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[A.M. No. P-10-2765. September 13, 2011]
(Formerly A.M. No. 09-11-199-MCTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **EVELYN G. ELUMBARING, Clerk of Court II, 1st Municipal Circuit Trial Court, Carmen-Sto. Tomas-Braulio E. Dujali, Davao del Norte,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; CLERKS OF COURT; DUTY-BOUND TO PERFORM THEIR DUTIES AND RESPONSIBILITIES WITH FULL COMPLIANCE AS CUSTODIANS OF THE COURT'S FUNDS, REVENUES, RECORDS, PROPERTIES AND PREMISES.— Clerks of Court perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises. As such, they are generally regarded as treasurer, accountant, guard and physical plant manager thereof. It is the Clerks of Court's duty to faithfully perform their duties and responsibilities as such "to the end that there was full compliance with function, that of being the custodians of the court's funds and revenues, records, properties and premises. They are the chief administrative officers of their respective courts. It is also their duty to ensure that the proper procedures are followed in the collection of cash bonds. Thus, their failure to faithfully perform their duties make them liable for any loss, shortage, destruction or impairment of such funds and property.

2. ID.; ID.; ID.; ID.; ID.; ADMINISTRATIVE CIRCULAR NO.3-2000; COMMANDS THAT ALL FIDUCIARY COLLECTIONS SHALL BE DEPOSITED IMMEDIATELY WITH AN AUTHORIZED GOVERNMENT DEPOSITORY BANK; VIOLATED BY FREQUENT DELAY IN REMITTING COURT COLLECTIONS.— Elumbarings frequent delay in remitting court collections was in complete violation of Administrative Circular No. 3-2000 dated June 15, 2000 which commands that all fiduciary collections shall

Supreme Court E-Library

be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank.

3. ID.; ID.; ID.; ID.; ID.; MANDATORY NATURE OF CIRCULARS ON DEPOSITS OF COLLECTIONS; CANNOT BE OVERRIDEN BY PROTESTATION OF GOOD FAITH.— The [c]irculars on deposits of collections are mandatory in nature, designed to promote full accountability for government funds and no protestation of good faith can override such mandatory nature. Failure to observe these Circulars resulting to loss, shortage, destruction or impairment of court funds and properties makes Elumbaring liable thereto.

4. ID.; ID.; ID.; DISHONESTY; CLASSIFIED AS A GRAVE OFFENSE; PENALTY IS DISMISSAL EVEN FOR THE FIRST OFFENSE.— Under Section 22 of Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, Dishonesty is classified as a grave offense. The penalty for this offense is dismissal even for the first offense.

D E C I S I O N

PER CURIAM:

This administrative matter stemmed from the financial audit of the books of accounts of the Municipal Circuit Trial Court (MCTC), Carmen-Sto. Tomas–Braulio E. Dujali, Davao Del Norte conducted by the Audit Team (Team) of the Court Management Office, Office of the Court Administrator (OCA) on November 18, 2008. The audit covered the accountability period of Clerk of Court Evelyn G. Elumbaring (Elumbaring), Clerk of Court II, from May 1985 to October 31, 2008.

The audit was prompted by the Commission on Audit's Audit Observation Memorandum dated May 25, 2007 which showed that Elumbaring has failed to submit financial reports since March 2006.[1]

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[1] *Rollo*, p. 1.

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During the Team's preliminary cash count, it revealed an initial cash shortage of ₱90,719.00; thus, the Team proceeded with a more detailed examination of the books of accounts.[2]

Based on the available documents, the audit report yielded the following results:[3]

I. Cash Examination and Inventory of Accountable Forms
A. Cash Count

x x x x x x x x x

Total Cash on Hand presented ₱ 40,020.00
Less: Total Undeposited Collections ₱ 113,739.00
- SAJF (for periods June- Nov. 18, 2008) – (₱54,472.60)
- JDF (for periods August-November 18, 2008) – (₱22,051.40)
- FF (for periods November 3-18, 2008) – (₱21,000.00)
- STF (for periods June–November 18, 2008) – (₱16,000.00)
- LRF (for periods August-November 18, 2008) – (₱215.00)

