



PHILJA E-Alerts

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RTC JUDGES

- **Gross inefficiency; Undue delay in resolving pending motion for reconsideration.**

On January 26, 2009, the complainants brought in the RTC in Tacloban City their petition for *certiorari* to annul the order issued by the MTCC Judge in Civil Case No. XXX, and the case was assigned to the respondent judge. It was only on March 3, 2009 when he directed the private respondent to file the comment on the petition. The comment was filed on March 31, 2009, and the complainants submitted their rejoinder to the comment. Subsequently, after they requested the resolution of the petition for *certiorari* by motion dated September 8, 2009, he issued his order of September 15, 2009 dismissing the petition for *certiorari*. In due time, they filed their motion for reconsideration. The parties exchanged their written submissions on the issue until the respondent judge issued the order of December 10, 2009 deeming the motion for reconsideration submitted for resolution. But he did not resolve the motion for reconsideration even by the time they filed their administrative complaint against him on July 26, 2010 in the Office of the Court Administrator.

What is obvious is that the respondent judge took too much time in disposing of the petition for *certiorari* and the ensuing motion for reconsideration. The delays were plainly violative of the injunction to him to act expeditiously on the matters 90 days from their submission.

The respondent judge sought to justify his delay by citing the voluminous caseload he had as the presiding judge. The justification does not persuade. Although we are not insensitive to the heavy caseloads of the trial judges, we have allowed reasonable extensions of the periods for the trial judges to resolve their cases. If the heavy caseload of any judge should preclude his disposition of cases within the reglementary period, he should notify the Court, through the Court Administrator, of the reasons or causes for the delay, and request in writing a reasonable extension of the time to dispose of the affected cases. No judge should arrogate unto himself the prerogative to extend the period for deciding cases beyond the mandatory 90-day period.

The respondent judge insists that that he did not need to act on the resulting motion for reconsideration because the petition for *certiorari*, being a prohibited pleading, was a contravention of the rules of procedure. Such insistence did not justify his inability to act promptly. The fact that the petition for *certiorari* was a prohibited pleading furnished him a better reason to act promptly on the petition for *certiorari* and the motion for reconsideration.

We are also not swayed by his other excuses of not having then a legal researcher assigned to him; and of his branch clerk of court being recently appointed. The court's business did not stop because of such events; hence, he could not use such excuses to delay his actions on the pending matters before his court. Verily, the responsibility for the prompt and expeditious action on the case, which belonged first and foremost to him as the presiding judge, could not be shifted to others like the legal researcher or the recently appointed branch clerk of court.

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The respondent cannot be spared from the consequences of his undue delays in the case of the complainants. He did not show that he ever requested the Court for the additional time within which to dispose of the matters therein. It then becomes inescapable for him to face the consequences of his inexplicable inaction. He was guilty of gross inefficiency and neglect of duty. Failure to render a decision within the 90-day period from the submission of a case for decision is detrimental to the honor and integrity of the judicial office, and constitutes a derogation of the speedy administration of justice.

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Finding the respondent **GUILTY** of gross inefficiency for his undue delay in resolving the pending motion for reconsideration, he was accordingly fined in the amount of P45,000, with a warning that a similar infraction in the future will be more severely sanctioned. **(A.M. No. RTJ-11-2275, March 8, 2016)**

SHERIFFS

- **Simple misconduct; Duties of sheriffs in enforcement of writ of execution.**

The writ of execution should mirror the judgment that it enforces. The form and contents of the writ of execution are specified in Section 8, Rule 39 of the *Rules of Court*, viz.:

SEC. 8. Issuance, form and contents of a writ of execution. – The writ of execution shall: (1) issue in the name of the Republic of the Philippines from the court which granted the motion; (2) state the name of the court, the case number and title, the dispositive part of the subject judgment or order; and (3) **require the sheriff or other proper officer to whom it is directed to enforce the writ according to its terms, in the manner herein after provided:**

(a) If the execution be against the property of the judgment obligor, to satisfy the judgment, with interest, out of the real or personal property of such judgment obligor;

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(e) In all cases, the writ of execution shall specifically state the amount of the interest, costs, damages, rents, or profits due as of the date of the issuance of the writ, aside from the principal obligation under the judgment. For this purpose, the motion for execution shall specify the amounts of the foregoing reliefs sought by the movant.

