

CLEMENTINO IMPERIAL, PETITIONER, VS. MARIANO F. SANTIAGO, JR., SHERIFF IV, RTC, BRANCH 139, MAKATI CITY, RESPONDENT.*A.M. No. P-01-1449 (formerly A.M. OCA IPI No. 99-574-P). February 24, 2003*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/47b8006c5f29/>**PER CURIAM:**

In a sworn letter-complaint dated November 26, 1998,[1] Clementino Imperial, President and Chairman of the Board of Laoang Shipping Corporation, charged respondent Mariano F. Santiago, Jr., Sheriff IV of the Regional Trial Court of Makati City (Branch 139) with Grave Abuse of Authority and Grave Misconduct for the illegal foreclosure of a pledge on the vessel M/V Angela Ceferina.

In his Comment dated April 29, 1999, respondent denies the alleged illegal foreclosure. He stressed that the foreclosure and auction sale was done in a legal and appropriate manner and that he issued a Certificate of Sale dated July 9, 1998 attesting that by virtue of a contract of pledge executed on November 7, 1995 by Richard Tang Tepace, for and in behalf of Laoang Shipping Corporation, respondent sold the vessel M/V Angela Ceferina in a public auction held on July 9, 1998 to Zoilo Uy, the highest bidder for Three Million Five Hundred Thousand Pesos (P3,500,000.00), conducted in front of the main entrance of the Gusali ng Katarungan, Zobel St., Makati City.[2]

In his Reply, dated June 14, 1999, complainant contends that the alleged valid foreclosure is belied by a Certification dated November 15, 1998 of Atty. Engracio M. Escasinas, Jr., Clerk of Court VII and Ex-Officio Sheriff, stating that: per records of the court, the alleged foreclosure of pledge does not appear to have been filed or properly docketed in the record; the prescribed filing and commission on sale fees does not appear to have been paid; the public sale of the vessel could not physically be done in front of the Gusali ng Katarungan in Makati since the vessel could not be brought to said location; the pledge cannot be legally foreclosed in Makati City since it was executed in the City of Manila; the pledge does not conform to the legal requirements; the alleged publication of the notice of the Sheriff's sale did not pass through the raffle required before publication by any newspaper could be had; there is no record in the Office of the Clerk of Court and Ex-Officio Sheriff of the raffle first being done because no petition had been filed with the said office; the posting of Sheriff's sale does not appear to have been certified to and does not comply with the requirements of Certification of the posting of Affidavit; Richard Tepace is no longer the President of Laoang Shipping Corporation since he was ousted as hold-over president on April 6, 1998; Laoang Shipping Corporation which appears in the Registration of Ownership to be the owner of the vessel, with address at Laoang, N. Samar, was never notified; there was no notice made to MARINA where the vessel is registered; respondent could not feign that he advised Zoilo Uy to pay the necessary fees required by the Office of the Clerk of Court after the auction sale; respondent issued a Certificate of Sale to Zoilo Uy dated July 9, 1998 without ensuring that the said fees were actually and properly paid; and respondent conspired with Richard Tepace and Zoilo Uy to deprive him (complainant) of his vessel by way of a false Certificate of Sale.[3]

On January 22, 2001, the administrative case was re-docketed as a regular administrative matter and referred to then Executive Judge Florentino A. Tuason, Jr., RTC (Branch 139) Makati City for investigation, report and

recommendation.[4] In a Resolution, dated March 19, 2001, the Court referred the case to the then First Vice Executive Judge Leticia P. Morales, RTC (Branch 140) Makati City in lieu of Judge Tuason, Jr. because of the administrative case filed by him against respondent, docketed as A.M. OCA IPI No. 00-791-P.[5]

