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SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Villarama, Jr., Perez, Reyes, Perlas-Bernabe, Leonen, and *Jardeleza, JJ.,* concur.

Brion, J., on official leave.

SECOND DIVISION

[A.M. No. P-11-2940. January 21, 2015]

JUDGE GODOFREDO B. ABUL, JR., *complainant, vs.* **GEORGE E. VIAJAR, Sheriff IV, Regional Trial Court, Branch 4, Butuan City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHERIFFS; IN SERVING WRITS AND PROCESSES AND IMPLEMENTING ITS ORDERS, THEY CANNOT AFFORD TO ERR WITHOUT AFFECTING THE INTEGRITY OF THEIR OFFICE AND THE EFFICIENT ADMINISTRATION OF JUSTICE.— [S]heriffs play an important role in the administration of justice. As agents of the law, they are called upon to discharge their duties with due care and utmost diligence. In serving the court's writs and processes and implementing its orders, they cannot afford to err without affecting the integrity of their office and the efficient administration of justice.

2. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; RETURN OF WRIT OF EXECUTION; THE SHERIFF IS MANDATED TO SUBMIT HIS PERIODIC REPORTS ON THE WRIT EVEN WHEN THE

JUDGMENT HAS NOT YET BEEN FULLY SATISFIED; CASE AT BAR.— [R]espondent violated a basic rule by failing to do his ministerial duty to make periodic reports on the writ x x x [, pursuant to] Section 14, Rule 39 of the Revised Rules of Court x x x. In this case, the writ of execution was issued on 26 March 2010. Respondent received it on the same day. Respondent made his Report on 21 June 2010. Respondent ignored the directive of the Rules requiring him to make a report to the court every 30 days on the proceedings taken on the writ until the judgment is satisfied in full, or when the effectivity of the writ expires. We cannot accept respondent's explanation that the main reason for his failure to make his report was that there were still activities to be undertaken in the process of his implementation of the writ. The Rule is clear. Even when the judgment has not yet been fully satisfied, respondent is mandated to submit his periodic report to the court. Respondent failed to do so.

3. **ID.; ID.; ID.; SATISFACTION BY LEVY; THE SHERIFF MUST PERSONALLY DEMAND FROM THE JUDGMENT DEBTOR THE PAYMENT OF THE JUDGMENT DEBT AND GIVE HIM THE OPTION TO CHOOSE WHICH OF THE PROPERTIES MAY BE LEVIED UPON; CASE AT BAR.—** Respondent x x x failed to show that he personally demanded from the judgment debtor the immediate payment of the full amount stated in the writ of execution, and of all lawful fees. In addition, respondent failed to show that he accorded the judgment debtor the option to choose which among its real or personal properties would be levied upon. Section 9(b) of Rule 39 states that "[i]f the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment." In this case, respondent just levied upon the property of the judgment debtor without demanding payment of the judgment debt, and without giving the judgment debtor the option to choose which of its properties may be levied upon.

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4. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHERIFFS; A SHERIFF'S DUTY TO EXECUTE JUDGMENT IS MINISTERIAL AND WHEN HE IS FACED WITH AN AMBIGUOUS EXECUTION ORDER HE SHOULD SEEK CLARIFICATION FROM THE JUDGE.— [R]espondent's duty to execute a judgment is ministerial and he need not look outside the plain meaning of the writ of execution. When a sheriff is faced with an ambiguous execution order, prudence and reasonableness dictate that he seek clarification from the judge. When confronted with the question of whether Fast Cargo Transport Corporation is the same as Fast Cargo Logistics Corporation, respondent should have consulted with the judge. Instead, he decided on his own that they are one and the same corporation.

5. ID.; ID.; ID.; ID.; ID.; GRAVE MISCONDUCT AND SERIOUS DISHONESTY; FAILURE TO FOLLOW THE BASIC PROCEDURE FOR IMPLEMENTING A WRIT OF EXECUTION, A CASE OF; PENALTY IN CASE AT BAR.— The OCA found respondent guilty of grave misconduct and dishonesty in the performance of his duties, which, considering the circumstances, we deem to be serious dishonesty. Both offenses are punishable with dismissal from the service. However, in recommending the imposable penalty, the OCA considered the following as mitigating circumstances in favor of respondent: (1) this is respondent's first offense; (2) respondent had been in the service for 15 years; and (3) humanitarian reasons. Thus, the OCA recommended that the penalty of suspension from office without salary for six months should instead be meted on respondent. In view of respondent's retirement from the service, the OCA further recommended that the amount corresponding to six months' salary be instead deducted from respondent's retirement benefits. We modify the recommended penalty by increasing the suspension from six months to one year. Considering that respondent already retired from the service, the amount corresponding to one year's salary should instead be deducted from respondent's retirement benefits.

