

## EN BANC

[ A.M. No. 95-4-143-RTC, March 13, 1998 ]

**RE: REPORT ON THE JUDICIAL AND FINANCIAL AUDIT OF RTC-  
BR. 4, PANABAO, DAVAO DEL NORTE**

### R E S O L U T I O N

**PER CURIAM:**

This administrative matter is a consequence of the judicial and financial audit conducted on the 13th to the 17th of February 1995 by an Audit Team from the Office of the Court Administrator (OCA) in response to a Letter of Judge Bernanrdo V. Salundares, then Acting Presiding Judge, RTC-Br. 4, Panabo, Davao del Norte, dated 24 October 1995 inviting our attention to the disorganized state of the case records and financial accounts of the count during the incumbency of Judge Mariano C. Tupas who optionally retired on 1 August 1994.

*Judicial Audit*

The physical inventory of pending cases made by the Audit Team disclosed that-

1. Five (5) civil cases, special civil action, special proceedings and miscellaneous cases remained undecided beyond the 90-day reglementary period -

a. Civil Case No. 1989 - Seguin v. Spouses Calibuso (For reconveyance, quieting of title and damages)<sup>[1]</sup>

b. Civil Case No. 89-9 - Alombro v. Codog (Unlawful detainer on appeal)<sup>[2]</sup>

c. Misc. Case No. 93 37- C. Ridor, et al., petitioners (For issuance of new owner's duplicate TCT)<sup>[3]</sup>

d. Civil Case No. 94-64 - Demetrio v. Baylon (Forcible entry on appeal)<sup>[4]</sup>

e. Civil Case No. 88-3 - Spouses Magdael v. Oray (For injunction with prayer for writ of preliminary injunction)<sup>[5]</sup>

2 Three (3) criminal cases were likewise undecided way beyond ninety (90) days -

a. Crim. Case No. 93-118 - People v. Suarez (For homicide)<sup>[6]</sup>

b. Crim. Case No. 90-189 - People v. Alcomendras (For qualified theft)<sup>[7]</sup>

c. Crim. Case No. 94-136 - People v. Castro (For grave slander)<sup>[8]</sup>

3. Cases submitted after 1 August 1994 when Judge Tupas optionally retired -

- a. Civil Case No. 93-70 - Del Campo v. Spouses Sison (For annulment of deed of sale)<sup>[9]</sup>
- b. Civil Case No. 90-72 - Trinio v. Rural Bank of Sto Tomas (For enforcement of right to purchase)<sup>[10]</sup>
- c. Civil Case No. 94-16- (No title reported) (For declaration of nullity of marriage)<sup>[11]</sup>
- d. Civil Case No. 91-22 - Heirs of M. Estarco v. Tayug (For damages under *culpa aquiliana*)<sup>[12]</sup>
- e. Crim Case No. 92-208 - People v. Palma Gil (For murder)<sup>[13]</sup>
- f. Civil Case No. 1586 - Heirs of C. Borre v. Nasser (For declararion of nullity)<sup>[14]</sup>
- g. Civil Case No. 94-53 - Omanos v. Forsentera (For declaration of nullity of deed of sale)<sup>[15]</sup>

4. Minutes of Proceedings appeared only in cases which were elevated to the Court of Appeals and remanded to it afterwards. All unappealed cases did not have Minutes of Proceedings on file.

5. At least fifty (5) decided civil and miscellaneous cases as well as special proceedings were not properly logged in the appropriate Docket Book as disposed cases.

6. In almost all the case records, pleadings were not chronologically stiched and, in some cases, they were not attached to the *expedientes*.<sup>[16]</sup>

### Financial Audit

On the other hand, the financial audit for the period covering August 1989 to 31 January 1995 provided the following data:

1. The collection for Fiduciary Fund were effected by Atty. Victor R, Ginete, Clerk of Court, RTC- Br. 4, Panabo, Davao del Norte, only in June 1993. Previous to this the amounts were directly deposited by the litigants with the Municipal Treasurer of Panabo. At the time of the audit in 1995, Atty Ginete was six (6) months behind in the submission of his reports.<sup>[17]</sup> There was no Cash Book kept for the Fiduciary Fund. The Unwithdrawn Fiduciary Fund collection deposited with the Treasurer's Office amounted to P335,545.00. As of 2 March 1995, Atty. Ginete incurred a shortage of P12,461.75.

2. The total collection for Judiciary Development Fund(JDF) was P545,843.47 and only the amount of P527,466.34 was remitted thus resulting in a total shortage of P18,377.25 as of 7 March 1995. The transactions in the Cash Book were recorded starting January 1993 only. From August 1989 to Febraury 1990, JDF collection were remitted to the National Treasury and not to the PNB - Supreme Court, in violation of SC Circular No. 5 of 21 February 1985. This however stopped in March 1990.

