

EN BANC

[A.M. No. P-08-2418 (Formerly OCA IPI No. 05-2152-P), December 04, 2012]

FERDINAND S. BASCOS, COMPLAINANT, VS. RAYMUNDO A. RAMIREZ, CLERK OF COURT, REGIONAL TRIAL COURT, HAGAN, ISABELA, RESPONDENT.

DECISION

PER CURIAM:

This administrative case is an offshoot of the case previously filed by Ferdinand S. Bascos (complainant) against Atty. Raymundo A. Ramirez Ramirez (respondent), Clerk of Court and Ex-Officio Provincial Sheriff of the Regional Trial Court of Ilagan, Isabela (RTC-Ilagan), for neglect of duty, arrogance, willful and deliberate violation of the Court's circulars relating to Presidential Decree No. 1079^[1] (PD 1079), and attempted extortions.

The Facts

In a letter-complaint dated January 31, 2003,^[2] complainant informed Executive Judge Juan A. Bigornia, Jr. (Judge Bigornia) of the RTC-Ilagan that respondent failed to abide by the judge's verbal order to designate a day of the week for the raffling of judicial and extrajudicial notices and other court processes requiring publication. He accused respondent of being partial when the latter awarded to Isabela Profile, a regional weekly newspaper, around 13 extra-judicial foreclosures without conducting any court raffle.

On February 3, 2003, Judge Bigornia required respondent to file his comment on the complaint, followed by another letter dated February 27, 2003^[3] directing him to submit the following:

1. Copies of the application for Extra-Judicial Foreclosures together with the docket number from December, 2002 to date (February 27, 2003);
2. To whom among the Deputy Sheriffs of this Court were these applications for extra-judicial foreclosure raffled respectively; and
3. The name of the newspaper to whom these notices were sent for publication.^[4]

It also contained a directive which reads:

From hereon, application for judicial foreclosure either by Notary Public or by the Sheriff shall be raffled to the different Deputy Sheriffs under my direction. The Deputy Sheriffs of this Court, in turn, shall raffle the notices for publication to the accredited newspaper under my direction.

Any violation of this directive shall be dealt with severely.^[5]

Without offering any explanation, respondent never complied with the aforesaid directives.^[6]

On March 8, 2005, complainant filed with the Office of the Court Administrator (OCA) a sworn letter-complaint dated November 25, 2004^[7] charging respondent of neglect of duty, arrogance, willful and deliberate violation of circulars of the Court in relation to PD 1079, and for attempted extortions.

After due proceedings, the OCA recommended that respondent be fined in the amount of P2,000.00 with a warning that similar infractions in the future shall be dealt with more severely.^[8]

In the Court's Decision dated January 31, 2008,^[9] the Court agreed with the OCA's findings but increased the fine to P20,000.00, stressing that "[o]n the more than twenty instances that respondent failed to include in the raffle the notices for publication, respondent displayed on each occasion dereliction and gross neglect of duty."^[10] Moreover, having observed that respondent failed to comply with the directives contained in the letter of Judge Bigornia, it ordered the submission of the required documents.

The dispositive portion of the said Decision reads:^[11]

"WHEREFORE, the Court finds Clerk of Court and Ex-Officio Provincial Sheriff of the Regional Trial Court of Ilagan, Atty. Raymundo A. Ramirez, **GUILTY of dereliction of duty, gross neglect, insubordination and for violating the Code of Professional Responsibility.** He is ordered to pay a **FINE of Twenty Thousand (P20,000) Pesos, with WARNING that the commission of the same or similar acts in the future shall be dealt with more severely.**

Respondent is further ORDERED to submit with utmost dispatch the records and documents specified in the February 27, 2003 Letter of then Executive Judge Juan A. Bigornia, Jr. This is without prejudice to the possible filing of criminal charges against respondent under Section 6 of P.D. 1079." (Emphasis supplied)

In his attempt to comply with the foregoing directives of the Court, respondent, in his letter dated February 26, 2008,^[12] merely submitted a certified true copy of the letter of Judge Bigornia dated February 27, 2003. Thus, the Court, in its Resolution dated April 30, 2008, required respondent to show cause why he should not be disciplinarily dealt with or held in contempt for his failure to pay the imposed fine

and submit the required records and documents.^[13]

