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In line with the ruling in *UNIMEX Micro-Electronics GmBH*, the Commissioner of Customs should pay AGFHA the value of the subject lost shipment in the amount of US$160,348.08 which liability may be paid in Philippine currency computed at the exchange rate prevailing at the time of the actual payment.

WHEREFORE, the February 25, 2009 Decision of the Court of Tax Appeals *En Banc*, in CTA EB Case No. 136, is *AFFIRMED.* The Commissioner of Customs is hereby ordered to pay, in accordance with law, the value of the subject lost shipment in the amount of US$160,348.08, computed at the exchange rate prevailing at the time of actual payment after payment of the necessary customs duties.

SO ORDERED.

Carpio (Chairperson), Peralta, Bersamin,[*] and *Abad, JJ.*, concur.

EN BANC

[A.M. No. P-09-2637. March 29, 2011]
(Formerly A.M. No. 08-12-682-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **ATTY. MAGDALENA L. LOMETILLO, Former Clerk of Court VII, VICTORIA S. PATOPATEN, Cashier II, LINDA C. GUIDES, Administrative Officer I, LENNY GEMMA P. CASTILLO, Clerk III, and BRENDA M. LINACERO, Clerk III, All of Regional Trial Court, Iloilo City,** *respondents.*

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[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Raffle dated July 15, 2009.

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SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; SERVICE WITH LOYALTY, INTEGRITY AND EFFICIENCY IS REQUIRED OF ALL PUBLIC OFFICERS AND EMPLOYEES WHO MUST, AT ALL TIMES, BE ACCOUNTABLE TO THE PEOPLE.— No less than the Constitution mandates that "public office is a public trust." In a long line of cases, the Court has untiringly reminded employees involved in the administration of justice to faithfully adhere to their mandated duties and responsibilities. Whether committed by the highest official or by the lowest member of the workforce, any act of impropriety can seriously erode the people's confidence in the judiciary. Thus, the Court does not hesitate to condemn and sanction such improper conduct, act or omission of those involved in the administration of justice that violates the norm of public accountability and diminishes or tends to diminish the faith of the public in the Judiciary. Service with loyalty, integrity and efficiency is required of all public officers and employees, who must, at all times, be accountable to the people.

2. ID.; ID.; CLERK OF COURT; FUNCTION AS CUSTODIAN OF THE COURT'S FUNDS, REVENUES, RECORDS, PROPERTY AND PREMISES, EXPLAINED; CASE AT BAR.— A number of non-judicial concerns connected with trial and adjudication of cases is handled by the clerk of court, demanding a dynamic performance of duties, with the prompt and proper administration of justice as the constant objective. The nature of the work and of the office mandates that the clerk of court be an individual of competence, honesty and integrity. The Clerks of Court perform a very delicate function as custodian of the court's funds, revenues, records, property and premises. They wear many hats – those of treasurer, accountant, guard and physical plant manager of the court, hence, they are "entrusted with the primary responsibility of correctly and effectively implementing regulations regarding fiduciary funds" and are thus, "liable for any loss, shortage, destruction or impairment of such funds and property." In this case, it appears that Atty. Lometillo utterly failed to perform her duties with the degree of diligence and competence expected of a clerk of court. The performance of one's duties in a

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perfunctory manner is never justified especially when reliance on employees of lower rank projects nothing else but gross inefficiency and incompetence.

3. ID.; ID.; ID.; ID.; DUTY TO DEPOSIT IMMEDIATELY ALL FIDUCIARY COLLECTIONS WITH AN AUTHORIZED GOVERNMENT DEPOSITORY BANK; OMISSION THEREOF CONSTITUTES GROSS NEGLECT OF DUTY.— Jurisprudence is replete with reminders to Clerks of Court for an effective performance of their collection and deposit functions. The 2002 Manual for Clerks of Court and countless SC circulars likewise serve as clear guideposts, to wit: All fiduciary collections shall be **deposited immediately** by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank. In SC Circular 5-93, the Land Bank was designated as the authorized government depository. Court personnel tasked with collections of court funds, such as clerk of court and cash clerks, should **deposit immediately** with authorized government depositories the various funds they have collected because they are not authorized to keep funds in their custody. **Delayed remittance of cash collections constitutes gross neglect of duty because this omission deprives the court of interest that may be earned if the amounts are deposited in a bank.**

4. ID.; ID.; ID.; ID.; ID.; LACK OR LIMITED KNOWLEDGE OF ACCOUNTING PROCEDURE DOES NOT EXONERATE THE CLERK OF COURT OF ADMINISTRATIVE LIABILITY; RATIONALE.— The Fiduciary Funds is composed of all collections from bail bonds, rental deposits and other fiduciary collections deposited with the Landbank. Just like any bank account, the Fiduciary Fund bank account earns interest. Generally, any increase of the account balance which is not a bail bond, rental deposit or other fiduciary collection is considered interest earned. Therefore, interest earned refers to interest income after deducting the withholding tax. Because of the withdrawal of the gross interest, the cash back-up for the bail bonds, rental deposits and other fiduciary collections still deposited with the court may not be enough to pay said deposits when the Court will order the release thereof. Atty. Lometillo's pretext of confusion over terms such as "net interest income" and "gross interest" and the supposed failure of the

Court to clarify this ambiguity, cannot work in her favor. Time and again, clerks of court have been reminded that "lack or limited knowledge of accounting procedures does not exonerate them. To credit such defense would set similarly situated employees to lightly discharge their duty of employing reasonable skill and diligence and thus evade administrative liability."

