

EN BANC

[A.M. NO. P-02-1660, January 31, 2006]

JUDGE ELISEO C. GEOLINGO, COMPLAINANT, VS. NICOLAS G. ALBAYDA, SHERIFF II, MUNICIPAL TRIAL COURT IN CITIES, BACOLOD CITY, RESPONDENT.

DECISION

PER CURIAM:

By Complaint ^[1] dated November 28, 2001, Judge Eliseo C. Geolingo (complainant) of the Municipal Trial Court in Cities (MTCC), Branch 6, Bacolod City charges Nicolas G. Albayda (respondent), MTCC Sheriff II, Branch 4, Bacolod City with dishonesty, falsification of time card, gross incompetence, insubordination, neglect of duty, and failure to liquidate sums of money received from litigants for implementation of writs of execution and demolition.

By complainant's account, the following events drew him to lodge the present complaint against respondent.

Complainant was barely two months in the judiciary when he was informed that respondent had charged the prevailing party-plaintiff in Civil Case No. 22511, for ejectment, P5,000 for every shanty to be demolished. He thus instructed respondent to henceforth issue receipts for any amounts he collects from litigants, deposit the same with the Clerk of Court, liquidate his expenses, and return any excess. Respondent did not, however, heed complainant's instruction. ^[2]

As reports reached complainant that respondent had been slow in implementing writs issued by the court, a memorandum of January 9, 2001 was issued to him directing him to promptly serve or implement writs and other court processes. Another memorandum dated June 4, 2001 was issued for him to comply with Section 14 of Rule 39 ^[3] of the 1997 Rules of Civil Procedure. ^[4] Respondent did not, however, heed the two memoranda.

In Civil Case No. 26374, "Daniel A. Consuji, et al. v. Joevel Marcelo," albeit respondent had been in the service as sheriff for 10 years, he betrayed his incompetence when he served the summons upon the wife of the defendant, instead of the defendant himself, which resulted in the recall and setting aside of the decision rendered in the case.

In the case of *Garrido v. Daguno*, complainant was informed that respondent collected from the prevailing party-plaintiff the sum of P15,000 for serving on the defendant the writ of execution.

In April 2001, the Clerk of Court discovered that respondent had been punching "IN" and "OUT" in his time card almost at the same time such that he would no longer

have to return to the office in the afternoon to log out. Respondent was thus warned to discontinue his dishonest practice, but to no avail, for again, sometime in November 2001, he failed to log-out in the afternoon. [5]

On October 29, 2001, respondent was directed to attend a seminar scheduled on October 31, 2001, but he did not comply.

Finally, complainant relates that respondent spends most of his time in the coffee shop and in the Department of Education Culture and Sports Provincial Office near the Hall of Justice where party litigants who wish to see him repair to. [6]

In respondent's *Answer*, [7] while he admits punching in and out his time card "although not necessarily almost at the same time," he alleges that the charges of dishonesty and falsification are mere observations of complainant.

Specifically with respect to his failure to log out in one afternoon of November 2001, he attributes this to his being out then to enforce a writ of execution.

As for the complaint that he charged the plaintiff in Civil Case No. 22511 the amount of P5,000 for every house to be demolished, respondent denied the same, he claiming that the amount represented expenses for the demolition of 10 houses.

Respecting his collection from the plaintiff in the case of *Garrido v. Daguno* of the sum of P15,000, respondent claimed that the amount represented transportation and food expenses, and allowance for the members of the Philippine National Police who assisted him in the enforcement of the writ of execution, and he returned part of the amount to the plaintiff's lawyer.

As to the complaint about the slow pace in the implementation of writs of execution and demolition, respondent attributed the same to his failure to cope up with the demands of lawyers, the failure of the winning parties to follow-up the implementation of writs, and pressure of work assignments some of which called for out-of-town trips.

On why he served the summons in the case of *Daniel Consuji v. Joevel Marcelo* upon the defendant's wife, respondent justified it by claiming that the defendant was always out every time he attempted to serve the summons on him.

On his failure to attend that seminar on October 31, 2001, he claimed that before he received the advice, he had been scheduled to go to Carabalan, Himamaylan, Negros Occidental to serve the summons in the case of *NKB Lending v. Joenil Nunay*, which schedule he could no longer postpone "because the plaintiff and the vehicle to be used were all set."

By *Resolution* [8] dated November 18, 2002, this Court referred the case to Executive Judge Ma. Lorna P. Demonteverde, MTCC, Bacolod City for investigation, report and recommendation.

During the hearing on January 29, 2003 before Judge Demonteverde, respondent, who appeared and intimated that he did not need the assistance of counsel, departed from his allegations in his Answer and **admitted all the allegations-**

charges in the complaint. [9]

Executive Judge Demonteverde thereupon recommended the dismissal of respondent from the service, which recommendation [10] the OCA has adopted in light of its following observations: [11]

Respondent's admission of the charges leveled against him undoubtedly shows his failure to live up to the standards of the office he had sworn to serve. He had fallen short of the degree of discipline exhorted from court personnel (*Office of the Court Administrator vs. Sirios, 410 SCRA 35; Madrid vs. Quebral, 413 SCRA 1*). Tampering with his DTR to make it appear that he rendered full services for the dates indicated shows his lack of integrity and a perverse sense of responsibility. This is gross dishonesty.

Charging P5,000.00 for every shanty to be demolished in Civil Case No. 22511 and P15,000.00 in Civil Case No. 26374 for the service of the writ of execution without the approval of the court constitutes grave misconduct and conduct prejudicial to the best interest of the service. Although the sheriff, in the performance of his duties, is not precluded from collecting additional sums from a requesting party, the same should be subject to approval from the court as provided for in Section 9 Rule 141 of the Rules of Court. Before an interested party pays the sheriff's expenses, the latter should first estimate the amount to be approved by the court. The approved estimated expenses shall be deposited by the interested party with the Clerk of Court and ex-officio sheriff who shall disburse the amount to the executing sheriff. The latter shall liquidate his expenses within the same period for rendering a return on the writ. (*Abalde vs. Roque, Jr. 400 SCRA 210*) Any amount received by the sheriff in excess of the lawful fees allowed by the Rules of Court is an unlawful exaction and renders him liable for grave misconduct and gross dishonesty (*Alvares, Jr. vs. Martin, 411 SCRA 248*). Moreover, any unspent amount shall be refunded to the party who made the deposit.

Respondent failed to comply with the above requirement despite directives of the complainant judge. He failed to explain why he collected P5,000.00 per demolished shanty. This constitutes extortion. Moreover, his explanation regarding the P15,000.00 he collected for the service of the writ of execution in the case of *Angelina Pahila-Garrido vs. Damiana Daguno* was not authorized by the court, hence, is illegal.

Likewise, the undue delay of respondent in the implementation and return of writs of execution, his failure to observe the procedure in the service of summons and his spending most of his working hours outside the court where he is supposed to be when not officially out in the field constitute gross negligence and dereliction of duty. [12]

This Court finds the observations and recommendation of the OCA well-taken.

Section 1 of Article XI of the 1987 Constitution declares that a public office is a public trust. It enjoins public officers and employees to serve with the highest degree of responsibility, integrity, loyalty and efficiency and to at all times remain