

## EN BANC

**[ A.M. No. P-15-3400 (Formerly OCA IPI No. 12-3896-P), November 06, 2018 ]**

**INVESTIGATING JUDGE JAIME E. CONTRERAS, REGIONAL TRIAL COURT, BRANCH 25, NAGA CITY, COMPLAINANT, VS. PATRICIA DE LEON, CLERK III, OFFICE OF THE CLERK OF COURT, REGIONAL TRIAL COURT, NAGA CITY; EDGAR HUFANCIA, SHERIFF<sup>•</sup>, REGIONAL TRIAL COURT, BRANCH 21, NAGA CITY; EDGAR SURTIDA IV,<sup>••</sup> SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 25, NAGA CITY; AND PELAGIO J. PAPA, JR., SHERIFF<sup>•</sup>, OFFICE OF THE CLERK OF COURT, REGIONAL TRIAL COURT, NAGA CITY, RESPONDENTS.**

### DECISION

#### PER CURIAM:

This administrative matter, which was filed by Investigating Judge Jaime E. Contreras (Judge Contreras) of the Regional Trial Court (RTC), Branch 25, Naga City, is an offshoot of *Olivan v. Rubio*,<sup>[1]</sup> which, in turn, stemmed from a complaint filed by Eleanor Olivan (Olivan) with the Office of the Court Administrator (OCA) against Arnel Jose A. Rubio (Rubio), Sheriff IV, Office of the Clerk of Court (OCC), RTC of Naga City, for malversation, alleging that Rubio claimed excessive sheriffs expenses and bloated the liquidation thereof in connection with Land Registration Case No. N-594, GLRC Rec. No. 8109 entitled *Domingo Olivan, et al. v. The Municipality of Pasacao, et al.*<sup>[2]</sup> (subject case), after which the Court then found Rubio guilty of Dishonesty and Grave Misconduct, and dismissed him from the service.

To recall, the Court of Appeals decided the subject case in favor of Olivan, which decision already became final and executory. Thereafter, a Writ of Execution was also issued in her favor, followed by an *Alias* Writ of Execution (writ) on September 29, 2005, wherein Rubio was tasked to enforce the latter.<sup>[3]</sup>

On April 27, 2006, Rubio received P20,000.00 from Olivan as partial payment for the sheriffs incidental expenses for the implementation of the writ, after which he issued a handwritten receipt which Olivan signed. Subsequently, on May 10, 2006, Rubio filed a Manifestation pursuant to Rule 141 of the Rules of Court, detailing the Sheriffs Expenses in the amount of P150,000.00 as incidental expenses and P3,000.00 as the court's commission fee, or a total of P153,000.00 for the implementation of the said writ. The Manifestation contained Olivan's conformity and the recommending approval of Atty. Egmedio C. Blacer, Clerk of Court VI and *Ex-Officio* Sheriff of the RTC, which was approved by Judge Pablo M. Paqueo, Jr., then Executive Judge of the RTC. On the same day, Olivan deposited P153,000.00 with the OCC of the RTC, which Rubio withdrew in full thereafter on the same day.<sup>[4]</sup>

Rubio, however, failed to implement the writ despite receipt of a total sum of P173,000.00, and failed to return to the OCC or to Olivan the remaining amount of P22,866.00 as indicated in his Liquidation of Sheriffs Expenses dated December 20, 2008. The said report showed that the total amount spent in attempting to implement the writ was only P150,134.00, thereby leaving a balance of P22,866.00.

[5]

Rubio defended the aforementioned payment of P20,000.00 given to him by Olivan by alleging that he needed other court sheriffs to assist him in implementing the writ and requested for a precision survey of the subject property to identify the actual occupants thereof to whom they would serve the writ and the Notice to Vacate, as well as personnel of the Philippine National Police and the Philippine Army to maintain peace and order, considering, among others, that it had to be served to 40 residents living in the parcel of land subject of the case, who had violently refused to obey the writ. He also added that Atty. Fiel V. Bagalacsa-Abad, Clerk of Court V of the OCC, issued a Travel Order to him and other assisting sheriffs, namely, respondent Pelagio Papa, Jr. (Papa), Sheriff, OCC, RTC Naga City, respondent Edgar Surtida IV (Surtida), Sheriff IV, RTC Branch 25, Naga City, and the late Donn Valenciano, after which they went to the subject property several times to enforce the writ, submitting thereafter a Partial Return thereof and a Sheriffs Report detailing the actions he had undertaken during the service of the writ.[6]

Thereafter, the Court, in its Resolution dated January 11, 2010, referred Olivan's complaint to Judge Contreras for investigation, report and recommendation.[7]

