

EN BANC

[A.M. No. P-12-3092 (Formerly A.M. No. 12-7-54-MTC), October 10, 2017]

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, V.
REMEDIOS R. VIESCA, CLERK OF COURT II, MUNICIPAL TRIAL
COURT OF SAN ANTONIO, NUEVA ECIJA, RESPONDENT.**

R E S O L U T I O N

PER CURIAM:

For resolution is the motion for reconsideration^[1] filed by respondent Remedios R. Viesca (Viesca) of the Court's Decision^[2] dated April 14, 2015. The Court adjudged Viesca guilty of Gross Neglect of Duty, Grave Misconduct, and Serious Dishonesty and imposed on her the following penalties: (i) dismissal from service; (ii) forfeiture of all her retirement benefits, except accrued leave benefits; (iii) perpetual disqualification from re-employment in any government-owned and controlled corporation or government financial institution; (iv) cancellation of her civil service eligibility; and (v) disqualification from taking the civil service examination.^[3]

In her motion, Viesca begs for the Court's compassion and implores it to mitigate the penalty imposed on her by taking into account her full restitution of the total amount of shortage, her thirty-four (34) years of government service, the lack of irregularities in the receipts she submitted, and the fact that this is her first administrative case. She also alleges that she is already sixty-eight (68) years old and pleads that she be allowed to enjoy the fruit of her long years of service, which were all spent in the Judiciary.^[4]

At the outset, the Court maintains that Viesca is administratively liable for her infractions and that her restitution of the shortages in judiciary collections does not exculpate her from liability. Clerks of courts, as custodian of court funds and revenues, have the duty to immediately deposit the various funds received by them, as well as submit monthly financial reports therein as mandated under Office of the Court Administrator (OCA) Circular Nos. 50-95^[5] and 113-2004^[6] and Administrative Circular No. 35-2004.^[7] Any shortages in the amounts to be remitted and delay in the remittance, coupled with misappropriation, render them administratively liable for Gross Neglect of Duty, Grave Misconduct, and Serious Dishonesty.^[8] These offenses are punishable by dismissal from service, together with the cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office, and bar from taking civil service examinations,^[9] as was properly imposed on Viesca.

Be that as it may, the presence of several mitigating circumstances in this case urges this Court to reconsider and reduce the penalty it imposed.

In several administrative cases, the Court has refrained from imposing the actual penalties in view of mitigating factors such as the respondent's length of service, acknowledgment of infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, and advanced age, among others.^[10] Indeed, while the Court is duty-bound to sternly wield a corrective hand to discipline errant employees and weed out those who are undesirable, it also has the discretion to temper the harshness of its judgment with mercy.^[11]

Thus, in *In Re: Delayed Remittance of Collections of Teresita Lydia R. Odtuhan*,^[12] the Court found therein respondent liable for serious misconduct when she remitted the court collections after more than three (3) years from the remittance date.^[13] Taking into account respondent's health and her full restitution of the amount, the Court reduced the penalty from dismissal from service to a fine of P10,000.00.^[14]

In Viesca's cited case, *Report on the Financial Audit Conducted on the Books of Accounts of the Municipal Circuit Trial Court, Mondragon-San Roque, Northern Samar*,^[15] the clerk of court was found liable for gross neglect of duty punishable by dismissal from service due to delay in the deposit of judiciary collections and non-submission of monthly reports. Considering that respondent had subsequently remitted the amounts leaving no outstanding accountabilities, the Court lowered the penalty to suspension for a period of one (1) month without pay.^[16]

Further, in *OCA v. Jamora*,^[17] the clerk of court was found liable for failure to timely deposit the judiciary collections. Observing that it was her first administrative case, that she fully restituted the amounts involved, and that she held two positions at the same time, the Court opted to reduce the penalty to a fine of P10,000.00.^[18]

In *OCA v. Lizondra*,^[19] the Court also imposed a fine of P10,000.00 on therein respondent who incurred delay in remitting court collections, after considering that it was her first offense and that she concurrently held more than one position in court.^[20]

In the fairly recent case of *OCA v. Judge Chavez*,^[21] the Court reconsidered its imposed penalties of forfeiture of retirement benefits in lieu of dismissal from service based on these mitigating factors: remorse in committing the infractions; length of government service; first offense; and health and age. Instead, it imposed a fine deductible from his retirement benefits.^[22]

In the present case, the Court notes several mitigating circumstances that may reasonably justify the reduction of the penalty imposable on Viesca. Records reveal that she fully restituted the shortages in judicial collections after the meeting with the audit team. Moreover, the interests that could have been earned had she timely deposited the amounts have already been deducted from her withheld salaries,^[23] leaving no outstanding accountabilities. The Court also notes that she fully cooperated with the audit team during the investigation of her infractions and soon thereafter, submitted the financial records without any irregularities, tampering, or falsifications.^[24] To the Court's mind, these acts amount to taking full responsibility for the infractions committed, and thus, may be duly appreciated in imposing the penalty.