

EN BANC

[A.M. No. P-04-1819 (Formerly A.M. No. 04-6-133-MTC), March 22, 2010]

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS.
MACARIO C. VILLANUEVA, CLERK OF COURT, MUNICIPAL TRIAL
COURT, BONGABON, NUEVA ECIJA, RESPONDENT.**

R E S O L U T I O N**PER CURIAM:**

In a memorandum dated May 20, 2004,^[1] the Office of the Court Administrator (OCA) reported the result of the financial audit conducted at the Municipal Trial Court (MTC) of Bongabon, Nueva Ecija in November 2003. In particular, the audit showed that respondent Macario C. Villanueva, clerk of court of MTC Bongabon, incurred cash shortages.^[2]

The Court resolved to treat the findings of the audit team as an administrative complaint against respondent and directed the following:

(a) restitution and deposit to the respective accounts of the following amounts and, thereafter, submission to the OCA of the validated deposit slips as proof of payment:

FUND	SHORTAGES
I. Fiduciary Trust Fund	P35,249.70
II. Judiciary Development Fund	32,119.56
III. General Fund	4,680.60
IV. VCF & LRF	875.00
TOTAL	P72,924.86

(b) withdrawal from the Judiciary Fund of the amounts of P807.02 and P4,000, representing the interest earned and confiscated cash bond, respectively, to be deposited to the JDF with the submission of validated deposit slips to the OCA;

(c) withdrawal from the Fiduciary Fund of the amount of P27,750, representing the amount erroneously transferred to the court, remittance of the same to the municipal treasurer's office (MTO) and submission to the OCA of the acknowledgment receipt from the MTO;

(d) submission of acknowledgment receipts of the following refunded cash bonds:

LITIGANT	O.R. NUMBER	CASE NUMBER	AMOUNT
--	--	2667	P1,000
--	--	2676	2,000
Arthur Sincon	MTC-6474215	2867	6,000
Carlito Marcelo	4643042	3039	10,000
TOTAL			P19,000

(e) accounting for 10 missing official receipt booklets with serial numbers 678501 to 679000 and

(f) explanation by respondent why no administrative sanction should be imposed on him for the above infractions.^[3]

Furthermore, respondent was placed under suspension pending the resolution of this administrative matter.^[4]

By way of explanation respondent submitted a letter^[5] dated July 15, 2004 praying that the salaries and other emoluments withheld from him be applied to his cash accountabilities.

Acting on respondent's prayer, the OCA informed the Court via memorandum dated September 22, 2004^[6] that an examination of additional documents pertaining to the accountabilities of respondent showed that he actually incurred a cash shortage amounting to P159,424.86 broken down as follows:

FUND	SHORTAGES
1. Judiciary Development Fund	P32,119.56
2. General Fund	4,680.60
3. Victim Compensation Fund	205.00
4. Legal Research Fund	670.00
5. Fiduciary Fund	121,749.70
TOTAL	P159,424.86

The OCA recommended that respondent be made to pay the said amounts and deposit these to their respective accounts and, thereafter, to submit validated deposit slips as proofs of payment. It also proposed that respondent be made to submit the following: the corresponding court orders and acknowledgment receipts pertaining to unwithdrawn cash bonds amounting to P221,700 as proof that they were duly refunded to the bondsmen; the corresponding court orders on withdrawn cash bonds totaling P31,000 and the acknowledgment receipts on withdrawn cash bonds amounting to P164,000.^[7]

The Court approved the recommendations of the OCA.^[8]

By way of compliance, respondent submitted a list of cases with the cash bonds and

the status of the bail bonds, whether withdrawn or unwithdrawn, together with the certification of the MTO, affidavits, court orders and acknowledgment receipts.^[9] He then requested that his suspension be lifted and reiterated his prayer that the salaries and other emoluments withheld from him be applied to his cash accountabilities.^[10]

Despite respondent's compliance, the OCA stated in a memorandum dated May 4, 2006 that respondent still had a cash shortage of P46,674.86, broken down as follows:^[11]

