

EN BANC

[A.M. No. P-15-3386 (Formerly A.M. No. 15-07-227-RTC), November 15, 2016]

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS.
CLERK OF COURT VI MELVIN C. DEQUITO AND CASH CLERK
ABNER C. ARO, REGIONAL TRIAL COURT, SAN PABLO CITY,
LAGUNA, RESPONDENTS.**

DECISION

PER CURIAM:

Before the Court is an administrative complaint^[1] against respondents Melvin C. Dequito (Dequito), Clerk of Court VI, and Abner C. Aro (Aro), Cash Clerk, both of the Regional Trial Court of San Pablo City, Laguna (RTC), charging them of Gross Neglect of Duty and Dishonesty, respectively.

The Facts

This matter stemmed from a Memorandum-Report^[2] dated June 30, 2015 submitted by the Financial Audit Team (Audit Team or Team) of the Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator (OCA), in connection with the financial audit conducted on the books of account of the aforementioned RTC. The examination covered Dequito's financial transactions for the period September 2, 2002 to March 31, 2015. For failure to comply with the submission of the monthly financial reports despite due notice, Dequito's salaries and allowances were withheld effective April 2015.^[3]

Among others, the Audit Team uncovered that there was a total shortage of P888,320.59 in the Fiduciary Fund (FF) account due to nonremittance of collections in the amount of P878,320.59 and an unaccounted withdrawal in the amount of P10,000.00.^[4] The unremitted collections covering the period August 28, 2014 to April 6, 2015 were concealed by Dequito's non-submission of the required monthly financial reports to the Revenue Section, Accounting Division, Financial Management Office, OCA, whereas P10,000.00 of Dequito's P30,000.00 withdrawal on September 8, 2014 remained unaccounted for.^[5]

When informed of the shortage in the FF, Dequito admitted responsibility only for P80,000.00^[6] and passed the blame onto Aro for the remainder.^[7] On the other hand, Aro did not deny that he misappropriated the unremitted FF collections. Based on the command responsibility rule, however, the Audit Team asked Dequito to restitute the missing funds, which he complied with on June 18, 2015.^[8] Despite the restitution, the Audit Team nonetheless noted that the Court was still deprived of interest amounting to P46,671.41 that could have accrued to its benefit had the collections been deposited during the prescribed time.^[9]

During the Team's exit conference with Executive Judge Agripino G. Morga, the latter expressed his dismay about the shortage in the FF account. Hence, both respondents were relieved of their respective duties.^[10]

In view of the foregoing, the Audit Team recommended that its Memorandum-Report be docketed as a regular administrative complaint against respondents for violating the Court's issuances on the proper handling of judiciary collections. Respondents were also directed to explain the incurrence of the FF shortage and the non-submission of the monthly financial reports.^[11]

Further, the Audit Team found unliquidated withdrawals amounting to P437,400.00 in the Sheriff's Trust Fund (STF). Thus, it recommended that the Court direct the accountable officers - among others, Sheriffs Mario S. Devanadera (Devanadera) and Rodrigo G. Baliwag (Baliwag) - to submit the pertinent liquidation reports with the corresponding supporting documents; otherwise, they would be liable to pay the same.^[12]

In a Resolution^[13] dated September 16, 2015, the Court adopted the Audit Team's recommendations.

As directed, Aro submitted his *Sinumpaang Salaysay*^[14] on December 16, 2015, averring that it was Dequito who asked him to make adjustments in the deposit and continued to borrow money from the court's collections, despite his reminders to the contrary. Nonetheless, he admitted to using the court's collections to resolve a personal problem, but added that Dequito never bothered to find a way to correct the same. He also alleged that he prepared the monthly financial reports, but Dequito refused to sign them.^[15]

