

HAKIM S. ABDULWAHID, AS CLERK OF COURT AND EX-OFFICIO CITY SHERIFF, COMPLAINANT, VS. EFREN B. REYES, AS DEPUTY SHERIFF, RESPONDENT.

A.M. Nos. P-902 & P-926. January 31, 1978

Ponente: ANTONIO, J.

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ANTONIO, J.:

Respondent Efren B. Reyes, Deputy Sheriff of the Court of First Instance of Zamboanga City, is charged with "Misconduct, Dishonesty and Neglect of Duty" in Administrative Matter No. P-926, and for "Serious Misconduct" in Administrative Matter No. P-902, by Hakim S. Abdulwahid, Clerk of Court and Ex-Officio City Sheriff, also of the Court of First Instance of Zamboanga City.

In Administrative Matter No. P-926, respondent is charged as follows: (1) That from July 2, 1974 up to the filing of this complaint, i.e., July 18, 1974, respondent has absented himself from office, without filing any application for leave of absence or notifying the Office of the Clerk of Court, CFI, Zamboanga City, of his inability to report for duty, to the prejudice of public service; (2) that respondent failed and/or refused to return to a certain Mr. Placido Cruz, Manager of the Sikatuna Fishing Corporation, Inc., Zamboanga City, the amount of P1,500.00 which he received from the latter on May 17, 1974, as deposit for the expenses to be incurred by the Sheriff's Office in connection with the execution of the Writ of Preliminary Attachment in Civil Case No. 1667 of the Court of First instance of Zamboanga City, entitled "Sikatuna Fishing Corporation vs. Compania Maritima", although there was no more need to attach any of the properties of the defendant; (3) that respondent misappropriated the amount of P150.00 which he received on May 14, 1974 from Atty. Alejandro Saavedra for payment of Sheriff's fees and transportation expenses for the service of summons in Civil Case No. 1668 of the Court of First Instance of Zamboanga City, entitled "Antonio Sta. Maria, et al. vs. Maria Iturralde, et al.", dated May 20, 1974; (4) that respondent failed and/or refused to turn over to Mr. Jackel Principel the amount of P50.00 out of the P350.00 which was entrusted to him by Mrs. Erlinda Infante for delivery to said Jackel Principel in connection with the execution in Civil Case No. 2133 of the City Court of Zamboanga City, entitled "Erlinda Infante vs. Jackel Principel"; (5) that respondent did not make any return to the court of origin, after serving to the defendants, as required by law, several summons and writs of execution; and (6) that respondent did not serve upon the defendants several summons which were endorsed to him for service and likewise failed to effect any return on the same to the court of origin as required by law.

Hon. Abdulwahid A. Bidin, District Judge of the Court of First Instance of Zamboanga City, directed, on July 19, 1974, respondent to file his answer in writing within five (5) days from receipt of the order, with option to have a formal administrative investigation. Respondent filed a written answer and requested for a formal administrative hearing which Judge Bidin conducted.

In his answer,[1] respondent (a) admits that he absented himself from office, but denies the allegation that no communication or application for leave of absence or sick leave was filed in the office, as copy of the said

application for sick leave, together with the doctor's certificate, was duly filed and received by the Office of the Clerk of Court; (b) denies the imputation that he failed and/or refused to return the deposit for expenses made by Sikatuna Fishing Corporation, the truth of the matter being that the said amount of P1,500.00 was refunded to the lawyer for the said Sikatuna Fishing Corporation on July 15, 1974; (c) admits the allegations that he issued a private receipt in the amount of P150.00, but denies he misappropriated said amount, as only the amount of P60.00 was deposited by Atty. Saavedra, which amount is not sufficient to cover the summons fees, so no official receipt was issued and this he did, upon insinuation of Atty. Saavedra, so he could collect the balance of P90.00 from his client to complete the payment of the Sheriff's fees; (d) denies likewise that he failed or refused to turn over to Mr. Jackel Principel the amount of P50.00 out of the P350.00 which was entrusted to him as alleged in the complaint by Mrs. Erlinda Infante, as no amount was ever entrusted to him by said Mrs. Infante. Said amount of P350.00 was paid by Jackel Principel as judgment in Civil Case No. 2133 and was already taken back by said defendant Jackel Principe; (e) admits that he did not return the original summons to the court of origin after their service to the defendants in several civil cases, but contends that said summons had already its Sheriff's return at the back of the summons and is ready for mailing; however, due to the pressure of work in the office, said returns were not effected; and (f) admits that other summons in other civil cases were not served but claims that this is due to several factors like: the defendants cannot be located at their given addresses, summons fees paid are not sufficient, etc..

