

EN BANC

[A.M. NO. P-05-2065, April 02, 2009]

REPORT ON THE FINANCIAL AUDIT CONDUCTED ON THE BOOKS OF ACCOUNTS OF MR. AGERICO P. BALLEs, MTCC-OCC, TACLOBAN CITY.

D E C I S I O N

PER CURIAM:

On October 25, 2004, the Financial Audit Team of the Office of the Court Administrator (FAT- OCA) conducted an examination of the books of accounts of the Municipal Trial Court in Cities (MTCC) of Tacloban, Leyte. The examination covered the period from 1 October 1989 to 30 September 2004 during the tenure of Mr. Agerico P. Balles (Balles), the Clerk of Court of the MTCC.

In its Memorandum^[1] dated June 15, 2005, the FAT-OCA reported to the then Court Administrator Presbitero J. Velasco, Jr.,^[2] the following initial findings: (1) shortage of P213,466.87 in the Fiduciary Fund; and (2) cash shortage of P12,814.00 and P86.00 representing uncollected marriage solemnization fees for the accounts of the JDF and SAJF; (3) unremitted bet money collections which were still in the possession of the City Prosecutor in the total amount of P18,031. 75; and (4) the need for Balles to explain not only the said shortages but also unidentified withdrawals and deposits appearing in the Land Bank of the Philippines (LBP) passbook and unreported/unrecorded collections.

On June 29, 2005, the Court Administrator issued a Memorandum^[3] to then Chief Justice Hilario Davide, Jr., recommending the following:

1. The report of the team be docketed as a regular administrative complaint against Mr. Agerico P. Balles, Clerk of Court, OCC- Municipal Trial Court in Cities (MTCC), Tacloban City;
2. Mr. Agerico P. Balles, incumbent Clerk of Court, be directed within fifteen (15) days from notice to:
 - a. PAY and DEPOSIT the shortage of P213,466.87 for the Fiduciary Fund;
 - b. PAY and DEPOSIT the shortages of P12,814.00 and P86.00 representing uncollected marriage solemnization fees as computed for the account of JDF and SAJF;
 - c. SUBMIT to the Fiscal Monitoring Division, CMO-OCA:
 - c.1 Machine validated deposit slip as proof of remittance in

Item 2.a

c.2 Certified true copy of original receipt issued and machine validated deposit slips as proof or remittance in Item 2.b

c.3 The COURT ORDERS, ACKNOWLEDGMENT RECEIPTS, WITHDRAWAL SLIPS of the withdrawn cash bonds as enumerated in Annex "C" of this report amounting to P2,729,317.52 otherwise this will form part of his accountabilities; and

c.4 A certified photocopy of LBP Passbook under Savings Account No. 0181-0842 covering the period from June 1, 1994 to August 31, 1995.

d. WITHDRAW the accrued interest (net of tax) amounting to P286,989.48 covering the period of March 31, 1994 to September 31, 2004 from Savings Account No. 0181-0842-19 and P20,297.27 from Savings Account No. 0941-0370-70 covering the period of December 31, 1998 to March 31, 2004 and issue the corresponding official receipt and transfer to the JDF account, copy furnished the Fiscal Monitoring Division, Court Management Office of the machine validated deposit slips as proof of transfer;

e. COLLECT the unremitted bet money from the possession of the City Public Prosecutor of Tacloban City, amounting to P7,594.75;

f. COLLECT the unremitted bet money from the possession of the City Prosecutor of Tacloban City, amounting to P10,437.00, and

g. EXPLAIN in writing within fifteen days (15) from notice

g.1 Why he should not be administratively sanctioned for incurring shortages from the Fiduciary Fund amounting to P213,466.87.

g.2 For unidentified withdrawals and deposits appearing in the LBP passbook.

g.3 Unreported/unrecorded collections in Fiduciary Fund.

3. Executive Judge Wenceslao B. Vanilla be DIRECTED to monitor the Clerk of Court, Mr. Agerico P. Balles, in the strict compliance of circulars in the proper handling of judiciary funds and adhere strictly to the issuances of the Court to avoid repetition of the offenses committed as enumerated above.

On August 22, 2005, the Court issued a Resolution^[4] noting the above-quoted Memorandum and directing Balles to, among others, pay and deposit his shortages

and submit his written explanation of the matters involved in the Memorandum.

In his Compliance^[5] dated January 19, 2006, Balles explained that the alleged shortage (representing uncollected marriage solemnization fees) was traceable and attributable to MTCC, Branch 2, Tacloban City and not his office. If collected, the same should be remitted to the office of the respondent Clerk of Court, MTCC, Tacloban City. Attached to his compliance was respondent's letter dated December 5, 2005 to a Ms. Hedy B. Saldaña, Clerk IV, Branch 2, MTCC Tacloban City directing the latter to remit the said shortage.

