

FELISA L. GONZALES, COMPLAINANT, VS. CLERK OF COURT JOSEPH N. ESCALONA AND SHERIFF IV EDGAR V. SUPERADA, RESPONDENTS.*A.M. No. P-03-1715 (Formerly IPI No. 00-908-P). September 19, 2008*

Ponente: BRION, J.

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This is a verified complaint for Conduct Prejudicial to the Best Interest of the Service and Grave Misconduct in connection with the enforcement of the writ of execution of the decision in Criminal Case No. 2150 (entitled People of the Philippines versus Paterno Makipig, Jr., for Reckless Imprudence Resulting in Homicide and Multiple Physical Injuries) filed with the Regional Trial Court (RTC), Branch 13, Carigara, Leyte. Respondent Atty. Joseph N. Escalona, now resigned, was the Branch Clerk of Court, while respondent Edgar V. Superada, now deceased, was the sheriff in the Office of the Clerk of Court of the same court.

The complaint showed that in convicting the accused in Criminal Case No. 2150, the RTC awarded damages to complainant Felisa L. Gonzales in the amount of P300,040.00 for the death of her son Bienvenido. The other victims were awarded damages in the total amount of P29,020.00. The RTC issued a writ of execution directing respondent Superada to enforce the judgment. Since the accused was insolvent, the judgment was enforced against the accused's employer, Serafica Enterprises (Serafica), owned and operated by Herminigildo Serafica who agreed to pay the damages awarded to the victims within a period of six months.

The complainant alleged that even before the writ of execution was issued by the RTC, respondent Superada approached her and demanded the amount of P27,500.00, allegedly for expenses in serving the writ. The complainant was able to give the respondent only P7,000.00.

The complainant further alleged that without her consent, both respondents accepted from Serafica twenty-four (24) postdated checks of Land Bank-Ormoc City, each in the amount of P13,710.85 (or a total of P329,060.00) in payment of the damages awarded to the victims of the vehicular accident. All the checks were made payable to respondent Escalona. The first check was dated April 7, 2000, while the last check was dated January 31, 2002.

When the first check was encashed, respondent Escalona deducted the amount of P3,000.00 for sheriff's fees and P1,400.00 allegedly for the use of his car in going to and from the Land Bank branch office in Ormoc City. Upon encashment of the second check dated April 17, 2000, respondent Escalona again deducted the same amounts of P3,000.00 and P1,400.00.

In his comment on the complaint, respondent Escalona denied the complainant's allegations claiming that he did not instruct nor propose to Serafica that he be made the payee of the postdated checks. It was Serafica's sole decision to make the checks payable to him. He had no idea why he was made the payee.

Respondent Superada adopted his co-respondent's comment. He further denied demanding the amount of P27,500.00 from the complainant. He admitted, however, that he received the amount of P7,000.00 after a conference was held among the accident victims; the latter all agreed to give this amount to defray the expenses

for the apprehension of the accused.

On the recommendation of then Deputy Court Administrator Zenaida N. Elepaño (now retired Court Administrator), the complaint was referred to Executive Judge Lourdes G. Blanco of the RTC of Carigara, Leyte for investigation, report, and recommendation.

As directed, Executive Judge Blanco conducted the investigation and set the case for hearing.

In his Comment filed with the Investigating Judge, respondent Escalona contended that the complainant's allegation that he twice demanded the amount of P1,400.00, apparently implying bribery or extortion, is "patently absurd and feeble concoction of truth." He never demanded these amounts for the use of his vehicle in going to the Land Bank in Ormoc City which is more than 54 kilometers away from his office. He claimed that he accepted these amounts from the complainant based on his agreement with the accident victims. He further averred that "[h]ad undersigned been the private counsel for herein complainant, he could have demanded an amount more than five times than what they have [sic] given, considering the wear and tear, fuel, risks, and stress of travel."

