

SECOND DIVISION

[A.M. No. P-96-1185, June 26, 2000]

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS.
SHERIFF IV JULIUS G. CABE, REGIONAL TRIAL COURT, BRANCH
28, CATBALOGAN, SAMAR, RESPONDENT.**

RESOLUTION

DE LEON, JR., J.:

For resolution before the Court is an administrative complaint against Julius G. Cabe, Sheriff IV^[1] for neglect of duty and/or inefficiency and incompetence in the performance of his official duties. More specifically, he is charged with violation of Supreme Court Circular No. 2, dated May 13, 1983,^[2] for failing to turn over to the Constabulary Command the firearms under his custody until they were lost sometime in February 20 or 21, 1993.

The antecedent facts are:

On March 9, 1993, Judge Sibanah E. Usman, Presiding Judge of Branch 28 of the Regional Trial Court (RTC) of Catbalogan, Samar, wrote the Hon. Sinforiano A. Monsanto, Executive Judge of the RTC of Catbalogan, Samar, calling his attention to the destruction and forced opening of the steel safe in his (Judge Usman's) office by unidentified persons sometime in February 20 or 21, 1993. As a result, the following objects of evidence were declared lost:

1. Four (4) units of .38 caliber Revolver (Paltik), with serial numbers 196395; SN-A-100295 and SN-142483, respectively, and the other one with the defaced serial number;
2. Five (5) pieces of empty shells of M-16 Armalite Rifle.

The incident was discovered by one Rodolfo Ableza, the court interpreter and custodian of the lost items. Upon discovery of the incident, Ableza immediately reported the same to the police authorities of Catbalogan, Samar. Due to the incident, Judge Usman requested for the investigation of the following court personnel:

1. Rodolfo Ableza, Court Interpreter and Custodian of the steel safe, RTC, Branch 28, Catbalogan, Samar;
2. Benjamin Garcia, Court Aide I, RTC, Branch 28, who was in the office on February 20, 1993;
3. Vito Liad, Process Server, RTC, Branch 28, who also went to the office on Sunday, February 21, 1993;
4. Julius G. Cabe, Sheriff IV, Officer-in-Charge, RTC, Branch 28; and

5. Two (2) security guards in the person of Arturo Carcellar and Roberto Bongcaras, who were also seen by Mr. Liad inside the court room on Sunday afternoon.^[3]

Judge Sinforiano Monsanto wrote Court Administrator Ernani Cruz-Pano and informed him of the loss of the four (4) .38 caliber revolvers (paltik) and five (5) pieces of empty shells (M-16 Armalite Rifle). Judge Monsanto also stated in his letter that he was referring the matter to the National Bureau of Investigation (NBI), Tacloban City for investigation.^[4]

On August 16, 1993, Judge Usman submitted a report to the Hon. Reynaldo L. Suarez, Deputy Court Administrator, on the status of the cases where the evidence was used. He averred -

That the three (3) revolvers consisting of one (1) Cal. .38 S&W (paltik), SN 142483; one (1) Cal. .38 S&W Snubnose (paltik), SN 196395; and one (1) Cal. .38 (paltik) Apache SN A-100295 were used in People vs. Epifanio Marcha, Jr., (Crim. Case No. 3231) for Violation of Sec. 1, P.D. No. 1866. Said case was terminated on July 12, 1991, upon motion to quash which was granted on even date x x x .

That another revolver Cal. .38 (paltik) with defaced serial number was used in People vs. Eduardo Pahanunot, PNP, (Crim. Case No. 3490) for Violation of Section 1, P.D. No. 1866. Said case was dismissed on June 29, 1992 x x x .

That the five (5) pieces of empty shells of M-16 Armalite Rifle are still being used as evidence in People vs. Zacarias Merencillo, Jr., @ Jojo (Crim. Case No. 2975) for Murder. x x x .

It is likewise reported that the loss of all the afore-mentioned exhibits was only discovered on February 22, 1993, at about 9:30 and 10:00 o'clock in the morning at the RTC Branch 28, Catbalogan, Samar.

On December 9, 1993, Deputy Court Administrator Suarez wrote to Atty. Medino L. Acuba, then Clerk of Court, RTC Branch 28, Catbalogan, Samar, and directed him to explain within seventy-two (72) hours (i) why he failed and/or refused to turn over the four (4) caliber .38 revolvers (paltik) to the PC Provincial Commander of Samar after termination of the cases pursuant to Supreme Court Administrative Circular No. 2; and (ii) why there was no report of the loss of the five (5) pieces of empty shells of the M-16 Armalite Rifle to the PC Provincial Commander of Samar.

