

COL. OCTAVIO ALVAREZ, COMPLAINANT, VS. JUDGE AUGUSTUS C. DIAZ, ATTY. VICTORY EDRALIN AND MR. EFREN P. LUNA, METC, BRANCH 37, QUEZON CITY, RESPONDENTS.*A.M. No. MTJ-00-1283 [Formerly OCA IPI No. 98-547-MTJ]. March 03, 2004*

Ponente: CORONA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/3b6360d9e211/>**CORONA, J.:**

This is an administrative complaint filed by Col. Octavio Alvarez against Judge Augustus C. Diaz, Clerk of Court Victory Edralin and Deputy Sheriff Efren Luna, all of the Metropolitan Trial Court of Quezon City, Branch 37, for grave abuse of authority, gross misconduct and solicitation of gifts relative to Civil Case No. 37-13857,[1] for forcible entry, filed by the spouses Domingo and Celia Garcia. Complainant Alvarez was one of the defendants in the said forcible entry case which resulted in the demolition of his office, his tenants' houses and other structures at No. 21 Congressional Avenue, San Beda Village, Bahay Toro, Quezon City.

The facts follow.

On October 27, 1995, spouses Domingo and Celia Garcia filed a complaint for forcible entry against the tenants[2] of complainant Alvarez before the Metropolitan Trial Court of Quezon City (MeTC).[3] The case was raffled to Branch 37 presided over by herein respondent Judge Diaz.

On June 17, 1996, plaintiff spouses Domingo and Celia Garcia, through counsel, filed a Motion for Leave of Court to Admit Amended Complaint[4] which dropped six of the defendants from the original complaint and added herein complainant Octavio Alvarez as one of the defendants.[5]

On November 11, 1997, respondent Judge Diaz rendered a decision in favor of the plaintiffs, ordering complainant Alvarez and his co-defendants, Charlie Robles and Marlyn Cortez to (a) immediately vacate the subject premises; (b) remove all improvements, structures or houses erected thereon and (c) pay the plaintiffs the sum of P20,000 per month as reasonable compensation for the use and occupancy of the subject property, computed from August 1995 until the subject premises were finally vacated.[6]

Complainant Alvarez received the decision on January 7, 1998. On January 14, 1998, he filed, through counsel, a Notice of Appeal[7] and paid the corresponding appellate docket fees the next day, January 15, 1998.[8]

However, on January 28, 1998, plaintiffs filed a Motion for Execution on the ground that the decision of the MeTC had already become final for failure of the defendants therein (complainant Alvarez and his tenants) to pay the requisite appellate docket fees within the appeal period, as mandated by Section 5, Rule 40 of the Rules of Court.[9]

In an order dated February 3, 1998, respondent Judge Diaz dismissed complainant Alvarez's Notice of Appeal for non-payment of docket fees within the appeal period.[10] At the same time, Judge Diaz granted the plaintiff's Motion for Execution for failure of the defendants to file a supersedeas bond required under Section 19, Rule 70 of the Rules of Court to stay the execution of judgment. The writ of execution was issued on the same date.[11]

On February 19, 1998, respondent Deputy Sheriff Luna personally served copies of the Notice to Vacate on all the defendants, except herein complainant Alvarez.[12] According to the respondent deputy sheriff, complainant Alvarez neither lived nor held an office in the subject premises. Thus, the respondent deputy sheriff left the complainant's copy of the notice with one of his tenants, Penny Montelo.[13] The Notice to Vacate gave all the defendants five days from receipt thereof within which to vacate the subject premises.

On February 26, 1998, the respondent deputy sheriff submitted to the MeTC his Sheriff's Report stating that he had served copies of the Writ of Execution and Notice to Vacate on the defendants but they refused to vacate, insisting that they owned the houses and other structures erected thereon.[14]

The following day, February 27, 1998, plaintiffs filed an ex parte Motion for Demolition.[15] On March 2, 1998, respondent Judge Diaz granted the motion and issued a Writ of Demolition.[16]

On March 11, 1998, respondent sheriff, with the help of several men, demolished all the houses, structures and improvements on the subject premises, and turned over its possession to the plaintiffs.[17]

On March 20, 1998, nine days after the demolition, respondent judge motu proprio issued an order reconsidering his order dated February 3, 1998, insofar as the dismissal of complainant Alvarez's Notice of Appeal was concerned. It appears that, on February 23, 1998, the MeTC received photocopies of the receipts of payment of the appellate docket fees by complainant Alvarez.[18] Accordingly, the records of the case were forwarded to the Regional Trial Court on appeal.

Feeling that an injustice had been done to him, complainant Alvarez filed the instant administrative complaint against Judge Diaz, Clerk of Court Edralin and Deputy Sheriff Luna for grave abuse of authority, grave misconduct and solicitation of gifts.

In his sworn Complaint-Affidavit dated April 15, 1998, complainant Alvarez alleged:

2.

The basis of the demolition illegally undertaken by the court personnel was the Writ of Execution dated February 3, 1998 issued by Honorable Judge Augustus C. Diaz that were marred with grave abuse of authority, gross injustices, violations of laws and the Rules of Court, to wit:

a.

Said writ was issued inspite of PERFECTED Notice of Appeal submitted to MTC Br. 37 on January 14, 1998 or SEVEN (7) days after the Decision (dated November 11, 1997) was received by the undersigned on January 7, 1998.

b.

