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[A.M. No. 99-11-157-MTC. August 7, 2000]

REPORT ON THE FINANCIAL AUDIT CONDUCTED ON THE BOOKS OF ACCOUNTS OF OIC MELINDA DESEO, MTC, General Trias, Cavite.

SYNOPSIS

Through a letter to the Court from Judge Lerio Castigador of the MTC, Gen. Trias, Cavite, it was found that Court Interpreter Deseo, formerly OIC of the said MTC, had used her cash collections to encash personal checks. Deseo readily admitted that she deposited in the savings account of the MTC, in lieu of her cash collections, her personal checks and those of her friends and relatives. However, she explained that she did this out of necessity and expressed regrets for what she had done.

Deseo violated Circular. No. 50-95 which provides for guidelines on Court Fiduciary Funds. Regardless of her reasons, she is guilty of misconduct for which suspension for six months and one day without pay is the appropriate penalty. It is no excuse that the funds of the court were all accounted for. Her superior, Judge Lerio Castigador, should have exercised close supervision over her to ensure her observance of the provisions of Circular 50-95. At any rate, the Court gave credit to the judge for getting wind of Deseo's activities and bringing them to the attention of the Court.

SYLLABUS

1. **ADMINISTRATIVE LAW; COURT PERSONNEL; CIRCULAR NO. 50-95; VIOLATED WHEN CASH COLLECTION IS USED FOR OTHER PURPOSES.**— Deseo violated Circular No. 50-95 by using her cash collections, which she should have deposited in the bank for the account of the MTC, in order to encash not only her personal checks but also those of her friends and relatives. The Fiduciary Fund is in the nature of a trust fund which should not be withdrawn without authority of the court. Its use for other purposes constitutes a misappropriation of public funds placed in the care of the public

Supreme Court E-Library

officer concerned. Ms. Deseo's claim that she encashed the checks of friends and relatives because they badly needed cash and her checks to defray the expenses of her sick mother cannot be justified. The same excuse has been rejected by this Court as the activity is no different from the activities of money changers victimizing lowly employees in need of cash. Indeed, the activity found was actually a lending operation with the use of public funds.

2. **ID.; ID.; ID.; ID.; PROPER PENALTY.**— Admonition is not a penalty. Violation of Circular No. 50-95 deserves more than a "gentle or friendly reproof, a mild rebuke, warning or reminder, counseling on a fault, error or oversight, an expression of authoritative advice or warning" which is all that admonition amounts to. Indeed, Ms. Deseo is guilty of misconduct for which suspension for six (6) months and one (1) day without pay is the appropriate penalty. It is no excuse that the funds of the court were all accounted for.

3. **ID.; JUDGES; DUTY TO SUPERVISE EMPLOYEES.**— As Ms. Deseo's superior, Judge Castigador should have exercised direct and immediate supervision over her to ensure that she observed the provisions of Circular No. 50-95. Judge Castigador cannot entirely wash his hands of responsibility by disclaiming knowledge of Ms. Deseo's activities. He must, however, be given credit for getting wind of Ms. Deseo's activities and bringing them to the attention of the Court.

DECISION

MENDOZA, *J.*:

The Office of the Court Administrator examined the books of account of the Municipal Trial Court, General Trias, Cavite with regard to collections for the Fiduciary Fund for the period November 1997 to February 4, 1999 and for the General and Judiciary Development Funds for the period August 1998 to January 31, 1999. The financial audit was ordered in response to the letter, dated February 4, 1999, of Judge Lerio C. Castigador of that court, informing the Court that Court Interpreter Melinda Deseo, who was formerly the Officer-in-Charge (OIC) of said MTC, had used her cash collections to encash personal checks.