In his Memorandum submitted to the Investigating Judge, respondent Superada insisted that he should not be adjudged guilty of misconduct. He claimed that although he was the one who received the amount of P7,000.00, "his act of receiving it cannot be considered as unlawful as he was the assigned executing sheriff who, under the circumstance, may advance for the prevailing party (the complainant) an amount for the expenses that may be incurred relevant to the execution of judgment." As to the P3,000.00 he received from complainant, respondent Superada maintained that he has a right to receive it as reimbursement for the expenses he had incurred during the execution of the writ.

In her report submitted to the Court, the Investigating Judge found that respondent Superada failed to comply with the procedure laid down in Section 9, Rule 11 of the Rules of Court on the manner of implementing writs of execution. This section provides:

[T]he 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, guard's fees, warehousing or 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 litigation 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 fixed as costs against the judgment debtor.

With respect to respondent Escalona, the Investigating Judge observed that "if the checks were issued by the accused's employer in his (Escalona's) name, and there was no other way to help the complainant, all that Atty. Escalona could have done was to arrange or advice the complainant to open an account with the Land Bank Tacloban City Branch so that he could have just endorsed the checks on the due date x x x." The checks could have also been issued to the complainant as payee to be released by Escalona on their due dates.

Executive Judge Blanco, in her report submitted to this Court, recommended:

- That Atty. Joseph N. Escalona, Branch Clerk of Court, and Edgar V. Superada, Sheriff IV, RTC Branch 13, Carigara, Leyte, are found guilty of violating R.A. 3019 as amended.[1] However, considering that Atty. Joseph N. Escalona has resigned from the service even before the filing of this case, it is recommended that this be placed in his record as a member of the Philippine Bar.

- That Edgar V. Superada, Sheriff IV of RTC Branch 13, Carigara, Leyte be fined in the amount of Php 2,000.00 this being his first, with a warning that a similar violation will be dealt with more seriously.

The evidence on record and the admissions made by both respondents in their comments filed with this Court and with the investigating court sufficiently establish their culpability. Guilt, however, for violation of Republic Act (R.A.) No. 3019, as amended, is beyond the Investigating Judge's authority to determine and should be read merely as her view on what criminal offense the respondents may have violated if they were to be criminally prosecuted.

Those connected with the dispensation of justice bear a heavy burden in the performance of their duties. Their positions demand a very high level of moral rectitude and uprightness. Clerks of Court, in particular, must be individuals of competence, honesty, and probity, charged as they are with safeguarding the integrity of the court and its proceedings. For that matter, the behavior of everyone connected with an office charged with the dispensation of justice - from the presiding judge to the lowliest clerk - must always be beyond reproach. Like Caesar's wife, they must not only be faithful to the responsibilities of their position and the propriety and decorum these entail; they must, above all, be above suspicion.

Our laws are not lacking in providing guidance and mandates on the responsibilities of a public position and the burdens they impose on the office holder. 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, at all times, remain accountable to the people.[2]

The Code of Conduct and Ethical Standards for Public Officers and Employees[3] sets out a policy towards promoting a high standard of ethical responsibility in the public service.[4] It enjoins those in the government service to extend prompt, courteous, and adequate service to the public, and at all times, to respect the rights of others and refrain from doing acts contrary to law, good morals and good customs, among other ideals.[5]

Our examination of the records of the case tells us that there was connivance between the respondents on the manner of collecting and disbursing the amounts awarded to the accident victims so that they (the respondents) could personally benefit from the proceeds of the court's award. That their actions were concerted is plain from the manner they undertook the exactions; one took care of and complemented the other towards the same result - a share in the complainant's pie. Although both respondents denied that they instructed or proposed to the complainant or the paying employer that the 24 postdated checks be made payable to respondent Escalona, we stand unconvinced that that the respondents had no active hand in the arrangement. For one, why the checks were made payable to Escalona was not sufficiently explained. To be sure, to pay checks whose proceeds are intended for a specific recipient, to someone other than the intended recipient is far from usual,[6] and is an arrangement that has to be explained if the arrangement is claimed to be legitimate. No explanation from the respondents, however, came. We are simply asked to believe, perhaps on faith, that the arrangement simply came without the respondents' active intervention. We cannot accept what amounts to a plain denial given the patent irregularities that attended the arrangement.

