

## EN BANC

**[ A.M. No. P-09-2637 (Formerly A.M. No. 08-12-682-RTC), March 29, 2011 ]**

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS. ATTY. MAGDALENA L. LOMETILLO, FORMER CLERK OF COURT VII, VICTORIA S. PATOPATEN, CASHIER II, LINDA C. GUIDES, ADMINISTRATIVE OFFICER I, LENNY GEMMA P. CASTILLO, CLERK III, AND BRENDA M. LINACERO, CLERK III, ALL OF REGIONAL TRIAL COURT, ILOILO CITY, RESPONDENTS.**

### DECISION

#### **GARCIA, J.:**

This administrative matter originated from a financial audit conducted by the Office of the Court Administrator (OCA) on the books of accounts of the Office of the Clerk Court, Regional Trial Court, Iloilo City (OCC), covering transactions from November 1993 to February 2004.

The audit was conducted in view of the compulsory retirement of former Clerk of Court, Atty. Magdalena L. Lometillo (*Atty. Lometillo*), and the designation of Atty. Gerry D. Sumaclub (*Atty. Sumaclub*) as Officer-In-Charge, without the benefit of a formal turn-over of accountabilities.

#### **The OCA Report**

In OCA Memorandum dated November 24, 2008,<sup>[1]</sup> certain irregularities unearthed by the OCA Financial Audit Team were reported as follows:

- a. Based on the Report of Collections presented and the inventory of unused Official Receipts (*Ors*), the team was able to account only 102,869 of the 105,500 pieces released by the Property Division of the OCA. 102,126 pieces had been duly issued while 743 pieces were presented unused. The remaining 2,631 pieces were unaccounted for.
- b. Per review of the books by the OCC audit team, the following accounts incurred shortages:

#### *A) Clerk of Court General Fund (CCGF)*

Collections (November 1, 1993 to November 10, 2003)	P
	7,873,045.66
Less: Deposits/Remittances (November 1, 1993 to November 10, 2003)	to <u>8,244,234.01</u>
Balance of Accountability/ Over Remittance	<u>P</u>
	( <u>371,188.35</u> ).

The balance of accountability is composed of the following:

Deposit Slips Without Machine Validation		<b>P</b>
		<b>129,780.72</b>
Less: Net Effect of Over and Under Remittance	P 135.55	
Erroneous Remittance of Fiduciary Fund Interest	455,114.14	
SAJF Collections	<u>45,723.38</u>	<u>500,969.07</u>
Grand Total		<b>P</b> <b>(371,188.35)</b>

*B) Special Allowance for the Judiciary Fund (SAJF)*

Collections (November 11, 2003 to February 28, 2004)	P 172,117.24
Less: Deposits/Remittances (November 11, 2003 to February 28, 2004)	<u>126,310.86</u>
Balance of Accountability/ Over Remittance	<u>P 45,806.38</u>

The balance of accountability is composed of the following:

Shortage	
Erroneous Remittance of SAJF Collections to the CCGF	P 45,723.38
Undeposited Collections (Net Effect of Over and Under deposit of collections)	<b><u>405.00</u></b>
Total	P 46,128.38
Less: Erroneous Deposit of SGF Collections to The SAJF (12/12/03)	<u>322.00</u>
Total	<u>P 45,806.38</u>

*C) Judiciary Development Fund (JDF)*

Collections (November 1, 2003 to February 28, 2004)	P
	82,873,662.38
Less: Deposits/Remittances (November 11, 2003 to February 28, 2004)	<u>82,866,145.88</u>
Balance of Accountability/ Shortage	<u>P</u> <u>7,516.50</u>

The balance of accountability is composed of the following:

Shortage	
Undeposited Collections (Net Effect of Over and Under Deposit of Collections)	<b>P 205.00</b>
Collections for February, 2004 deposited March, 2004	<u>7,311.50</u>
Total	<u>P 7,516.50</u>

*D) Sheriff's General Fund (SGF)*

Collections (November 11, 1998 to November 28, 2003)	P 88,629.00
Less: Deposits/Remittances	<u>88,245.00</u>
Balance of Accountability	<u>P 384.00</u>

The balance of accountability is composed of the following:

Erroneous Deposit of SGF collections to the SAJF	322.00
Undeposited Collections	<u><b>62.00</b></u>
Total	<u><b>P 384.00</b></u>

*E. Fiduciary Fund (FF)*

Unreported Collections	P 866,105.96
Unauthorized Withdrawals	
Over/Double Withdrawals	30,000.00
Withdrawals Without Supporting Documents	784,795.00 <sup>[2]</sup>
Forfeiture of PNB Account Balance	<u>9957.46</u>
Balance of Accountability	<b>P1,690,858.42</b>

- c. With respect to the Fiduciary Fund (FF), certain anomalies were discovered such as, late deposit of collections;<sup>[3]</sup> unreported collections, double and/or over withdrawals; withdrawals made sans supporting documents; and forfeiture by the Philippine National Bank (PNB) of the balance of the FF Account for being a dormant account. These irregularities caused a shortage of P1,690,858.42.
- d. The audit team discovered cash bond collections that were intentionally unreported to the Court, amounting to P866,105.96, from December 21, 1998 to June 8, 2001. As it turned out, the cash used for the refund of unreported and undeposited cash bonds was taken from the deposit of the other cash bonds, consignment deposits and other FF collections still deposited with the Court. Hence, the cash back-up is understated.<sup>[4]</sup>
- e. Unauthorized withdrawals were discovered, amounting to double withdrawals of P30,000.00.
- f. Withdrawals of P182,000.00 from the Landbank of the Philippines (Landbank) account<sup>[5]</sup> and P602,795.00 from the PNB account<sup>[6]</sup> totaling P784,795.00, were considered unauthorized due to absence of documentation.
- g. An account balance of P9,957.46 in a PNB account<sup>[7]</sup> was forfeited for being dormant.
- h. The audit team observed that, often, only the last three digits of the number of the Official Receipt appear in the column for "OR" in the cashbooks. The team had to examine the triplicate copies of the Official Receipts in order to come up with the accurate finding.<sup>[8]</sup>