In compliance, respondent paid the P20,000.00 fine on July 25, 2008^[14] but still failed to submit the required records and documents. He explained^[15] that the three deputy sheriffs who were “beneficiaries”^[16] of the subject documents died in 2005 and 2006, leaving only one sheriff, Christopher R. Belleza, to assist him in locating the same.^[17] Nonetheless, he had requested the warehouseman of the RTC-Ilagan to find the expediente of the extra-judicial foreclosures filed and raffled to the sheriffs during the subject period.^[18]

On the basis of the memorandum of the store room-in-Charge of RTC-Ilagan, Aristotle Tumaneng (Mr.Tumaneng), respondent reported^[19] that only 56 applications for extra-judicial foreclosure within the subject period were kept in the storeroom of the court. He also explained that he cannot submit the other questioned applications for foreclosure because of the untimely demise of the concerned sheriffs, and that his job was only to docket the foreclosures, collect the docket fees and sheriff’s commission after the auction sale, and forward the applications for extra-judicial foreclosure to the Executive Judge for approval.^[20]

On June 1, 2011, the Court referred the matter to the OCA for evaluation, report and recommendation.^[21]

The Action and Recommendation of the OCA

On November 15, 2011, the OCA found respondent guilty of grave misconduct for his contumacious conduct of disrespect for the Court’s lawful order and directive and recommended his dismissal from service with forfeiture of all retirement benefits, except accrued leave credits, and disqualification from reinstatement or appointment to any public office, including government-owned or-controlled corporations.^[22]

It observed that only 51 applications for extra-judicial foreclosure, not 56 as claimed by respondent, were listed in the memorandum of Mr.Tumaneng. Out of these cases, only 42 were filed within the covering period December 2002 to February 27, 2003. It also noted that while the memorandum provided the titles of the cases, dates of their filing and the sheriffs in charge, it failed to indicate the names of the newspaper to which the notices for extra-judicial foreclosure were sent for publication.^[23] It likewise did not find sufficient respondent’s justifications that his inability to comply was due to the deaths of his co-sheriffs and that his job was only to docket the applications for foreclosure and collect the docket fees and sheriff’s commission.^[24] In sum, the OCA concluded that respondent defied the lawful orders of the Court despite its warning that the commission of similar acts shall be dealt with more severely.

The Issue

The only issue to be resolved is whether respondent is guilty of grave misconduct warranting his dismissal from service.

The Ruling of the Court

The Court adopts the findings and recommendation of the OCA.

Misconduct is a transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior. Qualified by the term "grave" or "gross," it means conduct that is "out of all measure; beyond allowance; flagrant; shameful; such conduct as is not to be excused."^[25]

In this case, respondent has conveniently ignored the letter-directive of Judge Bigornia since it was issued in 2003 and such crude insubordination was characterized by the Court as "an obstinate refusal to perform his official duty and to comply with a direct order of a superior."^[26] Nonetheless, respondent was given another opportunity to submit the records and documents required of him by Judge Bigornia in the Court's Decision dated January 31, 2008 with a warning that "the commission of the same or similar acts in the future shall be dealt with more severely."^[27]

However, respondent continued to defy, not only the orders of Judge Bigornia but also the lawful directive of the Court. Respondent's justification that his co-sheriffs died in 2005 and 2006 does not merit consideration since the directive was issued as early as 2003 long before their deaths. Besides, the order to submit the subject documents was directed to him and not to the other sheriffs.

Neither can the Court accept the reason that "he is not in a position to have the documents be submitted"^[28] nor that his *job* "is only to docket the foreclosure as filed xxx and to collect the docket fees and sheriff's commission after the auction sale and forward the same (applications for extra-judicial foreclosure) to the Honorable Executive Judge xxx."^[29] As Clerk of Court and Ex-officio Provincial Sheriff, respondent is tasked to assist in the raffle of applications for extra-judicial foreclosure;^[30] presumed to know that notices of extra-judicial foreclosure shall be raffled to accredited newspapers for publication;^[31] and expected to keep a record thereof.^[32]

In the Decision of the Court, finding respondent guilty of dereliction of duty, gross neglect, insubordination and violation of the Code of Professional Responsibility, it stressed the duties of respondent as a lawyer and employee of the court, thus:

Respondent, as a lawyer and an employee of the court, ought to know the requirements in and the importance of distributing notices for publication. **And he is expected to keep his own record of the applications for extra-judicial foreclosure and the minutes of the raffle thereof so he can effectively assist the judge in the performance of his functions.** It is incumbent upon him to help the judge devise an efficient recording and filing system in the court so that no disorderliness can affect the flow of cases, particularly foreclosure cases, and their speedy disposition. That all efforts should be addressed