The Honorable MTC Br. 37 ordered the dismissal of the perfected Notice of Appeal x x x even without a request or Motion by the Plaintiffs, Leonardo & Celia Garcia. Said plaintiffs x x x "short cut" or "jumped the gun" by filing a motion for issuance of a Writ of Execution (minus a motion (sic) for dismissal of Notice of Appeal) where the Honorable Court with apparent bias, immediately issued TWO (2) orders rolled into one: one for dismissal of the Notice of Appeal and the other one was the issuance of the Writ of Execution. The

Court DID NOT SET any hearing for the TWIN orders and DID NOT notified (sic) the undersigned nor his counsel of the issuance of both the TWO (2) writs (execution and demolition) x x x. And worst, the plaintiffs did not bother notifying the undersigned for their Motion for Writ of Demolition.

c.

For clarity, above mentioned TWIN orders were issued on February 3, 1998 which copies were furnished the counsel of the undersigned only on March 17, 1998 after SIX (6) days from the execution of the Demolition (the Writ of Demolition was also issued without notice and hearing) undertaken on March 11, 1998.

d.

Forgeries were committed by falsifying the receipt signatures and/or initials of the office of my former counsel on the following documents: paul

1.

x x x twin Orders for dismissal of the perfected Notice of Appeal together with the Writ of Execution dated February 3, 1998;

2.

x x x the order for the Writ of Demolition;

x x x x x x x x

3.

Aside from the above offenses, injustices and hastes (sic) in demolishing the houses of the undersigned and the quick turning over the property to the plaintiffs, the following offenses were committed: paul

(a)

Sheriff Efren P. Luna and Branch Clerk of Court Victory Edralin who are casual acquaintances developed in

previous civil cases in the same MTC Branch, sometime before Christmas in December 1995, twice asked the undersigned for P100,000.00 for the dismissal of the complaint for Forcible Entry against me and tenants. x x x The undersigned graciously refused, however both in several occasions solicited gifts such as a lady's wrist watch (Guchi brand), golden necklace and pendants, among others (sic) received by Atty. Victory Edralin before and after Christmas day of 1995, while Sheriff Efren Luna picked up from my residence before Christmas of 1995 a Dunhill men's jacket and P5,000.00 and asked and received from the undersigned outside of MTC Branch 37 office before New Year of same year a golden pendant and two bottles of Fundador liquor.

x x x x x x x x

(c)

In the morning of February 20, 1998, upon receipt of the information from the tenants of the subject contested property that Sheriff Luna and Branch Clerk Atty. Edralin twice visited their houses and required them to voluntarily vacate the premises, otherwise their houses will be forcibly demolished and their personal properties will be confiscated as levies, the undersigned with counsel Atty. Rebeck Espiritu and accompanied (sic) RTC Judge Pedro Areola explained to MTC Br. 37 Judge Augustus Diaz that a perfected Notice of Appeal was already submitted rendering ipso facto the MTC lose (sic) jurisdiction over the case. It (sic) was explained the legal consequences of demolished (sic) tenanted houses because gleaned from the case folder of the complaint, there were NO NOTICE NOR SETTING OF HEARING for: (1) Dismissal of Notice of Appeal, (2) Issuance of Writ of Execution, (3) Notice to Vacate, (4) Sheriff's Report, (5) Motion for Writ of Demolition, and (5) Issuance of the order for the Writ of Demolition.

(d)

At this instance, it was discovered that the docket fee Official Receipts (nos. 6647869, 8413937, & 8408520) were detached from the files. This gave rise to an incident in the afternoon of January 20, 1998 when the undersigned saw plaintiff Leonardo Garcia in conference with Sheriff Efren Luna and Atty. Victory "Baby" Edralin in the office of the latter which after a while (sic) the former (Garcia) came out pocketing receipts. It could now be concluded that they detached the docket fee receipts in order for the court to succeed in demolishing the houses owned by the undersigned and quick (sic) turn over the contested lot to the Plaintiffs even before the houses are completely torn down.

(e)

On March 10, 1998, the undersigned once more visited Atty. Edralin who was able to talked (sic) with my counsel Atty. Rebeck Espiritu who again reiterated the court's commitment to withhold the demolition order. Unfortunately, the following day, March 11, at about 8:30 AM, TEN demolition crew led by Sheriff Luna and Atty. Edralin and SPO4 Bert Cruz accompanied by plaintiff LEONARDO GARCIA, with at least Five (5) heavily armed men in civilian attires came at the lot contested. x x x The (sic) immediately started torning (sic)

down the houses at No. 21 Congressional Ave., Quezon City against the protest of scared occupants. My son, Octavious Alvarez interceded but Sheriff Luna with his armed bodyguards shoved him away with a remark "order is order". The undersigned also arrived at about 9:30 AM and confronted Sheriff Luna who admitted that he was under the instruction of Atty. Edralin. He advised the undersigned to talk to Honorable Judge Augustus Diaz at the City Hall and he promised that he will withhold the demolition up to 3:00 o'clock in that afternoon to give me a chance to talk with Judge Diaz. At the City Hall however, at about 10:45 AM, the Honorable Judge upon seeing the undersigned hurried (sic) left his office thru the back door without leaving a word to any of his staff.

