

**SEVERIANA GACHO, COMPLAINANT, VS. DIOSCORO A. FUENTES, JR.
DEPUTY SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 20, CEBU
CITY, RESPONDENT.***A.M. No. P-98-1265. June 29, 1998*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/049cbeef0437/>**PER CURIAM:**

The instant administrative matter arose from a letter-complaint of Severiana Gacho dated February 4, 1997, addressed to the Honorable Executive Judge of the Regional Trial Court of Cebu, charging Dioscoro A. Fuentes, Jr., Sheriff IV of Branch 20 of the Regional Trial Court of Cebu City, with grave dishonesty allegedly committed as follows:

“Sometime after I was awarded as a winning bidder of the 25 [l]ots sold at public auction in Civil Case No. CEB-14498 entitled “Fermina O. Consunji, et al vs. Leopolda Cecilio” and on the execution of the Certificate of Sale on December 2, 1996 in my favor for P1,700,000.00, the aforementioned [s]heriff fraudulently demanded from me 10% of the said amount or the sum of P170,000.00 as an alleged sheriff’s fee for which I issued Manager’s Check No. 006513 in the said amount, dated December 2, 1996; that for the said amount, I was not issued an official receipt and much less even [a] provisional receipt; that what is worst is the fact that said [s]heriff has been avoiding my presence; that I finally verified recently with the Office of the Clerk of Court as to the payment of the sheriff’s fee and there I found out that the sheriff’s fee for the value of P1,700,000.00 is only P34,080.00; that it was only after the discovery of his anomaly that subject sheriff paid the sheriff’s fee of P34,080.00 belatedly; and that subject sheriff had twice requested me for time within which to return the excess of P135,920.00 but had consistently failed to return the said excess even up to the present indicative of his misappropriation thereof.”[1]

On February 17, 1997 complainant filed an affidavit of desistance,[2] praying that the complaint be withdrawn since she had already received a manager’s check in the amount of P135,920 representing the excess of the sheriff’s fee, and that she had come to terms with respondent.

On March 11, 1997, Deputy Court Administrator Bernardo P. Abesamis (now a member of the Court of Appeals) indorsed the letter-complaint and the subsequent affidavit of desistance to Executive Judge Priscila S. Agana, RTC, Branch 24, Cebu City, for the purpose of determining if there still existed reasonable ground to proceed administratively against respondent sheriff.[3]

In a second indorsement letter[4]addressed to Judge Galicano Arriesgado, Judge Agana stated that she could not act on the complaint with impartiality, because she had made a prejudgment thereon before it was referred to her by the Office of the Court Administrator. Hence, Judge Arriesgado himself conducted an inquiry. He subpoenaed the complainant and the respondent and advised them to bring witnesses and to obtain the assistance of counsel. In compliance therewith, Complainant Severina Gacho appeared with her counsel, Atty. Basilio E. Duaban, while Respondent Dioscoro Fuentes, Jr. was assisted by Atty. Oliveros Kintanar. Both parties gave their respective testimonies, which were summarized by Judge Arriesgado as follows:

“During the clarificatory examination, Mrs. Severina Gacho, 78 years old, widow, businesswoman and

residing at Sabellano St., Pleasant Homes, Cebu City, declared that she had filed a sworn letter-complaint addressed to the Honorable Executive Judge, RTC, Cebu City dated February 4, 1997. She identified her signature on the letter-complaint. The letter complaint was filed because as a winner in the bidding for P1.7 [m]illion, she was made to pay 10% thereof as sheriff's fee for P170,000.00 without any receipt as the payment was only through [a] manager's check of Monte de Piedad with the sheriff, Jun Fuentes, as payee. The manager of the bank handed to the sheriff the manager's check and the same was encashed by him. As he was not issued any receipt, she went to RTC Br. 20 where respondent sheriff is assigned. She went to Atty. Joaquin, the [c]lerk of [c]ourt, and she was told that the sheriff's fee was not P170,000.00 but only P34,080.00. The amount of P135,920.00 was returned to her by Sheriff Fuentes. Confronted with the Affidavit of Desistance executed by her on February 17, 1997, she declared that she was prompted to execute it as Mr. Fuentes pleaded to her that he would just pay the amount and she was asked to pity him because he ha[d] four (4) children and a wife. He might be ousted from his work. The amount was paid to her after the execution of her affidavit. With her execution of the affidavit, she had no more intention to pursue the case against him for as long as he would not do it again. She had executed the affidavit voluntarily, without being coerced or intimidated in any manner whatsoever.

