RE: REPORT ON THE FINANCIAL AUDIT CONDUCTED IN THE MTCC-OCC, ANGELES CITY.

A.M. NO. P-06-2140 (FORMERLY OCA I.P.I NO. 06-2-51-MTCC). June 26, 2006

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PER CURIAM:

Before us is an administrative case which arose from the Memorandum[1] of Dindo V. Sevilla, Team Leader of the Office of the Court Administrator (OCA) Financial Audit Team (Team) to then Court Administrator (now a member of this Court) Presbitero J. Velasco, Jr. dated February 3, 2006 charging Aurelia C. Lugue (respondent) of gross negligence in the performance of duty and gross dishonesty.

On February 14, 2005, the Team conducted an audit on the books of accounts and a surprise cash count in the Office of the Clerk of Court (OCC), Municipal Trial Court in Cities (MTCC), Angeles City.

The surprise cash count revealed an initial shortage of P700,025.00 in the Fiduciary Fund (FF) which prompted the Team to conduct a detailed and comprehensive financial audit on all the books of accounts of the court.

The cash presented to the Team totaling P16,000.00 together with the additional amount of P84,000.00 given by the cashier was deposited[2] on the following day, February 15, 2005 to the FF account in the total amount of P100,000.00. On February 18 and 23, 2005, respondent deposited[3] the amount of P500,000.00 and P5,025.00, respectively, to the FF account thereby restituting totally the audited shortage amounting to P605,025.00.

In a letter[4] dated March 2, 2005, Clerk of Court Anita G. Nunag (CoC Nunag) required respondent to explain in writing how and why she incurred the shortage of P605,025.00.

In her explanation[5] dated March 7, 2005, respondent admitted that she was remiss in her collecting functions, giving as reasons the following: she is the collecting and disbursing officer at the same time; while she gives priority to her disbursing functions, she failed to record her collections daily in the three cashbooks i.e., Fiduciary Fund (FF), Judiciary Development Fund (JDF) and Special Allowance for Justices and Judges (SAJJ), which resulted to the accumulated unrecorded transactions; she attends to the needs of litigants with claims for refund of their cash bonds including the preparation, processing of vouchers and withdrawals from the bank, thus her failure to record promptly the transactions in their specific/corresponding cashbooks.

Respondent reasoned that the alleged shortage of P605,025.00 was due to her failure to record her collection for Official Receipt (O.R.) Nos. 15156288 to 15156433, thus, she had difficulty in determining how much to deposit to the FF account.

In her explanation[6] dated February 16, 2005 addressed to Acting Executive Judge Aida E. Layug, respondent averred that as regards the withdrawal of cash bond, she would first check the Fiduciary receipts whether the same were already deposited or not. If the concerned O.R.s were not yet deposited, she will refund the amount from her present collections and will not withdraw from the FF account although the withdrawal slip is made and signed by the proper authorities. And due to the said process, she can no longer deposit to the said account the undeposited O.R.s as the same were already refunded to the claimants out of her present collection.

In her Explanation/Answer[7] dated March 7, 2005 addressed to the Audit Team, CoC Nunag explained that she was not in a position to explain the transactions as regards: a) the Clerk of Court General Fund (GF); b) unwithdrawn interests from prior years in the amount of P7,481.80; c) unwithdrawn interests from January 2003 to December 2004 (particularly the first and second quarters of 2003); and d) the confiscated/forfeited cash bonds not withdrawn from the FF since March 1999, as she assumed office as CoC of the OCC, MTCC, Angeles City only on August 16, 2003. She claimed good faith and oversight over the amount of P51.20 pertaining to Special Allowance for the Judiciary (SAJ) which resulted to an over-remittance of P40.00 and P11.20 on September 2004 and February 9, 2005, respectively. The P5,000.00 shortage in the JDF and over-remittance of P5,000.00 to the FF resulted from an erroneous deposit made to the FF. The same, however, was corrected through a credit advice from the Land Bank of the Philippines (LBP), Angeles Branch. With regard to the undeposited collections of respondent from November 2, 2004 to February 14, 2005, she explained that she was shocked and surprised and did not know how the respondent managed to do it because they submitted balanced Monthly Reports for the months of November and December, 2004, adding that in good faith, she was not remiss in strictly monitoring the respondent to the extent of her (CoC Nunag's) accounting ability. And to prove her innocence, she attached a copy of respondent's affidavit attesting that she (CoC Nunag) had no knowledge and consent to the undeposited collections. With regard to the marriage solemnization fees, the same were already settled. On confiscated/forfeited cash bonds, she reasoned that she is not in a position to explain the unwithdrawn confiscated/forfeited cash bonds from the FF since March 1999 in the amount of P625,600.00 because she assumed office only on August 16, 2003. For her term, she was not able to withdraw the corresponding amount for the confiscated/forfeited cash bonds for the reason that the forfeitures/confiscations received were only submitted by the respondent on February 15, 2005 when the same were asked by the Team. She averred that the records were not given to her by the respondent despite the fact that the records were being asked of her (respondent). And that she already complied with the withdrawal of P625,600.00 from the FF account on March 3, 2005 and thereafter deposited to the JDF account on the same day.

