

SECOND DIVISION

[A.M. No. P-02-1630, August 27, 2002]

EFREN V. PEREZ, COMPLAINANT, VS. ELADIA T. CUNTING, CLERK OF COURT IV, MTCC-OCC, ZAMBOANGA CITY, RESPONDENT.

DECISION

MENDOZA, J.:

This is a complaint, dated November 26, 2001, against Eladia T. Cunting, Clerk of Court IV of the Office of the Clerk of Court in the Municipal Trial Court in Cities, Zamboanga City.

Complainant Efren V. Perez is the owner and manager of SLR Lending Haus in Zamboanga City. In a letter, dated April 26, 2001, to the Office of the Court Administrator, complainant requested information on the authority of a sheriff to collect expenses in serving court processes from client agencies, in view of the fact that a deputy sheriff, assigned to a Metropolitan Trial Court, was collecting P100.00 as sheriff's fees for the service of the summons to each respondent in a civil case, P600.00 for the implementation of a writ of execution, and P700.00 for the extrajudicial foreclosure of a chattel mortgage.^[1] The letter was indorsed by the OCA on July 20, 2001 to the Clerk of Court of the Office of the Clerk of Court in the MTCC, Zamboanga City for comment.^[2]

In her comment, dated November 14, 2001, respondent Clerk of Court denied that the sheriffs were collecting fees in excess of those authorized under the Rules of Court and the circulars of this Court. She explained that the P100.00 sheriff's fee was for transportation and other expenses in serving summons. She said that this amount may vary depending upon the distance, that the P600.00 fee for the implementation of a writ of execution was for transportation costs and other incidental expenses, and that the MTCC had no jurisdiction over extrajudicial foreclosures of chattel or real estate mortgage as the same belongs to the jurisdiction of the Regional Trial Courts.^[3] In explaining that the sheriffs do not appropriate the amounts paid by the party-litigants, respondent said:

This amount that he gives are cash advances which are spent in the actual service of the summons to the defendants considering that sheriffs are not provided with service vehicles for the purpose, hence, the money does not go to the pockets of the sheriffs. What he (Mr. Perez) contends that he ought not to spend for these necessary expenses since sheriffs are paid their salaries is not tenable. Salaries are paid for services rendered as public servant but not meant to cover the necessary expenses incurred for transportation and incidental expenses in the actual service of Summons, Writs of Executions and other court processes. This matter had been decided by the Supreme Court in its long line of cases, that court personnel and sheriffs are not duty bound to

spend from their own purse for the benefit of private litigants in pursuit of their action.

Likewise, the amount of Six Hundred Pesos (P600.00) for Writs of Execution that he advances is not even enough to cover the costs for transportation, labor, security escorts, and storage fees that may be incurred in the execution proceedings. Sheriffs have to shoulder for additional expenses when the need arises and, [more often] than not, he refuses to reimburse the money shed by these court personnel. Legally speaking, these advances are for the account of the defendants, which the plaintiff may recover as charges for the proceedings, and therefore, he is not at a loss. Of course, there are cases which have empty judgment, but which [are] not within our control, they are risks to bear in litigation proceedings, just like in business, we have risks of losses.

....

It is worth to note that Mr. Perez runs a lending business firm named SLR Lending Haus; he must not be allowed to enrich himself at the expense of lowly paid court employees. In Zamboanga City, he is widely known for his notoriety in collecting exorbitant interests, and most of his cases filed in courts are for collection of interests which principal loans mostly have been paid. He practically lodged complaints in all head offices in government agencies. He filed capricious, whimsical and dilatory cases in the Ombudsman, Civil Service Commission and other quasi-judicial bodies in pursuit of his collection against his borrowers, most of which are either dismissed or thrown away for lack of merit.^[4]

Finding the foregoing comment to be arrogant, complainant, in a letter, dated November 26, 2001, sought administrative sanctions against respondent Eladia T. Cunting. The pertinent portion of his letter reads:

In her reply in a letter dated November 14, 2001, a copy attached marked as Annex "B", she cited the Rules of Court and related Supreme Court circulars as the basis, which [do not] address the real issue in my letter-inquiry. She failed to cite the specific issuance(s) of the Supreme Court which allow sheriffs to collect (not demand) such an amount. As a retired Auditor in the Commission on Audit, I only know of one circular which allows government employees to charge expenses while on travel, that is, the Travel Expense Law or Executive Order 248 dated May 29, 1995 to be specific. I am not referring to the salaries, as what Ms. Cunting contends, where to get their expenses for travel. So if court employees or sheriffs in particular are exempted to this Executive Order, then I am privileged to know for my guidance. The undersigned is not questioning the amount they are collecting but the legal basis if there is one. As simple as that. My concern is to help curb graft and corruption in government because if this is allowed to go on, this can be considered as irregular if not illegal practice, which is unbecoming for court employees who are supposed to know the law.

...Records of the courts will show that of the more than 45 Civil Cases for collection we have filed with the Municipal Trial Courts, almost all were awarded in favor of our establishment, meaning, our complaints have