EN BANC

[A.M. No. P-13-3113. August 2, 2016]

ROSEMARIE GERDTMAN, represented by her sister and Attorney-in-fact, ROSALINE LOPEZ BUNQUIN, *complainant, vs.* **RICARDO V. MONTEMAYOR, JR., Sheriff IV, Office of the Provincial Sheriff, Calapan City, Province of Oriental Mindoro,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHERIFFS; GRAVE MISCONDUCT; A DISREGARD OF THE ESTABLISHED RULES CONSTITUTES GRAVE MISCONDUCT FOR WHICH THE PENALTY OF DISMISSAL IS IMPOSABLE FOR THE FIRST OFFENSE.— [W]e find several procedural lapses in Sheriff Montemayor's conduct of the auction sale, which make him guilty of grave misconduct. First, instead of personally serving the notice of the execution sale to the judgment obligor, Sheriff Montemayor sent the notice via registered mail, in transgression of Section 15 (d), Rule 39 of the Rules x x x. Second, Sheriff Montemayor stated in the notice of execution sale that the sale shall be held at the main entrance of the Hall of Justice, Provincial Capitol Complex, Camilmil, Calapan City. The Rules, however, require that for property not capable of manual delivery, the sale shall be held at the office of the clerk of court of the regional trial court that issued the writ of execution. x x x Third, Sheriff Montemayor deviated from his ministerial duty in executing the 2008 Writ when he decided that the excess from the execution sale shall cover the costs of suit. x x x Instead of returning the excess amount from the auction sale to complainant as required in the Rules, Sheriff Montemayor allegedly applied it to the costs of suit. However, he failed to exhibit proof that the 2008 Writ directed him to make such application. He also did not present a court-approved computation of the costs of suit. x x x The foregoing series of procedural lapses committed by Sheriff Montemayor shows misconduct in service. Misconduct is the transgression of some established and definite rule of action, more particularly unlawful behavior or gross negligence by a

public officer. x x x Here, Sheriff Montemayor's misconduct is not only simple but has gone across being grave or gross for which the penalty of dismissal is imposable for the first offense. There is grave misconduct when the misconduct involves any of the additional element of corruption, willful intent to violate the law, or **disregard of the established rules**. x x x Significantly, this is not the first time that we administratively dealt with Sheriff Montemayor. In *Proserfina Nogaliza v. Ricardo Montemayor, Jr.,* we held Sheriff Montemayor liable for conduct prejudicial to the best interest of the service where he was meted the penalty equivalent to a fine of one (1) month salary. x x x Hence, for Sheriff Montemayor's successive commission of serious offenses, the appropriate penalty is dismissal from service.

2. ID.; ID.; ID.; ID.; ID.; MERELY PERFORM MINISTERIAL, NOT DISCRETIONARY FUNCTIONS IN THE PERFORMANCE OF THEIR DUTIES, AND THEY ARE DUTY-BOUND TO KNOW THE BASIC RULES RELATIVE TO THE IMPLEMENTATION OF WRITS OF EXECUTION.— [T]he sheriff and his deputies merely perform ministerial, not discretionary functions in the performance of their duties, sheriffs are supposed to execute orders of the court strictly to the letter of the order and the governing law. They are not supposed to decide and interpret for themselves unclear wordings of the judgment or order. x x x We often stress that sheriffs, by the very nature of their duties, perform a very sensitive function in the dispensation of justice. They are duty-bound to know the basic rules relative to the implementation of writs of execution, and should, at all times show a high degree of professionalism in the performance of their duties. Otherwise, the Judiciary would be filled with incompetent personnel acting on their personal beliefs and opinions rather than on established rules and principles of law.

3. ID.; ID.; ID.; DISHONESTY, DEFINED; A CLAIM OF DISHONESTY MUST BE SUPPORTED BY EVIDENCE.— [W]e do not agree with the OCA that Sheriff Montemayor is guilty of dishonesty. Dishonesty is defined as the disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. Complainant's theory that Sheriff Montemayor pocketed the excess bid price, simply because he did not give

the proceeds to complainant is unfounded. Complainant did not present evidence in connection with this claim. Mere suspicion without anything more cannot sway judgment.

