

EFREN V. PEREZ, COMPLAINANT, VS. ELADIA T. CUNTING, CLERK OF COURT IV, MTCC-OCC, ZAMBOANGA CITY, RESPONDENT.

A.M. No. P-02-1630. August 27, 2002

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a complaint, dated November 26, 2001, against Eladia T. Cunting, Clerk of Court IV of the Office of the Clerk of Court in the Municipal Trial Court in Cities, Zamboanga City.

Complainant Efren V. Perez is the owner and manager of SLR Lending Haus in Zamboanga City. In a letter, dated April 26, 2001, to the Office of the Court Administrator, complainant requested information on the authority of a sheriff to collect expenses in serving court processes from client agencies, in view of the fact that a deputy sheriff, assigned to a Metropolitan Trial Court, was collecting P100.00 as sheriff's fees for the service of the summons to each respondent in a civil case, P600.00 for the implementation of a writ of execution, and P700.00 for the extrajudicial foreclosure of a chattel mortgage.[1] The letter was indorsed by the OCA on July 20, 2001 to the Clerk of Court of the Office of the Clerk of Court in the MTCC, Zamboanga City for comment.[2]

In her comment, dated November 14, 2001, respondent Clerk of Court denied that the sheriffs were collecting fees in excess of those authorized under the Rules of Court and the circulars of this Court. She explained that the P100.00 sheriff's fee was for transportation and other expenses in serving summons. She said that this amount may vary depending upon the distance, that the P600.00 fee for the implementation of a writ of execution was for transportation costs and other incidental expenses, and that the MTCC had no jurisdiction over extrajudicial foreclosures of chattel or real estate mortgage as the same belongs to the jurisdiction of the Regional Trial Courts.[3] In explaining that the sheriffs do not appropriate the amounts paid by the party-litigants, respondent said:

This amount that he gives are cash advances which are spent in the actual service of the summons to the defendants considering that sheriffs are not provided with service vehicles for the purpose, hence, the money does not go to the pockets of the sheriffs. What he (Mr. Perez) contends that he ought not to spend for these necessary expenses since sheriffs are paid their salaries is not tenable. Salaries are paid for services rendered as public servant but not meant to cover the necessary expenses incurred for transportation and incidental expenses in the actual service of Summons, Writs of Executions and other court processes. This matter had been decided by the Supreme Court in its long line of cases, that court personnel and sheriffs are not duty bound to spend from their own purse for the benefit of private litigants in pursuit of their action.

Likewise, the amount of Six Hundred Pesos (P600.00) for Writs of Execution that he advances is not even enough to cover the costs for transportation, labor, security escorts, and storage fees that may be incurred in the execution proceedings. Sheriffs have to shoulder for additional expenses when the need arises and, [more often] than not, he refuses to reimburse the money shed by these court personnel. Legally speaking, these advances are for the account of the defendants, which the plaintiff may recover as charges for the proceedings, and therefore, he is not at a loss. Of course, there are cases which have empty judgment, but which [are] not within our control, they are risks to bear in litigation proceedings, just like in business, we have risks of losses.

....

It is worth to note that Mr. Perez runs a lending business firm named SLR Lending Haus; he must not be allowed to enrich himself at the expense of lowly paid court employees. In Zamboanga City, he is widely known for his notoriety in collecting exorbitant interests, and most of his cases filed in courts are for collection of interests which principal loans mostly have been paid. He practically lodged complaints in all head offices in government agencies. He filed capricious, whimsical and dilatory cases in the Ombudsman, Civil Service Commission and other quasi-judicial bodies in pursuit of his collection against his borrowers, most of which are either dismissed or thrown away for lack of merit.[4]

Finding the foregoing comment to be arrogant, complainant, in a letter, dated November 26, 2001, sought administrative sanctions against respondent Eladia T. Cunting. The pertinent portion of his letter reads:

In her reply in a letter dated November 14, 2001, a copy attached marked as Annex "B", she cited the Rules of Court and related Supreme Court circulars as the basis, which [do not] address the real issue in my letter-inquiry. She failed to cite the specific issuance(s) of the Supreme Court which allow sheriffs to collect (not demand) such an amount. As a retired Auditor in the Commission on Audit, I only know of one circular which allows government employees to charge expenses while on travel, that is, the Travel Expense Law or Executive Order 248 dated May 29, 1995 to be specific. I am not referring to the salaries, as what Ms. Cunting contends, where to get their expenses for travel. So if court employees or sheriffs in particular are exempted to this Executive Order, then I am privileged to know for my guidance. The undersigned is not questioning the amount they are collecting but the legal basis if there is one. As simple as that. My concern is to help curb graft and corruption in government because if this is allowed to go on, this can be considered as irregular if not illegal practice, which is unbecoming for court employees who are supposed to know the law.

...Records of the courts will show that of the more than 45 Civil Cases for collection we have filed with the Municipal Trial Courts, almost all were awarded in favor of our establishment, meaning, our complaints have legal basis. She is inconsistent with the decisions of the courts where she belongs.[5]

In her comment, dated April 5, 2002, respondent cited Rule 141, §9 of the Rules of Court which states that the sheriff and other persons serving court processes are authorized to collect P50.00 for the service of summons and P20.00 for the service of subpoenas to each witness in a civil action or proceeding. She pointed out, however, that in addition to the said fees, the party requesting the issuance of any process from a court, whether preliminary, incidental, or final, must pay the sheriff's expenses in serving or executing the process, including other similar fees and charges, in an amount to be estimated by the sheriff and thereafter approved by the court. Respondent called attention to the fact that these guidelines are embodied in the Manual for the Clerks of Court. She justified her defense of the sheriffs on the ground that they are under her direct and immediate supervision and she takes responsibility for their actions. She denied having any "hidden agenda," as insinuated by the complainant, alleging that her actions were done in the faithful performance of her duties. Respondent claimed that the complainant used the Office of the Clerk of Court as his agent for collecting unpaid loans. She also denied making derogatory remarks against complainant's lending establishment as the statements made were based on existing facts. Moreover, she quoted the judgment rendered by the MTC, Branch 2, Zamboanga City in a civil case for collection of a sum of money, wherein the complaint was dismissed for lack of merit and, consequently, complainant was ordered to refund the payments made by the defendants therein because of the exorbitant interest rates he charged. She added that she came to know of the dismissal of a complaint filed by the complainant against a regional director of the Civil Service Commission for being frivolous, and complainant was advised to refrain from further clogging the dockets of the CSC with his complaints.[6]

On July 25, 2002, the Office of the Court Administrator submitted the following evaluation and recommendation:

EVALUATION: There is merit in the complaint.

It is clear that the response dated November 14, 2001 of Ms. Cunting was not responsive to the query of Mr. Perez. The latter was asking for the legal basis for the fees being collected by the sheriffs. We have no doubt that Ms. Cunting's explanation was based on Section 9 (e), Rule 141 of the Rules of Court. However, what she failed to indicate in her letter was where she based her explanation. By her omission, Mr. Perez and any person reading her response would get the impression that she was merely expressing her own opinion. The proper way to respond to the query of Mr. Perez is to cite the specific provision of the Rules of Court, to wit, Section 9 (e), Rule 141 and if it is possible, provide him with a copy of the said rule.

If this was the only infraction of Ms. Cunting, a simple reminder would have sufficed. We, however, believe that she over-reacted to the query of Mr. Perez to the point of being discourteous to the latter. The last paragraph of her response wherein she stated that Mr. Perez, who is engaged in the lending business, should not be allowed to enrich himself at the expense of lowly paid court employees, that he is notorious for charging exorbitant interest, that in most of the collection suits he filed, the principal loan has been paid, that he filed complaints in the Ombudsman, Civil Service Commission, and other quasi-judicial bodies in pursuit of his debtors and that most of these cases have been dismissed for lack of merit, is totally uncalled for. We agree with Mr. Perez that in his query he was merely asking for the legal basis of the fees being collected by the sheriffs, hence, we find absolutely no reason why such a derogatory remark should be included in Ms. Cunting's response. Her comment that her remarks were based on existing facts is untenable. The point of the matter is her remarks, even if true, were totally irrelevant to the subject matter raised by Mr. Perez in his query.

