

## EN BANC

**[ A.M. No. MTJ-15-1854 [Formerly A.M. No. 14-4-50-MCTC], July 11, 2017 ]**

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS. PRESIDING JUDGE BILL D. BUYUCAN AND CLERK OF COURT GERARD N. LINDAWAN, BOTH AT MUNICIPAL CIRCUIT TRIAL COURT, BAGABAG-DIADI, NUEVA VIZCAYA, RESPONDENTS.**

### DECISION

#### PER CURIAM:

This administrative case stemmed from the Financial Audit conducted on September 10, 2013, by the Financial Monitoring Division (*FMD*), Court Management Office (*CMO*), Office of the Court Administrator (*OAS*), in the Municipal Circuit Trial Court Bagabag-Diadi, Nueva Vizcaya (*MCTC*).

#### The Antecedents

The audit was prompted by an anonymous Letter-Complaint<sup>[1]</sup> from the auditors of the Commission on Audit, Nueva Vizcaya (*COA*), who audited the cash and accounts of Gerard N. Lindawan (*Lindawan*), Clerk of Court II, MCTC, for the years 2009 and 2010. Allegedly, Lindawan failed to present four (4) booklets of official receipts with series numbers 7654801-7654850, 7654851-7654900, 7654901-7654950, and 7654951-7655000 despite several requests to submit the same.

Acting thereon, an audit was conducted covering the financial transactions of Pio M. Valdez (*Valdez*), Court Interpreter and Officer-in-Charge of MCTC from January 1, 2007 to January 31, 2008, and Lindawan from February 1, 2008 to August 21, 2013.

The Report<sup>[2]</sup> of the audit team disclosed the following:

#### I. For the CASH EXAMINATION CONDUCTED:

At the start of the audit, the team found out that no remittances were made starting August 2012 for the Judiciary Development Fund (JDF) and Special Allowance for the Judiciary Fund (SAJ), and starting May 2011 for the Mediation Fund (MF). Also, official cashbooks were not updated and monthly reports were not submitted starting August 2012.

Proceeding from the cash examination, the team made an inventory of the cash on hand and compared it with the unremitted collections from 1 to 12 September 2013. It disclosed an unremitted cash in the amount of Twelve Thousand Pesos (P12,000.00) representing the unreceipted cash

bond in Criminal Case No. 5903. As evidence, an unsigned Bail Bond Undertaking dated 9 September 2013 was detached from the records of the case.

The total unremitted collections are presented below with its corresponding period and the cash on hand, to wit:

<b>Fund</b>	<b>Period Covered</b>	<b>OR Nos.</b>	<b>Amount</b>
FF	Sept 9, 2013	Unreceipted	P 12,000.00
SAJF	Sept 1-11, 2013	0249356 - 0249386	2,500.00
<b>TOTAL</b>			<b>P 14,500.00</b>

CASH PRESENTED DURING THE CASH COUNT:

<b><u>DENOMINATION</u></b>		<b><u>No.</u></b>	<b><u>AMOUNT</u></b>	
		<b><u>of</u></b>		
		<b><u>PCS.</u></b>		
<b>BILLS</b>	500.00	4	2,000.00	
	100.00	3	300.00	
	50.00	4	200.00	<b>2,500.00</b>
<b>BALANCE OF</b>				<b>P12,000.00</b>
<b>ACCOUNTABILITY/SHORTAGE</b>				<b>=====</b>

Mr. Lindawan incurred an initial cash shortage of Twelve Thousand Pesos (P12,000.00) as a result of the cash count conducted. Mr. Lindawan deposited the cash on hand to the respective accounts and restituted the cash shortage on 13 September 2013.

## **II. For the INVENTORY OF OFFICIAL RECEIPTS:**

The inventory of the accountable forms disclosed that four (4) booklets of official receipts were unaccounted/missing. The missing ORs were issued on 6 July 2007 per record of the Property Division, Office of the Court Administrator (OCA). This confirmed that the COA indeed conducted an audit in 2009 and 2010 and their audit findings on the cash and accounts of Mr. Lindawan. When requested to present the missing booklets, Mr. Lindawan blamed the COA auditors that they got the official receipts during the audit and never returned it back. When asked to produce the transmittal of documents received by the COA auditors, Mr. Lindawan cannot provide any proof.

Aside from the missing booklets, forty-two (42) booklets of official receipts used for the JDF and SAJF from April 2011 up to July 2012 were not presented though they were posted in the cashbooks and monthly reports.

