

THIRD DIVISION

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

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

RESOLUTION

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**