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"In summation, taking into account the nature and gravity of the charges as well as the long years of service rendered by respondent Judge Remegio Peña in the judiciary, it is respectfully recommended that justice be tempered with mercy and that a penalty of forfeiture of salary for a period of THREE months be imposed upon said respondent Judge Remegio Peña."

While on its face, the report presents a picture not only of grave misconduct but of acts unbefitting an occupant of a judicial office, the Court cannot overlook the fact that due to no fault of his own, but because of the serious illnesses that have overcome him, respondent was not able to present his evidence. True it is that some of the facts found by Judge Emilia seem to be borne by admissions in the comment/answer of respondent to the charges against him, but conventional wisdom tells Us that even those admissions could have been probably explained by respondent so as to at least mitigate his liability. In any event, there being a presumption of innocence in his favor, We are not inclined to give full weight to the report under consideration. Besides, as may be noted, Judge Emilia himself recommends benignity, considering the unfortunate condition of respondent. We agree that respondent is deserving of compassion and humanitarian consideration.

IN VIEW OF THE FOREGOING, the Court hereby approves the recommendation of the Investigator that on the basis of a *prima facie* finding of acts unbecoming of a judicial officer, without any opportunity on his part to present evidence, the respondent be, as he is hereby reprimanded and made to suffer the forfeiture of three (3) months of his salary to be deducted from whatever retirement benefits he may be entitled to under existing laws.

Aquino, Concepcion, Jr., Abad Santos and *De Castro, JJ.*, concur.

SECOND DIVISION

[Adm. Mat. No. P-1472. October 30, 1981]

MARCIAL O. T. BALGOS, complainant, *vs.* CONSTANCIO VELASCO, Deputy Sheriff, Baguio City, respondent.

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[Adm. Mat. No. P-1649. October 30, 1981]

WALTER CARANTES, complainant *vs.* CONSTANCIO VELASCO, Deputy Sheriff, Baguio City, respondent.

SYNOPSIS

Two administrative cases were filed against the respondent for alleged irregularities in the performance of his duties as deputy sheriff, in connection with the enforcement of an order of execution issued by the labor arbiter of the National Labor Relations Commission in cases for reinstatement and backwages against the Itogon-Suyoc Mines, Inc. Administrative Case No. P-1472 charged him with grave misconduct and/or conduct prejudicial to the orderly administration of justice by allegedly going beyond the terms of the order of execution by including in his computation of the amount due from the mining company, not only backwages, but also emergency allowances, leave pay, and the 13th month pay when the labor-arbiter did not specify so in his decision. To fully satisfy the claim of the complaining laborers, respondent garnished ₱35,000.00 from the bank deposit of the mining company with the Baguio branch of the Bank of the Philippine Islands. Administrative Case No. P-1649 was filed in connection with the way he handled this amount as it was alleged that of the amount withdrawn, only ₱30,000.00 was given to the complainant's counsel with the balance having been clandestinely withdrawn without the owner's knowledge and authority.

Respondent explained that his computation of the amounts due the prevailing parties was correct and that he garnished the bank deposits of the Mining Company, acting in the regular course of enforcing the order of execution. His refusal to release to the complainant the balance of ₱5,000.00 was due to the fact that the claims amounted only to ₱3,632.00. He accounted for the balance in the following manner: ₱195.00 as applied to sheriff's commission and the expended ₱1,171.00 being deposited with the *ex-officio* city and provincial sheriff of Baguio and Benguet.

In a resolution dated August 2, 1978, the Supreme Court ordered the respondent's preventive suspension. The then Executive Judge Salvador J. Valdez, Jr. of Baguio City who investigated both cases, concluded that respondent's errors in enforcing the subject order of execution were without malice as they were compounded by contributory errors committed by the labor arbiter who did not specify in his decision the computed amounts of backwages. Respondent, however, was found to have committed a malfeasance with regard to the ₱5,000.00 deposit which he handled as if they were his personal funds, shown by the unexplained deposits and

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withdrawals on separate occasions after securing a new passbook on the pretext that the original one got lost, failing till the end to return the interests earned by the deposit.

