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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.M. No. P-07-2293. July 15, 2015]
(Formerly A.M. No. 06-12-411-MTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JOEBERT C. GUAN, former Clerk of Court, Municipal Trial Court, Bulan, Sorsogon,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; CLERKS OF COURT; GROSS NEGLECT OF DUTY; FAILURE TO DEPOSIT CASH COLLECTIONS AND INCOMPLETE DOCUMENTATIONS OF CASH COLLECTIONS, A CASE OF.— Here, Guan's shortages with respect to the JDF in the total amount of ₱49,609.10 and to the SAJF totaling to ₱5,824.00 were both due to unreported and undeposited collections. In other words, Guan's transgressions did not merely consist of delay in the remittance of his collections but to his total failure to deposit the same as well. This is a clear case of gross neglect of duty. As held, "[g]ross neglect is such neglect which, from the gravity of the case or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare." In this case, the frequency of the instances alone, *i.e.,* for two separate periods of accountability, Guan was both found to have incurred shortages with respect to the JDF and SAJF due to unreported and undeposited collections, makes

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respondent's neglect of duty so serious in its character as to threaten the public welfare. Anent Guan's accountability of ₱238,000.00 in FF, the audit team noted that the same was not due to unreported or undeposited collections but to incomplete documentation to support cash bond withdrawals therefrom. Still, it is well to state that documentation of cash collections is essential to the orderly administration of justice. It is for this reason that court circulars and other relevant rules for proper documentation such as by submission to the court of reports of collections of all funds and proper issuance of receipts, among others, were designed. Evidently, respondent failed to comply with the same and this likewise constitutes gross neglect of duty. x x x "Clerks of Court are the custodians of the courts' 'funds and revenues, records, properties, and premises.' They are 'liable for any loss, shortage, destruction or impairment' of those entrusted to them. Any shortages in the amounts to be remitted and the delay in the actual remittance 'constitute gross neglect of duty for which the clerk of court shall be held administratively liable.'"

2. ID.; ID.; ID.; GROSS NEGLECT OF DUTY; CLASSIFIED AS GRAVE OFFENSE AND PUNISHABLE BY DISMISSAL EVEN FOR THE FIRST OFFENSE, BUT WHERE THE PENALTY OF DISMISSAL CANNOT BE IMPOSED DUE TO RESIGNATION OR DROPPING OFF FROM THE ROLLS, A FINE CAN BE IMPOSED INSTEAD.— "Gross neglect of duty is classified as a grave offense and punishable by dismissal even if for the first offense pursuant to Section 52(A)(2) of Rule IV of the Uniform Rules on Administrative Cases in the Civil Service." While Guan had already been dropped from the rolls for being absent without official leave (AWOL) in A.M. No. 06-5-171-MTC, he still remains administratively liable, although the penalty of dismissal cannot be imposed upon him. Nevertheless, "[a] fine can be imposed, instead, and its amount is subject to the sound discretion of the Court. Section 56 (e) of Rule IV of the Revised Uniform Rules provides that fine as a penalty shall be in an amount not exceeding the salary for six months had the respondent not resigned [or been dropped from the rolls] the rate for which is that obtaining at the time of his resignation. The fine shall be deducted from any accrued leave credits, with the respondent being personally liable for any deficiency

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that should be directly payable to this Court. He is [also] further declared disqualified from any future government service."

R E S O L U T I O N

DEL CASTILLO,* ***J.*:**

Clerks of courts are custodians of the court's funds and revenues. Any delay in its remittance, or any shortages in the amounts, shall make the clerk of court administratively liable. Respondent Joebert C. Guan (Guan), former Clerk of Court of Municipal Trial Court (MTC), Bulan, Sorsogon, was found remiss in his duties and is accordingly penalized.

Factual Background

A financial audit of the books of accounts of MTC, Bulan, Sorsogon covering the period July 28, 1993 to August 31, 2004 disclosed that: (1) some collections were not properly and accurately recorded in the cashbooks; (2) there were shortages in the Judiciary Development Fund (JDF) and Special Allowance for the Judiciary Fund in the amounts of ₱48,207.10 and ₱5,116.00, respectively; (3) the financial reports on the JDF, General/Special Allowance for the Judiciary Fund (SAJF) and Fiduciary Fund (FF) were not regularly submitted to the Accounting Division of the Office of the Court Administrator (OCA); (4) the records control is not systematic; (5) no legal fees forms were attached to the case records; (6) daily transactions in the FF account were not duly recorded in the cashbooks; and, (7) documents needed to validate withdrawals of cash bonds from the Municipal Treasurer's Office (MTO) of Bulan were missing. The audit team thus made the following recommendation in its Partial Report[1] on the financial audit:

PREMISES CONSIDERED, it is most respectfully recommended that:

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* Per Special Order No. 2087 (Revised) dated July 1, 2015.

