

JUDGE JACINTO C. GONZALES, MTCC, BRANCH 2, OLONGAPO CITY, COMPLAINANT, VS. REWEL P. CERENIO, SHERIFF III, MTCC, BRANCH 2, OLONGAPO CITY, RESPONDENT.

A.M. No. P-07-2396 (Formerly OCA IPI No. 06-2462-P). December 04, 2007

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PER CURIAM:

This resolves the pending administrative matter concerning respondent Rewel P. Cerenio, Sheriff III of the Municipal Trial Court for Cities (MTCC) of Olongapo City, Branch 2.

In a Letter-complaint dated 2 May 2006, Hon. Jacinto C. Gonzales, presiding judge of the MTCC of Olongapo City, Branch 2, charged respondent with grave misconduct, insubordination and conduct prejudicial to the best interest of service and/or dereliction of duty. The basis of the complaint is a letter[1] with attached annexes dated 13 January 2006 of Ms. Annabelle F. Garcia, Clerk of the same court, addressed to complainant judge enumerating the alleged offenses of respondent.[2]

Pursuant to the Resolution of the Court dated 8 February 2007, the Office of the Court Administrator (OCA) referred the complaint for investigation to Judge Renato J. Dilag in his capacity as Vice Executive Judge in view of the then vacancy in the office of the executive judge in the Regional Trial Court of Olongapo City. Upon the appointment of an executive judge, and upon inquiry by Judge Dilag, Deputy Court Administrator Jose P. Perez, in his Letter dated 29 May 2007, advised Judge Dilag to continue with the investigation of the case. Hence, investigation resumed on 26 June 2007, with the same judge conducting the proceedings.

On 29 August 2007,[3] Judge Dilag submitted his Investigation Report and Recommendation (IRR)[4] on the instant administrative matter.

As stated in Judge Dilag's IRR, the parties agreed on the following facts:

- That respondent Rewel Cerenio was duly appointed as Sheriff III of MTCC, Branch 2, of Olongapo City having been appointed in March 1990;
- That Judge Jacinto Gonzales is the incumbent Judge of Branch 2[,] having been appointed on December 5, 2005;
- That witness Annabelle Garcia is the incumbent Branch Clerk of Court of Branch 2, MTCC, having been appointed on September 16, 2002;
- That prior to the appointment of Judge Jacinto Gonzales, Judge Merinissa Ligaya acted as Presiding Judge of Branch 2, Judge Jaime Dojillo and Judge Tita Alisuag were appointed as Pairing Judge(s) of MTCC, Branch 2.[5]

The relevant facts, as testified to by complainant judge and summarized in the IRR, are as follows:

Judge Jacinto C. Gonzales, complainant, testified that he assumed office as Presiding Judge of MTCC, Branch 2, Olongapo City on December 5, 2005. During briefing conducted by his branch clerk of court, Annabelle F.

Garcia, Judge Gonzales was informed, among other things, of the absences without leave by branch sheriff Rewel Cerenio who was recommended to be dropped from the rolls by Pairing Judge Merinissa O. Ligaya. On March 24, 2006, Judge Gonzales had a meeting with the respondent and the Branch Clerk whereby the respondent allegedly admitted his failure to perform his duties as branch sheriff, specifically, the latter's failure to make a return on the writs, despite the directive of the [B]ranch [C]lerk of Court. Allegedly, respondent was able to submit only the returns of fourteen (14) out of fifty-four (54) writs of execution issued by the Court. Judge Gonzales further claimed that upon the request of the respondent, he gave the latter a period of one (1) week to submit the returns of the unaccounted writs of execution which he accordingly received. Allegedly, respondent failed to comply with his commitment to submit the remaining unaccounted returns for which reasons, he (Judge Gonzales) was constrained to relieve respondent from his duties as branch sheriff effective April 17, 2006, and directed him to turn over to the [B]ranch [C]lerk of Court all writs, summons and notices in his possession. Judge Gonzales further claimed that despite such directive, respondent not only failed to comply with the Order, but thereafter, never reported for work which thus, further constrained him to file the instant administrative case against the respondent on May 2, 2006 at the Office of the Court Administrator.[6]

The specific factual issues are the following:

- Whether or not respondent failed to make returns of writ and other court processes;
- Whether or not respondent failed to account for the proceeds of the execution in Civil Cases No. 4991 and 5059; and
- Whether or not respondent committed irregularities in the handling of his Daily Time Records (DTRs) such as punching out his DTRs without reporting to office, punching out his DTRs in the morning and never coming back in the afternoon, and non-submission of his DTRs on time.

