ATTY. RUTILLO B. PASOK, COMPLAINANT, VS. CARLOS P. DIAZ, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 20, TACURONG CITY, RESPONDENT.

A.M. No. P-07-2300 [Formerly OCA IPI No. 05-2231-P]. November 29, 2011

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PER CURIAM:

Before us is an administrative complaint[1] filed by Atty. Rutillo B. Pasok (complainant) against respondent Carlos P. Diaz (respondent), Sheriff IV of the Regional Trial Court (RTC) of Tacurong City, Branch 20 for Dishonesty, Gross Inefficiency, Abuse of Authority and violation of Republic Act No. (R.A.) 3019, or the Anti-Graft and Corrupt Practices Act.

The charges stemmed from numerous cases wherein respondent sheriff allegedly extorted money from winning litigants on the pretext that said amounts will cover the costs of implementing court processes. Complainant averred that if parties failed to pay the amounts demanded, respondent would also refuse to perform his duty. In a nutshell, the charges arose in the following cases:

1. In Civil Case No. 761 entitled "Spouses Cayena, et al. vs. Spouses Pascua, et al."[2] for collection of sum of money and damages:

> Complainant alleged that respondent Diaz personally demanded money from him to answer for expenses in the implementation of the writ of possession. Respondent reasoned that his meager salary as a court sheriff prevented him from taking action on the same.
>
> In order to avoid undue delay in the implementation of the said writ, complainant utilized his own vehicle to bring respondent to the subject property. However, it turned out respondent conferred with the defendants and then unilaterally postponed the implementation of the Writ in order to give the latter additional time to amicably settle with the prevailing party in the suit. Complainant protested and reminded respondent that his duty to implement the writ is ministerial and that he could not substitute the directive of the court with that of his own. Nevertheless, respondent still refused to implement the writ. Later on, respondent explained to complainant that the defendants are his relatives.

2. In Civil Case 02-104 entitled "Spouses Jovencio Sabanal and Eden Sabanal vs. Spouses Roger Agtarap and Erlinda Agtarap" for collection of sum of money and damages:[3]

> Complainant alleged that respondent sent him a Letter[4] dated April 1, 2005 and demanded the amount of Ten Thousand (P10,000.00) to cover the expenses to be incurred in implementing the writ of execution issued by the RTC, Branch 20, Tacurong City. When he refused to accede to respondent's request, no action was taken on the case.

3. In sixteen (16) Civil Cases[5] for collection of sum of money involving plaintiff-Spouses Nicandro and Priscilla Loyola (plaintiffs):

> Complainant alleged that respondent demanded the amount of Five Hundred (Php 500.00) to One Thousand (Php 1,000.00) pesos per case in order to execute the respective writs of execution issued thereon. However,

due to the refusal of complainant to give in to respondent's demand, no writs of execution have been implemented. Neither were there any Sheriff's Reports on the said cases.

On October 12, 2004, Spouses Loyola made a personal follow up of the cases and inquired on the status of the writs for implementation. Respondent then demanded the amount of Two Thousand (P2,000.00) pesos for the implementation of the sixteen (16) writs and promised that he will submit the Sheriff's Report within the week from the receipt of the amount of P2,000.00.[6] However, despite the receipt of the P2,000.00, respondent failed to implement the writs.[7]
In April 2005, Spouses Loyola inquired again on the status of the implementation of the writs. To which, respondent explained that he was too busy that he has no time to attend to their cases. Respondent, likewise, insinuated that since he is receiving only P6,000.00 as his salary, the initial amount of P2,000.00 which was given to him was insufficient to cover the cost of implementing the writs. Despite Spouses Loyola's warning that they will file a complaint against respondent should he refuse to perform his duties, respondent failed to implement the writs.[8]

4. In Civil Case No. 02-076 entitled “Gerry Roxas Foundation, etc. vs. Spouses David Douglas Sespeña and Jocelyn Sespeña, et al.” for sum of money and damages:

Complainant alleged that respondent sent a demand letter to the Manager of his client, Gerry Roxas, and asked the amount of Ten Thousand (Php 10,000.00) pesos for the implementation of the writ of execution.[9]

Likewise, as in the above-mentioned cases, respondent did not implement the writ when complainant's client failed to deposit the former's requested amount.

