

SECOND DIVISION

[A.M. NO. P-06-2177 (FORMERLY A.M. NO. 06-4-268-RTC), June 27, 2006]

RE: REPORT ON THE FINANCIAL AUDIT CONDUCTED ON THE BOOKS OF ACCOUNTS OF ATTY. RAQUEL G. KHO, CLERK OF COURT IV, REGIONAL TRIAL COURT, ORAS, EASTERN SAMAR.

R E S O L U T I O N

CORONA, J.:

This administrative case is a result of the audit conducted by the Office of the Court Administrator (OCA) of the books of accounts of Atty. Raquel G. Kho, former clerk of court of the Regional Trial Court, Branch 5, Oras, Eastern Samar. The audit covered the period March 1985 to October 31, 2005.

The OCA, in its memorandum dated April 18, 2006, had the following findings: (1) there was a shortage of P545.00 in remittances to the General Fund; (2) a cash shortage of P24.00 in the Sheriff's General Fund; and (3) Atty. Kho did not deposit on time in the authorized depository bank the collections for the Fiduciary Fund (P60,000) and Special Allowance for the Judiciary Fund (P5,000). It also noted that Atty. Kho had already restituted the P545.00 and P24.00 cash shortages.

Regarding the delayed remittance of the amount of P60,000 representing the amount of a confiscated cash bond, Kho explained that the Land Bank of the Philippines (the authorized depository bank) had no branch in their locality. The nearest Land Bank branch was approximately 95 kilometers away so it was his practice to keep his collections in the court's safety vault.

On the other hand, the amount of P5,000 was collected as filing fee for an election protest. According to Kho, this was collected under Rule 40 of the Commission on Elections (COMELEC) Rules of Procedure. In defense, he presented a letter addressed to Senior Deputy Court Administrator Zenaida N. Elepaño inquiring where to remit said amount. The OCA, through Deputy Court Administrator Jose P. Perez, responded that pending official instructions on how to manage the money collected under Rule 40 of the COMELEC Rules, it was to be treated as trust deposits and temporarily deposited in the Fiduciary Fund.^[1] However, Kho failed to do this.

Consequently, the audit team advised him to deposit the P5,000 in the Special Allowance for the Judiciary Fund as provided under Sec. 21 (g) of the amended Administrative Circular No. 35-2004.^[2] He was also advised to deposit the confiscated P60,000 cash bond in the Judicial Development Fund account. He complied with both directives on November 15, 2005.

On January 26, 2006, the OCA received a letter-complaint with the information that Kho, along with his alleged common-law-wife, stenographer Riza Amor L. Libanan,

was engaged in lending out to court employees money in his possession as clerk of court, personally deriving profit from the interest earned.

The OCA found Kho liable for violating OCA Circular No. 8A-93^[3] dated April 21, 1993 when he kept the funds in a safety vault for more than a year. All clerks of lower courts are supposed to deposit all collections from bail bonds, rental deposits and other fiduciary collections with the Land Bank upon receipt thereof. Thus, it recommended that (1) the audit report be docketed as a regular administrative complaint against Kho and (2) a fine in the amount of P10,000 be imposed on him.

We agree with the OCA's recommendations.

Public office is a public trust.^[4] Those charged with the dispensation of justice, from the justices and judges to the lowliest clerks, should be circumscribed with the heavy burden of responsibility.^[5] Not only must their conduct at all times be characterized by propriety and decorum but, above all else, it must be beyond suspicion.^[6]

A clerk of court, aside from being the custodian of the court's funds, revenues, property and premises, is also entrusted with the primary responsibility of correctly and effectively implementing regulations regarding fiduciary funds.^[7] Safekeeping of funds and collections is essential to an orderly administration of justice and no protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability for government funds.^[8] Clerks of court have always been reminded of their duty to immediately deposit the various funds received by them to the authorized government depositories for they are not supposed to keep funds in their custody.^[9]

Kho failed to make a timely turn-over of cash deposited with him. This was inexcusable because he could have purchased postal money orders from the local post office payable to the chief accountant, Accounting Division, FMO-OCA. The money could have earned interest had he not kept them in the vault for over a year.^[10] As found by the OCA, although Kho had restituted all his cash accountabilities, he was nevertheless liable for failing to immediately deposit the collections for the judiciary funds.

The failure to remit the funds in due time constitutes gross dishonesty and gross misconduct. It diminishes the faith of the people in the Judiciary.^[11] Dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service even if committed for the first time. However, Kho showed remorse by immediately restituting the cash shortages and complying with the directives of the audit team. And considering that this is his first offense, we find that the penalty of P10,000 fine is sufficient.

We note that Kho has already transferred to the Department of Justice. However, it neither renders this matter moot nor frees him from liability.

Moreover, his misconduct reflects on his fitness as a member of the bar. His malfeasance *prima facie* contravenes Canon 1,^[12] Rule 1.01^[13] of the Code of Professional Responsibility. Hence, he should explain why no further disciplinary