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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.M. No. 690-CFI. June 29, 1979]

BENITO B. NATE, *complainant, vs.* **HON. ENRIQUE A. AGANA, SR., ETC., ET AL.,** *respondents.*

SYLLABUS

1. **LEGAL AND JUDICIAL ETHICS; JUDGES; GRAVE MISCONDUCT; A JUDGE IS GUILTY THEREOF FOR USING WITH INTENT TO ACQUIRE A CAR LEVIED IN EXECUTION.**— It is believed that respondent Judge Agana is guilty of misconduct, having used for sometime the car of Herino Concepcion, knowing that it had been levied upon in execution, sold at an auction sale by then Deputy Sheriff Nate and bought by Herino Concepcion, respondent Judge with intent to own the car by offering to buy it even for ₱6,000.00. Article 1491 of the Civil Code of the Philippines specifically provides that judges, among others, cannot acquire by purchase, either in person or through the mediation of another, the property in litigation or levied upon in execution within the jurisdiction or territory where they exercise their functions. x x x In the case of respondent Judge Agana, his act of using with intent to acquire a car, knowing that it had been levied upon in execution, transcended the bounds of propriety and, therefore, reproachful. Although, respondent Judge Agana did not actually buy the Renault car, because Herino Concepcion refused to sell it to him, his act of using the car, with intent to acquire it by purchase, is no less improper and censurable.

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2. ADMINISTRATIVE LAW; COURT PERSONNEL; A DEPUTY CLERK OF COURT IS GUILTY OF GRAVE MISCONDUCT IF HE COOPERATED WITH THE RESPONDENT JUDGE IN THE LATTER'S ATTEMPT TO ACQUIRE A CAR ILLEGALLY.— Respondent Deputy Clerk of Court Ubana knowingly cooperated with respondent Judge Agana in the latter's attempt to acquire the car illegally."

TEEHANKEE, *J.*, *separate opinion:*

LEGAL AND JUDICIAL ETHICS; JUDGES; GRAVE ABUSE OF AUTHORITY AND COERCION; A JUDGE WHO USED AND ATTEMPTED TO ACQUIRE A CAR LEVIED IN EXECUTION SHOULD BE HELD GUILTY THEREOF AND SHOULD HAVE BEEN SUSPENDED FOR SIX MONTHS.— I view such penalty as quite lenient and a suspension of six months duration would be more commensurate with the offense, considering the great responsibility and trust vested in respondent by virtue of his office.

MELENCIO-HERRERA, *J.*, *separate opinion:*

1. LEGAL AND JUDICIAL ETHICS; JUDGES; "CENSURE AND ADMONITION" IS TOO LIGHT A SANCTION FOR GRAVE MISCONDUCT OF A JUDGE.— "Censure and admonition to be more circumspect in behavior" is too light a sanction for the misconduct of respondent Judge.

2. ID.; ID.; THE COURT SHOULD RE-STUDY ITS POLICY OF LENIENCY IN CASES OF JUDICIAL MISBEHAVIOR; REASON THEREFOR.— To serve as an effective deterrent, and to strengthen public faith, the Court should re-study its policy of leniency in cases of judicial misbehavior, specially in cases of palpable infraction of statutory and ethical standards.

D E C I S I O N

ABAD SANTOS, *J.*:

This is an administrative case for misconduct, grave abuse of authority and grave coercion filed by Benito B. Nate, a deputy sheriff of the Court of First Instance of Rizal, Pasay City Branch.

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against District Judge Enrique A. Agana, Sr., Court of First Instance of Rizal, Branch XXVIII, Pasay City, and Atty. Herminio T. Ubana, deputy clerk of the same Court.

By resolution of this Court dated November 15, 1974, the case was referred to Associate Justice Magno S. Gatmaitan of the Court of Appeals for investigation, report and recommendation. In his report dated January 29, 1975, Justice Gatmaitan made the following recommendation:

"IN VIEW WHEREOF, Investigator respectfully recommends complete exoneration of both respondents; x x x."

For reasons which need not be stated here, this Court resolved:

"to return the records to the Honorable Justice Gatmaitan for reinvestigation, and subsequent submission to the Court of his report and recommendation based on such re-investigation."

