PHILJA E-Alerts

The PHILJA Electronic Alerts is published by the Research, Publications and Linkages Office of the Philippine Judicial Academy, with office at the 3rd Floor of the Supreme Court Centennial Building, Padre Faura Street corner Taft Avenue, Manila.

Tel. No: 02 5529524 Fax No: 02 5529621

E-mail address
philja@sc.judiciary.gov.ph
research_philja@yahoo.com

Website address
http://philja.judiciary.gov.ph

Issue 18-1
January 2018

JUDGES

- **Gross Ignorance of the Law; Gross Misconduct constituting violations of Judicial Code of Conduct**

In A.M. No. RTJ-11-2301, other irregularities committed in RTC AAA include the continuation of proceedings even without the appearance of the Solicitor General, the continuation of the pretrial despite the non-submission of pretrial briefs by the parties, the lack of formal offer of evidence in two cases submitted for decision, the non-attachment of the minutes to the records, the submission of unsigned and photocopied psychological evaluation reports of the psychiatrist/psychologist, and the submission of an unsigned *jurat* in the judicial affidavit of the petitioner in one case.

These irregularities speak for themselves and require no in-depth discussion. In *Maquilan v. Maquilan,* we enunciated that the appearances of the Solicitor General and/or the public prosecutor in proceedings for the declaration of nullity and annulment of marriage are mandatory. Under A.M. No. 02-11-10-SC, the failure of the petitioner to file a pretrial brief or even comply with its required contents has the same effect as the failure to appear at the pretrial, which means the dismissal of the case. While an oral offer of evidence is allowed by the Rules of Court, the offer should be reflected at least in the minutes of the proceedings or in the court order issued at the end of each proceeding covering what transpired during the court session. As against the finding of the judicial audit team that no formal offer of evidence was made in two cases submitted for decision, no minutes of the proceedings or court order was submitted by respondent judge to controvert the finding.

In A.M. No. RTJ-11-2302, other irregularities committed in RTC BBB include the rendition of judgment ahead of the issuance of the order admitting the documentary exhibits and the giving of due course to a petition without a verification and certification against forum shopping. We find no merit in the explanation of respondent Judge B regarding the date indicated in the order admitting the documentary exhibits. He says that the date, which shows that the order admitting the exhibits was issued four days after the date of the decision, was a mere typographical error. As keenly observed by the OCA and the judicial audit teams, even the stitching and the pagination of these two rulings show that the decision is ahead of the order admitting the documentary exhibits. As regards the missing page containing the verification and certification against forum shopping, its alleged accidental detachment from the records could have been proven by a gap in the pagination of the records. No evidence of this sort was offered by respondent judge.

Again, in RTC AAA, one petition for the declaration of nullity of marriage was granted even without the appearance of the parties. Respondent Judge A merely explained that a hearing was conducted, but she did not belie the finding that the parties had not at all appeared before her during the entire proceedings.

A blatant disregard of the provisions of A.M. No. 02-11-10-SC constitutes gross ignorance of the law. This Court has ruled that for a judge to be liable for gross ignorance of the law, it is not enough that the decision, order or actuation in the performance of official duties is contrary to existing law and jurisprudence. It must also be proven that the judge was moved by bad faith, fraud, dishonesty or corruption; or committed an error so egregious that it amounted to bad faith.

x x x x

But when there is persistent disregard of well-known rules, judges not only become liable for gross ignorance of the law, they commit gross misconduct as well. It is then that a mistake can no longer be regarded as a mere error of judgment, but one purely motivated by a wrongful intent.

The four courts herein have allowed themselves to become havens for "paid-for annulments." Their apparent conspiracy with the counsels of the parties in order to reflect paper compliance with the rules if not complete disregard thereof, as well as their failure to manage and monitor the regularity in the performance of duties by their court personnel, shows not only gross ignorance of the law but also a wrongful intention that smacks of misconduct.

