

DIOSCORO COMENDADOR, PETITIONER, VS. JORGE M. CANABE, RESPONDENT.

A.M. NO. P-00-1364. September 19, 2002

Ponente: AUSTRIA-MARTINEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/dfee049e3529/>

AUSTRIA-MARTINEZ, J.:

On February 17, 1997, the Office of Court Administrator received a letter-complaint from Dioscoro Comendador, one of the plaintiffs in Civil Case No. 41[1] against deputy sheriff Jorge M. Canabe assigned to Branch 13 of the Regional Trial Court, Carigara, Leyte “for willful and deliberate failure to serve the writ of execution”, alleging that Sheriff Canabe received two (2) copies of the writ of execution received by the Municipal Trial Court of Leyte, Leyte on September 29, 1995[2] and “December 1995”[3] ; that despite receipt of said writs, he failed to serve the same on the defendants and make a return of service per the Certification dated February 3, 1999 issued by the Clerk of Court of MTC Leyte.[4]

On September 1, 1997[5] , respondent was required to file his Answer which he received on October 10, 1997[6] . No answer was received from respondent and so on February 25, 1999 (or one year and four months later), the then Court Administrator Alfredo L. Benipayo sent a letter directing respondent to submit his Answer within fifteen (15) days from receipt thereof; otherwise, the case will be submitted to the Court without his Answer.[7]

On April 23, 1999, the OCA received respondent’s Answer which reads:

“1.That the writ of execution issued on September and December 1995, was served upon the principal defendant Atty. Vicente Ramirez, in Civil Case No. 41, captioned Dioscoro Comendador, et al., plaintiff versus Atty. Vicente Ramirez, et al., for Malicious Prosecution in the Municipal Trial Court of Leyte, Leyte;

“2.That principal defendant Atty. Vicente Ramirez was a resident of Brgy. San Jose, Tacloban, City, was not contacted because he was in Metro Manila at the time of service, while the other included defendants were all hired laborers and residents of Leyte, Leyte. All were insolvents except for a certain Delfin Relosa whose name appears to be a registered land owner of a parcel of land in the book of the Municipal Assessor’s Office of Leyte, Leyte, but a different person mentioned as defendant in the above-captioned case;

“3.That plaintiff Dioscoro Comendador was personally and verbally informed that Atty. Vicente Ramirez was not personally contacted because he was in Metro Manila at the time of service and readily agree that upon defendant’s return will be the time to serve the writ;

“4.That the charge of willful failure to serve the writ is belied by the fact that there never been an instant case that I have been remiss in my duties to the point of being labeled as incompetent and negligent as the foregoing returns of writ manifestly indicates; if there has not been satisfaction on the execution of judgment, that is not attributable to the fault or negligence or incompetence of the undersigned; as a matter of fact the undersigned has satisfactorily served the writ of execution with the defendant as shown by his signature affixed in the writ of execution (xerox copy of the writ of execution hereto attached),[*] letter request to the City Assessor, City Assessor’s Office, Tacloban City, to issue a Tax Declaration registered in the name of Atty. Vicente Ramirez; the Municipal Assessor of the Municipal Assessor’s Office, Leyte, Leyte, likewise to issue Tax Declaration in

the name of Atty. Vicente Ramirez and his co-defendants, all in xerox copies hereto attached[*] for ready reference, contrary to the sweeping and malicious accusation by complainant;

“5.That undersigned was given Two Hundred (P200.00) Pesos in going to Brgy. San Jose, Tacloban City, residence of defendant Atty. Vicente Ramirez, twice, to serve the writ which is almost one hundred fifteen kilometers back and forth and to the town of Leyte, Leyte, where the other defendants reside, and to contact his lawyer Atty. Manuel Montejo, who is a resident of Naval town, province of Biliran, a distance of almost one hundred fifty kilometers in going to and back and the amount given is not even enough for gasoline expenses for this own vehicle (jeep) he used and other miscellaneous expenses incurred.”[8]

On January 17, 2000, then Court Administrator submitted the following findings and recommendation:

“FINDINGS: The issue which needs to be resolved in this case is whether or not respondent failed to serve on the defendant’s (sic) of Civil Case No. 41, the two writs of execution issued by the court.

