

SECOND DIVISION

[**A.M. No. P-03-1715 (Formerly IPI No. 00-908-P), September 19, 2008**]

**FELISA L. GONZALES, COMPLAINANT, VS. CLERK OF COURT
JOSEPH N. ESCALONA AND SHERIFF IV EDGAR V. SUPERADA,
RESPONDENTS.**

D E C I S I O N

BRION, J.:

This is a verified complaint for **Conduct Prejudicial to the Best Interest of the Service** and **Grave Misconduct** in connection with the enforcement of the writ of execution of the decision in Criminal Case No. 2150 (entitled *People of the Philippines versus Paterno Makipig, Jr.*, for Reckless Imprudence Resulting in Homicide and Multiple Physical Injuries) filed with the Regional Trial Court (RTC), Branch 13, Carigara, Leyte. Respondent Atty. Joseph N. Escalona, now resigned, was the Branch Clerk of Court, while respondent Edgar V. Superada, now deceased, was the sheriff in the Office of the Clerk of Court of the same court.

The complaint showed that in convicting the accused in Criminal Case No. 2150, the RTC awarded damages to complainant Felisa L. Gonzales in the amount of P300,040.00 for the death of her son Bienvenido. The other victims were awarded damages in the total amount of P29,020.00. The RTC issued a writ of execution directing respondent Superada to enforce the judgment. Since the accused was insolvent, the judgment was enforced against the accused's employer, Serafica Enterprises (*Serafica*), owned and operated by Herminigildo Serafica who agreed to pay the damages awarded to the victims within a period of six months.

The complainant alleged that even before the writ of execution was issued by the RTC, respondent Superada approached her and demanded the amount of P27,500.00, allegedly for expenses in serving the writ. The complainant was able to give the respondent only P7,000.00.

The complainant further alleged that without her consent, both respondents accepted from Serafica twenty-four (24) postdated checks of Land Bank-Ormoc City, each in the amount of P13,710.85 (or a total of P329,060.00) in payment of the damages awarded to the victims of the vehicular accident. **All the checks were made payable to respondent Escalona.** The first check was dated April 7, 2000, while the last check was dated January 31, 2002.

When the first check was encashed, respondent Escalona deducted the amount of P3,000.00 for sheriff's fees and P1,400.00 allegedly for the use of his car in going to and from the Land Bank branch office in Ormoc City. Upon encashment of the second check dated April 17, 2000, respondent Escalona again deducted the same amounts of P3,000.00 and P1,400.00.

In his comment on the complaint, respondent Escalona denied the complainant's allegations claiming that he did not instruct nor propose to Serafica that he be made the payee of the postdated checks. It was Serafica's sole decision to make the checks payable to him. He had no idea why he was made the payee.

Respondent Superada adopted his co-respondent's comment. He further denied demanding the amount of P27,500.00 from the complainant. He admitted, however, that he received the amount of P7,000.00 after a conference was held among the accident victims; the latter all agreed to give this amount to defray the expenses for the apprehension of the accused.

On the recommendation of then Deputy Court Administrator Zenaida N. Elepaño (now retired Court Administrator), the complaint was referred to Executive Judge Lourdes G. Blanco of the RTC of Carigara, Leyte for investigation, report, and recommendation.

As directed, Executive Judge Blanco conducted the investigation and set the case for hearing.

In his Comment filed with the Investigating Judge, respondent Escalona contended that the complainant's allegation that he twice demanded the amount of P1,400.00, apparently implying bribery or extortion, is "patently absurd and feeble concoction of truth." He never demanded these amounts for the use of his vehicle in going to the Land Bank in Ormoc City which is more than 54 kilometers away from his office. He claimed that he accepted these amounts from the complainant based on his agreement with the accident victims. He further averred that "[h]ad undersigned been the private counsel for herein complainant, he could have demanded an amount more than five times than what they have [sic] given, considering the wear and tear, fuel, risks, and stress of travel."

In his Memorandum submitted to the Investigating Judge, respondent Superada insisted that he should not be adjudged guilty of misconduct. He claimed that although he was the one who received the amount of P7,000.00, "his act of receiving it cannot be considered as unlawful as he was the assigned executing sheriff who, under the circumstance, may advance for the prevailing party (the complainant) an amount for the expenses that may be incurred relevant to the execution of judgment." As to the P3,000.00 he received from complainant, respondent Superada maintained that he has a right to receive it as reimbursement for the expenses he had incurred during the execution of the writ.

In her report submitted to the Court, the Investigating Judge found that respondent Superada failed to comply with the procedure laid down in Section 9, Rule 11 of the Rules of Court on the manner of implementing writs of execution. This section provides:

[T]he party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriff's 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 or 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 litigation within the same period for rendering a return on the process. 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 fixed as costs against the judgment debtor.

