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Consequently, the Sandiganbayan did not gravely abuse its discretion amounting to lack or excess of jurisdiction in denying petitioner's motion to suspend trial.

WHEREFORE, the court hereby *DISMISSES* the petition.

No. costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), and *Kapunan, J.*, concur.

Puno, and *Ynares-Santiago, JJ.*, on official business abroad.

THIRD DIVISION

[A.M. No. RTJ-98-1425. November 16, 1999]

DOMINGO G. PANGANIBAN, *complainant, vs.* **JUDGE PABLO B. FRANCISCO and BRANCH CLERK ATTORNEY LIWAYWAY ABASOLO**, *respondents.*

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a) To afford adequate protection to the constitutional rights of the accused;

b) When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;

c) When there is a prejudicial question which is sub judice;

d) When the acts of the officer are without or in excess of authority;

e) Where the prosecution is under an invalid law, ordinance or regulation;

f) When double jeopardy is clearly apparent;

g) Where the court has no jurisdiction over the offense;

h) Where it is a case of persecution rather than prosecution;

i) Where the charges are manifestly false and motivated by the lust for vengeance;

j) When there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied.

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SYNOPSIS

In July 1995, two election contests were filed before the Regional Trial Court of Sta. Cruz, Laguna. These two cases were consolidated and assigned to Judge Pablo B. Francisco. One of them was the mayoralty protest against herein complainant Domingo Panganiban. Judge Francisco constituted five Revision Committees. Protestants made a cash deposit in the total amount of ₱286, 500.00 pursuant to Section 10, Rule 35 of the COMELEC Rules of Procedure and appointed Mrs. Dina Veronica Lleander as their attorney-in-fact for the disbursement of the said fund. In the course of the revision of ballots, Judge Francisco ordered several withdrawals and deliveries of money to Clerk of Court Liwayway Abasolo which amounted to ₱285,748.00. On November 23, 1995, the counsel for complainant filed a "Motion to Render Accounting". That incident was followed by this administrative complaint wherein Panganiban claimed that he discovered the clandestinely executed Power of Attorney in favor of respondent Abasolo, followed by "numerous, indiscriminate, undocumented and unitemized withdrawals from the excessively deposited exclusive revisors fees" as ordered by respondent Judge. On the other hand, Judge Francisco denied the charges. The Investigating Justice reported that based on the statement of account submitted by respondent Abasolo and Ms. Lleander, the cash deposits were properly utilized. However, he stressed that the fees for the stenographers should be those within the limits fixed by law and the coordinator's fees paid to respondent Abasolo should not be allowed as the same does not find any support from the records nor does it qualify as an expense. Hence, those facts alone were not sufficient to find respondents guilty of the crimes of Malversation /Estafa, Bribery and/or Violation of the Anti-Graft and Corrupt Practices Act.

The Court fully agreed with Justice Barcelona in his report and thus adopted his recommendations. Indeed, errors and mistakes had been committed by respondent Judge, but not every misjudgment in the performance of official duties makes a judge liable therefor. In order to merit disciplinary action, the fault ascribed to a judge must be gross or patent, malicious, deliberate or done in bad faith. Like the investigating Justice, the Court was not convinced that respondent Judge was guilty of having acted in any such untoward manner. He should, however, be reminded that he must constantly endeavor to avoid giving any impression

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of impropriety, and he should take extra care in protecting the image and integrity of his office which he can do by aptly keeping up with, and exercising great zeal and diligence in, the discharge of his functions. Respondent Abasolo is herself an officer of the court, whose own conduct must equally be characterized with great propriety and integrity and always above suspicion of any unfair dealing.

Judge Pablo B. Francisco and Branch Clerk of Court Liwayway Abasolo were *ADMONISHED* to be more cautious and circumspect in the performance of their official duties.

