

REPORT ON THE FINANCIAL AUDIT CONDUCTED ON THE BOOKS OF ACCOUNTS OF THE MUNICIPAL CIRCUIT TRIAL COURT, MONDRAGON-SAN ROQUE, NORTHERN SAMAR.

A.M. No. P-09-2721 (Formerly A.M. No. 09-9-162-MCTC). February 16, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

This administrative matter arose from the financial audit conducted by the Financial Audit Team on the books of accounts of Pompeyo G. Gimena, Clerk of Court II of Municipal Circuit Trial Court (MCTC), Mondragon-San Roque, Northern Samar, covering the period from July 1, 1985 to March 31, 2009, to verify whether the amounts collected were correctly and completely recorded in the books and, thereafter, deposited in the Land Bank of the Philippines (LBP) within the prescribed period.

In the Memorandum[1] for the Court Administrator, the audit team made the following observation and evaluation. Thus,

Based on the available documents presented to the audit team, the following are our significant findings and observations:

I. Cash Count on April 15, 2009 disclosed a shortage of P40.00 as shown below:

Denominations

Quantity

Amount

P1,000.00

55

P55,000.00

500.00

48

24,000.00

200.00

42

8,400.00

100.00

72

7,200.00

50.00

2

100.00

Total

P94,700.00

SUMMARY OF CASH COUNT ON APRIL 15, 2009

Total Undeposited Collections

P94,740.00

Total Cash Items

P94,700.00

Balance of Accountability

P 40.00

The cash presented were for the undeposited collections of the following accounts:

Name of Fund

Date OR No. Amount

JDF [Judiciary
Development Fund]

Aug. 20, 2008 to April 14, 2009

6936764 to 6800;

6851 to 6950;

6937051 to 7100;

7151 to 7167

P 6,133.00

SAJF [Special Allowance
for the Judiciary Fund]

Aug. 20, 2008 to April 14, 2009

6936830 to 6850;

6501 to 6550;

6937001 to 7150;

7201 to 7216

P12,607.00

MF [Mediation Fund]

Mar. 26 to April 11, 2009

6936953 to 6954

1,000.00

FF [Fiduciary Fund]

2716963

25,000.00

2716959

25,000.00

2716964

25,000.00

Total

P94,740.00

Aside from the shortage of P40.00 during cash count, Mr. Pompeyo G. Gimena did not deposit on time the collections on Fiduciary Fund, Special Allowance for the Judiciary Fund, Judiciary Development Fund and Mediation Fund with the authorized depository bank, the Land Bank of the Philippines, pursuant to the guidelines set forth in Circular No. 50-95 dated October 11, 1995 and Administrative Circular No. 35-2004 dated August 20, 2004, respectively.

The cash on hand representing undeposited collections from August 20, 2008 to April 14, 2009 are enumerated in detail for each fund and its corresponding number of months/days of delayed in the remittance to the respective accounts.

For the Judiciary Development Fund:

Date of Collections

O.R. Number

Amount

Period of Delay

Aug. 20 to 31, 2008

6936764 to 6785

P308.00

7 months & 15 days

September 2008

6786 to 6800 & 6851

249.00

6 months & 15 days

October 2008

6852 to 6871

1,314.00

5 months & 15 days

November 2008

318.00

5 months & 15 days

December 2008

900.00

4 months & 15 days

January 2009

450.00

3 months & 15 days

February 2009

896.00

2 months & 15 days

March 2009

1,208.00

1 month & 15 days

April 2009

490.00

Total

P6,133.00

For the Special Allowance for the Judiciary Fund:

Date of Collections

OR Number

Amount

Period of Delay

Aug 20 to 27, 2008

6936830 to 6835

September 2008

6836 to 6850 & 6936501 to 6502

P592.00

7 months & 15 days

October 2008

6503 to 6521

1,086.00

5 months & 15 days

November 2008

6522 to 6532

682.00

5 months & 15 days

December 2008

6533 to 6550 & 6937001 to 7004

2,115.00

4 months & 15 days

January 2009

7005 to 7034

1,050.00

3 months & 15 days

February 2009

7035 to 7050 & 7101 to 7122

2,104.00

2 months & 15 days

March 2009

7123 to 7150

2,992.00

1 months & 15 days

April 1 to 14, 2009

6937201 to 7216

1,510.00

P12,607.00

For the Fiduciary Fund:

Date of Collections

O.R. Number

Amount

Period of Delay

11/8/2007

2716963

P25,000.00

1 year, 4 months & 15 days

11/8/2007

2716959

25,000.00

1 year, 4 months & 15 days

11/16/2007

2716964

25,000.00

1 year, 4 months & 15 days

On April 27, 2009, Mr. Pompeyo G. Gimena submitted his explanation to the delayed remittance of undeposited collections of cash on hand totaling to P94,700.00. According to him, it is his practice to deposit/remit the cash collections whenever he makes his monthly reports. He admitted that he was negligent in making the report on time, resulting in the delay of remittance of Judiciary Development Fund and Special Allowance for the Judiciary Fund collections. He also opted not to deposit the cash bond collections of election protest collection to the Municipal Treasurer's Office (MTO) for reason that it is the source of all expenses in case of revision as provided by the Rules of Procedures in Election Contest (Annex "B").

