

**EN BANC**

**[ A.M. No. P-06-2148, March 04, 2009 ]**

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS.  
JINGKEY NOLASCO, CLERK OF COURT, MUNICIPAL TRIAL COURT,  
SAN JOSE, ANTIQUE, RESPONDENT.**

***DECISION*****PER CURIAM:**

This administrative matter arose from an examination conducted by the Commission on Audit (COA) on the cash and accounts of respondent Jingkey B. Nolasco, Clerk of Court II, Municipal Trial Court (MTC)-San Jose, Antique.

On March 21, 2005, the Fiscal Monitoring Division of the Court Management Office (FMD-CMO) received a letter from Judge Monina S. Misajon, Presiding Judge, MTC-San Jose, Antique, informing then Chief Justice Hilario G. Davide, Jr. of the initial results of a COA examination of the cash and accounts kept by Nolasco. The COA audit disclosed that as financial custodian of said court, Nolasco had undeposited collections in the amount of P563,683.35, and undocumented/unauthorized withdrawals from the Fiduciary Fund Account (FFA) amounting to P128,317.64.<sup>[1]</sup> Upon advice of the COA Audit Team, Judge Misajon relieved Nolasco of her duties as financial custodian on February 14, 2005 and designated Court Interpreter Arlyn Minguez in her stead.<sup>[2]</sup>

Acting on the reported financial irregularities in the MTC-San Jose, the Office of the Court Administrator (OCA) sent an audit team to conduct its own investigation on the matter. Relative to Nolasco's accountabilities, the audit team discovered that she incurred shortages in the following amounts:

Special Allowance for the Judiciary Fund (SAJF)	P 49,265.60
General Fund (GF)	3,187.00
Judiciary Development Fund (JDF)	113,428.04
Sheriff Trust Fund (STF)	7,000.00
Fiduciary Fund (FF)	614,999.95
 GRAND TOTAL	 787,880.59

With respect to the FFA, the audit team found that Nolasco had undeposited collections in the amount of P441,199.95, and unauthorized withdrawals specified as follows:<sup>[3]</sup>

Over Withdrawal of Cash Bonds:

Case	Court Or.	Bondsman	OR No.	OR Date	Amount	Amount	Over
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No.	Date					Withdrawn	Withdrawal
6837	6/7/2002	Renita Gabo	7685287	9/10/99	6,000.00		
7774	6/7/2002	Daniel G. Rafil	14699310	5/27/00	3,000.00	30,000.00	21,000.00
6230	2/7/2003	Azuena Parreno	4987422	03/03/97	6,000.00		
5749	2/5/2003	Emilie Pelago	3853607	09/28/94	4,200.00		
6642	2/12/2003	Ricardo Britania	9128867	12/14/98	10,000.00		
7696	2/20/2004	Dina Hiponia	14699298	2/18/2002	10,000.00		
6983	2/12/2003	Marieta De Guzman	11807178	02/15/00	2,000.00	60,000.00	27,800.00
6934	8/12/2004	Lynlyn Ziga	12557461	6/22/04	6,000.00		
8322	8/19/2004	Ricky Gutierrez	16196862	3/12/04	10,000.00	44,000.00	28,000.00
8322	8/19/2004	Ricky Gutierrez	16196862	3/12/04	10,000.00	14,000.00	4,000.00

Total

67,200.00148,000.0080,800.00

#### Withdrawal Without Supporting Documents

Case No.	Bondsman	Date Withdrawn	Court Or.	Acknowledgment Receipt	Amount Withdrawn
		7/2/2004	x	X	60,000.00
7574	Rochie Gutierrez	1/31/2005	x	X	3,000.00
6717	Delia Noble	1/31/2005	x	X	2,000.00

Total

65,000.00

#### Withdrawal of Bail Bond not Deposited with SA NO-0771-0101-33

Case No.	Court Or. Date	Bondsman	Court Or.	Date Withdrawn	Amount
7939	1/20/2003	Ma. Bella Lim	5611841	4/14/00	12,000.00
6238	3/24/2004	Raymundo Jungco	11307167	12/24/02	16,000.00

Total

28,000.00

The audit team further observed that the withdrawal slips and passbook indicating the foregoing withdrawals from the FFA, under Land Bank of the Philippines (LBP) Savings Account (SA) No. 0771-0107-33, were signed by Judge Misajon and countersigned by Nolasco.

