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EN BANC

[A.M. No. P-10-2840. June 23, 2015]
(Formerly A.M. No. 10-7-87-MTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **MS. FLORED L. NICOLAS, former Court Interpreter and Officer-in-Charge; MS. ERLINDA U. CABRERA, former Clerk of Court II; and MR. EDWIN SANTOS, Clerk of Court II, all of the MUNICIPAL TRIAL COURT, GUIGUINTO, BULACAN**, *respondents*.

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; EMPHASIZED FOR JUDICIAL PERSONNEL.—** Section 1, Article XI of the Constitution declares 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, act with patriotism and justice, and lead modest lives. The demand for moral uprightness is more pronounced for the members and personnel of the judiciary who are involved in the dispensation of justice. As frontliners in the administration of justice, they should live up to the strictest standards of honesty and integrity in the public service.

2. **ID.; ADMINISTRATIVE LAW; CLERK OF COURT; DUTY TO DEPOSIT WITHIN TWENTY FOUR HOURS ALL FIDUCIARY COLLECTIONS WITH THE LAND BANK.—** Circular No. 50-95 mandates that "[a]ll collections from bailbonds, 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 Land Bank of the Philippines."

3. **ID.; ID.; ID.; DUTIES AND RESPONSIBILITIES AND LIABILITY; NOT DIMINISHED FOR AN OFFICER IN CHARGE (OIC).—** The fact that Nicolas was a mere OIC did not diminish the expectation from her to perform all the

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duties and responsibilities of a Clerk of Court. As the OIC, she bore the same responsibilities and was expected to serve with the same commitment and efficiency as a duly-appointed Clerk of Court. Likewise, she must be held liable for any loss, shortage, destruction, or impairment of the funds entrusted to her by virtue of her office.

4. **ID.; ID.; ID.; FAILURE TO REMIT COURT FUNDS UPON OFFICIAL DEMAND IS GROSS NEGLECT OF DUTY, DISHONESTY AND GRAVE MISCONDUCT PUNISHABLE BY DISMISSAL FROM OFFICE FOR THE FIRST OFFENSE.—** Failure of a public officer to remit funds upon demand by an authorized officer constitutes *prima facie* evidence that the public officer has put such missing funds or property to personal use. Without explanation as to the non-remittance of court collections while [respondent Nicolas] was the accountable officer, the *prima facie* presumption stands. In *Audit Report, RTC-4, Davao del Norte,* the Court held that the failure of the Clerk of Court to remit the court funds constitutes gross neglect of duty, dishonesty, and grave misconduct prejudicial to the best interest of the service. Under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, dishonesty, gross neglect of duty, and grave misconduct are classified as grave offenses with the corresponding penalty of dismissal for the first offense.

D E C I S I O N

***PER CURIAM*:**

Sometime in 2004, a financial audit was conducted on the books of accounts of the Municipal Trial Court of Guiguinto, Bulacan (Guiguinto MTC) covering the period March 1985 to July 31, 2004 under then Clerk of Court II Erlinda U. Cabrera. The 2004 audit revealed that Cabrera incurred shortages amounting to ₱1,483,351.85 which served as the basis of the administrative cases[1] filed against her docketed as A.M. Nos. P-05-2027 and P-05-2028.

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[1] *Reyes v. Cabrera*, 516 Phil. 55 (2006).

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To prevent further dissipation of court funds, Cabrera was relieved from her duty as collecting officer. Pending the resolution of Cabrera's administrative cases, Court Interpreter Flored L. Nicolas was appointed as Officer-in-Charge (OIC) and was designated to handle the financial transactions of the court particularly the collections, remittances and reporting of all legal fees collected by the court. Nicolas acted as such until the appointment of Clerk of Court II Edwin C. Santos on July 13, 2006.

In the meantime, Cabrera was dismissed from service for dishonesty and gross misconduct and was ordered to restitute ₱1,483,351.85 in this Court's decision[2] dated January 27, 2006 in A.M. Nos. P-05-2027 and P-05-2028.

