

EN BANC

[A.M. No. P-04-1858 (Formerly OCA IPI No. 00-890-P), August 16, 2004]

**LAURENTE C. ILAGAN, COMPLAINANT, VS. MINDA G. AMAR,
CLERK OF COURT II, MCTC-KAPALONG, DAVAO DEL NORTE,
RESPONDENT.**

R E S O L U T I O N

PER CURIAM:

In a Complaint filed on May 12, 2000, Atty. Laurente C. Ilagan of the Law Firm of Ilagan, Te, Escudero, Laguindam & Jocom, charges Clerk of Court II Minda G. Amar of Irregularity, Abuse of Authority, and, possible, Malversation of Funds.

Atty. Ilagan alleges that their law firm represented accused Roda and Milagros Calimpong in Criminal Cases Nos. 3664-99 and 3667-99 to 3672-99 for Estafa, filed before the Municipal Circuit Trial Court (MCTC) of Kapalong, Davao del Norte. On July 30, 1999, the accused, through Atty. Cresdan Bangoy, posted bail in the amount of P100,000.00, for which respondent issued Official Receipt No. 10576958.

[1] The cases were tried by the Regional Trial Court (RTC) of Tagum City (Branch I), and were dismissed on September 28, 1999. The dismissal became final on October 12, 1999, and entry of judgment was made on March 13, 2000. [2]

As a result of the dismissal of the cases, Atty. Bangoy executed a Special Power of Attorney in favor of Guillermo Villamil in order to withdraw the bail amount posted by the accused. Despite follow-ups, respondent did not release said amount.

Per 1st Indorsement dated June 19, 2000, issued by the Office of the Court Administrator (OCA), the complaint was referred to respondent, who was required to comment thereon within ten (10) days from receipt. [3] Having failed to file any comment, Deputy Court Administrator Jose P. Perez, on April 10, 2001, required respondent to file her comment anew within a non-extendible period of five (5) days. [4] Again, respondent failed to file any comment.

On April 30, 2002, respondent filed an application for Gratuity Benefits under Republic Act (R.A.) No. 1616, as amended. [5] Thus, on March 13, 2003, the matter was referred to Atty. Wilhelmina D. Geronga, Officer-in-Charge of the OCA Legal Office, for initial assessment. [6]

On April 21, 2003, Court Administrator Presbitero J. Velasco, Jr. recommended that respondent be required, for the last time, to file her comment to the complaint within ten (10) days from receipt. It was also recommended that the letter requiring respondent to comment should be coursed through the Presiding Judge of the MCTC, Kapalong-Talaingod-Maniki, Kapalong, Davao del Norte, who would be

required to certify whether it was received by respondent.^[7]

On May 15, 2003, the Court received a letter from Milagrosa and Roda Calimpong, seeking assistance in the refund of their bail bond.^[8]

On June 11, 2003, respondent, through a letter, informed the OCA that she was not able to reply to the complaint against her because Atty. Laurente Ilagan, counsel of the accused, had already died.^[9] Respondent attached a letter from Atty. Jonathan Jocom of the Davao City Law Firm of Te, Laguindam, Jocom & Zarate, informing the Court that respondent has already released the amount of P100,000.00.^[10]

In its Resolution dated August 6, 2003, the Court required respondent to file her comment within ten (10) days from receipt, otherwise, the complaint shall be resolved based on the evidence on record, while respondent's letter, dated June 11, 2003, was noted.^[11] The Resolution was coursed through Judge Justino G. Aventurado, Presiding Judge of the MCTC, Kapalong-Talaingod-Maniki, Kapalong, Davao del Norte, who, on September 12, 2003, informed the Court that "Amar has long been found to have misappropriated the said amount," and that "there is no more money in the custody of the court or deposited in the bank for the release to Mrs. Milagrosa Calimpong."^[12] Judge Aventurado also certified that respondent received the Court's Resolution dated August 6, 2003.^[13]

Thereafter, Mrs. Milagrosa Calimpong again wrote the Court saying that the money was deposited in the Land Bank, Tagum City Branch under Account No. 0341-0948-87. Mrs. Calimpong was of the belief that her money is still in said bank account.^[14]

