

**BIYAHEROS MART LIVELIHOOD ASSOCIATION, INC., COMPLAINANT,
VS. BENJAMIN L. CABUSAO, JR., SHERIFF III, METROPOLITAN TRIAL
COURT, BRANCH 68, PASIG, METRO MANILA, RESPONDENTS.***Adm. Matter No. P-93-811. June 02, 1994*

Ponente: DAVIDE, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/5188f7a30849/>**DAVIDE, JR., J.:**

In a verified complaint filed with the Office of the Court Administrator on 29 April 1993, the complainant, a domestic non-stock corporation, charges the respondent sheriff with grave misconduct and serious irregularity in the performance of his official duties by accepting a "private job or undertaking as the administrator/trustee of Biyaheros Mart owned by Mr. Jerry Chua." The complaint alleges that the respondent, as such administrator or trustee, "spent most of his government time of the day in the Biyaheros Mart premises exercising his powers and function," thus "clearly moonlighting as he is using government time in the performance of his private business or undertaking" to the prejudice of public service; that the respondent "instituted various complaints for ejectment against members of Biyaheros Mart Livelihood Association, Inc. before the Barangay Chairman of Malinao, Pasig, Metro Manila and in pursuing the same used government time in attending various Barangay hearings and confrontations"; and that the respondent "subsequently instituted court actions for ejectment against various vendors/members of Biyaheros Mart Livelihood Association, Inc. before the Metropolitan Trial Court, Branches 69, 71, 72 of Pasig, Metro Manila as well as with the Regional Trial Court, Pasig, Metro Manila, but in doing so he used his official time as Sheriff of the Metropolitan Trial Court, Pasig, Metro Manila in personally preparing various complaints and attending hearings and trials in courts as well as following-up the result and development of said cases," without filing "the necessary leave of absence."

In his Comment filed on 9 July 1993, the respondent admits that he is the "trustee and/or administrator of Jer-Speedways Manpower and Transport Services" or of Biyaheros Mart (now Pasig Fruits and Vegetables Plaza)[1] but denies having spent or used government time in the performance of his duties and functions as trustee or administrator whose "most taxing activity" involves collection. He alleges that activities at the Biyaheros Mart start at five o'clock and end at exactly seven o'clock in the morning; that the confrontations before the barangay captain were done on non-working days; that the ejectment suits were covered by the Rules on Summary Procedure where there is no need for a full-blown trial; that he never attended a single trial when he filed "a string of cases" against certain stallholders of Biyaheros Mart; and that "the result and development of cases were usually followed-up" through telephone calls. He avers that "it would be the height of naivette [sic] for the complainant to require [him] to file a leave of absence whenever [he] attended hearings for cases ... filed at the different branches of the Metropolitan Trial Court because the sala where [he] work[s] for (Branch 68) is also located in the same building and at the same floor and is actually adjacent to the courtrooms where said hearing are conducted";[2] and that he prepared the various complaints and similar pleadings in the evening or on non-working days. Finally, he claims that the complainant has filed a similar complaint against him with the Ombudsman and that the cases "are pure harassment suits filed by the complainant on the belief that [he] may be

cowed or intimidated by it."

In the Resolution of 4 October 1993, we required the parties to manifest if they would submit this case for resolution on the basis of their pleadings, directed the respondent to immediately cease and desist from acting as the administrator/trustee of the Biyaheros Mart (now Pasig Fruits and Vegetables Plaza), and allowed the complainant to file a Reply to the respondent's Comment.[3]

In his Manifestation and Motion for Reconsideration filed on 19 October 1993,[4] the respondent manifested that he is submitting this case for resolution on the basis of the pleadings but moved for the reconsideration of the cease-and-desist order because it is "improper, unjustified and oppressive" considering that "just like many low-paid government employees, [he] was constrained to engage in business and other source of income as a way to augment his small salary of about P5,000.00 per month as deputy sheriff to fully support his family." He also reveals therein that as a countercharge to the ejection suits he had filed against four stallholders of the Biyaheros Mart, the aggrieved parties filed fabricated complaints against him for grave misconduct with the Ombudsman, for illegal dismissal with the National Labor Relations Commission (NLRC), for perjury (3 cases) with the Office of the Provincial Prosecutor of Rizal, for grave threats (2 cases) with the Metropolitan Trial Court (MeTC) of Pasig, and for grave slander with the MeTC of Pasig.

In the Resolution of 15 December 1993, we denied with finality the motion to set aside the cease-and-desist order and referred this case to the Office of the Court Administrator for evaluation, report, and recommendation. In the meantime, the complainant filed its Reply to the respondent's Comment.[5] The respondent then filed a Rejoinder to the Reply.[6]

In its Memorandum of 10 March 1994, the Office of the Court Administrator submits the following evaluation, findings, and conclusion:

"It is to be noted that the respondent accepted his position as administrator/trustee of Biyaheros Mart without seeking approval from this Court.

