

OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS. IRENE P. FUECONCILLO, FORMERLY OFFICER-IN-CHARGE AND INTERPRETER I, MUNICIPAL TRIAL COURT IN CITIES, SCIENCE CITY OF MUNOZ, N...

A.M. No. P-06-2208 (Formerly OCA IPI No. 04-1944-P). August 26, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before this Court is an administrative matter involving an audit conducted from 6-10 February 2006 by the Office of the Court Administrator (OCA) on the books of accounts of Ardentor C. Ramos (Ramos) Clerk of Court II; and Irene P. Fueconcillo (Fueconcillo), former officer-in-charge (OIC) and Interpreter I of the Municipal Trial Court in Cities (MTCC) of Science City, Muñoz, Nueva Ecija. Fueconcillo was the OIC of the Office of the Clerk of Court of the MTCC for the period 1 March 1998 up to 31 October 2004, while Ramos assumed the said office beginning 1 November 2004 up to the present. The audit was conducted on account of the failure of Fueconcillo to submit the Monthly Report of Collections starting March 2002, which led to the withholding of her salary since October 2004.

After the audit, the OCA Financial Audit Team made a report with the following recommendations:

- This report be docketed as a regular administrative matter against former Officer-in-Charge and Interpreter I of MTCC Science City of Muñoz Nueva Ecija, IRENE P. FUECONCILLO and that she be DIRECTED to EXPLAIN why she should not be administratively sanctioned for not remitting her collections on Clerk of Court General Fund, Judiciary Development Fund, Mediation Fund and the unauthorized withdrawal/non-remittance of collections of Fiduciary Fund.

- MR. ARDENTOR C. RAMOS, Clerk of Court, MTCC Science City of Muñoz be DIRECTED to strictly comply with the issuances of the Court particularly the handling of judiciary funds;

- HON. ELEANOR TF. MARBAS-VIZCARRA, Presiding Judge, be DIRECTED to:

- 3.a. EXPLAIN within ten (10) days from notice why she approved the withdrawal made by Ms. Fueconcillo amounting to P20,000.00 when there is no court order to effect the same;

- 3.b. MONITOR the activities of the Clerk of Court in the "strict" implementation of the issuances of the court relative to handling of Judiciary funds.[1]

On 26 July 2006, the First Division of this Court approved the afore-quoted recommendations of the OCA Financial Audit Team,[2] thus:

- (a) NOTE the aforesaid report;

- (b) RE-DOCKET this report as a regular administrative matter against former Officer-in-Charge and Interpreter 1 of Municipal Trial Court in Cities, Science City of Munoz, Nueva Ecija, Irene P. Fueconcillo;

(c) DIRECT Ms. Fueconcillo to EXPLAIN within ten (10) days from notice hereof why she should not be administratively sanctioned for not remitting her collections for Clerk of Court General Fund, Judiciary Development Fund, Mediation Fund and the unauthorized withdrawal/non-remittance of collections of Fiduciary Fund;

(d) DIRECT Mr. Ardentor C. Ramos, Clerk of Court, Municipal Trial Court in Cities, Science City of Munoz to STRICTLY COMPLY with the issuances of the Court particularly the handling of judiciary funds;

(e) DIRECT Hon. Eleanor TF. Marbas-Vizcarra, Presiding Judge, Municipal Trial Court in Cities, Science City of Munoz to: (1) EXPLAIN within ten (10) days from notice hereof why she approved the withdrawal made by Ms. Fueconcillo amounting to Twenty Thousand (P20,000.00) Pesos which contain (sic) no court order for the withdrawal of the said fund; and (2) MONITOR the activities of the Clerk of Court in the "strict" implementation of the issuance of the court relative to the handling of Judiciary Funds.

Complying with the order of the Court, Judge Eleanor TF. Marbas-Vizcarra (Judge Vizcarra) submitted her explanation^[3] to the Court on 2 October 2006. She stated therein that upon knowing of the alleged unauthorized withdrawal on 19 June 2002 by Fueconcillo from the judiciary fund, as discovered by the OCA Financial Audit Team, she required Fueconcillo to submit to the Court her explanation the soonest possible time, and to give her (Judge Vizcarra) a copy of said explanation with the withdrawal slip pertaining to the questioned withdrawal.

