JUDGE PLENIO B. DELA PEÑA, MUNICIPAL CIRCUIT TRIAL COURT, CAIBIRAN-CULABA, BILIRAN, COMPLAINANT, VS. ROGELIO A. SIA, CLERK OF COURT, MUNICIPAL CIRCUIT TRIAL COURT, CAIBIRAN-CULA...

A.M. NO. P-06-2167 (FORMERLY OCA IPI NO. 04-2079-P). June 27, 2006

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PER CURIAM:

In a Letter-Complaint[1] dated November 30, 2004, Judge Plenio B. Dela Peña, Presiding Judge of the Municipal Circuit Trial Court (MCTC), Caibiran-Culaba, Biliran, charged Rogelio A. Sia with dishonesty and misconduct for incurring cash shortages in connection with the handling of court funds in his capacity as Clerk of Court of the same sala.

The records show that the Provincial Auditor's Office of Naval, Biliran had issued a Memorandum[2] dated July 12, 2000 with the following findings: (a) respondent had incurred a cash shortage of P33,900.00 under the Fiduciary Fund; (b) cash bail bonds amounting to P73,400.00 had not been deposited in the authorized depository bank as required under Section 122 of the Government Accounting and Auditing Manual, "thus exposing government funds to misappropriation or losses;" (c) respondent failed to maintain a Fiduciary Fund Cashbook which made it difficult to ascertain his total accountability; and (d) two booklets of official receipts bearing serial numbers 6532701-750 and 5267001-50 could not be found.

The Tacloban City Regional Office of the Commission on Audit (COA) had also issued an Audit Observation Memorandum[3]dated August 14, 2003 with the following findings:

> - The Clerk of Court incurred a cash shortage in the amount of P10,596.00 as of April 8, 2003 representing his unremitted collections of the General Fund and undeposited collections of the Judiciary Development Fund. The shortage is broken down as follows:
>
> General Fund P5,555.00
>
> Judiciary Dev't Fund 5,041.00
>
> Total P10,596.00
>
> During the cash count, the Clerk of Court failed to produce the amount of P10,596.00 representing the balance of his accountability for the General Fund and the Judiciary Development Fund as of April 8, 2003 (date of cash examination). He promised to the audit team that he will remit/deposit said amount the following week and submit to the audit team a copy of the validated deposit slips or the stub of the money order issued to him but he failed to do so. On April 25, 2003, the Audit Team Leader issued a Demand Letter to the Clerk of Court, which was mailed to his official station thru registered mail. The auditor did not receive any reply from said accountable officer.
>
> Failure of the accountable officer to produce the missing funds upon demand by the Auditor is a ground for the institution of administrative and/or criminal charges against the erring xxx officer.

x x x x

- The Clerk of Court failed to remit/deposit his collections intact daily or as soon as it reached P500.00 to the agency's duly authorized government depository bank in violation of COA-DOF Joint Circular No. 1-81 dated January 1, 1981, thereby exposing government funds to possible misuse or misappropriation.

x x x x

- No collections were made by the Clerk of Court from October 1, 2002 to April 9, 2003 for the General Fund in violation of the Supreme Court Administrative Circular No. 3-2000 issued on June 15, 2000 thereby depriving the government of the much needed income/revenues to finance its various programs and projects.

x x x x

- The Fiduciary Fund was not audited by the audit team on April 9, 2003 due to the failure of the Clerk of Court to submit/produce for audit the following documents, to wit:

1.) Bank Passbook for Fiduciary Fund;

2.) Deposit Slips (validated by the bank);

3.) Withdrawal Slip (duly validated);

4.) Disbursement Voucher in the name of the claimant or authorized person named in the Special Power of Attorney;

5.) Court Order authorizing the withdrawal/payment of cash bond;

6.) Acknowledgment Receipt.

The Clerk of Court alleged that the bank passbook for the Fiduciary Fund was in the possession of the Presiding Judge, which was denied by the latter, when he talked with the Auditor on August 12, 2003 at the COA Regional Office.

x x x x

- The Clerk of Court has no available Official Receipts on hand for the use of the General Fund and the Judiciary Development Fund at the time of cash examination, thereby creating doubt as to whether collections received were receipted or not in violation of Section 68 of P.D. 1445 to the prejudice of the government.

x x x x

- The Clerk of Court failed to prepare and submit the Monthly Report of Accountability for Accountable Forms to the Auditor, hence his accountability for accountable forms could not be immediately established as of specific period in violation of Section 445 of the Government Accounting and Auditing Manual (Vol. 1).[4]

Another Audit Observation Memorandum[5] dated January 26, 2004 was issued by the COA Regional Office with the following observations:

- Collections from bail bonds were not deposited within 24 hours upon receipt thereof with LBP-Naval in violation of the provisions of Section B (4) of Supreme Court Circular No. 50-95 dated October 11, 1995 x x x

Initial audit findings showed that as of December 10, 2003, the Clerk of Court incurred a cash shortage in the amount of P15,400.00 representing his undeposited collections for the Fiduciary Fund as of December 10, 2003.

x x x x

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- The balance of Cash in Bank deposited with LBP-Naval under SA No. 1211-0542-60 in the amount of P156,589.15 as of December 10, 2003 from the Fiduciary Fund is doubtful due to the non-preparation and submission of the Bank Reconciliation Statement, hence the accuracy of the bank balance could not be ascertained.

x x x x

- Official Receipts (Gen. Form 13-A) bearing serial numbers 6532701-750 were missing and remained unaccounted for since last cash examination conducted on May 25, 2000, hence validation on the actual amount received could not be made.

x x x x

- The Clerk of Court failed to submit to the Auditor the Monthly Report of Collections and Deposits for all funds for verification and audit in violation of section 107 of P.D. 1445.

x x x x

- The accountable officer failed to prepare and submit the Monthly Report of Accountability for Accountable Forms to the Auditor, hence his accountability for accountable forms could not be immediately established as of specific time in violation of Section 445 of the Government Accounting and Auditing Manual (Vol. II).[6]

On October 27, 2004, the Court Administrator (OCA) issued a Memorandum[7] addressed to respondent with the following directive to be carried out within 10 days from notice:

- RESTITUTE/DEPOSIT your unremitted collections listed below:
aa. P2,924.00 to JDF Savings Account No. 0591-0116-34:

Collections, May 1989-September 2004 P70,868.70
Deposits, June 1989-April 2004 (67,944.70)
Shortage P 2,924.00

bb. P61,400.00 to Fiduciary Fund Savings Account No. 1211-0542-60:

Collections, November 1995-September 2004 P705,800.00
Withdrawals, January 1996-July 2004 (493,800.00)

P212,000.00

Bank balance under S/A No.
1211-0542-60, 30 Sept. 2004 P153,282.91
Unwithdrawn interest, 7/00-9/04 (2,682.91) (150,600.00)

Shortage P 61,400.00

cc. P1,360.00 to Special Allowance for the Judiciary Fund Savings Account No. 0591-1744-28:

Collections, November 11, 2003-September 2004 P 2,178.00
Deposits, November 11, 2003-June 2004 (818.00)

Shortage P 1,360.00

- TRANSFER to the JDF Account the unwithdrawn Fiduciary Fund interest (net of tax) of P2,682.91 (earned from July 2000 to September 2004);

- SUBMIT the machine-validated deposit slips, in connection with Items A and B, to the Chief, Fiscal Monitoring Division, Court Management Office, OCA, as proof of compliance with the directives;

- SUBMIT a list of cases filed from December 1991 to June 1992, together with the corresponding amounts collected therefrom, to be certified correct by the Hon. Presiding Judge Plenio B. Dela Peña.[8]

In view of these cash deficiencies attributed to respondent, the OCA finally directed Judge Dela Peï¿½a to relieve respondent of his duties and responsibilities as clerk of court.[9]

In his Comment,[10] respondent gave the following explanation:

> The complaint of Judge Plenio dela Peña is a retaliation and offshoot of our complaint filed against him signed by all 3[rd] MCTC employees, copy of the complaint is hereto attached, and marked as Annex "A." That corollary to our complaint against Judge Plenio de la Peña, the League of Barangays in the Municipality of Caibiran, Biliran also made a petition, copy is hereto attached and marked as Annex "B." Judge Plenio dela Peña who personally intervened and helped candidates or has involved himself in partisan political activity used government equipment and supplies, copy of some materials are printed utilizing the computer and printer of the Office for his personal benefit, copy of the materials are hereto attached and marked as Annex "C."
>
> With regard to his complaint against me for Dishonesty and Grave Misconduct, I vehemently deny his accusations. I did not use government money nor property for my personal benefit. I did [not] abuse my office. Last January 3, 2005, I sent a letter of explanation to the Chief Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator, Supreme Court, Manila, copy is hereto attached and marked as Annex "D," together with the copy of the two (2) Interbranch Deposit Accommodation with Land Bank, Naval Branch dated December 29, 2004, and the third amount could not be deposited against the Fiduciary Funds because Judge Plenio de la Peña withdraw (sic) the bankbook from the possession of Mr. Orlando Salentes, designated Officer-in-Charge in lieu of me. So, on December 29, 2004, I gave the money to the new OIC in our Office, Mr. Orlando Salentes, and he acknowledged the receipt of the amount of P61,400.00, copy of the acknowledgement receipt is hereto attached and marked as Annex "E." That Mr. Orlando Salentes executed an Affidavit on December 29, 2004, explaining why he was not able to deposit the money that I turned over to him, to whom the passbook for the fiduciary funds should have been in custody, however, said bankbook was taken from him by Judge Plenio dela Peña. On my end, I had no more money accountability as of December 31, 2004, because I deposited with the Land Bank Naval Branch the JDF Savings Account and Special Allowance for Judiciary Funds. The Fiduciary Funds was already turned over to Mr. Orlando Salentes, my successor in the Office of the Clerk of Court, for all monies, properties and records as required through the order relieving me from my responsibilities as Clerk of Court. All properties, records and money accountabilities were turned over to Mr. Orlando Salentes, OIC Clerk of Court, to clear myself from accountabilities and responsibility before I assumed to RTC Branch 37.
>
> Relative to the memorandum issued to Judge Plenio de la Peña from the Court Administrator dated October 27, 2004, the same was already complied with and I forwarded my compliance to the Chief Fiscal Monitoring Office, OCA, Supreme Court.
>
> I did not use any amount for my personal benefit, and all the amounts as stated in the complaint of Judge Plenio de la Peña were remitted to the Land Bank of the Philippines for the account of the Supreme Court and to Mr. Orlando Salentes on the Fiduciary Funds as should be in possession of the bankbook to record his deposit of the money that came to his possession by way of his Office.

