

EN BANC

[A.M. NO. P-06-2140 (FORMERLY OCA I.P.I NO. 06-2-51-MTCC), June 26, 2006]

RE: REPORT ON THE FINANCIAL AUDIT CONDUCTED IN THE MTCC-OCC, ANGELES CITY.

R E S O L U T I O N

PER CURIAM:

Before us is an administrative case which arose from the Memorandum^[1] of Dindo V. Sevilla, Team Leader of the Office of the Court Administrator (OCA) Financial Audit Team (Team) to then Court Administrator (now a member of this Court) Presbitero J. Velasco, Jr. dated February 3, 2006 charging Aurelia C. Lague (respondent) of gross negligence in the performance of duty and gross dishonesty.

On February 14, 2005, the Team conducted an audit on the books of accounts and a surprise cash count in the Office of the Clerk of Court (OCC), Municipal Trial Court in Cities (MTCC), Angeles City.

The surprise cash count revealed an initial shortage of P700,025.00 in the Fiduciary Fund (FF) which prompted the Team to conduct a detailed and comprehensive financial audit on all the books of accounts of the court.

The cash presented to the Team totaling P16,000.00 together with the additional amount of P84,000.00 given by the cashier was deposited^[2] on the following day, February 15, 2005 to the FF account in the total amount of P100,000.00. On February 18 and 23, 2005, respondent deposited^[3] the amount of P500,000.00 and P5,025.00, respectively, to the FF account thereby restituting totally the audited shortage amounting to P605,025.00.

In a letter^[4] dated March 2, 2005, Clerk of Court Anita G. Nunag (CoC Nunag) required respondent to explain in writing how and why she incurred the shortage of P605,025.00.

In her explanation^[5] dated March 7, 2005, respondent admitted that she was remiss in her collecting functions, giving as reasons the following: she is the collecting and disbursing officer at the same time; while she gives priority to her disbursing functions, she failed to record her collections daily in the three cashbooks *i.e.*, Fiduciary Fund (FF), Judiciary Development Fund (JDF) and Special Allowance for Justices and Judges (SAJJ), which resulted to the accumulated unrecorded transactions; she attends to the needs of litigants with claims for refund of their cash bonds including the preparation, processing of vouchers and withdrawals from the bank, thus her failure to record promptly the transactions in their specific/corresponding cashbooks.

Respondent reasoned that the alleged shortage of P605,025.00 was due to her failure to record her collection for Official Receipt (O.R.) Nos. 15156288 to 15156433, thus, she had difficulty in determining how much to deposit to the FF account.

In her explanation^[6] dated February 16, 2005 addressed to Acting Executive Judge Aida E. Layug, respondent averred that as regards the withdrawal of cash bond, she would first check the Fiduciary receipts whether the same were already deposited or not. If the concerned O.R.s were not yet deposited, she will refund the amount from her present collections and will not withdraw from the FF account although the withdrawal slip is made and signed by the proper authorities. And due to the said process, she can no longer deposit to the said account the undeposited O.R.s as the same were already refunded to the claimants out of her present collection.