APPEARANCES OF COUNSEL

Marcus C.S. Hernandez for complainant.

D E C I S I O N

***PER CURIAM*:**

We have ruled time and again that sheriffs are keepers of the public faith. Inevitably in close contact with litigants, sheriffs should maintain obedience to the law and the rules and observe circumspection in their behavior. Any conduct short of these shall not be tolerated and we will not hesitate to impose the supreme penalty of dismissal to purge the Judiciary from undeserving individuals.

The Case

For our consideration is the Complaint-Affidavit[1] filed by Rosemarie Gerdtman (Complainant) charging Ricardo V. Montemayor, Jr. (Sheriff Montemayor), Sheriff IV at the Office of the Provincial Sheriff of Calapan City, Oriental Mindoro with (1) gross misconduct, (2) dishonesty and (3) conduct prejudicial to the interest of the service.

The Office of the Court Administrator (OCA) recommended that Sheriff Montemayor be found guilty of grave misconduct and dishonesty and be dismissed from service.

The Facts

Complainant was one of the defendants in Civil Case No. 299,[2] an action for unlawful detainer, filed by a certain

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[1] *Rollo,* pp. 1-9.

[2] *Emilio Mingay v. Antero Lopez, Rosemarie Lopez Gerdtman and Rosalyn Lopez Bunquin, id.* at 14.

Emilio Mingay (Mingay) before the First Municipal Circuit Trial Court of Baco-San Teodoro-Puerto Galera (MCTC). Mingay is the registered owner of a parcel of land located at Barangay Sabang, Puerto Galera, Oriental Mindoro, a portion of which was leased by the defendants.[3] In a Decision[4] dated January 5, 2000, the MCTC ruled in favor of Mingay, to wit:

> WHEREFORE, in view of all the foregoing, judgment is hereby rendered for the plaintiff and against the defendants ordering them and all persons claiming rights under them to vacate and surrender possession of the subject premises to the plaintiff, as well as, to pay the following:
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> 1. For Defendant Rosemarie Lopez Gerdtman, to pay Plaintiff the amount of SEVEN HUNDRED SIXTY THOUSAND FIVE HUNDRED FORTY-SEVEN PESOS (₱760,547.00) in satisfaction of the accrued rentals with escalation rate of TEN PER CENTUM (10%) per annum from January 06, 1988 up to and including December 31, 1999 and thereafter to pay the sum of EIGHT THOUSAND FIVE HUNDRED FIFTY-SEVEN PESOS (₱8,557.00) as monthly rental beyond December 31, 1999 until she vacates the premises in question;
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> 2. For Defendants Antero Lopez, Rosemarie Lopez Gerdtman and Rosalyn Lopez Bunquin, to pay jointly and severally Plaintiff the sum of SEVEN THOUSAND TWO HUNDRED PESOS (₱7,200.00) as rentals for nine (9) months during the period covering the implied new lease;
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> 3. For all the Defendants, to pay jointly and severally the Plaintiff the amount of TWENTY THOUSAND (₱20,000.00) as attorney's fees; and[]
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> 4. Costs of suit.[]
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> SO ORDERED.[5]

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[3] *Id*. at 14-15.

[4] *Id*. at 14-18. Penned by Judge Designate Manolo A. Brotonel.

[5] *Id*. at 17-18.

On January 18, 2000, Mingay filed a Motion for Immediate Execution of Judgment.[6] The MCTC issued a Writ of Execution[7] on January 27, 2000 (2000 Writ). Defendants did not appeal the MCTC Decision but filed Civil Case No. R-4846 instead, a petition for annulment of judgment of the MCTC Decision in Civil Case No. 299. It was filed before Branch 40 of the Regional Trial Court (RTC) of Calapan City.[8] This halted the enforcement of the 2000 Writ, with the RTC restraining its enforcement for 20 days.[9] Eventually, in the Return[10] he filed, Sheriff Jaime V. Abas (Sheriff Abas) reported that a Notice of Levy on a land owned by complainant and covered by Transfer Certificate of Title (TCT) No. T-32779 was registered on March 1, 2000 with the Register of Deeds of Calapan City.[11]