After investigation, the following findings and recommendation were submitted by Judge Bidin:

"As regards specification No. 1 of the complaint; the same was duly proven, as evidenced by the Daily Time Record filed by the respondent (Exh. 'L'), showing that he was absent from July 2 to July 27, 1974 although respondent filed his application for leave (Exh. 'M' for complainant and Exh. '2' for respondent) on July 22, 1974 supported by a medical certificate Exh. 'M-1', issued by Dr. Tomas Ferrer, also filed on July 22, 1974, which is four days after the complaint in this case was filed. It is to be noted that the 'Medical Certificate' (Exh. 'M-1' for the complainant and Exh. '2-A' for the respondent) is not under oath and that the physician who issued the same is, as admitted by the respondent, the latter's uncle; hence, there is serious doubt if the respondent was actually sick of chronic bronchitis as claimed by him, considering that during this period he was seen downtown by some personnel of this Court among which were: Vicente Pelayo, Clerk of the Court of First Instance of Sulu, now detailed in this Court and Edgar Ortega, Deputy Sheriff of Branch II of this (court) who testified as witnesses in this case. As regards specification No. 2, the same appears to have been also substantiated as admitted in the answer filed by respondent although the amount deposited was later returned on July 15, 1974 (per Exh. 'D-4' of complainant and Exh. '3' of respondent), after the Manager of the SIKATUNA FISHING CORPORATION had written the complainant on June 25, 1974 (Exh. 'B') which was endorsed to the respondent by complainant on June 26, 1974 (Exh. 'D-1'). As regards specification No. 3, only P60.00 was delivered by Atty. Saavedra to respondent in connection with the service of summons in civil case no. 1668. The summons was served by the respondent and the P60.00 was later returned after Atty. Saavedra complained to the Clerk of Court in a letter (Exh. 'F'). As regards specification No. 4, the amount appears to have been returned, per Exh. '5', after plaintiff in said case complained to the Clerk of Court in a letter Exh. 'E' on July 2, 1974, although the receipt evidencing the re-turn appears to have been anti-dated (sic). In the three specifications (nos. 2, 3 and 4) above mentioned, all the amounts therein complained of were received by respondent but were returned only to the respective parties after this administrative case was filed, although the receipts evidencing the restitution appear to have been anti-dated (sic) to accommodate the respondent. Specification No. 5 is admitted by respondent in his answer. Although respondent alleges as a defense that he failed to mail the returns to the courts of origin because of pressure of work, the same is not borne out of the records as the said summons and writs appear to have been served several months before by him but were kept in his drawer and not returned to the court of origin thru gross negligence, contrary to and in violation of

Circular No. 35, dated June 9, 1971 issued by the Secretary of Justice requiring all sheriffs to make the return within three days from service (Exh. 'J'). As regards specification No. 6, the summons therein mentioned (Exhs. 'K', 'K-1', 'K-2', 'K-3' and 'K4') appear to have been served by other sheriffs assigned to serve them after respondent's failure to serve the same.

"The undersigned believes that each and every specification charged in the above-entitled case, was fully substantiated by the evidence adduced at the hearing. As regards specification No. 1, the respondent only filed his sick leave after this complaint was filed against him. In specification Nos. 2, 3 and 4, although the amounts misappropriated were later returned after the filing of this complaint, nevertheless, as this is not a civil case for recovery of the amounts taken but an administrative case for dishonesty and misconduct in the performance of official duty, the return of the amounts taken especially after the filing of the complaint, does not exonerate respondent from the charge of dishonesty and misconduct, in the performance of his official function. Specification Nos. 5 and 6, being admitted by respondent, need not be commented on as the excuse put up by respondent deserve scant consideration." (Rollo, Adm. Matter No. P-926, pp. 397-398).

Administrative Matter No. P-902 refers to the failure of respondent Efren B. Reyes to turn over to the Metro Drug Corporation, plaintiff-creditor in Civil Case No. 224138 of the City Court of Manila, entitled "Metro Drug Corporation vs. Baby Apostol and Miguel Apostol", the amount of P1,136.41 which he collected in the month of May, 1974 from the defendants as judgment debtors, despite repeated demands.

