

EN BANC

[A.M. No. P-03-1681 (Formerly OCA I.P.I No. 99-680-P), February 28, 2003]

JUDGE VERONICA A. DONDIEGO, COMPLAINANT, VS. PETRONIO D. CUEVAS, JR., CLERK OF COURT, MUNICIPAL TRIAL COURT, TAMBULIG, ZAMBOANGA DEL SUR, RESPONDENT.

D E C I S I O N**PER CURIAM:**

Judge Veronica A. Dondiego, the Municipal Trial Court (MTC) Judge of Tambulig, Zamboanga del Sur, sent a sworn letter- complaint, dated 22 June 1999, addressed to then Court Administrator Alfredo Benipayo, against Petronio D. Cuevas, Jr., Clerk of Court II, MTC, of Tambulig, Zamboanga del Sur, charging the latter with incompetence, dishonesty and gross neglect of duty.

Judge Dondiego is assigned to different salas in five municipalities and one city. In order to cope with her work, she has entrusted much of the supervision of administrative matters in each sala to the respective clerks of court. In her letter-complaint, Judge Dondiego stated that respondent Cuevas was most of the time either not in his office or absent from work even when the Judge would be in Tambulig. Once, a litigant complained to the Judge that the cash bond deposited with respondent could not be accounted for by the latter. When confronted by the Judge about it, respondent neither denied nor admitted having taken the amount. The Judge then instructed a member of her staff to obtain a certification and computerized bank statement from the Rural Bank of Bonifacio, Misamis Occidental, where the court was maintaining its account. It appeared from the bank statement of 01 February 1999, that the court's deposit of P20,936.55 did not tally with what had been posted by way of cash bonds per the court's records. Respondent thenceforth kept on evading the Judge. Sometime later, in May 1999, the Judge issued Office Order No. 01-99 requiring respondent to submit MCTC Savings Passbook Account No. 51-04063-4. When shown to her, Judge Dondiego was dumbfounded to see that as of 05 May 1999, there was a balance of only P8,093.77, as against the bonds posted with the court, totaling P25,800.00, still not withdrawn, to wit:

1) Criminal Case No. 1939	-	P20,000.00
2) Criminal Case No. 1780	-	1,800.00
3) Criminal Case No. 1765	-	2,500.00
4) Criminal Case No. 1934	-	<u>1,500.00</u>
Total		P25,800.00

In Criminal Case No. 1910, the judge said, the court's resolution dismissing the case remained unserved and the cash bond posted by the accused in the case appeared to have been borrowed by respondent. The Judge additionally averred that

respondent failed to remit on time judiciary development fund collections.

In its 1st Indorsement of 02 August 1999, the Office of the Court Administrator (OCA) referred and required respondent to submit his comment within ten (10) days from receipt of the letter-complaint of Judge Dondiego.

In his comment, dated 09 November 1999, respondent denied the charges and asserted that the accusations were malicious and baseless, contending that the complaint was motivated by a personal grudge of the Judge against him. He explained that the resolution in Criminal Case No. 1910, although served late, was nevertheless sent to the parties. He placed the blame on a clerk for not mailing it on time. Negating the claim that he borrowed the cash bond of the accused, respondent said that the money was actually put up by the bondsman, Municipal Mayor Eduardo C. Balaod, to whom he personally handed the money upon the request of the sister of the accused. Contradicting the Judge that he was always out or absent, respondent said that he absented himself from work only "once in a while" and "only whenever needed or necessary as any other employee would normally do." Finally, respondent asseverated that while there might have been some lapses in proper accounting reports on fund disbursements which resulted in inaccurate bank records vis-à-vis court records, he implored, however, the indulgence and compassion of this Court considering (a) his faithful thirty years of government service and (b) that this was the first time that a complaint had been lodged against him.

In a resolution, dated 17 January 2001, the Court referred the case to Executive Judge Camilo E. Tamin of the Regional Trial Court (RTC), Branch 23, of Molave, Zamboanga del Sur, for investigation, report and recommendation.

On 23 May 2001, Executive Judge Tamin issued an "ORDER" (should have been aptly titled, "REPORT and RECOMMENDATION"), recommending the dismissal of the charges against respondent; Judge Tamin explained:

"When this case was called for hearing on the charges against respondent for misappropriation of fiduciary funds, absenteeism and incompetence both the respondent and the complainant failed to appear.

"Present in today's proceedings is Lourderoma Lerasan, the Administrative Officer of the Rural Bank of Bonifacio, Bonifacio, Misamis Occidental.

"Filed with this Office is an affidavit of desistance of complainant Veronica A. Dondiego which states that she is withdrawing her administrative case against respondent Petronio Cuevas, Jr., Clerk of Court II, MCTC, Tambulig, Zamboanga del Sur.

"Since no evidence has been adduced to substantiate any of the charges under investigation in this case, it is recommended that the administrative charges for misappropriation of fiduciary funds, absenteeism and incompetence be DISMISSED."^[1]

The OCA, in its Memorandum of 28 August 2001, expressing dissatisfaction over the report and recommendation of Executive Judge Tamin, gave this observation:

"Records reveal that the instant case was initially set for investigation on 08 and 09 May 2001. On 30 April 2001, complainant requested postponement of the hearing, which was granted by the court in an Order dated 03 May 2001. In his Order, Investigating Judge Tamin reset the hearing for 23 and 24 May 2001. However, at the hearing on 23 May 2001, complainant filed an Affidavit of Desistance. On the same day, Judge Tamin issued an order recommending the dismissal of the case on the basis of the affidavit of desistance executed by herein complainant.

"From the foregoing, it can be clearly seen that no earnest effort was exerted by herein investigating judge to determine why the present administrative case was filed in the first place, and why complainant supposedly suddenly lost interest in the case she initiated. The complainant should have been asked to explain why she was reversing her position and withdrawing her complaint. And, Judge Tamin should have delved into the basis of the charges.

"Considering the seriousness and gravity of the offense now sought to be withdrawn, an exhaustive investigation is necessary. The allegations in the pleadings should not be taken lightly but examined carefully and the parties concerned should be confronted with them. Judge Tamin should not have satisfied himself with the pro-forma affidavit of desistance of private complainant and her suspicious non-appearance during the hearing."^[2]

On 26 September 2001, the Court issued another resolution, this time referring the case to RTC Executive Judge Loreto C. Quinto of Branch 30, Aurora, Zamboanga del Sur, for a more exhaustive and extensive investigation, report and recommendation. Judge Quinto, following his investigation, submitted his report and recommendation thusly:

"1. The constant absence of the Respondent in office everytime Judge Dondiego will hold office. How will Judge Dondiego properly supervise the Respondent in such a situation? Why did Judge Dondiego [fail] to correct this when it is her duty to properly manage the Court? If that is the situation, the Respondent has an average absence of eight (8) days a month or ninety-six (96) days a year;

"2. There were delays by the Respondent in the remittances of his collections for the JDF, and General Fund. This was admitted by him but his reason that he might be absent when they will be prepared is unacceptable. The testimony of Mrs. Capirig is very credible because she based it on record when she conducted her audit on the Respondent. The Respondent was delayed in his remittances of JDF collections from September, 1989 to November, 1990 or a total of 15 months; from December 1990 to September, 1994 or a total of 46 months or a continuous non-remittance from September, 1989 to September, 1994 or a sum total of five (5) years and one (1) month; from February, 1997 to August, 1998 or a total of nineteen (19) months; from October, 1998 to March, 1999 or a total of six (6) months. The collections from April, 1999 to October 17, 2000 [are] not remitted;