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SECOND DIVISION

[A.M. No. P-1669. December 27, 1979]

GEORGE C. CUSTODIO, *complainant, vs.* **APOLONIO F. FULINARA, Deputy Provincial Sheriff of the Province of Zambales at Iba, Zambales,** *respondent.*

SYLLABUS

1. **ADMINISTRATIVE LAW; COURT PERSONNEL; DEPUTY PROVINCIAL SHERIFF; FAILURE TO REFUTE THE ACCUSATION AGAINST HIM CREATES AN INFERENCE THAT THE CHARGES COULD BE TRUE; CASE AT BAR.**— Failure of respondent to refute by himself or through other witnesses his accuser's assertions, creates an inference that the charges could be true. The inference is not without basis. A person charged with serious misconduct, if innocent, and is given the opportunity to refute the charges, has every inducement to deny, contradict or explain the accusation by stating facts which would exonerate him. The truth would be his protection. There can be no reason why respondent should withhold the evidence for his defense considering that it is necessary for his exoneration. In any event, the evidence submitted is sufficient to prove the charge of serious misconduct.

2. **ID.; ID.; DUTIES OF SHERIFFS AND DEPUTY SHERIFFS; DISCUSSED.**— This occasion is as good as any to emphasize again that sheriffs and deputy sheriffs in the cities and provinces are officers of the court. They form an integral part of the administration of justice because they are called upon to serve court writs, execute all processes, and carry into effect the orders of the court. They should discharge their duties with utmost dispatch. Undue and unreasonable delays, such as obtaining in the case at bar, not only prejudice the parties, but more important, also undermine the faith of the people in the effectiveness of the administration of justice.

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DECISION

ANTONIO, *J.*:

In a verified complaint dated July 22, 1977, George C. Custodio charges Apolonio F. Fulinara, Deputy Provincial Sheriff of the Court of First Instance of Zambales, with dishonesty, neglect of duty, and conduct prejudicial to the best interest of the service and other actionable grounds provided under Section 1 of Presidential Decree No. 6.

Upon respondent's answer, this Court, on October 11, 1978, referred the case to the Executive Judge of the Court of First Instance of Zambales for investigation, report and recommendation. Executive Judge Ramon Mabutas, Jr. conducted the investigation and on January 11, 1979 submitted to this Court his Report containing the summary of the evidence adduced, his findings and recommendation, to wit:

"EVIDENCE ADDUCED

George C. Custodio, first witness presented, testified that: He was the one who filed the complaint with the Supreme Court against Apolonio Fulinara: his complaint against Fulinara is in connection with the latter's dishonesty in the performance of his duty as deputy provincial sheriff and for breach of promise; he engaged the services of Fulinara relative to a case — Civil Case No. 86 — he had against Cirilo Llagas, which case had been tried by the Cabangan Municipal Court; he was the plaintiff in said case, which was for collection of a sum of money, while Cirilo Llagas was the defendant; the case arose from the repair of a tractor owned by Cirilo Llagas — and he was collecting ₱500.00 for his services: he won and was awarded by the Cabangan Municipal Court the sum of ₱500.00.

"Fulinara neglected his duty in that he failed to execute the decision of the Cabangan Municipal Court; he had engaged the services of Fulinara in connection with the writ of execution which was issued by the Cabangan Municipal Court; the writ was given to Fulinara and the latter (Fulinara) asked for a jeep to be used in towing the subject tractor to the municipal building of Cabangan; however, Fulinara was not able to accomplish the towing of said tractor; Fulinara

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had told him that the tractor would be impounded until Llagas would pay his (witness) services in connection with the repair thereof; failing to impound said tractor, Fulinara told him that he was not able to locate the same (tractor) — Llagas might have hidden it.