In the meantime, on May 9, 2000, the RTC dismissed the petition for annulment of judgment for lack of merit.[12] On May 23, 2000, Sheriff Abas continued to implement the 2000 Writ but complainant refused to vacate the leased premises.[13] Defendants then filed an appeal to the Court of Appeals (CA), which affirmed the RTC.[14] The case was further elevated to us via a Petition for Review on *Certiorari*. On March 12, 2007, we denied the petition and our resolution became final and executory on July 18, 2007.[15]

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[6] *Id.* at 321.

[7] *Id*. at 322-324.

[8] *Id.* at 19, 21.

[9] *Id*. at 281.

[10] *Id*. at 281-282.

[11] *Id*. at 283-287.

[12] *Id.* at 67, 281.

[13] *Id.* at 281.

[14] *Id.* at 19-26.

[15] *Id.* at 27.

Consequently, Civil Case No. 299 attained finality. Mingay then filed another Motion for Issuance of a Writ of Execution[16] with the MCTC. A Writ of Execution[17] dated June 26, 2008 (2008 Writ) was issued directing the implementation of the January 5, 2000 Decision of the MCTC.

Complainant thereafter filed the present administrative complaint before us, alleging that Sheriff Montemayor made it appear that the levied property was sold in public auction on March 17, 2009 for the bloated amount of ₱5 million. She claims that the sale was dubious, if not purely simulated. We quote her grounds in *verbatim*:

a) [T]he purported notice of auction sale was personally served by Sheriff Montemayor not on us but on a certain Dhorie dela Cruz who is not even the addressee and whose name was merely printed without any indication whether she did really receive it and on what day and time did she receive it, copy of which is hereto attached as **ANNEX "G".** The purported notice is clearly fabricated. Consequently, we were not duly notified of the scheduled auction sale, if such was scheduled, to enable us to take part, all in violation of our right to due process and Section 15 (d), Rule 39, Revised Rules of Court;

b) Aside from the absence of due written notice of the auction sale on us, there is nothing on record which will show strict compliance with the requirements of Section 15 (c);

c) [B]ased on the minutes of public auction sale, only one (1) bidder took part in the bidding, Emilio Mingay, in flagrant violation of A.M. 99-1005-SC requiring at least two (2) participating bidders to which Sheriff Montemayor cannot profess ignorance, copy of which is hereto attached under caption PRESENT as **ANNEX "H"**;

d) [A]ssuming arguendo that the public auction sale where Emilio Mingay supposedly bidded for PhP5,000,000 or in excess of the minimum bid of PhP2,600,00[0] was valid, Sheriff Montemayor, for reasons of his own, did not promptly deliver to my sister, the excess proceeds amounting to PhP2,400,000 in willful transgression of Section 19 of Rule 39 giving a ground for reasonable suspicion that Sheriff

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[16] *Id.* at 325-326.

[17] *Id.* at 327-329.

Montemayor pocketed or misappropriated the excess amount, to our great damage and prejudice.[18]

Complainant avers that since the land was sold over and above the monetary judgment, Sheriff Montemayor made it difficult for her to redeem the land within the one (1) year redemption period. As a result, Mingay was able to cause the cancellation of complainant's title.

In his Comment,[19] Sheriff Montemayor counters that complainant is guilty of forum shopping because she filed two (2) other suits against him: 1) Civil Case No. CV-10-6284,[20] which is a case for annulment of certificate of sale and confirmation of sale annotated at the back of TCT No. T-32779 filed before RTC of Calapan City, Branch 39; and 2) a complaint for anti-graft and corrupt practices act filed before the Office of the Ombudsman.[21] Sheriff Montemayor argues that the complaint is premature because Civil Case No. CV-10-6284 is still pending. Hence, there is no pronouncement yet that the implementation of the writ was fraught with irregularities.[22]

Moreover, Sheriff Montemayor avers that:

a. It was Sheriff Abas and not he who made the levy on March 1, 2000 through the Register of Deeds of Oriental Mindoro. This is evidenced by the annotation stated in TCT No. T-32779;[23]

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[18] *Id.* at 3-4.