FUND	SHORTAGES
1. Judiciary Development Fund	P27,293.56
2. General Fund	2,286.60
3. VCF & LRF	650.00
4. Fiduciary Fund	8,999.70
5. Discrepancies on the Filing Fees Collected	7,445.00
TOTAL	P46,674.86

The OCA reported that the said cash shortage could be fully covered by the money value of respondent's total terminal leave benefits of P417,693.13.^[12]

In the same memorandum, the OCA informed the Court that it received an affidavit of a certain Evelyn O. Mercado alleging that, when certain criminal cases^[13] pending in the MTC of Bongabon were dismissed due to amicable settlement, the cash bonds posted by the accused (which were supposed to be remitted to the complainants to satisfy the respective obligations of the accused) were applied by respondent as payment for outstanding filing fees without issuing any receipt therefor.^[14]

Accordingly, the OCA recommended that respondent be directed to comment on the affidavit of Mercado and to submit the corresponding acknowledgment receipts relating to cash bonds to prove that these had been duly refunded to the bondsmen.^[15] While the OCA also recommended the denial of respondent's request for the lifting of his suspension, it proposed that his request for the release of salaries and other emoluments withheld from him prior to his suspension be granted.^[16]

In a resolution dated June 20, 2006,^[17] the Court approved the recommendations of the OCA.

In his comment,^[18] respondent denied the allegations contained in the affidavit of Mercado. He also presented an affidavit dated July 28, 2006 of purportedly the "real" Evelyn Mercado denying that she had accused respondent of failing to issue receipts for filing fees.^[19]

Due to the nature of respondent's allegations in his comment, the Court resolved to refer to Judge Corazon D. Soluren, executive judge of the Regional Trial Court (RTC) of Palayan City, the matter of the "conflicting affidavits" of Mercado.^[20]

In her investigation report dated March 20, 2007,^[21] Judge Soluren stated that the affidavits dated November 12, 2003 and July 26, 2006 were executed by the same person. She noted that the affiant Mercado appeared during the hearing and admitted that respondent was actually her *kumpadre*. The 2006 affidavit was executed three years after the execution of the first affidavit in 2003. Respondent himself secured the 2006 affidavit.

After evaluating the investigation report of Judge Soluren, the OCA submitted its report and recommendation.^[22] The OCA adopted Judge Soluren's finding that the 2003 and 2006 affidavits had been executed by one and the same person. The OCA concluded that respondent himself secured the 2006 affidavit as a desperate attempt to insulate himself from the additional charge of not issuing receipts, a matter alleged in the 2003 affidavit.

The 2003 affidavit showed that Mercado intended to file an administrative complaint against respondent but respondent persuaded her to recant the same. Respondent even tried to fabricate a scenario wherein the 2003 affidavit was supposedly executed by a fictitious person to confuse the Court. Notwithstanding the fact that the author of the two affidavits was identified, however, the charge of not issuing receipts was not proven.

Nonetheless, respondent is not entirely without any liability as there still remains the matter of the shortages he incurred.

The OCA proposed that respondent be held liable for incurring various cash shortages. That respondent was able to pay a portion of his shortages does not absolve him from the consequences of his wrongdoing. The fact remains that he incurred cash shortage as a result of misappropriation of court funds. Such misappropriation constituted dishonesty, gross neglect of duty and grave misconduct which are grave offenses punishable by dismissal for the first offense.^[23]

Thus, the OCA recommended the following:

- (a) dismissal of respondent from the service, with forfeiture of his retirement benefits, excluding accrued leave credits, and perpetual disqualification from reemployment in the government or in any government-owned or controlled corporation;
- (b) computation by the Financial Management Office-OCA of the final money value of all the respondent's accrued leave credits, dispensing with the usual documentary requirements, and to apply the same to the shortage incurred by the respondent, observing the following order of preference: Fiduciary Fund, Special Allowance for the Judiciary and Clerk of Court Fund and
- (c) restitution by respondent of the portion of the shortage not covered by the money value of his accrued leave credits.

We agree with the findings and recommendations of the OCA.