[1] *Rollo*, pp. 3-7.

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I. This report be docketed as a complaint against Mr. Joebert C. Guan, former Clerk of Court of MTC, Bulan, Sorsogon and DIRECT Mr. Guan to:

1. IMMEDIATELY RESTITUTE his incurred shortages [in the] Judiciary Development Fund and Special Allowance for the Judiciary Fund amounting to Forty Eight Thousand Two Hundred Seven Pesos and 10/100 (₱48,207.10) and Five Thousand [One] Hundred Sixteen Pesos and 00/100 (₱5,116.00) respectively by depositing the same to [their] respective bank account[s] through Mr. Joseph G. Guim,[2] the incumbent Officer-in-Charge, copy furnished the Fiscal Monitoring Division, Court Management Office with the machine validated deposit slip/s as proof of compliance.

2. EXPLAIN within ten (10) days from notice why he incurred such shortages and why he should not be administratively dealt with for failure to comply with the court circulars and issuances regarding proper handling of court collections;

3. SECURE from the Municipal Treasurer's Office of Bulan[,] Sorsogon an itemized list of Unwithdrawn Fiduciary Fund or cashbonds he deposited thereat, certified correct by the Municipal Accountant and the Municipal Treasurer; and

4. TRANSMIT to [the Office of the Court Administrator] through the Fiscal Monitoring Division, Court Management Office all the documents regarding the deposits and withdrawals of cashbonds from the Municipal Treasurer's Office for the period covering May 1998 to July 31, 2005, i.e., triplicate copies of Official Receipts issued, Fiduciary Fund official cashbooks, and file copies of monthly Reports of Collections, Deposits and Withdrawals together with the corresponding supporting documents like the court order, original copy of surrendered official receipts, vouchers and acknowledgment receipts as proof that all withdrawn cashbonds were properly received by the bondsmen or their authorized representatives.

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[2] Also spelled as Guin in some parts of the records.

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Then Court Administrator Christopher O. Lock approved[4] the recommendation and submitted the same to the Court.[5] On January 29, 2007, the Court issued a Resolution[6] adopting the recommendation of the OCA. In addition, this Court held in abeyance any claim of Guan for separation benefits pending resolution of the administrative matter against him.

Subsequently, Guan wrote the Court a letter[7] dated March 12, 2007 requesting that the monetary value of his leave credits be applied as payment for his accountability amounting to ₱53,323.10. He explained that he could no longer account for the shortages because some of the records pertaining thereto, as well as his Judiciary and General Fund reports, could no longer be found.

In a Resolution[8] dated August 13, 2007, the Court deferred action on Guan's request pending submission of the documents required of him, specifically (1) an itemized list from the MTO of the unwithdrawn fiduciary fund or cash bonds, certified correct by the Municipal Accountant and Municipal Treasurer; and (2) all documents regarding the deposits to and withdrawals of cash bonds from the MTO for the period covering May 1998 to July 31, 2005. But since Guan still failed to submit all the required documents, he was directed, through a Resolution[9] dated October 17, 2011, (1) to show cause why he should not be held in contempt for such failure and (2) to comply by submitting the said documents.

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[3] *Rollo*, p. 6.

[4] *Id*. at 7.

[5] *Id*. at 1-2.

[6] *Id*. at 8-10.

[7] *Id*. at 11.

[8] *Id*. at 23.

[9] *Id*. at 27-28.

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In a letter[10] dated August 26, 2011, Guan explained that while he was able to secure from the MTO a list of cash bond deposits made by him, the Fiscal Monitoring Division (FMD) of the OCA did not accept the same for being incomplete. He thus exerted all efforts to secure a complete list but what was issued him was the same incomplete list, which when submitted was again rejected by the FMD. And while he was also able to present to the FMD a certification from the MTO that its records were damaged by typhoon "Melenyo" in July 2007 (which thereby hindered the MTO from providing a complete list), the same still proved futile as the FMD did not accept the certificate. Therefore, Guan requested that an audit be conducted in the MTC of Bulan, Sorsogon. Granting Guan's request, the Court, via a Resolution[11] dated August 13, 2012, directed Executive Judge Adolfo G. Fajardo of the Regional Trial Court, Branch 65 of Bulan, Sorsogon, to conduct a financial audit on the itemized list of unwithdrawn fiduciary fund or cashbonds deposited by Guan and to thereafter submit a report thereon. Unfortunately, Judge Fajardo, in his Compliance[12] dated January 24, 2013, informed the Court that he cannot make an intelligible and comprehensive financial audit as several pertinent records were nowhere to be found. In view of this, the Court issued its July 24, 2013 Resolution[13] directing the OCA to constitute a financial audit team to conduct the audit. Accordingly, an audit team was again sent to the MTC of Bulan, Sorsogon.

