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CONCURRING OPINION

BARREDO, *J.*:

I concur.

The mildest way I can put what I feel about the circumstances of this case is that there must be more than meets the eye in them. The apparently inconsistent actions of the Labor Ministry authorities appearing in the record so confuse me that I am at a loss as to how to apply settled principles to them in order to arrive at a fair decision. Maybe *res adjudicata* or waiver thereof may be invoked here, but, as I have said, the procedures in the Labor Ministry are seemingly complicated that it would be hazardous to the interests of justice to act in this case without requiring the clarificatory proceeding ordered in the judgment herein.

Perhaps it is high time the Minister of Labor's attention were called to this enigmatic situation. While it is not for Us to complain if labor cases seem to be plaguing the Court, but both labor and capital and all concerned would be happier, I am sure, if procedures in labor cases were to be simplified to the barest requirements of truth and fair play. I note, however, that the Ministry is actually striving towards such laudable goal, but it may not be amiss to say that the public anxiety in this regard involves much more than mere procedural simplification. The basics of impartiality, intelligent appraisal of controversial situations and plain integrity are deemed as also indispensable.

FIRST DIVISION

[A.M. No. P-1568. December 28, 1979]

ATTY. FRANCISCO E. ANTONIO, *complainant, vs.* **RODRIGO E. DIAZ, Deputy Sheriff, Court of First Instance, Isabela, Basilan,** *respondent.*

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SYLLABUS

ADMINISTRATIVE LAW; COURT PERSONNEL; DEPUTY SHERIFF; GRAVE MISCONDUCT; WHEN COMMITTED.— The act of respondent in appropriating for his own personal use part of the attorney's fee of complainant which respondent, in the performance of his duty as deputy sheriff, collected from the Province of Basilan, constitutes a grave misconduct which is one of the grounds for disciplinary action under the applicable civil service law. The desistance of the complainant, as in this case does not bar the taking of disciplinary action against the respondent. Neither does it dissuade the Court from imposing the appropriate disciplinary sanction against the respondent. One who occupies a public position, especially in an office connected with the administration of justice and the execution of judgments, must at all times be free from the appearance of impropriety.

D E C I S I O N

TEEHANKEE, *J.*:

Respondent, Rodrigo E. Diaz, Deputy Sheriff, Court of First Instance, Isabela, Basilan, was charged on February 23, 1977 by Atty. Francisco E. Antonio, a practising lawyer in Zamboanga City for conduct unbecoming of a government and public official alleging that:

"I was the counsel for the claimant in WCC Case No. ROX-321-73 (Labor Regional Office No. 9, Zamboanga City), entitled '*CARLOTA ALANO RIVERO, Claimant, vs. CITY OF BASILAN, represented by the Mayor, and DEPARTMENT OF NATIONAL DEFENSE, represented by the Secretary, Respondents.*' The claimant won in said case, and she was awarded the sum of ₱3,320.00 as compensation for the death of her husband, and I was awarded the sum of ₱420.00 as my attorney's fee.

"By virtue of a writ of execution issued by the National Labor Relations Commission (NLRC), Department of Labor, Regional Office No. 9, Zamboanga City, said Rodrigo Diaz, in his capacity as Deputy Sheriff of Basilan, executed the decision. He collected my attorney's fee of ₱420.00 from the Province of Basilan.

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"On August 18, 1976, said Rodrigo Diaz appeared in my law office at Room 211, German Wee Sit Building, Zamboanga City, and he handed to me only the amount of ₱220.00 as my attorney's fee in said case. I got furious, and I demanded from him the missing ₱200.00 but he said he had taken it and he had used it. Whereupon, I asked him to sign a written confession or admission, which he did freely and voluntarily.

"Mr. Diaz committed the act above-mentioned without my knowledge or consent.

"In view whereof, I respectfully request that said Rodrigo Diaz be investigated, and thereafter, to terminate him from service, with forefeiture of benefits."[1]

In compliance with the 1st Indorsement[2] of the Acting Judicial Consultant, dated March 15, 1977, requiring him to comment on the charges against him, respondent admitted "all the allegations in the complaint" invoking, however, certain extenuating and/or mitigating circumstances.[3]

Thereafter, or on August 2, 1977, the complainant executed an Affidavit of Desistance[4] on the ground that "Mr. Diaz (the respondent) approached me last July 29, 1977, at Isabela, Basilan Province, and he paid me the sum of Two Hundred (₱200.00) Pesos, Philippine Currency, as payment of the sum of money which is mentioned in my complaint addressed to the Honorable Supreme Court dated February 23, 1977" and that "Mr. Diaz explained to me the reasons and circumstances for his use of said money."

In view of the admission by the respondent of the act complained of, we see no necessity for a further investigation of this case.

The act of respondent in appropriating for his own personal use part of the attorney's fee of complainant which respondent,

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[1] Complaint, pages 10-11, Record.

[2] Page 17, Record.

[3] Pages 5-6, Record.

[4] Page 4, Record.

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in the performance of his duty as deputy sheriff, collected from the Province of Basilan, constitutes a grave misconduct which is one of the grounds for disciplinary action under the applicable civil service law.[5] The desistance of the complainant, as in this case does not bar the taking of disciplinary action against the respondent.[6] Neither does it dissuade the Court from imposing the appropriate disciplinary sanction against the respondent. One who occupies a public position, especially in an office connected with the administration of justice and the execution of judgments, must at all times be free from the appearance of impropriety.[7]

The Court finds and holds respondent Rodrigo Diaz guilty of grave misconduct; but considering that this is his first offense during his long service in the judicial branch of the government which covers a period of more than 21 years, the Court is inclined to be lenient in this instance.

ACCORDINGLY, the Court imposes upon respondent a fine equivalent to his salary for three (3) months, with warning that any repetition of the same or similar offense will be dealt with more severely.

SO ORDERED.

Makasiar, Fernandez, Guerrero, De Castro, and *Melencio-Herrera, JJ.*, concur.

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[5] See P.D. 809, Article IX, Section 36.

[6] *Espayos vs. Lee*, Adm. Matter No. 1574-MJ, April 30, 1979.

[7] *Gutierrez, et al. vs. Fernandez*, Adm. Case No. P-165, August 18, 1975.