(f)

The undersigned (sic) returned back to site of demolition at about 11:45 to advised Sheriff Luna to await the return of Judge Diaz after lunch but it was shocking to find out that the property was already enclosed with GI sheets from the torn and uncomplete demolished (sic) houses which was heavily guarded by armed men. No one from the tenants was allowed to retrieved (sic) their remaining personal properties including one Sony 14 inches colored TV, an electric fan standard brand and an office table with some documents therein owned by the undersigned. The construction materials captured by these court personnel and plaintiffs worth no less than P500,000.00. The property was turned over to plaintiff Leonardo Garcia at exactly 1130 AM, THE SAME DAY or barely Three (3) hours too hastily, a total deception by the personnel of Court apparently for money.[19]

Then Court Administrator Alfredo L. Benipayo, in his first indorsement dated September 8, 1998, directed respondent Judge Diaz, Clerk of Court Edralin and Deputy Sheriff Luna to answer.[20]

Respondent Judge Diaz, in his Answer dated October 5, 1998, prayed for the dismissal of the complaint, alleging that:

The issue that there was no hearing for the motion for issuance of a writ of demolition was already moot and academic, as the decision included therein the demolition of the structures built on the premises.

It is alleged that there were forged signature (sic) on the Court Orders to signify their receipt by the parties. These allegedly forged signatures are that of Mr. Gabriel Eugenio, an employee of the Court, to indicate that they have been released through registered mail.

The defendant Octavio Alvarez received the decision on January 7, 1998. He had, therefore, until January 22, 1998 within which to file a notice of appeal. He filed a notice of appeal on January 14, 1998 x x x The xeroxed copies of the receipt of payments were forwarded to the Court on February 23, 1998.

On January 23, 1998, the day after the lapse of the period for him to file a notice of appeal, defendant Alvarez had not yet posted the required supersedeas bond in order to stay the execution of judgment.

The complainant also alleged that the undersigned promised to Judge Arreola that the undersigned will stop the demolition. x x x [I]f people come to see the undersigned to request for accommodation, it is just the character of the undersigned that he is only being polite to them. But this does not mean that he gives in to requests for accommodation outrightly. The undersigned likewise sees to it that such requests are meritorious, just, and valid under the circumstances. x x x The alleged request, if there was any, was not in accordance with the foregoing. Certainly, it was not legal and proper. Furthermore, the undersigned did not make any promise to Judge Arreola. If ever he talked to Judge Arreola, it is certain that no promises were made.

As to the charge that the materials were confiscated by the undersigned, the Clerk of Court and Deputy Sheriff,

the undersigned vehemently denies such acts were committed. The undersigned never even went to the premises in question.[21] (emphasis ours)

For their part, respondents Clerk of Court Victory Edralin and Deputy Sheriff Luna submitted a Joint Answer dated October 5, 1998, strongly denying the allegations of the complainant that they solicited gifts and demanded P100,000 from him in exchange for the dismissal of the forcible entry case. The pertinent portions of their answer read:

Let it be noted that the original Complaint in Civil Case No. 13857, for Forcible Entry x x x was filed with our Court on October 27, 1995, and complainant Octavio Alvarez was not cited as co-defendant therein. We never came to meet nor have we talked with Mr. Octavio Alvarez in December of 1995 regarding aforesaid case. So how could this alleged asking of PhP100,000.00 for the dismissal of the complaint for Forcible Entry x x x and the solicitation of gifts from the complainant happened who was NOT a party to the case.

x x x x x x x x

On January 29, 1998, plaintiffs filed their Motion For Issuance Of Writ Of Execution, setting said motion for hearing on February 3, 1998. A copy of this motion was duly furnished Atty. Bernardo Nera, counsel for the defendants, on the same date x x x as shown by the stamp that it was received by the office of Atty. Nera. This is also contrary to the allegation of Mr. Octavio Alvarez that his counsel was never furnished a copy of this motion.

x x x x x x x x

On February 27, 1998, plaintiffs filed their Motion For Writ of Demolition. On this point, Mr. Octavio Alvarez was hammering on the fact again that said motion was never set for hearing. The Court did not see the necessity in setting the motion for hearing anymore as it would be just an idle ceremony considering that the defendants have failed to post the requisite supersedeas bond.

x x x x x x x x

That it is not also true that on March 11, 1998, the undersigned Branch Clerk of Court was at subject premises while the demolition was going on because she was never been there. In fact, a son of Mr. Octavio Alvarez took pictures while the demolition was going on x x x. But yet, these pictures do not depict that Branch Clerk of Court Victory A. Edralin was there present.

x x x x x x x x

That this Octavio Alvarez has an axe to grind against the Branch Clerk of Court because sometime in the morning of March 11 1998, the day of the demolition, Atty. Rebeck Espiritu, the new lawyer of Mr. Octavio Alvarez, called her up at her office. Atty. Espiritu informed her that together with Judge Pedro Areola, an RTC Judge in Quezon City, (the latter claims that a brother-in-law of his is in turn the brother-in-law of Mr. Octavio Alvarez), they went to see Judge Augustus C. Diaz xxx and allegedly Judge Areola prevailed upon Judge Diaz to issue an Order for the stopping of the demolition. Atty. Espiritu asked the Branch Clerk of Court whether she has prepared the Order for the stopping of the demolition and when she told Atty. Espiritu that Judge Diaz has not yet advised her to prepare one, Atty. Espiritu then told her to prepare the order for the stopping of the demolition and to have it signed at once by Judge Diaz. The Branch Clerk inquired from Atty. Espiritu whether they have already filed their supersede (sic) as bond and if there was any motion for reconsideration in order that the Court will have a basis to reconsider its Order for demolition. But this only infuriated Atty. Espiritu as he said there was no more time to draft one and he reminded the Branch Clerk of Court again that Judge Diaz promised this Order to Judge Areola and the latter was expecting this Order x x x since there was no order from Judge Diaz for her to prepare the requested Order x x x she did not prepare the requested order xxx. This is the very reason why Octavio Alvarez is dragging the Branch Clerk of Court into this complaint. He expected her to succumb to their pressure and make her a tool to (sic) their unjust, illegal, and improper conduct.