"Fulinara then asked him if he would be willing to spend for publication relative to the public auction of a certain lot belonging to Cirilo Llagas; for said purpose, he gave to Fulinara the amount of ₱500.00 about the first week of December, 1976 — the latter (Fulinara) promising to return the same after collecting from Cirilo Llagas; Fulinara did not issue any receipt for the ₱500.00 — Fulinara merely told him that the receipt for publication would be given to him upon his (Fulinara's) return from the *Olongapo News*; however, Fulinara never gave him any receipt upon his return from the *Olongapo News* — up to the present (witness testified on December 4, 1978); neither has Fulinara returned the ₱500.00.

"He demanded from Fulinara the return of the ₱500.00 sometime in June, 1977; sometime that month, he also went to the office of the *Olongapo News* — and got the information that Fulinara did not publish the planned auction sale; however, he did not tell Fulinara about his going to the office of the *Olongapo News* to make verification because he might be insulted; Fulinara had been telling him that the publication of the auction sale could not be effected because they were busy at the *Olongapo News*; he repeatedly went to see Fulinara regarding the matter — sometimes at the latter's residence in San Felipe, other times at his office in Iba; however, Fulinara never told him the truth — that he (Fulinara) failed to publish the auction sale; neither has he (Fulinara) returned the ₱500.00, as promised; he had even tactfully told Fulinara that if he (Fulinara) could not cause the publication of the auction sale, he better return the ₱500.00 to him (witness); he made such demand to Fulinara twice — the first in June, 1977 and the second was about three to six months later.

"Contrary to the averment of Fulinara in his answer, it was not he (witness) who gave the two tax declarations for the projected auction sale — it was Fulinara who gave them to him; Fulinara told him that said tax declarations covered the two parcels of land that would be published at the *Olongapo News* for auction sale; later, Fulinara told him that the publication at the *Olongapo News* could not be made because it was 'occupied'; he made verification from the Provincial Assessor's Office whether or not the parcels covered by the tax declarations had been mortgaged; he secured Tax

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Declarations Nos. 6439 (Exhibit 'A'), 6441 (Exhibit 'A-1'), 3572 (Exhibit 'A-2') and 3571 (Exhibit 'A-3') from the Office of the Provincial Assessor; he found that two of the parcels covered by said tax declarations were mortgaged, while the other two were not — making Fulinara's averment in his answer inaccurate; he likewise made a verification from the Municipal Court of Cabangan whether or not Fulinara made a return of the writ of execution in Civil Case 86 (Exhibit 'B').

"Before filing the complaint against Fulinara with the Supreme Court, he consulted Fiscal Nacin — and the latter advised him to approach Fulinara and inquire whether or not he (Fulinara) had caused the execution of the writ issued in connection with the decision of the Municipal Court of Cabangan in Civil Case 86; he consulted Fiscal Nacin sometime in December, 1977 and he went to see Fulinara on the same date; he had seen Fulinara several times after seeking the advice of Fiscal Nacin — during the months of January, February and March; confronting Fulinara, he told him (Fulinara) to cause the execution of the writ; he saw Fulinara several times at the latter's residence in San Felipe, other times at the office of the Clerk of Court in Iba; however, he never consulted the officer-in-charge of the Office of the Clerk of Court; his meetings with Fulinara yielded no positive result — Fulinara had so many 'alibis'; Fulinara told him that he could retrieve the amount of ₱500.00 after collecting from Llagas; up to the present, however, he has not received his ₱500.00, which amount he gave to Fulinara for the publication of the public auction.