[19] *Id.* at 266-269.

[20] Titled *Rosalyn Lopez Bunquin, for Herself and as Attorney-in-Fact for Rosemarie Gerdtman v. Emilio Mingay, Sheriff Ricardo V. Montemayor, Jr., and the Register of Deeds of Calapan City, Province of Oriental Mindoro*. *Id.* at 270-274.

[21] Titled *Rosemarie Gerdtman, Reperesented by her Sister and Attorney-in-Fact, Rosaline Lopez Bunquin v. Sheriff Richard Montemayor, Office of the Provincial Sheriff, Calapan City, Province of Oriental Mindoro*. *Id.* at 275-280.

[22] *Id.* at 267.

[23] *Id.* at 268.

b. He notified complainant and her family of the schedule of the auction sale as shown by the registry return card and the certification issued by the Postmaster of the Philippine Postal Corporation in Puerto Galera, Oriental Mindoro;[24]

c. He complied with Section 15 (c) of Rule 39 of the Revised Rules of Court (the Rules). He posted a Notice of Sheriff's Sale of Property on Execution at the mandated locations, such as: the main entrance of the Office of the Clerk of Court, the bulletin board of the Provincial Capitol Building and the Municipal Hall of Puerto Galera and the Barangay Hall of Sabang, Puerto Galera as evidenced by the Certificate of Posting;[25]

d. A.M. No. 99-10-05-0 does not prohibit the participation of only one (1) bidder in an auction sale;[26] and

e. The ₱5 million bid is considered small compared to the ₱16,935,737.00 demanded in the letter of Mingay's wife. Also, complainant and her family must pay the cost of the suit.[27]

Complainant filed a Reply[28] dated April 13, 2012 where she rebuts the defenses raised by Sheriff Montemayor and maintains that she is not guilty of forum shopping because the three (3) cases seek different reliefs. She also argues that as a sheriff, Sheriff Montemayor is duty bound to enforce only the writ of execution issued by the court and not the demand of the judgment obligee.[29] Complainant attacks the manner by which the writ was implemented, noting that Sheriff Montemayor immediately

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[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Rollo,* pp. 268-269.

[28] *Id.* at 248-254.

[29] *Id.* at 252-253.

levied upon complainant's real property without checking if her personal properties are sufficient. Complainant also observes that the minutes of the auction sale contain only meager facts on how the proceedings were had, not even stating whether the bid was paid in cash.[30]

OCA Recommendation

In its Report[31] dated January 21, 2013, the OCA found sufficient ground to hold Sheriff Montemayor administratively liable for grave misconduct and dishonesty. Preliminarily, the OCA ruled that no forum shopping exists and that the pendency of civil and criminal cases does not bar the filing of an administrative complaint. It found that Sheriff Montemayor has failed to perform what was expected of him under the rules. He has a ministerial duty to carry out only the judgment rendered by the court and not what the judgment obligee is demanding.[32] The OCA further noted that Sheriff Montemayor was previously found liable for conduct prejudicial to the best interest of the service and meted the penalty of fine equivalent to his one (1) month salary.[33] Hence, it recommended Sheriff Montemayor's dismissal from the service.[34]

Issue

Whether Sheriff Montemayor should be held administratively liable for the acts complained of.

Ruling

At the outset, to set the facts straight, it is correct that Sheriff Montemayor did not make the levy on complainant's property.

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[30] *Id.* at 251.

[31] *Id.* at 298-308.

[32] *Id.* at 304-306.

[33] *Id.* at 304.

[34] *Id.* at 308.

Per the Sheriff's Return dated May 29, 2000 and the inscription in TCT No. T-32779, it was Sheriff Abas who implemented the 2000 Writ. Thus, the allegation that Sheriff Montemayor erred in levying the land without first determining if complainant has sufficient personal property deserves scant consideration. Any irregularity on the levy of the real property cannot be imputed to him.

However, we find several procedural lapses in Sheriff Montemayor's conduct of the auction sale, which make him guilty of grave misconduct.