5. In Civil Case No. 671 entitled “Sultan Kudarat Construction and Development Corporation, etc. vs. Spouses Darlito Sumagaysay, et al.” for sum of money and damages:

Complainant alleged that, upon the payment by the judgment debtor of the sum of One Million Fifty Thousand (P1,050,000.00) pesos, respondent demanded the amount of P50,000.00 purportedly as legal fees incurred in the execution of the writ. On September 26, 2003, on the condition that respondent will issue an official receipt, complainant paid the amount of P50,000.00 to respondent.[10]

On the same day, complainant proceeded to the Office of the Clerk of Court (OCC) to secure the Official Receipt incurred in the execution. However, Mr. Pelagio Hilario, Jr., the OIC Clerk of Court, apparently issued only two (2) receipts for a total amount of Thirty-Seven Thousand Six Hundred (Php 37,600.00) pesos only.[11] According to Mr. Hilario, that was the only amount turned over by respondent Diaz to the OCC.

Complainant confronted respondent regarding the balance of Twelve Thousand Four Hundred (Php 12,400.00) pesos, but the latter explained that he was entitled to said amount for services rendered in the garnishment of the amount subject of the writ of execution.

Finally, complainant emphasized that, in all the above-mentioned cases, respondent not only demanded and received money from party-litigants, he, likewise, refused to perform his duties in accordance with the law in the absence of the demanded money.

Thus, the instant administrative complaint against respondent.

On July 4, 2005, the Office of the Court Administrator (OCA) directed respondent sheriff to file his Comment on the allegations against him.[12]

In a Comment[13] dated August 19, 2005, respondent Diaz explained his position in the following manner:

(1) With respect to Civil Case No. 761, respondent admitted that he indeed conferred with the defendants and gave them three (3) days within which to comply with the conditions of the writ of possession.[14] After said

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period, respondent claimed that defendants informed him that their lawyer advised them that they still have the right to repurchase the property for which they will pursue in court in order to protect their right, which precluded him from proceeding with the implementation of the writ.

Respondent claimed that he never received a single centavo from either the Spouses Cayena or complainant even for the gasoline expenses.

(2) As to Civil Case No. 02-104, respondent admitted that he required the amount of Ten Thousand Pesos (P10,000.00) from complainant's clients to be deposited in his office.[15] He, however, asserted that the requirement to deposit is pursuant to the standard practice of writing to the parties or their counsel to inform them of their obligation to finance the writ of execution,[16] citing Section 10 of the Amended Administrative Circular No. 35-2004 dated August 30, 2004.

(3) As to the sixteen (16) civil cases[17] of the Spouses Loyola, respondent denied that he demanded any amount from the parties, although he admitted having received Two Thousand Pesos (P2,000.00) from the Spouses Loyola as sheriff's expenses.[18] He claimed that the amount was utilized in the service of sheriff's notices to the defendants. Respondent further reasoned that upon service of the sheriff's notices, he discovered that many of the defendants were indigent and have no properties which may be subject to execution.[19] He likewise averred that complainant also failed to inform him of the particular properties to be executed.[20]

(4) As to Civil Case No. 02-076, respondent clarified that contrary to the allegations of complainant, no money was ever deposited at the Office of the Clerk of Court. He argued to have only made an estimate of the expenses which will be incurred in the implementation of the writ. He claimed that if the parties found the amount of Ten Thousand Pesos (P10,000.00) to be exorbitant, then they could have just requested for a reduction thereof.[21]

(5) As to Civil Case No. 671,[22] respondent admitted that he indeed received the amount of Fifty Thousand Pesos (P50,000.00)[23] from defendant Sumagaysay as payment for the legal fees of the Two Million Five Hundred Thousand Pesos (P2,500,000.00) which was subjected to garnishment in compliance with the writ of execution.[24] He explained, however, that the balance amount of Twelve Thousand Four Hundred Pesos (P12,400.00)[25] from the P50,000.00 was voluntarily given to him by defendant Sumagaysay.[26]

Finally, respondent countered that while complainant repeatedly complains on the delay of the implementation of the writs, he, however, never paid the required legal fees in order to carry out his tasks. He prayed, thus, that the complaint against him be dismissed.

On January 15, 2007, the OCA, after reviewing the positions taken by both parties, found that the complaint cannot be resolved by mere examination of the records; thus, it recommended that the instant matter be referred to Executive Judge Milanio M. Guerrero, RTC, Branch 20, Tacurong City, for investigation and submission of report and recommendation.[27]

On February 26, 2007, the Court resolved to docket the instant complaint as a regular administrative matter and refer the same to Executive Judge Milanio M. Guerrero, RTC, Branch 20, Tacurong City, for investigation, report and recommendation.[28]

After a series of delays and extensions, on February 8, 2011, Executive Judge Guerrero submitted his Investigation Report recommending the imposition of sanctions upon respondent Diaz for failing to follow the appropriate procedure in the collection of fees relative to the service of processes, writs and execution of judgment in Civil Case Nos. 761, 02-104, 02-076, the sixteen cases of the Spouses Loyola and Civil Case No. 671.