For his part, Judge Dela Peña submitted his Reply,[11] stating that contrary to the allegation of respondent, the filing of the request for his transfer was done in retaliation for his issuance of the Memorandum dated November 23, 2004 relieving respondent of his duties and responsibilities. Respondent then sent to the OCA a request for a 38-day extension to restore the cash shortage. Judge Dela Peña stated that respondent's request for extension of time is in itself an admission that the funds "were not in his possession and could not be produced and deposited immediately in the Supreme Court accounts because [respondent] used it for his personal benefit." The complainant judge further pointed out that there is clear evidence of malversation on the part of respondent, which

would in turn constitute grave misconduct and dishonesty punishable by dismissal from the service. Respondent's Letter dated November 24, 2004 addressed to the OCA reads:

> Relative to your memorandum to the undersigned dated 27 October 2004, which I received on November 23, 2004, directing me to "restitute/deposit unremitted collections listed therein within ten (10) days from notice," may I respectfully request that I be given until December 31, 2004 within which to comply [with] your memorandum.
>
> This request is prompted by the fact that the yuletide season is approaching and, by tradition, everybody would want to celebrate the occasion which will necessarily entail expenses.
>
> Rest assured that I will comply with your memorandum.
>
> May I also take this occasion to inform you that on November 23, 2004, I received from Judge Dela Peña a memorandum of even date relieving me of my duties and functions as Clerk of Court, effective upon receipt of said memorandum, per your instruction. Copy of said memorandum is hereto attached.
>
> May I be clarified Mr. Justice if the order for my relief has the imprimatur of your office considering that your memorandum does not say so. Pending receipt of the answer to my query, I am inclined not to consider the memorandum of Judge Dela Peña, since he has no authority to relieve me of my duties and functions as Clerk of Court.[12]

In its Report[13] dated March 8, 2006, the OCA recommended that respondent be dismissed from the service with forfeiture of all benefits, except accrued leave credits, if any, with prejudice to re-employment in any branch or instrumentality of the government, for dishonesty and grave misconduct, and that he be directed "to pay the amount of interest which the Court failed to earn had the collections been deposited on time, upon the determination of the exact amount of the interest by the Fiscal Monitoring Division, Court Management Office, OCA."[14]

We agree with the foregoing findings and recommendation.

No less than the Constitution itself provides that a public office is a public trust. Public officers and employees are duty bound to serve the people with the highest degree of responsibility, integrity, loyalty, and efficiency and shall, at all times, remain accountable to the people.[15] Persons involved in the administration of justice ought to live up to the strictest standard of honesty and integrity in the public service. The conduct of every personnel connected with the courts should, at all times, be circumspect to preserve the integrity and dignity of our courts of justice.[16] 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. Clerks of Court, in particular, are the 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. Furthermore, they are judicial officers entrusted to perform delicate functions with regard to the collection of legal fees, and are expected to correctly and effectively implement regulations.[17] Hence, as custodians of court funds and revenues, they 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.[18]

In this case, respondent's act of requesting for additional time to produce the funds leads to no other conclusion than that the questioned funds were not in his possession. As pointed out by the OCA, respondent did not question the findings of the financial audit team from the Fiscal Monitoring Division, Court Management Office that examined the books of account from May 1989 to September 2004 which found that he had a cash shortage of P65,684.00 representing collections for the JDF, Fiduciary Fund, and Special Allowance for the Judiciary Fund; instead, he requested that he be given until the yuletide season to restitute the amount. We agree with the