On the other hand, Dequito, in his Explanation^[16] dated December 18, 2015, regarded the situation as a case of abused trust and confidence. He narrated that from the time he assumed office as Clerk of Court VI, he gave his full trust and confidence to the previous cash clerk, Celia Getrudes Magpantay (Magpantay) until the latter's promotion.^[17] Aro then took over and the same "system" implemented by Magpantay went on with similar smoothness and efficiency until the early part of 2014 when Aro started incurring numerous absences. Dequito noticed that there were delays in the preparation of the monthly financial reports and thus, constantly reminded Aro of his duties.^[18] Further, Dequito alleged that he only found out about the FF shortage after he was informed by the Audit Team. When he confronted Aro about the shortage, the latter admitted having incurred the same but could not give any answer on how to rectify the situation. Finally, Dequito, who had borrowed money from several persons just to reconstitute the shortage, implored the Court to help him recover the restituted amount from Aro and likewise, impose the proper disciplinary sanctions upon the latter.^[19]

The OCA's Report and Recommendation

In a Memorandum-Report^[20] dated July 14, 2016, the OCA found Dequito and Aro administratively liable for Gross Neglect of Duty and Dishonesty, respectively. However, considering that this is the first administrative case filed against them, the

OCA recommended that they both be suspended for a period of six (6) months without salary and benefits, instead of being dismissed from service.^[21]

The OCA pronounced that Dequito should be sanctioned for being lax in the performance of his duties as clerk of court and further remarked that his restitution of the shortage should not exempt him from liability. It also chastised Dequito for passing the blame for the incurred shortage onto Aro, given that it was his duty to ensure that his subordinates perform their duties and responsibilities in accordance with the pertinent circulars relating to deposits and collections and proper accountability of all court funds.^[22] On the other hand, Aro admitted to using judicial funds for his personal benefit. Hence, the OCA adjudged J:tim guilty of Dishonesty.^[23]

Relatedly, the OCA observed that Baliwag had an unliquidated STF balance in the amount of P74,000.00. However, since Baliwag had already retired from service on December 30, 2012, the OCA recommended that Dequito be held liable for the unliquidated STF if he had already issued the former's clearance upon retirement.^[24]

Finally, albeit not being a party to the case, the OCA directed Devanadera to pay his unliquidated STF in the amount of P15,000.00^[25] and furnish the OCA proof of deposit upon payment thereof.^[26]

The Issue Before the Court

The main issue in this case is whether or not Dequito and Aro should be held administratively liable.

The Court's Ruling

At the outset, the Court observes that Devanadera was not impleaded as a party to the present case.^[27] Hence, up until the proper complaint is filed against him, the Court cannot adopt nor approve the OCA's directive against him as it would violate his right to due process.

As for Aro, the Court not only adopts the OCA's finding that he is guilty of Dishonesty, but also finds him administratively liable for Grave Misconduct pursuant to existing jurisprudence.

Dishonesty is the disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.^[28]

In this case, Aro had admitted to misappropriating the court's funds for his own use, which resulted in the shortage in the FF. His justification that he used the court's money to help his daughter is no excuse for using judiciary funds in his custody. As a cash clerk, he is an accountable officer entrusted with the delicate task of collecting money for the court.^[29] This proprietary function imbues his position with trust and confidence, and acts of misappropriation clearly betray his integrity, much more evince his disposition to defraud the court. For whatever personal reason Aro

may proffer, it should be remembered that as a court personnel, he is expected, at all times, to uphold the public's interest over and above his personal interest.^[30] To stress, judicial employees should be living examples of uprightness and must bear in mind that the image of the court, as a true temple of justice, is mirrored in their conduct.^[31]

Equally unavailing is Aro's defense that his superior, Dequito, never bothered to correct his infractions. The lack of proper supervision, much more tolerance of professional obliquity, cannot excuse one's own wrongdoing. A court employee, whether in the capacity of a subordinate or a superior, should be held accountable for his own actions. If it is indeed true that Dequito condoned his misappropriation of court funds, then the correct course of action is to hold them both liable. That said, the Court agrees with the OCA that Aro is guilty of Dishonesty. Where respondent is an accountable officer, and the dishonest act directly involves property, accountable forms or money for which he is directly accountable and respondent shows an intent to commit material gain, graft and corruption, the dishonesty is considered serious,^[32] as in this case.

