



PHILJA E-Alerts

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MTC JUDGES

- **Gross ignorance of the law; Disqualification to hear cases if judge is related to one of the parties within the sixth degree of consanguinity or affinity**

We find, however, that respondent judge indeed violated the New Code of Judicial Conduct in relation to the Rules of Court by acting on the criminal complaint and issuing a warrant of arrest despite his relationship to the private complainant. **Rule 137 of the Rules of Court clearly disqualifies judges from hearing cases if they are related to one of the parties within the sixth degree of consanguinity or affinity. As expressed in Section 5(c), Canon 3 of the New Code of Judicial Conduct, judges should not take part in proceedings in which their impartiality might reasonably be questioned, including those in which a party litigant is related to them by consanguinity or affinity.** We stress that this disqualification rule was put into place to preserve the people's faith and confidence in the courts of justice. Thus, judges should not preside over a case in which they are not wholly free, disinterested, impartial, and independent. (emphasis supplied)

The rule on disqualification remains even if the present case merely involves the determination of probable cause and the eventual issuance of a warrant of arrest. Contrary to the insistence of respondent judge, the issuance of a warrant of arrest is not merely ministerial in nature. Pursuant to Section 6(b), Rule 112 of the Rules of Court, judges are required to personally examine private complainants and witnesses, as well as any supporting documents that they may produce. The purpose is to determine whether there is probable cause to believe that the persons being prosecuted are guilty of the crime charged. Afterwards, judges would again be required to exercise judicial discretion to ascertain if there is a necessity to place the accused in custody so that the ends of justice would not be frustrated. MCTC judges may even choose to merely issue a summons, instead of a warrant of arrest, if they do not find it necessary to place the accused under custody even after the determination of the existence of probable cause.

By issuing a warrant of arrest, respondent judge is assumed to have applied Section 6(b), Rule 112 of the Rules of Court, which required the examination of his own niece to determine the existence of probable cause. Further, he is also deemed to have relied on her testimony to determine whether the ends of justice necessitated that complainant be placed in custody, instead of merely issuing summons to compel him to appear before the court. Clearly, respondent judge should not have participated in any of these courses of action, as he might have appeared biased in issuing the warrant of arrest that would ensure that the accused in the case filed by the judge's own niece would stand trial. Respondent judge should have disqualified himself the moment he read the criminal complaint containing the name of his relative. He committed an administrative offense once he took cognizance of the case and issued a warrant of arrest.

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For failing to immediately inhibit himself in Criminal Case No. XXX, respondent judge was found guilty of gross ignorance of the law or procedure and was fined in the amount of P25,000 with a stern warning that a repetition of the same or a similar infraction shall be penalized more severely. **[A.M. No. MTJ-16-1877 (Formerly OCA IPI No. 13-2635-MTJ), June 13, 2016]**

SHERIFFS

• Gross misconduct

This Court has considered the solicitation and acceptance of monetary considerations by sheriffs as conduct unbecoming of a court employee, grave misconduct, and dishonesty. x x x

X X X X

Both respondent and Plantersbank allege that no solicitation took place and that Plantersbank insisted on giving respondent the amount as a token of appreciation and gratitude.

Still, this Court has repeatedly emphasized that “sheriffs are not authorized to receive any *voluntary* payments from parties in the course of the performance of their duties.” This opens doubt on monetary considerations being made for wrongful and unethical purposes, creates cracks in our justice system, and proves “inimical to the best interests of the service.”

The Concurring Opinion in *Re: Allegations Made Under Oath at the Senate Blue Ribbon Committee Hearing Held on September 26, 2013 against Associate Justice Gregory S. Ong* explained that the prohibition against accepting gifts by public employees applies irrespective of when they were given in relation to the conduct of official duty. The law penalizes accepting gifts “regardless of whether or not the same is for past favors or the giver hopes or expects to receive a favor or better treatment in the future from the public official or employee concerned in the discharge of his official functions.”