Judge Vizcarra explicated that considering the more than four years which had passed since the suspicious withdrawal was made on 19 June 2002 and the numerous withdrawal slips she had signed for several courts she was handling at that time, she needed to see first the withdrawal slip of 19 June 2002 to have an idea as to the circumstances surrounding the same. Thus, she directed the present Clerk of Court, Ramos, to secure a copy of the withdrawal slip dated 19 June 2002 from the Land Bank of the Philippines (LBP). However, according to the LBP personnel, it would be very difficult for the bank to locate the withdrawal slip from the year 2002, considering the volume of documents in the bank's archives. Judge Vizcarra then issued an Office Memorandum dated 11 August 2006 to Fueconcillo directing the latter to explain in writing the unauthorized withdrawal. It was only after Fueconcillo received the said Office Memorandum that she gave Judge Vizcarra the withdrawal slip dated 19 June 2002, as well as another withdrawal slip dated 25 September 2002.

Judge Vizcarra explained the standard procedure observed in all the courts being handled by her, as follows: Since her courts give priority to cases with orders of dismissal and for withdrawal of bonds, the corresponding withdrawal slips are prepared on the same day the orders are issued. As one copy is submitted to the bank, another to the Supreme Court and the last is kept for the file of the trial court concerned. Two sets of withdrawal slips are prepared to ensure that all the copies are clear. The withdrawal slips, though, are usually left undated, as they will be dated only on the exact day the claimant returns to the court, especially when the withdrawal slips are for large amounts. This is to prevent the money from being left in the hands of the OIC/Clerk of Court for a long period of time.

In the course of her investigation, Judge Vizcarra discovered that Fueconcillo, then the OIC/Clerk of Court, made two withdrawals based on Judge Vizcarra's Order dated 23 April 2002 provisionally dismissing Criminal Case No. 6656, entitled *People v. Ruben Briones, et al.*, and her corresponding Order of the same date directing the withdrawal of the cash bonds, amounting to P20,000.00, posted by the accused in said criminal case. The first withdrawal was made on 19 June 2002 and the second on 25 September 2002. Fueconcillo took advantage of the standard procedure of the court by twice withdrawing the amount of P20,000.00 from the LBP pursuant to the same order for withdrawal of the bonds issued in Criminal Case No. 6656, and using the extra set of withdrawal slips prepared pursuant to said order. Fueconcillo actually turned over P20,000.00 to the accused only on 25 September 2002.

According to Judge Vizcarra, Fueconcillo admitted that she pocketed the P20,000.00 she withdrew on 19 June 2002 for her personal needs, since her family was facing financial difficulties. Fueconcillo allegedly used the amount for her children's tuition fees; hence, the withdrawal was made only in June 2002 even though the order for the withdrawal of the bonds was issued and the withdrawal slips were prepared in April 2002.

Judge Vizcarra asserted that she would never allow the withdrawal of any amount from the bank without the proper court order. The unauthorized withdrawal by Fueconcillo was a very unfortunate incident, which happened only because of the trust Judge Vizcarra reposed upon her former OIC/Clerk of Court, and which the latter dismally betrayed. Judge Vizcarra then gave assurances that she would strictly monitor the faithful implementation of the issuances of this Court relative to judiciary funds.

On 20 October 2006, Fueconcillo asked for extension of time to submit her explanation on the ground that she was hospitalized from 1-6 October, as evidenced by the attached Medical Certificate.

In her undated Explanation,[4] received by this Court on 27 October 2006, Fueconcillo admitted the finding of the OCA Financial Audit Team that she incurred the following shortages:

Clerk of Court General Fund

- P9,919.99

JDF

- P25,762.00

Fiduciary Fund

- P40,000.00

Sheriff's Fee

- P9,000.00

TOTAL

- P84,681.99

She explained that due to financial difficulties arising from her meager salary, she used the money for her family's sustenance and her children's educational expenses. She claimed that when the OCA Financial Audit Team required her to restitute the amount, she readily did so by depositing the amount of P84,681.99 on 9 February 2006.

