

ALON

Ocean Wave

PANDIMAN PHILIPPINES Inc.

P&I Correspondent in the Philippines

Topics of interest relating to the Philippine Maritime Industry and Shipping

National Labour Relations Commission (NLRC)
The new Sheriff's Manual on Execution 2012



The NLRC in an En-Banc Resolution in December 2012 updated the rules and procedure for the Execution of cases in a dedicated Manual for the Sheriff's of the NLRC. There have been some creative applications by Sheriff's and we discuss the changes and advice we provide to owners and manning agents. The Chairman of the NLRC has also clarified an important issue on what the "cash bond" is



Pandiman Philippines Inc.
Pandiman Building
General Luna Street
Intramuros
Manila

Tel: 527 7831 to 40

Email mis@pandiman.com



The National Labour Relations Commission (NLRC) have expand the rules on execution of cases (when garnishment is undertaken). The following is a comparison between the latest NLRC Rules 2011 and the specific Sheriff's Manual 2012.



NLRC Rules 2011



NLRC Rules 2012 Sheriff's Manual on Execution of Jugement
All underscored lines are additions to previous NLRC definitions or notes



Pandiman Comments

Republic of the Philippines
Department of Labor and Employment
NATIONAL LABOR RELATIONS COMMISSION
Quezon City

EN BANC RESOLUTION NO. 10-12
(Series of 2012)

2012 NLRC SHERIFFS' MANUAL ON EXECUTION OF JUDGMENT

Pursuant to the provisions of Art. 218 (a) of the Labor Code, as amended, in relation to **Rule XI, 2011 NLRC Rules of Procedure**, the following **2012 NLRC Sheriffs** Manual on Execution of Judgment is hereby adopted and promulgated:

RULE I
TITLE AND CONSTRUCTION

SECTION 1. Title of the Manual. - This Manual shall be known as the **2012 NLRC SHERIFFS' MANUAL ON EXECUTION OF JUDGMENT**. (1a)

SECTION 2. Construction. - This Manual shall be construed in a manner that shall attain a just, expeditious and inexpensive execution of a judgment as defined herein.

SECTION 3. Suppletory Application of Rules of Court and Jurisprudence. - In the absence of any applicable provision in this Manual, and in order to carry out its objectives, the pertinent provisions of the Revised Rules of Court of the Philippines and prevailing **law and** jurisprudence may, in the interest of expeditious execution of a judgment, and whenever practicable and convenient, be applied by analogy or in a suppletory **manner**. (3a)



SECTION 4. Definition of Terms. - For purposes of this Manual, the following terms are defined as follows:

- a) SHERIFF - a duly appointed public officer or one duly deputized or designated by the Chairman as sheriff tasked with the service or enforcement of writs and other processes, including any judgment as defined herein;
- b) WRIT OF EXECUTION - an Order directing the Sheriff to enforce, implement or satisfy the final decisions, orders or awards of the Labor Arbiter or the Commission which shall be effective for a period of five (5) years from issuance thereof; .
- c) LEVY - the act of taking possession, actual or constructive, by the sheriff or duly designated officer, of sufficient property of the losing party or of the appeal bond posted by the latter to satisfy the decision, order or award.
- d) GARNISHMENT - the levy of money, goods or chattels and/or an interest thereon, belonging or owing to the losing party in the possession or control of a third party;
- e) JUDGMENT - any order, resolution, award or decision of the National Labor Relations Commission or any of its Labor Arbiters;
- f) THIRD PARTY CLAIM - a claim whereby a person, not a party to the case, asserts title or right to the possession of levied or garnished property. (4a)

PPI Notes: Above definitions reproduced from previous NLRC documents and expanded in certain cases.

RULE II THE SHERIFF

SECTION 1. Duties. - The Sheriff shall serve all writs within three (3) days from receipt of the same, execute all processes and carry into effect any judgment herein. A sheriff is a ministerial officer who is an agent of the law. The Sheriffs function is limited to the full implementation and complete satisfaction of the decisions, orders, awards or judgments. Any settlement attempts or settlement entered into by the parties shall be referred by the Sheriff to the Commission or the Labor Arbiter who issued the writ. In no case shall the Sheriff conciliate or take part in any settlement proceedings during enforcement. (1a)

SECTION 2. Norm of Conduct. - The Sheriff of the Commission must at all times conduct himself in an upright manner, with utmost dignity, integrity and professionalism. His first and primary duty is to implement the writ of execution, processes and other orders strictly in accordance with the terms thereof. (3a)

SECTION 3. Control and Supervision Over the Sheriff. - The Commission or Labor Arbiter issuing the writ shall have full control and supervision over the sheriff assigned to enforce the same. (7a, RIII)

SECTION 4. Responsibility and Bond. - Only bonded sheriffs may serve writs of execution involving the taking, holding or delivering of money or property in trust for the prevailing party. The bond of the sheriff as required by law shall be determined by the Commission conditioned, among others, for the delivery or payment to the government or persons entitled thereto of all property, real or personal, that may officially come into his control and custody. (2a)



