



Republic of the Philippines  
**Supreme Court**  
 Manila

**EN BANC**

**ANTONIO K. LITONJUA,**                      **A.M. No. P-18-3865**  
 Complainant,                      (formerly OCA I.P.I. No. 11-3735-P)

Present:

LEONARDO-DE CASTRO, *C.J.*,  
 CARPIO,  
 PERALTA,  
 BERSAMIN,\*  
 DEL CASTILLO,  
 PERLAS-BERNABE,  
 LEONEN,  
 JARDELEZA,  
 CAGUIOA,  
 TIJAM,  
 A. REYES, JR.,  
 GESMUNDO,\* and  
 J. REYES, JR.,\*\* *JJ.*

- versus -

**JERRY R. MARCELINO, Sheriff**  
**III, Metropolitan Trial Court,**  
**Branch 71, Pasig City,**  
 Respondent.

Promulgated:

October 9, 2018

X-----X

**DECISION**

***PER CURIAM:***

This administrative case stems from a letter<sup>1</sup> dated June 29, 2009 that was sent by complainant Antonio K. Litonjua (Antonio), as president of Fruehauf Electronics Phil. Corp. (Fruehauf), to the Clerk of Court of the Metropolitan Trial Court (MeTC) of Pasig City, a copy of which letter was furnished the Office of the Court Administrator (OCA).

\* On official business.  
 \*\* On wellness leave.  
<sup>1</sup> *Rollo*, p. 20.

It was alleged in Antonio's letter that Fruehauf was the winning party in Civil Case No. 10652, an ejectment case entitled "*Fruehauf Electronic Phil. Corp v. Capitol Publishing House, Inc.*" that was resolved by the MeTC of Pasig City, Branch 71. Upon execution of the trial court's judgment, respondent Jerry R. Marcelino (Marcelino), Sheriff III of MeTC, Branch 71, Pasig City, charged Fruehauf the amount of ₱100,000.000 as sheriff's fees. To prove that the amount was actually paid to Marcelino, attached to Antonio's letter were two vouchers dated May 13, 2005<sup>2</sup> and July 14, 2005,<sup>3</sup> each for the amount of ₱50,000.00 and indicated to be for the payment of sheriff's fees. Both vouchers bore the name and signature of Marcelino as payee.

When the trial court's decision in Fruehauf's favor was eventually declared null and void by the Court of Appeals, Fruehauf was ordered to return all funds and property that were earlier subjects of execution, plus pay lawful fees for sheriff's services. This prompted Fruehauf to also demand from Marcelino the sheriff's fees that it had previously paid in 2005.<sup>4</sup> As Marcelino continuously failed to refund the fees or to at least present official receipts covering the payments made, Fruehauf was prompted to write the letter dated June 29, 2009 to the Clerk of Court of MeTC, Pasig City to request for a certification on the applicable lawful fees for sheriff services, and copies of official receipts for the fees already paid.<sup>5</sup>

Atty. Reynaldo V. Bautista (Atty. Bautista), Clerk of Court of the MeTC of Pasig City replied to Fruehauf *via* a letter<sup>6</sup> dated August 18, 2009, and explained that per Sheriff's Return<sup>7</sup> issued by Marcelino, the following incidents in relation to the execution in Fruehauf's favor transpired:

i. On May 12, 2005[,] proceed[ed] with the auction sale of the levied property with [Fruehauf] as the highest bidder with a bid of Php7,100,000.00;

x x x x

p. On June 3, 2005[,] received the replacem[en]t check from Malayan Insurance Co., Inc. in the amount of Php17,416,666.00;

x x x x

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<sup>2</sup> Id. at 21.  
<sup>3</sup> Id. at 22.  
<sup>4</sup> Id. at 20.  
<sup>5</sup> Id.  
<sup>6</sup> Id. at 13.  
<sup>7</sup> Id. at 5-6.

s. On June 20, 2005[,] received the check in the amount of Php 63,225.64 from Bank of the Philippine Islands and turned-over the same to [Frueauf].<sup>8</sup>

Citing Amended Administrative Circular No. 35-2004<sup>9</sup>, Atty. Bautista declared Frueauf liable for the following fees:

As to the amount of Php 7,100,000.00 Sale price of levied property (machiner[y])

|                     |                    |
|---------------------|--------------------|
| JDF                 | SAJ                |
| Php 160.00          | Php 60.00          |
| <u>+ 141,920.00</u> | <u>+ 70,920.00</u> |
| Php 142,080.00      | Php 71,020.00      |

As to the amount of Php 17,416,666.00 Money collected from Supersedeas bond

|                     |                     |
|---------------------|---------------------|
| JDF                 | SAJ                 |
| Php 160.00          | Php 60.00           |
| <u>+ 348,253.32</u> | <u>+ 174,126.66</u> |
| Php 348,413.32      | Php 174,186.66      |

As to the amount of Php 63,225.64 Amount garnished from BPI.

|                     |                              |
|---------------------|------------------------------|
| JDF                 | SAJ                          |
| Php 160.00          | Php 60.00                    |
| <u>+ 348,253.32</u> | <u>+ 174,126.66</u>          |
| Php 348,413.32      | Php 174,186.66 <sup>10</sup> |

As to Antonio's request for official receipts covering portions of the sheriff's fees that Frueauf had already paid, Atty. Bautista explained that his office had not received any amount as payment, including the amount of ₱100,000.00 that was allegedly paid by the company directly to Marcelino.<sup>11</sup>

<sup>8</sup> Id. at 13.

<sup>9</sup> Section 10. Sheriffs, Process Servers and other persons serving processes.

x x x x

(1) For money collected by him ACTUAL OR CONSTRUCTIVE (WHEN HIGHEST BIDDER IS THE MORTGAGEE AND THERE IS NO ACTUAL COLLECTION OF MONEY), by order, execution, attachment, or any other process, judicial or extrajudicial, which shall immediately be turned over to the Clerk of Court, the following sums shall be paid to the clerk of court to wit:

(1) On the first FOUR THOUSAND (P4,000.00) PESOS, FIVE AND A HALF (5.5%) per centum; 4% for the Judiciary Development Fund (JDF), 1 ½% for the Special Allowance for the Judiciary (SAJ) Fund;

(2) On all sums in excess of FOUR THOUSAND (P4,000.00) PESOS, THREE (3%) per centum; 2% of the JDF, 1% for the SAJ.

x x x x

<sup>10</sup> *Rollo*, pp. 13-14.

<sup>11</sup> Id. at 14.

The OCA directed Marcelino to comment on Fruehauf's letter.<sup>12</sup> In his Comment<sup>13</sup> dated August 17, 2009, Marcelino denied having received the ₱50,000.00 covered by the voucher dated May 13, 2005. He nonetheless admitted receiving the ₱50,000.00 that was covered by the July 14, 2005 voucher. The check for it was allegedly voluntarily handed to him by Atty. Benedict Litonjua (Benedict), son of Antonio and a lawyer of Fruehauf, who even escorted him to iBank, Mandaluyong Branch for its encashment. Specifically, Marcelino declared:

3. For the voucher dated July 14, 2005, said check was received by the undersigned from [Benedict], son of [Antonio] and lawyer of [Fruehauf] who even escorted me to iBank, Mandaluyong Branch to encash the same;

4. Said amount/check was voluntarily given by [Benedict] as a token of appreciation, having been satisfied by the proceedings made by the undersigned sheriff.<sup>14</sup>

The foregoing claims of Marcelino prompted Antonio to file with the OCA an Affidavit<sup>15</sup> by which he accused the sheriff of deception and dishonesty in the exercise of official functions. Marcelino allegedly misrepresented in the collection of the sheriff's fees, as Antonio averred in his affidavit:

5. After [Marcelino] conducted the auction of the machiner[y] on May 12, 2005 amounting to Seven Million One Hundred Thousand Pesos (PhP7,100,000.00), he immediately demanded for the partial payment for sheriff fees. The undersigned personally disbursed cash from his own funds to the sheriff on May 13, 2005 to satisfy this demand, the amount to be reimbursed later by [Fruehauf]. This disbursement is evidenced by the corresponding personal Cash Voucher of [**Antonio**], duly signed by [Marcelino] specifically for the purpose stated therein, of a **“Partial payment of sheriff fees for pesos 50,000.00”**. x x x.

