

FIRST DIVISION

[A.M. No. P-07-2321 [Formerly OCA I.P.I. No. 07-2492-P], April 24, 2009]

**JUDGE PELAGIA DALMACIO-JOAQUIN, PETITIONER, VS.
NICOMEDES C. DELA CRUZ, PROCESS SERVER, MTCC, SAN JOSE
DEL MONTE, BULACAN, RESPONDENT.**

D E C I S I O N

VELASCO JR., J.:

This administrative matter arose from the Letter-Complaint of Judge Pelagia J. Dalmacio-Joaquin of the Metropolitan Trial Court in Cities (MTCC) in San Jose Del Monte City, Bulacan, charging respondent Nicomedes C. dela Cruz, Process Server in said MTCC, with Insubordination, Disobedience, and Conduct Unbecoming a Court Personnel.

The facts of the case, as gathered from the records, are as follows:

On November 3, 2006, after complainant judge left her office a few minutes before 5:00 p.m., Security Guard Sielam G. Wee reported to her that on November 2, 2006, respondent allegedly arrived in the office, apparently drunk, and hurled invectives while pointing his fingers at other employees present, particularly: Jonathan Nolasco, Josephine dela Rosa, Cresencia Reyes, and Harold Gumbao. Afterwards, respondent attempted to punch Nolasco but was waylaid by Wee who pulled respondent away.

After hearing the report, complainant summoned the employees involved in the incident to her chambers. In the presence of Acting Branch Clerk of Court Mark Anthony V. Ania, the employees recounted their stories and expressed their apprehension that respondent might do them harm. They also expressed the intention not to file administrative charges against respondent and one of them even asked to be transferred to another court.

At past 1:00 p.m. of the same day, respondent was summoned into the complainant's office where he denied the contents of Wee's report. Thereafter, complainant asked Wee to produce the logbook, which detailed the events that transpired the day before, and show it to respondent. After seeing the logbook, respondent admitted taking alcoholic drink but denied being drunk at that time. When the employees involved in the incident confronted respondent, he called them liars and left the complainant's chambers without a word. Complainant then followed him asking him to return so that they can finish their discussion, but respondent ignored her and hid in a comfort room.

Complainant also alleged that respondent is the subject of other complaints, one filed sometime in 2005 with the Office of the Court Administrator (OCA), entitled

Judge Pelagia Dalmacio-Joaquin v. Nicomedes C. Dela Cruz, initially docketed as IPI No. 05-2299-P, and later redocketed as A.M. No. 05-2299-P. In it, respondent was charged with challenging a co-employee to a fight, submitting either false or misleading and oftentimes late returns for serving notices and orders, and failing to comply with the show-cause orders issued to him. In fact, on February 20, 2006, the Court issued a Resolution in which respondent was admonished and warned that a repetition of the same or similar offense shall be dealt with more severely.

In compliance with the directive of the OCA, respondent submitted his comment dated January 15, 2007. Giving his version of the incident in question, he alleged that he was just having an argument with his co-employees, adding that he raised his voice merely to stress a point. He claimed that Wee must have thought that he was angry upon hearing his voice. He denied the imputation of his being drunk and that he hurled invectives against his co-employees. He also said that a stomachache prompted him to hurriedly leave the complainant's office and go home. Furthermore, he declared that he did not want to answer back at the complainant so he just left her office.

On May 23, 2007, the Court resolved to refer the administrative matter to Executive Judge Petrita B. Dime of the Regional Trial Court in Malolos City for investigation, report, and recommendation.

In accordance with the authority the Court granted her through a Resolution in A.M. No. 05-10-671-RTC, Judge Dime, after the raffle of the matter on November 21, 2007, designated 1st Vice-Executive Judge Herminia V. Pasamba to conduct the investigation, prepare the report, and submit her recommendations.

Following an investigation, Judge Pasamba submitted on March 5, 2008 her Report, in which she described respondent as ill-tempered and lacking in restraint and discipline, bordering on disrespect and disobedience to a superior. She also found respondent to have deviated from the judicial decorum demanded of him when he hurled invectives at his co-employees, causing them to cower in fear and cry. She also determined that respondent was drunk when he returned to the court on the afternoon in question. Finally, she found that respondent has been charged administratively three (3) times, one of which is still pending with the Executive Judge.

The investigating judge recommended that respondent, for his acts complained of, be meted the penalty of suspension for two (2) months without pay.

On April 16, 2008, the Court referred the report of Judge Pasamba to the OCA for further evaluation, report, and recommendation. On October 21, 2008, Court Administrator Jose P. Perez submitted a Memorandum in which he affirmed and adopted the factual findings of the investigating judge. He, however, recommended the modification of the proposed sanction to suspension of one (1) year without pay on the ground that respondent's inculpatory acts constitute gross insubordination and misconduct.

The recommendation of the Court Administrator and the premises holding it together are well taken.

Insubordination is defined as a refusal to obey some order, which a superior officer