

REPORT ON THE FINANCIAL AUDIT CONDUCTED ON THE BOOKS OF ACCOUNTS OF MR. AGERICO P. BALLEs, MTCC-OCC, TACLOBAN CITY.

A.M. NO. P-05-2065. April 02, 2009

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PER CURIAM:

On October 25, 2004, the Financial Audit Team of the Office of the Court Administrator (FAT- OCA) conducted an examination of the books of accounts of the Municipal Trial Court in Cities (MTCC) of Tacloban, Leyte. The examination covered the period from 1 October 1989 to 30 September 2004 during the tenure of Mr. Agerico P. Balles (Balles), the Clerk of Court of the MTCC.

In its Memorandum[1] dated June 15, 2005, the FAT-OCA reported to the then Court Administrator Presbitero J. Velasco, Jr.,[2] the following initial findings: (1) shortage of P213,466.87 in the Fiduciary Fund; and (2) cash shortage of P12,814.00 and P86.00 representing uncollected marriage solemnization fees for the accounts of the JDF and SAJF; (3) unremitted bet money collections which were still in the possession of the City Prosecutor in the total amount of P18,031. 75; and (4) the need for Balles to explain not only the said shortages but also unidentified withdrawals and deposits appearing in the Land Bank of the Philippines (LBP) passbook and unreported/unrecorded collections.

On June 29, 2005, the Court Administrator issued a Memorandum[3] to then Chief Justice Hilario Davide, Jr., recommending the following:

- The report of the team be docketed as a regular administrative complaint against Mr. Agerico P. Balles, Clerk of Court, OCC-Municipal Trial Court in Cities (MTCC), Tacloban City;
- Mr. Agerico P. Balles, incumbent Clerk of Court, be directed within fifteen (15) days from notice to:
- PAY and DEPOSIT the shortage of P213,466.87 for the Fiduciary Fund;
- PAY and DEPOSIT the shortages of P12,814.00 and P86.00 representing uncollected marriage solemnization fees as computed for the account of JDF and SAJF;
- SUBMIT to the Fiscal Monitoring Division, CMO-OCA:

c.1 Machine validated deposit slip as proof of remittance in Item 2.a

c.2 Certified true copy of original receipt issued and machine validated deposit slips as proof or remittance in Item 2.b

c.3 The COURT ORDERS, ACKNOWLEDGMENT RECEIPTS, WITHDRAWAL SLIPS of the withdrawn cash bonds as enumerated in Annex "C" of this report amounting to P2,729,317.52 otherwise this will form part of his accountabilities; and

c.4 A certified photocopy of LBP Passbook under Savings Account No. 0181-0842 covering the period from June 1, 1994 to August 31, 1995.

- WITHDRAW the accrued interest (net of tax) amounting to P286,989.48 covering the period of March 31, 1994 to September 31, 2004 from Savings Account No. 0181-0842-19 and P20,297.27 from Savings Account No. 0941-0370-70 covering the period of December 31, 1998 to March 31, 2004 and issue the corresponding official receipt and transfer to the JDF account, copy furnished the Fiscal Monitoring Division, Court Management Office of the machine validated deposit slips as proof of transfer;

- COLLECT the unremitted bet money from the possession of the City Public Prosecutor of Tacloban City, amounting to P7,594.75;

- COLLECT the unremitted bet money from the possession of the City Prosecutor of Tacloban City, amounting to P10,437.00, and

- EXPLAIN in writing within fifteen days (15) from notice

g.1 Why he should not be administratively sanctioned for incurring shortages from the Fiduciary Fund amounting to P213,466.87.

g.2 For unidentified withdrawals and deposits appearing in the LBP passbook.

g.3 Unreported/unrecorded collections in Fiduciary Fund.

- Executive Judge Wenceslao B. Vanilla be DIRECTED to monitor the Clerk of Court, Mr. Agerico P. Balles, in the strict compliance of circulars in the proper handling of judiciary funds and adhere strictly to the issuances of the Court to avoid repetition of the offenses committed as enumerated above.

On August 22, 2005, the Court issued a Resolution[4] noting the above-quoted Memorandum and directing Balles to, among others, pay and deposit his shortages and submit his written explanation of the matters involved in the Memorandum.

In his Compliance[5] dated January 19, 2006, Balles explained that the alleged shortage (representing uncollected marriage solemnization fees) was traceable and attributable to MTCC, Branch 2, Tacloban City and not his office. If collected, the same should be remitted to the office of the respondent Clerk of Court, MTCC, Tacloban City. Attached to his compliance was respondent's letter dated December 5, 2005 to a Ms. Hedy B. Saldaña, Clerk IV, Branch 2, MTCC Tacloban City directing the latter to remit the said shortage.

