

EN BANC

[A.M. No. P-12-3063 (Formerly A.M. OCA IPI No. 09-3082-P), November 26, 2013]

**ELEANOR P. OLIVAN, COMPLAINANT, VS. ARNEL JOSE A. RUBIO,
DEPUTY SHERIFF IV, OFFICE OF THE CLERK OF COURT,
REGIONAL TRIAL COURT, NAGA CITY, RESPONDENT.**

DECISION

PER CURIAM:

Before us is a sworn administrative complaint^[1] dated February 11, 2009, filed by complainant Eleanor^[2] P. Olivan against respondent Arnel Jose A. Rubio, Deputy Sheriff IV, Office of the Clerk of Court (OCC), Regional Trial Court (RTC), Naga City, for malversation.

The facts, as culled from the records, follow:

Complainant is the daughter-in-law and representative of the applicants in a land registration case, docketed as Land Registration Case No. N-594, GLRC Record No. N-8109 entitled, "*Domingo P. Olivan and Venancia R. Olivan, Applicants v. Municipality of Pasacao, Camarines Sur, Oppositor.*" She averred that the case was decided in their favor by the Court of Appeals whose decision became final and executory. Hence, a writ of execution^[3] was issued in favor of the applicants. Subsequently, an Alias Writ of Execution^[4] (Alias Writ) was issued on September 29, 2005 and respondent was tasked to enforce the same.

On April 27, 2006, respondent received P20,000 from complainant as partial payment for the sheriff's incidental expenses for the implementation of the Alias Writ, as evidenced by a handwritten receipt^[5] signed by respondent.

On May 10, 2006, respondent filed a Manifestation^[6] pursuant to Rule 141 of the Rules of Court, detailing the Sheriff's Expenses in the amount of P150,000 as incidental expenses and P3,000 as the court's commission fee, or a total of P153,000 for the implementation of said writ. The Manifestation was with the conformity of complainant, the recommending approval of Atty. Egmedio C. Blacer, Clerk of Court VI and Ex Officio Sheriff of the RTC, and was approved by Judge Pablo M. Paqueo, Jr., then Executive Judge of the RTC. On the same day, complainant deposited P153,000 with the OCC of the RTC as evidenced by Official Receipt No. 3453158.^[7] Also on the same day, respondent withdrew the full amount of P153,000.^[8]

Complainant averred that to her damage and prejudice, respondent failed to execute the decision despite receipt of a total sum of P173,000. She also averred that respondent failed to return to the OCC or to her the remaining cash of P22,866

as indicated in his Liquidation of Sheriff's Expenses^[9] dated December 20, 2008. Said report showed that the total amount spent was only P150,134, thereby leaving a balance of P22,866.

In his Comment^[10] dated April 7, 2009, respondent stated that implementing the Alias Writ required the delivery of the material possession of the subject property to the applicants and the service of the said writ to more than 40 residents in the area. He informed complainant of the expenses that will be needed to implement the writ considering the number of residents affected and their opposition thereto, the location of the subject property and the need for additional assistance from other court sheriffs. Thus, on April 27, 2006, complainant gave him the aforementioned amount of P20,000.

He adds that on April 24, 2006 Atty. Fiel V. Bagalacsa-Abad, Clerk of Court V of the OCC issued a Travel Order^[11] to him and other assisting sheriffs namely, Pelagio Papa, Jr., Edgar Surtida II^[12] and the late Donn Valenciano. Together with said other sheriffs, he went to the subject property several times to serve the writ.

On May 10, 2006, he filed the aforementioned Manifestation and submitted a Partial Return of Alias Writ of Execution^[13] on May 11, 2006 reporting the actions he had undertaken in the implementation of the writ. He also requested that a precision survey be conducted for the purpose of identifying the actual occupants of the subject property so that they may be duly served in person with the notice to vacate and the alias writ. He also requested that the survey be conducted with the assistance of the members of the Philippine Army or the Philippine National Police (PNP) to maintain peace and security. In an Order^[14] dated May 16, 2006, the RTC duly took note of the said Partial Return and ordered the conduct of the precision survey. The RTC also directed the PNP Provincial Commander of Camarines Sur to provide respondent at least ten PNP personnel to maintain peace and order during the said survey.