After evaluating the documentary and testimonial evidence of both parties, the investigating judge arrived at the following findings:

- On the issue of unreturned writs of execution, respondent submitted the return on the writs only after his meeting with Judge Gonzales on March 24, 2006. (page 32[,] tsn, July 11, 2007). Thus, out of the 54 unreturned writs, he initially was able to account for 14 writs. Mrs. Liwanag, the [c]lerk-in-charge of civil docket admitted on cross-examination that as of the time she testified in his investigation, respondent has returned 22 writs of execution leaving 32 unaccounted writs of execution (Page 35[,] tsn July 11, 2007). Respondent's claim that he has returned all the writs received by him for execution from Mrs. Liwanag has not been substantiated.

Section 14[,] Rule 39 of the Rules on Civil Procedure specifically requires that:

"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 thereof. x x x"

Considering that the writs of execution issued in the cases listed in Exhibit "A-9" which appears to have been received by respondent for service dates back to the year 1990, delay in the service of twenty-two (22) and non-service of the rest of the writs constitutes (sic) clear violation of the mandatory provision of the aforementioned rules.

- On the issue of non-service of notices of hearing in Civil Case No. 6072 entitled Ana Famisan [v.] Sylvia Lescano, and Civil Case No. 4128 entitled Lee [v.] Rivero, record shows that [the] corresponding notices were referred to the respondent for service as early as April 1, 2005 for the scheduled hearing on April 26, 2005 and he went on emergency leave five (5) days before the scheduled hearing. Clearly, respondent had sufficient time to

serve the notices before the scheduled date of hearing and before he went on emergency leave, but he failed to do so. Likewise in Civil Case No. 6336[,] entitled Metro Bank [v.] Sps. Josaue and Maningning Lutana which was also set for hearing on April 26, 2005, respondent received the notice on April 18, 2005, yet respondent again failed to serve the aforesaid notice and Order which resulted to the unnecessary postponement of the scheduled hearing. Hence[,] the excuse of respondent that he failed to serve the notices to the parties due to an emergency situation brought about by the sickness of his mother is untenable.

- In the case of Lonzame [v.] Pantig, Civil Case No. 4991 where the judgment amount is P21,000.00 more or less, record shows that respondent received on various dates the total amount of P16,000.00 from defendant Pantig. He[,] however, applied the amount of P6,000.00 as sheriff's expenses, the amount of P5,000.00 she (sic) gave to Mrs. Lonzame, the plaintiff, and the amount of P5,000.00 she (sic) gave to Mrs. Garcia. Such act of respondent is anomalous to say the least. Section 9[,] Rule 141 of the Rules on Civil Procedure details the legal fees and sheriff's expenses that can be assessed on account of the service of the writ of execution and the amount charged as sheriff's expenses by the respondent in this case in relation to the judgment amount appears to be exorbitant. There is also indication here that respondent did not observe the procedure required under the Rules regarding execution of judgments for money. (Sec. 9, Rule 39[,] Rules of Civil Procedure).

- With respect to Civil Case No. 5059 entitled[,] Rural Bank of Zambales [v.] Sotelo, respondent's claim that he returned the amount of P25,000.00 the day after he received the same from Mr. Sotelo is not supported by the evidence on record. Respondent was not able to produce a receipt that he returned the amount of P25,000.00 to the defendant Sotelo. His allegation that the parties have already settled lacks proof as he failed to show evidence of settlement between the parties. (Pages 41-42[,] tsn[,] July 19, 2007). Respondent's allegation that he returned the amount of P25,000.00 to Sotelo, a day after he received the amount from said Mr. Sotelo is demolished by the fact that Sotelo's lawyer, Atty. Gonzales[,] wrote a letter dated April 1, 2004[,] claiming that Sotelo gave the amount of P25,000.00 as partial payment of judgment amount on April 4, 2003, or a year before the letter. The letter, (Exhibit "A-14"), which was addressed to the Branch Clerk of Court of Branch II, MTCC, also requested that respondent be directed to deliver the amount of P25,000.00 to the lawyer's law office within (3) three days from receipt thereof. If it is true, as claimed by respondent, that he had returned the amount of P25,000.00 to defendant Sotelo the day after the latter gave the amount to him, why would Sotelo's lawyer, Atty. Gonzales, still ask the respondent to return the money the latter received from his client. Respondent's failure to support his claim that he returned the money to defendant Sotelo or that there was subsequent settlement between Rural Bank of Zambales and Sotelo certainly renders his defense untenable.