Cash on Hand- for Refund to Cashbonds to parties in -
CC # 10359-08 OR# 8065563 ₱ 2,000.00
CC # 9851-05 OR # 4363475 ₱15,000.00 ₱ 17,000.00

Balance of Accountability – shortage ₱ ***90,719.00***

II. For the Clerk of Court's General Fund (COCGF), Special Allowance for the Judiciary Fund (SAJF), Judiciary Development Fund (JDF) and Mediation Fund (MF):

	COGF 01/01/96 - 11/10/03	SAJF 11/11/03 - 10/31/08	JDF 05/01/85 - 10/31/08	MF 11/01/03 – 10/31/08
Total Collections	₱164,546.50	₱ 180,760.97	₱ 933,874.88	₱ 57,000.00
Total Deposits	₱164,716.50	₱ 27,404.50	₱ 843,296.65	₱ 55,500.00
Balance	₱ (170.00)	₱ 153,356.47	₱ 90,578.23	₱ 1,500.00
Less: Deposit in Transit - 11/05/08				₱ 1,500.00
Balance of Accountability	**₱ (170.00)**	**₱ 153,356.47**	**₱ 90,578.23**	**₱ 0.00**

[2] *Id.*

[3] *Id.*

Supreme Court E-Library

III. For the Trust Fund Deposits:

Unwithdrawn Fiduciary Fund as of October 31, 2008	₱ 886,918.00
Total Collections (Sept. 2002-Oct. 2008) –	₱ 3,363,518.00
Less: Total Withdrawals (same period) -	₱ 2,476,600.00
Unwithdrawn Fiduciary Fund as of October 31, 2008:	(₱ 886,918.00)
Adjusted Bank Balance as of October 31, 2008	801,377.55
Adjusted Bank Balance as of October 31, 2008	
LBP S/A No. 1741-1010-72	
Bank Balance as of October 31, 2008	₱ 816,102.62
Less: Unwithdrawn Interest	14,725.07
Adjusted Bank Balance as of October 31, 2008:	(₱ 801,377.55)
Balance of Accountability	***₱ 85,540.45***

IV. Delay in the remittances:

Fund	Date of Collections	Date Deposited	No. of Months of Delay
GF	December 1996-July 1998	July 1998	6 months
	September-October 1998	Nov. 1998	2 months
	December 1999-April 2000	June 2000	6 months
	May 2000- February 2001	March 2001	9 months
	Nov. 2001-December 2001	April 2002	4 months
	January 2002- March 2003	April 2003	14 months
	April 2003-November 2003	Dec. 2003	7 months
SAJ	December 2003-July 2004	August 2004	8 months
Fund	Sept. 2004-February 2005	February 2005	5 months
	September 2005-January 2006	January 2006	3 months
	June 2006	July 2006	1 month
	February 2007-April 2007	May 2007	2 months
	July 2007-October 2007	Not deposited	
	December 2007-January 2008	Not deposited	
	April 2008	Not deposited	
	June 2008-October 2008	Not deposited	
JDF	August 1991-July 1993	August 1993	22 months

Supreme Court E-Library

	April 2000-August 2000	Dec. 2000	8 months
	Sept. 2000-February 2001	March 2001	5 months
	November-Dec. 2001	April 2002	4 months
	Jan 2002-March 2003	May 2003	15 months
	April 2003-Sept. 2003	Dec. 2003	4 months
	October 2003-July 2004	August 2004	9 months
	Sept 2007-Jan. 2008	February 2008	4 months
	August 2008-Oct. 2008	Not deposited	

The Team discovered that the computed shortages in the SAJF and JDF amounting to ₱153,356.47 and ₱90,578.23, respectively, resulted from the accumulated non-remittance of these collections. Moreover, the official cashbooks for these funds disclosed that the last remittances made by Elumbaring for SAJF and JDF were for the months of July 2008 and August 2008, respectively, and the same do not tally with the actual balance of her undeposited collections.[4]

The Team observed that Elumbaring engaged in the practice of lapping[5] collection and remittances. The JDF collections were not deposited in full. Likewise, the collections were deposited beyond the reglementary period prescribed in court-issued circulars. In fact, most of her collections were deposited only after two or three months.[6]

Moreover, the Team also discovered that Elumbaring withdrew cash bonds upon issuance of a court order, but failed to refund the same to the bondsman or accused and, instead, kept in her possession for 20 days or more. It appeared that Elumbaring did not release the same due to the bondsman's/accused's failure to either show up or produce valid identification cards. The Team, however, concluded that Elumbaring's continuous

[4] *Id.* at 2.