The fact that the Branch Clerk of Court did not succumb to the pressure of the complainant to prepare the requested Order for the stopping of the demolition only proves the truth that the alleged solicitation of gifts never happened in this case. For why did the Branch Clerk of Court not give in to the request of the complainant if she had indeed solicited gifts from him.[22] (emphasis ours)

In his Reply to the answers of respondents, dated November 19, 1998, complainant Alvarez insisted that Deputy Sheriff Luna and Clerk of Court Edralin were aware from the very start that he was the principal litigant in the complaint for forcible entry, even if the original complaint filed on October 27, 1995 did not include him as one of the defendants. He also alleged that it was respondent Judge Diaz who required him and his counsel to get an RTC Judge to state that his (Judge Diaz's) orders were incorrect.[23]

In her Rejoinder to the complainant's reply dated January 4, 1999,[24] respondent Clerk of Court Edralin countered that she never saw complainant appear in court after the original complaint for forcible entry was filed on October 27, 1995. The first time she ever spoke with complainant regarding the case was during the first ocular inspection of the premises on April 22, 1996. Complainant called up one of his tenants, telling the latter to give the phone to the clerk of court because he (complainant) wanted to talk to her. According to respondent clerk of court, this belied the allegations of complainant that she demanded money from him in December 1995 since she did not meet nor talk to complainant at that time.[25]

Court Administrator Alfredo Benipayo, in his Report dated March 13, 2000, found the versions of the parties conflicting and suspected that "there (was) more to the case than (met) the eye." He thus recommended that the charges against Judge Diaz, Clerk of Court Edralin and Deputy Sheriff Luna be assigned to a consultant for a full-blown investigation.[26] In our Resolution dated June 14, 2000, we resolved to re-docket the case as a regular administrative matter, A.M. No. MTJ-00-1283.[27]

Retired Justice Narciso T. Atienza was assigned as consultant to investigate the charges. In his Report, Investigating Justice Atienza found respondent Judge Diaz guilty of "gross ignorance of basic procedural laws and grave misconduct prejudicial to the interest of the service" for (1) issuing a writ of demolition without notice and hearing, and (2) taking cognizance of plaintiffs' fatally defective Motion for Execution and Motion for Demolition.[28]

As to the charges against respondents Clerk of Court Edralin and Deputy Sheriff Luna, Justice Atienza found no substantial evidence to support the accusations of grave misconduct and solicitation of gifts. However, he found respondent clerk of court guilty of "ignorance of the law" for accepting the fatally defective motions of the plaintiffs. Accordingly, Justice Atienza recommended that:

Judge Augustus C. Diaz be penalized to pay a fine of P20,000.00. Respondent Clerk of Court be ordered to pay a fine of P5,000 and the charge against Deputy Sheriff Luna be dismissed for insufficiency of evidence.[29]

After a meticulous review of the records, we find respondent Judge Diaz guilty of gross ignorance of basic procedural laws and grave abuse of authority. On the other hand, we find the evidence against respondents Clerk of Court Edralin and Deputy Sheriff Luna insufficient to hold them liable for grave misconduct and solicitation of gifts. We, however, find respondent clerk of court guilty of ignorance of the law and incompetence in the performance of official duties for accepting the fatally defective motions of the plaintiffs.

I

Complainant Alvarez alleged that the respondent judge abused his authority in issuing the following defective orders:

- a) the order dismissing complainant's notice of appeal despite payment of the appellate docket fees on time and

the absence of any motion to dismiss the said notice of appeal;

b) the order granting plaintiff's Motion for Execution despite a perfected notice of appeal filed by complainant and failure to furnish a copy of the same to the complainant; and

c) the order granting plaintiff's ex parte Motion for Demolition.[30]

As to the propriety of the first order, we find that respondent Judge Diaz did not abuse his authority in initially dismissing complainant Alvarez's Notice of Appeal inasmuch as the latter failed to submit to the court the official receipts showing payment of the appellate docket fees.[31] The last day for filing the appellate docket fees was on January 22, 1998, since complainant Alvarez received a copy of the decision on January 7, 1998.[32] On January 15, 1998,[33] complainant Alvarez paid the appellate docket fees but, for unknown reasons, he failed to submit the original copies of the official receipts to the MeTC.[34] He only submitted photocopies thereof on February 23, 1998.[35]

Thus, on February 3, 1998, upon verification from the records that complainant had not paid the appellate docket fees within the appeal period, respondent judge correctly dismissed complainant's notice of appeal.[36] Certainly, no abuse of authority can be attributed to respondent judge for that.

Complainant further alleged that respondent judge abused his authority in dismissing his Notice of Appeal despite the absence of a motion to dismiss said order. We hold, however, that respondent judge may *motu proprio* dismiss complainant's notice of appeal in accordance with Section 13, Rule 41 of the Rules of Court which provides that "prior to the transmittal of the original record or the record on appeal to the appellate court, the trial court may *motu proprio*, or on motion, dismiss the appeal for having been taken out of time."

