

EN BANC

[A.M. No. P-05-2064 (Formerly A.M. OCA IPI No. 05-7-449-RTC), March 02, 2010]

**OFFICE OF THE COURT ADMINISTRATOR, PETITIONER, VS.
CLERK OF COURT JOCELYN G. CABALLERO, REGIONAL TRIAL
COURT, KIDAPAWAN CITY, NORTH COTABATO, RESPONDENT.**

DECISION

PER CURIAM:

This administrative matter stemmed from the financial audit of the Regional Trial Court of Kidapawan City, North Cotabato (RTC-Kidapawan), conducted by the Audit Team of the Court Management Office (team). The audit covered the accountability period of Clerk of Court Atty. Jocelyn G. Caballero (Caballero) from April 1983 to April 2004.

The team's preliminary cash count revealed an initial cash shortage of P19,875.20^[1] which Atty. Caballero immediately reasoned to be due to the encashment of her personal checks. This prompted the team to conduct a more detailed and comprehensive financial audit on all the books of accounts of the court.

Based on the available documents, the Financial Audit Report yielded the following results:

1. The cash count on May 17, 2004 disclosed a shortage of P19,875.20 which was due to the encashment of personal checks of Atty. Caballero from the court's collections;^[2]
2. Atty. Caballero issued merely acknowledgment receipts instead of official receipts for collections received as sheriff's expenses as evidenced by the photocopies of several acknowledgement receipts issued by Atty. Caballero,^[3] summarized below:

FORECLOSURE CASE NO.	AMOUNT COLLECTED
204-2000	P 1,000.00
183-196	7,000.00
181-2000	2,000.00
50 to 51-2001	2,000.00
41-2001	5,000.00
37-2001	2,000.00
167-2002	1,000.00
113 to 116-2002	4,000.00

71-2002	1,000.00
38-2003	1,000.00
06-2004	1,000.00
TOTAL	P27,000.00

3. Confiscated bonds amounting to P66,000.00 were withdrawn from the Fiduciary Fund account with the Land Bank of the Philippines, but not remitted to the Judiciary Development Fund:[4]

Date Confiscated	Date Withdrawn	Case No.	Amount
07/10/96	11/08/96	2643-2654	P30,000.00
08/15/96	12/05/96	2012	6,000.00
05/04/99	04/21/99	197-96	30,000.00
TOTAL			P66,000.00

In view of the above-mentioned findings, the team required Caballero to comment on its findings/observations. Corollary thereto, the team asked Atty. Caballero to produce the proofs of liquidation in order to verify the exact amount given to sheriffs as sheriff's expenses. The team likewise asked Atty. Caballero to show proofs of remittances of the confiscated bonds to the General Fund.[5] On both counts, Atty. Caballero offered no proof of either remittances or liquidation. However, Atty. Caballero submitted an Affidavit dated May 24, 2004,[6] where she averred that the parties to the case consented that the money they paid be used as sheriff's expenses; thus, there was no need for liquidation, and acknowledgment receipts would suffice. She further claimed that the money collected as sheriff's expenses was all given to the implementing sheriffs concerned.

The audit further revealed that the interests earned (net of withholding tax) on Fiduciary Fund deposits from August 1993 to March 2004, with an accumulated amount of Two Hundred Eleven Thousand Three Hundred Forty-Nine Pesos & 64/100 (P211,349.64), remained unwithdrawn.

On May 25, 2004, the team requested Alexander D. Lopez, Sheriff IV, Office of the Clerk of Court (OCC); Jose Noel C. Balbas, Sheriff IV, Branch 17; and Norberto F. Dapusala, Sheriff IV, Branch 23, all in RTC-Kidapawan City, to confirm how much exactly was given to them by Atty. Caballero as sheriff's expenses.

On May 27, 2004, in their respective Affidavits,[7] Lopez, Balbas and Dapusala acknowledged in unison that Atty. Caballero gave them P100.00 only as sheriff's expenses for the service of court processes including foreclosures. Moreover, Dapusala added that since 2002 up to the present, Atty. Caballero had not given him any amount as sheriff's expenses.

In sum, Atty. Caballero incurred the following accountabilities:

A. CLERK OF COURT GENERAL FUND

(Period Covered: April 1983 to April 2004)

Total Collections from April 1983 to December 2003	P 1,060,323.36
Less: Deposits for the same period	<u>P 1,044,060.79</u>
Balance of Accountability	P 16,262.57
Less: GF Collections deposited to JDF	<u>P,064.61</u>
FINAL ACCOUNTABILITY (shortage)	<u>P 8,197.96</u>

B. FIDUCIARY FUND (Period Covered: April 1983 to April 2004)

Unwithdrawn Fiduciary Fund as of March 31, 1983	P 83,984.37
Add: Total Collections from April 1983 to April 2004	P 6,253,474.51
Total:	P 6,337,458.88
Less: Total Withdrawals for the same period	P 4,040,878.36
Unwithdrawn Fiduciary Fund as of April 30, 2004	P 2,296,580.52
Less: Balance per LBP SA# 0741 0236-28 as of April 30, 2004	P 2,465,545.12
Less: Unwithdrawn interest net of tax of P 52,837.41	<u>P 211,349.64</u>
	<u>2,254,195.48</u>
Balance of Accountability	P 42,385.04
Less: Deposit-in-Transit	<u>10,000.00</u>
FINAL ACCOUNTABILITIES (Shortage)	<u>P 32,385.04</u>

In a Memorandum dated October 22, 2004,^[8] the Office of the Court Administrator directed Hon. Rogelio R. Narisma, Executive Judge, RTC, Kidapawan City to investigate the instant complaint and to relieve Atty. Caballero of her duties and functions as accountable officer.