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D E C I S I O N

CARPIO,* ***J.*:**

The Case

Before the Court is an administrative case for Dishonesty, Grave Abuse of Authority, Usurpation of Judicial Authority, and Malfeasance and Graft and Corruption filed by Judge Godofredo B. Abul, Jr. (complainant) of the Regional Trial Court, Branch 4, Butuan City, against Sheriff IV George E. Viajar (respondent).

The Antecedent Facts

Complainant alleged that on 26 March 2010, he issued a Writ of Execution (writ) in Civil Case No. 3985 entitled "*Felipe Gorme, Sr., Adela Gorme, Crisanta Gorme-Gado and Felipe Saludo v. Fast Cargo Transport Corporation and Romy Estrella*." According to complainant, respondent received the writ on the same day it was issued but he withheld the writ and filed the Sheriff's Return of Service only on 21 June 2010. Complainant further alleged that respondent arrogated judicial powers upon himself by receiving ₱68,000 from the judgment creditor and failing to deposit it to the court. Complainant also alleged that respondent submitted an unreasonably high Sheriff's fees, through padded and imaginary charges, as can be seen from the Statement of Liquidation he submitted which contained the following charges:

(a) Two ₱5,800, without receipts;
(b) Publication of Sheriff's Notice of Sale – ₱15,000, published without the required raffle;
(c) Lifting of levy – ₱5,000, without receipt;
(d) Representation allowances – ₱4,500; and
(e) Withheld amount from the judgment creditor – ₱28,260.

Complainant alleged that respondent refused to follow the Rules of Court when he failed to demand payment directly from

* Chairperson.

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the judgment creditor. Respondent took it upon himself to make a determination that the judgment creditor in Civil Case No. 3985, Fast Cargo Transport Corporation, is the same as Fast Cargo Logistics Corporation. In addition, respondent mailed a copy of the writ of execution to the judgment debtor in Cebu City instead of serving the writ. He then proceeded to execute a levy garnishment and conducted an illegal sale. By purposely not giving notice to the judgment debtor and its counsel, respondent deprived some of the parties of their right to participate. Respondent allegedly conducted a simulated bidding, awarded the property to the judgment creditor, received ₱800,000 for the bid but did not deposit the money with the Clerk of Court. On 15 June 2010, respondent executed a Sheriff's Certificate of Redemption with accompanying acknowledgment receipt which showed that he charged the judgment debtor additional expenses of ₱40,000 as actual expenses and ₱40,000 as Sheriff's fees. Respondent then allowed the judgment debtor to withdraw the amount of ₱460,647 from him and only informed the trial court through an addendum of Return of Service submitted on 24 June 2010. The trial court ordered respondent to deposit the ₱800,000 paid by the highest bidder to the court but he refused and only gave a vague explanation.

In his comment, respondent denied that he deliberately withheld the making of the return of the writ. He alleged that on 24 May 2010, he proceeded with the auction sale since there was no sign that the judgment debtor would settle its obligation. On 25 May 2010, he delivered ₱575,000 out of the bid amount of ₱800,000 to the judgment creditor to satisfy the obligation. Respondent alleged that on 9 June 2010, Terence Saavedra (Saavedra), a representative of Fast Cargo Logistics Corporation who claimed to also represent Fast Cargo Transport Corporation, came to the trial court and informed him that he wanted to redeem the property. Respondent alleged that Saavedra returned on 15 June 2010, made a proposal to satisfy the judgment amount and the Sheriff's expenses, and he received the amount on the same day.

Respondent further alleged that the amount of ₱69,000 as estimated expenses was approved by complainant because he was supposed to go to Cebu City to serve the writ. However,

he changed his plans because he learned that the judgment creditor still had property in Butuan City. He added that the judgment creditor opted not to deposit the estimated amount of expenses and instead personally handed it to him. Respondent further stated that it is discretionary upon complainant whether to approve his expenses. Respondent denied that he made a judicial pronouncement that Fast Cargo Transport Corporation is the same as Fast Cargo Logistics Corporation. He claimed that he observed the change in the corporate name on 15 August 1997 and that complainant was duly informed when he submitted his Sheriff's Return of Service. Respondent denied that he deliberately refused to deposit the amount of ₱800,000. He added that ₱575,000 was already delivered to the judgment creditor. He stressed that he did not receive a single centavo for his personal benefit.

In its Resolution dated 15 June 2011, this Court re-docketed the complaint as a regular administrative complaint and referred the case to the Executive Judge of the Regional Trial Court of Butuan City, Branch 3, for investigation, report and recommendation.

The Report and Recommendation of the Executive Judge

After conducting his investigation, Executive Judge Francisco F. Maclang found that respondent committed the following violations:

1. Respondent did not enforce the writ by personally going to Cebu City. Instead, respondent mailed a copy of the writ to Fast Cargo Transport Corporation.

