

## THIRD DIVISION

[ A.M. No. P-02-1540, March 06, 2003 ]

**EULOGIO B. GUEVARRA, COMPLAINANT, VS. VICENTE S. SICAT, JR., SHERIFF IV, OFFICE OF THE CLERK OF COURT, REGIONAL TRIAL COURT, ANGELES CITY, RESPONDENT.**

### DECISION

**SANDOVAL-GUTIERREZ, J.:**

The instant administrative complaint filed by Eulogio B. Guevarra charges Vicente S. Sicat, Jr., Sheriff IV, Office of the Clerk of Court, Regional Trial Court, Angeles City, with neglect of duty and/or inefficiency for failure to implement the writ of execution and order of demolition in Civil Case No. 272, "Eulogio B. Guevarra vs. Ross Chessman and Teodoro Baul and wife" for ejectment.

Complainant was the plaintiff in Civil Case No. 272 decided by the Municipal Trial Court (MTC) in his favor. After the decision became final and executory, a writ of execution was issued. In implementing the writ, respondent sheriff gave the defendants a period of ten (10) days within which to vacate the premises but they refused. Eventually, the MTC issued an order of demolition.

Complainant alleged that on various dates (in the course of the execution of the decision) respondent demanded and received from him the following sums of money intended for sheriff's expenses:

(a)	November 17, 1997	P700.00
(b)	July 10, 1998	1,000.00
(c)	September 2, 1998	5,000.00
(d)	November 12, 1998	3,000.00

The last two amounts are evidenced with receipts.

Despite the lapse of time and complainant's repeated requests, respondent failed to implement the writ of execution and order of demolition.

In his comment on the complaint, respondent denied the charges, contending that what he received from the complainant was only P8,000.00 for which he issued the corresponding receipts. He gave this amount to the persons he hired to assist in the demolition of the premises, namely: Rudolfo Garcia, Eduardo Cortez and Nicolas A. Bulaon. However, the demolition did not materialize because the defendants placed barbed wire around the premises and threatened those three persons. In their joint affidavit dated April 17, 2000, Bulaon and Garcia stated that they are willing to return the money to the complainant.<sup>[1]</sup>

Court Administrator Presbitero J. Velasco, Jr., in his Report and Recommendation dated November 5, 2001, found respondent guilty of neglect in the performance of

his duty. He recommended that the complaint be re-docketed as an administrative matter and that respondent be fined in the amount of P5,000.00 with a warning that a repetition of the same or similar offense shall be dealt with more severely. His "Evaluation" reads:

"The respondent is negligent in the performance of his duty as a Sheriff. The respondent said that he failed to implement the writ of demolition because the heirs of the defendant placed barbed wire around the premises and threatened to fight and resist the demolition of the structure built on the property. The reason given by the respondent why he failed to implement the writ of demolition is flimsy and it is a proof of his inefficiency. Respondent can always seek the intervention of police authorities or Barangay officials of the place in order to accomplish the task he was mandated by the court to do. There will be no end to litigations if Sheriffs would be afraid to implement the writs issued by the court."

Pursuant to the Resolution dated January 14, 2002 of this Court, both parties manifested that they are submitting this case for decision on the basis of the pleadings/records already filed.

In implementing the writ of execution, Section 9, Rule 141 of the Revised Rules of Court prescribes the procedure to be followed by the sheriffs, thus:

"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 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, guards' 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 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 from the above Rule that before an interested party pays the sheriff's expenses, the latter should first estimate the amount to be approved by the court. Upon approval, the interested party deposits the amount with the clerk of court and ex-officio sheriff. The latter then disburses the amount to the sheriff assigned to execute the writ. The amount so disbursed is subject to liquidation. Any unspent amount should be refunded to the party making the deposit. Thereafter, the sheriff must render a full report.<sup>[2]</sup>

In the instant case, respondent sheriff simply demanded and received money from the complainant without first informing him of the estimated expenses and without