**RULE III
THE WRIT OF EXECUTION**

SECTION 1. Execution Upon Final Judgment or Order. - A writ of execution may be issued *motu proprio* or on motion upon a decision or order that has become final and executory. (1a)

SECTION 2. FORM AND CONTENTS OF A WRIT OF EXECUTION. The form, contents and effectivity of the writ shall be in accordance with Rule XI. Section 7. (2a)

SECTION 3. ISSUANCE OF WRIT. The Commission or Labor Arbiter shall, *motu proprio* or upon motion of any interested party, issue a writ of execution on a judgment only within five (5) years from the date of entry of judgment or issuance of certificate of finality. (4a)

SECTION 4. Effect of Motion to Quash on Execution. - The mere filing of a motion to quash shall not stay execution and the Sheriff shall proceed during its pendency. The Labor Arbiter shall resolve the motion within ten (10) working days from the filing of the said motion. (5a)

SECTION 5. Effect of Third Party Claim on Execution.- Upon receipt of third party claim, with proof of posting of the corresponding bond, the Sheriff shall suspend the proceedings with respect to the execution of the property subject of the third party claim.(RV1a)

SECTION 6. Effect of Filing of Extraordinary Remedy.- Upon the filing of extraordinary remedy, the Sheriff shall not suspend execution proceedings but no money collected or credit garnished may be released or personal properties levied upon be sold by public auction within fifteen (15) days from the filing of the petition. If no temporary restraining order or writ of preliminary injunction is issued within the same period, the money collected or credit garnished shall be released and/or the properties levied upon sold by public auction and the proceeds of the sale applied, to satisfy the judgment. (n)

SECTION 7. Effect of Filing Petition for Certiorari. - A petition for certiorari with the Court of Appeals or the Supreme Court shall not stop the Sheriff from enforcing the assailed decision unless a restraining order is issued by said courts. (n)

PPI Notes: The following section (Execution *in red* 2012 Manual) and below that is the Section form the (2011 NLRC Rules on Execution *in green*), specific comparisons are highlighted

**RULE IV
EXECUTION**

SECTION 1. Property Exempt from Execution. - Except as otherwise expressly provided by law, the following property and no other, shall be exempt from execution:

- a) The losing party's family home, constituted in accordance with law and, in the absence thereof, the homestead in which he resides, and land necessarily used in connection therewith, subject to the limits fixed by law;
- b) His necessary clothing, and that of his family;
- c) Household furnitures and utensils necessary for housekeeping, and used for that purpose by the losing party such as he may select, of a value not exceeding the amount fixed by law;
- d) Provisions for individual or family use sufficient for three (3) months;



e) The professional libraries of attorneys, judges, physicians, pharmacists, dentists, engineers, surveyors, clergymen, teachers, and other professionals, not exceeding the amount fixed by law;

f) So much of the earnings of the losing party for his personal services within the month preceding the levy as are necessary for the support of his family;

g) All moneys, benefits, privileges or annuities accruing or, in any matter, growing out of any life insurance **and proceeds of retirement plan expressly provided for by law;**

h) Tools and instruments necessarily used by him in his trade or employment of a value not exceeding three thousand pesos (P3,000.00).(1a)

PPI Notes: The above does not leave much which can easily be recovered from the seafarer, if the money has been used to purchase property and especially if in his wife's or another family members name, such action would need to be followed through a separate action! This alone high-lights why a solution to garnishment under a more equitable format is paramount.

SECTION 2. Execution of Money Judgment. - In enforcing the money judgment, the Sheriff shall strictly follow the order of payment in Section 8, Rule XI of the 2011 NLRC Rules of Procedure.

a) Immediate payment on demand. - The Sheriff shall enforce a monetary judgment by demanding the immediate payment of the full amount stated in the writ of execution and all lawful fees from the losing party or any other person required by law to obey the same.

In case of voluntary tender of payment of the losing party and –

- (1) in the presence of the prevailing party, it shall be effected before the Labor Arbiter or Executive Labor Arbiter, as the case maybe;**
- (2) In the absence of the prevailing party, it shall be effected by immediately depositing the same, in cash or in check, with the Cashier of the NLRC or authorized depository bank and shall be released only upon order of the Commission or Labor Arbiter who issued the writ. Payment in the form of check shall be in the name of the Commission.**

b) In the event of failure or refusal of the losing party to pay the judgment award, the Sheriff shall enforce the judgment award in the following order:

- 1. Cash bond**
- 2. Bank deposits**
- 3. Surety bond**

PPI Notes: This is very worrying as compared to 2011 the sheriff is now given a specific order in which to execute and we have recently had several calls from manning agents where the Sheriff has gone straight to the manning agents performance bond (cash deposit) at the Philippines Overseas Employment Administration (POEA). This appears to defeat the object of having placed a Club Letter of Undertaking (LOU) in place with the appeal where the bonding company has assumed the liability. The undersigned recently observed an article in a Philippine newspaper where the Chairman of the NLRC had clarified that the POEA cash bond should not be considered as a cash bond in the context of the rules above, we have written to the Chairman to verify this point, we quote the newspaper article;

Friday April 19th 2013

MANILA — *The cash bond being referred to under Section 2, Rule IV of the 2012 Sheriffs' Manual on Execution of Judgment is the appeal bond paid in the form of cash and deposited with the NLRC Cashier.*

"It does not refer to the Escrow account of manning agencies mandated under POEA Rules. Escrow accounts are considered as bank deposits."



