

EN BANC

[A.M. OCA IPI No. 09-3138-P (Formerly A.M. No. 09-1-19-MTCC), October 22, 2013]

REPORT ON THE FINANCIAL AUDIT CONDUCTED IN THE MUNICIPAL TRIAL COURT IN CITIES, TAGUM CITY, DAVAO DEL NORTE. OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS. JUDGE ISMAEL L. SALUBRE, MR. NERIO L. EDIG AND MS. BELLA LUNA C. ABELLA, MS.

[A.M. NO. MTJ-05-1618 (FORMERLY A.M. NO. 05-10-282-MTCC)]

DELIA R. PALERO AND MR. MACARIO HERMOGILDO S. AVENTURADO, ALL OF MUNICIPAL TRIAL COURT IN CITIES, TAGUM CITY, DAVAO DEL NORTE, RESPONDENTS.

DECISION

PER CURIAM:

These consolidated administrative matters resulted from the two financial audits conducted on the books of accounts of the Municipal Trial Court in Cities (MTCC) of Tagum City, Davao del Norte.

The first financial audit conducted in said court in 2005 covered the period January 1, 1993 to January 31, 2005. The court was then presided by Judge Ismael L. Salubre. The audit was prompted by a report of the Commission on Audit (COA) regarding the violation of Nerio L. Edig, Clerk of Court IV, of Section 21 of the New Manual on the New Government Accounting System, which requires all collecting officers to deposit intact all their collections with the authorized government bank daily or not later than the next banking day, and Edig's non-submission of monthly reports. Edig failed to submit monthly reports for the Judiciary Development Fund (JDF) for the period February 2003 to December 31, 2004, the Clerk of Court General Fund (COCGF) for the period February 2003 to November 2003, the Special Allowance for the Judiciary Fund (SAJF) for the period December 2003 to December 31, 2004 and the Fiduciary Fund for the period April to December 31, 2004.^[1] The second audit, done in 2008, covered the period February 1, 2005 to July 31, 2008 and was prompted by the successive changes in accountable officers in the court.^[2]

During the 2005 audit, Edig informed the audit team that Bella Luna C. Abella was his cashier from the time he assumed office as Clerk of Court on February 16, 1978. Abella was later replaced by Delia R. Palero from January 1, 1996 until January 30, 2002 and then by Macario H.S. Aventurado from January 31, 2002 up to the time of the audit in 2005. Abella also acted as Officer-in-Charge from April 1, 2002 until October 6, 2002 while Edig was on study leave.^[3]

Per Report^[4] of the audit team dated September 2, 2005, the financial

accountabilities of Edig, Salubre, Abella, Palero and Aventurado are as follows:

PARTICULARS	Judge Salubre	Edig	Abella	Palero	Aventurado
Received cash which was supposedly due to Government and the bondsman	P436,800.00				
JDF		P11,340.50	P36,928.00		
General Fund		6,703.40	2,900.00		
Fiduciary Fund		11,496.00	5,000.00		
Deposit slips w/o machine validation (JDF/GF)		97,535.60			
Unauthorized Withdrawals (Fiduciary Fund)		5,684,875.00		P3,147,285.00	P2,537,590.00
Unidentified withdrawals (Fiduciary Fund)		206,500.00			
Uncollected Fines		2,480,656.16			
Unaccounted confiscated Bet Money		51,921.00			
Unremitted forfeited Cash bonds		149,800.00		110,800.00	P39,000.00
Uncollected forfeited surety bonds		105,400.00			
Dismissed Cash bonds		21,000.00		21,000.00 ^[5]	

applied to					
FINES					

The audit team likewise reported that “[b]y stroke of luck, the team was able to discover documents showing that Judge Salubre received on many occasions cash bonds of dismissed cases and forfeited cash bonds in the total amount of P436,800.00. This discovery would confirm the allegations of both Ms. Palero and Mr. Aventurado that the Judge has something to do with the unaccounted amount incurred by them. They further alleged that Mr. Edig knew about what was happening inside the court but can not do anything. All of them were pressured.”^[6] The team also found several withdrawal slips with acknowledgments at the back signed by Judge Salubre evidencing receipts of cash bonds of dismissed cases. They also discovered conflicting orders of Judge Salubre in two criminal cases.

Other irregularities such as the keeping of court collections outside court premises by Aventurado and the failure of Sheriff Carlito B. Benemile to serve the writ of execution in two criminal cases were likewise found.