- i. The existing internal control system in the handling of official receipts is vulnerable to abuse. As these were kept in an unlocked filing cabinet, it was not surprising that 14,631 pieces of official receipts were not properly accounted for.<sup>[9]</sup>
- j. It appears that Atty. Lometillo failed to exercise the required degree of supervision over the personnel authorized to collect legal fees and the other functions related thereto.<sup>[10]</sup> Had Atty. Lometillo monitored/supervised the members of her staff, the irregular practices, especially the resulting shortage of funds, should have been at least avoided.

### **Explanation of Atty. Lometillo**

The above findings of the OCA Audit Team were refuted by Atty. Lometillo in her Explanation dated February 15, 2007.<sup>[11]</sup> She explained each finding of irregularity as follows:

#### *Account and Turnover of Official Receipts--*

Atty. Lometillo attributed the missing official receipts to the disposal and burning of rotting and termite-infested court records by the Records Section of the OCC on April 27, 1992 and on May 26, 2001.<sup>[12]</sup> According to her, some boxes may have contained some of the old receipts up to year 2000 [and] the Records Officer did not bother to list these down and she simply directed the aides and janitors to take them out of the Records Room and place them in a vacant space under the stairs to wait for the burning thereof.<sup>[13]</sup>

As to the Fiduciary Funds Vouchers (withdrawals and collections), Atty. Lometillo also echoes the view of one of her staff that all vouchers were included in the bundles which the Audit Team took for inspection.

#### *Shortages--*

Atty. Lometillo generally denied knowledge of any shortage in the unreported collections in the SAJF, JDF and SGF amounting to P405.00, P684.51 and P62.00, respectively. Anent the FF, Atty. Lometillo explained that she was not aware of unreported collections amounting to P866,105.96, prior to the recent audit. She claimed to have been cleared from accountabilities by the Supreme Court Audit Team and by the local COA after audit was conducted on October 25, 1993.<sup>[14]</sup> She instead shifted blame to the Administrative Section of the OCC headed by Cashier II Victoria Patopaten (*Patopaten*), who was responsible for, among others, "making physical deposits and withdrawals of cash, receiving collection of cash clerks and consolidating daily collection reports, verifying cash balance of receiving cash clerks by comparing cash on hand with book balances, preparing daily cash position reports and other monthly reports of collections and disbursements."<sup>[15]</sup>

Atty. Lometillo further emphasized that in Memorandum 92-2 dated May 25, 1992, she specifically assigned Patopaten "to perform such functions as are necessary in the collection and remittance of all money paid to the Clerk of Court. In another

Memorandum on December 20, 2000, Atty. Lometillo directed Patopaten to issue receipts and receive money from litigants and depositors; to check monthly reports and entries in the books of accounts from time to time; and to remit to the undersigned all collections at the end of the day.<sup>[16]</sup> Other administrative functions such as bookkeeping, preparation of deposit slips, monthly reports, vouchers and checks for withdrawal of deposits were delegated to other employees, namely: Administrative Officer I Linda Guides (*Guides*), Clerk III Leny Gemma Castillo (*Castillo*), and Clerk III Brenda Linacero (*Linacero*). Of the employees mentioned by Atty. Lometillo, only Linacero rendered an explanation, stating that "she only received fees and issued receipts when the other two clerks, who were charged with the function of collection were absent or out of the office as requested by Ms. Patopaten."<sup>[17]</sup>

Atty. Lometillo refused to pay and deposit the shortages in the SAJF, JDF, SGF and FF because (1) she did not collect them herself, having delegated the task to Patopaten; (2) she had not been aware that there were collections that had not been deposited because when the collection would be remitted to her at the end of office hours, she would always compare the amount collected with the receipts issued and they always tallied; and (3) she had complete trust in the cashier and the collecting clerks and never thought that they would not report any collection, if indeed, they did not.<sup>[18]</sup>

*Over/Double Withdrawals amounting to P30,000.00--*

With respect to the finding of double withdrawals, Atty. Lometillo speculated that the procedure of "partial withdrawal"<sup>[19]</sup> adhered to by the office could have caused the errors. She likewise echoed Licanero's allegations that no over withdrawals could have been possible because the vouchers went through several offices and signatories, including the Executive Judge.

*Overwithdrawal of Interest Income from the FF amounting to P455,114.14--*

On the theory that SC Circular No. 50-95 only mentioned the terms "interest income," Atty. Lometillo said that she opted to withdraw the gross interest income from the FF instead of the net interest income. In her own words, Atty. Lometillo reasoned that "the circular mentions only interest income. It does not mention net interest income which the SC audit team insisted should have been the amount remitted to the National Treasury. The audit team, in fact, mentioned that many clerks of court had committed the same mistake and yet the Supreme Court did not issue clarificatory statements or circular to correct this ambiguity."<sup>[20]</sup> Request for refunds from the Bureau of Treasury were already been submitted.

*Unauthorized Withdrawals Without Supporting Documents amounting to P784,795.00--<sup>[21]</sup>*

Atty. Lometillo surmised that withdrawals pertaining to checks had been made for consignment deposits considering that the names of the payees did not appear in the index of cases in the Office of the Clerk of Court. She insisted that all withdrawals from the FF were duly supported with court orders except those of consignment deposits and financial assistance from the Provincial Government of Iloilo for traveling expenses of employees.