

**EDILBERTO NATIVIDAD, COMPLAINANT, VS. ALFONSO B. MELGAR,
DEPUTY SHERIFF, BRANCH 6, REGIONAL TRIAL COURT, BAGUIO
CITY, RESPONDENT.**

A.M. No. P-90-418. September 03, 1992

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PER CURIAM:

In his affidavit dated 20 February 1990, attached by his counsel to an Ex-Parte Manifestation filed on 21 February 1990 in Civil Case No. 909-R, entitled Accord Finance Corporation versus Victorino H. Natividad, and pending before Branch 6 of the Regional Trial Court (RTC) of Baguio City, complainant charges respondent with the misuse of a vehicle in custodia legis.

Acting on the Ex-Parte Manifestation and Affidavit, Judge Ruben C. Ayson, presiding Judge of the aforesaid court, issued on 21 February 1990 an Order considering the Affidavit as a formal complaint for grave misconduct against respondent, directing the latter to file within five (5) days from receipt thereof his Comment and/or Answer to the said Affidavit-Complaint, informing him that the Affidavit and his answer would then be forwarded to this Court, through the Office of the Court Administrator, for appropriate administrative action and ordering him to turn over the attached vehicle to Rosemarie Alim, the Clerk of Court and Ex-Officio City Sheriff of Baguio City, for safekeeping in accordance with the rules. It was only on 23 February 1990 that respondent turned over the vehicle to Alim.

In a letter dated 28 February 1990, respondent informed Judge Ayson that if directed to do so, he would just submit his counter-affidavit to this Court since the complainant's affidavit and his (respondent's) answer thereto would be forwarded to the same. On 16 March 1990, Judge Ayson transmitted to the Court Administrator the affidavit of the complainant, together with copies of the complaint in Civil Case No. 909-R; the answer of the defendants in said case; the motion for preliminary attachment; the order granting the writ of attachment; the writ of attachment; the sheriff's return of the writ; the motion of defendant's counsel dated 11 November 1989 calling the attention of the court to the alleged use of the attached vehicle by the respondent; the order of the court of 14 November 1989; the order of the court of 21 February 1990; the letter of the Clerk of Court and Ex-Officio City Sheriff Alim dated 23 February 1990 informing the court of the turning over to her of the vehicle by the respondent; and the letter of respondent dated 28 February 1990.

In the Resolution of 20 August 1990, this Court required respondent to comment on the said Affidavit-Complaint; respondent complied with this order only on 27 December 1990 after he was directed in the Resolution of 28 November 1990 to show cause why no disciplinary action should be taken against him for failing to file the comment. He admits in his Comment that he turned over the vehicle to the Clerk of Court and Ex-Officio City Sheriff only on 23 February 1990; he alleges, however, that he exercised due care in preserving the condition of the vehicle while it was in his custody and that he brought the same out only on two (2) or three (3) instances to fill it with gasoline and have the mechanical parts of the underchassis greased.

Complainant filed a Reply to the Comment submitted by the respondent. In this Court's Resolution of 14 October

1991, the case was referred to Executive Judge Ruben C. Ayson of the RTC of Baguio City for investigation, report and recommendation.

In the meantime, however, respondent exerted efforts to convince the complainant to withdraw the complaint. On 22 February 1992, the latter executed an Affidavit of Desistance which provided in part:

“That the respondent Alfonso B. Melgar had personally come to my house and explained his side, following which he expressed his deep regrets and heartfelt apology for whatever mistakes or wrong he may have committed;

That in the spirit of charity and christian living, I have decided to forgive and forget whatever may have been committed by the respondent, if only to promote peace and better (sic) relationship between the two of us; x x x”

This affidavit was filed with Judge Ayson on 25 February 1992, the day when the latter was supposed to start the investigation. Complainant did not anymore appear for the said investigation.

Judge Ayson subsequently submitted a Report, dated 26 February 1992, informing this court of the above facts and commenting that respondent be, nevertheless, penalized correspondingly because the previous affidavit of the complainant and the pictures attached thereto provide sufficient evidence of misconduct.

On 30 March 1992, this Court directed Judge Ayson to investigate the complaint, using his authority to issue a subpoena and to submit the proper recommendation. In compliance therewith, an investigation was conducted and a Report, dated 25 June 1992, was submitted; the Court Administrator received the same on 14 July 1992.