With respect to respondent Escalona, the Investigating Judge observed that "if the checks were issued by the accused's employer in his (Escalona's) name, and there was no other way to help the complainant, all that Atty. Escalona could have done was to arrange or advice the complainant to open an account with the Land Bank Tacloban City Branch so that he could have just endorsed the checks on the due date x x x." The checks could have also been issued to the complainant as payee to be released by Escalona on their due dates.

Executive Judge Blanco, in her report submitted to this Court, recommended:

1. That Atty. Joseph N. Escalona, Branch Clerk of Court, and Edgar V. Superada, Sheriff IV, RTC Branch 13, Carigara, Leyte, are found guilty of violating R.A. 3019 as amended.^[1] However, considering that Atty. Joseph N. Escalona has resigned from the service even before the filing of this case, it is recommended that this be placed in his record as a member of the Philippine Bar.
2. That Edgar V. Superada, Sheriff IV of RTC Branch 13, Carigara, Leyte be fined in the amount of Php 2,000.00 this being his first, with a warning that a similar violation will be dealt with more seriously.

The evidence on record and the admissions made by both respondents in their comments filed with this Court and with the investigating court sufficiently establish their culpability. Guilt, however, for violation of Republic Act (R.A.) No. 3019, as amended, is beyond the Investigating Judge's authority to determine and should be read merely as her view on what criminal offense the respondents may have violated if they were to be criminally prosecuted.

Those connected with the dispensation of justice bear a heavy burden in the performance of their duties. Their positions demand a very high level of moral rectitude and uprightness. Clerks of Court, in particular, must be individuals of competence, honesty, and probity, charged as they are with safeguarding the integrity of the court and its proceedings. For that matter, the behavior of everyone connected with an office charged with the dispensation of justice - from the presiding judge to the lowliest clerk - must always be beyond reproach. Like Caesar's wife, they must not only be faithful to the responsibilities of their position and the propriety and decorum these entail; they must, above all, be above suspicion.

Our laws are not lacking in providing guidance and mandates on the responsibilities of a public position and the burdens they impose on the office holder. Section 1 of Article XI of the 1987 Constitution declares that a public office is a public trust. It enjoins public officers and employees to serve with the highest degree of

responsibility, integrity, loyalty and efficiency and, at all times, remain accountable to the people.^[2]

The Code of Conduct and Ethical Standards for Public Officers and Employees^[3] sets out a policy towards promoting a high standard of ethical responsibility in the public service.^[4] It enjoins those in the government service to extend prompt, courteous, and adequate service to the public, and at all times, to respect the rights of others and refrain from doing acts contrary to law, good morals and good customs, among other ideals.^[5]

Our examination of the records of the case tells us that there was connivance between the respondents on the manner of collecting and disbursing the amounts awarded to the accident victims so that they (the respondents) could personally benefit from the proceeds of the court's award. That their actions were concerted is plain from the manner they undertook the exactions; one took care of and complemented the other towards the same result - a share in the complainant's pie. Although both respondents denied that they instructed or proposed to the complainant or the paying employer that the 24 postdated checks be made payable to respondent Escalona, we stand unconvinced that that the respondents had no active hand in the arrangement. For one, why the checks were made payable to Escalona was not sufficiently explained. To be sure, to pay checks whose proceeds are intended for a specific recipient, to someone other than the intended recipient is far from usual,^[6] and is an arrangement that has to be explained if the arrangement is claimed to be legitimate. No explanation from the respondents, however, came. We are simply asked to believe, perhaps on faith, that the arrangement simply came without the respondents' active intervention. We cannot accept what amounts to a plain denial given the patent irregularities that attended the arrangement.

Respondent Superada admits having received the amount of P7,000.00, but explained that the P7,000.00 was agreed upon by the complainant and the other victims of the vehicular accident to defray the expenses for the apprehension of the accused. Why Superada, a court sheriff, would participate in the apprehension of the accused escapes us. Likewise, the excuse, even if legitimate, will not completely exculpate him as he is mandated to act within defined limits in the performance of his duties as sheriff, particularly on the matter of expenses. For him, good faith is not a defense as he is charged with the knowledge of what his proper conduct should be. As an officer of the court involved in the implementation of court decisions, he is bound to observe the Rules of Court faithfully, not use them for his personal ends; sheriffs must perform their duties by the book.^[7] Charging any amount to litigants for his services without the approval of the court constitutes grave misconduct and conduct prejudicial to the best interest of the service. While allowed to collect sums to cover his expenses in the service of summons and writs of execution, he can only charge and collect with the approval of the court as provided for in Section 9, Rule 141 of the Rules of Court. To do this by the book, an estimate has to be made of the projected expenses for approval by the court and the amounts paid should be deposited by the requesting party with the Clerk of Court and *Ex-Officio* Sheriff who shall disburse the amount to the executing sheriff. The latter shall liquidate his expenses within the same period for rendering a return on the writ.^[8] Any amount received by the sheriff in excess of the lawful fees