5. ID.; ID.; ID.; ID.; ID.; ID.; WHEN GUILTY OF NEGLIGENCE, INCOMPETENCE AND GROSS INEFFICIENCY IN THE PERFORMANCE OF OFFICIAL DUTY; PENALTY OF DISMISSAL, PROPER.— Atty. Lometillo had clearly failed to live up to the standards of competence and integrity expected of an officer of the court. Mediocrity is not at all fit for a member of a complement tasked to dispense justice. Her failure to exhibit administrative leadership and ability renders Atty. Lometillo guilty of negligence, incompetence and gross inefficiency in the performance of her official duty as Clerk of Court. Thus, the penalty of dismissal from service is proper considering her failure to exercise supervision over her administrative staff resulting in commission of Blatant infractions against the Rules. In view of Atty. Lometillo's compulsory retirement, however, the imposition of accessory penalties, including the forfeiture of her retirement benefits, is justified.

6. ID.; ID.; COURT PERSONNEL; WHEN GUILTY OF SIMPLE NEGLECT OF DUTY; CASE AT BAR.— As found after investigation, Patopaten failed to exercise her general functions and duties, as provided in the 2002 Manual for Clerks of Court. As the head of the Cash Division, Patopaten must have displayed heightened circumspection of the other employees' performance, specifically those of Castillo's and Guides' who were in-charge of collection of payment from litigants. Patopaten must have been vigilant in the performance of her duties, not only to clear herself from fault, but more importantly, to prevent misappropriation of judiciary funds. The same offense of simple neglect of duty was committed by Guides, Castillo and Licanero. Their individual pleas of innocence and blame-shifting are insufficient to cover up their shortcomings as shown by evidence. None of the three was able to offer a plausible explanation for the shortages, showing their indifference to

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the oaths they took as public servants. Undoubtedly, the Court does not, and will never, tolerate carelessness and apathy, all for the sake of efficient administration of justice.

7. ID.; ID.; THE COURT SHOULD ACT TO RECOVER UNACCOUNTED SHORTAGES AND TO MINIMIZE, IF NOT TO ELIMINATE, IRREGULARITIES IN THE FUTURE.— The Court should act to recover the unaccounted shortages in the Clerk of Court General Fund (CCGF), the Special Allowance for the Judiciary Fund (SAJF), Judiciary Development Fund (JDF), Sheriff's General Fund (SGF), and Fiduciary Fund (FF). For this purpose, the OCA should institute the necessary action against the persons responsible in our courts of law. And to minimize, if not eliminate, said irregularities in the future the OCA should expand the coverage of the check payment system in all cities and capital towns in the provinces.

APPEARANCES OF COUNSEL

Norberto J. Posecion for respondents.

Ilarde Penetrante Tungala & Associates for Lenny Gemma Castillo.

Honorato P. Sayno, Jr. for Victoria Patopaten.

D E C I S I O N

PER CURIAM:

This administrative matter originated from a financial audit conducted by the Office of the Court Administrator *(OCA)* on the books of accounts of the Office of the Clerk Court, Regional Trial Court, Iloilo City *(OCC)*, covering transactions from November 1993 to February 2004.

The audit was conducted in view of the compulsory retirement of former Clerk of Court, Atty. Magdalena L. Lometillo *(Atty. Lometillo)*, and the designation of Atty. Gerry D. Sumaclub *(Atty. Sumaclub)* as Officer-In-Charge, without the benefit of a formal turn-over of accountabilities.

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The OCA Report

In OCA Memorandum dated November 24, 2008,[1] certain irregularities unearthed by the OCA Financial Audit Team were reported as follows:

a. Based on the Report of Collections presented and the inventory of unused Official Receipts *(Ors)*, the team was able to account only 102,869 of the 105,500 pieces released by the Property Division of the OCA. 102,126 pieces had been duly issued while 743 pieces were presented unused. The remaining 2,631 pieces were unaccounted for.

b. Per review of the books by the OCC audit team, the following accounts incurred shortages:

A) Clerk of Court General Fund (CCGF)

Collections (November 1, 1993 to November 10, 2003)	₱ 7,873,045.66
Less: Deposits/Remittances (November 1, 1993 to November 10, 2003)	8,244,234.01
Balance of Accountability/Over Remittance	₱ (371,188.35)

The balance of accountability is composed of the following:

Deposit Slips Without Machine Validation		**₱ 129,780.72**
Less: Net Effect of Over and Under Remittance	₱ 135.55	
Erroneous Remittance of-		
Fiduciary Fund Interest	455,114.14	
SAJF Collections	45,723.38	500,969.07
Grand Total		₱ (371,188.35)

B) Special Allowance for the Judiciary Fund (SAJF)

Collections (November 11, 2003 to February 28, 2004)	₱ 172,117.24
Less: Deposits/Remittances (November 11, 2003 to February 28, 2004	126,310.86
Balance of Accountability/ Over Remittance	₱ 45,806.38

[1] *Rollo*, pp. 1- 22.

