

THIRD DIVISION

[A.M. No. P-01-1490, July 11, 2002]

**CONCERNED CITIZEN, COMPLAINANT, VS. VIVEN M. TORIO,
SHERIFF III, MTCC, PROMULGATED BRANCH 1, BATANGAS CITY,
RESPONDENT.**

DECISION

PANGANIBAN, J.:

Being the front-line representatives of the justice system, sheriffs must always exert every effort to perform their duties in order to maintain public trust. They must see to it that the final stage in the litigation process -- the execution of the judgment -- is carried out with no unnecessary delay.

The Case and the Facts

Viven M. Torio, Sheriff III of the Municipal Trial Courts in Cities (MTCC), Branch I, Batangas City, is charged with gross inefficiency, dereliction of duty and/or incompetence. The Complaint arose from two anonymous letter-complaints dated October 15, 1999^[1] and December 7, 1999^[2] addressed respectively to “the Hon. Court Administrator” and to Judge Ruben A. Galvez of the MTCC, Branch 1, Batangas City. The letters alleged that respondent had not been reporting to office regularly, and that he had failed to enforce Writs of Execution in more than fifty cases.

Acting on these letter-complaints, the Office of the Court Administrator (OCA) referred the matter to Judge Ruben A. Galvez for a discreet investigation. In response, Judge Galvez submitted to the OCA the Report of Gilbert Howard M. Atienza, Clerk of Court III, MTCC, Branch 1, Batangas City, showing that respondent had had a spotty attendance record and had indeed failed to enforce fifty Writs of Execution and eight Writs of Replevin and summonses. The Report reads:

“In compliance with your verbal directive, I am respectfully submitting this summary report regarding the attendance and work performance/accomplishment of Mr. Viven M. Torio, Branch Sheriff of this Court.

“Per records of this office, subject person has not yet submitted his Daily Time Record for the month of November. However, his Daily Time Records for the months of October and December together with their corresponding leave applications were submitted only today, January 14, 2000.

“With regard to subject person’s work accomplishment, court records show that he has now 50 pending writs of executions and 8 pending writs of replevin and summonses.

“Of the 50 pending writs of executions, 12 were issued on the year 1997; 24 were issued on the year 1998 and 14 were issued on the year 1999.

“Out of the 12 writs issued in 1997, only two bears a sheriff’s report dated December 29, 1999 with the information that the defendants in said cases are insolvent based on a certification issued by the City Assessor’s Office that defendants have no declared real properties in their names within the city. However, there was no showing in said report that he first attempted to levy personal properties of the defendants pursuant to Sec. 9 (b) of Rule 39 of the Rules of Court before proceeding with the real properties of the defendants.

“As regards the 24 writs issued on 1998, only 4 bears a sheriff’s report also dated December 29, 1999 with the same reason stated above and without proof that personal properties were levied first pursuant to Sec. 9 (b) of Rule 39 of the Rules of Court.

“On the remaining 14 writs issued on 1999, only 2 bears a sheriff’s report dated December 29, 1999, also with the same reason. Still, it is bereft of any proof that he attempted to levy first the personal properties of the defendants in accordance with Rules of Court.

“In addition to this, court records reveal that all the pending writs in his possession have no periodical report as required by the Rules with the exception of the 8 writs which bears a sheriff’s report all dated December 29, 1999.

“In connection with the 8 pending cases of replevin with damages; one was approved on 1997; four (4) were approved on 1998 and three (3) were approved in the year 1999. All writs of replevin and summonses remained unserved to date.”^[3]

In his first Indorsement dated March 22, 2000,^[4] Court Administrator Alfredo L. Benipayo required respondent to comment on the two letter-complaints. In compliance, respondent submitted an undated Comment^[5] explaining that the nature of his work required him to be out of the office most of the time to serve court processes and writs of execution. As to the other instances when he was absent from work, he claimed that these were covered by approved leaves of absences.

On the basis of these initial exchanges of documents, the OCA issued a Report dated May 8, 2001,^[6] finding sufficient reason to call for a full-blown investigation to determine the extent of respondent’s liability. Thus, in its Resolution dated July 11, 2001,^[7] the Court resolved to re-docket the case as a regular administrative matter and to refer the same to the executive judge of the MTCC, Batangas City, for investigation, report and recommendation.

Report of the Investigating Judge

In a Memorandum dated November 22, 2001,^[8] Executive Judge Minerva A. Malaluan-Exchaure of the MTCC, Batangas City, transmitted to the OCA her Report on the investigation and the complete records of the case. The Report summarized the work performance of respondent and recommended his suspension as follows:

“1. It appears that of those pending fifty (50) Writs of Execution reported as of January 14, [2000], he had acted only on three (3) of them as the writs were returned fully satisfied.

“With respect to the rest, his action taken consisted only of telling the defendants to make arrangements with plaintiff in the manner of payment not even bothering to

find out what happened thereafter, the reason why he has not made any initial and periodic reports.

“While he claims that some defendants are already insolvent, there is no showing that they have no personal nor real properties and no report was ever submitted to the Clerk of Court about this fact.

“The seven (7) reports on file of unsatisfied Writs of Execution were all dated December 29, 1999 and were probably done after his being informed by Judge Ruben Galvez of the anonymous complaint against him dated December 7, 1999.

“With respect to those writs which he claims to be partially satisfied, he could not produce any receipt except for two (2) and not bothering to make a report at all.

“2. It appears that it was only in the service of the Writ of Replevin whereby he complied with his duty but not even so completely because he failed to return the writ with his proceeding indorsed thereon.

“3. Of those issued writs of execution issued in the year 2000 and 2001, he has not even gone over the thirty-six (36) writs when it is his duty to act on them promptly after receipt. Of those wherein he claims that he had already acted upon, he had actually done nothing but to inform defendant to pay plaintiff. As sheriff he should demand full payment and if no payment is made, he has to levy on the personal and/or real properties of defendants to satisfy the obligation. It is no longer the prevailing parties['] responsibility to exact payment. That is Sheriff Torio's duty.

“There could be no valid justification for the respondent Sheriff's failure to perform his duty faithfully. He is not new to his job and in fact has held this position for twelve (12) years. He had attended seminars for Sheriffs. He knows that he is guided by the Rules of Court with respect to the manner and procedure in the service of court processes and enforcement of writs. Yet, despite this knowledge he had failed to implement the orders in the writs faithfully. He failed to act on the writs with dispatch on the excuse that the writ has a life of five years. The five years life was intended to favor the prevailing parties so that they would not have to secure alias writs. This was not intended for the sheriff's convenience so that he may take his own sweet time in executing the writ. His duty is to execute the writ promptly and enforce it faithfully according to the letter. He has to inform the Court and the prevailing party of his action taken on the writ within thirty (30) days from his receipt thereof.

“The respondent sheriff's failure to do his duties is indicative of the fact that he has not taken his work seriously. He had forgotten that he is an officer of the court and subject to its orders. By his work ethics, Sheriff Torio had lost his sense of accountability to the Court. In so doing, he had rendered to naught the whole proceedings the Court had taken until its judgment and defeated the very purpose of litigation, to give the deserving party what is his due. In this sense, he had contributed to the lack of faith and respect with which the public sometimes has of the judicial system.

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“Finding the Sheriff to be guilty of inefficiency and incompetence in the performance of his duties, [I] hereby recommend that he be suspended for one year.”^[9]

Recommendation of the OCA