2. Respondent mailed to Fast Cargo Transport Corporation not only the writ but also the notice of levy of execution. As such, Fast Cargo Transport Corporation was not given an option to select what personal or real property would be levied by respondent. Respondent was not able to show that Fast Cargo Transport Corporation has no bank account or other personal property that would justify the immediate levy on its real property.

3. Respondent did not immediately return the writ after the judgment had been satisfied in part or in full. Instead, he submitted

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the Report on 21 June 2010, or almost three months after the issuance of the writ on 26 March 2010.

4. Respondent did not present any evidence that the written Notice of Sale had been published once a week for two consecutive weeks in one newspaper. Respondent presented one Sheriff's Notice of Sale. He also presented an official receipt issued by The People's Guardian showing payment for ₱15,000 on 25 May 2010 but the publication was dated 28 April 2010. Respondent likewise failed to give a copy of the Notice of Sale to Fast Cargo Transport Corporation.

5. Instead of turning over the payment to the Clerk of Court for delivery to the judgment creditor, respondent took it upon himself to deliver the bid amount. He also made a conclusion that Fast Cargo Transport Corporation changed its name to Fast Cargo Logistics Corporation.

6. Respondent charged an exorbitant amount of sheriff's expenses of ₱68,260 even if he did not actually go to Cebu City. Even the actual expenses reflected on the Sheriff's Return, amounting to ₱40,000, were exorbitant. Respondent also failed to explain why he demanded ₱460,627 from Fast Cargo Transport Corporation after the Certificate of Sale was issued.

7. In his letter dated 1 July 2010, respondent included the amount of ₱176,112.60 allegedly representing lawyer's expenses from 6 November 2001 to 6 August 2007. He also admitted that he gave money to the Register of Deeds and the Assessor's Office to facilitate the release of the papers.

8. Respondent approved the Certificate of Sale instead of giving the same to the court for approval.

9. Respondent failed to show that The People's Guardian had been awarded the right to publish the Notice of Sale through a raffle conducted by the Office of the Clerk of Court.

10. Respondent failed to submit receipts for the following amounts:

a. ₱5,800;
b. ₱5,000;

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c. ₱4,500;
d. ₱28,620; and
e. ₱40,000.

The investigating judge noted that respondent initially admitted that he had been remiss in the performance of his duties and that he expressed willingness to accept any disciplinary action. After some time, respondent recanted and denied all the charges against him. The investigating judge recommended that respondent be imposed the corresponding sanctions by this Court.

The Report and Recommendation of the OCA

In a Memorandum dated 28 August 2013, the Office of the Court Administrator (OCA) agreed with the findings of the investigating judge that respondent did not follow the basic procedure for implementing a writ of execution.

The OCA stressed that respondent should have personally demanded the payment of the principal obligation from the judgment debtor. If, upon verification, respondent noticed that the name of the corporation appeared to have been changed, he should have inquired from the judgment debtor if Fast Cargo Transport Corporation is the same as Fast Cargo Logistics Corporation. In addition, the OCA stated that respondent failed to show that he accorded the judgment debtor the option to choose which among its personal or real properties may be levied upon.

The OCA noted that respondent seemed unaware of the rule that he has to make a report to the court even if the writ is not satisfied in full. He did not make periodic reports on the status of the implementation of the writ of execution. The OCA likewise found that respondent failed to show proof that The People's Guardian was awarded the right to publish the Notice of Sale through a raffle conducted by the Office of the Clerk of Court. Respondent could not prove the fact of publication because he could not present a copy of the newspaper clipping where the Notice of Sale was published and the Affidavit of Publication by the publisher. Further, the Official Receipt for ₱15,000 that respondent presented was dated 25 May 2010 but the dates of publication were on 2, 9 and 16 May 2010.

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The OCA found that respondent was guilty of grave misconduct and dishonesty. The OCA recommended that respondent be imposed the penalty of suspension from office without pay for six months. However, considering that respondent had already retired from the service, the OCA further recommended that the amount corresponding to respondent's salary for six months should instead be deducted from his retirement benefits.

The Ruling of this Court

We adopt the findings of the OCA and increase the recommended penalty.

We must stress once again that sheriffs play an important role in the administration of justice.[1] As agents of the law, they are called upon to discharge their duties with due care and utmost diligence.[2] In serving the court's writs and processes and implementing its orders, they cannot afford to err without affecting the integrity of their office and the efficient administration of justice.[3]

In this case, respondent had been remiss in performing his responsibilities.