Respondent judge was therefore correct in granting plaintiff's Motion for Execution on February 3, 1998 on the grounds that (1) there was no perfected Notice of Appeal and (2) as admitted by the complainant himself, there was no payment of the supersedeas bond.[37]

However, even if there was no perfected Notice of Appeal and payment of the supersedeas bond, respondent judge should not have granted plaintiff's Motion for Execution because it was fatally defective. Section 5, Rule 15 of the Rules of Court provides:

Sec. 5. Notice of Hearing. — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion. (emphasis ours)

It is well-settled that any motion with a notice of hearing that is not addressed to all parties, in violation of Section 5, Rule 15 of the Rules of Court, is a mere scrap of paper which should not be accepted for filing and, if filed, is not entitled to judicial cognizance.[38]

In this case, the notice of hearing of the motion for execution was addressed only to the clerk of court and not to the parties:

The Clerk of Court
MTC Branch 37
Quezon City

Kindly include this motion in your calendar for February 3, 1998 at 8:30 in the morning during which the matter and parties may be heard. Signature Illegible.

Sgd. C.A.L.[39]

Respondent judge argues that although the notice of hearing attached to the motion for execution was addressed only to the clerk of court, a copy of the Motion for Execution was nonetheless sent to the counsel of the complainant.[40] This was confirmed by Atty. Conrado A. Leaño, respondent clerk of court's counsel, who testified that he (Atty. Leaño) personally delivered a copy of the Motion for Execution to complainant's counsel.[41]

If personal service of the motion was made upon complainant's counsel, then proof of service thereof consisting of any of the following should have been presented to the court, together with the Motion for Execution:

Section 13. Proof of service. — x x x [1] a written admission of the party served, [2] the official return of the server, or [3] the affidavit of the party serving containing a full statement of the date, place and manner of service x x x.

None of the above was presented. Thus, in accordance with Section 6, Rule 15 of the Rules of Court which mandates the "no written motion set for hearing shall be acted upon by the court without proof of service thereof," the motion for execution should not have been acted upon by the respondent judge.

Complainant also charged respondent judge with grave abuse of authority for granting plaintiff's Motion for Demolition without notice and hearing. In his answer, respondent judge argued that a hearing for the Motion for Demolition was "moot and academic" as his decision in the forcible entry case already included the demolition of the structures in the subject premises.

During the hearing conducted by Investigating Justice Narciso Atienza, respondent judge admitted "with confidence" that no hearing was necessary for the Motion for Demolition.[42]

Section 10 (d), Rule 39 of the Rules of Court provides:

(d) Removal of improvements on property subject of execution. — When the property subject of the execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court. (emphasis ours)

The above-stated rule is clear and requires no interpretation. If demolition is necessary, there must first be a hearing, upon motion and with due notice, for the issuance of a special order for demolition.[43] In the present case, respondent judge immediately granted plaintiff's Motion for Demolition without any notice and hearing. Clearly, his actuation amounted to gross ignorance of the law.

In fact, respondent judge's own testimony clearly showed his gross ignorance of basic procedural laws, thus:

ATTY. REGALADO:

It is February 27. I stand corrected, your Honor. The motion for writ of demolition was dated February 27, 1998 and the order of the court following the said motion was made on March 2, 1998 that was a Monday. Between the period that the motion for writ of demolition was filed and your order of March 2, 1998, judge, there appears to have no hearing of the said motion for execution [must be motion for demolition] and yet the order was made.

JUDGE DIAZ:

The hearing of the motion for execution [referring to the motion for demolition] is no longer necessary because that's a surplusage case as far as the court is concerned. There's the writ of execution includes (sic) therein the demolition of the structures.[44] (emphasis ours)

And his prior testimony regarding the fatally defective motion for execution:

COURT:

That's your practice?

JUDGE:

Yes. That's why I followed it, what's been practiced in court.

COURT:

So you do not follow the exact provisions of the rules of court on motions.

JUDGE:

It appears to be Justice, but nobody is complaining except Col. Alvarez.[45] (emphasis ours)

No less than the Code of Judicial Conduct mandates that a judge shall be faithful to the laws and must maintain professional competence.[46] When a judge displays an utter lack of familiarity with the rules, he erodes the public's confidence in the competence of our courts. Having accepted the exalted position of a judge, he owes the public and the court the duty to be proficient in the law.[47] And when the law is so elementary, not to be aware of it constitutes gross ignorance of the law.[48]

Lastly, we notice that, when respondent judge granted plaintiff's Motion for Demolition on March 2, 1998, his court had already received copies of the official receipts of the appellate docket fees paid by complainant Alvarez a week before, on February 23, 1998.[49] Instead of reinstating complainant's Notice of Appeal on account of the submission of the official receipts, respondent judge proceeded to grant plaintiffs' ex parte Motion for Demolition on March 2, 1998. Complainant's Notice of Appeal was in fact reinstated only on March 20, 1998, or almost a month after the submission of the official receipts and nine days after the structures and improvements on the subject premises had already been demolished. Respondent judge no doubt committed grave abuse of authority.

Considering the seriousness of the offenses committed by respondent judge (gross ignorance of the law and grave abuse of authority), he is hereby fined in the amount of P20,000, as recommended by the Court Administrator and Investigating Justice Atienza.

