

EN BANC

[A.M. NO. 04-8-195-MCTC, August 18, 2005]

**RE: FINANCIAL AUDIT ON THE ACCOUNTABILITIES OF MR.
RESTITUTO A. TABUCON, JR., FORMER CLERK OF COURT II OF
THE MUNICIPAL CIRCUIT TRIAL COURT, ILOG, CANDONI,
NEGROS OCCIDENTAL**

D E C I S I O N**CARPIO, J.:****The Facts**

Mr. Restituto A. Tabucon, Jr. ("Tabucon"), former Clerk of Court II of the Municipal Circuit Trial Court of Ilog, Candoni, Negros Occidental, was due to retire from the service on 16 September 2000. To expedite the processing of his clearance, the Fiscal Monitoring Division ("FMD") of the Court Management Office under the Office of the Court Administrator ("OCA") prepared, as early as 10 January 2000, the necessary checklist of documents needed for the audit of Tabucon's accountabilities. The FMD mailed a tracer to Tabucon when he failed to submit the necessary documents on his retirement date. Tabucon submitted the documents for the audit of his accountabilities only on 24 May 2004.

FMD made the following findings and observations on Tabucon's accountabilities covering the period from March 1985 to August 2000:

1. Judiciary Development Fund

Collections	P 163,412.30
<i>Less: Deposits to the SC JDF Account</i>	<u>133,796.30</u>
Balance of Accountability/Shortage	P 29,616.00

Tabucon restituted this amount which was deposited on 30 June 2004 to the JDF account of the Supreme Court.

2. Clerk of Court General Fund

Collections	P 1,293.60
<i>Less: Remittance to the Bureau of Treasury</i>	<u>0.00</u>
Balance of Accountability/Shortage	P 1,293.60

Tabucon restituted this amount which was deposited on 30 June 2004 to the National Treasury.

3. Fiduciary Fund

The Municipal Treasurer's Office of the Municipality of Ilog, Negros Occidental certified that the unwithdrawn bail bonds as of June, 2000 was *ONE HUNDRED SIXTY EIGHT THOUSAND EIGHT HUNDRED EIGHTY SIX & 3/100 (P168,886.03)*.

When asked to comment, Tabucon, in his letter dated 22 September 2004, replied that his "salaries and allowances were withheld starting 16 May 1999" up to the end of his service on 16 September 2000. Being the breadwinner of the family, he could no longer feed his family and this prompted him to use the Judiciary Development Fund ("JDF") collections of the last remaining months to feed his family. He was able to submit almost all the documents for his retirement. He restituted his shortages only in May 2004 after he borrowed money from a friend on a 5% interest per month. Tabucon asks for compassion, indulgence and humanitarian consideration.

The case was referred to OCA for evaluation, report and recommendation.

The OCA's Report and Recommendation

The OCA opined that although Tabucon restituted the shortages, the delay in the remittance of the JDF collections deprived the Court of the interest it would have earned had the amounts been deposited promptly in a bank as required. The act of misappropriating judiciary funds for personal use constitutes dishonesty and grave misconduct which is punishable by dismissal from the service. The OCA, however, in recommending a penalty of P5,000 fine, considered as mitigating Tabucon's financial distress.

The Court's Ruling

It is not clear from the records why Tabucon's salary was withheld in May 1999 or more than a year before his retirement in September 2000. Nonetheless, Tabucon admitted that there was indeed a delay in the remittances of JDF collections because he used the JDF collections "to feed his family." He borrowed money from a friend to reconstitute the amounts he took from the JDF collections.

Paragraph B(4) of the Supreme Court Circular No. 50-95^[1] mandates that collections from bail bonds, rental deposits, and other fiduciary collections shall be deposited with the Land Bank of the Philippines by the clerk of court concerned, within 24 hours upon receipt. Tabucon admittedly failed to comply with Circular No. 50-95. Even the fact that Tabucon fully paid his shortages will not free him from the consequences of his wrongdoing.^[2] Delay in the remittance of cash collections is a clear violation of Circular No. 50-95.

Safekeeping of public funds entrusted to court personnel 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 of government funds.^[3] A public official's failure to turn over cash deposited with him on time constitutes not just gross negligence in the performance of his duty, but gross dishonesty, if not malversation.^[4] Gross neglect of duty and dishonesty are