

EN BANC

[A.M. No. P-06-2221 (FORMERLY A.M. NO. 06-7-215-MTCC), October 05, 2010]

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS.
RODELIO E. MARCELO AND MA. CORAZON D. ESPAÑOLA, MTCC,
SAN JOSE DEL MONTE CITY, BULACAN, RESPONDENTS.**

D E C I S I O N

PER CURIAM:

We resolve in this Decision the administrative matter involving Clerk of Court Rodelio E. Marcelo and Ma. Corazon D. Española, Officer-in-Charge, Office of the Clerk of Court, arising from the financial audit conducted at the Municipal Trial Court in Cities (MTCC), San Jose del Monte City, Bulacan.

THE ANTECEDENTS

The financial audit was conducted by the Office of the Court Administrator (OCA) on the MTCC books of accounts for the period May 1991 to April 30, 2005, which covered the terms of several clerks of court.

The report, dated June 28, 2006, of the OCA audit team^[1] showed that Marcelo and Española incurred shortages in their collections, pertaining to the court's funds, in the total amount of Seven Hundred Ninety-Two Thousand Two Hundred Thirteen Pesos (P792,213.00), broken down as follows:

NAME OF FUND	AMOUNT OF SHORTAGE
Clerk of Court General Fund	P 75,553.00
Special Allowance for the Judiciary	69,006.00
Judiciary Development Fund	214,929.00
Fiduciary Fund	418,325.00
Marriage Solemnization fees	14,400.00
TOTAL SHORTAGES	P792,213.00

Española, a former clerk of court/officer-in-charge, had a shortage in her collection for the Judiciary Development Fund (JDF), for the period January 18, 1996 to November 8, 1996 amounting to P11,647.00.^[2] The shortage was due to the absence of deposit slips evidencing the remittance of the collection. There was also a shortage in Española's collection of marriage solemnization fees in the amount of P200.00. Española was directed to immediately deposit the P11,647.00 to the JDF and the P200.00 to the marriage solemnization fund.

In a letter, dated June 2, 2005,^[3] to Dindo Sevilla (the OCA audit team leader), Española complied with the directive by depositing the amounts covering the shortages.^[4]

At the recommendation of the OCA, the Court resolved, on August 7, 2006,^[5] to: (1) docket the audit team's report as a regular administrative matter; (2) direct Marcelo to pay the amount of P792,213.00, and immediately deposit the payment according to its fund allocations; (3) direct Marcelo and Española to explain, in writing, their failure to deposit the collections on time and why no disciplinary action should be taken against them for the shortages; and (4) refer the matter to Judge Pelagia Dalmacio-Joaquin, MTCC, San Jose del Monte City, Bulacan, for investigation.

Marcelo explained his side through a letter to the MTCC on October 20, 2006.^[6] He strongly denied the charge of malversing/pocketing the court's collections. He claimed that he had been frequently on leave of absence starting late 2003 as he has a heart ailment due to stress, anxiety and fear caused by threats to his life and that of his family; sometime in March 2004, he expressed to Judge Joaquin his intention to return to work, but was advised to continue his leave of absence or to report but not as clerk of court, and to perform some other tasks, pending Judge Joaquin's request for the revocation of his designation as acting clerk of court; and he opted to remain on leave instead of doing other tasks.

Marcelo claimed that had Judge Joaquin allowed him to return to work for at least a week, he could have done his work and deposited the court's collections. Marcelo admitted that he entrusted the undeposited court collections to Bernadette Alconiza, supervising stenographer and his mother's secretary, who kept the cash in the vault of the City Prosecutor's Office. The cash were in several bundles, each bundle marked with the amount it contained. While he admitted that he had been remiss in the performance of his duties as clerk of court, he blamed his poor health for his shortcomings.

Judge Joaquin's investigation was cut short as she inhibited herself from the case^[7] upon the motion for inhibition filed by Marcelo's mother and counsel, Atty. Lucita E. Marcelo (who claimed she had retired as City Prosecutor of San Jose del Monte City on April 18, 2006).^[8]

In a Resolution dated February 28, 2007, the Court referred the case to Judge Mario B. Capellan of the MTCC, Branch 1, Malolos City, Bulacan, whose Report and Recommendation, submitted on October 9, 2007,^[9] provides:

The salient features of the said financial audit report revealed the following shortages:

COC General Fund	75,553.00
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Special Allowance for the Judiciary (SAJ)	69,006.00
Judiciary Development Fund (JDF)	214,923.00

Fiduciary Fund (FF)	418,325.00
Marriage Solemnization Fees	<u>14,400.00</u>
	P792,213.00

These shortages were incurred greatly in part, during the terms of office of Rodelio E. Marcelo.

