JUDGE ELEUTERIA BADOLES-ALGODON, COMPLAINANT, VS. RENE D. ZALDIVAR, SHERIFF III, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 2, CAGAYAN DE ORO CITY, RESPONDENT.

A.M. NO. P-04-1818. August 03, 2006

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PER CURIAM:

This is an administrative complaint against Sheriff III Rene D. Zaldivar ("respondent sheriff") of the Municipal Trial Court in Cities ("MTCC"), Branch 2, Cagayan de Oro City, for gross neglect of duty and dishonesty.

In her letter-complaint dated 24 February 2003, complainant Judge Eleuteria Badoles-Algodon ("complainant judge"), Presiding Judge of the MTCC, Branch 2, Cagayan de Oro City, alleged that she received complaints against respondent sheriff for being "negligent, remiss and unmindful of his duties and responsibilities." Complainant judge also stated that based on to the records of the court, respondent sheriff had received 416 writs of various kinds but had only made returns for 187 writs.
Complainant judge cited three cases to illustrate respondent sheriff's offenses:

- In Civil Case No. C-DEC-1135 entitled Northern Mindanao Sales Corporation v. Roger Mole ("Northern Mindanao case") for sum of money, the court issued the writ of execution on 19 July 2002 and assigned the writ to respondent sheriff. On 14 February 2003, complainant judge received a motion[1] requiring respondent sheriff to explain why he should not be cited for indirect contempt for his failure to implement the writ and for failure to file the monthly sheriff's report.

Subsequently, the court learned that the judgment debtor had already paid P3,000 to respondent sheriff, as evidenced by hand-written receipts issued by respondent sheriff.[2] But respondent sheriff did not turn over said amount to the plaintiff. Complainant judge issued an order[3] dated 28 February 2003, citing respondent sheriff for contempt and recommending his suspension and dismissal for gross neglect of duty and dishonesty. Complainant judge also ordered respondent sheriff to immediately turn over the amount to plaintiff.

- In Civil Case No. C-Jun-405 entitled Anflo Motor Corporation v. Spouses Rogelio and Cecille Bucais ("Anflo Motor's case") for collection, the court issued the writ of execution on 22 December 2000. On 11 February 2003, plaintiff's counsel wrote a letter[4] to respondent sheriff because the writ had remained unsatisfied. Complainant judge issued a memorandum[5] directing respondent sheriff to immediately enforce the writ and to explain within 72 hours why no administrative disciplinary action should be taken against him.

- In Criminal Case Nos. M-337 and M-338, entitled People v. Balbino Privaldos ("Privaldos case") for violation of Batas Pambansa No. 22, the court issued the writ of execution on September 2001. On February 2003, private respondent's counsel manifested[6] that the judgment had remained unsatisfied, with respondent sheriff filing only one report dated 3 September 2002.

The Office of the Court Administrator (OCA) in its 1st Indorsement dated 31 March 2003 required respondent sheriff to comment on the letter-complaint.

In his comment dated 30 May 2003, respondent sheriff admitted that 416 writs were assigned to him but denied that he had only made returns for 187 writs. He alleged that he had already implemented some of the writs and had submitted them to the court. He surmised that they were not attached to the records of the case, for which he is not responsible, not being the person in charge of record keeping.[7] He also stated that some of the writs issued were to be implemented outside of his jurisdiction.[8]

On the cases cited by complainant judge, respondent sheriff offered the following explanations:

- On the Northern Mindanao case, respondent sheriff stated that he had the "right to receive partial or full payment" after serving the writ.[9]

- On the Anflo Motor's case and in reply to complainant judge's memorandum, respondent sheriff claimed that he had already taken action. However, the auction sale was postponed because plaintiff failed to submit his initial bid.[10]

- On the Privaldos case, respondent sheriff admitted that the writ was not implemented because the accused had no real or personal property in his name and the accused no longer resides at his given address.[11]

The OCA referred the matter to Judge Edgardo T. Lloren ("Judge Lloren"), Executive Judge, Regional Trial Court, Cagayan de Oro City, for investigation, report and recommendation.

