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[A.M. No. P-98-1267. July 13, 1999]

JUDGE ALFREDO S. CAIN, *complainant, vs.* **EVELYN R. NERI, Clerk of Court, Sixth Municipal Circuit Trial Court, Tagoloan-Villanueva, Misamis Oriental,** *respondent.*

SYNOPSIS

Upon examination of the cash accounts of which Clerk of Court Evelyn Neri was accountable, a shortage of ₱58,880.00 representing undeposited collections has been definitely established. Neri explained that the same accumulated from funds borrowed by her superior and co-employees from the Judiciary Development Fund and the Fiduciary Funds under her custody. Wherefore, the Court Administrator recommended the dismissal of Neri from service for grave misconduct.

The Court agreed, with the recommendations that court personnel are required to conduct themselves always beyond reproach, circumscribed with the heavy burden of responsibility as to free them from any suspicion that may taint the good image of the judiciary. The Clerk of Court is the custodian of the court's funds and revenues, and thus, liable for any loss or shortage thereof. Here, Neri admitted the shortage in her cash accounts and that she diverted the funds into purposes other than that for which the same had been collected. As a rule, Clerks of Court may not keep public funds in their custody. Money received by them shall be deposited immediately upon receipt thereof with the City, Municipal or Provincial Treasurer. And failure thereof constitutes serious misconduct prejudicial to the service.

SYLLABUS

1. ADMINISTRATIVE LAW; COURT PERSONNEL; REQUIRED DECORUM. — The Code of Conduct and Ethical Standards for Public Officials and Employees provides that every public servant shall uphold public interest over his or her personal interest at all times. Court personnel, from the presiding judge

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to the lowliest clerk, are required to conduct themselves always beyond reproach, circumscribed with the heavy burden of the responsibility as to free them from any suspicion that may taint the good image of the judiciary.

2. **ID.; ID.; CLERK OF COURT; RESPONSIBILITY AS CUSTODIAN OF THE COURT'S FUNDS; VIOLATION THEREOF IS SERIOUS MISCONDUCT PREJUDICIAL TO THE SERVICE.** — The Clerk of Court performs a very delicate function. He is the custodian of the court's funds and revenues, records, property and premises. Being the custodian thereof, the clerk of court is liable for any loss, shortage, destruction or impairment of said funds and property. As per SC Citrculars Nos. 5 and 5A, the clerk of court may not keep public funds in her custody. Money received by the clerk of court "shall be deposited immediately x x x upon receipt thereof with the City, Municipal or Provincial Treasurer where the court is located. Here, respondent admitted the shortage in the cash accounts for which she is accountable. She also admitted that she diverted the funds into purposes other than for which the funds had been collected. Respondent likewise admitted that she allowed her co-employees to make use of the money collected under the Fiduciary Funds. Thus, for failure to remit the funds to the Municipal Treasurer, respondent committed serious misconduct prejudicial to the service. Clerks of court must be individuals of competence, honesty, and probity. Restitution of the amount involved does not free respondent from liability.

RESOLUTION

PER CURIAM:

The Court has for consideration a letter dated April 18, 1997, of Provincial Auditor Hesselinda A. Valencia, Misamis Oriental, to the Presiding Judge, 6th Municipal Circuit Trial Court, Tagoloan, Misamis Oriental, stating "that upon examination of the cash and accounts of Ms. Evelyn R. Neri, Clerk of Court, 6th MCTC, Tagaloan, Misamis Oriental, conducted on March 17, 1997, a shortage in her accountability in the amount of Fifty Eight Thousand Eight Hundred Eighty Pesos (₱58,880.00) has been definitely established," representing undeposited collections for

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the period January to March 17, 1997. He recommended that Ms. Neri be transferred to a position not involving money or property accountability and that appropriate administrative action be instituted against her.[1]

However, respondent Neri restituted the amount by presenting two deposit slips dated March 19, 1997 and April 1, 1997, in the amounts of Three Thousand Eight Hundred Sixty Six Pesos (₱3,866.00) and Fifty Five Thousand Pesos (₱55,000.00), respectively.[2]

On June 25, 1997, Judge Alfredo S, Cain. MCTC Judge Designate, Tagoloan-Villanueva, Misamis Oriental, indorsed the letter of the provincial auditor to this Court.[3]

On September 17, 1997, we required respondent to file her comment on the shortage.[4]

In her comment dated September 24, 1997,[5] respondent stated that the uncollected amounts accumulated from funds borrowed by her superior, the judge of the Municipal Circuit Trial Court, Tagoloan-Villanueva, Misamis Oriental, from Judiciary Development Fund and the Fiduciary Funds under her custody. Although the judge would restitute the said amounts at the end of the month, the times increased when respondent herself would have to cover the amounts with her own money or wait until the judge would be able to secure the money.

Unfortunately, the judge died in an accident, leaving respondent with a large sum of money unaccounted for. Respondent managed to borrow money from loan sharks in order to pay the amount left unpaid by the late judge.