We do not find sufficient evidence to show that respondent deliberately refused to serve the writs of execution issued by the court. Complainant herein has not fully substantiated his charge against respondent. The mere absence of a sheriff’s return or report would not, ipso facto, lead to the conclusion that respondent, willfully and with malice, refused to serve said writs on the defendants in Civil Case No. 41. Substantial evidence is the quantum of proof required in administrative cases (*Flordeliza vs. Lachica*, 254 SCRA 278). This was not evident in this case.

This is not to say, however, that respondent’s actuations did not amount to administrative liability. Paragraph (4) of Administrative Circular No. 12 as issued by this Court provides that:

“4.All sheriffs and deputy sheriffs shall submit a report to the judge concerned on the action taken on all writs and process assigned to them within ten (10) days from receipt of said writ or process.”

In the same vein, Section 11, Rule 39 of the then applicable Rules of Court provides that:

“Sec. 11.Return of writ of execution. – The writ of execution may be made returnable to the clerk or judge of the court issuing it, at anytime not less that ten (10) nor more than sixty (60) days after the receipt by the officer xxx.”

This was furthermore reiterated in Paragraph 2 (x), Section D, Chapter VIII of the Manual for Clerks of Court.

As clearly shown by the complainant, no return or report was made by the respondent as of February 3, 1997 on the writs issued by the court on September 29, 1995 and December, 1995 as per certification of Clerk of Court Laura D. Delantar, or more than one (1) year after both writs were issued and received by the respondent. Said failure of the respondent is a violation of his duties as mandated by the provisions as mentioned above.

There is neglect in the performance of his duty if the sheriff fails to submit his report to the court on time (*San Jose vs. Centeno*, 245 SCRA 297). As such, it clearly appears that respondent is similarly liable for said neglect. The sheriff, an officer of the court upon whom the execution of a final judgment depends, must be circumspect and proper in his behavior (*Elipe vs. Fabre*, 241 SCRA 249).

RECOMMENDATION: Respectfully recommended that:

- 1.This case be RE-DOCKETED as a regular administrative matter;
- 2.Respondent be FINED P1,000.00 for his failure to make a return of the writ; and
- 3.Respondent be WARNED that the commission of similar acts in the future will be dealt with more severely.”[9]

On February 16, 2000, the Court resolved to docket the case as regular administrative proceeding and required

parties to manifest if they are willing to submit the case for resolution based on the pleadings.[10]

Accordingly, complainant filed his Manifestation that he is willing to submit the case for resolution based on the documents and other evidence which he had filed.[11]

On the part of respondent, he was required in our Resolution dated February 19, 2001 to show cause why he should not be disciplinarily dealt with or held in contempt for failure to comply with our Resolution dated February 16, 2000 and to comply therewith.[12] On August 6, 2001, the Court resolved to consider the filing of the manifestation as “waived”. Thus, respondent is deemed to have waived his right to present evidence in support of his defense.

Hence, herein Resolution.

We agree with the Court Administrator that there is no sufficient evidence which supports complainant’s charge that respondent deliberately refused to serve the writs of execution. However, respondent is not free from any fault on this matter. The perception given to complainant that respondent was deliberately refusing to serve the writs of execution emanated from the undisputed fact that respondent failed to submit his returns within the period required under Section 11, Rule 39 of the Rules of Court, then prevailing, to wit:

“Sec. 11. Return of writ of execution. – Writ of execution may be made returnable to the clerk or judge of the court issuing it, at any time not less than ten (10) nor more than sixty (60) days after the receipt by the officer who must set forth in writing on its back the whole of his proceedings by virtue thereof, and file it with the clerk or judge to be preserved with the other papers in the case. A certified copy of the record, in the execution book kept by the clerk, of an execution by virtue of which real property has been sold, or of the officer’s return thereon, shall be evidence of the contents of the originals whenever they, or any part thereof, have been lost or destroyed.”

Respondent failed to present any countervailing evidence to show otherwise. He failed to attach his alleged proofs that he tried to serve or enforce the writs. The Clerk of Court certified that as of February 3, 1997, respondent had not submitted his returns of the writs issued on September 29, 1995 (or the lapse of one year and five months), and December, 1995 (or the lapse of one year and two months).[13] Respondent is guilty of gross negligence in the performance of his duties.