Respondent's admission that he accepted a check for P8,000, which he claims need not be accounted as expense estimates for court approval in accordance with Rule 141, Section 10, establishes his culpability.

X X X X

For gross misconduct, respondent was ordered suspended from the service for one year without pay, with a stern warning that a repetition of the same or similar act will be dealt with more severely. **[A.M. No. P-16-3459 (Formerly OCA IPI No. 13-4119-P), June 21, 2016]**

• Effect of complainant's withdrawal of complaint on the administrative case

Complainant's withdrawal of his Complaint does not dismiss the administrative case against respondents nor divest this court of its jurisdiction to determine the administrative liabilities of its officers and employees. To maintain the public's trust and confidence in government and its instrumentalities, disciplinary proceedings cannot be made to depend on the whim of complainants who may have lost interest in pursuing the case or succumbed to a settlement with the respondents. To do otherwise would undermine this court's authority under Article VIII, Section 6 of the Constitution. In *Saraza v. Tam*:

At the outset, it must be emphasized that the withdrawal of an administrative complaint by the complainant does not necessarily warrant the dismissal of the same. Administrative actions cannot depend on the will or pleasure of a complainant who may, for reasons of his own, condone what may be detestable. Neither can the Court be bound by the unilateral act of a complainant in a matter relating to its disciplinary power. After all, complainants in administrative cases against court personnel are, in a real sense, only witnesses.

The withdrawal of an administrative complaint or subsequent desistance by the complainant does not free the respondent from liability, as the purpose of an administrative proceeding is to protect the public service, based on the time-honored principle that a public office is a public trust. It does not operate to divest the Court of jurisdiction to determine the truth behind the matter stated in the complaint. The Courts disciplinary authority cannot be dependent on or frustrated by private arrangements between the parties. An administrative complaint against a court official or employee cannot simply be withdrawn by a complainant who suddenly changes his mind.

Thus, complainant's Motion and Manifestation does not prevent this Court from continuing its investigation and taking proper action against respondents. **[A.M. No. P-16-3419 (Formerly OCA IPI No. 11-3648-P), February 23, 2016]**

• **Dishonesty, Gross neglect of duty, Simple misconduct**

The duties of a sheriff in implementing a writ of execution for the delivery and restitution of real property are outlined in Rule 39, Section 10(c) and (d) and Section 14 of the Rules of Court.

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Considering the step-by-step process mandated by the Rules, the implementation of a writ of execution is a ministerial act of the sheriff. An act is ministerial if done by "an officer or tribunal [who] performs in the context of a given set of facts, in a prescribed manner and without regard to the exercise of his own judgment, upon the propriety or impropriety of the act done." Sheriffs do not exercise any discretion when implementing a writ of execution. Litigants are not obliged to request the sheriff to execute the writ:

We will reiterate that a sheriff's duty in the execution of a writ is purely ministerial; he is to execute the order of the court strictly to the letter. He has no discretion whether to execute the judgment or not. He is mandated to uphold the majesty of the law as embodied in the decision.

When a writ is placed in the hands of a sheriff, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to execute it according to its mandate. Accordingly, a sheriff must comply with his mandated ministerial duty as speedily as possible. There is even no need for the litigants to "follow up" a writ's implementation.

The Writ of Execution in this case was issued by the MTC on February 23, 2009. A Special Writ of Demolition was issued on July 15, 2009. Complainant first approached Sheriff AAA of the MTC to request the implementation of the Writ. Due to health reasons, Sheriff AAA referred him to respondent A of the Municipal Trial Court Office of the Clerk of Court, and later, to respondent B of the Regional Trial Court.

While Sheriff AAA was not impleaded in this case due to his death, his act of referring complainant to other sheriffs was irregular. If Sheriff AAA was physically unable to fulfill his duties due to his ill health, he should have informed the court so it could make other arrangements for the execution of judgment.

