

EN BANC

[AM P-03-1755, April 29, 2005]

JUDGE MANUEL S. SOLLESTA, COMPLAINANT, VS. SALVACION B. MISSION, RESPONDENT.

DECISION

PER CURIAM:

In a letter-complaint dated February 4, 2002, Judge Manuel S. Sollesta, Acting Judge of the Second Municipal Circuit Trial Court (MCTC) of Banga/Tantangan, South Cotabato, charged Salvacion B. Mission, Clerk of Court II of the same court, with embezzlement, misappropriation and conversion to her personal use and benefit the amount of P171,450.00, representing Judiciary Development Fund (JDF) and Trust Fund of the court.

The letter-complaint stemmed from an examination of the cash and accounts under the custody of herein respondent conducted on August 9, 1999 by State Auditor III Vicenta G. Cagang and State Auditor II Bonifar T. Barluado of the Commission on Audit (COA), who are assigned at the Provincial Auditor's Office of South Cotabato. The examination was made pursuant to PAO Office Order No. 99-002.

In a Memorandum dated September 16, 1999, State Auditors Cagang and Barluado submitted a report to the Provincial Auditor of South Cotabato containing the result of their examination of the cash and accounts of respondent. Pertinent portions of the report are as follows:

PART II – FINDINGS AND RECOMMENDATIONS

1. FINDING

Ms. Salvacion B. Mission, Clerk of Court II, incurred a cash shortage in her accountability of P171,450.00 due to undeposited collection of P93,450.00 and unliquidated cash advance of P78,000.00.

Section 606 of the GAAM states that:

. . . The failure of public officer to have duly forthcoming any public funds or property with which he is chargeable upon demand by any duly authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal use.

Pursuant to Article 2 of the Revised Administrative Code:

The term public officer as used in the law with reference to a person having authority to do a particular act or

perform a function in the exercise of government employee, agent, or body having authority to do the act or exercise the function in question.

Upon demand, Ms. Mission presented a total cash of P760.00. Her total accountabilities for all funds combined, after same were established making available all the records in her office, showed a balance of P172,210.00, thereby incurring a shortage of P171,450.00 . . .

. . .

This shortage was incurred by Ms. Mission in the following funds as presented in Table I, below:

TABLE I
Apportionment of Cash Shortage

	Accountability		Cash Presented		Shortage
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Judiciary	P	1,210.00	P 760.00		P 450.00
Dev. Fund					
Trust Fund					
-		93,000.00	-----		93,000.00
Undeposited					
Collections					
-		78,000.00	-----		78,000.00
Unliquidated					
Cash					
Advance					
		P 172,210.00	P 760.00		P171,450.00
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The shortage of P171,450.00 is charged to the Judiciary Development Fund and Trust Fund in the amount of P450.00 and P171,000.00, respectively.

In the Judiciary Development Fund, the audited balance arrived at was P1,210.00 contrary to what was shown in the JDF cashbook of Ms. Mission which was zero. This was due to improper recording of the remittances. Ms. Mission usually took up her remittances within the month when collection was made and not on the month when actual remittance was made, thus showing a zero balance at the end of month. . . .

. . .

The difference of P360.00 in the collection on August 1-9, 1999 per audit pertained to beginning balance not reflected in the books of Ms. Mission which was adjusted in August, 1999.

On the other hand, the shortage of P171,000.00 in the Trust Fund consisted of the total collections for P93,000.00 not deposited by Ms. Mission and total withdrawals for P78,000.00 made by her at LBP, Surallah Branch under Account No. 2191-0124-64 which were not supported by court order and acknowledgment receipt of the accused persons. The withdrawals served as cash advance of Ms. Mission until she had liquidated them.

Ms. Mission confirmed the aforecited shortages as it is evidenced by her signature on the schedules marked as Annex C and Annex D.

The withdrawal slips dated December 4, 15, 24, 1998, January 20, 1999 and April 19, 1999 covering cash withdrawn not supported by court orders, original official receipts and acknowledgement receipts are shown in Annexes E to H.

RECOMMENDATION:

Institute administrative and/or criminal action against Ms. Salvacion B. Mission for malversation of public funds.

The failure of Ms. Salvacion B. Mission to produce upon demand by the team the amount of P171,450.00, a shortage disclosed as of August 9, 1999, is a prima facie evidence that she used such missing funds for her own personal benefit which warrants the institution of administrative and/or criminal action against her as provided for under the provisions of Article 217 of the Revised Penal Code.