In her Explanation/Answer^[7] dated March 7, 2005 addressed to the Audit Team, CoC Nunag explained that she was not in a position to explain the transactions as regards: a) the Clerk of Court General Fund (GF); b) unwithdrawn interests from prior years in the amount of P7,481.80; c) unwithdrawn interests from January 2003 to December 2004 (particularly the first and second quarters of 2003); and d) the confiscated/forfeited cash bonds not withdrawn from the FF since March 1999, as she assumed office as CoC of the OCC, MTCC, Angeles City only on August 16, 2003. She claimed good faith and oversight over the amount of P51.20 pertaining to Special Allowance for the Judiciary (SAJ) which resulted to an over-remittance of P40.00 and P11.20 on September 2004 and February 9, 2005, respectively. The P5,000.00 shortage in the JDF and over-remittance of P5,000.00 to the FF resulted from an erroneous deposit made to the FF. The same, however, was corrected through a credit advice from the Land Bank of the Philippines (LBP), Angeles Branch. With regard to the undeposited collections of respondent from November 2, 2004 to February 14, 2005, she explained that she was shocked and surprised and did not know how the respondent managed to do it because they submitted balanced Monthly Reports for the months of November and December, 2004, adding that in good faith, she was not remiss in strictly monitoring the respondent to the extent of her (CoC Nunag's) accounting ability. And to prove her innocence, she attached a copy of respondent's affidavit attesting that she (CoC Nunag) had no knowledge and consent to the undeposited collections. With regard to the marriage solemnization fees, the same were already settled. On confiscated/forfeited cash bonds, she reasoned that she is not in a position to explain the unwithdrawn confiscated/forfeited cash bonds from the FF since March 1999 in the amount of P625,600.00 because she assumed office only on August 16, 2003. For her term, she was not able to withdraw the corresponding amount for the confiscated/forfeited cash bonds for the reason that the forfeitures/confiscations received were only submitted by the respondent on February 15, 2005 when the same were asked by the Team. She averred that the records were not given to her by the respondent despite the fact that the records were being asked of her (respondent). And that she already complied with the withdrawal of P625,600.00 from the FF account on March 3, 2005 and thereafter deposited to the JDF account on the same day.

The Team submitted its report^[8] containing their significant audit findings, to wit:

Based on the records presented to us by Clerk of Court Nunag, here are our significant findings:

A. CLERK OF COURT GENERAL FUND

A.1 Reconciliation of the collections and deposits of the **General Fund** for the period December 2002 to December 31, 2003

For General Fund (GF)

Total Collections from December 2002 to December 31, 2003	P475,164.60
Less: Total Remittances made during the same period	<u>475,364.60</u>
Balance of Accountability as of December 31, 2003 (Overage)	P (200.00)

The P200.00 overage was due to the double-remittance of O.R. No. 16474633 dated February 28, 2003 both in the cashbook and in the monthly report. This amount would be treated as Other Income.

B. SPECIAL ALLOWANCE FOR THE JUDICIARY (SAJ)

Reconciliation of the collections and deposits of the **Special Allowance for the Judiciary** Fund for the period January 2004 to February 14, 2005.

For Special Allowance for the Judiciary (SAJ)

Total Collections from January 2004 to February 14, 2005	P549,750.40
Less: Total Remittances made during the same period	<u>549,801.60</u>
Balance of Accountability as of February 14, 2005	P (51.20)

The P51.20 overage was due to over-remittance of P40.00 on September 10, 2004 and P11.20 on February 9, 2005. These amounts would be treated as Other Income.

C. JUDICIARY DEVELOPMENT FUND (JDF)

Reconciliation of the collections and deposits of the **Judiciary Development Fund** for the period December 2002 to January 31, 2005.

For Judiciary Development Fund (JDF)

Total Collections from December 2002 to February 14, 2005	P1,612,886.73
Less: Total Remittances made during the same period	<u>1,607,886.73</u>
Balance of Accountability as of	P 5,000.00

February 14, 2005 (Shortage)

The P5,000.00 shortage was due to collections in the Fiduciary Fund erroneously deposited in the Judiciary Development Fund on September 8, 2003 (see "ANNEX B"). The Clerk of Court informed immediately the FMBO and FMO about the matter. On January 14, 2004, the COA State Auditor advised the Clerk of Court to make an off-setting in the collections of Judiciary Development Fund to the Fiduciary Fund to compensate the incurred shortage. This process of "setting-off" was not in accordance with the court's policies and accounting standards. In fact it violated Section 2 of P.D. 1949 which states that "exclusive power and duty to approve[d] disbursements and expenditures of the JDF is vested solely to the Chief Justice of the Supreme Court." Moreover, there was already notice sent to the Supreme Court for the necessary adjustments on the matter. On October 24, 2003, LANDBANK corrected the erroneous recording with a credit advice totaling P5,000.00 to the Fiduciary Fund account no. 1521-0426-10 (see "ANNEX B"). Therefore, the Judiciary Development Fund now is understated by P5,000.00 due to the "off-setting" and the Fiduciary Fund is overstated by P5,000.00 due to the inter-office credit advice.