II

We now come to the charges of grave misconduct and solicitation of gifts against Clerk of Court Edralin and Deputy Sheriff Luna. Complainant Alvarez alleged that, sometime before Christmas of 1995, respondents Clerk of Court Edralin and Deputy Sheriff Luna asked for P100,000 from him in exchange for the dismissal of the complaint for forcible entry. Complainant Alvarez said he refused the request though, on several occasions, he gave respondents gifts they allegedly solicited from him. Before Christmas of 1995, he claimed to have given respondent clerk of court a "Guchi" (sic) lady's wrist watch and golden necklace with pendant, and to respondent deputy sheriff, a Dunhill men's jacket and P5,000. Before New Year's Day, he said he gave respondent deputy sheriff a golden pendant and two bottles of Fundador brandy.[50]

In his report, Investigating Justice Atienza did not believe complainant Alvarez's allegations because these were in conflict with the fact on record that complainant was, at that time, not yet a party to the forcible entry case. There was no reason for the respondents to demand money from complainant Alvarez who was then a stranger to the forcible entry case. Furthermore, the unexplained delay in the filing of the administrative complaints against

respondents clerk of court and deputy sheriff affected complainant's credibility.[51]

After a careful review of the records, we affirm the findings of Investigating Justice Atienza. It is worth reiterating that the quantum of proof necessary for a finding of guilt in administrative cases is substantial evidence, meaning, such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.[52] Members of the judiciary may be disciplined but only after due investigation and the presentation of substantial evidence, specially considering that charges of this nature are penal.[53]

In his testimony, complainant Alvarez admitted that respondent clerk of court did not demand any money from him and that it was only respondent deputy sheriff who tried to illegally solicit money for the dismissal of the forcible entry case.[54] However, complainant Alvarez was not able to prove his allegation against respondent deputy sheriff. Records show that, when respondent deputy sheriff allegedly demanded money from complainant sometime in December 1995, complainant was not yet a party to the case.[55] Complainant Alvarez himself admitted as much in his testimony.[56] He was only made a party to the amended complaint filed on June 17, 1996. This made complainant's claim of extortion in December 1995 unworthy of belief.

Complainant Alvarez, however, argued that respondent deputy sheriff knew that he was a party to the forcible entry case right from its start in the barangay conciliation proceedings. Allegedly, respondent also acted as sheriff in some of the ejectment cases he had previously filed against his tenants and that they (complainant and respondent deputy sheriff) purportedly talked about the forcible entry case against him. Complainant promised to present documentary evidence to prove that respondent had indeed acted as sheriff in some of his previous cases but he never did.[57] In any case, these circumstances were not sufficient to prove that respondent deputy sheriff demanded money from him.

Complainant moreover alleged that it was precisely because of his failure to give in to the monetary demand of respondent deputy sheriff that his name was included in the complaint. He, however, failed to present evidence to show that the plaintiffs, their counsel and respondent deputy sheriff conspired with one other to include him in the complaint. In reality, what complainant's testimony showed was that it was only "his belief" that respondent deputy sheriff had something to do with his inclusion in the amended complaint.[58] This hardly constituted substantial evidence. A charge of extortion is a serious charge. A finding of guilt can result in dismissal and thus cannot be based on mere speculation but on substantial evidence.[59]

As to the charge that respondents clerk of court and deputy sheriff solicited gifts from him, we find that complainant likewise failed to substantiate his claim. He testified that he had receipts for the gifts he bought in Recto Street, Manila but he could not present them because he allegedly lost them.[60]

In addition, it took complainant more than two years to bring to the attention of the proper authorities the alleged illegal acts committed by the respondent court employees against him.[61] He claimed he did not know where to report the alleged offenses.[62] This is incredulous considering that he was the chairman of "Citizen's Foundation for the Prevention of Crimes and Injustices, Inc.," a foundation which, the complainant himself proudly stated, had submitted voluminous reports of crimes to different agencies and had filed many graft and corruption cases in court.[63] If this were so, what took complainant so long to file the administrative charges against the respondent court employees for extortion and solicitation of gifts?

In his testimony, complainant categorically stated that, had he won the forcible entry case, he would not have filed the administrative complaint against respondents branch clerk of court and deputy sheriff.[64] Therefore, the charges against the respondent court employees for extortion and solicitation of gifts were obviously a mere afterthought totally unsupported by evidence.

Lastly, complainant accused respondent Deputy Sheriff Luna of grave misconduct for demolishing the structures in the subject premises "in just three hours." [65] We hold that respondent deputy sheriff cannot be held liable for grave misconduct because "when a writ is placed in the hands of the sheriff, it is his duty, in the absence of any instruction to the contrary, to proceed with reasonable celerity and promptness, to execute it according to its mandate." [66]

The sheriff is responsible for the speedy and efficient implementation of writs. [67] Even if the writ of demolition is later ruled to be illegal, the sheriff is not in a position to question said writ as his duty in executing the same is purely ministerial. [68] It is not a matter subject to his discretion. [69]

Although we cannot punish the respondent clerk of court for grave misconduct in relation to the demolition of the structures because she had nothing to do with the implementation of the writ, she was liable for accepting the defective motions filed by the plaintiffs.

In her testimony, respondent clerk of court stated that she had been with the court for 32 years and that all motions and pleadings were sent to her desk. [70] Being a lawyer [71] and a clerk of court for a long time, she was expected to know the basic procedural laws and doctrines. [72]

It is elementary in procedural law that any motion that fails to comply with Sections 4, 5 and 6, Rule 15 of the Rules of Court is a mere scrap of paper [73] which the court has no right to consider, nor the clerk of court any right to receive. [74] It is also elementary that any Motion for Demolition cannot be granted ex parte, as notice and hearing are necessary for the issuance of the Writ of Demolition.

