

EN BANC

[A.M. No. 95-1-01-MTCC, January 05, 1998]

**IN RE: REPORT OF COA ON THE SHORTAGE OF THE
ACCOUNTABILITIES OF CLERK OF COURT LILIA S. BUENA, MTCC,
NAGA CITY. FRANCISCO L. MARASIGAN AND FRANCISCO T.
DELA VINA, COMPLAINANTS, VS. LILIA S. BUENA AS CLERK OF
COURT, MTCC, NAGA CITY, RESPONDENTS.**

DECISION

PER CURIAM:

This administrative case arose from a letter-recommendation^[1] dated June 9, 1994 of Francisco L. Marasigan, Director IV, Commission on Audit, Regional Office No. V, Legaspi City, addressed to the court administrator recommending that, on the basis of a report and documents pertaining to the examination of cash and accounts of Lilia S. Buena, clerk of court and ex officio, Sheriff, Municipal Trial Court in Cities (MTCC), Naga City, which found respondent short in her accountabilities in the amount of P81,650.00, appropriate administrative action be instituted against her. State Auditor Francisco T. Dela Viña of the City Auditor's Office in Naga City, who had conducted the examination of the cash accounts of respondent, further executed a sworn affidavit^[2] on June 20, 1994, charging Mrs. Buena with the crime of malversation penalized under Article 217 of the Revised Penal Code.

In his sworn affidavit, State Auditor Dela Viña declared that in compliance with the office memorandum of the city auditor dated October 12, 1993, an examination was conducted on the cash and accounts of respondent. The corresponding report was submitted on December 8, 1993 to the City Auditor's Office, Naga City. No discrepancy appeared in the cash examination report because the balance of respondent's cash accountabilities as verified tallied with the balance appearing in the records and documents presented for verification, which were found to be proper and in order except for minor discrepancies. However, the City Auditor's Office subsequently received an anonymous call accusing Mrs. Buena of misappropriation of public funds. This prompted the office to confirm and verify said information. Thus, a reexamination of the accounts of respondent was made in accordance with Section 52 of P.D. No. 1445 (Opening and Revision of Settled Accounts). A comparison was made among the following official records: (1) MTCC docket book maintained by another personnel where details of civil cases filed and amounts of docket, sheriff and legal research fees paid are recorded; (2) cash book maintained by respondent; (3) file copies of official receipts issued to acknowledge collection of the fees mentioned. The examination disclosed that from the latter part of 1989 until 1993, the total collection reflected in the cash book was only part of 1989 until 1993, the total collection reflected in the cash book was only P8,092.00, while in the docket book it amounted to P89,742.00, revealing a shortage of P81,650.00. The auditor discovered that respondent had resorted to alterations of official receipts by understating the amounts actually paid and changing the

particulars of payment, such that receipt of docket, sheriff and legal research fees was made to appear as collection of clearance or certification fees. On April 12, 1994, a demand letter was served upon respondent for immediate production of the missing funds and for a written explanation therefor.

Mrs. Buena promptly responded to the demand letter of State Auditor Dela Viña, confirming the audit findings and admitting fault and error therefor. She explained that the malversation was resorted to when her son was hospitalized and had to undergo a major operation after having been accidentally hit by a stray bullet of a policeman during a hold-up incident in Manila, making her incur so much expense beyond her means. She had hoped to be recompensed by the NAPOLCOM, but had to give up her claim since postponements of the scheduled conferences with NAPOLCOM in Manila resulted in additional (travel) expenses. She manifested willingness to restitute the missing amount, expressing her wholehearted repentance and further pleading for utmost consideration and leniency.^[3]

On July 4, 1994, the City Auditor's Office in Naga City confirmed the full payment by respondent of the cash shortage.^[4]

Meanwhile, Deputy Court Administrator Reynaldo L. Suarez referred to the Fiscal Audit Division (FAD) of the Supreme Court the June 9, 1994 letter of COA Director Marasigan, for report and recommendation. On October 28, 1994, FAD submitted its report^[5] which substantially stated that per its audit, other than the shortage discovered by COA which had been fully restituted by respondent, there was also a deficit in JDF collections amounting to P29,776.00. Of this amount, respondent has remitted P18,000.00 to the JDF savings account with the Land Bank of the Philippines, thus, leaving a balance of P11,776.00 which Mrs. Buena promised to pay if remittances thereof to PNB could not be accounted for. FAD further noted the ardent cooperation extended by respondent who had "shown deep remorse" and "practically beg(ged) for compassion" and for a second chance.

On the basis of FAD findings, Deputy Court Administrator Suarez concluded that "it is sufficiently established that respondent was short in her cash and accounts as Clerk of Court in the amount of P81,650.00 and P29,776.00. These amounts were converted by respondent to her own personal use and benefit allegedly to defray the hospitalization expenses of her son. The fact of misappropriation was further confirmed by respondent's payments of the shortages. Subsequent restitution of the amount moment. Her act constitutes malversation of public funds or estafa, payments, indemnification or reimbursement of, or compromise on the amounts or funds malversed or misappropriated after the commission of the crime effects only the civil liability of the offender but does not extinguish his criminal liability."^[6]

In view of the seriousness of the charges which may warrant the dismissal from service of respondent, and pursuant to the constitutional requirement of due process, the Court en banc required Mrs. Buena to comment on the reports of State Auditor Dela Viña and the FAD.

