

EN BANC

[A.M. NO. P-10-2765 [FORMERLY A.M. NO. 09-11-199-MCTC], September 13, 2011]

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS.
EVELYN G. ELUMBARING, CLERK OF COURT II, 1ST MUNICIPAL
CIRCUIT TRIAL COURT, CARMEN-STO. TOMAS-BRAULIO E.
DUJALI, DAVAO DEL NORTE, RESPONDENT.**

DECISION

PER CURIAM:

This administrative matter stemmed from the financial audit of the books of accounts of the Municipal Circuit Trial Court (MCTC), Carmen-Sto. Tomas-Braulio E. Dujali, Davao Del Norte conducted by the Audit Team (Team) of the Court Management Office, Office of the Court Administrator (OCA) on November 18, 2008. The audit covered the accountability period of Clerk of Court Evelyn G. Elumbaring (Elumbaring), Clerk of Court II, from May 1985 to October 31, 2008.

The audit was prompted by the Commission on Audit's Audit Observation Memorandum dated May 25, 2007 which showed that Elumbaring has failed to submit financial reports since March 2006.^[1]

During the Team's preliminary cash count, it revealed an initial cash shortage of P90,719.00; thus, the Team proceeded with a more detailed examination of the books of accounts.^[2]

Based on the available documents, the audit report yielded the following results:^[3]

I . Cash Examination and Inventory of Accountable Forms

A. Cash Count

x x x x

Total Cash on Hand presented	P
40,020.00	
Less: Total Undeposited Collections	P
113,739.00	

- SAJF (for periods June- Nov 18, 2008) - (P54,472.60)
- JDF (for periods August-November 18, 2008) - (P22,051.40)
- FF (for periods November 3-18, 2008) - (P21,000.00)
- STF (for periods June-November 18, 2008) - (P16,000.00)

- LRF (for periods August-November 18, 2008) - (P215.00)

Cash on Hand- for Refund to Cashbonds to parties in -
 CC # 10359-08 OR# 8065563 P 2,000.00
 CC # 9851-05 OR # 4363475 P15,000.00
17,000.00

P

Balance of Accountability - shortage

P 90,719.00

II. For the Clerk of Court's General Fund (COCGF), Special Allowance for the Judiciary Fund (SAJF), Judiciary Development Fund (JDF) and Mediation Fund (MF):

	COGF 01/01/96 -11/10/03	SAJF 11/11/03 -10/31/08	JDF 05/01/85 - 10/31/08	MF 11/01/03 - 10/31/08
Total Collections	P164,546.50	P 180,760.97	P 933,874.88	P 57,000.00
Total Deposits	164,716.50	P 27,404.50	843,296.65	P 55,500.00
Balance	P (170.00)	P 153,356.47	P 90,578.23	P 1,500.00
Less: Deposit in Transit - 11/05/08				P 1,500.00
Balance of Accountability	P (170.00)	P 153,356.47	P 90,578.23	P 0.00

III. For the Trust Fund Deposits:

Unwithdrawn Fiduciary Fund

as of October 31, 2008

P

886,918.00

Total Collections (Sept. 2002-Oct. 2008) -

P3,363,518.00

Less: Total Withdrawals (same period) -

P 2,476,600.00

Unwithdrawn Fiduciary Fund as of October 31, 2008: (P 886,918.00)

Adjusted Bank Balance as of October 31, 2008

801,377.55

Adjusted Bank Balance as of October 31, 2008

LBP S/A No. 1741-1010-72

Bank Balance as of October 31, 2008

P 816,102.62

Less: Unwithdrawn Interest

14,725.07

Adjusted Bank Balance as of October 31, 2008: (P 801,377.55)

Balance of Accountability

P 85,540.45

IV. Delay in the remittances:

Fund	Date of Collections	Date Deposited	No. of Months of Delay
GF	December 1996-July 1998	July 1998	6 months
	September-October 1998	Nov. 1998	2 months
	December 1999-April 2000	June 2000	6 months
	May 2000-February 2001	March 2001	9 months
	Nov. 2001-December 2001	April 2002	4 months
	January 2002-March 2003	April 2003	14 months
	April 2003-November 2003	Dec. 2003	7 months
SAJ	December 2003-July 2004	August 2004	8 months
Fund	Sept. 2004-February 2005	February 2005	5 months
	September 2005-January 2006	January 2006	3 months
	June 2006	July 2006	1 month
	February 2007-April 2007	May 2007	2 months
	July 2007-October 2007	Not deposited	
	December 2007-January 2008	Not deposited	
	April 2008	Not deposited	
	June 2008-October 2008	Not deposited	
JDF	August 1991-July 1993	August 1993	22 months
	April 2000-August 2000	Dec. 2000	8 months
	Sept. 2000-February 2001	March 2001	5 months
	November-Dec 2001	April 2002	4 months
	Jan 2002-March 2003	May 2003	15 months
	April 2003-Sept 2003	Dec. 2003	4 months