With regard to the shortage in the Fiduciary Fund, Balles claimed that there was no shortage of P213,466.87 in the Fiduciary Fund as shown by the Land Bank of the Philippines (LBP) Cash Deposit Slip dated October 25, 2005^[6] wherein he deposited the same amount to the account of MTCC, Tacloban City under Account Number 0181 0842 19.

As for the directive for him to submit court orders, acknowledgement receipts, and withdrawal slips pertaining to withdrawn cash bonds, Balles claims to have submitted his records to the OCA in 1998 and that when he tried to retrieve them, he was informed that the records had been submitted to the Commission on Audit. Hence, respondent was under the impression that the matter was duly accounted for.

On June 7, 2006, the Court issued a Resolution^[7] referring the instant administrative matter to the OCA.

On October 25, 2006, then Court Administrator Christopher O. Lock issued a Memorandum Report^[8] addressed to then Chief Justice Artemio Panganiban, recommending that Balles be dismissed from the service for gross neglect of duty. To quote the pertinent portions of the Memorandum Report:

The explanation proffered by Mr. Balles centers largely on accounting for the shortage of court funds as well as providing justifications on how some court funds remained unaccounted for or uncollected. However, what he has not satisfactorily explained is the underlying issue [of] his failure to perform the primordial responsibilities of his office. xxx xxx xxx

Settled is the role of clerks of courts as judicial officers entrusted with the delicate function with regard to collection of legal fees, and are expected to correctly and effectively implement regulations (*Gutierrez v. Quitalig*, 448 Phil 465, [2003], cited in *Dela Peña v. Sia*, A.M. No. P-06-2167, June 27, 2006). Relating to proper administration of court funds, the Court has issued SC Circular No. 13-92 which commands that all fiduciary collections "*shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized depository bank.*" In SC Circular No. 5-93, the Landbank is designated as the authorized government depository.

Mr. Balles failed to heed the aforementioned Court directives. The audit conducted on his books of account reveals that much of what accounts for his accountability of P213,446.87, representing shortage in the

Fiduciary Fund, are unreported or unrecorded collections. **Aside from failing to issue official receipts for these official transactions. Mr. Balles missed to timely deposit said collections in the authorized depository bank. At times, only temporary receipts were issued therefore. Such issuance of temporary receipts is prohibited** (2002 Revised Manual for Clerks of Court, p. 400, vol.1). **Also, confiscated bet money [in] Illegal Gambling cases amounting to P18,031.75 have not been remitted to the JDF Account.** In another instance, **the Statement of Unwithdrawn Fiduciary Fund (as of September 30, 2004) prepared by the Clerk of Court did not tally with the Statement of Unwithdrawn Fiduciary Fund prepared by the audit team.** This results when Mr. Balles excluded from his list the cash bond collections, rental deposits and consignment for cases not yet dismissed or withdrawn. **These constitute neglect of duty because in accounting of funds, all collections [of the court] are entered daily into their corresponding cashbooks and deposited to the proper bank accounts maintained with the Landbank of the Philippines xxx. (id., p.394).** He should not lose sight of the oft-repeated reminder from the Court that clerks of courts should deposit immediately with authorized government depositaries the various funds they have collected because they are not authorized to keep funds in their custody. The Court stresses, *"the unwarranted failure to fulfill these responsibilities deserves administrative sanction and not even the full payment, as in this case, will exempt the accountable officer from liability"* (Office of the Court Administrator v. Julian, February 10, 2005). **His belated deposit of the amount of his accountability does not exonerate him from liability.**

Clearly, Mr. Balles has been remiss in the performance of his administrative responsibilities. One of the non-adjudicative functions of a clerk of court is to withdraw interest earned on deposits, and remit the same to the account of the Judiciary Development Fund (JDF) within two (2) weeks after the end of each quarter (Circular 13-92, March 1, 1992; A.M. No. 99-8-01-SC, September 14, 1999). As reported by the audit team, interest earned from Savings Accounts Nos. 0181-0842-19 and 0941-0370-70 remained unwithdrawn as of September 30, 2004 and therefore, not remitted to the JDF Account. His other lapse in the performance of his duty is his inability to direct the concerned clerks of court within his supervision to timely remit marriage solemnization fees to his office. Moreover, by his indifference to the reported practice of some courts to forego payment of marriage solemnization fees for relatives of some court personnel, he has unwittingly caused the court to lose revenues. He must be re-apprised that *clerks of court, in particular, are chief administrative officers of their respective courts who must show competence, honesty and probity, having been charged with safeguarding the integrity of the court and its proceedings* (Gutierrez v. Quitalig, id).

IN VIEW OF THE FOREGOING, the undersigned respectfully recommends that respondent MR. AGERICO P. BALLEs be DISMISSED from the service for gross neglect of duty with forfeiture of all benefits except accrued leave credits, if any, and with prejudice to re-employed in any