6. On June 3, 2005[,] Malayan Insurance paid the bond in the amount of Seventeen Million Four Hundred Sixteen Thousand Six Hundred Sixty Six Pesos (PhP17,416[,]666.00). On June 20, 2005[,] the amount of Sixty Three Thousand Pesos and Sixty Four Centavos (Php63,223.64) was collected from the Bank of Philippine Islands. For the completion of the above, a second demand was made by [Marcelino] for the sheriff's fees and on July 14, 2005[,] [Fruehauf] issued a check for the **“payment of sheriff fees for Pesos 50,000.00”** duly acknowledged in the accompanying Check Voucher of [Fruehauf], x x x and a copy of the [Fruehauf's] returned check (with the dorsal portion with [Marcelino's] signature) x x x.<sup>16</sup>

<sup>12</sup> Id. at 18.

<sup>13</sup> Id. at 23.

<sup>14</sup> Id.

<sup>15</sup> Id. at 8-9.

<sup>16</sup> Id. at 8.

Attached to the affidavit were the two vouchers and the encashed check. Also attached was an affidavit<sup>17</sup> executed by Benedict in which he explained that the money given to Marcelino was from Fruehauf and/or Antonio, and intended as sheriff's fees for the execution of the judgment in the corporation's favor. It was not meant to be a mere token of appreciation.

After an evaluation of the respective accounts of Antonio and Marcelino, the OCA submitted to the Court its reports dated February 5, 2013<sup>18</sup> and May 11, 2018.<sup>19</sup> In both reports, the OCA found Marcelino guilty of dishonesty and dereliction of duty and then recommended that he be "DISMISSED from the service with forfeiture of all retirement benefits and privileges, except accrued leave credits, if any, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations."<sup>20</sup>

The Court agrees with the OCA's evaluation and recommendations, both as to the guilt of Marcelino and the appropriate penalty for his wrongful acts.

Marcelino himself admitted that he received the amount of ₱50,000.00 from Fruehauf through the latter's counsel, Benedict. To his mind, the amount was a voluntary payment of the winning litigant and thus, he did not turn over the money to the court and instead appropriated the amount for himself. For its part, on the other hand, Fruehauf believed that the total amount of ₱100,000.00 that was directly paid to Marcelino would be applied as partial payments for the required sheriff's fees, and would then be remitted to the office of the Clerk of Court in accordance with applicable rules. Regardless of the amount actually received by Marcelino and the purpose for which it was paid, whether as sheriff's fees or as a gratuitous payment, the commission of an act that was prohibited from him as a sheriff was patent.

Time and again, the Court has ruled against the acceptance by sheriffs of voluntary payments from parties in the course of the performance of their duties.<sup>21</sup> Doing so would be inimical to the best interests of the service, as it might create the suspicion that the payments were made for less than noble purposes.<sup>22</sup>

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<sup>17</sup> Id. at 15.

<sup>18</sup> Id. at 28-33.

<sup>19</sup> Id. at 35-41.

<sup>20</sup> Id. at 40-41.

<sup>21</sup> *Atty. Gonzalez, et al. v. Calo*, 685 Phil. 352, 363 (2012).

<sup>22</sup> *See Francia v. Esguerra*, 746 Phil. 423, 429 (2014).

Clearly, in this case, the purpose for which Marcelino allegedly received the money was not sanctioned under the rules. He might have thought that his claim of voluntary payment was sufficient defense for his failure to remit the amount to the court. Such voluntary payments or gratuities, however, are proscribed under the rules and covered by settled jurisprudence. "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 and extortion. And any amount received in violation of Section 10, Rule 141 of the Rules of Court constitutes unauthorized fees."<sup>23</sup> Even as the Rules of Court allows payments to sheriffs, it limits the amounts they could receive from parties in relation to the execution of writs, and likewise prescribes the manner by which the sums should be handled, particularly:

Sec. 10. Sheriffs, process servers and other persons serving processes.

x x x x

With regard to sheriff's expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, the interested party shall pay said expenses 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. The liquidation shall be approved by the court. 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.

