

**LETICIA L. SALES, COMPLAINANT, VS. ARNEL JOSE A. RUBIO,
SHERIFF IV, RTC-OCC, NAGA CITY, RESPONDENT.***A.M. No. P-08-2570 [Formerly A.M. OCA IPI No. 07-2547-P]. September 04, 2009*

Ponente: CARPIO MORALES, J.

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In Civil Case No. 1289, the Municipal Circuit Trial Court (MCTC) of Magarao-Canaman, Camarines Sur rendered judgment in favor of the therein plaintiff-herein complainant Leticia L. Sales. The decision in favor of herein complainant having become final and executory, a writ of execution was issued which was implemented by herein respondent Sheriff IV Arnel Jose A. Rubio by seizing personal properties of the judgment debtor.

It appears that complainant and respondent engaged in an argument over the failure of respondent to seize some other personal property of the judgment debtor, as well as over the demand from complainant by respondent of the amount of P5,000, said to represent expenses for the implementation of the writ. In the course of the argument, respondent employed discourteous words.

The scheduled sale at public auction on October 6, 2006 of the seized properties did not push through, complainant and respondent proffering different reasons therefor.

Hence, spawned the filing by complainant of the present administrative complaint against respondent,[1] by letter of November 21, 2006, for dishonesty, bribery, inefficiency, incompetence in the performance of official functions, gross discourtesy, and violation of Republic Act No. 6713[2] Rule VI Section 4(a) in relation to Civil Case No. 1289.

After respondent filed his Comment-Answer denying the charges and giving his side of the case, the Court, on recommendation of the Office of the Court Administrator (OCA), referred the case to the Executive Judge of the Regional Trial Court (RTC), Naga City, for investigation, report and recommendation.[3]

The Executive Judge found the charges for dishonesty, bribery, and inefficiency and incompetence in the performance of official duties unsubstantiated.[4] He, however, found respondent liable for discourtesy, with the recommendation that he be reprimanded, and that he be "sternly warned to [observe] the SC circular directing sheriffs to submit an estimated itemized expense before proceeding with the implementation of the writ."

The Investigating Judge also recommended that respondent and Patricia de Leon, Clerk, Office of the Clerk of Court, Regional Trial Court, Naga City, be formally administratively charged for Conduct Prejudicial to the Best Interest of the Service for collecting the amount of P3,000.00 from complainant, purportedly representing sheriff's expense in the implementation of the writ, without issuing any receipt therefor.[5]

The OCA, after evaluating the Complaint and respondent's Answer vis-a-vis the Report and Recommendation of the Investigating Judge, sustained the finding that respondent committed discourtesy, but modified the rest of the findings and recommendations, viz:

On the charges of Inefficiency and Incompetence in the Performance of Official Duties, the evidence presented during the investigation show[s] that the respondent Sheriff failed to follow the rules on the proper implementation of the subject writ of execution.

With regard to the recommended penalty of "warning" for the failure of the respondent Sheriff to comply with the provisions of the Rules of Court, specifically on the duty of the sheriff to submit to the court the itemized expenses for implementing the writ of execution, we find the same too light.

As an officer of the court, the respondent Sheriff should be fully aware of Sec. 10(j) , Rule 141 of the Rules of Court, to wit:

"Sec. 10. Sheriffs, and other persons serving processes.

x x x x

(j) For levying on execution on personal or real property, THREE HUNDRED (P300.00) pesos;

With regard to sheriff's expenses in executing the writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guard's fee, 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." (Underscoring supplied by OCA; emphasis supplied)

As correctly pointed out by the Investigating Judge, the respondent Sheriff failed to strictly observe the requirements prescribed by Section 10, Rule 141 as amended by Supreme Court Resolution No. 04-2-04 dated 16 August 2004, the resolution amending Rule 141 (Legal Fees) of the Rules of Court. It even appears that he deliberately ignored the rules. The respondent Sheriff's explanation that his failure to submit the estimated sheriff's expenses to the court was due to the complainant's desire for the hasty implementation of the said writ does not justify his actuations. The respondent Sheriff should be cited for inefficiency and incompetence in the performance of his duties.

Anent the allegation that the respondent Sheriff demanded P5,000 from the complainant for the expenses to be incurred in the enforcement of the writ of execution, the Supreme Court has ruled that a Sheriff who demands and agrees to receive money from a party for the implementation of the Writ of Execution is liable for Conduct Unbecoming of an Officer of the Court.[6]

However, no evidence was submitted indicating that the respondent Sheriff received the aforesaid money [of P5,000] from the complainant for which reason he should be exonerated on the charge of bribery.

