

## **EN BANC**

**[ A.M. NO. P-98-1281, April 27, 2005 ]**

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS.  
SYLVIA R. YAN, STENOGRAPHIC REPORTER AND FORMER OIC,  
RESPONDENT.**

### **D E C I S I O N**

#### **PER CURIAM:**

In his letter dated November 19, 1997, addressed to former Court Administrator Alfredo L. Benipayo, Judge Fernando R. Gomez, Jr. of the Municipal Trial Court, Brooke's Point, Palawan, requested an audit of all collections and deposits of Sylvia R. Yan, Stenographic Reporter, herein respondent, while she was the Officer-In-Charge (OIC) of the said court.

In his letter, Judge Gomez, Jr. reported that he issued two memoranda to respondent ordering her to turn over to Clerk of Court Remedios Base the bank book for Judiciary Fund and receipts for cash bailbonds. However, respondent failed to do so.

Upon receipt of Judge Gomez' letter, the Office of the Court Administrator (OCA) immediately sent a checklist of audit requirements to the following:

1. Respondent Sylvia R. Yan who acted as Officer-In-Charge for the periods from June 20, 1991 to February 7, 1993 and November 8, 1993 to October 5, 1997.
2. Remedios Base – Clerk of Court, for the periods from February 8, 1993 to November 7, 1993 and October 6, 1997 to present.

Only Clerk of Court Remedios Base submitted the audit requirements to the OCA.

On May 8, 1998, the OCA wired respondent to surrender the necessary documents.

Eventually, respondent appeared before the OCA and submitted the official cashbooks and the official receipts of all collections pertaining to the Judiciary Development Fund (JDF) and Fiduciary Fund. She explained that she failed to submit the required documents on time because she was sick. When asked why there was delay in the submission of monthly reports of collections and deposits during her term as OIC, she explained that although she was the designated OIC, there were other court personnel who collected money from the parties concerned. Oftentimes, her co-workers borrowed the money and that she had a hard time collecting the amounts. When asked about the Fiduciary Fund, respondent cried and admitted that she spent it.

The Fiscal Monitoring Division of the OCA conducted an audit of the JDF, Clerk of Court General Fund, and Fiduciary Fund of the said court during the period that

respondent acted as OIC. The audit shows that with respect to the JDF, respondent incurred a shortage amounting to P3,371.00.

As to the Clerk of Court General Fund, the audit shows that respondent did not maintain a cashbook nor prepare reports of collections and deposits. The collections amounting to P2,576.00 were not remitted.

Relative to the Fiduciary Fund, respondent failed to submit any monthly report of collections and withdrawals. For this Fund, respondent had a shortage of P255,115.38. Following is the summary of respondent's shortages in all her collections:

1) JDF	P 3,371.00
2) General Fund	2,576.00
3) Fiduciary Fund	255,115.38
Total	P261,062.38

On August 14, 1998, the OCA submitted to this Court its audit report. In a Resolution dated September 22, 1998, we treated the OCA's audit report as an administrative complaint against respondent; directed her to explain her failure to remit her collections in the amount of P261,062.38; and placed her under preventive suspension pending resolution of the matter.

For her failure to explain and retribute her shortages, we issued a Resolution dated June 29, 1999 requiring her to show cause why no disciplinary action should be taken against her.

However, despite an extension of 15 days, she still failed to comply with our Resolution. Hence, on October 24, 2000, we referred the matter to the OCA for the filing of appropriate charges against respondent.

On February 9, 2001, the OCA formally filed an administrative complaint for dishonesty, gross misconduct and violation of Administrative Circular No. 5-93<sup>[1]</sup> against respondent.

Acting thereon, we required respondent to file her comment. But she was defiant. Thus, in the Resolutions dated July 9, 2002 and January 28, 2003, we ordered her to show cause why no disciplinary action should be taken against her. But she remained obstinate.

On December 14, 2004, we issued a Resolution imposing a fine of P1,000.00 upon respondent or a penalty of imprisonment of 5 days if the fine is not paid, within 5 days from notice. Again, respondent disregarded our Resolution.

In his Report dated January 25, 2005, Court Administrator Presbitero J. Velasco, Jr. made the following evaluation and recommendation:

"The function of being the custodian of the court's funds and revenues, records, properties and premises devolves upon respondent. She was tasked to use the funds under her official custody in a judicious manner.

Being a mere office-in-charge in no way ebbd the degree of care respondent should exercise in performing her functions. Section 7, Rule 136 of the Rules of Court requires that 'the clerk shall safely keep all records, papers, files exhibits and public property committed to his charge.' Thus, as custodian of the court's funds, respondent had no justification whatsoever for leaving the duty of collecting and issuing receipts for legal fees to other court personnel. The collection of legal fees, by its nature, is a delicate function of clerks of court as judicial officers entrusted with the correct and effective implementation of the regulation thereon.

Under no circumstances can the grant of loans from the court's collections be justified. It was a clear case of an accountable officer consenting to the improper or unauthorized use of public funds by other persons, which is punishable by law. x x x

Respondent's continued refusal to heed the numerous directives from the Court aggravated her legal responsibility. From 1998 to present, she ignored no less than six directives from the Court for her to explain and give her side. This continued defiance amounts to an evasion of the investigation process, clearly indicative of her guilt. Her refusal to face head-on the charges against her is contrary to the principle in criminal law that the first impulse of an innocent man when accused of wrongdoing is to express his innocence at the first opportune time (*Report on the Financial Conducted at the Municipal Trial Courts of Bani, Alaminos, and Lingayen, Pangasinan, A.M. No. 01-2-18-MTC, 5 December 2003*). Her lack of respect for and recognition of the Court's authority, which is an essential and implicit element in an effective and credible judicial system, is contemptible.

Verily, respondent's grave misdemeanors justify her severance from the service. Section 56 (a) of CSC Resolution No. 99-1936 dated 31 August 1999 provides that the penalty of dismissal shall result in the permanent separation of the respondent from the service, with or without prejudice to criminal or civil liability, and under Section 58 (a) of the same resolution, it shall carry with it that of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision.

In view of the foregoing, respectfully submitted for the consideration of the Honorable Court are our recommendations that:

1. Respondent Sylvia R. Yan, Stenographic Reporter and Former OIC, MTC, Brooke's Point, Palawan be DISMISSED from the service for gross misconduct, dishonesty and misappropriation of public funds, with forfeiture of all withheld salaries, allowances and benefits, with prejudice to re-employment in any branch or instrumentality in the government, including government-owned and controlled corporations;