

EN BANC

[A.M. No. 96-1-25-RTC, April 18, 1997]

REPORT ON THE FINANCIAL AUDIT IN RTC, GENERAL SANTOS CITY; AND THE RTC & MTC OF POLOMOLOK, SOUTH COTABATO. D E C I S I O N

PER CURIAM:

This matter concerns the report and recommendation of the Office of the Court Administrator on the results of the audit of the books of account of the clerks of court of the Regional Trial Court of General Santos City, the Regional Trial Court of Polomolok, South Cotabato, and the Municipal Trial Court of Polomolok.

1. Regional Trial Court of General Santos City:

The audit of the books of account of Clerk of Court Elmer D. Lastimosa showed a cash overage of P105.00 and a shortage of P196,983.49. Mrs. Eliasim J. Narvaez, cash clerk III of the RTC, explained that the overage was actually her money because she used her own money whenever there was no loose change available in her cash collections. On the other hand, with respect to the Judiciary Development Fund the audit team found that the total collections for the period April 1991 to December 1994 amounted to P2,887,384.99, but only P2,690,401.50 had been remitted to the bank so that there was a shortage of P196,983.49. The shortage was admitted by Ms. Teresita Blanco who, although holding an appointment as social welfare officer, also handled the cash collections of the court. Ms. Blanco did not record her collections before January, 1995. Documents, such as the triplicate copies of official receipts covering the collections during the period, which could shed light on the matter, were missing. Apparently, Ms. Blanco destroyed them to conceal her misappropriation. Nevertheless, other evidence shows that the collections from April 1991 to June 1995 (except the months of May 1992 and July, 1993, which could not be determined because no other evidence covering these periods could be found) amounted to P2,887,384.99. On the other hand, based on the subsidiary ledgers of the Accounting Division and the certification of the Philippine National Bank General Santos City Branch, the total remittances were found to be P2,690,401.50. There was, therefore, a shortage of P196,983.49.

The Clerk of Court, Atty. Elmer Lastimosa, said that he was surprised by the discovery of the shortage and that he did not know how it was incurred. According to him, Ms. Teresita Blanco was already performing the work of cash clerk, handling the funds of the court, on July 8, 1991 when he became the clerk of court. Atty. Lastimosa explained that he did not want to antagonize the members of his staff by changing the system already in place. Besides, he did not know accounting procedures and he simply assumed that the staff members knew what they were doing. He trusted Ms. Blanco because she is the godmother of his oldest child. He enjoined his staff to do their duties faithfully. Upon discovery of the defalcation, Atty. Lastimosa said he demanded from Ms. Blanco restitution of the amount.

As already stated, Ms. Teresita Blanco admitted the shortage and the amount thereof. She claimed that she used part of her collection to defray the hospital expenses of her two-day old niece who suffered a viral infection. Her sister, who is the mother of the child, is a public school teacher depending on her meager salary for their livelihood, while the latter's husband is jobless. Ms. Blanco said she intended to repay the amount she had "borrowed"^[1] from her collection, but, before she could do so, her brother-in-law living in Balagtas, Bulacan, died. She was forced by circumstance to use some of her collection to pay for the transportation of her family from Koronadal, South Cotabato, to Bulacan. In addition, Ms. Blanco said she loaned money taken from her collection to her co-employees, because otherwise they would "fall prey to loan sharks or usurers charging interest rate ranging from 10% to 21% a month."^[2] Ms. Blanco was certain that her co-employees would repay the amounts they borrowed.

Ms. Blanco paid a total of P105,520.87, leaving a balance of P91,462.62. Checks, corresponding to her salaries and bonuses for the period August 1, 1995 to May 16, 1996, in the amount P52,340.49, were withheld after discovery of the shortage. During this period, Ms. Blanco did not work. She was on vacation leave from August 1, 1995 up to October 31, 1996 but she did not report for work until October 24, 1996, after she had been ordered to do so.

On the basis of the foregoing facts, the OCA recommends that:

"1. Ms. Teresita C. Blanco, Social Welfare Officer II, be dismissed from the service with forfeiture of all retirement benefits and with prejudice to reemployment in any national or local office of agency of the Government, including government-owned or controlled corporations, for misappropriating the amount of P196,983.49 from the JDF collections of her court;

"2. accept Ms. Blanco's deposit of P105,520.87 with the Land Bank of the Philippines' General Santos City branch last December 4, 1996 as partial restitution of the amount of P196,983.49 which she misappropriated from the JDF collections of her court;

"3. the cash value in the amount of P52,340.49 of all the Land Bank of the Philippines checks (itemized listing found on page 21 of this Memorandum) due Ms. Blanco, for her vacation leave with pay, sick leave with pay and other benefits due her for the period August 1, 1995 to May 16, 1996, be used to pay, the amount of P196,983.49 which she misappropriated from the JDF collections of her court;

"4. the net salary due her, for the period October 24, 1996 to the date the Court finally decides her fate, be likewise used to pay the amount of P196,983.49 which she misappropriated from the JDF collections of her court; and

"5. Atty. Elmer D. Lastimosa, Clerk of Court VI, RTC, General Santos City, South Cotabato be fined one (1) month's salary for his negligence in the handling of the court's JDF collections; . . ."