SYLLABUS

1. **POLITICAL LAW; ELECTION LAW; ELECTION CONTEST; CHARGEABLE COSTS AND FEES; SHOULD NOT EXCEED THOSE EXPRESSLY FIXED BY LAW.**— It must be noted that unlike in election contests before the Commission on Elections (COMELEC) where chargeable costs and fees are specifically provided for in *Rule 40 of the COMELEC Rules of Procedure,* the law is silent as regards the fees and costs in election contests before courts of general jurisdiction. Thus, reference must be made to the cases of *Belarmino, et al. v. Allhan, et al., 105 Phil. 358 [1950]* and *Montero v. Guerrero, 108 Phil., 725 [1960],* where the Supreme Court held that with respect to costs in election contests tried and decided by the courts, the same shall be governed and should not exceed those expressly fixed by the Rules of Court. It was likewise ruled therein that 'expenses' in election contests should mean actual expenses connected with and incidental to the trial of such election contests. Thus, the Supreme Court allowed as expenses the sums paid to the revisors of the ballots, to the clerk of court for acting as chairman of the revision committee, and the sums paid for the transportation, handling and custody of the ballot boxes.

2. **ID.; ID.; ID.; ID.; STENOGRAPHERS' FEES SHOULD BE WITHIN THE LIMITS FIXED BY LAW.**— "Foremost in these expenses are the fees paid to the stenographers for the transcription of the notes taken during the revision of the ballots, as well as during the trial of the election contest. As the Statements of Account would show, the stenographers assigned were paid Two Hundred Pesos (₱200.00) per electoral precinct. Under *Section*

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8, Rule 141 of the Rules of Court, as amended, '(S)tenographers shall give certified transcript of notes taken by them to every person requesting the same upon payment of (a) five (₱5.00) pesos for each page of not less than two hundred and fifty words before the appeal is taken and three (₱3.00) pesos for the same page, after the filing of the appeal; provided, however, that one-half of the total charges shall be paid to the Court and the other half to the stenographer concerned.' In her Statement of Account, respondent Abasolo justified the payment of such amount by stating that it was 'upon the request of the protestants and for speedy and orderly proceedings.' Notwithstanding the foregoing, however, it must be stressed that the fees for the stenographers should be those within the limits fixed by the law. It is the duty of the stenographers to take stenographic notes and transcribe them, and they may collect only such fees as may be authorized by the Rules of Court. (see *No. 4, Section B [Specific Duties of Court Employees], Chapter II, Manual for Clerks of Court*)

3. **LEGAL AND JUDICIAL ETHICS; CODE OF JUDICIAL CONDUCT; JUDGES SHOULD ORGANIZE AND SUPERVISE COURT PERSONNEL TO ENSURE PROMPT AND EFFICIENT DISPATCH OF BUSINESS.**— The records show that respondent Judge relied entirely upon his Acting Branch Clerk of Court, herein respondent Abasolo, and Ms. Dina Veronica Lleander to account for the disbursements made from the deposit. The orders he issued allowing the disbursements were all made in lump sums, and he did not even require that these sums be accounted for in detail, and that an accounting be made immediately after every disbursement. In fact, it was only after complainant filed a 'Motion to Render Accounting' that respondent Judge required respondent Abasolo and Ms. Lleander to submit their accounting. *Rule 3.09, Cannon 3 of the Code of Judicial Conduct* states that '(A) judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of business, and require at all times the observance of the high standards of public service and fidelity.' On this score, respondent Judge was somewhat negligent.

4. **POLITICAL LAW; CONSTITUTIONAL LAW; SUPREME COURT SUPERVISION OVER COURT PERSONNEL; CLERK OF COURT; MUST PERFORM AND DISCHARGE HER DUTIES WITH HIGHEST DEGREE OF EXCELLENCE AND PROFESSIONALISM.**— "For her part,

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respondent Abasolo was likewise remiss in her duties. The manner by which the disbursements were justified and accounted for leaves much to be desired. Aside from the disorganized ledger where the revisors and other appointed personnel signed their names in receipt of their fees, no other receipts were attached to the records of this case to account for the specific amounts spent for the transportation of the ballots, purchase of the supplies and the construction of the holding room. It devolves upon respondent Abasolo to perform and discharge her duties with the highest degree of excellence and professionalism. (See. *Sec. 4 (b) Code of Conduct and Ethical Standards for Public Officials and Employees*)."