Respondent was presented as the only witness for himself. He declared that he [was] 43 years old, married and a resident of Talo-ot, Argao, Cebu and presently Sheriff IV, Regional Trial Court, Branch 20, Cebu City. He was a deputy sheriff for about three (3) years. He [knew] Severiana Gacho, a lone bidder in a bidding conducted by him in a sale of execution. She was known to him for 3 months before the bidding. After the bidding, he informed Mrs. Gacho that being the highest bidder and not being a party to the case, she ha[d] to pay him the sum of P1,700,000.00 as her bid price and an amount corresponding to the payments due to the government and somebody close to her who were termed as "ahente sa mga yuta", real estate brokers for the sum of P170,000.00 or ten percent (10%) of P1,700,000.00 because this would be the amount due the government. He issued to Mrs. Gacho a Certificate of Sale.

It was further testified by respondent that the sum of P170,000.00 really went to the government. After deducting the amount of P34,800[5] representing the government commission under Rule 141, Rules of Court, capital gains tax and documentary stamps were to be paid to the Bureau of Internal Revenue. Another amount was also to be paid to the Register of Deeds for the registration of the certificate of sale. He did not issue any receipt to complainant in the amount of P1,700,000.00 and the P170,000.00 because there were 2 checks which she gave through the manager of the bank both in the name of respondent. He admitted that the amount actually payable [was] only P34,080.00 and not P170,000.00. The amount of P135,020.00 [was] an excess amount from P170,000.00 after deducting P34,080.00 paid to the Office of the Clerk of Court but it did not necessarily mean that the excess amount went to his pocket. He returned the P135,020.00 to her to pay the capital gains tax with the BIR and to pay the registration fees with the Register of Deeds.

Mr. Fuentes also declared that he did not receive a formal complaint against him. He only received an Affidavit of Desistance executed by [C]omplainant Severiana Gacho. The execution of the affidavit of desistance was upon request of respondent who pleaded to her that he ha[d] 4 children and a wife.

xxx xxx xxx"

Concluding, on the basis of the foregoing, that "the act complained of [was] an established matter," Judge Arriesgado explained:

"With the declaration of the complainant and the admission of the respondent, the fact of the commission of the act complained of is an established matter. There is however an extenuating evidence adduced during the whole inquiry[:] the assertion of the respondent that although he received P170,000.00 and P34,080.00 was paid representing the government commission (sheriff's fee) under Rule 141, Rules of Court, yet the sum of P135,920.00 was intended to pay capital gains tax, [and] documentary stamps to the Bureau of Internal Revenue and another sum to be paid to the Register of Deeds for the registration of the Certificate of Sale.

Respondent claimed that nothing of such amount went to his pocket. Even assuming that what he declared [was] true, yet as a sheriff, it [was] not proper for him to receive any amount of money other than what is termed as sheriff's fee for which proper receipt must [have been] issued therefor. He was not supposed to receive other sums of money as payments of capital gains tax, documentary stamp tax and registration of documents as this could be handled by the interested party, the complainant herself. A government employee must, like Caesar's wife, appear not only upright, but above suspicion. A public office is a public trust."^[6]

In a memorandum dated February 11, 1998 addressed to the Chief Justice, the Office of the Court Administrator (OCA) agreed with the findings of Investigating Judge Arriesgado and recommended that Deputy Sheriff Dioscoro A. Fuentes be dismissed from the service for grave dishonesty and grave misconduct.