In the course of the investigation, Judge Contreras found that, aside from the fact that Rubio had incurred unnecessary and/or unsubstantiated expenses, other employees of the RTC, who were identified as Papa, Surtida, respondent Patricia De Leon (De Leon), Clerk III, OCC, RTC Naga City, and respondent Edgar Hufancia (Hufancia), Sheriff, RTC Branch 21, Naga City, were involved in the anomalous transactions wherein they were able to collect certain sums of money from Olivan under the promise of helping her in the subject case.[8] In his Report and Recommendation[9] dated December 5, 2010, Judge Contreras made the following observations, based on the testimonies and admissions of Olivan and the respondents, to wit:

#### OTHER RELATED MATTERS

During the course of the investigation in this instant administrative case against Sheriff Rubio, informations were disclosed showing that other employees in the Regional Trial Court of Naga City were involved in anomalous or shady transactions wherein they were able to collect certain sums of money from complainant, Eleanor Olivan, under the guise of helping her in her case. They are the following:

1. **PATRICIA DE LEON**, a Clerk at the Office of the Clerk of Court, Regional Trial Court, Naga City, whom complainant Eleanor Olivan approached for help being her townmate, promised to expedite the implementation of the writ of execution and find a lawyer for her and in the process received aggregate sums of money in the total amount of [P]9,500.00. However, for failure to comply with her promises, Patricia de

Leon undertook to return the money to Mrs. Olivan upon the latter's demand. However, the money was not actually returned to Mrs. Olivan due to the intervention of her lawyer, Atty. Amador Simando, that said amount be just credited as payment for his future court appearances in her case, and

2. **SHERIFF EDGAR HUFANCIA** of RTC, Br. 21, Naga City, who, per his own admission was allegedly the assisting sheriff of the late Sheriff Roque Angeles, to whom this case was earlier assigned. He received certain sums of money amounting to more than [P]40,000.00 from Mrs. Olivan under the guise of helping her with Budget Secretary Rolando Andaya, Jr. for the payment of the lot purchase [sic] of the land subject-matter [sic] of the writ. However, upon demand, [he] acknowledged and paid only the amount of [P]24,000.00 to Mrs. Olivan.

Other sheriffs must also be taught a lesson and be subjected to disciplinary action by reason of their complicity in the implementation of the writ, when ordinary prudence would tell them that on several occasions, it was unnecessary for them to still be going back and forth to Pasacao, Camarines Sur, and still hire unreasonable number of laborers/security escorts which resulted to the financial losses or prejudice of Mrs. Olivan, and they are the following:

1. **SHERIFF EDGAR SURTIDA II** of RTC, Br. 25, Naga City, who was one of the assisting sheriffs of Sheriff Rubio in causing the implementation of the writ subject-matter [sic] in [sic] this case, for his complicity and in conspiracy with Sheriff Rubio and other assisting sheriffs, who per travel orders, have [sic] repeatedly gone with [I]mplementing Sheriff Rubio to Pasacao, Camarines Sur, even if a simple exercise of prudence would dictate that the same were no longer necessary, thereby causing additional expense to the complainant. Further, as assisting sheriff, he disregarded the Supreme Court Circular on the matter and repeated reminders of herein Investigating Judge, who is also the Presiding Judge of Br. 25, to secure the latter's appropriate permission and approval before consenting/agreeing to be an assisting sheriff, and

2. **SHERIFF PELAGIO J. PAPA, JR.** of the OCC, RTC, Naga City for his complicity and in conspiracy with Sheriff Rubio and other assisting sheriffs of having repeatedly gone with [I]mplementing Sheriff Rubio to Pasacao, Camarines Sur, even if a simple exercise of prudence would dictate that the same were [sic] no longer necessary, thereby causing additional expense to the complainant.<sup>[10]</sup>

Acting on the recommendation of the OCA in its Memorandum<sup>[11]</sup> dated March 14, 2012, the Court, in its Resolution<sup>[12]</sup> dated June 13, 2012, docketed Judge Contreras' aforementioned Report and Recommendation as the instant administrative matter against herein respondents separately from that of Rubio, and required them to comment therein. While Papa and Hufancia had filed their respective Comments, Surtida and De Leon failed to file theirs.

Papa, in his Comment,<sup>[13]</sup> denied having conspired with Rubio and having committed misconduct, asserting that he was issued travel orders<sup>[14]</sup> to assist Rubio in the subject case where more than 200 persons or 35 families were subject for eviction. That, coupled by the fact that the subject property was located 40 kilometers from the RTC of Naga City, and that the area was believed to be infested by members of the New People's Army, necessitated his assistance in implementing the writ. Moreover, there were also times when he did not actually accompany Sheriff Rubio, and merely reported to the office, as shown by his daily time records.<sup>[15]</sup>

Hufancia, for his part,<sup>[16]</sup> denied having been the assisting sheriff of Rubio or the late Sheriff Roque Angeles, or that he received any complaint from Olivan. He maintained that it was retired Executive Sheriff Anastacio Bongon whom he assisted in implementing the writ before the task was reassigned to Rubio. However, he admitted having tried to convince the *Sangguniang Bayan* of Pasacao, Camarines Sur, to instead buy the subject property from Olivan, necessitating additional expenses which were not included in the original estimate of expenses. Thus, he received the amount of P24,000.00 from Olivan in connection with his attempt to sell the property, issuing receipts for every amount that he received from her. However, he claimed that he had returned the said amount to Olivan during the investigation conducted by Judge Contreras.