The Team submitted its report[8] containing their significant audit findings, to wit:

> Based on the records presented to us by Clerk of Court Nunag, here are our significant findings:

A. CLERK OF COURT GENERAL FUND

A.1 Reconciliation of the collections and deposits of the General Fund for the period December 2002 to December 31, 2003

For General Fund (GF)

Total Collections from December 2002 to December 31, 2003 P475,164.60

Less: Total Remittances made during the same period 475,364.60

Balance of Accountability as of December 31, 2003 (Overage) P (200.00)

> The P200.00 overage was due to the double-remittance of O.R. No. 16474633 dated February 28, 2003 both in the cashbook and in the monthly report. This amount would be treated as Other Income.

B. SPECIAL ALLOWANCE FOR THE JUDICIARY (SAJ)

> Reconciliation of the collections and deposits of the Special Allowance for the Judiciary Fund for the period January 2004 to February 14, 2005.

For Special Allowance for the Judiciary (SAJ)

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Total Collections from January 2004 to February 14, 2005 P549,750.40

Less: Total Remittances made during the same period 549,801.60

Balance of Accountability as of February 14, 2005 P (51.20)

The P51.20 overage was due to over-remittance of P40.00 on September 10, 2004 and P11.20 on February 9, 2005. These amounts would be treated as Other Income.

C. JUDICIARY DEVELOPMENT FUND (JDF)

Reconciliation of the collections and deposits of the Judiciary Development Fund for the period December 2002 to January 31, 2005.

For Judiciary Development Fund (JDF)

Total Collections from December 2002 to February 14, 2005 P1,612,886.73

Less: Total Remittances made during the same period 1,607,886.73

Balance of Accountability as of February 14, 2005 (Shortage) P 5,000.00

The P5,000.00 shortage was due to collections in the Fiduciary Fund erroneously deposited in the Judiciary Development Fund on September 8, 2003 (see "ANNEX B"). The Clerk of Court informed immediately the FMBO and FMO about the matter. On January 14, 2004, the COA State Auditor advised the Clerk of Court to make an off-setting in the collections of Judiciary Development Fund to the Fiduciary Fund to compensate the incurred shortage. This process of "setting-off" was not in accordance with the court's policies and accounting standards. In fact it violated Section 2 of P.D. 1949 which states that "exclusive power and duty to approve[d] disbursements and expenditures of the JDF is vested solely to the Chief Justice of the Supreme Court." Moreover, there was already notice sent to the Supreme Court for the necessary adjustments on the matter. On October 24, 2003, LANDBANK corrected the erroneous recording with a credit advice totaling P5,000.00 to the Fiduciary Fund account no. 1521-0426-10 (see "ANNEX B"). Therefore, the Judiciary Development Fund now is understated by P5,000.00 due to the "off-setting" and the Fiduciary Fund is overstated by P5,000.00 due to the inter-office credit advice.

D. FIDUCIARY FUND

Reconciliation of the collections and withdrawals of the Fiduciary Fund for the period December 2002 to February 14, 2005

For Fiduciary Fund (FF)

Beginning Balance as of November 30, 2002 P3,918,225.00

Total Collections from December 2002 to February 14, 2005 5,191,343.61

Less: Total Withdrawals made during the same period 3,290,175.00

Balance of Unwithdrawn FF as of February 14, 2005 5,819,393.61

LESS: 4,481,905.30

Amount of Bank Balance as of February 14, 2005 P5,301,065.69

Over-remittance-Sept. 8, 2003 ("Annex B") (5,000.00)

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Unwithdrawn int. from prior Years ("Annex C") (7,481.80)