First, respondent violated a basic rule by failing to do his ministerial duty to make periodic reports on the writ. Section 14, Rule 39 of the Revised Rules of Court provides:

SEC. 14. *Return of writ of execution.* — The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken

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[1] *Vda. de Feliciano v. Rivera,* A.M. No. P-11-2920, 19 September 2012, 681 SCRA 323.

[2] *Id.*

[3] *Id.*

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thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

In this case, the writ of execution was issued on 26 March 2010. Respondent received it on the same day. Respondent made his Report on 21 June 2010. Respondent ignored the directive of the Rules requiring him to make a report to the court every 30 days on the proceedings taken on the writ until the judgment is satisfied in full, or when the effectivity of the writ expires. We cannot accept respondent's explanation that the main reason for his failure to make his report was that there were still activities to be undertaken in the process of his implementation of the writ. The Rule is clear. Even when the judgment has not yet been fully satisfied, respondent is mandated to submit his periodic report to the court. Respondent failed to do so.

Respondent likewise failed to show that he personally demanded from the judgment debtor the immediate payment of the full amount stated in the writ of execution, and of all lawful fees. In addition, respondent failed to show that he accorded the judgment debtor the option to choose which among its real or personal properties would be levied upon. Section 9(b) of Rule 39 states that "[i]f the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment." In this case, respondent just levied upon the property of the judgment debtor without demanding payment of the judgment debt, and without giving the judgment debtor the option to choose which of its properties may be levied upon.

In addition, respondent's duty to execute a judgment is ministerial and he need not look outside the plain meaning of

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the writ of execution.[4] When a sheriff is faced with an ambiguous execution order, prudence and reasonableness dictate that he seek clarification from the judge.[5] When confronted with the question of whether Fast Cargo Transport Corporation is the same as Fast Cargo Logistics Corporation, respondent should have consulted with the judge. Instead, he decided on his own that they are one and the same corporation. Respondent relied on the words of Atty. Audie Bernabe, counsel of the judgment creditor,[6] when his proper course of action should have been to seek clarification from the judge.

As regards the publication of the sale, we agree with the OCA that respondent failed to show that The People's Guardian was selected by raffle in accordance with Section 15(c), Rule 39 of the 1997 Rules of Civil Procedure. Respondent failed to present a copy of the newspaper clipping where the Notice of Sale was published as well as the affidavit of publication by the publisher. Further, the official receipt presented by respondent was dated 25 May 2010 but the Notice of Sale was supposed to have been published on 2, 9 and 16 May 2010.

Respondent also admitted that he accommodated the judgment creditor's request to include the amount of ₱176,112.60 as lawyer's expenses which was not part of the decision. Respondent explained:

> x x x the judgment creditor asked this amount to be included, to take chances that it might [be] accepted by the judgment debtor, and to give the benefit of the doubt, the undersigned Sheriff accommodated the said claim, though to his personal knowledge it is not a valid claim since it was not part of the judgment amount as mentioned in the writ of execution[.][7]

Again, respondent went beyond the terms of the writ of execution although he knew that the judgment creditor's claim was not valid.

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[4] See *Sps. Stilgrove v. Sabas*, 573 Phil. 185 (2008).

[5] *Id*.

[6] *Rollo*, p. 45.

[7] *Id*. at 34.

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As regards the Sheriff's expenses, respondent himself admitted that some of the amount he included did not have receipts and were, therefore, not justified.[8]

The OCA found respondent guilty of grave misconduct and dishonesty in the performance of his duties, which, considering the circumstances, we deem to be serious dishonesty. Both offenses are punishable with dismissal from the service.[9] However, in recommending the imposable penalty, the OCA considered the following as mitigating circumstances in favor of respondent: (1) this is respondent's first offense; (2) respondent had been in the service for 15 years; and (3) humanitarian reasons. Thus, the OCA recommended that the penalty of suspension from office without salary for six months should instead be meted on respondent. In view of respondent's retirement from the service, the OCA further recommended that the amount corresponding to six months' salary be instead deducted from respondent's retirement benefits. We modify the recommended penalty by increasing the suspension from six months to one year. Considering that respondent already retired from the service, the amount corresponding to one year's salary should instead be deducted from respondent's retirement benefits.

WHEREFORE, we find George E. Viajar **GUILTY** of grave misconduct and serious dishonesty and impose upon him the penalty of **SUSPENSION** from office without pay for one year. In view of Viajar's retirement from the service, we direct the Finance Division, Financial Management Office of the OCA to deduct the amount corresponding to his one year's salary from the retirement benefits due him.

SO ORDERED.

Velasco, Jr.,[*] *del Castillo, Mendoza,* and *Leonen, JJ.,* concur.

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[8] *Id*. at 26.

[9] Section 46, Rule 10, Uniform Rules on Administrative Cases in the Civil Service.

[*] Designated Acting Member per Special Order No. 1910 dated 12 January 2015.