Due to the absence without leave (AWOL) of Nicolas and the grant of study leave to Santos, a second financial audit was conducted from March 1 to 5, 2010 on the books of accounts of the Guiguinto MTC covering the period August 1, 2004 to February 28, 2010. The period of accountability of Nicolas was from August 1, 2004 to July 31, 2006 while that of Santos was from August 1, 2006 to February 28, 2010.

Below is the summary[3] of the accountability of Nicolas and Santos from the second audit:

Mr. Edwin C. Santos, Clerk of Court II		
Judiciary Development Fund (JDF)	₱	7,355.40
Fiduciary Fund (FF)		2,000.00
TOTAL	₱	9,355.40
Ms. Flored L. Nicolas, former Interpreter and Officer-in-Charge		
Special Allowance for the Judiciary Fund (SAJF)	₱	14,160.50
Judiciary Development Fund (JDF)		9,344.50
Fiduciary Fund (FF)		154,333.24
TOTAL	₱	177,838.24

[2] *Id*.

[3] *Rollo*, p. 12.

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Santos' JDF shortage resulted from his accumulated under-remittances of JDF collections for the period August 2006 to February 2010 while the FF shortage was due to his undeposited collections. The above-computed shortages have already been restituted by Santos.

The shortages attributed to Nicolas, on the other hand, were due to her failure to deposit her collections on time during her tenure as collecting officer. Her shortages remain outstanding.

The audit team also noted that the triplicate FF Official Receipts Nos. 6729451-6729500 issued by Nicolas for the period February 2005 to June 2006 were not presented for examination. All cash bonds collected during said period were extracted mainly from the Monthly Reports of Collections/Deposits and Withdrawals for Fiduciary Fund, records of cases filed for said period, as well as from the withdrawals reflected on the court's LBP Savings Account. All efforts were exhausted by the audit team to establish the true and correct amount collected under O.R. Nos. 6729451-6729500 but the following official receipts remain unaccounted for:

6729466	9729485
6729478	9729500[4]
6729481	

According to the audit team, Nicolas' accountability may still increase if the above unaccounted official receipts will be identified and examined.

In its Memorandum[5] dated June 10, 2010 to Court Administrator Jose Midas P. Marquez, the audit team recommended that:

1. **Ms. ERLINDA U. CABRERA**, former Clerk of Court II, MTC Guiguinto, Bulacan, be **DIRECTED** within fifteen (15) days from notice to:

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[4] *Id*. at 8.

[5] *Id*. at 4-15.

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a. **RESTITUTE** her balance of accountability in the following judiciary funds, to wit:

Fund		**Amount**
Clerk of Court General Fund (COCGF)	₱	54,433.00
Judiciary Development Fund (JDF)		206,418.85
Fiduciary Fund (FF)		1,069,584.70
TOTAL	**₱**	**1,330,436.55**

b. **SUBMIT** to the Fiscal Monitoring Division, CMO, OCA copy of machine validated deposit slips or LBP Certification of the said restitution; and

2. This report be docketed as an administrative complaint against Ms. Flored L. Nicolas, former Court Interpreter and Officer-in-Charge, Municipal Trial Court, Guiguinto, Bulacan for non-remittance of collections in violation of Circular No. 50-95, Amended Administrative Circular No. 35-2004 and OCA Circular No. 113-2004.

3. **Ms. FLORED L. NICOLAS**, former Court Interpreter and Officer-in-Charge, MTC, Guiguinto, Bulacan, be **DIRECTED** within fifteen (15) days from notice to:

a. **EXPLAIN** in writing why no criminal case shall be filed against her for appropriating judiciary collections for her personal use;

b. **RESTITUTE** her balance of accountability in the following judiciary funds, to wit:

Fund		**Amount**
Special Allowance for the Judiciary Fund	₱	14,160.50
Judiciary Development Fund		9,344.50
Fiduciary Fund		154,333.24
TOTAL	**₱**	**177,838.24**

c. **SUBMIT** to the Fiscal Monitoring Division, CMO, OCA the following:

c.1. copy of machine validated deposit slips or LBP Certification of the said restitution;

c.2. triplicate copy of Official Receipts Nos. 6729451 – 6729500 for examination; and