We find the explanation of Mr. Gimena on his failure to deposit to the MTO the cash collections amounting to P75,000.00 in election protest cases and the JDF and SAJF collections unmeritorious. He kept the cash collections in election protest cases in his personal possession for almost one year. The P75,000.00 collections in election protest cases were part of the P150,000.00 he collected in November 2007. The other half P75,000.00 was deposited in November 2007 to the MTO under MTO OR Nos. 1230960 to 962 as shown in the attached photocopy of the Certificate of Deposits issued by the MTO (Annex "C").

The undeposited collections of cash on hand could have earned interest to the JDF/SAJF had he not kept the amount in his personal possession. He is allowed to purchase Postal Money Orders (PMOs) from the Local Post Office payable to the Chief Accountant, Accounting Division, FMO-OCA for the JDF and SAJF collections or the nearest Land Bank situated in Catarman, Northern Samar which is approximately fifteen kilometers away from the court.

On April 15, 2009 the Team advised Mr. Gimena to deposit the amount of P12,607.00 to the Special Allowance for the Judiciary Fund as provided for under Sec. 21 (g) of the Amended Administrative Circular No. 35-2004 which he complied on that day. Furthermore, he was advised to deposit P6,133.00 and

P75,000.00 to the JDF account & Fiduciary Fund, respectively, which he complied also on the same day (Annexes "D" & "E").

II. INVENTORY OF USED AND UNUSED OFFICIAL RECEIPTS:

All two hundred thirty (230) booklets of Accountable Forms No. 51 (Official Receipts) requisitioned by the court from the Property Division, OCA were fully accounted for.

There were fifteen (15) booklets and one hundred forty five (145) pieces of official receipts which remained unused as of April 15, 2009, to wit:

Name of Accountable Form

Inclusive Serial Numbers

Quantity

Unallocated

6937251 to 8000

15 booklets

JDF

6937168 to 7200

33 pieces

SAJF

6937217 to 7250

34 pieces

FF

2716969 to 7000

32 pieces

MF

6936955 to 7000

46 pieces

Total

15 booklets and 145 pieces

Hereunder are the audit computations for each judiciary fund based on the available documents presented to the team:

III. For the JUDICIARY DEVELOPMENT FUND (JDF):

There was a total cash shortage of Nine Thousand One Hundred Sixty One (P9,161.00), which was restituted on April 21, 2009 (Annex "F").

Total Collections (July 1, 1985 to March 31, 2009)

P337,044.60

Less: Total Remittance (same period)

328,025.15

Balance of Accountability - Shortage

P 9,019.45

Less: Restitution on April 21, 2009

9,161.00

Over-remittance

(P141.55)

The shortage was due to under-remittance of collections of the following period:

Period

Collection

Deposit

Short/(Over)

1985 to 1996

P33,431.00

P32,015.00

P1,416.00

1997 to 2001

85,932.00

82,665.00

3,267.00

2002 to 2004

124,269.60

122,010.40

2,259.20

2005 to 2006

54,990.00

52,442.25

2,547.75

2007 to March 2009

38,422.00

38,892.50

(470.50)

Total

P337,044.60

P328,025.15

P9,019.45

IV. For the SPECIAL ALLOWANCE FOR THE JUDICIARY FUND (SAJF):

There was a total cash shortage of Two Thousand One Hundred Twenty One & 50/100 (P2,121.50), which was restituted on April 21, 2009 (Annex "G").

SCOPE OF AUDIT - November 11, 2003 to March 31, 2009

Total Collections (Nov. 11, 2003 to March 31, 2009)

P157,791.30

Less: Total Remittance (same Period)

155,669.80

Balance of Accountability - shortage

P 2,121.50

Less: Restitution on April 21, 2009

2,121.50

Balance of Accountability

P 0.00

The shortage was due to under-remittance of collections of the following period:

Period

Collection

Deposit

Short/(Over)

2004

P11,319.90

P 1,150.60

P10,169.30

2005

59,038.90

50,618.50

8,420.40

2006

33,000.50

26,570.40

6,430.10

2007

28,464.50

30,348.00

1,883.50

2008

19,821.50

35,710.30

(15,888.80)

2009

6,146.00

11,272.00

(5,126.00)

Total

P157,791.30

P155,669.80

P2,121.50

V. For the MEDIATION FUND (MF)

There was a total cash shortage of Five Hundred Pesos (P500.00), which was restituted on April 15, 2009.

