

CONCERNED CITIZEN, COMPLAINANT, VS. ELEUTERIO C. GABRAL, JR., CLERK OF COURT II, MCTC, STA. RITA, SAMAR, RESPONDENT.*A.M. No. P-05-2098 (Formerly OCA I.P.I. No. 02-1333-P). December 15, 2005*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/207a8cba020a/>**PER CURIAM:**

This refers to the Letter-Complaint[1] dated 16 July 2001, addressed to the Chief Justice, of a concerned citizen (complainant) charging Eleuterio C. Gabral, Jr., Clerk of Court II, Municipal Circuit Trial Court (MCTC), Sta. Rita, Samar, with tardiness and violations of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

Complainant alleged that she was the wife of the accused in a case for illegal gambling. That his husband paid a fine in said case. Thereafter, it was found out that his husband was innocent, thus, the trial court ordered the respondent to release the money deposited to him, but respondent delayed its release. Similarly, in other cases, the bonds deposited by the parties to the respondent were no longer released. If released, it was made on installment basis. Complainant claimed that respondent was misappropriating the courts funds. Further, she averred that the monies received by the respondent remained unaccounted for because he had been evading the auditor. Lastly, she charged respondent of not observing office hours, that is, he would report late and would leave early.

To determine the veracity of the accusations, the Court Administrator directed[2] the then Executive Judge Jovito O. Abarquez, Regional Trial Court, Basy, Samar, to conduct a discreet investigation on the matter. In compliance with this directive, Judge Abarquez questioned the respondent and the other court employees of the MCTC, Sta. Rita, Samar. On 05 February 2002, Judge Abarquez submitted its report[3] finding respondent guilty of the charges and recommended that respondent be suspended for a period of one (1) month, or be fined in the amount equivalent to one (1) month of his salary.

In his Comment[4] dated 07 May 2002, respondent Gabral assailed the legality of the investigation conducted by Judge Abarquez. He claimed that the testimonies of the court employees were inadmissible because they were not under oath. Anent his delay in returning the deposited bond, he averred that there must be a court order before he can release it. He denied that he evaded the auditor. He explained that indeed on April 2001, he was not ready for an audit because there was money yet to be entered in the cashbook. Thus, he arranged a meeting with the auditor. He went to the agreed place on the appointed date; however, the auditor had already left when he arrived. Respondent clarified that the money entrusted to him is intact. As to the remaining charge, he admitted that sometimes, he reports to the court late and goes home before 5 p.m. because he merely commutes to the court from his residence which is sixty (60) kilometres from the court.

In a Report Agenda dated 10 October 2002, Office of the Court Administrator submitted its report[5] which was adopted by the Court in a Resolution[6] dated 04 December 2002, thus:

- b. DIRECT a team from the fiscal Monitoring Division, CMO, OCA, to conduct a financial audit at the MCTC, Sta. Rita, Samar, and submit its report on the same within a reasonable time from receipt of notices;

and

c. HOLD IN ABEYANCE the disposition of this matter and the charge concerning office hours pending submission of the Financial Audit Report and the Summary of Attendance.

In compliance with the Courts directive, a team conducted a financial audit in MCTC, Sta. Rita, Samar from 02 to 12 March 2003. In a Report dated 07 July 2003, the team found that respondent Gabral has accountabilities amounting to One Hundred Sixty Two Thousand Three Hundred Eighty-Five Pesos (P162,385.00), itemized as follows:

NATURE OF FUNDS

ACCOUNTABILITIES

Judiciary Development Fund

P 30,770.00

Clerk of court General Fund

25,700.00

Clerk of Court Fiduciary Fund

105, 915.00

TOTAL

P162,385.00

Based on the audit report, a Memorandum[7] dated 07 July 2003 was issued by Deputy Court Administrator Zenaida N. Elepao directing respondent Gabral to:

1. Restitute the amounts of P30,770.00, P25,700.00 and P105,915.00 representing the shortages in the JDF, General Fund and the Fiduciary Fund, respectively, by depositing the said amounts to the respective accounts, furnishing the Fiscal Monitoring Division, CMO, with the machine validated deposit slips as proof of remittance and to EXPLAIN why no administrative charges be taken (against you) for incurring said shortages;
2. EXPLAIN in writing within a period of fifteen (15 days from notice 2.a) (your) failure to submit (your) monthly reports of collections and deposits/withdrawals for the JDF starting July 1999 and for Clerk of court General Fund and Clerk of Court fiduciary Fund since (you) started collecting the said funds, 2.b) why only one remittance amounting to P2,000.00 on October 1997 was made to the JDF for the period October 1995 to February 28, 2003; and

3. SUBMIT within a period of fifteen (15) days from notice the Statement of the outstanding Balance of the Cash Bonds deposited with the Municipal Treasurers Office of Sta. Rita, Talalora and Zumarraga, all in the province of Samar as of February 28, 2003 duly certified by the respective Municipal Treasurer and the Municipal Accountant.

