

## THIRD DIVISION

[ **A.M. No. P-07-2402 (Formerly OCA I.P.I. No. 07-2591-P), October 15, 2008** ]

**ATTY. REDENTOR S. VIAJE, COMPLAINANT, VS. ROLANDO A. DIZON, SHERIFF IV, REGIONAL TRIAL COURT-OFFICE OF THE CLERK OF COURT, STO. DOMINGO, NUEVA ECIJA, RESPONDENT.**

### RESOLUTION

**NACHURA, J.:**

This is an administrative complaint filed with the Office of the Court Administrator (OCA) by Atty. Redentor S. Viaje against Rolando A. Dizon, Sheriff IV, Regional Trial Court-OCC, Sto. Domingo, Nueva Ecija, for dishonesty and grave misconduct.

The complaint was referred to Executive Judge Cholita B. Santos, RTC Branch 88, Sto. Domingo, Nueva Ecija for Investigation, Report and Recommendation<sup>[1]</sup>. Later, the case was referred to the OCA for evaluation, report and recommendation.<sup>[2]</sup>

The facts, gleaned from the Report of the OCA, may be summarized as follows:

In a verified Affidavit-Complaint<sup>[3]</sup> dated May 3, 2007, Atty. Redentor S. Viaje (Viaje), counsel of the plaintiff in an ejectment case docketed as Civil Case No. 1946, charged respondent Sheriff with grave misconduct and dishonesty. The complaint alleges that plaintiff obtained a favorable judgment in the ejectment case, and for the purpose of implementing the decision, Viaje handed to respondent the amount of P3,000.00 representing the estimated expenses for the service and implementation of the writ of execution. In addition, respondent allegedly demanded and received another P3,000.00 from the plaintiff's daughter because he would personally serve the writ on the defendant. Further, in early March 2007, respondent also demanded the amount of P5,000.00 ostensibly for the expenses in confiscating the rice to be harvested in the contested parcel of land. However, a few days before the harvest, respondent allegedly refused to receive the P5,000.00 and implement the writ. It was only on March 16, 2007 that respondent issued the first and only Sheriff's Return. For these acts, Viaje claims that respondent should be held administratively liable.

In his Comment<sup>[4]</sup> dated July 7, 2007, respondent contends that when the complainant asked him the amount needed to implement the decision, he answered that the matter will be discussed after he had served the notice to the defendant. Viaje allegedly agreed and left without giving him any money. After the lapse of thirty (30) days, the representative of the plaintiff, Ms. Cristina Cortez, told him that, as estimated, P5,000.00 was the least amount to be spent in the implementation of the decision. Respondent avers that he told the representative that he would prepare an estimate of expenses for the approval of the court and should the same be approved, the amount will have to be deposited with the Clerk

of Court. According to respondent, the representative got suspicious and told him that she would return the next day and would then take care of the expenses, but she did not return. Respondent further alleges that he requested the presence of the representative during the implementation of the writ so that he could place her in actual physical possession of the property but she never showed up. He, thus, prays for the dismissal of the complaint.

As adverted to above, in a Resolution<sup>[5]</sup> dated November 19, 2007, this Court referred the case to Executive Judge Cholita B. Santos, RTC, Sto. Domingo, Nueva Ecija, for investigation, report, and recommendation. Thereafter, Judge Santos' report was referred to the OCA for evaluation.

Judge Santos recommended that the charges of dishonesty and grave misconduct against respondent be dismissed. However, according to her, respondent should be found guilty of Simple Neglect of Duty and suspended for one (1) month with a stern warning that a repetition of the same shall be dealt with more severely. The OCA agreed with the findings and recommendation of Judge Santos.

The Court adopts the Investigating Judge's and the OCA's findings and recommendations.

The dismissal of the charges for grave misconduct and dishonesty is proper, because Viaje, despite notice, failed to attend the hearings scheduled by Judge Santos. In administrative cases, the complainant has the burden of proving by substantial evidence the allegations in the complaint.<sup>[6]</sup> And in the absence of contrary evidence, the presumption that respondent has regularly performed his duty prevails.<sup>[7]</sup>

Nonetheless, Judge Santos correctly pointed out that respondent should still be faulted for non-compliance with the requirements in implementing the writ of execution. First, he failed to follow the procedure relative to the expenses to be incurred in implementing the writ. Section 10(l), Rule 141 of the Rules of Court provides that respondent should have prepared and submitted to the court for approval a statement of the estimated expenses. In his Comment, respondent stated that he suggested to the representative of the plaintiff that he would prepare an estimate of expenses which he would file in court for approval but the representative became suspicious and left. Respondent should not have merely suggested such course of action and waited for the approval of the plaintiff. He was obliged to follow the prescribed procedure regardless of the opinion of the plaintiff.

This led to his second mistake - failing to make a return on the implementation of the writ of execution after every thirty (30) days from receipt of the writ. Respondent admitted having received the writ on October 6, 2006<sup>[8]</sup> but he made the first and only return on March 16, 2007.<sup>[9]</sup> As correctly observed by Judge Santos, respondent should have made the periodic report required by Section 14, Rule 39 of the 1997 Rules of Civil Procedure. Had he done so, the difficulties he had in dealing with the complainant and the representative of the plaintiff, which he narrated in his Comment, would have been avoided. All these translate to simple neglect of duty.

Under Section 52, B(1), Rule IV of the Uniform Rules on Administrative Cases in the