5. **LEGAL AND JUDICIAL ETHICS; JUDGES; NOT EVERY MISJUDGMENT IN PERFORMANCE OF OFFICIAL DUTIES MAKES A JUDGE LIABLE.**— Indeed, errors and mistakes have been committed by respondent Judge but not every misjudgment in the performance of official duties makes a judge liable therefor. In order to merit disciplinary action, the fault ascribed to a judge must be gross or patent, malicious, deliberate or done in bad faith.

6. **ID.; ID.; MUST AVOID GIVING ANY IMPRESSION OF IMPROPRIETY.**— He must constantly endeavor to avoid giving any impression of impropriety, and he should take extra care in protecting the image and integrity of his office which he can do by aptly keeping up with, and exercising great zeal and diligence in the discharge of his functions. What he does and how he does it, can spell approbation or censure, either of which can influence, favorably or unfavorably, the public's perception of and attitude towards the entire judiciary in more ways than one.

7. **POLITICAL LAW; CONSTITUTIONAL LAW; SUPREME COURT SUPERVISION OVER COURT PERSONNELS; CLERK OF COURT; HER CONDUCT MUST ALWAYS BE ABOVE SUSPICION OF ANY UNFAIR DEALING.**— Respondent Abasolo is herself an officer of the court, whose own conduct must equally be characterized with great propriety and integrity and always above suspicion of any unfair dealing.

APPEARANCES OF COUNSEL

Ariel Vista for complainant.
Leonardo G. Ragasa for Atty. Abasolo

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RESOLUTION

VITUG, *J.*:

In the instant administrative matter, Domingo G. Panganiban has charged Judge Pablo B. Francisco of the Regional Trial Court ("RTC") of Sta. Cruz, Laguna, Branch 26, and Acting Clerk of Court Liwayway Abasolo of the same court with "malversation/ estafa, bribery, and violation of the Anti-Graft and Corrupt Practices Act."

The case stems from a mayoralty protest filed in July 1995 by Enrique Bautista contesting the election and proclamation of herein complainant Domingo Panganiban as being the duly elected municipal mayor of Sta. Cruz, Laguna. The protest, docketed Election Contest No. SC-10, was raffled to the *sala* of Judge Hilario F. Corcuera of Branch 27. Another election protest, docketed Election Contest No. SC-11, was also filed by Grace Vergara, Lito F. Noroña, Rolando L. Unison, and Alberto E. Pabellon, the unsuccessful candidates for the Sangguniang Bayan of Sta. Cruz, Laguna, against the proclaimed winners in the local elections. Election Contest No. SC-11 was raffled to the *sala* of respondent Judge. The two cases were later consolidated and assigned to Judge Francisco, who then constituted five Revision Committees, each with three members with substitute watchers, for the revision of ballots. Four committees were organized for Election Contest No. SC-11, and a cash deposit of ₱229,200.00 was fixed therefor, broken down, as follows:

"one (1) chairman		P100.00
one (1) revisor for the protestants		P100.00
one (1) revisor for the protestees		P100.00
Total		P300.00
₱300 X 191 precincts	=	₱57,300.00
₱57,300 X 4 committees	=	₱229,200.00"[1]

[1] Report and Recommendation, A.M. No. OCA-IPI 96-215-RTJ, p. 3.

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A single committee was constituted for Election Contest No. SC-10, and a cash deposit of ₱57,300.00 was fixed, hereunder itemized, as follows:

"one (1) chairman		₱100.00
one (1) revisor for the protestants		₱100.00
one (1) revisor for the protestees		₱100.00
Total		₱300.00
₱300 X 191 precincts	=	₱57,300.00"[2]

The total cash deposit for the two cases amounted to ₱286,500.00. The deposits were made pursuant to Section 10, Rule 35, of the COMELEC Rules of Procedure; thus -

"SEC. 10. *Cash deposit.* – (a) In any protest, counter-protest or protest-in-intervention not requiring ballot revision, the protestant, the counter-protestant, or intervenor, as the case may be, shall upon the payment of the filing fee, make a cash deposit in the amount of five hundred pesos (₱500.00) which shall be applied to the payment of all expenses incidental to such protest, counter-protest or protest-in-intervention. When circumstances so warrant, additional cash deposits may be required. Any unused balance thereof shall be returned to the party making the deposit.