- On the issue of respondent's alleged frequent unauthorized absence which apparently relates to the question as to whether or not respondent reported to the office after punching of DTRs, this investigator defers to the recommendation of the Court Administrator dated 6 November 2006 pertinent portion of which is hereby quoted. Thus-

"Despite the palpably strong indication of respondent's guilt relative to habitual absenteeism, we refrain from imposing upon him administrative sanctions this early."

- On the other issue of misconduct arising from an alleged trespassing incident involving one Emma Caroc as well as the issue of insubordination, the investigator notes the failure of the complainant to substantiate the allegations of misconduct and insubordination against the herein respondent. There was no showing that the act of trespassing was intentionally done by respondent to violate the law; neither was it established that respondent deliberately ignored orders from his supervisor to receive memorandum.

WHEREFORE, premises considered, this investigator submits the following findings:

- On the issue of failure to make returns of writs of execution in certain cases, respondent is found liable for violation of [S]ection 14[,] Rule 39 of the Rules on Civil Procedure;
- On the issue of non-service of notices of hearing in certain cases resulting to the unnecessary postponement of scheduled hearings, respondent is likewise found liable;
- On the issue of respondent's failure to account for the proceeds of writs of execution in certain cases, the respondent is likewise found liable for [v]iolation of Section 9, Rule 39 of the Rules on Civil Procedure.[7]

The investigating judge then recommended a penalty of six (6) months suspension without pay.

We agree with the findings of the investigating judge but not his recommended penalty. The gravity and number of offenses, as well as the repetitiveness of the violations, committed by respondent starkly call for the most severe penalty.

Failure to make a return makes a sheriff guilty of malicious nonfeasance warranting dismissal.[8] In *Teresa T. Gonzales La'O & Co., Inc. v. Hatab*[9] the Court emphasized the importance of the sheriffs' role for the efficient administration of justice and the manner in which they are to execute their duties, to wit:

x x x They (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.[10]

In the instant case, respondent failed to make a return of not one (1) but fifty-four (54) writs of execution. Pending investigation, he was able to return twenty-two of these writs. However, he could not account for the remaining thirty-two (32) writs. Many of the 54 writs of execution were issued as early as 1990 but respondent made an effort to account for them only in 2006 during the investigation. Thus, it is not entirely baseless to conclude that had no investigation been conducted, respondent have simply left the writs of execution in a state of limbo, to the obvious detriment of the litigants who, in turn, may be constrained to condemn the whole judicial system.

Section 14 of Rule 39 provides the procedure to be followed by a sheriff in the execution of judgments, to wit:

SEC. 14. Return of writ of execution. — x x x 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 therefore x x x 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.

It is mandatory, therefore, for the sheriff to execute the judgment and make a return on the writ of execution within the period provided by the Rules of Court. With respect to partially satisfied or unsatisfied writs, the sheriff must make periodic reports in accordance with Rule 39 Sec. 14. Such periodic reporting on the status of the writs must be done by the sheriff regularly and consistently every thirty days until they are returned fully satisfied.[11] In the instant case, there is no showing that respondent had taken the trouble to comply with this duty.

Respondent's infractions do not involve the writs of execution only. He also failed to serve notices of hearing which caused postponements and unnecessary delay in the cases involved. The acts and omissions of respondent contravene his obligation as sheriff to discharge his duties with integrity, reasonable dispatch, due care and circumspection.[12] This is because in serving the court's writs and processes and in implementing the orders of the court, sheriffs cannot afford to err without affecting the efficiency of the process of the administration of

justice.[13]

The investigating judge also found that in a civil case[14] where there was a judgment amount for P21,000.00, more or less, respondent received from defendant therein the amount of P16,000.00. Of this amount, respondent applied P6,000.00 as sheriff's expenses, gave to the plaintiff therein P5,000.00, and gave the remaining P5,000.00 to Ms. Garcia, the Clerk of Court. As correctly pointed out by the investigating judge, Rule 141 Sec. 9 details the legal fees and sheriff's expenses but the amount charged by respondent for his expenses was exorbitant in relation to the judgment amount.