Respondent judges were found guilty of gross ignorance of the law and gross misconduct constituting violations of the Code of Judicial Conduct. Considering that respondent Judge A has already been dismissed from the service while respondent Judge B has already compulsorily retired, the Court imposed a fine in the amount of P80,000. ***[A.M. Nos. RTJ-11-2301 (Formerly A.M. No. 11-3-55-RTC) and RTJ-11-2302 (Formerly A.M. No. 11-7-125-RTC), January 16, 2018]***

JUDGES, CLERKS OF COURT, SHERIFFS AND PROCESS SERVERS

- **Non-compliance with the Rules on the Service of Summons**

Section 6 of A.M. No. 02-11-10-SC provides that the service of summons shall be governed by Rule 14 of the Rules of Court. Under that Rule, the summons may be served by the sheriff, the deputy sheriff, or other proper court officer, or, for justifiable reasons, by any suitable person authorized by the court issuing the summons. Whenever practicable, the summons shall be served by handing a copy thereof to respondents in person or, if they refuse to receive and sign for it, by tendering it to them. However, if the service cannot be done personally for justifiable causes and within a reasonable time, it may be effected by (a) leaving copies of the summons with some other person of suitable age and discretion then residing at respondent's house; or (b) leaving copies of the summons with some competent person in charge of the respondent's office or regular place of business.

Manotoc v. CA operationalized the provision for a valid substituted service of summons by laying down the following requirements:

(1) Impossibility of Prompt Personal Service

The party relying on substituted service or the sheriff must show that defendant cannot be served promptly or there is impossibility of prompt service. Section 8, Rule 14 provides that the plaintiff or the sheriff is given a reasonable time to serve the summons to the defendant in person, but no specific time frame is mentioned. Reasonable time is defined as so much time as is necessary under the circumstances for a reasonably prudent and diligent man to do, conveniently, what the contract or duty requires that should be done, having a regard for the rights and possibility of loss, if any[,] to the other party. Under the Rules, the service of summons has no set period. However, when the court, clerk of court, or the plaintiff asks the sheriff to make the return of the summons and the latter submits the return of summons, then the validity of the summons lapses. The plaintiff may then ask for an alias summons if the service of summons has failed. What then is a reasonable time for the sheriff to effect a personal service in order to demonstrate impossibility of prompt service? To the plaintiff: reasonable time means no more than seven days since an expeditious processing of a complaint is what a plaintiff wants. To the sheriff, reasonable time means 15 to 30 days because at the end of the month, it is a practice for the branch clerk of court to require the sheriff to submit a return of the summons assigned to the sheriff for service. The Sheriffs Return provides data to the Clerk of Court, which the clerk uses in the Monthly Report of Cases to be submitted to the Office of the Court Administrator within the first 10 days of the succeeding month. Thus, one month from the issuance of summons can be considered reasonable time with regard to personal service on the defendant.

Sheriffs are asked to discharge their duties on the service of summons with due care, utmost diligence, and reasonable promptness and speed so as not to prejudice the expeditious dispensation of justice. Thus, they are enjoined to try their best efforts to accomplish personal service on defendant. On the other hand, since the defendant is expected to try to avoid and evade service of summons, the sheriff must be resourceful, persevering, canny, and diligent in serving the process on the defendant. For substituted service of summons to be available, there must be several attempts by the sheriff to personally serve the summons within a reasonable period [of one month] which eventually resulted in failure to prove impossibility of prompt service. Several attempts [mean] at least three tries, preferably on at least two different dates. In addition, the sheriff must cite why such efforts were unsuccessful. It is only then that impossibility of service can be confirmed or accepted.

(2) Specific Details in the Return

The sheriff must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service. The efforts made to find the defendant and the reasons behind the failure must be clearly narrated in detail in the Return. The date and time of the attempts on personal service, the inquiries made to locate the defendant, the name/s of the occupants of the alleged residence or house of defendant and all other acts done, though futile, to serve the summons on defendant must be specified in the Return to justify substituted service. The form on Sheriffs Return of Summons on Substituted Service prescribed in the Handbook for Sheriffs published by the Philippine Judicial Academy requires a narration of the efforts made to find the defendant personally and the fact of failure. Supreme Court Administrative Circular No. 5 dated November 9, 1989 requires that impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the failure of such efforts, which should be made in the proof of service.