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The balance of accountability is composed of the following:

Shortage	
Erroneous Remittance of SAJF Collections to the CCGF	₱ 45,723.38
Undeposited Collections (Net Effect of Over and Under deposit of collections)	**405.00**
Total	₱ 46,128.38
Less: Erroneous Deposit of SGF Collections to The SAJF (12/12/03)	322.00
Total	₱ 45,806.38

C) Judiciary Development Fund (JDF)

Collections (November 1, 2003 to February 28, 2004)	₱ 82,873,662.38
Less: Deposits/Remittances (November 11, 2003 to February 28, 2004)	82,866,145.88
Balance of Accountability/ Shortage	₱ 7,516.50

The balance of accountability is composed of the following:

Shortage	
Undeposited Collections (Net Effect of Over and Under Deposit of Collections)	**₱ 205.00**
Collections for February, 2004 deposited March, 2004	7,311.50
Total	₱ 7,516.50

D) Sheriff's General Fund (SGF)

Collections (November 11, 1998 to November 28, 2003)	₱ 88,629.00
Less: Deposits/Remittances	88,245.00
Balance of Accountability	₱ 384.00

The balance of accountability is composed of the following:

Erroneous Deposit of SGF collections to the SAJF	322.00
Undeposited Collections	**62.00**
Total	₱ 384.00

E. Fiduciary Fund (FF)

Unreported Collections	₱ 866,105.96
Unauthorized Withdrawals	
Over/Double Withdrawals	30,000.00
Withdrawals Without Supporting Documents	784,795.00[2]
Forfeiture of PNB Account Balance	9957.46
Balance of Accountability	**₱1,690,858.42**

[2] See list, *id.* at 19.

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c. With respect to the Fiduciary Fund *(FF)*, certain anomalies were discovered such as, late deposit of collections;[3] unreported collections, double and/or over withdrawals; withdrawals made sans supporting documents; and forfeiture by the Philippine National Bank *(PNB)* of the balance of the FF Account for being a dormant account. These irregularities caused a shortage of ₱1,690,858.42.

d. The audit team discovered cash bond collections that were intentionally unreported to the Court, amounting to ₱866,105.96, from December 21, 1998 to June 8, 2001. As it turned out, the cash used for the refund of unreported and undeposited cash bonds was taken from the deposit of the other cash bonds, consignation deposits and other FF collections still deposited with the Court. Hence, the cash back-up is understated.[4]

e. Unauthorized withdrawals were discovered, amounting to double withdrawals of ₱30,000.00.

f. Withdrawals of ₱182,000.00 from the Landbank of the Philippines *(Landbank)* account[5] and ₱602,795.00 from the PNB account[6] totaling ₱784,795.00, were considered unauthorized due to absence of documentation.

g. An account balance of ₱9,957.46 in a PNB account[7] was forfeited for being dormant.

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[3] In violation of Administrative Circular No. 3-2000 dated June 15, 2000 which provides that "collections must be deposited everyday or if depositing daily is not possible, deposit for the fund shall be at the end of every month, provided however, that every time collections for the fund reach ₱500.00, the same shall be deposited immediately before the period above indicated."

[4] *Rollo*, p. 6.

[5] *Id.* at 7, Fiduciary Fund LBP Current Account No. 731-515826-7.

[6] *Id.*, Fiduciary Fund PNB Savings Account 416-515826-7.

[7] *Id.* at 8, Fiduciary Fund PNB Account No. 416-515826-7.

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h. The audit team observed that, often, only the last three digits of the number of the Official Receipt appear in the column for "OR" in the cashbooks. The team had to examine the triplicate copies of the Official Receipts in order to come up with the accurate finding.[8]

i. The existing internal control system in the handling of official receipts is vulnerable to abuse. As these were kept in an unlocked filing cabinet, it was not surprising that 14,631 pieces of official receipts were not properly accounted for.[9]

j. It appears that Atty. Lometillo failed to exercise the required degree of supervision over the personnel authorized to collect legal fees and the other functions related thereto.[10] Had Atty. Lometillo monitored/ supervised the members of her staff, the irregular practices, especially the resulting shortage of funds, should have been at least avoided.

Explanation of Atty. Lometillo

The above findings of the OCA Audit Team were refuted by Atty. Lometillo in her Explanation dated February 15, 2007.[11] She explained each finding of irregularity as follows:

Account and Turnover of Official Receipts—

Atty. Lometillo attributed the missing official receipts to the disposal and burning of rotting and termite-infested court records by the Records Section of the OCC on April 27, 1992 and on May 26, 2001.[12] According to her, some boxes may have contained some of the old receipts up to year 2000 [and] the Records Officer did not bother to list these down and she simply directed the aides and janitors to take them out of the

[8] *Id.* at 8.

[9] *Id.*

[10] *Id.* at 14, OCA Audit Team Report.

[11] *Id.* at 55-59.

[12] Pursuant to Administrative Order No. 13 dated April 29, 1981.

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Records Room and place them in a vacant space under the stairs to wait for the burning thereof.[13]

As to the Fiduciary Funds Vouchers (withdrawals and collections), Atty. Lometillo also echoes the view of one of her staff that all vouchers were included in the bundles which the Audit Team took for inspection.

Shortages—

Atty. Lometillo generally denied knowledge of any shortage in the unreported collections in the SAJF, JDF and SGF amounting to ₱405.00, ₱684.51 and ₱62.00, respectively. Anent the FF, Atty. Lometillo explained that she was not aware of unreported collections amounting to ₱866,105.96, prior to the recent audit. She claimed to have been cleared from accountabilities by the Supreme Court Audit Team and by the local COA after audit was conducted on October 25, 1993.[14] She instead shifted blame to the Administrative Section of the OCC headed by Cashier II Victoria Patopaten *(Patopaten)*, who was responsible for, among others, "making physical deposits and withdrawals of cash, receiving collection of cash clerks and consolidating daily collection reports, verifying cash balance of receiving cash clerks by comparing cash on hand with book balances, preparing daily cash position reports and other monthly reports of collections and disbursements."[15]

Atty. Lometillo further emphasized that in Memorandum 92-2 dated May 25, 1992, she specifically assigned Patopaten "to perform such functions as are necessary in the collection and remittance of all money paid to the Clerk of Court. In another Memorandum on December 20, 2000, Atty. Lometillo directed Patopaten to issue receipts and receive money from litigants and depositors; to check monthly reports and entries in the books of accounts from time to time; and to remit to the

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[13] *Id.* at 58.

