

JUDGE ELISEO C. GEOLINGO, COMPLAINANT, VS. NICOLAS G. ALBAYDA, SHERIFF II, MUNICIPAL TRIAL COURT IN CITIES, BACOLOD CITY, RESPONDENT.

A.M. NO. P-02-1660. January 31, 2006

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PER CURIAM:

By Complaint [1] dated November 28, 2001, Judge Eliseo C. Geolingo (complainant) of the Municipal Trial Court in Cities (MTCC), Branch 6, Bacolod City charges Nicolas G. Albayda (respondent), MTCC Sheriff II, Branch 4, Bacolod City with dishonesty, falsification of time card, gross incompetence, insubordination, neglect of duty, and failure to liquidate sums of money received from litigants for implementation of writs of execution and demolition.

By complainant's account, the following events drew him to lodge the present complaint against respondent.

Complainant was barely two months in the judiciary when he was informed that respondent had charged the prevailing party-plaintiff in Civil Case No. 22511, for ejectment, P5,000 for every shanty to be demolished. He thus instructed respondent to henceforth issue receipts for any amounts he collects from litigants, deposit the same with the Clerk of Court, liquidate his expenses, and return any excess. Respondent did not, however, heed complainant's instruction. [2]

As reports reached complainant that respondent had been slow in implementing writs issued by the court, a memorandum of January 9, 2001 was issued to him directing him to promptly serve or implement writs and other court processes. Another memorandum dated June 4, 2001 was issued for him to comply with Section 14 of Rule 39 [3] of the 1997 Rules of Civil Procedure. [4] Respondent did not, however, heed the two memoranda.

In Civil Case No. 26374, "Daniel A. Consuji, et al. v. Joevel Marcelo," albeit respondent had been in the service as sheriff for 10 years, he betrayed his incompetence when he served the summons upon the wife of the defendant, instead of the defendant himself, which resulted in the recall and setting aside of the decision rendered in the case.

In the case of Garrido v. Daguno, complainant was informed that respondent collected from the prevailing party-plaintiff the sum of P15,000 for serving on the defendant the writ of execution.

In April 2001, the Clerk of Court discovered that respondent had been punching "IN" and "OUT" in his time card almost at the same time such that he would no longer have to return to the office in the afternoon to log out. Respondent was thus warned to discontinue his dishonest practice, but to no avail, for again, sometime in November 2001, he failed to log-out in the afternoon. [5]

On October 29, 2001, respondent was directed to attend a seminar scheduled on October 31, 2001, but he did not comply.

Finally, complainant relates that respondent spends most of his time in the coffee shop and in the Department of

Education Culture and Sports Provincial Office near the Hall of Justice where party litigants who wish to see him repair to. [6]

In respondent's Answer, [7] while he admits punching in and out his time card "although not necessarily almost at the same time," he alleges that the charges of dishonesty and falsification are mere observations of complainant.

Specifically with respect to his failure to log out in one afternoon of November 2001, he attributes this to his being out then to enforce a writ of execution.

As for the complaint that he charged the plaintiff in Civil Case No. 22511 the amount of P5,000 for every house to be demolished, respondent denied the same, he claiming that the amount represented expenses for the demolition of 10 houses.

Respecting his collection from the plaintiff in the case of Garrido v. Daguno of the sum of P15,000, respondent claimed that the amount represented transportation and food expenses, and allowance for the members of the Philippine National Police who assisted him in the enforcement of the writ of execution, and he returned part of the amount to the plaintiff's lawyer.

As to the complaint about the slow pace in the implementation of writs of execution and demolition, respondent attributed the same to his failure to cope up with the demands of lawyers, the failure of the winning parties to follow-up the implementation of writs, and pressure of work assignments some of which called for out-of-town trips.

On why he served the summons in the case of Daniel Consuji v. Joevel Marcelo upon the defendant's wife, respondent justified it by claiming that the defendant was always out every time he attempted to serve the summons on him.

On his failure to attend that seminar on October 31, 2001, he claimed that before he received the advice, he had been scheduled to go to Carabalan, Himamaylan, Negros Occidental to serve the summons in the case of NKB Lending v. Joenil Nunay, which schedule he could no longer postpone "because the plaintiff and the vehicle to be used were all set."

By Resolution [8] dated November 18, 2002, this Court referred the case to Executive Judge Ma. Lorna P. Demonte Verde, MTCC, Bacolod City for investigation, report and recommendation.

During the hearing on January 29, 2003 before Judge Demonte Verde, respondent, who appeared and intimated that he did not need the assistance of counsel, departed from his allegations in his Answer and admitted all the allegations-charges in the complaint. [9]

Executive Judge Demonte Verde thereupon recommended the dismissal of respondent from the service, which recommendation [10] the OCA has adopted in light of its following observations: [11]

Respondent's admission of the charges leveled against him undoubtedly shows his failure to live up to the standards of the office he had sworn to serve. He had fallen short of the degree of discipline exhorted from court personnel (Office of the Court Administrator vs. Sirios, 410 SCRA 35; Madrid vs. Quebral, 413 SCRA 1). Tampering with his DTR to make it appear that he rendered full services for the dates indicated shows his lack of integrity and a perverse sense of responsibility. This is gross dishonesty.

