

## FIRST DIVISION

**[ A.M. No. P-05-2088 [Formerly OCA IPI No. 01-1080-P], November 11, 2005 ]**

**HERNANDO O. SIBULO COMPLAINANT, VS. MURIEL S. SAN JOSE, SHERIFF III, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 1, NAGA CITY, RESPONDENT.**

### R E S O L U T I O N

**QUISUMBING, J.:**

On January 4, 2001, complainant Hernando O. Sibulo filed with the Office of the Court Administrator a verified complaint against respondent Muriel S. San Jose, Sheriff III, Municipal Trial Court in Cities (MTCC), Branch 1, Naga City, for gross neglect of duty, dishonesty and acts prejudicial to public interest.

It appears that, based on the records of this administrative matter, on October 19, 1998, Judge Julian C. Ocampo III of MTCC, Branch 1, Naga City rendered a decision in favor of complainant, who was the plaintiff in Civil Case No. 10454, entitled *Sibulo v. Federis and Santiago* for Damages. Because the defendants in that case did not file an appeal, the decision became final and executory. Thereafter, a writ of execution was issued on December 17, 1998.

On November 3, 1999, more than a year after the decision became final, complainant informed the judge through a letter-complaint about the delay of respondent sheriff in implementing the writ of execution. Acting on the letter-complaint, the judge required respondent to explain.

In his written explanation, respondent claimed that he made a return on the writ a few days after February 4, 1999. However, upon verification of the records, no sheriff's return was found in the records of the case. A year later, on November 16, 2000, complainant's father followed-up the case. Complainant averred that respondent had not until then implemented the writ of execution and it was only after his follow-up that the respondent acted on the writ. The next day, respondent made a return dated November 17, 2000. Complainant prayed that respondent be made to explain why the decision was not executed despite payment of sheriff's fees and repeated demands for the execution of the judgment. Complainant asked that respondent's irregular and anomalous delay in the execution of the writ be investigated.

In his Comment,<sup>[1]</sup> respondent denied complainant's allegation that he failed to implement the writ with reasonable dispatch. Respondent claimed that after he received a copy of the writ on January 19, 1999, he implemented the writ in the afternoon of that same day. He claimed that service was made in the presence of the Deputy Sheriff in the Office of the Clerk of Court of the Regional Trial Court.

Respondent avers now that the writ was not implemented because the defendant had no properties that could be levied upon. He asserts that the prevailing party also had the duty to assist him and should have informed him of defendant's properties that could be levied upon. However, respondent adds, complainant did not coordinate with him after November 3, 1999. When he was informed that the complainant's father followed-up the case on November 16, 2000, he immediately made a return on the writ on November 17, 2000 to notify the complainant to look for and inform him of any properties belonging to defendant. Moreover, considering that the sheriff's report was filed through the Receiving or Docket Clerk, respondent contends he should not be blamed if his reports were misplaced.

Meantime, the Office of the Court Administrator (OCA) received a letter,<sup>[2]</sup> dated April 17, 2002, from Judge Jose P. Nacional, recommending an investigation of respondent's failure to execute the writ. Judge Nacional said that upon his assumption of duty as Acting Presiding Judge of MTCC, Branch 1, Naga City, he required respondent to explain his failure to perform his duties, and to submit a regular return until the writs are fully implemented and terminated. Respondent did not comply. Complainant informed the judge that the case of Sibulo was among the cases where the judgment remained unsatisfied.

Executive Judge Corazon A. Tordilla, to whom the case was referred for investigation, reported that the sheriff did not follow the procedure in Rule 39, Section 9(b)<sup>[3]</sup> of the Rules of Court in the service of the writ of execution on Delia Santiago, and found herein respondent guilty of gross neglect of duty. She likewise noted that as of November 12, 2003, respondent had been dropped from the roll for absence without official leave (AWOL) since August 1, 2002.

On further evaluation, the OCA found respondent indubitably guilty of gross neglect of duty. It recommended that since respondent had been previously dismissed from the service, he should now be considered dismissed with forfeiture of all benefits and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

We agree with the OCA's recommendation. It is mandatory for a sheriff to execute a judgment and make a return on the writ of execution within the period provided by the Rules of Court.<sup>[4]</sup> Section 14, Rule 39 of the Rules on Civil Procedure provides that the writ of execution shall be returnable to the court immediately after the judgment had 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 reason therefor and shall make a report to the court every thirty (30) days until judgment is satisfied in full or its effectivity expires.

Records show that the writ of execution in Sibulo's case was issued on December 17, 1998 and the return on the writ was made two years after, on November 17, 2000. Although respondent claimed that he made the return a few days after February 4, 1999, no such return was attached to the records of the case. In his explanation before the Executive Judge, he claimed that he received the writ on January 19, 1999 and served the writ on the afternoon of that date. However, in his return dated November 17, 2000, he alleged that he received the writ on February 4, 1999. Such conflicting details cast serious doubt on his claim that he indeed