Subsequently, Travel Orders were issued in his favor and in favor of his companions for the periods May 18 to 19, 2006;^[15] May 23 to 24, 2006;^[16] and June 20 to 23, 2006.^[17]

On June 26, 2006, he submitted a Sheriff's Report^[18] stating the actions he pursued and the events that transpired during the service of the RTC's Order dated May 16, 2006. Respondent alleged therein that the occupants resisted and refused to obey the Alias Writ and that respondent and his companions were met with threats and violence. Thus, respondent opined that a precision survey and a writ of demolition were proper under the circumstances. Respondent claimed that complainant's counsel filed a motion for issuance of a writ of demolition but the court had not yet resolved the motion. Respondent also claimed that complainant would oftentimes visit him, insisting that he demolish the houses erected on the subject property but he refused as there was no writ of demolition yet.

On November 30, 2008, he received a letter^[19] from complainant, copy furnished Judge Jaime E. Contreras (Judge Contreras), Executive Judge of the RTC, asking for an accounting of the expenses he incurred in the implementation of the Alias Writ. Judge Contreras treated the letter as an administrative complaint and met the

parties for a conference. As a result, he was ordered to return the full amount or make a full and detailed liquidation, which he did on January 13, 2009, through the aforementioned Liquidation of Sheriff's Expenses. However, complainant manifested to Judge Contreras that she was not satisfied with the accounting rendered. Complainant was then informed by Judge Contreras that the matter was properly within the jurisdiction of the Office of the Court Administrator (OCA).^[20]

In her Opposition to Respondent's Comment,^[21] complainant maintained that respondent's liquidation report contained bloated expenses. She submitted that respondent malversed a portion of the total amount he received. In his Reply,^[22] respondent countered that the expenses he incurred were all legitimate.

Considering the conflicting allegations of the parties and the gravity of the charges which required a full-blown investigation, the OCA referred the matter to Judge Contreras for investigation, report and recommendation.^[23]

In his Report and Recommendation^[24] dated December 5, 2010, Judge Contreras concluded that respondent incurred unnecessary and/or unsubstantiated expenses. He found that respondent's claim for expenses regarding police assistance was refuted by the Certifications issued by Police Superintendent Marlon Celetaria Tejada of the PNP Camarines Sur Provincial Office^[25] and Police Senior Inspector Venerando Flor Ramirez of the Pasacao Municipal Police Station^[26] stating that their respective offices based on record did not deploy any PNP personnel to assist respondent in implementing the alias writ covering the period of April 28 to June 22, 2006. Said police officers confirmed the veracity of these Certifications in their respective testimonies made before Judge Contreras.^[27] Judge Contreras further noted that respondent submitted his liquidation of expenses only after almost two years. Thus, Judge Contreras made the following conclusion and recommendation:

CONCLUSION AND RECOMMENDATION

In view of all the foregoing, the undersigned Investigating Judge respectfully recommends to hold respondent Sheriff Jose Arnel Rubio liable for Serious Misconduct for having committed the following acts, to wit:

1. For having received from the complainant Php 20,000.00 out of his demand for Php 100,000.00 in consideration of his services which allegedly entailed risk;
2. For having directly received from complainant [a] sum of money as sheriff's expense, without following the appropriate procedure;
3. For having knowingly or unknowingly failed to exercise proper prudence thereby incurring unnecessary expenses or financial losses, under the guise of implementing the writ, to the prejudice of the complainant;
4. For having presented questionable and falsified receipts to justify his

bloated expenses; and

5. For having enlisted the assistance of several sheriffs, and in the process involved them in complicity in implementing the writ.

