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THIRD DIVISION

[A.M. No. P-11-2944. July 27, 2011]
(Formerly OCA IPI No. 10-3342-P)

CAROL A. ABADIANO, CLEOFE ABADIANO-BONACHITA, RYAN M. ABADIANO and CHERRY MAE M. ABADIANO, *complainants, vs.* **GENEROSO B. REGALADO, Sheriff IV, Regional Trial Court, Branch 16, Cebu City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFFS; THOSE WHO WORK IN THE JUDICIARY MUST ADHERE TO HIGH ETHICAL STANDARDS TO PRESERVE THE COURT'S GOOD NAME AND STANDING; RATIONALE.— Time and again, this Court has pointed out the burden and responsibility that bound every officer and staff of the Judiciary by reason of their exalted positions as keepers of the public's faith in the courts. They should, therefore, avoid any impression of impropriety, misdeed or negligence in the performance of their official functions. Indeed, those who work in the judiciary must adhere to high ethical standards to preserve the courts' good name and standing. They should be examples of integrity, competence and efficiency, and they must discharge their duties with due care and utmost diligence for they are officers of the court and agents of the law. Any conduct, act or omission on the part of those who would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary shall not be countenanced.

2. ID.; ID.; ID.; ID.; MOONLIGHTING ACTIVITY CONSTITUTES AN ACT OF IMPROPRIETY; ELUCIDATED.— Sheriffs, in particular, being officers of the court and agents of the law, are exacted to use prudence, due care, and diligence in the discharge of their official duties. Where rights of individuals are jeopardized by their actions, sheriffs may be properly fined, suspended, or dismissed from office by virtue of this Court's administrative supervision over the judicial branch of the

government. In the earlier case of *Biyaheros Mart Livelihood Association, Inc. v. Cabusao, Jr.,* a sheriff was suspended for one month without pay for accepting a position in a private entity. It was explained in that case that: The act of the respondent in accepting the position of an administrator/ trustee of a private entity and for continuously holding the same for a considerable period of time, aside from being violative of the aforesaid circulars, can be properly called as moonlighting. While **moonlighting** is not normally considered as a serious misconduct, nonetheless, by the very nature of the position held by respondent, it obviously amounts to malfeasance in office. Respondent, in engaging in other irrelevant activities, failed to observe and maintain that degree of dedication to the duties and responsibilities required of him as a deputy sheriff. More recently, another sheriff was suspended for receiving "sheriff's fees" without the court's knowledge and approval, and for *moonlighting by collecting rentals* for a domestic company. Although moonlighting was merely considered as an aggravating circumstance in that case, the Court pointed out, nonetheless, that it was a malfeasance in office. Thus, in the case of *Garcia v. Alejo*, it was stated: x x x there is a prohibition for all officials and employees of the judiciary to engage directly in any private business, vocation or profession even outside office hours. Alejo's acts can be considered as **moonlighting,** which, though not normally considered as a serious misconduct, amounts to malfeasance in office.

3. **ID.; ID.; ID.; ID.; ID.;CONFLICT OF INTEREST PRESENT IN CASE AT BAR.—** In the present case, Regalado's moonlighting activity is inescapably linked to his work as a sheriff. It is connected or somehow related to the performance of his official functions and duties as a sheriff. He was, after all, in charge of implementing the writ of possession over the property contested by the Abadianos and Genosolango. Yet, a special power of attorney was also issued in his favor to act for and on behalf of Genosolango. Undoubtedly, there is a conflict of interest. Given its complicities, this moonlighting activity of Regalado definitely constitutes an act of impropriety.

4. **ID.; ID.; ID.; ID.; WHEN GUILTY OF MISCONDUCT; IMPOSABLE PENALTY.—** Withal, Regalado is guilty of misconduct in the discharge of his official functions punishable

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with suspension without pay for not less than one (1) month but not more than three (3) months, or a fine of not less than ten thousand pesos (₱10,000.00) but not exceeding twenty thousand pesos (₱20,000.00).

D E C I S I O N

MENDOZA, *J.*:

Subject of this disposition is the complaint of Carol A. Abadiano, Cleofe Abadiano-Bonachita, Ryan M. Abadiano, and Cherry Mae M. Abadiano *(complainants)* filed on February 4, 2010 before the Office of the Court Administrator[1] against respondent Generoso B. Regalado *(Regalado),* Sheriff-IV of the Regional Trial Court, Branch 16, Cebu City *(RTC-Branch 16),* for Grave Abuse of Authority, Oppression and Gross Misconduct.

