

EN BANC

[**A.M. No. P-07-2398 (Formerly OCA IPI No. 03-1621-P), February 13, 2008**]

IRENEO GERONCA, Complainant, vs. VINCENT HORACE V. MAGALONA, Respondent.

R E S O L U T I O N

PER CURIAM

Before us is an administrative case for gross misconduct, gross dishonesty, neglect of duty and conduct prejudicial to the best interest of the service filed by the complainant Ireneo Geronca against respondent Vicente Horace V. Magalona, Sheriff IV of the Regional Trial Court (RTC), Branch 46 of Bacolod City.

In a sworn complaint^[1] dated March 6, 2003, the complainant claimed that he was the judgment obligee in Civil Case No. 4657, entitled *Spouses Ireneo and Mariles Geronca v. Poweroll Construction Co., et al.*, in which case the RTC of Bacolod City issued a writ of execution. According to the complainant, after the issuance of the writ, respondent asked for P10,000 to implement it in Dumaguete City which was 300 kilometers away from Bacolod City. The complainant, however, learned that the writ was served on the judgment obligor nearby, in a place near Bacolod City's Hall of Justice.

The complainant added that respondent levied on three secondhand and dilapidated motorcycles belonging to the judgment obligor even if there were brand new motorcycles available. After the auction sale of the motorcycles, respondent also refused to deliver to him the amount of P7,000 paid by the winning bidder. He likewise rejected demands to turn over the keys of the two motorcycles complainant bought at said auction.

In his Comment,^[2] respondent repudiated the allegations saying that he did not ask for the P10,000 execution fee; rather, it was the complainant who "voluntarily" gave the money to him. He likewise averred that he could not be expected to levy on the brand new motorcycles as these were not registered in the judgment obligor's name.

In a resolution dated June 8, 2005,^[3] we adopted the Office of the Court Administrator's (OCA's) recommendation for the executive judge of Bacolod City to conduct an investigation on the matter.

In a report^[4] dated August 8, 2005, Judge Roberto S. Chiongson, the investigating judge, informed this Court:

The Comment of the [r]espondent consists of vague generalities and feeble denials. He alleges that he performed his duty with utmost

[d]iligence, [p]rudence and [r]easonable celerity but without any specification or explanation how he performed his duty. He does not deny having received the amount of P10,000 and nor does he deny his failure to deliver the amount of P7,000 which [was] the proceeds of the auction sale.^[5]

Judge Chiongson found respondent guilty of dishonesty and gross misconduct, and recommended his suspension for three months without pay. The OCA, on the other hand, held respondent guilty of grave misconduct, dereliction of duty and negligence. In its memorandum^[6] to this Court, the OCA stated:

In fine, respondent's conduct in the implementation of the writ of execution constitutes grave misconduct which under the Civil Service Rules is classified as a grave offense with a penalty of dismissal. Likewise, failure to faithfully comply with the provisions of Rule 141 of the Rules of Court constitutes dereliction of duty and negligence which warrants the imposition of disciplinary measures.

WHEREFORE, it is respectfully submitted for the consideration of the Honorable Court that respondent Vincent Horace U. Magalona, Sheriff IV, RTC, Branch 46, Bacolod City, Negros Occidental, [be found] GUILTY of GRAVE MISCONDUCT, [DERELICTION OF DUTY AND NEGLIGENCE] and [should be] DISMISSED from the SERVICE.

After a careful review of the records of this case, we find respondent guilty of dereliction of duty, grave misconduct and dishonesty.

Rule 141, Section 9 of the Rules of Court provides:

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

In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriffs expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guard's 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 the liquidation within the same period for rendering a return on the process. Any unspent amount shall be submitted by the deputy sheriff assigned with his return, and the sheriffs expenses shall be taxed as costs against the judgment debtor.

A sheriff may collect fees for his expenses from the party requesting the execution of a writ but only in accordance with the procedure rule laid down in the aforesaid provision. Thus, a sheriff must (1) make an estimate of expenses; (2) obtain court approval for such estimated expenses and (3) liquidate his expenses within the same period for rendering a return on the writ.

In respondent's case, not only did he fail to observe the proper procedure but he also made false representations to the complainant so he could collect money from