In a separate Memorandum of the same date, DCA Elepao directed[8] Judge Nieto A. Delantar, Acting Presiding Judge of MCTC, Sta. Rita, Samar, to relieve respondent Gabral as an accountable officer and to designate a competent and honest court employee to take charge of the collections of judiciary funds and to monitor its proper handling.

On 01 June 2005, we referred this matter to OCA for evaluation, report and recommendation within thirty (30) days from receipt of the record. On 01 July 2005, OCA submitted its report,[9] thus:

In view of the foregoing, respectfully submitted for the consideration of the Honorable Court are our recommendations that:

1. Respondent Eleuterio C. Gabral BE DISMISSED from the service for gross misconduct, dishonesty and misappropriation of public funds with forfeiture of all withheld salaries, allowances and benefits, with prejudice to re-employment in any branch or instrumentality in the government, including government owned and controlled corporations;

2. Respondent Eleuterio C. Gabral BE DIRECTED to reconstitute the amount of One Hundred Sixty Two Thousand Three Hundred Eighty-Five Pesos (P162,385.00) representing the shortages in the In a Letter to DCA Elepao dated 27 August 2003following: JDF-P30,770.00; General Fund-P25,700.00; and Fiduciary Fund-P105,915.00;

3. The Employees Leave Division, Office of Administrative Services-OCA, BE DIRECTED to compute the balance of the respondents earned leave credits and forward the same to the Finance Division, Fiscal Management Office-OCA, which shall compute the money value of the same, the amount, as well as other benefits the respondent may be entitled to, to be included as restitution of the computed shortages; and,

4. The Legal Office of the Office of the Court Administrator BE AUTHORIZED to file criminal charges against the respondent before the appropriate court.

We affirm the findings and recommendations of the OCA.

At the outset, respondent first denied the charges against him when he said that all money entrusted to him are intact and had never been used for his personal gain. It was only after the audit team submitted its report that respondent Gabral admitted in a letter dated 27 August 2003 addressed to DCA Elepao that he misappropriated the courts funds for the studies of his children and in a civil case which his family got involved in. He stated that because of financial difficulties, he was able to make only one remittance to the JDF in October 1997 for the period 1995 to February 2003. He averred further that the submission of the Statement of the Outstanding Balance of the Cash Bonds deposited with the Municipal Treasurer of Talalora and Zumarraga would be delayed because of their distance from the court. He promised that he will pay all his obligations.

The court finds the explanation unsatisfactory.

It has been ruled that personal problems cannot justify his acts of using the judiciary funds in his custody.[10] We have said time and again that those involved in the administration of justice from the highest official to the lowest clerk must live up to the strictest standards of honesty and integrity in the public service[11] bearing in mind that the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of men and women who work thereat.[12]

Clerks of court are officers of the law who performs vital functions in the administration of justice.[13] They are designated custodian of the courts fund and revenues, records, properties, and premises.[14] Verily, they are expected to possess a high degree of discipline and efficiency in the performance of these functions.

In the case at bar, the acts of respondent fell short of the exacting standards extolled by the Court, as he committed numerous infractions.

He issued only one set of official receipts for the collections of all funds, in violation of Item No. 2 of SC Circular No. 22-94[15] dated 08 April 1994 which prescribes that in issuing official receipt, separate booklet must be used for each fund account for proper accounting and control of collections.

SC Circular No. 32-93[16] prescribes the guidelines for the collection and custody of legal dues. This administrative circular was issued to attain maximum efficiency and accountability in the handling of collections and deposits of court funds. It enjoins all clerks of court and accountable officers to submit monthly reports of collections for all fund . . . not later than the 10th day of each succeeding month.

Respondent clearly violated SC Circular No. 32-93. The audit team unearthed that the last Monthly Report of Collections and Remittances submitted by the respondent for the JDF account was in June 1999 and the last remittance was in October 1997.

Administrative Circular No. 3-2000 (II-A-3[d])[17] provides that " the aggregate total of the Deposit Slips for any particular month should always be equal to and tally with the total collections for the month as reflected in the Monthly Report of Collections and Deposits and Cash Book." As found by the Audit Team, from March 1985 to September 1995, JDF collections were properly remitted, but, from October 1995 to 28 February 2003, respondent Gabral made only one remittance in October 1997 in the amount of P2,000.00. Clearly, he violated this circular.