RECOMMENDATION: Respectfully submitted for the consideration of this Honorable Court are our recommendations that the instant complaint be REDOCKETED as a regular administrative matter and Ms. Eladia Cunting be ADMONISHED to be more circumspect in her comments regarding official matters with a WARNING that a repetition of the same offense would be dealt with more severely.[7]

Except as to the penalty, the recommendation is well taken.

As a public officer, respondent is bound, in the performance of her official duties, to observe courtesy, civility, and self-restraint in her dealings with the public.[8] Above all, the code of Conduct and Ethical Standards for Public Officials and Employees directs all public officials to extend prompt, courteous, and adequate service to the public, and at all times to respect the rights of others and refrain from doing acts contrary to law, good morals, good customs, public order, public policy, public safety, and public interest.[9]

Respondent's comment, dated November 14, 2001, made in response to complainant's query regarding the legal basis for the collection of sheriff's fees appears to be on its face discourteous. There was no reason why respondent should write a strongly worded letter in response to the inquiry of the complainant when she could have done otherwise. Complainant's letter merely called for an explanation of the legal basis for the collection of certain fees. Considering that respondent is assigned to the Office of the Clerk of Court of the MTCC, it is inevitable that, every now and then, she would be dealing with party-litigants who would come to her to inquire on the status of their cases, to have an update on the appropriate actions taken by the courts on the pleadings filed and other incidents thereto, or to request information on certain legal questions, all of which require her reply or comment. It behooves respondent to observe courtesy, keeping in mind always that arrogance and discourtesy reflect adversely on the good image of the judiciary.

Under Rule XIV, Sec. 23 of the Civil Service Law and Rules,[10] a first offense of discourtesy, which is a light penalty, in the course of one's official duties shall be meted the penalty of reprimand. In *Peñalosa v. Viscaya, Jr.*,[11] respondent deputy sheriff was reprimanded for gross discourtesy in connection with his actuations towards the complainant (therein private complainant in a criminal case) when the latter requested for an explanation for his failure to serve a warrant of arrest upon the accused. In *Paras v. Lofranco*,[12] the respondent, Clerk III of a lower court, was charged with discourtesy and conduct unbecoming a court employee for her acts

and utterances directed against the complainant, the counsel for the accused in a pending case before the said court. This Court found the arrogant gesture and discourteous utterances of the respondent in treating the complainant to be improper. Accordingly, it imposed on respondent the penalty of reprimand. In *Reyes v. Patiag*[13], respondent clerk of court was censured for discourtesy for two acts, when, in a very rude manner, she denied complainant's request to see the records of a civil case and treated her as if she was not an interested party by telling complainant that she seemed to be more knowledgeable than the court because complainant asked why a "preliminary investigation," actually a preliminary examination, was necessary. Considering that this is the first offense of the respondent, we find the penalty of reprimand to be appropriate in this case.

WHEREFORE, respondent Eladia T. Cunting, Clerk of Court IV of the Office of the Clerk of court in the Municipal Trial Court in Cities, Zamboanga City, is hereby REPRIMANDED for discourtesy in the performance of her official duty with a WARNING that a repetition of the same or similar act will be dealt with more severely. Let this decision be noted in the personal record of herein respondent.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, and Corona, JJ., concur.

[1] Rollo, p. 32.

[2] Id., p. 31.

[3] Id., p. 35.

[4] Id., pp. 35-36.

[5] Id., p. 13.

[6] Id., pp. 1-5.

[7] Rollo, pp. 40-41.

[8] *Reyes v. Patiag*, A.M. No. P-01-1528, Dec. 7, 2001. See *Paras v. Lofranco*, A.M. No. P-01-1469, Mar. 26, 2001 citing *Policarpio v. Fortus*, 248 SCRA 272 (1995).

[9] R.A. No. 6713, § (c) and (e). See *Punzalan-Santos v. Arquiza*, 244 SCRA 527 (1995).

[10] Book V, Executive Order No. 292.

[11] Signed res, 84 SCRA 298 (1978).

[12] A.M. No. P-01-1469, Mar. 26, 2001.

[13] A.M. No. P-01-1528, Dec. 7, 2001.

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