Upon the conclusion of the audit, it was revealed that both the former Officer-In-Charge, Joseph C. Guim (Guim) and the incumbent Clerk of Court, Emerose F. Denso, have no accountability insofar as their periods of accountability are concerned as their books of account were in order. With respect to Guan, however, the audit team found him accountable for the following:

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[10] *Id*. at 29-30.

[11] *Id*. at 38-39.

[12] *Id*. at 42-43.

[13] *Id*. at 58-59.

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I. FIDUCIARY FUND (FF)
FOR THE PERIOD COVERED: June 17, 1998 to September 23, 2004

Guan's final accountability/shortage is ₱238,000.00. The audit team noted that Guan's FF accountability was not due to undeposited collections but to lacking documentations, specifically the deficient supporting documents on cashbonds withdrawal transactions.

II. JUDICIARY DEVELOPMENT FUND (JDF)
FOR THE PERIOD COVERED: September 1 to 23, 2004

Guan's accountability/shortage is ₱1,402.00. This comprised the unreported and undeposited collections for the period covered.

III. SPECIAL ALLOWANCE FOR THE JUDICIARY FUND (SAJF) FOR THE PERIOD COVERED: September 1 to 23, 2004

Guan's SAJF accountability/shortage is ₱708.00. This comprised the unreported and undeposited collections for the covered period.[14]

Thus, including his previous accountabilities for JDF and SAJF as found during the earlier audit in 2006, Guan's balance of accountabilities are as follows:

FUND/ ACCOUNT NAME	PERIOD/S AUDITED	BALANCE ACCOUNTABILITY (SHORTAGE/ (OVERAGE)
Fiduciary Fund	17 June 1998 to 23 Sept. 2004	[₱]238,000.00
Judiciary Development Fund (Unrestituted Shortages from previous audit)	28 July 1993 to 31 Aug. 2004	[₱]48,207.10
Judiciary Development Fund	1 to 23 Sept. 2004	[₱] 1,402.00

[14] *Id*. at 76-78.

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Special Allowance for the Judiciary Fund (Unrestituted Shortages from previous audit)	11 Nov. 2003 to 31 Aug. 2004	[₱] 5,116.00
Special Allowance for the Judiciary Fund	1 to 23 Sept. 2004	[₱] 708.00[15]

In its report[16] dated November 7, 2014, the OCA concluded that Guan was remiss in the performance of his duties and is administratively liable for:

1) failing to properly remit his cash collections in contrast with the requirements set forth in the Commission on Audit (COA) and Department of Finance (DOF) Joint Circular 1-81 and in Administrative Circular No. 13-92 dated March 1, 1992 as amended by Administrative Circular (A.C.) No. 3-2000 dated June 15, 2000;[17] and,

2) failing to remit FF collections, in complete derogation of Administrative Circular No. 50-95 dated October 11, 1995.[18]

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[15] *Id*. at 83-84.

[16] *Id*. at 72-90.

[17] Pertinent portion of which provides:

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> II. Procedural Guidelines
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> A. Judiciary Development Fund
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> xxx xxx xxx
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> 3. Systems and Procedures
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> xxx xxx xxx
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> c. In the RTC, MeTC, MTCC, MTC, MCTC, SDC and SCC. – The daily collections for the Fund in these courts shall be deposited everyday with the nearest LBP branch for the account of the Judiciary Development Fund, Supreme Court, Manila – Savings Account No. 0591-0116-34 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 period above-indicated.

[18] Under the subject "Court Fiduciary Fund," the pertinent portion of which provides:

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Thus, it recommended that:

1. Mr. Joebert C. Guan, former Clerk of Court II, Municipal Trial Court, Bulan, Sorsogon, be found GUILTY of Violation of Office Rules and Regulations and Simple Neglect of Duty and that he be ordered to PAY A FINE of ₱10,000.00 to be deducted from the monetary value of his earned leave credits and/or other retirement benefits;

2. the Office of the Administrative Services, OCA be DIRECTED to provide the Financial Management Office (FMO), OCA with the following documents pertaining to Mr. Joebert C. Guan:

2.1) Official Service Record;

2.2) Certification of Leave Credits; and

2.3) Notice of Salary Adjustment (NOSA) if any.