D. FIDUCIARY FUND

Reconciliation of the collections and withdrawals of the **Fiduciary Fund** for the period December 2002 to February 14, 2005

For Fiduciary Fund (FF)

Beginning Balance as of November 30, 2002	P3,918,225.00
Total Collections from December 2002 to February 14, 2005	5,191,343.61
Less: Total Withdrawals made during the same period	3,290,175.00
Balance of Unwithdrawn FF as of February 14, 2005	5,819,393.61
LESS:	4,481,905.30
Amount of Bank Balance as of February 14, 2005	P5,301,065.69
Over-remittance-Sept. 8, 2003 ("Annex B")	(5,000.00)
Unwithdrawn int. from prior Years ("Annex C")	(7,481.80)
Unwithdrawn interest-Jan 2003 To Dec. 2004	(74,481.80) <u>5,214,368.61</u>
Balance of Accountability as of February 14, 2005	P 605,025.00

The P605,025.00 shortage was already paid/restituted by Ms. Aurelia C. Lague on February 15, 2005 for P100,000.00; on February 21, 2005 for

P500,000.00; and finally the remaining balance on February 23, 2005 for P5,025.00. In her affidavit dated February 16, 2005 (see "ANNEX D") Ms. Lugue averred that collections for the day were deposited the next day. She also claimed that the real amount of shortage will be much lower than the initial shortage of P700,625.00 if ever, there will be a shortage. She insinuated that there was no shortage at all. However, based on the passbooks presented to the Team, the collections from November 4, 2004 to February 14, 2005 were not deposited. Even though the amount of actual shortage of P605,025.00 was lower than the initial amount of P700,625.00, it still showed an intention on the part of Ms. Lugue to embezzle the court's funds. Therefore, Ms. Lugue was indeed guilty of misappropriating the Fiduciary Funds for her own personal benefit. Also, there were withdrawals committed by Ms. Lugue from the undeposited collections or cash available on hand in the Fiduciary Fund amounting to P52,600.00. These were deducted from the unremitted collections of P657,625.00 as these were valid withdrawals. Ms. Lugue averred that she would check first whether the collections were deposited or not. Otherwise, she would refund to the party with her own money if proven that the bond was not deposited.

Almost all the collections in the Fiduciary Fund were delayed in remittance. This is a glaring violation of Circular No. 50-95 of the Office of the Court Administrator stating that "collections in the Fiduciary Fund should be deposited within twenty four (24) hours by the Clerk of Court with the Land Bank of the Philippines." Even during the time of former Officer-in-Charge Marlon Roque, MTCC-Branch 3 Clerk of Court during the period December 2002 to August 15, 2003, collections in the Fiduciary Fund were delayed in remittance. Mr. Roque was remiss in his duty to monitor and supervise the Cashier Ms. Lugue in the management of court funds.

Meanwhile, Ms. Lugue thought that her "lapping" technique in delaying the remittance of the Fiduciary Fund would not be discovered. Official Receipts Nos. 15156288 to 15156433 totaling 145 official receipts comprised the total shortage of P605,025.00. These amounts were not deposited/remitted by her. Moreover, Clerk of Court Nunag was found negligent in over-seeing the affairs of the Cashier, Ms. Lugue when she reported back to work. Even if she was on official leave from September 2004 to November 15, 2004, Ms. Nunag should have exercised diligence in monitoring and supervising the work of Ms. Lugue. The team was furnished by an explanation of the Clerk of Court, Ms. Nunag on March 7, 2005. She states, "...Since I assumed office on August 16, 2003, I adopted the practice done by the previous Clerk of Court and the cashier Mrs. Lugue since I know it is in order. On January 14, 2004, our office was subjected to audit by the Commission on Audit for the period covering December 2002 to January 2004. There was no findings of any shortages (except for the erroneous deposit to the JDF of the P5,000.00 Fiduciary collection, which was already rectified.).. My attention was never called by the auditor regarding the delayed deposits made by the Cashier." (see "ANNEX E")

E. ON MARRIAGE SOLEMNIZATION