[14] *Id.* at 61-91, as appearing in the Report of Cash Examination and Certificate of Settlement and Balances (CSB) annexed to Atty. Lometillo's Explanation.

[15] *Id.* at 56.

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undersigned all collections at the end of the day.[16] Other administrative functions such as bookkeeping, preparation of deposit slips, monthly reports, vouchers and checks for withdrawal of deposits were delegated to other employees, namely: Administrative Officer I Linda Guides *(Guides)*, Clerk III Leny Gemma Castillo *(Castillo)*, and Clerk III Brenda Linacero *(Linacero)*. Of the employees mentioned by Atty. Lometillo, only Linacero rendered an explanation, stating that "she only received fees and issued receipts when the other two clerks, who were charged with the function of collection were absent or out of the office as requested by Ms. Patopaten.[17]

Atty. Lometillo refused to pay and deposit the shortages in the SAJF, JDF, SGF and FF because (1) she did not collect them herself, having delegated the task to Patopaten; (2) she had not been aware that there were collections that had not been deposited because when the collection would be remitted to her at the end of office hours, she would always compare the amount collected with the receipts issued and they always tallied; and (3) she had complete trust in the cashier and the collecting clerks and never thought that they would not report any collection, if indeed, they did not.[18]

Over/Double Withdrawals amounting to ₱30,000.00—

With respect to the finding of double withdrawals, Atty. Lometillo speculated that the procedure of "partial withdrawal"[19] adhered to by the office could have caused the errors. She likewise echoed Licanero's allegations that no over withdrawals could have been possible because the vouchers went through several offices and signatories, including the Executive Judge.

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[16] *Id.*

[17] *Id.* at 318.

[18] *Id.* at 59.

[19] *Id.* at 56. "If the deposit is say ₱20,000.00 and the depositor is authorized to withdraw ₱10,000.00 only, we withdrew the whole amount of ₱20,000.00 and then we re-deposited the balance of ₱10,000.00. Since we could not do this without court order, we usually ask the judge concerned to change the order authorizing us to release ₱20,000.00 and to re-deposit the ₱10,000.00 balance. The error may have been committed here."

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Overwithdrawal of Interest Income from the FF amounting to ₱455,114.14—

On the theory that SC Circular No. 50-95 only mentioned the terms "interest income," Atty. Lometillo said that she opted to withdraw the gross interest income from the FF instead of the net interest income. In her own words, Atty. Lometillo reasoned that "the circular mentions only interest income. It does not mention net interest income which the SC audit team insisted should have been the amount remitted to the National Treasury. The audit team, in fact, mentioned that many clerks of court had committed the same mistake and yet the Supreme Court did not issue clarificatory statements or circular to correct this ambiguity."[20] Request for refunds from the Bureau of Treasury were already been submitted.

Unauthorized Withdrawals Without Supporting Documents amounting to ₱784,795.00—[21]

Atty. Lometillo surmised that withdrawals pertaining to checks had been made for consignation deposits considering that the names of the payees did not appear in the index of cases in the Office of the Clerk of Court. She insisted that all withdrawals from the FF were duly supported with court orders except those of consignation deposits and financial assistance from the Provincial Government of Iloilo for traveling expenses of employees.

Forfeiture of PNB account balance ₱9,957.46 for being a dormant account—

Atty. Lometillo insisted that there was an agreement with the depository bank, that the account would not be closed until the cash bond was completely withdrawn. She explained that after all the unused checks were returned to the bank, "the account was virtually forgotten."[22]

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[20] *Id.* at 57.

[21] *Id.*

[22] *Id.* at 57-58.

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Violation of Administrative Circular No. 3-2000 dated June 15, 2000—

Atty. Lometillo claimed that deposits were picked up by bank representatives thrice a week, every Monday, Wednesday and Friday.[23] When the day would fall on a holiday, the bank representative would be at the court the next working day. She theorized that the office's former practice of encashing postdated checks of employees might have been the cause of delay. This prompted her to issue Office Memorandum No. 97-03[24] directing the staff "not to change bank drafts, money orders, and/or other kinds of checks with, or from, the money in your collection to prevent overages in your deposits."[25]

Deposit Slips of the GF and JDF without Machine Validation—

The OCC entered into an arrangement with the local branch of the Landbank, where bank representatives were supposed to return validated deposit slips on "the next pick-up day." "When the Landbank picked up the deposits, its *[sic]* personnel thereof did not take along the validating machine. They did the validating in the Landbank office when they returned there and took them back the following collection day."[26] Atty. Lometillo admitted that, at times, bank representatives would fail to bring the slips, and the probability that Patopaten forgot to remind them, was not remote.[27]

Explanation of other Respondents

In compliance with the above resolution of the Court, the other respondents submitted their respective Explanation denying participation in the anomalies uncovered by the audit team.[28]

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[23] *Id.* at 56.

[24] *Id.* at 54.

[25] *Id.* at 58.

[26] *Id.*

[27] *Id.* at 13.

[28] Explanation of Castillo, *id.* at 274-275; Explanation of Licanero, *id.* at 276; Explanation of Guides, *id.* at 278-287; Explanation of Patopaten, *id.* at 289-291.

