Supreme Court E-Library

EN BANC

[A.M. No. P-15-3299; April 25, 2023]
(Formerly A.M. No. P-14-12-404-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *Complainant, v.* **ATTY. ROBERT RYAN H. ESMENDA, CLERK OF COURT VI, REGIONAL TRIAL COURT, LIPA CITY, BATANGAS,** *Respondent*.

D E C I S I O N

***PER CURIAM*:**

This is an administrative case which emanated from the financial audit conducted by the Financial Audit Team (FAT) of the Office of the Court Administrator (OCA) on the books of accounts of the Regional Trial Court, Lipa City, Batangas (RTC).

The Facts

The FAT conducted the financial audit pursuant to Travel Order No. 47-2014[1] and Travel Authority,[2] dated April 3, 2014. The audit covered the accountability period between December 1, 2005 to August 30, 2010 and January 11, 2011 to April 30, 2014. The audit findings, contained in a Memorandum-Report,[3] dated November 12, 2014, revealed, among others, cash shortages incurred by Atty. Robert Ryan H. Esmenda (Atty. Esmenda) in the total amount of PHP 2,914,996.52.

In a Memorandum,[4] dated November 18, 2014, the OCA adopted the recommendation contained in the FAT's Memorandum-Report, and submitted the same for the Court's consideration.[5]

---

1 *Rollo*, p. 16.

2 *Id.* at 17.

3 *Id.* at 3–15.

4 *Id.* at 1–2.

5 *Id.*

Supreme Court E-Library

In a Resolution,[6] dated February 4, 2015, the Court's First Division resolved to:

(1) to ***NOTE***: (a) the aforesaid memorandum-report; and (b) Memorandum dated November 18, 2014 of the Office of the Court Administrator;

(2) to ***DOCKET*** the memorandum-report of the Financial Audit Team as a regular administrative complaint against Atty. Robert Ryan H. Esmenda, Clerk of Court VI of the Regional Trial Court, Lipa City, Batangas, for failure to exercise diligence in the performance of his duties as Officer of the Court, thereby violating the circulars and other Court issuances regarding the proper handling of judiciary collections resulting in the shortages incurred in the different fund accounts of the Court;

(3) to ***PLACE*** Atty. Robert Ryan H. Esmenda under ***PREVENTIVE SUSPENSION*** effective ***IMMEDIATELY*** and to ***CONTINUE*** until further orders from this Court for failure to deposit the funds in due time which constitutes gross dishonesty and gross misconduct;

(4) to ***DIRECT*** Atty. Esmenda:

(a) to ***EXPLAIN*** within ten (10) days from notice hereof, the incurrence of a total cash shortage of Two Million Nine Hundred Fourteen Thousand Nine Hundred Ninety Six Pesos and 52/100 (PHP 2,914,996.52), in the following judiciary funds during his term, to wit:

FUND	AMOUNT
Fiduciary Fund	PHP 981,685.00
Sheriff's Trust Fund	174,200.00
Judiciary Development Fund	550,380.63
Special Allowance for the Judiciary Fund	620,730.89
General Fund	468,000.00
Mediation Fund	120,000.00
TOTAL	PHP 2,914,996.52

and

[6] *Id.* at 23–25.

Supreme Court E-Library

(b) to ***RESTITUTE*** the above cash shortages incurred in the Fiduciary Fund, Sheriff's Trust Fund, Judiciary Development Fund, Special Allowance for the Judiciary Fund, General Fund, and Mediation Fund in the amount of PHP 981,685.00, PHP 174,200.00, PHP 550,380.63, PHP 620,730.89, PHP 468,000.00, PHP 120,000.00, respectively, or a total of PHP 2,914,996.52, and ***SUBMIT*** to the Fiscal Monitoring Division-Court Management Office (**FMD-CMO**), the corresponding machine validated deposit slips as proof of compliance herewith, within ten (10) days from notice hereof;

(5) to ***DIRECT*** the incumbent Officer-in-Charge:

