

EN BANC

[A.M. No. P-11-2894 (Formerly OCA IPI No. 10-3429-P), April 10, 2019]

**ROMAN P. TRINIDAD, COMPLAINANT, VS. ALAN C. JAVIER
(SHERIFF IV, OFFICE OF THE CLERK OF COURT, REGIONAL TRIAL
COURT, IN TANAUAN CITY, BATANGAS), RESPONDENT.**

DECISION

PER CURIAM:

The 2017 *Rules on Administrative Cases in the Civil Service* (2017 RACCS)^[1] allows the application of mitigating circumstances in administrative cases to soften or lessen the administrative penalty imposable on erring employees of the Judiciary. However, pursuant to Section 53 of the same, the mitigation of penalties is not allowed if the prescribed penalty is dismissal from the service.

The Case

The complainant has charged the respondent with grave misconduct, dereliction of duty, conduct prejudicial to the best interest of the service, and violation of Section 9, Rule 141 of the *Rules of Court* in relation to his handling of the execution proceedings in Civil Case No. 1316 entitled *Spouses Roman and Estela Trinidad v. Erlinda Avelino-Carandang, et al.*^[2]

Antecedents

Based on the report and recommendation issued by the Office of the Court Administrator (OCA), the following factual antecedents were established.

The complainant was the plaintiff in Civil Case No. 1316, an ejectment case commenced and tried in the Municipal Trial Court in Cities (MTCC) of Tanauan City, Province of Batangas. In November 2005, the MTCC rendered judgment in favor of the complainant by ordering the defendants to vacate the property subject of the action. After the judgment became final, the Clerk of Court of the MTCC issued the writ of execution upon motion of the complainant, and the implementation of the writ of execution was assigned to the respondent as the implementing sheriff.^[3]

According to the complainant, the respondent initially demanded P50,000.00 from him as expenses for the execution of the judgment under the representation that the amount was necessary to pay the police officers who would assist in the implementation of the writ of execution. The complainant acceded and gave the amount, and the respondent issued a typewritten receipt for the same.^[4]

The complainant stated that the respondent went to his house twice more to collect an additional P30,000.00 purportedly for the food of the police officers who would

assist in the execution; that in each instance he (complainant) could give only P5,000.00; and that he recorded the transactions in his notebook, and the respondent received and signed for the amounts.^[5]

On January 4, 2010, the complainant received a copy of the Sheriffs Report dated December 28, 2009 requesting the resurvey of the property. As a consequence, he demanded that the respondent return his money in view of the latter's failure to execute the judgment of the MTCC.^[6]

In his comment, the respondent denied the allegations that he had demanded and received money from the complainant. He claimed that the only time he had gone to the latter's house was on December 28, 2009, and he did so to ask if the complainant could pinpoint the exact boundaries of his property because the monuments were missing; and that the complainant could not locate the exact boundaries of his property.^[7]

Report and Recommendation of the OCA

Pursuant to the letter dated April 13, 2011 of then Deputy Court Administrator (DCA) Nimfa Cuesta-Vilches, Executive Judge Arcadio I. Manigbas of the Regional Trial Court in Tanauan City submitted his report dated October 19, 2011,^[8] whereby he recommended the dismissal of the administrative complaint for neglect of duty, but recommended the suspension from the service without pay for one year for the charge of grave misconduct, conduct prejudicial to the best interest, and violation of the Rules of Court.

In its Report and Recommendation, the OCA found substantial evidence to prove that the respondent had violated Section 10 Rule 141 of the *Rules of Court*; and held that the respondent's acts of soliciting and accepting money from the complainant rendered him liable for conduct unbecoming of a court employee, as well as for grave misconduct and dishonesty, the latter two being penalized with dismissal from the service. Opining that his penalty should be mitigated because the charge had been his first offense and he had been in the service of the Judiciary for more than three decades, the OCA adopted the recommendation of Judge Manigbas to suspend the respondent for one year without pay for the charge of grave misconduct, conduct prejudicial to the best interest of the service, and violation of Rule 141 of the *Rules of Court*.^[9]

Ruling of the Court

We affirm the findings of the OCA, and rule that the respondent was guilty of grave misconduct and conduct prejudicial to the best interest of service. However, we cannot accept the recommended penalty in view of the gravity of the offense committed by the respondent; hence, we need to impose a stiffer penalty commensurate to the offense committed.

As shown in the OCA's report,^[10] the respondent did not successfully rebut the positive and categorical testimonies of the complainant and of his witness establishing that he had signed the receipt and the notebook entries by way of acknowledging having received the P50,000.00, P5,000.00 and another P5,000.00, respectively. All that he had done herein was to deny the testimonies about his

receiving the sums. Not surprisingly, he insisted that the signature on the receipt and the notebook entries purporting to be his was not identical or similar to his usual and legal signature. Such insistence could not be accorded credence, however, because even assuming the dissimilarity between the signatures to be true that fact alone did not bolster his denial of liability considering that changing the appearance of a signature in order to mislead others was too easy to do. Verily, if his denial of the signature had any truth to it, how come he did not initiate the submission of the assailed documents to expert examination and analysis if he really desired to uphold his allegation of forgery of his signature. Given the gravity of the charge against him, he ought to have done so before the investigating judge, who would have fully accorded to him the opportunity for the submission to the expert.

Accordingly, the respondent was guilty of gross misconduct. Misconduct has been defined as an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior, especially by a government official. It is grave where the elements of corruption, or clear intent to violate the law, or flagrant disregard of established rule is present.^[11] That was true herein.

As the OCA further pointed out, the respondent did not observe the requirements stated in the last paragraph of Section 10, Rule 141 of the *Rules of Court*,^[12] to wit:

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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 sheriffs expenses shall be taxed as costs against the judgment debtor.

In *Litonjua v. Marcelino*,^[13] the sheriffs failure to observe the procedural rules was held to constitute a dereliction of duty, and the sheriff was dismissed from the service.

Not only did the respondent not observe the prescribed procedure regarding the collections or payment of sheriffs expenses in the service of writs of execution, but he also deliberately ignored the rules by directly demanding and receiving from the complainant the sums of money. He ultimately did not implement the writ of execution, thereby causing prejudice to the complainant whose favorable judgment went for naught because of his inaction. Worse, he refused to return the sums of money he had received, and, in the end, even denied receiving the amounts. The presumption that he had misappropriated the amounts became reasonable. Indeed, a sheriff's failure to turn over amounts received from a party in his official capacity constituted misappropriation of funds and amounted to dishonesty.^[14]