Respondent further admitted that her co-employees would borrow amounts of money from the Fiduciary Funds collected

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[1] *Rollo*, p. 3.

[2] *Rollo*, p. 3.

[3] *Rollo*, p.1.

[4] Resolution, September 8, 1997, *Rollo*, pp. 4-5.

[5] *Rollo*, pp. 6-7.

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by her, which practice was with the knowledge and consent of the judge.

On November 10, 1997, this Court referred the case to the Office of the Court Administrator for evaluation, report and recommendation.[6]

On January 12, 1998, the Court Administrator submitted a memorandum recommending the dismissal of respondent from the service for grave misconduct.[7]

We agree.

The Code of Conduct and Ethical Standards for Public Officials and Employees[8] provides that every public servant shall uphold public interest over his or her personal interest at all times. Court personnel, from the presiding judge to the lowliest clerk, are required to conduct themselves always beyond reproach, circumscribed with the heavy burden of the responsibility as to free them from any suspicion that may taint the good image of the judiciary.[9]

The Clerk of Court performs a very delicate function. He is the custodian of the court's funds and revenues, records, property and premises. Being the custodian thereof, the clerk of court is liable for any loss, shortage, destruction or impairment of said funds and property.[10]

Respondent admitted the shortage in the cash accounts for which she is accountable. She also admitted that she diverted the funds into purposes other than for which the funds had been collected, such activities occurring since July 1994, when she started collecting the Judiciary Development Funds, and the Fiduciary Funds in 1995.

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[6] Resolution, *Rollo*, p. 8.

[7] *Rollo*, pp. 9-13.

[8] Republic Act No. 6713.

[9] *Marasigan vs. Lilia S. Buena, Clerk of Court, MTCC, Naga City,* A.M. No. 95-1-01-MTCC, January 5, 1998.

[10] *Office of the Court Administrator vs. Bawalan*, 231 SCRA 408.

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Respondent likewise admitted in her comment that she allowed her co-employees to make use of the money collected under the Fiduciary Funds. We have declared that:

"The grant of loans through the 'vale' system is a clear case of an accountable officer consenting to the improper or unauthorized use of the public funds by other persons, which is punishable by law. To tolerate such a practice is to give a license to every disbursing officer to conduct a lending operation with the use of public funds."[11]

The clerk of court may not keep public funds in her custody. Money received by the clerk of court "shall be deposited immediately x x x upon receipt thereof with the City, Municipal or Provincial Treasurer where the court is located." Supreme Court Circulars Nos. 5 dated November 25, 1982 and 5-A dated December 3, 1982 provide:

"All collections of funds of a fiduciary character including rental deposits shall be deposited immediately by the Clerk of Court concerned upon receipt thereof with the City, Municipal or Provincial Treasurer where his Court is located."

Failure to remit the funds to the Municipal Treasurer constitutes serious misconduct prejudicial to the service.[12]

Clerks of court must be individuals of competence, honesty, and probity. Restitution of the amount involved does not free respondent from liability.

IN VIEW WHEREOF, the Court hereby orders the *DISMISSAL* of respondent Evelyn R. Neri, Clerk of Court, 6th Municipal Circuit Trial Court, Tagoloan, Misamis Oriental from the service, for grave misconduct, with forfeiture of all leave credits and retirement benefits and with prejudice to re-instatement or re-employment in any agency, branch or instrumentality of the government, including government-owned and controlled corporations.

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[11] *Meneses vs. Sandiganbayan*, 232 SCRA 441.

[12] *Ferriols vs. Hiam*, 225 SCRA 205.

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SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and *Ynares-Santiago, JJ.,* concur.

Romero, J., on official leave.

THIRD DIVISION

[AM No. RTJ-99-1455. July 13, 1999]

REYNALDO DE VERA, *complainant, vs.* **JUDGE SANCHO A. DAMES II, Regional Trial Court of Camarines Norte, Branch 38,** *respondent.*

SYNOPSIS

Complainant, in three (3) separate informations filed with respondent's sala, was charged with libel in connection with his letter to Mrs. Mariano, DECS School's Division Superintendent, Daet, Camarines Norte requesting for an investigation of the treasure hunting and excavation made within the premises of the school. Complainant moved to dismiss the information on the ground of privileged communication and to inhibit respondent on ground of partiality as respondent was a mahjong partner of one of the complainants. Both motions were denied. However, before the promulgation of the judgment finding complainant guilty, the same was prematurely published in a local newspaper. The trial court found that the letter was presumed to be malicious and defamatory, hence, complainant's liability for libel. However, the conclusion was not sufficiently explained by respondent judge in his decision who even failed to cite any legal principle or authority to support his conclusion. Aggrieved, complainant appealed to the Court of Appeals which reversed the assailed decision and acquitted complainant. It ruled that the letter was a privileged communication beyond the ambit of libel, the same having been written with good intentions. It found that the decisions were not supported by