In his 2[nd] Indorsement dated 6 June 2003, Judge Lloren reported that he conducted an investigation on 30 May 2003. Complainant judge presented her evidence ex-parte because respondent sheriff failed to appear despite proper notice.[12] Judge Lloren recommended the filing of administrative and criminal charges against respondent sheriff. He stated in his 2nd Indorsement that:

> First allegation: Sheriff Zaldivar has so many unserved writs of executions and no returns were made. Perusal to Zaldivar's answer letter dated February 12, 2003, he admitted that 416 writs were issued, but he was able to make only 187 returns, because they were issued outside his territorial jurisdiction. However, he was not able to make clear statements about the specific case number[s] and the places to be served.
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> Second allegation: That Sheriff Zaldivar had served some of the writs but failed to turnover [sic] the proceeds to the judgment creditors, failed to undertake proper returns of the writs and made false returns.
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> (1) In the case of People vs. Galaritta under Criminal Case No. 97-01-167 to 97-01-175, Sheriff Zaldivar made a return on October 3, 2002, wherein he stated that the accused was out of the [c]ountry, therefore, [the] writ was unsatisfied (Annex "A", report). However, when an alias writ was served by another sheriff (Drefus G. Acenas), it was shown that subject amount was already received earlier by Sheriff Zaldivar (Annex "B", report) and shown in the receipts signed by Zaldivar, dated June 18, 2001 in the amount of P20,000.00 (Annex "B-1", report); another receipt in the amount of P20,000.00 (Annex "B-2", report); another receipt dated June 26, 2002 in the amount of P20,000.00 (Annex "B-3", report); and another receipt dated November 19, 2002 in the amount of P13,331.00 (Annex "B-4", report).
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> (2) In the case of Tri-Star Paints Center, et [al.] vs. Porferio Borromeo, Jr., Civil Case No. 99-AUG-627, a [m]otion by [p]laintiff's counsel praying for disciplinary action against Sheriff Zaldivar for failure to turn over [to] the plaintiff the amount collected from the defendant (Annexes "C", "C-1", "C-2", report) as shown in the receipts (Annexes "D", "D-1", "D-2" and "D-3", report) in the total amount of P48,000.00.
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> (3) In the case of Virgo Appliance Corp. vs. Judith Jaurique, Civil Case No. C1-APR-266, an [e]x-parte [m]otion was filed by [p]laintiff's counsel, praying for [a] possible administrative charge against Sheriff Zaldivar for his failure to account and turn over to the plaintiff the sum of P2,500.00 that he collected from the defendant (Annexes "E", "E-1", and "E-2", report).

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> (4) In the case of Northern Mindanao Sales Corp. vs. Rober[t] Mole, Civil Case No. C-DEC-1135, it was shown that Sheriff Zaldivar received the amount of P3,000.00 from defendant Mole but he again failed to turn over the proceeds to the plaintiff (Annexes "F" and "F-1", report).
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> (5) On May 20, 2003, Eduardo D. Adviento, Branch Manager of Philacor Credit Corporation, wrote a letter to Judge Algodon, (Annex "G") wherein [the] former received a Notice of Auction Sale involving one unit refrigerator that was recovered from its creditor in Civil Case No. 99 June 501, however, on the date of the auction sale on April 30, 2003, Sheriff Zaldivar did not appear and the subject unit could not be located.

x x x x

> Recommendations: With respect to allegations number one and two, necessary administrative and criminal proceedings should be instituted since the evidence against Sheriff Zaldivar are documented and he failed to present contrary evidence to that effect.[13]

In its Report dated 15 April 2004 ("Report"), the OCA recommended that respondent sheriff be dismissed from the service with forfeiture of all benefits, except accrued leave credits, with prejudice to re-employment in the government or any of its agencies, including government-owned or controlled corporations. The OCA's Report reads:

> In the first allegation, respondent should be held liable for gross misconduct for failure to make the returns of 229 writs issued by the court.
>
> In the second allegation, respondent should be held liable for dishonesty and violation of the Revised Penal Code for misappropriating or converting to the prejudice of another, money, goods or any personal property received by the offender in trust or on commission or for administration, or under any obligation involving the duty to make delivery of or to return the same x x x (Article 315(b), RPC).[14]

As a preliminary matter, the Court notes that, except for the Northern Mindanao case, the cases discussed in Judge Lloren's report and, subsequently, in the OCA's report, were different from the cases mentioned in the letter-complaint. Four new cases were presented before Judge Lloren and the two other original cases were not pursued by complainant judge.