Total Collections

P1,500.00

Less: Total Remittance

1,000.00

Balance of Accountability - shortage

P 500.00

Less: Restitution on April 25, 2009

500.00

Balance of Accountability

P 0.00

The shortage was due to under-remittance of March 2009 collections.

VI. For the CLERK OF COURT GENERAL FUND (COCGF)

The Clerk of Court did not assess or collect General Fund from start of collection up to December 31, 2003. All legal fees were receipted and deposited to the Judiciary Development Fund, a violation of Administrative Circular 3-2000, Re: Guidelines in the allocation of the legal fees collected under Rule 141 of the Rules of Court, as amended, between the General Fund and the Judiciary Development Fund.

VII. For the FIDUCIARY FUND (FF)

There was a total shortage of Four Thousand Pesos (P4,000.00) which was due to undocumented withdrawals in Criminal Case No. 8526 under Official Receipt Number 19043196. Thus, Mr. Pompeyo paid P4,000.00 on July 13, 2009, because he could not locate the bondsman to acknowledge receipt of the withdrawn cash bond nor the records for the said withdrawal, computed below:

Collections

P393,310.00

Less: Withdrawals

197,000.00

Bal. of Unwithdrawn Fiduciary Fund as of March 31, 2009

196,310.00

Less: Certification of deposits issued by the MTO-Mondragon

192,310.00

Balance of Accountability

4,000.00

Less: Deposit on 7/13/09 under LBP SA No. 1191-1324-47

4,000.00

Balance of Accountability

0.00

Mr. Pompeyo G. Gimena failed to deposit the cash collections in election protest cases amounting to P75,000.00 to the Land Bank of the Philippines, Catarman Branch or to the Municipal Treasurer's Office. This is a direct violation of Section A(2) of OCA Circular No. 50-95, which provides that cash collections accruing to the FF shall be deposited in the name of the court with its Clerk of Court and the Executive Judge/Presiding Judge as authorized signatories. The court opened a savings account only on July 7, 2009, with an initial deposit of Fifteen Thousand Pesos (P15,000.00) under SA No. 1191-1324-47.

He also failed to remit his collections of the JDF and SAJF on time, as shown below:

SCHEDULE 1:

Date of Collections

Date Deposited

Amount

Period of Delay

October 2007

August 20, 2008

P210.00

10 months

November 2007

August 20, 2008

11,975.00

9 months

December 2007

August 20, 2008

531.00

8 months

January 2008

August 20, 2008

3,087.00

7 months

February 2008

August 20, 2008

510.00

6 months

March 2008

August 20, 2008

708.00

5 months

April 2008

August 20, 2008

804.00

4 months

May 2008

August 20, 2008

717.00

3 months

June 2008

August 20, 2008

210.00

2 months

July 2008

August 20, 2008

749.50

1 months

Total

P19,501.50

SCHEDULE 2:

Date of Collections

Date Deposited

Amount

Period of Delay

July 2004

June 23, 2006

P317.30

1 year & 11 months

August 2004

June 23, 2006

154.00

1 year & 10 months

September 2004

June 23, 2006

1,596.90

1 year & 9 months

October 2004

June 23, 2006

725.50

1 year & 8 months

November 2004

June 23, 2006

3,968.10

1 year & 7 months

December 2004

June 23, 2006

3,541.50

1 year & 6 months

February 2005

November 10, 2005

4,709.00

9 months

March 2005

November 10, 2005

3,866.50

8 months

April 2005

November 10, 2005

7,758.30

7 months

May 2005

November 10, 2005

5,912.50

6 months

June 2005

November 10, 2005

8,921.50

5 months

July 2005

November 10, 2005

8,733.00

4 months

August 2005

November 10, 2005

6,825.00

3 months

September 2005

November 10, 2005

3,893.00

2 months

January 2006

June 23, 2006

2,918.50

5 months

February 2006

June 23, 2006

5,640.00

4 months

March 2006

June 23, 2006

1,534.00

3 months

April 2006

June 23, 2006

3,932.00

2 months

July 2006

March 23, 2007

2,324.50

8 months

August 2006

March 23, 2007

1,782.00

7 months

September 2006

March 23, 2007

4,332.00

6 months

October 2006

March 23, 2007

3,373.50

5 months

November 2006

March 23, 2007

2,269.00

4 months

December 2006

March 23, 2007

1,612.50

3 months

March 2007

September 13, 2007

3,878.00

6 months

April 2007

September 13, 2007

1,861.50

5 months

May 2007

September 13, 2007

1,993.00

4 months

June 2007

September 13, 2007

805.00

3 months

July 2007

September 13, 2007

2,700.00

2 months

Total

[P101,877.60]