In response thereto Justice Gatmaitan asked that he be replaced by another investigator. His request was granted and Associate Justice Ricardo C. Puno was designated in his place. Owing to Justice Puno's designation as Judicial Consultant in the Supreme Court, he was replaced by Associate Justice Luis B. Reyes of the Court of Appeals who conducted a full reinvestigation of the case.

The report of Associate Justice Luis B. Reyes insofar as relevant reads as follows:

"This case (Adm. Matter No. P-690-CFI) stemmed from the letter-complaint of Herino Concepcion, addressed to the Secretary of National Defense, dated September 21, 1973, charging respondents Judge Enrique A. Agana, Sr., Deputy Clerk of Court Herminio Ubana and then Deputy Sheriff (now complainant) Benito B. Nate, with violation of Sec. 3, par. (h), of Republic Act 3019, otherwise known as Anti-Graft and Corrupt Practices Act.

From the letter-complaint, it appears that pursuant to the order of respondent Judge Agana, dated July 30, 1973, and the writ of execution issued in Civil Case No. 2778-P, Court of First Instance of Rizal, Branch XXVIII-Pasay City, then Deputy Sheriff Nate levied on a Renault car which Herino Concepcion bought on September 4, 1973, for ₱5,000.00 at the auction sale conducted by Deputy Sheriff Nate.

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After paying the ₱5,000.00 which was delivered by Deputy Sheriff Nate to Atty. Juan G. Atencia, counsel for the judgment creditor, Herino Concepcion received the Renault car and a certificate of sheriff's sale from Deputy Sheriff Nate. After he had delivered the car to Herino Concepcion, Deputy Sheriff Nate borrowed it to be used by him for a while. According to Herino Concepcion, "although I was taken aback by his unusual action, I could not in good grace refuse him, but I told him to return the car to me the following day." Deputy Sheriff Nate who used the car failed to return it to Herino Concepcion on September 5, 1973. When Herino Concepcion called him by telephone the next day and told him that he needed the car, Deputy Sheriff Nate promised to return it in the afternoon on that day, but he failed to do so.

On September 7, 1973, when Herino Concepcion personally contacted Deputy Sheriff Nate at the Pasay City Hall to get the car, the latter told him that Judge Agana borrowed the car that day.

On September 10, 1973, Atty. Juan G. Atencia informed Herino Concepcion that in a telephone conversation he had with Judge Agana, the latter told him that he (Judge Agana) was using the car and wanted to pay therefor even ₱6,000.00. Later, Herino Concepcion told Deputy Sheriff Nate to get the car from the judge, since he was the one who lent the car without his knowledge or consent.

Late on the evening of September 18, 1973, Herino Concepcion received a telephone call from Deputy Sheriff Nate, informing him that he was instructed by Deputy Clerk of Court Herminio Ubana to tell him (Concepcion) to agree to sell the car to Judge Agana; otherwise, he (Ubana) would see to it that the certificate of sheriff's sale in his (Concepcion) favor would be annulled.

On December 27, 1973, then Deputy Sheriff Nate filed a sworn letter-complaint with the Department of National Defense, charging respondents Judge Agana and Deputy Clerk of Court Ubana with misconduct, grave abuse of authority and grave coercion, alleging that on October 1, 1973, in connection with the complaint of Herino Concepcion, he was summoned by the Prosecution Staff, Military Tribunals, and then and there he executed an affidavit admitting and confirming the contents of the letter-complaint of Herino Concepcion, and stating that he could not return the car to him, because since the morning of September 5, 1973, respondent Judge Agana was using the car with intention to own it by paying ₱5,000.00 for it; that respondent Deputy Clerk of Court Ubana became angry with him when he did not succeed in carrying out his instruction to convince

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Concepcion to sell his car to Judge Agana, and told him that the certificate of sheriff's sale in favor of Concepcion "had to be annulled"; that on September 19, 1973, respondent Judge Agana instructed Deputy Clerk of Court Ubana and him (Nate) to get in touch with Atty. Benitez, counsel for plaintiff, and Atty. Tejada, counsel for defendants, in Civil Case No. 2778-P and to tell them to oppose the motion for satisfaction of judgment and to question the sale of the car to Concepcion; that Atty. Benitez having filed his opposition to the motion for satisfaction of judgment and questioned the sale of the car to Concepcion; respondent Judge Agana issued an order for the Deputy Clerk of Court to take custody of the car; and that even after he had issued the order, respondent Judge Agana continued to use the car.