(a) to **WITHDRAW** the outstanding Fiduciary Fund still deposited with the City Treasurer's Office, Lipa City, Batangas, and **TRANSFER** the same to the Fiduciary Fund Account with the Land Bank of the Philippines; and

(b) To **SUBMIT** to the FMD-CMO the corresponding machine validated deposit slip as proof of compliance herewith, all within ten (10) days from notice hereof; and

(6) to ***DIRECT*** Executive Judge Noel M. Lindog, Regional Trial Court, Lipa City, Batangas, to ***PROPERLY MONITOR*** the financial transactions of the incumbent Officer-in-Charge.[7]

In his Explanation/Compliance,[8] dated March 27, 2015, Atty. Esmenda admitted the existence of cash shortages, but attributed the same to the absence of a Cash Clerk/Clerk III in the RTC-Office of the Clerk of Court for ten years who could have assisted him in monitoring the financial transactions of the court.[9] He also claimed that some validated deposit slips were overlooked and, as such, the total amount to be restituted may not have been properly reflected in the Memorandum-Report.[10] He likewise disclosed that some funds collected for the Sheriff's expenses were given directly to the Sheriff or Process Server

---

[7] *Id.* at 23–24. Emphasis in the original.

[8] *Id.* at 26–29.

[9] *Id.* at 26.

[10] *Id.* at 27.

Supreme Court E-Library

and were not reflected in the current account of the Sheriff's Trust Fund.[11] While Atty. Esmenda admitted that his explanation was "feeble," "flimsy," and "no way at par with the guidelines and rules enunciated by the Supreme Court in the many cases already decided," still he begged the compassion and mercy of the Court and the OCA to reconsider his suspension so he can rectify his shortcomings.[12] While he cannot restitute the shortage within the required period, he promised to restitute the same and, if reinstated, proposed that his monthly Representation and Transportation Allowances (RATA) be applied to his cash shortages.[13]

In the Resolution,[14] dated June 22, 2015, the Court's First Division noted the Explanation/Compliance and referred the administrative matter to the OCA for evaluation, report and recommendation.

In its Memorandum,[15] dated September 24, 2015, the OCA recommended the denial of Atty. Esmenda's request to apply his monthly RATA to the cash shortages and directed the issuance of a Hold Departure Order against Atty. Esmenda to prevent him from leaving the country.

On December 9, 2015, the Court's First Division issued a Resolution[16] which (i) noted the Memorandum dated September 24, 2015, (ii) denied the request of Atty. Esmenda, and (iii) issued a Hold Departure Order against him. Thus, the Court, through the Division Clerk of Court, wrote to the Department of Justice and the Bureau of Immigration and Deportation to direct the inclusion of Atty. Esmenda in the Hold Departure List.[17]

---

[11] *Id.*

[12] *Id.*

[13] *Id.* at 28.

[14] *Id.* at 31.

[15] *Id.* at 34–36.

[16] *Id.* at 37.

[17] *Id.*

Supreme Court E-Library

Following the creation of the Judicial Integrity Board (JIB), the OCA referred this matter to the JIB.

The Recommendation of the Office of the Executive Director, JIB

In its Report and Recommendation,[18] dated March 15, 2022, the Office of the Executive Director (OED) of the JIB recommended that Atty. Esmenda be found guilty of Dishonesty and Gross Neglect of Duty and, accordingly, be dismissed from the service with forfeiture of all retirement benefits, with prejudice to his re-employment in the Government.[19] The OED found that, not only did Atty. Esmenda fail to perform the duties of his office, but he also fell short in adhering to the high ethical standards expected of court employees.[20] Atty. Esmenda's shortages in the total amount of PHP 2,914,996.52 and delay in the remittance of his cash collections was in flagrant violation of Commission on Audit (COA)—Department of Finance (DOF) Joint Circular No. 1-81, OCA Circular No. 50-95, and SC A.C. No. 3-2000.[21] These acts constitute gross neglect of duty, which is punishable with dismissal, and dishonesty, which is an act unbecoming of a court personnel.[22] The OED ruled that a portion of the shortages incurred may be taken from Atty. Esmenda's leave credits.[23]