On August 12, 2005, the OCA issued a Memorandum<sup>[4]</sup> directing Judge Misajon to

explain why the foregoing withdrawals from the FFA were allowed. Likewise, the OCA directed respondent Nolasco to:

- A. EXPLAIN in writing why she should not be administratively charged with incurring the total initial shortage of SEVEN HUNDRED EIGHTY SEVEN THOUSAND EIGHT HUNDRED EIGHTY & 59/100 (P787,880.59) x x x.
- B. PAY/DEPOSIT the initial shortages in the SAJF, GF, JDF, STF and FF amounting to P49,265.60, P3,187.00, P113,428.04, P7,000.00 and P614,999.95 respectively and SUBMIT to the FMD-CMO the proof of remittance thereof.
- C. EXPLAIN why withdrawals from the Fiduciary Fund were made:
  - 1. In excess of the cash bond deposited;
  - 2. Without the court orders/acknowledgment receipts; and
  - 3. (Why some ) Cash bonds (were) not deposited with SA No. 0771-0107-33.<sup>[5]</sup>

In compliance with the OCA directive, Nolasco sent an undated letter to then Court Administrator Presbitero J. Velasco, Jr., reporting on her efforts to reconstitute the shortages, thus:

With regards the Special Allowance for the Justices Fund (SAJF) as well as the General Fund (GF), I have already reconstituted the amount of P56,274.30. It was so because on the initial findings of the Commission on Audit-Region VI, there was a shortage of P45,342.30 for the SAJF and P9,748.00 for the STF, supposedly SGF or Sheriff's General Fund which is also remitted in the SAJF account which totals to P55,090.30 but lately Miss Bonifacia Lee informed me that my total shortage for the SAJF account amounted to P56,272.30 hence; an additional remittance was made. I could no longer deposit Your Honor, the amount of P3,187.00 for the General Fund (GF) in the account of the Treasurer of the Philippines considering that there was a Circular to remit the collections from the Treasurer of the Philippines to SAJF Fund, so I would humbly beg that the same be credited Your Honor since the total accountability I have as per findings of the Supreme Court Audit Team amounted to P52,452.60. As to Judiciary Development Fund (JDF), please find attached deposit slip as to the restitution of P73,910.40. Again, Your Honor, in the COA findings, I was short of P77,431.00 which prompted me to remit additional amount of P4,520.60. As to the interest income of P39,517.64, that need to be deposited with the JDF account, could it be possible Your Honor that the over remittance I have with the JDF account in the amount of P4,520.60 and SAJF account in the amount of P3,821.70 for a total sum of P8,342.30 be offset and/or deducted to the amount of P39,517.64 so that I will only remit P31,175.34 instead?

The Sheriff's Trust Fund (STF) Your Honor in the amount of P7,000.00 was received by Ms. Arlyn Minguez, Court Interpreter and Designated Financial Custodian from the undersigned on April 22, 2005 and the same

was deposited on even date at the account of STF-MTC, San Jose, Antique.<sup>[6]</sup>

With regard to the undeposited collections in the FFA, Nolasco stated that, during a chamber conference held on May 4, 2005, she already admitted her failure to deposit collections amounting to more than P400,000.00 before then Deputy Court Administrator Zenaida Elepaño, Atty. Thelma Bahia and Judge Misajon. She expressed willingness to restitute the amount if given ample time.<sup>[7]</sup>

On the other hand, Nolasco explained the unauthorized withdrawals from the FFA, as follows:

As to OVERWITHDRAWALS, in the amount of P80,800.00, please be informed Your Honor that in the withdrawn amount of P30,000.00, the amount was withdrawn per instruction of Judge Ma. Monina S. Misajon, for that time she needed the money in going home to Cebu City, her native town to partition her properties. Indeed, I have knowledge and consented to said withdrawal even though I knew it was wrong since the authorized amount to be withdrawn is only P9,000.00, but I was ordered by her, who am I to refuse a judge, Your Honor? Nonetheless, the Supreme Court Audit Team must have noted that the amount of P21,000.00 excess of the authorized amount withdrawn, it was restituted on June 18, 2002 because even the COA-Regional Office findings would reveal that there was an over deposit of P21,000.00 for the year 2002. Vivid perusal of Annex 12 would show that said amount was deposited/restituted by Judge Misajon herself because the penmanship in the amount of P21,000.00 was hers, she let me sign the deposit slip that I was the depositor and place the total amount of P21,000.00 but it was her handwriting on the amount of 42 pieces of 500 bills and the figures P21,000.00 and she personally deposited the amount at Land Bank of the Philippines, San Jose, Antique branch. x x x