This is highly improper because it deprived respondent sheriff of his right to due process. The OCA's argument that respondent sheriff's failure to appear despite proper notice is tantamount to a waiver of his rights[15] cannot be upheld. Respondent sheriff may have chosen not to appear during the investigation because he felt that he already satisfactorily answered the charges against him. Respondent sheriff was, therefore, not informed that there were new charges against him. Respondent sheriff was not given the opportunity to answer these new charges or to confront complainant judge on her new accusations or to present evidence in his favor. Therefore, the Court will only discuss the allegation that respondent sheriff failed to execute and make returns for 229 writs and the three cases mentioned in the letter-complaint. On the four other cases, the OCA should conduct further investigations to determine respondent sheriff's administrative liability.

One of the sheriff's principal functions is to serve or execute writs and processes addressed or assigned to him by the court. The sheriff is also tasked to prepare and submit returns of his proceedings.[16]

In this case, respondent sheriff is charged with the failure to implement and file returns for 229 writs. Respondent sheriff denies this charge. Complainant judge, in her letter-complaint, stated that copies of the writs would be made available anytime upon proper investigation by the Court.[17] However, the Court notes that complainant judge failed to present copies of the writs, nor was a list of these writs prepared and submitted in evidence during Judge Lloren's investigation.

In administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in the complaint.[18] Mere allegation is not evidence[19] and it is not equivalent to proof.[20] There is nothing in the records to indicate that respondent sheriff failed to execute and file returns for 229 writs. Since complainant judge failed to substantiate this allegation, the Court cannot hold respondent sheriff liable.

On the three cases mentioned in the letter-complaint, the records show that respondent sheriff failed, without justifiable reasons, to implement the writs of execution. Respondent sheriff manifested his undue disregard of his duties and functions as sheriff.[21] The Court has repeatedly stressed the need for circumspect and proper behavior on the part of the sheriff upon whom the execution of a final judgment depends. Execution is the fruit and end of the suit and is aptly called the life of the law.[22] A judgment, if left unexecuted because of the inefficiency, negligence, misconduct or ignorance of the law of those charged with their execution, delays the administration of justice, renders the decision inutile[23] and becomes an empty victory for the prevailing party.[24]

On the issue of filing of returns on these three cases, respondent sheriff was silent on the matter. He did not deny that no returns were filed, nor did he give any explanation for his failure to file the returns. Silence is admission if there was a chance to deny, especially if it constitutes one of the principal charges against him.[25]

Section 14, Rule 39 of the 1997 Rules of Civil Procedure (Rules) provides:

> 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 reasons therefor. Such writ shall continue in effect during 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 furnished the parties. (Emphasis supplied)

The Rules clearly provide that it is mandatory for sheriffs to execute and make a return on the writ of execution within 30 days from receipt of the writ and every 30 days thereafter until it is satisfied in full or its effectivity expires. Even if the writs are unsatisfied or only partially satisfied, sheriffs must still file the reports so that the court, as well as the litigants, may be informed of the proceedings undertaken to implement the writ.[26] Periodic reporting also provides the court insights on the efficiency of court processes after promulgation of judgment. Over-all, the purpose of periodic reporting is to ensure the speedy execution of decisions.[27]

In this case, respondent sheriff failed to comply with the rules on periodic reporting. His reports, if any, were submitted sporadically. The court and the judgment creditors were not regularly informed of the actions taken to satisfy the judgment. The long delay in the execution of the judgments and the failure to accomplish the required periodic reports demonstrate respondent sheriff's gross neglect and gross inefficiency in the performance of his official duties.[28] His lack of diligence and zeal is truly deplorable.

In the Northern Mindanao case, respondent sheriff received a total of P3,000 from the judgment debtor, which respondent sheriff failed to turn over to the judgment creditor.[29] Respondent sheriff claimed that he had a right to receive "partial or full payment' after serving the writ. The hand-written receipts issued by respondent sheriff indicate that the money was a "partial deposit,"[30] "another partial payment,"[31] and "another partial deposit"[32] for the judgment debt by the judgment debtor.

Section 9(a), Rule 39 of the Rules provides:

> SEC. 9. Execution of judgments for money, how enforced. –

> (a) Immediate payment on demand. – The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.
>
> If the judgment obligee or his authorized representative is not present to receive payment, the judgment obligor shall deliver the aforesaid payment to the executing sheriff. The latter shall turn over all the amounts coming into his possession within the same day to the clerk of court that issued the writ, or if the same is not practicable, deposit said amounts to a fiduciary account in the nearest government depository bank of the Regional Trial Court of the locality. (Emphasis supplied)

In this case, the judgment debtor entrusted the money to respondent sheriff for the specific purpose of satisfying the judgment debt. Respondent sheriff's receipt of the money in his official capacity and his failure to turn over the amount to the judgment creditor or the clerk of court is an act of misappropriation of funds amounting to dishonesty.[33] His failure to issue official receipts for the amount is also a violation of the General Auditing and Accounting Rules.[34] Likewise, the records of the case reveal that respondent sheriff did not file a Sheriff's Return relative to the writ's implementation and his receipt of the money.