Under this provision of the *Rules of Court*, respondent could enforce the writ of execution only “according to its terms, in the manner herein after provided.” However, he was remiss in his duty to enforce the writ by collecting only P25,000. Even assuming that he had only been successful in collecting P25,000 from the defendant, he still exceeded his authority in requesting complainant to sign the typewritten acknowledgment receipt reflecting the P25,000 as the full and complete satisfaction of the writ of execution. He had neither basis nor reason to have complainant sign the receipt in that tenor because the text and tenor of the writ of execution expressly required the recovery of P35,000 from the losing party.

Also, complainant claimed that respondent had represented to him that the defendant could no longer pay the balance. The representation, even if true, did not justify respondent’s unilateral decision to discontinue the effort to recover the balance. It clearly devolved upon him as the sheriff to levy upon the execution debtor’s properties, if any, as well as to garnish the debts due to the latter and the credits belonging to the latter. The duty to exhaust all efforts to recover the balance was laid down in Section 9, Rule 39 of the *Rules of Court*, with special attention to the highlighted portions, to wit:

SEC. 9. Execution of judgments for money, how enforced.

- (a) *Immediate payment on demand.* – **The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.**

If the judgment obligee or his authorized representative is not present to receive payment, the judgment obligor shall deliver the aforesaid payment to the executing sheriff. The latter shall turn over all the amounts coming into his possession within the same day to the clerk of court of the court that issued the writ, or if the same is not practicable, deposit said amount to a fiduciary account in the nearest government depository bank of the Regional Trial Court of the locality.

The clerk of court shall thereafter arrange for the remittance of the deposit to the account of the court that issued the writ whose clerk of court shall then deliver said payment to the judgment obligee in satisfaction of the judgment. The excess, if any, shall be delivered to the judgment obligor while the lawful fees shall be retained by the clerk of court for disposition as provided by law. In no case shall the executing sheriff demand that any payment by check be made payable to him.

- (b) *Satisfaction by levy.* – **If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment.** If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.

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- (c) *Garnishment of debts and credits.* – **The officer may levy on debts due the judgment obligor and other credits, including bank deposits, financial interests, royalties, commissions and other personal property not capable of manual delivery in the possession or control of third parties. Levy shall be made by serving notice upon the person owing such debts or having in his possession or control such credits to which the judgment obligor is entitled. The garnishment shall cover only such amount as will satisfy the judgment and all lawful fees.**

The garnishee shall make a written report to the court within five days from service of the notice of garnishment stating whether or not the judgment obligor has sufficient funds or credits to satisfy the amount of the judgment. If not, the report shall state how much funds or credits the garnishee holds for the judgment obligor. The garnished amount in cash, or certified bank check issued in the name of the judgment obligee, shall be delivered directly to the judgment obligee within 10 working days from service of notice on said garnishing requiring such delivery, except the lawful fees which shall be paid directly to the court.

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The executing sheriff shall observe the same procedure under paragraph (a) with respect to delivery of payment to the judgment obligee. (8a, 15a)

Thus, respondent was guilty of misconduct, which the Court has defined in *Dela Cruz v. Malunao* as “a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules.”

In this case, complainant was not able to establish that the act complained of was tainted with corruption, willful intent to violate the law, or disregard of established rules.

