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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.M. No. 95-4-143-RTC. March 13, 1998]

RE: REPORT ON THE JUDICIAL AND FINANCIAL AUDIT OF RTC-BR. 4, PANABAO, DAVAO DEL NORTE

SYNOPSIS

This administrative matter is a consequence of the judicial and financial audit conducted by an audit team from the Office of the Court Administrator in response to a Letter of Judge Bernardo V. Saludares, then the Acting Presiding Judge of Branch 4, RTC, Panabo, Davao del Norte.

It was found that Atty. Victor R. Ginete, Clerk of Court, incurred a shortage of ₱12,461.75 in the Fiduciary Fund, ₱18,377.25, in the Judiciary Development Fund, ₱6,849.65 in the General Fund, and borrowings from the savings account of the court in the amount of ₱1,553.00, P300.00 and ₱4,000.00.

Atty. Ginete was remiss in the performance of his duties as Clerk of Court. His encashment of the postdated treasury warrants of his co-employees out of "pakikisama" is illegal because such is not allowed by the Commission on Audit. Worse, he did not use his own money but the court's Fiduciary Funds. It is of no moment that the borrowings were subsequently returned.

The Clerk of Court may not keep funds in his custody as the same should be deposited immediately upon receipt thereof

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with the City, Municipal or Provincial Treasurer where his court is located, should there be no branch of the Land Bank of the Philippines in the locality. Thus, the failure of Atty. Ginete to remit the funds to the Municipal Treasurer of Panabo, Davao, constitutes gross neglect of duty, dishonesty and grave misconduct prejudicial to the best interest of the service.

The Fiduciary Fund from which Atty. Ginete effected the borrowings in question is in the nature of a trust fund which should not be withdrawn in the absence of a court order. There is no doubt, therefore, that in the case of Atty. Ginete, the penalty of dismissal is well-founded.

Judge Mariano Tupas, during his incumbency, did not make an inventory of all cases. He had no rational calendar plan. To top it all, he borrowed from the court funds which were used outside of official business.

Retired Judge Tupas was guilty to grave misconduct and gross negligence in the performance of his duties. He was fined ₱20,000.00.

SYLLABUS

1. **ADMINISTRATIVE LAW; PUBLIC OFFICERS; COURT PERSONNEL; CLERK OF COURT; CLERK OF COURT HAS GENERAL SUPERVISION OVER ALL THE COURT PERSONNEL.** — As Clerk of Court he is also the concurrent cashier and disbursement officer, thus, it is his duty to collect and receive by himself or through a duly appointed cashier, all monies in payment of all legal fees, as well as to receive deposits, fines, and dues. As Clerk of Court he has general supervision over all the court personnel. While Ms. Basa appeared to be the collecting officer, it was Atty. Ginetes duty to see to it that she faithfully performed her duties and responsibilities as such "to the end that there was full compliance with circulars on deposits of collections." Besides, RTC - Br. 4, Panabo, Davao, is a single sala court with no designation in its plantilla of a cashier item, thus making the Clerk of Court personally responsible for the handling of funds. Definetely, Atty. Ginete must be liable for the shortages in the amount of ₱37,724.65.

2. **ID.; CLERK OF COURT; MAY NOT KEEP FUNDS IN HIS CUSTODY.** — The Clerk of Court may not keep funds in his

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custody as the same should be deposited immediately upon receipt thereof with the City, Municipal or Provincial Treasurer where his court is located should there be no branch of the LBP in the locality. Thus, the failure of Atty. Ginete to remit the funds of the Municipal Treasurer of Panabo, Davao, constitutes gross neglect of duty, dishonesty and grave misconduct prejudicial to the best interest of the service.

3. **ID.; NATURE OF CLERK OF COURT'S WORK.** — The Clerk of Court is an essential officer in any judicial system. His office is the nucleus of activities, adjudicative and administrative. As such he must be reminded that his administrative functions are just as vital to the prompt and proper administration of justice. He is charged with the efficient recording, filing and management of court records, besides having administrative supervision over court personnel. Clerks of Court play a key role in the complement of the court and cannot be permitted to slacken on their jobs under one pretext or another.

R E S O L U T I O N

PER CURIAM:

This administrative matter is a consequence of the judicial and financial audit conducted on the 13th to the 17th of February 1995 by an Audit Team from the Office of the Court Administrator (OCA) in response to a Letter of Judge Bernardo V. Saludares, then Acting Presiding Judge, RTC-Br. 4, Panabo, Davao del Norte, dated 24 October 1995 inviting our attention to the disorganized state of the case records and financial accounts of that court during the incumbency of Judge Mariano C. Tupas who optionally retired on 1 August 1994.

Judicial Audit

The physical inventory of pending cases made by the Audit Team disclosed that —

1. Five (5) civil cases, special civil actions, special proceedings and miscellaneous cases remained undecided beyond the 90-day reglementary period —

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a. Civil Case No. 1989 — *Seguin v. Spouses Calibuso* (For reconveyance, quieting of title and damages)[1]

b. Civil Case No. 89-9 — *Alombro v. Codog* (Unlawful detainer on appeal)[2]

c. Misc. Case No. 93-37 — *G. Ridor, et al., petitioners* (For issuance of new owner's duplicate TCT)[3]

d. Civil Case No. 94-64 — *Demetrio v. Baylon* (Forcible entry on appeal)[4]

e. Civil Case No. 88-3 — *Spouses Magdael v. Oray* (For injunction with prayer for writ of preliminary injuction)[5]

2. Three (3) criminal cases were likewise undecided way beyond ninety (90) days —

a. Crim. Case No. 93-118 — *People v. Suarez* (For homicide)[6]

b. Crim. Case No. 90-189 — *People v. Alcomendras* (For qualified theft)[7]

c. Crim. Case No. 94-136 — *People v. Castro* (For grave slander)[8]

3. Cases submitted after 1 August 1994 when Judge Tupas optionally retired —

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[1] Field 16 August 1985, submitted 13 August 1992.