The Office of the Court Administrator agreed with the investigator's recommendation that respondent, in Adm. Mat. No. P-1472 be reprimanded and admonished to observe more care in the discharge of his duties and in Adm. Mat. No. P-1649, he be dismissed from office with forfeiture of retirement privileges and with prejudice to re-employment in any national or local government, agency, including government-owned or controlled corporations or instrumentalities.

The Supreme Court agreed with the findings and adopted the recommendations submitted.

Respondent deputy sheriff dismissed from the service.

SYLLABUS

1. CONSTITUTIONAL LAW; SUPREME COURT; ADMINISTRATIVE SUPERVISION OVER LOWER COURTS; COMPLAINTS AGAINST A DEPUTY SHERIFF; ERRORS COMMITTED IN CONNECTION WITH THE ENFORCEMENT OF AN ORDER OF EXECUTION; RESPONDENT REPRIMANDED WHEN ERROR WITHOUT MALICE.— In Administrative Case No. P-1472, respondent might have committed an error in the erroneous interpretation on the terms of the order of execution which resulted in the expansion of awards, but the Labor Arbiter contributed to that error in not computing the backwages and the Mining Company did not dispute the computation. The error committed by respondent was without malice in which case he deserves merely a reprimand and admonition to observe more care in the discharge of his duties.

2. ID.; ID.; ID.; ID.; ID.; IMPROPER HANDLING OF PRIVATE FUNDS CONSTITUTES MALFEASANCE; RESPONDENT DISMISSED FROM THE SERVICE.— Respondent's handling of the ₱5,000.00 raises serious doubts on his honesty. His pretext that he lost the passbook covering the ₱5,000.00 deposit and his execution of the affidavit of loss to secure a new passbook, were mere subterfuge to enable him to dip his hand into the money that was deposited. The original passbook was never lost. It had always been in the possession of Atty. Andres V. Leal, the Clerk of Court, and *ex-officio* city and provincial sheriff of Baguio and Benguet. An examination of the passbook revealed that there were unexplained deposits and withdrawals as respondent treated the deposit covered by the new

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passbook as if they were his personal funds. In June of 1977, when Atty. Carantes demanded the release of ₱5,000.00 for his clients, respondent could not comply because at that time only ₱10.34 remained of the deposit. It is very clear that by his deposits, he was able to return the ₱5,000.00 but he failed to return the ₱229.66 as of July 16, 1977, representing the interests earned by the deposit. The clear conclusion is that he committed a malfeasance in Adm. Case No. P-1649, deserving of dismissal from office.

DECISION

CONCEPCION, JR., *J.*:

Both Administrative Cases P-1472 and P-1649, originated from the alleged irregularities in performance of duties committed by respondent Deputy Sheriff Constancio Velasco of Baguio City, in connection with the enforcement of the order of execution issued on October 12, 1976, by Labor Arbiter Benigno M. Ayson of the National Labor Relations Commission, Regional Branch No. I, in NLRC Cases Nos. RB-1-102-76 and RB-1-99-76, for reinstatement and back wages.[1]

The order of execution,[2] commanded the Sheriff of Baguio-Benguet, or his deputy "that of the goods and chattels of the respondent, Itogon-Suyoc Mines, Inc., Sangilo District, Itogon, Benguet, you cause to be made the sum stated in the decisions in the above entitled cases dated September 14, 1976, and September 15, 1976, respectively, for back wages, and to reinstate the complainants without loss of seniority rights in accordance with the decisions, together with your lawful fees for the service of this execution, ..."

It was respondent Constancio Velasco, a Deputy Sheriff of the Court of First Instance of Mountain Province (Bontoc) detailed to the Court of First Instance of Baguio and Benguet, who was assigned to enforce the aforementioned order of execution.

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[1] Exhibit "G", or "1", Adm. Case No. P-1472; Exh. "1", Adm. Case No. P-1649; p. 305, Rollo, Adm. Case No. P-1472.

[2] p. 170, Rollo, Adm. Case No. P-1472.