According to complainant Nate, respondent Ubana prepared an affidavit for his signature but when he refused to sign it, respondent Judge Agana intervene in Ubana's behalf. The reason why he refused to sign the affidavit, so complainant Nate claimed, is that it contained a statement that the car was in his possession since September 5, 1973, up to the date of the prepared affidavit. Complainant Nate further stated in his sworn letter-complaint that because respondents Judge Agana and Deputy Clerk of Court failed to make him sign the prepared affidavit, they ordered him to resign from his office as Deputy Sheriff. Later, he was charged with the crime of infidelity in the custody of prisoner before the military authorities. After hearing, he was exonerated.

It appears that on November 23, 1973, Herino Concepcion executed an Affidavit of Withdrawal of Complaint, "in order to exculpate whatsoever from liability District Judge Enrique A. Agana, Sr. and Deputy Clerk of Court Herminio Ubana." The affidavit was admittedly prepared by respondent Deputy Clerk of Court Ubana.

At the outset of the re-investigation, attempts were made to secure the appearance of Herino Concepcion at the re-investigation so that he could testify on the real reason or reasons which induced him to withdraw the complaint he addressed to the Secretary of National Defense, dated September 21, 1973, against respondents, including complainant Benito B. Nate.

All efforts to contact Herino Concepcion produced negative results. His present whereabouts are unknown even to the complainant and his counsel who were requested to, but could not, locate his address.

Atty. Juan G. Atencia, the lawyer who prepared the letter-complaint of Herino Concepcion, was called to testify on the said letter-

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complaint. He confirmed the content of that letter-complaint to the effect that he had a telephone conversation with respondent Judge Agana on September 10, 1973, who then told him that he was using Concepcion's car and wanted to pay the latter even ₱6,000.00 for it. Atty. Atencia testified that in the morning of September 10, 1973, he called up the Deputy Sheriff (Nate) in the *sala* of respondent Judge Agana about the car which he borrowed from Concepcion and has not returned. According to Atty. Atencia, while he was talking with Deputy Sheriff through the telephone, the latter told him that respondent Judge Agana was there and he was giving the telephone to him; that assuming Judge Agana was at the other end of the line, he (Atty. Atencia) had a conversation with him who then told him (Atty. Atencia) that he would pay even ₱6,000.00 to Herino Concepcion if the latter would want to sell the car; that he conveyed the message to Concepcion in the afternoon of September 10, 1973, but the latter was reluctant to sell the car, as he needed it; that the last time he met Concepcion was when the latter told him that he was able to cash the check covering the refund of the amount of ₱5,000.00 which he paid for the car when he purchased it at the auction sale; that Concepcion never told him that the letter-complaint he filed in the Office of the Secretary of National Defense was the result of a misunderstanding as stated in his Affidavit of Withdrawal of Complaint; and that after receiving the refund of the amount he paid for the car, Concepcion lost interest in his complaint against respondents.

Atty. Atencia stated that he was not sure that he was talking with Judge Agana at the other end of the line, because he was not familiar with his voice. Complainant Nate, on the other hand, insisted that he (Atty. Atencia) was talking with respondent Judge Agana, because he was then beside the latter.

There are no pictures of respondent Judge Agana using the car. The picture of the car presented by the complainant (Exhibit "P-2") shows that his co-employee was inside, driving it. Complainant Nate said that his said co-employee was driving the car for respondent Judge Agana. Respondent Judge Agana declared that the man in the car resembled his messenger named Pablo, but he was never his driver. Neither respondents nor complainant presented that employee of the court to testify. Respondent Judge Agana claimed that he never saw the car and he never used it. According to him, he has three cars and has his own driver. But respondent Judge Agana did not present his driver to confirm his testimony that he never used the car.

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Lorenzo C. Sta. Ana, Clerk of Court and *ex-Oficio* Sheriff, Court of First Instance, Pasay City Branch, testified, confirming the statement of complainant Nate that he was transferred from the *sala* of respondent Judge Agana and detailed to another court, but denied that respondents or any one of them demanded complainant Nate's separation from the service. He, however, declared that one time Nate told him that he liked to have his office near his room, as he had a case in the *sala* of respondent Judge Agana, and he was "being persecuted"; and that Nate told him once again that respondents "harassed or persecuted him."