The Report and Recommendation of the JIB

In its Report,[24] dated July 6, 2022, the JIB substantially adopted the findings and recommendations of the OED, submitting that Atty. Esmenda should be held administratively liable for Serious Dishonesty and Gross Neglect of Duty. Considering the gravity of his offenses, the penalty of dismissal from service with forfeiture of all his benefits, except his accrued leave credits, and disqualification from reinstatement or appointment to any public

---

[18] *Id.* at 45–52.

[19] *Id.* at 51.

[20] *Id.* at 49.

[21] *Id.*

[22] *Id.* at 49–50.

[23] *Id.* at 50–51.

[24] *Id.* at 61–71.

Supreme Court E-Library

office, including government-owned or -controlled corporations, was deemed appropriate. The JIB further held that Atty. Esmenda's approved leave credits should be withheld and applied to his financial shortages.[25]

However, as the complaint does not specifically state that Atty. Esmenda's infractions also constitute violations as a member of the Philippine Bar, and he has not yet been required to explain why he should not be disciplined as a lawyer, the JIB noted that the determination of his liability as a lawyer shall not yet be considered in its report.[26]

The JIB further noted that the act of misappropriating funds by an accountable public officer constitutes the crime of malversation, and that the failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds to his personal use. Thus, the JIB recommended that a case of malversation should be filed against Atty. Esmenda.[27] The dispositive portion of the JIB Report reads:

> **WHEREFORE**, it is respectfully **RECOMMENDED** to the Honorable Supreme Court that:
>
> 1. respondent Atty. Robert Ryan H. Esmenda (respondent), Clerk of Court VI, Regional Trial Court, Lipa City, Batangas, be found **GUILTY** of Dishonesty and Gross Neglect of Duty and be penalized with **DISMISSAL** from the service with forfeiture of all his benefits, except his accrued leave credits, and disqualification from reinstatement of appointment to any public office, including government-owned or controlled corporations;
>
> 2. respondent be **ORDERED** to restitute the Court the amount of ₱2,459,982.37 (₱2,914,996.52 minus ₱455,014.15, the amount of his leave credits);

---

[25] *Id.*

[26] *Id.* at 69.

[27] *Id.*

Supreme Court E-Library

3. respondent be **DIRECTED** to **EXPLAIN** why he should not be disbarred as member of the Philippine Bar for his misappropriation of public funds; and

4. the OCA be **DIRECTED** to file the appropriate criminal charges against Atty. Robert Ryan H. Esmenda.[28]

The Issue

Should Atty. Esmenda be held administratively liable for the acts complained of?

The Ruling of the Court

The Court adopts the findings and recommendation of the JIB. The Court thus holds Atty. Esmenda administratively liable for Serious Dishonesty and Gross Neglect of Duty and imposes the recommended penalty of dismissal and forfeiture of all benefits.

A public office is a public trust, and the Constitution mandates that "public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency."[29] The Court has repeatedly stressed the duty of court employees to always conduct themselves in a manner that is beyond reproach:

> [A]ll court employees must exercise at all times a high degree of professionalism and responsibility, as service in the Judiciary is not only a duty but also a mission. The Court has repeatedly emphasized that everyone in the judiciary, from the presiding judge to the clerk, must always be beyond reproach, free of any suspicion that may taint the judiciary. Public service requires utmost integrity and discipline. A public servant must exhibit at all times the highest sense of honesty and integrity, for no less than the Constitution mandates the principle that "a public office is a public trust and all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency." As the administration of justice is a sacred task, the persons involved in it ought to live up to the strictest standards of honesty and integrity. Their conduct, at all times, must not only be characterized by propriety and decorum, but must also

---

[28] *Id.* at 69–70. Emphasis in the original.

