

**RE: REPORT ON THE JUDICIAL AUDIT CONDUCTED IN THE
REGIONAL TRIAL COURT, BRANCH 117, PASAY CITY.***A.M. No. 96-5-163-RTC. June 18, 1998*

Ponente: DAVIDE, JR., J.

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As a result of the judicial audit and physical inventory of pending cases in the Regional Trial Court, Branch 117, Pasay City, conducted on 18 and 19 March 1996, it was discovered that, among other things, although Mr. William Villaruz was the regular Deputy Sheriff of Branch 117, most of the writs of replevin issued in eighty-seven (87) civil cases were assigned to Deputy Sheriff Virgilio Villar of Branch 111 and Deputy Sheriff Edilberto Santiago of Branch 113 said court. Upon inquiry, Teresita S. Pablo, Clerk of Court, Branch 117 informed the audit team that Deputy Sheriff Villaruz did not accept the numerous writs of replevin due to time constraints; and Villaruz himself explained that he had to request service by the other deputy sheriffs because many of those writs could only be served in the evening.

Conformably with the recommendation of the Office of the Court Administrator (OCA) in its memorandum of 24 April 1996, the court, in its resolution of 9 July 1996, required Deputy Sheriff Villaruz “to explain ... why he should not be held administratively liable for refusal to perform his official duty of serving copies of writs of replevin amounting to insubordination and/or gross inefficiency.”

In his Explanation of 14 August 1996, Villaruz averred that it was not true that he refused to serve copies of the writ of replevin, in fact, he spent several days and nights monitoring the whereabouts of the properties to be seized; that although there were times when due to asthma attacks, he had to pass on service of the writs to his co-sheriffs in order not to impair the administration of justice, he nevertheless continued to perform his official duties of serving subpoenae and other court processes; and that due to his deteriorating health and age, he would like to avail of early retirement so as not to prejudice the best interest of the service.

In its resolution of 12 November 1996, the Court required Villaruz to submit copies of the sheriff’s returns of service which he filed with Branch 117 from January 1995 up to the present, and to inform the Court if he would submit his case for resolution on the basis of his 14 August 1996 explanation.

In his letter of 2 January 1997, Villaruz complied with the 12 November 1996 resolution and manifested that he was submitting his case for resolution on the basis of his explanation.

On 17 June 1997, the Court referred the case to the OCA for re-evaluation, report and recommendation. The OCA then recommended that Villaruz be required to submit a “properly notarized Medical Certificate attesting to his asthmatic condition...which prevented him from performing his duties,” which the Court approved in our resolution of 23 September 1997.

On 24 November 1997, Villaruz submitted medical certificates dated as follows: (1) 13 May 1996 and 19 November 1997 issued by Dr. Delfin P. Santos stating that Villaruz was under his care for recurring bronchial

asthma since 1988; (2) 23 September 1997, issued by the Holy Saviour's Family Clinic stating that Villaruz was examined on 26 August and 23 September 1997, for difficulty of breathing and was diagnosed as suffering from bronchial asthma; (3) 20 August 1996, showing that Villaruz was treated at Estuita Clinic of Internal Medicine for moderately severe asthmatic bronchitis; and (4) 27 August 1996, issued by Dr. Winchito M. Moral stating that Villaruz was treated for asthmatic bronchitis.

In its Memorandum of 18 February 1998, the OCA informed the Court that Deputy Sheriff Villaruz had applied for optional retirement effective 15 July 1997, which request was still pending due to this case, and that an inquiry from the Leave Section of the Office of the Administrative Services revealed that for the period of 1 January 1995 to 14 July 1997, he had no application for leave of absence except for the period of 7-30 April 1997 for vacation leave, and that he did not file his daily time records from 16 May to 14 July 1997. The OCA then observed and found:

At the very outset, Deputy Sheriff Villaruz claimed that the other deputy sheriff[s] performed his duties for him because the defendants could only be served the writs in the late evening. This assertion corroborates Branch Clerk of Court Pablo's disclosure of time constraints as the reason for his refusal sometimes to enforce writs of replevin.

Later, he altered his excuse averring instead asthmatic condition. Explored, this ground opens the question of his work performance, office attendance and application for early retirement.

The Sheriff's Returns of Service on record show that in 1995, he discharged his duties only in the months of May-August and November-December; in 1996, in the months of February and September-December; and in 1997, only in the month of February. There is no showing that he performed his duties the rest of the time. Viewing that no leaves of absences were filed and no reported unauthorized absences were incurred on the dates he did not perform his duties, we presume that he regularly reported to work without rendering actual service.

The medical certificates bear no moment in the light of respondent's consistent attendance. In any case, there is nothing in the medical certificates that suggests that his asthmatic condition incapacitated him from discharging his duties. Moreover, if his health was undermining the quality of his work and conversely, his work further impaired his health, he should have filed an application for disability retirement and not early retirement. Finally, as observed in this Office's Memorandum of August 18, 1997, "the absence of any any [sic] communication casts some doubts as to the real reason for his request for succor from other sheriffs, so that the writs under his care can be implemented."

