

EN BANC

[A.M. No. P-00-1384, February 27, 2002]

**JUDGE PASCUAL F. FOJAS, JR., MUNICIPAL TRIAL COURT,
INDANG CAVITE, COMPLAINANT, VS. GALICANO M. ROLLAN,
CLERK OF COURT, MUNICIPAL TRIAL COURT IN CITIES,
TAGAYTAY CITY (THEN WITH MCTC, INDANG CAVITE),
RESPONDENT.**

DECISION

PER CURIAM:

Before us is an Administrative complaint filed by Judge Pascual F. Fojas, Jr., presiding Judge of the Municipal Circuit Trial Court of Indang Mendez Nuñez, Indang Cavite, against Galicano M. Rollan, former clerk of court of said MCTC, who is now with the Municipal Trial Court in Cities, Tagaytay City.

This complaint stemmed from an audit examination conducted by the Commission on Audit on the cash accountabilities or respondents Galicano M. Rollan, who was transferring to the MTCC, Tagaytay City from his post in the MCTC, Indang Cavite effective April 1999.^[1] The audit covered the period from June 1, 1994 to March 31, 1999.^[2]

Respondent's cash collections were found to be in order. However, members of the audit team discovered that the original copy of official receipt no. 2130901 was missing. The team was informed that the booklet containing said receipt was found in the drawer of a cabinet previously used by respondent. However, the same booklet of receipt was not included in the statement of accountable forms submitted by respondent to the incoming clerk of court, Wilma de Fiesta.^[3] Consequently, the audit team leader requested Judge Fojas to conduct an investigation into the matter and to submit a report thereon to the Office of the Provincial Auditor.^[4]

In connection with the investigation, De Fiesta executed an affidavit^[5] on July 18, 1999, stating that she was appointed officer-in-charge/clerk of court by Judge Fojas on April 19, 1999; that she took for her use two booklets of official receipts numbered 2130901-2130950 and 2130951-2131000; that she used the booklet with receipts numbered 2130951-2131000 since the original copy of receipt no. 2130901 was missing; that respondent arrived at that moment and she asked him why said original copy was missing; that she advised him to report the matter to this court for proper action; and that respondent took the entire booklet with receipt numbered 2130901-2130950.

De Fiesta stated that she was audited during the period June 8, to June 10, 1999,^[6] and the auditor inquired why she did not use the receipts numbered 2130901-2130950. She informed the auditor that the original copy of receipt no. 2130901

was missing. On June 14, 1999, De fiesta narrated further, the auditor arrived with the booklet containing the receipt in question, which had earlier been given to the auditor by respondent. The auditor detached the duplicate and triplicate copies of receipt no. 2130901 in the presence of Judge Fojas and returned the booklet to De Fiesta.

Also on July 18, 1999, Dennis M. Constante, Clerk II of the MCTC in Indang, Cavite, likewise executed an affidavit^[7] regarding the lost original receipt. He stated that when he carefully examined the duplicate and triplicate copies of receipt no. 2130901, he could see from the impressions on the paper that respondent signed the receipt. He claimed that he could also glean the words and figures "fine", "P.D. 1602", and "P2,000". However, Constante said that when the duplicate and triplicate copies were again shown to him, it was as if the receipts had been ironed.

Previously, on June 23, 1999, respondent executed an affidavit of loss^[8] stating that De Fiesta informed him of the loss of the original copy of receipt no. 2130901. He claimed that he did not use said receipt and that he exerted effort to locate it, but to no avail. In a letter to Judge Fojas dated June 30, 1999, respondent asked to be relieved of any responsibility arising from the loss of the receipt.

On July 20, 1999, De Fiesta requested the National Bureau of Investigation to conduct a technical examination of the indentations found on the duplicate and triplicate copies of receipt no. 2130901.

While the NBI investigation was pending, respondent executed a second affidavit on September 21, 1999^[9] where he expressly admitted that he issued receipt no. 2130901 and signed thereon. He stated that he issued the missing receipt sometime in 1996 to an unknown person, to acknowledge that he received a P2,000 fine imposed upon four persons who were caught playing jueteng. He said he would try to find the person to whom he issued the receipt.

In his report dated October 18, 1999 and submitted to the Office of the Provincial Auditor, Judge Fojas observed:

...In a situation like this, it has always been an effective protective scheme to deny and again positional advantage in a possible investigation. But as a result of an afterthought, when the questioned document was being subjected to a technical examination by the N.B.I., Mr. Rollan became remorseful as it appears that he has apparent motive to contrive or devise.

Since Mr. Rollan is the only person who stood to benefit by the use of the missing Official Receipt, it follows that he is the material author of its disappearance. A person who changes his statement as he wants to suit his convenience, is unreliable. Mr. Rollan is not entitled to credit because if his affidavit is obviously the result of an afterthought and if he could have lied in his affidavit of June 23, 1999, for same motive, he can by the same token commit another falsity in his [other] affidavit.^[10]

Judge Fojas recommended that respondent be removed from the service. He furnished the Office of the Court Administrator with a copy of his report, which this court treated as a complaint against respondent. In a resolution dated March 21,

2000, we relieved respondent of his duties as collecting officer of the MCTC, Indang, Cavite. In the same resolution, we noted that there were two other complaints, both filed by Judge Fojas, pending against respondent: one for inefficiency, negligence, and insubordination, and another for insubordination and refusal to perform official duty.

In his undated answer received by the OCA on June 6, 2000,^[11] respondent assailed the statements made by Dennis M. Constante in his affidavit. Respondent stressed that Constante was not a handwriting expert and pointed out that the NBI itself stated that the indentation marks on the duplicate and triplicate copies of receipt no. 2130901 were "fragmentary undecipherable".^[12] He claimed that he executed a second affidavit on September 21, 1999 to buy peace and only upon the suggestion of De Fiesta and Judge Fojas. He said that Judge Fojas had been filing baseless complaints against him, and that he would not have lasted 32 years in the service if he were insubordinate. He recanted the contents of the second affidavit and denied that he used receipt no. 2130901.

Attached to respondent's answer was a joint affidavit executed by two persons who knew him, attesting to his good character.

On July 3, 2000, we referred this matter to the OCA for investigation, report, and recommendation. It submitted a memorandum to this Court on September 22, 2000, with the following observations:

After a careful examination of the records of the case, it is clear that respondent had been remiss in his duties as an accountable officer. Part of his duty before leaving his post as Clerk of Court of MCTC, Indang, Cavite is to turn-over all the accountable forms, and that includes official receipts, to his successor. In case of loss of any of the accountable forms, he ought to report the same to the proper authorities as mandated by COA Circular No. 84-233 dated August 21, 1984 reiterating GAO Memorandum Circular No. 318 dated February 11, 1957 xxx.

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The purpose of the aforesaid circular to prevent the fraudulent use of the missing form. Apparently, respondent failed to comply with said circular inasmuch as he failed to report the said loss of the Office of the Court Administrator.

Moreover, this Office took notice of respondent's conflicting statements as contained in his Affidavit of Loss dated June 23, 1999 wherein he disclaims responsibility for the disappearance of OR No. 2130901 xxx. This cavalier manner of changing statements does not speak well of respondent. However, it is not clear therefrom whether or not he indeed used the missing official receipt for any personal gain to the prejudice of the government. At most, his conflicting statements [amount] to dishonesty which deserves administrative sanction.^[13]

The most telling pieces of evidence pointing to respondent's culpability for the loss of receipt no. 2130901 are the two affidavits he executed which contained conflicting statements as regards the missing receipt. In the first affidavit, he