Supreme Court E-Library

In her explanation, dated February 13, 1999, Court Interpreter Deseo admitted the allegations. She admitted that she deposited in the savings account of the MTC in lieu of her cash collections not only her personal checks received from the Government Service Insurance System for salary and salary loan but those of her friends and relatives as well. She claimed that she did so in good faith and that she had seen to it that the amounts she had taken from her collections were equal to the amounts of the checks she deposited in the savings account of the MTC. She explained that she encashed the personal checks of her friends and relatives out of "necessity" and also her personal checks to defray the expenses of her sick mother, and otherwise avoid unscrupulous money changers who cashed checks at huge discounts. She admitted that she did the foregoing without the authority of Judge Castigador and expressed regrets for what she had done.

The Office of the Court Administrator found the following:

1. The Rural Bank of General Trias, Cavite is being utilized as depository bank instead of Land Bank of the Philippines or Provincial Treasurer's Office/City Treasurer's Office/Municipal Treasurer's Office, the authorized depository agencies of the government.

2. The incumbent Officer-In-Charge, Ms. Corazon Perez, was directed to transfer the outstanding balance as of February 4, 1999 net of interest earned from Rural Bank of General Trias to the nearest Land Bank of the Philippines.

3. The interests earned from Fiduciary Fund are not remitted on a quarterly basis to the National Treasurer under the General Fund as provided for in Circular No. 50-95.

4. There were encashments of personal checks from Fiduciary Fund collections.

5. The accountable officer was not complying with Circular No. 22-94 which requires that all receipts must be issued in strict numerical sequence and all copies of cancelled receipts must be intact for COA inspection.

6. Entries in the Cashbook do not reconcile with the monthly reports submitted to the Accounting Division, Office of the Court Administrator.

Supreme Court E-Library

In the course of our examination we noted that there was an overage deposit of ₱1,500 deposits in the Rural Bank of General Trias which according to Ms. Deseo pertains to the deposits made by Mr. Perfecto Villanueva in Criminal Case No. 2476 under O.R. No. 6852716, dated February 19, 1998. This was already refunded to Mr. Villanueva by virtue of a Court Order dated February 23, 1998. According to Ms. Deseo she personally refunded the amount upon presentation of the SC official receipt from her collections and did not withdraw the said amount from the bank. There is also unwithdrawn interest of ₱180.12 making a total of ₱1,680.12 overage from bank balance as against cashbook and Statement of Unwithdrawn Fiduciary Fund.

On the basis of the foregoing findings, the OCA recommended on October 20, 1999 that (1) Melinda Deseo be given an admonition and warned that repetition of what she had done or a similar offense would be dealt with more severely; (2) the present OIC, Corazon Perez, be advised to comply strictly with Circular No. 50-95 and other circulars governing the collection of funds; and (3) Judge Lerio Castigador be admonished to closely monitor the handling of the cash collections.

In view of the recommendation that Court Interpreter Melinda Deseo be simply given an admonition with warning, the matter was returned to the OCA for revision of its recommendations. However, in its memorandum, dated February 9, 2000, the OCA reiterated its previous recommendation.

Hence, the necessity to impose a penalty on Ms. Deseo consistent with the OCA's finding that she violated Circular No. 50-95.

The pertinent portions of this Circular are set forth below:

CIRCULAR NO. 50-95

TO: ALL JUDGES AND CLERKS OF COURT OF THE REGIONAL TRIAL COURTS, SHARI'A DISTRICT COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS AND SHARI'A CIRCUIT COURTS.

Supreme Court E-Library

SUBJECT: COURT FIDUCIARY FUNDS

The following guidelines and procedures for purposes of uniformity in the manner of collections and deposits are hereby established:

A. *Guidelines in Making Deposits:*

(1) Deposits of fiduciary funds shall be made under a savings account. A current account may also be maintained provided that a savings account is also maintained with automatic fund transfer arrangement.

(2) Deposits shall be made in the name of the Court, with its Clerk of Court and the Executive Judge as authorized signatories.