Sta. Ana testified also that respondent Deputy Clerk of Court Herminio Ubana handed to him a folder containing documents against Nate for proper administrative action; that before he could take any action, Ubana went back to his office and retrieved the folder with the documents. The reason for taking it back, according to respondent Ubana, being that there had been a pending investigation of a criminal case against Nate and they did not want it to appear that he was being persecuted.

William Villaluz Paraz, Bailiff in the *sala* of respondent Judge Agana, refused to confirm the statements attributed to him, as quoted in paragraph II, sub-paragraph 3, of the Resolution, dated July 30, 1975.

Atty. Castillo Reyno testified that sometime in the middle of September, 1973, he had a case assigned in the *sala* of respondent Judge Agana, entitled "*Cadavillo vs. Arellano and PHHC,*" and, as the service of summons was quite delayed, their clerk-messenger Bernardo Basco was sent to find out from Deputy Clerk of Court the cause of the delay. Basco later reported that an employee named Alice in the Office of the Deputy Clerk of Court was charging ₱40.00 for the service of the summons. Atty. Reyno's secretary, Escolastica R. Sison, upon being informed by Basco, went to the office of the Deputy Clerk of Court and there confronted employee Alice why she was asking ₱40.00 for the service of the summons to the PHHC when it is just a stone-throw from the Quezon City Hall where the office of the Deputy Clerk of Court is located. Employee Alice told Escolastica R. Sison that it was Deputy Sheriff Nate who was charging the amount of ₱40.00. When the matter was reported to him, Atty. Castillo Reyno went to the office of respondent Judge Agana and informed him of the reported act of mulcting by Deputy Sheriff Nate. Respondent Judge Agana having advised Atty. Reyno to put his complaint in writing, the latter wrote a letter, dated November 19, 1973, and, with enclosed sworn statements of B.T. Basco, Jr., and E.R. Sison, sent

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it to respondent Judge Agana who must have received it on the same day.

Atty. Castillo Reyno was emphatic in saying that he made the complaint against Deputy Sheriff Nate at his own initiative, and as a member of the bar he had to complain the way he did.

Atty. Salvador Paras testified that on October 16, 1973, he was in the chambers of respondent Judge Agana with several other people when Deputy Clerk of Court Ubana came in with Deputy Sheriff Nate, saying: "*Ito po si Nate. Siya na lang daw ang gagawa ng kanyang affidavit.*" Judge Agana asked Nate whether he knew how to make one and, when Nate answered in the affirmative, Judge Agana advised him to state only the truth. Further testifying, Atty. Paras declared that after Nate had left he asked Judge Agana to confirm what their messenger related to him (Atty. Paras), that is, that he (respondent Judge Agana) was asking ₱400.00 from him through Nate. Respondent Judge Agana denied having asked for any amount of money from any one, and requested Atty. Paras to tell his messenger to execute an affidavit. The messenger was not able to execute any affidavit as he died the same month.

According to respondent Judge Agana, complainant Nate admitted to him later that he asked for ₱400.00 from the office of Atty. Paras, but he denied having used his name.

Respondent Judge Agana declared that he was not aware, and complainant Nate did not even give him any hint, that he executed an affidavit before the JAGO on October 1, 1973. The declaration of respondent Judge Agana is confirmed by complainant Nate himself when he testified on cross-examination during the hearing on January 6, 1975, that neither of the respondents knew of the affidavit he executed on October 1, 1973. Respondent Deputy Clerk Ubana also declared that as late as October 16, 1973, he did not know that complainant Nate had executed the affidavit before the JAGO.

When complainant Nate cross-examined respondent Judge Agana (the former was not assisted by counsel then), the latter testified:

"Q Mr. Respondent, what prompted you to endorse the confidential memorandum of respondent Deputy Clerk?