Chairman Gerardo C. Nograles made this clarification as he reminded, sheriffs about the provision of the Sheriffs' Manual.

Said rule, Nograles said, provides that in the event of failure or refusal of the losing party to pay the judgment award, the Sheriff shall enforce the judgment award in the following order: (1) cash bond; (2) bank deposits; (3) surety bond. The 2012 Sheriffs' Manual on Execution of Judgment was promulgated by the NLRC through En Banc Resolution No. 10-12, Series of 2012, which aims to expedite the procedures and to ensure transparency in the enforcement of decisions, and to guarantee receipt of monetary awards by prevailing litigants through institutionalization of safeguards in the handling of fiduciary funds.

The NLRC, through the leadership of Chairman Nograles, continues to streamline the procedures pursuant to its commitment of reforming labor adjudication and arbitration.(PNA)

b) In the event of failure or refusal of the losing party to pay the judgment award, the Sheriff shall immediately proceed against the cash deposit or surety bond posted by the losing party, if any;

please see the “annex” at the end of this report which is the Memorandum issued by the Chairman and shared with the public in the news article above. That “cash bond” refers only to the appeal bond placed in cash with the cashier of the NLRC.

c) Should the cash bond or surety bond be insufficient, the Sheriff shall, within five (5) days from demand, execute the monetary judgment by levying on the personal property, and if insufficient, the real property of the losing party not exempt from execution, sufficient to cover the judgment award, which may be disposed of for value at a public auction to the highest bidder.

d) Should the cash deposit or surety bond be insufficient, or in case the surety bond cannot be proceeded against for any reason, the Sheriff shall, within five (5) days from demand, execute the monetary judgment by garnishing bank deposits, credits, receivables, and other personal property not capable of manual delivery, if the same is not enough, proceed to levy the personal property of the losing party, and if still insufficient, against the real property not exempt from execution, sufficient to cover the judgment award, which may be disposed of for value at a public auction to the highest bidder.

d) If the losing party has no properties or his/her properties are insufficient and the bonding company refuses to comply with the writ of execution, the sheriff shall proceed to levy on the personal property, and if insufficient, the real property of the bonding company, without prejudice to contempt proceedings against its president, officers or authorized representatives. Moreover, the bonding company shall be barred from transacting business with the Commission.

e) Proceeds of execution shall be deposited with the Cashier of the concerned Division or Regional Arbitration Branch, or with an authorized depository bank. Where payment is made in the form of a check, the same shall be payable to the Commission.

f) For monetary judgment on cases involving Overseas Filipino Workers, the manner of execution shall be in accordance with Republic Act 10022. (2a)

c) If the bonding company refuses to pay or the bank holding the cash deposit of the losing party refuses to release the garnished amount despite the order or pertinent processes issued by the Labor Arbiter or the Commission, the president or the responsible officers or authorized representatives of the said bonding company or the bank who resisted or caused the non-compliance shall be either cited for contempt, or held liable for resistance and disobedience to a person in authority or the agents of such person as provided under the pertinent provision of the Revised Penal Code. This rule shall likewise apply to any person or party who unlawfully resists or refuses to comply with the break open order issued by the Labor Arbiter or the Commission.



For this purpose, the Labor Arbiter or the Commission may issue an order directing the sheriff to request the assistance of law enforcement agencies to ensure compliance with the writ of execution, orders or processes.

A bonding company cited for contempt, or for an offense defined and punishable under the pertinent provision of the Revised Penal Code shall be barred from transacting business with the Commission.

e) Proceeds of execution shall be deposited with the Cashier of the concerned Division or Regional Arbitration Branch, or with an authorized depository bank. Where payment is made in the form of a check, the same shall be payable to the Commission.

f) For monetary judgment on cases involving overseas Filipino workers, the manner of execution shall be in accordance with Republic Act No. 10022. (5a)

SECTION 3. EXECUTION OF REINSTATEMENT PENDING APPEAL. – The Sheriff shall serve the writ of execution upon the employer or any other person required by law to obey the same and to submit a report not later than ten (10) working days from receipt of the same. If the employer or person so directed disobeys the writ, and there is an order of payment of accrued reinstatement wages, the same shall be enforced in accordance with Section .2 of this Rule without prejudice to contempt proceedings under Rule IX of the 2011 NLRC Rules of Procedure. (amended 2[b], RIII)

**RULE V
LEVY**

SECTION 1. Levy on Personal Property.- To constitute a valid levy on personal property, the sheriff must take possession and control, actual or constructive, of the same in the following manner:

- a) Personal property capable of manual delivery, by taking and safely keeping it in his capacity as sheriff after issuing the corresponding receipt therefor;
- b) **Shares of stocks**, or an interest in stocks or shares **in** any corporation or company, by leaving with the president, **corporate secretary** or managing partner/**resident** agent thereof, a copy of the decision, order or award, and a notice stating that the **shares of** stock or interest of the party against whom the levy is issued, is levied.
- c) Debts and credits, and other personal property not capable of manual delivery, by leaving with the person **or his agent**, owing such debts **or credits**, or having in his possession or under his control, other personal property, a copy of the decision, order or award, and notice that the debts **owed** by him to the party against whom the levy is issued, and the credits and other personal property not capable of **manual delivery** in his possession, or under his control, **belong to the party against whom the levy has been issued.**
- d) The interest of the losing party against whom levy is issued in property belonging to the estate of a decedent, whether as heir legatee or devisee, by serving to the executor or administrator or other personal representative of the decedent a copy of the decision, order or award and a notice that said interest is levied. A copy of said decision, order or award, and notice shall also be filed with the Office of the Clerk of Court in which said estate is being settled and served upon the heir, legatee or devisee concerned.
If the property sought to be levied is in *custodia legis*, a copy of the decision, order or award, and notice shall be filed with the proper court, and notice of levy served upon the custodian of such property. (1a)

SECTION 2. Garnishment. - Garnishment is effected by the sheriff or authorized officer by serving a notice thereof to the third party who has possession or control of such money, goods, chattels and/or any interest therein, belonging or owing to the losing party directing or requiring him (garnishee) to hold the same subject to further orders from the Commission or Labor Arbiter who issued the writ. Where the property garnished consists of money deposited with a bank or third party, the Commission or Labor Arbiter shall order that the same shall only be released to the cashier of the NLRC. (2a)



SECTION 3. Levy on Real Property. - Real property or any interest therein may be levied in the following manner:

- a) Real property, or growing crops thereon, standing upon the records of the register of deeds of the province or city in the name of the party against whom levy is issued, not appearing at all upon such records, by filing with the register of deeds a copy of the decision, order, or award, together with a description of the property levied, and a notice that it is levied upon and by leaving a copy of such decision, order or award, description, and notice with the occupant of the property, if there is any. When the property has been brought under the operation of the land registration system, the notice shall contain a reference to the number of the certificate of title and the volume and page in the registration book where the certificate is registered. The register of deeds must index levies filed under this paragraph in the name of both the prevailing party and the losing party;

- b) **Machinery, equipment or mechanical contrivances attached to an immovable in a fixed manner, in such a way that they will break or deteriorate if separated therefrom, and machinery, receptacles instruments or implements intended by the owner of the tenement for an industry or works which may be carried on in a building or in a piece of land, and which tend directly to meet the need of the said industry or works are classified as immovable/real property under Article 415, paragraphs 3 & 5 of the Civil Code. Thus, they cannot be dismantled and levied as personal property.**

- c) Real property, or growing crops thereon or any interest therein, belonging to the party against whom levy is issued, and held by any other person or standing on the records of the register of deeds in the name of any other person, by filing with the register of deeds a copy of the decision, order or award, together with a description of the property, and a notice that such real property, and any interest therein of said property, held or standing, in the name of such other persons, naming him are levied by leaving with the occupant of the property, if any, and with such other persons, or his agents, if found within the province or city or at the residence of either, if within the province or city, a copy of such decision, order or award, description and notice. When the property has been brought under the operation of the land registration system, the notice shall contain a reference to the number of the certificate of title and the volume and page in the registration book where the certificate is registered. The register of deeds must index levies filed under this paragraph in the name of the prevailing party, the losing party and the person for whom the property is held or in whose name it stands on the records. (3a)

SECTION 4. Effect of Levy. - The levy on execution shall create a lien in favor of the prevailing party over the right, title or interest of the losing party in such property at the same time of the levy.

SECTION 5. Effect of Levy on Debts and Credits. - All persons having in their possession or under their control any credit or other similar personal property belonging to the party against whom levy is issued, or owing any debt to the latter, at the time of service upon them a copy of the decision, order or award, and notice, shall be liable to the prevailing party for the amount of such credits, debts or other property, until the levy is discharged, or any judgment recovered by him is satisfied, unless such property is delivered or transferred, or such debts are paid, to the sheriff or duly designated officer of the National Labor Relations Commission.

SECTION 6. Effect of Refusal of Entry - Should the losing party, his agent or representative refuse or prohibit the sheriff or his authorized representative entry to the place where the property subject of execution is located or kept. The Sheriff shall immediately submit a report to the Commission or Labor Arbiter who issued the writ for their appropriate action. (n)



SECTION 7. Break Open Order; When Issued. - Should the losing party. His agent or representative refuse or prohibit the sheriff or his authorized representative entry to the place. where the property subject of execution is located or kept, the prevailing party may file a motion for a break open order with the Commission or Labor Arbiter concerned who, after due notice and hearing, shall resolve the same. (n)

SECTION 8. Request for Police Assistance.- The Secretary of Labor and Employment, or the Commission, or any Labor Arbiter, in appropriate cases, may deputize the Philippine National Police or any law enforcement agencies to assist in the enforcement of final awards, orders or decisions.

