

CYNTHIA A. FLORENDO, COMPLAINANT, VS. EXEQUIEL ENRILE, RESPONDENT.*Adm. Matter No. P-92-695. December 07, 1994*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/005e7acda111/>**PER CURIAM:**

In a sworn letter-complaint filed with the Office of the Court Administrator on 17 March 1992, the complainant charged the respondent deputy sheriff of the Municipal Trial Court in Cities (MTCC) at Cabanatuan City with the failure to enforce a writ of demolition notwithstanding his collection and receipt of P5,200.00. She averred that she was the plaintiff in Civil Cases Nos. 9241 to 9249, all for ejectment, and that in a joint decision rendered on 22 June 1987 by Branch 2 of the MTCC[1] the defendants were ordered to vacate the premises and to surrender the possession thereof to the complainant. The defendants appealed this decision to the Regional Trial Court (RTC) which in a joint decision of 18 August 1989[2] affirmed it in toto. On 19 January 1990, the MTCC issued a writ of execution.[3]

The writ was assigned to the respondent for implementation. In view of the refusal of the defendants to vacate the premises, the complainant asked for the issuance of a writ of demolition, which the court granted pursuant to its order of 21 March 1990.[4] On 27 June 1990, it denied the defendant's motion for extension of time to execute the writ of demolition.[5] For the service and implementation of the writ of demolition, the respondent asked and received from the complainant and her lawyer the total sum of P5,200.00 purportedly as sheriff's fee.[6] The respondent issued no official receipt for this amount. His acknowledgment of the partial payment of P2,700.00 appears on the stationery of the complainant's lawyer, Atty. Edgardo G. Villarin, while that for the other payment of P500.00 is handwritten on the stationery of the Office of the City Legal Officer, who is the same Atty. Edgardo G. Villarin. The other payment of P2,000.00 was by check drawn by the complainant's counsel.

The respondent did not execute the writ of demolition despite the receipt of P5,200.00. The complainant's lawyer then wrote a letter to the respondent on 8 November 1990 demanding that the latter implement the writ of demolition or return the aforesaid sum within ten days from receipt of the letter, otherwise the matter would be brought up to this Court.[7] Since nothing was done by the respondent, the complainant filed this complaint. She asked that the respondent be dismissed from the service.

On 25 May 1992, we required the respondent to comment on the letter-complaint.

In his comment (denominated as an answer) dated 16 June 1992, the respondent did not deny the charge that he collected P5,200.00 as sheriff's fee; however, he specifically denied the allegation that he did not implement the writ of execution and the writ of demolition. He claimed that he "returned to the defendants for several times to advice [sic] them to vacate the said place," but since they did not, he advised the complainant's counsel to file a motion for the issuance of a writ of demolition. When he received the writ of demolition, he served it on the defendants on 25 July 1990; the latter requested an extension of thirty days. He then prepared a return of service dated 25 July 1990.[8] Then, after the expiration of the extended period, he again approached the defendants on 4 September 1990 to make them vacate the premises. However, he was threatened by them that if he would enforce the writ of demolition something would happen, i.e., "magkamatayan muna." He then prepared the return of

service on the said date.[9] The writ was thus unsatisfied. It appears, however, that these returns dated 25 July 1990 and 4 September 1990 were filed with the MTCC only on 29 May 1991 and 6 June 1991, respectively.

He further claimed that on 8 July 1991, Judge Romeo Mauricio of the MTCC referred to Mr. Arsenio S. Vicencio, Clerk of Court IV and Ex-Officio Sheriff of the MTCC, the respondent's return of service of 4 September 1990 for comment.[10] In his compliance of 15 July 1991,[11] Mr. Vicencio informed Judge Mauricio that the threat on the respondent's life was "real, and it will be very risky for him to implement" it, and requested that a new deputy sheriff be assigned to enforce the writ. Pursuant to this request, Judge Mauricio sent a formal request to the Presiding Judge of Branch I of the MTCC of Cabanatuan City asking that deputy sheriff Teodoro Pineda be assigned to implement the writ of demolition.[12]

This case was referred to the Executive Judge of the RTC in Cabanatuan City for investigation, report and recommendation.

In his Report and Recommendation dated 4 March 1994, but transmitted to this Court only on 6 June 1994, Executive Judge Johnson L. Ballutay narrates the several instances that the case was set for hearing and the postponements thereof because of the respondent's plea for time to secure the services of counsel or because of his non-appearance. Judge Ballutay recommends:

"PREMISES CONSIDERED, and taking into account the stubborn attitude of the respondent of not engaging the services of counsel to facilitate the early termination of the investigation, it is respectfully recommended that in addition to the suspension for one (1) year without pay and to return to the complainant the P5,200.00, a suspension without pay for six (6) months be imposed upon the respondent."

In the resolution of 8 August 1994, we referred the Report and Recommendation of Judge Ballutay to the Office of the Court Administrator for evaluation, report and recommendation.

