

ATTY. GERARDO B. PADILLA, COMPLAINANT, VS. PAISAL M. ARABIA, DEPUTY SHERIFF IV, BRANCH 5, ILIGAN CITY, RESPONDENT.*A.M. No. 93-774. March 08, 1995*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a-m-no-93-774/>**PER CURIAM:**

This is an administrative complaint against Paisal M. Arabia, Deputy Sheriff IV assigned at Branch 5 of the Regional Trial Court of Iligan City.

The complainant, Atty. Gerardo B. Padilla, was counsel for the plaintiffs, the prevailing parties, in three cases. Complainant alleges that in Civil Cases Nos. 1765 and 1769, entitled "Cheryl B. Deleste v. Vicente Lura and Selverio Paasa," and "Cheryl B. Deleste v. Alfonso Brazil and Felipe Macarandan," respectively, respondent Deputy Sheriff received on November 29, 1991 from the plaintiff, Cheryl B. Deleste, the sum of P1,000.00 to defray the expenses for enforcing the writs of execution issued by the Regional Trial Court. Receipt of the money is evidenced by a "petty cash voucher" signed by respondent Deputy Sheriff and annexed to the complaint as Annex "A."

It is alleged that the writs were served upon the defendants, but were returned unsatisfied despite the fact that respondent Deputy Sheriff had found real properties of the defendants. The reason given by respondent in his returns, [1] dated February 12, 1991, was that the properties could no longer be levied upon because the 60-day life of the writs of execution had expired. He stated that he had given the judgment debtors in each case "ample time" to settle the amount of the judgment, but until the writs expired, none of them was able to pay.

Complainant further alleged that upon his motion alias writs of execution were issued by the court but they were likewise returned unsatisfied. In his return in Civil Case No. 1769, respondent sheriff claimed that he had served the writ on his own "initiative" despite the fact that plaintiff and her counsel had not paid him his fees but he failed to enforce the writ because the parties concerned had lost interest in their case. [2] On the other hand, with respect to Civil Case No. 1765, respondent Deputy Sheriff stated in his return that, also through his initiative, because the plaintiff and her counsel had lost interest in the case, he was able to collect P1,500.00 which he deposited with the Clerk of Court of the Regional Trial Court of Iligan City as payment for his (sheriff's) commission. [3]

It further appears that on August 17, 1992 in another case (Civil Case No. 1920, entitled "Refractories Corporation of the Philippines v. Dr. Pedro Sabayle") complainant, as counsel for the plaintiff, the prevailing party, asked respondent for an estimate of the expenses for the service of the writ of execution so that counsel could deposit the amount with the Clerk of Court. The request was made by complainant in writing. [4] In reply respondent instructed the complainant in a letter dated August 31, 1992 to deposit the amount of P500.00 in the Office of the Clerk of Court. He assured the complainant that the amount would be liquidated by him upon his return of the writ. [5] Accordingly, complainant made the deposit and then informed the respondent sheriff in writing that they had complied with his request. [6]

As in the first two cases, the writ was returned unsatisfied. In his return, respondent Deputy Sheriff gave the alibi

that although plaintiff had deposited the amount of P500.00 with the Clerk of Court, the amount could not be withdrawn because it had been erroneously deposited as "proceeds of the writ." [7]

In his Comment in this case respondent Deputy Sheriff reiterates the reasons stated in his returns why the writs given to him for enforcement were unsatisfied. He explains that the defendants in Civil Case Nos. 1765 and 1769 asked him for time to settle the judgment amount and that he granted their request for "compelling and humanitarian reasons." The 60-day life of the writ expired without the defendants being able to settle the amounts of the judgment against them.

As for the alias writs of execution later issued in those cases, respondent explains that he was unable to implement them because plaintiff and counsel had failed to pay the expenses for levy and the fees required by the City Assessor. He claims that he even had to use his own money to be able to serve the writs. Respondent points out that Cagayan de Oro City is 88 kilometers from Iligan City and that to execute the writ there would entail some expenses.

In his Reply complainant denies that he and the plaintiff lost interest in their cases. He contends that he and his client did not have to deposit any amount for the enforcement of the alias writs of execution in Civil Case Nos. 1765 and 1769 because respondent Deputy Sheriff had not even accounted for the P1,000.00 previously given to him.

In turn respondent sheriff filed a Rejoinder in which he denies that he was under any obligation to render an accounting of the P1,000.00 given to him. He contends that:

1. When the writs of execution in Civil Cases Nos. 1765 and 1769 were issued by the Honorable Court, RTC, Branch 5, Iligan City, without any demand and request, plaintiff (CHERYL B. DELESTE) proposed and offered P1,000.00 for the execution of the two (2) writs because defendants were based in Cagayan de Oro City;
2. Respondent is not under obligation and subjected to Section 9, Rule 141 of the Rules of Court to liquidate the offered amount of P1,000.00 by plaintiff;
3. The amount was not requested by the respondent, nor approved or recommended by the Court, nor was it deposited to the Office of the Clerk of Court and Ex-Officio Sheriff who shall disburse the amount to the deputy sheriff assigned to effect the writs; [8]
4. There was no violation of the Rules of Court. No irregularity committed. Respondent did not in any way commit any infraction of Section 9, Rule 141 of the Rules of Court as amended by Memorandum Circular No. 31-90 dated November 2, 1990;

We find respondent liable for his failure to enforce the writs of execution and account for P1,000.00 paid to him.

First. The writs of execution issued in Case Nos. 1765 and 1769 were returned to the court unsatisfied because of respondent's fault. The judgment debtors had real properties which respondent could have levied upon. But he gave them time to pay with the result that, even after the 60-day life of the writ had expired, they failed to pay their obligation.