The inventory conducted on the official receipts disclosed the following unused OR as of 10 September 2013:

<b>SERIAL NUMBERS</b>	<b>REMARKS/QUANTITY</b>
<b>7654801 -7654850</b>	<b>Missing</b>
<b>7654851- 7654900</b>	<b>Missing</b>
<b>7654901 - 7654950</b>	<b>Missing</b>
<b>7654951 - 7655000</b>	<b>Missing</b>
6661901 - 6662000	2 booklets
0248901 - 0249000	2 booklets
0249401- 0249900	10 booklets
0249951 - 0250000	1 booklet
0249387 - 0249400	14 pieces
6661879 - 6661900	22 pieces
0249907 - 0249950	44 pieces
<b>TOTAL</b>	<b>15 booklets &amp; 80 pieces</b>

### **III. For the FIDUCIARY FUND:**

After examining and verifying evidential records, the total accountabilities amounted to Nine Hundred Thirty-Nine Thousand Pesos (P939,000.00), which was partially restituted on 13 September 2013 amounting to P80,000.00. Thus, the net shortage amounted to **Eight Hundred Fifty-Nine Thousand Pesos (P859,000.00)** computed as follows:

Beginning Balance (as of 12/31/06)		P 500,710.00
Total Collections (1/1/07 to 8/31/13)		<u>2,989,200.00</u>
Total Collections available for withdrawal		P 3,489,910.00
Less: Total Withdrawals (same period)		
Valid Withdrawals	P2,517,000.00	
Invalid Withdrawals (see Schedule I)	<u>45,000.00</u>	<u>2,562,000.00</u>
<b>Unwithdrawn Fiduciary</b>		<b><u>P 927,910.00</u></b>

**Fund as of 8/31/13**

Balance per LBP Solano Branch, Solano, Nueva Vizcaya SA# 0431-0973-70 as of 8/31/13 P 11,778.41

Less: Unwithdrawn Interest as of 8/31/13

Gross interest earned	P 35,215.32	
Less: Withholding Tax	<u>7,043.03</u>	
Net Interest Earned	P 28,172.29	
Less: Withdrawn Interest	5,303.88	22,868.41

**Adjusted Bank Balance as of 8/31/13** **P (11,090.00)**

Unwithdrawn Fiduciary Fund as of 8/31/13 P 927,910.00

Adjusted Bank Balance, LBP SA# 0431-0973-70 (11,090.00)

**Balance of Accountabilities/Cash Shortage** **P 939,000.00\***

**Less: Amount deposited on 9/13/13** **80,000.00**

**Final Accountabilities** **P859,000.00**  
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**\*Breakdown of the Cash Shortage:**

a. Over-withdrawal of Case No. 5542 P 15,000.00

b. Over-withdrawal of Case No. 490-11 40,000.00

c. Over-deposit of Case NO.5783 (1,000.00)

d. Undeposited Collections:

Total Undeposited Collections		P	
	1,346,000.00		

Less: Cash on Withdrawals Hand

Without ORs	P		
	406,000.00		
With ORs	55,000.00	461,000.00	885,000.00

**Total** **P 939,000.00**

It was observed that the total collections for the month were not

deposited in full, thus, said collections did not tally with the corresponding deposits for the month. This is in violation of Circular No. 50-95-Sec. B(4), dated 11 October 1995, xxx

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Initially, the list of withdrawals with lacking documents amounted to P149,000.00 but compliances made by Mr. Valdez and Mr. Lindawan on 20 September 2013 and 14 October 2013, respectively, reduced the amount to P45,000.00, to wit:

<b>Schedule I</b> <b>List of Invalid Withdrawals (without court order/acknowledgement receipt)</b> <b>For the period covered January 1, 2007 to August 31, 2013</b>						
<b>Date</b>	<b>OR NO.</b>	<b>CASE NO.</b>	<b>BONDSMAN</b>	<b>AMOUNT</b>	<b>C.O.</b>	<b>A.R.</b>
06/24/13	6661878	490-11	Adriano Dummanao	40 000.00	none	Ok
10/04/12	Unreceipted	5751	Edarlino Adlos	5,000.00	Ok	None
<b>TOTAL</b>				<b>45,000.00</b>		

**Other findings:**

- a. Unreceipted collections amounted to P802,000.00. The team examined all criminal case folders filed from 1 January 2008 to 31 August 2013 and found out that there were cash bonds posted without official receipts (copies of undertakings were detached from the case folders as proof). Said practice of not issuing official receipts for cash bonds started in September 2009. Also, some bail bond undertakings were not signed by the presiding judge.
- b. Undeposited collections amounted to P1,346,000.00. Included in this amount are the unreceipted collections totaling to P802,000.00.
- c. Some official receipts were tampered. Amount/date in the original copy is different from the duplicate copy.

<b>OR No.</b>	<b>Amount in Original OR</b>	<b>Amount in Duplicate OR</b>
6661877	P3,000.00	P50.00
	Date in Original OR	<b>Date in Duplicate OR</b>
6661853	3/18/11	5/20/11