With regard to the shortage in the Fiduciary Fund, Balles claimed that there was no shortage of P213,466.87 in the Fiduciary Fund as shown by the Land Bank of the Philippines (LBP) Cash Deposit Slip dated October 25, 2005[6] wherein he deposited the same amount to the account of MTCC, Tacloban City under Account Number 0181 0842 19.

As for the directive for him to submit court orders, acknowledgement receipts, and withdrawal slips pertaining to withdrawn cash bonds, Balles claims to have submitted his records to the OCA in 1998 and that when he tried to retrieve them, he was informed that the records had been submitted to the Commission on Audit. Hence, respondent was under the impression that the matter was duly accounted for.

On June 7, 2006, the Court issued a Resolution[7] referring the instant administrative matter to the OCA.

On October 25, 2006, then Court Administrator Christopher O. Lock issued a Memorandum Report[8] addressed to then Chief Justice Artemio Panganiban, recommending that Balles be dismissed from the service for gross neglect of duty. To quote the pertinent portions of the Memorandum Report:

The explanation proffered by Mr. Balles centers largely on accounting for the shortage of court funds as well as providing justifications on how some court funds remained unaccounted for or uncollected. However, what he has not satisfactorily explained is the underlying issue [of] his failure to perform the primordial

responsibilities of his office. xxx xxx xxx

Settled is the role of clerks of courts as judicial officers entrusted with the delicate function with regard to collection of legal fees, and are expected to correctly and effectively implement regulations (*Gutierrez v. Quitalig*, 448 Phil 465, [2003], cited in *Dela Peña v. Sia*, A.M. No. P-06-2167, June 27, 2006). Relating to proper administration of court funds, the Court has issued SC Circular No. 13-92 which commands that all fiduciary collections "shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized depositary bank." In SC Circular No. 5-93, the Landbank is designated as the authorized government depositary.

Mr. Balles failed to heed the aforementioned Court directives. The audit conducted on his books of account reveals that much of what accounts for his accountability of P213,446.87, representing shortage in the Fiduciary Fund, are unreported or unrecorded collections. Aside from failing to issue official receipts for these official transactions. Mr. Balles missed to timely deposit said collections in the authorized depositary bank. At times, only temporary receipts were issued therefore. Such issuance of temporary receipts is prohibited (2002 Revised Manual for Clerks of Court, p. 400, vol.1). Also, confiscated bet money [in] *Illegal Gambling* cases amounting to P18,031.75 have not been remitted to the JDF Account. In another instance, the Statement of Unwithdrawn Fiduciary Fund (as of September 30, 2004) prepared by the Clerk of Court did not tally with the Statement of Unwithdrawn Fiduciary Fund prepared by the audit team. This results when Mr. Balles excluded from his list the cash bond collections, rental deposits and consignment for cases not yet dismissed or withdrawn. These constitute neglect of duty because in accounting of funds, all collections [of the court] are entered daily into their corresponding cashbooks and deposited to the proper bank accounts maintained with the Landbank of the Philippines xxx. (id., p.394). He should not lose sight of the oft-repeated reminder from the Court that clerks of courts should deposit immediately with authorized government depositaries the various funds they have collected because they are not authorized to keep funds in their custody. The Court stresses, "the unwarranted failure to fulfill these responsibilities deserves administrative sanction and not even the full payment, as in this case, will exempt the accountable officer from liability" (*Office of the Court Administrator v. Julian*, February 10, 2005). His belated deposit of the amount of his accountability does not exonerate him from liability.

Clearly, Mr. Balles has been remiss in the performance of his administrative responsibilities. One of the non-adjudicative functions of a clerk of court is to withdraw interest earned on deposits, and remit the same to the account of the Judiciary Development Fund (JDF) within two (2) weeks after the end of each quarter (Circular 13-92, March 1, 1992; A.M. No. 99-8-01-SC, September 14, 1999). As reported by the audit team, interest earned from Savings Accounts Nos. 0181-0842-19 and 0941-0370-70 remained unwithdrawn as of September 30, 2004 and therefore, not remitted to the JDF Account. His other lapse in the performance of his duty is his inability to direct the concerned clerks of court within his supervision to timely remit marriage solemnization fees to his office. Moreover, by his indifference to the reported practice of some courts to forego payment of marriage solemnization fees for relatives of some court personnel, he has unwittingly caused the court to lose revenues. He must be re-apprised that clerks of court, in particular, are chief administrative officers of their respective courts who must show competence, honesty and probity, having been charged with safeguarding the integrity of the court and its proceedings (*Gutierrez v. Quitalig*, id).