Unwithdrawn interest-Jan 2003 To Dec. 2004 (74,481.80) 5,214,368.61

Balance of Accountability as of February 14, 2005 P 605,025.00

The P605,025.00 shortage was already paid/restituted by Ms. Aurelia C. Lugue on February 15, 2005 for P100,000.00; on February 21, 2005 for P500,000.00; and finally the remaining balance on February 23, 2005 for P5,025.00. In her affidavit dated February 16, 2005 (see "ANNEX D") Ms. Lugue averred that collections for the day were deposited the next day. She also claimed that the real amount of shortage will be much lower than the initial shortage of P700,625.00 if ever, there will be a shortage. She insinuated that there was no shortage at all. However, based on the passbooks presented to the Team, the collections from November 4, 2004 to February 14, 2005 were not deposited. Even though the amount of actual shortage of P605,025.00 was lower than the initial amount of P700,625.00, it still showed an intention on the part of Ms. Lugue to embezzle the court's funds. Therefore, Ms. Lugue was indeed guilty of misappropriating the Fiduciary Funds for her own personal benefit. Also, there were withdrawals committed by Ms. Lugue from the undeposited collections or cash available on hand in the Fiduciary Fund amounting to P52,600.00. These were deducted from the unremitted collections of P657,625.00 as these were valid withdrawals. Ms. Lugue averred that she would check first whether the collections were deposited or not. Otherwise, she would refund to the party with her own money if proven that the bond was not deposited.

Almost all the collections in the Fiduciary Fund were delayed in remittance. This is a glaring violation of Circular No. 50-95 of the Office of the Court Administrator stating that "collections in the Fiduciary Fund should be deposited within twenty four (24) hours by the Clerk of Court with the Land Bank of the Philippines." Even during the time of former Officer-in-Charge Marlon Roque, MTCC-Branch 3 Clerk of Court during the period December 2002 to August 15, 2003, collections in the Fiduciary Fund were delayed in remittance. Mr. Roque was remiss in his duty to monitor and supervise the Cashier Ms. Lugue in the management of court funds.

Meanwhile, Ms. Lugue thought that her "lapping" technique in delaying the remittance of the Fiduciary Fund would not be discovered. Official Receipts Nos. 15156288 to 15156433 totaling 145 official receipts comprised the total shortage of P605,025.00. These amounts were not deposited/remitted by her. Moreover, Clerk of Court Nunag was found negligent in over-seeing the affairs of the Cashier, Ms. Lugue when she reported back to work. Even if she was on official leave from September 2004 to November 15, 2004, Ms. Nunag should have exercised diligence in monitoring and supervising the work of Ms. Lugue. The team was furnished by an explanation of the Clerk of Court, Ms. Nunag on March 7, 2005. She states, "...Since I assumed office on August 16, 2003, I adopted the practice done by the previous Clerk of Court and the cashier Mrs. Lugue since I know it is in order. On January 14, 2004, our office was subjected to audit by the Commission on Audit for the period covering December 2002 to January 2004. There was no findings of any shortages (except for the erroneous deposit to the JDF of the P5,000.00 Fiduciary collection, which was already rectified.).. My attention was never called by the auditor regarding the delayed deposits made by the Cashier." (see "ANNEX E")

E. ON MARRIAGE SOLEMNIZATION

We have noticed that a volume of marriage solemnizations were not receipted by the court. From the period 2000 to 2005, a number was collected and receipted by the clerk of court. Per Administrative Circular No. 31-90 dated October 15, 1990 and Administrative Circular No. 00-2-01 SC dated March 1, 2000, the court should collect marriage solemnizations fees. Below is the summary of our audit findings:

The total amount of uncollected marriage solemnization fees for the period 2000 to 2005 amounted to P37,450.00 (see "ANNEX F"). These uncollected marriage solemnization fees were already paid by the

respective branches (see "ANNEX G").

x x x x

H. ON CONFISCATED/FORFEITED CASH BONDS

Confiscated/Forfeited Cash Bonds were not withdrawn from the Fiduciary Fund and remitted to the Judiciary Development Fund since March 1999 up to the present. The Team discovered that a total amount of P625,600.00 forfeited cash bonds were not withdrawn and remitted to the JDF account fund (see "ANNEX H").