First, instead of personally serving the notice of the execution sale to the judgment obligor, Sheriff Montemayor sent the notice via registered mail, in transgression of Section 15 (d), Rule 39 of the Rules, which reads:

> Sec. 15. *Notice of sale of property on execution*. — Before the sale of property on execution, notice thereof must be given as follows:
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> x x x x x x x x x
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> (d) In all cases, written notice of the sale shall be given to the judgment obligor, at least three (3) days before the sale, except as provided in paragraph (a) hereof where notice shall be given at any time before the sale, **in the same manner as personal service of pleadings and other papers as provided by Section 6 of Rule 13.** (Emphasis ours.)

In *Villaceran v. Beltejar*,[35] we ruled that requirements for execution sales under Rule 39 of the Rules must be strictly complied with.[36] The Rules require personal service of the notice to ensure that the judgment obligor will be given a chance to prevent the sale by paying the judgment debt sought to be enforced.[37] If only Sheriff Montemayor personally served the notice, there would be no question on who "Dhorie dela Cruz"

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[35] A.M. No. P-05-1934, April 11, 2005, 455 SCRA 191.

[36] *Id.* at 196-198.

[37] *Venzon v. Juan,* G.R. No. 128308, April 14, 2004, 427 SCRA 237, 243-244.

is and there would be no issue on whether the complainant has knowledge of the sale.[38]

Second, Sheriff Montemayor stated in the notice of execution sale that the sale shall be held at the main entrance of the Hall of Justice, Provincial Capitol Complex, Camilmil, Calapan City.[39] The Rules, however, require that for property not capable of manual delivery, the sale shall be held at the office of the clerk of court of the regional trial court that issued the writ of execution.[40] In *Villaceran*, we held the sheriff therein liable for ignorance of this rule, as well.

Third, Sheriff Montemayor deviated from his ministerial duty in executing the 2008 Writ when he decided that the excess from the execution sale shall cover the costs of suit. Section 19, Rule 39 of the Rules provides:

> Sec. 19. *How property sold on execution*; *who may direct manner and order of sale*. — All sales of property under execution must be made at public auction, to the highest bidder, to start at the exact time fixed in the notice. **After sufficient property has been sold to satisfy the execution, no more shall be sold and any excess property or proceeds of the sale shall be promptly delivered to the judgment obligor or his authorized representative, unless otherwise directed by the judgment or order of the court.** When the sale is of real property, consisting of several known lots, they must be sold separately; or, when a portion of such real property is claimed by a third person, he may require it to be sold separately. When the sale is of personal property capable of manual delivery, it must be sold within view of those attending the same and in such parcels as are likely to bring the highest price. The judgment obligor, if present at the sale, may direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels which can be sold to advantage separately. Neither the officer conducting the execution sale, nor his deputies, can become a purchaser, nor be interested directly or indirectly in any purchase at such sale. (Emphasis ours.)

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[38] *Rollo*, p. 3.

[39] *Id.* at 292.

[40] REVISED RULES OF COURT, Rule 39, Sec. 15.

On the other hand, Section 8, Rule 142 of the Rules provides how costs of suit are taxed:

> Sec. 8. *Costs, how taxed*. — **In inferior courts, the costs shall be taxed by the justice of the peace or municipal judge and included in the judgment.** In superior courts, costs shall be taxed by the clerk of the corresponding court on five days' written notice given by the prevailing party to the adverse party. With this notice shall be served a statement of the items of costs claimed by the prevailing party, verified by his oath or that of his attorney. Objections to the taxation shall be made in writing, specifying the items objected to. Either party may appeal to the court from the clerk's taxation. The costs shall be inserted in the judgment if taxed before its entry, and payment thereof shall be enforced by execution. (Emphasis ours.)

