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THIRD DIVISION

[A.M. No. P-06-2179. January 12, 2011]
(Formerly A.M. No. 06-5-169-MCTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **MERLINDA T. CUACHON, Clerk of Court, and FE P. ALEJANO, Court Stenographer, both of the MCTC, Ilog-Candoni, Negros Occidental,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CLERK OF COURT; DUTY; A CLERK OF COURT IS GROSSLY NEGLIGENT FOR FAILURE TO PROMPTLY REMIT OR DEPOSIT CASH COLLECTIONS WITH THE LOCAL OR NEAREST LBP BRANCH IN ACCORDANCE WITH COURT ADMINISTRATIVE CIRCULARS AND ISSUANCES; CASE AT BAR. — The settled rule is that a clerk of court is grossly negligent for his or her failure to promptly remit or deposit cash collections with the local or nearest LBP Branch, in accordance with Court administrative circulars and issuances. No protestation of good faith can override the mandatory observance of court circulars which are designed to promote full accountability of government funds. Restitution of the amount of the shortages does not erase administrative liability. The irregularities committed by both respondents were direct violations of SC Circular No. 50-95. This circular mandates that all collections from bail bonds, rental deposits, and other fiduciary collections should be deposited with the LBP upon receipt by the Clerk of Court **within twenty-four (24) hours**; the circular also requires that only one depository bank be maintained. In localities where there are no branches of the LBP, fiduciary collections should be deposited by the Clerk of Court with the Provincial, City or Municipal Treasurer.

2. ID.; ID.; COURT PERSONNEL; WHEN GUILTY OF GROSS NEGLIGENCE IN THE PERFORMANCE OF DUTY; PENALTIES. — Gross negligence in the performance of duty

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is considered a grave offense for which the penalty of dismissal is imposed, even for the first offense. This Court has ordered the dismissal of clerks of court and other court personnel for failure to deposit fiduciary funds in authorized government depository banks. We cannot countenance any conduct, act or omission, committed by those involved in administering justice, that violate the norm of public accountability and diminish the faith of the people in the Judiciary. However, since both respondents have retired from the service, while Ms. Cuachon – though belatedly – restituted her shortages, we find the imposition of a fine to be the appropriate penalty in accordance with our previous rulings.

APPEARANCES OF COUNSEL

Tranquilino R. Gale for Merlinda T. Cuachon.

D E C I S I O N

BRION, *J.*:

For consideration are the findings and recommendations of the Office of the Court Administrator (*OCA*) in its Memorandum of August 26, 2008[1] on the financial audit conducted in the Municipal Circuit Trial Court (*MCTC*), Ilog-Candoni, Negros Occidental. A financial audit was conducted because of respondent Clerk of Court Merlinda T. Cuachon's (*Cuachon*) compulsory retirement on November 25, 2005. The audit covered transactions from September 1, 2000 to September 30, 2005, and included the books of account of respondent Fe P. Alejano (*Alejano*), Court Stenographer and designated Officer-in-Charge (*OIC*)– Clerk of Court from September 1, 2000 to March 15, 2001.

The Initial Report of the OCA's Financial Audit Team showed that Cuachon had incurred a shortage of ₱15,065.00 in her Fiduciary Fund collections due to the difference between undeposited collections, amounting to ₱49,065.00, and withdrawals from cash on hand, amounting to ₱35,000.00, plus

[1] *Rollo,* pp. 176-183.

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an unauthorized withdrawal of ₱1,000.00 due to an overwithdrawal under Official Receipt (*OR*) No. 14847505. Cuachon made restitutions by depositing with the Land Bank of the Philippines (*LBP*), Kabankalan Branch, ₱4,065.00 and ₱11,000.00 on January 25, 2006 and February 7, 2006, respectively. On the other hand, Alejano incurred a shortage of ₱31,800.00 for undeposited collections of ₱26,800.00 and an unauthorized withdrawal of ₱5,000.00 on February 28, 2001. She, likewise, failed to account for two hundred (200) pieces of OR, with serial numbers 11653401 to 11653500 and 11654001 to 11654100.