### **The OCA's Report and Recommendation**

In its Memorandum<sup>[17]</sup> dated September 1, 2015, the OCA made the following findings and recommendations, to wit:

1. It found De Leon guilty of Dishonesty and Grave Misconduct for accepting P9,500.00 from Olivan in exchange for a promise to expedite the implementation of the writ in the subject case. It opined that, not only did she violate Section 3(b) of Republic Act No. (RA) 3019, but her act is also considered as grave misconduct under Section 2, Canon 1 of the Code of Conduct for Court Personnel which enjoins all personnel from soliciting or accepting any gift, favor or benefit based on any or explicit understanding that such gift, favor or benefit shall influence their official actions, as well as dishonesty, both of which are considered grave offenses under Section 52(A) (1) and (3) (later Section 46[A][1] and [3]) of the Revised Rules on Administrative Cases in the Civil Service (RRACCS). Moreover, her failure to file her Comment on Judge Contreras' Report and Recommendation despite orders from the Court is considered a violation of the Court's circulars. However, considering that De Leon had been previously dropped from the rolls effective February 1, 2012 in the Court's Resolution dated August 12, 2013,<sup>[18]</sup> the OCA recommended that she be fined P40,000.00 in lieu of dismissal from the service.<sup>[19]</sup>
2. As for Hufancia, he was found guilty of Serious Dishonesty for his act of unilaterally receiving P24,000.00 from Olivan for the execution of the Alias Writ without issuing a receipt therefor. It opined that as the sheriff, he is not allowed to receive any voluntary payments from parties to a case, much less demand such payment on his own without observing the proper procedure, that is: (1) making the estimate of his expenses to be submitted for the

approval of the court; (2) depositing the amount by the party concerned with the clerk of court and *ex-officio* sheriff, who will then disburse such amount to the sheriff assigned to enforce the writ; and (3) liquidating the amount received, returning the excess amount to the party, and rendering a full report. Moreover, it is immaterial whether or not Hufancia received the said amount in good faith, since it is important that the said procedure be followed before accepting such amount, which he had failed to do. However, in view of his death on August 31, 2013, the OCA recommended that this case as against him be dismissed.<sup>[20]</sup>

3. With regard to Surtida, he was found guilty of Conduct Prejudicial to the Best Interest of the Service in his act of travelling with Rubio and the other sheriffs to Pasacao, Camarines Sur around ten (10) times in order to implement the writ, all without any authority issued by the Executive Judge. It also found that Surtida had received allowances therefrom, brought along his own security, and had continued to assist Rubio even though the only thing they had accomplished was the service of the writ and the notice to vacate, thereby also causing Olivan to suffer additional and needless expenses. Moreover, his failure to file a Comment on Judge Contreras' Report and Recommendation despite orders from the Court is considered a violation of the Court's circulars. Considering that suspending Surtida would unduly have an adverse effect on public service, the OCA recommended that he instead be fined P20,000.00.<sup>[21]</sup>
4. Finally, as to Papa, he was also found guilty of Conduct Prejudicial to the Best Interest of the Service. It held that, like Surtida, Papa also travelled with Rubio and the other sheriffs to Pasacao, Camarines Sur around the same number of times in order to implement the writ, and received allowances therefrom, all without any authority issued by the Executive Judge. Thus, the OCA recommended that he be fined P5,000.00.<sup>[22]</sup>

In its Resolution<sup>[23]</sup> dated August 3, 2016, the Court dismissed the case as against Hufancia in view of his death.

### **The Court's Ruling**

After a judicious review of the records, the Court has no compelling reason to deviate from the findings of the OCA. However, the penalties should be modified.

Dishonesty has been defined as "the disposition to lie, cheat, deceive, defraud, or betray; unworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness" which renders a person unfit to serve in the judiciary.<sup>[24]</sup>

Misconduct, on the other hand, involves a "transgression of some established and definite rule of action, [specifically] unlawful behavior or gross negligence" by a public officer or employee, which should be grave, serious, important, weighty, momentous, and not trifling. Moreover, to be characterized as gross, such misconduct must be attended by corruption, clear intent to violate the law, or flagrant disregard of established rule.<sup>[25]</sup>

Conduct prejudicial to the best interest of the service pertains to any conduct,