Aside from the fact that the collections from the Judiciary Development Fund, Special Allowance for the Judiciary Fund and cash collections in election protest cases were not remitted on time (Schedules 1 & 2), the Team found that Mr. Pompeyo violated Administrative Circular No. 3-2000, dated June 15, 2000, which states that the aggregate total of the deposit slips for any particular month should always be equal to and tally with the total collections for that month as reflected in the Monthly Report of Collections and Deposits and Cash Book. He violated Section A(2) of Circular No. 50-95, whereby all Clerks of Court of the lower courts are directed to deposit all collections from bailbonds, rental deposits and other fiduciary collections within twenty-four (24) hours by the Clerk of Court concerned, upon receipt thereof, following the same guidelines laid down in Circular No. 13-19 dated March 1, 1992, with the Land Bank of the Philippines, the authorized government depository bank for the Judiciary. Clerks of Court are not authorized to keep their collections in their custody. He also violated OCA Circular No. 113-2004, the guidelines and procedures in the submission of monthly reports of collections, and deposits to the Accounting Division, Financial Management office, Office of the Court Administrator because of his failure to submit the monthly reports of collections, deposits and withdrawals.

In keeping the cash on hand for almost a year in the personal possession of Mr. Gimena, it exposes the risk of being lost or malversed and deprived the court of interest income, if collections were deposited on time in the bank.

x x x x

Indeed, Mr. Gimena had been remiss in the performance of his duties as Clerk of Court. However, since Mr. Gimena had already been relieved as accountable officer and he had restituted the shortages in his collection and deposited the cash on hand immediately upon advice by the Team, we find that a penalty of suspension without pay and a fine should imposed for the infractions committed.

Furthermore, the withholding of Mr. Gimena's salaries was due to his failure to submit monthly reports of

collections, deposits and withdrawals to the Financial Management Office, OCA, despite warnings and follow-up communications. Considering that the audit on the books of accounts of Mr. Gimena has been finalized, his withheld salaries can now be released.

In view of the foregoing, we respectfully recommended that:

A. This report be docketed as an administrative complaint against Mr. Pompeyo G. Gimena, incumbent Clerk of Court of MCTC, Mondragon-San Roque, Northern Samar for the delay in the deposit of collections and non submission of monthly reports of collections, deposits and withdrawals in violation of Administrative Circular No. 3-2000 and OCA Circular 113-2004 dated June 15, 2000 and September 16, 2004, respectively;

B. Ms. Pompeyo G. Gimena be SUSPENDED for one (1) month without pay and FINED in the amount of FIVE THOUSAND PESOS (P5,000.00) for delay in the deposit of collections exposing to the risk of being malversed and depriving the Court of interest income with a STERN WARNING that similar act will be dealt with more severely in the future;

C. The withheld salaries and allowances of Mr. Pompeyo G. Gimena, Clerk of Court II of MCTC, Mondragon-San Roque, be released for humanitarian consideration;

D. Ms. Nila A. Tuballas, incumbent Officer-in-Charge/Stenographer, MCTC, Mondragon-San Roque, Northern Samar be DIRECTED to:

1. Effectively exercise control and supervision over the court personnel especially those in charge with the collection/deposits/withdrawals and recording of all court funds, and submission of monthly reports; and
2. Keep herself abreast/updated with the court issuance & strictly comply with the provisions there of, particularly on the proper handling of judiciary funds; and

E. Presiding Judge Emerenciana O. Manook be DIRECTED to MONITOR the Officer-in Charge, Ms. Nila A. Tuballas to ensure strict compliance with the circulars on the proper handling of judiciary funds and adhere strictly to the issuance of the Court to avoid repetition the same offenses committed as enumerated above.

In its Memorandum for the Chief Justice dated September 16, 2009, the Office of the Court Administrator (OCA) adopted in toto the recommendation of the audit team.

On January 10, 2007, the FMO OCA again requested authority from the Chief Justice to withhold the salaries of Gimena for non-submission of monthly reports of collections, deposits and withdrawals despite due notices of the following accounts, to wit:

Accounts

Period

Special Allowance for Judiciary Fund

April 2004 to February 28, 2007

Judiciary Development Fund

February 2004, July 2004 to February 2007

Fiduciary Fund

None

Gimena complied in September 2007; however, his salaries were not released despite submission of the compliance in the above accounts because again, he failed to submit the succeeding monthly reports of collections

and deposits from March 1, 2007 to March 31, 2009.

In a letter dated April 27, 2009 addressed to the Team Leader of the Fiscal Monitoring Division, CMC-OCA, Gimena justified the delay of his remittance with the following explanation:

It has become my practice to deposit/remitt my cash collections whenever I make my monthly report. I have been lately negligent in making this report on time resulting in the delay of my remittance of the JDF and the SA[J]F. Rest assured, however, that I have not used any of said amount for my personal benefit and as of today, I have already remitted/deposited all amount according to your audit and reconciliation of my book of accounts. The corresponding disbursement vouchers and acknowledgment receipts are all hereto attached.