In its Memorandum of 23 September 1994, the Office of the Court Administrator finds that:

"An exhaustive study of the evidence on record shows a considerable amount of Neglect of Duty on the part of respondent. He should have coordinated with the counsel of the complainant and/or caused the citation of the defiant defendants for contempt of court when they resisted the implementation of the writ. Moreover, he should have requested for additional sheriff and/or police assistance for the proper and immediate implementation of the subject writs, but he did not. For a long period of time, the complainants have been deprived of their constitutional right to a speedy administration of justice considering that the Decision sought to be enforced was issued in 1989 yet, all because of the negligence of herein respondent.

In the case of *Active Wood Products, Inc. vs. IAC*, 183 SCRA 671, the Court declares that sheriffs must implement or execute the decision of the court without delay to prevent injury or damage to the winning party and so as not to prejudice said party of obtaining speedy justice.

Respondent did not also conduct himself in an upright and professional manner as the judiciary code of ethics require [sic], particularly in his getting the amount of P5,200.00 in installment basis from the respondent.

This Court, speaking through Justice Regalado, in the case of *Anonuevo vs. Pempena* (Administrative Matter No. P-93-795) promulgated on July 18, 1994, enunciates: -- 'It is an abhorrent and anomalous practice for a sheriff to demand fees in excess of those lawfully allowed. This Court has emphasized time and again, that the conduct and behaviour of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the sheriff down to the lowliest clerk should be circumscribed with the heavy burden of responsibility. Their conduct at all times, must be characterized with propriety and decorum, but above all else, must be above and beyond suspicion,' for every employee should be an example of integrity, uprightness and honesty (*Valenton, et al. vs. Melgar* - A.M. No. P-92-698, March 3, 1993, 219 SCRA 372)."

It then recommends:

"WHEREFORE, considering all the foregoing, it is respectfully recommended to the Honorable Court that respondent be imposed a FINE equivalent to his one (1) month salary payable within ten (10) days upon notice, taking into account that (a) he was not totally remiss in his duties but also exerted efforts to execute the writs; (b) he even went to the extent of approaching the City Mayor for relocation of the defendants; and (c) the complainant herself is in conformity to the dismissal of the complaint; and (2) to RETURN the total amount of P5,200.00 to the complainant, without interest, within twenty (20) days from notice hereof, with a STERN WARNING that the repetition of similar offense will be dealt with more severely."

We do not agree with the penalty recommended by Judge Ballutay or the Office of the Court Administrator. Both are, especially that of the latter, grossly inadequate in the light of the gravity of the administrative offenses committed by the respondent. Moreover, the former's recommendation of an additional penalty of suspension for six months on account of the "stubborn attitude of the respondent of not engaging the services of counsel to facilitate the early termination of the investigation" is improper. The records disclose that Judge Ballutay was very accommodating to the parties. No less than fifteen scheduled hearings were cancelled or postponed and despite admonitions that he would proceed with the hearing regardless of the absence of counsel, he never did.

Having been delegated by this Court the authority to investigate the case and to submit his report and recommendation, he should have, upon deliberate failure of the respondent to engage the services of counsel, allowed the complainant to present ex-parte her evidence and, upon the non-appearance of the respondent on any of the scheduled dates of hearing, considered him to have waived the presentation of his evidence. As we see it then, Judge Ballutay is not entirely without blame for the delay in the termination of the investigation of this case.

It must be stressed that administrative cases involving misconduct, nonfeasance, misfeasance, or malfeasance in office of officers and employees in the judiciary are of paramount public interest as the respondents are involved in the administration of justice, a sacred and solemn task. Such cases must be resolved with reasonable dispatch to clear the name of the innocent and to punish forthwith the guilty whose stay in office, prolonged by delay, could further tarnish the image of and diminish the public's faith in the judiciary.

We cannot likewise give weight to the circumstances relied upon by the Office of the Court Administrator to mitigate the respondent's liability. As hereinafter noted, he is guilty of grave misconduct, gross dishonesty, serious dereliction or neglect of duty, gross inefficiency or incompetence, and conduct prejudicial to the best interest of the service. That the complainant "is in conformity to the dismissal of the complaint" can by no means be considered a mitigating circumstance as it is offensive to the postulate that a complaint for misconduct, malfeasance, or misfeasance against a public officer or employee cannot just be withdrawn at any time by the complainant and that the need to maintain the faith and confidence of the people in the Government and its agencies and instrumentalities demands that proceedings in such cases should not be made to depend on the whims and caprices of the complainants who are, in a real sense, only witnesses therein.[13] In this case, the conformity of the complainant, found in the motion to dismiss dated 8 February 1994[14] and signed by the counsel for the complainant, is based on the ground that the respondent had already "fully implemented the writ of execution." That motion to dismiss was not, and correctly so, granted by Judge Ballutay. On the contrary, on 4 March 1994 he made his Report and Recommendation.

