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**JURISPRUDENCE ON SHERIFFS –  
EXECUTORS OR EXECUTIONERS OF JUDGMENT?**

Sheriffs have "enriched" Philippine jurisprudence only recently. There was no entry for "Sheriffs" in the SCRA Quick Index Vols. 1, 2, and 3 and the 1975 and 1976 Supplements. Since their "debut" in 1977 as an independent entry, they have made up for their prior anonymity and traded it for callous notoriety. The long line of cases dealing with these erring sheriffs has definitely added to the stigma that has been attached to the position as a whole, unfair as it is to the upright and ethical sheriffs in the service.

This article deals with 34 Supreme Court decisions on Sheriffs. This is about three-fourths of the Supreme Court decisions concerning sheriffs penned between 1977 and 1982.

What are the possible horrors the winning litigant, the defeated litigant and even innocent third persons may have to face upon execution of judgment? In the course of or sometimes in the guise of executing judgments, sheriffs misperformance, malperformance or non-performance of their duties can generally be divided into two categories. They are as follows:

1. Bribery and Corruption.
2. Incompetence and Ignorance of the law.

It should be noted that these categories overlap. For example, there are times when it may be suspected that corruption may implicitly be the "cause" for the incompetence and ignorance. However, this is the most convenient division that this author could make.

The behaviour of some sheriffs has so offended the Supreme Court that in at least two decisions – *Villaraza vs. Atienza*, 108 SCRA 559 and *Agcaoili vs. Reyes*, 100 SCRA 188 – the Court had to remind these erring sheriffs of their Constitutional duties. As stated in the *Villaraza* case –

"It is thus imperative that respondent Deputy Sheriff, for one, must always remember the yardstick of public service enshrined in our Constitution under Section 1 of Article 13 which stresses that a public office is a public trust and public officers and employees must serve with the highest degree of responsibility, integrity, loyalty and efficiency and at all times remain accountable to the people".

What follows is a list of the different ways sheriffs and deputy sheriffs have engaged in bribery and corruption:

1. Receiving money allegedly to buy land at a public auction sale which did not materialize and only paying back the amount upon the filing of this administrative case. (*Caballero vs. Villanueva* 116 SCRA 140).
  2. Depositing funds representing garnished money without returning the interest earned. (*Balagos vs. Velasco*, 108 SCRA 525).
  3. Demanding a percentage fee before serving a writ of execution. (*Villaraza vs. Atienza*, 108 SCRA 559).
  4. Employment of armed men by the sheriff to assist him in implementing the writ and forcing the company gate open without any court order. (underscoring supplied) (*Wearever Textile Mills, Inc. vs. Bagaybayan*, 109 SCRA 412).
  5. Failing to turn over to the prevailing party in a civil case the money entrusted to him or to deposit it with the Municipal Treasurer despite court order. (*De Labaco vs. Parale*, 110 SCRA 25).
  6. Misappropriating for his personal use the funds collected by him. The court considered personal and family needs unavailing as a defense against misappropriation. (*Ancheta vs. Hilario*, 96 SCRA 62).
  7. Demanding money from counsel in return for information regarding location of levied properties. (*Agcaoili vs. Reyes*, 100 SCRA 188).
  8. Demanding money from a person without issuing a receipt. (*Garcia vs. Asilo*, 88 SCRA 608).
  9. Appropriating for his own personal use part of the attorney's fees collected by him as deputy sheriff. (*Antonio vs. Diaz*, 94 SCRA 890).
  10. Being guilty of several counts of misappropriation of funds remitted to him. (*Abdulwahid vs. Reyes*, 81 SCRA 213).
  11. Appropriating for his own use some of the properties under his custody. (*Tantingco vs. Aguilar* 81 SCRA 599).
  12. Misappropriating the amount received by him from the judgment debtor to the damage and prejudice of the judgment creditor. (*Abejaron vs. Panes*, 84 SCRA 494).
  13. Keeping for more than one year, money given to him to defray expenses connected with the execution of a court's judgment. (*Estioko Sr. vs. Santos*, 79 SCRA 164).
- With regard to incompetence, ignorance of the law and other similar actions, the following is an outline of the various ways some sheriffs and deputy sheriffs have abused the public trust inherent in their office:
1. Admitting to engaging in fornication with the complainant. (*Morales vs. Lotuaco*, 114 SCRA 405).
  2. Failing to enforce the writ of execution or to make a return of the writ. (*Barola vs. Abogatal*, 114 SCRA 582; similarly *Sy Tian Tin vs. Ma-*

capugay, 106 SCRA 241; *Smith Bell and Co. vs. Saur*, 96 SCRA 668; *Vda. de Malasuerte vs. Yebes*, 91 SCRA 13; *Custodio vs. Fulinara*, 94 SCRA 808).

3. Failure to serve summons without any reason. (*Philippine Trial Lawyers Association, Inc. vs. Tabadda*, 103 SCRA 1).

4. Hasty enforcement of a writ of execution, without first checking the veracity of the issuance of a temporary restraining order to stop enforcement. (*Felbet s Timber vs. Lumerthang*, 107 SCRA 656).

5. Levying upon property far in excess of the amount which appears in the writ of execution. (*RM Salazar, Jr. Construction Inc. vs. Espinelli*, 110 SCRA 32).