In her comment^[7] submitted on April 3, 1995, respondent claimed that she had fully restituted the P81,650.00 shortage discovered by the City Auditor's Office as well as the remaining P11,776.00 deficiency in JDF collections. By way of explanation, respondent recounted two successive medical crises that had occurred

in her family which she alone had to shoulder, having been a widow since 1983. Her youngest child had been allegedly stricken with typhoid fever, from which it took her several months to recover. While this child was still in the process of recovery, the unfortunate incident in October 1990, involving her son who was studying in Manila, happened. Driving by panic to save her son's life, she was forced to use her collections in the office to come to Manila through the fastest means possible upon being notified of the accident. To make ends meet, she also incurred loans from JUSLA and GSIS, subsequent amortizations for which were deducted from her salary, resulting in her low take-home pay. To solve her financial dilemma, she was forced to falsify official receipts.

Respondent professes full repentance of her misdeeds for which she has sought forgiveness from the Lord Almighty. She pleads for this Court's compassion and mercy, citing twenty-seven (27) long and faithful years of public service, and active and voluntary work in her parish and in the Gift of Love ministry which is dedicated to helping orphans and the aged. Respondent also provided the Court with an attestation^[8] from Msgr. Juan A. Alarcon, Jr., parish priest of the Immaculate Concepcion Parish in Naga City, her "renewed commitment . . . to serve the Father the Son and the Holy Spirit." She prays to be allowed a graceful exit from the service through optional retirement so that she may continue to provide decently for her children.

On June 20, 1995, the Court resolved to refer the matter to the Office of the Court Administrator for the evaluation, report and recommendation. In his Report dated August 25, 1995, the Deputy Court Administrator, after evaluating the facts and records of the case and noting respondent's plea for the Court's compassion and mercy, and prayer for a second chance since she only did the act complained of out of her desire to save her son's life. Opined that "(t)he end does not justify the means." He added that while the Court may sympathize with the predicament of the respondent, it has "no choice but to find her administratively liable for dishonesty and conduct prejudicial to the best interest of the service." He thus recommended:

"WHEREFORE, in view of the foregoing, it is respectfully recommended to the Court that respondent Clerk of the Court Lilia S. Buena be found guilty as charged and that she be dismissed from the service."^[9]

The Court agrees in part with the OCA's recommendation.

That "public office is a public trust" cannot be imprudently undermined for it is constitutionally enshrined. Public officers and employees are at all times accountable to the people; must serve them with utmost responsibility, integrity, loyalty and efficiency; and must lead modest lives.^[10] The Code of Conduct and Ethical Standards for Public Officials and Employees (R.A. No. 6713) additionally provides that every public servant shall uphold public interest over his or her personal interest at all times.^[11] Court personnel, from the presiding judge to the lowliest clerk, are further to conduct themselves always beyond reproach, circumscribed with the heavy burden of responsibility as to free them from any suspicion that may taint the good image of the judiciary.^[12] As this Court has recently pronounced, "(t)he nature and responsibilities of public officers enshrined in the 1987 Constitution and oft-repeated in our case law are not mere rhetorical words. Not to be taken as idealistic sentiments but as working standards and attainable goals that

should be matched with actual deeds.”^[13]

With these time-honored principles and the substantiated findings of the Deputy Court Administrator, we are constrained to conclude that respondent is administratively guilty of the offense charged.

For about a period of four years (late 1989 to 1993), respondents Buena systematically deprived the government of public funds entrusted to her by reason of her public office. She intermittently altered innumerable official receipts by either understating amounts actually paid by litigants or changing the particulars of their payments. Respondent converted court collections to the personal use and benefit of her family. No matter how noble and virtuous might have been the reason that compelled her to resort to repeated dishonest and wrongful acts, it does not extinguish their unlawfulness and culpability.

Moreover, respondent is clerk of a court of justice, an officer described as essential to the judicial system, whose office is the core of activities, both adjudicative and administrative. She occupies a position of great importance and responsibility in the framework of judicial administration. Clerks of court are thus required to be persons of competence, honesty and probity since they are specifically imbued with the mandate of safeguarding the integrity of the court and its proceedings, to earn and preserve respect therefor, to maintain the authenticity and correctness of court records and to uphold the confidence of the public in the administration of justice.

^[14]

Respondent's acts of dishonesty and conduct prejudicial to the best interest of the service, being in the nature of grave offenses, carry the extreme penalty of dismissal on the first offense.^[15] Mrs. Buena, however, implores compassion and mercy from this Court, pleading her sincere repentance, full restitution and spiritual renewal. Indeed, the deputy court administrator observed that respondent's acts were committed "not with evil design but rather because of dire need of money to save the life of her son."

We thus find reason to distinguish the instant case from *Report on the Financial Audit in RTC, General Santos City*,^[16] and similar cases, where Social Welfare Officer Teresita Blanco of the Regional Trial Court of General Santos City was dismissed from service with forfeiture of all leave credits and retirement benefits and disqualification from reemployment from any government office including government-owned and controlled corporations. Similarly, Mrs. Blanco was found to have misappropriated of her personal use JDF collections totaling P196,983.49. Ms. Blanco admitted the shortage claiming she used part of her collections to (1) defray hospital expenses of two-day-old niece who suffered a viral infection, (2) pay for transportation expenses of her family from Koronadal, South Cotabato to Bulacan when her brother-in-law died, and (3) extend as loans to her co-employees. She later repaid P105,520,87 of the total shortage.

We did not find sufficient justification to exonerate Ms. Blanco from full culpability under the law. The hospital expenses were incurred only for a niece, not a direct descendant like a son in the instant case; and only for a viral infection where the expenses could not be compared with hospitalization due to major surgery and another hospitalization due to deadly typhoid fever as in this case. Since Ms.