

FIRST DIVISION

[A.M. No. P-02-1643, April 01, 2003]

**DIMAS ABALDE, COMPLAINANT, VS. ANTONIO ROQUE, JR.,
SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 29, TOLEDO
CITY, RESPONDENT.**

RESOLUTION

YNARES-SANTIAGO, J.:

Complainant Dimas Abalde was the plaintiff in Civil Case No. T-674 before the Regional Trial Court of Toledo City, Branch 29, entitled "*Dimas Abalde, Plaintiff versus Luzviminda Dulang, et al., Defendants.*" On March 2, 1999, the trial court rendered judgment in his favor, awarding to him damages, attorney's fees and litigation expenses totaling One Hundred Ten Thousand Pesos (P110,000.00).^[1] The decision became final and was duly entered in the book of judgments.^[2] Accordingly, a writ of execution was issued commanding respondent Antonio Roque, Jr., the Court Sheriff, to enforce the said decision.

On August 4, 1999, complainant and respondent sheriff went to the Land Bank of the Philippines, Cebu Main Branch, to collect the amount of the judgment award.^[3] However, it was only respondent sheriff who transacted with the bank personnel. After completing the transaction, respondent sheriff handed to complainant cash in the amount of Ninety Thousand Pesos (P90,000.00) only, which was Twenty Thousand Pesos (P20,000.00) short of the judgment award.^[4] Respondent told complainant that the balance of the judgment award will be remitted by the defendants-obligors in due time.^[5]

It was only sometime in February 2000 that respondent presented to complainant a document entitled "Report of Sheriff's Expenses," which purportedly listed, in general terms, the various expenses incurred in the execution of the judgment in the total sum of Sixteen Thousand Two Hundred and Sixty Pesos (P16,260.00).^[6] The Report was not accompanied by receipts or other documents to substantiate said expenses.

Thus, on February 15, 2000, complainant filed with the Office of the Court Administrator (OCA) and with the Office of the Ombudsman-Visayas an Affidavit-Complaint, accusing respondent sheriff of grave misconduct. The Office of the Ombudsman-Visayas referred the case to the OCA.

In his Comment, respondent maintained that he spent the balance of the monetary award for valid execution expenses, and that complainant was satisfied with the respondent's explanation and no longer interested in pursuing his various complaints against him.^[7]

On January 16, 2002, the case was referred to the Executive Judge of the Regional Trial Court of Toledo City for investigation.^[8] In the hearings scheduled, complainant manifested his lack of interest in pursuing the charges he had filed against respondent. The latter, on the other hand, maintained that his actions were legal, further admitting that he did not turn over to complainant the amount of Three Thousand Seven Hundred Forty Pesos (P3,740.00), representing the sum of money unaccounted for in the "Report of Sheriff's Expenses."^[9]

In his Report and Recommendation, Executive Judge Cesar O. Estrera of the Regional Trial Court of Toledo City recommended the dismissal of the case.^[10]

The case was thereafter referred to the OCA for evaluation, report and recommendation. In its report, the OCA found that respondent failed to comply with the procedure for the payment of sheriff's expenses as laid down in Rule 141, Section 9 of the Rules of Court. Respondent's acts gave rise to the suspicion that he had misappropriated the balance of the monetary award. The OCA recommended that respondent sheriff Antonio C. Roque be suspended for a period of one (1) month without pay with a stern warning that a repetition of the same or similar acts in the future will merit severe disciplinary action.^[11]

We agree with the recommendation of the OCA, except as to the period of suspension.

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

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, 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 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. (Emphasis supplied)

As can be clearly seen from the above-quoted Rule, the steps that must be followed before any sums may be required of the prevailing party are: *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 estimated expenses 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. Any portion of the amounts received by the sheriff in excess of the lawful fees allowed by the Rules of Court is an unlawful exaction which renders him liable for grave misconduct and gross dishonesty.^[12]