

RIZAL COMMERCIAL BANKING CORPORATION, complainant, vs. NOEL V. QUILANTANG, SHERIFF IV, RTC – BR. 53, BACOLOD CITY, respondent.*A.M. No. P-01-1481 (OCA IPI No. 98-447-P). July 05, 2001*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/b3b5009fef64/>**PER CURIAM:**

This is an administrative complaint against respondent Noel V. Quilantang, Sheriff IV, RTC-Br. 53, Bacolod City, filed on 30 April 1998 by Rizal Commercial Banking Corporation (RCBC) for Grave Misconduct, Gross Dishonesty, Gross Incompetence, Inefficiency, Neglect of Duty and Conduct Prejudicial to the Best Interest of the Service.

Specifically, complainant RCBC alleged that respondent failed to implement a writ of preliminary attachment issued on 10 February 1998 in Civil Case No. 98-10141[1] of the RTC-Br. 51, Bacolod City, notwithstanding the fact that respondent had demanded and was given P7,000.00 purportedly for expenses in the implementation of the writ; that said amount was never deposited with the Clerk of Court nor liquidated; that contrary to what respondent stated in his Sheriff's Partial Return of Service dated 5 March 1998 respondent failed to attach a lot registered in the name of the defendants or to take possession of their Honda Civic car; that as a consequence of such neglect of duty and incompetence the defendants succeeded in transferring their land to a third party on 2 March 1998; and, that the money judgment eventually rendered in favor of complainant was reduced to a mere empty victory as the defendants changed residence and could no longer be located.[2]

In his Answer dated 1 September 1998 respondent alleged that he faithfully complied with his duty to implement the subject writ of preliminary attachment as evident from a copy of the Notice of Embargo which clearly showed on its face that it was entered in the Day Book of the City Register of Deeds of Bacolod City at 9:25 in the morning of 24 February 1998 and assigned Entry No. 237100;[3] that if ever the defendants succeeded in transferring their property to third persons, it was not his fault but rather that of the City Registrar of Deeds for failing to annotate at the back of the TCT the Notice of Embargo duly served upon her; that he did not take possession of the Honda Civic registered in the name of the defendants because he was informed that the car had already been sold to a third person as early as 2 January 1998; and, that he did not deposit the P7,000.00 received from the complainant for expenses in the implementation of the writ because it was the usual practice among sheriffs of the RTC-Bacolod City not to do so since such money might be needed anytime as opportunities for implementation would arise.

In its Reply to the foregoing Answer complainant RCBC alleged that the City Registrar of Deeds was not able to annotate the Notice of Embargo served on 24 February 1998 because it was not respondent who served the notice but a certain "R. Talisa" who did not leave a copy thereof for annotation. Complainant alleged that respondent himself brought a copy of the notice to the City Registrar of Deeds only when subject land had already been transferred to a third person and the certificate of title in the name of the defendants already cancelled.

On 22 November 2000 we referred this case to the Executive Judge, RTC-Bacolod City, for investigation, report

and recommendation. Hearings were conducted on 29 January and 22 February 2001 during which respondent, though represented by counsel, failed to appear and to present his evidence despite due and repeated notices.

On 26 March 2001 Executive Judge Edgar G. Garvilles submitted his Investigation Report dated 7 March 2001 finding respondent guilty as charged and recommending his suspension for six (6) months.

We adopt the findings of the Investigating Judge except for the penalty imposed which we here modify as may be warranted by the circumstances.

The rule is that when a writ is placed in the hands of a sheriff it is his duty to proceed with reasonable promptitude to execute it pursuant to its mandate.[4] His duty to do so is ministerial and not directory,[5] and one which he must accomplish as early as possible.[6] Specifically, Sec. 5, Rule 57, 1997 Rules of Civil Procedure mandates that the sheriff shall enforce the writ of preliminary attachment without delay and with all reasonable diligence.

