

THIRD DIVISION

[A.M. No. P-00-1392, July 13, 2000]

WILSON B. TAN, COMPLAINANT, VS. JOSE A. DAEL, DEPUTY SHERIFF, REGIONAL TRIAL COURT OF DUMAGUETE CITY (BRANCH 36), RESPONDENT.

DECISION

PANGANIBAN, J.:

A sheriff must observe the rules for executing a writ. Any act deviating from the procedures laid down by this Court is considered a misconduct that would warrant disciplinary action.

The Case and the Facts

On September 22, 1997, the Office of the Court Administrator (OCA) received a letter-complaint from Dr. Wilson B. Tan accusing Deputy Sheriff Jose A. Dael^[1] of misappropriating the money collected in Civil Case No. 96-147. Dr. Tan narrated:

"Pursuant to the Writ of Execution dated August 21, 1996 issued by Branch Clerk of Court Eugene D. Salon of Branch 2 of the Municipal Trial Court in Cities, Dumaguete City, of the sala of Judge Felipe T. Torres, in Civil Case No. 96-147, Deputy Sheriff Jose A. Dael was tasked by Clerk of Court Thelma Garcia to enforce the writ, a copy of which is hereto attached and marked as Annex `A'. On November 9, 1996, the said deputy sheriff was able to collect from the defendants P2,000.00, but he did not remit the same to Branch Clerk of Court Eugene Salon, a [copy] of the receipt is hereto attached as Annex `B'. In his Sheriff's Return of Service dated February 17, 1997, a copy of which is hereto attached as Annex `C', only the sum of P2,500.00 was remitted to the court. Surpr[i]ngly, in his reply letter dated August 28, 1997 Mr. Jose A. Dael asserted that the amount of P1,500.00 was for his services in serving the writ allegedly six (6) times.

"I do not believe in his assertion because he is a government employee and whatever he collected should still be remitted to the government."^[2]

In response to a letter-indorsement^[3] of the OCA, Respondent Dael filed on May 12, 1998 his Answer denying any liability and praying for the dismissal of the Complaint. He explained:

"1.....The writ of execution in question dated August 26, 1996 was issued by the Municipal Trial Court in Cities of Dumaguete City, Branch II as a result of a decision rendered by that Court in Civil Case No. 96-147 entitled: Wilson Tan versus Myrna Vailoces, et al. Since defendant Myrna Vailoces resides in Barrio Dumolog, Bindoy, Negros Oriental, the writ of

execution was raffled among the Regional Trial Court (RTC) Clerk of Court of Negros Oriental. [sic] Consequently, it was assigned to him for execution, he being the Deputy Sheriff of the RTC, Branch 36 of Dumaguete City. The amount of P7,000.00 was sought to be executed such being the settlement amount as stated in paragraph 6 of a Compromise Agreement which was the basis of the trial court's decision;

"2.....In his first attempt to serve the writ of execution x x x in the first week of September, 1996, undersigned met the defendant Myrna Vailoces and her husband. Defendant Vailoces and husband admitted their inability to pay the amount claiming that they had no money, though they promised to pay the week after. Note that Myrna Vailoces is a public school teacher, while the husband is sickly and jobless. They have five (5) children all of school age. Around and within the defendant's house, nothing of value could be taken to answer for their obligations and neither [were] there any real properties;

"3.....Sometime [i]n the second week of September, 1996, the undersigned went back to Dumolog, Bindoy, Negros Oriental in order to collect the judgment money as promised, but defendant Myrna Vailoces was out of Bindoy;

"4.....Ten (10) days after, he went back to Dumolog, Bindoy, and this time sought the assistance of the Barangay Captain Mrs. Merlina Narciso to collect the judgment money. The barangay captain promised to help though she told him to come back the following week;

"5.....He returned and personally met the defendant at the office of the Barangay Captain where defendant promised to tender the payment to the barangay captain soonest. He informed the defendant that all expenses in the execution of the writ shall be charged to defendant's account.

"6.....On November 9, 1996, undersigned went to see the Barangay Captain to check if there was any payment made by defendant Vailoces. The amount of P2,000.00 was tendered by the Barangay Captain which he received and receipted;

"7.....The following day, November 10, 1996, the amount of P800.00 was deposited with the Clerk of Court, RTC, Branch 36, less the P1,200.00 as expenses for transportation, food and per diems incurred during the previous attempts of executions;

"[I]n the early part of February, 1997, P300.00 was withdrawn by him from the Clerk of Court of RTC, Branch 36 leaving the balance of P500.00. He proceeded to Dumolog, Bindoy where Myrna Vailoces paid another P2,000.00 which was duly acknowledged;

"8.....So, on February 17, 1997, he went to see Wilson Tan at the latter's clinic in Dumaguete City and tendered the amount of P2,500.00, including the remaining P500.00 deposited with the Clerk of Court of RTC, Branch 36. However, Mr. Tan arrogantly refused to accept it claiming

that [he had] to consult first his lawyer Atty. Herbert Timtim. So, the undersigned re-deposited the whole amount of P2,500.00 with the Clerk of Court of Branch 36;

"9.....From sources reliable to him, undersigned knew that on February 24, 1997, Mr. Tan was looking for him obviously fuming mad during which he was out on field for an execution of another writ. Yet, Mr. Tan got the P2,500.00 from the Branch Clerk of Court of Branch 36;

"10.....The total amount so far collected by the undersigned from Defendant Myrna Vailoces, et al., was P4,000.00, deducting therefrom the amount of P1,500.00 by the undersigned as expenses for previous executions leaving the balance of P4,500.00;

"11.....The amount of P1,500.00, so far collected by the undersigned is reasonable owing to hi[s] expenses for the execution and per diems mandated by the Rules."

On March 6, 2000, this Court issued a Resolution requiring the parties to manifest whether they were submitting the case for disposition on the basis of the pleadings on file. In their respective Manifestations, both parties agreed that no further evidence was necessary, and that the case should be deemed submitted for decision.

OCA Report and Recommendation

The OCA found Sheriff Dael guilty of misappropriating the money he had collected in Civil Case No. 96-147. It explained:

"It is apparent then that respondent has blatantly disregarded and violated the aforecited Rules. Respondent simply deducted his allowance and transportation expenses from the amount he collected from defendants upon his own initiative and volition, without even informing the complainant of the same as a matter of courtesy and respect expected from an officer of the court. Respondent neither sought prior approval from the court nor waited for the requesting party to deposit the needed amount with the clerk of court and ex-officio sheriff to defray whatever expenses he incurred.

Admittedly, respondent is entitled to sheriff's fees. However, the amount he appropriated for said fees exceeded that allowed by the Rules. What was sanctioned was only 4% of the first P4,000.00. Hence, respondent is entitled only to P160.00 and not P1,500.00 as he very much claimed to be reasonable based on his frequent return trips to defendant's place. There was absolutely no legal justification for respondent to extract and appropriate the P1,500.00 he collected.

Further, in the case of Padilla vs. Arabia, 242 SCRA 227, this Court emphasized that:

`When a writ is placed in the hands of a sheriff it is duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to execute it