After conducting the necessary investigation, Judge Morales submitted her Report dated May 26, 2002. She found respondent guilty of Grave Abuse of Authority and Grave Misconduct. She pointed out that respondent evidently treated an extra-judicial foreclosure based on mortgage and a foreclosure based on a pledge as similar, if not the same; that such error cannot be treated as insignificant since the law treats the two securities as different, and it was inexcusable negligence, if not gross ignorance of the law on the part of the respondent to ignore such statutory differences. Judge Morales added that even the foreclosure proceeding adopted by the respondent was invalid inasmuch as the Certification of the Clerk of Court VII affirmed the non-existence of the foreclosure, the filing and recording, as well as payment of the necessary fees; and, that respondent in fact admitted his negligence as regards the payment of the necessary filing and docket fees. However, Judge Morales did not recommend a specific penalty to be meted out to the respondent.[6]

In its Memorandum dated August 30, 2002, the Office of the Court Administrator (OCA) adopted the findings of the Investigating Judge and recommended to the Court the dismissal of respondent from the service.

The Court agrees with the OCA.

Respondent claims that he conducted a valid foreclosure on the vessel M/V Angela Ceferina as supported by an Affidavit of Publication,[7] Certificate of Posting[8] and Certificate of Sale.[9] However, a close scrutiny of the extant evidence reveals otherwise.

The procedure for foreclosure of a pledge is set forth under Article 2112 of the Civil Code, to wit:

“Art. 2112. The creditor to whom the credit has not been satisfied in due time, may proceed before a Notary Public to the sale of the thing pledged. This sale shall be made at a public auction, and with notification to the debtor and the owner of the thing pledged in a proper case, stating the amount for which the public sale is to be held. If at the first auction the thing is not sold, a second one with the same formalities shall be held; and if at the second auction there is no sale either, the creditor may appropriate the thing pledged. In this case he shall be obliged to give an acquittance for his entire claim.” (Italics supplied)

Although it is only on February 12, 2001 that the Court in A.M. No. 01-1-01-0 clarified that the procedure in the foreclosure of pledge before a notary public does not require the submission of a petition for extra-judicial foreclosure before the Executive Judge of the appropriate Regional Trial Court, through the Clerk of Court/Ex-Officio Sheriff, it is expressly provided for in Article 2112, as above-quoted, that only a notary public can conduct a public auction after proper notice is sent to the debtor and owner of the thing pledged.

The fault of respondent could have been regarded as simple ignorance of the proper procedure or an error of judgment on his part but respondent sheriff betrayed himself and confirmed the charges against him when he testified during the investigation conducted by the Investigating Judge:

“Q

As a Sheriff, you know that in pledges, only the Notary Public can conduct foreclosure, not the Sheriff?

“A

What I know, I can.

“Q

In this case, you conducted this alleged foreclosure and auction sale concerning the vessel mortgaged under R.A. - (interrupted)

“A

Pledge Contract.

“Q

How long have you been a Sheriff?

“A

Nine (9) to ten (10) years.

“Q

So, you can distinguish between Pledge and Chattel mortgage?

“A

Yes.

“Q

You know that in Pledges, only lawyers can conduct the foreclosure?

“A

As far as I know, I can also conduct foreclosure.

“Q

In this case, you issued a Certificate of Sale on the same day, July 9, 1998, allegedly on the same day when the auction sale was made?

“A

Auction sale was in the morning.

“Q

So, you issued the certificate of Sale even knowing that there was no docket fees paid?

“A

That’s why I issued the certificate of Sale and told them to pay the required fees.

“Q

So, what you did, you first issued the Certificate of Sale and you told them to pay the legal fees?

“A

Yes.

“Q

When you issued the Certificate of Sale, the Certificate of Sale was not signed by Engracio Escasinas, Jr.?

“A

Yes.

“Q

And he has not even seen that Certificate of Sale?

“A

Yes.

“Q

Nor the Certificate of Sale was even forwarded to the Office of the Clerk of Court?

“A

Yes, sir. I told when they should pay - (interrupted)

“Q

No, no, no. My question is, this Certificate of Sale was not even forwarded to the Office of the Clerk of Court?

“A

Yes.

“ATTY. SIRUELO:

That will be all.

“COURT:

“Q

As a matter of procedure, do you not forward the sale to the Clerk of Court?

“A

I told them, ma’am, to go to the Office of the Clerk of Court to pay considering that the Certificate of Sale will be registered.

“Q

As a Sheriff, is it not your duty to bring the Certificate of Sale there to be noted by Atty. Engracio Escasinas, Jr.?