In the instant case the writ of preliminary attachment issued in favor of complainant RCBC was by virtue of an Order dated 10 February 1998 of Judge Ramon B. Posadas, RTC-Br. 51, Bacolod City. The Notice of Embargo issued pursuant thereto by Atty. Ildefonso M. Villanueva, Jr., Clerk of Court VI and Ex-Oficio Provincial Sheriff, RTC-Bacolod City, and addressed to the City Registrar of Deeds was dated 23 February 1998. The duty to implement the writ of attachment and to serve the Notice of Embargo was entrusted to respondent as Sheriff of Branch 53 because the Sheriff of Branch 51 was on sick leave.

Although the Notice of Embargo was indeed served on the Office of the City Registrar of Deeds on 24 February 1998 as claimed by respondent in his Sheriff's Partial Return of Service dated 5 March 1998, it was not respondent himself who served the notice but a certain "R. Talisa" to whom respondent apparently delegated the task. However "R. Talisa" proved completely ignorant of the procedure for the effective annotation of a Notice of Embargo on a certificate of title observed in the Office of the City Registrar of Deeds. As a consequence the Notice of Embargo, which was ineffectively served, was not annotated at the back of TCT No. 167358 in the name of the defendants. Atty. Milagros de la Cruz, Acting City Registrar of Deeds of Bacolod City, expounded on the blunder -

[O]n February 24, 1998, her office received a "notice of embargo" (Exh. "A") in Civil Case 98-10141 entitled RCBC v. Sps. Rodrigo Legaspi, Jr. and Mary Jane Legaspi. Upon receipt of the document, the Entry Clerk wrote thereon Entry No. "237100 2-24-98 9:25," (Exh. "A-1"). The presenter of the document, per the office record, was a certain "R. Talisa" who is neither connected with the Office of the Register of Deeds nor with the Office of the Provincial Sheriff. The notice of embargo was not annotated at the back of TCT 16737 (sic) because after the notice was presented to the Entry Clerk for logging in the Entry Book, the presenter who was required to pay the necessary fees to the cashier did not come back to the Entry Clerk for the necessary receipt. Upon submission of the OR, the Entry Clerk should have "annotated" the notice of embargo at the back of the title and the title with annotation should have been forwarded to her as Register of Deeds for signature. But in this particular case, no title with annotation of the notice of embargo was brought to her office for her signature x x x x When Quilantang for the first time personally brought the notice of embargo to her office on March 2, 1998, she denied the request for annotation at the back of the title because the TCT No. 167358 was no longer in the name of Sps. Rodrigo and Mary Jane Legaspi since it was already cancelled and the same was already transferred to another party, Mrs. Imelda Precion, on a deed of sale also dated March 2, 1998. The notice of embargo was brought by Quilantang to the office after the transfer of the title to Precion.[7]

As a result of respondent's gross neglect of duty in entrusting the service of the Notice of Embargo to someone who was neither connected with the Office of the Register of Deeds of Bacolod City nor with the Provincial Sheriff of Negros Occidental and therefore was not conversant with established procedure, the defendants succeeded in transferring their property clandestinely to a third person to the damage and prejudice of

complainant. Respondent compounded his infraction by falsely representing in his Sheriff's Partial Return of Service dated 5 March 1998 that he was able to attach defendants' property notwithstanding the fact that he knew very well that the attempted annotation on 24 February 1998 was incomplete and ineffectual, and that annotation was eventually refused by the Registrar of Deeds when he himself requested it on 2 March 1998 for the reason that subject property had already been sold to a third person. Although no sufficient evidence exists to prove that respondent was in collusion with the defendants, although we do not discount such possibility, we hold him liable nonetheless for such serious neglect of duty and gross dishonesty.

We also take note of the fact that respondent had requested and admittedly received the amount of P7,000.00 from the complainant on different dates purportedly for expenses in the implementation of the writ. However, Sec. 9, par. (c), Rule 141 of the Rules of Court merely authorizes a sheriff's legal fee of P50.00 for executing a writ of attachment.[8] Although additional sums may be required from the party requesting the writ certain steps have to be followed first as may be evident hereunder -

In addition to the fees hereinabove fixed, the 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, guards' fees, warehousing or similar charges, in such amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit said 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 liquidation 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 taxed as costs against the judgment debtor (underscoring supplied).