"(b) In case revision of ballots is required, there shall be deposited, within ten days after being required by the Court, the sum of three hundred pesos (₱300.00) for every ballot box for the compensation of revisors at the rate of ₱100.00 each.

"(c) Failure to make the cash deposits herein provided within the prescribed time limit shall result in the automatic dismissal of the protest, counter-protest, or protest-in-intervention, as the case may be.

"(d) In case the party who has paid the expenses and costs wins, the court shall assess, levy and collect the same as costs from the losing party."

Judge Francisco ordered the revision of ballots to commence on 09 October 1995 and to continue daily from 1:00-5:00 p.m., excepting Saturdays, Sundays and holidays, until its completion.

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[2] *Ibid.*

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On 17 October 1995, the protestants executed a Special Power of Attorney in favor of respondent Abasolo designating the latter to be their attorney-in-fact to "give and signify (their) conformity to any and all disbursement from any fund which (they) have deposited in court to cover expenses for supplies, tools, equipment, additional remuneration or benefits for persons or stenographers and the like in relation to the aforementioned election cases x x x." Upon advice, however, of respondent Judge who pointed out that respondent Abasolo was a court employee, the latter declined the appointment and another Special Power of Attorney was on even date executed in favor of Ms. Dina Veronica Lleander. In the course of the revision of the ballots for 191 precincts, respondent Judge ordered the withdrawal and delivery to respondent Abasolo, of the following amounts:

"DATE	AMOUNT
August 11, 1995	₱1,000.00
October 10, 1995	₱3,383.00
October 12, 1995	₱17,450.00
October 19, 1995	₱12,805.00
October 26, 1995	₱17,100.00
November 6, 1995	₱13,700:00
November 10, 1995	₱22,000.00
November 16, 1995	₱23,800.00
November 22, 1995	₱25,900.00
November 29, 1995	₱34,760.00
December 5, 1995	₱31,650.00
December 14, 1995	₱11,800.00
February 13, 1996	₱17,900.00
March 22, 1996	₱11,500.00
March 22, 1996	₱ 2,600.00
March 29, 1996	₱25,000.00
April 2, 1996	₱13,400.00
	₱285,748.00"[3]

[3] Exh. A – A-3, Folder of Exhibits.

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On 23 November 1995, the counsel for complainant filed a "Motion to Render Accounting," asseverating that there were disbursements made from the cash deposit without notice to counsel and that some members of the revision committees were not being paid their due compensation. This incident was followed by an administrative complaint filed by Panganiban charging respondent Judge with having prematurely taken over the proceedings of Election Contest No. SC-10 despite a pending motion for reconsideration filed by his counsel. The complaint further asserted that while the amount of ₱57,300.00 was fixed as exclusive revisors fees in Election Contest No. SC-10 (191 ballot boxes X ₱300.00, pursuant to COMELEC Rules of Procedure, Part VI, Rule 35, Section 10, paragraph b), respondent Judge, however, still required the four protestants in Election Case No. SC-11 to deposit ₱57,300.00 each, which was likewise paid by protestant Bautista. It was only later, complainant said, that he discovered the "clandestinely executed" Power of Attorney in favor of respondent Abasolo, followed by "numerous, indiscriminate, undocumented and unitemized withdrawals from the excessively deposited exclusive revisors fees" ordered by respondent Judge. From the deposited amount of ₱286,500.00, ₱285,748.00 were thereby withdrawn, leaving the sum of ₱171,148.00 yet to be accounted for.

Judge Francisco denied the charges and countered that all the sums disbursed from the deposit made by the protestants had been duly accounted for, and all the revisors had been paid their fees. He stated that the chairmen and the revisors had to be compensated twice at times because the functions of the committees in the two cases were coordinated. In these disbursements, that included the costs of stenographic notes, security fees, and other expenses incidental to the protests, the payments, he said, were all authorized by the protestants and indeed bore the conformity of their attorney-in-fact Ms. Lleander.

