

EN BANC

[A.M. NO. P-01-1499, September 26, 2006]

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS.
ATTY. MARILOU DUREZA-ALDEVERA CLERK OF COURT, RTC,
DAVAO CITY, AND TERESITA M. ELEGINO, CASH CLERK III, SAME
COURT, RESPONDENTS.**

D E C I S I O N

PER CURIAM

This is an administrative case against respondents Clerk of Court Marilou Dureza-Aldevera and Cash Clerk Teresita M. Elegino for the cash shortages and infractions discovered in the Office of the Clerk of Court, Regional Trial Court (RTC), Davao City during an audit conducted in April 2000 and February 2001.

Due to reports of fiscal irregularities being committed in the Office of the Clerk of Court, Regional Trial Court, Davao City, then Court Administrator Alfredo L. Benipayo directed Verina F. Yap, Head of the Fiscal Monitoring Division of the Court Management Office, Office of the Court Administrator (OCA), to form a team and conduct a surprise audit of the accountabilities of respondent Atty. Marilou D. Aldevera, Clerk of Court of the Regional Trial Court, Davao City.

On April 5, 2000, the audit team went to Davao City and proceeded to the Office of the Clerk of Court. They made a cash count of the contents of the vault and found P373,337.16 in currency; twelve (12) manager's checks from different banks amounting to P280, 615.36; six (6) postal money orders amounting to P1,150; one (1) check dividend from the Supreme Court Savings and Loan Association amounting to P160; forty-six (46) salary checks and seventeen (17) checks representing rice allowances of court personnel amounting to a total of P174,019.50. The inventory of cash and cash items totaled P829,282.02. The next day, Atty. Aldevera deposited the checks found in the vault in the account for the Fiduciary Fund.

After making a preliminary finding, the team took custody of the records of the Clerk of Court. They returned to Manila to further determine the exact status of the accountabilities of respondent Clerk of Court.

The Partial Report dated July 18, 2000 of the Financial Audit Team covered only the Judiciary Development Fund, Clerk of Court General Fund, Sheriff's General Fund and Sheriff's Trust Fund. It was reported that there was a shortage in the Sheriff's General Fund and Sheriff's Trust Fund in the amount of P2,959.21 and P229,283.85, respectively. While there was over-remittance in the Judiciary Development Fund (JDF) and Clerk of Court General Fund (CoCGF) in the amount of P71,053.34 and P133,603.90, respectively. Over-remittance in the JDF was attributed to improper recording of collections. While over-remittance in the CoCGF, was attributed to non-

issuance of the corresponding receipt upon the transfer of forfeited bonds from the Fiduciary Fund to the CoCGF.

In a Resolution^[1] dated October 24, 2000, the Court resolved to:

x x x

(b) SUSPEND Ms. Teresita Elegino from office pending resolution on this audit report;

(c) DIRECT Atty. Marilou D. Aldevera and Ms. Teresita Elegino to: (c-1) explain why no administrative sanction shall be imposed upon them based on the result of the audit findings and (c-2) restitute the shortages for Sheriff General Fund and Sheriff Trust Fund amounting to P2,959.21 and P229,283.85, respectively; x x x

(d) DIRECT the Fiscal Management and Budget Office, this Court, and the Financial Management Office, OCA, to WITHHOLD the salaries, allowances and other benefits of Atty. Aldevera and Ms. Elegino to cover possible shortages that may be found after the audit of the Fiduciary Fund account; and

(e) DIRECT Atty. Aldevera to explain why she signed the Daily Time Record of Ms. Elegino without reflecting her absence on 18 April 2000.

On January 12, 2001, respondent Elegino filed a Manifestation^[2] informing the Court that she had restituted the shortage of P229,283.85 in the Sheriff's Trust Fund, which was supported by two deposit slips.^[3] She, however, did not file an Explanation in compliance with the Court Resolution of October 24, 2000.