(3) A Person of Suitable Age and Discretion

> If the substituted service will be effected at defendant's house or residence, it should be left with a person of suitable age and discretion then residing therein. A person of suitable age and discretion is one who has attained the age of full legal capacity (18 years old) and is considered to have enough discernment to understand the importance of a summons. Discretion is defined as the ability to make decisions which represent a responsible choice and for which an understanding of what is lawful, right or wise may be presupposed. Thus, to be of sufficient discretion, such person must know how to read and understand English to comprehend the import of the summons, and fully realize the need to deliver the summons and complaint to the defendant at the earliest possible time for the person to take appropriate action. Thus, the person must have the relation of confidence to the defendant, ensuring that the latter would receive or at least be notified of the receipt of the summons. The sheriff must therefore determine if the person found in the alleged dwelling or residence of defendant is of legal age, what the recipient's relationship with the defendant is, and whether said person comprehends the significance of the receipt of the summons and his duty to immediately deliver it to the defendant or at least notify the defendant of said receipt of summons. These matters must be clearly and specifically described in the Return of Summons.

(4) A Competent Person in Charge

> If the substituted service will be done at [defendant's] office or regular place of business, then it should be served on a competent person in charge of the place. Thus, the person on whom the substituted service will be made must be the one managing the office or business of defendant, such as the president or manager; and such individual must have sufficient knowledge to understand the obligation of the defendant in the summons, its importance, and the prejudicial effects arising from inaction on the summons. Again, these details must be contained in the Return.

The return for a substituted service should state, with more particularity and detail, the facts and circumstances such as the number of attempts at personal service, dates and times of the attempts, inquiries made to locate the respondent, names of occupants of the alleged residence, and reasons for failure in order to satisfactorily show the efforts undertaken. The exertion of efforts to personally serve the summons on respondent, and the failure of those efforts, would prove the impossibility of prompt personal service.

Manotoc also emphasized that while substituted service of summons is permitted, it is extraordinary in character and a departure from the usual method of service. As such, it must faithfully and strictly comply with the prescribed requirements and circumstances authorized by the rules.

In these cases, it was clear that no faithful and strict compliance with the requirements for substituted service of summons was observed by Sheriffs A and B and Process Servers C, D, and E.

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Notably, this return fails to establish the impossibility of prompt personal service. Although it states that Process Server C went to the respondent's address three times on three different dates, it does not show that efforts were made to find the respondent personally or cite why those efforts "proved ineffectual." Neither does it show that he ascertained whether

or not the recipient comprehended the significance of the receipt of the summons and the duty to deliver it to the respondent or at least to notify the latter about the receipt of the summons.

In Civil Case Nos. XXXX-AA and XXXX-BB, Process Server C indicated in his returns that he had made a personal service of summons on the respondents at their given addresses. However, subsequent orders sent to the same addresses were "returned to sender." Indeed, it is possible that after personal service of summons on respondents, they moved to another residence, but it is a different matter if the subsequent orders were returned to sender because respondents were "unknown at given address." This notation overturns whatever presumption of regularity in the performance of official duties may be accorded to the prior return of Process Server C stating that personal service on the respondent was made at that address. Furthermore, Civil Case No. XXXX-AA was decided by RTC CCC in 3 months and 10 days and Civil Case No. XXXX-BB in 4 months and 17 days from filing. It would be hard to imagine that in such a short span of time, the respondents would be "unknown at given address," if they had really been found there just a few months previously.

Sheriff B was in the habit of stating in his returns that "no one was around to receive the court process. Hence, a copy of the summons was left at the door of the defendant's place." The Court cannot even begin to describe how far-off this practice is from the prescribed requirements and circumstances authorized by the rules. It does not even fall under the category of substituted service of summons, which, as we have said, is already a departure from the usual method of service. x x x

x x x x

The blatant nonobservance of the rule regarding personal and substituted service of summons was shown by Sheriff A in Civil Case No. XXXX-CC when he resorted to substituted service of summons on the very same day that it was issued. He was also found to have served summons—one was personal and the other substituted—on two different respondents in two different cases at the same address in Makati. We cannot countenance his alleged practice of resorting to substituted service after being advised by the respondent over the phone to leave the summons with the person present in the house. Contrary to his belief, this practice does not fulfill the requirement that he exert all efforts to personally serve the summons. In these instances, since he had already contacted the respondent by phone, it would have been more prudent and dutiful to have set an appointment for another day to enable him to personally serve the summons on the respondent himself, rather than to resort to a substituted service at the first instance.