[29] 1987 CONST., art, XI, sec. 1.

be above suspicion. Thus, every employee of the judiciary should be an example of integrity, uprightness, and honesty.[30]

Clerks of Courts perform vital functions in the administration of justice.[31] They perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises.[32] As such, they generally are also the treasurer, accountant, guard and physical plant manager of the trial courts.[33] The Clerk of Court's functions are imbued with public interest that any act which would compromise, or tend to compromise, that degree of diligence and competence expected of them in the exercise of their functions would destroy public accountability and effectively weaken the faith of the people in the justice system.[34]

Clerks of Courts are mandated to timely deposit collections for the judiciary and to submit monthly financial reports on these collections. As summarized in the report of the OED-JIB, the following circulars underscore the duties of clerks of courts:

> OCA Circular No. 32-93 requires all Clerks of Court/Accountable Officers to submit to the Court a monthly report of collections for all funds not later than the 10th day of each succeeding month. Likewise, OCA Circular No. 113-2004 provides that the monthly reports of collections and deposits for the [Judiciary Development Fund], [Special Allowance for the Judiciary], and [Fiduciary Fund] shall be sent not later than the 10th day of each succeeding month to the Chief Accountant of the of the [Accounting Division], [Financial Management Office], OCA.
>
> As to the period within which to deposit the fiduciary collections, COA-DOF Joint Circular No. 1-81 provides that collecting officers shall deposit their national collections intact to the Bureau of the Treasury or to any authorized government depository bank as prescribed below:

---

30 *Office of the Court Administrator v. Isip*, 613 Phil. 32, 38-39 (2009) [Per J. Carpio, First Division].

31 *Office of the Court Administrator v. Alauya*, 892 Phil. 38, 47 (2020) [Per J. Hernando, Third Division].

32 *Judge Ladaga v. Atty. Salilin*, 888 Phil. 413 (2020) [*Per Curiam, En Banc*].

33 *Id.*

34 *Office of the Court Administrator v. Alauya*, *supra* note 31, at 47.

Supreme Court E-Library

. . . .

Also, OCA Circular No. 50-95 requires that all collections from bailbonds, rental deposits, and other fiduciary collections be deposited within 24 hours by the Clerk of Court concerned, upon the receipt thereof, with the LBP. In localities where there are no branches of LBP, fiduciary collections shall be deposited by the Clerk of Court with the provincial, city or municipal treasurer.

Moreover, SC A.C. No. 3-00 mandates that the daily collections for the JDF and the [General Fund] in the MTC shall be deposited everyday with the nearest LBP branch or if depositing daily is not possible, deposits for the fund shall be at the end of every month; provided, however, that whenever collections for the Fund reach ₱500.00, the same shall be deposited immediately even before the said period.[35]

The mandatory nature of the clerk of court's duties signify that any failure or delay in the remittance of collections may be considered as a serious breach of duty to the public.[36] Safekeeping of funds and collections is essential to an orderly administration of justice and no protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability for government funds.[37] The funds entrusted to clerks of court are intended for the courts and litigants for the efficient administration of justice.

Atty. Esmenda was undoubtedly remiss in performing his financial and administrative duties with utmost diligence as Clerk of Court VI, which included timely depositing the court collections and regularly submitting his monthly report. He clearly admitted to incurring the cash shortages amounting to PHP 2,914,996.52, yet he failed to offer an acceptable reason that could persuade this Court to exercise leniency in resolving this administrative

---

[35] *Rollo*, pp. 47–48.

[36] *See Office of the Court Administrator v. Alauya*, *supra* note 31, at 50, *citing Office of the Court Administrator v. Fontanilla*, 695 Phil. 142, 148–149 (2012) [Per J. Mendoza, *En Banc*].

