

## EN BANC

[ **A.M. No. P-04-1789 (Formerly OCA IPI No. 02-1402-P), July 22, 2005** ]

**JUDGE JOSE MANUEL P. TAN, COMPLAINANT, VS. HENRY G. PAREDES, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 29, SURIGAO CITY, RESPONDENT.**

[**A.M. NO. RTJ-04-1841 (FORMERLY OCA IPI NO. 02-1523-RTJ)**]

**HENRY G. PAREDES, COMPLAINANT, VS. JUDGE JOSE MANUEL P. TAN, RESPONDENT.**

### RESOLUTION

#### PER CURIAM:

For our resolution are two consolidated cases, namely, (1) the administrative complaint, docketed as OCA IPI No. 02-1402-P, filed by Judge Jose Manuel P. Tan, then presiding judge of Regional Trial Court (RTC), Branch 29, Surigao City, against Henry G. Paredes, Sheriff IV of the same court; and (2) the administrative complaint, docketed as OCA IPI No. 02-1523-RTJ, against Judge Tan by Sheriff Paredes.

On May 8, 2002, in a letter-complaint, OCA IPI No. 02-1402-P,<sup>[1]</sup> later docketed as **A.M. No. P-04-1789**, Judge Tan charged Sheriff Paredes with grave misconduct and violation of Republic Act No. 3019,<sup>[2]</sup> in connection with the decision in Civil Case No. 5147, entitled *Sps. Lucio Mijares v. Nora Efren Miwa*.

Judge Tan alleged that the son of the plaintiffs, Ramon Mijares, complained to him that Sheriff Paredes was constantly asking money for the execution of the judgment and demolition of the fence of the premises, subject of the case. He later learned that Sheriff Paredes received a total of P5,500 from the plaintiffs. Accordingly, Judge Tan called a staff meeting and confronted respondent Sheriff Paredes who admitted asking P10,000 from the plaintiffs to defray the expenses for the demolition of a fence, and receiving P3,000 for the execution of the judgment. Later, Judge Tan placed Sheriff Paredes on preventive suspension. Judge Tan attached to his report, the affidavits of Atty. Paulino Chua, an employee of Branch 29, who witnessed the confrontation; Prosecutor Jesse Rey Silvosa, who allegedly espied on the sheriff in an adjacent room; and plaintiff Mrs. Mijares who made Sheriff Paredes sign cash vouchers which were also attached to the complaint.

In his **Comment**,<sup>[3]</sup> respondent Sheriff Paredes denied he demanded money from Mrs. Mijares. According to him, he told her to deposit the money with the Clerk of Court to defray the cost of demolition. He claimed he began the demolition and incurred expenses. He asked reimbursement from Mrs. Mijares who asked him to sign the vouchers, which he did. According to the sheriff, the confrontation inside

the chamber of Judge Tan was malicious, self-serving, coercive, and intimidating. He claimed Judge Tan suspended and withheld his salaries and other benefits, without giving him any opportunity to explain. In addition, even though Civil Case No. 5147 was not scheduled on that day, Judge Tan called the case, to announce the alleged extortion. He claimed that Judge Tan filed the complaint against him to justify his suspension from the service and used his position to influence Atty. Chua, who was reluctant to execute his affidavit, and Mrs. Mijares, who showed no interest.

Judge Tan, in his **Reply-Affidavit**,<sup>[4]</sup> countered that he neither intimidated respondent nor influenced the witnesses. He denied being a relative of Prosecutor Silva. According to Judge Tan, he suspended respondent to prevent him from extorting more money from litigants.

Meanwhile, Judge Tan also filed a criminal case against Sheriff Paredes with the Office of the Ombudsman for Mindanao. The Ombudsman deferred the criminal complaint pending the determination of the instant administrative case.<sup>[5]</sup>

In **A.M. No. RTJ-04-1841**, Sheriff Paredes in a letter-complaint<sup>[6]</sup> dated June 24, 2002, charged Judge Tan for gross ignorance of the law, oppression, gambling, misconduct, and immorality. He asserted that Judge Tan ordered him to execute the writ of execution in Civil Case No. 5147. He claimed he told Judge Tan that they should wait for a resolution from the Court of Appeals since the defendants appealed the case. This infuriated Judge Tan who went on to order the demolition of the improvements in the premises. Hence, he told the plaintiffs to deposit with the Clerk of Court, the amount for the necessary expenses. In the meantime, he began to demolish the fence even without the deposit. He admitted in a staff meeting that he asked P10,000 from the plaintiffs and that he received P3,000. According to him, Judge Tan got angry and accused him of extortion before he could explain. He was suspended and his salaries and benefits were withheld. Thereafter, Judge Tan announced the incident in court, using facilities of several radio stations.

Sheriff Paredes claimed he brought the matter to the attention of Acting Executive Judge Diomedes Eviota and Court Administrator Presbitero J. Velasco Jr. during a seminar at Cagayan de Oro City. As a result, he was reinstated and his salaries and benefits were released.

He further claimed that on June 17, 2002, while he was seated behind his desk, Judge Tan boxed him and hit his face, while allegedly uttering something about the counter-affidavit in the criminal complaint Judge Tan filed before the Ombudsman; and that Judge Tan fraternizes with litigants, gambles in public places, flirts with a married woman, and is guilty of immorality having filed annulment cases against his first and second wives.