We are not persuaded by the documents on record that health reasons brought about his failure to perform his duties, hence, our conclusion that he is administratively liable for negligence and insubordination.

The Office of the Court Administrator thus recommend that:

Deputy Sheriff Villaruz be FINED in the amount of FIVE THOUSAND (P5,000.00) PESOS to be remitted to the Court within THIRTY (30) DAYS from notice.

The Court agrees with the OCA only insofar as the recommended penalty is concerned, but cannot subscribe to the view that Villaruz is liable for "negligence and insubordination." Plainly, "negligence" is not involved here. What the OCA may have had in mind was "neglect of duty," one of the grounds for disciplinary action under Sec. 46(3), Chapter 7, Subtitle A, Title I, Book V, Administrative Code of 1987.

Negligence is not synonymous with "neglect of duty." The former pertains to the failure to observe such care as a reasonably prudent and careful person would use under similar circumstances; it is the doing of some act which a person of ordinary prudence would not have done under similar circumstances. It is a conduct which falls below

the standard established by law for the protection of others against unreasonable risk of harm; a departure from the conduct expected of a reasonably prudent person under like circumstances (BLACK'S LAW DICTIONARY 930-931, 5th ed., hereafter BLACK'S). At bottom, it is a test of foreseeability, and in this jurisdiction, may be deemed either a quasi-delict under Chapter 2, Title XVII, Book IV, Civil Code, or a delict under Article 365 of the Revised Penal Code, depending on the facts attending its commission. Likewise, it may be ground for administrative liability of a government official or employee.

The Court likewise does not perceive "insubordination" as pertinent to this proceeding. While it is another ground for disciplinary action against erring civil servants (Sec. 46[25], Chapter 7, Subtitle A, Title I, Book V, Administrative Code of 1987), it properly refers to wilful or intentional disregard to some lawful and reasonable instructions of the employer (BLACK'S 720). Here, there is no showing that any of Villaruz' immediate superiors instructed him to serve the writs of replevin and that he wilfully or intentionally refused to do so. What appears clear from the record is that he requested that the writs be served by other deputy sheriffs due to his alleged asthmatic condition and that his requests were accommodated. In fact, the Clerk of Court of Branch 117 even tolerated this practice as neither has it been shown that he ever called Villaruz' attention to this irregularity.

To our mind, what Villaruz must be sanctioned for is either neglect of duty or conduct prejudicial to the best interest of the service, pursuant to Sec. 46(3) and (27), respectively, Chapter 7, Subtitle A, Title I, Book V, Administrative Code of 1987.

This Court has time and again stressed that each and every employee in the judiciary is a vital link in the chain which binds all those involved in the sacred task of administering justice. And as the chain can only be as strong as its weakest link, by the very nature of the duties and responsibilities of those so involved, be they the seemingly lowliest clerk or the Executive Judge, they must all faithfully adhere to, hold inviolate and invigorate the principle solemnly enshrined in Section 1, Article XI of the Constitution, that public office is a public trust and, as such, all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency and act with patriotism and justice and lead modest lives. Thus, will this Court never tolerate or condone any conduct, act or omission on the part of officers and employees of the judiciary which would violate the norm of public accountability or diminish, or even tend to diminish, the faith of the people in the justice system (Sy v. Academia, 198 SCRA 705 [1991]; Annang v. Vda. De Blas, 202 SCRA 635 [1991]).

The alleged asthmatic condition of Deputy Sheriff Villaruz provided him no excuse to be remiss in the performance of his duties, nor did it exempt him from the exacting demands of the public trust character of his office. In the first place, what is telling for Villaruz is that while his ailment had been characterized as "recurrent" or "moderately severe," there is at all no showing that his condition had degenerated to such a stage that would have reduced him to the demonstrated levels of neglect of duty and inefficiency. The medical certificates he submitted failed to so indicate the gravity of his disorder which could have accounted for, but certainly not have justified, his ineptitude, as most of the dates of treatment mentioned therein were post-audit dates. Moreover, considering that he submitted these medical certificates only after he was required to do so, and not of his own volition, to support his allegations in his explanation, there is much doubt as to the credibility of the entries therein. Confirming this doubt is the finding of the OCA that for the periods material to this case, Villaruz did not apply for sick leave and nothing in his daily time records suggested that he was absent due to sickness. If indeed he had frequent bouts of asthma, then he must have absented himself from work, or if he did not, necessarily he must have simply rested in the office, much like a non-performing asset, to the prejudice of public service.

WHEREFORE, for neglect of duty and for conduct prejudicial to the best interest of the service, Deputy Sheriff WILLIAM VILLARUZ is hereby FINED in the amount of FIVE THOUSAND (P5,000.00) PESOS payable to

this Court within ten (10) days from notice of this resolution. He is further WARNED that the commission of the same or similar acts or omissions in the future shall be dealt with more severely.

SO ORDERED.

Narvasa, C.J., Regalado, Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Martinez, Quisumbing, and Purisima, JJ., concur.

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