Respondent Superada admits having received the amount of P7,000.00, but explained that the P7,000.00 was agreed upon by the complainant and the other victims of the vehicular accident to defray the expenses for the apprehension of the accused. Why Superada, a court sheriff, would participate in the apprehension of the accused escapes us. Likewise, the excuse, even if legitimate, will not completely exculpate him as he is mandated to act within defined limits in the performance of his duties as sheriff, particularly on the matter of expenses. For him, good faith is not a defense as he is charged with the knowledge of what his proper conduct should be. As an officer of the court involved in the implementation of court decisions, he is bound to observe the Rules of Court faithfully, not use them for his personal ends; sheriffs must perform their duties by the book.[7] Charging any

amount to litigants for his services without the approval of the court constitutes grave misconduct and conduct prejudicial to the best interest of the service. While allowed to collect sums to cover his expenses in the service of summons and writs of execution, he can only charge and collect with the approval of the court as provided for in Section 9, Rule 141 of the Rules of Court. To do this by the book, an estimate has to be made of the projected expenses for approval by the court and the amounts paid should be deposited by the requesting 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.[8] Any amount received by the sheriff in excess of the lawful fees allowed by the Rules of Court is an unlawful exaction that renders him liable for grave misconduct and gross dishonesty.[9] Moreover, any unspent amount must be refunded to the paying party, the failure to refund is again a violation.

A misconduct is the violation of an established and definite rule of action, a forbidden act, a dereliction from duty, an unlawful behavior, willful in character, improper and wrong; while "gross" has been defined as "out of all measure; beyond allowance; flagrant; shameful." [10] In short, it is a level of conduct that is not to be excused.

In considering the present case, we are guided by the ruling of this Court in Letter of Atty. Socorro M. Villamer-Basilla, Clerk of Court V, Regional Trial Court, Branch 4, Legaspi City,[11] where we held that the sheriff's "act of receiving an amount for expenses to be incurred in the execution of the writ is clearly proscribed by the rule. Whether the amount was advanced to him by the counsel for the plaintiffs or he offered to return the excess to the plaintiff is beside the point; his mere acceptance of the amount without the prior approval of the court and without him issuing a receipt therefor is clearly a misconduct in office."

In *Danao v. Franco, Jr.*, [12] the Court ruled that the conduct of a sheriff in simply demanding from a party a particular sum without first furnishing her the estimate or detail of the expenses and without securing court approval is highly improper and erodes faith and confidence in the administration of justice; it brings the whole court to disrepute, and marks it as an institution to be approached warily and with caution.

While both cited cases involved sheriffs, their rulings apply, *mutatis mutandis*, to respondent Escalona. Not only is he guilty of his own specific gross misconduct against the complainant, but also, as we explained above, we find him guilty of having acted in concert with the respondent Superada in fleecing the complainant of a part of her awarded damages.

Under Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order 292, grave misconduct carries with it the penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification for reemployment in government service.

Respondent Escalona had already resigned from the service. His resignation, however, does not render this case moot, nor does it free him from liability.[13] In fact, the Court views respondent Escalona's resignation before the investigation as indication of his guilt, in the same way that flight by an accused in a criminal case is indicative of guilt. In short, his resignation will not be a way out of the administrative liability he incurred

while in the active service.[14] While we can no longer dismiss him, we can still impose a penalty sufficiently commensurate with the offense he committed.

We treat respondent Superada no differently. While his death intervened after the completion of the investigation, it has been settled that the Court is not ousted of its jurisdiction over an administrative matter by the mere fact that the respondent public official ceases to hold office during the pendency of the respondent's case;[15] jurisdiction once acquired, continues to exist until the final resolution of the case.[16] In *Layao, Jr. v. Caube*, [17] we held that the death of the respondent in an administrative case does not preclude a finding of administrative liability:

This jurisdiction that was ours at the time of the filing of the administrative complainant was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent public official innocent of the charges or declared him guilty thereof. A contrary rule would be fraught with injustice and pregnant with dreadful and dangerous implications ... If innocent, respondent public official merits vindication of his name and integrity as he leaves the government which he has served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.

