

## FIRST DIVISION

[ **A.M. No. P-05-2072 (Formerly OCA IPI No. 04-1989-P), August 13, 2008** ]

**ROMMEL N. MACASPAC, COMPLAINANT, VS. RICARDO C. FLORES,  
PROCESS SERVER, REGIONAL TRIAL COURT, BRANCH 3,  
BALANGA CITY, BATAAN, RESPONDENT.**

### DECISION

**AZCUNA, J.:**

This administrative case arose from the Complaint<sup>[1]</sup> filed on August 20, 2004 with the Office of the Court Administrator (OCA) charging respondent, in his capacity as Process Server of Regional Trial Court (RTC), Branch 3, Balanga City, Bataan, with Serious Neglect of Duty relative to Criminal Case Nos. 9038 and 9039 entitled "*People of the Philippines v. Nova A. Catapang*" for violation of Republic Act No. 9165 (otherwise known as the "Comprehensive Dangerous Drugs Act of 2002").

Complainant, who introduced himself as a Police Officer (PO) I assigned at the District Civil Disturbance Management Group (DCDMG) located at Western Police District (WPD) Headquarters, United Nations Avenue, Ermita, Manila, alleged: that he was previously assigned at PRO 3 Police Station in Orani, Bataan from August 30, 2002 to December 19, 2003; that on January 14, 2003, he apprehended Nova Catapang for violation of Sections 5 and 11, Article II of R.A. No. 9165; that an Information was filed, docketed as Criminal Case Nos. 9038 and 9039, and raffled to Balanga City RTC Br. 3; that knowing that he was bound to testify as the arresting officer, he waited for the notice of hearing to be sent but none came until his actual reassignment on December 19, 2003; that on July 22, 2004, he was shocked and surprised when it came to his knowledge that the criminal cases were dismissed by the court per Order dated June 30, 2004<sup>[2]</sup> stating, among others, that "*the prosecution of these cases went caput (sic) simply because of the failure of the purported arresting officer to appear at the scheduled hearings*"; that upon inquiry with RTC Br. 3, he was informed by a court personnel that respondent made a report on the return of the notice of hearing at the back page of the subpoena dated October 22, 2003 certifying that he has not served a copy of the subpoena to complainant on November 18, 2003 because "*the said PO1 Rommel Macaspac is now [assigned] at WPD Station 2[, ] Tondo, Manila according to SPO3 Antonio Capuli of the PNP, Orani, Bataan*"; that respondent perjured in his report because complainant was at the time not assigned or transferred to another station, and in fact the latter was the desk officer-on-duty from November 17 to 19, 2003, in that same station where the subpoena was allegedly served; that the act of respondent, in making a report without further inquiry as to the truth thereof, is a grave neglect of his duties as a process server because it is detrimental to the prosecution of the case and the government's campaign against illegal drugs; and that the act of respondent against complainant's case is not an isolated incident as complainant found out through inquiries that most of the cases handled by the municipal police

officers of Orani, Bataan were dismissed because of respondent's reports that a subpoena was served to a particular police officer but in truth and in fact it was never served or that respondent never tried to serve it by coming to the police station. Complainant prayed that a proper investigation of the matter be conducted before further damage would be caused by respondent.

In its Indorsement dated September 9, 2004,<sup>[3]</sup> the OCA directed respondent to file his Comment within ten days. On October 7, 2004, respondent requested for an extension of fifteen days - reckoned from October 9, 2004 - within which to file his pleading, which was granted.<sup>[4]</sup> However, it was only on January 18, 2005 that respondent filed his Comment dated December 2, 2004.<sup>[5]</sup>

Respondent countered that he should not be faulted for making a report that is candid and truthful. To him, he simply made a statement of fact, no more and no less. He asserted that the situation would have been different had complainant questioned the existence of a certain SPO3 Capuli, which he did not. Respondent stated that he could not have gone beyond the advice of SPO3 Capuli for the same was accorded truth only after complainant was found unavailable; that it was complainant who was first sought by respondent and it was only after he was nowhere to be found that respondent started to inquire from his colleagues. As to complainant's allegation that respondent was also negligent in other cases, respondent argued that such accusation deserves scant regard for want of specific evidence that would link him to the supposed acts.

In his Reply filed on January 27, 2005,<sup>[6]</sup> complainant reacted that respondent merely went through the process of serving a subpoena without exerting much effort to locate him. He suspected that respondent's service of the subpoena is tainted with irregularity, giving doubts as to his integrity. Complainant reiterated his plea that a full-blown hearing be conducted to prove respondent's negligence in the performance of his duty.

On August 4, 2005, the OCA found in its Report<sup>[7]</sup> that respondent is guilty for neglect of duty:

It is clear from the records of the instant complaint that there was indeed an unjustified failure to serve the subpoena dated 22 October 2003 on the complainant. Respondent, in his comment, expressly admitted that he failed to serve the subpoena on complainant because the latter had been reassigned to the Tondo Police Station in Manila. This is not true for the fact is that the complainant was reassigned to the NCRPO only on 11 December 2003. As of 18 November 2003 the complainant was still the desk officer at the Orani Municipal Police Station, Bataan.

Respondent's explanation that he was not able to serve the said subpoena as per advice of SPO3 Capuli is unmeritorious. As a Process Server imbued with a sense of dedication to duty he should have ascertained the veracity of the information given to him that complainant has been reassigned elsewhere. His alleged attempt to serve the subpoena was downright perfunctory.

By promptly acting the way he did without further verifying the false

information given to him the respondent was guilty of neglect of duty which caused the dismissal of Criminal [Cases] Nos. 9038 and 9039 of the RTC, Branch 3, Balanga City.<sup>[8]</sup>

The OCA recommended that the administrative complaint be re-docketed as a regular administrative matter and that respondent, conformably with the ruling in *Musni v. Morales*,<sup>[9]</sup> be fined in the amount of P3,000, with a warning that a repetition of the same or similar act shall be dealt with more severely.

Per resolution dated September 12, 2005, this Court required respondent to manifest his agreement to submit the case for decision based on the pleadings filed, as to which he assented.

After perusing over the records of the case, this Court agrees with the OCA findings, except as to its recommended penalty.

As opposed to the self-serving and uncorroborated declaration of respondent, documentary evidence substantiates the claim that on November 18, 2003, the day respondent purportedly tried to serve a copy of the subpoena, complainant was actually still assigned as the desk officer at the PRO 3 Police Station in Orani, Bataan. It can, therefore, be deduced that either respondent deliberately made a false report as he, in fact, did not actually go to the police station or that he tried to serve the subpoena but no longer pursued it upon relying on the representation of SPO3 Capuli. Since fraud or malice cannot be ascribed in the absence of clear and convincing evidence to prove the same, the Court is inclined to regard the latter scenario as logical especially since complainant himself failed to disprove the identity of SPO3 Capuli or present his testimony to belie respondent's allegation of having talked to him.

Nevertheless, respondent cannot escape administrative liability, considering that he did not diligently exert his best effort to ascertain the true whereabouts of complainant. Evidently, he conveniently depended on just a lone informant, who later on was not even willing to exculpate him from the present charges, instead of endeavoring to double check the data he obtained with the view in mind that justice to the cause of the People would be served.

Notably, under Section 6, Rule 21 of the Revised Rules of Court, service of a subpoena shall be made in the same manner as personal or substituted service of summons. Pertinent sections of Rule 14, in effect, state:

*Sec. 6. Service in person on defendant.* - Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.

*Sec. 7. Substituted service.* - If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.