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Patopaten averred that her position as Cashier II did not entail custody over the unaccounted receipts discovered by the audit team, as it was not her official task to accept payments from litigants and to issue receipts therefor. Her only responsibility was to receive remittance of collections from Castillo and Guides, and to see to it that the remitted amount tallied with the receipts issued. Patopaten issued receipts only when requested by Atty. Lometillo, or when Castillo and Guides were not around. She claimed that without a direct hand on collections, she had no knowledge of how the shortages came about. She likewise had no way of noticing, much less determining, the unreported collections on the part of her co-employees.

Licanero, on the other hand, explained that double withdrawals could not have possibly occurred because the vouchers she had prepared were scrutinized not just by Atty. Lometillo, but also by the Clerk of Court of the Executive Judge and the Executive Judge himself. Like Patopaten, she issued receipts only when Castillo and Guides were not around, and that she religiously remitted her collections to Atty. Lometillo on these occasions.

For her part, Castillo asserted diligence in turning over her collections to Atty. Lometillo and Patopaten, whom she claimed to be strict in going over the issued receipts. Guides, in turn, alleged that she was obliged by Atty. Lometillo to prepare the monthly reports of regular collections, under the direct supervision of Patopaten. Despite lack of bond, she was constrained to perform actual collection in the absence of Castillo, who was often designated as an "acting cashier," in the absence of Patopaten. She denied any malfeasance or misfeasance during her short stint as a cash clerk.

Recommendation of the OCA

In the Resolution[29] dated March 31, 2009, the Court adopted the recommendation of the OCA as follows:

1. This report be DOCKETED as a regular complaint against Atty. Magdalena L. Lometillo for violation of the 2002

[29] *Id.* at 265-269.

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Revised Manual for Clerks of Courts, Circular No. 50-95 dated October 11, 1995, Administrative Circular No. 3-2000 dated June 15, 2000 and OCA Circular No. 22-94 dated April 8, 1994 for: x x x

a. Initial shortages incurred in the Clerk of Court General Fund (CCGF), Special Allowance for the Judiciary Fund (SAJF), Judiciary Development Fund (JDF), Sheriff General Fund (SGF) and the Fiduciary Fund in the amount of ₱129,780.72, ₱405.00, ₱205.00, ₱62.00 and ₱1,690,858.42 respectively x x x;

x x x x x x x x x

2. Writ of Preliminary Attachment be ISSUED as security for the satisfaction of the shortages incurred x x x;

3. Retirement benefits of Atty. Magdalena L. Lometillo be FORFEITED and be APPLIED to the shortages incurred x x x;

4. For the purpose of appropriating the proceeds of retirement benefits of Atty. Magdalena L. Lometillo in order to refund/pay the shortages incurred x x x;

4.1 Employees Welfare and Benefits Division, OAS, OCA be DIRECTED to process the Application for Clearance of Atty. Magdalena Lometillo;

4.2 Financial Management Office, OCA be DIRECTED to process the terminal leave pay of Atty. Magdalena Lometillo dispensing with the usual documentary requirements and apply the same to the shortages x x x;

4.3 Government Service Insurance System be ORDERED to pay the Proceeds of the Retirement Benefits of Atty. Magdalena Lometillo in favor of the Supreme Court for the settlement of Atty. Lometillo's financial accountabilities

x x x x x x x x x

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5. Hon. Antonio M. Natino, Executive Judge, RTC, Iloilo (City) be DIRECTED to CONDUCT an investigation and SUBMIT a report and recommendation thereon within thirty (30) days from notice on the violations committed resulting to [the] misappropriation of judiciary funds by Atty. Magdalena L. Lometillo x x x.

Findings and Recommendation of Investigating Judge

After the investigation, Executive Judge Antonio M. Natino *(Judge Natino)* submitted his findings and recommendations to the OCA. In his first report, Judge Natino recommended a penalty of suspension of one (1) month and one (1) day with a stern warning against Patopaten, who was found guilty of Simple Neglect of Duty, as she clearly failed to give attention to a task expected of a court employee, to wit:

> Had she performed the functions and duties of Cashier II, or as she claimed to be, that Lenny Gemma Castillo and Linda Guides are designated to act as such xxx she could have checked the records such that these anomalies could have been avoided. Being the Cashier II, and granting there are issuing clerks, it is her obligation to safeguard the issuance of Official Receipts and the receipt of money as well."[30]

In the continuation of his report dated March 3, 2010, Judge Natino made the following findings:

a) The unreported collections found by the OCA audit team are reflected in the series of official receipts that were found as "unaccounted for." In effect, the missing 2,631 receipts, as found by the OCA audit team come from different branches of the Court. In other words, the loss of 2,631 pieces of receipts was made intentionally.

b) Guides, who had the highest number of issuance of unaccounted receipts, presented machine copies of her remittances. Upon examination, however, the machine copies do not show proof of remittance of the amounts to Castillo.

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[30] Report and Recommendation of Judge Natino, dated January 20, 2010.

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c) Guides admitted that, together with Linacero and Castillo, she handled the issuance of receipts and actual collection for the Fiduciary Fund.

d) If each of the respondents had properly carried out their duties and responsibilities, especially Guides who prepared monthly reports, irregularities could have been detected early.

Guides, Castillo and Linacero were all found guilty of Simple Neglect of Duty and were recommended to be meted out a penalty of suspension of six (6) months in accordance to Section 22, Rule XIV of the Omnibus Civil Service Rules and Regulations.