The Sheriff, when warranted by the situation, may request from the Commission or Labor Arbiter police assistance in the enforcement of final awards. orders. decisions. (Amended 4c, RIII)

SECTION 9. Enforcement of break Open Order. In the implementation of the break-open order, whenever the circumstances warrant, the sheriff who may be accompanied by police officer/s authorized to render police assistance, may use reasonable force necessary to repel any resistance, and thereafter, to proceed entry in the place of the defiant losing party, where the properties subject of execution are located. (n)

**RULE VI
SALE OF PROPERTY ON EXECUTION**

SECTION 1. Notice of Sale. - No sale of property on execution shall proceed without notice of sale describing the property to be sold, its location, the date, time and place of sale and terms and conditions thereof.

- a) In case of perishable property, by posting written notice of the time and place of the sale in three (3) public places in the municipality or city, where the sale is to take place, for such time as the sheriff may deem reasonable, considering the character and condition of the property;
- b) In case of other personal property, by posting a similar notice in three (3) public places in the municipality or city where the sale is to take place, for not less than five (5) nor more than ten **calendar** (10) days;
- c) In case of real property, by posting **a similar notice** for twenty (20) **calendar** days in the three (3) public places above-mentioned particularly describing the property and stating where the property is to be sold, and if the assessed value of the property exceeds fifty thousand pesos (P50,000.00), by publishing a copy of the notice once a week for two (2) consecutive weeks, in one newspaper, whether in English, Filipino, or any major regional language, published and circulated **in the province or city** or, in the absence thereof, **in a newspaper** having general circulation;
- d) In all cases, written notice of the sale shall be given to the losing party;
- e) A **Sheriff** selling without the notice prescribed in the preceding sections shall forfeit five thousand pesos (P5,000.00) to any party injured thereby, in addition to his actual damages, both to be recovered in a single proper action; and a person wilfully removing or defacing the notice posted, if done before the sale, shall forfeit five thousand pesos (P5,000.00) to any person injured by reason thereof, to be recovered in any proper action.

An execution sale without the valid levy and notice of sale as herein provided is null and void and vests no title in the purchaser. (1a)

SECTION 2. Satisfaction of Judgment Award Before Sale. At any time before the sale of property on execution, the losing party may prevent the sale by paying the **judgment award** and the costs that have been incurred **in the execution.** (2a)



SECTION 3. How Property Sold on Execution. - 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 losing party or his authorized representative, unless otherwise directed by the judgment or order of the Commission or Labor Arbiter.

When the sale pertains to real property, consisting of several known lots, they must be sold separately. When a portion of such real property is claimed by a third person, the latter may require it to be sold separately.

When the sale pertains to 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. When such property consists of several known lots or parcels which can be sold to advantage separately, the losing party, if present at the sale, may direct the order which property, real or personal, shall be sold.

Neither the sheriff nor any authorized officer conducting the execution sale, can become a purchaser, nor be interested directly or indirectly in any purchase at such sale. (3a)

SECTION 4. CONDUCT OF AUCTION SALE - In the conduct of auction sale, the Sheriff shall strictly follow the following procedure:

1. Submission of written bids of the bidders
2. Announcement of the highest written bid only
3. Inquiry from the bidders present on who intends to bid higher
4. Announcement of the winning bid.
5. Payment of the full bid price by the winning bidder.
6. In case of failure to pay, auction sale shall be conducted anew, which shall follow the same procedure, in relation with Rule VI, Section 6 in case of personal property. Provided that in case of real property, republication shall be made.
7. Issuance of certificate of sale to the winning bidder. (n)

SECTION 5. Refusal of Purchaser to Pay. - If a purchaser refuses to pay **his/her bid at the sale under execution**, the sheriff may again sell the property to the highest bidder and **he/she** shall not be responsible for any loss occasioned thereby. The Commission or Labor Arbiter who issued the writ of execution may order the refusing purchaser to pay the amount of such loss with costs and may punish him for contempt. The amount of such payment shall be for the benefit of the person entitled to the proceeds of the execution **sale**, unless the execution has been fully satisfied, in which event, such proceeds shall be for the benefit of the losing party. When a purchaser refuses to pay, the sheriff may thereafter reject any subsequent bid of such person. (4a)

SECTION 6. Prevailing Party as Purchaser. - When the purchaser is the prevailing party, and no third party claim has been filed, he need not pay the amount of the bid if it does not exceed the amount of the judgment. If it does, he shall pay only the excess.