The Court agrees with the OCA that the acts of respondent constitute grave dishonesty and grave misconduct, for which dismissal from the service is warranted.

In *Flores v. Caniya*,^[7] the Court "emphasized time and again that the conduct and behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the sheriff and to the lowliest clerk should be circumscribed with the heavy burden of responsibility. Respondent sheriff is a court employee. He is thus required to conduct himself with propriety and decorum. His actions must be beyond suspicion." In this case, the Court finds that the respondent has failed to comply with the strict standards required of court employees.

The essential facts of this case are undisputed. The evidence shows that respondent demanded from complainant the amount of P170,000 as sheriff's fees. He received that amount, but issued no official or provisional receipt therefor. Upon complainant's inquiry at the Office of the Clerk of Court in the said branch, she learned that the correct amount of sheriff's fee was only P34,080 and that said sum was still unpaid at the time. Respondent transmitted the amount of P34,080 only after complainant discovered the irregularity. Respondent had earlier claimed that the excess of P135,920 was for the payment of capital gains tax, documentary stamps and registration of the Certificate of Sale; but the amount was not used for the said purpose, and it was subsequently returned to the complainant.

Quite obviously, respondent improperly collected an excessive amount of money from complainant. In the first place, only the payment of sheriff's fees can be lawfully received by him. Acceptance of any other amount is improper, even if it were to be applied for lawful purposes as herein alleged by respondent. As held in *Tan v. Herras*,^[8] sheriffs cannot receive gratuities and voluntary payments from parties in the course of the performance of their duties. This is inimical to the best interest of the service, which would be tainted with suspicion.

Worse, respondent claimed that the excess was for the payment of tax and other registration fees. It is undisputed, however, that he did not tell the complainant at the time that the amount was to be used also for such purpose; instead, he misrepresented the entire amount of P170,000 as sheriff's fees. In the first place, it was not the duty of the sheriff to pay taxes and other sums to the Bureau of Internal Revenue (BIR) and the Register of Deeds. In the second place, he knew that the amount he collected as sheriff's fees was excessive. This Court has held that any sum collected by a court employee in excess of the lawful fees allowed by the Rules of Court is an unlawful exaction which makes the respondent liable for grave misconduct and grave dishonesty.^[9] In *Añonuevo v. Pempeña*,^[10] the Court held that "[i]t is an abhorrent and anomalous practice for a sheriff to demand fees in excess of those lawfully allowed."

Compounding his culpability, respondent did not issue any receipt for the amount he received in his official capacity, in violation of the General Auditing and Accounting Rules, which evidently signified his intent to misappropriate it.^[11] Furthermore, he did not remit the payment of the sheriff's fees to the clerk of court; or the

capital gains tax or registration fees to the BIR and the Register of Deeds, respectively.

Respondent failed to give a satisfactory justification for (1) collecting sheriff's fees in excess of those prescribed by the Rules, (2) misrepresenting the purpose of the amount he demanded, (3) failing to issue a receipt for the amount he collected, and (4) not using the amount for the purported objectives.

Indubitably, respondent is administratively liable for grave dishonesty and grave misconduct in the discharge of his official duty. By his conduct, he violated the yardstick of public service imposed in Section 1, Article XI of our Constitution: a public office is a public trust; public officers and employees must serve with the highest degree of responsibility, integrity, loyalty and efficiency; and they must at all times remain accountable to the people.[12] In addition, he displayed unprofessionalism in the discharge of his official duty, contrary to the mandate of the Code of Conduct and Ethical Standards for Public Officials and Employees,[13] i.e., to perform and discharge their duty with the highest degree of excellence, professionalism, intelligence and skill, while endeavoring to discourage wrong perceptions of their role as dispensers of justice.