The Court's Ruling

No less than the Constitution mandates that "public office is a public trust." In a long line of cases, the Court has untiringly reminded employees involved in the administration of justice to faithfully adhere to their mandated duties and responsibilities. Whether committed by the highest official or by the lowest member of the workforce, any act of impropriety can seriously erode the people's confidence in the judiciary.[31] Thus, the Court does not hesitate to condemn and sanction such improper conduct, act or omission of those involved in the administration of justice that violates the norm of public accountability and diminishes or tends to diminish the faith of the public in the Judiciary.[32] Service with loyalty, integrity and efficiency is required of all public officers and employees, who must, at all times, be accountable to the people.

One such officer is the Clerk of Court, whose "administrative functions are vital to the prompt and sound administration of justice."[33] Next to the judge, the clerk of court is the chief

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[31] *Office of the Court Administrator v. Atty. Fermin M. Ofilas and Ms. Aranzazu V. Baltazar, Clerk of Court and Clerk IV, respectively, both of the RTC of San Mateo, Rizal,* A.M. No. P-05-1935, April 23, 2010.

[32] *Mendoza v. Mabutas,* A.M. No. MTJ-88-142, June 17, 1993, 223 SCRA 411.

[33] *Escañan v. Monterola II*, 404 Phil. 32, 39 (2001).

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administrative officer charged with preserving the integrity of court proceedings. A number of non-judicial concerns connected with trial and adjudication of cases is handled by the clerk of court, demanding a dynamic performance of duties, with the prompt and proper administration of justice as the constant objective. The nature of the work and of the office mandates that the clerk of court be an individual of competence, honesty and integrity.[34] The Clerks of Court perform a very delicate function as custodian of the court's funds, revenues, records, property and premises.[35] They wear many hats – those of treasurer, accountant, guard and physical plant manager of the court, hence, they are "entrusted with the primary responsibility of correctly and effectively implementing regulations regarding fiduciary funds"[36] and are thus, "liable for any loss, shortage, destruction or impairment of such funds and property."[37]

In this case, it appears that Atty. Lometillo utterly failed to perform her duties with the degree of diligence and competence expected of a clerk of court. The performance of one's duties in a perfunctory manner is never justified especially when reliance on employees of lower rank projects nothing else but gross inefficiency and incompetence.

First. Atty. Lometillo's convenient excuse for the missing copies of Official Receipt shows her blatant disregard for her responsibilities. She was unsure of whether the official receipts were placed in the boxes of records eaten by termites or were in the state of decomposition. Instead of presenting proof that she had taken steps to minimize the risk of losses, she conveniently passed on the blame, ignoring her serious lapses in the handling of the receipts. Atty. Lometillo was tasked by the 2002 Revised Manual for Clerks of Court to store or keep unused receipts in an

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[34] *Office of the Court Administrator v. Atty. Fermin M. Ofilas and Ms. Aranzazu V. Baltazar, Clerk of Court and Clerk IV, respectively, both of the RTC of San Mateo, Rizal, supra* note 31.

[35] *OCA v. Orbigo-Marcelo*, 416 Phil. 356, 364 (2001).

[36] *OCA v. Roque*, A.M No. P-06-2200, February 4, 2009, 578 SCRA 21, 26.

[37] *Id*.

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unlocked filing cabinet in the staff room of her office. Obviously, these safety measures were not undertaken. Atty. Lometillo eventually had to resort to empty surmises and guesswork when asked to explain about thousands of unaccounted official receipts. It was indeed unfortunate that a display of inefficiency like this could cause the judiciary so much without discounting the possibility of more unreported FF collections, and even unreported collection of legal fees.

Second. Jurisprudence is replete with reminders to Clerks of Court for an effective performance of their collection and deposit functions. The 2002 Manual for Clerks of Court and countless SC circulars likewise serve as clear guideposts, to wit:

> All fiduciary collections shall be **deposited immediately** by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank. In SC Circular 5-93, the Land Bank was designated as the authorized government depository. Court personnel tasked with collections of court funds, such as clerk of court and cash clerks, should **deposit immediately** with authorized government depositories the various funds they have collected because they are not authorized to keep funds in their custody. **Delayed remittance of cash collections constitutes gross neglect of duty because this omission deprives the court of interest that may be earned if the amounts are deposited in a bank.** In the same vein, clerks of court are required by SC Circular 13-92 to withdraw interest earned on deposits, and to remit the same to the account of the Judiciary Development Fund (JDF) within two (2) weeks after the end of each quarter.[38] [Emphases supplied]

In the same vein, Administrative Circular No. 3-2000, dated June 15, 2000, is emphatic in its command: "collections must be deposited everyday or if depositing daily is not possible, deposit for the fund shall be at the end of every month, provided however, that every time collections for the fund reach ₱500.00, the same shall be deposited immediately before the period above indicated."

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[38] *Office of the Court Administrator v. Atty. Fermin M. Ofilas and Ms. Aranzazu V. Baltazar, Clerk of Court and Clerk IV, respectively, both of the RTC of San Mateo, Rizal, supra* note 31.

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Here, Atty. Lometillo's performance was clearly wanting. The late deposit of collections, as found by the audit team, cannot be countenanced. The Court agrees with the OCA that Atty. Lometillo did not exert all available means to comply with the above directives, like negotiating with the depositary bank for an everyday pick-up service or requesting for police back-up in transporting deposits to the bank.[39]

Surely, no amount of convenience or expediency can justify Atty. Lometillo's excuse from making arrangements with the bank for a pick-up service, thrice a week. The rules are plain enough to command strict compliance. Atty. Lometillo's 42-year stint in office provides the Court a reasonable expectation that she was aware of the consequences that "delay in the remittances of collections constitutes neglect of duty."[40] Surely, her long service to the judiciary must have made her realize the effect of delayed deposit of collections: that the court is deprived of the interest that may be earned if the amounts are deposited in a bank.