Atty. Acuba in response, then wrote the Deputy Court Administrator to inform him that he only assumed office as Branch Clerk of Court on July 12, 1993 so that he cannot be held accountable for the loss of the firearms because the loss occurred long before his assumption of office, and that the firearms were not turned over to him by his predecessors, namely, (a) Atty. Ma. Lourdes Amascual-Hilvano, Clerk of Court VI, Regional Trial Court, Basey, Samar, and (b) Julius G. Cabe, Deputy Sheriff IV and then Officer-in-Charge (OIC) of the Office of the Clerk of Court, Branch 28 of the RTC of Catbalogan, Samar. In a letter dated June 29, 1994, Hon. Bernardo Abesamis, Deputy Court Administrator, wrote to Atty. Amascual- Hilvano directing

her to explain the reason for her failure to turn over the four (4) caliber .38 revolvers (paltik) to the PC Provincial Commander and the loss of the five (5) pieces of empty shells of M-16 Armalite Rifle to the PC Provincial Command^[5] of Samar.

In response thereto, Atty. Amascual-Hilvano wrote a letter dated July 20, 1994 to Deputy Court Administrator Abesamis wherein she stated that she did not have a copy of the SC Administrative Circular No. 2, but the same notwithstanding, she averred that the records of the cases she handled, more particularly Criminal Case No. 3490, shows that none of the revolvers were ever turned over to her during her incumbency as Branch Clerk of Court. In Criminal Case No. 3231, Atty. Amascual-Hilvano averred that the revolvers were not turned over to her by the evidence custodian during her incumbency as Branch Clerk of Court. She added that firearms and non-documentary exhibits were stored in a safe whose combination was known only to the court interpreter and the then Deputy Sheriff of that branch, and, that since no loss of firearms nor empty shells were ever reported to her while she was still assigned to Branch 28, there was no way she could report the same to the PC Command of Samar.

On August 23, 1994, Deputy Court Administrator Abesamis requested Judge Monsanto to furnish him with a copy of the NBI report on the matter. In his Reply, Judge Monsanto informed the Deputy Court Administrator that they have not yet received the NBI report but would immediately forward the same upon their receipt thereof. He also stated therein that they were conducting their own discreet investigation of the case but have not come across any conclusive evidence as to the identity of the culprit/s.^[6]

On October 20, 1994, this Court issued a Resolution directing: (1) Executive Judge Sinforiano A. Monsanto to conduct a formal inquiry on the matter of the lost firearms to the Constabulary Command in violation of Circular No. 2 dated May 13, 1983 and to make his report and recommendation within thirty (30) days from notice; and (2) the NBI, Tacloban City, to immediately furnish the Court with a copy of its report on the investigation conducted.^[7]

In compliance with the said resolution, the NBI wrote a letter to the Clerk of Court^[8] and informed the latter that the case was still pending in the absence of any leads and that all employees of the Branch have denied any involvement in the loss of the firearms and shells. They further stated that members of the Philippine National Police (PNP) who immediately responded and went to the crime scene, failed to lift latent prints which were vital to the investigation, and that the NBI was continuing its investigation in the hope of finding new leads for the early resolution of the case. Lastly, the NBI opined that the case was a simple robbery with the motive of gain because all other items taken from the safe were exhibits in cases that had either been terminated/dismissed or archived, and therefore have no more evidentiary value insofar as the court was concerned. In the case of the empty shells, the same were already offered in evidence and presently, the suspect in the pertinent criminal case was considered "at large."

On January 9, 1995, Judge Monsanto submitted his report and recommendation, the dispositive portion of which reads:

In view of all the foregoing, it is the conclusion of your Investigator that Mr. Julius G. Cabe, Sheriff IV of the RTC Branch 28, Catbalogan, Samar, is the employee who is answerable to the failure to turn over to the Constabulary Command the lost firearm involved in Criminal Case No. 3490 ("People vs. Eduardo S. Pahanunot" for Violation of Section 1, P.D. 1966), in violation of Circular No. 2, dated May 13, 1983.

It is therefore hereby recommended that Mr. Cabe be proceeded against administratively for neglect of duty and/or inefficiency and incompetence in the performance of official duties.