[2] Received on appeal 3 October 1989 submitted upon receipt of memorandum per Oder of the same date.

[3] Filed 26 July 1993, submitted upon receipt of petitioner's written offer of evidence per Order of 13 May 1994.

[4] Received on appeal 30 October 1994, submitted 1 December 1994.

[5] Joint Motion to Dismiss filed 24 February 1988, submitted 30 September 1991.

[6] Filed 23 June 1993, submitted 22 December 1994.

[7] Filed 11 July 1990, submitted 26 December 1994.

[8] Filed 9 June 1994, submitted 29 December 1994.

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a. Civil Case No. 93-70 — *Del Campo v. Spouses Sison* (For annulment of deed of sale)[9]

b. Civil Case No. 90-72 — *Trinio v. Rural Bank of Sto. Tomas* (For enforcement of right to purchase)[10]

c. Civil Case No. 94-16 — (No title reported) (For declaration of nullity of marriage)[11]

d. Civil Case No. 91-22 — *Heirs of M. Estarco v. Tayug* (For damages under *culpa aquiliana*)[12]

e. Crim. Case No. 92-208 — *People v. Palma Gil* (For murder)[13]

f. Civil Case No. 1586 — *Heirs of C. Borre v. Nasser* (For declaration of nullity)[14]

g. Civil Case No. 94-53 — *Omanos v. Forsentera* (For declaration of nullity of deed of sale)[15]

4. Minutes of Proceedings appeared only in cases which were elevated to the Court of Appeals and remanded to it afterwards. All unappealed cases did not have Minutes of Proceedings on file.

5. At least fifty (50) decided civil and miscellaneous cases as well as special proceedigns were not properly logged in the appropriate Docket Book as disposed cases.

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[9] Filed 30 September 1993, submitted 16 January 1995.

[10] Filed 3 December 1990, submitted 13 January 1995.

[11] File 13 April 1994, submitted 27 January 1995.

[12] File 10 May 1991, submitted 16 January 1995.

[13] File 8 September 1992, submitted 27 January 1995.

[14] Opposition and Urgent Motion to Quash attachment Levy filed 25 October 1985, submitted 13 February 1995.

[15] Motion for reconsideration filed 5 October 1994, submitted 27 January 1995.

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6. In almost all the case records, pleadings were not chronologically stitched and, in some cases, they were not attached to the *expedientes*.[16]

Financial Audit

On the other hand, the financial audit for the period covering August 1989 to 31 January 1995 provided the following data:

1. The collections for Fiduciary Fund were effected by Atty. Victor R, Ginete, Clerk of Court, RTC- Br. 4, Panabo, Davao del Norte, only in June 1993. Previous to this the amounts were directly deposited by the litigants with the Municipal Treasurer of Panabo. At the time of the audit in 1995, Atty Ginete was six (6) months behind in the submission of his reports.[17] There was no Cash Book kept for the Fiduciary Fund. The Unwithdrawn Fiduciary Fund collection deposited with the Treasurer's Office amounted to P335,545.00. As of 2 March 1995, Atty. Ginete incurred a shortage of P12,461.75.

2. The total collection for the Judiciary Development Fund(JDF) was P545,843.47 and only the amount of P527,466.34 was remitted thus resulting in a total shortage of P18,377.25 as of 7 March 1995. The transactions in the Cash Book were recorded starting January 1993 only. From August 1989 to February 1990, JDF collection were remitted to the National Tresury and not to the PNB - Supreme Court, in violation of SC Circular No. 5 of 21 February 1985. This however stopped in March 1990.

3. For the Clerk of Court General Fund, of the total collection of P270,368.56 only the amount of ₱263,518.91 was

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[16] Civil Cases Nos. 93-20, 94-57, 92-17, 89-37, 94-26, 94-25, 94-20, 92-22, 92-19, 92-16, 92-10, 93-24, 93-23, 93-19, 93-73, 93-57, 94-09, 94-11, 93-07, 93-05, 92-52, 92-49, 92-36, 92-30; Special Proc. 91-09, 92-01, 93-37, 92-15, 92-14, 94-02, 93-14, 93-12, 94-12, 94-10, 93-08, 93-05, 93-02, 93-01, 89-09; Misc. Cases 94-64, 94-11, 94-04, 94-46, 93-12 , 92-28, 94-06, 93-14, 93-46, 92-37; Special Civil Action 94-09.

[17] Atty. Ginete's last Monthly Report for Fiduciary Fund was dated June 1994.

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remitted thus showing a shortage of ₱6,849.65. After the audit, however, Atty. Ginete further remitted ₱7,317.65 on 7 March 1995 resulting in an excess of ₱468.00.

4. For the *Ex-Officio* Sheriff General Fund, a total collection of ₱5,333.00 was made but only ₱5,297.00 was remitted, incurring a shortage of ₱36.00. After the audit, Atty. Ginete remitted ₱152.00 on 7 March 1995 which was ₱116.00 more than the amount due.

