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[**A.M. NO. 01-10-279-MCTC, October 15, 2007**]

REPORT ON THE JUDICIAL AUDIT CONDUCTED IN THE MUNICIPAL CIRCUIT TRIAL COURT, GEN. M. NATIVIDAD- LLANERA, NUEVA ECIJA.

DECISION

SANDOVAL-GUTIERREZ, J.:

On July 11 to 13, 2001, the judicial audit team of the Office of the Court Administrator (OCA) conducted an audit and inventory of cases in the Municipal Circuit Trial Court (MCTC) of Gen. M. Natividad-Llanera, Nueva Ecija. The purpose of the audit was to determine the veracity of reports that cash bonds posted for the provisional liberty of the accused in criminal cases were being paid directly to the presiding judge for which no official receipts were issued. The MCTC was then presided by Judge Octavio A. Fernandez.

On October 10, 2001, the judicial audit team submitted its findings to Deputy Court Administrator Jose P. Perez.

On December 5, 2001, the Court designated retired Sandiganbayan Justice Narciso T. Atienza, Consultant in the OCA, to conduct an investigation, report and recommendation on the findings of the audit team that:

a) Judge Octavio A. Fernandez

- 1) disregarded the rule on the deposit of money as bail (Sec. 14, Rule 114, Revised Rules on Criminal Procedure);
- 2) Misappropriated the cash bonds he directly received in Criminal Cases Nos. 2461-N (*People v. Marthy Manliclic*), No. 110-L (*People v. Edgardo Balunes*), No. 111-L (*People v. Guiller Ferrer*) and No. 135-L (*People v. Rufino Casimiro*) – all are MCTC, Gen. M. Natividad-Llanera cases, and Criminal Cases Nos. 505 and 506 (*People v. Florentino Marcelo*) – both MTCC, Palayan City cases; and
- 3) Misappropriated the amount of P10,000.00 which was intended as a settlement of the civil aspect of Criminal Case No. 2443-N (*People v. Danilo Rivera*); and

b) Judge Fernandez and Clerk of Court Teresita S. Esteban misappropriated **P65,000.00** from the P300,000.00 as full payment of the civil aspect covering the face value of the two (2) checks subject of Criminal Cases Nos. 2628-N and 2630-N (*People v. Mercedita Santos*).

On June 25, 2002, Justice Atienza submitted his Report and Recommendation which, in turn, was referred by the Court to the OCA for evaluation.

On August 26, 2003, the OCA submitted its Evaluation Report as follows:

In his Report to the Court, Justice Atienza stated that respondent's actuations constitute **grave misconduct**. He justified his conclusion based on the oral testimonies of the witnesses and the various documentary evidence attached to the records. He viewed the counter-affidavit of Judge Fernandez as hearsay but since the Rules on Evidence are not strictly followed in administrative proceedings, he nevertheless discussed it along with the other evidence adduced during the investigation. Hereunder are the findings of Justice Atienza, to wit:

x x x

As culled from the records of Criminal Cases Nos. 2461-N, 110-L, 111-L, 505 MTCC Palayan City, and 2443-N, respondent judge received the cash bail bond deposits of the accused and retained possession of the same in violation of Section 11, (Sec. 14 of the Revised Rules) Rule 114 of the 1985 Rules on Criminal Procedure x x x.

x x x

Respondent Judge also violated the law when he issued the orders of release of the accused who posted cash bonds without requiring the submission of a written undertaking showing compliance with Section 2 of Rule 114 x x x.

x x x

With respect to the alleged misappropriation of the **P65,000.00**, part of the P300,000.00 full settlement of the civil aspect of Criminal Cases Nos. 2628 and 2630-N, it appears that two (2) counts of Violation of BP 22 were filed by Ricardo Santos in the MCTC, Gen. Natividad-Llanera, Nueva Ecija against Mercedita Santos on May 14, 1999. The parties settled the cases amicably, and accused Mercedita Santos entrusted to Teresita Esteban, Clerk of Court of MCTC, Gen. Natividad-Llanera, Nueva Ecija, the amount of **P300,000.00** for delivery to Ricardo Santos, in full settlement of the civil aspects of both cases. On September 3, 1999, Ricardo Santos executed a document denominated as "*Sinumpaang Salaysay Tungkol sa Pag-uurong*" which was sworn to before Judge Fernandez. In view of the desistance executed by the complainant, Judge Mallare directed the Clerk of Court to include both cases in the trial calendar for affiant to affirm the veracity of the contents of his affidavit of desistance. On the witness stand, complainant retracted his desistance because, according to him, he received only P235,000.00 from the Clerk of Court and not the entire amount of P300,000.00 as

full settlement for both cases. This prompted Judge Mallare to issue an order dated October 27, 1999, stating, *inter alia*, that "upon inquiry made by the court, said Clerk of Court manifested in open court that Judge Octavio Fernandez **took the Thirty Thousand (P30,000.00)** Pesos as attachment bond". The Clerk of Court did not say what happened to the remaining P35,000.00.

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Judge Octavio A. Fernandez and Clerk of Court Teresita S. Esteban of MCTC Gen. Natividad-Llanera, Nueva Ecija did not live-up to the standards of conduct demanded of court employees. They failed to act according to the responsibilities attached to their respective offices. A Judge should so behave at all times to promote public confidence in the integrity and impartiality of the judiciary and the Clerk of Court must be honest and competent.

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THE RECOMMENDATION OF THIS OFFICE

This Office fully agrees with the extensive investigation and report of Justice Atienza regarding the administrative liability of Judge Fernandez and Clerk of Court Esteban. It is well taken but the penalty he recommended against Judge Fernandez appears to be disproportionate to the gravity of the offense. Respondent Judge Fernandez has been **previously fined in the amount of P5,000.00 and sternly warned in A.M. No. MTJ-01-1354** dated April 4, 2000 that repetition of his mistakes, more so aggravation thereof, would be dealt with more severely. Apparently, the warning did not work and we see no reason in employing it again for purposes of this disciplinary case. Public interest in an honest judiciary dictates that notice of future harsher penalties should not be followed by another forewarning of the same kind, *ad infinitum*, but by discipline through appropriate penalties. This understanding should leave no doubt that, unless completely absolved of the charges, respondent Judge faces a grimmer sentence than the P30,000.00 fine and warning recommended by Justice Atienza.

Respondent Judge Fernandez undeniably kept or retained in his possession the cash bonds submitted by the accused for their temporary liberty in the following criminal cases:

Criminal Case No.	Amount of Bail	Date of Payment
1. 2461-N	P 4,000.00	February 3, 1988
2. 110-L	4,000.00	February 10, 1999
3. 111-L	10,000.00	January 26, 1999