

EN BANC

[A.M. NO. P-04-1818, August 03, 2006]

**JUDGE ELEUTERIA BADOLES-ALGODON, COMPLAINANT, VS.
RENE D. ZALDIVAR, SHERIFF III, MUNICIPAL TRIAL COURT IN
CITIES, BRANCH 2, CAGAYAN DE ORO CITY, RESPONDENT.**

DECISION

PER CURIAM:

This is an administrative complaint against Sheriff III Rene D. Zaldivar ("respondent sheriff") of the Municipal Trial Court in Cities ("MTCC"), Branch 2, Cagayan de Oro City, for gross neglect of duty and dishonesty.

In her letter-complaint dated 24 February 2003, complainant Judge Eleuteria Badoles-Algodon ("complainant judge"), Presiding Judge of the MTCC, Branch 2, Cagayan de Oro City, alleged that she received complaints against respondent sheriff for being "negligent, remiss and unmindful of his duties and responsibilities." Complainant judge also stated that based on to the records of the court, respondent sheriff had received 416 writs of various kinds but had only made returns for 187 writs.

Complainant judge cited three cases to illustrate respondent sheriff's offenses:

1. In Civil Case No. C-DEC-1135 entitled Northern Mindanao Sales Corporation v. Roger Mole ("Northern Mindanao case") for sum of money, the court issued the writ of execution on 19 July 2002 and assigned the writ to respondent sheriff. On 14 February 2003, complainant judge received a motion^[1] requiring respondent sheriff to explain why he should not be cited for indirect contempt for his failure to implement the writ and for failure to file the monthly sheriff's report.

Subsequently, the court learned that the judgment debtor had already paid P3,000 to respondent sheriff, as evidenced by hand-written receipts issued by respondent sheriff.^[2] But respondent sheriff did not turn over said amount to the plaintiff. Complainant judge issued an order^[3] dated 28 February 2003, citing respondent sheriff for contempt and recommending his suspension and dismissal for gross neglect of duty and dishonesty. Complainant judge also ordered respondent sheriff to immediately turn over the amount to plaintiff.

2. In Civil Case No. C-Jun-405 entitled Anflo Motor Corporation v. Spouses Rogelio and Cecille Bucais ("Anflo Motor's case") for collection, the court issued the writ of execution on 22 December 2000. On 11 February 2003, plaintiff's counsel wrote a letter^[4] to respondent sheriff because the writ had remained unsatisfied. Complainant judge issued a memorandum^[5] directing respondent sheriff to immediately enforce the writ and to explain within 72 hours why no

administrative disciplinary action should be taken against him.

3. In Criminal Case Nos. M-337 and M-338, entitled *People v. Balbino Privaldos* ("Privaldos case") for violation of Batas Pambansa No. 22, the court issued the writ of execution on September 2001. On February 2003, private respondent's counsel manifested^[6] that the judgment had remained unsatisfied, with respondent sheriff filing only one report dated 3 September 2002.

The Office of the Court Administrator (OCA) in its 1st Indorsement dated 31 March 2003 required respondent sheriff to comment on the letter-complaint.

In his comment dated 30 May 2003, respondent sheriff admitted that 416 writs were assigned to him but denied that he had only made returns for 187 writs. He alleged that he had already implemented some of the writs and had submitted them to the court. He surmised that they were not attached to the records of the case, for which he is not responsible, not being the person in charge of record keeping.^[7] He also stated that some of the writs issued were to be implemented outside of his jurisdiction.^[8]

On the cases cited by complainant judge, respondent sheriff offered the following explanations:

1. On the Northern Mindanao case, respondent sheriff stated that he had the "right to receive partial or full payment" after serving the writ.^[9]
2. On the Anflo Motor's case and in reply to complainant judge's memorandum, respondent sheriff claimed that he had already taken action. However, the auction sale was postponed because plaintiff failed to submit his initial bid.^[10]
3. On the Privaldos case, respondent sheriff admitted that the writ was not implemented because the accused had no real or personal property in his name and the accused no longer resides at his given address.^[11]

The OCA referred the matter to Judge Edgardo T. Lloren ("Judge Lloren"), Executive Judge, Regional Trial Court, Cagayan de Oro City, for investigation, report and recommendation.

In his 2nd Indorsement dated 6 June 2003, Judge Lloren reported that he conducted an investigation on 30 May 2003. Complainant judge presented her evidence *ex-parte* because respondent sheriff failed to appear despite proper notice.^[12] Judge Lloren recommended the filing of administrative and criminal charges against respondent sheriff. He stated in his 2nd Indorsement that:

First allegation: Sheriff Zaldivar has so many unserved writs of executions and no returns were made. Perusal to Zaldivar's answer letter dated February 12, 2003, he admitted that 416 writs were issued, but he was able to make only 187 returns, because they were issued outside his territorial jurisdiction. However, he was not able to make clear statements about the specific case number[s] and the places to be served.

Second allegation: That Sheriff Zaldivar had served some of the writs but failed to turnover [sic] the proceeds to the judgment creditors, failed to undertake proper returns of the writs and made false returns.