5. For the Sheriff Trust Fund, no collection at all was found.

6. All collections were later on deposited still with the Rural Bank of Panabo under Savings Account No. S/A #51-26718-1.[18] Other than the entries in the passbook, only a few duplicate copies of the savings account deposit slips were kept. Deposit slips on file lumped together all the different collections into a single total therein.

7. Collections for JDF, General Fund, Legal Research Fees and Land Registration Commission Fees were withdrawn from the Rural Bank Panabo after earning interest for three (3) months and transferred to the Land Bank of the Philippines (LBP), Tagum Branch.

8. Postdated Supreme Court salary checks of employees were found to have been encashed from the Fiduciary Fund Collections.

9. Collections by the court were allowed to be borrowed by the personnel: Judge Tupas borrowed ₱500.00 on 19 April 1991 which he paid back on 23 May 1991; and Atty. Ginete made several unauthorized withdrawals: (a) ₱1,253.00 on 8 November 1991 for himself and P800.00 for James Bacaltos, the legal researcher who was then taking the bar examinations; (b) ₱800.00 on 27 March 1992; and, (c) ₱3,500.00 on 3 April 1992, for a certain Jimboy and ₱500.00 for himself.

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[18] Despite SC Circular No. 8-A - 93 of 21 April 1993 directing the deposit of all accounts from bail bond s, rental deposits and other fiduciary collections with the Land Bank of the Philippines as directed by Circular No. 13-92 of 1 March 1992.

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On 30 May 1995 this Court *en banc* resolved[19] to —

(1) require Judge Mariano C. Tupas to EXPLAIN: (a) why he did not decide before he optionally retired CvC 1989, CvC 89-9 and Misc. 93-37, all of which had already been undecided for more than ninety (90) days; (b) why he did not resolve before he optionally retired the Motion to Dismiss in CvC 88-3 which had been left unresolved for more than ninety (90) days; (c) why he did not efficiently manage the court's affairs which resulted in the lack of Minutes in all the cases being heard by the court, the topsy-turvy and haphazard manner of stitching the various pleadings to their respective court *expedientes*, and the non-archiving of criminal cases which should have been archived; and (d) why he borrowed ₱500.00 on April 19, 1991 from the court's S/A#51-26718-1 in deposit with the Rural Bank of Panabo, Davao;

(2) require Victor R. Ginete, Clerk of Court, to EXPLAIN: (a) the shortages of ₱12,461.75, ₱18,377.25, ₱6,849.65 and ₱36.00 in the Fiduciary Fund, Judiciary Development Fund, Clerk of Court General Fund and *Ex-Officio* Sheriff General Fund, respectively, and (b) the borrowing from the court's S/A in the amounts of ₱1,553.00, ₱300.00 and ₱4,000.00 made on November 8, 1991, March 27, 1992 and April 3, 1992, respectively, for himself and James Bacaltos, the court's Legal Researcher; and

(3) require Ms. Delsa M. Flores, the court Interpreter, to explain why she has never made the Minutes for the cases being heard by the court.

In compliance with the Resolution of 30 May 1995, Judge Mariano C. Tupas, Atty. Victor R. Ginete and Ms. Delsa M. Flores submitted their respective explanations.

Re: Judge Mariano C. Tupas

In his Letter/ Explanation dated 21 August 1995,[20] retired Judge Tupas belied the report and claimed that he efficiently

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[19] *Rollo*, pp.5-6.

[20] *Id.*, pp. 44-53.

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managed RTC -Br. 4, Panabo, while he was its presiding Judge. Admittedly, his Interpreter could not prepare the Minutes considering that he conducted hearings in the morning and in the afternoon. Moreover, although he had ordered all pleadings and other papers to be properly stitched, the Court Aide could not manage it well as he was new to the job. Judge Tupas denied borrowing P500.00 from the court's account with the Rural Bank of Panabo. In support thereof, he attached a withdrawal slip dated 19 April 1991[21] duly certified at the back by the bank manager showing that the withdrawal slip was signed by Atty. Ginete and Ms. Belen Basa. A certification by Ms. Basa to the effect that Judge Tupas never meddled with the money matters of the court[22] was also annexed to the Letter/ Explanation.

Re: Atty. Victor R. Ginete

For his part, Atty. Ginete made the following clarifications in his Letter of 1 August 1995[23] —

1. *On the ₱12,461.75 Shortage in the Fiduciary Fund*

The reason why the receipts evidencing deposits and withdrawals were not on file when the Audit Team visited them on 13 February 1995 is that it was the practice in the RTC of Panabo to attach all pertinent documents, including those involving fiduciary transactions, to the records of the case stressing that the court had a caseload of approximately 900 cases and the receipts had to be retrieved from the *carpeta*. It was only on 24 February 1995, after diligent efforts were exerted, that they were able to get some of the pertinent papers therefrom, e.g., (a) O.R. No. 9875455 dated 14 September 1993 in the amount of ₱2,400.00 issued to Rolando Mawas in Crim. Case No. 93-175; (b) O.R. No. 9875459 dated 17 November 1993 in the amount of P1,000.00 issued to Fernan

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[21] *Id.*, p. 51-A, Annex "D".

[22] *Id.*, p.52; Annex "E".

[23] *Id.*, pp. 7-17A.