x x x x

In a number of the returns submitted by Process Server D, he claimed to have made a substituted service of summons to recipients who refused to sign or acknowledge receipt thereof. However, subsequent orders sent to the same addresses were "returned to sender," because "no such defendant/name" or "unknown address;" or, worse, the address was "unlocated, no such name and number of house on given address." Again, these notations overturn whatever presumption of regularity in the performance of official duties may be accorded to the prior return of Process Server D that substituted service on respondents was made at the given addresses.

x x x x

As borne out by the records and admitted by Sheriffs A and B and Process Servers C, D, and E, they have all served summons outside the territorial jurisdictions of their respective courts. Process Server C has served summons in Makati and Muntinlupa City, Sheriff B in Camarines Sur, Process Server E in Camarines Norte, Sheriff A in Nueva Ecija, and Process Server D in Cagayan de Oro City.

Their service of summons outside the territorial jurisdiction of their respective courts is regrettable for two reasons. First, it was contrary to Administrative Circular No. 12 dated October 1, 1985, which provides that the service of all court processes and the execution of writs issued by the courts shall only be made within their territorial jurisdictions. Second, the level of industry, commitment and diligence that went into the service of summons in places very far from the territorial jurisdictions of the courts in question unfortunately failed to find its way into the service of summons *within* the territorial jurisdictions of the concerned courts or into the preparation of the corresponding returns.

The purpose of a summons is twofold: to acquire jurisdiction over the person of respondents and to notify them that an action has been commenced, so that they may be given an opportunity to be heard on the claim being made against them. The importance of the service and receipt of summons is precisely the reason why the Court has laid down very strict requirements for undertaking substituted service of summons. As we said in *Manotoc,* to allow sheriffs and process servers to describe the facts and circumstances of substituted service in inexact terms would encourage routine performance of their precise duties. It would be quite easy for them to shroud or conceal carelessness or laxity in such broad terms.

Having administrative supervision over court personnel, Clerks of Court X and Y in A.M. No. RTJ-11-2302 and OIC Z in A.M. No. RTJ-11-2301 had the responsibility to monitor compliance with the rules and regulations governing the performance of their duties. Their responsibility gains more significance considering that they are the ones who issue the summons and receive the returns from the sheriffs and process servers. They should have insisted on strict compliance with the rules and imposed a corresponding punishment for repeated violations.

The same is true with regard to the four respondent judges in these cases. That they allowed and tolerated noncompliance with the strict requirements of the rules for a long period of time shows their unfitness to discharge the duties of their office. Despite the improper service of summons, they continued with the conduct of the proceedings in the petitions for declaration of nullity and annulment of marriage. These findings tie up with the allegation of the OCA and the judicial audit teams that a conspiracy existed and thereby turned the courts in Cavite into havens for "paid-for annulments."

Respondent judges were found guilty of gross ignorance of the law and gross misconduct; the respondent clerks of courts were found guilty of simple neglect of duty; while the respondent sheriffs and process servers were found guilty of simple neglect of duty. ***[A.M. Nos. RTJ-11-2301 (Formerly A.M. No. 11-3-55-RTC) and RTJ-11-2302 (Formerly A.M. No. 11-7-125-RTC), January 16, 2018]***

SHERIFFS

- **Gross neglect of duty; Inefficiency in the performance of official duties; Misconduct**

Section 10, Rule 141 of the Rules of Court provides the duties of sheriffs in the implementation of writ, thus:

> **SEC. 10.** ***Sheriffs, process servers and other persons serving processes.***
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> x x x x
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> **With regard to sheriffs expenses in executing writs issued pursuant to court orders or decisions** or safeguarding the property levied upon, attached or seized, including

> kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, **the interested party shall pay said expenses in an amount estimated by the sheriff, subject to 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. The liquidation shall be approved by the court. 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, the sheriffs expenses shall be taxed as cost against the judgment debtor.