In its Memorandum^[7] dated September 2, 2005 to then Chief Justice Hilario G. Davide, Jr., the Office of the Court Administrator (OCA) recommended that:

1. MR. NERIO L. EDIG, Clerk of Court, MTCC, Tagum City be DIRECTED to:

a. PAY the following amount in the manner herein indicated (see table below) **within fifteen (15) days** from receipt hereof:

PARTICULARS		AMOUNT	Manner of Payment
Judiciary Development Fund	P	11, 340.50	By depositing the said amount to LBP SA#0591-0116-34. There must be an indication in the deposit slip that said amount is for the payment of the shortage incurred per audit dated January 31, 2005 .
Clerk of Court General Fund		6,703.40	Through PMO, payable to the National Treasury and send to the OCA-Chief Accountant and the latter to remit it to the National Treasury.
Fiduciary Fund		11,496.00	Direct deposit to LBP SA#0341-0727-19.

		To be indicated in the deposit slip as payment of the shortage incurred per audit dated January 31, 2005.
Total		29,539.90

Thereafter, to immediately **FURNISH** the Court, thru the Office of the Court Administrator (OCA) machine validated deposit slip[s] as proof of deposit in the JDF and Fiduciary Fund Account.

The remittance amounting to P97,535.60 (Schedule 1) which was considered not to have been deposited for failure of the accountable officer to present, upon demand, machine validated deposit slips as proof of its remittance shall be held in abeyance. However, if the accountable officer fail[s] to submit certification from the Land Bank that the said amount has been received and properly entered to the account maintained by the court for the General Fund, it shall be considered as final shortage after the lapse of fifteen (15) days from notice hereof.

b. **EXPLAIN within fifteen (15) days** from receipt hereof why no administrative charge shall be taken against him for the following:

1) For the undeposited collections in the Judiciary Development Fund, Clerk of Court General Fund and Fiduciary Fund amounting to **P11,340.50, P6,703.40** and **P11,496.00**, respectively, **excluding temporary shortages** brought about by the absence of supporting documents such as **P97,535.60**, representing deposit slips without machine validation; **P5,684,875.00**, representing unauthorized withdrawals; and **P206,500.00**, representing unidentified withdrawals;

2) Failure to monitor the status of cases, thereby resulting [in] two writ[s] of execution becoming stale or not being served for several years (Annex D) and several cases were not reported (Annex K);

3) For allowing his cash clerk, Mr. Aventurado to bring court collections outside the court premises;

4) For allowing Judge Salubre to receive the cash bonds intended for the concerned bondsmen without informing the court of such fact (Annex H);

5) For his failure to report cases (Schedule 14) as mentioned herein; and

6) For questionable supporting documents presented to this team (Annex F).

c. **SHOW** cause **within fifteen (15) days** from receipt hereof why the following shall not be charged against him:

1) The amount of **P2,480,656.16** (Schedule 8) which represents uncollected fines;

2) The amount of **P51,921.00** (Schedule 9.2) representing unreported confiscated bet money;

3) The amount of **P105,400.00** (Schedule 12) representing uncollected personal bonds guaranteed by sureties which were forfeited due to non[-]production of the body of the accuse[d].

4) The amount of **P21,000.00** (Schedule 13) representing forfeited cash bonds applied to fine; and

5) The amount of **P149,800.00** (Schedule 10) representing unremitted forfeited cash bonds;

d. **USE** the standard docket book where the status of the case, official receipts (where the amount, date and nature of payment are indicated) and the corresponding fees collected are entered; and

e. **SUBMIT** the list of official receipts issued corresponding to the following withdrawn interest, otherwise said interest shall be considered as unremitted and will form part of his accountability:

1. P17,937.70 – withdrawn on January 21, 1998;
2. 23,317.79 – withdrawn on March 5, 2002;
3. 8,946.72 – withdrawn on April 10, 2003; and
4. 4,719.52 – withdrawn on January 21, 2004

2. **MS. BELLA LUNA C. ABELLA**, Court Legal Researcher and former Officer-in-Charge, MTCC, Tagum City from April 1 to October 7, 2005 be **DIRECTED** to:

a. **PAY** the following amount in the manner herein indicated (see table below) **within fifteen (15) days** from receipt hereof:

FUND		AMOUNT	Manner of Payment
Judiciary Development Fund	P	36,928.00	By depositing the said amount to LBP SA#0591-0116-34. Indicate in the deposit slip that such was the payment of the shortage incurred in JDF per audit dated January 31, 2005 .
Clerk of Court General Fund		2,900.00	Through PMO payable to the National Treasury and send to the OCA-Chief Accountant and