IN VIEW OF THE FOREGOING, the undersigned respectfully recommends that respondent MR. AGERICO P. BALLEs be DISMISSED from the service for gross neglect of duty with forfeiture of all benefits except accrued leave credits, if any, and with prejudice to re-employed in any government office or instrumentality, including government-owned or controlled corporation. (emphasis supplied)

In the meantime, on July 30, 2007, Edwin K. Cabello, Clerk of Court III, Officer-in-Charge (OIC), Office of the Clerk of Court, MTCC, Tacloban City, sent a letter to Chief Justice Reynato S. Puno, requesting the speedy disposition of the instant administrative case. Cabello was interested in the case because of his claim for

representation and transportation allowance (RATA) and expense allowance as Officer-in-Charge or Acting Clerk of Court of the MTCC, Office of the Clerk of Court, Tacloban City, respondent's post. According to Cabello, he had been performing all the functions and duties of Clerk of Court (COC) Balles, and, although he was the one performing all the functions and duties of the COC, it was Balles who was still receiving the RATA for the COC which, to him, was unfair. Hence, he requested to be entitled to the same.

On September 11, 2007, then Court Administrator Lock issued another Memorandum Report[9] to Chief Justice Puno, recommending that Balles be suspended pending the outcome of the present case. He also recommended that the Financial Management Office (FMO), Office of the Court Administrator, be directed to pay Edwin Cabello the RATA pertaining to the COC, MTCC, Tacloban City.

On July 21, 2008, the Court issued a Resolution[10] directing the FMO-OCA to release the RATA pertaining to Cabello. However, in a later Resolution, the Court clarified that Cabello shall be entitled to the Expense Allowance (EA) equivalent to the RATA for the position of Clerk of Court pursuant to the August 4, 2008 Memorandum[11] of now Court Administrator Jose Perez addressed to Chief Justice Puno. Said Memorandum states:

Since Mr. Cabello is performing the functions and duties of Clerk of Court IV in the Office of the Clerk of Court but he is not receiving the RATA as Mr. Balles is still holding the position of Clerk of Court IV, it is recommended that he be entitled to receive expense allowance which the Court may authorize.

The Ruling of the Court

We agree with the OCA's recommendations regarding Balles' liability.

Supreme Court (SC) Circular Nos. 13-92 and No. 5-93 provide the guidelines for the proper administration of court funds. SC Circular No. 13-92 enumerates the guidelines to be followed in making deposits or withdrawals of all collections from bailbonds, rental deposits and other fiduciary collections. It commands that all fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized depository bank.

We reproduce here the relevant provisions of Supreme Court Circular No. 13-92, dated March 1, 1992, thus:

"CIRCULAR NO. 13-92

To : All Executive Judges and Clerks of Court of the Regional Trial Courts and Shari'a District Courts.

Subject: Court Fiduciary Funds

xxx xxx xxx

xxx The following procedure is, therefore, prescribed in the administration of Court Fiduciary Funds:

"Guidelines in Making Deposits:

- 1) Deposits shall be made under a savings account. Current account can also be maintained provided that it is on automatic transfer of account from savings.
- 2) Deposits shall be made in the name of the Court.
- 3) The Clerk of Court shall be the custodian of the Passbook to be issued by the depository bank and shall advise the Executive Judge of the bank's name, branch and savings/current account number.

Guidelines in Making Withdrawals

- 1) Withdrawal slips shall be signed by the Executive Judge and countersigned by the Clerk of Court.
- 2) In maintaining a current account, withdrawals shall be made by checks. Signatories on the checks shall likewise be the Executive Judge and the Clerk of Court.

All collections from bailbonds, rental deposits and other fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank. xxx xxx xxx (Emphasis ours)

In SC Circular No. 5-93, the Land Bank was designated as the authorized government depository.

These circulars were incorporated into the 2002 Revised Manual for Clerks of Court, which provides for the guidelines for the accounting of court funds. To quote the relevant portions of the said Manual:

2.1.2.2. Procedural Guidelines

xxx xxx xxx

c. Court Fiduciary Funds

c.1. Nature of the fund

All collections from bail bonds, rental deposits and other fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank, the Land Bank of the Philippines.

xxx xxx xxx

2.1.2.3. Accounting of Funds

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b. Official Receipts

b.1. Official receipt issued by the Supreme Court shall be used only for collections that will accrue to the National Government.

xxx xxx xxx

b.3. Official receipts shall be issued in strict numerical sequence. xxx xxx xxx

Issuance of temporary receipts is prohibited. (Emphasis ours)

In the case at bar, Balles evidently did not faithfully comply with the foregoing guidelines issued by this Court. The records show that respondent accepted various cash deposits during his tenure as Clerk of Court and, though he was aware that he should immediately deposit the money to the authorized depository bank, he did not. His own evidence shows that he deposited the money supposedly collected on different dates from 1995 to 2004 (inclusive) only on October 25, 2005 and only after this Court issued a Resolution dated August 22, 2005 for Balles to remit the amount of his shortage in the Fiduciary Fund.[12] As for his other infractions, Balles conveniently puts the blame on the Branch Clerks of Court or the City Prosecutor to avoid responsibility for his unauthorized practices and lapses that contributed to the accumulation of his shortages, representing uncollected marriage solemnization fees and confiscated bet money in illegal gambling cases, that should have been for the account of the JDF and SAJF.