[5] Lapping: a covering of a current cash shortage by deferring the deposit of funds received until a later date. (Webster Third New International Dictionary, 1986 Copyright, p. 1272)

[6] *Id.* at 2.

Supreme Court E-Library

possession of the withdrawn bonds for a long period of time, without even redepositing the same to the court's fiduciary fund account and with no safety vault for proper safekeeping, showed that she had, at the very least, temporarily appropriated said money for personal use.[7]

In her Explanation, Elumbaring disputed the Team's findings, yet submitted machine-validated deposit slips showing that the shortages in the JDF and SAJF amounting to ₱90,578.23 and ₱153,356.47 were duly deposited on November 28, 2008.[8]

Futhermore, to restitute the computed shortages of Eighty-Five Thousand Five Hundred Forty Pesos and 45/100 (₱85,540.45) in the Fiduciary Fund, Elumbaring deposited the amounts of ₱21,000.00 and ₱50,000.00, on November 19 and 28, 2008, respectively. Thus, only the amount of ₱14,540.45 remained in her balance of accountability.[9]

In a Memorandum dated February 2, 2009, Elumbaring was directed to: (1) explain why no administrative charges shall be filed against her for her failure to remit the JDF and SAJF collections in full and within the reglementary period; (2) submit valid documents to support the withdrawals of the unauthorized withdrawals amounting to ₱995,200,00, or otherwise restitute the same; and (3) restitute the balance of her accountability in the Court's Fiduciary Fund amounting to ₱14,540.45.

In her Compliance, Elumbaring admitted that she failed to remit her judiciary collections in full within the reglementary period and acknowledged that she had no legitimate excuse for such failure. She, however, claimed that there is no Land Bank Branch in Carmen, Davao Del Norte; the nearest LBP is located in Panabo City, which is 6 kms or approximately 30 minutes away from MCTC Carmen, Davao Del Norte.

Elumbaring likewise argued that she does not know how to operate a computer and relied on the court personnel to do the

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[7] *Id.* at 15.

[8] *Id.* at 27.

[9] *Id.* at 28.

Supreme Court E-Library

financial reports. She also claimed that it was not stated in her job description as clerk of court that she will act as the "financial accountable officer." She said that if she had known earlier, she would not have applied for the position as she knew she was not suited for that kind of work.[10]

Thus, in a Memorandum to the Chief Justice, dated November 11, 2009, the OCA found Elumbaring guilty of Dishonesty and Malversation of Public Funds for her failure to deposit her collections within the prescribed period and, accordingly, recommended her dismissal from the service.

The OCA confirmed that Elumbaring already submitted valid documents to support the unauthorized withdrawals of cash bonds amounting to ₱995,200,00. Likewise, the aggregate amount of ₱329,475.15 consisting of: ₱85,540.45 for the Fiduciary Fund, ₱153,356.47 for the SAJF, and ₱90,578.23 for JDF have already been deposited on November 19 and 28, 2008, respectively. On April 6, 2009, she deposited the shortage of ₱14,540.45 to the Fiduciary Fund.[11] In sum, the OCA manifested that Elumbaring was able to restitute the whole amount of her accountabilities in the court collections.[12]

On January 27, 2010, as recommended by the OCA, the Court resolved to:

(1) REDOCKET this matter as a regular administrative case against Evelyn G. Elumbaring, Clerk of Court II, MCTC, Carmen-Sto. Tomas-Braulio E. Dujali, Davao Del Norte, for gross dishonesty and malversation of public funds;

(2) REQUIRE Clerk of Court Elumbaring to MANIFEST whether she is willing to submit the case for decision on the basis of the pleadings/records already filed and submitted, within ten (10) days from notice; and

(3) DIRECT Hon. Evalyn Arellano-Morales, Presiding Judge, MCTC, Carmen-Sto. Tomas-Braulio E. Dujali, Davao Del Norte, to:

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[10] *Id.* at 5.