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c.3. valid and authentic documents showing that the following Official Receipts were either cancelled or withdrawn, to wit:

6729466	9729485
6729478	9729500
6729481	

4. **Mr. EDWIN C. SANTOS**, Clerk of Court II, MTC, Guiguinto, Bulacan, be **DIRECTED** within fifteen (15) days from notice to:

a. **PROCURE** from the Property Division, OAS, OCA the prescribed Official Cash Books for Judiciary Development Fund (JDF), Special Allowance for the Judiciary Fund (SAJF), Fiduciary Fund (FF), Sheriff's Trust Fund (STF) and Mediation Fund (MF) to be used in recording and monitoring of his judiciary collections.

b. **EXPLAIN** in writing why no administrative case should be filed against him for not reporting and depositing his Mediation Fund collections for the period October 2008 to February 2010 in the total amount of ₱84,000.00 and for violating the provision of Amended Administrative Circular No. 35-2004 with regards to the timely deposits of judiciary fund collections.

c. **STRICTLY ADHERE** to the provision of:

c.1. Administrative Matter No. 05-3-13-SC-PHILJA with regards to the timely submission of Monthly Reports of Collections and Deposits for the Mediation Fund.

c.2. Amended Administrative Circular No. 35-2004, Section 10 with regards to the proper handling of the Sheriff's Trust Fund and all Circulars issued by the Honorable Court, particularly OCA Circular No. 50-95.

c.3. Section 10, Rule 141 of the Rules of Court (Amended Administrative Circular No. 35-2004) Re: The amount of ₱1,000.00 shall be deposited with the Clerk of Court upon filing of the

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complaint to defray the actual travel expenses of the sheriff, process server or other court-authorized persons in the service of summons, subpoena and other court processes that would be issued relative to the case, subject to the usual accounting and auditing rules and regulations to disburse the amount. After service, a statement of liquidation shall be submitted to the court for approval.

c.4. Court issued Circulars with regards to the timely and full remittances/deposits of his judiciary collections and be **STERNLY WARNED** that the repetition of the same infractions will be dealt with more severely in the future.

x x x x x x x x x[6]

Said recommendations were approved[7] by the Court Administrator and were adopted by this Court in a Resolution[8] dated August 23, 2010.

In a Manifestation[9] dated October 14, 2010, Cabrera prayed that her compliance with the August 23, 2010 Resolution be held in abeyance for the time being pending final resolution of her criminal case for malversation of public funds so as not to render meaningless her constitutional presumption of innocence.

In a letter-explanation[10] dated October 15, 2010, Santos attributed the delay in reporting and depositing of mediation collections from October 2008 to February 2010 to (a) lack of court personnel which constrained him to multi-task; and (b) his preparation for taking the 2008 and 2009 Bar Exams. He prayed that he be given a chance to rectify his lapses without administrative penalty.

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[6] *Id*. at 13-14.

[7] *Id*. at 1-3.

[8] *Id*. at 42-45.

[9] *Id*. at 53-55.

[10] *Id*. at 47-48.

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The copy of the August 23, 2010 Resolution sent to Nicolas, however, was returned unserved with postal carrier's notation "RTS-moved out" on the envelope.[11] On June 8, 2011, the OCA was required to inform the Court of the complete and present address of Nicolas.[12] Per verification from the Records Division of the Office of Administrative Services of the OCA, however, there was no other address of Nicolas that was discovered or determined except that stated in her Personal Data Sheet, Statement of Assets, Liabilities and Net Worth and BIR Form 1902 which is at Blk. 8, Lot 5, Royale Estates, Bulihas, Malolos, Bulacan.[13] Thus, this Court, in a Resolution[14] dated November 28, 2011, required the officials and employees of Guiguinto MTC to inform the OCA if they know the whereabouts of Nicolas. In the same resolution, the letter-explanation of Santos and the manifestation of Cabrera were referred to the OCA for evaluation, report and recommendation.