Also noted in the Initial Report were the following irregularities committed in the administration of the court's funds: (1) collections were not properly deposited with the LBP within the month they were collected; (2) withdrawals from the Fiduciary Fund were made without supporting documents; (3) cash bond deposits were withdrawn from the undeposited collections; (4) the funds were deposited with the Municipal Treasurer's Office (*MTO*), in violation of Supreme Court (*SC*) Circular No. 50-95; (5) unwithdrawn bail bonds amounting to ₱151,986.03 (as of September 2005) were still deposited with the MTO; (6) the court's financial transactions were not recorded in the official cashbooks; and (7) actual cash on hand and the entries reflected in the cashbooks were not reconciled.

In a Memorandum dated May 12, 2006,[2] the OCA recommended that the Initial Report be docketed as an administrative complaint against respondents Cuachon and Alejano for violation of SC Circular No. 50-95, and that they be fined five thousand pesos (₱5,000.00) each for the delay in their deposit of Fiduciary Fund collections. Accordingly, the Court formally docketed the Initial Report as an administrative complaint and required the respondents to manifest their willingness to submit the case for decision based on the records and/or pleadings filed.[3]

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[2] *Id.* at 1-7.

[3] In a Resolution dated June 14, 2006; *id.* at 21.

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In her Manifestation,[4] Cuachon acknowledged: the violations she committed caused by her poor record keeping of court transactions, resulting in her cash shortages; her delay in the deposit or remittance of collections; and her unauthorized withdrawals. She attributed her shortcomings to her unfamiliarity with accounting and bookkeeping principles, and with the Court's circulars on the proper administration of court funds. She claimed that she incurred the shortages with no intention to defraud the Court or the government. She also faulted the Office of the Clerk of Court in the MCTC, Ilog-Candoni, for not having an updated compilation of the Court's issuances that could guide her in her work, and the court's Property Division for turning a deaf ear to her repeated requests for cashbooks. Ultimately, she asked this Court to grant her leniency and to allow her to enjoy her retirement benefits in full since she had restituted her shortages by depositing the amounts of these shortages with the LBP.

After considering Cuachon's explanation, the OCA maintained its recommendation to impose a fine of ₱5,000.00, to be deposited with the Judiciary Development Fund, in order to compensate the government for the lost interest income caused by her delay in the deposit or remittance of Fiduciary Fund collections.[5] In compliance with our Resolution,[6] Cuachon expressed her willingness to submit the case for resolution based on the records and/or pleadings filed. She also asked for the early resolution of her case[7] and for the immediate release of her retirement benefits and the monetary value of her leave credits. She claimed that she needed the money to buy her diabetes and hypertension medications. The Court noted her letters and motions in its subsequent resolutions.

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[4] *Id.* at 44-45.

[5] In a Memorandum dated November 10, 2006; *id.* at 64-69.

[6] In a Resolution dated January 31, 2007; *id.* at 80.

[7] In a Motion dated October 25, 2006; Second Motion for Early Resolution dated February 9, 2007; Letter dated March 15, 2007; Urgent Motion for Resolution dated June 26, 2007; Letter dated October 5, 2007; Urgent Motion dated November 27, 2007; Letter dated March 10, 2008; Urgent Motion dated April 16, 2008; Letter dated April 21, 2008; Letter dated April 30, 2008; Letter dated August 20, 2009; and Letter dated February 2, 2010.

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Alejano, on the other hand, also explained in her Letter of July 14, 2006[8] the circumstances behind her shortages and the loss or misplacement of receipts. She faulted the lack of a proper turnover of documents and cash bonds from the outgoing Clerk of Court at the time she was designated as OIC-Clerk of Court. She also alleged that the newly renovated building that housed most of their court records was infested by termites, and many court documents – including the receipts already audited by the OCA – were lost there. Accompanying Alejano's letter-explanation were additional documents that could be useful in reducing her remaining accountability, and her humble request that the Court guide her on how to resolve her problem.