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Dingle in Crim. Case No. 3080; (c) O.R. No. 9875460 dated 22 November 1993 in the amount of P500.00 issued to Picat Panaginit in Crim. Case No. 2973; (d) O.R. No. 9875462 dated 29 November 1993 in the amount of ₱500.00 issued to Danilo Rivera in Crim. Case No. 2973; and, (e) O.R. No. 9875498 dated 17 June 1994 in the amount of ₱12,500.00 issued to Efren Saman in Crim. Case No. 93-176.

Atty. Ginete further claimed that he assumed office without the benefit of a formal turnover as then Acting Clerk of Court Leo Caballero went on AWOL and was later on charged with gross dishonesty and gross misconduct by reason of which he was dismissed from government service. The S/A No. 51-26718-1 of the court with the Rural Bank of Panabo is a continuation of the savings account opened by then Clerk of Court Caballero.

2. *On the ₱18,377.25 Shortage in the Judiciary Development Fund*

Atty. Ginete claimed that he was then new in the service when the reported shortage occurred due to non-remittance of the funds for the year 1991 or 1992. As there was no PNB or Land Bank in the municipality he had to deposit whatever funds were collected by him under the savings account of the court with the Rural Bank of Panabo, withdrawing the corresponding amount only when it was time to remit. According to him, he remitted ₱3,696.83 and ₱3,589.00 for the months of November and December, respectively, and the remaining balance of ₱12,270,42 was left deposited with PNB, Panabo.

3. *On the ₱6,849.65 Shortage in the General Fund*

Atty. Ginete explained that remittances in the amounts of ₱456.00 and ₱430.00 for the months of November and December 1994 were made and the balance was again deposited under the savings account of the court at the Rural Bank of Panabo. The reported shortage of ₱36.00 in the Sheriff General Fund was also deposited in the bank.

4. *On the borrowings from the savings account of the court in the amounts of ₱1,553.00, ₱300.00 and ₱4,000.00*

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Atty. Ginete remonstrated that he was of the impression that since treasury checks were government obligations, he encashed the postdated treasury warrants of Mr. Boyd James B. Bacaltos for humanitarian reasons as the latter was going to Manila to take the Bar Examinations.

Moreover, Atty. Ginete updated the Court on the Status of the cases found by the Audit Team to have been pending beyond the 90-day period: (a) Civil Case No. 89-9 was resolved on 4 July 1994; (b) Civil Case No. 1989 was not decided because Atty. Pedro C. Buhion, counsel for the defendant, passed away before formal submission of evidence as shown in the Order of 13 August 1992 and up to the time of the filing of Atty. Ginete's comment, no new counsel had entered his appearance; (c) Civil Case No. 88-3 was decided on 16 December 1988 based on the Compromise Agreement submitted to the court; and (d) Misc. Case No. 93-37 was archived as neither the petitioner nor his witnesses attended the hearings on 30 August 1993, 27 September 1993, 11 October 1993 and 20 October 1993.

Atty. Ginete claimed that pleadings were not properly stitched to their respective *expedientes* because RTC Aide Luisito B. Cagape was new in the service and did not yet know his job well. However, efforts had already been exerted to put the records in order.

Re: *Ms. Delsa M. Flores*

On 1 August 1995 Ms. Flores submitted her Comment[24] wherein she confirmed that one of her principal duties was preparing the Minutes of the Proceedings in every case but which she could not ably perform due to the volume of cases being handled by the court (900 more or less) and the setting of hearings morning and afternoon. She also claimed to have tentatively prepared the Minutes after every session in order to finalize them later but unfortunately failed to do so on account of the great number of cases scheduled daily. According to her, she attended to her duties religiously and conscientiously

[24] *Rollo*, p. 36.

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since the time her attention on the matter was called by the Audit Team.

On 19 October 1995 the Office of the Court Administrator received the Letter/Comment dated 11 October 1995 of Judge Bernardo V. Saludares,[25] then stationed at RTC- Br. 28, Lianga, Surigao del Sur, to the explanations given by Atty. Ginete and Ms. Flores, copies of which were furnished him.

As regards Ms. Flores, Judge Saludares avers that she had been remiss in the performance of her duties from the time she assumed office in 1991 up to 1995 when the audit was done. This was proof of her utter laxity and ineptness in records management which, in turn, was but a reflection of how badly the responsible court officials exercised personnel supervision in the court.

On Atty. Ginete's admission that their copies of the remittances might have been misplaced when the court transferred to the Hall of Justice in May 1993, Judge Saludares opined that this was undoubtedly a reflection on the disorderly sytem of the Office of the Clerk of Court. Judge Saludares further stated that Atty. Ginete's claim that the balances on the shortages in the Fiduciary Fund, General Fund and Judiciary Development Fund were in the court's S/A No. 51-26718-1 was still subject to verification.

As to the claim that the remittances had been delayed because Ms. Belen V. Basa, Clerk-in-Charge of the remittance of funds, went on maternity leave from 22 November 1994 to 23 January 1995 and was suffering from a recurring illness, the same was not a valid excuse as it was Atty. Ginete's duty to do the job and that he nevertheless could have delegated the work to another trustworthy subordinate from his staff.

Judge Saludares also claimed he had been bypassed in all bank transactions despite constant reminders. It was only on 26 December 1994 that he wrote the Manager of the Rural

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[25] *Id.*, pp. 94-99.

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Bank of Panabo that there should be no transactions unless his signature appeared thereon.