The Court also reiterated in *Garcia v. Alejo*:<sup>24</sup>

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 interest of the service because even assuming arguendo such payments were indeed given in good faith, this fact alone would not dispel the suspicion that such payments were made for less than noble purposes. Sheriffs cannot receive gratuities or voluntary payments from parties they are ordered to assist. Court personnel shall not accept any fee or remuneration beyond what they are entitled to in their official capacity.<sup>25</sup>

<sup>23</sup> Id. See also *Santos v. Leano, Jr.*, 781 Phil. 342, 351 (2016).

<sup>24</sup> 655 Phil. 482 (2011).

<sup>25</sup> Id. at 489.

The claim of gratuity or mere appreciation for the efforts Marcelino undertook during execution was also inconsistent with the fact that proceedings were still ongoing at the time the payments were made to him.<sup>26</sup>

There is greater merit in Antonio's claim that the two payments of ₱50,000.00 each were made upon Marcelino's demands, and believed by the payor to be part of the sheriff's fees that were required from them under the rules. Such purpose was particularly indicated in the vouchers covering the amounts. Marcelino acted wrongly by the mere act of personally and directly receiving the money, and even more by his failure to comply with the processes required for the handling of the fees or expenses.

"The rules on sheriff's expenses are clear-cut and do not provide procedural shortcuts."<sup>27</sup> The OCA correctly observed that having been a sheriff for over 17 years at the time of his receipt of the payments, Marcelino should have known fully well the bounds of his authority when it came to demands for, receipt and handling of fees.<sup>28</sup> A sheriff's failure to turn over amounts received from a party in his official capacity constitutes an act of misappropriation of funds amounting to dishonesty.<sup>29</sup>

Marcelino's failure to observe the procedural rules further classifies as dereliction of duty. "The rule requires the sheriff executing writs or processes to estimate the expenses to be incurred. Upon the approval of the estimated expenses, the interested party has to deposit the amount with the Clerk of Court and *ex-officio* Sheriff. The 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>30</sup> This procedure was not observed in this case.

On the matter of the appropriate penalty to be meted out for the foregoing infractions, the OCA's recommendation on Marcelino's dismissal from the service is justified.

Section 50 of the Revised Rules on Administrative Cases in the Civil Service provides that "(i)f the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances." This particularly applies in this case because under the Code of Conduct for Court Personnel,<sup>31</sup> "(a)ll provisions of law, Civil

<sup>26</sup> Rollo, pp. 5-6.

<sup>27</sup> *Francia v. Esguerra*, supra note 22.

<sup>28</sup> Rollo, p. 38.

<sup>29</sup> See *Anico v. Pilipiña*, 670 Phil. 460, 470 (2011).

<sup>30</sup> Id. at 468.

<sup>31</sup> A.M. No. 03-06-13-SC, April 23, 2004.

Service rules, and issuances of the Supreme Court governing or regulating the conduct of public officers and employees applicable to the Judiciary are deemed incorporated into (the) Code.”<sup>32</sup> Marcelino’s dismissal from the service is thus correct because it is the appropriate penalty in cases of serious dishonesty.<sup>33</sup> Given the circumstances of the case, with Marcelino receiving a total of ₱100,000.00 without any intention to remit the same to the court or to apply to expenses in relation to the execution, he committed serious dishonesty, a grave offense that is punishable by dismissal on the first offense.<sup>34</sup> There was also a patent grave abuse of his authority that allowed him to commit the dishonest act.

It is likewise material that per records, this is not the first time that he is found guilty of an offense as an employee of the court. On September 18, 2003, the Court rendered its Resolution in *Paredes v. Marcelino*,<sup>35</sup> docketed as A.M. No. P-00-1370, wherein he was found guilty of abuse of authority and fined ₱1,000.00, with a stern warning from the Court that a repetition of the same or similar acts in the future would be dealt with more severely. Marcelino, then the acting clerk-in-charge of criminal cases, took it upon himself to exclude without any justifiable reason a particular case from the court calendar in two hearing dates. For the Court, he “arrogated unto himself in the absence of any authority from the judge to exclude Crim. Case No. 23663 in the court calendar,” and thus, clearly “overstepped the boundaries of his assigned task.”<sup>36</sup>

