

THIRD DIVISION

[A.M. No. MTJ-07-1667, September 27, 2007]

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS.
JUDGE JAMES V. GO AND MA. ELMER M. ROSALES, CLERK OF
COURT, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 2,
BUTUAN CITY, RESPONDENTS.**

D E C I S I O N

YNARES-SATIAGO, J.:

A judicial audit and physical inventory of cases was conducted on September 25, 2006 to October 2, 2006 in the Municipal Trial Court in Cities (MTCC), Branch 2, Butuan City. The audit findings revealed that respondent Judge James V. Go failed to immediately arraign the accused in 632 criminal cases; to archive 140 criminal cases; to act on summons issued in 477 criminal cases; to act on 13 criminal cases which have no further setting; and to resolve pending incidents in 15 criminal cases. He likewise failed to act on 17 civil cases from the time of their filing; to take further action on 32 civil cases; and to resolve motions or incidents in 88 civil cases.

It was also noted that Clerk of Court Ma. Elmer M. Rosales failed to conduct the inventory of cases; to apprise Judge Go of cases that require immediate action; failed to issue writs of execution as ordered; issued summons instead of subpoena in criminal cases; and that nine case records were missing.

Moreover, several case records were unstitched with no pagination; the resetting of cases was usually grounded on the "absence of parties" or the "absence of counsel of parties"; cases jointly tried were not stitched together; there were no minutes of proceedings in almost all the cases; the stages of the proceedings were not accurately stated in the orders; there was no order of revival of archived cases; both the criminal and civil books were not updated; summonses instead of subpoenas were issued to the accused in criminal cases falling under the summary procedure; the entries in the court's semestral docket inventory were not accurate as some active cases were not included therein while cases decided/dismissed a year ago were still indicated as pending; and the raffling of cases was conducted monthly.

The audit team also observed that after conducting hearings for more or less an hour, Judge Go would leave the court premises and return only the following day. He was advised by the audit team not to leave the court premises after conducting the hearings but he retorted that he had to rest early because he had suffered a stroke; that a Judge is not required to render eight hours of service every working day; and that the Supreme Court is too far to monitor him.

Judge Go assumed office on October 16, 1996 and collects a monthly salary of P60,754.11. In his Certificate of Service, he failed to indicate that there were still

unresolved motions in both criminal and civil cases as well as undecided civil cases submitted for decision.

In a Memorandum dated December 29, 2006, Judge Go was directed to take appropriate action on cases submitted for decision, on unresolved motions/incidents, to render eight hours of service every working day, to conduct raffle of cases every Monday and Thursday instead of monthly, and to issue orders indicating whether the cases are being tried under the regular or summary procedure. Clerk of Court Rosales was likewise directed to conduct a physical inventory of cases, to explain why no writs of execution were issued on five civil cases, to issue subpoenas in all criminal cases including those falling under the Rules on Summary Procedure, and to explain why nine cases were not presented to the audit team. Mr. Reynaldo C. Mordeno, Sheriff III of the same court, was also directed to explain why he failed to make the returns on the writs of execution in Civil Case Nos. 8755, 8684, 9853 and 8637.

In her comment, Clerk of Court Rosales stated that she constantly apprised Judge Go on the status of the cases that require prompt action; that writs of execution were issued but were not attached to the records of the case; and that they have already scheduled the physical inventory of cases. She also prayed for another chance to improve on her performance. No explanation however was given why no writ of execution was issued in Civil Case Nos. 7620 and 10886 or why Civil Cases Nos. 8141 and 8142 were not presented to the audit team.

Sheriff Mordeno stated that writs of execution were issued in Civil Case Nos. 8755, 8684, 9853 and 8637 although the returns were attached to the records only on January 15, 2007.

Judge Go requested, through Clerk of Court Rosales, for an extension of time to file comment. However, Judge Go did not file any comment. In a letter dated March 12, 2007, he merely denied all the allegations in the judicial audit report and demanded a formal hearing.

We treated the judicial audit report as an administrative complaint and referred it to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.

According to the OCA, Sheriff Mordeno failed to comply with Sec. 14, Rule 39 of the Rules of Court which requires the sheriff to make a return and submit it to the court immediately upon satisfaction in part or in full of the judgment. Sheriff Mordeno admitted that the returns were attached to the individual records only on January 15, 2007 but failed to furnish the Court with copies of the returns.

The OCA also found Clerk of Court Rosales negligent in her duties. She failed to take further action on the "summons" and warrants issued, to supervise her subordinates particularly on the service of writs of execution, the stitching of all case records and the issuance of "summons" in criminal cases.

