

EN BANC

[A.M. No. P-04-1878 (Formerly OCA-IPI-02-1462-P), August 31, 2004]

DALTON SANDOVAL, COMPLAINANT, VS. ALFONSO H. IGNACIO, JR., RESPONDENT.

RESOLUTION

PER CURIAM:

This is an administrative complaint against Alfonso H. Ignacio, Jr. (Ignacio), Sheriff IV, Regional Trial Court (RTC), Branch 44, Dumaguete City.

In a *Verified Complaint*^[1] dated July 29, 2002, Dalton Sandoval (Sandoval) charges Ignacio with Dereliction of Duty and Grave Misconduct. Sandoval alleges that he was one of the substitute plaintiffs in Civil Case No. 245 filed before the Municipal Circuit Trial Court (MCTC) of Tayasan-Jimalalud, Negros Oriental. Five (5) years after the case was filed, judgment was rendered in favor of the plaintiffs. On appeal, the RTC affirmed the MCTC's decision and the same became final and executory. An *Order*^[2] for the issuance of a Writ of Execution was thereafter issued on July 7, 1995.

Sandoval attached to his *Verified Complaint* a letter^[3] from Ignacio addressed to his counsel requesting money to be used for the service of the writ. Although the complaint fails to indicate whether Sandoval gave money to Ignacio as requested, Sandoval asserts in his *Memorandum*^[4] dated March 25, 2003 that he gave Ignacio P1,200.00 and that the latter issued him an undated *Temporary Receipt*^[5] therefor.

Apparently, the writ was served on February 9, 1996 but Ignacio was not able to enforce the writ and judgment was not fully executed. Not having heard from Ignacio since, Sandoval's counsel inquired on the status of the case on June 12, 2002 and learned that Ignacio did not file a return of service. It was only on June 25, 2002, as certified by the Acting Clerk of Court,^[6] that Ignacio filed a *Sheriff Return of Service*^[7] dated June 21, 2002, explaining that the writ was not fully satisfied because of a possible agreement between the parties. Ignacio attached to his return a *Manifestation and Motion*^[8] also dated June 21, 2002 filed by counsel for the defendants, praying that no further action be taken on Civil Case No. 245 until after a decision in a similar case^[9] involving the same property has been rendered, which Sandoval points to as evidence of an "unholy alliance" between Ignacio and the defendants' counsel for the purpose of delaying the enforcement of the writ.

Ignacio filed a *Comment*^[10] dated October 8, 2002 denying that he failed to serve the *Writ of Execution*^[11] and to submit a return therefor. According to him, he filed a return on February 9, 1996 handwritten at the bottom the writ itself. Considering

that the lifetime of writs of execution under the old Rules of Court was sixty (60) days, the writ expired on February 25, 1996, as it was received by the Office of the Provincial Sheriff on December 27, 1995. The plaintiffs did nothing to enforce the judgment since then. In fact, it was only on March 4, 1999 that Sandoval's counsel filed a *Motion for Issuance of an Alias Writ of Execution*, which the court did not act upon.

Ignacio admitted writing a letter to Sandoval's counsel asking for money to defray the expenses of execution. However, he did not say if he received the requested amount of money. However, he denied colluding with counsel for the defendants to delay the enforcement of the writ.

In the *Agenda Report*^[12] dated December 4, 2002, the Office of the Court Administrator (OCA) concluded that the respondent sheriff complied with the provisions of the old Rules of Court concerning the service of writs of execution and filing of return therefor. The OCA, however, found him guilty of misfeasance in office for failure to comply with Section 9, Rule 141 of the old Rules of Court on the procedure for the implementation of writs and other court processes, and accordingly recommended that he be suspended for a period of one (1) week without pay.

In a *Resolution*^[13] dated 15 January 2003, the Court resolved to refer the matter to the Executive Judge of the Regional Trial Court, Dumaguete City for investigation, report and recommendation within thirty (30) days from receipt of the records.

Pursuant to this directive, Executive Judge Eleuterio E. Chiu (Executive Judge Chiu) submitted a *Report and Recommendation*^[14] dated April 11, 2003 finding that Ignacio acted negligently and irregularly when:

a) He did not submit his sheriff's return of service within sixty (60) days from December 27, 1995 or at most, within a reasonable time after he served it on Feb. 9, 1996, but only on June 25, 2002, after he was prodded to submit his return;

b) He asked for and received P1,200.00 from complainant without issuing official receipt therefor, without depositing it with the Clerk of Court, and without making a liquidation and accounting thereof even up to the present.

He thus violated Sec. 11, Rule 39 and Sec. 7, Rule 141, Old Rules of Court and of Sec. 113, Art. 3, Chapter 5, National Accounting and Auditing Manual for failure to issue official receipt for money collected...

^[15]

Accordingly, Executive Judge Chiu recommended that Ignacio be suspended for a period of three (3) months without pay with a stern warning that any further infraction of the Rules of Court shall be dealt with more severely.

The Court, in its *Resolution*^[16] dated September 22, 2003, referred Executive Judge Chiu's report to the OCA for evaluation, report and recommendation. Pursuant thereto, the OCA submitted a *Memorandum*^[17] dated January 8, 2004 adopting the

recommendation of Executive Judge Chiu.

Significantly, Executive Judge Chiu's report varies with the OCA's *Memorandum* on the aspect of whether Ignacio made a return of service of the writ and filed the same with the court as required under Section 11, Rule 39 of the old Rules of Court. Executive Judge Chiu completely disregarded Ignacio's return handwritten on the writ itself. Instead, he found that Ignacio made a return dated June 21, 2002 and filed the same with the MCTC only on June 25, 2002. On the other hand, the OCA acknowledges that Ignacio made a handwritten return but that he failed to file the same within the time fixed by the old Rules of Court. Incidentally, this OCA conclusion diametrically contradicts the preliminary finding in its *Agenda Report* that Ignacio served the writ on February 9, 1996, wrote the return on the writ itself and filed the same with the court.^[18]

Section 11, Rule 39 of the old Rules of Court, provides:

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 any time not less than ten (10) nor more than sixty (60) days after its 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.

This provision requires the officer making the return to do two things: 1) to make a return setting forth the whole of the proceedings taken by virtue of the writ of execution; and 2) to file the same with the clerk of court or the judge who issued the writ.

The note^[19] handwritten with the date "2-9-96," on the bottom of page 2 of the *Writ of Execution* dated July 11, 1995 can be considered a return of the writ in compliance with the Rules of Court. The fact that Acting Clerk of Court Emelyn D. Gonzaga (Gonzaga) later issued a *Certification*^[20] dated July 1, 2002 to the effect that Ignacio filed on June 25, 2002 a *Sheriff Return of Service* dated June 21, 2002 does not necessarily indicate that no return was made and filed on February 9, 1996 as claimed by Ignacio and shown on the writ itself. Notably, the handwritten return is even authenticated by Gonzaga's signature superimposed thereon.^[21]

Nonetheless, we find that the *Writ of Execution* was returned unsatisfied due to Ignacio's fault. Ignacio testified during his direct examination, thus:

- Q: Now you said you executed or served the writ, what was the result of the writ?
- A: The partial execution was served and in fact, I ordered the defendants to vacate the premises giving them a grace period and I was with one police officer of Tayasan. After that, I made a return at the lower portion of the writ.