The above rule is not without exceptions, as we explained in the case of *Limliman v. Judge Ulat-Marrero*,^[18] where we said that death of the respondent necessitates the dismissal of the administrative case upon a consideration of any of the following factors: first, the observance of respondent's right to due process;^[19] second, the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons;^[20] and third, it may also depend on the kind of penalty imposed.^[21] None of these exceptional considerations are present in the case.

The dismissal of an administrative case against a deceased respondent on the ground of lack of due process is proper under the circumstances of a given case when, because of his death, the respondent can no longer defend himself.^[22] Conversely, the resolution of the case may continue to its due resolution notwithstanding the death of the respondent if the latter has been given the opportunity to be heard, as in this case, or in instances where the continuance thereof will be more advantageous and beneficial to the respondent's heirs.^[23]

In Judicial Audit Report, Branches 21, 32 and 36, we recognized the dismissal of an administrative case by reason of the respondent's death for equitable and humanitarian considerations; the liability was incurred by reason of the respondent's poor health.^[24] We had occasion, too, to take into account the imposable administrative penalty in determining whether an administrative case should be continued. We observed in several cases that the penalty of fine could still be imposed notwithstanding the death of the respondent, enforceable against his or her estate.^[25]

From another perspective, administrative liability is separate and distinct from criminal and civil liability which are governed by a different set of rules. In *Fletcher v. Grinnel Bros., et. al*,^[26] the United States District Court of Michigan held that whether a cause of action survives the death of the person depends on the substance of the cause of action and not on the form of the proceeding to enforce it. Thus, unlike in a criminal case where the death of the accused extinguishes his liability arising thereon under Article 89 of the Revised Penal Code, or otherwise relieves him of both criminal and civil liability (arising from the offense) if death occurs before final judgment, the dismissal of an administrative case is not automatically terminated upon the respondent's death. The reason is one of law and public interest; a public office is a public trust that needs to be protected and safeguarded at all cost and even beyond the death of the public officer who has tarnished its integrity. Accordingly, we rule that the administrative proceedings is, by its very nature, not strictly personal so that the proceedings can proceed beyond the employee's death, subject to the exceptional considerations we have mentioned above. This conclusion is bolstered up by *Sexton v. Casida*,^[27] where the respondent, who in the meantime died, was found guilty of act unbecoming a public official and acts prejudicial to the best interest of the service, and fined Five Thousand Pesos (P5,000.00), deductible from his terminal leave pay.

WHEREFORE, the Court finds both respondents guilty of gross misconduct and conduct prejudicial to the best interest of the service. Considering, however, that this is respondent Atty. Joseph N. Escalona's first administrative offense, we find the penalty of a fine of P10,000.00 just and reasonable. With respect to respondent Sheriff Edgar V. Superada, tempering his liability with compassion in light of his untimely demise, he is imposed a fine of P10,000.00. Both fines are to be taken from each of the respondents' terminal leave pay.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Anti-Graft and Corrupt Practices Act.

[2] *Geolingo v. Albayda*, A.M. No. P-02-1660 (formerly A.M. OCA IPI 02-1290-P), January 31, 2006, 481 SCRA 32, citing *Abalde v. Roque, Jr.*, 400 SCRA 210 (2003).

[3] REPUBLIC ACT NO. 6713.

[4] *Opeña v. Luna*, A.M. No. P-02-1549 (formerly A.M. OCA-IPI No. 01-1025-P), 476 SCRA 153, citing *Zipagan v. Tattao*, 365 SCRA 605 (2001) and *Arroyo v. Alcantara*, 368 SCRA 567 (2001).

[5] *Id.*

[6] *Flores v. Falcotelo*, A.M. No. P-05-2038, January 25, 2006, 480 SCRA 16, citing *Philippine Airlines Inc. v. Court of Appeals*, 181 SCRA 557 (1990).