6. Losing the property levied upon while in his custody. (*To vs. Distor*, 110 SCRA 398).

7. Failing to take into custody personal properties under writ of attachment and to make an immediate return of the implementation of the writ. (*Bautista vs. De Castro*, 97 SCRA 366).

8. Failure to serve alias summons, even by substituted service, which later had to be served by complainant's counsel by substituted service. (*Philippine Trial Lawyers Association Inc. vs. Basco* 100 SCRA 416).

9. Serving the writs of execution to the wife of the defeated party and the notice of sale of the seized articles on the defeated party's daughter-in-law instead of the party himself. (*Briz vs. Encinarez, Jr.*, 101 SCRA 48).

10. Failing to enforce a writ of execution and make a return thereof and collecting P500 from the complainant allegedly for expenses and publication of the auction sale which did not materialize and his failure to return the amount. (*Custodio vs. Fulinara*, 94 SCRA 808).

11. Failing to show courtesy and civility in doing his duty in ejecting a party. (*Galman vs. Quash*, 81 SCRA 3).

12. Going on repeated absence without leave. (*Abdulwahid vs. Aficial*, 81 SCRA 213).

13. Failing to levy on all properties of a judgment debtor not exempt from execution. The fact that these properties were subject to a prior lien in favor of a third person does not excuse him from implementing a writ of execution. That third person can protect his interest by filing a third party claim. (*Aquino vs. Aficial*, 81 SCRA 213).

14. A sheriff's duty is to implement a writ of execution and he may not enter into a compromise with the judgment debtor which should be done by complainant and debtor. (*Aquino vs. Aficial*, supra).

15. Attaching properties of the defendant worth much more than the claim of plaintiff in the complaint. (*Salazar-Choco vs. Villafior*, 81 SCRA 229).

16. Negligently making possible the pilferage of some of the property under attachment. (*Tantingo vs. Aguilar*, 81 SCRA 599).

17. Failing to allow an adverse claimant to file a 3rd party claim even if it will result in a delay of the auction sale for a few minutes or an hour, particularly when the lawyer for the prevailing party is present within the premises where the sale was to be held. (*Guadalupe vs. Tiongco*, 81 SCRA 605).

18. Issuing a clearance that there are no pending cases against a person before the court where he works. A deputy sheriff is not qualified to do this. (*Arellano vs. Agustin*, 84 SCRA 136).

19. Selling real property by virtue of a writ of execution of a judgment without due notice to the owner thereof or judgment debtor, violates Section 18, Rule 39 of the Rules of Court and betrays a flagrant disregard for the elementary rules of due process. (*Amolador vs. Feliciano*, 84 SCRA 267).

20. Failing to levy on the property of the judgment debtor and his wife to satisfy the judgment against them. (*Abejaron vs. Panes*, 84 SCRA 494).

21. Proceeding with the sale of properties at public auction despite his receipt of court order staying all proceedings. (*Pascual vs. Guevarra*, 86 SCRA 1).

22. Levying and carting away the goods in question after he was informed that the store does not belong to the defendant named in the writ and where the sheriff did not wait for the defendant, a practicing attorney, with an office located nearby, to arrive as requested by those in the store before taking the goods levied upon. (*Policarpio vs. Fajardo*, 18 SCRA 210).

Obviously, not a sterling record, especially considering that all these cases were decided recently, between 1977 and 1982.

It is clear that the mechanism for the selection, supervision as well as the means to obtain redress of grievances against sheriffs is woefully inadequate. Several structural changes in these three areas must be made. What follows are some preliminary ideas on what direction these changes should take.

First, there must be an upgrading of the minimum skills required of sheriffs and an intensified retraining and refresher program similar to the one instituted for fiscals. This will hopefully lessen the cases and complaints filed based on gross ignorance of the law and negligence of sheriffs.

Then there should be a separate office or department in charge of the selection, promotion and supervision of sheriffs. Furthermore, promotion based on merit would help. The present officers charged with the

supervision of sheriffs do not have the time and funds to do the job properly. If the Supreme Court had to appoint a Court Administrator to make their supervision of judges more effective, surely a counterpart for sheriffs is equally needed.

Another possible change is the setting up of an office to quickly handle and act on complaints against sheriffs. The tedious procedure of filing administrative complaints while the decision sought to be executed remains unexecuted clearly militates against even filing a complaint against erring sheriffs. Lawyers and litigants are forced to accept oftentimes extortionate terms and so the aberration becomes the norm as it becomes the only way to execute a judgment while there is still something left to execute.

All these are only preliminary and tentative thoughts. What is really needed is an indepth look and study into the problems involving sheriffs. In closing, it would be best to quote the admonition of the Supreme Court regarding the nature and obligation of a sheriff:

"Respondent sheriff should bear in mind that when a writ is placed in his hands as a sheriff, it is his duty, in the absence of instruction, to proceed with reasonable celerity and promptness to execute it in accordance with its mandate." (Villaraza vs. Atienza, 108 SCRA 559).

"A deputy sheriff, as an officer of the court, is under obligation to perform the duties of his office honestly and faithfully and his conduct, at all times, must not only be characterized with propriety but most of all, be above suspicion." (De Labaco vs. Parale, 110 SCRA 25).

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