Respondent admitted the fact that he is holding the position of an administrator/trustee of Biyaheros Mart, which is a private entity, but clarifies that he is performing his functions as such only after office hours. However, his defense that he is not using government time in doing his duties as an administrator of a public [sic] entity is not tenable considering that there is a prohibition for all officials and employees of the judiciary to engage directly in any private business, vocation or profession even outside office hours. Administrative Circular No. 5, dated October 4, 1988 (re: Prohibition for All Officials and Employees of the Judiciary to Work as Insurance Agents), clearly provides that the provisions of Memorandum Circular No. 17, issued by the Executive Department on September 4, 1986, which authorizes the heads of the government offices to grant employees permission to engage directly in private business, vocation or profession outside office hours, are not applicable to officials and employees of the courts considering the express prohibition in the Rules of Court and the nature of their work which requires them to serve with the highest degree of efficiency and responsibility, in order to maintain public confidence in the judiciary. The said administrative circular likewise states that the entire time of Judiciary officials and employees must be devoted to government service to insure efficient and speedy administration of justice.

Moreover, in Circular No. 6, dated April 10, 1987, all Judges, Clerks of Courts, and Sheriffs are disqualified to accept the position of director or any other position in any electric cooperative and other enterprises or to resign immediately from such position if already holding the same.

The act of the respondent in accepting the position of an administrator/trustee of a private entity and for continuously holding the same for a considerable long period of time (since December 1991), aside from being violative of the aforesaid circulars, can be properly called as 'moonlighting.' While 'moonlighting' is not

normally considered as a serious misconduct, nonetheless, by the very nature of the position held by the respondent, it obviously amounts to malfeasance in office. Respondent, in engaging in other irrelevant activities, failed to observe and maintain that degree of dedication to the duties and responsibilities required of him as a deputy sheriff (Mirasol Hipolito vs. Elmer Mergas, Deputy Sheriff, RTC, Branch 46, Manila A.M. No. P-90-412, March 11, 1991, per curiam)."

and recommends that:

"respondent Benjamin Cabusao, Jr., Deputy Sheriff, MeTC, Branch 68, Pasig, Metro Manila, be suspended from office for a period of one (1) month without pay, effective immediately, with a stern warning that a repetition of similar acts in the future will be dealt with more severely and that he be directed to resign from his position as administrator/trustee of Biyaheros Mart (now Fruits and Vegetables Plaza)."

We find the foregoing evaluation, findings, conclusion, and recommendation to be well taken. We thus adopt them as our own.

We further note that the respondent admitted in his comment that he appeared in court at the hearings of the ejectment cases during office hours and that he did not secure any leave of absence on those occasions simply because the sala where he holds office is "located in the same building and at the same floor and is actually adjacent to the courtrooms" where the hearings on the said cases were conducted by the different branches of the MeTC. In addition to the cases which he filed, he is himself facing several cases before the Ombudsman, NLRC, Provincial Prosecutor of Rizal, and various branches of the MeTC, all of which would necessarily require time and effort in the preparation of his defense and his attendance during hearings.

We are not impressed by his plea that he was constrained to engage in business to augment his "small salary of P5,000.00 per month." Government service demands great sacrifice. One who cannot live with the modest salary of a public office has no business staying in the service. He is free to seek greener pastures. The public trust character of the office proscribes him from employing its facilities or using official time for private business or purposes.

WHEREFORE, for misconduct and conduct prejudicial to the best interest of the service, respondent BENJAMIN L. CABUSAO, JR. is hereby **SUSPENDED** from office for a period of one (1) month without pay, effective on the day following service on him of a copy of this decision, and **STERNLY WARNED** that further commission of similar or related acts will be dealt with more severely. He is further **DIRECTED** to resign, within three (3) days from such service, as administrator/trustee of Biyaheros Mart (now Pasig Fruits and Vegetables Plaza) and to submit proof of his resignation to this Court within a non-extendible period of five (5) days from such resignation.

A copy of this decision shall be personally served by a process server of the Office of the Court Administrator on the respondent.

SO ORDERED.

Bellosillo and Quiason, JJ., concur.

Cruz, (Chairman), and Kapunan, JJ., on official leave.

[1] In his Manifestation and Motion for Reconsideration filed on 19 October 1993, the respondent clarified that Jer Speedways Manpower and Transport Services is a business entity organized and existing under Philippine laws and owned and operated by him. It is the appointed administrator and trustee of the Pasig Fruits and Vegetables Plaza, a franchised private market owned by Jerry Chua.

[2] Rollo, 83.

[3] Id., 111.

[4] Id., 113-117.

[5] Rollo, 129-134.

[6] Id., 167 et seq.

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