Additionally, Judge Saludares declared that the reason given by Atty. Ginete for the failure to resolve Civil Case No. 1989 was mainly because of the death of Atty. Buhion could not be justified because Atty. Buhion died only in March 1995 while the formal submission of the evidence in the case was ordered by the court as early as 13 August 1992. As a matter of fact, it was during Judge Saludares' designation as Acting Judge when the cases submitted for decision were brought to his attention one after another.

Furthermore, Judge Saludares maintained that as of 11 October 1995 the Semestral Inventory of Cases for the period of 1 January to 30 June 1995 had not been formalized. And while he issued directives to the Clerk of Court for the chronological arrangement of the pleadings/papers comprising the records of cases, including proper pagination and stitching, these fell on deaf ears. Atty. Ginete likewise did not observe regular office hours. He reported for work at 9:30 in the morning at the earliest. After the judicial and financial audit had been conducted from 13 to 17 February 1995, Atty. Ginete even threatened the Judge with retaliation if he would be made to explain as a result of the audit.

In our Resolution of 5 September 1995,[26] we referred the matter to the Office of the Court Administrator for evaluation, report and recommendation. The Report submitted was not however satisfactory to the Court so that it referred the case back to the OCA for re-evaluation. We now summarize the report and recommendation of OCA as modified —

1. The amounts reflected in the official receipts forwarded to OCA on 28 February 1995 have already been included in the computation indicating a shortage in the Fiduciary Fund collections of Atty. Ginete. Still, Atty Ginete has to explain

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[26] *Rollo*, p. 18.

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the remaining shortage in the amount of ₱12,461.75. The computation follows[27] —

Fiduciary Fund —		
Unwithdrawn Fiduciary Fund, per records, 31 January 1995		₱ 262,800.00
Add: Collections, 1-13 February		
1.O.R. Nos. 1315447-450	₱19,000.00	
2.O.R. Nos. 1314701-702	10,000.00	
		29,000.00
Interest Earned		11,268.51
Less: Withdrawals		
1. 10 February 1995	₱ 500.00	
2. 14 February 1995	2,500.00	(3,000.00)
Unwithdrawn Fiduciary Fund, per records, 14 February 1995		₱ 300,068.51
Unwithdrawn Fiduciary Fund, per bank, 14 February 1995		270,706.76
FUND SHORTAGE, as of 14 February 1995		₱ *29,361.75*
Fund shortage, as above computed		29,361.75
Less: Receipts itemized after a 1st Indorsement dated 28 Febraury 1995 was received at the Office on 2 March 1995		
1. OR No. 9875455-09/14/93	P2,400.00	
2. OR No. 9875459-11/17/93	1,000.00	
3. OR No. 9875460-11/22/93	500.00	
4. OR No. 9875462-11/29/93	500.00	
5. OR No. 9875498-06/17/94	12,500.00	
		(16,900.00)
ACTUAL SHORTAGE:		₱ *12,461.75*

[27] *Id.*, pp. 112-113.

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2. As to the Judiciary Development Fund (JDF) shortage, Atty. Ginete probably forgot that he had already remitted the amount of ₱13,994.47 for the month of the January 1995. The amount of ₱18,377.25 was the shortage as of 7 March 1995 considering the remittances totalling ₱21,279.47 forwarded to this Office the remittances totalling ₱21,279.47 Forwarded to this Office after the Audit Team returned to Manila. The JDF shortage is reflected in the following computation[28] —

Judiciary Development Fund —			
Total Collections			₱ 545,843.47
Less: Total Remittances			506,186.87
FUND SHORTAGE:			₱ *39,656.72*
Less: After-Audit Remittances			
For Remitted Amount			
Nov./94	03/07/95	₱3,696.00	
Dec./94	03/07/95	3,589.00	
Jan./95	03/07/95	13,994.47	₱ 21,279.47
ACTUAL SHORTAGE, as of 7 March 1995			₱ *18,377.25*

3. As to the Cleck of Court General Fund and *Ex-Officio* Sheriff General Fund, the remittances made by Atty. Ginete came from his personal funds and not from the actual monies received by the court in the course of business during the time of audit. What is required to be explained is the shortage, not the excess. The following computations[29] are relevant —

A. Clerk of Court General Fund —		
Total Collections		₱ 270,368.56
Less: Total Remittances		263,518.91
FUND SHORTAGE:		₱ *6,849.65*

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[28] *Id.*, p. 114.

[29] *Id.*, pp.116-117.

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Less: After-Audit Remittances made on 7 March 1995	₱	7,317.65
Excess		468.00
B. Ex-Officio Sheriff General Fund —		
Total Collections	₱	5,333.00
Less: Total Remittances		5,297.00
FUND SHORTAGE:	₱	*36.00*
Less: After-Audit Remittances made on 7 March 1995	₱	152.00
Excess	₱	116.00

4. Atty. Ginete may have encashed the postdated treasury warrants of his co-employees out of "pakikisama" but, strictly speaking, the encashment is not allowed by the Commission on Audit (COA).[30] Worse, Atty. Ginete did not use his own money but the court's Fiduciary Funds. It is of no moment that the "borrowings" were subsequently returned.