Under **Administrative Circular No. 12, sheriffs shall execute writs of their courts only within their territorial jurisdiction. If there is no deputy sheriff assigned or appointed to a court, only the judge may, at any time, designate any of the deputy sheriffs of the Office of the Clerk of Court to execute the writs.** The judge may be allowed to designate a deputy sheriff from another branch but must first secure the consent of the Presiding Judge. (emphasis supplied)

Respondent B was aware that his designation was irregular since he requested that complainant file a motion in court “to make [his] designation official.” Both respondents B and A’s acceptance of their designation without the requisite order from the court was in direct violation of Administrative Circular No. 12.

What is worse is that through their illegal designation, respondents were able to commit more infractions. Respondent A, on his part, made it appear to complainant that he could validly execute the Special Writ of Demolition but refused to do so because of his religious affiliations. Respondent B, on the other hand, accepted the designation with the knowledge that it was illegal, and then proceeded to ask complainant to deposit ₱200,000, the amount approved by the court as the estimates of expenses.

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Under Rule 141, Section 10 of the Rules of Court, expenses for the execution of writs shall be paid by the interested party based on estimates by the sheriff and subject to the approval of the court. Upon approval of the estimates, the party must deposit the amount with the clerk of court who shall disburse it to the sheriff. The sheriff must liquidate the amount within the same period of filing the return before the court. Sections 9 and 10 state:

SEC. 10. Sheriffs, PROCESS SERVERS and other persons serving processes.

X X X X

In addition to the fees hereinabove fixed, the amount of ONE THOUSAND (P1,000) PESOS shall be deposited with the Clerk of Court upon filing of the complaint to defray the actual travel expenses of the sheriff, process server or other court authorized persons in the service of summons, subpoena and other court processes that would be issued relative to the trial of the case. In case the initial deposit of ONE THOUSAND (P1,000) PESOS is not sufficient, then the plaintiff or petitioner shall be required to make an additional deposit. The sheriff, process server or other court authorized person shall submit to the court for its approval a statement of the estimated travel expenses for service of summons and court processes. Once approved, the Clerk of Court shall release the money to said sheriff or process server. After service, a statement of liquidation shall be submitted to the court for approval. After rendition of judgment by the court, any excess from the deposit shall be returned to the party who made the deposit.

In case a request to serve the summons and other process is made to the Clerk of Court and *ex officio* Sheriff who has jurisdiction over the place where the defendant or the person subject of the process resides, a reasonable amount shall be withdrawn from said deposit by the Clerk of the Court issuing the process for the purchase of a postal money order to cover the actual expenses of the serving sheriff.

With regard to sheriff's 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 the 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, and the sheriff's expenses shall be taxed as costs against the judgment debtor.

On June 11, 2010, the MTC approved Sheriff AAA's estimated expenses amounting to ₱200,000. This amount was supposed to be deposited to the clerk of court who should then disburse it to Sheriff AAA, respondent B and Sheriff BBB, the sheriffs assigned to execute the Writ.

Instead of following proper procedure, respondent B directly solicited and received money for expenses from the complainant. Respondents A and C both received per diems from the complainant even though they were not the sheriffs assigned by the court. The sheriffs never gave complainant an official receipt for the amounts received; on the contrary, acknowledgments of the amounts received were merely written on various scraps of paper. The amounts received were also not liquidated. Further, the Special Writ of Demolition was not fully served and implemented.

A sheriff's failure to implement a writ of execution has previously been characterized by this court as gross neglect of duty. A sheriff's failure to liquidate expenses is considered simple misconduct, while the solicitation of sheriff's expenses without observing the proper procedure is considered dishonesty or extortion. As earlier mentioned, respondents blatantly violated Administrative Circular No. 12 when they agreed to execute a writ without the consent of the trial court.

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For their numerous infractions, respondents were ordered dismissed from the service with forfeiture of all retirement benefits and privileges, except for accrued leave credits, if any, with prejudice to reemployment in any branch or instrumentality of government, including government-owned or controlled corporations. **[A.M. No. P-16-3419 (Formerly OCA IPI No. 11-3648-P), February 23, 2016]**