In his **Comment**,<sup>[7]</sup> Judge Tan claimed that Sheriff Paredes filed a complaint to blackmail him and to eventually withdraw his complaint. He suspended Sheriff Paredes upon respondent's admission of wrongdoings. He also admitted that he went on air because the case was imbued with public interest. He vehemently denied hitting Sheriff Paredes. He said he merely pointed a finger at Sheriff Paredes. Sheriff Paredes, in fact, aimed to strike him. He asserted he was not guilty of gross ignorance of the law. He denied consorting with other women. He was faithful to his legal wife and his subsequent marriages were well in accordance with

the law. He, however, admitted playing mahjong during weekends but only for relaxation and in private homes, and the game involved negligible amounts.

In his **Reply**,<sup>[8]</sup> Sheriff Paredes said that he filed the complaint because Judge Tan intimidated and humiliated him when he was suspended from office; abused his authority by withholding the release of his salaries and benefits; and had improperly solicited computers through his fraternity brothers.

The Court referred the matter to the Executive Judge of the RTC, Butuan City for investigation, report, and recommendation. Executive Judge Victor A. Tomaneng, RTC, Butuan City, to whom the consolidated cases were referred<sup>[9]</sup> to for investigation, reported<sup>[10]</sup> that the allegation that Sheriff Paredes demanded P10,000 from Mrs. Mijares was not supported by clear and convincing evidence. According to Judge Tomaneng, nobody testified that the sheriff extorted money. Although Paredes admitted receiving P5,500, the amount was reasonably spent and accounted for. Nonetheless, Sheriff Paredes did not strictly follow the procedure in Section 9, Rule 141<sup>[11]</sup> of the Rules of Court. Thus, the Executive Judge recommended that Sheriff Paredes be admonished.

The investigating judge found that the charges of ignorance of the law, abuse of authority and discretion, violation of human rights, womanizing, gambling, and grandstanding against Judge Tan were too broad and general, and unsupported by convincing and credible proof. Nonetheless, Judge Tan, according to the report, should be held liable for boxing Sheriff Paredes who suffered a swollen left face. The sanction against the Judge was left for the Court to decide.

In protest, Judge Tan filed a "**Vehement Protest to the Joint Investigation Report of Hon. Victor A. Tomaneng.**" Judge Tan claimed that the report did not take his memorandum into consideration and was contrary to the evidence presented. Sheriff Paredes also submitted his comment on the protest.

Upon referral of the case to the Office of the Court Administrator (OCA) for evaluation, report and recommendation, the OCA found reasonable grounds to hold both Sheriff Paredes and Judge Tan, administratively liable.<sup>[12]</sup>

The OCA found Sheriff Paredes liable for gross misconduct and dishonesty for failure to comply with the provisions of Section 9, Rule 141. Contrary to the findings of Judge Tomaneng, records showed that Mrs. Mijares testified that Sheriff Paredes demanded and asked P10,000. Further, the OCA noted that this was the first case against the sheriff who had been with the judiciary for twenty-seven years.

We agree with the findings of the OCA, concerning the charges against Sheriff Paredes. 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. The requesting party shall deposit such amount with the Clerk of Court. These expenses shall then be disbursed to the executing Sheriff subject to his liquidation within the same period for rendering a return on the process or writ. Any unspent amount shall be refunded to the party who made the deposit.<sup>[13]</sup>

In the implementation of a writ of execution, only the payment of sheriff's fees may

be received by sheriffs. Sheriffs are not allowed to receive any *voluntary* payments from parties in the course of the performance of their duties. To do so would be inimical to the best interests of the service because even assuming *arguendo* such payments were indeed given and received in good faith, this fact alone would not dispel the suspicion that such payments were made for less than noble purposes. [14] Corollary, a sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedural steps, otherwise, it would amount to dishonesty or extortion. [15]

In this case, Sheriff Paredes asked P10,000 from the plaintiffs to defray the expenses for the implementation of the decision without any approval from the court. The acquiescence or consent of the plaintiffs to such expenses, does not absolve the sheriff for his failure to secure the prior approval of the court concerning such expense. [16] Moreover, although the plaintiffs gave P5,500 directly to sheriff, he failed to deposit with the court, the amount received from the plaintiffs.

It must be stressed that high standards are expected of sheriffs, who play an important role in the administration of justice. [17] At the grassroots of our judicial machinery, sheriffs and deputy sheriffs are indispensably in close contact with the litigants, hence, their conduct should be geared towards maintaining the prestige and integrity of the court. [18] The Court condemns and would never countenance 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 diminish or even just tend to diminish the faith of the people in the judiciary. [19]

In *Rizal Commercial Banking Corp. v. Quilantang*, [20] we dismissed a sheriff for grave misconduct and gross dishonesty in the performance of his duties. Both are grave offenses, the penalty of which is dismissal from the service. Hence, considering the circumstances in the present case, in the light of *Quilantang*, Sheriff Paredes should be held liable and ordered dismissed from the service.

In **A.M. No. RTJ-04-1841**, the OCA found that Judge Tan failed to observe due process in ordering the suspension of Sheriff Paredes and the withholding of his salaries and other benefits.

Judges are authorized under Rule 3.10 [21] of the Code of Judicial Conduct to take or initiate appropriate disciplinary measures against lawyers or court personnel for unprofessional conduct. [22] As administrator of their courts, they are responsible for its conduct and management. Judges have the duty to supervise court personnel to ensure prompt and efficient dispatch of business in their courts. [23] However, the authority of judges and/or executive judges to discipline erring court personnel under their supervision is limited to light offenses only. [24] Under Supreme Court Circular No. 30-91, [25] the suspension of a court employee charged with grave or less grave offenses shall be referred to the Supreme Court for appropriate action.

In this case, Judge Tan placed Sheriff Paredes under preventive suspension upon his admission of wrongdoings. Judge Tan cannot unilaterally suspend him considering that the charges against Sheriff Paredes are classified as grave offenses under a Civil Service Commission Memorandum Circular. [26] The judge should have