She likewise admitted the unauthorized withdrawal of P20,000.00 without the knowledge and consent of Judge Vizcarra. She confessed to withdrawing the amount using the Order dated 23 April 2002 issued by Judge Vizcarra for the withdrawal of the bonds posted by the accused in Criminal Case No. 6656. She presented the said Order to the LBP Branch, Science City, Muñoz, Nueva Ecija, twice - on 19 June 2002 and then on 25 September 2002 - together with the pre-signed withdrawal slips. She split the several copies of withdrawal slips signed by Judge Vizcarra to be able to make two withdrawals. She begged for the Court's consideration and understanding on the matter.

The Court, in its 7 February 2007 Resolution, referred the matter to the OCA for evaluation, report, and recommendation.

On 24 September 2007, the OCA submitted its report,[5] recommending the suspension of Fueconcillo, to wit:

Premises considered, it is respectfully recommended for the consideration of the Honorable Court are our recommendations that: (a) that Ms. Fueconcillo, Interpreter 1 and former Officer-in-Charge of MTCC, Science City of Muñoz, Nueva Ecija, be **SUSPENDED** for one (1) year without pay for gross misconduct, gross neglect of duty and gross dishonesty amounting to malversation of public funds with stern warning that a repetition of the same or similar act shall be dealt with more severely; and (b) Judge Eleanor TF. Marbas-Vizcarra be **ADMONISHED** to be more careful in the supervision of personnel handling the court's funds.

On 12 November 2007, the Court required the parties to manifest within 10 days from notice if they were willing to submit the matter for resolution based on the pleadings filed.[6]

Fueconcillo failed to file a manifestation within the period given by the Court despite notice sent to and received by her; thus, the Court deemed as waived[7] her submission of supplemental comment/pleadings.

Resultantly, the administrative matter was submitted for decision based on the pleadings filed.

The Court agrees in the findings and recommendations made by the OCA in its report.

Records show that Fueconcillo was the OIC of the Office of the Clerk of Court of the MTCC, Science City, Muñoz, Nueva Ecija, from 1 March 1998 to 31 October 2004. As the accountable officer, she was the designated custodian of the funds, revenues, records, properties and premises of the court. She was also the court treasurer and accountant; and any loss, shortage or impairment of the funds and property of the court was her responsibility.

As the custodian of the court, Fueconcillo's duties have been defined by several circulars of this Court.

Section B(4) of Supreme Court (SC) Circular No. 50-95 on the collection and deposit of court fiduciary funds mandates that:

(4) All collections from bail bonds, rental deposits, and other fiduciary funds shall be deposited within twenty-four (24) hours by the Clerk of Court concerned upon receipt thereof with the Land Bank of the Philippines.

SC Circulars No. 13-92 and No. 5-93 provide the guidelines for the proper administration of court funds.

SC Circular No. 13-92 commands that all fiduciary collections "shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank."

More explicitly, Section 3 in relation to Section 5 of SC Circular No. 5-93, which designated the LBP as the authorized government depository of the JDF, states:

- Duty of the Clerks of Court, Officers-in-Charge or accountable officers. - The Clerks of Court, Officers-in-Charge, or their accountable duly authorized representatives designated by them in writing, who must be accountable officers, shall receive the Judiciary Development Fund collections, issue the proper receipt therefore, maintain a separate cash book properly marked x x x deposit such collections in the manner herein prescribed and render the proper Monthly Report of Collections for said Fund.

x x x x

- Systems and Procedures:

x x x x

c.

