

## SECOND DIVISION

**[ A.M. No. P-01-1519, November 19, 2003 ]**

**EXECUTIVE JUDGE NELSONIDA T. ULAT-MARRERO, REGIONAL TRIAL COURT, LA TRINIDAD, BENGUET, COMPLAINANT, VS. ANTONIO B. TORIO, JR., PROCESS SERVER, REGIONAL TRIAL COURT, BRANCH 8, LA TRINIDAD, BENGUET, RESPONDENT.**

### DECISION

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

Before us is an administrative case which stemmed from the Order of Executive Judge Nelsonida T. Ulat-Marrero, issued on September 28, 2000, suspending court process server Antonio B. Torio, Jr., for a period of one month for violation of the Civil Service Law on habitual absenteeism, thus:

#### ORDER

This is with reference to Memorandum #2000-006 dated September 11, 2000 directing the above-named personnel to show cause why no administrative sanction shall not be taken against him for going on Absence Without Leave and undertime on the following dates:

August 29, 2000 - did not report in the morning September 5, 2000 - did not report in the afternoon September 6, 2000 - AWOL September 8, 2000 - AWOL

Accordingly, respondent personnel submitted an answer and subsequently he was summoned before the undersigned and the Clerk of Court for confrontation and further comment, if any, to explain his side. But he gave no additional explanations except to reiterate and confirm the statements made in his answer admitting his fault and that his reasons are personal and without merit.

WHEREFORE, considering the seriousness of the violation, and to serve notice to all court personnel not to take their obligations lightly and report for work promptly and regularly in accordance with the Civil Service Law, ANTONIO B. TORIO, JR., is hereby meted a penalty of One (1) Month suspension effective October 9, 2000 to November 7, 2000.<sup>[1]</sup>

In a Letter<sup>[2]</sup> addressed to the Court Administrator dated January 7, 2002, the respondent protested the imposition of the said suspension order. He alleged that as a process server, he was tasked to serve court processes and this entails going out of the office. He personally delivered court processes particularly when they were "urgent," whether on official time or on weekends. While admitting that he did not report for work in the morning of August 29, 2000, the respondent averred that he

declared the same in the logbook. He was actually performing his duty on the said date and served orders to several lawyers handling cases before the court.

The respondent, likewise, denied being absent on September 5, 2000 as found by Executive Judge Marrero, claiming that he was out serving court processes. He also denied being absent without official leave (AWOL) on the 6<sup>th</sup> and 8<sup>th</sup> of September 2000, since he filed the necessary leave of absence, duly signed by Atty. Rodrigo P. Kito, Branch Clerk of Court of Regional Trial Court, La Trinidad, Branch 8, Benguet.

The respondent claims that under the Civil Service Law, a public servant is allowed to go on sick leave without prior application, therefore, as no one exactly knows when he may be sick; it suffices that he files the necessary application for leave as soon as he reports back to work. He also points out that the distance between Baguio City where he usually serves court processes, and La Trinidad, Benguet, is more than seven kilometers. The respondent explained that it would take at least one hour to negotiate the distance, considering the very heavy flow of traffic. He averred that it is quite understandable for him to be on half-day everyday because of the nature of his job and the distance he frequently travels. The respondent prayed that the Court reconsider the order of Judge Marrero suspending him for one month, and for him to be paid the one-month salary as well as other benefits withheld during the month of suspension.

Finding the order of suspension not in accord with Supreme Court Circular No. 30-91, the Office of the Court Administrator (OCA) immediately referred the matter to this Court with the following recommendations:

(a) RE-DOCKET the case as a regular administrative case and REQUIRE Mr. Antonio B. Torio, Jr., to file COMMENT on the charge of Executive Judge Nelsonida T. Ulat-Marrero against him;

(b) TREAT the suspension imposed upon Mr. Torio, Jr. under the Order dated 28 September 2000 of Judge Ulat-Marrero as a PREVENTIVE SUSPENSION pending the final adjudication of this case; and

(c) WARN Judge Nelsonida T. Ulat-Marrero to follow Supreme Court Circular No. 30-91 providing that judges of the lower court may discipline erring court personnel only for light offenses. [3]

The recommendation was adopted by the Court in its Resolution dated October 24, 2001. [4]

The OCA, thereafter, received Executive Judge Marrero's Letter dated January 18, 2002, a portion of which reads:

I was designated as Acting Presiding Judge of RTC Br. 8 on October 21, 1999 by virtue of Adm. Order No. 115-99. When I started presiding over the said branch, cases were often reset because of the absence of lawyers, party litigants or witnesses. I found out then that orders, subpoenas and notices were not served on time by the process server, Antonio B. Torio, Jr. I would like to point out that at that time, Antonio B. Torio, Jr. did not report for duty in the mornings in the guise that he was

serving notices and orders. He reported only in the afternoons. There was therefore no way for me to find out if he was on duty or not.

