

## **THIRD DIVISION**

**[ A.M. No. P-02-1569, November 13, 2002 ]**

**CARMELITA S. DANAOS, COMPLAINANT, VS. JESUS T. FRANCO, JR., SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 215, QUEZON CITY. RESPONDENT.**

### **D E C I S I O N**

**SANDOVAL-GUTIERREZ, J.:**

On September 22, 2000, Carmelita S. Danaos filed with the Office of the Court Administrator (OCA) an administrative complaint against Jesus T. Franco, Sheriff IV, Regional Trial Court (RTC), Branch 215, Quezon City. Complainant alleged that respondent sheriff committed serious misconduct for asking P5,000.00 from her (complainant) to be spent to implement the writ of execution in Civil Case No. Q-99-37876.

As aptly stated by Court Administrator Presbitero J. Velasco, Jr. in his Report and Recommendation dated January 14, 2002, the incidents which precipitated the filing of the instant administrative complaint are:

“Complainant is the plaintiff in Civil Case No. Q-99-37876. Having obtained a favorable judgment therein, complainant was able to secure a writ of execution. After inspecting the apartment unit which was the subject of the writ, respondent demanded from complainant the amount of P5,000.00 telling her that this amount is necessary to implement the writ and that it was a standard operating procedure for a winning party to give money to the sheriff so that the writ can be implemented. Complainant offered P2,000.00 which respondent refused. Respondent told complainant to produce the P5,000.00 the following day.

Complainant proceeded to the National Bureau of Investigation to file a complaint against respondent and to plan an entrapment operation. The following day complainant handed the money to respondent and immediately thereafter the NBI Agents arrested respondent.”

On October 18, 2000, the OCA referred the complaint to herein respondent for his comment.

On March 1, 2001, respondent filed with the OCA his “Comment/Motion To Dismiss” alleging inter alia that aside from misconduct, complainant also charged him with robbery (extortion), docketed as Criminal Case No. Q-99-87150 in the RTC, Branch 90, Quezon City. The Prosecutor’s Office filed a motion to withdraw the Information for insufficiency of evidence which was granted by the court. Respondent insists that since the allegations of the administrative complaint are similar to those contained in the Information in Criminal Case No. Q-99-87150 which was ordered withdrawn, consequently the administrative complaint should be dismissed.

Forthwith, complainant filed her opposition to respondent's "Comment/Motion to Dismiss" alleging that in finding him guilty of an administrative offense, mere substantial evidence is sufficient, not evidence beyond reasonable doubt required in criminal cases. Thus, the withdrawal of the Information against respondent due to insufficiency of evidence does not justify the dismissal of the administrative complaint against him.

After evaluating the records, the Court Administrator found respondent sheriff guilty of misconduct and recommended that a fine of P1,000.00 be imposed upon him with a warning that commission of the same offense will warrant a more drastic penalty.

In a Resolution dated March 4, 2002, this Court ordered that the complaint be re-docketed as an administrative case and directed the parties to manifest whether they are submitting the case for decision on the basis of the pleadings/records already filed and submitted.

Both parties manifested their respective assent.

Section 9, Rule 141 of the Revised Rules of Court prescribes the procedure to be followed by the sheriffs in implementing a writ of execution, 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 for his expenses, the latter should first estimate the amount to be approved by the court. Upon approval, the interested party shall deposit the amount with the clerk of court and ex-officio sheriff who shall disburse it to the sheriff assigned to execute the writ. The amount so disbursed is subject to liquidation. Any unspent amount shall be refunded to the party making the deposit. Thereafter, a full report shall be submitted by the sheriff.

Respondent sheriff simply demanded from complainant the sum of P5,000.00 without first furnishing her the estimate or detail of the expenses and without securing court approval. Even conceding that the sum of P5,000.00 demanded by respondent is reasonable, this does not justify his deviation from the procedure laid down in the above Rule.<sup>[1]</sup>