In the RTC, SDC, MeTC, MTCC, MTC, and SCC. - The daily collections for the Fund in these courts shall be

deposited every day with the local or nearest LBP branch "For the account of the Judiciary Development Fund, Supreme Court, Manila - Savings Account No. 159-01163; or if depositing daily is not possible, deposits of the Fund shall be every second and third Fridays and at the end of every month, provided, however, that whenever collections for the Fund reach P500.00, the same shall be deposited immediately even before the days before indicated.

Where there is no LBP branch at the station of the judge concerned, the collections shall be sent by postal money order payable to the Chief Accountant of the Supreme Court at the latest before 3:00 of that particular week.

x x x x

d.

Rendition of Monthly Report. - Separate "Monthly Report of Collections" shall be regularly prepared for the Judiciary Development Fund, which shall be submitted to the Chief Accountant of the Supreme Court within ten (10) days after the end of every month, together with the duplicate of the official receipts issued during such month covered and validated copy of the Deposit Slips.

The aggregate total of the Deposit Slips for any particular month should always equal to, and tally with, the total collections for that month as reflected in the Monthly Report of Collections.

If no collection is made during any month, notice to that effect should be submitted to the Chief Accountant of the Supreme Court by way of a formal letter within ten (10) days after the end of every month.

The Audit Report of the OCA Financial Audit Team clearly shows that Fueconcillo failed to comply with the mandates of the foregoing Circulars. It is her duty as custodian of funds of the court to perform her responsibilities faithfully, so that she can fully comply with the circulars on deposits of collections. And among her responsibilities is to deposit immediately, with authorized government depositaries, the various funds she has collected, because she is not authorized to keep those funds in her custody. The unwarranted failure to fulfill this responsibility deserves administrative sanction; and not even the full payment, as in this case, of the collection shortages will exempt the accountable officer from liability.

Fueconcillo does not dispute her failings as custodian of the court funds.

Records show that Fueconcillo incurred delay in depositing collections for the Mediation Fund, collected from 7 September to 21 October 2004 in the amount of P9,000.00, as it were deposited only on 6 February 2006.

Fueconcillo not only incurred delay, but she did not at all deposit certain amounts collected to the account of the court. She admitted that she incurred shortages, totaling P84,681.99, in the amounts she collected and should have deposited to the Clerks of Court General Fund, Judiciary Development Fund, Sheriff's Trust Fund, Fiduciary Fund and Mediation Fund. She admitted that she used the money for her family's sustenance and her children's educational expenses because of the financial difficulties she was experiencing in light of her meager salary.

While Fueconcillo was subsequently able to account for the shortages, her restitution thereof was belatedly done as it was effected only after being directed to do so by the Audit Team.[8] Obviously, this will not exonerate her from liability.[9]

Fueconcillo also confessed to withdrawing twice the amount of P20,000.00 based on only one Order for withdrawal of bonds issued on 23 April 2002 in Criminal Case No. 6656 and fraudulently using the second set of LBP withdrawal slips signed by Judge Vizcarra pursuant to the same Order.

Fueconcillo, as the OIC/Clerk of Court, had the duty to completely and immediately deposit with the LBP the

various funds she collected. She had no authority to keep any of the funds in her custody, or to use the same for her personal purpose. When she did so, she breached her fidelity to her duties. She acted without due regard for her functions as a fiduciary officer of the judiciary.

Reiterated is the rule that public office is a public trust. A public servant is expected to exhibit, at all times, the highest degree of honesty and integrity, and should be made accountable to all those he serves.[10]

Fueconcillo's undue delay in remitting collections, keeping some of the amounts collected for herself and spending it for her family consumption, and fraudulently withdrawing amounts from the judiciary funds, collectively constitute gross misconduct and gross neglect of duty. Pursuant to Section 52, Rule IV of the Civil Service Rules, gross misconduct and gross neglect of duty are grave offenses punishable with dismissal for the first offense.

However, in several administrative cases, the Court has refrained from imposing the actual penalties in the presence of mitigating factors. Factors such as the respondent's length of service,[11] the respondent's acknowledgement of his or her infractions and feeling of remorse,[12] family circumstances,[13] humanitarian and equitable considerations,[14] restitution of the amount unlawfully withheld,[15] among other things, have had varying significance in the Court's determination of the imposable penalty.