The complainants are the legitimate heirs of the late spouses Pablo and Teodora Abadiano. In a decision rendered by the RTC, Branch 13, Cebu City *(RTC-Branch 13)*, they were judicially recognized as entitled to their respective shares in the properties of the deceased. When their late father was hospitalized, medical and hospital expenses were incurred which prompted their brother, Armando Abadiano *(Armando),* to file a motion before the Court seeking permission to dispose or encumber certain properties of their father for the said expenses. On December 1, 2004, the RTC-Branch 13 granted the motion with a caveat that the proceeds should be used strictly for the purpose of defraying the late Pablo Abadiano's medical and hospital expenses.[2]

Without informing his siblings and without leave from the Court, Armando obtained a loan that exceeded the amount of the subject expenses and offered one of their late father's properties as security. About eight months into the mortgage, the mortgagee, Alfredo Genosolango *(Genosolango),* initiated a Petition for Extra-Judicial Foreclosure with RTC-Branch 16.

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[1] *Rollo*, p. 1.

[2] *Id.*

To protect their interests, the complainants filed a complaint for Declaration of Nullity of Loan Agreement, Real Estate Mortgage, Damages, and Attorney's Fees *(annulment case)* before the RTC Branch 23.

On January 25, 2008, while the annulment case was pending, Regalado served a Writ of Possession on the complainants and placed Genosolango in actual possession of the mortgaged property previously owned by the late Pablo Abadiano. Complainants immediately filed their Verified Motion/ Petition to Cancel Writ of Possession but the same was eventually denied by the RTC-Branch 16.[3]

On October 10, 2009, Regalado went to the subject property and prevented the complainants from collecting rentals from its occupants. He then threatened them with estafa if they would insist on collecting rentals. Regalado even arrogantly told the complainants that they already lost the case and that a motion for reconsideration would surely be denied. When challenged, Regalado openly showed a Special Power of Attorney executed by Genosolango authorizing him to do so.[4] This was the basis for the subject complaint.

In his Comment, Regalado denied the allegations in the complaint and claimed that all the proceedings in the implementation of the Writ of Possession were in accordance with law. He was merely performing his duty when he installed the new owner of the subject property. He denied using the Special Power of Attorney which he called a "stray paper," since it was Genosolango's lawyer who received the rentals on behalf of his client. He claimed that he was simply misquoted when he informed the complainants that Genosolango's lawyer might file a case for estafa if they would continue to collect the rentals.[5]

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[3] *Id.* at 1-2.

[4] *Id.* at 3.

[5] *Id.* at 9-10.

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After due evaluation, the OCA made the following pronouncements:

> On the parties conflicting accounts regarding the respondent's act as Attorney-in-Fact of Mr. Genosolango of collecting the monthly rentals from the lessees and to facilitate the implementation and enforcement of the Writ of Possession issued by the Regional Trial Court, Branch 16, Cebu City in relation to Lot 12-D, we find the complainants' version more credible.
>
> Respondent's bare denial cannot overcome the clear and categorical assertion of the complainants that he allowed himself to be the Attorney-in-Fact of Mr. Genosolango. The Special Power of Attorney, duly executed by the latter in favor of respondent sheriff whose signature appears thereon, is the evidence that pinned down the respondent.
>
> Moreover, the agreement entered into by respondent sheriff with Mr. Genosolango is without the knowledge and consent of the court which does not bode well of the conduct of a judicial employee. Verily, the act of the respondent sheriff being assailed of constitutes Conflict of Interest."[6]

Based on the foregoing, the OCA recommended that Regalado be found guilty of Conduct Prejudicial to the Best Interest of the Service and be fined in the amount of ₱10,000.00 with stern warning that a repetition of the same would be dealt with more severely.[7] The Court is in unison with the evaluation of the OCA, but finds itself unable to adopt its conclusion as to the offense imputed against Regalado.

Time and again, this Court has pointed out the burden and responsibility that bound every officer and staff of the Judiciary by reason of their exalted positions as keepers of the public's faith in the courts. They should, therefore, avoid any impression of impropriety, misdeed or negligence in the performance of their official functions. Indeed, those who work in the judiciary must adhere to high ethical standards to preserve the courts' good name and standing. They should be examples of integrity,

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[6] *Id.* at 81.