As stated earlier, it is submitted that with respect to the firearms involved in Crim. Case No. 3231, there has been no violation of the abovementioned Circular No. 2.^[9]

Based on the foregoing findings, the Court issued a Resolution on June 19, 1995 directing the Office of the Court Administrator to file an administrative case against Julius Cabe for neglect of duty and/or inefficiency or incompetence in the performance of official duties.^[10]

In his Comment dated June 7, 1996,^[11] respondent Julius Cabe contends that the investigation conducted by Judge Monsanto was farcical and that the same was conducted without due process. It is respondent's contention that Criminal Case No. 3490 was dismissed and terminated on June 29, 1992 by virtue of a court order issued by Judge Sibanah E. Usman, and that was during the incumbency of Carlos Daiz who was then OIC of the Office of the Clerk of Court of Branch 28 of the RTC of Catbalogan, Samar from June 26, 1992 to July 8, 1992. Respondent did not conduct any inquiry on the matter because of his "honest and sincere assumption" that Carlos Daiz made an effort in turning over the firearm involved in Criminal Case No. 3490 to the Constabulary Command immediately after the termination of the case as required in Supreme Court Circular No. 2.

In A Resolution dated February 10, 1998, this Court directed Executive Judge Sinforiano A. Monsanto to conduct another formal inquiry involving respondent Julius G. Cabe and Carlos Daiz. In compliance therewith, Judge Monsanto conducted another inquiry and thereafter, he submitted his report and recommendation dated April 24, 1998, which reads in part as follows:

Considering that we have already conducted a previous inquiry on these lost firearms, our present inquiry has centered on getting the side and explanations of Sheriff Cabe and Mr. Daiz, and as to who, as between them, is answerable for violation of Circular No. 2.

Circular No. 2 does not exactly state within what period after the case's termination the firearm-exhibit shall be turned over to the nearest Constabulary Command. All we can say therefore is that the firearm-exhibit should be so turned over within a reasonable period after the case is terminated. The Clerk of Court is not necessarily required to effect the turn-over immediately after the case's termination. He must however make the turn-over within a reasonable period after the case is terminated. Otherwise stated, the Clerk of Court only violates the circular when he unreasonably delays the turn-over of the firearm to the

Constabulary Command.

Criminal Case No. 3490 was dismissed and terminated by virtue of a court order dated June 29, 1992 issued by Judge Sibanah E. Usman. As we stated in our previous report, there is no evidence as to the exact date the said order, which was not dictated in open court, was actually received from Judge Usman by the OIC of the Office of the Branch Clerk of Court or for that matter, by any member of the court's staff. Records in the hands of the Court Interpreter of RTC Branch 28 during the previous investigation showed that Judge Usman was not in town on June 29, 1992 and the several days that followed. The probability, therefore, is that the signed order was given to the court's staff by the judge days after June 29, 1992. The record of the case however shows that copies of the order of June 29, 1992 were furnished the accused and the Office of the Provincial Prosecutor of Samar only on July 8, 1992.

Mr. Carlos Daiz was the OIC of the Branch Clerk of Court of RTC Branch 28 only from June 16, 1992 to July 8, 1992.

Mr. Daiz says that the court order of June 29, 1992 did not pass through him and that, in accordance with the practice in their office at the time, the said order was directly handed from the Judge to the clerk who was in charge of criminal cases.

Considering the above circumstances, and especially the fact that the parties were furnished with copies of the court order which terminated the case only on July 8, 1992 - the very last day of Mr. Daiz's tenure in office as Branch Clerk of Court OIC - this Investigator believes that Mr. Carlos Daiz was not guilty of any delay in the turn-over of the firearm in question to the Constabulary Command.

Reason and good office practice dictate that in the situation before us, the more appropriate time for the turn-over of the firearm was already after and not before the parties had been notified of the case's dismissal.

On the other hand, Mr. Cabe was the OIC of the Clerk of Court RTC Branch 28 from July 9, 1992 continuously up to and even for sometime after the discovery of the loss of the firearm on or about February 22, 1993.

According to Mr. Cabe, he was not aware that there were firearms among exhibits as nobody informed him about that fact.

Mr. Cabe's claim of ignorance of the existence of the firearms among the exhibits is hard to believe; but even if this was really true, this Investigator does not believe this is a valid excuse for Mr. Cabe's failure to comply with Circular No. 2.

The period from July 9, 1992 when Mr. Cabe started his tenure as OIC of the Office of the Branch Clerk of Court up to the loss of the firearm on or about February 20 or 21, 1993 is more than seven (7) months. Especially considering the testimony of Mr. Rodolfo Ableza, a retired employee of