Needless to say, respondent Deputy Sheriff acted beyond his authority. When a writ is placed in the hands of a sheriff it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to execute it according to its mandate. [9] He is to execute the order of the court strictly to the letter. [10] He has no discretion, much less authority, to grant a judgment debtor a grace period within which to settle his obligation.

Second. Deputy Sheriff Arabia likewise failed to execute the decisions in Civil Case Nos. 1765 and 1769 even

after alias writs of execution had been issued by the court. His pretext that he failed to carry out the writs because the plaintiffs did not pay his fees cannot be given credit because he had previously been paid P1,000.00 which was in fact in excess of his legal fees under Rule 141, §9. That he thought the judgment creditor to be no longer interested in enforcing the writ is belied by the fact that the alias writs had been secured precisely to obtain satisfaction of the decisions in the two cases.

Probably thinking it to be a smart defense, respondent contends that he has no obligation to account for the P1,000.00 paid to him by the plaintiffs in the two cases because the amount was not deposited with the Clerk of Court and paid by the latter to him as his sheriff's fees as required by the Rules of Court.

The second paragraph of §9 of Rule 141, as revised effective November 2, 1990, provides:

In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriff's expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, 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. 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. (7a)

If the amount given to him was not for his legal fees, as respondent claims, then he surely had no authority to receive the amount. What is more, he should not have received it at all. The amount was not paid to him as compensation or salary. In *Eduarte v. Ramos*, [11] a deputy sheriff was administratively held liable for receiving P5,000.00 which the prevailing party had paid. There was no justification for the failure in this case of respondent Deputy Sheriff to liquidate the amount paid to him, although it was not given to him strictly in accordance with the procedure in §9 of Rule 141.

Third. In case No. 1765, respondent refused to release the amount of P1,500.00 which he was able to collect in partial satisfaction of the alias writ, appropriating the amount for himself as his.

Rule 141, §9(1) states that a sheriff may only retain as his fees 4 per cent of the first P4,000.00 and, on all sums in excess of that amount, 2 per cent. There was absolutely no legal justification for respondent Deputy Sheriff to appropriate the entire amount he collected as sheriff's fees.

Fourth. With respect to respondent's claim that he failed to implement the writ in Civil Case No. 1920 because, although complainant had made a deposit of P500.00 with the Clerk of Court, the same could not be withdrawn having been erroneously receipted as "proceeds of the writ." There was no reason at all for supposing that the amount represented the proceeds of the writ when precisely the writ had yet to be enforced. That respondent knew this to be simply an error is shown by the fact that he mentioned it in his return. Instead of calling the complainant's attention to the apparent error so that the amount could be withdrawn and paid to him for his expenses, respondent Deputy Sheriff kept quiet and allowed the 60-day period to pass. Afterwards he reported that the writ could not be enforced because of the failure of the plaintiff to deposit the sum for his expenses and legal fees.

The charges against respondent Deputy Sheriff are for neglect of duty and conduct prejudicial to the best interests of the service. From the foregoing, however, it is apparent that respondent Deputy Sheriff committed a much graver offense in unlawfully receiving and appropriating money paid for the service of the writs of execution in

Civil Cases Nos. 1765, 1769 and 1920, and deliberately and maliciously preventing the enforcement of the writs of execution.

In A.M. No. P-89-325, entitled "Timoteo D. Abutanmo v. Deputy Sheriff Paisal M. Arabia" decided on September 3, 1990, respondent Deputy Sheriff was suspended for one month without pay for violation of the provisions of the Rules of Court, to wit: (a) Rule 39 §18(c), for having posted the notice of sale of property on execution for only 19 days instead of 20 as required and causing the notice to be published when its publication in a newspaper was not required and (b) Rule 39, §11 for having made the return of the writ of execution 102 days after its receipt when the law requires that the return should be made not later than 60 days after receipt. He was warned that he would be dealt with more severely the next time. There is, therefore, reason for imposing on him this time a more severe penalty.

In *Moya v. Bassig* [12] a Deputy Sheriff, who failed to sell at public auction personal properties levied upon by him under a writ of execution, was held guilty of dereliction of duty and ordered dismissed from the service with forfeiture of retirement benefits. What this Court said is apropos of the case at bar:

It is undisputable that the most difficult phase of any proceeding is the execution of judgment. Hence, the officers charged with the delicate task of the enforcement and/or implementation of the same must, in the absence of a restraining order, act with considerable dispatch so as not to unduly delay the administration of justice; otherwise, the decisions, orders or other processes of the courts of justice and the like would be futile. Stated differently, the judgment if not executed would be just an empty victory on the part of the prevailing party. [13]

WHEREFORE, respondent Deputy Sheriff Paisal M. Arabia is hereby DISMISSED from the service for serious misconduct and dereliction of duty, with forfeiture of all retirement benefits and with prejudice to reemployment in any branch of government including government-owned or controlled corporations.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Vitug, Kapunan, Mendoza, and Francisco, JJ., concur.

[1] Complaint, Annexes B and C.

[2] Annex "6", Rollo , p. 33.

[3] Annex "5," Rollo , p. 32.

[4] Annex "D," Rollo , p.12.

[5] Annex "E," Rollo , p. 13.

[6] Annex "F," Rollo p. 14.

[7] Annex "G," Rollo , p. 15.

[8] Emphasis added.

[9] *Young v. Momblan*, 205 SCRA 33 (1992).

[10] *Eduarte v. Ramos*, A.M. No. P-94-1069, Nov. 9, 1994.

[11] *Supra* note 10.

[12] 138 SCRA 49 (1985).

[13] Id. at 52-53. See also *Tan v. Herras*, 195 SCRA 1 (1991); *PAL v. Court of Appeals*, 181 SCRA 557 (1990).

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