Contrary to his own claim, Sheriff Canabe has shown his propensity for ignoring not only the Rules of Court but also our own Resolutions duly received by him.

With respect to respondent’s complaint in his Answer that he was given only Two Hundred Pesos (P200.00) by the complainant for transportation to serve the writ on a certain Atty. Vicente Ramirez who lived 115 kilometers away from Leyte, Leyte - suffice it to be stated that the applicable rule is embodied in Section 9, Rule 141 of the Rules of Court, to wit:

“SECTION 9. Sheriff, and other persons serving processes.—

“xxx xxx xxx

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 and similar charges, in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such 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."

There is no indication in the Answer of respondent or any part of the records that respondent had complied with the above-quoted Rule. The Sheriff is obliged to secure the approval of the issuing court of the estimated expenses and fees for implementation of the writ of execution.[14] The acceptance of cash for whatever amount and purpose without a written approval of the Presiding Judge and the issuance of the corresponding receipt therefor, constitutes gross misconduct.

Sheriffs play an important role in the administration of justice, and as agents of the law, high standards are expected of them.[15] By the nature of their functions, sheriffs at all times must act above suspicion.[16]

In *Jumio v. Egay-Eviota*, we stressed:

"One of the most difficult phases of any proceeding is the execution of judgment. Hence, the officers charged with the delicate task of the enforcement and/or implementation of the same must, in the absence of a restraining order, act with considerable dispatch so as not to unduly delay the administration of justice; otherwise, the decision, orders or other processes of the courts of justice would be futile. Stated differently, the judgment, if not executed, would be just an empty victory on the part of the prevailing party."[17]

In *Portes v. Tepace*, we held:

"Indeed, the importance of the role played by sheriffs and deputy sheriffs in the administration of justice cannot be over-emphasized. They are the court personnel primarily responsible for the speedy and efficient service of all court processes and writs originating from courts. Most importantly, they are officers of the court upon whom the execution of a final judgment depends and it is a truism that execution is the fruit and end of the suit and is the life of the law. Hence, sheriffs must at all times show a high degree of professionalism in the performance of their duties. A decision left unexecuted or delayed indefinitely due to the inefficiency, negligence, misconduct or ignorance of the law of sheriffs renders the same inutile. What is worse, the parties who are prejudiced tend to condemn the entire judicial system."[18]

The Court cannot countenance any act or omission which divides or tends to diminish the faith of the people in the judiciary. To drive home to all those involved in the administration of justice and to stress the gravity of the gross negligence and gross misconduct committed by respondent, we deem it just and reasonable to increase the fine recommended by the OCA from One Thousand Pesos (P1,000.00) to Ten Thousand Pesos (P10,000.00). Respondent had compulsorily retired on September 2, 2002.

WHEREFORE, we find Jorge M. Canabe, Sheriff IV, guilty of gross negligence and gross misconduct in the performance of his duties and imposed a fine of Ten Thousand Pesos (P10,000.00) to be deducted from his retirement benefits.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Callejo, Sr., JJ., concur.

[1] Entitled, *Dioscoro Comendador, Anunciacion Comendador and Juan Mabines v. Atty. Vicente Ramirez, Delfin Relosa, Ben Coquilla and Dominador Rosal*.

[2] Rollo, Annex "A", p. 5.

[3] Rollo, Annex "B", p. 7.

[4] Rollo, Annex “C”, p. 3.

[5] Rollo, p. 9.

[6] Id.

[7] Rollo, p. 10.

[*] No attachments to the Answer are found.

[*] No attachments to the Answer are found.

[8] Rollo, pp. 12-13.

[9] Rollo, pp. 17-18.

[10] Rollo, p. 19.

[11] Rollo, p. 21.

[12] Rollo, p. 33.

[13] Rollo, Annex “C”, p. 2.

[14] Vda. De Gillego v. Roxas, 235 SCRA 158, 163 [1994] .

[15] Llamado v. Ravelo, 280 SCRA 597, 606-607 [1997] .

[16] Vda. De Tisado v. Tablizo, 253 SCRA 646, 652 [1996] .

[17] 231 SCRA 551, 554 [1994] .

[18] 267 SCRA 185, 194 [1997] .

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.