

EN BANC

[A.M. No. P-19-3911 (Formerly OCA IPI No. 13-4159-P), January 15, 2019]

**RURAL BANK OF TALISAY (CEBU), INC., REPRESENTED BY ITS
PRESIDENT, ADELE V. VILLO, COMPLAINANT, V. MANUEL H.
GIMENO, SHERIFF IV, BRANCH 19, REGIONAL TRIAL COURT,
CEBU CITY, RESPONDENT.**

DECISION

PER CURIAM:

Subject of this Decision is the complaint filed by the Rural Bank of Talisay (Cebu), Inc., represented by its president Adele V. Villo (complainant), seeking the dismissal from service of Manuel H. Gimeno, Sheriff IV, Branch 19, Regional Trial Court, Cebu City (respondent).

Factual Antecedents

On November 23, 2007, Arnie A. Cabanero (Cabanero) obtained a credit accommodation for a principal amount of P150,000.00 from complainant. The obligation was secured by a real estate mortgage over a parcel of land registered under Transfer Certificate of Title No. 161323. Complainant sent a demand letter to Cabanero requiring him to settle his overdue account, exclusive of interest and penalties. After he failed to timely settle his account, the bank filed a Petition for Extrajudicial Foreclosure of Real Estate Mortgage. The said complaint for extrajudicial foreclosure was raffled to respondent, as sheriff designate of the Regional Trial Court, Branch 19, Cebu City (RTC).^[1]

On December 8, 2011, respondent brought a copy of the December 8, 2011 Notice of Extrajudicial Foreclosure Sale, together with an undated bill for his services in the foreclosure proceedings including the cost of publication of the notice in a newspaper of general circulation to complainant. The bank's representative paid him the amount of P10,000.00 as cost for publication. The December 2011 Notice indicated that the public auction was to be held on January 25, 2012.^[2]

In January 2012, Cebu Daily News (CBN), a newspaper of general circulation, called complainant asking for the payment for the publication so that it can publish the December 2011 Notice. The bank claimed that it had given the payment for publication to respondent but CBN denied receiving the same.^[3]

On January 12, 2012, complainant's officers visited respondent in his office seeking an explanation regarding the unpaid publication cost. He, however, merely prepared a Second Amended Notice of Extrajudicial Foreclosure Sale setting the Public Auction on February 16, 2012. Respondent assured complainant that he would take care of the payment with CBN.^[4]

During the February 16, 2012 public auction, complainant placed a bid price of P350,000.00. After the public sale, it asked for the sheriff's certificate of sale for annotation on the title from respondent but the latter failed to do so. Complainant eventually learned that the January 2012 Notice was also not published in CBN. This prompted complainant to report the matter to the Executive Judge of the RTC, who directed the clerk of court to conduct an investigation.^[5]

In its August 10, 2012 Report,^[6] the Office of the Clerk of Court of the RTC (OCC) recommended the imposition of the appropriate administrative sanction against respondent. It pointed out that respondent did not deny receiving the P10,000.00 as publication cost from complainant, but was not able to use it as he paid it for the hospital expenses of his mother. The OCC stated that respondent promised that the Notice of Extrajudicial Foreclosure would be published on July 27, 2012, but up until its report was made, no publication ever took place.

Meanwhile, the RTC Executive Judge forwarded complainant's letter to the Office of the Court Administrator (OCA). The OCA informed complainant that there must be a formal complaint under oath filed against respondent before the said office could act on the matter.^[7] Thus, it filed the present complaint against respondent. In his Comment,^[8] respondent admitted receiving the P10,000.00 as publication cost from complainant but was unable to use it for the said purpose as he used the same to pay his mother's hospital bills. He explained that if not for his ailing mother, he would have used the said amount to pay for the publication cost as he was only compelled by dire needs to act as he did. Respondent highlighted that in his 22 years of service, this is the first and only complaint against him as he had worked in accordance with ethical standards.

OCA Report and Recommendation

In its April 6, 2017 Report and Recommendation,^[9] the OCA ruled that respondent should be dismissed from service for gross misconduct and dishonesty. It noted that respondent tarnished the reputation of the judiciary after he appropriated for himself the money given to him by complainant as payment for publication cost. The OCA also highlighted that it took two years for respondent to answer the complaint against him and only after he was dropped from the rolls and while he was processing his early retirement benefits.

The Court's Ruling

The Court concurs with OCA's Report and Recommendation.

In *Executive Judge Rojas, Jr. v. Mina*,^[10] the Court reminds court personnel of the extreme burden and duty attached to their roles as officers of the Court, to wit:

The Code of Conduct for Court Personnel stresses that employees of the judiciary serve as sentinels of justice, and any act of impropriety on their part immeasurably affects the honor and dignity of the Judiciary and the people's confidence in it. No other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than in the Judiciary. Thus, the failure of judicial employees to live up to their avowed duty constitutes a transgression of the trust reposed in them as court officers and inevitably leads to the exercise of disciplinary authority.

Much is demanded from court personnel in that they are expected to not only deviate from engaging in any misconduct, but also to preserve their image of integrity. Any impression of impropriety, misdeed or negligence in the performance of their official functions must be avoided.^[11] In *Tolentino-Genilo v. Pineda*,^[12] the Court emphasized that those tasked with the dispensation of justice should be beyond reproach, to wit:

There is no place in the judiciary for those who cannot meet the exacting standards of judicial conduct and integrity. This is because the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel. Thus, it becomes the imperative sacred duty of each and every one in the court to maintain its good name and standing as a true temple of justice.

Too, a public servant is expected to exhibit, at all times, the highest degree of honesty and integrity and should be made accountable to all those whom he serves.

The Court succinctly stated in the case of *Araza v. Sheriffs Garcia and Tonga* that the conduct and behavior of every person connected with an office charged with the dispensation of justice, from the presiding judge to the lowest clerk, is circumscribed with a heavy burden of responsibility. **His conduct, at all times, must not only be characterized by propriety and decorum but also, and above all else, be above suspicion.** (Emphases and underscoring supplied)

Measured by the exacting standards imposed on court personnel, it is unquestionable that respondent severely failed to uphold what was expected of him. He readily admits that he appropriated for himself the money given to him by complainant as payment for publication costs. Respondent's liability is indubitable and the only genuine issue to be resolved is the penalty to be imposed for his transgressions.

Grave misconduct is the intentional wrongdoing or deliberate violation of a rule of law or standard of behavior attended with corruption or a clear intent to violate the law, or flagrant disregard of established rule.^[13] Corruption as an element of grave misconduct contemplates a scenario where public officials unlawfully and wrongfully use their position to procure some benefit for themselves, contrary to the rights of others.^[14]

In the case at bench, respondent's actions were clearly tainted with corruption as he received money from complainant in his capacity as sheriff for the RTC. He, however, appropriated the funds for himself instead of using it to pay for the publication cost for Notice of Extrajudicial Foreclosure Sale. Even if it were true that respondent only used it to pay for the hospital funds of his mother, it cannot be gainsaid that he used his position as sheriff to obtain funds from private persons for his own benefit and to the detriment of the latter.

In addition, respondent failed to exhibit contriteness after he continuously failed to make the necessary payments for publications in spite of demands or opportunities for him to correct his wrongdoings. *First*, he did not fulfill his promise that he would