"A When I received reports about anomalies being committed in my office, these reports if you remember very well, I called your attention, I asked you the truth if you demanded that amount of ₱400.00 from the client of Atty. Paras using my name and you answered 'I did not use your name.' And I

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told you, 'but did you ask for the ₱400.?' and you said 'yes.' I asked you again: 'Is it true that you got ₱860.00 to serve notices for summons and garnishments?' You did not deny these charges. Then I asked you again about a certain Mr. Imperial that you ask from him ₱300. to levy a car, again you did not deny. Again I asked you about a report demanding ₱400. to serve a summons and Mrs. Balbuena was even included in this charge and whom I also asked to resign, you did not deny. I asked you to submit a resignation within 2 days, otherwise, I will take the necessary action.

Investigator:

When did this happen Judge?

Judge Agana:

A day before November 16, Your Honor. The day I endorsed the confidential information, at that time this confidential information was not written."

(T.s.n., pp. 65-67 hearing on January 7, 1975)

Respondents were not able to include the other questionable activities of complainant Nate in the confidential memorandum, dated November 16, 1973, because while the affiants, through their counsel Atty. L. Castillo Reyno, had already expressed their complaints against Nate verbally, Atty. Reyno endorsed their affidavits in his letter to respondent Judge only on November 19, 1973. The position of respondents is that having received the affidavits only on November 19, 1973, it was impossible for respondent Deputy Clerk Ubana to have made reference thereto and to include them in his confidential memorandum to respondent Judge on November 19, 1973; and it was likewise impossible for respondent Judge to have made reference to them in his first indorsement to the commanding officer of the UIOG also on the same date, November 16, 1973.

Respondents denied that they engaged in a sort of "fishing expedition" against complainant Nate, and claimed that they merely "endorsed the anomalies he committed to the authorities for proper action."

Respondents contended that the confidential memorandum on complainant Nate's infidelity in the custody of prisoner had to be lodged with the commanding officer of the UIOG, and not to be filed

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with the Supreme Court, because when the crime of infidelity in the custody of prisoner is committed by a public officer, the Military Tribunals shall try and decide the same, exclusive of the civil courts, citing General Order No. 12, dated September 30, 1972.

Respondents denied having demanded the outright resignation and/or separation of complainant Nate from the service, contending that they were merely trying to accommodate his request to be pardoned for his anomalies and to afford him a graceful exit. When complainant Nate cross-examined respondent Judge Agana, the latter testified, as follows:

"Q Is it right for you to order complainant to resign?

"A Yes, specially when you, yourself admit that you have committed those irregularities, sometimes using my name.

"Q Do you know the provisions of the Civil Service Law, that an employee may be removed for cause?

"A Precisely, I am giving you a graceful exit. It was more of a consideration, you are a law student and I don't want you to have black record. You were asking me for a chance, you were given that chance when I asked you to resign."

(T.s.n. pp. 67-68 hearing on January 7, 1975)

From the evidence submitted by the complainant and that for respondents, the undersigned finds no sufficient basis for the complaint charging them with grave abuse of authority and grave coercion.

What complainant has considered as grave abuse of authority or grave coercion on the part of respondents is their having told him to resign. But in the face of the evidence of his mulcting activities hereinbefore narrated, a demand for his resignation is not unjustified, since he admitted some of them, asking that "he be given a chance," and respondent Judge Agana simply wanted to give him "a graceful exit."

However, it is believed that respondent Judge Agana is guilty of misconduct, having used for sometime the car of Herino Concepcion, knowing that it had been levied upon in execution, sold at an auction sale by then Deputy Sheriff Nate and bought by Herino Concepcion, respondent Judge with intent to own the car by offering to buy it

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even for ₱6,000.00. Article 1491 of the Civil Code of the Philippines specifically provides that judges, among others, cannot acquire by purchase, either in person or through the mediation of another, the property in litigation or levied upon in execution within the jurisdiction or territory where they exercise their functions. x x x

In the case of respondent Judge Agana, his act of using with intent to acquire a car, knowing that it had been levied upon in execution, transcended the bounds of propriety and, therefore, reproachful. Although, respondent Judge Agana did not actually buy the Renault car, because Herino Concepcion refused to sell it to him, his act of using the car, with intent to acquire it by purchase, is no less improper and censurable. The fact that the car had already been acquired by Herino Concepcion at the sheriff's sale when he used and offered to buy it is of no moment. It was still subject to the exercise of his functions as Judge, as shown by the fact that, at that time, the sale of the car to Concepcion was questioned before his court and respondent Judge Agana would have determined the legality of the sale had not the case been amicably settled.