3. The FMO, OCA be further DIRECTED to:

3.1) PROCESS the money value of the terminal leave benefits of Mr. Joebert C. Guan, dispensing with the usual documentary requirements, and apply the same to the following shortages:

Name of Fund	Period Covered	Amount
Fiduciary Fund	17 June 1998 to 23 September 2004	[₱]238, 000.00
Judiciary Development Fund	28 July 1993 to 23 September 2004	[₱]49, 609.10
Special Allowance for the Judiciary Fund	28 July 1993 to 23 September 2004	[₱] 5, 824.00
Total		[₱] 293, 433.10

3.2) COORDINATE with the Fiscal Monitoring Division, Court Management Office, OCA, before the processing of the checks to be issued in favour of the Fiduciary

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(4) All collections from the bail bonds, rental deposits and other fiduciary collections shall be deposited within twenty four (24) hours by the Clerk of Court concerned, upon receipt thereof, with the Lank Bank of the Philippines.

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> Fund account of the MTC, Bulan, Sorsogon, and for the preparation of the necessary communication with the incumbent Clerk of Court/Officer-in-Charge thereat;
>
> 4. ORDER Mr. Guan to restitute the remaining shortages in case the monetary value of his earned leave credits and/or other benefits would not be sufficient to cover the aforementioned shortages; and
>
> 5. CLEAR MR. JOSEPH G. GUIM AND MS. EMEROSE F. DENSO, former Officer-in-Charge and incumbent Clerk of Court, respectively, MTC, Bulan, Sorsogon, of any accountability insofar as their corresponding periods of accountability are concerned, after having been audited of their books of accounts which were found to be in order.[19]

Our Ruling

The Court modifies the findings and recommendations of the OCA.

As found by the audit team, Guan's accountabilities were either due to unreported or undeposited collections or to deposited collection but with lacking documentation. This only demonstrates Guan's disorganized way of managing and documenting his collections which, as aptly observed by the OCA, is in violation of Administrative Circular No. 5-93 that provides, *viz.*:

> 3. Duty of the Clerks of Court, Officers-in-Charge or accountable officers. – The Clerk of Court, Officers-in-Charge of the Office of the Clerk of Court, or their accountable duly authorized representative designated by them in writing, who must be accountable officers, shall receive the Judiciary Development Fund collections, issue the proper receipt therefor, maintain a separate cash book properly marked CASH BOOK FOR JUDICIARY DEVELOPMENT FUND, deposit such collections in the manner herein prescribed and render the proper Monthly Report of Collections for said Fund.

However, the Court disagrees with the OCA's finding that Guan's transgressions constitute simple neglect of duty only.

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[19] *Id*. at 88-89.

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In the *Office of the Court Administrator v. Acampado,*[20] the Court declared that any shortages in the amounts to be remitted and the delay in the actual remittance thereof constitute gross neglect of duty for which the clerk of court shall be held administratively liable. Moreover, in the *Office of the Court Administrator v. Melchor, Jr.,*[21] it was held that delayed remittance of cash collections constitutes gross neglect of duty because this omission deprives the court of interest that could have been earned if the amounts were deposited in the authorized depository bank. This was also reiterated in the fairly recent case of *Office of the Court Administrator v. Mrs. Aurora T. Zuniga*.[22]

Here, Guan's shortages with respect to the JDF in the total amount of ₱49,609.10 and to the SAJF totaling to ₱5,824.00 were both due to unreported and undeposited collections. In other words, Guan's transgressions did not merely consist of delay in the remittance of his collections but to his total failure to deposit the same as well. This is a clear case of gross neglect of duty. As held, "[g]ross neglect is such neglect which, from the gravity of the case or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare."[23] In this case, the frequency of the instances alone, *i.e.,* for two separate periods of accountability, Guan was both found to have incurred shortages with respect to the JDF and SAJF due to unreported and undeposited collections, makes respondent's neglect of duty so serious in its character as to threaten the public welfare.

Anent Guan's accountability of ₱238,000.00 in FF, the audit team noted that the same was not due to unreported or undeposited collections but to incomplete documentation to support cash bond withdrawals therefrom. Still, it is well to state that

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[20] A.M. Nos. P-13-3116 & P-13-3112, November 12, 2013, 709 SCRA 254.

[21] A.M. No. P-06-2227, August 19, 2014, 733 SCRA 246.

[22] A.M. P-10-2800, November 18, 2014.

[23] *Clemente v. Bautista,* A.M. No. P-10-2879, June 3, 2013, 697 SCRA 10, 18.

