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EN BANC

[A.M. No. P-06-2287. October 12, 2010]
(Formerly A.M. No. 06-11391-MTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **MARCELA V. SANTOS, CLERK OF COURT II, MUNICIPAL TRIAL COURT, SAN LEONARDO, NUEVA ECIJA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; PUBLIC OFFICERS; ABSENCE WITHOUT LEAVE; CASE AT BAR.— To date, the Court is not aware of the whereabouts of respondent who failed to comply with the Court's Resolution of October 8, 2007. She was last heard on March 7, 2007 when she filed her March 7, 2007 explanation, pertinent portions of which were quoted above.

2. ID.; CONSTITUTIONAL LAW; JUDICIARY; SUPREME COURT; ADMINISTRATIVE SUPERVISION OVER LOWER COURTS; ADMINISTRATIVE CHARGE AGAINST LOWER COURT PERSONNEL; WHEN CONSIDERED SUBMITTED FOR DECISION; CASE AT BAR.— Acting on the March 29, 2010 Memorandum of the OCA, the Court, by Resolution of July 28, 2010, resolved to determine the liabilities of respondent on the basis of the records.

3. ID.; ID.; ID.; ID.; ID.; ID.; FINDINGS OF FACT; CASE AT BAR.— The Court finds that, indeed, respondent failed to *regularly* submit monthly reports of collections and deposits, as required by SC Circular No. 32-93, and official receipts and other documents, despite this Court's repeated orders.

4. ID.; ID.; ID.; ID.; ID.; ID.; THE FAILURE TO REMIT THE FUNDS IN DUE TIME AMOUNTS TO DISHONESTY AND GRAVE MISCONDUCT; CASE AT BAR.— In incurring shortage of accountabilities in the amount of ₱326,900, respondent is guilty of gross dishonesty and grave misconduct. "[N]o position demands greater moral righteousness and uprightness from the occupant than does the judicial office.

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The safekeeping of funds and collections is essential to the goal of an orderly administration of justice, and protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability for government funds. The failure to remit the funds in due time amounts to dishonesty and grave misconduct, which the Court cannot tolerate for they diminish the people's faith in the judiciary. The act of misappropriating judiciary funds constitutes dishonest and grave misconduct which are punishable by dismissal from the service even if committed for the first time.

5. ID.; PUBLIC OFFICERS; JUDICIARY; CLERK OF COURT; ACCOUNTABLE FOR THE COURT'S MONEY.— It can never be overemphasized that a clerk of court, like respondent, is responsible for court records and physical facilities of the court and is accountable for the court's money and property deposits, following Section B, Chapter 1 of the 1991 Manual for Clerks of Court and 2002 Revised Manual for Clerks of Court.

6. ID.; CONSTITUTIONAL LAW; CONSTITUTIONAL COMMISSIONS; CIVIL SERVICE COMMISION; ADMINISTRATIVE CASES CONCERNING GOVERNMENT PERSONNEL; REVISED UNIFORM RULES ON ADMINISTRATIVE CASES; GROSS MISCONDUCT AND DISHONESTY; PENALTY.— Under Section 23 of Rule XIV of the Omnibus Rules implementing Book V of Executive Order 292 and other pertinent Civil Service Laws, gross misconduct and dishonesty are both punishable by DISMISSAL from the service.

D E C I S I O N

***PER CURIAM*:**

The Financial Audit Team of the Office of the Court Administrator (OCA) conducted an audit at the Office of the Clerk of Court (OCC), Municipal Trial Court (MTC), San Leonardo, Nueva Ecija covering the accountability period from April 1, 1997 to May 31, 2006 of Marcela V. Santos, Clerk of Court II (respondent).

The audit team came up with the following findings:

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I. MISSING OFFICIAL RECEIPTS[1]

1. SC O.R. No. I-799-2001-799050
2. SC O.R. No. II-7992051-7992100
3. SC O.R. No. IV-21701401-21701450

II. UNSUBMITTED MONTHLY REPORTS OF COLLECTIONS AND DEPOSITS[2]

For Fiduciary Fund	May 2003 to June 2003;
	October 2003 to March 2006
For SAJ	November 2004 to March 2006
For JDF	March 2003
	November 2003 to March 2006

III. GENERAL FUND (CoCGF)[3]

Total Collections – January 1, 1998 to November 10, 2003	₱	26,830.40
Total Deposit – January 1, 1998 to November 10, 2003		26,827.40
Balance – Shortage	₱	**3.00**

IV. SPECIAL ALLOWANCE FOR THE JUDICIARY FUND[4]

Total Collections November 11, 2003 to May 31, 2006	₱	10,066.80
Total Deposit November 11, 2003 to May 31, 2006		10,642.80
Balance – Shortage	₱	**19,424.00**

V. JUDICIARY DEVELOPMENT FUND (JDF)[5]

Total Collections – June 1, 1997 to May 31, 2006	₱	87,185.00
Total Deposit – June 1, 1997 to May 31, 2006		60,503.80
Balance – Shortage	₱	**26,681.20**

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[1] *Rollo*, p. 6.