Undoubtedly, respondent Balles committed the following serious infractions: (1) he did not deposit on time the court's collections; (2) he failed to regularly submit monthly reports to the Court; (3) the reports, when submitted, contained numerous discrepancies between the amounts reported and the amounts appearing in the official

receipts, deposit slips or cash books, among others.

His belated turnover of cash deposited with him is inexcusable and will not exonerate him from liability. Clerks of Court are presumed to know their duty to immediately deposit with the authorized government depositories the various funds they receive, for they are not supposed to keep funds in their personal possession.[13] Even undue delay in the remittances of the amounts that they collect at the very least constitutes misfeasance. Although respondent Balles had subsequently deposited his cash accountability with respect to the Fiduciary Fund, he was nevertheless liable for failing to immediately deposit the said collections into the court's funds. His belated remittance will not free him from punishment. Even restitution of the whole amount cannot erase his administrative liability. For, clearly, his failure to deposit the said amount upon collection was prejudicial to the court, which did not earn interest income on the said amount or was not able to otherwise use the said funds unlawfully kept by Balles in his possession.

Such conduct raises grave doubts regarding the trustworthiness and integrity of Balles. The failure to remit the funds in due time constitutes gross dishonesty and gross misconduct. It diminishes the faith of the people in the Judiciary. Dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service even if committed for the first time.[14]

Under Section 22(a), (b) and (c) of Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, Gross Neglect of Duty, Dishonesty and Grave Misconduct are classified as grave offenses. The penalty for each of these offenses is dismissal even for the first offense.

Hence, for the delay in the remittance of cash collections in violation of Supreme Court Circulars No. 5-93 and No. 13-92 and for his failure to keep proper records of all collections and remittances, Balles is found guilty of Gross Neglect of Duty punishable, even for the first offense, by dismissal.

WHEREFORE, Agerico P. Balles is hereby found GUILTY of gross neglect of duty and is ordered DISMISSED from the service. Except for leave credits already earned, his retirement benefits are FORFEITED, with prejudice to reemployment in any government agency, including government-owned and controlled corporations. The Civil Service Commission is ordered to cancel his civil service eligibility, if any, in accordance with Section 9, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292.[15]

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Corona, Carpio Morales, Tinga, Chico-Nazario, Nachura, Leonardo-De Castro, Brion, and Peralta, JJ., concur.

Austria-Martinez, J., on official leave.

Velasco, Jr.[**], J., no part.

[**] No part due to prior action in the Office of the Court Administrator.

[1] Rollo, pp. 57 - 125, including annexes.

[2] Now an Associate Justice of this Court.

[3] Rollo, pp. 1-2.

[4] Rollo, pp. 54-56.

[5] Id. at 131-137.

[6] Annex "1," rollo, p. 138.

[7] Rollo, p. 159.

[8] Id. at 160-172.

[9] Rollo, pp. 181-185.

[10] Id. at 210-211.

[11] Id. at 213.

[12] Rollo, p. 61.

[13] Maricis A. Alenio, Edison F. Amper, Nestor M. Appari, Lily dela Cruz, and Perigrino M. Macrohon, v. Eladia T. Cunting, Clerk of Court IV, and Marie Gay B. Naranjo, Clerk III, Municipal Trial Court in Cities-Office of the Clerk of Court, Zamboanga City, A. M. No. P-05-1975, July 26, 2007, 528 SCRA 159, 167.

[14] Report on the Financial Audit Conducted on the Books of Accounts of Atty. Raquel G. Kho, Clerk of Court IV, Regional Trial Court, Oras, Eastern Samar, A.M. No. P-06-2177, June 27, 2006, 493 SCRA 44, 49.

[15] "Section 9, Rule XIV of the Civil Service Rules provides that `the penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of leave credits and retirement benefits, and the disqualification for re-employment in the government service. Further, it may be imposed without prejudice to criminal or civil liability.' " Cited in Re: Financial Report on the Audit Conducted in the Municipal Circuit Trial Court, Apalit-San Simon, Pampanga, A.M. No. 08-1-30-MCTC, April 10, 2008, 551 SCRA 79.

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