"Regulus Cruz, second witness, testified that: He brought along with him a certification (Exhibit 'C') regarding the landholdings of a certain Cirilo Llagas of Cabangan, this province — adverting to Tax Declarations Nos. 3571, 3572, 6439 and 6441; the signature above the typewritten name Santiago Y. Parong (Exhibit 'C-1') is that of the assistant provincial assessor; he also brought along with him the tax declarations mentioned in said certification — Tax Declarations Nos. 3571 (Exhibit 'D'), 3572 (Exhibit 'D-1'), 6439 (Exhibit 'D-2') and 6441 (Exhibit 'D-3'), all in the name of Cirilo Llagas; the parcel of land covered by Tax Declaration No. 3571 was mortgaged to the rural bank of Botolan for the amount of ₱2,000.00, as per document executed on December 5, 1968; the parcel covered by Tax Declaration No. 3572 was also mortgaged to the same rural bank for the amount of ₱2,000.00, as per document executed on December 5, 1963; however, the parcels covered by Tax Declarations Nos. 6439 and 6441 have no annotations — they were not encumbered (counsel manifested that Exhibit 'A'

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is the same as Exhibit 'D-2', Exhibit 'A-1' the same as Exhibit 'D-3', Exhibit 'A-2' the same as Exhibit 'D-1', and Exhibit 'A-3' the same as Exhibit 'D'); he did not know whether or not Fulinara got any tax declaration from the provincial assessor's office.

"Luz Darusin, third witness, testified that: Being the clerk-stenographer of the Municipal Circuit Court of Botolan-Cabangan, she is incharge of the records thereof — aside from attending the hearings and transcribing the stenographic notes taken; as records custodian, she had in her possession the record of Civil Case No. 86, entitled *George Custodio versus Cirilo Llagas* (counsel marked the original writ of execution found on page 20 of said record as Exhibit 'E'); Exhibit 'E' was indorsed, in a first indorsement, dated November 2, 1976 (Exhibit 'F'), to the provincial sheriff's office in Iba, as evidenced by a registry receipt (Exhibit 'F-1') and a registry return card (Exhibit 'F-2'); so far, there is no return of the original writ of execution that was issued; there was also a motion, dated May 12, 1978 (Exhibit 'G'), for the issuance of an *alias* writ of execution filed by the plaintiff, thru counsel; said motion was granted, as evidenced by an order (Exhibit 'H') of the Municipal Court — and an *alias* writ of execution (Exhibit 'I') was thereby issued; she had issued a certification (Exhibit 'B') in connection therewith; the record does not yield any proof that said *alias* writ was sent to the provincial sheriff.

FINDINGS AND RECOMMENDATION

"After judiciously weighing the evidence adduced, it appears that respondent Deputy Provincial Sheriff Apolonio Fulinara is guilty of the charges hurled against him. Parenthetically, his non-appearance alone during the scheduled hearings — in spite of notices sent to him — constituted a virtual admission of such charges and the evidence adduced buttressing the same. In his answer, the averments of which he failed to substantiate, he virtually admitted receipt of ₱500.00 from complainant George Custodio and another ₱500.00 from Cirilo Llagas, but that said complainant refused to receive it (paragraph 6 of answer) and that he (complainant) was in hiding (Paragraphs 10 and 11, *idem*). However, his (Fulinara's) repeated and consistent absence during the hearings (he was even given a day to present his evidence after the complainant rested) torpedoed such pretension. (Subject deputy provincial sheriff has been absent without leave since January, 1978). Also, why did he not make a return of the writ of execution he apparently executed? If he had no

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evil intention, why did he not turn over the money in his hands to the officer-in-charge of the office of the Clerk of Court — if the complainant really refused to receive it? Above all, if his answer really project the truth, why did he not show up — not even once — during the series of settings?

"The position held by the respondent is one invested with public trust and confidence. Like any other public office, that of a sheriff exists for the purpose of effecting the ends for which government has been instituted, which are the common good, and not the profit, honor, or private interest of any one man, family, or class of men. A sheriff is supposed to assist in a fair and speedy administration of justice — he is principally charged with serving court processes, orders, writs, etc. He should, therefore, discharge his duties — including making returns of the services effected by him — promptly and well. Otherwise, there will be a derailment in the administration of justice. From the evidence adduced, it appears that the respondent failed to live up to his sworn duties — to comply with the implied promises he made when he took his oath as a deputy provincial sheriff. Hence, we have no other alternative — if we have to maintain clean and resplendent the ivory-like altar of justice — but to recommend the immediate separation of Apolonio Fulinara from service, without prejudice to further prosecution under pertinent laws."