On August 24, 2011, the OCA recommended that Diaz be dismissed from service for having been found guilty of grave misconduct. It further recommended the filing of corresponding criminal charges against Diaz for violation of R.A. 3019.[29]

RULING

We adopt the recommendation of the OCA.

Time and again, this Court has pointed out the heavy burden and responsibility which court personnel are saddled with in view of their exalted positions as keepers of the public faith. They should, therefore, be constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. 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 responsibility, competence and efficiency, and they must discharge their duties with due care and utmost diligence since they are officers of the court and agents of the law. Indeed, 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.[30]

There is no question as to respondent Diaz's guilt. The facts and the evidence, coupled with respondent's own admission, sufficiently established his culpability. His categorical admission of having demanded and collected money from complainant and his clients to defray the expenses of the implementation of the writs is clearly in violation of the procedures laid down by the Rules with regard to the payment of legal fees.

Under Section 9, Rule 141 of the Rules of Court, the sheriff is required to secure the court's prior approval of the estimated expenses and fees needed to implement the court process. Specifically, the Rules provide:

> SEC. 9. Sheriffs and other persons serving processes. - x x x
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> x x x x
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> (l) For money collected by him by order, execution, attachment, or any other process, judicial or extrajudicial, the following sums, to wit:
>
> - On the first four thousand (P4,000.00) pesos, four (4%) per centum.
>
> - On all sums in excess of four thousand (P4,000.00) pesos, two (2%) per centum.
>
> In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriff's expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guard's fees, warehousing and similar charges, in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and ex officio sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor.[31]

Thus, following the above-mentioned rules, it is imperative that a sheriff shall observe the following: (1) the sheriff must make an estimate of the expenses to be incurred by him; (2) he must obtain court approval for such estimated expenses; (3) the approved estimated expenses shall be deposited by the interested party with the Clerk of Court and Ex Officio Sheriff; (4) the Clerk of Court shall disburse the amount to the executing sheriff; and (5) the executing sheriff shall disburse/liquidate his expenses within the same period for rendering a return on the writ.[32] Any unspent amount shall be refunded to the party who made the deposit.

Likewise, we have repeatedly ruled that sheriffs are not authorized to receive any voluntary payments from parties in the course of the performance of their duties. In this case, respondent's act of receiving the balance of P12,400.00 from Sumagaysay in Civil Case No. 671 is indeed a violation of Canon III, Section 2 (b) of A.M. No. 03-06-13-SC,[33] which prohibited court employees from receiving tips or any renumeration for assisting or attending to parties engaged in transactions involved in actions or proceedings with the Judiciary. Corollary, a sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedural steps; otherwise, it would amount to dishonesty or extortion.[34]

We also take note that respondent's issuance of a temporary receipt,[35] which was handwritten on a scrap of paper, also constituted a violation of Section 113 of Article III, Chapter V of the National Accounting and Auditing Manual which provides that “no payment of any nature shall be received by a collecting officer without immediately issuing an official receipt in acknowledgment thereof.”[36]

Furthermore, it must be stressed anew that the duty of sheriffs to promptly execute a writ is mandatory and ministerial. Sheriffs have no discretion on whether or not to implement a writ. There is no need for the litigants to "follow-up" its implementation. When writs are placed in their hands, it is their ministerial duty to proceed with reasonable celerity and promptness to execute them in accordance with their mandate. Unless restrained by a court order, they should see to it that the execution of judgments is not unduly delayed. Clearly, in Civil Case No. 761,[37] when respondent took it upon himself to mediate between litigants and even provided an extension of the implementation of the writ, he appeared to be lacking in the amount of diligence required of him in the performance of his duties.

Under the circumstances, respondent is clearly guilty of grave misconduct which the Court will never tolerate. No less than the Constitution mandates that all public officers and employees should serve with responsibility, integrity and efficiency. Indeed, public office is a public trust. Thus, We have often stated that the conduct and behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, is circumscribed with the heavy burden of responsibility. The Judiciary expects the best from all its employees who must be exemplars in the administration of justice.[38]

We come to the imposable penalty.