The respondent never denied that he received the sum of P5,200.00 from the complainant in connection with the writ of demolition. He did not issue any official receipt for the amount received. At the time the writ of demolition was placed on his hands for implementation, the basic amount that the complainant had to pay was only P8.00 pursuant to paragraph (g), Section 7, Rule 141 of the Rules of Court. This was later increased to P100.00 per this Court's en banc resolution of 4 September 1990.[15] There are, of course, other sheriff's expenses that prevailing

parties have to pay for the service or implementation of court processes, or the safeguarding of property levied upon, attached or seized, including kilometrage, guard's fees, warehousing and similar charges, in an amount to be estimated by the sheriff. However, the approval of the court thereof is needed and upon such approval, the amount shall be deposited by the interested party with the clerk of court and ex-officio sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return of the process. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return.[16]

In the instant case, the respondent did not make any report on the amount he received from the complainant nor did he issue an official receipt therefor. It is then obvious that he asked for the amount not as lawful fees alone but as a consideration for the performance of his duty. Any portion of the P5,200.00 then in excess of the lawful fees allowed by the Rules of Court is an unlawful exaction which makes the respondent liable for grave misconduct and gross dishonesty.

The records further disclose that the respondent's returns of service dated 25 July 1990[17] and 24 September 1990[18] were filed by him only on 29 May 1991 and 6 June 1991, respectively, with the MTCC, which issued the writ of demolition. Either the respondent correctly dated the returns, in which case there was a deliberate and unreasonable delay in their filing with the court, or he antedated them to make it appear that he prepared it well within the period provided for by the Rules of Court. Section 11 of Rule 39 thereof provides that a writ of execution should be returned at any time not less than ten days nor more than sixty days after its receipt by the sheriff who must set forth in writing on its back the whole of his proceedings by virtue thereof and file it with the clerk or judge to be preserved with the other papers in the case.[19] As the court personnel primarily responsible for the speedy and efficient service of all court processes and writs originating from his court,[20] it was the respondent's duty to immediately implement the writ of demolition. The Manual for Clerks of Court[21] provides:

"2. Duty of sheriff as to execution of process. -- When a writ is placed in the hands of the sheriff, it is his duty in the absence of instructions, to proceed with reasonable celerity and promptness to execute it in accordance with its mandate.... He has no discretion whether to execute it or not."

Section E(4) of the Manual also provides:

"4. All sheriffs and deputy sheriffs shall submit a report to the Judge concerned on the action taken on all writs and processes assigned to them within ten (10) days from receipt of said process or writ. Said report shall form part of the records of the case."

The duty imposed upon the sheriff to execute the writ is ministerial, not directory. A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of the legal authority, without regard to the exercise of his own judgment upon the propriety or impropriety of the act done.[22]

The respondent's explanation that he was not able to implement the writ of demolition because he was threatened with death by the defendants is unacceptable. If that were true, he should have either reported it to the MTCC and requested the assistance of other sheriffs or law enforcement authorities, or filed the appropriate criminal complaint against the defendants who had threatened him. Instead of doing so, he filed his returns only after several months had lapsed.

For such nonfeasance and misfeasance, the respondent is guilty of serious dereliction or neglect of duty, gross inefficiency or incompetence, and conduct prejudicial to the best interest of the service.

Time and again, this Court has stressed that the conduct and behavior of everyone connected with the dispensation

of justice from the presiding judge to the lowliest clerk should be circumscribed with the heavy burden of responsibility. They must at all times not only observe propriety and decorum, they must also be above suspicion.[23]

WHEREFORE, for grave misconduct, gross dishonesty, serious dereliction or neglect of duty, gross incompetence or inefficiency, and conduct prejudicial to the best interest of the service, respondent EXEQUIEL ENRILE, Deputy Sheriff of the Municipal Trial Court in Cities of Cabanatuan City, is ordered DISMISSED from the service with forfeiture of all benefits and with prejudice to re-employment in any branch of service of the Government, including government-owned or controlled corporations.

This decision is immediately executory.

SO ORDERED.

Narvasa, C.J., Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Vitug, Kapunan, and Mendoza, JJ., concur.
Feliciano, J., on leave.

[1] Annex "A" of letter-complaint.

[2] Annex "B" of letter-complaint.

[3] Annex "C," Id.

[4] Annex "D," Id.

[5] Annex "E," Id.

[6] Annexes "F," "F-1," and "F-2," inclusive, Id.

[7] Annex "G" of letter-complaint.

[8] Annex "B" of Comment.

[9] Annex "C," Id.

[10] Annex "D" of Comment.

[11] Annex "E," Id.

[12] Annex "F," Id.

[13] *Sy vs. Academia*, 198 SCRA 705 [1991].

[14] *Rollo*, 80.

[15] See Manual for Clerks of Court, Chapter IX, Section B, subsection 9(g), 194.

[16] See Manual for Clerks of Court, *op. cit.*, 195.

[17] Annex "B" of Comment.

[18] Annex "C," Id.

[19] See *Cruz vs. Villarin*, 181 SCRA 53 [1990].

[20] Supreme Court Circular No. 12, dated 1 October 1985; De Castro vs. Santos, 198 SCRA 245 [1991].

[21] Page 178. See Young vs. Momblan, 205 SCRA 33 [1992].

[22] Lamb vs. Phibbs, 22 Phil. 456 [1912], cited in Young vs. Momblan, supra at note 21.

[23] Tan vs. Herras, 195 SCRA 1 [1991]; Sy vs. Academia, supra at note 13.

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