Be that as it may, it is worth stressing that the respondent Sheriff incurred delay in implementing the writ of execution. This can be deduced from his own admission that he waited for the filing of the Affidavit of Third-Party Claimant on 10 October 2006 when he should have been conducting the sale of the levied properties as early as 6 October 2006.[7]

Sheriffs do not exercise discretionary power with respect to the implementation of a writ of execution.

x x x x

The foregoing considered, we submit that the appropriate penalties for the two (2) charges in the instant case are Suspension for Six (6) months and One (1) day to One (1) year for Inefficiency and Incompetence in the Performance of Official Duties, and Reprimand for discourtesy in the course of official duties. Noteworthy is the provision that:

"if the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count and the rest shall be considered aggravating circumstances."

IN VIEW OF THE FOREGOING, we respectfully submit for consideration of the Honorable Court our recommendations that (1) the instant administrative complaint be RE-DOCKETED as a regular administrative matter; and (2) respondent Arnel Jose A. Rubio, Sheriff IV, RTC-OCC, Naga City be held liable for Inefficiency and Incompetence in the Performance of Official Duties and Discourtesy in the course of official duties, respectively. Consequently, the respondent should be meted the penalty of SUSPENSION for a period of Six (6) months without pay and STERNLY WARNED that a repetition of the same infractions in the future shall be dealt with more severely.[8] (Citations omitted) (Italics in the original; emphasis and underscoring partly in the original, partly supplied)

Thus, aside from faulting respondent for discourtesy, the OCA also faulted respondent for Inefficiency and Incompetence in the Performance of Official Duties.

The Court finds well-taken the evaluation and recommendation of the OCA on the charge for discourtesy.

The Court finds well-taken too the evaluation and recommendation of the OCA on respondent's failure to comply with the requirements of Rule 141, Section 10 of the Rules of Court. It finds the OCA's characterization of such failure as "Inefficiency and Incompetence in the Performance of Official Duties" - a grave offense - too harsh, however.

In *Danao v. Franco, Jr.*,[9] the therein respondent who violated the same Section 10 of Rule 141 was faulted for Simple Misconduct - a less grave offense - and was penalized with suspension for two months without pay. In *Villarico v. Javier*[10] which also involved a violation of the same Rule, the Court faulted the therein respondent for "Conduct Unbecoming a Court Employee" and imposed on him a fine of P2,000.[11] And in *Guilas-Gamis v. Beltran*,[12] the Court, without characterizing the similar offense committed, imposed on the therein respondent a fine of P2,000.

In light of its rulings in the immediately-cited cases, the Court finds respondent liable for violation of Section 10, Rule 141 of the Rules of Court, which is penalized, under Rule IV, Section 52(B) (4) of the Uniform Rules on Administrative Cases in the Civil Service, with suspension for one month and one day to six months on the first offense.[13] As for respondent's commission of discourtesy in the course of the performance of official duties, it is penalized with reprimand on the first offense.[14]

Rule IV, Section 55 of the Uniform Rules on Administrative Cases in the Civil Service provides that "[i]f the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count and the rest shall be considered as aggravating circumstances." Discourtesy should thus, in the present case, be considered as an aggravating circumstance.

WHEREFORE, respondent, Sheriff IV Arnel Jose Rubio of the Municipal Circuit Trial Court of Magarao-Canaman, Camarines Sur, is found GUILTY of violation of Rule 141, Section 10 and of Discourtesy, and is SUSPENDED for Six Months without pay, with a stern warning that a repetition of the same or similar offense or offenses shall be dealt with more severely.

SO ORDERED.

Quisumbing, (Chairperson), Brion, Del Castillo, and Abad, JJ., concur.

[1] Rollo, pp. 6-7.

[2] 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 VIOLATIONS THEREOF AND FOR OTHER PURPOSES.

[3] Rollo, p. 57.

[4] Id. at 151-152.

[5] Id. at 134.

[6] Villarico v. Javier, A.M. No. P-04-1828, February 14, 2005, 451 SCRA 218, 224.

[7] Vide rollo, p. 184 (TSN, February 18, 2008, p. 16).

[8] Id. at 246-249.

[9] A.M. No. P-02-1569, November 13, 2002, 391 SCRA 515, 520-521.

[10] A.M. No. P-04-1828, February 14, 2005, 451 SCRA 218, 225.

[11] Id. at 224-225.

[12] A.M. No. P-06-2184, September 27, 2007, 534 SCRA 175, 180.

[13] Uniform Rules on Administrative Cases in the Civil Service, Rule IV, Section 52 (B) (4).

[14] Uniform Rules on Administrative Cases in the Civil Service, Rule IV, Section 52 (C) (1).

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