The findings and recommendation of the Investigating Judge, being supported by substantial evidence, are well taken. In particular, Our attention has been called to the statement in the Report that the investigation was conducted *ex parte* because "the respondent consistently refused/failed to appear in spite of notices sent to him." We have examined the records and have noted that the case had been set and reset for hearing no less than nine (9) times with sixteen (16) scheduled days in all, the last two (2) settings, after complainant had rested his case, having been intended to give respondent all the chances to present his evidence. Yet not even once had respondent appeared for the investigation.

The unexplained and consistent failure of the respondent to appear and produce his evidence in the investigation creates the inference that his defense that he tried his best to enforce the Writ of Execution but failed because the defendant was

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insolvent and that he attempted to return to complainant the amount of ₱500.00, but the latter refused to accept it, is unworthy of credence. Failure of a party to introduce evidence material to his case, after promising to produce them, creates the presumption that they would be unfavorable to the contention of the party who made the promise.[1] Similarly, failure of respondent to refute by himself or through other witnesses his accuser's assertions, creates an inference that the charges could be true. The inference is not without basis. A person charged with serious misconduct, if innocent, and is given the opportunity to refute the charges, has every inducement to deny, contradict or explain the accusation by stating facts which would exonerate him. The truth would be his protection. There can be no reason why respondent should withhold the evidence for his defense considering that it is necessary for his exoneration. In any event, the evidence submitted is sufficient to prove the charge of serious misconduct.

This occasion is as good as any to emphasize again that sheriffs and deputy sheriffs in the cities and provinces are officers of the court. They form an integral part of the administration of justice because they are called upon to serve court writs, execute all processes, and carry into effect the orders of the court. They should discharge their duties with utmost dispatch. Undue and unreasonable delays, such as obtaining in the case at bar, not only prejudice the parties, but more important, also undermine the faith of the people in the effectiveness of the administration of justice.

In the case at bar, respondent failed to effect the immediate enforcement of the Writ of Execution referred to him by the complainant and to make a return of the writ. He collected from the complainant the amount of ₱500.00 under the pretext that the amount would be used to defray the expenses of publication of the auction sale yet failed to return the same when the publication did not materialize; and worst, by his lack of integrity, he caused the complainant to incur additional expenses

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[1] *Halili v. De la Cruz*, L-3321, May 16, 1951, 88 Phil. 699.

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and unnecessary trouble. All these acts of the respondent are highly prejudicial to the interest of the service. In the language of Justice Makasiar, they "vitiate the integrity of the court personnel as well as the Court itself."[2]

WHEREFORE, this Court, finding the charge of neglect of duty, dishonesty and grave misconduct sufficiently proven, hereby orders the DISMISSAL of respondent from the service, with prejudice to re-employment in any branch of the government service, effective upon receipt hereof.

SO ORDERED.

Barredo (Chairman) Aquino, Concepcion Jr., Santos, and *Abad Santos, JJ.*, concur.

SECOND DIVISION

[A.M. No. P-2315. December 27, 1979]

HON. J. CEZAR SANGCO, *complainant, vs.* **FRANCISCA HIDALGO,** *respondent.*

SYLLABUS

ADMINISTRATIVE LAW; COURT PERSONNEL; CLERK; PERSONAL DIFFICULTIES AND FAMILY PROBLEMS ARE NOT LAWFUL GROUNDS AND VALID JUSTIFICATION FOR FREQUENT ABSENCES.— Indeed, there can be no question that personal difficulties and family problems are not lawful

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[2] *Ganaden v. Bolasco.* Adm. Matter No. P-124. May 16. 1975. 64 SCRA 50, 53.