As to the amount of P75,000.00 (FF), the same has already been deposited with the Office of the Municipal Treasurer, LGU-Mondragon, Northern Samar. I was mistaken in my belief that it need not be deposited/remitted since it was the source for all expenses in case of revision as provided by the Rules of Procedure in Election Contest.

Wherefore, I beg the indulgence of your Honorable Office and I commit myself to make my monthly report on time and that all these mistakes will not happen again.

On May 25, 2009, the newly designated Presiding Judge Emerenciana O. Manook relieved Gimena as accountable officer and designated Stenographer Nila A. Tuballas as Officer-in-Charge. Thus,

Effective as of this date, collection of money accruing to this Court shall be transferred from Mr. Pompeyo G. Gimena, Clerk of Court, to Mrs. Nila a. Tuballas, Stenographer, who shall accept, sign for and keep in her custody the money which must be deposited immediately to the depository Bank on a daily basis, weekly basis, or monthly basis. Mrs. Tuballas is further instructed to submit a written daily report of cash payment made to the Court.[2]

The Court agrees with the findings of the OCA that Gimena is administratively liable, but modifies its recommended penalty.

Administrative Circular No. 3-2000, dated June 15, 2000, emphasized the responsibility of the Clerks of Court, Officer-in-Charge, or Accountable Officers to adhere to the proper procedure in handling court funds as follows:

ADMINISTRATIVE CIRCULAR NO. 3-2000

TO: THE COURT OF APPEALS, SANDIGANBAYAN, COURT OF TAX APPEALS, REGIONAL TRIAL COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS, SHARI'A DISTRICT COURTS AND SHARI'A CIRCUIT COURTS

SUBJECT: RE: GUIDELINES IN THE ALLOCATION OF THE LEGAL FEES COLLECTED UNDER RULE 141 OF THE RULES OF COURT, AS AMENDED, BETWEEN THE GENERAL FUND AND THE JUDICIARY DEVELOPMENT FUND.

x x x x

II. PROCEDURAL GUIDELINES

A. Judiciary Development Fund.

1. Duty of the Clerks of Court, Officer-in-Charge or Accountable Officers. The Clerks of Court, Officers-in-Charge of the Office of the Clerk of Court, 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 therefor, maintain a separate cash book properly marked CASH

BOOK FOR JUDICIARY DEVELOPMENT FUND, deposit such collections in the manner herein prescribed, and render the proper Monthly Report of Collections and Deposits for said Fund.

2. Depository Bank for the Fund. - The amounts accruing to the Fund shall be deposited for the account of the Judiciary Development Fund, Supreme Court, Manila by the Clerks of Court, Officer-in-Charge, of the Office of the Clerk of Court in an authorized government depository bank. The income or interest earned shall likewise form part of the Fund. For this purpose, the depository bank for the Fund shall be the LAND BANK OF THE PHILIPPINES (LBP) or its branches. In the absence of a LBP Branch, Postal Money Order (PMOs) payable to the Chief Account, SC (OCA) can be purchased from the Local Post Office and sent to the latter for deposit to the JDF Savings Account.

In cases of remittances through PMOs, Clerks of Courts/Accountable Officers are directed to check the entries on the PMO as to (a) date (staled PMOs should not be remitted); (b) amount in words and figures; and (c) signature of the Postmaster, to avoid inconveniences.

3. Systems and Procedures. -

x x x x

c. In the RTC, MeTC, MTCC, MTC, MCTC, SDC and SCC. - The daily collections for the Fund in these courts shall be deposited everyday with the nearest LBP branch for the account of the Judiciary Development Fund, Supreme Court, Manila - SAVINGS ACCOUNT No. 0591-0116-34 or if depositing daily is not possible, deposits for the Fund shall be 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 period above-indicated.

x x x x

d. Rendition of Monthly Report. - Separate "Monthly Report of Collections and Deposits" shall be regularly prepared for the Judiciary Development Fund which shall be submitted to the Chief Accountant, FMO, OCA, copy furnished the FMBO, Supreme Court, the Fiscal Monitoring Division within ten (10) days after the end of every month. Duplicate copies of the official receipts issued during such month covered and validated copy of the Deposit Slips, should likewise be submitted. Deposit Slips that are not machine validated shall not be considered as deposits.

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

x x x x

B. General Fund (GF)

(1) Duty of the Clerks of Court, Officer-in-Charge or Accountable Officers. - The Clerks of Court, Officers-in-Charge of the office of the Clerk of Court, or their accountable duly authorized representatives designated by them in writing, who must be accountable officers, shall receive the General Fund collections, issue the proper receipt therefor, maintain a separate cash book properly marked CASH BOOK FOR CLERK OF COURT'S GENERAL FUND AND SHERIFF'S GENERAL FUND, deposit such collection in the manner herein prescribed, and render the proper Monthly Report of Collections and Deposits for said Fund.