Respondent clerk of court stated that she did not notice that the Motion for Execution was defective. [75] She also reasoned out that she accepted the ex parte Motion for Demolition believing that there was no need for a hearing as it "would just be an idle ceremony considering that the defendants failed to post the supersedeas bond." [76] All this, without doubt, showed respondent's incompetence in the performance of her official duties and ignorance of the law. For this, she is fined in the amount of P5,000, as recommended by the Court Administrator and Investigating Justice Atienza.

Clerks of court must be individuals of competence, honesty and probity. [77] They play a key role in the complement of the court and thus cannot be permitted to slacken on their jobs under one pretext or another. [78]

III

The other allegations of complainant, like forgery in the orders of the court dated February 3, 1998 and March 2, 1998 in order to show receipt by complainant of the said orders, were not substantiated. Atty. Bernardo S. Nera, complainant's former counsel, did not testify on his affidavits regarding the forgery charge. [79]

Respondents, refuting the accusation of forgery in their respective answers and testimonies, stated that the signature thereon was that of Mr. Gabriel Eugenio, an employee of the MeTC. The said orders were released via registered mail. Complainant presented no further evidence to disprove respondent's defense.

Complainant also failed to prove his accusation that respondents clerk of court and deputy sheriff took his personal properties during the demolition. As complainant himself admitted in his testimony, respondents did not steal anything from him, only that the subject premises were fenced in by the deputy sheriff and turned over to the plaintiffs. [80]

IV

We would like to make certain observations in ending this ponencia. Complainant Alvarez testified that, three days before the demolition, he, together with his counsel Atty. Rebeck Espiritu and Quezon City RTC Judge Pedro Areola, went to the chambers of respondent Judge Diaz to persuade the latter to stop the demolition. Complainant stated that it was his understanding that RTC judges had supervisory powers over MeTC judges. Thus, as “supervising judge,” Judge Areola was allegedly in a position to make respondent Judge Diaz stop the demolition.[81]

A review of the records shows that no petition in the RTC was ever filed by the complainant to stop the demolition. Complainant himself admitted that he did not file such a petition even if he knew that there was already a writ of demolition issued by the MeTC.[82]

We cannot turn a blind eye to what complainant did. Instead of filing a petition before the proper court to stop the demolition, complainant used the office, position and influence of a higher court judge for the purpose of securing a favorable order from the respondent judge.

The complainant is sternly warned against using unethical means in seeking a favorable judgment. The integrity of our courts is severely compromised if the parties resort to underhanded tactics to win their cases.

WHEREFORE, respondent Judge Augustus C. Diaz is hereby found guilty of grave abuse of authority and gross ignorance of the law, and is fined P20,000.

Respondent Clerk of Court Victory Edralin is hereby found guilty of ignorance of the law and incompetence in the performance of official duties, and is fined P5,000.

The complaint against Deputy Sheriff Efren Luna for grave misconduct and solicitation of gifts is hereby dismissed for lack of evidence.

Complainant Octavio Alvarez, on the other hand, is hereby reprimanded for resorting to unethical means to secure a favorable judgment from respondent Judge Diaz. He is sternly warned that a repetition thereof will be dealt with more severely.

SO ORDERED.

Vitug, (Chairman), and Sandoval-Gutierrez, JJ., concur.
Carpio-Morales, J., no part, related to party.

[1] Entitled "Spouses Domingo Garcia and Celia Garcia vs. Ferry Mantelo, Marlyn Cortez, Marianita Palo, Carol Banzon, Vicky Valera, Yolly Castillo and Eduardo Bernardo". The complaint was later amended and entitled "Spouses Domingo and Celia Garcia vs. Octavio Alvarez, Charlie Robles and Marlyn Cortez".

[2] Charlie Robles, Ferry Mantelo, Marlyn Cortez, Marianita Palo, Carol Banzon, Vicky Valera, Yolly Castillo and Elizabeth Bernardo.

[3] Rollo, p. 47.

[4] Id., p. 51.

[5] Id., pp. 53-56.

[6] Id., pp. 15-18.

[7] Id., p. 12.

[8] Id., pp. 13-14.

[9] Id., pp. 57-58.

[10] Id., p. 22.

[11] Id., pp. 60-61.

[12] Id., p. 26.

[13] TSN, March 5, 2001, pp. 19-22; TSN, March 8, 2001, p. 41.

[14] Id., p. 27

[15] Id., pp. 19-20.

[16] Id., pp. 23, 65-66.

[17] Id., pp. 6, 28.

[18] Id., p. 67.

[19] Id., pp. 2-8.

[20] Id., pp. 29-31.

[21] Id., pp. 32-36.

[22] Id., pp. 37-46.

[23] Id., pp. 72-75.

[24] Id., p. 82.

[25] Id., pp. 82-84.

[26] Id., pp. 91-98.

[27] Id., pp. 91-89. The case was initially docketed as OPA IPI No. 98-547-MTJ. 91-98.

[28] Report of Investigating Justice Narciso T. Atienza, pp. 16-27.

[29] Id., p. 28.

[30] Rollo, pp. 2-4; Report of Investigating Justice Narciso T. Atienza, pp. 4-5, 16-17.

[31] TSN, March 14, 2001, p. 8; Rollo, p. 67.

[32] Rollo, p. 12.

[33] Id., pp. 13-14.