[11] *Id.* at 29.

[12] *Id.* at 5.

Supreme Court E-Library

(a) DESIGNATE a competent and honest Officer-in-Charge to handle effectively the financial transactions of the court to avoid repetition of dissipation of the court funds;

(b) STUDY and IMPLEMENT an effective internal control to safeguard and handle effectively the financial transaction of the court;

(c) MONITOR all financial transactions of the court in strict adherence to the issuances of the Supreme Court in the proper handling of all judiciary funds to avoid the incurrence of infractions committed by Clerk of Court Elumbaring.

In her Manifestation dated March 30, 2010, respondent Elumbaring admitted that she committed the irregularities discovered during the audit and asked forgiveness from the Court. She claimed that she was able to restitute the whole amount. She then begs the Court for leniency and compassionate justice, and that she be allowed to retire or resign instead.

On July 21, 2010, the Court considered the instant complaint submitted for resolution on the basis of the pleadings/records already filed as required in the Resolution dated January 27, 2010.

RULING

Clerks of Court perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises. As such, they are generally regarded as treasurer, accountant, guard and physical plant manager thereof.[13] It is the Clerks of Court's duty to faithfully perform their duties and responsibilities as such "to the end that there was full compliance with function, that of being the custodians of the court's funds and revenues, records, properties and premises.[14] They are the

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[13] *Re: Misappropriation of the Judiciary Fund Collections by Juliet C. Banag, Clerk of Court, MTC, Plaridel, Bulacan*, 465 Phil. 24, 34 (2004).

[14] *Office of the Court Administrator v. Fortaleza*, 434 Phil. 511, 522 (2002), citing *Office of the Court Administrator v. Bawalan*, A.M. No. P-93-945, March 24, 1994, 231 SCRA 408 and *Office of the Court Administrator v. Galo*, A.M. No. P-93-989, September 21, 1999, 314 SCRA 705.

Supreme Court E-Library

chief administrative officers of their respective courts. It is also their duty to ensure that the proper procedures are followed in the collection of cash bonds. Thus, their failure to faithfully perform their duties make them liable for any loss, shortage, destruction or impairment of such funds and property.[15]

There is no question as to Elumbaring's guilt as she herself admitted her transgressions. The records speak for itself, as it was clearly shown that: (1) she had been remiss in the submission of her financial reports since March 2006 which violated OCA Circular No. 54-2004 and OCA No. 50-95; (2) she failed to immediately remit court collections pertaining to SAJF and JDF, amounting to ₱153,356.47 and ₱90,578.23, respectively, which resulted to shortages and untallied court collections; (3) she had repeatedly engaged in the practice of *lapping* to cover up the misuse of court collections; (4) she failed to deposit the court collections within the reglementary period as most of her collections were deposited only after two or three months; and (4) she failed to immediately refund the cash bonds to the bondsman/accused even after its withdrawal, or deposit the same to the Fiduciary Fund.

Elumbaring's frequent delay in remitting court collections was in complete violation of Administrative Circular No. 3-2000 dated June 15, 2000 which commands that all fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank. The procedural guidelines of this Circular provide:

II. Procedural Guidelines

A. Judiciary Development Fund

x x x x x x x x x

3. Systems and Procedures.

x x x x x x x x x

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[15] *OCA v. Caballero*, A.M. No. P-05-2064, March 2, 2010, 614 SCRA 21, 38.