On the second amount of P60,000.00, Your Honor, the authorized amount to be withdrawn is only P32,200 for it represents the forfeited bonds to be deposited to the JDF Account but again, I extended another favor for Judge Misajon since she told me that she badly needed the money to be used for the cremation of her sister who died in Cebu City. x x x she paid me P32,200.00 on June 18, 2004 to be deposited to the JDF account for I told her, I need to make a report thereon. The remaining amount of P27,800 was never returned by her Your Honor.

In another withdrawal of P44,000.00, the authorized amount to be withdrawn is only P12,000.00 representing the cash bond of Ricky Gutierrez and Consolita Veñegas in the amount of P6,000.00 each. The amount of P32,000.00 representing the cash bond of the Licanda family was withdrawn because their cases were dismissed by the Court but the prosecution filed an appeal to the Order of dismissal, hence, said amount should have been returned to the Fiduciary Fund, but I wasn't able to redeposit the same Your Honor for again, I used said amount. x x x In effect, the OVERWITHDRAWAL of cash bond in the amount of P80,800.00 should be reduced to P59,800 for that is the total amount not restituted Your Honor.<sup>[8]</sup>

Nolasco alleged that the P60,000.00 withdrawal on July 4, 2004 which the audit team found to be unsupported by any documents was again made at the instance of Judge Misajon. Even though she knew that the same was unauthorized, Nolasco consented to the withdrawal since it was her superior who asked her to do so. She also admitted that she had a personal interest in granting Judge Misajon's request because she was then aiming for a promotion and was courting the judge's favor. As for the other withdrawals without supporting documents amounting to P5,000.00, the same were actually covered by court orders and acknowledgment receipts which Nolasco attached as annexes to her letter.

With respect to the withdrawal of bail bonds not deposited in the FFA, Nolasco stated that the P16,000.00 cash bond in the Jungco case was withdrawn and turned over to the bondsman upon dismissal of the same by Judge Sylvia Jurao of Branch 10, RTC-San Jose, Antique. On the other hand, the cash bond in the amount of P12,000.00 in the Lim case was erroneously withdrawn together with the bond posted by the same accused in another case that was dismissed at the same time. At any rate, the amount is covered by an acknowledgment receipt issued by the accused-bondsman.<sup>[9]</sup>

Meanwhile, Judge Misajon explained in a letter<sup>[10]</sup> dated September 23, 2005, that she did not allow the unauthorized withdrawals and asserted that Nolasco schemed and deliberately withdrew the amounts to pay for her debts and maintain an affluent lifestyle. Judge Misajon surmised that the amounts in the withdrawal slips she signed must have been altered by Nolasco, as shown by an examination of the withdrawal slips. She asserted that she signed the withdrawal slips in good faith, as she had full trust and confidence in Nolasco.

In a Memorandum<sup>[11]</sup> dated January 16, 2006, the OCA recommended that the report be docketed as a regular administrative matter against Nolasco, and that the same be referred to Judge Rudy Castrojas for further investigation, report and recommendation, in view of the conflicting allegations of Judge Misajon and Nolasco.

On March 14, 2006, Judge Misajon wrote the OCA requesting that steps be taken by the Court to prevent Nolasco from leaving the country and evading her accountabilities.<sup>[12]</sup> On March 28, 2006, the Court thus issued a resolution immediately suspending Nolasco from office and ordering the issuance of a hold departure order against her.<sup>[13]</sup>

On June 5, 2007, the Court adopted the recommendation of the OCA and docketed the audit report as A.M. No. P-06-2148. The administrative matter was then referred to Judge Rudy Castrojas of Branch 12, RTC-San Jose, Antique, for further investigation.

In the meantime, Judge Misajon compulsorily retired from the service on June 12, 2007.

After conducting several hearings in which respondent Nolasco and Judge Misajon were allowed to testify and present their respective witnesses, Judge Castrojas terminated his investigation and submitted his report and recommendation<sup>[14]</sup> to this Court on October 30, 2007. The investigating judge found that there were