In a Memorandum[15] dated June 20, 2012, the OCA recommended to this Court that:

1. Respondent Erlinda U. Cabrera's prayer in her Manifestation dated 14 October 2010 that her compliance with the Resolution dated 23 August 2010 be held in abeyance pending final resolution of the criminal case against her be **DENIED** for lack of merit;

2. Ms. Flored L. Nicolas, former Court Interpreter and Officer-in-Charge, Municipal Trial Court, Guiguinto, Bulacan, be **DIRECTED** within fifteen (15) days from notice to:

    a. **EXPLAIN** in writing why no criminal case shall be filed against her for appropriating judiciary collections for her personal use;

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[11] *Id*. at 68.

[12] *Id*.

[13] *Id*. at 74.

[14] *Id*. at 76.

[15] *Id*. at 79-85.

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b. **RESTITUTE** her balance of accountability in the following judiciary funds, to wit:

Fund		Amount
Special Allowance for the Judiciary Fund	₱	14, 160.50
Judiciary Development Fund		9,344.50
Fiduciary Fund		154,333.24
TOTAL	**₱**	**177,838.24**

c. **SUBMIT** to the Fiscal Monitoring Division, CMO, OCA the following:

c.1. copy of machine-validated deposit slips or LBP Certification of the said restitution;

c.2. triplicate copy of Official Receipts Nos. 6729451 – 6729500 for examination; and

c.3. valid and authentic documents showing that the following Official Receipts were either cancelled or withdrawn, to wit:

6729466	9729485
6729478	9729500
6729481	

3. **Mr. EDWIN C. SANTOS**, former Clerk of Court II, Municipal Trial Court, Guiguinto, Bulacan be **FINED** in the amount of **Ten Thousand Pesos** (₱10,000.00) for his failure to deposit his collections on time thereby depriving the government of the supposed interests earned from the said deposit; and the said fine shall be deducted from the monetary value of his earned leave credits;

x x x x x x x x x[16]

Said recommendations were adopted by this Court in a Resolution[17] dated August 15, 2012.

In compliance with the November 28, 2011 Resolution of the Court, the OCA made a telephone call to the Guiguinto

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

[17] *Id*. at 86-88.

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MTC. Mr. Willy B. Mesenda, the court's Process Server, informed the OCA that Nicolas still resides in Blk. 8, Lot 5, Royale Estates, Bulihan, Malolos, Bulacan and that she is presently working at the Barangay office of Sta. Rita, Guiguinto, Bulacan as Barangay Secretary. Mr. Mesenda likewise stated that the Barangay Captain is the uncle of Nicolas. To confirm the information relayed by Mr. Mesenda, the OCA endeavored to secure the telephone number of the office of Barangay Sta. Rita, but to no avail. Thus, the OCA recommended that any communication addressed to Nicolas be sent to Barangay Sta. Rita, Guiguinto, Bulacan or to Blk. 8, Lot 5, Royale Estates, Bulihan, Malolos, Bulacan.[18] In a Resolution[19] dated June 19, 2013, the Court resolved to serve personally all resolutions to Nicolas at Barangay Sta. Rita, Guiguinto, Bulacan and at Blk. 8, Lot 5, Royale Estates, Bulihan, Malolos, Bulacan.

In a *Sulat Kahilingan*[20] dated September 26, 2013, Nicolas requested that she be given an extension of 45 to 60 days within which to comply with the August 23, 2010 Resolution which she allegedly received on August 29, 2013. She claimed that she does not know how she will give an explanation since she is not in possession of any record regarding the missing court funds and official receipts. She is also requesting that she be given a copy of complete records of the financial audit that was conducted in Guiguinto MTC. She also prayed that she be given an opportunity to return to the service, or that she be informed if she is still entitled to receive any benefits including her terminal leave benefits.