Ms. Blanco is guilty of dishonesty and should be dismissed from the service, with prejudice to her reinstatement in the government, and all leave credits and retirement benefits due her forfeited, as recommended. As recommended also, the amount of P105,520.87, which she deposited on December 4, 1996 in the Land Bank of the Philippines General Santos City branch, should be credited to her account so that her liability for the period in question should be reduced to P91,462.62.

Rule XIV, Section 9 of the Civil Service Rules provides:

"The penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of leave credits and retirement benefits, and the disqualification for reemployment in the government service. Further, it may be imposed without prejudice to criminal or civil liability."

Although the amount of P52,340.49 corresponds to Ms. Blanco's salaries, nonetheless it is subject to forfeiture under this Rule because it actually represents the money value of vacation leaves, considering that during the period in question, she was either on vacation leave or was absent without leave (AWOL). The amount cannot, therefore, be applied to the payment of shortage as the OCA recommends it should be.

Recommendation No. 4 is well taken. The salary which Ms. Blanco has earned since her return to work on October 24, 1996 until her separation from the service should be applied to the payment of her liability consistent with Rule XIV, Section 9 of the Civil Service Rules.

The Court agrees that the misappropriation of funds pertaining to the Judiciary Development Fund by Ms. Teresita Blanco constitutes malversation under Article 217 of the Revised Penal Code. Her intention to repay the amount cannot erase her criminal liability.^[3] The Court Administrator should take steps for the criminal prosecution of Ms. Blanco.

With respect to recommendation No. 5 of the OCA, the Court finds that Atty. Lastimosa is guilty not only of negligence but also of inefficiency and incompetence in the performance of official duty. Apparently lost on him was what this Court stated in OCA vs. Bawalan:^[4]

"The Office of the Clerk of Court performs a very delicate function, that of being the custodian of the court's funds and revenues, records, properties and premises. Being the custodian thereof, the clerk of court is liable for any loss, shortage, destruction or impairment of said funds and properties. . . . Section 7, Rule 136 of the Rules of Court requires that 'the clerk shall safely keep all records, papers, files, exhibits and public property committed to his charge',

"By virtue likewise of his duty as custodian of the court's funds, respondent had no justification whatsoever for leaving the collection and issuance of receipts for legal fees to Emy Austria. It devolves upon him to personally attend to the collection of the fees, the safekeeping of the money thus collected, the making of the proper entries thereof in the

corresponding book of accounts, and the deposit of the same in the offices concerned. These duties he had to discharge notwithstanding his admission or pretension that since he has no knowledge of accounting rules and regulations, he was constrained to rely on the assistance of his designated collecting officer. The collection of legal fees, by its nature, is a delicate function of clerks of court as judicial officers entrusted with the correct and effective implementation of the regulations thereon. Functionally, the work involves the examination and verification of every pleading and document to determine with accuracy the amount of collectible revenues or fees which by law properly belong to the Government."

Atty. Lastimosa's dependence on his staff members for the performance of his duties cannot be justified by the fact that he is young, has just been admitted to the bar, and is new on the job. His duties are spelled out in Chapter VII, Section B of the Manual for Clerks of Court. As the Court Administrator observed:

"While it may be true that the Clerk of Court item was his first job and he may not want to have antagonized the OCC employees who were there ahead of him, the fact is he IS the Clerk of Court and should have — even if he had not participated in any Court-sponsored seminar wherein he would have been told about his financial responsibility — looked at the cash records very carefully and asked Ms. Blanco to always give to him duplicate copies of all collections receipted for. This is only common sense where money matters are concerned for any person accountable for the same.

"Or he should have appointed a cash clerk of his own confidence after conducting a cash count and inventory as soon as he had assumed office."

Atty. Lastimosa has shown lack of administrative leadership and ability, judged by the nature of his work and position, and his duties and responsibilities.

Instead of fine equivalent to his salary for one month, as recommended by the OCA, Atty. Lastimosa should be suspended for six (6) months and one (1) day in accordance with Rule XIV, Section 23, in relation to Rule XIV, Section 17, of the Civil Service Rules.

2. Regional Trial Court of Polomolok, South Cotabato:

The audit team of the OCA found irregularities consisting of (a) failure to deposit collections of the court in the Land Bank of the Philippines and (b) the use of such collections to encash the checks of private individuals.

Atty. Antonio Tagami is the Clerk of Court of the Regional Trial Court of Polomolok, South Cotabato (Branch 39). He admitted opening an account in the Rural Bank of Tupi, but sought to justify his action on the ground that this was done with the knowledge and consent of the presiding judge, allegedly because the vault supplied by the Court could not be opened. He claimed that the choice of the rural bank as temporary depository was based on the fact it is the nearest, being less than 200 meters away from the RTC, while the Land Bank of the Philippines, the official depository of government funds, is 4.5 kilometers away and the only means of