[34] Complainant alleged that he submitted official receipts to court but these were detached from the records by Leonardo Garcia, plaintiff's attorney-in-fact. We find this hard to believe. An examination of complainant's testimony will show that he himself did not see Leonardo Garcia actually detach the official receipts. He admitted that he merely concluded that Leonardo Garcia was the one who detached the receipts because he saw him pocketing some "pieces of paper" after talking with respondents Deputy Sheriff Efren Luna and Clerk of Court

Victory Edralin in the latter's office. Complainant in fact said he was not sure that the "pieces of paper" were official receipts. Clearly, complainant's allegation is based merely on conclusions and speculations and must not be entertained. TSN, September 20, 2000, pp. 46-52.

[35] Report of Investigating Justice Narciso T. Atienza, p. 4; Rollo, p. 59.

[36] Rollo, p. 67; TSN, September 20, 2000, p. 22.

[37] TSN, September, 20, 2000, p. 22.

[38] Basco vs. Court of Appeals, 326 SCRA 768, 782 [2000], citing People vs. Court of Appelas, et al., 296 SCRA 418 [1998]; De la Pena vs. De la Pena, 258 SCRA 298 [1996]; Manila Electric Company vs. La Campana Food Products, Inc., 247 SCRA 77 [1995]; Sembrano vs. Ramirez, 166 SCRA 30 [1988]; Cledera vs. Sarmiento, 39 SCRA 552 [1971]; Manakil and Tison vs. Revilla and Tuaño, 42 Phil 82 [1921].

[39] Rollo, p. 58.

[40] Id., p. 33.

[41] TSN, March 8, 2001, p. 19. Atty. Leaño was plaintiffs' counsel in the forcible entry case.

[42] TSN, March 21, 2001, p. 7.

[43] Bajet vs. Areola, A.M. No. RTJ-01-1615, June 19, 2001; Lu vs. Siapno, 335 SCRA 181 [2000]; Morta, Sr. vs. Sañez, 343 SCRA 177 [2000]; Carreon vs. Mendiola, 220 SCRA 214 [1993].

[44] TSN, March 14, 2001, p. 20.

[45] Id., pp. 13-16.

[46] Canon 3, Rule 3.01, Code of Judicial Conduct.

[47] Guillen vs. Cañon, A.M. No. MTJ-01-1381, January 14, 2002; Osumo vs. Serrano, A.M. No. RTJ-00-1607, April 3, 2002.

[48] Guillen vs. Cañon, A.M. No. MTJ-01-1381, January 14, 2002, citing Agunday vs. Tresvalles, 319 SCRA 134 [1999].

[49] Barangay 24 of Legazpi City vs. Imperial, G.R. No. 140321, August 21, 2001.

[50] Rollo, pp. 4-5.

[51] Report of Investigating Justice Narciso T. Atienza, pp. 16-18.

[52] Mercado vs. Casida, A.M. No. P-02-1572, April 24, 2002.

[53] Separa vs. Maceda et al., A.M. No. P-02-1546, April 18, 2002.

[54] TSN, October 11, 2000, pp. 5, 11-12.

[55] Rollo, pp. 47-50, 53-56. It was only on June 17, 1996 when complainant was included in the complaint.

[56] TSN, October 11, 2000, pp. 16-17.

[57] TSN, February 7, 2001, pp. 9-10.

[58] Id., pp. 4-5.

- [59] Mercado vs. Casida, A.M. No. P-02-1572, April 24, 2002.
- [60] TSN, October 11, 2000, pp. 24, 27-29, 42.
- [61] The alleged extortion and solicitation happened in December of 1995 while the complaint-affidavit dated April 15, 1998 was filed only on June 2, 1998.
- [62] TSN, October 11, 2000, p. 12.
- [63] Rollo, p. 72; TSN, September 20, 2000, pp. 90-92.
- [64] TSN, September 20, 2000, pp. 94-95.
- [65] Rollo, p. 7.
- [66] Padilla vs. Arabia, 242 SCRA 227 [1995]; Sarmineto vs. Salamat, A.M. No. P-01-1501, September 4, 2001.
- [67] Valencia vs. Valena, A.M. No. P-00-1409, August 16, 2000.
- [68] Separa vs. Maceda, et al., A.M. No. P-02-1546, April 18, 2002; Valencia vs. Valena, A.M. No. P-00-1409, August 16, 2000, citing Evangelista vs. Pensurga, 242 SCRA 702 [1995].
- [69] Separa vs. Maceda, et al., A.M. No. P-02-1546, April 18, 2002.
- [70] TSN, March 8, 2001, p. 4.
- [71] Id., March 5, 2001, p. 4.
- [72] Jason vs. Ygaña, A.M. No. RTJ-00-1543, August 4, 2000.
- [73] Cledera vs. Sarmiento, 39 SCRA 552 [1971].
- [74] Meris vs. Ofilada, A.M. Nos. RTJ-97-1390 and RTJ-98-1411, August 5, 1998; Vlaon Enterprises Corp. vs. Court of Appeals, G.R. No. 130314, July 6, 1999; Manakil vs. Revilla, 42 Phil 84 [1921].
- [75] TSN, March 8, 2001, p. 24.
- [76] Joint Answer to Complaint-Affidavit, p. 4; Rollo, p. 40.
- [77] Cain vs. Neri, 310 SCRA 207 [1999].
- [78] Separa vs. Maceda et al., A.M. No. P-02-1546, April 24, 2002.
- [79] Formal Offer of Exhibits for Complainant; Resolution of Investigating Justice Narciso Atienza on Complainant's Formal Offer of Exhibits.
- [80] TSN, February 7, 2001, pp. 27-29.
- [81] TSN, September 20, 2000, pp. 33-42.
- [82] TSN, February 7, 2001, pp. 17-18.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.