As to the Clerk of Court General Fund, respondent Gabral did not maintain an official cashbook nor submit a single report to the Accounting Division of this Office. Collections for this fund were received under receipt intended for the JDF. He also did not remit any collections for the period March 1999 to August 2000.

Circular No. 50-95 (B[4])[18] provides that "all collections from bailbonds, rental deposits and other fiduciary collections shall be deposited within twenty-four (24) hours by the Clerk of Court concerned, upon receipt thereof with the LBP." Further, in localities where there are no branches of the LBP, fiduciary collections shall be deposited by the Clerk of Court with the Provincial City or Municipal Treasurer.[19] In herein case, the audit team found that the court did not maintain an account with the Land Bank of the Philippines (LBP) as required in said Circular.

Up to now, respondent failed to restore the amount which he misappropriated despite the lapse of almost two years from the time the Court through DCA Elepao required him to do so. Respondents refusal to obey directive aggravated his legal responsibility. The misappropriation of the courts funds, which respondent admitted, may, moreover, subject him to criminal liability.

As custodian of court funds and revenues,[20] Clerks of Court has always been reminded of their duty to immediately deposit the various funds received by them to the authorized government depositories[21] for they are not supposed to keep funds in their custody.[22] A failure to timely turn over cash deposited with them constitutes, not just gross negligence in the performance of their duty, but gross dishonesty, if not malversation.[23] For those who have fallen short of their accountabilities, we have not hesitated to impose the ultimate penalty.[24] This Court has never and will never tolerate nor condone any conduct which would violate the norms of public accountability, and diminish, or even tend to diminish, the faith of the people in the justice system.[25]

There is no doubt that respondent had been delinquent in the performance of his duties as clerk of court with regard to financial concerns. He did not regularly submit his reports. He did not record his cash transactions in the cashbook. Worse, he misappropriated for himself the collections. The act of misappropriating judiciary funds constitutes dishonesty and grave misconduct which are grave offense punished by dismissal.[26] Not even full payment of collection shortages will exempt the accountable officer from liability.[27] Verily, respondents grave misdemeanours justify his severance from the service.

As to the charge of tardiness, it was not sufficiently shown that respondent is liable for tardiness. Absent substantial evidence, we are inclined to absolve respondent Gabral from this charge. Besides, the Certification dated 09 March 2005 issued by the Leave Division of this Office shows that respondent Gabral incurred only the following absences:

1999

Jan. 11, 19

2 days with pay

Feb. 1, 8, 15

3 days with pay

2000

None

2001

None

2002

Oct. 21

1 day with pay

ALL SAID, we find respondent guilty of dishonesty which is understood to imply a "disposition to lie, cheat, deceive, or defraud; unworthiness; lack of integrity; lack of honesty; probity or integrity in principles; lack of

fairness and straightforwardness; disposition to defraud, deceive or betrayal." [28]

Section 22(a), Rule XIV of the Omnibus Rules Implementing Book V of Executive Order 292[29] as amended by CSC Memorandum Circular No. 19, s. 1999, mandates:

SEC. 22. Administrative Offenses with its corresponding penalties are classified into grave, less grave, and light, depending on the gravity of its nature and effect on said acts on the government service.

The following are grave offenses with corresponding penalties:

(a) Dishonesty

1st Offense-Dismissal

Thus, dishonesty, as a grave offense, warrants the severe penalty of dismissal from service upon the commission of even the first offense.

It is best stress that dishonesty is a malevolent act that has no place in the judiciary.[30] More particularly, we have repeatedly warned Clerks of Court, being next in rank to judges in courts of justice, that dishonesty, particularly that amounting to malversation of public funds, will not be countenanced as they definitely reduce the image of courts of justice to mere heavens of thievery and corruption.[31]

Parenthetically, Section 56(a) of CSC Resolution No. 99-1936 dated 31 August 1999 provides that the penalty of dismissal shall result in the permanent separation of the respondent from the service, with or without prejudice to criminal or civil liability. Under Section 58(a) of the same resolution, it shall carry with it that of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision.