In the meantime, a copy of the August 15, 2012 Resolution sent to Santos at his given address, which, among others, imposed upon him a ₱10,000 fine for his failure to deposit his collections on time, was returned unserved with postal notation "RTS-Resigned." A copy of the Resolution dated June 19, 2013 which was also sent to Santos at his given address was returned with

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[18] *Id*. at 93-94.

[19] *Id*. at 95.

[20] *Id*. at 110-111.

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the postal notation "RTS-No One to Receive, Addressee Abroad."[21]

In a Resolution[22] dated February 26, 2014, this Court informed Nicolas that this administrative matter was already referred to the OCA for evaluation, report and recommendation and that she can file her compliance with the OCA considering that the extension she requested has already lapsed.

In a Memorandum[23] dated July 9, 2014, the OCA opined that Nicolas had already been given sufficient time to answer/comply with the August 23, 2010 Resolution. It noted that despite the lapse of the requested extension of time to file the compliance, she has not submitted the same. The OCA is of the opinion that the requirement of due process has been complied with as she has been given an opportunity to be heard. Thus, it recommended, among others, that Nicolas be found guilty of gross neglect of duty for non-remittance of her judiciary collections; that she be dismissed from the service with forfeiture of all retirement benefits, except accrued leave credits, and with perpetual disqualification from re-employment in any government agency, including government-owned and controlled corporations; and that she be directed to pay the amount of ₱177,838.24 representing her shortages.

We agree with the OCA that Nicolas should be held administratively liable.

Section 1, Article XI of the Constitution declares 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, act with patriotism and justice, and lead modest lives. The demand for moral uprightness is more pronounced for the members and personnel of the judiciary who are involved in the dispensation of justice. As frontliners in the administration of justice, they

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[21] *Id*. at 108.

[22] *Id*. at 112.

[23] *Id*. at 114-116.

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should live up to the strictest standards of honesty and integrity in the public service.[24]

Circular No. 50-95 mandates that "[a]ll collections from bailbonds, 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 Land Bank of the Philippines." Undoubtedly, Nicolas violated said circular considering the shortages she incurred when she was OIC of Guiguinto MTC.

Clerks of court are officers of the law who perform vital functions in the prompt and sound administration of justice. Their office is the hub of adjudicative and administrative orders, processes and concerns. They perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises. As such, they generally are also the treasurer, accountant, guard and physical plant manager thereof. They are liable for any loss, shortage, destruction or impairment of such funds and property.[25]

The fact that Nicolas was a mere OIC did not diminish the expectation from her to perform all the duties and responsibilities of a Clerk of Court.[26] As the OIC, she bore the same responsibilities and was expected to serve with the same commitment and efficiency as a duly-appointed Clerk of Court. Likewise, she must be held liable for any loss, shortage, destruction, or impairment of the funds entrusted to her by virtue of her office.[27]

In this case, Nicolas failed to offer an explanation on the shortages that were incurred during her period of accountability. We agree with the OCA that she was given more than enough

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[24] *Office of the Court Administrator v. Peradilla,* A.M. No. P-09-2647, July 17, 2012, 676 SCRA 509, 519-520.

[25] *Misajon v. Clerk of Court Feranil*, 483 Phil. 340, 353-354 (2004).

[26] *Gutierrez v. Quitalig*, 448 Phil. 469, 480-481 (2003).

[27] *Report on the Financial Audit Conducted on the Books of Account of Dy, et al.*, 655 Phil. 367, 381 (2011).

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time to submit her explanation and that the requirement of due process was sufficiently complied with. She even allowed the 45 to 60 days extension she requested to lapse. Thus, it is clearly her fault why she failed to explain the shortages discovered during the audit.

Since Nicolas failed to offer any explanation on the audit findings, the Court shall consider the audit team's report as conclusive and adjudge her liability on the sole basis thereof.

Failure of a public officer, Nicolas in this case, to remit funds upon demand by an authorized officer constitutes *prima facie* evidence that the public officer has put such missing funds or property to personal use.[28] Without Nicolas' explanation as to the non-remittance of court collections while she was the accountable officer, the prima facie presumption stands.

