Supreme Court E-Library

WHEREFORE, the petition is DENIED for lack of merit.

SO ORDERED.

Bellosillo (Chairman), Quisumbing, Buena, and *De Leon, Jr., JJ.,* concur.

EN BANC

[A.M. No. P-00-1415-MeTC. August 30, 2001]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **MRS. TERESITA Q. ORBIGO-MARCELO, Clerk of Court, MeTC, Taguig, Metro Manila,** *respondent.*

SYNOPSIS

In a judicial audit conducted by the Office of the Court Administrator (OCA), respondent Clerk of Court who then was abroad was found to have incurred a shortage of ₱3,827,552.70 on her accountabilities. Respondent did not deny the alleged deficiencies and irregularities uncovered, but admitted her shortcoming as to her accountabilities and obligations and conceded that there were still unremitted cash collections on her account.

Clerks of courts must be individuals of competence, honesty and probity. As the custodian of the court's funds and revenues, any unexplained shortage of funds will give rise to a finding of dishonesty and gross misconduct in office. Respondent was dismissed from the service with prejudice to re-employment and with forfeiture of all benefits. She was also directed to restitute her total accountabilities in the amount of ₱3,827,552.00.

Supreme Court E-Library

SYLLABUS

ADMINISTRATIVE LAW; COURT PERSONNEL; CLERKS OF COURT; CUSTODIAN OF COURT'S FUNDS AND PROPERTY; SHORTAGE OF FUNDS CONSTITUTE DISHONESTY AND GROSS MISCONDUCT IN OFFICE. — Clerks of court must be individuals of competence, honesty, and probity. As the custodian of the court's funds and revenues, records, property and premises, he or she performs a very delicate function and is liable for any loss, shortage, destruction or impairment of said funds and property. The failure of respondent to explain the shortage of funds leaves the Court with little choice but to hold her liable for dishonesty and gross misconduct in office justifying her dismissal from office.

RESOLUTION

***PER CURIAM*:**

The absence without official leave of the Clerk of Court of the Metropolitan Trial Court (MeTC) of Taguig, Metro Manila since November 3, 1999 prompted Judge Benjamin T. Pozon, MeTC Taguig, Branch 74, to order an inventory of all the records of the office of the Clerk of Court. Judge Pozon also reported the matter to the Office of the Court Administrator (OCA) and requested that a financial audit be conducted.

In a Letter dated December 1, 1999, Judge Pozon directed the respondent Clerk of Court, Mrs. Teresita Marcelo, to explain her unauthorized absences. In response thereto, Herbert Orbigo, the son of respondent, informed Judge Pozon that:

a) Respondent left for the United States of America on 1 November 1999 together with her husband, Gonzalo Marcelo, to attend a family reunion and for other personal reasons;

b) Prior to respondent's departure, he was informed by the former that she will go on vacation leave with the knowledge and permission of Judge Pozon. The judge even asked respondent to prepare the monthly reports of cases before she leaves to which request she complied;

Supreme Court E-Library

c) Respondent's officemates, including Judge Pozon, threw a *"despedida"* party for her last October 30, 1999 which only showed that they are fully aware of the whereabouts of the respondent and the reason why she was on vacation leave; and

d) Respondent left an accomplished vacation leave form with the court's Legal Researcher Mabel Madamba, who even accompanied her when she asked permission to go on vacation leave and to whom respondent entrusted some important documents. The leave form was even shown to Herbert Orbigo by Judge Pozon on November 3, 1999 when the former went to the latter's office. Judge Pozon also showed him a passbook of the Land Bank of the Philippines and told him that the respondent also entrusted the amount of ₱100,000.00 with the Legal Researcher and the Cash Clerk.

Lastly, Herbert Orbigo questioned the integrity of the audit and inventory conducted by Legal Researcher Mabel Madamba on November 3, 1999 involving the official receipts accountable to the respondent. He alleged that although his mother reported to work up to October 30, 1999, a Saturday, it was after she left for abroad that the audit and inventory was conducted by Ms. Madamba. Thus, he claimed, the authenticity of the records particularly of the official receipts for which his mother is being held accountable, may have been compromised:[1]

In the meantime, the OCA's examination revealed a shortage in the sum of ₱3,827,552.70, broken down as follows:

1.) Judiciary Development Fund (JDF)	359,455.20
2.) Clerk of Court General Fund (GF)	235,715.50
3.) Clerk of Court Fiduciary Fund (FF)	3,232,382.00
Total Accountabilities	₱3,827,552.70[2]

The bases for the above findings are contained in the OCA Memorandum dated June 23, 2000 addressed to the Honorable Chief Justice and are reproduced below:

---

[1] Memorandum of the Office of the Court Administrator dated May 18, 2001, p. 3.