In the said Report, Judge Ayson made the following findings of fact and conclusions:

“It appears that in Civil Case No. 909-R entitled Accord Finance Corporation versus Victorino Natividad et al for Sum of Money pending in RTC, Branch 6, Baguio City, an Order of Attachment dated May 4, 1987 directed the City Sheriff and/or his deputy, Regional Trial Court, Baguio City to attach the property of defendant Victorino Natividad within the City of Baguio not exempt from execution as may be sufficient to satisfy plaintiff’s demand in the amount of P32,594.85 and to safely keep the same in accordance with the Rules to await judgment and execution in the said case.

By virtue of said Order of Attachment, a Toyota Pick-up Motor Vehicle belonging to defendant Victorino Natividad who was then abroad in the possession of his father, Edilberto Natividad, was seized which as per Sheriff’s Return dated May 29, 1987 of Alfonso Melgar was under the custody of the Sheriff’s Office thru him for safekeeping.

In an Ex-Parte Motion dated November 11, 1989, Atty. Emilio Fallarme, counsel for Victorino Natividad, conveyed to the Court that they were informed that the Motor Vehicle attached was being used and driven by Sheriff Melgar himself for his own benefit and had no idea where it was being stored.

In an Order dated November 14, 1989, Deputy Sheriff Melgar was warned that his use of said vehicle, if true, is prohibited and was directed to produce said vehicle from where it had been stored for inspection in court on November 17, 1989, to see (sic) if it is still in good running condition.

On February 21, 1990, Atty. Emilio Fallarme again filed another Ex-Parte Manifestation and Motion calling the attention of the Court that despite the Order dated November 14, 1989 of the Court warning Deputy Sheriff Melgar that it is prohibited by law for him to use the vehicle for his own personal use and benefit, Sheriff Melgar continued to use it for his own personal use and benefit and that Edilberto Natividad, father of Victorino Natividad, investigated, the matter and was able to take pictures of the Motor vehicle actually being used by Sheriff Melgar. Thus Edilberto Natividad submitted his affidavit together with 4 pictures to support the misuse (sic) of the vehicle for his personal benefit by Sheriff Melgar, which are now the charges (sic)

complained of in this Administrative Complaint.

From the declaration of Edilberto Natividad, it appears that after persistently receiving reports that Sheriff Melgar was using the attached Motor vehicle for his personal benefit, he decided to find out for himself. And so Edilberto Natividad and a hired photographer posted themselves at the Saint Louis School, Campo Filipino at the Saint Vincent Church where it was reported Sheriff Melgar frequents (sic) as his child is studying thereat.

And true enough on December 15, 1989 at about 11:30 A.M. after some waiting, Sheriff Melgar came driving the attached vehicle in the company of William Baden, another Sheriff, and parked it at Saint Vincent Church. And Melgar alighted and proceeded to Saint Louis School where his child was studying. Thus pictures were taken of Sheriff Melgar beside the vehicle subject of attachment parked at Saint Vincent Church.

Furthermore, Edilberto Natividad declared he did not see Sheriff Melgar dropped (sic) by a gasoline station at the time.

Again on another occasion, sometime (sic) February 7, 1990 at about 3:00 P.M. while Edilberto Natividad was going towards their Branch Office of the Rural Bank of Tuba, Benguet, he met the Motor vehicle subject of attachment driven by Sheriff Melgar speeding along the road fronting the Home Sweet Home in the vicinity of the Lions Club building and Baguio General Hospital.

Hence charge (sic) of misuse of the Motor vehicle subject of a preliminary attachment for his personal benefit against Sheriff Melgar.

In his defense, Sheriff Melgar explained that although the Motor vehicle attached was under custodia legis or in the custody of the Sheriff's Office pursuant to an Order of Attachment of the Court to await judgment and execution, he kept possession of the vehicle and stored it in his place.

And on the day aforementioned when he was seen driving the car at Saint Vincent Church he was bringing the car to a gasoline station to fill it up with gasoline and to warm up its engine to keep it in running condition so it will not deteriorate. Sheriff Melgar explained that the Saint Vincent Church was along the way going to the gasoline station. He admitted however having a child studying at St. Louis School, Campo Filipino beside Saint Vincent Church and that he has no gasoline receipts. Thus Sheriff Melgar claims he did not use the attached Motor Vehicle for his personal benefit.

Further Sheriff Melgar elaborated that since there were no storehouse facilities of (sic) the City Sheriff's Office of Baguio, he stored the vehicle in his place with the diligence of a good father of a family.

It is a fact however, that because of the complaints of the misuse of the vehicle, it was ordered by the Court that the vehicle be turned over to the City Sheriff and Clerk of Court Rose Mary Alim who immediately had it stored at the Maharlika Livelihood Center and had the tickets and receipts for its safekeeping charges submitted to the Court which Melgar never did.