[7] *Id.* at 82.

competence and efficiency, and they must discharge their duties with due care and utmost diligence for they are officers of the court and agents of the law. Any conduct, act or omission on the part of those who would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary shall not be countenanced.[8]

Sheriffs, in particular, being officers of the court and agents of the law, are exacted to use prudence, due care, and diligence in the discharge of their official duties. Where rights of individuals are jeopardized by their actions, sheriffs may be properly fined, suspended, or dismissed from office by virtue of this Court's administrative supervision over the judicial branch of the government.[9]

In the earlier case of *Biyaheros Mart Livelihood Association, Inc. v. Cabusao, Jr.*,[10] a sheriff was suspended for one month without pay for accepting a position in a private entity. It was explained in that case that:

> The act of the respondent in accepting the position of an administrator/ trustee of a private entity and for continuously holding the same for a considerable period of time, aside from being violative of the aforesaid circulars, can be properly called as moonlighting. While **moonlighting** is not normally considered as a serious misconduct, nonetheless, by the very nature of the position held by respondent, it obviously amounts to malfeasance in office. Respondent, in engaging in other irrelevant activities, failed to observe and maintain that degree of dedication to the duties and responsibilities required of him as a deputy sheriff.[11] [Emphasis supplied]

More recently, another sheriff was suspended for receiving "sheriff's fees" without the court's knowledge and approval, and for *moonlighting by collecting rentals* for a domestic company. Although moonlighting was merely considered as an

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[8] *OCA v. Ramano*, A.M. No. P-90-488, January 25, 2011.

[9] *Calaunan v. Madolaria*, A.M. No. P-10-2810, February 8, 2011.

[10] A.M. No. P-93-811, June 2, 1994, 232 SCRA 707.

[11] *Id.* at 712.

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aggravating circumstance in that case, the Court pointed out, nonetheless, that it was a malfeasance in office.[12] Thus, in the case of *Garcia v. Alejo,*[13] it was stated:

> x x x there is a prohibition for all officials and employees of the judiciary to engage directly in any private business, vocation or profession even outside office hours. Alejo's acts can be considered as **moonlighting**, which, though not normally considered as a serious misconduct, amounts to malfeasance in office.[14] [Emphasis supplied]

In the present case, Regalado's moonlighting activity is inescapably linked to his work as a sheriff. It is connected or somehow related to the performance of his official functions and duties as a sheriff.[15] He was, after all, in charge of implementing the writ of possession over the property contested by the Abadianos and Genosolango. Yet, a special power of attorney was also issued in his favor to act for and on behalf of Genosolango. Undoubtedly, there is a conflict of interest. Given its complicities, this moonlighting activity of Regalado definitely constitutes an act of impropriety.

Withal, Regalado is guilty of misconduct in the discharge of his official functions punishable with suspension without pay for not less than one (1) month but not more than three (3) months, or a fine of not less than ten thousand pesos (₱10,000.00) but not exceeding twenty thousand pesos (₱20,000.00).[16]

WHEREFORE, Generoso B. Regalado, Sheriff IV, Regional Trial Court, Branch 16, Cebu City, is found *GUILTY* of Misconduct and is hereby *FINED* in the amount of Ten Thousand Pesos (₱10,000.00) with a *STERN WARNING* that a repetition of the same or similar offense in the future would be dealt with more severely.

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[12] *Garcia v. Alejo*, A.M. No. P-09-2627, January 26, 2011.

[13] *Id.*

[14] *Id.*

[15] *Tenorio v. Perlas*, A.M. No. P-10-2817, January 26, 2011.

[16] *Id.*

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SO ORDERED.

Carpio,[*] *Velasco, Jr., Peralta,* and *Abad, JJ.,* concur.

FIRST DIVISION

[A.M. No. RTJ-07-2060. July 27, 2011]
(Formerly OCA IPI No. 06-2498-RTJ)

NATIONAL POWER CORPORATION, represented by its President CYRIL DEL CALLAR, *complainant, vs.* **JUDGE SANTOS B. ADIONG, RTC, BRANCH 8, MARAWI CITY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; MANDATORY CHARACTER OF PRE-TRIAL, SUSTAINED. — The mandatory character of pre-trial is embodied in Administrative Circular No. 3-99 dated January 15, 1999, and found its way in Section 2, Rule 18 of the Rules of Court, which imposes a duty upon the plaintiff to promptly move *ex parte* that the case be set for pre-trial. To further implement the pre-trial guidelines, this directive was reiterated in Administrative Matter No. 03-1-09-SC entitled "*Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures*" which recognized the importance of pre-trial and the deposition-discovery measures as vital components of case management in trial courts. To further show that the Court is serious in implementing the rules on pre-trial, in *Alviola v. Avelino* the Court imposed the penalty of suspension on a judge

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[*] Designated as additional member of the Third Division per Special Order No. 1042 dated July 6, 2011.