

**MARISOL C. HIPOLITO, COMPLAINANT, VS. ELMER R. MERGAS,
DEPUTY SHERIFF, REGIONAL TRIAL COURT, BRANCH 46, MANILA,
RESPONDENT.**

A.M. No. P-90-412. March 11, 1991

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PER CURIAM:

Respondent, Elmer R. Mergas, a deputy sheriff of the Regional Trial Court, Branch 46, Manila was charged by herein complainant Marisol C. Hipolito, an applicant for a small scale mining permit, on January 4, 1990 in the Office of the Prosecutor, Province of Tarlac, with acts allegedly amounting to the crime of swindling or estafa.[1]

On January 18, 1990, a copy of an affidavit-complaint, dated January 4, 1990, charging herein respondent with grave misconduct and involving the same facts subject of the aforesaid criminal case, together with its corresponding attachments, was received in the Office of the Court Administrator.[2]

In a resolution of April 30, 1990 in I.S. No. 90-010 of the office of the aforesaid provincial prosecutor, the charge for estafa was dismissed on the theory that the evidence shows that there was no unfaithfulness or abuse of confidence on the part of respondent, and the issue of falsification was not ruled upon since no evidence proving the same was submitted for proper appreciation and consideration.[3]

On the administrative case, in a resolution of this Court, dated July 9, 1990[4], respondent was required to comment on the affidavit-complaint filed against him. On January 26, 1990, respondent filed his comment[5], together with his counter-affidavit and those of two of his witnesses which were allegedly the same documents filed with the provincial prosecutor of Tarlac in I.S. No. 90-010.

The Court noted that the acts complained of appear to have been committed by respondent over a period of at least four (4) months, presumably even during office hours, and it does not appear that he was granted any leave of absence therefor from his official station. Hence, on October 1, 1990, the Court resolved to refer the administrative case to Judge Bernardo P. Pardo, Executive Judge of the Regional Trial Court of Manila, for investigation, report and recommendation.[6]

On January 22, 1991, the investigating judge submitted his report and recommendation, with the following findings of fact which are borne out by the evidence:

"1. Elmer R. Mergas, at all times material hereto, has been a deputy sheriff of the Regional Trial Court of Manila, Branch 46, duly appointed and performing his duties as such.

"2. Sometime in September, 1989, a certain Mirasol (sic) Hipolito, together with Abel Mergas, respondent's brother, approached him and asked (for) his help in connection with her application with the Bureau of Mines for a small scale mining permit for pumice.

"3. Although such undertaking was not part of his work as deputy sheriff, respondent acceded to the request.

"4. Consequently, on September 22, 1989, respondent deputy sheriff caused the filing of an application for

small scale mining permit for pumice in behalf of Marisol Hipolito with the Bureau of Mines, regional office, San Fernando, Pampanga.

"5. However, the site applied for was claimed by another person and the respondent suggested another site. This second site was not acceptable to the applicant and the applicant submitted a plan for still another site in San Luis, Tarlac, Tarlac which was covered by an application of another person. Consequently, the application could not be given due course.

"6. In connection with such application, respondent sheriff received from Marisol Hipolito the sum of P14,200.00 which was spent for the following:

P4,500.00, for the survey conducted on September 16 & 17, 1989

P 600.00, for filing fee of the application

P4,000.00, for project information filed on October 17, 1989

P3,000.00, for verification fee of the site on November 28, 1989

P3,500.00, for the survey of another site on December 7-8, 1989

P2,000.00, for travelling expenses, food and other expenses in following up the application.

Respondent claims that Marisol Hipolito still owes him P3,400.00.

"7. On January 4, 1990, Marisol Hipolito filed with the Provincial Prosecutor of Tarlac a complaint for estafa against respondent deputy sheriff.

"8. In his resolution dated April 30, 1990, Assistant Provincial Prosecutor Gregorio R. Bautista found that 'complainant delivered sums of money to the respondent that involves the duty for the respondent to help her work for her application and approval of a small scale mining permit with the Bureau of Mines' but 'there was no unfaithfulness or abuse of confidence that is the essence of swindling and deceit'. Consequently, the Assistant Prosecutor recommended that the case be dismissed which was duly approved by the Provincial Prosecutor."

The investigating judge submitted that the acts of respondent deputy sheriff are improper and not conducive to the best interest of the service. Respondent was held to have committed acts which may be called "moonlighting" and which are contrary to civil service rules and regulations. He observed that respondent is not supposed to be following up extraneous matters outside Manila, in other government offices and for private individuals, to the prejudice of his work in the judiciary as a deputy sheriff of the Regional Trial Court of Manila. Consequently, his Honor recommended the penalty of suspension from office for a period of six (6) months without pay effective immediately.

Respondent failed to refute the fact that he was indeed involved in the work and processes involved in the application for the small scale mining permit for complainant Marisol C. Hipolito. This clearly shows that respondents failed to observe and maintain that degree of dedication to the duties and responsibilities required of him as a deputy sheriff. Thus, it bears mention at this juncture that although he appears to have been exonerated by the prosecutor of the criminal charges proffered against him, such absolution is not per se a bar to administrative sanctions where called for by the malfeasance, misfeasance or nonfeasance of a public officer.

A deputy sheriff, as an officer of the court whose duties form an integrated part of the administration of justice, may be properly punished, even with a penalty short of dismissal or suspension from office, by this tribunal which exercises administrative supervision over the judicial branch of the Government, for an action committed in violation of the Rules of Court and which impedes and detracts from a fair and just administration of justice.[7]

While "moonlighting" is not normally considered as a serious misconduct, nonetheless, by the very nature of the position held by respondent, it obviously amounts to a malfeasance in office. In sum, he is bound, *virtute officii*, to bring to the discharge of his duties that prudence, caution and attention which careful men usually exercise in the management of their own affairs.[8]

Finally, public service requires utmost integrity and strictest discipline. A public servant must exhibit at all times the highest sense of honesty and integrity. This yardstick has been imprinted in the 1973 Constitution under Section 1 of Article XIII, thus: "Public office is a public trust. Public officers and employees shall serve with the highest degree of responsibility, integrity, loyalty and efficiency and shall remain accountable to the people." [9] This is reiterated more emphatically in the 1987 Constitution.[10]

WHEREFORE, as correctly evaluated and recommended by the investigating judge, the Court finds respondent. Deputy Sheriff Elmer R. Mergas guilty of serious misconduct in office or conduct prejudicial to the best interest of the service. He is hereby **SUSPENDED** from office for a period of six (6) months without pay effective immediately. Let a copy of this resolution be entered in the personal records of respondent. It is so ordered.

Melencio-Herrera, (Chairman), Paras, Padilla, Sarmiento, and Regalado, JJ., concur.

[1] Rollo, 2-4.

[2] Ibid., 6.

[3] Ibid., 10-13.

[4] Ibid., 7.

[5] Ibid., 8-9.

[6] Ibid., 51.

[7] *Bareno vs. Cabauatan, etc.*, 151 SCRA 293 (1987).

[8] *Peñalosa vs. Viscaya, Jr.*, 84 SCRA 298 (1978).

[9] *Ganaden vs. Bolasco*, 64 SCRA 50 (1975).

[10] Section 1, Art. XI provides: "Public office is a public trust. Public officers must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives."

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