“A

It’s my fault, ma’am. I forgot to do it because of other tasks.[10]

In claiming that he followed the procedure required in the foreclosure of a chattel mortgage, and in admitting before the Investigating Judge that he is well-aware that the proper requirement of law is that a petition for foreclosure of mortgage, real estate or chattel, must be filed first with the Clerk of Court before foreclosure or auction may commence,[11] he sealed his fate. This is because the records lay bare the following facts:

- Respondent totally ignored the specific reference in paragraph 4 of the Pledge Agreement[12] that Article 2112 of the Civil Code is the applicable law.
- No petition for foreclosure of chattel mortgage was ever filed before the Clerk of Court.[13] Despite the lack of petition, respondent proceeded with the auction sale.
- The prescribed filing and commission on sale fees were not paid[14] yet respondent signed the certificate of sale merely because he trusted that Tepace will pay the fees. The explanation of respondent that: “it’s only on my good faith and that’s only my procedure because others usually pay”[15], is absolutely weak and completely absurd.
- The certificate of sale was not even forwarded to the Office of the Clerk of Court, and bears only the signature of respondent.[16]
- When the Investigating Judge inquired why he did not recall the certification since no fees were paid, respondent replied that he simply forgot the transaction.[17] Forgetfulness or failure to remember is never a rational or acceptable explanation.[18]
- Respondent failed to controvert the amounts received by him totalling One Hundred Sixty-Five Thousand Pesos (P165,000.00), as shown by the unofficial receipt issued and signed by him, to wit:

“PETITION FOR PUBLIC AUCTION
PARTIAL RECEIPT

1. PUBLICATION

P

20,000.00

2. POSTING

P

5,000.00

3. NOTARIAL FEES

P

35,000.00

4. JUDICIAL FUNDS

P

70,000.00

5. SHERIFF'S FEES

P

35,000.00

RECEIVED the described amount from Mr. & Mrs. Uy for the implementation of the Extra-Judicial Foreclosure of M/V Ceferina.”[19]

Respondent and his counsel, Atty. Salvador D. Abong, did not appear in the subsequent investigation despite being fully notified and given the opportunity to explain on the amounts received. When the Investigating Judge required Process Server Aldwin Atilon to call respondent, the latter refused to come. Respondent instead told Atilon that the case should be submitted for resolution because he does not intend to present additional evidence other than the ones previously submitted and those admitted by him during the investigation.[20]

Per Certification of the Clerk of Court, respondent did not remit said amounts nor did he secure the approval of the court.

Evidently, respondent grievously failed to comply with the requirements of Rule 141 of the Rules of Court, as follows:

“SEC. 3. Persons authorized to collect legal fees. - Except as otherwise provided in this rule, the officers and persons hereinafter mentioned, together with their assistants and deputies, may demand, receive, and take the several fees hereinafter mentioned and allowed for any business by them respectively done by virtue of their several offices, and no more. All fees so collected shall be forthwith remitted to the Supreme Court. The fees collected shall accrue to the general fund. However, all increases in the legal fees prescribed in amendments to this rule shall pertain to the Judiciary Development Fund as established by law. The persons herein authorized to collect legal fees shall be accountable officers and shall be required to post bond in such amount as prescribed by law.

“SEC. 9. Sheriff, and other persons serving processes. —

x x x x x x x x

“(h) For advertising a sale, besides cost of publication, fifty (P50.00) pesos;

x x x x x x x x

“(I) For money collected by him by order, execution, attachment, or any other process, judicial or extrajudicial, the following sums, to wit:

“1. On the first four thousand (P4,000.00) pesos, four (4%) per centum.

“2. On all sums in excess of four thousand (P4,000.00) pesos two (2%) per centum.

“In addition to the fees hereinabove fixed, the party requesting the process of any court. preliminary, incidental, or final, shall pay the sheriff’s expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards’ fees, warehousing and similar charges, 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. 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.”[21] (*Italics supplied*)

It is clear that under the rule, sheriffs are authorized to collect certain specified fees in specified amounts. The sheriff has to estimate the expenses to be incurred and upon the approval of the estimated expenses by the court, the interested party has to deposit the amount with the Clerk of Court and the Ex-Officio Sheriff. These expenses shall then be disbursed to the executing Sheriff subject to his liquidation within the same period for rendering a return on the process or writ. Any unspent amount shall be refunded to the party who made the deposit.

