

## SECOND DIVISION

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

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

### D E C I S I O N

**CALLEJO, SR., J.:**

In a verified Letter<sup>[1]</sup> 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/	Date summons/ subpoena	Date summons/ subpoena
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	<b>Subpoena issued</b>	<b>taken by Fabugais</b>	<b>served by Fabugais</b>
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 <sup>[2]</sup>

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.<sup>[3]</sup>

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.<sup>[4]</sup> 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. Alafritz, 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