In no case shall a Special Power of Attorney be issued by the prevailing party. (5a)

SECTION 7. Adjournment of Sale. - By written consent of the prevailing party and losing party, the sheriff **or authorized officer** may adjourn any sale on execution to any date agreed upon in writing by the parties. Without such agreement, he may adjourn the sale from day to day, if it becomes necessary to do so for lack of time to complete the sale on the day fixed in the notice. (6a)

SECTION 8. Conveyance to Purchaser of Personal Property Capable of Manual Delivery. - When the purchaser of any personal property capable of manual delivery pays the purchase price, the sheriff making the sale shall deliver the property to the purchaser and, if desired, execute and deliver to him a certificate of sale. The sale conveys to the purchaser all the rights which the losing party has in such property on the day of its levy. (7a)



SECTION 9. Conveyance to Purchaser of Personal Property Not Capable of Manual Delivery. - When the purchaser of any personal property not capable of manual delivery pays the purchase price, the sheriff making the sale shall execute and deliver to the purchaser a certificate of sale. Such certificate conveys to the purchaser all the rights which the losing party has in such property on the day of its levy. (8a)

SECTION 10. Conveyance of Real Property. Certificate Thereof Given to Purchaser and Filed with the Register of Deeds. - Upon a sale of real property, the sheriff shall give to the purchaser a certificate of sale containing:

- a) A particular description of the real property sold;
- b) The price paid for each distinct lot or parcel;
- c) The whole price paid by him.
- d) A statement that the right of redemption expires one (1) year from the date of the registration of the certificate of sale. It shall be the obligation of the purchaser to register a duplicate of such certificate with the Office of the Register of Deeds of the province or city where the property is located.** (9a)

SECTION 11. Certificate of Sale When Property is Claimed by Third Party. – When a property sold by virtue of a writ of execution is claimed by a third party, the certificate of sale to be issued by the sheriff pursuant to preceding sections 7, 8 and 9 shall indicate therein such third party claim. (10a)

SECTION 12. Redemption of Real Property Sold; Who may Redeem. – Real property sold as provided in the last preceding section or any part thereof separately, may be redeemed in the manner hereinafter provided, by the following parties/persons:

- a) The losing party, or his successor in interest in the **entire** or any part of the property;
- b) A creditor having a lien by attachment, judgment or mortgage on the property sold, or on some part thereof, subsequent to the judgment under which the property was sold. Such redeeming creditor is termed a redemptioner. (11 a)

SECTION 13. Proof Required of Redemptioner. - A redemptioner shall produce and serve to the sheriff, **a notice of redemption accompanied by the following:**

- a) A **certified true** copy of the judgment or final order under which he claims the right to redeem, or, if he redeems upon a mortgage or other liens, a memorandum of the record thereof, certified by the Register of Deeds;
- b) A **certified true** copy of any **deed of** assignment necessary to establish his claim, **supported by a verified affidavit;** or of a subscribing witness thereto;
- c) An affidavit by himself or his agent, showing the amount then actually due on the lien. (14a)

SECTION 14. Time and Manner of, and Amounts Payable on, Successive Redemptions. Notice to be Given and Filed. - The losing party, or redemptioner, may redeem the property from the purchaser, at any time within **one (1) year** after the **registration of the certificate** of sale, by paying the purchaser the amount of his purchase with one per centum per month interest thereon **plus any assessments or taxes which the purchaser may have paid with interest** up to the time of redemption.

If the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such other lien, with interest.

Property so redeemed may again be redeemed within sixty (60) days after the last redemption upon payment of the sum paid in the last redemption, with two per centum thereon in addition, and the amount of any assessments or taxes which the last redemptioner may have paid thereon after redemption by him, with interest on such last named amount, and in addition, the amount of any liens held by said last redemptioner prior to his own, with interest.



The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner within sixty (60) days after the last redemption, by paying the sum paid on the last previous redemption, with two per centum thereon in addition, and the amount of any assessments or taxes which the last previous redemptioner paid after the redemption thereon, with interest thereon, and the amount of any liens held by the last redemptioner prior to his own, with interest.

Written notice of any redemption must be given to the sheriff who made the sale, and if any assessments or taxes are paid by the redemptioner or if he has or acquires any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the sheriff and filed **by the redemptioner** with the register of deeds; if **no** such notice **is** filed, the property may be redeemed without paying such assessments, taxes or liens.

In all cases, the Sheriff shall immediately transmit the written notice of redemption including the proof submitted by the redemptioner to the Commission or the Labor Arbiter of origin for proper disposition. (12a)

SECTION 15. Effect of Redemption by Losing Party, and a Certificate to be Delivered and Recorded Thereupon. To Whom Payments on Redemption Made. - If the losing party redeems, he shall make the same payments as are required to effect a redemption by a redemptioner. Whereupon the effect of the sale is terminated and he is restored to his estate, and the person to whom the payment is made shall execute and deliver to him a certificate of redemption acknowledged or approved before a notary public or other officer authorized to take acknowledgments of conveyance of real property. Such certificate must be filed **by the losing party** and recorded in the office of the Register of Deeds of the province or city in which the property is situated, and the Register of Deeds must note the record thereof on the margin of the record of the certificate of sale.