(3) The Clerk of Court shall be the custodian of the Passbook to be issued by the depository bank and shall report to the Executive Judge for TC, SDC, MetroTC, MTCC, and the Presiding Judge for MTC, MCTC and SCC, the bank's name, branch and savings/current account number. Xerox copy of the passbook shall be submitted to the Fiscal Audit Division.

B. *Guidelines in Making Withdrawals*

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(4) All collections from bailbonds, rental deposits, and other fiduciary collections shall be deposited within twenty four (24) hours by the Clerk of Court concerned, upon receipt thereof, with the Land Bank of the Philippines.

(5) Interest earned on these deposits and any forfeited amounts shall accrue to the general fund of the national government. Within two (2) weeks after the end of each quarter, the Clerk of Court shall withdraw such interest and forfeited amounts and shall remit the same to the National Treasury under a separate remittance advice, duplicate copy thereof to be furnished the Chief Accountant of the Supreme Court for record and control purposes.

(6) Only one depository bank shall be maintained and the bank must be formally informed by the Executive/Presiding Judge as to who are the authorized signatories to the withdrawal slips and that every withdrawal slip must be accompanied by a court order authorizing the withdrawal of the amount indicated thereat.

(7) Except in instances specifically mentioned in the immediately succeeding paragraph, all fiduciary collections currently deposited

Supreme Court E-Library

with the local treasurers/ and other depositories shall be withdrawn therefrom and deposited with the savings/current accounts maintained by the court for these collections.

(8) In localities where there are no branches of the Land Bank of the Philippines, fiduciary collections shall be deposited by the Clerk of Court with the Provincial, City, or Municipal Treasurer.

(9) Within two (2) weeks after the end of each quarter, all Clerks of Court are hereby required to submit to the Chief Accountant of the Supreme Court, copy furnished the Office of the Court Administrator, a quarterly report indicating the outstanding balance maintained with the depository bank or local treasurer, and the date, nature, and amount of all deposits and withdrawals made within such period.

Circulars that are inconsistent herewith are considered revoked.

This Circular shall take effect on November 1, 1995.

October 11, 1995.

(Sgd.) ERNANI CRUZ PAÑO
Court Administrator

Considering her admissions and the findings of the OCA, there is no doubt that Court Interpreter Melinda Deseo violated Circular No. 50-95 by using her cash collections, which she should have deposited in the bank for the account of the MTC, in order to encash not only her personal checks but also those of her friends and relatives. As we have previously stated, the Fiduciary Fund is in the nature of a trust fund which should not be withdrawn without authority of the court.[1] Its use for other purposes constitutes a misappropriation of public funds placed in the care of the public officer concerned.

Ms. Deseo's claim that she encashed the checks of friends and relatives because they badly needed cash and her checks to defray the expenses of her sick mother cannot be justified.

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[1] *Re: Report of the Judicial and Financial Audit of RTC-Br. 4, Panabo, Davao del Norte*, 287 SCRA 510 (1998).

Supreme Court E-Library

The same excuse has been rejected by this Court as the activity is no different from the activities of money changers victimizing lowly employees in need of cash. Indeed, the activity found was actually a lending operation with the use of public funds.[2]

In recommending that Ms. Deseo be merely admonished, the OCA stated:

> Ms. Deseo was designated as Officer-in-Charge of this court on September 25, 1995. She occupies the position of Interpreter, thus she is unfamiliar with the guidelines in handling court funds. When she was designated in an acting capacity, she had no thorough knowledge nor had an orientation/seminar in administering Fiduciary Fund collections. When she encashed personal checks against court funds she violated Circular No. 50-95 which she readily admitted per explanation dated February 13, 1999. These factors were considered as mitigating in evaluating the liability of Ms. Deseo. Besides, this office found that the collections and deposits on other funds (JDF and General Fund) are in order and withdrawals of Fiduciary Funds fire upon court order.