3. For the Clerk of Court General Fund, of the total collection of P270,368.56 only the amount of P263,518.91 was remitted thus showing a shortage of P6,849.65. After the audit, however, Atty. Ginete further remitted P7,317.65 on 7 March 1995 resulting in an excess of P468.00.

4. For the Ex-Officio Sheriff General Fund, a total collection of P5,333.00 was made but only P5,297.00 was remitted, incurring a shortage of P36.00. After the audit, Atty Ginete remitted P152.00 on 7 March 1995 which was P116.00 more than the amount due.

5. For the Sheriff Trust Fund, no collection at all was found.

6. All collection were later on deposited still with the Rural Bank of Panabo under Savings Account No. S/A #51-26718-1.<sup>[18]</sup> Other than the entries in the passbook, only a few duplicate copies of the savings account deposit slips were kept. Deposit slips on file lumped together all the different collections into a single total therein.

7. Collection for JDF, General fund, Legal Research Fees and Land Registration Commission Fees were withdrawn from the Rural Bank Panabo after earning interest for three (3) months and transferred to the Land Bank of the Philippines (LBP), Tagum Branch.

8. Posted Supreme Court salary checks of employees were found to have been encashed from the Fiduciary Fund Collections.

9. Collection by the court were allowed to be borrowed by the personnel: Judge Tupas borrowed P500.00 on 19 April which he paid back on 23 May 1991; and Atty. Ginete made several unauthorized withdrawals: (a) P1,253.00 on 8 November 1991 for himself and P800.00 for James Bacaltos, the legal researcher who was then taking the bar examinations; (b) P800.00 on 27 March 1992; and, (c) P3,500.00 on 3 April 1992, for a certain Jimboy and P500.00 for himself.

On 30 May 1995 this Court *en banc* resolved<sup>[19]</sup> to -

(1) require Judge Mariano C. Tupas to EXPLAIN: (a) why he did not decide before he optionally retired CvC 1989, CvC 89-9 and Misc. 93-37, all of which had already been undecide for more than ninety (90) days; (b) why he did not resolve before he optionally retired the Motion to Dismiss in CvC 88-3 which had been left unresolved for more than ninety (90) days; (c) why he did not efficiently manage the court's affairs which resulted in the lack of Minutes in all the cases being heard by the court, the topsy-turvy and haphazard manner of stitching the various pleadings to their respective court *expedientes*, and the non-archiving of criminal case which should have been archived; and (d) why he borrowed P500.00 on April 19, 1991 from the court's S/A#51-26718-1 in deposit with Rural Bank of Panabo, Davao;

(2) require Victor R. Ginete, Clerk of Court, to EXPLAIN: (a) the shortages of P12,461.75, P18,377.25, P6,849.65 and P36.00 in the Fiduciary Fund, Judiciary Development Fund, Clerk of Court General Fund and Ex-Officio Sheriff General Fund, respectively, and (b) the borrowing from the court's S/A in the amounts of P1,553.00, P300.00 and P4,000.00 made on November 8, 1991, March 27, 1992 and April 3, 1992, respectively, for himself and James Bacaltos, the court's legal Researcher ; and

(3) require Ms. Delsa M. Flores, the court Interpreter, to explain why she has never made the Minutes for the cases being heard by the court.

In compliance with the Resolution of 30 May 1995, Judge Mariano C. Tupas, Atty. Victor R. Ginete and Ms. Delsa M. Flores submitted their respective explanations.

Re: Judge Mariano C. Tupas

In his Letter/ Explanation dated 21 August 1995,<sup>[20]</sup> retired Judge Tupas belied the report and claimed that he efficiently managed RTC -Br. 4, Panabo, while he was its presiding Judge. Admittedly, his Interpreter could not prepare the Minutes considering that he conducted hearings in the morning and in the afternoon. Moreover, although he had ordered all pleadings and other papers to be properly stitched, the Court Aide could not manage it well as he was new to the job. Judge Tupas denied borrowing P500.00 from the court's account with the Rural Bank of Panabo. In support thereof, he attached a withdrawal slip dated 19 April 1991<sup>[21]</sup> duly certified at the back by the bank manager showing that the withdrawal slip was signed by Atty. Ginete and Ms. Belen Basa. A certification by Ms. Basa to the effect that Judge Tupas never meddled with the money matters of the court<sup>[22]</sup> was also annexed to the Letter/Explanation.

Re: Atty. Victor R. Ginete

For his part, Atty Ginete made the following clarification in his Letter of 1 August 1995<sup>[23]</sup>.

