

## EN BANC

**[ A.M. No. P-11-2896 [Formerly OCA I.P.I. No. 08-2977-P], August 02, 2011 ]**

**PROSERPINA V. ANICO, COMPLAINANT, VS. EMERSON B. PILIPIÑA, SHERIFF IV, OFFICE OF THE CLERK OF COURT, REGIONAL TRIAL COURT, MANILA, RESPONDENT.**

### DECISION

#### PER CURIAM:

Before us is an administrative complaint dated September 4, 2008, filed by Proserpina V. Anico against Sheriff Emerson B. Pilipiña, Sheriff IV, Office of the Clerk of Court, Regional Trial Court, Manila, for extortion and neglect of duty.

The facts, as culled from the records, are as follows:

Complainant is one of the plaintiffs in a civil case, docketed as Civil Case No. 02-27454 entitled *Ariel Anico and Spouses Arthur and Proserpina Anico v. Robin J. Taguinod and Jerome T. Cayabyab*, for collection of sum of money, specific performance and damages.

On September 16, 2004, a Decision was issued favoring plaintiffs, including herein complainant. On August 10, 2007, a Writ of Execution was issued for the implementation of said decision. On August 13, 2007, the writ was forwarded to the Office of the Clerk of Court, RTC, Manila and was assigned to respondent sheriff for execution.

Complainant recalled that sometime in September 2007, she called respondent and inquired the status of the execution. In response, complainant alleged that respondent sheriff demanded the amount of P5,000.00 to defray his expenses in the implementation of the writ. She claimed that she had no money at hand, thus, she informed respondent that she could only give P3,000.00. Respondent sheriff consented. Complainant's sister-in-law, Filipinas N. Villasis, then personally gave the amount of P3,000.00 to respondent at his office.

In April 2008, complainant made another follow-up on the status of the writ since the same remained unimplemented. She claimed respondent again demanded the amount of P2,000.00, allegedly to defray his gasoline expenses. Complainant immediately sent the money via "Kwarto Padala" of the M. Lhuillier Pawnshop at SM City, Iloilo City.

On August 27, 2008, complainant inquired again, this time from Branch 32, the status of the writ. She then learned that respondent made no return of the writ even after a lapse of one year. Dissatisfied, complainant filed the instant administrative complaint against respondent sheriff.

On October 10, 2008, in his Comment submitted before the Clerk of Court of the RTC-Manila, Sheriff Pilipiña denied the accusations against him. He claimed that he immediately served the writ and notice to pay judgment to defendant Robin Taguinod but, being a seafarer, he was out of the country. He instead opted to leave the copies of the writ and notice to defendant's relative.

Respondent also claimed that in several occasions, he also attempted to serve the same writ and notice to pay judgment to the other defendant, Jerome T. Cayabyab, at the Coastguard Headquarters, but to no avail, as defendant was allegedly on board a ship. He added that he came back, but still defendant Cayabyab was not around; thus, he again left copies of the writ and notice to a certain ASN/PCG Efren Tolentino.

Respondent likewise claimed that he even served a notice of garnishment to the Land Bank of the Philippines (LBP), but was informed later on that defendants did not have any existing garnishable/leviable account with the LBP.

Respondent further added that when he got information that defendant Taguinod had returned from abroad, he immediately went back to Cavite on May 14, 2008 to serve the writ. He was, however, informed that defendant was already in Manila. On May 21, 2008, he averred that he was able to finally serve the writ to defendant Cayabyab who, in turn, promised to pay his judgment debt on June 2008. However, when he returned to collect, defendant Cayabyab was already in Romblon. Respondent claimed that he has not heard from defendant Cayabyab since then.

Respondent insisted that he was never negligent in the performance of his duties, considering that even after the filing of the instant case, he still continued to serve the said writ to the defendants. However, respondent argued that he could not make the return because his job was still incomplete. He claimed to be at loss as to where to locate the defendants, because both have no permanent address. He explained that defendant Taguinod, being a seaman, was always out of the country, while defendant Cayabyab was always on board a ship and assigned in different places. Respondent further argued that while he failed to make timely returns, he nevertheless submitted, on September 9, 2008, the Sheriff's Report where he enumerated what transpired during the implementation of the writ.

As to the allegation of extortion, respondent denied that he demanded P5,000.00 and received P3,000.00 from complainant. He, however, admitted that he received P1,500.00 from complainant thru "Kuarta Padala" of the M. Lhuiller Pawnshop to defray the cost of his transportation and other reasonable expenses relative to the implementation of the writ. He justified his receipt of money by claiming that it is judicial knowledge that winning litigants shoulder all legal and incidental expenses to be incurred in the lawful implementation of a writ. He likewise stressed that he never demanded money from any party for his own personal benefit. In fact, respondent contend that it was complainant and her representatives who were constantly inquiring about his expenses, to which he always respond, "*bahala na po kayo.*"

Finally, respondent asserted that he did not violate any rule in the implementation of the writ and was never remiss in the performance of his duties and responsibilities as an officer of the court.

On November 13, 2008, the Office of the Court Administrator (OCA) directed respondent to file his Comment to the instant complaint against him.

In compliance with the OCA's directive, respondent manifested that he is adopting his Comment dated October 10, 2008.

On December 19, 2008, in her Reply, complainant refuted respondent's allegations as mere afterthought and cover-ups. She pointed out that respondent made his report only on September 3, 2008, or almost a year after he received the writ on October 10, 2007; and after she had filed the instant administrative complaint against him.

In his Comment to complainant's Reply,<sup>[1]</sup> respondent sheriff clarified that the Sheriff's report was duly received; thus, it was not a mere cover-up. He explained that he was not able to make a return within the 30-day period from the receipt of the court order because he was always on the run to locate defendant's properties.

Respondent reiterated anew that "it is a judicial knowledge that the winning parties and litigants should shoulder all the legal, incidental and necessary expenses to be incurred in the lawful implementation/enforcement of a WRIT" and that he never demanded any amount for his own personal benefit. He claimed to have never violated any rule pertaining to the implementation of the subject writ.

In a Memorandum dated October 22, 2010, the OCA found respondent sheriff guilty of conduct prejudicial to the best interest of the service and recommended the penalty of suspension of one (1) year.

The OCA noted that this is respondent's first offense in his more than 11 years of service in the judiciary. It, however, did not apply this as a mitigating circumstance, considering that respondent was not apologetic for his transgression.

We agree with findings of the OCA, except its recommendation as to the imposable penalty.

Under Section 9, Rule 141 of the Rules of Court, the sheriff is required to secure the court's prior approval of the estimated expenses and fees needed to implement the court process. Specifically, the Rules provide:

*SEC. 9. Sheriffs and other persons serving processes.* - x x x

(1) For money collected by him by order, execution, attachment, or any other process, judicial or extrajudicial, the following sums, to wit:

1. On the first four thousand (P4,000.00) pesos, four (4%) per centum.
2. On all sums in excess of four thousand (P4,000.00) pesos, two (2%) per centum.