# TERESITA GUERRERO-BOYLON, COMPLAINANT, VS. ANICETO BOYLES, SHERIFF III, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 2, CEBU CITY, RESPONDENT.

*A.M. No. P-09-2716. October 11, 2011*

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**PER CURIAM:**

In a letter-complaint dated February 13, 2007, Teresita Guerrero-Boylon (complainant) charges Aniceto Boyles (respondent), Sheriff III, Municipal Trial Court in Cities, Branch 2, Cebu City, with neglect of duty in connection with his delay and refusal to implement the writ of execution/demolition (writ) issued in a forcible entry case docketed as Civil Case No. R-75.

The complainant is the daughter of Asuncion T. Guerrero, the plaintiff in Civil Case No. R-75. In behalf of her mother, the complainant moved to implement the final and executory decision in Civil Case No. R-75 in July 2005. The court in due course issued a writ and assigned the respondent to implement it. At the respondent's request, two (2) sheriffs from the Regional Trial Court, Branch 9, Cebu City, were assigned to assist him in the writ's implementation; a schedule for the demolition of the offending structures in the litigated property was set; and proper arrangements were made between the complainant and the respondent's group.

According to the complainant, the scheduled demolition did not take place as the respondent did not show up on time and could not be reached. In another planned demolition scheduled for the last quarter of 2005, the respondent also failed to show up. The respondent offered varied excuses[1] to the complainant to justify his non-appearances and his failure to implement the writ.

By December 16, 2006, the writ remained unserved despite the complainant's entreaties to the respondent for its immediate service. The respondent also failed to comply with his representations to the complainant that he would serve the notices to vacate on the occupants of the property within the period of January 3, 2007 to January 8, 2007. At the intervention of Hon. Anatalio S. Necesario, the judge who issued the writ, the respondent, on January 18, 2007, served a notice to vacate on Manuel Tipgos. The respondent designated Tipgos to deliver the notices to the other occupants in the property. The notices, however, failed to reach the intended recipients.

On April 10, 2007, then Court Administrator Christopher O. Lock required the respondent to file his comment to the letter-complaint.[2]

In his comment dated April 27, 2007,[3] the respondent clarified that the forcible entry case was docketed as Civil Case No. R-46168, not Civil Case No. R-75. The respondent denied the accusations in the letter-complaint and prayed for the dismissal of the complaint. He explained that immediately after the issuance of the writ, he went to serve the writ to the occupants of the property. The respondent claimed that he failed to implement the writ because none of the defendants in the civil case were then occupying the property. The respondent also claimed that he refused to implement the writ because the structures to be demolished were located at a different parcel of land. He further claimed that Tipgos was not a party to the forcible entry case.

The respondent insisted that he and his team tried to serve the notices to vacate sometime in January 2007. However, he could not immediately serve them as he had other court processes to attend to. The respondent also explained that service of the notices to vacate could not be made either because the gates of the property were locked or because no one answered their calls. The last attempt of the respondent's team to serve the notices and writ was on January 18, 2007 when they chanced upon Tipgos. The respondent and his team requested Tipgos to serve the court processes on his neighbors.

In a Resolution dated November 18, 2009, the Court resolved to: (1) note the letter-complaint of the complainant and the comment of the respondent; (2) re-docket the letter-complaint as a regular administrative matter; and (3) require the parties to manifest whether they were willing to submit the matter for resolution on the basis of the pleadings filed, within ten (10) days from notice.

Only the respondent manifested his intention to file additional pleadings and documents. In this regard, the respondent filed his answer together with supporting documents.[4] He additionally averred that he had filed a motion for clarification before the issuing court to clarify the party against whom the writ should be implemented. He also averred that he inhibited himself from continuing with the implementation of the writ as he was convinced that the plaintiffs no longer trusted him. After his inhibition, another sheriff continued to implement the writ and succeeded in evicting defendant spouses Nicolas and Natalia Babao from the property.

Thereafter, we referred the administrative matter to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.[5]

The Findings and Recommendations of the OCA
In its Report dated July 6, 2010, the OCA[6] found the respondent liable for simple neglect of duty:

> It has been said that the sheriff's duty to execute a judgment is ministerial. A purely ministerial act is one "which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to the exercise of his own judgment upon the propriety of the act done." Otherwise stated, a sheriff need not look outside the plain meaning of the writ. In this case, it was respondent Sheriff's duty to use reasonable and necessary force to see that judgment debtors vacate the premises. Any exercise of discretion may be used only when a sheriff is faced with an ambiguous execution order, in which case prudence and reasonableness dictate that he seeks clarification from the judge.
>
> The non-implementation of the writ for almost two years cannot be justified by the allegation that the property is not properly identified and that the persons are not parties to the civil case. To exercise compassion and discretion to the extent that the sheriff substitutes his own standard of justice which has been properly determined in contentious proceedings is to encroach upon the power of a judge, which amounts to grave abuse of authority. He should have acted promptly to clarify the court order.
>
> The explanations offered by the respondent are hollow and undeserving of merit. Evidently, respondent was not only remiss in his implementation of the writ, but likewise derelict in his submission of the returns thereof.[7]

The OCA recommended that the respondent be suspended without pay for one (1) month, with a stern warning that a repetition of the same or similar act shall be dealt with more severely.