Indeed, Atty. Lometillo should have imbibed her primary responsibility of correctly and effectively implementing regulations regarding fiduciary funds. "Safekeeping of funds and collections is essential to an orderly administration of justice, and no protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability for government funds."[41]

With more reason, the office's old practice of encashing postdated checks of employees is unacceptable, regardless of Atty. Lometillo's office memorandum which was issued later to prohibit the same. This merely shows dangerous laxity in her style of supervision over the staff.

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[39] *Rollo*, p. 17.

[40] *In-House Financial Audit, Conducted on the Books of Accounts of Khalil B. Dipatuan, RTC-Malabang, Lanao Del Sur,* A.M. No. P-06-2121, June 26, 2008, 555 SCRA 417, 423.

[41] *OCA v. Atty. Mary Ann Paduganan-Penaranda, Office of the Clerk of Court, Municipal Trial Court in Cities (MTCC) Cagayan de Oro, Misamis Oriental and Ms. Jocelyn Meidante,* A.M. No. P-07-2355, March 19, 2010.

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Third. Anent the forfeiture of PNB account balance of ₱9,957.46 for being a dormant account, the reasoning of the OCA is well-taken. The situation should have been avoided had Atty. Lometillo closed the account as required in Circular No. 50-95 dated October 11, 1995 and transferred the same to the Landbank, which is the authorized depository bank for the FF.[42] As much as the forfeited amount was not as considerable compared to the other amounts of shortages found by the audit team, this display of indifference pains the entire Judiciary.

Fourth. The explanation of Atty. Lometillo on the over withdrawal of interest income from the FF amounting to ₱455,114.14, likewise deserves scant consideration.

The Fiduciary Funds is composed of all collections from bail bonds, rental deposits and other fiduciary collections deposited with the Landbank. Just like any bank account, the Fiduciary Fund bank account earns interest. Generally, any increase of the account balance which is not a bail bond, rental deposit or other fiduciary collection is considered interest earned. Therefore, interest earned refers to interest income after deducting the withholding tax. Because of the withdrawal of the gross interest, the cash back-up for the bail bonds, rental deposits and other fiduciary collections still deposited with the court may not be enough to pay said deposits when the Court will order the release thereof.[43]

Atty. Lometillo's pretext of confusion over terms such as "net interest income" and "gross interest" and the supposed failure of the Court to clarify this ambiguity, cannot work in her favor. Time and again, clerks of court have been reminded that "lack or limited knowledge of accounting procedures does not exonerate them. To credit such defense would set similarly situated employees to lightly discharge their duty of employing reasonable skill and diligence and thus evade administrative liability."[44]

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[42] *Rollo*, p. 16.

[43] *Id.*

[44] *Supra* note 36.

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Fifth. The OCA correctly refused the deduction of withdrawals without supporting documents from Atty. Lometillo's accountabilities with respect to the Fiduciary Fund. The amount of ₱784,795.00 should be accounted for by Atty. Lometillo, with withdrawal slips signed by the Executive Judge and countersigned by the Clerk of Court, or with a lawful order from the Court that has jurisdiction over the subject matter involved.[45] Further, the original official receipt and a copy of the acknowledgment receipt are required. Without said requirements, Atty. Lometillo's claims that these were withdrawals of financial assistance from the Provincial Government of Iloilo for traveling expenses of employees, or consignation deposits, cannot stand. She never presented correct disbursement vouchers with attachments in the first place, further bolstering her ineptitude as the designated custodian of court funds.

The same applies with deposit slips of ₱3,788,269.12 and ₱6,253,484.79 to the General Fund and Judiciary Fund, respectively. These were rightly ignored by the OCA for lack of machine validation, a condition which certainly may not be excused by Atty. Lometillo's and her staff's failing memory.

Sixth. Atty. Lometillo "can not pass the blame for the shortages incurred to his/her subordinates who perform the task of handling, depositing, and recording of cash and check deposits xxx" for it is "incumbent upon the Clerk of Court to ensure his/her subordinates are performing his/her duties and responsibilities in accordance with the circulars on deposits and collections to ensure that all court funds are properly accounted for."[46]

It is evident in her Explanation that Atty. Lometillo preferred to shift responsibility over fund shortages to her administrative staff. With exoneration in mind, she desperately tried to convince the Court that she did everything possible to come up with a competent flow of functions in her office, but to no avail. Atty.

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[45] Circular No. 50-95 dated October 11, 1995.

[46] *Office of the Court Administrator v. Bernardino*, A.M. No. P-97-1258, January 31, 2009, 450 SCRA 89, 116.

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Lometillo, in fact, designated the other respondents to functions which she herself should have performed, or at least closely monitored, she was unmindful of her duty "to **personally** attend to the collection of the fees, the safekeeping of the money thus collected, the making of the proper entries thereof in the corresponding book of accounts, and the deposit of the same in the offices concerned."[47]

Her so-called office memoranda, apprising her co-employees of their tasks in handling the finances of the Court can only provide as much leverage in her favor, but surely, absolution for the fund shortages which ballooned over time, is not forthcoming.