In his report of the investigation of the case, District Judge Abdulwahid A. Bidin stated:

"* * * On October 28, 1974, the undersigned required the respondent to answer the complaint in five days from receipt of the order. However, on November 4, 1974, the respondent filed a 'Motion for Extension of Time to File Answer' with a request that he be furnished with the receipts of payment which he himself issued to the defendants-payor as well as the letter which he himself wrote the METRO DRUG CORPORATION. When asked to comment on this motion by the undersigned, the complainant Clerk of Court interposed no objection to the request of respondent and at the same time attaching the documents which respondent wanted to be furnished to him. The receipt of the documents by him notwithstanding, respondent filed a motion on November 15, 1974 for another five-day extension of time within which to file answer. The undersigned granted the extension sought in its order dated November 16, 1974. On November 23, 1974 respondent filed his answer admitting among other things that 'he received the amount (P1,136.41) alleged therein (complaint) from Miguel Apostol in connection with Civil Case No. 224138 of the City Court of Manila, Branch VII * * *' but alleges obviously as a defense that he had 'made the proper payments to Metro Drug Corporation through its manager'. The foregoing recital of facts and events is made to show the efforts of the respondent to delay and frustrate the investigation of this case.

"This case was first set for hearing on December 16, 1974 but the undersigned was on vacation, consequently, no hearing was held. It was then re-set for February 14, 1975 at 2:30 in the afternoon. However, in the morning of said date, respondent filed a 'Motion to Reset Hearing', alleging that his father-in-law is sick at Basilan City. The undersigned accommodated the respondent by resetting the case to February 21, 1975 at 2:30 P.M. On February 21, 1975 the respondent although present in the office in the morning, did not appear for the hearing or absented himself, in the afternoon. On motion of complainant's counsel, this court authorized the hearing of this case ex-parte, it appearing that respondent had notice of the hearing having received a copy of the order setting the case for hearing that afternoon of February 21, 1975, but without any reason whatsoever, respondent absented himself in the afternoon session when the case was due for hearing. Whereupon, the complainant presented his witnesses in the persons of Floren Vic Lumo, Zamboanga Branch Manager of

plaintiff, METRO DRUG CORPORATION, and Miguel Apostol, Jr., defendant in Civil Case No. 224138 of the City Court of Manila, Branch VII. After the two witnesses testified, the undersigned reset the continuation of the investigation to February 25, 1975 to afford the respondent, an opportunity to cross examine the witnesses of the complainant. However, when Deputy Sheriff Marcial Feliciano tried to serve a copy of the order resetting the case to February 25, 1975, upon the respondent, as the latter had continuously absented himself from office since the afternoon of February 21, 1975, the respondent could not be found even at his residence. Nevertheless, the undersigned again gave respondent another opportunity to cross examine the witnesses for the complainant and to adduce evidence by resetting the case to March 5, 1975 in an order dated February 25, 1975 which order was finally served upon the respondent personally together with a copy of the transcript of the stenographic notes of the hearing of February 21, 1975. However, when the case was called on March 5, 1975 at 2:30 P.M., the respondent again did not appear. In view of the failure of the respondent to appear despite notice served upon him, the complainant submitted its case for decision and the undersigned considered respondent's wilful and voluntary failure to appear, as a waiver of his right to adduce evidence.