Instead of returning the excess amount from the auction sale to complainant as required in the Rules, Sheriff Montemayor allegedly applied it to the costs of suit. However, he failed to exhibit proof that the 2008 Writ directed him to make such application. He also did not present a court-approved computation of the costs of suit. Rather than showing the legal basis for his actuation, Sheriff Montemayor took refuge on the letter of Mingay's wife. Thus, in his Comment before us, he stated:

> With respect to complainant's allegation that he [pertaining to himself] should have delivered to her sister [the complainant] the excess proceeds of the auction sale as the alleged minimum bid representing the accrued rentals and attorney's fees is only ₱2,600,000.00, the undersigned Sheriff asserts that there were no excess proceeds to deliver because of the costs of suit that should be paid by the complainant, her sister and their co-defendant Antero Lopez. **As a matter of fact the bid price of ₱5,000,000.00 is considered too small an amount and even short compared to the amount of ₱16,935,737.00 total payment being demanded by Emilio Mingay from Bunquin, her sister and their co-defendant Antero Lopez as decided by the court in Civil Case No. 299.** A copy of the letter dated February 18, 2009 x x x sent to the Office of the Clerk of Court and Ex-Officio Sheriff, RTC, Calapan City by Flordeliza P. Mingay, wife of Emilio Mingay is hereto attached.[41] (Emphasis ours.)

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[41] *Rollo,* pp. 268-269.

By his own words, Sheriff Montemayor casts **doubt** on his trustworthiness and propriety as an officer of the court. To our mind, Sheriff Montemayor allowed himself to be swayed or influenced by the letter of Mingay's wife who demanded ₱1,800,000.00 as costs of suit,[42] and which amount was not reflected in the 2008 Writ. The conduct of Sheriff Montemayor betrayed the foremost duty of sheriffs to execute the order of the court strictly to the letter. Sheriffs are under obligation to perform their duties honestly, **faithfully** and to the best of their ability; they must conduct themselves with propriety and decorum, and above all else, be **above suspicion**.[43]

Should Sheriff Montemayor find the MCTC decision confusing or wanting as to the cost of suit, he should have asked the MCTC for clarification. Sheriff Montemayor is expected to know the limits of his authority. We have frequently reiterated that the sheriff and his deputies merely perform ministerial, not discretionary functions in the performance of their duties, sheriffs are supposed to execute orders of the court strictly to the letter of the order and the governing law. They are not supposed to decide and interpret for themselves unclear wordings of the judgment or order.[44]

The foregoing series of procedural lapses committed by Sheriff Montemayor shows misconduct in service. Misconduct is the transgression of some established and definite rule of action, more particularly unlawful behavior or gross negligence by a

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[42] *Id.* at 295-297, letter from Flordeliza P. Mingay to the Office of the Clerk of Court & *Ex-Officio* Sheriff of RTC, Calapan City, dated January 18, 2009.

[43] *Musngi v. Pascasio*, A.M. No. P-08-2454, May 7, 2008, 554 SCRA 1, 13 citing *Letter of Atty. Socorro M. Villamer-Basilla, Clerk of Court V, RTC, Branch 4, Legaspi City*, A.M. No. P-06-2128, February 16, 2006, 482 SCRA 455, 459. (Emphasis ours.)

[44] *Eduarte v. Ramos*, A.M. No. P-94-1069, November 9, 1994, 238 SCRA 36, 40 citing *Young v. Momblan,* A.M. No. P-89-367, January 9, 1992, 205 SCRA 33. See also *Del Rosario v. Bascar, Jr.,* A.M. No. P-88-255, March 3, 1992, 206 SCRA 678.

public officer.[45] In *Tan v. Dael*,[46] we held that any act of deviation from the procedures is considered a misconduct that warrants disciplinary action.[47]

Here, Sheriff Montemayor's misconduct is not only simple but has gone across being grave or gross for which the penalty of dismissal is imposable for the first offense.[48] There is grave misconduct when the misconduct involves any of the additional element of corruption, willful intent to violate the law, or **disregard of the established rules**.[49]

We often stress that sheriffs, by the very nature of their duties, perform a very sensitive function in the dispensation of justice. They are duty-bound to know the basic rules relative to the implementation of writs of execution, and should, at all times show a high degree of professionalism in the performance of their duties.[50] Otherwise, the Judiciary would be filled with incompetent personnel acting on their personal beliefs and opinions rather than on established rules and principles of law.[51]

Further, in deviating from the Rules, Sheriff Montemayor also violated the Code of Conduct for Court Personnel[52] in the Judiciary, which mandates that court personnel are enjoined to

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[45] *Alconera v. Pallanan*, A.M. No. P-12-3069, January 20, 2014, 714 SCRA 204, 217.