The payments mentioned in this and the last preceding sections **shall be paid** to the purchaser or redemptioner, or to the sheriff or duly designated officer who made the sale, **thereafter, the latter shall deposit said payment to the Cashier of the NLRC for further disposition.** (13a)

SECTION 16. Deed and Possession to be Given at Expiration of Redemption Period. By Whom Executed or Given. - If no redemption be made within **one (1) year from the date of the registration of the Certificate of Sale**, the purchaser, or his assignee, is entitled to a conveyance and possession of the property. **In the event redemption is made with notice and sixty (60) days have elapsed, the last redemptioner** or his assignee, is entitled to the conveyance and possession **of the property so redeemed.** In all cases, the losing party shall have the entire period of **one (1) year** from date of the registration of the sale to redeem the property. The deed shall be executed by the sheriff making the sale or by his successor in office, and in the latter case, shall have the same validity as though the sheriff making the sale has continued in office and executed it.

Upon the execution and delivery of said deed, the purchaser, or redemptioner, or his assignee, shall be substituted to and acquire all the rights, title, interest and claim of the losing party to the property as of the time of levy, except as against the losing party in possession, in which case, the substitution shall be effective as of the date of the deed. The possession of the property shall be given to the purchaser or last redemptioner by the same sheriff unless a third party is actually holding the property adversely to the losing party. (15a)

RULE VII SHERIFF'S RETURN

SECTION 1. SHERIFF'S REPORT. - The Sheriff enforcing the writ of execution shall submit not later than thirty (30) days from receipt of such writ, and every thirty (30) days thereafter, a report updating the Commission or Labor Arbiter who issued the writ of execution on the status of the enforcement thereof. The Commission or Labor Arbiter when necessary, may issue an updated writ of execution.

A copy of the report shall be furnished the Chairman and. the Executive Labor Arbiter. (2a, RIX)

SECTION 2. **Sheriffs** Return- The writ of execution shall be made returnable to the Commission or Labor Arbiter who issued it **immediately after the full satisfaction of the judgment award or after five (5) years from the date of entry of judgment or issuance of a certificate of finality.** The **sheriff** shall set forth in writing the whole proceedings and file it with the Commission or Labor Arbiter to form part of the records of the case.



In the event the judgment or order is returned unsatisfied, **after the lapse of the lifetime of the writ**, the sheriff shall no longer execute the judgment or order, unless **a new writ** of execution is duly issued **by the Labor Arbiter or Commission**. (1a)

SECTION 3. Penalties. Failure of the Sheriff to submit a report or make the return within the stated period shall subject the sheriff to a fine of not less than FIVE HUNDRED PESOS (P500.00) nor more than TEN THOUSAND PESOS (P10,000.00), or suspension for fifteen (15) days without payor both.

- a. **1st offense -1st warning**
- b. **2nd offense -2nd warning**
- c. **3rd offense -Filing of Administrative Case.** (n)

SECTION 4. Execution by Independent Action. - Pursuant to Art. 224 of the Labor Code, a decision or order may be executed on motion within five (5) years from the date it becomes final and executory. After the lapse of such period, the judgment shall become dormant, and may only be enforced by an independent action before the Regional Arbitration Branch of origin and within a period of ten (10) years from date of its finality. (6a,III)

**RULE VIII
MISCELLANEOUS PROVISIONS**

SECTION 1. Hours and Days When Writ Shall Be Served. - Writ of Execution shall be served at any day, except Saturdays, Sundays, and holidays, between the hours of eight in the morning and five in the afternoon. If, by nature of the losing party's business, it requires the implementation of the same beyond the period provided herein, a written authorization must be secured by the sheriff or duly designated officer from the Commission or Labor Arbiter who issued the writ.

SECTION 2. Assignment of Writs of Execution. - The Commission or Labor Arbiters issuing the writs of execution, in coordination with the **Legal Department or** Executive Labor Arbiter, shall conduct a raffle for purposes of assigning writs of execution to the sheriff/so (3a)

SECTION 3. Storage of Levied Property. - To avoid pilferage or damage to levied property, the same shall be inventoried and stored in a warehouse, wherever available, or in a secured place as may be determined by the **Labor Arbiter or the Commission** with notice to the losing party or third party claimant. For this purpose, the sheriff shall inform the Commission or Labor Arbiter concerned of the corresponding storage fees, **chargeable to the prevailing party.** (4a)

SECTION 4. Referral of Questions Relative to Writ Enforcement. – Questions relative to writ of enforcement shall be referred to the Commission or Labor Arbiter who issued the writ for resolution. (5a)

SECTION 5. Cash Advance and Execution Fees- Sheriffs or duly designated officers shall be provided at the beginning of the month with a cash advance **not less than** Two Thousand Pesos (P2,000.00), for transportation expenses. **Any additional amount for the said purpose may be granted subject to availability of funds. All transportation expenses** shall be liquidated at the end of the month with a statement of expenses and itinerary of travel duly approved by the Commission or Labor Arbiter issuing the writ **subject to existing accounting and auditing rules and regulations.**