Under the Civil Service Rules, if the respondent is found guilty of two or more charges, the penalty to be imposed should be that corresponding to the most serious charge and the rest will be considered aggravating circumstances.[35] Dishonesty, a grave offense punishable by dismissal on the first offense,[36] is the most serious charge of which respondent sheriff is found guilty. Gross neglect of duty and gross inefficiency will be considered aggravating circumstances. Hence, dismissal from service is the appropriate penalty to be imposed on respondent sheriff.

In Punzalan-Santos vs. Arquiza, we said:

> At the grassroots of our judicial machinery, sheriffs and deputy sheriffs are indispensably in close contact with the litigants; hence, their conduct should be geared towards maintaining the prestige and integrity of the court, for the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel; hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a temple of justice. Respondent's behavior erodes the faith and confidence of our people in the administration of justice. He no longer deserves to stay in the service any longer.[37]

WHEREFORE, we FIND respondent Rene D. Zaldivar, Sheriff III of the Municipal Trial Court in Cities, Branch 2, Cagayan de Oro City, GUILTY of dishonesty, aggravated by gross neglect of duty and gross inefficiency for which we DISMISS him from the service, with forfeiture of all 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. We ORDER respondent Sheriff Zaldivar to turn over the amount of P3,000 to the clerk of court within ten days from finality of this Decision.

The Office of the Court Administrator is also DIRECTED to investigate the other charges against respondent sheriff.

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SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario and Garcia, JJ., concur.
Velasco, Jr., J., No part due to prior action in OCA.

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[1] Rollo, pp. 5 and 7.

[2] Id. at 6, 8-9. Three receipts for P1,000 dated 30 October 2002, 7 December 2002 and 13 January 2003.

[3] Id. at 38.

[4] Id. at 11.

[5] Id. at 10.

[6] Id. at 12-13.

[7] Id. at 16.

[8] Id. at 17.

[9] Id. at 16.

[10] Id. at 18.

[11] Id. at 19.

[12] Id. at 20.

[13] Id. at 20-21.

[14] Report, pp. 3-4.

[15] Id. at 4.

[16] I The 2002 Revised Manual for Clerks of Court 205.

[17] Rollo, p. 2.

[18] Manguerra v. Judge Arriesgado, A.M. No. RTJ-04-1854, 8 June 2004, 431 SCRA 161.

[19] Martinez v. NLRC, 339 Phil. 176 (1997).

[20] Philippine National Bank v. Court of Appeals, G.R. No. 116181, 6 January 1997, 266 SCRA 136.

[21] Tan v. Herras, A.M. No. P-90-404, 11 March 1991, 195 SCRA 1.

[22] PAL v. Court of Appeals, G.R. No. 49188, 30 January 1990, 181 SCRA 557.

[23] Portes v. Tepace, A.M. No. P-97-1235, 30 January 1997, 267 SCRA 185.

[24] Jumio v. Egay-Eviota, A.M. No. P-92-746, 29 March 1994, 231 SCRA 551.

[25] Perez v. Suller, 320 Phil. 1 (1995).

[26] Concerned Citizen v. Torio, 433 Phil. 649 (2002).

[27] Benitez v. Acosta, A.M. No. P-01-1473, 27 March 2001, 355 SCRA 380.

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[28] Aquino v. Martin, A.M. No. P-03-1703, 18 September 2003, 411 SCRA 242.

[29] Rollo, pp. 7-9. Respondent sheriff issued three receipts for P1,000 dated 30 October 2002, 7 December 2002 and 13 January 2003.

[30] Id. at 6.

[31] Id. at 8.

[32] Id. at 9.

[33] Jerez v. Paninsuro, 363 Phil. 522 (1999).

[34] Supra.

[35] Revised Rules on Administrative Cases in the Civil Service, Section 55, Rule IV.

[36] Id., Section 52 (A) (1), Rule IV.

[37] 314 Phil. 460, 472 (1995).

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