For **SIMPLE MISCONDUCT** and considering that respondent had been previously suspended twice in two separate administrative cases, and considering further that respondent had already retired from the service effective December 7, 2007, the Court imposed upon the respondent a fine in the amount of P10,000 and forfeiture of his entire retirement benefits. **(A.M. No. P-10-2793 [Formerly A.M. OCA I.P.I. No. 06-2406-P], March 8, 2016)**

- **Dishonesty, gross neglect of duty, and simple neglect of duty; Duties of sheriffs in the execution of writs.**

With regard to the sheriff’s duty to turn over or remit any payments in satisfaction of money judgments, Section 9(a), Rule 39 of the Rules of Court provides in part:

SEC. 9. Execution of judgments for money, how enforced.

- (a) *Immediate payment on demand.* – The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. **The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.**

If the judgment obligee or his authorized representative is not present to receive payment, the judgment obligor shall deliver the aforesaid payment to the executing sheriff. **The latter shall turn over all the amounts coming into his possession within the same day to the clerk of court of the court that issued the writ, or if the same is not practicable, deposit said amount to a fiduciary account in the nearest government depository bank of the Regional Trial Court of the locality.**

The clerk of said court shall thereafter arrange for the remittance of the deposit to the account of the court that issued the writ whose clerk of court shall then deliver said payment to the judgment obligee in satisfaction of the judgment. The excess, if any, shall be delivered to the judgment obligor while the lawful fees shall be retained by the clerk of court for disposition as provided by law. In no case shall the executing sheriff demand that any payment by check be made payable to him.

In this case, it has been established, through substantial evidence, that respondent *received* the amount of P10,000 from Garcia, through the latter's staff, in partial satisfaction of the judgment obligation in favor of Lopue's. It has also been established that despite the lapse of more or less four months, respondent failed to remit the same to the Branch Clerk of the MTCC of Victorias City. In fact, had it not been for several follow-ups from complainant and a reminder from the Branch Clerk requiring respondent to make a return of service on the writ of execution, the latter would not have remitted the money. Likewise, even after having remitted the partial payment from Garcia, respondent failed to satisfactorily implement the writ and only made a return of service after a period of almost three years after the issuance thereof.

Under these premises, the Court thus concurs with the OCA that respondent's omissions in this case make him administratively liable for dishonesty, as well as for gross neglect of duty.

Records indubitably show his receipt of the money which he was obliged to remit immediately to the Branch Clerk, it being his *ministerial duty* to satisfactorily enforce the writ of execution. As the amounts were received by him by virtue of his office, it was his duty, as sheriff, to faithfully account therefor. Sheriffs have the duty to perform faithfully and accurately what is incumbent upon them, and any method of execution falling short of the requirement of the law should not be countenanced. In this respect, respondent miserably failed, and his various defenses all fail to persuade.

Moreover, respondent made a return of service on the writ of execution on July 21, 2014, or almost three years after the issuance thereof on October 11, 2011, and only after an *ex parte* motion on the part of the complainant. On this score, Section 14, Rule 39 of the Rules of Court mandates that a sheriff should submit a return of service every 30 days on the proceedings taken on the writ he is to implement. Based on the records, respondent clearly failed to comply with the Rules.

It bears stressing that the submission of the return and of periodic reports by the sheriff is a duty that cannot be taken lightly. It serves to update the court on the status of the execution and the reasons for the failure to satisfy its judgment. The periodic reporting also provides the court insights on how efficient court processes are after a judgment's promulgation. Its overall purpose is to ensure speedy execution of decisions. A sheriff's failure to make a return and to submit a return within the required period constitutes inefficiency and incompetence in the performance of official duties. Consequently, respondent's failure in this respect renders him administratively liable for simple neglect of duty, defined as the failure of an employee to give attention to the task expected of him.

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For dishonesty, gross neglect of duty, and simple neglect of duty, the Court ordered respondent **DISMISSED** from service with forfeiture of all benefits and privileges, except accrued leave credits, if any, with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations. **(A.M. No. P-16-3430 [Formerly OCA I.P.I. No. 12-3905-P], March 1, 2016)**