Respondent Abasolo, for her part, maintained that all withdrawals made from the deposit were supported by orders issued by respondent Judge, and that no amount of the deposit of money was taken, appropriated, or converted by her for purposes other than what had been authorized by the protestants.

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In its resolution of 13 April 1998, the Court assigned the case to Associate Justice Ramon A. Barcelona of the Court of Appeals for investigation, report and recommendation. The Investigating Justice, acting accordingly, conducted the investigation, and thereafter submitted his report and recommendation. He found that, based on the statements of account submitted by respondent Abasolo and Ms. Lleander, the cash deposits were properly utilized for the payment of revisors' fees, stenographers' fees, security fees, coordinators' fees, transportation of the ballot boxes, supplies, and expenses for the construction of the holding room. The Investigating Justice elucidated:

"The question then that needs to be resolved is whether or not these expenses incurred are taxable as expenses or costs under the law.

"At this juncture, it must be noted that unlike in election contests before the Commission on Elections (COMELEC) where chargeable costs and fees are specifically provided for in Rule 40 of the COMELEC Rules of Procedure, the law is silent as regards the fees and costs in election contests before courts of general jurisdiction. Thus, reference must be made to the cases of *Belarmino, et al. v. Alihan, et al.*, 105 Phil. 358 [1950] and *Montero v. Guerrero*, 108 Phil. 725 [1960], where the Supreme Court held that with respect to costs in election contests tried and decided by the courts, the same shall be governed and should not exceed those expressly fixed by the Rules of Court. It was likewise ruled therein that expenses' in election contests should mean actual expenses connected with and incidental to the trial of such election contests. Thus, the Supreme Court allowed as expenses the sums paid to the revisors of the ballots, to the clerk of court for acting as chairman of the revision committee, and the sums paid for the transportation, handling and custody of the ballot boxes.

"Applying the foregoing jurisprudence, it becomes evident that certain expenses incurred in Election Contest Nos. 10 and 11 should have been disallowed or tempered by respondent Judge as these do not fall within those allowed by law.

"Foremost in these expenses are the fees paid to the stenographers for the transcription of the notes taken during the revision of the ballots, as well as during the trial of the election contest. As the Statements of Account would show, the stenographers assigned were paid Two Hundred Pesos (₱200.00) per electoral precinct. (see Exhibits '65' and '67') Under Section 8, Rule 141 of the Rules of Court, as amended,

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'(S)tenographers shall give certified transcript of notes taken by them to every person requesting the same upon payment of (a) five (₱5.00) pesos for each page of not less than two hundred and fifty words before the appeal is taken and three (₱3.00) pesos for the same page, after the filing of the appeal; provided, however, that one-half of the total charges shall be paid to the Court and the other half to the stenographer concerned.' In her Statement of Account, respondent Abasolo justified the payment of such amount by stating that it was 'upon the request of the protestants and for speedy and orderly proceedings.' (p. 5, Compliance, Exhibit '65') Notwithstanding the foregoing, however, it must be stressed that the fees for the stenographers should be those within the limits fixed by the law. It is the duty of the stenographers to take stenographic notes and transcribe them, and they may collect only such fees as may be authorized by the Rules of Court. (*see No. 4, Section B [Specific Duties of Court Employees*], Chapter II, Manual for Clerks of Court) Moreover, a review of the records of Election Contest Nos. 10 and 11 reveals that the transcript of stenographic notes (TSNs) submitted by the stenographers are incomplete. Specifically, certain notes taken during the revision of the ballots are lacking, although the Statements of Account submitted by both respondent Abasolo and Ms. Dina Veronica Lleander show that they were duly compensated on such dates. Thus, an inventory of the TSNs taken during the revision of the ballots show that the following TSNs were lacking, *viz.:* October 9, 1995 – Committees A, B, C and D; October 10, 1995 – Committee D and E; October 16, 1995 – Committee E; October 19, 1995 – Committee A, B, C and D; October 23, 1995 – Committee B; October 26, 1995 – Committee A, B, C, and D; to cite only a few. In this regard, respondent Abasolo, as the Acting Branch Clerk of Court, has administrative supervision over court personnel and it devolves upon her to see to it that their duties are properly discharged (see No. 1, Sec. A, Chapter VII, Manual for Clerks of Court).