In their Compliance dated April 29, 2005,^[9] all three sheriffs concerned once again reiterated their earlier statements about receiving a fixed P100.00 as sheriff's expenses. They also added that it was Ms. Minerva Paunon, Cash Clerk, RTC-Kidapawan City, from whom they got the amount for sheriff's expenses after the same was handed over to her by Atty. Caballero. The sheriffs in turn were required to sign and acknowledge the amount received in a logbook. Atty. Caballero opted not to give her statement in court.

After investigation, Judge delos Santos, in his Report dated April 29, 2005,^[10] manifested his observation that indeed Atty. Caballero was remiss in the performance of her duties. The pertinent portion of his report reads as thus:

It can be clearly deduced from the aforesaid memorandum that Atty. Caballero only gave the three (3) sheriffs P100.00 for every foreclosure case or in serving summons and other court processes. She explained that these are the incidental expenses in connection with every foreclosure specifically on chattels where more expenses shall be incurred. ***She also mentioned in the memorandum that she still had with her whatever amount in excess of P100.00 paid to her by each litigant. She is the one accountable for the amount that she received for every foreclosure case. Verily, Atty. Caballero all (sic) confirmed the statements of the three (3) sheriffs and Ms. Paunon.*** (Emphasis supplied.)

In a Memorandum dated March 22, 2005,^[11] Atty. Caballero insisted that the investigation against her be terminated and that the complaint be dismissed since she was allegedly denied her right to due process, as she was not given a copy of the Financial Audit Report and was immediately relieved as accountable officer.

On August 17, 2005,^[12] as recommended by the Office of the Court Administrator, the Court directed Atty. Caballero to:

a) EXPLAIN why no administrative sanction shall be imposed against her for:

- 1. Encashing her personal checks and those of other employees from the collections of the court;*
- 2. Issuing acknowledgment receipts for the amounts received as sheriff's expenses, instead of official receipts;*
- 3. Not presenting any proofs of liquidation as to where the amounts covered by the acknowledgment receipts were disbursed;*
- 4. Not presenting proofs that any excess of the collected amounts as sheriff's expenses were refunded to the parties making the deposit;*
- 5. Not presenting any amount on the cash count on May 17, 2004 representing collections for sheriff's expenses, considering that she did not maintain an account with the Land Bank of the Philippines (LBP) for these collections; and*
- 6. Withdrawing the following confiscated cash bond from the FF account of the court with the LBP, Kidapawan City Branch, but unremitted to the GF account of the National Treasury, viz:*

<i>Date Confiscated</i>	<i>Date Withdrawn</i>	<i>Case No.</i>	<i>Amount</i>
<i>07/10/96</i>	<i>11/08/96</i>	<i>2643- 2654</i>	<i>P 30,000.00</i>
<i>08/15/96</i>	<i>12/05/96</i>	<i>2012</i>	<i>6,000.00</i>

05/04/99	04/21/99	197-96	30,000.00
TOTAL			P 66,000.00

b) WITHDRAW the unwithdrawn interest, net of tax as of March 31, 2004, from the Fiduciary Fund amounting to P211,349.64 and DEPOSIT the same to the Judiciary Development Fund account and submit to the FMD, CMO the machine validated deposit slip.

b) DEPOSIT to the Judiciary Development Fund the amount of P66,000.00 representing confiscated cash bonds withdrawn from the Fiduciary Fund but still unremitted, and SUBMIT the machine validated deposit slip to the FMD, CMO; and

d) PAY and DEPOSIT the shortages she incurred for General Fund and for Fiduciary Fund in the amounts of P8,197.96 and P32,385.04, respectively, and SUBMIT the machine validated deposit slip to FMD, CMO."

In another Resolution dated August 17, 2005,^[13] the Court resolved to redocket the administrative matter involving the financial audit of Kidapawan City as a regular administrative complaint against Atty. Caballero.

In her Explanation/Compliance dated September 28, 2005,^[14] Atty. Caballero admitted that she usually encashed the checks of court employees if there was cash available for humanitarian reasons.

In her case, Atty. Caballero alleged that she had discovered late in the afternoon of May 14, 2005, which was a Friday, that she had not yet encashed her mid-year bonus and Representation and Transportation Allowance (RATA) checks with the bank. She claimed that she needed cash money for the tuition fee of her nephew, whom she was sending to school. She further claimed that since her nephew was scheduled to leave for Cebu the following day, May 15, 2005, she decided to encash her checks out of the court collections, as she could no longer wait until Monday - or until May 17, 2004 - considering that her available cash on hand was only good for her nephew's allowance and traveling expenses. She, however, averred that the money was immediately replenished upon encashment of her checks.

Atty. Caballero asserted that the encashment of personal checks from the court's collections did not violate any rule, since those were good checks issued by the Supreme Court. She reasoned out that the court would not incur any losses, since the amount of court collections remained the same.

With regard to the non-issuance of official receipts for the amounts received as sheriff's expenses, Atty. Caballero admitted that she issued only acknowledgment receipts instead of official receipts, since she knew that the money would be used to defray expenses for serving court processes and would not be remitted to the National Treasury. Atty. Caballero further contended that she informed the parties thru their counsel that the money they deposited would be used to defray the expenses for the service of the court processes. Hence, she claimed that there was