As per records, this is not respondent's first offense. In A.M. No. P-07-2332 dated September 4, 2009,[39] respondent had been previously suspended for one (1) month and one (1) day for Simple Neglect of Duty.[40]

Under the Civil Service Rules, if the respondent is found guilty of two or more charges, the penalty to be imposed should be that corresponding to the most serious charge and the rest will be considered aggravating circumstances. Grave misconduct, a grave offense punishable by dismissal on the first offense, is the most serious charge of which respondent sheriff is found guilty. Thus, following the Civil Service Rules and the fact that this is his second infraction involving similar charges, dismissal from service is the appropriate penalty to be imposed on respondent sheriff.

WHEREFORE, the Court finds CARLOS P. DIAZ, Sheriff IV, of the Regional Trial Court, Branch 20, Tacurong City, GUILTY of GRAVE MISCONDUCT,[41] and orders his DISMISSAL from the service, with forfeiture of all retirement benefits and privileges, except accrued leave credits, if any, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

The Legal Division of the Office of the Court Administrator is likewise, DIRECTED to INITIATE appropriate criminal proceedings against respondent Diaz.

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SO ORDERED.

Corona, C.J., Carpio, Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Sereno, Reyes, and Perlas-Bernabe, JJ., concur.
Velasco, Jr.,[*] J., no part.

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[*] No part.

[1] Rollo, pp. 1-21

[2] Id. at 2-8.

[3] Id. at 8-11.

[4] Id. at 32.

[5] Docketed as Civil Case Nos. 02-081, 02-083; 02-085, 02-086, 02-087, 02-089, 02-090, 779, 780, 784, 785, 935, 936, 938, 942 and 943 before the Municipal Trial Court of Tacurong City; id. at 36-37.

[6] Copy of the receipt of Php 2,000.00 is attached as Exhibit “A” of the Complaint; id. at 35.

[7] Copy of the Sworn Statement of Spouses Loyola is attached as Exhibit “B” and “B-1” of the Complaint; id. at 36-38.

[8] Id.

[9] Copy of the demand letter is attached as Exhibit “A” of the Complaint; id. at 39.

[10] Copy of the Acknowledgment Receipt is attached as Exhibit “B” of the Complaint; id. at 45.

[11] Rollo, p. 18; Copy of official receipts is attached as Exhibit “C” and “D” of the Complaint; id. at 46.

[12] Id. at 49.

[13] Id. at 51-59.

[14] Id. at 51.

[15] Investigation Report dated February 8, 2011, id. at 158; id. at 53.

[16] Id.

[17] Id. at 159; id. at 54.

[18] Id.

[19] Id.

[20] Id. at 55.

[21] Id.

[22] Sultan Kudarat Construction and Development Corp. v. Sps. Sumagaysay, et al.

[23] Investigation Report dated February 8, 2011; rollo, p. 164; rollo, p. 56.

[24] Id.

[25] Id. at 9; Total amount of legal fees amounted to P37,600.00 only as evidenced by Official Receipt No. 17677315 amounting to P9,390.00 and Official Receipt No. 17677816 amounting to P28,210.00, id. at 46.

[26] Rollo, pp. 56; 80.

[27] Id. at 83-87.

[28] Id. at 88.

[29] Id. at 202.

[30] Apuyan, Jr. v. Sta. Isabel, A.M. No. P-01-1497, May 28, 2004, 430 SCRA 1, 15, citing Gutierrez v. Quitalig, A.M. No. P-02-1545, April 2, 2003, 400 SCRA 391, 397.

[31] Emphasis supplied.

[32] Lacambra v. Perez, A.M. No. P-08-2430, July 14, 2008, 558 SCRA 36, 43.

[33] Section 2. x x x

x x x x

(b) Receive tips or other remunerations for assisting or attending to parties engaged in transactions or involved in actions or proceedings with the Judiciary.

x x x

(Canon III, A.M. No. 03-06-13-SC, CODE OF CONDUCT FOR COURT PERSONNEL)

[34] Anico v. Pilipiña, A.M. No. P-11-2896, August 2, 2011.

[35] Rollo, p. 35.

[36] Sandoval v. Ignacio, Jr., A.M. No. P-04-1878, August 31, 2004, 437 SCRA 238, 246. (Italics ours.)

[37] Rollo, p. 2.

[38] Francisco v. Galvez, A.M. No. P-09-2636, December 4, 2009, 607 SCRA 21, 28.

[39] 598 SCRA 188, 194.

[40] Rollo, p. 200.

[41] Section 52(A)(3) of the Revised Rules on Administrative Cases in the Civil Service.

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