[46] A.M. No. P-00-1392, July 13, 2000, 335 SCRA 513.

[47] *Id.* at 514.

[48] Pursuant to Section 46 (A) (3), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service, the offense of "grave misconduct" is punishable by dismissal from service on the first offense.

[49] *Alconera v. Pallanan*, *supra*. (Emphasis ours.)

[50] *Pineda v. Torres*, A.M. No. P-12-3027, January 30, 2012, 664 SCRA 374, 379.

[51] *Villaceran v. Beltejar, supra* note 35 at 201 citing *Paner v. Torres*, A.M. No. P-01-1451, February 28, 2003, 398 SCRA 381.

[52] A.M. No. 03-06-13-SC, June 1, 2004.

"expeditiously enforce rules and implement orders of the court within the limits of their authority."[53]

However, we do not agree with the OCA that Sheriff Montemayor is guilty of dishonesty. Dishonesty is defined as the disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.[54] Complainant's theory that Sheriff Montemayor pocketed the excess bid price, simply because he did not give the proceeds to complainant is unfounded. Complainant did not present evidence in connection with this claim. Mere suspicion without anything more cannot sway judgment.

Significantly, this is not the first time that we administratively dealt with Sheriff Montemayor. In *Proserfina Nogaliza v. Ricardo Montemayor, Jr.,*[55] we held Sheriff Montemayor liable for conduct prejudicial to the best interest of the service where he was meted the penalty equivalent to a fine of one (1) month salary.

Grave misconduct is a grave offense punishable by dismissal on first offense under Section 46 (A) (3), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service. Conduct prejudicial to the best interest of the service is likewise a grave offense which carries the penalty of suspension of six (6) months and one (1) day to one (1) year for the first offense, and dismissal

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[53] Section 6, Canon IV, Code of Conduct for Court Personnel.

[54] *Cañada v. Suerte*, A.M. No. RTJ-04-1884, February 22, 2008, 546 SCRA 414, 424 citing *Re: (1) Lost Checks Issued to the Late Roderick Roy P. Melliza, Former Clerk II, MCTC, Zaragga, Iloilo and (2) Dropping from the Rolls of Ms. Esther T. Andres,* A.M. No. 2005-26-SC, November 22, 2006, 507 SCRA 478, 497 also citing *Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Sec. I & Angelita C. Esmerio, Clerk III, Off. Clerk of Court,* A.M. Nos. 2001-7-SC & 2001-8-SC, July 22, 2005, 464 SCRA 1.

[55] Resolution, A.M. No. P-09-2719, November 23, 2009.

on the second offense.[56] Hence, for Sheriff Montemayor's successive commission of serious offenses, the appropriate penalty is dismissal from service.[57]

There being no mitigating circumstance to temper Sheriff Montemayor's liability and more importantly, to impress upon court personnel the need to be competent and prudent in their dealings with litigants, we resolve to impose this penalty. In fine, we cannot afford leniency to repeat offenders for to do so would give the public the impression that we tolerate incompetence in the Judiciary.[58]

WHEREFORE, we find Sheriff Ricardo V. Montemayor, Jr. guilty of **GRAVE MISCONDUCT** and order his **DISMISSAL** from the service with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations. We also **DIRECT** the Legal Office of the Office of the Court Administrator to file the appropriate criminal charges against him.

SO ORDERED.

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

Velasco, Jr., J. no part, inhibits due to relation to a party.

Brion, J., on leave.

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[56] Section 46 (B) (8), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service.

[57] See *Beltran v. Monteroso*, A.M. No. P-06-2237, December 4, 2008, 573 SCRA 1.

[58] *Olivan v. Rubio*, A.M. No. P-12-3063, November 26, 2013, 710 SCRA 590, 606 citing *Marcos v. Pamintuan*, A.M. No. RTJ-07-2062, January 18, 2011, 639 SCRA 658, 669.