[2] *Ibid.*

[3] *Ibid.*

[4] *Ibid.*

[5] *Id.* at 7.

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VI. FIDUCIARY FUND[6]

Beginning Balance per SUFF date June 19, 1997	₱	56,600.00
Add: Total Collections for April 1, 1997 to May 31, 2006		452,600.00
Less: Total Withdrawals for April 1, 1997 to May 31, 2006		178,100.00
Total Unwithdrawn Fiduciary Fund as of May 31, 2006	₱	331,100.00
Bank Balance as of May 31, 2006		7,614.65
Less: Unwithdrawn Interest (net of tax 603.70)		2,414.65
Adjusted Bank Balance as of May 31, 2006		5,200.00
Unwithdrawn Fiduciary Fund as of May 31, 2006		331,100.00
Adjusted Bank Balance as of May 31, 2006		5,200.00
Balance of Accountability – Shortage	**₱**	**325,900.00**

VII. UNSUPPORTED WITHDRAWN CASH BOND[7]

Case No.	Name of Litigants	Documents Lacking
84/85-94	Amelia Vallarta	Acknowledgment Receipt
12-95	Francisco Ingal	Court Order
92-99	Eric Garcia	Acknowledgment Receipt
		Court Order
104-00	Zoilo Ngo	Acknowledgment Receipt
11-03	Nida Manaois	Acknowledgment Receipt

VIII. EARNED INTEREST FROM SAVINGS ACCOUNT No. 1531-0427-23 NOT YET TRANSFERRED TO THE JDF ACCOUNT[8]

PERIOD COVERED	GROSS INTEREST	WITHHOLDING TAX	NET INTEREST
30-Jun-99	4.56	0.91	3.65
30-Sep-99	5.23	1.05	4.18
31-Dec-99	-		-
31-Mar-00	52.39	10.48	41.91
30-Jun-00	179.86	35.97	143.89

[6] *Id.* at 7.

[7] *Id.* at 8.

[8] *Ibid.*

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30-Sep-00	209.52	41.90	167.62
31-Dec-00	210.38	42.08	168.30
31-Mar-01	206.65	41.33	165.32
30-Jun-01	209.78	41.96	167.82
30-Sep-01	188.74	37.75	150.99
31-Dec-01	179.98	36.00	143.98
31-Mar-02	130.68	26.14	104.54
30-Jun-02	107.16	21.43	85.73
30-Sep-02	65.29	13.06	52.23
31-Dec-02	65.42	13.08	52.34
31-Mar-03	136.33	27.27	109.06
30-Jun-03	207.93	41.59	166.34
30-Sept-03	195.54	39.11	156.43
31-Dec-03	146.77	29.35	117.42
31-Mar-04	123.94	24.79	99.15
30-Jun-04	92.38	18.48	73.90
30-Sep-04	87.84	17.57	70.27
31-Dec-04	88.03	17.61	70.42
31-Mar-05	88.54	17.71	70.83
30-Jun-05	29.29	5.86	23.43
30-Sep-05	6.12	1.22	4.90
31-Dec-05	-	-	-
31-Mar-06	-	-	-
TOTAL	**₱ 3,018.35**	**₱ 603.70**	**₱ 2,414.65**

IX. PHILIPPINE MEDIATION FUND[9]

Total Collections – August 1, 2004 to May 31, 2006	₱	10,000.00
Total Deposit – August 1, 2004 to May 31, 2006		250.00
Balance – Shortage	**₱**	**9,750.00**

X. SUMMARY OF TOTAL ACCOUNTABILITY[10]

For General Fund	₱	3.00
For Special Allowance for the Judiciary Fund		19,424.00
For Judiciary Development Fund		26,681.20
For Philippine Mediation Fund		9,750.00
For Sheriff Trust Fund/Process Server's Fee		1,000.00
For Fiduciary Fund	₱	325,900.00
TOTAL	₱	**382,758.20**

[9] *Id.* at 9.