[2] Memorandum of the Office of the Court Administrator dated June 23, 2000, p. 3.

Supreme Court E-Library

(1) Judiciary Development Fund (JDF)

Mrs. Marcelo handled the collections of this fund for the period March 1985 to October 1999. She maintained a cashbook only from March 1985 to August 1994. Considering that file copies of Monthly Reports of collections and deposits submitted to the Accounting Division were incomplete which made the audit very cumbersome, the examinations were based entirely on the triplicate copies of Official Receipts issued and partially on the available cashbook and copies of monthly reports. Collections were not deposited in full at the end of each month. Thus, this fund showed an understated remittance/deposits amounting to ₱359,455.20 as against the total collections computed as follows:

Total collections from March 1985 to October 1999		₱459,571.20
Less: Remittances made:		
1. Remittance to SC Cashier from April 1985 to September 1990	₱ 5,560.00	
2. Deposit to LBP for the period from February 1994, April 1999 to November 1999	130,556.00	136,116.00
Shortage as of October 31, 1999		₱359,455.20

(2) Clerk of Court General Fund (GF)

Audit examination for this fund covered the period July 1996 to October 1999. To determine the collections for this fund we used the triplicate copies of Official Receipts issued as basis since Mrs. Marcelo did not maintain any cashbook. Likewise no copy of the Monthly Reports were kept nor were there entries on the Subsidiary Ledger of the Accounting Division which showed that she was submitting regularly the monthly reports for this fund.

In the course of the audit examination of the triplicate copies of the Official Receipts issued for this fund, total monthly collections reported to the Accounting Division were understated as against the total entries reflected on the Official Receipts issued for the month. Actual/correct collections for the month were not reported. There were duplicate copies of official receipts issued for a particular month, which should have been attached to the Monthly Report of Collections, and Remittances submitted but were deliberately excluded which rendered the report incorrect.

Supreme Court E-Library

Mrs. Marcelo did not keep any copy of deposit slips on her file except for one remittance made on November 17, 1999, as evidenced by Supreme Court O.R. # 8885688 (copy attached as annexed A), amounting to ₱8,977.00 covering collections received by Mrs. Marcelo for the period September 1999 to October 1999. The amount was remitted by Ms. Mabel Madamba, the incumbent Officer-in-Charge. On the Subsidiary Ledger of the Accounting Division, there were remittances made for this account but we cannot take it up since we have no proof as to the validity of these remittances and records are not available for further verification of this account. Hence, accountability for this fund amount[s] to ₱235,715.50, broken down as follows:

Total collections from July 1996 to October 1999	₱244,692.50
Less: Remittances made	8,977.00
Total Accountability as of October 31, 1999	₱235,715.50

(3) Fiduciary Fund (FF)

The collections for this fund started on August 15, 1994. The determination of collections was based solely on all the triplicate copies of Official Receipts issued. Mrs. Marcelo did not maintain any cashbook, and no copy of monthly reports submitted to the Accounting Division were left in her custody. There were series of official receipts intended for Judiciary Development Fund and Clerk of Court General Fund collections, which were erroneously used for Fiduciary Fund.

The Subsidiary Ledger at the Accounting Division showed no entries for the withdrawals of cashbonds since they were never reported at all. To determine the withdrawals, we were left with no choice but to base it on the available records of lawful Orders of the Court. On the other hand, monthly reports of collection for the period January 1996 to August 1996, January 1997 to April 1997 and September 1999 to October 1999 were the only reports submitted to the Accounting Division, but said reports were found out to be understated. There was a discrepancy between the actual amount of collections as per official receipts issued compared to the reports submitted to the Accounting Division.