Supreme Court E-Library

c. In the RTC, MeTC, MTCC, MTC, MCTC, SDC and SCC. – **The daily collections for the Fund in these courts shall be deposited everyday with the nearest LBP branch for the account of the Judiciary Development Fund, Supreme Court, Manila – SAVINGS ACCOUNT NO. 0591-0116-34 or if depositing daily is not possible, deposits for the Fund shall be at the end of every month, provided, however, that whenever collections for the Fund reach ₱500.00, the same shall be deposited immediately even before the period above-indicated.**

x x x **x x x** **x x x**

Collections shall not be used for encashment of personal checks, salary checks, *etc.* x x x

x x x x x x x x x

B. General Fund (GF)

(1.) Duty of the Clerks of Court, Officer-in-Charge or Accountable Officers.—The Clerks of Court, Officers-in-Charge of the Office of the Clerk of Court, or their accountable duly authorized representatives designated by them in writing, who must be accountable officers, shall receive the General Fund collections, issue the proper receipt therefor, **maintain a separate cash book properly marked CASH BOOK FOR CLERK OF COURT'S GENERAL FUND AND SHERIFF'S GENERAL FUND, deposit such collections in the manner herein prescribed, and render the proper Monthly Report of Collections and Deposits for said Fund**.

x x x (Emphasis ours)

These Circulars are mandatory in nature, designed to promote full accountability for government funds and no protestation of good faith can override such mandatory nature. Failure to observe these Circulars resulting to loss, shortage, destruction or impairment of court funds and properties makes Elumbaring liable thereto.

We will reiterate anew that it is the duty of clerks of court to perform their responsibilities faithfully, so that they can fully comply with the circulars on deposits of collections. They are reminded to deposit immediately, with authorized government

Supreme Court E-Library

depositories, the various funds they have collected because they are not authorized to keep those funds in their custody. The unwarranted failure to fulfill these responsibilities deserves administrative sanction and not even the full payment of the collection shortages will exempt the accountable officer from liability.

Likewise, the practice of respondent in offsetting her collection is not allowed under accounting and auditing rules and regulations.[16] By failing to properly remit the cash collections constituting public funds, she violated the trust reposed in her as disbursement officer of the Judiciary. Likewise, her claim that she did not know that she is the accountable officer for the court collections does not convince Us. Clerks of Court are presumed to know their duty to immediately deposit with the authorized government depositories the various funds they receive, for they are not supposed to keep funds in their personal possession. Her failure to deposit the said amount upon collection was prejudicial to the court, which did not earn interest income on the said amount or was not able to otherwise use the said funds.[17]

Under Section 22 of Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, Dishonesty is classified as a grave offense. The penalty for this offense is dismissal even for the first offense.[18]

Time and time again, this Court has stressed that those charged with the dispensation of justice – from the presiding judge to the lowliest clerk – are circumscribed with a heavy burden of responsibility. Their conduct, at all times, must not only be characterized by propriety and decorum, but above

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[16] *Soria v. Oliveros*, 497 Phil. 709, 724 (2005).

[17] See *Report on the Financial Audit Conducted on the Books of Accounts of Mr. Agerico P. Balles, MTCC-OCC, Tacloban City*, A.M. No. P-05-2065, April 2, 2009, 583 SCRA 50, 61.

[18] *Id.*

Supreme Court E-Library

all else, must be beyond suspicion. Every employee should be an example of integrity, uprightness and honesty.[19] Thus, this Court has not hesitated to impose the ultimate penalty on those who have fallen short of their accountabilities.

WHEREFORE, respondent *EVELYN G. ELUMBARING*, Clerk of Court II, MCTC, Carmen-Sto. Tomas-Braulio E. Dujali, Davao Del Norte, is hereby found *GUILTY* of *DISHONESTY*. She is ordered *DISMISSED* from the service with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to re-employment in the government, including government-owned or controlled corporations.

SO ORDERED.

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

del Castillo and *Reyes, JJ.,* are on leave.

Perez, J., no part. Acted as Court Administrator.

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[19] *In Re: Report of COA on the Shortage of the Accountabilities of Clerk of Court Lilia S. Buena, MTCC, Naga City*, 348 Phil. 1, 9 (1998); *In Re: Delayed Remittance of Collections of Odtuhan*, 445 Phil. 220, 224 (2003); *Office of the Court Administrator v. Galo*, 373 Phil. 483, 490 (1999); *Cosca v. Palaypayon*, A.M. No. MTJ-92-721, September 30, 1994, 273 SCRA 249, 269.