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In Administrative Case No. P-1472, Itogon-Suyoc Mines, Inc., respondent in the two labor cases, charged Sheriff Velasco with grave misconduct and/or conduct prejudicial to the orderly administration of justice, when the respondent allegedly went beyond the terms of the order of execution by including in his computation of the amount due from the Mining Company, not only backwages, but also emergency allowances, leave pay, and the 13th month pay. That on the basis of the excessive computation, respondent proceeded to garnish the bank deposit of the Mining Company and utilized the proceeds thereof to pay the complaining laborers.[3]

In Administrative Case No. P-1649, Atty. Walter Carantes, counsel for the complainants in the same labor cases, alleged that of the ₱35,000, garnished from the bank deposit of the Itogon-Suyoc Mines Inc., respondent Sheriff Velasco withdrew ₱30,000.00 on November 4, 1975 but delivered to Atty. Carantes only ₱29,000.00. Velasco allegedly clandestinely withdrew the remaining ₱5,000.00 without the knowledge, much less authority of either Atty. Carantes or the claimant laborers in the two labor cases. Atty. Carantes further alleged that respondent Velasco succeeded in withdrawing the ₱5,000.00 which was deposited with the 1st Peso Savings and Loan Association, Inc. by falsely executing an affidavit that he lost the corresponding passbook so that another passbook was issued to respondent. In truth and in fact, the passbook had always been in the possession of Atty. Andres V. Leal, then the *Ex-Officio* City and Provincial Sheriff of Baguio and Benguet, to whom respondent Velasco himself had earlier turned it over for safekeeping.[4]

In Administrative Case No. P-1472, respondent Velasco explained that his computation of the amounts due the prevailing parties in the aforementioned labor cases is correct, and that in garnishing the bank deposits of the Itogon-Suyoc Mines, Inc.,

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[3] pp. 1-9, Rollo, Adm. Case No. P-1472.

[4] pp. 2-4, Rollo, Adm. Case No. P-1649.

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he merely acted in the regular course of enforcing the order of execution.[5]

In Administrative Case No. P-1649, the explanation of respondent Velasco on the disposition of the ₱35,000.00 that was garnished is that on November 4, 1976, he delivered ₱30,000.00, not only ₱29,000.00, to Atty. Carantes who consented to respondent's retaining the remaining ₱5,000.00, to answer for sheriff's fees, commissions and other expenses, which would be computed later. Sometime in April, 1977, Velasco discovered that the passbook covering the deposit of ₱5,000.00 with the 1st Peso Savings and Loan Association Inc. was missing from his files. He immediately executed an affidavit of loss. Upon the issuance to Velasco of a new passbook, he withdrew the amount to prevent the possibility of its being withdrawn by the person who might have taken the lost passbook. On June 9, 1977, Atty. Carantes tried to get the ₱5,000.00, but Velasco refused to release the whole amount because the balance due to the clients of Atty. Carantes was only ₱3,632.90. Atty. Carantes filed a criminal complaint with the City Fiscal's Office of Baguio against Velasco. Later on, Atty. Galeazo Bucaycay, a law partner of Atty. Carantes, received the amount of ₱3,632.90, after Velasco explained to the satisfaction of Atty. Bucaycay how the amount was computed. The criminal complaint against Velasco was dropped. Velasco claims that the remaining balance of the ₱5,000.00 was applied to ₱195.00, sheriff's commission. The unexpended balance of ₱1,171.10 was deposited with the *Ex-Officio* City and the Provincial Sheriff of Baguio and Benguet.[6]

On August 2, 1978, a resolution of this Court, in Adm. Case No. P-1649, served on respondent Velasco on August 30, 1978, ordered the preventive suspension of respondent.

The then Executive Judge Salvador J. Valdez Jr. of Baguio City investigated both administrative cases, and heard the evidence during his incumbency.[7]

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[5] pp. 13-16, Rollo, Adm. Case No. P-1472.

[6] pp. 11-16, Rollo, Adm. Case No. P-1649.

[7] p. 305, Rollo, Adm. Case No. P-1472.

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The evidence in Administrative Case No. P-1472, discloses that respondent Velasco on October 18, 1976 served on the Baguio Branch of the Bank of the Philippines Islands, a notice of garnishment for ₱35,000.00 relative to the two labor cases (Exh. A). The client depositor Mining Company was informed of the garnishment on October 27, 1976, and the bank was authorized to earmark the amount against the Mining Company Account No. 1-065. Velasco was informed that the amount was available (Exh. B). On October 28, 1976, Velasco brought a letter to the Bank requesting the release of ₱35,000.00 in the form of a check payable to Velasco as Deputy Sheriff (Exh. C). In accordance with Bank regulations, a check was released payable to the City Sheriff of Baguio (Exh. D). Velasco issued receipts for the check (Exhs. E and F).