[10] *Ibid.*

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Acting on the report and recommendation of the OCA, the Court, by Resolution of January 15, 2007,[11] resolved to

1. **REDOCKET** the instant report as regular administrative complaint against Mrs. Marcela V. Santos, Clerk of Court II, Municipal Trial Court, San Leonardo, Nueva Ecija;

2. **DIRECT** Clerk of Court Marcela V. Santos, within ten (10) days from notice, to:

    a. RESTITUTE the amount of ₱325,900.00 and ₱1,000.00 representing her balance of accountability for Fiduciary Fund and Sheriff Trust Find/Process Server's Fee, respectively;

    b. WITHDRAW the interest earned on deposits of Fiduciary Fund in the total amount of ₱2,414.65, deposit the same to the account of the JDF, and submit to the Fiscal Monitoring Division, Court Management Office, OCA, the machine validated deposit slip relative thereto; and

    c. SUBMIT to the Fiscal Monitoring Division, Court Management Office, OCA, the original copies of the 3 booklets of unaccounted Official Receipts.

3. **SUSPEND** Clerk of Court Marcela V. Santos from the service pending resolution of the administrative matter;

4. **DIRECT** Acting Collecting Officer Ms. Leonida A. Ladisla to strictly comply with all courts circulars and issuances in the proper handling of Judiciary Funds; and

5. **DIRECT** Hon. Rixon M. Garong, Presiding Judge, to study and implement procedures that will strengthen the internal control over cash transactions of the court.

x x x[12] (emphasis in the original; underscoring supplied)

In her March 7, 2007 explanation,[13] respondent stated:

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[11] *Id.* at 23-24.

[12] *Ibid.*

[13] *Id.* at 51-53.

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x x x x x x x x x

3. With much apologies, the undersigned is very sorry for the problem of shortages and lost receipts. However, she is not to be blamed in the incident because the same were brought about by the flood caused by numerous typhoons that devastated their province in the year 1998 and 2004;

4. To prove and clear all her accountabilities, the undersigned will be presenting documents, records and other evidence to give light to the shortages. However, if the same does not satisfactorily cover the whole amount of ₱325,900.00 for Fiduciary Fund and ₱1,000.00 for Sheriff Trust Fund/Process Server's Fee, she will pay the remaining shortages;

5. As to the original copies of the three (3) booklets of unaccounted Official Receipts, undersigned failed to retrieve all the receipts, after the same were destroyed by flood caused by typhoon. However, she will be presenting all the receipts she had successfully retrieved and will present certifications from those who posted cashbonds that they had released and released the same;

x x x (underscoring supplied)

The OCA, by Memorandum of August 22, 2007,[14] thereupon evaluated the complaint as follows:

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Based on the Report dated November 14, 2006, of the OCA Audit Team, respondent Santos' summary of accountabilities is as follows:

General Fund	₱ 3.00
Special Allowance for the Judiciary Fund (SAJF)	19,424.00
Judiciary Development Fund (JDF)	26,681.20
Philippine Mediation Fund	9,750.00
Sheriff Trust Fund/Process Server's Fee	1,000.00
Fiduciary Fund	325,900.00
Total	**₱ 382,758.20**

The General Fund shortage was restituted by respondent on July 21, 2006.

[14] *Id.* at 60-65.

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The SAJF shortage of ₱19,424.00 was the result of respondent's failure to remit her collections from April 2005 to May 2006, **in violation of** Amended Administrative Circular No. 35-2005. The amount was restituted by respondent on July 17, 2006.

The JDF's shortage corresponds to respondent's collections of said account for the period November 2003 to March 2006. Respondent restituted the amount on July 17, 2006.

The last entry in the Mediation Fund cashbook was for the month of November 2004 and the court's file of Monthly Reports of Collections and Deposit for the said fund was for October 2004 only. Evidently, the financial records of the Mediation Fund was taken for granted in violation of A.M. No. 01-10-5-SC-PHILJA. Respondent restituted the ₱9,750.00 shortage on July 17, 2006.

Only one process server's fee in the amount of ₱1,000.00 was collected by respondent based on the official receipt issued for the said account. The OR used by respondent was for the Mediation Fund Account.

The Fiduciary Fund shortage of ₱325,900.00 was also the result of respondent's **failure to deposit her collections** of said account **in violation of Circular NO. 13-92**, which mandates the Clerks of Courts concerned to deposit, with an authorized government depositary bank, immediately or within 24 hours upon receipt of all collections from bail bonds, rental deposits and other fiduciary collections. Respondent failed to comply with said directive despite the fact that the court's depositary bank is in Gapan City, Nueva Ecija which is less than an hour from the MTC, San Leonardo, Nueva Ecija.