2. FINDING

Withdrawals of bank deposits in the total amount of P78,000.00 were allowed even without court orders.

Section B(1), B(2) and part of B(6) of Circular 50-95 of the Office of the Court Administrator, Supreme Court of the Philippines provide that:

Section B(1)

Withdrawal slips shall be signed by the Executive/Presiding Judge and counter-signed by the Clerk of Court.

Section B(2)

No withdrawals, except as specifically provided in the immediately preceding paragraph, shall be allowed unless there is a lawful order from the court that has jurisdiction over the subject matter involved.

Section B(6)

... Every withdrawal slip must be accompanied by a court order authorizing the withdrawal of the amount indicated thereat.

Five withdrawal slips dated December 4, 15, 24, 1998, January 20, 1999 and April 19, 1999 were found not supported by court orders the corresponding original official receipts of bond deposits and acknowledgement receipts. However withdrawal made on January 20, 1999 for P10,000.00 was in excess of P6,000.00 since only P4,000.00 was paid for the release of bond.

The signatures thereon were all confirmed by the presiding judge as his signature. He explained that even without the court order presented him, he signed those withdrawal slips because of his trust and confidence on the concerned clerk of court.

The Clerk of Court, however, admitted that she made a foregoing withdrawal of deposits even without any claim for refund of cash bond deposit.

RECOMMENDATION:

Sign the withdrawal slips only when properly supported by court order. The provision in Sec. B(2) shall in no case be ignored allowing risk to loss of government fund because of the malpractice of the accountable officer.

3. FINDING

The accountable officer had the practice of delaying the deposit of her collections from 2 to 50 days and withheld from monthly collections amounts totaling P93,000.00 while remittances to Supreme Court of JDF collection was also delayed.

Section 4 of Circular 50-95 of same Circular provides that:

All collections from bailbonds, rental deposits, and other fiduciary collections shall be deposited within twenty-four (24) hours by the Clerk of Court concerned, upon receipt thereof, with the Land Bank of the Philippines.

In tracing the entries of the Trust Fund cashbook of Ms. Mission to the official receipts issued and to the deposit slips that correspond to collections made, it was disclosed that Ms. Mission held her collections for quite a long period before depositing them or even withheld a bigger amount from her monthly collections.

Ms. Mission held her collection on bail bonds received in November, 1998 of P18,000.00 for 49 to 50 days while she withheld the amount of P24,000.00. In December, 1999, she held her collection of P6,000.00 for 42 days and P10,000.00 for 4 days. In the ensuing year, 1999, the collections withheld by her were: January

- P41,000.00; February - P9,000.00; March - P8,000.00; April P3,000.00; May - P3,000.00; and June - P5,000.00. The total amount withheld amounted to P93,000.00. . . .

. . .

On the other hand remittances to the Supreme Court of collection for Judiciary Development Fund was so delayed. From November 21, 1998 to August 9, 1999, Ms. Mission had made four remittances only. These were remittances made on November 25, 1998, May 6, 1999, June 23, 24, 1999 and August 4, 1999 for P500.00, P780.00, P975.00, P1,515.00 and P50.00, respectively.

The collection of Ms. Mission for the month of July, 1999 and August, 1999 of P715.00 and P50.00 respectively were presented to the team during the audit for P760.00 only. However, her total accountability was arrived at P1,210.00, hence a shortage of P450.00 which was demanded from her.

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RECOMMENDATION:

The Clerk of Court is required to deposit her collection within 24 hours pursuant to the provision of Section B(4) of Circular 50-95.

The said Clerk of Court did not only delay the deposit/ remittance of her collections but took/misused part of her collection. Her culpability is shown by the series of action she had taken to defalcate her collection.

4. FINDING

Interests earned from deposits of Trust Fund collections pertaining to cash bond were not remitted to the National Treasury.

Section B(5) of Circular 50-95 dated October 11, 1995 of the Office of the Court Administrator provides that:

Interest earned on these deposits and any forfeited amounts shall accrue to the general fund of the national government, within two (2) weeks after the end of each quarter, the Clerk of Court shall withdraw such interest and forfeited amounts and shall remit the same to the National Treasury under a separate remittance advise, duplicate copy thereof to be furnished the Chief Accountant of the Supreme Court for record and control purposes.

In the verification of the depository account of the MCTC, it was disclosed that total interest earned remained in their account hence, not withdrawn and remitted to the Supreme Court...

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