The Clerk of Court, Ms. Anita Nunag already withdrew these confiscated/forfeited cash bonds on March 3, 2005 and were immediately deposited to the Judiciary Development Fund on that same day.

x x x x[9]

and its recommendation, as follows:

J. RECOMMENDATION

In the case decided by the court just recently on February 10, 2005 entitled, Office of the Court Administrator vs. Rosario G. Julian, Court Interpreter, Regional Trial Court, Branch 24, Echague, Isabela, the Supreme Court stressed the responsibility of "court personnel tasked with collections of court funds, such as the Clerks of Courts and cash clerks, to deposit immediately with authorized government depositaries the various funds they have collected because they are not authorized to keep those funds in their custody. 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." Furthermore, the Court emphasizes that public service requires the utmost integrity and strictest discipline. A public servant must exhibit at all times the highest sense of honesty and integrity. Indeed, those involved in the administration of justice must live up to the strictest standard of honesty and integrity in the public service for the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women thereat, from the judge to the least and lowest of its personnel.

The failure on the part of the Cashier, Ms. Aurelia C. Lugue to make a timely turn-over of cash deposited with her constitutes not just gross negligence in the performance of duty but also gross dishonesty, if not malversation. Misappropriation of judiciary funds is a serious misconduct, a grave offense punishable by dismissal from service.

In view hereof, it is respectfully recommended that:

- This report be docketed as a regular administrative matter against Cashier 1 MS. AURELIA C. LUGUE, and that she be DISMISSED from the service for gross dishonesty.

- That MR. MARLON ROQUE, Clerk of Court MTCC Branch 3, as former OIC, OCC, MTCC Angeles City and MS. ANITA A. NUNAG, Clerk of Court, OCC, MTCC, Angeles City be DIRECTED to EXPLAIN in writing within ten (10) days from notice the following:

2.1 Their failure to exercise close supervision over the financial transactions of the court;

2.2 Their failure to monitor the activities of former Cashier, Ms. Aurelia C. Lugue, relative to the proper handling of collections of legal fees; and

2.3 Their failure to monitor the proper remittance of collections on time which resulted to many instances of delayed remittances;

- HON. GEMMA THERESA B. LOGRONIO, Executive Judge, be DIRECTED to closely monitor the OCC in

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the "strict" implementation of the issuances of the court relative to handling of Judiciary funds.[10]

In its Memorandum[11] dated February 8, 2006, the OCA adopts the recommendation of the Team and recommends for approval thereof, to wit:

- That this matter be DOCKETED as a regular administrative complaint against MS. AURELIA C. LUGUE, Cashier I, MTCC Angeles City;

- That Ms. Aurelia C. Lugue, Cashier 1, be DISMISSED from the service for gross dishonesty with forfeiture of all benefits except accrued leave credits and with prejudice to reemployment in any government agency, including government-owned or controlled corporations;

- That the Legal Office, OCA be DIRECTED to file criminal case against Ms. Aurelia C. Lugue; and

- A hold departure order be ISSUED to prevent Mrs. Lugue from leaving the country.

We adopt the recommendation of the OCA with regard to respondent Aurelia C. Lugue, except as to the issuance of a hold-departure order considering that no criminal case has as yet been filed against respondent.

However, we deem it proper to adopt the recommendation of the Team as regards Clerks of Court Marlon Roque and Anita A. Nunag, being accountable officers.

At present, the issue to be resolved is whether or not respondent Lugue should still be held liable in view of the fact that she has already restituted the total amount of P605,025.00 shortage as found by the Team.

Respondent, in her explanation,[12] admitted that she was remiss in her collecting functions because of her role as the collecting and disbursing officer at the same time, giving rise to her failure in recording her daily collections in the three cashbooks, i.e., FF, JDF and SAJJ, which resulted to the accumulated unrecorded transactions including O.R. Nos. 15156288 to 15156433 or a total of 145 unrecorded receipts which were issued starting November 2, 2004; and thus, had difficulty in determining how much to deposit to the FF account. However, she was able to restitute the total amount of P605,025.00.

Supreme Court Circulars Nos. 13-92 and 5-93 provide the guidelines for the proper administration of court fund. 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 depository bank." In SC Circular No. 5-93, the Land Bank was designated as the authorized government depository.

Time and again, we have reminded court personnel tasked with collections of court funds, such as Clerks of Courts and cash clerks, to deposit immediately with authorized government depositories the various funds they have collected because they are not authorized to keep funds in their custody.[13] Respondent, as cash clerk, is responsible to deposit immediately with the authorized depositories, in this case, LBP, because delayed remittance of cash collections constitutes gross neglect of duty.[14] Failure of a public officer to remit funds upon demand by an authorized officer constitutes prima facie evidence that the public officer has put such missing funds or property to personal use.[15]

The practice of respondent in offsetting her collections is not allowed under accounting and auditing rules and regulations.[16]