Further, in another case docketed as A.M. No. P-15-3323 and entitled *Judge Marina Gaerlan Mejorada v. Jerry Marcelino*, Marcelino was found to have failed to deposit garnished money and to observe the proper procedure in the handling of a money judgment. In a Minute Resolution dated June 22, 2015, he was then declared guilty of less serious dishonesty and simple neglect of duty and accordingly, was suspended for six (6) months.<sup>37</sup>

The repeated infractions of Marcelino clearly demonstrate that he has lost the character of a person worthy to proceed with the demands of his office. The function held by Marcelino demanded high standards, both as to his character and repute, and the manner by which he should discharge his functions. As the Court declared in *Spouses Cailipan v. Castañeda*:<sup>38</sup>

<sup>32</sup> Section 1. Incorporation of Other Rules.

<sup>33</sup> *Anico v. Pilipiña*, supra note 29, at 471.

<sup>34</sup> Revised Rules on Administrative Cases in the Civil Service, Rule IV, Sec. 46(A)(1); see also *Anico v. Pilipiña*, id.

<sup>35</sup> 458 Phil. 54 (2003).

<sup>36</sup> Id. at 59.

<sup>37</sup> *Rollo*, p. 40.

<sup>38</sup> 780 Phil. 479 (2016).




[I]t cannot be over-emphasized that sheriffs are ranking officers of the court. They play an important part in the administration of justice – execution being the fruit and end of the suit, and the life of the law. In view of their exalted position as keepers of the faith, their conduct should be geared towards maintaining the prestige and integrity of the court. x x x.<sup>39</sup>


Further, the following is the oft-repeated jurisprudence tackling the standards by which sheriffs are especially estimated when their actions and demeanor become subjects of inquiry, as in this case:

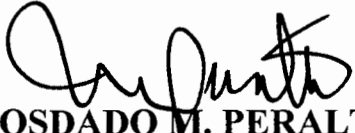
At the grassroots of our judicial machinery, sheriffs and deputy sheriffs are indispensably in close contact with litigants, hence, their conduct should be geared towards maintaining the prestige and integrity of the court, for the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel; hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a temple of justice.<sup>40</sup> (Citation omitted)

**WHEREFORE**, the Court finds respondent Jerry R. Marcelino, Sheriff III, Metropolitan Trial Court, Branch 71, Pasig City, **GUILTY** of serious dishonesty and dereliction of duty. He is ordered **DISMISSED** from the service with forfeiture of all retirement benefits and privileges, except accrued leave credits, if any, with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations.

**SO ORDERED.**

  
**TERESITA J. LEONARDO-DE CASTRO**  
Chief Justice

  
**ANTONIO T. CARPIO**  
Associate Justice


  
**DIOSDADO M. PERALTA**  
Associate Justice


<sup>39</sup> Id. at 488.


<sup>40</sup> *Geronca v. Magalona*, 568 Phil. 564, 570-571 (2008).

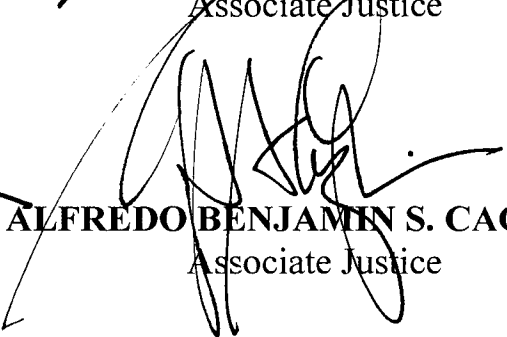
(On official business)  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

  
**MARVIC M.V.F. LEONEN**  
Associate Justice

  
**FRANCIS H. JARDELEZA**  
Associate Justice

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice


  
**NOEL GIMENEZ TIJAM**  
Associate Justice

  
**ANDRES B. REYES, JR.**  
Associate Justice

(On official business)  
**ALEXANDER G. GESMUNDO**  
Associate Justice

(On wellness leave)  
**JOSE C. REYES, JR.**  
Associate Justice

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**EDGAR O. ARICHETA**  
Clerk of Court En Banc  
Supreme Court