On the other hand, Atty. Aldevera filed an Explanation^[4] dated January 15, 2001. She informed the Court that respondent Elegino had fully restituted the shortages in the Sheriff's General Fund and the Sheriff's Trust Fund. She also appended thereto her letter dated November 22, 2000 directing Elegino to immediately restitute the shortage of P229,283.85 in the Sheriff's Trust Fund. She explained that all the anomalies had been committed by Elegino without her knowledge, participation or connivance. She pointed out that Elegino executed an Undertaking^[5] stating that Elegino "assume[s] full money accountability for all shortages in the collections that may be found by the auditing team during the audit."

Atty. Aldevera stated that long before she assumed the position of Clerk of Court in 1989, Elegino had already been performing the duties of a cash clerk/cashier under her (Aldevera's) predecessors. Elegino performed the task of handling, depositing, recording of cash and check deposits. She was the exclusive custodian of all records and documents pertaining to the cash, money and other payments handled by the Office of the Clerk of Court.

Atty. Aldevera claimed that she exercised due diligence in supervising and monitoring Elegino in the handling of the court accounts and transactions. She also systematized the filing system of deposits and withdrawal slips on a monthly basis. Because of the volume of the transactions, she assigned four persons to assist

Elegino.

Atty. Aldevera contended that the *modus operandi* employed by Elegino was such that a cursory and normal monitoring and checking of the transactions would not result in its discovery, but could only be found out in a regular audit. Even the assignment of other personnel did not uncover the irregularities, especially in the Fiduciary Fund.

Atty. Aldevera stated that after the audit on April 6, 2000, she relieved Elegino and assigned Laarni G. Mascardo as the Acting Cash Clerk. Her persistent efforts to protect the interest of the government enabled her to secure an admission from Elegino of her accountability. Through her efforts, cash and checks amounting to P679,928.68 had been recovered. To further protect the interest of the government, Atty. Aldevera claimed that she was able to secure from the Elegino spouses a transfer certificate of title and a special power of attorney to mortgage their property and to use the amount loaned to reconstitute any shortages.

Atty. Aldevera maintained that the irregularities committed by Elegino should be blamed on Elegino alone. She argued that in the absence of any evidence of her own personal wrongdoing, participation or knowledge of Elegino's irregular acts, she should be spared from any administrative sanction for acts which she did not commit. She contended that although she was the head of office who had supervision and control of her cash clerk, "it would defy logic and fair play if she is made to answer for the latter's acts or misdeeds, the same having been astutely hidden from her and where such misdeed would not, by due diligence, be discovered were it not for the work of the Audit Team."

Finally, Atty. Aldevera stated that Elegino was present on April 18, 2000, but that she was "verifying/locating her records." Her physical absence may have given the auditors the misimpression that she was absent that day.

In February 2001, the same audit team returned to the RTC, Davao City for the purpose of determining the state of the Fiduciary Fund. After the second audit, a Final Report dated August 17, 2001 was submitted to the Court by then Acting Court Administrator Zenaida N. Elepaño.

It was reported that from the period covering June 1989 to April 5, 2000, the collections in the Fiduciary Fund supposed to be deposited in the depository bank totaled P24,777,871.92. However, the balance reflected in the bank account for Fiduciary Fund as of April 5, 2000 was only P15,349,393.17. Hence, there was a shortage of P9,428,478.75. In view of the partial restitution made by respondent Elegino in the amount of P455,505.68, the shortage was lessened to P8,972,923.07.

The second audit found that the Office of the Clerk of Court, RTC, Davao City, under the supervision of Atty. Aldevera as Clerk of Court, committed the following infractions:

1. Allowing the encashment of checks (such as salary checks, checks issued by the Supreme Court Savings and Loan Association (SCSLA) representing dividends and Rice Allowance checks) from funds collected as Legal Fees, in violation of Sec. 67 of P.D. 1445;