Finally, in a letter addressed to the OCA Legal Office, respondent replied that, per Atty. Jonathan Jocom's letter dated June 10, 2003, she had already remitted the amount sought to be collected by Mrs. Calimpong.^[15] Respondent also sought the Court's indulgence and consideration in granting her application for gratuity benefits as she has faithfully served as Clerk of Court of MCTC, Kapalong-Talaingod-Maniki for twenty nine (29) years, and she has been "very sick and is always on medication due to diabetes, had become blind and partially crippled due to arthritis."^[16]

The case was then referred to the OCA for evaluation, report, and recommendation; and in its Memorandum dated March 30, 2004, Court Administrator Velasco, Jr., recommended that (1) respondent be dismissed from the service with forfeiture of her retirement benefits, and that she be barred from re-employment in any government agency, including government owned and controlled corporations; and (2) the OCA be directed to (a) initiate criminal charges for Malversation of Public Funds against respondent; and (b) to furnish Mrs. Calimpong a copy of respondent's letter dated June 11, 2003, and Atty. Jonathan Jocom's letter dated June 10, 2003.^[17]

In recommending the penalty of dismissal, OCA reasons out, thus:

... Ms. Amar's failure to produce the money when it was demanded from her in February 2000 raised the presumption that she misappropriated the money, making her liable for malversation of public funds. In fact, she was able to return the money only after more than three (3) years.

Furthermore, she was not able to satisfactorily explain why she was not able to return the money immediately and why it took her more than three (3) years to do so. (Rollo, pp. 53-54)

In A.M. No. 01-10-259-MTC (Re: Partial Audit Findings on the Books of Accounts of the Past and Present Clerks of Court MTCC-Kaputian Island Garden City of Samal [IGCS], MTCC-Bakak, IGCS, MCTC, Kapalong-Talaingod, Davao del Norte, and MTC, Asuncion, Davao Del Norte) the Fiduciary Fund of MCTC, Kapalong-Talaingod Davao Del Norte, of which Ms. Amar was formerly the Clerk of Court, is still being audited. The records, principally the bank books, gathered by the audit team readily shows the infraction of Ms. Amar.

The P100,000.00 was paid on 30 July 1999 (Rollo, p. 3) but the bank book shows that an amount of P100,000.00 was deposited only on 04 August 1999. More significantly, on 12 October 1999 the criminal cases were dismissed and Entry of Judgment was made on 13 March 2000. (Rollo, p.4) As early as February 2000 the complainant was already seeking the release of the money. However, the bank book shows that between October 1999 and March 2000 the account balance never came close to P100,000.00 -- the highest being P29,880.26 for 06 October 1999. In the month of February 2000 the balance was only P13,923.31. Evidently, Ms. Amar being the accountable officer, misappropriated the cash bond of Milagros and Roda Calimpong.^[18]

The Court agrees with the findings of the OCA except as to the recommended penalty.

As Clerk of Court of the MCTC, Kapalong-Talaingod-Maniki, respondent performs very delicate functions. One of these is to act as a cashier and disbursement officer of the Court.^[19] She collects and receives all monies paid as legal fees, deposits, fines, and dues; controls the disbursement of funds appropriated by the provincial and city governments as aid to the Court; and disburses funds quarterly allocated by the Supreme Court to the branches upon the direction and approval of the Executive Judge.^[20]

With regard to the collection of bail bonds and other fiduciary collections, Administrative Circular No. 13-92,^[21] specifically directs the Clerk of Court to **deposit immediately all collections upon receipt thereof** with the authorized government depository bank (Land Bank of the Philippines). Should there be no Land Bank of the Philippines branch in the locality, the Clerk of Court shall deposit all collections with any rural bank in the area, informing the Accounting Division of the Supreme Court.

In the present case, the records show that Atty. Bangoy, in behalf of Roda and Milagros Calimpong, remitted the P100,000.00 bail bond fee to respondent on July 30, 1999.^[22] After having received the amount, respondent should have deposited such amount **immediately** with the Land Bank of the Philippines, Tagum City Branch, per Administrative Circular No. 13-92. The deposit book of the Fiduciary Fund of the MCTC, Kapalong, however, does not reflect any deposit made during or within such period.^[23] Instead, a deposit in an amount of P100,000.00 was made