[37] *Office of the Court Administrator v. Clerk of Court Ermelina C. Bernardino*, 490 Phil. 500, 524 (2005) [*Per Curiam, En Banc*], *citing Re: Misappropriation of the Judiciary Fund Collections by Ms. Juliet C. Banag*, 465 Phil. 24 (2004) [Per J. Ynares-Santiago, First Division].

Supreme Court E-Library

matter. Thus, Atty. Esmenda cannot escape liability for his gross negligence. Not only did Atty. Esmenda fail to perform the duties of his office, he also fell short of adhering to the highest ethical standards expected of court employees.

Dishonesty has been defined by the Court as follows:

> Dishonesty is defined as intentionally making a false statement in any material fact, or practicing or attempting to practice any deception or fraud in securing his examination, registration, appointment or promotion. Dishonesty, like bad faith, is not simply bad judgment or negligence, but a question of intention. In ascertaining the intention of a person accused of dishonesty, consideration must be taken not only of the facts and circumstances giving rise to the act committed by the respondent, but also of his state of mind at the time the offense was committed, the time he might have had at his disposal for the purpose of meditating on the consequences of his act, and the degree of reasoning he could have had at that moment.[38]

Further, Civil Service Commission (CSC) Resolution No. 06-0538[39] classifies the offense of Dishonesty and the corresponding penalties therefor. Section 2 of CSC Resolution No. 06-0538 provides that Serious Dishonesty is punishable by dismissal from service.[40] Section 3 provides that the presence of any of the following attendant circumstances in the commission of the dishonest act constitutes the offense of Serious Dishonesty:

1. The dishonest act caused serious damage and grave prejudice to the government;
2. The respondent gravely abused his authority in order to commit the dishonest act;
3. **Where the respondent is an accountable officer, the dishonest act directly involves property; accountable forms or money for which he is directly accountable;**

---

[38] *Re: Report on the Financial Audit Conducted in the Municipal Trial Court, Labo, Camarines Norte*, A.M. No. P-21-4102, January 5, 2021 [*Per Curiam, En Banc*].

[39] Rules on the Administrative Offense of Dishonesty (2006).

[40] *Id.* at sec. 2.

Supreme Court E-Library

and respondent shows intent to commit material gain, graft and corruption;

4. The dishonest act exhibits moral depravity on the part of the respondent;
5. The respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment;
6. The dishonest act was committed several times or in various occasions;
7. The dishonest act involves a Civil Service examination irregularity or fake Civil Service eligibility such as, but not limited to, impersonation, cheating and use of crib sheets.
8. Other analogous circumstances.[41]

On the other hand, the Court defines gross neglect of duty as:

> Gross neglect of duty or gross negligence "refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property." It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.[42]

Gross neglect of duty "refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to the consequences, insofar as other persons may be affected."[43]

---

[41] *Id.* at sec. 3.

[42] *Collado v. Hon. Villar*, 891 Phil. 1, 25 (2020) [Per J. Caguioa, *En Banc*], *citing Office of the Ombudsman v. De Leon*, 705 Phil. 26, 37–38 (2013) [Per J. Bersamin, First Division].

[43] *Office of the Court Administrator v. Sarabia, Jr.*, A.M. No. P-15-3398, July

Supreme Court E-Library

Atty. Esmenda was an accountable officer by virtue of his position as Clerk of Court VI. Thus, he was guilty of Serious Dishonesty in failing to account for funds he was directly accountable for, and the mere failure to account for the same showed an intent to commit material gain. The accumulated cash shortages in his accounts, incurred by failing and/or delaying the remittance of court collections within the prescribed period, constitutes Serious Dishonesty and Gross Neglect of Duty.

Moreover, while the records do not show exactly how many times Atty. Esmenda failed to deposit the court collections, it is undisputed that Atty. Esmenda accumulated shortages in the total amount of PHP 2,914,996.52 within the period from December 1, 2005 to August 31, 2010. His irresponsible safekeeping of the court collections affects the proper administration of justice, and undeniably taint the integrity of the judiciary. Thus, the Court finds that Atty. Esmenda is guilty of Serious Dishonesty and Gross Neglect of Duty.