2. Failure to present upon demand the full amount of the Fiduciary Fund which gives rise to the presumption that malversation was done resulting in the shortage of NINE MILLION FOUR HUNDRED TWENTY EIGHT THOUSAND FOUR HUNDRED SEVENTY EIGHT PESOS and 75/100 (P9,428,478.75), defined and penalized under Art. 217 of the Revised Penal Code;
3. Failure to present upon demand the full amount of the Sheriff's General Fund which gives rise to the presumption that malversation was done resulting in the shortage of TWO THOUSAND NINE HUNDRED FIFTY NINE PESOS and TWENTY ONE CENTAVOS (P2,959.21), also penalized under Art. 217 of the Revised Penal Code;
4. Failure to present upon demand the full amount of the Sheriff's Trust Fund which gives rise to the presumption that malversation was done resulting in the shortage of TWO HUNDRED TWENTY NINE THOUSAND TWO HUNDRED EIGHTY THREE PESOS and EIGHTY FIVE CENTAVOS (P229,283.85) also penalized under Art. 217 of the Revised Penal Code;
5. Over-remittance of the Judiciary Development Fund in the amount of SEVENTY ONE THOUSAND FIFTY THREE PESOS and THIRTY FOUR CENTAVOS (P71,053.34), which can only be caused by improper book handling;
6. Over-remittance of Clerk of Court General Fund in the amount of ONE HUNDRED THIRTY THREE THOUSAND SIX HUNDRED THREE and NINETY CENTAVOS (P133,603.90) which can only be caused by improper book handling;
7. Failure to issue Official Receipts for collections for the Fiduciary Fund in Special Case No. 3762-93 amounting to P2,389,767.67 and Civil Case No. 21,811-93 amounting to P642,200.00 in violation of Sec. 61 and 113, Art. VI, Auditing and Accounting Manual;
8. Failure to submit the Monthly Report of Collections, Deposits and Withdrawals for Fiduciary Fund as reflected in the Subsidiary Ledger of the Revenue Division, Accounting Division for the months of June to December 1989; January to December 1990; January to December 1991; May to December 1994; January to December 1995; January to April 1996; November to December 1996; February 1997; April to August 1997; October to December 1997; January 1998; March to December 1998 and January to December 1999, in violation of Circular No. 32-93; and
9. Failure to deposit the daily collections with the authorized depository bank in violation of Administrative Circular No. 31-90 dated 15 October 1990.^[6]

Imputed to Atty. Aldevera are the following specific violations:

1. Failure to sign the certification in the cash books that the entries therein are true and correct. At the end of each month, she should have signed the certification but the records show that there was not a single certification signed by her in the cash book. Had she done this regularly she could have monitored the everyday transaction in her office. It appears that she left all the work to Ms. Elegino;
2. There were checks of judges and court personnel encashed from the collections which are still in their possession, some of which were duly signed and endorsed by Atty. Aldevera for deposit but were never done, causing the checks to become stale, thus depriving the RTC of funds, the interest of which should have accrued to the JDF;
3. Atty. Aldevera is aware that Cash Clerk Elegino is engaged in the business of lending money to the court personnel and some other people, but she condoned such activities. She should have not authorized Ms. Elegino to engage in such business considering the nature [of] her work in the court. Atty. Aldevera should have made the necessary measures to safeguard their collections;
4. Atty. Aldevera does not regularly submit Monthly Reports of Collections, Deposits and Withdrawals for the Fiduciary Fund which resulted in the large amount of shortages;
5. Atty. Aldevera claims that she allowed Ms. Elegino to handle the cash collections because she was already performing this task when she assumed office. This, however, is not reason enough for her to continue the set-up in her office.^[7]

In an *en banc* Resolution dated August 21, 2001, the Court resolved to:

x x x

(b) RE-DOCKET this matter as A.M. No. P-01-1499 (Office of the Court Administrator v. Atty. Marilou Aldevera, Clerk of Court, RTC, Davao City);

(c) DIRECT Ms. Teresita M. Elegino x x x to submit her explanation as required in the resolution dated 24 October 2000;

(d) REFER this matter to ACA Antonio H. Dujua for investigation report and recommendation thereon within sixty (60) days from receipt of the explanation of Ms. Elegino;

(e) place Atty. Aldevera under PREVENTIVE SUSPENSION effective immediately and while this matter is under investigation;

(f) DIRECT the Executive Judge of RTC Davao City to DESIGNATE Branch Clerk of Court Rosemarie Cabaguio as Officer-in-Charge of the Office of