

RENATO MIGUEL D. GARCIA, COMPLAINANT, VS. RICKY MONTEJAR, SHERIFF, REGIONAL TRIAL COURT, BRANCH 64, GUIHULNGAN, NEGROS ORIENTAL, RESPONDENT.

A.M. No. P-10-2860 (FORMERLY A.M. OCA I.P.I. NO. 06-2392-P). October 20, 2010

Ponente: BRION, J.

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BRION, J.:

The present administrative case arose from the complaint the Office of the Court Administrator (OCA) received from the Rural Bank of Guihulngan (Negros Oriental), Inc.[1] (complainant bank), against Ricky Montejar, in the latter's capacity as Sheriff of the Regional Trial Court, Branch 64, Guihulngan, Negros Oriental (respondent).

The complainant accused respondent of committing irregularities in his official duties in the implementation of the writ of execution in the six (6) civil cases where the complainant bank was the party plaintiff, namely:

(1)

The respondent received the amount of P7,000.00 as sheriff's fee in the enforcement of the writ of execution in Civil Case No. 352 without a court-approved estimate of expenses. He also failed to attach receipts and/or documents to support his liquidation report on the money received;[2]

(2)

The respondent failed to submit the liquidation report on the expenses he incurred in the implementation of the writs of execution in Civil Case No. 01-7-135 and Civil Case No. 375; and

(3)

The respondent failed to fully execute the writs of execution in Civil Case No. 01-7-135; Civil Case No. 352; Civil Case No. 01-2-127; Civil Case No. 429 and Civil Case 426.

In his Comment,[3] the respondent denied the charges and maintained that there was proper enforcement of the writs of execution, albeit they were returned not executed or partially executed because the defendants no longer had properties. He also claimed that: (a) his liquidation report in Civil Case No. 352 was not supported by receipts because he lost them; (b) in Civil Case No. 375, the money tendered as sheriff expenses was the approved amount of sheriff expenses that was turned over to him because of the inhibition of the sheriff who previously handled the writ; and (c) in Civil Case No. 01-2-127 and Civil Case No. 429, the complainant bank failed to pay the approved sheriff's itemized expenses.

On July 11, 2003, the Court referred the complaint and comment to the OCA for evaluation, report, and recommendation.

The OCA Report and Recommendation

In the Memorandum dated January 23, 2009, the OCA[4] recommended that the matter be docketed as an administrative case. The OCA found the respondent guilty of simple misconduct and recommended that he be fined in an amount equivalent to two (2) months' salary to be deducted from the benefits that may be due to him. The penalty of fine was recommended in lieu of suspension, considering the respondent's death during the pendency of the case.

The OCA found that the respondent violated the accepted procedure provided in Section 10, Rule 141 (Sheriffs, process servers and other persons serving processes) of the Rules of Court on sheriff expenses by directly receiving sums of money from the complainant bank as sheriff expenses and by failing to properly render and/or substantiate the liquidation reports.

The Court's Ruling

We find the OCA report and recommendation well-taken. We agree that under the circumstances the respondent is guilty of simple misconduct. We modify the imposable penalty, however, as discussed below.

Section 10, Rule 141 of the Rules of Court, as amended reads:

Sec. 10. Sheriffs, process servers and other persons serving processes. - With regard to sheriff's expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, the interested party shall pay said expenses 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. The liquidation shall be approved by the court. 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. (Emphasis supplied)

Moreover, the deposit and payment of expenses incurred in enforcing writs are governed by Section 9, Rule 141 of the Rules of Court:

SEC. 9. Sheriffs and other persons serving processes. -

x x x x

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, guards' 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. (Emphasis supplied)

The rule requires that the sheriff executing the writs shall provide an estimate of the expenses to be incurred that shall be approved by the court.[5] Upon the court's approval, the interested party shall then deposit the amount with the clerk of court and ex-officio sheriff.[6] Thereafter, the expenses shall then be disbursed to the assigned deputy sheriff who shall execute the writ subject to the latter's liquidation upon the return of the writ.[7] Any amount unspent shall be returned to the interested party.[8] Clearly, the rule does not allow direct payment of sheriff expenses from the interested party to the sheriff.