The sheriff or duly designated officer shall collect the following execution fees which shall be charged against the losing party:

- (1) For awards less than P5,000.00 - P200.00;
- (2) P5,000.00 or more but less than P20,000.00 - P400.00;
- (3) P20,000.00 or more but less than P50,000.00 - P600.00;
- (4) P50,000.00 or more but not less than P100,000.00 - P800.00;
- (5) P100,000.00 or more but not exceeding P150,000.00 - P1,000.00;
- (6) P150,000.00 the fee is plus P10.00 for every P.1,000.00 in excess of P150,000.00



The sheriff or duly designated officer shall be administratively liable in case of failure to collect and remit the execution of fees. (6a)

SECTION 6. Execution of Judgment in Certain Areas. -For the purpose of execution of judgment in areas where there are no available sheriffs, or there are no regional or sub-regional arbitration branches, the **Chairman, upon recommendation of the Commission or Labor Arbiter concerned**, may designate sheriff/s of the city or province where the property of the losing party sought to be levied/garnished is located. The sheriff shall make his **progress report** to the Commission or Labor Arbiter concerned within thirty (30) days from receipt **of the writ of execution**. (7a)

SECTION 7. Sheriffs Identification. - In the performance of their official duties, sheriffs or duly designated officer shall be in uniform as prescribed by the Commission and should carry at all times their identification cards, **and badges**. (8a)

RULE IX EFFECTIVITY AND REPEALING CLAUSE

SECTION 1. Effectivity. - This Manual shall take effect fifteen (15) days after its publication in two (2) newspapers of general circulation.

SECTION 2. Repealing Clause. - The existing **NLRC Manual on Execution of Judgment** shall be deemed superseded upon the effectivity of this **2012 NLRC SHERIFFS' MANUAL ON EXECUTION OF JUDGMENT**. (2a)

Signed this 15th day of November 2012 at Quezon City, Philippines

Comments and notes;

In the past few months we had observed an increase in phone calls from manning agents wherein the Sheriff of the NLRC had been at the Philippines Overseas Employment Administration (POEA) with the intention to garnish the manning agents performance bond (cash deposit with the POEA). While they do proceed to manning agents banks the increase of directly as a first port of call to the POEA caused concern. On investigating we identified that the NLRC during the November En-Banc session (this is where all the NLRC commissioners from all over the Philippines meet at the NLRC in Manila (NCR-National Capital Region), to discuss issues and policies and approved a specific manual of procedure for the Sheriff's of the NLRC entitled "*Sheriff's Manual on Execution of Judgment*".

The concern as high-lighted on page 5 was the now very specific order of what collateral the Sheriff should garnish;

b) In the event of failure or refusal of the losing party to pay the judgment award, the Sheriff shall enforce the judgment award in the following order:

- 1. Cash bond**
- 2. Bank deposits**
- 3. Surety bond**

what was of concern is that several Sheriff's had interpreted the rules to mean the "cash bond" being the ESCROW (performance bond) at the POEA. However in a Memorandum from the Chairman of the NLRC it clarified that a cash bond is the actual "cash" appeal bond for a specific case.



Therefore our advice to manning agents and ship owners remains the same, In the event that a Sheriff of the NLRC does turn up at their bank or the POEA in regards to garnishment related to a labour case, NLRC adverse decision handled by Pandiman they should;

- ⇒ call us immediately and advise where the Sheriff is
- ⇒ we shall either meet with the Sheriff or talk to them over the phone advising:
 - That the funds are available shortly and settlement date is arranged.
 - That they should be proceeding to the bonding company
- ⇒ If necessary we can meet with the manning agents bank and help explain the situation
- ⇒ Contact claimants counsel that there is no need for the sheriff to be pursuing the M/A, especially;
 - Where there is an appeal bond in place (LOU)
 - Settlement date arranged and funds arriving
 - Funds deposited with the cashier of the NLRC

Captain Andrew Malpass – President & GM
Pandiman Philippines, Inc.

SEE ANNEX BELOW



Annex 1



Republic of the Philippines
Department of Labor and Employment
NATIONAL LABOR RELATIONS COMMISSION
Quezon City


2013 APR -1 AM 9:43

MEMORANDUM

TO : ALL SHERIFFS/DEPUTY/ ACTING SHERIFFS
This Commission

RE : Order of Enforcement of Judgment

DATE : 25 March 2013

Section 2, Rule IV of the 2012 Sheriffs' Manual on Execution of Judgment provides that, in the event of failure or refusal of the losing party to pay the judgment award, the Sheriff shall enforce the judgment award in the following order: (1) Cash bond; (2) Bank deposits; (3) Surety bond.

Please be reminded that the cash bond being referred to in the aforesated provision is the appeal bond paid in the form of cash and deposited with the NLRC Cashier. It does not refer to the Escrow account of manning agencies mandated under POEA Rules. Escrow accounts are considered as bank deposits.

Please be guided accordingly.


GERARDO C. NOGRALES
Chairman

Cc: All concerned