Respondent did not prepare an estimate of expenses to be incurred in the auction, for which he should have sought the approval of the Court. He did not render an accounting. He did not remit and report the amounts he received.[22] He blatantly disregarded general auditing and accounting rules when he did not issue an official receipt for the total amount he received. His willful failure to offer any explanation on what happened to the money he received leads to the inescapable conclusion that he misappropriated the same for his own personal use.[23]

The Court has once held that when a judge’s inefficiency springs from a failure to consider so basic and elemental a rule, a law or a principle in the discharge of his duties, he is either too incompetent and undeserving of the position and title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and with grave abuse of judicial authority.[24] There is no reason not to apply the same principle to respondent.

By his conduct, respondent gravely abused his authority to conduct auction sales. Respondent cannot feign ignorance of the proper procedure to follow in case of pledge considering that he has been a sheriff for more than 10 years.[25] He wielded authority where he had none and admitted disregarding the procedure in the foreclosure of a chattel mortgage. Respondent knew his action to be wrong yet persisted in doing the same. Such grave abuse of authority amounts to grave misconduct.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous and not trifling. The misconduct must imply wrongful intention and not a

mere error of judgment. The misconduct must also have a direct relation to and be connected with the performance of his official duties amounting either to maladministration or willful, intentional neglect or failure to discharge the duties of the office.[26] There must also be reliable evidence showing that the judicial acts complained of were corrupt or inspired by an intention to violate the law.[27] All of these requisites are met in this case.

Respondent grossly violated the yardstick of public service imposed in Section 1, Article XI of our Constitution that a public office is a public trust; that public officers and employees must serve with the highest degree of responsibility, integrity, loyalty and efficiency; and that they must 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.[28]

The Court will not tolerate any Court employee's conduct, act or omission that violates the norm of public accountability and diminishes or tends to diminish the faith of the people in the judiciary.[29] By the very nature of their functions, sheriffs must conduct themselves with propriety and decorum, and above all else, be above suspicion.[30] The Court has repeatedly stressed that high standards are expected of sheriffs, thus:

“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.”[31]

Respondent's conduct fell far too short of the standard required of court employees. He allowed himself to be a pawn for fraud and deceit, sowing injustice in exchange for One Hundred Sixty-Five Thousand Pesos (P165,000.00).

Grave misconduct is a malevolent act which threatens the very existence of the system of administration of justice. Because of his misconduct, respondent does not deserve to stay a minute longer in the judicial service as he seriously lacks the integrity, uprightness and honesty demanded of an employee in the judiciary.[32]

Clearly grave in character, said act is tainted by the element of corruption punishable under Section 46 (b), (4) of Book V of the Executive Order No. 292, otherwise known as the Administrative Code of 1987. Under Section 23, Rule XIV of the Omnibus Civil Service Rules and Regulations, Grave Misconduct is punishable with dismissal even in the first offense. This penalty is reiterated in Civil Service Memorandum Circular No. 30, Series of 1989,[33] the prevailing rule at the time of the commission of the complained acts in 1998.

Section 9, Rule XIV of the Omnibus Rules and the aforecited circulars likewise provide that the penalty of dismissal from the service shall carry with it cancellation of civil service eligibility, forfeiture of leave credits and retirement benefits, and disqualification from any employment in the government service, unless otherwise provided in the decision, per Section 58 of Civil Service Memorandum Circular No. 19, Series of 1999.

WHEREFORE, Mariano F. Santiago, Jr., Sheriff IV of the Regional Trial Court of Makati City (Branch 139) is found GUILTY of GRAVE MISCONDUCT. He is DISMISSED from service with prejudice to re-employment in any government agency and government-owned or controlled corporation and with forfeiture of all retirement benefits, except accrued leave credits.