The Court's Ruling

We agree with the findings of the OCA that
the respondent is administratively liable, but
we differ on the characterization of the offense


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and the recommended penalty.

The duties of the sheriff in implementing writs of execution are explicitly laid down in the Rules of Court (Rules). Paragraphs (c) and (d) of Section 10, Rule 39 of the Rules provide for the manner a writ for the delivery or restitution of real property shall be enforced by the sheriff:

> Section 10. Execution of judgments for specific act. -
>
> x x x x
>
> (c) Delivery or restitution of real property. - The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peaceably vacate the property within three (3) working days, and restore possession thereof to the judgment obligee, otherwise, the officer shall oust and such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money.
>
> (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.

After the implementation of the writ, Section 14, Rule 39 of the Rules requires sheriffs to execute and make a return on the writ of execution:

> SEC. 14. Return of writ of execution. - The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

The above provisions enumerate the following duties of a sheriff: first, to give notice of the writ and demand that the judgment obligor and all persons claiming under him vacate the property within three (3) days; second, to enforce the writ by removing the judgment obligor and all persons claiming under the latter; third, to remove the latter's personal belongings in the property as well as destroy, demolish or remove the improvements constructed thereon upon special court order; and fourth, to execute and make a return on the writ within 30 days from receipt of the writ and every 30 days thereafter until it is satisfied in full or until its effectivity expires.

Clearly, these provisions leave no room for any exercise of discretion on the part of the sheriff on how to perform his or her duties in implementing the writ. A sheriff's compliance with the Rules is not merely directory but mandatory.[8] A sheriff is expected to know the rules of procedure pertaining to his functions as an officer of the court.[9]

In this case, we find that the respondent was remiss in performing his mandated duties. In the first place, the respondent failed to implement and enforce the writ within the prescribed period provided under the Rules. As the records show, the respondent failed to serve the writ and the notices to vacate to the occupants of the property within three (3) days. Moreover, the respondent failed to evict the occupants of the subject property, and to

remove their personal belongings, and the structures and improvements they introduced. Aside from these, the respondent failed to make periodic reports, thus depriving the court of the opportunity to know and ensure the speedy execution of its decision.[10]

We are not unmindful that the respondent had been given several opportunities over a long period of time - almost two (2) years - to comply with his duties in implementing the writ. The records show that the respondent imputed the delay in executing the writ to his hectic work schedule. We also note that his half-hearted attempts and refusal to execute the writ were due to his misgivings and doubts on the soundness and propriety of the writ. The records also show that the respondent only acted on the writ when the complainant sought the intervention of Judge Necesario. Even then, the respondent's insincere efforts to comply with his duties were obvious; it particularly stood out when he carelessly designated Tipgos to do his court duties for him. The extent of his indifference and carelessness totally emerged after his inhibition when another sheriff acted in his place and immediately served the writ on, and promptly evicted, the occupants of the property.

The Code of Conduct for Court Personnel mandates that court employees act properly and with due diligence in the performance of their duties. The same Code also demands that court employees implement the orders of the court within the limits of their authority.[11] In Teresa T. Gonzales La'O & Co., Inc. v. Sheriff Hatab,[12] the Court emphasized the importance of sheriffs and the efficient performance of their functions in the administration of justice, to wit:

> [Sheriffs] are tasked to execute final judgments of courts. If not enforced, such decisions are empty victories of the prevailing parties. They must therefore comply with their mandated ministerial duty to implement writs promptly and expeditiously. As agents of the law, sheriffs are called upon to discharge their duties with due care and utmost diligence because in serving the court's writs and processes and implementing its order, they cannot afford to err without affecting the integrity of their office and the efficient administration of justice.[13]

The respondent failed to observe these standards. The lapse of time it took for the respondent to unsuccessfully execute the writ demonstrates his utter lack of diligence in performing his duties.

We have held time and again that the sheriff's duty in the execution of a writ is purely ministerial.[14] Once the writ is placed in his or her hands, a sheriff is obligated to execute the order of the court strictly to the letter and with reasonable promptness, taking heed of the prescribed period required by the Rules.[15] The respondent is presumed to know all these and he cannot be excused from compliance regardless of his personal views and busy schedule. Any kind of doubt in the proper implementation of the writ would have been addressed if the respondent seasonably asked for a clarification from the court. Regrettably, he only made such request after a considerable time and after he had given the complainant excuses that only delayed the implementation of the writ.

