

SECOND DIVISION

[A.M. NO. P-05-2015, June 28, 2005]

ANONYMOUS COMPLAINT AGAINST PERSHING T. YARED, SHERIFF III, MUNICIPAL TRIAL COURT IN CITIES, CANLAON CITY.

D E C I S I O N

CALLEJO, SR., J.:

The instant administrative case arose when an anonymous complainant filed a Letter-Complaint^[1] dated April 10, 2001 before the Office of the Ombudsman, Visayas, charging Pershing T. Yared, Sheriff III, presently detailed at the Municipal Trial Court in Cities (MTCC), Guihulngan, Negros Oriental, with grave misconduct for collecting excessive service fees.

In support of the charge, the unknown complainant submitted two receipts issued by the respondent Sheriff: (1) an undated receipt^[2] where the amount of P1,350.00 was reflected as service fees for summons in three civil cases; and (2) a receipt^[3] dated February 7, 2000 reflecting the amount of P1,650.00 for four civil cases. Citing Section 9(a) of Resolution No. 00-2-01-SC, amending Rule 141 of the Rules of Court, the complainant pointed out that multiplying the number of defendants by P60.00 per service fee, the respondent was only entitled to P660.00 for the service of summons in the civil cases; following the same computation, the fee for the rest of the cases should have been only P720.00.^[4]

In a Letter^[5] dated April 30, 2001, the Office of the Ombudsman forwarded the anonymous complaint to the Office of the Court Administrator. Thereafter, then Deputy Court Administrator Bernardo T. Ponferrada referred the matter to Executive Judge Hector B. Barillo of the MTCC, Canlaon City, for discreet investigation and report.^[6]

In his Report^[7] dated July 27, 2001, Judge Barillo enumerated the cases subject matter of Annexes "A" and "B," and averred that there were 24 defendants who were to be served with summons. The Executive Judge opined that Section 9 of Rule 141 does not fix the amount for sheriff's expenses in serving or executing processes. He further reported that Sheriff Yared only asked P150.00 for each defendant whose residence was outside the *poblacion* even if he (the respondent Sheriff) was uncertain that the defendants could be contacted immediately in his first attempt to serve the summons. According to the Investigating Judge, it was from the amount collected that respondent Sheriff took P300.00 for the rental of a motorcycle. Judge Barillo added that he was well aware of the sheriff's procedure in collecting fees, and understood that the same was based on the doctrine of equity.

In a 1st Indorsement^[8] dated January 14, 2002, the matter was referred to the

respondent Sheriff for comment. The respondent denied the allegations against him in his Comment^[9] dated February 11, 2002, alleging that the amount of P60.00 provided for under Rule 141 of the Rules of Court is inadequate to cover and defray all the necessary and incidental expenses for the service of summons outside of his station. He further contended that the said rule applies only to service of summons within the *poblacion* where the sheriff is stationed, and does not apply to the *barangays* outside the *poblacion*.

Although the respondent admitted having received the amount of P3,000.00 from the Rural Bank of Guihulngan, he argued that the same was for the necessary and incidental expenses which he incurred in serving summons at Vallehermoso, Negros Oriental. He elaborated that he hired a motorcycle at P200.00 a day, and engaged the services of a guide at the cost of P100.00 just to locate the residence of the 24 defendants. The respondent, likewise, averred that since some of the defendants were nowhere to be found, he still had to go back in order to serve the summons, thus, incurring more expenses.^[10]

In justifying the amount of P3,000.00, the respondent invoked Executive Order No. 248, which he averred entitles all government officials or employees who go out of their station on official business to traveling expenses. He also claimed that a public officer is entitled to P300.00 a day excluding transportation fares, board and lodging, and other incidental expenses. The amount of P3,000.00 was not even enough to defray his expenses, and as such, he had to spend his own money for the service of summons.^[11]

Thereafter, Deputy Court Administrator Zenaida N. Elepaño filed her Report dated April 22, 2002, with the following recommendation:

1. The instant administrative complaint be **DOCKETED** as a regular administrative matter;
2. Respondent Sheriff Pershing T. Yared, of [the] MTCC, Canlaon City, Negros Oriental, be **FINED** the amount of Two Thousand Pesos (P2,000.00) with a **WARNING** that a repetition of the same or similar offense shall be dealt with more severely.^[12]

The respondent, thereafter, filed a Motion to Dismiss^[13] the complaint on February 13, 2003. He alleged that the anonymous complainant was not the proper party to file the complaint, as he could not convincingly claim to be injured as a result of the act or omission complained of. The respondent further alleged that the pertinent administrative regulation, Administrative Circular No. 3-2000 dated June 15, 2000, explicitly provides in no uncertain terms that the party should shoulder the necessary and incidental expenses and other similar charges for the service of summons. He added that in this case, the expenses included the hiring of the motorcycle and a guide to expedite the service of summonses with least possible delay.^[14] In support of his motion, the respondent attached a certification/acknowledgment receipt marked as Annex "A," executed by Atty. Jonathan L. Eleco, former Clerk of Court, MTCC, Canlaon City, and now a practicing lawyer. The receipt reflected that in eight other cases where he was required to serve summons within the vicinity of Canlaon City, the respondent received the total amount of P2,000.00, to wit:

- | | |
|-----------------------------|---------|
| 1. CC# 965-Dominga Calderon | P200.00 |
| 2. CC# 966-Lacria Trasmonte | P200.00 |
| 3. CC# 967-Mirasol Vailoces | P200.00 |
| 4. CC# 968-Jesus Rudavites | P400.00 |
| 5. CC# 969-Maria Duro | P200.00 |
| 6. CC# 970-Roselo Velara | P400.00 |
| 7. CC# 971-Jose España | P200.00 |
| 8. CC# 972-Urcesia Banacia | P200.00 |

The respondent further elaborated as follows:

A reasonable and prudent mind could easily perceive and reach a conclusion the extreme impossibility for a person not so familiar on the terrain of the place and the persons to be served to dispatch the summonses to the 23 defendants in one setting alone or for only one day. This is the reason why I have to go back and forth to said town for a number of days. As a matter of fact, I have to spend my own personal money to defray the necessary and incidental expenses in serving the summonses for fear that I would be scolded by the Judge considering that the plaintiff in these cases is the former's nephew. One can imagine that the amount said to be exorbitant and excessive is very such (sic) insufficient and inadequate to defray the expenses. How could I charge more than what is allowable as what is being claimed by the complainant when the latter knows the intimate relationship by affinity between the Judge and the plaintiff? There were even several instances that I served summonses and writs of said plaintiff bank without asking even a single centavo because of this relationship.

...

WHEREFORE, it is most respectfully prayed to summarily dismiss the above-entitled case for it is a principle in law that no person should be brought within the terms of penal statutes who is not clearly within them, nor should any act be pronounced violative to a certain administrative regulation which is not clearly made so by statute.^[15]

In a Resolution^[16] dated July 7, 2003, the Court resolved to deny the respondent's motion and refer the matter back to Executive Judge Barillo for investigation, report and recommendation.

In a 2nd Indorsement dated March 18, 2005, the Executive Judge manifested that he concurs with the recommendation of Deputy Court Administrator Elepaño that the respondent be fined the amount of P2,000.00.

At the outset, the Court stresses that an anonymous complaint is always received with great caution, originating as it does from an unknown author. However, a complaint of such sort does not always justify its outright dismissal for being baseless or unfounded for such complaint may be easily verified and may, without much difficulty, be substantiated and established by other competent evidence.^[17]

As this Court ruled in *Anonymous Complaint Against Gibson A. Araula*:^[18]

Although the Court does not as a rule act on anonymous complaints, cases are accepted in which the charge could be fully borne by public records of indubitable integrity, thus, needing no corroboration by

evidence to be offered by the complainant, whose identity and integrity could hardly be material where the matter involved is of public interest.

...

Indeed, any conduct, act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and would diminish or even just tend to diminish the faith of the people in the Judiciary cannot be countenanced,^[19] as such, anonymous complaints of this nature should be accordingly acted upon by this Court.

Section 9(a), Rule 141, of the Rules of Court authorizes the sheriff and other persons serving summons and copy of complaint to collect the amount of P60.00 for each defendant. According to the same rule:

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 safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer travel, guard's fee's, 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 liquidation 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 taxed as costs against the judgment debtor.

It is clear then that a sheriff, in the performance of his duties, is not precluded from collecting additional sums from a requesting party. He is, however, mandated by the Rules to follow certain steps: *First*, the sheriff must make an estimate of the expenses to be incurred by him; *Second*, he must obtain court approval for such estimated expenses; *Third*, the approved amount shall be deposited by the interested party with the Clerk of Court and Ex Officio Sheriff; *Fourth*, the Clerk of Court shall disburse the amount to the executing sheriff; and *Fifth*, the executing sheriff shall liquidate his expenses within the same period for rendering a return on the writ.

There is no evidence on record that the respondent followed this procedure. As aptly stated by Deputy Court Administrator Elepaño in her evaluation dated April 22, 2002:

In the instant case, respondent sheriff collected the amounts of P1,350.00 and P1,650.00 from the plaintiff Rural Bank of Guihulngan, Negros Oriental, as service fees for the summons. The records are bereft of any indication that he obtained court approval for the estimated expenses nor does it show that the amounts involved were deposited with the Clerk of Court. In fact, the evidence (Annexes "A" and "B") furnished by complainant and which were admitted by respondent in his comment, point out that the total amount of P3,000.00 was personally asked by respondent and was directly received by him.