Going by the aforesaid evidence, this investigating Judge finds the Complaint of Edilberto Natividad of misuse of the motor vehicle subject of attachment sufficiently established for the following reasons:

First, it is very obvious that Sheriff Melgar used the Motor Vehicle subject of attachment in going to Saint Vincent Church for his child who was studying there at Saint Louis School, Campo Filipino. Melgar admitted he was at Saint Vincent Church and has a child studying at Saint Louis School Campo Filipino. The vehicle was certainly not simply passing by while on its way for gasoline as claimed by Melgar.

It can be taken judicial notice of that to drop by Saint Vincent Church, you have (sic) to turn inside and has to (sic) leave the main road to go up Saint Vincent Church and the School thereat. So that clearly his purpose was to go to Saint Vincent Church and was not just passing by it in going to a gasoline station. Sheriff Melgar went to Saint Vincent Church obviously as he even parked the vehicle there apparently waiting for his child

studying there. The personal use of the vehicle therefore was clear.

Second, Edilberto Natividad categorically said that on the said occasion he did not see Melgar fill the vehicle with gasoline. Even Melgar admitted he had no gasoline receipts. In fact coming from City Hall or even the residence of Melgar in Bakakeng, Saint Vincent Church is farther than the Caltex gasoline station in Naguilian Road. So that one does not pass by Saint Vincent Church along the way in going to the Caltex Station in Naguilian Road.

Third, the misuse of the vehicle for a personal purpose on December 15, 1989 which was seen is all the more reprehensible since Melgar was already warned prior to that in an Order dated November 14, 1989 that any misuse of the vehicle for his personal benefit was prohibited.

Fourth, the declaration of Edilberto Natividad and the photographs submitted are sufficient to support the misuse of the attached Motor Vehicle for personal benefit. The pictures speaks (sic) a thousand words literally. Why should the attached vehicle be at Saint Vincent Church and Saint Louis Campo Filipino if it was not really used for the personal benefit of Sheriff Melgar?

Although the infraction involved maybe considered a slight offense, still, in view of the several charges against Sheriff Melgar, which are presently pending showing his being notoriously undesirable, it is recommended that he be suspended for one month without pay so that he may not commit further offenses while his other charges are being investigated.”

and recommended that:

“x x x Deputy Sheriff Alfonso Melgar be found guilty of misuse of a Motor Vehicle subject of a preliminary attachment for his personal benefit and penalized with suspension from office for one month without pay.”

We find the above findings of fact to be indubitably supported by the evidence. However, We are unable to agree with the conclusion that the infraction committed is only a slight offense and that considering that there are several pending charges against respondent showing that he is notoriously undesirable, he should be meted the penalty of suspension from office for one (1) month without pay. Said pending cases, regardless of the gravity of the administrative offenses involved therein, can by no means serve to aggravate whatever penalty may be imposed in the present case. Respondent is still presumed innocent in those cases until judgments of conviction shall have been rendered therein.

Be that as it may, this Court concludes that the use of the attached vehicle for respondent’s personal benefit and advantage, despite the unequivocal prohibition earlier issued by the RTC, constitutes misconduct and conduct prejudicial to the best interest of the service and shows his blatant defiance of the latter court’s warning. Such conduct is not only deplorable, it is likewise condemnable for it violates the norm of public accountability and tends to diminish the people’s faith in the Judiciary. In *Sy vs. Academia* and *Pardo vs. Academia* [198 SCRA 705, 717 (1991)], this Court held:

“This Court condemns and would never countenance any conduct, act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and would diminish or even just tend to diminish the faith of the people in the Judiciary. In *Jereos, Jr. vs. Reblando, Sr.* (71 SCRA 126,131-132). We laid down the rule that the conduct and behavior of every one connected with an office charged with the dispensation of justice, like the court below, from the presiding judge to the lowliest clerk, should be circumscribed with the heavy burden of responsibility. His conduct, at all times, must not only be characterized by propriety and decorum but above all else must be above suspicion.

Indeed, every employee of the judiciary should be an example of integrity, uprightness and honesty (*Ablanida vs. Intia*, Adm. Matter No. R-770-P, May 17, 1988).”

A penalty then of suspension from office for three (3) months without pay would be in order.

WHEREFORE, respondent is hereby declared guilty of misconduct and conduct prejudicial to the best interest of the service and is SUSPENDED from office for three (3) months without pay, with a warning that the commission of similar or grave offenses in the future shall be dealt with more severely.

This decision shall take effect immediately upon receipt by respondent of a copy thereof.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

Feliciano, J., on official leave.

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