In a Resolution dated July 11, 2007,[9] the Court directed Alejano: to pay and deposit her shortage of ₱12,800.00 in the Fiduciary Fund (which amount resulted from the re-computation of Alejano's accountability based on additional documents presented); to furnish the Fiscal Monitoring Division, Court Management Office, OCA, with the machine-validated deposit slip as proof of compliance thereto; and to explain why she failed to record in the cashbook and report to the Court the amount of one thousand pesos (₱1,000.00) she had collected pertaining to the unaccounted and missing OR No. 116544551 dated December 12, 2000.

In the same resolution, the Court also directed Judge Victor P. Magahud (Presiding Judge of the MCTC, Ilog-Candoni, Negros Occidental) to submit an inventory of cases with unwithdrawn cash bonds, indicating their OR numbers and the dates when they were issued by the court; to investigate the missing ORs with serial numbers 11653401 to 11653500, 11653452 to 11653500 and 11654001 to 11654100; and to submit a report and recommendation regarding these matters. The Court received Judge Magahud's Report on December 7, 2007.[10]

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[8] *Rollo*, pp. 33-34.

[9] *Id.* at 97.

[10] Dated November 19, 2007; *id.* at 138.

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In a Letter dated March 28, 2008,[11] Alejano asked the Court, for clearance purposes, for a clarification of the status of her accountability. She also stated that she had tried her best to recover the necessary documents to prove that the funds were not used for her personal gain. As of November 14, 2007, Alejano's remaining accountability showed a balance of nine thousand eight hundred pesos (₱9,800.00), after the OCA considered the additional documents she had submitted.

After a careful review of the records, the OCA found both respondents guilty of simple neglect of duty for violating SC Circular No. 50-95. This circular specifies the guidelines on the proper collection and deposit of court fiduciary funds. The records showed that Cuachon and Alejano failed to deposit their collections within twenty-four (24) hours, in violation of the circular. Also, the shortages incurred by the respondents were due to their failure to account for their collections, which could have been avoided had they immediately remitted or deposited these collections with the LBP. Due to the delayed remittance of collections, the cash on hand was used to pay for other withdrawals, *i.e.*, undeposited collections were used to pay for cash bond withdrawals instead of withdrawing their cash bond equivalent from the Fiduciary Fund, thus, circumventing the system of "check and balance." Lastly, the respondents made withdrawals from the Fiduciary Fund without the necessary supporting documents. Under SC Circular No. 50-95, no withdrawals are allowed unless there is a lawful order of the court with jurisdiction over the subject matter involved.

THE COURT'S RULING

We find the OCA's recommended fine to be appropriate and in accord with jurisprudence. We disagree, however, with the OCA's finding that the respondents were only liable for simple neglect of duty. We find both respondents liable for **gross neglect of duty** for the irregularities they committed in the administration of court funds.

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[11] *Id.* at 146.

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The settled rule is that a clerk of court is grossly negligent for his or her failure to promptly remit or deposit cash collections with the local or nearest LBP Branch, in accordance with Court administrative circulars and issuances.[12] No protestation of good faith can override the mandatory observance of court circulars which are designed to promote full accountability of government funds.[13] Restitution of the amount of the shortages does not erase administrative liability.[14]

The irregularities committed by both respondents were direct violations of SC Circular No. 50-95.[15] This circular mandates that all collections from bail bonds, rental deposits, and other fiduciary collections should be deposited with the LBP upon receipt by the Clerk of Court **within twenty-four (24) hours**; the circular also requires that only one depository bank be maintained. In localities where there are no branches of the LBP, fiduciary collections should be deposited by the Clerk of Court with the Provincial, City or Municipal Treasurer.

Gross negligence in the performance of duty is considered a grave offense for which the penalty of dismissal is imposed, even for the first offense.[16] This Court has ordered the dismissal of clerks of court and other court personnel for failure to deposit fiduciary funds in authorized government depository banks.[17] We cannot countenance any conduct, act or omission, committed by those involved in administering justice, that violate the norm

[12] *Re: Judge Demasira M. Baute,* A.M. No. 95-10-06-SCC, March 27, 1996, 255 SCRA 231; *JDF Anomaly in the RTC of Ligao, Albay,* A.M. No. 95-1-07-RTC, March 21, 1996, 255 SCRA 221; *Lirios v. Oliveros*, A.M. No. P-96-1178, February 6, 1996, 253 SCRA 258.