The audit team also observed that the cash bonds for the following cases were **withdrawn without the required supporting documents**, to wit:

Case No.	Name of Litigants	Documents Lacking
84/85-94	Amelia Vallarta	Acknowledgment Receipt
12-95	Francisco Ingal	Court Order
92-99	Eric Garcia	Acknowledgment Receipt Court Order

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104-00	Zoilo Ngo	Acknowledgment Receipt
11-03	Nida Manaois	Acknowledgment Receipt

The three (3) booklets of OR's that are unaccounted or missing are the following: SC OR Nos. I-7992001-799050, II-7992051-7992100 and IV-21701401-21701450.

Respondent's **failure to regularly submit monthly reports of collections and deposits** as mandated by SC Circular No. 32-93 prompted the Accounting Division, Financial Management Office, OCA to withhold her salaries. Below is the list of respondent's unsubmitted reports:

For Fiduciary Fund	May 2003 to June 2003;
	October 2003 to March 2006
For SAJ	November 2004 to March 2006
For JDF	March 2003
	November 2003 to March 2006

Respondent requests for a recomputation of her accountabilities in view of the restitutions she made. Notably, the total amount she had restituted has already been deducted from her total accountability. Thus, only the shortages for the fiduciary fund and sheriff trust fund/ process server's fee were ordered by the Court to be restituted. (emphasis and underscoring supplied)

THE OCA CONCLUDED/RECOMMENDED:

In view of the foregoing, only a partial suspension of the Court's January 15, 2007 Resolution is in order, *i.e.*, particularly the directive to respondent Santos to restitute the amount of ₱325,900.00 and ₱1,000.00 representing her balance of accountability for Fiduciary Fund and Sheriff Trust Fund/Process Server's Fee, respectively; and, the directive to submit to the Fiscal Monitoring Division, Court Management Office (CMO), OCA, the original copies of the 3 booklets of unaccounted OR's. This is in order to give respondent the final opportunity to produce and present her evidence. In this connection, respondent Santos should be given ten (10) days from notice within which to **present** to the Fiscal Monitoring Division, CMO, OCA **all the documents, records and other evidence pertaining to her shortages and the 3 booklets of unaccounted OR's**. (emphasis and underscoring supplied)

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Acting on the recommendation of the OCA, the Court, by Resolution of October 8, 2007,[15] resolved to:

1. **REQUIRE** respondent to **MANIFEST** to the Court whether she is willing to submit this matter for resolution on the basis of the pleadings filed within ten (10) days from notice;

2. **DIRECT** Mrs. Marcela V. Santos to **PRODUCE** and **PRESENT** before the Fiscal Monitoring Division, Court Management Office (CMO), OCA, within ten (10) days from notice: all the "documents, records and other evidence" pertaining to her shortages on the Fiduciary Fund and Sheriff Trust Fund/Process Server's Fee, as well as the evidence on the original copies of the three (3) booklets of unaccounted or missing Supreme Court Official Receipts;

3. **DIRECT** the Fiscal Monitoring Division, CMO, OCA to **REPORT** to the Court, with the necessary **RECOMMENDATION**, on respondent Santos' presentation of evidence, stating clearly the resulting balance of her accountabilities on the Fiduciary Fund and Sheriff Trust Fund/Process Server's Fee, should there still be any, and her accountability on the missing official receipts, within fifteen (15) days after respondent Santos' presentation of evidence;

4. **DIRECT** Acting Collecting Officer Ms. Leonida A. Ladisla to:

   (a) **WITHDRAW** the interest earned on deposits of Fiduciary Fund in the total amount of ₱2,414.65, **DEPOSIT** the same to the account of the JDF, and **SUBMIT** to the Fiscal Monitoring Division, Court Management Office, OCA, the corresponding machine validated deposit slip, within ten (10) days from notice; and

   (b) **STRICTLY COMPLY** with all court circulars and issuances in the proper handling of Judiciary Funds; and

5. **DIRECT** Hon. Rixon M. Garong, Presiding Judge, to study and implement procedures that will strengthen the internal control over the cash transactions of the court.[16] (emphasis in the original)

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[15] *Id.* at 66-67.

[16] *Ibid.*

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To date, the Court is not aware of the whereabouts of respondent who failed to comply with the Court's Resolution of October 8, 2007.[17] She was last heard on March 7, 2007 when she filed her March 7, 2007 explanation,[18] pertinent portions of which were quoted above.

