

EN BANC

[A.M. No. P-95-1133, April 26, 1996]

**MACARIO S. FLORES, COMPLAINANT, VS. NONILON A. CANIYA,
DEPUTY SHERIFF, REGIONAL TRIAL COURT, IMUS, CAVITE,
RESPONDENT.**

DECISION

PER CURIAM:

The instant administrative matter arose from a letter of Macario S. Flores dated January 3, 1995 informing the Court Administrator of the alleged failure of Nonilon A. Caniya, Deputy Sheriff, Regional Trial Court, Imus, Cavite, to tender to him the amount of P3,000.00 paid by a judgment debtor in relation to a case for a sum of money he filed.

It appears that complainant Macario S. Flores obtained a favorable judgment in Civil Case No.093-18201, a civil action for sum of money he filed against Romy Perez. Accordingly, a writ of execution was issued to satisfy the judgment.

The records reveal that on July 28, 1994, August 11, 1994, September 16, 1994 and September 28, 1994, respondent Nonilon A. Caniya received from judgment debtor Romy Perez a total sum of nine thousand pesos (P9,000.00), broken down respectively: P3,000.00, P3,000.00, P1,500.00 and P1,500.00, as payment for the judgment debt. However, respondent did not issue any official receipts for the money. Rather, the payments were reflected in handwritten receipts marked in evidence as Exhibits "D", "E", "F", and "G".^[1] Of the P9,000.00, only P6,000.00 was tendered by respondent sheriff to complainant Flores.

Complainant thus brought the matter to the Court Administrator who required the respondent sheriff to comment on the letter-complaint.

In his comment, the respondent sheriff explained that he was not immediately able to turn over the P3,000.00 he received on August 11, 1994 to complainant Flores because whenever the latter would come by the office, he was out serving court processes. He assured the court that he already turned over the P3,000.00 to complainant on January 28, 1995.

Replying to respondent's comment, complainant refuted the allegation that respondent was always out of the office whenever the former would come by to see him. Complainant maintained that respondent sheriff was always in the office whenever he dropped by and the latter invariably told him that he was yet to collect the money from judgment debtor Perez when in truth and in fact, the money was already in his possession. Complainant, however, admitted that respondent tendered to him sometime in February, 1995 P2,900.00, P 100.00 short of the amount due because respondent sheriff appropriated the same for "transportation expenses."

Issues having been joined, this case was referred to Executive Judge Lucenito N. Tagle of the Regional Trial Court of Imus, Cavite for investigation, report and recommendation.

The parties presented their evidence in the investigation conducted by Executive Judge Tagle.

On October 4, 1995, the investigating judge submitted his report wherein he made the following findings and conclusions:

Admittedly, respondent-deputy sheriff had received the amount of P3,000.00 from Romy Perez way back in August, 1994. This is borne by the receipt dated August 11, 1994 (Exh 'F') which respondent signed acknowledging receipt of P3,000.00 from Romy Perez. But it was only after the lapse of several months when respondent tendered P2,900.00 to the complainant (sic). The excuse profered (sic) by the respondent was that he was out of his office most of the time and that he and complainant failed to see each other. Evidently, the excuse advanced by respondent is flimsy and can not justify his omission to immediately turn over the amount of P3,000.00 to complainant. As deputy sheriff, he is bound to deliver the amount he received to the judgment-creditor. Assuming that he can not get in touch with complainant, the best thing for him to do was to deposit the amount with the Clerk of Court. Instead, what he did was to appropriate the money which he is holding only in trust. His failure to turn over the amount he received in implementing the writ of execution despite demands constitutes not only conduct prejudicial to the best interest of the service but also estafa.^[2]

He then recommended that respondent sheriff be dismissed from the service.

On November 22, 1995, the Court resolved to refer the investigation report to the Office of the Court Administrator for evaluation, report and recommendation.

On December 6, 1995 however, the Court received a Motion to Dismiss filed by respondent sheriff on the ground that the complainant executed a Sinumpaang Salaysay ng Pag-uurong signifying his intention to withdraw the instant complaint as he is no longer interested to pursue the charge which was allegedly brought about by a misunderstanding with the respondent.

Based on the foregoing antecedents, the Deputy Court Administrator to whom the case was assigned for review affirmed the investigating judge's findings and echoed his recommendation for dismissal.

We are convinced that respondent had the intent to appropriate for his personal use the money when he failed to tender to herein complainant the amount of P3,000.00 as part of the judgment debt. The uncontroverted evidence shows that judgment debtor Romy Perez tendered the amount of P9,000.00 to respondent in order to satisfy the judgment in Macario Flores' favor. It however took respondent sheriff more than six (6) months to turn over P3,000.00 of that amount to herein