Bank records showed that Mrs. Marcelo opened an account intended for Fiduciary Fund at Land Bank of the Phils.-Kapasigan

Supreme Court E-Library

Branch on October 17, 1996 under LBP Savings Account No. 1641-0148-57 named after MeTC, Taguig with her as the sole signatory. Examination of said account disclosed that there were inconsistencies/irregularities in both deposits and withdrawals made as evidenced by the entries reflected in the bank passbook (copy attached as Annex B). Collections from 1994 to October 16, 1996 were never deposited, and the deposits made from October 17, 1996 to April 1999 represent only partial remittance/deposits of collections for the entire period of Mrs. Marcelo's accountability. Some withdrawals made on said account were not duly supported by Court Orders.

The interest earned from deposits with LBP for the period October 1996 to October 1999 were not remitted to the account of Clerk of Court General Fund. The present Officer-in-Charge has already been advised to withdraw the interest earned from Fiduciary Fund deposits and transfer it to the JDF.

We exerted all our efforts to look for the undeposited Fiduciary Fund collections through official communication and confirmation of deposits with the Landbank of the Philippines branches of Kapasigan, Makati and FTI but their response were all in the negative.

After examining and verifying evidential records, the total accountabilities of Mrs. Teresita Orbigo-Marcelo on Fiduciary Fund amount to ₱3,232,382.00, computed as follows:

Total collections from Aug. 15, 1994 to Oct. 31, 1999		₱3,946,826.25
Less: Total withdrawals made for the same period based on the Court Orders issued		608,844.25
Total Unwithdrawn Fiduciary Fund		₱3,337,982.00
Less: Deposits at LBP (Kapasigan Branch) as of October 1999	₱110,171.59	
Less: Interest earned, net of w/tax	4,571.59	105,600.00
Total Accountabilities as of October 31, 1990		₱3,232,382.00[3]

[3] *Id.*, at 1-3.

Supreme Court E-Library

In sum, the OCA discovered "the following deficiencies and irregularities during the tenure of Mrs. Marcelo in maintaining all her book of accounts":

1.) Entries in the cashbook were not updated;

2.) There was an irregularity in the submission of Monthly Reports of Collections and Deposits/Withdrawals to the Accounting Division, Supreme Court;

3.) Collections were not deposited/remitted on time;

4.) Actual collections for the month do not reconcile with the actual deposit/remittance made for the month;

5.) Issuances of official receipts are not in a numerical sequence and not according to funds;

6.) Erroneous reporting of the actual amount of collections;

7.) There were withdrawals made as reflected in the passbook but no corresponding Court Orders to support the same;

8.) Non-remittance of interest earned from Fiduciary Fund deposits to the account of Judiciary Development Fund.[4]

The OCA concluded that Mrs. Marcelo violated Circulars issued by the Supreme Court and the Court Administrator, particularly Circular Nos. 5-93, 32-93, 22-94 and 50-95 respectively.

In accordance with the recommendation of the Court Administrator, the Court in its Resolution dated August 8, 2000 resolved to:

(a) NOTE the Memorandum dated 23 June 2000 of Court Administrator Alfredo L. Benipayo;

(b) DOCKET this administrative matter as A.M. No. P-00-1415-MeTC (*Office of the Court Administrator vs. Mrs. Teresita Q. Orbigo-Marcelo*, Clerk of Court, MeTC, Taguig, Metro Manila);

(c) require Mrs. Marcelo to COMMENT on the aforesaid Memorandum within ten (10) days from notice hereof;

---

[4] *Id.*, at 4.

Supreme Court E-Library

(d) DIRECT Mrs. Marcelo to restitute the shortages mentioned in the Memorandum amounting to ₱3,827,552.70; and

(e) DIRECT the Financial Management Office, Office of the Court Administrator, to WITHHOLD the salaries/allowances and retirement benefits that may be due to Mrs. Marcelo pending resolution of this matter. x x x.

On September 22, 2000, the Office of the Court Administrator received a letter from Herbert Q. Orbigo, respondent's son, stating that his mother was still in the United States attending to her ailing husband, who is suffering from a heart ailment. Mr. Orbigo asked that his mother be given a 30-day extension to submit her comment. After two more requests for extension, respondent finally submitted a Letter dated November 20, 2000, consisting of two pages.