Respondent Deputy Clerk of Court Ubana knowingly cooperated with respondent Judge Agana in the latter's attempt to acquire the car illegally."

The findings of Associate Justice Luis B. Reyes are amply supported by the evidence.

WHEREFORE, we find the respondents namely, Judge Enrique A. Agana, Sr. and Deputy Clerk of Court Herminio T. Ubana guilty of misconduct. However, no serious pecuniary damage appears to have been suffered by Herino Concepcion who even withdrew his complaint. Under the circumstances, the penalty of censure appears to be adequate and the respondents are hereby censured and admonished to be more circumspect in their behaviour.

Let this decision be entered in the personal files of the respondents.

SO ORDERED.

Fernando, Acting Chief Justice, Antonio, Aquino, Barredo, Santos, Fernandez, Guerrero, and *De Castro, JJ.*, concur.

Concepcion Jr., J., took no part.

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Teehankee, J., votes in a separate opinion for the imposition of at least 3 months suspension with warning that any future violations will be drastically dealt with.

Makasiar, J., considering that respondent abused his official authority and tried to coerce the complainant into selling his car to him, the penalty should be three (3) months suspension.

Melencio-Herrera. J., filed a separate opinion.

TEEHANKEE, *J.*, *separate opinion*:

Considering the serious acts of grave abuse of authority and coercion committed by respondent judge, I vote with Justice Makasiar for the imposition of a penalty of at least three months' suspension from office. I view such penalty as quite lenient and a suspension of six months duration would be more commensurate with the offense, considering the great responsibility and trust vested in respondent by virtue of his office. In any case, respondent should further be served with a warning that the commission by him in the future of the same or other violations of law will be more drastically dealt with.

MELENCIO HERRERA, *J.*, *separate opinion*:

After going over the mentioned circumstances of this case, it strikes me that "censure and admonition to be more circumspect in behavior" is too light a sanction for the misconduct of respondent Judge.

It is quite clear that respondent Judge not only used a car which had been levied upon on execution within his territorial jurisdiction but also tried to purchase the car from the buyer thereof in the auction sale, with a threat, through respondent Deputy Clerk of Court, to have said buyer lose the right to retain the car if he did not comply with the suggestion or demand of respondent Judge. This is in direct contravention of Article 1410 of the Civil Code and runs counter to Secs. 3 and 22 of the Canons of Judicial Ethics.

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On the basis of facts accepted by the Court, I believe, that in order to keep inviolate the image of the Bench, to serve as an effective deterrent, and to strengthen public faith, the Court should re-study its policy of leniency in cases of judicial misbehaviour, specially in cases of palpable infraction of statutory and ethical standards, and in respect of respondent Judge impose, at the very least, suspension from office of three (3) months.

FIRST DIVISION

[A.M. No. P-1622. June 29, 1979]

LEONARDA VDA. DE MALASARTE, *complainant, vs.* **DEPUTY SHERIFF LIBRADO Z. YEBES, COURT OF FIRST INSTANCE OF ZAMBOANGA DEL NORTE, DIPOLOG CITY,** *respondent.*

SYLLABUS

ADMINISTRATIVE LAW; COURT PERSONNEL; DEPUTY SHERIFF; FAILURE TO MAKE A RETURN OF THE WRIT OF EXECUTION WITHIN SIXTY DAYS AND DEMANDING MONEY FROM THE PREVAILING PARTY TO COVER EXPENSES INCIDENT TO SERVICE AND EXECUTION OF THE WRIT; SANCTION; CASE AT BAR.— Having again failed to make a return of the Writ of Execution within the maximum period of sixty (60) days prescribed by Sec. 11, Rule 39 of the Revised Rules of Court and for demanding the amount of Two Hundred Pesos (₱200.00) from the prevailing party to cover his expenses incident to serving and executing the writ of execution, an act which is in violation of existing regulation on the matter, the respondent Librado Yebes, Deputy Sheriff of the Court of First Instance of Zamboanga del Norte, Dipolog City, is hereby suspended for a period of one (1) month without pay commencing from the time his preventive suspension is lifted.