[13] *Re: Report on Examination of the Cash and Accounts of the Clerks of Court, RTC and MTC, Vigan, Ilocos Sur,* A.M. No. 01-1-13-RTC, April 2, 2003, 400 SCRA 387.

[14] *JDF Anomaly in the RTC of Ligao, Albay, supra* note 12.

[15] Effective November 1, 1995.

[16] Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292.

[17] *Rangel-Roque v. Rivota,* A.M. No. P-97-1253, February 2, 1999, 302 SCRA 509.

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of public accountability and diminish the faith of the people in the Judiciary.[18] However, since both respondents have retired from the service, while Ms. Cuachon – though belatedly – restituted her shortages, we find the imposition of a fine to be the appropriate penalty in accordance with our previous rulings.[19]

WHEREFORE, premises considered, the Court finds as follows:

1. MERLINDA T. CUACHON, Clerk of Court, Municipal Circuit Trial Court, Ilog-Candoni, Negros Occidental, *GUILTY* of gross neglect of duty for which she is *FINED* five thousand pesos (₱5,000.00), to be deducted from her retirement benefits.

2. FE P. ALEJANO, Court Stenographer, Municipal Circuit Trial Court, Ilog-Candoni, Negros Occidental, *GUILTY* of gross neglect of duty for which she is *FINED* five thousand pesos (₱5,000.00). She is also directed to *RESTITUTE* the amount of nine thousand eight hundred pesos (₱9,800.00) as payment for her remaining accountability. Both amounts are to be deducted from her retirement benefits.

3. The Financial Management Office, Office of the Court Administrator, is directed to *RELEASE* respondent MERLINDA T. CUACHON's retirement benefits and the monetary value of her accrued leave credits, deducting therefrom five thousand pesos (₱5,000.00) as payment for the fine imposed.

4. The Financial Management Office, Office of the Court Administrator, is directed to *RELEASE* respondent FE

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[18] *Re: Report of Justice Felipe B. Kalalo,* A.M. No. 96-10-380-RTC, November 18, 1997, 282 SCRA 61.

[19] *Re: Audit Conducted on the Books of Accounts of Former Clerk of Court Mr. Wenceslao P. Tinoy, MCTC, Talakag, Bukidnon,* A.M. No. 02-5-111-MCTC, August 7, 2002, 386 SCRA 459; *Re: Financial Audit Conducted on the Book of Accounts of Clerk of Court Pacita T. Sendin, MTC, Solano, Nueva Vizcaya,* A.M. No. 01-4-119-MCTC, January 16, 2002, 373 SCRA 351.

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P. ALEJANO's retirement benefits and the monetary value of her accrued leave credits, deducting therefrom five thousand pesos (₱5,000.00), as payment for the fine imposed, and nine thousand eight hundred pesos (₱9,800.00), as payment for her remaining accountability.

5. Presiding Judge VICTOR P. MAGAHUD of the Municipal Circuit Trial Court, Ilog-Candoni, Negros Occidental, is directed to *CLOSELY MONITOR* the financial transactions of the court; otherwise, he can be held equally liable for the infractions by the employees under his supervision. He is advised to *STUDY* and *IMPLEMENT* procedures that shall strengthen the court's internal control over financial transactions.

SO ORDERED.

Carpio Morales (Chairperson), Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

THIRD DIVISION

[A.M. No. P-09-2696. January 12, 2011]
(Formerly A.M. OCA IPI No. 08-2956-P)

FREDDY H. REYES, *complainant, vs.* **VIVIAN L. PABILANE, COURT INTERPRETER, MUNICIPAL TRIAL COURT, TAGKAWAYAN, QUEZON,** *respondent.*

SYLLABUS

1. POLITICAL LAW ; ADMINISTRATIVE LAW; COURT PERSONNEL; COURT INTERPRETER; DUTY TO PREPARE AND SIGN THE MINUTES OF COURT SESSIONS; FAILURE TO REFLECT IN THE MINUTES