Likewise, it is respectfully recommended that he be **suspended** for six (6) months without pay.^[28]

As a related matter, in the course of the investigation, Judge Contreras found that other employees of the RTC, namely, Patricia De Leon, Sheriff Edgar Hufancia, Sheriff Edgar Surtida II and Sheriff Pelagio Papa, Jr. were likewise involved in anomalous or shady transactions which enabled them to collect certain sums of money from complainant under the guise of helping her in her case. Thus, Judge Contreras recommended that a case for Conduct Prejudicial to the Best Interest of the Service be filed against said employees. His recommendation was approved by this Court in its Resolution^[29] dated June 13, 2012 and the matter is now separately docketed as A.M. OCA IPI No. 12-3896-P.^[30]

In its Memorandum^[31] dated March 14, 2012, the OCA found that the conclusions of fact of Judge Contreras are duly supported by evidence on record. The OCA agreed with said findings except for the recommended penalty. Invoking our ruling in *Anico v. Pilipiña*,^[32] the OCA opined that respondent's act of soliciting money from complainant constituted serious misconduct. The OCA added that such was further aggravated by respondent's act of receiving the amount of P20,000 and his failure to turn over said amount to the OCC, which is an act of misappropriation of funds amounting to dishonesty. Thus, the OCA recommended, among others, that respondent be found guilty of Serious Misconduct and Dishonesty and be ordered dismissed 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 Court adopts in full the factual findings and the recommendation of the OCA.

The deposit and payment of expenses incurred in enforcing writs are governed by Section 10, Rule 141 of the Rules of Court, as revised by A.M. No. 04-2-04-SC,^[33] viz:

SEC. 10. *Sheriffs, PROCESS SERVERS and other persons serving processes.* –

x x x x

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.)

The rule clearly requires that the sheriff executing a writ shall provide an estimate of the expenses to be incurred, and such estimated amount must be approved by the court. Upon approval, the interested party shall then deposit the amount with the clerk of court and *ex officio* sheriff. The expenses shall be disbursed to the assigned deputy sheriff to execute the writ, subject to liquidation upon the return of the writ. Any amount unspent shall be returned to the interested party.^[34]

In this case, respondent failed to comply with the prescribed procedure. His admitted act of receiving P20,000 for expenses to be incurred in the execution of the writ on April 27, 2006^[35] as evidenced by a mere handwritten receipt, without having made an estimate and without securing prior approval of the court, is a violation of the above rules. Respondent's explanation that he merely received the P20,000 because complainant was very insistent to implement the Alias Writ, is not acceptable. The rules are clear. Respondent should not have received any money from complainant without first providing an estimate of the expenses to be incurred and submitting the same for approval of the court.^[36] He did not even advise complainant that he was not authorized to receive any amount from her and that the money for expenses should be deposited with the OCC.^[37] Neither does it appear that he deposited the amount with the Clerk of Court and *Ex officio* Sheriff. In fact, the money which respondent had demanded and received from complainant was not among those prescribed and authorized by the Rules of Court as it was not even accounted for earlier in his Manifestation. He merely reported his receipt of the P20,000 in his liquidation of expenses only after complainant demanded an accounting and in compliance to Judge Contreras' directive. This Court has ruled that any amount received by the sheriff in excess of the lawful fees allowed by the Rules of Court is an unlawful exaction and renders him liable for grave misconduct and gross dishonesty.^[38]

Dishonesty is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of one's duty. It implies a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness.^[39] On the other hand, misconduct is defined as any unlawful conduct on the part of a person concerned in the administration of justice prejudicial to the rights of parties or to the right determination of the cause. The term "grave" means "very serious; involving or resulting in serious consequences: likely to produce real harm or damage."^[40]

We concur with Judge Contreras' findings that respondent indeed incurred unnecessary and/or unsubstantiated expenses. It is evident from the