WHEREFORE, respondent Elueterio C. Gabral Jr., having been found guilty of dishonesty and gross neglect of duty is **DISMISSED** from the service effective immediately, with **FORFEITURE** of all benefits, except accrued leave credits if any, with prejudice to his reemployment in any branch or instrumentality of the government including government owned and controlled corporation. He is further **ORDERED** to reconstitute the amount of P162,385.00 representing the shortages in the following: JDF- P30,770.00; General Fund-P25,700.00; and Fiduciary Fund-P105,915.00. The Employees Division, Office of the Administrative Services-OCA, is likewise **DIRECTED** to compute the balance of respondents earned leave credits and forward the same to the Finance Division, Fiscal Management Office-OCA, which shall compute the money value of the same, the amount, as well as other benefits the respondent may be entitled to, to be included as restitution of the computed shortages. The OCA is also **ORDERED** to coordinate with the prosecution arm of the government to ensure the expeditious prosecution of the criminal liability of the respondent.

SO ORDERED.

Davide, Jr. C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.

Carpio, J., on official leave.

[1] Rollo, p. 7.

[2] Rollo, p. 5.

[3] Rollo, pp. 2-4.

[4] Rollo, pp. 12-16.

[5] Rollo, pp. 19-23.

[6] Rollo, p. 24

[7] Rollo, pp. 50.

[8] Rollo, p. 51.

[9] Rollo, p. 60.

[10] RE: Report on the Examination of the Cash Accounts of the Clerks of Court of the RTC and MTC of Vigan , Ilocos Sur, A.M. No. 01-1-13-RTC, 02 April 2003, 400 SCRA 387.

[11] Solidbank Corporation v. Capoon, Jr., A.M. No. P-98-1266, 15 April 1989, 289 SCRA 9.

[12] Cajot v. Cledera, A.M. No. P-98-1262, 12 February 1998, 286 SCRA 238.

[13] Reyes-Domingo v. Morales, A.M. No. P-99-1285, 04 October 2000, 342 SCRA 6.

[14] Chapter 1(b), Manual for Clerks of Court.

[15] Issued on 08 April 1994.

[16] Issued on 09 July 1993.

[17] Issued on 15 June 2000.

[18] Issued on 11 October 1995.

[19] Circular No. 50-95(B[8]).

[20] Office of the Court Administrator v. Lucio, A.M. P-96-1206, 11 June 1996, 257 SCRA 287.

[21] Judiciary Planning Development and Implementation Office v. Calaguas, A.M. No.P-95-1155, 15 May 1996, 256 SCRA 690.

[22] Ferriols v. Hiam, A.M. No. P-90-414, 09 August 1993, 225 SCRA 205, 209.

[23] Judge Veronica A. Dondiego v. Petromi;ia Cuevas,Jr., Clerk of Court, Municipal Trial Court, Tambulig, Zamboanga del Norte, A.M. No. P-03-1681, 28 February 2003, 398 SCRA 386, citing Re: Report on Audit and Physical Inventory of the Records of Cases in MTC of Penaranda, Nueva Ecija, A.M. No. 95-6-55-MTC, 28 July 1997, 276 SCRA 257.

[24] Re: Report on the Judicial and Financial Audit of RTC-Br. 4, Panabo, Davao del Norte, A.M. No. 95-4-143-RTC, 13 March 1998, 287 SCRA 510; Gano v. Leonen, A.M. No. P-92-756, 03 May 1994, 232 SCRA 98; Office of the Court Administrator v. Soriano, A.M. No. 2864-P, 16 May 1985, 136 SCRA 461; Estenzo v. Dejanao, A.M. No. 2082, 20 September 1979, 93 SCRA 218; In re: Carloto U. Alvizo, A.M. No. 818-TEL.,18

April 1979,89 SCRA 426.

[25] Re: Report on the Judicial Audit, RTC-Br. 117, Pasay City, A.M. No. 96-5-163-RTC, 18 June 1998, 291 SCRA 1.

[26] Re: Report on the Examination of the Cash and Accounts of the Clerks of Court of the RTC and MTC of Vigan, Ilocos Sur, A.M. No. 01-1-13-RTC, 02 April 2003, 400 SCRA 387.

[27] Re: Withholding of Other Emoluments of the Following Clerks of Court: Elsie C. Remoroza, et.al, A.M. No. 01-4-133-MTC, 26 August 2003, 409 SCRA 574.

[28] Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Secretary I, and Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court, Third Division, A.M. No. 2001-8-SC, 22 July 2005.

[29] The Administrative Code of 1997.

[30] Lacurom v. Magbanua, A.M. No. P-02-1646, 22 January 2003, 395 SCRA 589, citing Pizarro v. Villegas, A.M. No. P-97-1243, 20 November 2000, 345 SCRA 42.

[31] Re: Report Report on the Judicial and Financial Audit of RTC-Br.4, Panabo, Davao del Norte, supra note 24.

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