"Respondent Judge, likewise, should have disallowed the 'coordinator's fee' paid to respondent Abasolo in the total amount of Twelve Thousand Pesos (₱12,000.00), as the same does not find any support from the records nor does it qualify as an 'expense.' Primarily, the records of this case reveals that there is no court order issued by respondent Judge which would show that respondent Abasolo was duly appointed as such 'coordinator' nor even as a revisor. While she may have performed certain duties during the revision of the ballots, these duties are only proper within her office as the Acting Branch Clerk of the court where Election Contests Nos. 10 and 11 are pending. As such,

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she should have not received any extra remuneration for performing her official tasks.

"However, these facts alone are not sufficient to find respondents guilty of the crimes of Malversation/Estafa, Bribery and/or Violation of the Anti-Graft and Corrupt Practice Act. The records support respondents' contention that all the disbursements from the deposit made by the protestants were duly accounted for, and that all these sums were expended for what respondents believed, in all seriousness, albeit erroneously, to be expenses which were allowable as expenses connected with and incidental to Election Contest Nos. 10 and 11.

"Be that as it may, respondents may be found to have been negligent in the premises. The records show that respondent Judge relied entirely upon his Acting Branch Clerk of Court, herein respondent Abasolo, and Ms. Dina Veronica Lleander to account for the disbursements made from the deposit. The orders he issued allowing the disbursements were all made in lump sums, and he did not even require that these sums be accounted for in detail, and that an accounting be made immediately after every disbursement. In fact, it was only after complainant filed a 'Motion to Render Accounting' that respondent Judge required respondent Abasolo and Ms. Lleander to submit their accounting. *Rule 3.09, Cannon 3 of the Code of Judicial Conduct* states that '(A) judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and fidelity.' On this score, respondent Judge was somewhat negligent.

"For her part, respondent Abasolo was likewise remiss in her duties. The manner by which the disbursements were justified and accounted for leaves much to be desired. Aside from the disorganized ledger where the revisors and other appointed personnel signed their names in receipt of their fees, no other receipts were attached to the records of this case to account for the specific amounts spent for the transportation of the ballots, purchase of the supplies and the construction of the holding room. It devolves upon respondent Abasolo to perform and discharge her duties with the highest degree of excellence and professionalism. (See Sec. 4 (b) *Code of Conduct and Ethical Standards for Public Officials and Employees*)."[4]

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[4] Report and Recommendation, A.M. No. OCA-IPI 96-215-RTJ, pp. 15-18.

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The Court fully agrees with Justice Barcelona in his report and thus adopts his recommendations. Indeed, errors and mistakes have been committed by respondent Judge but not every misjudgment in the performance of official duties makes a judge liable therefor. In order to merit disciplinary action, the fault ascribed to a judge must be gross or patent, malicious, deliberate or done in bad faith.[5] Like the Investigating Justice, the Court is not convinced that respondent Judge is guilty of having acted in any such untoward manner. He should, however, be reminded that he must constantly endeavor to avoid giving any impression of impropriety, and he should take extra care in protecting the image and integrity of his office which he can do by aptly keeping up with, and exercising great zeal and diligence in, the discharge of his functions. What he does and how he does it, can spell approbation or censure, either of which can influence, favorably or unfavorably, the public's perception of and attitude towards the entire judiciary in more ways than one. Respondent Abasolo is herself an officer of the court, whose own conduct must equally be characterized with great propriety and integrity and always above suspicion of any unfair dealing.

WHEREFORE, Judge Pablo B. Francisco and Branch Clerk of Court Liwayway Abasolo are *ADMONISHED* to be more cautious and circumspect in the performance of their official duties. Branch Clerk of Court Liwayway Abasolo is *DIRECTED* to promptly return the coordinator's fee of ₱12,000.00 which she has received.

SO ORDERED.

Melo, (Chairman), Panganiban, Purisima, and *Gonzaga-Reyes, JJ.*, concur.

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[5] *Del Callar vs. Salvador*, 268 SCRA 320.