5. The caseload of RTC - Br. 4, Panabo, when Ms. Flores entered the service on 16 May 1991 was only 490 cases. By the end of the year, it was down to 458 cases, then steadily rose to 906 at the start of February 1995 when Judge Saludares was already the Acting Presiding Judge. Thus, Ms. Flores' alibi regarding the sheer volume of cases that prevented her from preparing the required Minutes is unacceptable since she was not doing her job even before the number of cases increased.[31]

6. The status of Civil Case No. 89-9, Misc. Case No. 93-37 and Civil Case No. 88-3 was satisfactorily clarified. However, the fact still remains that when the Audit Team went to Panabo, the pertinent papers were not attached to the case records.[32]

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[30] *Id.*,p. 118, citing COA Audit Memo No. 84-373, 23 January 1984, Chapter 4, Sec. A, Par. 2 (a).

[31] *Id.*, pp. 119-120.

[32] *Id.*, pp. 121-122.

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7. Judge Tupas clearly borrowed the amount of P500.00 on 19 April 1991 as shown on the notation on a duplicate for record purposes so that his claim of innocence is obviously self-serving.[33]

After due deliberation and a painstaking review of the working papers of the Audit Team and OCA's evaluation and re-evaluation, we are fully convinced that the concerned court officials had been remiss in their respective duties.

With regard to Ms. Delsa Flores, her case is already moot and academic as she had been dismissed from the service in *Marita Rabe v. Delsa Flores*.[34] Nevertheless, it bears pronouncing once more, as we did in *Bandong v. Ching*,[35] that —

> Among the duties of court interpreters is to prepare and sign "all Minutes of the session." (Manual for Clerks of Court, 32). After every session they must prepare the Minutes and attach it to the record. It will not take an hour to prepare it. The Minutes is a very important document because it gives a brief summary of the events that took place at the session or hearing of a case. It is in fact a capsulized history of the case at a given session or hearing, for it states the date and time of the session; the names of the judge, clerk of court, court stenographer, and court interpreter who were present; the names of the counsel for the parties who appeared; the party presenting evidence; the names of witnesses who testified; the documentary evidence marked; and the date of the next hearing (*Id.*, 543). In criminal cases, the Minutes also includes data concerning the number of pages of the stenographic notes (*Id.*, 589).

With respect to Atty. Ginete, the evidence inevitably leaves no doubt that he had been remiss in the performance of his duties as Clerk of Court, both in the financial and administrative concerns.

Atty. Ginete assumed his duties as Clerk of Court and *Ex-Officio* Sheriff in January 1990. As Clerk of Court he is also

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[33] *Id.*, pp. 124-125.

[34] A.M. No. P-97-1247 prom. 14 May 1997.

[35] A.M. No. P-95-1161, 23 August, 261 SCRA 10, 14.

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the concurrent cashier and disbursement officer, thus, it is his duty to collect and receive by himself or though a duly appointed cashier, all monies in payment of all legal fees, as well as to receive deposits, fines, and dues.[36]

Administrative Circular No. 31-90 dated 15 October 1990 provides that the amounts accruing to the JDF in the Regional Trial Courts shall be deposited daily with the Philippine National Bank (PNB), an authorized government depository bank, or private bank owned or controlled by the government as may be specified by the Chief Justice "for the account of the Judiciary Development Fund, Supreme Court, Manila -S/A No. 068-503174-4." If daily deposit is not possible, deposits for the Fund shall be made every second and third Friday and at the end of every month, provided, however, that whenever collections for the Fund reach P500.00, the amount should be deposited immediately even before the above-indicated dates. If there is no authorized depository bank at the place where the court is stationed, the collections are to be sent by postal money order payable to the Chief Accountant of the Supreme Court.[37] Correlatively, Circular No. 13-92 dated 1 March 1992 states that "in localities where there are no branches of authorized government depository banks, or, even if there be a branch but it is impractical, for justifiable reasons, to maintain deposits, all fiduciary fund collections shall be deposited by the Clerk of Court with the Provincial or Municipal Treasurer. In either case, the Clerk of Court must first seek a favorable recommendation from the Executive Judge."

On 30 April 1993 SC Administrative Circular No. 5-93 was issued designating the Land Bank of the Philippines (LBP) as the depository bank, in place of PNB, for all amounts accruing to the Judiciary Development Fund under JDF - Supreme Court - Manila Savings Account No. 159-01163-1.

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[36] Manual for Clerks of Court, Chapter VII, Secs. A(1) and B, pp.121-123.

[37] See *JPDIO v. Calaguas*, A.M. No. P-95-1155, 15 May 1996, 256 SCRA 690.

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The Audit Team's Report bares the amounts of Atty. Ginete's accountabilities. That he failed to diligently follow the procedures contained in the aforestated circulars is quite evident from the erroneous remittances he had effected, not to mention the delays that accompanied them.

Atty. Ginete incurred a shortage of ₱12,461.75 in his Fiduciary Fund collections. In his explanation[38] he claimed to have forwarded O.R. No.9875455 dated 14 September 1993 in the amount of ₱2,400.00, O.R. No. 9875459 dated 17 November 1993 for ₱500.00 and O.R. No. 9875498 dated 17 June 1994 for ₱12,500.00. Notwithstanding the aforesaid receipts there is still a shortage of ₱12,461.75 as the amount covered by these receipts was already included in the computation of his Fiduciary Fund Collection earlier reported to this Court. His original shortage was ₱29,361.75 and after deducting ₱16,900.00 (total amount covering the receipts) there is still a difference of ₱12,461.75 which Atty. Ginete has to account for.