(1) In the case of People vs. Galaritta under Criminal Case No. 97-01-167 to 97-01-175, Sheriff Zaldivar made a return on October 3, 2002, wherein he stated that the accused was out of the [c]ountry, therefore, [the] writ was unsatisfied (*Annex "A", report*). However, when an alias writ was served by another sheriff (Drefus G. Acenas), it was shown that subject amount was already received earlier by Sheriff Zaldivar (*Annex "B", report*) and shown in the receipts signed by Zaldivar, dated June 18, 2001 in the amount of P20,000.00 (*Annex "B-1", report*); another receipt in the amount of P20,000.00 (*Annex "B-2", report*); another receipt dated June 26, 2002 in the amount of P20,000.00 (*Annex "B-3", report*); and another receipt dated November 19, 2002 in the amount of P13,331.00 (*Annex "B-4", report*).

(2) In the case of Tri-Star Paints Center, et [al.] vs. Porferio Borromeo, Jr., Civil Case No. 99-AUG-627, a [m]otion by [p]laintiff's counsel praying for disciplinary action against Sheriff Zaldivar for failure to turn over [to] the plaintiff the amount collected from the defendant (*Annexes "C", "C-1", "C-2", report*) as shown in the receipts (*Annexes "D", "D-1", "D-2" and "D-3", report*) in the total amount of P48,000.00.

(3) In the case of Virgo Appliance Corp. vs. Judith Jaurique, Civil Case No. C1-APR-266, an [e]x-parte [m]otion was filed by [p]laintiff's counsel, praying for [a] possible administrative charge against Sheriff Zaldivar for his failure to account and turn over to the plaintiff the sum of P2,500.00 that he collected from the defendant (*Annexes "E", "E-1", and "E-2", report*).

(4) In the case of Northern Mindanao Sales Corp. vs. Rober[t] Mole, Civil Case No. C-DEC-1135, it was shown that Sheriff Zaldivar received the amount of P3,000.00 from defendant Mole but he again failed to turn over the proceeds to the plaintiff (*Annexes "F" and "F-1", report*).

(5) On May 20, 2003, Eduardo D. Adviento, Branch Manager of Philacor Credit Corporation, wrote a letter to Judge Algodon, (*Annex "G"*) wherein [the] former received a Notice of Auction Sale involving one unit refrigerator that was recovered from its creditor in Civil Case No. 99 June 501, however, on the date of the auction sale on April 30, 2003, Sheriff Zaldivar did not appear and the subject unit could not be located.

x x x x

Recommendations: With respect to allegations number one and two, necessary administrative and criminal proceedings should be instituted

since the evidence against Sheriff Zaldivar are documented and he failed to present contrary evidence to that effect.^[13]

In its Report dated 15 April 2004 ("Report"), the OCA recommended that respondent sheriff be dismissed from the service with forfeiture of all benefits, except accrued leave credits, with prejudice to re-employment in the government or any of its agencies, including government-owned or controlled corporations. The OCA's Report reads:

In the first allegation, respondent should be held liable for gross misconduct for failure to make the returns of 229 writs issued by the court.

In the second allegation, respondent should be held liable for dishonesty and violation of the Revised Penal Code for misappropriating or converting to the prejudice of another, money, goods or any personal property received by the offender in trust or on commission or for administration, or under any obligation involving the duty to make delivery of or to return the same x x x (Article 315(b), RPC).^[14]

As a preliminary matter, the Court notes that, except for the Northern Mindanao case, the cases discussed in Judge Lloren's report and, subsequently, in the OCA's report, were different from the cases mentioned in the letter-complaint. Four new cases were presented before Judge Lloren and the two other original cases were not pursued by complainant judge.

This is highly improper because it deprived respondent sheriff of his right to due process. The OCA's argument that respondent sheriff's failure to appear despite proper notice is tantamount to a waiver of his rights^[15] cannot be upheld. Respondent sheriff may have chosen not to appear during the investigation because he felt that he already satisfactorily answered the charges against him. Respondent sheriff was, therefore, not informed that there were new charges against him. Respondent sheriff was not given the opportunity to answer these new charges or to confront complainant judge on her new accusations or to present evidence in his favor. Therefore, the Court will only discuss the allegation that respondent sheriff failed to execute and make returns for 229 writs and the three cases mentioned in the letter-complaint. On the four other cases, the OCA should conduct further investigations to determine respondent sheriff's administrative liability.

One of the sheriff's principal functions is to serve or execute writs and processes addressed or assigned to him by the court. The sheriff is also tasked to prepare and submit returns of his proceedings.^[16]

In this case, respondent sheriff is charged with the failure to implement and file returns for 229 writs. Respondent sheriff denies this charge. Complainant judge, in her letter-complaint, stated that copies of the writs would be made available anytime upon proper investigation by the Court.^[17] However, the Court notes that complainant judge failed to present copies of the writs, nor was a list of these writs prepared and submitted in evidence during Judge Lloren's investigation.

In administrative proceedings, the complainant has the burden of proving, by