For purposes of determining the proper charge and corresponding penalty for erring court officers in administrative cases, the Court relies on its recently promulgated Further Amendments to Rule 140 of the Rules of Court (Amendments to Rule 140),[44] governing the discipline of members, officials, employees, and personnel of the Judiciary.[45] While the acts complained of were committed prior to the effectivity of the Amendments to Rule 140, the same still applies as Section 24 thereof expressly provides for retroactivity:

SECTION 24. Retroactive Effect. — All the foregoing provisions shall be applied to all pending and future administrative cases involving the discipline of Members, officials, employees, and personnel of the

---

12, 2022 [*Per Curiam, En Banc*], *citing Re: Complaint of Aero Engr. Darwin Reci Against CA Marquez and DCA Bahia Relative to Crim. Case No. 05-236956*, 805 Phil. 290, 292 (2017) [Per J. Perlas-Bernabe, *En Banc*].

[44] RULES OF COURT, Rule 140, as amended by A.M. No. 21-08-09-SC, February 22, 2022.

[45] *Office of the Court Administrator v. Sarabia, Jr.*, A.M. No. P-15-3398, July 12, 2022 [*Per Curiam, En Banc*].

Supreme Court E-Library

Judiciary, without prejudice to the internal rules of the Committee on Ethics and Ethical Standards of the Supreme Court insofar as complaints against Members of the Supreme Court are concerned.[46] (Underscoring supplied)

Gross Neglect of Duty and Serious Dishonesty are both categorized as serious charges under Section 14 of the Amendments to Rule 140. With regard to the applicable penalty, Section 17 thereof provides:

SECTION 17. *Sanctions* –

(1) If the respondent is guilty of a serious charge, any of the following sanctions shall be imposed:

   (a) Dismissal from service, forfeiture of all or part of the benefits as the Supreme Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or -controlled corporation. *Provided, however*, that the forfeiture of benefits shall in no case include accrued leave credits;

   (b) Suspension from office without salary and other benefits for more than six (6) months but not exceeding one (1) year; or

   (c) A fine of more than ₱100,000.00 but not exceeding ₱200,000.00.

Moreover, Section 21 of the Amendments to Rule 140 provides the manner of imposition of the penalty in cases where there liability is established for more than one (1) offense arising from the same act or omission:

SECTION 21. Penalty for Multiple Offenses. – . . .

On the other hand, if a single act/omission constitutes more than one (1) offense, the respondent shall still be found liable for all such offenses, but shall, nonetheless, only be meted with the appropriate penalty for the most serious offense.

---

[46] RULES OF COURT, Rule 140, sec. 24 as amended by A.M. No. 21-08-09-SC, February 22, 2022.

Supreme Court E-Library

Given the severity of the offenses committed by Atty. Esmenda, the Court deems it proper to impose the penalty of dismissal from the service, with forfeiture of all his benefits, and disqualification from reinstatement or appointment to any public office, including government-owned or-controlled corporations. Since the forfeiture of benefits shall not include accrued leave credits, the Court agrees with the JIB's recommendation to deduct from the monetary value of Atty. Esmenda's accrued leave credits the amount he is required to restitute. Per the computation of the Financial Management Office, Atty. Esmenda's accrued leave credits amount to PHP 455,014.15, which amount shall be withheld and applied to his cash shortages.[47] Taken against the total cash shortage in the amount of PHP 2,914,996.52, the remaining liability stands at PHP 2,459,982.37.