[7] *Id.*, *Flores v. Falcotelo*, 480 SCRA 16 (2006).

[8] *Supra* note 2.

[9] *Id.*, citing *Alvares, Jr. v. Martin*, 411 SCRA 248 (2003).

[10] Associate Justice Delilah Vidallon-Magtolis, *Court of Appeals v. Cielito M. Salud, Clerk IV*, Court of Appeals, A.M. No. CA-05-20-P, 469 SCRA 439.

[11] A.M. No. P-06-2128 (formerly A.M. No. 04--6-313-RTC), February 16, 2006, 482 SCRA 455.

[12] A.M. No. P-02-1569, November 13, 2002, 391 SCRA 515.

[13] Re: Report on the Financial Audit Conducted on the Books of Accounts of Atty. Raquel G. Kho, Clerk of Court IV, RTC, Oras, Eastern Samar.

[14] Re: (1) Lost Checks Issued to the Late Roderick Roy P. Melliza, Former Clerk II, MCTC, Zarraga, Iloilo, and (2) Dropping from the Rolls of Ms. Esther T. Andres, A.M. No. 2005-26-SC, November 22, 2006, 507 SCRA 478, citing *Withholding of the Salary and Benefits of Michael A. Latiza*, Court Aide, Regional Trial Court, Branch 14, Cebu City, for Unexplained Absences and Involvement in the Loss of Evidence, A.M. No. 03-3-179-RTC, and A.M. No. 03-10-576-RTC, Re: Resignation of Michael Latiza, Utility Worker I, Regional Trial Court, Branch 14, Cebu City, January 26, 2005, 449 SCRA 278; *Clerk of Court Marbas-Vizcarra v. Florendo*, 369 Phil. 840 (1999); *Judge Cajot v. Cledera*, 349 Phil. 907 (1998).

[15] Re: Audit Report on Attendance of Court Personnel of Regional Trial Court, Branch 32, Manila, A.M. No. P-04-1838 (formerly A.M. No. 03-11-641-RTC), August 31, 2006, 500 SCRA 351, citing *Aquino, Jr. v. Miranda*, A.M. No. P-01-1453, May 27, 2004, 429 SCRA 230; *Boiser v. Aguirre*, A.M. No. RTJ-04-1886, May 16, 2005, 458 SCRA 430.

[16] *Opeña v. Luna*, *supra* note 4.

[17] A.M. No. P-02-1599, April 30, 2003, 402 SCRA 33, 37.

[18] A.M. No. RTJ-02-1739, January 22, 2003, 395 SCRA 607.

[19] *Id.*, citing *Camsa v. Judge Rendon*, 377 SCRA 271, 274 (2002), and *Apiag v. Judge Cantero*, 268 SCRA 47, 53 (1997).

[20] *Id.*, citing Judicial Audit Report, Branches 21, 32 & 36, et. al., 343 SCRA 427, 441 (2000), and *Hermosa v. Paraiso*, 62 SCRA 361, 362 (1975).

[21] *Id.*, citing Report on the Judicial Audit Conducted in RTC, Br. 1, Bangued, Abra, 332 SCRA 273, 284 (2000); *Apiag v. Judge Cantero*, supra note 18; *Mañozca v. Judge Domagas*, 248 SCRA 625, 627-628 (1995); and *Loyao, Jr. v. Caube*, supra note 16, p.39.

[22] *Id.*, p. 611.

[23] *Herbosa v. Paraiso*, supra note 19.

[24] Judicial Audit Report, Branch 21, 32 & 36, et. al., supra note 19.

[25] *Mañozca vs. Judge Domagas*, supra note 20, p. 628; *Apiag v. Judge Cantero*, supra note 18, p. 64; and *Loyao, Jr. v. Caube*, supra note 16, p. 39.

[26] 64 F. Supp. 778, February 28, 1946.

[27] A.M. No. P-05-2048, September 30, 2005, 471 SCRA 168.

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