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documentation of cash collections is essential to the orderly administration of justice.[24] It is for this reason that court circulars and other relevant rules for proper documentation such as by submission to the court of reports of collections of all funds and proper issuance of receipts, among others, were designed. Evidently, respondent failed to comply with the same and this likewise constitutes gross neglect of duty.[25]

"Gross neglect of duty is classified as a grave offense and punishable by dismissal even if for the first offense pursuant to Section 52(A)(2) of Rule IV of the Uniform Rules on Administrative Cases in the Civil Service."[26] While Guan had already been dropped from the rolls for being absent without official leave (AWOL) in A.M. No. 06-5-171-MTC, he still remains administratively liable, although the penalty of dismissal cannot be imposed upon him. Nevertheless, "[a] fine can be imposed, instead, and its amount is subject to the sound discretion of the Court. Section 56 (e) of Rule IV of the Revised Uniform Rules provides that fine as a penalty shall be in an amount not exceeding the salary for six months had the respondent not resigned [or been dropped from the rolls] the rate for which is that obtaining at the time of his resignation. The fine shall be deducted from any accrued leave credits, with the respondent being personally liable for any deficiency that should be directly payable to this Court. He is [also] further declared disqualified from any future government service."[27]

As a final note, "Clerks of Court are the custodians of the courts' 'funds and revenues, records, properties, and premises.'

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[24] *Office of the Court Administrator v. Atty. Dureza-Aldevera*, 534 Phil. 102, 136 (2006).

[25] *Id*.

[26] *Office of the Court Administrator v. Siwa,* A.M. No. P-13-3156, November 11, 2014, citing *Judge Absin v. Montalla*, 667 Phil. 560, 564 (2011).

[27] *Alleged Loss of Various Boxes of Copy Paper During Their Transfer From the Property Division, Office of Administrative Services (OAS), to the Various Rooms of the Philippine Judicial Academy,* A.M. No. 2008-23-SC, September 30, 2014, 737 SCRA 176, 191-192.

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They are 'liable for any loss, shortage, destruction or impairment' of those entrusted to them. Any shortages in the amounts to be remitted and the delay in the actual remittance 'constitute gross neglect of duty for which the clerk of court shall be held administratively liable.'"[28]

WHEREFORE, the Court finds respondent Joebert C. Guan GUILTY of gross neglect of duty and resolves to:

1. **ORDER** respondent TO PAY A FINE equivalent to his salary for six months computed at the salary rate of his former position at the time he was dropped from the rolls to be deducted from the monetary value of his earned leave credits and/or other retirement benefits, and, **DECLARE** him DISQUALIFIED from re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations;

2. **DIRECT** the Office of the Administrative Services of Office of the Court Administrator to provide the Financial Management Office, Office of the Court Administrator, with the following documents pertaining to respondent Joebert C. Guan:

a. Official Service Record;

b. Certification of Leave Credits; and

c. Notice of Salary Adjustment, if any.

3. **FURTHER DIRECT** the Financial Management Office of the Office of the Court Administrator to:

3.1 **PROCESS** the monetary value of the terminal leave benefits of respondent Joebert C. Guan, dispensing with the usual documentary requirements, and whatever remains therefrom after deducting the fine imposed upon him, **APPLY** the same to the following shortages:

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[28] *Office of the Court Administrator v. Acampanado, supra* note 20 at 270-271.

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Name of Fund	Period Covered	Amount
Fiduciary Fund	17 June 1998 to 23 September 2004	[₱]238,000.00
Judiciary Development Fund	28 July 1993 to 23 September 2001	[₱]49,609.10
Special Allowance for the Judiciary Fund	28 July 1993 to 23 September 2004	[₱]5,824.00
Total		[₱]293,433.10

3.2 **COORDINATE** with the Fiscal Monitoring Division, Court Management Office of the Office of the Court Administrator, before the processing of the checks to be issued in favor of the Fiduciary Fund account of the MTC, Bulan, Sorsogon, and for the preparation of the necessary communication with the incumbent Clerk of Court/Officer-in-Charge thereat;

4. ORDER respondent Guan to pay any remainder of the fine and/or restitute any remaining shortages in case the monetary value of his earned leave credits and/or other benefits would not be sufficient to cover the same; and,

5. CLEAR MR. JOSEPH G. GUIM AND MS. EMEROSE F. DENSO, former Officer-in-Charge and incumbent Clerk of Court, respectively, MTC, Bulan, Sorsogon, of any accountability insofar as their corresponding periods of accountability are concerned, after having been audited of their books of accounts which were found to be in order.

SO ORDERED.

Peralta,[**] *Bersamin,*[***] *Mendoza,* and *Leonen, JJ.,* concur.

[**] Per Special Order No. 2088 dated July 1, 2015.

[***] Per Special Order No. 2079 dated June 29, 2015.