Considering that Atty. Esmenda is a member of the Philippine Bar, Section 4 of the Amendments to Rule 140 is *apropos*:

> SECTION 4. *Administrative Case Considered as Disciplinary Actions Against Members of the Philippine Bar*. – An administrative case against any of those mentioned in Section 1 (1) of this Rule shall also be considered as a disciplinary action against him or her as a member of the Philippine Bar, *provided*, that the complaint specifically states that the imputed acts or omissions therein likewise constitute a violation of the Lawyer's Oath, the Code of Professional Responsibility, the Canons of Professional Ethics, or such other forms of breaches of conduct that have been traditionally recognized as grounds for the discipline of lawyers.
>
> If the complaint fails to include such specific statement, or if the disciplinary proceedings are instituted *motu proprio*, the respondent, in the interest of due process, must first be required to show cause in this respect before he or she is likewise disciplined as a member of the Philippine Bar as may be warranted by the circumstances of the case.
>
> The disciplinary action against the respondent as a member of the Philippine Bar shall be docketed as a separate administrative case but shall be jointly threshed out in, and consolidated with, the investigation of the administrative complaint against him or her as a Member, official, employee, or personnel of the Judiciary. The Judicial Integrity Board

---

[47] *Rollo*, p. 54.

Supreme Court E-Library

shall include its findings on said disciplinary action in the "Report" submitted to the Supreme Court pursuant to Sections 10 and 11 of this Rule.

The complaint instituted as a result of the financial audit does not specifically state that Atty. Esmenda's infractions also constitute charges against him as a member of the Philippine Bar, and he has not yet been required to explain why he should not be disciplined as such. Thus, in the interest of due process, Atty. Esmenda must first be directed to show cause why he should not be disciplined as a member of the Philippine Bar. A separate administrative case must be docketed for the purpose of resolving the disciplinary case against Atty. Esmenda.

Finally, the failure of Atty. Esmenda to remit funds upon demand by an authorized representative of the Court, without any justifiable reason, constitutes *prima facie* evidence of misappropriation, or that she has diverted such missing public funds to personal use. Given that the quantum of evidence required in administrative cases is less than that required in a criminal case, his criminal liability may only be determined in a separate criminal proceeding that can establish his guilt beyond reasonable doubt. Thus, the Court recommends the filing of a separate criminal case against Atty. Esmenda for malversation of public funds.

WHEREFORE, the Court finds respondent Atty. Robert Ryan H. Esmenda, Clerk of Court VI, Regional Trial Court, Lipa City, Batangas **GUILTY** of **SERIOUS DISHONESTY** AND **GROSS NEGLECT OF DUTY**. Accordingly, the Court **DISMISSES** him from the service with forfeiture of all retirement benefits (excluding earned leave credits), with prejudice to his re-employment in the Government, including government-owned or government-controlled corporations.

Atty. Esmenda is ordered to **RESTITUTE** the total amount of PHP 2,459,982.37, the remaining liability after deduction of Atty. Esmenda's accrued leave credits, broken down as follows:

Supreme Court E-Library

FUND	AMOUNT
Fiduciary Fund	PHP 981,685.00
Sheriff's Trust Fund	174,200.00
Judiciary Development Fund	550,380.63
Special Allowance for the Judiciary Fund	620,730.89
General Fund	468,000.00
Mediation Fund	120,000.00
Less: Accrued Leave Credits	455,014.13
TOTAL	**PHP 2,459,982.37**

Atty. Esmenda is further directed to **SUBMIT** to the Fiscal Monitoring Division, Court Management Office, the corresponding machine validated deposit slips as proof of compliance, within ten (10) days from notice.

Further, the Court **DIRECTS** Atty. Esmenda to **SHOW CAUSE** and **EXPLAIN** why he should not be disciplined as a member of the Philippine Bar.

Finally, the Court **DIRECTS** the Office of the Court Administrator to file with dispatch the appropriate criminal charges against Atty. Esmenda.

SO ORDERED.

Gesmundo, C.J., Leonen, S.A.J., Caguioa, Lazaro-Javier, Inting, Zalameda, M. Lopez, Gaerlan, J. Lopez, Dimaampao, Kho, Jr., and *Singh, JJ.*, concur.

Marquez, *J.*, no part due to prior participation as Court Administrator.

Hernando and *Rosario*, *JJ.*, on leave.