(2) Depository Bank of the GF.- The amounts accruing to the Fund shall be deposited for the account of the General Fund, Bureau of Treasury, by the Clerks of Court, Officers-in-Charge of the Office of the Clerk of Court in the authorized government depository bank. For this purpose, the depository bank for the GF shall be the LAND BANK OF THE PHILIPPINES (LBP) or its branches. In the absence of a LBP Branch, Postal Money Orders (PMO's) payable to the Chief Accountant, SC (OCA) can be purchased from the Local Post Office and sent to the Chief Accountant, SC (OCA) for deposit to the Bureau of Treasury.

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

x x x x

Strict observance of this rules and regulations in hereby enjoined. The Clerks of Court, Officer-in-Charge shall exercise close supervision over their respective duly authorized representatives to ensure strict compliance herewith and shall be held administratively accountable for failure to do so. Failure to comply with any of these rules and regulations shall mean the withholding of the salaries and allowances of those concerned until compliance thereof is duly affected, pursuant to Section 122 of P.D. No. 1445 dated June 11, 1978, without prejudice to such further disciplinary action the Court may take against them.

June 15, 2000.

(Signed)

HILARIO G. DAVIDE, JR.

Chief Justice

In OCA Circular No. 113-2004 dated September 16, 2004 (effective October 1, 2004), the guidelines for the uniform submission of Monthly Reports of Collections and Deposits by Clerks of Courts have been outlined as follows:

OCA CIRCULAR NO. 113-2004

TO: ALL CLERKS OF COURT OF THE REGIONAL TRIAL COURTS (RTC), SHARI'A DISTRICT COURTS (SDC), METROPOLITAN TRIAL COURTS (MeTC), MUNICIPAL TRIAL COURT IN CITIES (MTCC), MUNICIPAL CIRCUIT TRIAL COURTS (MCTC), MUNICIPAL TRIAL COURTS (MTC), AND SHARI'A CIRCUIT COURTS (SCC)

SUBJECT: SUBMISSION OF MONTHLY REPORTS OF COLLECTIONS AND DEPOSITS

The following guidelines and procedures are hereby established for purposes of uniformity in the submission of Monthly Reports of Collections and Deposits, to wit:

1. The Monthly Reports of Collections and Deposits for the Judiciary Development Fund (JDF), Special Allowance for the Judiciary (SAJ) and Fiduciary Fund (FF) shall be:

- 1.1. Certified correct by the Clerk of Court
- 1.2. Duly subscribed and sworn to before the Executive/Presiding Judge
- 1.3. Sent not later than the 10th day of each succeeding month to -

The Chief Accountant
Accounting Division
Financial Management Office
Office of the Court Administrator
Supreme Court of the Philippines

Taft Avenue, Ermita
Manila

2. The following documents shall be attached to the reports:

A. For Judiciary Development Fund (JDF)

a. Duplicate copies of the official receipts issued

b. Machine validated deposit slips, if collections are remitted/deposited with the Land Bank of the Philippines (LBP), or Postal Money Order (PMO), if collections are remitted through PMO.

B. For Special Allowance for the Judiciary (SAJ)

a. Duplicate copies of the official receipts issued

b. Machine validated deposit slips, if collections are remitted/deposited with the LBP, or PMO, if collections are remitted through PMO

C. For Fiduciary Fund (FF)

a. Duplicate copies of the official receipts issued

b. Machine validated deposit slips, if collections are deposited with the LBP, or certified true copies of the official receipts issued by the Provincial/City/Municipal Treasurer, if collections are deposited with the Treasurer's Office.

c. In case of withdrawal:

c.1. Copy of the Court Order

c.2. Original Official Receipt (OR) or certified true copy of

OR

c.3. Duplicate or certified true copy of withdrawal slip and disbursement voucher if collections are deposited in a savings account with the LBP, or a copy of the check and disbursement voucher if collections are deposited in a current account with the LBP, or disbursement voucher, if collections are deposited with the PTO/CTO/MTO

c.3.3 Copy of the acknowledgment receipt

3. In case no transaction is made within the month, written notice thereof shall be submitted to the aforesaid Office not later than the 10[th] day of the succeeding month.

Henceforth, all Clerks of Court shall only submit monthly reports for the three (3) funds, namely: JDF, SAF, and FF.

The former Special Allowance for Justices and Judges (SAJJ) shall be now described as Special Allowance for the Judiciary (SAJ).

Circular No. 44-2000 is hereby revoked.

This Circular shall be effective beginning 01 October 2004.