As regards Judge Go, the OCA noted that he failed to file his comment on the findings of the audit team despite his request for an extension of time to submit the same. Nonetheless, he partially complied with the memorandum with the transmittal of copies of "constancia," orders and decisions. He took action on 71 out

of 140 cases where warrants were issued, 242 out of 477 criminal cases where summons were issued, 10 out of 13 other criminal cases without further action or setting, 366 cases out of the 632 cases for arraignment, 36 cases out of the 100 criminal cases with unresolved motions or incidents and decided the only criminal case submitted for decision. Regarding civil cases, only 3 out of 17 cases remain unacted upon from the time of their filing and 17 out of 32 cases where the court failed to take further action for a considerable length of time. He also took action on the pending motions/incidents in 17 out of 33 cases and on 26 out of the 37 civil cases submitted for decision.

However, the OCA noted that although actions were taken on these cases, Judge Go still has to act on the remaining cases and respond to the issues on the required eight-hour service every working day.

Based on the foregoing, the OCA recommended that Sheriff III Reynaldo C. Mordeno be fined in the amount of P1,000.00 for failure to immediately make a return on subject writs of execution with a stern warning that a repetition of the same or similar act will be dealt with more severely; that Clerk of Court Ma. Elmer M. Rosales be fined in the amount of P2,000.00 for gross neglect of duty with a stern warning that a repetition of the same or similar act will be dealt with more severely and that she be directed to inform the OCA of the status of Civil Case Nos. 8141 and 8142; and that Judge James V. Go be fined in the amounts of P20,000.00 for gross incompetence and undue delay in rendering decisions and resolving motions and P2,000.00 for failure to comment on the adverse findings of the audit team despite notice, and that he be directed to fully comply with the December 29, 2006 Memoranda within sixty (60) days from notice; and finally, that an investigation be conducted to determine whether the Judges in the Hall of Justice are complying with the required eight-hour service every working day.

We have carefully reviewed the records of the case and we agree with the findings of the OCA; however, we find the recommended penalties not commensurate with the infractions committed.

In *Patawaran v. Nepomuceno*,^[1] respondent sheriff was found guilty of simple neglect of duty for failure to file the sheriff's return on time. We held that:

[I]t is mandatory for a sheriff to make a return on the writ of execution to the clerk or judge issuing it. If the judgment cannot be satisfied in full within thirty days after his receipt of the writ, the officer shall report to the court and state the reason or reasons therefor. The officer is, likewise, tasked to make a report to the court every thirty days on the proceedings taken thereon until the judgment is satisfied in full or its effectivity expires.

There is neglect in the performance of duty on the part of respondent when he failed to submit his report on time. Records show that respondent failed to timely make a sheriff's return on the alias writ of execution x x x Respondent cannot escape liability for not filing his return on time x x x.

[T]he submission of the return and periodic reports is not an empty requirement. It serves to update the court as to the status of the

execution and to give it an idea as to why the judgment was not satisfied. It also provides insights for the court as to how efficient court processes are after judgment has been promulgated. The overall purpose of the requirement is to ensure the speedy execution of decisions.

x x x x

Under Sec. 23, Rule XIV of the Omnibus Civil Service Rules and Regulations, simple neglect of duty is punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense. However, under Sec. 19, Rule XIV, the penalty of fine, instead of suspension, may also be imposed in the alternative. Considering the fact that this is respondent's first administrative offense and following the Court's ruling in several cases involving simple neglect of duty, we find the penalty of a fine in the amount of P5,000.00, as recommended by the Investigating Judge, just and reasonable.

In the instant case, Sheriff Mordeno failed to file the returns on time; in fact, the returns were filed only on January 15, 2007 or after the judicial audit was conducted. For this infraction, Sheriff Mordeno is guilty of simple neglect of duty and should be meted the penalty of fine in the amount of P5,000.00.

As regards Clerk of Court Rosales, we find her guilty of manifest negligence for failing to take further action on the "summons" and warrants issued, to supervise her subordinates particularly on the service of writs of execution, the stitching of all case records and the issuance of subpoenas in criminal cases. As Clerk of Court, her duties include conducting periodic docket inventory and ensuring that the records of each case are accounted for. It is likewise her duty to initiate and cause the search of missing records. Her failure to perform her duties constitutes manifest negligence which cannot be countenanced.^[2] It is incumbent upon the Clerk of Court to ensure an orderly and efficient record management in the court and to supervise the personnel under her office to function effectively.^[3] Under the circumstances, Clerk of Court Rosales should be meted the penalty of fine in the amount of P5,000.00.

As regards Judge Go, we note that he did not file any comment despite the Court's Resolution dated January 27, 2007 directing him to comment on the audit findings. Moreover, he did not formally request for an extension of time to file comment. Records show that his "request" was merely "relayed" by Clerk of Court Rosales through a "telegram for transmission." Notwithstanding, we granted said request by giving him (Judge Go) a period of two months to comply. However, instead of submitting a comment, Judge Go merely denied the allegations in the audit report in a letter dated March 12, 2007 which reads:

March 12, 2007

The Court Administrator
Supreme Court
Taft Avenue, Manila

Re: A.M. No. 7-01-02-MTCC