In a Resolution dated March 6, 2001, the Court noted the letter of Mrs. Marcelo and referred the same to the OCA for evaluation, report and recommendation.

In compliance therewith, the OCA submitted its Memorandum dated May 18, 2001. After a summary of the facts that led to this administrative matter, the OCA concluded that:

Clearly, respondent committed gross dishonesty which the Court cannot countenance. Such conduct is violative of the norm of public accountability. Consistently, the Court has enjoined all those involved in the administration of justice to serve with utmost responsibility, integrity and efficiency and to invigorate the principle solemnly enshrined in Section 1 of Article XI of the Constitution that a public office is a public trust (Report of the Financial Audit Conducted on the accounts of Clerk of Court Zenaida Garcia, MTC, Barotac Nuevo, Iloilo, A.M. No. 97-1-03-MTC, February 16, 1999).

For her gross dishonesty and gross neglect of duty, respondent ought to be dismissed from the service. However, record shows that in A.M. No. 00-11-261-MeTC, Re: Absence Without Official Leave (AWOL) of Teresita O. Marcelo, respondent was already dropped from the service effective November 3, 1999. All her retirement, terminal and other benefits were also withheld by the court pending the outcome of this case (A.M. No. 00-11-261-MeTC, Resolution dated December 13, 2000, First Division).

Supreme Court E-Library

Accordingly, the OCA recommends that:

1. respondent be DIRECTED to restitute her total accountabilities in the amount of ₱3,827,552.00;
2. all her withheld salaries, allowances and benefits be FORFEITED; and
3. she be BARRED from re-employment in any agency of the government including government owned and controlled corporations. All these, without prejudice to the filing of the appropriate civil and criminal actions against her.

The recommendation is well taken.

In her Letter dated November 20, 2000, Mrs. Marcelo, who was still in the United States attending to her ailing husband, did not deny any of the alleged "deficiencies and irregularities" uncovered by the OCA financial audit. Indeed, she "admit[ted] her shortcomings as to accountabilities and obligations," and conceded "that there were still unremitted cash collections on my account."

Respondent stated, however, that she "appeal[s] for *[sic]* the amount accounted to me according to the audit made by the Financial Audit Department." The Court interprets this to mean that respondent disputes the amount found to constitute a shortage. Significantly, though, respondent failed to present any explanation or evidence to refute the same.

Clerks of court must be individuals of competence, honesty, and probity.[5] As the custodian of the court's funds and revenues, records, property and premises, he or she performs a very delicate function and is liable for any loss, shortage, destruction or impairment of said funds and property.[6] The failure of respondent to explain the shortage of funds leaves the Court with little choice but to hold her liable for dishonesty and gross misconduct in office justifying her dismissal from office.[7]

---

[5] *Cain vs. Neri,* 310 SCRA 207 (1999).

[6] *Ibid.; Re: Financial Audit in RTC, General Santos City,* 271 SCRA 302 (1997), citing *OCA vs. Bawalan,* 231 SCRA 408 (1993).

[7] *Estenzo vs. Dejaño,* 93 SCRA 218 (1979).

Supreme Court E-Library

WHEREFORE, respondent Teresita Q. Orbigo Marcelo, Clerk of Court of the Metropolitan Trial Court, Taguig, Metro Manila, is found *GUILTY* of dishonesty and gross misconduct and is hereby *DISMISSED* from the service with prejudice to re-employment in any government agency, including government owned and controlled corporations. All her withheld salaries, allowances and benefits are hereby *FORFEITED*. Respondent is further *DIRECTED* to restitute her total accountabilities in the amount of ₱3,827,552.00 All these without prejudice to the filing of the appropriate civil and criminal actions against her.

SO ORDERED.

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

Gutierrez, J., on leave.

THIRD DIVISION

[G.R. No. 111709. August 30, 2001]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROGER P. TULIN, VIRGILIO I. LOYOLA, CECILIO O. CHANGCO, ANDRES C. INFANTE, CHEONG SAN HIONG, and JOHN DOES,** *accused-appellants.*

SYNOPSIS

Appellants were charged with qualified piracy in connection with the seizure of M/T Tabangao in Batangas where the officers and crew were forced to sail to Singapore and transfer its loaded