In addition, Aro should also be held administratively liable for Grave Misconduct. In several cases,^[33] the Court has regarded the misappropriation of judicial funds not only as a form of Dishonesty, but also of Grave Misconduct. Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behaviour or gross negligence by a public officer. The misconduct is considered grave when it is accompanied by the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule,^[34] as Aro's misappropriation of the FF in this case. Consequently, the Court modifies the OCA's recommendation to include Aro's administrative liability for Grave Misconduct.

As for Dequito, the Court similarly adopts the OCA's finding of Gross Neglect of Duty, in view of the shortage in the FF, as well as his failure to timely remit collections and to submit the required monthly financial reports.

Gross neglect of duty refers to negligence characterized by the glaring want of care; by acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally; or by acting with a conscious indifference to consequences with respect to other persons who may be affected.^[35] In contrast, simple neglect of duty only refers to the failure to give proper attention to a required task or a disregard of duty due to carelessness or indifference.^[36]

The safeguarding of funds and collections, and the submission of monthly collection reports are essential to the orderly administration of justice.^[37] In this light, Supreme Court (SC) Circular No. 13-92^[38] mandates clerks of courts to immediately deposit fiduciary funds with the authorized government depository banks,^[39] specifically the Land Bank of the Philippines (LBP).^[40] Moreover, SC Circular No. 32-93^[41] requires all clerks of court or accountable officers to submit a monthly report of collections for all funds not later than the tenth (10th) day of each succeeding month.

A clerk of court is the custodian of court funds.^[42] Hence, he is liable for any loss,

shortage, destruction or impairment of these funds.^[43] Any shortage in the amounts to be remitted, as well as the delay in the actual remittance of these funds, constitutes Gross Neglect of Duty of a clerk of court.^[44] The Court has also ruled that a clerk of court who fails to timely deposit judiciary collections, as well as to submit monthly financial reports, is administratively liable for Gross Neglect of Duty.^[45]

In this case, Dequito clearly exhibited Gross Neglect of Duty when he completely left the task of remitting the court funds and submitting the collection reports to the cash clerk, Aro. As clerk of court, he is duty-bound to timely remit the collections and submit the required financial reports even if he delegates these tasks to other court employees, which he failed to accomplish.

Further, Dequito, being the RTC's Clerk of Court, is primarily responsible for all its funds - such as the FF and is further charged with administrative supervision over court personnel.^[46] As the records show, Dequito was undoubtedly remiss in performing his functions when he failed to supervise Aro in the management of the court's funds, thus resulting in its misappropriation.^[47] To note, Aro's admission of misappropriation of a substantial portion of the missing funds could not exculpate Dequito from his own negligence.^[48] As above-intimated, a clerk of court is primarily accountable for all funds that are collected for the court, whether received by him personally or by a duly appointed cashier who is under his supervision and control.^[49] Hence, Dequito cannot pass the blame onto his subordinate, Aro. As such, he was properly held liable to return the FF shortage, including the unearned interest caused by the delay in its remittance.^[50]

Separately, the Court observes that the OCA recommended that Dequito be ordered to pay Baliwag's unliquidated STF balance in the amount of P74,000.00 if he had issued the latter's clearance upon retirement.^[51] The records are, however, bereft of any showing that such clearance had indeed been issued. Thus, the Court deems it proper for the OCA to first make a determination of the matter, and thereafter, make the appropriate recommendation depending on its finding.

Case law holds that the unwarranted failure of a clerk of court to fulfill his responsibilities deserves administrative sanction and not even the full payment of any incurred shortage as in this case - will exempt the accountable officer from liability.^[52] Therefore, for his glaring disregard of his duties as clerk of court, Dequito is adjudged guilty of Gross Neglect of Duty.

Anent the penalties to be imposed, Serious Dishonesty, Grave Misconduct, and Gross Neglect of Duty are all serious offenses punishable by dismissal from public service, even on a first offense.^[53] Hence, the Court disapproves the OCA's recommendation to reduce the penalty to mere suspension for both Aro and Dequito.

The Constitution mandates that a public office is a public trust and that all public officers must be accountable to the people and must serve them with responsibility, integrity, loyalty, and efficiency.^[54] The demand for moral uprightness is more pronounced for members and personnel of the judiciary who are involved in the dispensation of justice. As front liners in the administration of justice, court