Charging P5,000.00 for every shanty to be demolished in Civil Case No. 22511 and P15,000.00 in Civil Case No. 26374 for the service of the writ of execution without the approval of the court constitutes grave misconduct and conduct prejudicial to the best interest of the service. Although the sheriff, in the performance of his duties, is not precluded from collecting additional sums from a requesting party, the same should be

subject to approval from the court as provided for in Section 9 Rule 141 of the Rules of Court. Before an interested party pays the sheriff's expenses, the latter should first estimate the amount to be approved by the court. The approved estimated expenses shall be deposited by the interested party with the Clerk of Court and ex-officio sheriff who shall disburse the amount to the executing sheriff. The latter shall liquidate his expenses within the same period for rendering a return on the writ. (*Abalde vs. Roque, Jr.* 400 SCRA 210) Any amount received by the sheriff in excess of the lawful fees allowed by the Rules of Court is an unlawful exaction and renders him liable for grave misconduct and gross dishonesty (*Alvares, Jr. vs. Martin*, 411 SCRA 248). Moreover, any unspent amount shall be refunded to the party who made the deposit.

Respondent failed to comply with the above requirement despite directives of the complainant judge. He failed to explain why he collected P5,000.00 per demolished shanty. This constitutes extortion. Moreover, his explanation regarding the P15,000.00 he collected for the service of the writ of execution in the case of *Angelina Pahila-Garrido vs. Damiana Daguno* was not authorized by the court, hence, is illegal.

Likewise, the undue delay of respondent in the implementation and return of writs of execution, his failure to observe the procedure in the service of summons and his spending most of his working hours outside the court where he is supposed to be when not officially out in the field constitute gross negligence and dereliction of duty. [12]

This Court finds the observations and recommendation of the OCA well-taken.

Section 1 of Article XI of the 1987 Constitution declares that a public office is a public trust. It enjoins public officers and employees to serve with the highest degree of responsibility, integrity, loyalty and efficiency and to at all times remain accountable to the people.

No other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than in the judiciary. [13] Section 1 of Canon IV of the Code of Conduct for Court Personnel [14] specifically enjoins court personnel to at all times perform official duties properly and with diligence, and to commit themselves exclusively to the business and responsibilities of their office during working hours.

By the very nature of their functions, sheriffs, like respondent, are called upon to discharge their duties with due care and utmost diligence and, above all, to be above suspicion. [15]

"At the grassroots of our judicial machinery, sheriffs and deputy sheriffs are indispensably in close contact with the litigants, hence, their conduct should be geared towards maintaining the prestige and integrity of the court, for 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 temple of justice." [16] (Underscoring supplied)

And they are mandated to, in the implementation of writs or processes of the court, comply with Rule 141, Section 10 of the Revised Rules of Court, the pertinent portion of which reads:

With regard to sheriff's expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, the interested party shall pay said expenses in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount 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 on the process. THE LIQUIDATION SHALL BE APPROVED BY THE COURT. 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, and the sheriff's expenses shall be taxed as costs against the judgment debtor.

But respondent did not.

Respondent's act of punching in his time card with the Bundy clock and punching out almost at the same time is patent dishonesty, reflective of his fitness as an employee to continue in office and the discipline and morale of the service. [17]

Just as his failure to attend that seminar on October 31, 2001, which mirrors his insubordination and lack of professionalism, retards his moral fitness to serve in the judiciary.

Given respondent's purely ministerial role in the execution of judgments, he is under duty to proceed with reasonable celerity and promptness to execute judgments according to their mandate, [18] otherwise, they become empty victories of the prevailing party. [19] But respondent failed to discharge this duty.

With respondent's admission of the charges against him which constitute Gross Neglect of Duty and Grave Misconduct, he is a stigma to the good image of the judiciary and should not thus be allowed to stay in the service a day more.

WHEREFORE, respondent, Nicolas G. Albayda, Sheriff II, Municipal Trial Court in Cities, Branch 6, Bacolod City is, for Dishonesty, Gross Neglect of Duty and Grave Misconduct, **DISMISSED** from the service effective immediately, with forfeiture of all benefits and privileges except accrued leave credits, if any, and with prejudice to re-employment in any branch or instrumentality of government including government-owned and controlled corporations and financing institutions.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.

[1] Rollo, p. 1.

[2] Id.at 2.

[3] Rules Of Court, Rule 39, Sec. 14.

SEC. 14. Return of Writ of Execution. – The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties. (Underscoring supplied)

[4] Rollo, p. 2.

[5] Id. at 1-2.

[6] Id. at 3.

[7] Id. at 15-16.

[8] Id. at 20.

[9] Id. at 27.

[10] Id. at 28

[11] Id. at 97.

[12] Id. at 97.

[13] See *Imperial v. Santiago, Jr.*, 446 Phil. 104, 119 (2003); *Rabe v. Flores*, 338 Phil. 919, 925-926 (1997).

[14] Promulgated on April 13, 2004 and took effect on June 1, 2004.

[15] See *Imperial v. Santiago, Jr.*, supra note 13.

[16] *Guevarra v. Sicat, Jr.*, 446 Phil. 872, 879 (2003); *Vda. de Abellera v. Dalisay*, 335 Phil. 527, 530-531 (1997); *Gacho v. Fuentes, Jr.*, 353 Phil. 665, 675 (1998); *Vda. de Velayo v. Ramos*, 424 Phil. 734, 742 (2002).

[17] *Alabastro v. Moncada, Sr.* A.M. No. P-04-1887, December 16, 2004, 447 SCRA 42, 59; *Nerra v. Garcia and Elicaño*, 106 Phil. 1031, 1036 (1960).

[18] *Paner v. Torres*, 446 Phil. 508, 512-513 (2003).

[19] *Guevarra v. Sicat, Jr.*, 446 Phil. 872, 880 (2003).

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