With respect to his JDF collections, Atty. Ginete has a shortage of ₱18,377.25. He claimed that he made remittances with PNB Tagum but that copies of these remittances might have been misplaced when the court transferred to the Hall of Justice. He also said that if only PNB Tagum would extend its cooperation in going over the records he could present proofs of remittances. We are disinclined to accept these claims considering that SC Adm. Circular No. 5-93 decreed that all JDF collections be deposited with LBP. His alleged remittance of these collections to PNB Tagum violated the Court's directive and laid him open to sanction. Be that as it may, it is clear that he exerted no effort at all to coordinate with PNB Tagum. In *Lirios v. Oliveros*[39] we held that a Clerk of Court's undue delay in his JDF remittances amounts no less to grave misfeasance, if not malversation of funds.

Atty. Ginete has a shortage of ₱6,849.65 in the Clerk of Court General Fund and ₱36.00 in the *Ex-Officio* Sheriff General

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[38] *Rollo*, pp. 7-8.

[39] A.M No. P-96-1178, 6 February 1996, 253 SCRA 258, 263.

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Fund. However, he made remittances of ₱7,317.65 and ₱152.00 on 7 March 1995 for the Clerk of Court General Fund and *Ex-Officio* General Fund resulting in excess remittances of ₱468.00 and ₱152.00, respectively. It must be noted that the remittances so made by Atty. Ginete appear to have come from his personal funds and not from the actual collections paid to the RTC in the course of its daily business.

Atty. Ginete claimed that he belatedly made remittances to cover the amount of the shortages because Ms. Belen V. Basa, Clerk III, who was tasked to make such remittances went on maternity leave from November 1994 to 23 January 1995 and had thereafter been suffering from a recurring illness.

We find his explanation to be without merit. As Clerk of Court he has general supervision over all the court personnel. While Ms. Basa appeared to be the collecting officer, it was Atty. Ginete's duty to see to it that she faithfully performed her duties and responsibilities as such "to the end that there was full compliance with circulars on deposits of collections."[40] Besides, RTC - Br. 4, Panabo, Davao, is a single sala court with no designation in its plantilla of a cashier item, thus making the Clerk of Court personally responsible for the handling of funds. Definitely, Atty. Ginete must be liable for the shortages in the amount of ₱37,724.65.

The Clerk of Court may not keep funds in his custody as the same should be deposited immediately upon receipt thereof with the City, Municipal or Provincial Treasurer where his court is located[41] should there be no branch of the LBP in the locality. Thus, the failure of Atty. Ginete to remit the funds of the Municipal Treasurer of Panabo, Davao, constitutes gross neglect of duty, dishonesty and grave misconduct prejudicial to the best interest of the service.

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[40] In Re: Priscilla Hernandez of RTC, Tangub City, Mis. Occidental, A. M. No. 94-9-297-RTC, 22 December 1994, 239 SCRA 350,355.

[41] *Ferriols v. Hiam*, A. M. No. P-90-414, 9 August 1993, 225 SCRA 205, 210.

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Moreover, the Clerk of Court is an essential officer in any judicial system. His office is the nucleus of activities, adjudicative and administrative. As such he must be reminded that his administrative functions are just as vital to the prompt and proper administration of justice. He is charged with the efficient recording, filing and management of court records, besides having administrative supervision over court personnel. Clerks of Court play a key role in the complement of the court and cannot be permitted to slacken on their jobs under one pretext or another.[42]

On Atty. Ginete's "borrowings" from the savings account of the court with the Rural Bank of Panabo, Davao, in the amounts of ₱1,553.00, P300.00 and ₱4,000.00 for himself and for James Bacaltos, Court Legal Researcher, Atty. Ginete's explanation that the encashments were secured with postdated treasury checks is likewise unsatisfactory. The encashment of treasury warrants is prohibited by the Commission on Audit.[43] Check accommodations are oftentimes done by some accountable officers who encash current checks and replace them with postdated personal checks so that any spot audit will not result in their being charged with malversation. In this case, Atty. Ginete did not use his personal funds to encash Bacaltos' postdated treasury checks; instead, he encashed the same by using the court's fiduciary funds.

Consequently, we affirm OCA's recommended penalty of dismissal to serve as a clear warning to all Clerks of Court that this Court will not countenance dishonesty and malversation of funds which definitely disminish the faith of the people in the judiciary.

A public servant, like the Clerk of Court, must exhibit at all times the highest sense of honesty and integrity. By Atty. Ginete's failure to properly remit the cash collections that are public

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[42] *Callejo, Jr. v. Garcia*, Adm. Case No. P 88-198, 25 February 1992, 206 SCRA 491, 496.

[43] See Note 30.

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funds he transgressed the trust reposed in him as cashier and disbursement officer of the court.[44]

In *Teresita Astillazo v. Rolando Jamlid, Clerk of Court, RTC-Peñaranda, Nueva Ecija*[45] we stressed that:

> Pursuant to Section 23, Rule XIV of the Omnibus Rules implementing Book V of Executive Order 292, gross negligence in the performance of duty, dishonesty and grave misconduct are clasiffied as grave offenses for which the penalty of dismissal is imposed. Section 9 of the said Rule likewise provides that "the penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of leave credits and retirement benefits and the disqualification for re-employment in the government service. Further, it may be imposed without prejudice to criminal liability."

In *Dioquino v. Martinez*[46] we categorically stated that the "practice of appropriating trust funds for unauthorized expenses, although replaced when the same is demanded, is fraught with danger, and should not be indulged in by any public officer worthy of the name." The Fiduciary Fund from which Atty. Ginete effected the "borrowings" in question is in the nature of trust fund which should not be withdrawn in the absence of a court order. There is no doubt, therefore, that in the case of Atty. Ginete, the penalty of dismissal is well-founded.