Acting on the March 29, 2010[19] Memorandum of the OCA, the Court, by Resolution of July 28, 2010,[20] resolved to determine the liabilities of respondent on the basis of the records.

The Court finds that, indeed, respondent failed to *regularly* submit monthly reports of collections and deposits, as required by SC Circular No. 32-93, and official receipts and other documents, despite this Court's repeated orders. In incurring shortage of accountabilities in the amount of ₱326,900, respondent is guilty of gross dishonesty and grave misconduct.

> [N]o position demands greater moral righteousness and uprightness from the occupant than does the judicial office. The safekeeping of funds and collections is essential to the goal of an orderly administration of justice, and protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability for government funds. The failure to remit the funds in due time amounts to dishonesty and grave misconduct, which the Court cannot tolerate for they diminish the people's faith in the judiciary. The act of misappropriating judiciary funds constitutes dishonest and grave misconduct which are punishable by dismissal from the service even if committed for the first time.[21] (underscoring supplied)

It can never be overemphasized that a clerk of court, like respondent, is responsible for court records and physical facilities of the court and is accountable for the court's money and property deposits, following Section B, Chapter 1 of the 1991 Manual

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[17] *Ibid.*

[18] *Id.* at 51-53.

[19] *Id.* at 107-109.

[20] *Id.* at 111-112.

[21] *OCA v. Nolasco,* A.M. No. P-06-2148, March 4, 2009, 580 SCRA 471, 487.

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for Clerks of Court and 2002 Revised Manual for Clerks of Court.[22]

Under Section 23 of Rule XIV of the Omnibus Rules implementing Book V of Executive Order 292 and other pertinent Civil Service Laws, gross misconduct and dishonesty are both punishable by DISMISSAL from the service.

WHEREFORE, respondent, Marcela V. Santos, Clerk of Court II, Municipal Trial Court of San Leonardo, Nueva Ecija, is declared *GUILTY* of Gross Dishonesty and Grave Misconduct. She is ordered *DISMISSED* from the service with forfeiture of all retirement benefits, excluding accrued leave credits, and with prejudice to reemployment in any government office including government-owned and controlled corporations.

For failure to return the required documents despite repeated orders of the Court, respondent is likewise declared *GUILTY* of contempt of court. She is ordered to pay a *FINE* of Five Thousand Pesos (₱5,000) and to submit all the required documents to the Office of the Court Administrator within thirty days from receipt of this Decision.

The Fiscal Management Office, Office of the Court Administrator, is *DIRECTED* to process the terminal leave benefits of respondent with dispatch and apply the same to her accountabilities, giving priority to the Fiduciary Fund Account of the Municipal Trial Court of San Leonardo, Nueva Ecija.

Upon submission of the missing documents by respondent, the Fiscal Management Office is *DIRECTED* to compute the remaining accountabilities of respondent, if any, and to submit a report thereon within thirty days from compliance by respondent.

Respondent is further ordered to *RESTITUTE* the amount of Three Hundred Twenty Five Thousand Nine Hundred Pesos (₱325,900) representing shortage in the Fiduciary Fund, and One Thousand Pesos (₱1,000) representing shortage of the Sheriff Trust Fund/Process Server's Fee.

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[22] *OCA v. Canque*, A.M. No. P-04-1830, June 4, 2009, 588 SCRA 226, 235.

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Finally, the Office of the Court Administrator is *DIRECTED* to initiate appropriate criminal proceedings against respondent in light of the above findings of the Court.

SO ORDERED.

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

Carpio and *Abad, JJ.,* on official leave.

Peralta, J., is on leave.

Perez, J., no part.

EN BANC

[A.M. No. P-09-2735. October 12, 2010]
(Formerly OCA I.P.I. No. 07-2614-P)

LEVI M. ARGOSO, *complainant, vs.* **ACHILLES ANDREW REGALADO II, Sheriff IV, Regional Trial Court, Office of the Clerk of Court, Naga City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIARY; SUPRME COURT; ADMINISTRATIVE SUPERVISION OVER LOWER COURTS; SHERIFFS; PROPER PROCEDURE IN ENFORCING WRITS OF EXECUTION; A.M. NO. P-10-2772, FEBRUARY 16, 2010; ACHILLES ANDREW REGALADO II; SUSPENDED FROM THE SERVICE FOR ONE (1) YEAR WITHOUT PAY, WITH A STERN WARNING THAT A REPETITION OF THE SAME OFFENSE SHALL BE DEALT WITH MORE SEVERELY.— In A.M. No. P-10-2772, entitled *Domingo Peña, Jr. v. Achilles*