In *Audit Report, RTC-4, Davao del Norte,*[29] the Court held that the failure of the Clerk of Court to remit the court funds constitutes gross neglect of duty, dishonesty, and grave misconduct prejudicial to the best interest of the service. Under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, dishonesty, gross neglect of duty, and grave misconduct are classified as grave offenses with the corresponding penalty of dismissal for the first offense.

The Court notes the observation of the audit team regarding the missing official receipts, which, if identified and examined, may still increase the accountability of Nicolas. While she mentioned in her *Sulat Kahilingan*, that she has no records of said receipts or any document pertaining thereto, the July 9, 2014 Memorandum of the OCA did not mention Nicolas' liability regarding them, if any. Thus, there is a need for OCA to ascertain if Nicolas may still be held liable regarding the receipts which remain unaccounted for.

WHEREFORE, the Court finds Ms. Flored L. Nicolas, former Court Interpreter and Officer-in-Charge, Municipal Trial Court,

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[28] *Office of the Court Administrator v. Besa,* 437 Phil. 372, 380-381 (2002).

[29] 351 Phil. 1, 20 (1998).

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Guiguinto, Bulacan **GUILTY** of gross neglect of duty, dishonesty and grave misconduct prejudicial to the best interest of the service for non-remittance of her judiciary collections and imposes upon her the penalty of **DISMISSAL** from the service. All her retirement benefits, except accrued leave credits, are forfeited and she is barred from re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations. She is further **DIRECTED** to:

(a) **PAY** the amount of ₱177,838.24 representing her shortages in the following judiciary funds:

Fund		Amount
Special Allowance for the Judiciary Fund	₱	14,160.50
Judiciary Development Fund		9,344.50
Fiduciary Fund		154,333.24
TOTAL	**₱**	**177,838.24**

(b) **PAY** the amount of **INTEREST** which the Court would have earned had the collections been deposited on time.

The Leave Division, Office of Administrative Services of the Office of the Court Administrator is hereby **DIRECTED** to:

a. **COMPUTE** the earned leave credits of Ms. Flored L. Nicolas, former Court Interpreter and Officer-in-Charge, Municipal Trial Court, Guiguinto, Bulacan; and

b. **SUBMIT** the same, together with her computerized service record and Notice of Salary Adjustment (NOSA), to the Finance Division, Fiscal Management Office of the Office of the Court Administrator, for computation of its monetary value as well as other monetary benefits she may be entitled to.

The Finance Division, Fiscal Management Office of the Office of the Court Administrator is **DIRECTED** to **APPLY** the monetary value of Nicolas' earned leave credits as well as other benefits she may still be entitled to the payment of her computed shortages and the interest thereon.

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The Office of the Court Administrator is **DIRECTED** to determine if Nicolas has any liability as to the following official receipts which remain unaccounted for:

6729466	9729485
6729478	9729500
6729481	

The Court, further, resolves to **SERVE ANEW** copies of the Resolutions dated August 15, 2012 and June 19, 2013 to Mr. Edwin Santos, former Clerk of Court II, Municipal Trial Court, Guiguinto, Bulacan at his given address at 181 Bulihan, Malolos City, Bulacan.

SO ORDERED.

Sereno, C.J., Carpio, Leonardo-de Castro, Peralta, Bersamin, del Castillo, Villarama, Jr., Mendoza, Reyes, Perlas-Bernabe, Leonen, and *Jardeleza, JJ.,* concur.

Perez, J., no part.

Velasco, Jr. and *Brion, JJ.,* on leave.

EN BANC

[A.M. No. P-15-3322. June 23, 2015]
(Formerly A.M. OCA IPI No. 10-3569-P)

BRANCH CLERK OF COURT GAIL M. BACBAC-DEL ISEN, *complainant, vs.* **ROMAR Q. MOLINA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DENIAL; TO BE BELIEVED, IT MUST BE BUTTRESSED BY STRONG EVIDENCE