16 September 2004.

(Signed)

PRESBITERO J. VELASCO, JR.[3]

Court Administrator

During the examination of the books of accounts of MCTC, Mondragon-San Roque, the Financial Audit Team called the attention of Gimeno with regard to the shortage of P40.00 during the cash count on April 15, 2009 and his failure to timely deposit the court collections in the total amount of P94,740.00, specifically on the following: JDF in the amount of P6,133.00 (from August 20, 2008 to April 14, 2009); SAJF in the amount of P12,607.00 (from August 20, 2008 to April 14, 2009); MF in the amount of P1,000.00 (from March 26 to April 11, 2009); and FF in the amounts of P25,000.00 + P25,000.00 + P25,000.00 or a total of P75,000.00 (November 8 and 16, 2007).

In his letter dated April 27, 2009, Gimena explained that it had become his practice to deposit or remit the cash collections whenever he would make his monthly report. His express admission that he had been negligent in submitting the monthly report which, consequently, resulted in the delay in remitting the JDF and SAJF does not warrant his exculpation from administrative liability. Likewise, his defenses that he had not used the subject funds for his personal benefit and that he had already deposited the said amounts do not work in his favor. His subsequent restitution of the amount did not alter the fact that he was remiss in the discharge of his duties. Suffice it to state that circulars of the Court must be strictly complied with to protect the safekeeping of funds and collections and to establish full accountability of government funds.[4] Shortages in the amounts to be remitted and the years of delay in the actual remittance constitute gross neglect of duty for which the Clerk of Court shall be administratively liable,[5] gross dishonesty, gross misconduct,[6] and even malversation of public funds.[7] As pointed out by the OCA, the P75,000.00 collected from election protest cases was part of the P150,000.00 he collected in November 2007 which he kept in his personal possession for almost one year (should be more than one year) and, thus, posed the danger of being lost or malversed and deprived the court of interest income. The failure to remit on time judiciary collections deprives the court of interest that may be earned if the amounts are deposited in a bank.[8] His "mistaken belief that the P75,000.00 FF need not be deposited or remitted since it was the source for all expenses in case of revision as provided by the Rules of Procedure in Election Contest" would not constitute valid excuse. Unfamiliarity with procedures will not exempt him from liability. As Clerk of Court II, Gimeno is expected to keep abreast of all applicable laws, jurisprudence and administrative circulars pertinent to his office. As custodian of court funds and revenues, Clerks of Court have always been reminded of their duty to immediately deposit the various funds received by them to the authorized government depositories for they are not supposed to keep funds in their custody.[9]

The Court finds Gimena guilty of two (2) offenses, i.e., delay in the deposit of collections and non-submission of monthly reports of collections, deposits and withdrawals in violation of Administrative Circular No. 3-2000 (dated June 15, 2000) and OCA Circular No. 113-2004 (September 16, 2004). The OCA recommended two penalties for the said offenses, albeit in the alternative -- suspension for one (1) month without pay or fine in the amount of five thousand pesos (P5,000.00) with a stern warning that similar act will be dealt with more severely in the future. This should be modified. In *Re: Report on Audit and Physical Inventory of the Records of Cases in MTC of Peñaranda, Nueva Ecija*,[10] therein clerk of court was found guilty of gross neglect of duty for failure to timely turn over the court collections and submit monthly reports and, thus, dismissed from the service. Similarly, in *Sollesta v. Mission*,[11] aside from failure to submit monthly reports, therein clerk of court restituted the misappropriated court funds, but was still found guilty of gross neglect of duty and, therefore, dismissed from the service.

As to the proper sanction to be imposed upon Gimena, the Court applies the rules under Sections 54 and 55, Rule IV (Penalties), of the Uniform Rules on Administrative Cases in the Civil Service as follows:

Section 54. Manner of Imposition. When applicable, the imposition of the penalty maybe made in accordance with the manner provided herein below:

- a. The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.
- b. The medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present.
- c. The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.
- d. Where aggravating and mitigating circumstances are present, paragraph [a] shall be applied where there are

more mitigating circumstances present; paragraph [b] shall be applied when the circumstances equally offset such other; and paragraph [c] shall be applied when there are more aggravating circumstances.

Section 55. Penalty for the Most Serious Offense. If the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count and the rest shall be considered as aggravating circumstances.