This decision shall take effect immediately.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Morales, Callejo, Sr., and Azcuna, JJ., concur.
Ynares-Santiago, J., on leave.

[1] Indorsed to the Office of the Court Administrator by then Executive Judge Josefina Guevarra Salonga of the Regional Trial Court of Makati City.

[2] Rollo, pp. 9 and 73.

[3] Rollo, pp. 18-21.

[4] Rollo, pp. 35-36.

[5] Rollo, p. 39.

[6] Rollo, pp. 214-219.

[7] Rollo, p. 11.

[8] Rollo, p. 12.

[9] Rollo, p. 10.

[10] TSN, June 22, 2001, pp. 30-33.

[11] TSN, June 22, 2001, p. 29.

[12] Rollo, Annex "E", p. 24.

[13] Certification of Atty. Engracio M. Escasinas, Jr., Clerk of Court VII & Ex-Officio Sheriff, Rollo, p.72.

[14] Id.

[15] TSN, June 22, 2001, p. 29.

[16] TSN, June 22, 2001, p. 32.

[17] TSN, June 22, 2001, p. 26.

[18] Rabe vs. Flores, 272 SCRA 415, 423 (1997).

[19] Rollo, p. 74.

[20] Rollo, p. 209.

[21] As amended by A.M. No. 00-2-01-SC, Resolution of the Supreme Court En Banc dated March 1, 2000, Section 9 now reads, as follows:

“SEC. 9. Sheriff, and other persons serving processes. —

x x x x x x x x

(h) For advertising a sale, besides cost of publication, seventy-five (P75.00) pesos;

x x x x x x x x

(l) For money collected by him by order, execution, attachment, or any other process, judicial or extrajudicial, the following sums, to wit:

- On the first four thousand (P4,000.00) pesos, five (5%) per centum;
- On all sums in excess of four thousand (P4,000.00) pesos, two and one-half (2.5%) per centum.

In addition to the fees herein above fixed, the party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriffs expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, 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. 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 sheriffs expenses shall be taxed as costs against the judgment debtor."

[22] Certification of Atty. Engracio M. Escasinas, Jr., Clerk of Court VII & Ex-Officio Sheriff, Rollo, p. 72.

[23] Jerez vs. Paninsuro, 304 SCRA 180, 183 (1999); Hernandez vs. Borja, 242 SCRA 162, 165 (1995); Florendo vs. Enrile, 239 SCRA 22, 30 (1995); Ong vs. Meregildo, 233 SCRA 632, 641 (1994); Lim vs. Guasch, 223 SCRA 756, 760 (1993).

[24] Macalintal vs. Teh, 280 SCRA 623, 631 (1997); Castaños vs. Escaño, Jr., 251 SCRA 174, 199 (1995).

[25] TSN, June 22, 2001, p. 30.

[26] Almario vs. Resus, 318 SCRA 742, 748-749 (1999); Amosco vs. Magro, 73 SCRA 107, 109 (1976); In re Impeachment of Horrilleno, 43 Phil. 212, 214 (1922).

[27] Manuel vs. Calimag, Jr., 307 SCRA 657, 663 (1999).

[28] Rabe vs. Flores, supra.

[29] Office of the Court Administrator vs. Cabe, 334 SCRA 348, 361 (2000); Lepanto Consolidated Mining Company vs. Melgar, 256 SCRA 600, 610 (1996).

[30] Araza vs. Garcia, 325 SCRA 1, 10 (2000); Flores vs. Caniya, 256 SCRA 518, 523 (1996).

[31] Rural Bank of Francisco F. Balagtas (Bulacan), Inc. vs. Pangilinan, 307 SCRA 725, 730 (1999); Gacho vs. Fuentes, Jr., 291 SCRA 474, 483-484 (1998); Vda. de Abellera vs. Dalisay, 268 SCRA 64, 67 (1997).

[32] Court Administrator vs. Sevillejo, 270 SCRA 190, 192 (1997); Estreller vs. Manatad, Jr., 268 SCRA 608, 618 (1997).

[33] Guidelines in the application of penalties in administrative cases. Reiterated in Civil Service Memorandum Circular No. 19, series of 1999.

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.