The respondent was the recipient of a series of memoranda from the Executive Judge, admonishing him to be more circumspect in the performance of his duties. Executive Judge Marrero admitted that it was erroneous on her part not to have referred the matter on the disciplinary measure to the OCA. She insisted, however, that the respondent was given a chance to explain his side during the hearing on September 27, 2000 conducted precisely for the purpose.<sup>[5]</sup> The Executive Judge, thereafter, issued the questioned suspension order.

After a careful evaluation of the record of this case, we find reason to sustain the finding of both Executive Judge Marrero and the Office of the Court Administrator, that the respondent is administratively liable. As found by the OCA, through Deputy Court Administrator Jose P. Perez:

It should be noted that while respondent was suspended for his alleged absenteeism, complainant Executive Judge Nelsonida Ulat-Marrero, was not merely complaining said absenteeism but also about the result of such absences which was the failure of respondent to properly attend to his duty in attaching to every record of the cases copies of return receipts which had accumulated to nine hundred forty-two (942) on 13 January 2000 (Annex "A" of Judge Marrero's letter dated 18 January 2000 Re: Memorandum #2000-01). Some of these return receipts even dates back to as early as 1997. Respondent even admitted this as a fact in his answer to Judge Marrero's Memorandum #2000-01 addressed to him (Annex "B" of Judge Marrero's comment). After the first memorandum addressed to the respondent, the latter has been a recipient of series of memoranda reminding him to properly attend to his duties. After each memorandum, respondent can only come up with the same statement that he was sorry for his shortcomings with a promise to attend to his duties properly in the future.<sup>[6]</sup>

Neglect of duty is the failure of an employee to give one's attention to a task expected of him.<sup>[7]</sup> Gross neglect, on the other hand, is such neglect from the gravity of the case, or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare. The term does not necessarily include willful neglect nor intentional official wrongdoing.<sup>[8]</sup> The Court has categorized the following as constitutive of the grave offense of gross neglect of duty: a judge's failure to promulgate a decision in a criminal case for a period of five years from the time the said case was submitted for decision and failure to decide cases pending in court within the period required by law;<sup>[9]</sup> a court process server's failure to serve summons which resulted in the delayed resolution of the case;<sup>[10]</sup> a stenographer's infidelity in the custody of stenographic notes;<sup>[11]</sup> failure of a judge to remit cash collections for a period of four years;<sup>[12]</sup> and, a sheriff's failure to remit payment made by a judgment debtor.<sup>[13]</sup>

In line with the foregoing jurisprudence, the Court finds that the respondent's actuations constitute only simple neglect of duty. As amply found by the OCA:

While the respondent admittedly has been remiss in his duties as process server as previously directed by then Executive Judge Nelsonida Ulat-Marrero, to attach copies of all court processes to the record of each case and to make a report of all notices served, respondent, however, has already complied with the said directive as shown in Annex "A" of his reply to the Comment of Judge Marrero (pp. 39-125). There was, therefore, a conscious effort made on the part of the respondent to comply with said directive albeit belatedly after the complainant has suspended him.<sup>[14]</sup>

A process server should be fully cognizant not only of the nature and responsibilities of his task but also of their impact in the speedy administration of justice.<sup>[15]</sup> It is through the process server that a defendant learns of the action brought against him by the complainant. More importantly, it is through the service of summons of the process server that the trial court acquires jurisdiction over the defendant.<sup>[16]</sup> As a public officer, the respondent is bound *virtute officii* to bring to the discharge of his duties the prudence, caution, and attention which careful men usually exercise in the management of their affairs.<sup>[17]</sup> Relevant in the case at bar is the salutary reminder from this Court that the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel -- hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a true temple of justice.<sup>[18]</sup>

The respondent cannot, however, be held liable for habitual absenteeism. According to Civil Service Resolution No. 91-1631,<sup>[19]</sup> an officer or employee may be considered habitually absent "if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the Leave Law for at least three (3) months in a semester or at least three (3) consecutive months during the year."<sup>[20]</sup> Furthermore, as found by the OCA, upon verification from its Leave Division, the respondent's absences of September 6, 7 and 8, 2000, were duly approved by his superior. He was, thus, absent without going on authorized leave only on August 29 and September 5, 2000.<sup>[21]</sup> At most, the respondent was not entitled to receive his salary corresponding to the period of his unauthorized leave of absence.<sup>[22]</sup>

Although the respondent was indeed, remiss in the performance of his duties, Executive Judge Marrero had no authority to suspend him outright, as she was doing so on the premise that the respondent was guilty of a grave offense. According to Circular No. 30-91:<sup>[23]</sup>

#### b. *Grave or Less Grave Offenses*

##### 2. Lower Court Personnel

###### a. *Light Offenses*

- (1) Disciplinary matters involving light offenses as defined under the Civil Service Law (Administrative Code of 1987, and the Code of Conduct and Ethical Standards for Public Officials and Employees (Rep. Act 6713) where the penalty is reprimand, suspension for not more than thirty days, or a fine not exceeding thirty days'