In the recent case of Proserpina V. Anico v. Emerson B. Pilipiña, etc.,[16] we held that the failure of the sheriff to carry out what is a purely ministerial duty, to follow well-established rules in the implementation of court orders and writs, to promptly undertake the execution of judgments, and to accomplish the required periodic reports, constitute gross neglect and gross inefficiency in the performance of official duties.

Gross neglect of duty refers to negligence that is characterized by glaring want of care; by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally; or by acting with a conscious indifference to consequences with respect to other persons who may be affected.[17] It is the omission of that care that even inattentive and thoughtless men never fail to take on their own property.[18] In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable.[19] Gross inefficiency is closely related to gross neglect as both involve specific acts of omission on the part of the

employee resulting in damage to the employer or to the latter's business.[20]

We find that the circumstances in Anico have been duly established in the present case to make the respondent liable for gross neglect of duty and gross inefficiency. Under the circumstances, the records show several infractions committed by the respondent in the performance of his official duties, namely: (1) the failure to implement the writ; (2) the failure to make periodic reports; (3) the failure to execute the writ within the prescribed period; and (4) the utter disregard of the rules on execution and the well-established jurisprudence relating to the ministerial duty of sheriffs in the execution and implementation of a writ.

Under the Revised Uniform Rules on Administrative Cases in the Civil Service (Civil Service Rules), gross neglect of duty and gross inefficiency are classified as grave offenses. Gross neglect of duty is punishable with dismissal from the service for the first offense, while gross inefficiency is punishable with suspension for six (6) months and one (1) day to one (1) year for the first offense, and dismissal for the second offense.[21] The Civil Service Rules also provides that if the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be the penalty corresponding to the most serious charge or count while the other proven charges shall be considered as aggravating circumstances.[22] Thus, for the infractions committed, the respondent is meted the penalty of dismissal from the service with the accessory penalties of forfeiture of all his retirement benefits, except accrued leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government- owned or controlled corporations.

As a final note, court personnel should be constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided.[23] Those who work in the Judiciary must adhere to high ethical standards to preserve the courts' good name and standing.[24] They should be examples of responsibility, competence and efficiency, and they must discharge their duties with due care and utmost diligence, since they are officers of the Court and agents of the law.[25] Indeed, any conduct, act or omission violative of the norms of public accountability and that may diminish the faith of the people in the Judiciary should not be allowed.[26]

WHEREFORE, premises considered, we find ANICETO BOYLES, Sheriff III, Municipal Trial Court in Cities, Branch 2, Cebu City, GUILTY of gross neglect of duty and gross inefficiency in the performance of his duties, and hereby DISMISS him from the service. This penalty shall carry with it the accessory penalties of forfeiture of all his retirement benefits, except accrued leave credits, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

**SO ORDERED.**

Corona, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Abad, Villarama, Jr., Mendoza, Sereno, Reyes, and Perlas-Bernabe, JJ., concur.
Bersamin and Perez, JJ., on official leave.
Del Castillo, J., on Leave.

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[1] The respondent reasoned that he was "on another assignment; leave of absence; demolition crew and/or police or security force are scared; or coming up with a technicality or another to render the demolition unimplementable[.]" Rollo, p. 8.

[2] Id. at 12.

[3] Id. at 15-18.


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[4] Id. at 47-69.

[5] Id. at 73; Resolution dated March 10, 2010.

[6] Through Court Administrator Jose Midas P. Marquez.

[7] Rollo, pp. 77-78.

[8] Office of the Court Administrator v. Efren E. Tolosa, etc., A.M. No. P-09-2715, June 13, 2011.

[9] Ibid.

[10] Proserpina V. Anico v. Emerson B. Pilipiña, etc., A.M. No. P-11-2896, August 2, 2011.

[11] Code of Conduct for Court Personnel, Canon IV, Sections 1 and 6.

[12] 386 Phil. 88 (2000), cited in Gonzales v. Cerenio, A.M. No. P-07-2396, December 4, 2007, 539 SCRA 320.

[13] Teresa T. Gonzales La'O & Co., Inc. v. Sheriff Hatab, supra, at 92-93.

[14] Proserpina V. Anico v. Emerson B. Pilipiña, etc., supra note 10.

[15] Ibid.

[16] Ibid.

[17] Brucal v. Desierto, G.R. No. 152188, July 8, 2005, 463 SCRA 151.

[18] Id. at 166.

[19] Ibid.

[20] St. Luke's Medical Center, Incorporated v. Fadrigo, G.R. No. 185933, November 25, 2009, 605 SCRA 728, insofar as the principle applies mutatis mutandis.

[21] Civil Service Rules, Rule IV, Section 52(A)(2) and (16).

[22] Id., Rule IV, Section 55.

[23] Proserpina V. Anico v. Emerson B. Pilipiña, etc., supra note 10.

[24] Ibid.

[25] Ibid.

[26] Ibid.

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