In the case of Navallo v. Sandiganbayan,[17] we held that an accountable officer may be convicted of malversation even in the absence of direct proof of misappropriation as long as there is evidence of shortage in his accounts which he is unable to explain. Even the fact that respondent fully paid her shortages will not free her from the consequences of her wrongdoing.[18] Respondent's restitution of the whole amount of P605,025.00, will

not erase her (respondent's) administrative culpability. By her reprehensible act of gross dishonesty, respondent has undermined the public's faith in our courts and, ultimately, in the administration of justice.[19]

Those who work in the judiciary must adhere to high ethical standards to preserve the court's good name and standing.[20] They should be examples of responsibility, competence and efficiency, and they must discharge their duties with due care and utmost diligence since they are officers of the court and agents of the law.[21] Indeed, any conduct, act or omission on the part of those who would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary shall not be countenanced.[22]

The conduct required of court personnel, from the presiding judge to the lowliest clerk, must always be beyond reproach and circumscribed with a heavy burden of responsibility.[23] As forerunners in the administration of justice, they ought to live up to the strictest standards of honesty and integrity, considering that their positions primarily involve service to the public.[24] The Court is left with no choice but to declare the respondent guilty of dishonesty and gross misconduct, which are grave offenses punished by dismissal.[25]

Hence, for failure to live up to the high ethical standards expected of court employees, respondent Lugue should be dismissed.

WHEREFORE, the Court finds respondent Aurelia C. Lugue, Cashier I, OCC, MTCC, Angeles City guilty of gross dishonesty and imposes on her the penalty of DISMISSAL from the service. Except for leave credirs already earned, her retirement benefits are forfeited, with prejudice to re-employment in any government agency, including government-owned and controlled corporation. The Civil Service Commission is ordered to cancel her civil service eligibility, if any, in accordance with Section 9, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292.[26]

The Legal Office of the Office of the Court Administrator is DIRECTED to file criminal charges against respondent Aurelia C. Lugue before the appropriate court.

Further, the Court DIRECTS Clerk of Court Marlon Roque, MTCC, Branch 3, as former OIC, MTCC; and Clerk of Court Anita G. Nunag, OCC, MTCC, Angeles City to explain in writing, within 10 days from receipt of herein resolution, why they should not be disciplinarily dealt with for failure to:

- exercise close supervision over the financial transactions of the court;

- monitor the activities of Cashier I, Aurelia C. Lugue, relative to the proper handling of collections of legal fees; and

- monitor the proper remittance of collections on time which resulted to many instances of delayed remittances.

Let this administrative matter against Clerks of Court Roque and Nunag be given a separate docket number and re-raffled.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.
Velasco, Jr., J., no part due to prior action of OCA.

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[1] Rollo, pp. 2, 8.

[2] Id. at 10.

[3] Id.

[4] Id. at 66.

[5] Id. at 67.

[6] Id. at 27.

[7] Id. at 36.

[8] Id. at 2-9.

[9] Id. at 3-7.

[10] Id. at 7-8.

[11] Id. at 1.

[12] Supra note 5.

[13] Soria v. Oliveros, A.M. No. P-00-1372, May 16, 2005, 458 SCRA 410.

[14] Id.

[15] Office of the Court Administrator v. Besa, 437 Phil. 372, 380 (2002).

[16] Supra note 13.

[17] G.R. No. 97214, July 18, 1994, 234 SCRA 175. People v. Hipol, 454 Phil. 679, 690 (2003).

[18] Report on the Financial Audit Conducted at the Municipal Trial Court of Bani, Alaminos, and Lingayen, in Pangasinan, A.M. No. 01-2-18-MTC, December 5, 2003, 417 SCRA 107, 111; Judiciary Planning Development and Implementation Office v. Calaguas, 326 Phil. 704 (1996).

[19] Sollesta v. Mission, A.M. No. P-03-1755, April 29, 2005, 457 SCRA 519, 536.

[20] Gutierrez v. Quitalig, 448 Phil. 469, 478 (2003).

[21] Id. at 478-479.

[22] Id.

[23] Supra note 18, at 113.

[24] Id.

[25] Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (Resolution No. 9-1936, which took effect on September 27, 1999) provides:
Section 52. Classification of Offenses. – Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.
A. The following are grave offenses with their corresponding penalties:

1. Dishonesty –1[st] Offense – Dismissal

2. Gross Neglect of Duty – 1[st] Offense – Dismissal

3. Grave Misconduct – 1[st] Offense – Dismissal

[26] Section 9, Rule XIV of the Civil Service Rules provides that "(t)he penalty of dismissal shall carry with it

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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.

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