"From the evidence adduced by the complainant Clerk of Court, it appears that the writ of execution (Exhibit 'A') issued by the City Court of Manila was received by respondent Efren Reyes as deputy sheriff, for execution on March 29, 1974. In the enforcement of the Writ of Execution, respondent Deputy Sheriff Efren Reyes, was accompanied by the Zamboanga City Manager of plaintiff METRO DRUG CORPORATION, Floren Vic Lumo, When they went to the residence of defendant--debtor but failing to find him at his residence, they went to his place of work at the Coca Cola Plant, where they found the defendant, Miguel Apostol, and to whom the writ of execution was presented. Miguel Apostol paid P1,000.00 to respondent Efren Reyes pursuant to the writ of execution and the latter issued a receipt for said amount dated March 29, 1974 (Exhibit 'B'). This amount of P1,000.00 was turned over to Floren Vic Lumo by respondent, as evidenced by a receipt bearing the same date (Exhibit 'C'). However, there was a deficiency in the payment made by the defendant amounting to over P1,000.00, which deficiency defendant Miguel Apostol promised to pay in the month of May 1974. The said deficiency was paid as promised by the defendant to respondent Efren Reyes as deputy sheriff on three occasions, as evidenced by the receipts dated May 16, 1974 in the amount of P300.00 (Exhibit 'D'), another receipt dated May 29, 1974 in the amount of P500.00 (Exhibit 'D-1'), and another receipt dated May 31, 1974 in the amount of P336.41 (Exhibit 'D-2'), all signed by the respondent. Sometime in May, the manager of the METRO DRUG CORPORATION, Floren Vic Lumo, called the respondent by phone, asking him if he collected the deficiency or balance of the amount covered by the writ of execution. The respondent answered in the negative. However, when Mr. Lumo verified from the judgment-debtor, Miguel Apostol, he was surprised to know that the full amount had already been paid by defendant to the respondent in three installments, as shown by the receipts above mentioned. When the receipt was brought to the respondent, the latter claimed that the receipts were only 'make-believe' or a sort of arrangement between him and defendant to be shown to the latter's wife. Nevertheless, the respondent assured the manager that he will collect the amount from Miguel Apostol. The Manager gave him a chance to return the amount which he collected and finally when pressed for payment, the respondent on October 8, 1974, wrote a letter, (Exhibit 'E') to the manager of the METRO DRUG CORPORATION, promising that 'I'll make the full payment of his (Apostol's) account on October 11, 1974 * * * and if in case I failed to comply with this promise, it is up for you to do what you want as you've given me a long time. Thank you again.'. The letter was signed by the respondent (Exhibit 'E-1'). The respondent failed to pay the said amount as promised and on October 14, 1974, plaintiff then, thru its Zamboanga Branch Manager, wrote respondent a letter dated October 15, 1974 (Exhibit 'F'), expressing disappointment over respondent's failure to pay the amount of P1,136.41 as promised, and gave him two days within which to do which letter was received by respondent as evidenced by his signature (Exhibit 'F-1'). On October 21, 1974, the Zamboanga Branch Manager of plaintiff corporation wrote the complainant, Clerk of Court and Ex-Officio Sheriff Hakim S. Abdulwahid, a letter (Exhibit 'G'), informing the latter of the 'dishonest conduct of your Deputy Sheriff, Mr. Efren Reyes', for failure of the latter to remit the P1,136.41 he collected as deputy sheriff from defendant Miguel Apostol, as judgment-debtor in Civil Case No. 224138. And

as aforesaid, on October 26, 1974, the complainant filed the instant case for 'Serious Misconduct.'

"It is to be noted that this is the second administrative case filed by complainant against the respondent. The first case, Administrative Case No. 1, is for 'Misconduct, Dishonesty and Neglect of Duty' with numerous specifications.

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"From the evidence adduced, the undersigned believes that the complaint has been fully substantiated and there is no doubt in the mind of the undersigned that respondent Efren Reyes had appropriated for his own use and benefit, the amount of P1,136.41 which he, as deputy sheriff, collected from the judgment-debtor pursuant to a writ of execution issued in Civil Case No. 224138 of the City Court of Manila, Branch VII. This finding is supported by the receipts (Exhibits 'D', 'D-1' and 'D-2') issued by the respondent, the admissions in his answer to this complaint and letter (Exhibit 'F') of respondent to the branch manager of Metro Drug Corporation and corroborated by the testimonies of witnesses Miguel Apostol and Floren Vic Lumo. There is no doubt that the offense committed is serious misconduct and/or dishonesty. The evidence is not only strong but conclusive as the respondent had not adduce any evidence in his defense despite the opportunities given him to do so. The respondent is a 'recidivist', as contemplated by section 3 of Presidential Decree No. 6 having committed this offense while facing similar charge against him under Administrative Case No. 1. The respondent has become notoriously undesirable. As a matter of fact, during the pendency of this case, some complaints were brought to the attention of the undersigned by other litigants with pending cases for execution, alleging to have been victims of and mulcted by the respondent, of certain amounts. In other words, the respondent is incorrigible. Since the afternoon of February 21, 1975, and up to the present, respondent has absented himself from office without filing any application for leave. In the interest of the service, the undersigned recommends that respondent be immediately separated from the service and/or dismissed effective February 21, 1975, the date when he commenced his absence without leave." (Rollo, Adm. Matter No. P-902, pp. 119 to 122).

We find the findings supported by substantial evidence.

WHEREFORE, premises considered, We find Efren B. Reyes, Deputy Sheriff of Branch I, Court of First Instance of Zamboanga City, guilty of serious misconduct in both cases and hereby order his DISMISSAL from the service effective February 21, 1975, the date when he became absent without leave.

Fernando, (Chairman), Barredo, Aquino, and Concepcion, Jr., JJ., concur.

Santos, J., on leave.

[1] Rollo, Adm. Matter No. P-926, pp. 16-17.

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