We agree with the OCA that the complainant's desistance does not warrant the dismissal of the case. Administrative cases against public officers and employees are impressed with public interest, for they relate to a public office which is a public trust.[14] The grievance of the complainant against the respondent relates to his public duty and not to a purely personal matter; therefore, the matter transcends the complainant's personal pique or pride. The need to maintain the faith and confidence of the people in the government, its agencies and its instrumentalities demands that proceedings in such cases should not be made to depend on the whims and caprices of the complainants who are, in a real sense, only witnesses therein.[15] After this Court has taken cognizance of an administrative case, the complaint can no longer be withdrawn just because the complainant had changed his or her mind. In any event, this Court cannot be bound by the unilateral act of a complainant in a matter which involves its disciplinary authority over all employees of the judiciary.[16]

The records indubitably establish respondent's administrative liability. For such grave offenses prejudicial to the best interest of the service, respondent deserves the penalty of dismissal. As held by the Court in *Punzalan-Santos v. Arquiza*: [17]

"At the grassroots of our judicial machinery, sheriffs and deputy sheriffs are indispensably in close contact with the litigants; hence, their conduct should be geared towards maintaining the prestige and integrity of the court, for the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel; hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a temple of justice. Respondent's behavior erodes the faith and confidence of our people in the administration of justice. He no longer deserves to stay in service any longer."

WHEREFORE, Dioscoro A. Fuentes, Jr., Sheriff IV, RTC, Branch 20, Cebu City is hereby **DISMISSED** for grave dishonesty and grave misconduct prejudicial to the best interest of the service, with forfeiture of all retirement benefits and accrued leave credits and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations.

SO ORDERED.

Narvasa, C. J., Regalado, Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Martinez Quisumbing, and Purisima, JJ., concur.

Davide, Jr., J., no part due to relationship of Davide to the parties.

[1] Rollo, p. 18.

[2] Rollo, p. 20.

[3] Ibid., p. 17.

[4] Id., p. 16.

[5] This is a typographical error. The correct amount is P34,080.

[6] Report of Judge Arriesgado, June 2, 1997, pp. 1-3; rollo, pp. 7-9.

[7] 256 SCRA 518, April 26, 1996, per curiam; citing Office of the Court Administrator v. Fuentes, et al., AM No. RTJ-94-1270, August 23, 1995; Ong v. Meregildo, 233 SCRA 632, July 5, 1994; GVM, Inc. v. De Guzman, 227 SCRA 684, November 11, 1993.

[8] 195 SCRA 1, March 11, 1991, per curiam, cited in Casal v. Concepcion, Jr., 243 SCRA 369, April 6, 1995; Re: Pioquinto Villapana, 229 SCRA 718, February 7, 1994.

[9] Florendo v. Enrile, supra.

[10] 234 SCRA 168, 174, July 18, 1994, per Regalado, J.

[11] Hernandez v. Borja, 242 SCRA 162, March 7, 1995; Flores v. Caniya, supra; Florendo v. Enrile, 239 SCRA 22, December 7, 1994.

[12] Villaraza v. Atienza, 108 SCRA 559, October 30, 1981.

[13] “An Act Establishing a Code of Conduct and Ethical Standards For Public Officials And Employees, To Uphold The Time-Honored Principle Of Public Office Being A Public Trust, Granting Incentives and Rewards For Exemplary Service, Enumerating Prohibited Acts and Transactions And Providing Penalties For Violation Thereof And For Other Purposes.”

[14] Flores v. Caniya, supra; citing § 1, Art. XI, of the Constitution.

[15] Florendo v. Enrile, supra; Sy v. Academia, 198 SCRA 705, July 3, 1991.

[16] Zamora v. Jumamoy, 238 SCRA 587, December 2, 1994.

[17] 244 SCRA 527, May 31, 1995, per curiam, citing Recto v. Racelis, 70 SCRA 438, April 30, 1976.

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