of the nature and responsibilities of his task, but also of their impact in the speedy