Jurisprudence abound that delayed remittance of cash collections by the clerk of court or cash clerk constitutes gross neglect of duty and imposed the supreme penalty of dismissal.[12] Hence, the imposable penalty upon Gimena should be dismissal from the service. However, since he pleaded that he did not malverse any of the amounts collected for his personal benefit and had subsequently remitted the subject amounts, as shown by the attached disbursement vouchers and acknowledgment receipts, with no outstanding accountabilities, these can be taken as mitigating circumstances which warrant the imposition of the lower penalty of suspension of one (1) month without pay. This is in line with Section 53 of Rule IV (Penalties) of the Uniform Rules on Administrative Cases in the Civil Service[13] and some decided cases wherein therein respondents subsequently fully remitted all collections.[14]

WHEREFORE, for delay in the deposit of cash collections, in violation of the Court's Administrative Circular No. 3-2000 dated June 15, 2000, and non-submission of monthly reports of collections, deposits and withdrawals, in violation of Office of the Court Administrator Circular No. 113-2004 dated September 16, 2004, Pompeyo G. Gimena, Clerk of Court II of the Municipal Circuit Trial Court, Mondragon-San Roque, Northern Samar, is found GUILTY of gross neglect of duty and SUSPENDED for a period of one (1) month without pay with a STERN WARNING that a repetition of the same or similar act in the future shall be dealt with more severely.

SO ORDERED.

Corona, (Chairperson), Velasco, Jr., Nachura, and Mendoza, JJ., concur.

[1] Dated September 16, 2009, pp. 2-11, which was addressed to then Court Administrator Jose P. Perez, now a Member of this Court.

[2] Annex "A" of the Memorandum for the Court Administrator dated September 16, 2009.

[3] Now a Member of this Court.

[4] Re: Report of Acting Presiding Judge Wilfredo F. Herico on Missing Cash Bonds in Criminal Case Nos. 750 and 812, A.M. No. 00-3-108-RTC, January 28, 2005, 449 SCRA 407.

[5] Soria v. Oliveros, A.M. No. P-00-1372, May 16, 2005, 458 SCRA 410; Office of the Court Administrator v. Besa, A.M. No. P-02-1551, September 11, 2002, 388 SCRA 558; Re: Audit Conducted on the Books of Accounts of Former Clerk of Court Mr. Wenceslao P. Tinoy, MCTC, Talakag, Bukidnon, A.M. No. 02-5-111-MCTC, August 7, 2002, 386 SCRA 459; Re: Financial Audit Conducted on the Books of Accounts of Clerk of Court Pacita T. Sendin, MTC, Solano, Nueva Vizcaya, A.M. No. 01-4-119-MTC, January 16, 2002, 373 SCRA 351.

[6] Report on the Financial Audit Conducted on the Books of Accounts of Mr. Agerco P. Balles, MTCC-OCC, Tacloban City, A.M. No. P-05-2065, April 2, 2009, 583 SCRA 50.

[7] Muin v. Avestruz, Jr., A.M. No. P-04-1831, February 2, 2009, 578 SCRA 1; Office of the Court Administrator v. Fortaleza, A.M. No. P-01-1524, July 29, 2002, 385 SCRA 293.

[8] Sollesta v. Mission, A.M. No. P-03-1755, April 29, 2005, 457 SCRA 519; Office of the Court Administrator

v. Besa, supra note 5.

[9] Report on the Financial Audit Conducted on the Books of Accounts of Mr. Agerco P. Balles, MTCC-OCC, Tacloban City, supra note 6; Office of the Court Administrator v. Bernardino, A.M. No. P-97-1258, January 31, 2005, 450 SCRA 88

[10] A.M. No. 95-6-55-MTC, July 28, 1997, 276 SCRA 257.

[11] A.M. No. P-03-1755, April 29, 2005, 457 SCRA 519.

[12] Report on the Financial Audit Conducted on the Books of Accounts of Mr. Agerco P. Balles, MTCC-OCC, Tacloban City, supra note 6; Report on the Financial Audit Conducted in the MCTC-Maddela, Quirino, A.M. No. P-09-2598, February 12, 2009, 578 SCRA 520; Office of the Court Administrator v. Dureza-Aldevera, A.M. No. P-01-1499, September 26, 2006, 503 SCRA 18; Office of the Court Administrator v. Bernardino, id.; Office of the Court Administrator v. Besa, id.; Rangel-Roque v. Rivota, A.M. No. P-97-1253, February 2, 1999, 302 SCRA 509.

[13] Sec. 53. Extenuating, Mitigating, Aggravating, or Alternative Circumstances. -- In the determination of the penalties to be imposed, mitigating, aggravating and alternative circumstances attendant to the commission of the offense shall be considered.

x x x x x

l. Other analogous circumstances

Nevertheless, in the appreciation thereof, the same must be invoked or pleaded by the proper party, otherwise, said circumstances shall not be considered in the imposition of the proper penalty. The Commission, however, in the interest of substantial justice may take and consider these circumstances.

[14] Re: Misappropriation of the Judiciary Fund Collections by Ms. Juliet C. Banag, Clerk of Court, MTC, Plaridel, Bulacan, A.M. No. P-02-1641, January 20, 2004, 420 SCRA 150; In Re: Delayed Remittance of Collections of Teresita Lydia R. Odtuhan, OIC, RTC, Br. 117, Pasay City, A.M. No. 02-10-598-RTC, February 11, 2003, 397 SCRA 222.

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