In the present case, dismissal from the service may be too harsh, considering the following circumstances, to wit: (1) this is Fueconcillo's first infraction after twenty (20) years of government service; (2) she restituted, albeit belatedly, P84,681.99, the total amount of her shortages before the complaint against her was filed; (3) humanitarian and family considerations; and (4) Fueconcillo's acknowledgment of her infractions and feelings of remorse. The Court also notes that Fueconcillo's salary has been withheld since October 2004 due to her non-submission of the required Monthly Reports. These are circumstances which sufficiently mitigate Fueconcillo's liability and keeps this Court from imposing the ultimate penalty of dismissal from service. Thus, suspension of one (1) year would suffice.

As to Judge Vizcarra, the Court finds her explanation less than satisfactory but enough to save her from administrative penalties. While she claimed that she did not allow unauthorized withdrawal of funds, she provided an opportunity for the commission of the same by leaving several copies of undated withdrawal slips in Fueconcillo's possession. The advance preparation of multiple copies of withdrawal slips enabled Fueconcillo to make the unauthorized withdrawal on 19 June 2002. However, considering Judge Vizcarra's numerous assignments to additional courts, this Court resolves not to impose sanctions for the lax standard of procedure adopted in her courts, and merely admonishes Judge Vizcarra for the same.

WHEREFORE, the Court RESOLVES as follows:

(1)

To find Irene P. Fueconcillo, former Officer-in-Charge, Office of the Clerk of Court, Municipal Trial Court in Cities, Science City, Muñoz, Nueva Ecija, GUILTY of GROSS MISCONDUCT AND GROSS NEGLIGENCE and order her SUSPENSION for one (1) year without pay with a WARNING that a repetition of this or a similar offense will be dealt with more severely; and

(2)

To ADMONISH Judge Eleanor TF. Marbas-Vizcarra to exercise effective supervision over the personnel of her court, especially those charged with collection of the Fiduciary Fund and other trust funds (Judiciary

Development Fund and Sheriff's Trust Fund).

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Rollo, pp. 9-10.

[2] Id. at 38-39.

[3] Id. at 41-43.

[4] Id. at 54-55.

[5] Id. at 79.

[6] Id. at 80.

[7] Id. at 82.

[8] Id. at 54.

[9] Report on Anomalies of JDF Collections in MTCC, Angeles City v. Calaguas, 326 Phil. 703, 708 (1996).

[10] Id.

[11] Buntag v. Paña, G.R. No. 145564, 24 March 2006, 485 SCRA 302, 306-307; Floria v. Sunga, 420 Phil. 637, 651 (2001); Concerned Taxpayer v. Doblada, Jr., A.M. No. P-99-1342, 20 September 2005, 470 SCRA 218, 222-223; Civil Service Commission v. Belagan, G.R. No. 132164, 19 October 2004, 440 SCRA 578, 601.

[12] In 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. 2001-7-SC & 2001-8-SC, 22 July 2005, 464 SCRA 1, 19; In Re: Irregularities in the Use of Logbook and Daily Time Records by Clerk of Court Raquel D.J. Razon, Cash Clerk Joel M. Magtuloy and Utility Worker Tiburcio O. Morales, MTC-OCC, Guagua, Pampanga, A.M. No. P-06-2243, 26 September 2006, 503 SCRA 52, 62-63.

[13] Id.

[14] In Re: Delayed Remittance of Collections of Odtuha, 445 Phil. 220, 226-227 (2003); In Re: Imposition of Corresponding Penalties for Habitual Tardiness Committed during the First and Second Semesters of 2003 by the Following Employees of this Court: Gerardo H. Alumbro, A.M. No. 00-06-09-SC, 16 March 2004, 425 SCRA 534, 547.

[15] In Re: Misappropriation of the Judiciary Fund Collections by Ms. Juliet C. Banag, 465 Phil. 24, 38 (2004).

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