Clearly, the steps that have to be followed before additional sums may be required are: first, the sheriff must make an estimate of the expenses to be incurred by him; second, he must obtain court approval for such estimated expenses; third, the approved estimated expenses shall be deposited by the interested party with the Clerk of Court and ex-officio sheriff; fourth, the Clerk of Court shall disburse the amount to the executing sheriff; and fifth, the executing sheriff shall liquidate his expenses within the same period for rendering a return on the writ. Any portion of the amounts received by the sheriff in excess of the lawful fees allowed by the Rules of Court is an unlawful exaction which makes him liable for grave misconduct and gross dishonesty.[9]

A sheriff cannot just unilaterally and repeatedly demand sums of money from a party-litigant, as respondent herein did, without observing the foregoing steps, otherwise, it would amount to dishonesty and extortion.[10] In fact even "reasonableness" of the amounts charged, collected and received by the sheriff is not a defense where the procedure laid down in Sec. 9, Rule 141, of the Rules of Court has been clearly ignored.[11]

Respondent in the instant case did not even explain or give an accounting of the P7,000.00 which he himself admitted having received from complainant RCBC. When presented the opportunity to do so during the investigation, respondent who was fully notified and represented by counsel, absolutely failed to present any evidence whatsoever to exculpate himself.

In *Lim v. Guasch*[12] we dismissed a sheriff for grave misconduct and gross negligence in the performance of his duties for demanding and receiving unauthorized sums of money totalling P700.00 from a party-litigant, and failing to attend an auction sale he himself had scheduled, thus enabling the judgment debtors to run away with properties supposed to have been sold at the sale. We can do no less in the case of respondent. Moreover, we take note of the fact that respondent had been absent without official leave (AWOL) since December 1999 and had been recommended for separation or "dropping" from the rolls.[13] Respondent's absence without official leave during the investigation of the administrative case against him is indicative of his guilt in the same way that flight

in criminal cases creates the presumption of guilt.[14]

WHEREFORE, for Gross Neglect of Duty amounting to Conduct Prejudicial to the Best Interest of the Service, Inefficiency, Incompetence, Grave Misconduct and Gross Dishonesty, as well as absence without leave since December 1999, respondent Noel V. Quilantang, Sheriff IV, RTC-Br. 53, Bacolod City, is DISMISSED from the service with FORFEITURE of all benefits and with prejudice to his re-employment in any branch or service of the government, including government-owned and controlled corporations.

This Decision is immediately executory.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Pardo, Buena, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

Panganiban, Quisumbing, Gonzaga-Reyes, and Ynares-Santiago, JJ., on official leave.

[1] "Rizal Commercial Banking Corporation v. Sps. Rodrigo Legaspi, Jr., and Mary Jane Legaspi" for collection of sum of money with prayer for writ of preliminary attachment.

[2] Manifestation dated 23, November 1998.

[3] Exh. "A" and "A-1."

[4] Balantes v. Ocampo III, A.M. Nos. MTJ-93-853 and P-94-1013, 14 March 1995, 242 SCRA 327, 331.

[5] Philippine Bank of Communications v. Torio, A.M. No. P-98-1260, 14 January 1998, 284 SCRA 67, 74.

[6] Vda. de Tisado v. Tablizo, A.M. No. P-94-1025, 20 February 1996, 253 SCRA 646, 652.

[7] Report dated 7 March 2001 by Executive Judge Edgar G. Garvilles, RTC, Bacolod City.

[8] Increased to P60.00 effective 1 March 2000 per amendment introduced in Court Resolution dated 14 September 1999 in A.M. No. 99-8-01-SC.

[9] Florendo v. Enrile, A.M. No. P-92-695, 7 December 1994, 239 SCRA 22, 30.

[10] Ong v. Meregildo, A.M. No. P-93-935, 5 July 1994, 233 SCRA 632.

[11] Ibid.

[12] A.M. No. R-711-P, 29 June 1993, 223 SCRA 756.

[13] A.M. No. 00-10-457-RTC Re: Absence without Official Leave (AWOL) of Mr. Noel V. Quilantang.

[14] Casal v. Concepcion, Jr., A.M. No. P-93-942, 6 April 1995, 243 SCRA 369, 373.

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