In the recent case of *OCA v. Penaranda and Mediante*,[48] a Clerk of Court delegated the handling of the financial matters of the court to her "trustworthy" cashier including actual possession of court collections and issuance of receipts. Like Atty. Lometillo, the Clerk of Court claimed that "she signs the deposit slips every day, but whether or not all collections were actually deposited, she was unaware." The Court had this to say:

> While Peñaranda was not the custodian of the court's collection and she, instead, delegated said function to Mediante, still, **the expectation that she would perform all the duties and responsibilities of a Clerk of Court is not diminished**. Indeed, the fact that Mediante was the one tasked to deposit the court collections does not absolve Peñaranda from liability, since the duty to remit court collections remains with her as the clerk of court, albeit, in this case, she was supposed to monitor that the same was being carried out.
>
> x x x Both have been remiss in their duty to remit the collections within a prescribed period and are liable for keeping funds in their custody – Peñaranda as the one responsible for monitoring the court's financial transactions and Mediante as the one in whom such functions are reposed. Undoubtedly, Peñaranda and Mediante

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[47] *Office of the Court Administrator v. Atty. Jose R. Bawalan, Clerk of Court, Regional Trial Court, Branch 23, Trece Martires City*, A.M. No. P-93-945, March 24, 1994, 231 SCRA 408.

[48] A.M. No. P-07-2355, March 19, 2010.

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violated the trust reposed in them as disbursement officers of the judiciary. Thus, they should be held liable for the shortages mentioned above. [Emphasis supplied]

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Based on the foregoing findings, Atty. Lometillo had clearly failed to live up to the standards of competence and integrity expected of an officer of the court. Mediocrity is not at all fit for a member of a complement tasked to dispense justice. Her failure to exhibit administrative leadership and ability renders Atty. Lometillo guilty of negligence, incompetence and gross inefficiency in the performance of her official duty as Clerk of Court. Thus, the penalty of dismissal from service is proper considering her failure to exercise supervision over her administrative staff resulting in commission of blatant infractions against the Rules. In view of Atty. Lometillo's compulsory retirement, however, the imposition of accessory penalties, including the forfeiture of her retirement benefits, is justified.

With respect to the other respondents, the Court agrees with the recommendation of Judge Natino but with a modification of the penalty.

As found after investigation, Patopaten failed to exercise her general functions and duties,[49] as provided in the 2002 Manual for Clerks of Court. As the head of the Cash Division, Patopaten must have displayed heightened circumspection of the other employees' performance, specifically those of Castillo's and

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[49] 1) make physical deposit and withdrawals of cash as may be authorized by the Clerk of Court;

2) receives collection of cash clerks and consolidate daily collection reports;

3) prepares statements of cash accountability;

4) verifies cash balance of lower grade receiving cashiers by comparing cash on hand with book balance;

5) verifies the posting of cash advances, disbursement, collections and deposits;

6) prepares daily cash position reports and other monthly reports of collections and disbursements; and

7) does related work.

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Guides' who were in-charge of collection of payment from litigants. Patopaten must have been vigilant in the performance of her duties, not only to clear herself from fault, but more importantly, to prevent misappropriation of judiciary funds.

The same offense of simple neglect of duty was committed by Guides, Castillo and Licanero. Their individual pleas of innocence and blame-shifting are insufficient to cover up their shortcomings as shown by evidence. None of the three was able to offer a plausible explanation for the shortages, showing their indifference to the oaths they took as public servants. Undoubtedly, the Court does not, and will never, tolerate carelessness and apathy, all for the sake of efficient administration of justice.

The matter of these irregularities should not end with this disposition. The Court should act to recover the unaccounted shortages in the Clerk of Court General Fund (CCGF), the Special Allowance for the Judiciary Fund (SAJF), Judiciary Development Fund (JDF), Sheriff's General Fund (SGF), and Fiduciary Fund (FF). For this purpose, the OCA should institute the necessary action against the persons responsible in our courts of law.

And to minimize, if not eliminate, said irregularities in the future the OCA should expand the coverage of the check payment system in all cities and capital towns in the provinces.

WHEREFORE, judgment is hereby rendered as follows:

(1) Atty. Magdalena L. Lometillo, former Clerk of Court, Regional Trial Court, Iloilo City is hereby found *GUILTY* of gross inefficiency and gross neglect of duty. Her retirement benefits, except her terminal leave pay, are ordered *FORFEITED*. Further, she is *DISQUALIFIED* from re-employment in any branch or instrumentality in the government, including government-owned and controlled corporations.

(2) Cashier II Victoria S. Patopaten, Administrative Officer I Linda C. Guides, Clerk III Leny Gemma P. Castillo, and Clerk III Brenda M. Linacero are hereby found

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GUILTY of Simple Neglect of Duty. They are ordered *SUSPENDED* from office for three (3) months effective immediately upon their receipt of this decision. They are likewise *STERNLY WARNED* that a repetition of the same or similar offense shall be dealt with more severely.

(3) Executive Judge Antonio M. Natino is *DIRECTED* to *CLOSELY MONITOR* the financial transactions of his court and to *STUDY* and *IMPLEMENT* procedures that would strengthen internal control over financial transactions.

(4) The Office of the Court Administrator is hereby ordered to institute the necessary actions against the persons responsible in our courts of law for the recovery of the unaccounted shortages in the Clerk of Court General Fund (CCGF), the Special Allowance for the Judiciary Fund (SAJF), Judiciary Development Fund (JDF), Sheriff's General Fund (SGF), and Fiduciary Fund (FF).

(5) The Office of the Court Administrator is hereby ordered to expand the coverage of the check payment system in all cities and capital towns in the provinces.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Mendoza, and *Sereno, JJ.,* concur.

Perez, J., no part.