In the letter request for the release of the garnished amount (Exh. C) Velasco stipulated that the check would not be encashed until both parties in the labor cases shall have submitted to Velasco their respective computations on the claims being collected (Exh. C-1). The accountant of Itogon-Suyoc Mines Inc. alleged that he did not make any computation of the monetary awards in favor of the laborers concerned.

Velasco claims that when he received the Order of Execution (Exh. I or G) he addressed on October 18, 1976, a letter of demand to the Itogon-Suyoc Mines Inc. for the reinstatement of the complainant laborers and the payment of their backwages or claims.[8] Velasco attached to that letter a copy of the computation made by the laborers' counsel, Atty. Walter Carantes, in the total amount of ₱33,632.90 (Exh. 2) a copy of the order of execution, and copies of the decisions sought to be executed (Exhs. 3 and 4).

Velasco avers that accompanied by Deputy Sheriffs Olivas and Manipon, Jr. he delivered those documents at the Office of the Mining Company's manager, in the Sangilo District, Itogon, Benguet, giving the Mining Company a week to submit their own

[8] Exh. 3, Adm. Case No. P-1649.

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computations. The documents were received at the accounting division of the Mining Company.

Regarding the alleged erroneous inclusion of emergency allowances, leave pay, and the 13th month pay in the computation, Velasco claims he brought that to the attention of Atty. Walter Carantes but the latter said it was up to the Itogon-Suyoc Mines, Inc. to dispute the computation.

The labor Arbiter Atty. Benigno Ayson who issued the order of execution in the labor cases admitted that in decided cases of illegal termination of service, he does not specify the amount or rate of backwages as the employer is the one to do that. Atty. Ayson stated that the sheriff may make the computation if he knows how. The computation of the backwages in the two labor cases should not have included emergency allowances, leave pay and 13th month pay since the laborers did not claim them, but the employer Itogon-Suyoc Mines Inc. did not protest nor impugn the computation allegedly made by respondent Velasco.

The Investigating Judge concluded that "while there is much to be desired in the way Sheriff Velasco enforced the subject order of execution," his errors and predicament were compounded by contributory errors committed by the Labor Arbiter who did not specify in his decision the computed amounts of backwages and the failure of the Mining Company to dispute or impugn the computation allegedly made by Velasco.[9]

The alleged error imputed to respondent Velasco in not giving receipt for the garnished amount turned over to him in the form of a check on October 28, 1976, is without basis nor merit, for Velasco issued a temporary receipt (Exh. E) and an official receipt, (Exh. F) the following day.

The Investigating Judge correctly concluded that in Administrative Case No. P-1472, respondent might have committed an error in the erroneous interpretation on the terms of the order of execution which resulted in the expansion of

[9] pp. 311-314, Rollo, Adm. Case No. P-1472

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awards, but the Labor Arbiter contributed to that error in not computing the backwages and the Mining Company did not dispute the computation. The error committed by respondent Velasco was without malice. In this case, the Investigator merely recommends a reprimand and admonition to observe more care in the discharge of his duties.[10]

In Administrative Case No. P-1649, Atty. Walter Carantes, the complainant did not appear to substantiate his charges despite due notice. Only the respondent appeared and testified.[11]

Velasco avers that from the amount of ₱35,000.00 that he garnished from the Bank of the Philippine Islands and which he later on deposited with the 1st Peso Savings and Loan Association Inc., he withdrew ₱30,000.00 at the instance of Atty. Walter Carantes, which was delivered to the latter, as per receipt marked Exh. 4, dated November 4, 1976.[12]

The remaining ₱5,000.00 was left on deposit to answer for sheriff's fees, commissions, and other expenses which would be computed later. On May 9, 1977, Velasco executed an affidavit attesting to the loss of the deposit passbook sometime during the Holy Week days in April, 1977. He requested the 1st Peso Savings and Loan Association Inc. to issue another in lieu of the lost one.[13] A new passbook was issued. Velasco withdrew the ₱5,000.00, allegedly to save said amount from the possibility of being withdrawn by any person who might have taken possession of the lost deposit book.[14]

In June, or July, 1977, Atty. Carantes asked for the release of the ₱5,000.00, but Velasco refused to give the full amount on the ground that the claimant-laborers were only entitled to ₱3,632.90. Atty. Carantes became angry and left. Later on, Atty.