	October 2003-July 2004	August 2004	9 months
	Sept 2007-Jan 2008	February 2008	4 months
	August 2008-Oct 2008	Not deposited	

The Team discovered that the computed shortages in the SAJF and JDF amounting to P153,356.47 and P90,578.23, respectively, resulted from the accumulated non-remittance of these collections. Moreover, the official cashbooks for these funds disclosed that the last remittances made by Elumbaring for SAJF and JDF were for the months of July 2008 and August 2008, respectively, and the same do not tally with the actual balance of her undeposited collections.^[4]

The Team observed that Elumbaring engaged in the practice of lapping^[5] collection and remittances. The JDF collections were not deposited in full. Likewise, the collections were deposited beyond the reglementary period prescribed in court-issued circulars. In fact, most of her collections were deposited only after two or three months.^[6]

Moreover, the Team also discovered that Elumbaring withdrew cash bonds upon issuance of a court order, but failed to refund the same to the bondsman or accused and, instead, kept in her possession for 20 days or more. It appeared that Elumbaring did not release the same due to the bondsman's/accused's failure to either show up or produce valid identification cards. The Team, however, concluded that Elumbaring's continuous possession of the withdrawn bonds for a long period of time, without even redepositing the same to the court's fiduciary fund account and with no safety vault for proper safekeeping, showed that she had, at the very least, temporarily appropriated said money for personal use.^[7]

In her Explanation, Elumbaring disputed the Team's findings, yet submitted machine-validated deposit slips showing that the shortages in the JDF and SAJF amounting to P90,578.23 and P153,356.47 were duly deposited on November 28, 2008.^[8]

Futhermore, to restitute the computed shortages of Eighty-Five Thousand Five Hundred Forty Pesos and 45/100 (P85,540.45) in the Fiduciary Fund, Elumbaring deposited the amounts of P21,000.00 and P50,000.00, on November 19 and 28, 2008, respectively. Thus, only the amount of P14,540.45 remained in her balance of accountability.^[9]

In a Memorandum dated February 2, 2009, Elumbaring was directed to: (1) explain why no administrative charges shall be filed against her for her failure to remit the JDF and SAJF collections in full and within the reglementary period; (2) submit valid documents to support the withdrawals of the unauthorized withdrawals amounting to P995,200.00, or otherwise restitute the same; and (3) restitute the balance of her accountability in the Court's Fiduciary Fund amounting to P14,540.45.

In her Compliance, Elumbaring admitted that she failed to remit her judiciary

collections in full within the reglementary period and acknowledged that she had no legitimate excuse for such failure. She, however, claimed that there is no Land Bank Branch in Carmen, Davao Del Norte; the nearest LBP is located in Panabo City, which is 6 kms or aaproximately 30 minutes away from MCTC Carmen, Davao Del Norte.

Elumbaring likewise argued that she does not know how to operate a computer and relied on the court personnel to do the financial reports. She also claimed that it was not stated in her job description as clerk of court that she will act as the "financial accountable officer." She said that if she had known earlier, she would not have applied for the position as she knew she was not suited for that kind of work.
[10]

Thus, in a Memorandum to the Chief Justice, dated November 11, 2009, the OCA found Elumbaring guilty of Dishonesty and Malversation of Public Funds for her failure to deposit her collections within the prescribed period and, accordingly, recommended her dismissal from the service.

The OCA confirmed that Elumbaring already submitted valid documents to support the unauthorized withdrawals of cash bonds amounting to P995,200,00. Likewise, the aggregate amount of P329,475.15 consisting of: P85,540.45 for the Fiduciary Fund, P153,356.47 for the SAJF, and P90,578.23 for JDF have already been deposited on November 19 and 28, 2008, respectively. On April 6, 2009, she deposited the shortage of P14,540.45 to the Fiduciary Fund.^[11] In sum, the OCA manifested that Elumbaring was able to restitute the whole amount of her accountabilities in the court collections.^[12]

On January 27, 2010, as recommended by the OCA, the Court resolved to:

(1) REDOCKET this matter as a regular administrative case against Evelyn G. Elumbaring, Clerk of Court II, MCTC, Carmen-Sto. Tomas-Braulio E. Dujali, Davao Del Norte, for gross dishonesty and malversation of public funds;

(2) REQUIRE Clerk of Court Elumbaring to MANIFEST whether she is willing to submit the case for decision on the basis of the pleadings/records already filed and submitted, within ten (10) days from notice; and

(3) DIRECT Hon. Evalyn Arellano-Morales, Presiding Judge, MCTC, Carmen-Sto. Tomas-Braulio E. Dujali, Davao Del Norte, to:

(a) DESIGNATE a competent and honest Officer-in-Charge to handle effectively the financial transactions of the court to avoid repetition of dissipation of the court funds;

(b) STUDY and IMPLEMENT an effective internal control to safeguard and handle effectively the financial transaction of the court;