1. On the P12,461.75 Shortage in the Fiduciary Fund

The reason why the receipt evidencing deposits and withdrawal were not on file when the Audit Team visited them on 13 February 1995 is that it was the practice in RTC of Panabo to attach all pertinent documents, including those involving fiduciary transactions, to the records of the case stressing that the court had a caseload of approximately 900 cases and the receipts had to be retrieved from the *carpeta*. It was only on 24 February 1995, after diligent efforts were exerted, that they were able to get some of the pertinent papers therefrom, e.g., (a) O.R. No. 9875455 dated 14 September 1993 in the amount of P2,400.00 issued to Rolando Mawas in Crim. Case No. 93-175; (b) O.R. No. 9875459 dated 17 November 1993 in the amount of P1,000.00 issued to Fernan Dingle in Crim. Case No. 3080; (c) o.r. No. 9875460 dated 22 November 1993 in the amount of P500.00 issued to Picat Panaginit in Crim. Case No. 2973; (d) O.R. No. 9875462 dated 29 November 1993 in the amount of P500.00 issued to Danilo Rivera in Crim. Case No. 2973; and (e) O.R. No. 9875498 dated 17 June 1994 in the amount of P12,500.00 issued to Efren Saman in Crim. Case No. 93-176.

Atty. ginete further claimed that he assumed office without the benefit of a formal turnover as then Acting Clerk of Court Leo Cabelloro went on AWOL and was later on charged with gross dishonesty and gross misconduct by reasons of which he was dismissed from government service. The S/A No. 51-26718-1 of the court with the Rural Bank of Panabo is in continuation of the savings account opened by then Clerk of Court Caballero.

2. On the P18,377.25 Shortage in the Judiciary Development Fund

Atty. Ginete claimed that he was then new in the service when the reported shortage occurred due to non-remittance of the funds for the year 1991 or 1992. As there was no PNB or Land Bank in the municipality he had to deposit whatever funds were collected by him under the savings account of the court with the Rural Bank of Panabo, withdrawing the corresponding amount only when it was time to remit. According to him, he remitted P3,696.83 and P3,589.00 for the months of November and December,

respectively, respectively, and the remaining balance of ₱12,270,42 was left deposited with PNB, Panabo.

3. On the ₱6,849.65 Shortage in the General Fund

Atty. Ginete explained that remittances in the amounts of ₱456.00 and ₱430.00 for the months of November and December 1994 were made and the balance was again deposited under the savings account of the court at the Rural Bank of Panabo. The reported shortage of ₱36.00 in the Sheriff General Fund was also deposited in the bank.

4. On the borrowing from the saving account of the court in the amount of ₱1,553.00, ₱300.00 and ₱4,000.00

Atty. Ginete remonstrated that he was of the impression that since treasury checks were government obligations, he encashed the postdated treasury warrants of Mr. Boyd James B. Bacaltos for humanitarian reasons as the latter was going to Manila to take the Bar Examination.

Moreover, Atty. Ginete updated the Court on the Status of the cases found by the Audit Team to have been pending beyond the 90-day period: (a) Civil Case No. 89-9 was resolve on 4 July 1994; (b) Civil Case No. 1989 was not decided because Atty. Pedro C. Buhion, counsel for the defendant, passed away before formal submission of evidence as shown in the Order of 13 August 1992 and up to the time of the filing of Atty. Ginete's comment, no new counsel had entered his appearance; (c) Civil Case No. 88-3 was decided on 16 December 1988 based on the Compromise Agreement submitted to the court; and (d) Misc. Case No. 93-37 was archived as neither the petitioner nor his witnesses attended the hearings on 30 August 1993, 27 September 1993, 11 October 1993 and 20 October 1993.

Atty. Ginete claimed that pleadings were properly stitched to their respective *expedientes* because RTC Aide Luisito B. Cagape was new in the service and did not yet know his job well. However, efforts had already been exerted to put the records in order.

Re: Ms. Delsa M. Flores

On 1 August 1995 Ms. Flores submitted her Comment<sup>[24]</sup> wherein she confirmed that one of her principal duties was preparing the Minutes of the Proceedings in every case but which she could not ably perform due to the volume of cases being handled by the court (900 more or less) and the setting of hearings morning and afternoon. She also claimed to have tentatively prepared the Minutes after every session in order to finalize them later but unfortunately failed to do so on account of the great number of cases scheduled daily. According to her, she attended to her duties religiously and conscientiously since the time her attention on the matter was called by the Audit Team

On 19 October 1995 the Office of the Court Administrator received the Letter/Comment dated 11 October 1995 of Judge Bernardo V. Salundares,<sup>[25]</sup> then stationed at RTC Br. 28, Linga, Surigao del Sur, to the explanations given by Atty. Ginete and Ms. Flores, copies of which were furnished him.

As regards Ms. Flores, Judge Salundares avers that she had been remiss in the performance of her duties from the time she assumed office in the 1991 up to 1995 when the audit was done. This was proof of her utter laxity and ineptness in records