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[10] p. 135, Adm. Case No. P-1472.

[11] p. 310, Rollo, Adm. Case No. P-1472.

[12] p. 310, Rollo, Adm. Case No. P-1472.

[13] p. 3, Record, Adm. Case No. P-1649.

[14] p. 13, Record, Adm. Case No. P-1649.

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Galeazo Bucaycay, law partner of Atty. Carantes, talked with respondent Velasco. After hearing Velasco, Atty. Bucaycay accepted the ₱3,632.90. Out of the remaining balance of ₱1,367.10 from the original ₱5,000.00, Velasco charged ₱195.00 for sheriff's commission and turned over the residue of ₱1,172.10 to the *Ex-Officio* City and Provincial Sheriff (Exh. 5).

The Investigating Judge concluded that Velasco's handling of the ₱5,000.00 raises serious doubts on his honesty.[15] Velasco's pretext that he lost the passbook covering the ₱5,000.00 deposit and his execution of the affidavit of loss dated May 9, 1977[16] to secure a new passbook, were mere subterfuge to enable him "to dip his hand into the money that was deposited," according to the Investigator.[17] That original passbook was never lost. It had always been in the possession of Atty. Andres V. Leal, the Clerk of Court, and *Ex-Officio* City and Provincial Sheriff of Baguio and Benguet.[18]

The Investigator examined the new passbook (Exh. 5). As of May 11, 1977, there was on deposit the amount of ₱5,197.98. The excess of ₱197.98 is presumed to be the interests earned by the ₱5,000.00 deposit. On the same day, Velasco withdrew ₱5,100.00, leaving a balance of ₱97.98. Between May 12 and July 16, 1977, Velasco made a series of deposits and withdrawals. On July 16, 1977, the credit balance was ₱762.38.[19] The conclusion is that in these unexplained deposits and withdrawals, Velasco treated the deposit covered by the new passbook as if they were his personal funds. In June of 1977, when Atty. Carantes demanded the release of the ₱5,000.00 for his clients, Velasco could not comply because at that time only ₱10.34 remained of the deposit..

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[15] p. 315, Rollo, Adm. Case No. P-1472.

[16] p. 3, Record, Adm. Case No. P-1649.

[17] P. 315, Rollo, Adm. Case No. P-1472.

[18] p. 4, Rollo, Adm. Case No. P-1649.

[19] pp. 93-97, Record, Adm. Case No. P-1649.

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It is very clear that by his deposits, Velasco was able to return the ₱5,000.00, but he failed to return the ₱229.66 as of July 16, 1977, representing the interests earned by the deposit.[20]

The clear conclusion of the Investigator is that the respondent committed a malfeasance in Administrative Case No. P-1649, deserving of dismissal from office.[21]

The recommendation of Deputy Court Administrator Romeo D. Mendoza, concurred in by Court Administrator Lorenzo Relova is that respondent be dismissed from office effective November 1, 1978, with forfeiture of retirement privileges and with prejudice to re-employment in any national or local government agency, including government owned or controlled corporation or instrumentality.[22]

WHEREFORE, and in accordance with the foregoing recommendation, respondent Constancio Velasco is hereby DISMISSED from the service, effective November 1, 1978, with forfeiture of retirement privileges and with prejudice to re-employment in any national or local government office or agency, including government owned or controlled corporation or instrumentality.

SO ORDERED.

Barredo (Chairman), Aquino, Abad Santos and *De Castro, JJ.,* concur.

EN BANC

[Adm. Mat. No. 1888-CFI. October 30, 1981]

FRANCISCO I. PULIDO, complainant, *vs.* JUDGE MAGNO B. PABLO, respondent.

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[20] p. 316, Rollo, Adm. Case No. P-1472.

[21] p. 316, *Id.*

[22] p. 10, Memorandum dated June 17, 1981, End of Rollo, Adm. Case No. P-1649.