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following findings of the OCA:

> SC Circular No. 5-93 mandates that "collections for the Judiciary Development Fund (JDF) shall be deposited every day with the local or nearest Land Bank of the Philippines (LBP) branch." Furthermore, Circular No. 50-95 provides that "all collections from bailbonds, rental deposits and other fiduciary collections shall be deposited with the [LBP] by the Clerk of Court concerned within twenty-four (24) hours from receipt hereof. In localities where there are no branches of LBP, fiduciary collections shall be deposited by the Clerk of Court with the provincial, city or municipal treasurer."
>
> Respondent clearly violated the aforementioned circulars. As Clerk of Court, respondent is an accountable officer entrusted with the great responsibility of collecting money belonging to the funds of the court. He has the duty to immediately deposit with the authorized government depositories the various funds he had collected because he is not authorized to keep those funds in his custody. Regrettably, he abused the trust and confidence reposed upon him and did not perform his duty with utmost loyalty and honesty. His unwarranted failure to fulfill his responsibilities deserves administrative sanction and not even the restitution of the full amount will exempt him from liability.
>
> On 29 December 2004, respondent deposited with the Landbank of the Philippines the amount of Two Thousand Nine Hundred and Twenty-Four Pesos (P2,924.00) and One Thousand Three Hundred Sixty Pesos (P1,360.00) for the Judiciary Development Fund and Special Allowance for Judiciary Fund, respectively, and on 12 January 2005, sixty One Thousand Four Hundred Pesos (P61,400.00) for the Fiduciary Fund. Respondent also deposited on 4 January 2006 Seven Hundred Fifty-Four Pesos (P754.00) for the JDF and Special Allowance for Judiciary Fund for the period 1 October 2004 to 23 November 2004.
>
> The restitution of the shortages though made was belatedly done by respondent; the non-remittance thereof on time deprived the Court of the interest that may have accrued if it were deposited on time. The fact that she did ultimately restore the full amount misappropriated certainly cannot in full exonerate her from liability. Respondent was dismissed from the service (JPDIO v. Calaguas, 256 SCRA 690 [1996]).[19]

The failure of a clerk of court to turn over funds in his possession and adequately explain and present evidence thereon constitutes gross dishonesty, grave misconduct, and even malversation of public funds which this Court will never countenance, as these offenses indubitably diminish the faith of the people in the Judiciary.[20] We are thus left with no choice but to declare the respondent guilty of dishonesty and gross misconduct.[21] Dishonesty alone, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification for reemployment in the government service. Dishonesty has no place in the Judiciary.[22]

WHEREFORE, Respondent Rogelio A. Sia is found GUILTY of dishonesty and gross misconduct. He is DISMISSED from the service effective immediately, with forfeiture of all retirement benefits, except accrued leave credits, with prejudice to reemployment in any branch or instrumentality in the government, including government-owned and controlled corporations. He is likewise DIRECTED to pay the amount of interest which the Court failed to earn had the collections been deposited on time. The Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator, is DIRECTED to determine the exact amount of interest which respondent is liable for.

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. 2-3.

[2] Id. at 22-25.

[3]Id. at 14-20.

[4] Id. at 14-19.

[5] Id. at 8-13.

[6] Id. at 10-12.

[7] Id. at 6-7.

[8] Id.

[9] Id. at 4.

[10] Id. at 63-64.

[11]Id. at 26-29.

[12] Id. at 34.

[13] Id. at 144-147.

[14] Id. at 147.

[15]Constitution, Article XI, Section 1.

[16] De Guzman v. Gatlabayan, A.M. No. P-99-1323, February 20, 2001, 352 SCRA 264, 275.

[17] Gutierrez v. Quitalig, 448 Phil. 469, 481 (2003).

[18]Aquino v. Olivares, 447 Phil. 609, 613 (2003).

[19] Rollo, pp. 146-147.

[20] Report on the Financial Audit Conducted at the Municipal Trial Courts of Bani, Alaminos and Lingayen, in Pangasinan, A.M. No. 01-2-18-MTC, December 5, 2003, 417 SCRA 106, 111, citing Re: Memorandum dated 27 September 1999 of Ma. Corazon M. Molo, 459 Phil. 973, 985 (2003).

[21] Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (Resolution No. 99-1936, 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:

- Dishonesty – 1[st] Offense – Dismissal

- Gross Neglect of Duty – 1[st] Offense – Dismissal

- Grave Misconduct – 1[st] Offense – Dismissal

[22] Madrid v. Quebral, 459 Phil. 306, 318 (2003).

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