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Respondent Marcelo, through counsel, admitted that the collections for the different funds of the MTCC, San Jose Del Monte, Bulacan during his incumbency as OIC of the said court were not deposited with the Land Bank, Sta. Maria, Bulacan branch; that when he was about to make the said deposit, he was informed of the change in the authorized signatories. Following his mother/counsel's advi[c]e, the latter being then still in active government service (City Prosecutor's Office), respondent Marcelo brought the money to her, which in turn was given to a certain Bernadette Alconiza for safekeeping in the office's vault. Thereafter, all the withdrawals of deposits made during Marcelo's incumbency as OIC were effected through respondent's mother/counsel.

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Respondent Marcelo's shortages were incurred during his incumbency pertaining to the five (5) accounts of the said court, namely:

- I. Judiciary Development Fund (JDF)
P214,929.00 (period of collection - August 6, 2002 to December 31, 2004)
- II. Fiduciary Fund (FF)
P418,325.00 (period of collection - March 5, 2002 to December 31, 2004)
- III. General Fund (GF)
P75,553.00 (period of collection - August 6, 2002 to November 10, 2002)
- IV. Special Allowance for the Judiciary (SAJ)
P69,006.00 (period of collection - November 11, 2002 to December 3, 2004)
- V. Marriage Solemnization Fee[s]
P14,400.00 (period [of collection] - August 13, 2002 to November 23, 2004 or a total of 48 uncollected marriage solemnization fees).

The shortages for accounts, numbers I to IV, were incurred in the absence of the requisite deposit slips. For Account No. V, the total of P14,400.00 represents uncollected fees for the forty-eight (48) marriages solemnized during the said period. Respondent Marcelo's

total unexplained accountabilities aggregate to P792,213.00.

The explanation advanced by respondent Marcelo is simple - that he failed to deposit the collections with the proper depository bank; that around two (2) years, his collections had accumulated and when he decided to make the deposits, there was already a change in the signatories authorized to make such deposits. What puzzles the mind of the court is - why did it take him that long to make the deposits? Admittedly, he kept the money, which he later on turned-over to his mother (his counsel).

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In the case at bar[,] respondent Marcelo having been on AWOL, was already dropped from the rolls effective June 1, 2005. His position was already declared vacant (SC Resolution in case No. AM-06-4-135 dated May 29, 2006).

Be that as it may, respondent Marcelo's severance from the government service should not be as simple as that. Although respondent's declaration of AWOL and eventual severance from the office is in effect a dismissal, however, his ouster merits a more severe penalty for a grave offense of dishonesty. There should be a clear categorical and concise pronouncement of his guilt meriting the aforesaid extreme penalty. Such pronouncement will definitely deter similarly minded accountable officers from following respondent's footsteps. The gross dishonesty, if not per se malversation of public funds, deserves not only severance from service not only from the judiciary but the entire government service.

Judge Capellan recommended Marcelo's dismissal, the cancellation of his eligibilities, the forfeiture of all his benefits, perpetual disqualification from holding any public office, and the payment or restitution of the total amount of P792,213.00. He also recommended that Marcelo's case be indorsed to the Office of the Ombudsman for proper action.

In a Resolution dated November 26, 2007,^[10] the Court referred Judge Capellan's report to the OCA for evaluation.

THE OCA REPORT

In a memorandum submitted on October 9, 2008,^[11] the OCA advised the Court of its concurrence with the findings of facts, conclusions of law and recommendations of Judge Capellan. Like Judge Capellan, it found the evidence sufficient to hold Marcelo liable for the irregularities he committed during his term as clerk of court of the MTCC, San Jose del Monte City, Bulacan. Accordingly, it recommended that: (1) Marcelo be found guilty of grave misconduct, dishonesty and gross neglect of duty, and be dismissed from the service; (2) Marcelo's retirement and/or separation benefits be forfeited, except accrued leave credits, and that he be disqualified from re-employment in the government; (3) Marcelo be directed to pay P792,213.00; (4)