The rule above enumerates the steps to be followed in the payment and disbursement of fees for the execution of a writ: (1) the sheriff must prepare and submit to the court an estimate of the expenses he would incur; (2) the estimated expenses shall be subject to court approval; (3) the approved estimated expenses shall be deposited by the interested party with the Clerk of Court, who is also the *ex-officio* sheriff; (4) the Clerk of Court shall disburse the amount to the executing sheriff; (5) the executing sheriff shall thereafter liquidate his expenses within the same period for rendering a return on the writ; and (6) any amount unspent shall be returned to the person who made the deposit. It is clear from the enumeration that sheriffs are not authorized to receive direct payments from a winning party.

In this case, respondent did not submit an estimate of the expenses he would incur in the execution of the writ to the trial court for its approval. Instead, he received money from the plaintiff to defray his expenses in the implementation of the writ. Moreover, he did not submit a liquidation report to the OCC-MTCC. x x x

x x x x

Moreover, the Investigating Judge reported that respondent never made a return of the writ in violation of Section 14, Rule 39 of the Rules of Court:

> **SEC. 14.** ***Return of writ of execution.*** — The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within 30 days after his receipt of the writ, the officer shall report to the court and state the reason therefore. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every 30 days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

The Rules clearly provide that it is mandatory for sheriffs to execute and make a return on the writ of execution within 30 days from receipt of the writ and every 30 days thereafter until it is satisfied in full or its effectivity expires. Even if the writs are unsatisfied or only partially satisfied, sheriffs must still file the reports so that the court, as well as the litigants, may be informed of the proceedings undertaken to implement the writ. Periodic reporting also provides the court insights on the efficiency of court processes after promulgation of judgment. Overall, the purpose of periodic reporting is to ensure the speedy execution of decisions.

The Court agrees with the Investigating Judge and the OCA that since the writ was only addressed to defendant A, it should have prompted respondent to clarify with the court that issued the writ whether defendant B could be made subject of the implementation of the writ. The Investigating Judge correctly noted that if respondent submitted a report to the court

regarding the non-implementation of the writ within 30 days from its issuance and then reported every 30 days thereafter on the proceedings taken thereon until the judgment was satisfied, respondent could have been clarified about the involvement of C and A or B in the Compromise Agreement, or whether B's property could be subject of levy.

Moreover, irregularities were found in the conduct and documentation of the auction sale. Respondent insisted that the auction sale was conducted on November 29, 2013, while the Daily Collection Report of C showed that the auction sale was conducted on December 10, 2013, but the undated Certificate of Sale and Certificate of Final Sale dated January 14, 2015 stated that the auction sale was conducted on November 4, 2013. Further, respondent failed to give the judgment debtor a notice on the sale of the property; there was no proof of publication of the notice and of the raffle among the accredited publishing companies for the selection of the newspaper that would publish the notice of sale of property. All of the foregoing are in disregard of Section 15, Rule 39 of the Rules of Court,

> **SECTION 15.** ***Notice of sale of property on execution.*** — Before the sale of property on execution, notice thereof must be given as follows:
>
> (a) In case of perishable property, by posting written notice of the time and place of the sale in three public places, preferably in conspicuous areas of the municipal or city hall, post office and public market in the municipality or city where the sale is to take place, for such time as may be reasonable, considering the character and condition of the property;
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> x x x x
>
> (c) **In case of real property**, by posting for 20 days in the three public places abovementioned a similar notice particularly describing the property and stating where the property is to be sold**, and if the assessed value of the property exceeds Fifty Thousand (P50,000.00) Pesos, by publishing a copy of the notice once a week for two consecutive weeks in one newspaper selected by raffle**, whether in English, Filipino, or any major regional language published, edited and circulated or, in the absence thereof, having general circulation in the province or city;
>
> (d) **In all cases, written notice of the sale shall be given to the judgment obligor, at least three days before the sale**, except as provided in paragraph (a) hereof where notice shall be given at any time before the sale, in the same manner as personal service of pleadings and other papers as provided by Section 6 of Rule 13.

Further, respondent discharged the wrongful levy on the property of B without proper court order.

Based on the foregoing, respondent was found guilty of gross neglect of duty, inefficiency in the performance of official duties and misconduct for the irregularities in the conduct of the auction sale and his circumvention of the established rule on motions. He was ordered dismissed from the service, with forfeiture of all retirement benefits and privileges, except accrued leave credits, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations. ***[A.M. No. P-17-3639 (Formerly OCA I.P.I. No. 14-4314-P), January 23, 2018]***