Moreover, the rules on sheriff expenses are clear-cut and do not provide procedural shortcuts. Compulsory observance of the rules under the circumstances is also underscored by the use of the word "shall" in the above sections.

In this case, the records show that the respondent failed to comply with the rules. The respondent admitted that he directly received from the complainant bank the amount of P7,000.00 as sheriff expenses in Civil Case No. 352. He also stated that he gave the amount of P1,000.00 to another sheriff who assisted him, instead of using the amount to implement the writ. The respondent further admitted that his conduct in preparing, submitting and substantiating his liquidation reports fell below the standard prescribed by the above rule. Thus, in Civil Case No. 352, he admitted that his expenses in his liquidation report were not substantiated by receipts. Moreover, in Civil Case No. 375, the respondent failed to properly liquidate the P2,000.00 he received for the execution of the writ.

These circumstances show without doubt that the respondent is liable for simple misconduct, defined as a transgression of some established rule of action, an unlawful behavior, or negligence committed by a public officer.[9] He cannot be held liable for grave misconduct since this offense requires substantial evidence showing that the acts complained of were corrupt or inspired by an intention to violate the law or were in persistent disregard of well-known legal rules.[10] In this case, there is lack of evidence showing that the respondent's actuations were motivated by any corrupt interest or were done intentionally or willfully to violate the law and the established rules. At most, the records only show that the respondent was remiss in efficiently performing and discharging his duties as sheriff. As an officer of the court, the respondent is expected to discharge his duties competently and diligently and with a high degree of professionalism. After all, the sheriff is the front-line representative of the justice system in this country; if he loses the trust reposed in him, he inevitably diminishes the faith of the people in the Judiciary.[11] A sheriff who fails to comply with the standard of conduct of his office may be subjected to administrative liability.

Given the intervening event of the respondent's death, the OCA recommended that he be fined in an amount equivalent to two (2) months salary. In accordance with prevailing jurisprudence,[12] we modify the OCA'S recommendation in favor of a fine of P20,000.00.

WHEREFORE, premises considered, we hereby find respondent Sheriff Ricky Montejar guilty of SIMPLE MISCONDUCT. He is imposed a FINE of Twenty Thousand Pesos (P20,000.00) to be deducted from the benefits due to him (or his estate) as an employee who died in the service. Let a copy of this decision be attached to his personal records.

SO ORDERED.

[*]Nachura, Villarama, Jr., [***]Mendoza, and Sereno, JJ., concur.

[*] Designated Additional Member of the Third Division, per Special Order No. 907 dated October 13, 2010.

[**] Designated Acting Chairperson of the Third Division, per Special Order No. 906 dated October 13, 2010.

[***] Designated Additional Member of the Third Division, per Special Order No. 91107 dated October 15, 2010.

[1] Through its President/Manager, Renato Miguel D. Garcia.

[2] Page 3 of the Recommendation dated November 30, 2006 of then Court Administrator Christopher O. Lock.

[3] Rollo, pp. 312-315.

[4] Through then Court Administrator (now Supreme Court Associate Justice) Jose P. Perez.

[5] Aprieto v. Lindo, A.M. No. P-07-2356, May 21, 2009, 588 SCRA 19, 25.

[6] Ibid.

[7] Ibid.

[8] Ibid.

[9] China Banking Corp. v. Janolo, Jr., A.M. No. RTJ-07-2035, June 12, 2008, 554 SCRA 295, 301.

[10] Donton v. Loria, A.M. No. P-03-1684, March 10, 2006, 484 SCRA 224.

[11] Areola v. Patag, A.M. No. P-06-2207, December 16, 2008, 574 SCRA 10, 13.

[12] Calo v. Dizon, A.M. No. P-07-2359, August 11, 2008, 561 SCRA 517, 534.

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