The Court disagrees. Ms. Deseo's alleged lack of prior training and orientation in administering Fiduciary Fund collections cannot relieve her of administrative liability. Her collections and deposits of other funds (Judiciary Development Fund and General Fund) are in order. Her responsibilities for these funds are substantially the same as her responsibility for the Fiduciary Fund. It is difficult to believe that she was ignorant of the provisions of Circular No. 50-95. She might, in the beginning, have been unaware of the circular, but surely she could not have remained so for the three years that she was the OIC. Admonition, as recommended by the OCA, is not a penalty. Her offense deserves more than a "gentle or friendly reproof, a mild rebuke, warning or reminder, counseling on a fault, error or oversight, an expression of authoritative advice or warning"[3] which is all that admonition amounts to.

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[2] *Meneses v. Sandiganbayan*, 232 SCRA 441 (1994); *Re: Financial Audit in RTC General Santos City*, 271 SCRA 302 (1997).

[3] *Tobias v. Veloso*, 100 SCRA 177, 184 (1981).

Supreme Court E-Library

Indeed, Ms. Deseo is guilty of misconduct for which suspension for six (6) months and one (1) day without pay is the appropriate penalty. It is no excuse that the funds of the court were all accounted for.[4]

This is where the responsibility of Judge Lerio Castigador comes in. As Ms. Deseo's superior, Judge Castigador should have exercised direct and immediate supervision over her to ensure that she observed the provisions of Circular No. 50-95. As the Court held:

> Indeed, clerks of court are the chief administrative officers of their respective courts; with regard to the collection of legal fees, they perform a delicate function as judicial officers entrusted with the correct and effective implementation of regulations thereon. Even the undue delay in the remittances of amounts collected by them at the very least constitutes misfeasance. On the other hand, a vital administrative function of a judge is the effective management of his court, and this includes control of the conduct of the court's ministerial officers. It should be brought home to both that the safekeeping of funds and collections is essential to the goal of 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.[5]

Judge Castigador cannot entirely wash his hands of responsibility by disclaiming knowledge of Ms. Deseo's activities. He must, however, be given credit for getting wind of Ms. Deseo's activities and bringing them to the attention of the Court.

WHEREFORE, the Court *RESOLVED* as follows:

(1) To find Melinda Deseo, former Officer-in-Charge, Municipal Trial Court, General Trias, Cavite, guilty of *MISCONDUCT* and order her *SUSPENSION* for six (6) months and one (1) day without pay with *WARNING* that a

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[4] *Re: Financial Audit in RTC, General Santos City, supra.*

[5] A.M. No. 96-1-25-RTC, *Report on the Financial Audit in the RTC, General Santos City and the RTC and MTC of Polomolok, South Cotabato*, March 8, 2000.

Supreme Court E-Library

repetition of this or a similar offense will be dealt with more severely;

(2) to *ADMONISH* Judge Lerio C. Castigador to exercise effective supervision over the personnel of his court, especially those charged with collection of the Fiduciary Fund and other trust funds (Judiciary Development Fund and Trust Fund); and

(3) to *ADVISE* Ms. Corazon Perez, Officer-in-Charge, to observe strictly Circular No. 50-95 and pertinent circulars of the Court.

SO ORDERED.

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

Bellosillo, J., on leave.

EN BANC

[A.M. No. P-99-1316. August 8, 2000]

KENNETH S. NEELAND, *complainant, vs.* **ILDEFONSO M. VILLANUEVA, Clerk of Court, Regional Trial Court, Bacolod City, and NELSON N. ABORDAJE, Sheriff III, Municipal Trial Court in Cities, Branch 4, Bacolod City,** *respondents.*

SYNOPSIS

In 1996, Sugarland Motor Sales placed the highest bid price in the amount of ₱40,000 for a motor vehicle owned by Neeland subject of an auction sale. Sheriff Abordaje, who conducted the public auction sale, turned over the amount of ₱20,000, representing payment of the mortgage obligation of Neeland,