Moreover, Section 9, Rule 141 provides that a party requesting the process of any court, preliminary, incidental, or final, shall pay the expenses of the sheriff and/or other persons serving or executing processes, in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of such estimated expense, the requesting party should deposit the amount with the clerk of court and ex-officio sheriff, who shall disburse the same to the deputy sheriff assigned. Further, this same amount is subject to liquidation within the same period for making a return, and any unspent amount should be refunded to the party making the deposit.[15] Evidently, this procedure was not observed by respondent.

Another charge against respondent is that he allegedly failed to return to a defendant the amount of P25,000.00. Respondent claims that he has already returned to the defendant the same amount the day after he received it. This claim was found by the investigation as lacking in proof. Further, respondent's defense was contradicted when defendant's lawyer sent a formal letter addressed to the Branch Clerk of Court requesting respondent to return said amount to his (lawyer's) office within three days from receipt of the letter. Respondent's action in this particular instance constitutes dishonesty which is a grave offense under the Civil Service Rules[16] and warrants a dismissal.

With respect to respondent's alleged frequent unauthorized absences and irregularities in his DTRs, the investigating judge did not make an official finding thereon. Prior to the assignment of this case to the investigating judge, the OCA reviewed the records pertinent to this case, among which are certified copies of respondent's Bundy cards provided by the Office of Administrative Services.[17] It was the OCA's finding that respondent absented himself from work, without official or approved leave, during the following days: September 13, 21 and 23 of 2005; October 10, 11, 12, 26, 27 and 28, 2005; and November 2, 3, 4, 7, 8, 9, 10, and 11, 2005. Clearly, respondent exceeded the allowable 2.5 days monthly leave credits provided under the Administrative Code of 1997.[18] Once more, respondent committed a grave offense under the Civil Service Rules.[19]

Lastly, the investigating judge considered the allegation of insubordination and misconduct arising from an alleged trespassing incident as unsubstantiated.

For all of respondent's violations, a mere six-(6-)month suspension is not commensurate. Respondent miserably failed to live up to the high standards expected of sheriffs whose conduct, along with that of other court personnel, mirrors the image of the court of justice.[20]

WHEREFORE, respondent Rewel P. Cerenio, Sheriff III of the Municipal Trial Court for Cities, Branch 2, Olongapo City, is hereby found GUILTY of malicious nonfeasance, dishonesty, committing unauthorized absences and conduct prejudicial to the best interest of the service, and is hereby DISMISSED from office, with forfeiture of all retirement benefits and accrued leave credits and with prejudice to re-employment in any branch or instrumentality of government, including government-owned and controlled corporations.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, and Reyes, JJ., concur.

Sandoval-Gutierrez, J., on official leave.

[1] Rollo, pp. 8-9.

[2]Id. at 8.

[3]Id. at 138.

[4] Id. at 143-160.

[5]Id. at 144.

[6]Id. at 145.

[7] Id. at 155-159.

[8] Benitez v. Acosta, 407 Phil. 687, 698 (2001); Tan v. Dela Cruz, Jr., A.M. No. P-04-1892. 30 September 2004.

[9] 386 Phil. 88, (2000).

[10]Id. at 92-93.

[11] Aquino v. Martin, 458 Phil. 76, 83 (2003), citing Concerned Citizen v. Torio, A.M. No. P-01-4190, 11 July 2002.

[12] Escobar vda. de Lopez v. Luna, A.M. No. P-04-1786, 13 February 2006 citing Trinidad v. Paclibar, A.M. No. P-03-1673, 25 August 2003, 409 SCRA 434.

[13] Abalde v. Roque, Jr., A.M. No. P-02-1643, 1 April 2003, 400 SCRA 210.

[14]Lonzame v. Pantig, Civil Case No. 4991.

[15]Visitacion, Jr. v. Ediza, 414 Phil. 699, 703 (2001).

[16]Civil Service Commission Resolution No. 991936 (1999), RULE IV, Sec. 52(A), par. 1n

[17] Rollo, p. 63.

[18] Specifically, Omnibus Rules Implementing Book V of the Administrative Code of 1987, Rule XIV, Sec. 22 (q).

[19] Supra note 8 (Civil Service Rules) Sec. 52.A. par. 17.

[20] Vda. De Abellera v. Dalisay, A.M. No. P-87-100, 12 February 1997, 268 SCRA 64.

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