

EN BANC

[A.M. NO. P-06-2167 (FORMERLY OCA IPI NO. 04-2079-P), June 27, 2006]

JUDGE PLENIO B. DELA PEÑA, MUNICIPAL CIRCUIT TRIAL COURT, CAIBIRAN-CULABA, BILIRAN, COMPLAINANT, VS. ROGELIO A. SIA, CLERK OF COURT, MUNICIPAL CIRCUIT TRIAL COURT, CAIBIRAN-CULABA, BILIRAN, RESPONDENT.

DECISION

PER CURIAM:

In a Letter-Complaint^[1] dated November 30, 2004, Judge Plenio B. Dela Peña, Presiding Judge of the Municipal Circuit Trial Court (MCTC), Caibiran-Culaba, Biliran, charged Rogelio A. Sia with dishonesty and misconduct for incurring cash shortages in connection with the handling of court funds in his capacity as Clerk of Court of the same *sala*.

The records show that the Provincial Auditor's Office of Naval, Biliran had issued a Memorandum^[2] dated July 12, 2000 with the following findings: (a) respondent had incurred a cash shortage of P33,900.00 under the Fiduciary Fund; (b) cash bail bonds amounting to P73,400.00 had not been deposited in the authorized depository bank as required under Section 122 of the Government Accounting and Auditing Manual, "thus exposing government funds to misappropriation or losses;" (c) respondent failed to maintain a Fiduciary Fund Cashbook which made it difficult to ascertain his total accountability; and (d) two booklets of official receipts bearing serial numbers 6532701-750 and 5267001-50 could not be found.

The Tacloban City Regional Office of the Commission on Audit (COA) had also issued an Audit Observation Memorandum^[3] dated August 14, 2003 with the following findings:

1. The Clerk of Court incurred a cash shortage in the amount of P10,596.00 as of April 8, 2003 representing his unremitted collections of the General Fund and undeposited collections of the Judiciary Development Fund. The shortage is broken down as follows:

General Fund	P5,555.00
Judiciary Dev't Fund	<u>5,041.00</u>
Total	<u>P10,596.00</u>

During the cash count, the Clerk of Court failed to produce the amount of P10,596.00 representing the balance of his accountability for the General Fund and the Judiciary Development

Fund as of April 8, 2003 (date of cash examination). He promised to the audit team that he will remit/deposit said amount the following week and submit to the audit team a copy of the validated deposit slips or the stub of the money order issued to him but he failed to do so. On April 25, 2003, the Audit Team Leader issued a Demand Letter to the Clerk of Court, which was mailed to his official station thru registered mail. The auditor did not receive any reply from said accountable officer.

Failure of the accountable officer to produce the missing funds upon demand by the Auditor is a ground for the institution of administrative and/or criminal charges against the erring xxx officer.

x x x x

2. The Clerk of Court failed to remit/deposit his collections intact daily or as soon as it reached P500.00 to the agency's duly authorized government depository bank in violation of COA-DOF Joint Circular No. 1-81 dated January 1, 1981, thereby exposing government funds to possible misuse or misappropriation.

x x x x

3. No collections were made by the Clerk of Court from October 1, 2002 to April 9, 2003 for the General Fund in violation of the Supreme Court Administrative Circular No. 3-2000 issued on June 15, 2000 thereby depriving the government of the much needed income/revenues to finance its various programs and projects.

x x x x

4. The Fiduciary Fund was not audited by the audit team on April 9, 2003 due to the failure of the Clerk of Court to submit/produce for audit the following documents, to wit:

- 1.) Bank Passbook for Fiduciary Fund;
- 2.) Deposit Slips (validated by the bank);
- 3.) Withdrawal Slip (duly validated);
- 4.) Disbursement Voucher in the name of the claimant or authorized person named in the Special Power of Attorney;
- 5.) Court Order authorizing the withdrawal/payment of cash bond;
- 6.) Acknowledgment Receipt.

The Clerk of Court alleged that the bank passbook for the Fiduciary Fund was in the possession of the Presiding Judge, which was denied by the latter, when he talked with the Auditor on August 12,

2003 at the COA Regional Office.

x x x x

5. The Clerk of Court has no available Official Receipts on hand for the use of the General Fund and the Judiciary Development Fund at the time of cash examination, thereby creating doubt as to whether collections received were receipted or not in violation of Section 68 of P.D. 1445 to the prejudice of the government.

x x x x

6. The Clerk of Court failed to prepare and submit the Monthly Report of Accountability for Accountable Forms to the Auditor, hence his accountability for accountable forms could not be immediately established as of specific period in violation of Section 445 of the Government Accounting and Auditing Manual (Vol. 1).^[4]

Another Audit Observation Memorandum^[5] dated January 26, 2004 was issued by the COA Regional Office with the following observations:

2. **Collections from bail bonds were not deposited within 24 hours upon receipt thereof with LBP-Naval in violation of the provisions of Section B (4) of Supreme Court Circular No. 50-95 dated October 11, 1995** x x x

Initial audit findings showed that as of December 10, 2003, the Clerk of Court incurred a cash shortage in the amount of P15,400.00 representing his undeposited collections for the Fiduciary Fund as of December 10, 2003.

x x x x

3. **The balance of Cash in Bank deposited with LBP-Naval under SA No. 1211-0542-60 in the amount of P156,589.15 as of December 10, 2003 from the Fiduciary Fund is doubtful due to the non-preparation and submission of the Bank Reconciliation Statement, hence the accuracy of the bank balance could not be ascertained.**

x x x x

4. **Official Receipts (Gen. Form 13-A) bearing serial numbers 6532701-750 were missing and remained unaccounted for since last cash examination conducted on May 25, 2000, hence validation on the actual amount received could not be made.**

x x x x

5. **The Clerk of Court failed to submit to the Auditor the Monthly Report of Collections and Deposits for all funds for**

verification and audit in violation of section 107 of P.D. 1445.

X X X X

- 6. The accountable officer failed to prepare and submit the Monthly Report of Accountability for Accountable Forms to the Auditor, hence his accountability for accountable forms could not be immediately established as of specific time in violation of Section 445 of the Government Accounting and Auditing Manual (Vol. II).**^[6]

On October 27, 2004, the Court Administrator (OCA) issued a Memorandum^[7] addressed to respondent with the following directive to be carried out within 10 days from notice:

A. RESTITUTE/DEPOSIT your unremitted collections listed below:

aa. P2,924.00 to JDF Savings Account No. 0591-0116-34:

Collections, May 1989-September 2004

P70,868.70

Deposits, June 1989-April 2004

(67,944.70).

Shortage

P

2,924.00

bb. P61,400.00 to Fiduciary Fund Savings Account No. 1211-0542-60:

Collections, November 1995-September 2004

P705,800.00

Withdrawals, January 1996-July 2004

(.

493,800.00).

P212,000.00

Bank balance under S/A No.

1211-0542-60, 30 Sept. 2004

P153,282.91

Unwithdrawn interest, 7/00-9/04

(2,682.91)

(150,600.00).

Shortage

P 61,400.00

cc. P1,360.00 to Special Allowance for the Judiciary Fund Savings Account No. 0591-1744-28:

Collections, November 11, 2003-September

2004 P 2,178.00

Deposits, November 11, 2003-June 2004
(818.00).

Shortage

P 1,360.00

- B. **TRANSFER** to the JDF Account the unwithdrawn Fiduciary Fund interest (net of tax) of **P2,682.91** (earned from July 2000 to September 2004);
- C. **SUBMIT** the machine-validated deposit slips, in connection with **Items A and B**, to the Chief, Fiscal Monitoring Division, Court Management Office, OCA, as proof of compliance with the directives;
- D. **SUBMIT** a list of cases filed from December 1991 to June 1992, together with the corresponding amounts collected therefrom, to be certified correct by the **Hon. Presiding Judge Plenio B. Dela Peña**.^[8]

In view of these cash deficiencies attributed to respondent, the OCA finally directed Judge Dela Peña to relieve respondent of his duties and responsibilities as clerk of court.^[9]

In his Comment,^[10] respondent gave the following explanation:

The complaint of Judge Plenio dela Peña is a retaliation and offshoot of our complaint filed against him signed by all 3rd MCTC employees, copy of the complaint is hereto attached, and marked as Annex "A." That corollary to our complaint against Judge Plenio de la Peña, the League of Barangays in the Municipality of Caibiran, Biliran also made a petition, copy is hereto attached and marked as Annex "B." Judge Plenio dela Peña who personally intervened and helped candidates or has involved himself in partisan political activity used government equipment and supplies, copy of some materials are printed utilizing the computer and printer of the Office for his personal benefit, copy of the materials are hereto attached and marked as Annex "C."

With regard to his complaint against me for Dishonesty and Grave Misconduct, I vehemently deny his accusations. I did not use government money nor property for my personal benefit. I did [not] abuse my office. Last January 3, 2005, I sent a letter of explanation to the Chief Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator, Supreme Court, Manila, copy is hereto attached and marked as Annex "D," together with the copy of the two (2) Interbranch Deposit Accommodation with Land Bank, Naval Branch dated December 29, 2004, and the third amount could not be deposited against the Fiduciary Funds because Judge Plenio de la Peña withdraw (sic) the bankbook from the possession of Mr. Orlando Salentes, designated Officer-in-Charge in lieu of me. So, on December 29, 2004, I gave the money to the new OIC in our Office, Mr. Orlando Salentes, and he acknowledged the receipt of the amount of P61,400.00, copy of the