The matter of missing files, haphazard recording and deficient court Minutes is properly the main responsibility of the Clerk of Court as he is the administrative officer of the court and is thus the one with the control and supervision over all court records, exhibits, documents, properties and supplies. However, he is subject to the control and supervision of the presiding Judge.

A Judge presiding over a branch of a court is, in legal contemplation, the head thereof. To say that he is not would

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[44] See Chapter VII, Sec. B, Manual for Clerks of Court, July 1991, p. 123.

[45] A.M. No. P-95-6-55-MTC, prom. 28 July 1997, p. 15.

[46] A.M. No. P-195, 10 May 1976, 71 SCRA 93, 102.

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make him a mere figurehead, without effective control over the employees working under him and without authority to discipline them. This, of course, would be an intolerable situation.[47]

Thus, the Judge, along with the Clerk of Court, is mandated by Administrative Circular No.1 dated 28 January 1988 to make an inventory of all cases — pending, submitted for decision, or archived. Part of that inventory process is necessarily the checking of court records — whether they are missing, done in a haphazard manner or needing resolution — and the mending of the situation. Consequently, two (2) weeks are taken off the trial calendar every semester to accomodate the inventory. This, Judge Tupas and Clerk of Court Ginete did not do diligently.

Neither is the daily hearing of cases in the morning and afternoon an excuse for the laxity in the keeping of records, as par. 2.3 of the same Circular provides, "(t)he preparation of the court calendar should not be left entirely in the hands of the Clerk of Court but must be closely supervised by the Presiding Judge. A rational calendar plan should be followed so that each case in the calendar is assured of a hearing on the scheduled day of trial."

To top it all, Judge tupas likewise borrowed from the court's funds. It matters not that these personal borrowings were paid as what counts is the fact that these funds were used outside of official business. Rule 5.04, Canon 5, of the Code of Judicial Conduct unequivocally states that "(a) judge or any immediate member of the family *shall not accept* a gift, bequest, favor or *loan from anyone except as may be allowed by law*" *(italics supplied)*

In his Comment, Judge Tupas denied having borrowed ₱500.00 from the court's S/A No. 51-26718-1 with the Rural Bank of Panabo on 19 April 1991. As proof thereof, he attached a xerox copy of the withdrawal slip duly certified by the bank manager showing that the slip was signed by Atty. Victor R.

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[47] *Garcia v. Teehankee*, No. L-28747, 28 April 1969, 27 SCRA 1142, 1145.

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Ginete and Ms. Belen Basa, a court personnel. He also submitted a certification by Ms. Basa to the effect that he never borrowed ₱500.00.

The Audit Team however found a duplicate copy of the deposit slip inside the drawer of Ms. Basa which bore the notation: "Payment on the ₱500.00 withdrawn by Judge Tupas."[48] This is a clear indication that Judge Tupas borrowed ₱500.00 on 19 April 1991 from the court's fiduciary funds despite his foolhardy claim of innocence.

On 23 August 1994 the Court *en banc in A.M. No. 8381-Ret. - Re: Application for optional retirement of Judge Mariano C. Tupas,* resolved among others to *RETAIN* the amount of Fifty Thousand Pesos (₱50,000.00) from the retirement benefits due Judge Tupas pending the outcome of this administrative case filed against him.

While the Court will not anymore dwell on the abject state of affairs of RTC-Br. 4, Panabo, Davao del Norte, under the leadership and direction of Judge Tupas who has already retired, nevertheless it underscores the need for all judges to adopt and implement effective management techniques and procedures in their respective jurisdictions. There is no gainsaying the snowball effect of the failure of a judge to exercise authoritative control and supervision over his court personnel and court processes. The whole system may simply break down. It is thus exigent that the Office of the Court Administrator appropriately address the administrative problems of trial courts, particularly those uncovered in this case, *viz.*, inefficient and improper handling, nay, mismanagement of *expedientes,* docket books and other court documents and papers; lackadaisical or perfunctory enforcement of rule on financial accountabilities and related obligations of court officers and employees; and, the need for judicial inventory prior to the resignation or retirement of judges and court personnel. Unless the reins of control and supervision over the administrative aspect of the adjudicatory

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[48] *Rollo,* pp.128-129.

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process are tightened, the swift and efficient delivery of justice will be impeded and rendered illusory.

WHEREFORE, the Court finds retired *Judge Mariano C. Tupas* guilty of grave misconduct and gross negligence in the performance of his duties as Presiding Judge of the Regional Trial Court, Branch 4, Panabo, Davao del Norte, and *FINES* him Twenty Thousand Pesos (₱20,000.00) which shall be taken from the amount of ₱50,000.00 ordered withheld per Resolution of this Court *en banc* dated 23 August 1994 in A. M. No. 8381. The remaining amount of ₱30,000.00 may now be released to Judge Tupas unless otherwise withheld for some lawful cause.

Clerk of Court Victor R. Ginete is *DISMISSED* from the service with forfeiture of all leave credits and retirement benefits with prejudice to reemployment in any government office or agency including government owned or controlled corporation. He is further *DIRECTED* to *REMIT* the amount of Thirty-Seven Thousand Seven Hundred Twenty-Four Pesos and Sixty-Five Centavos (₱37,724.65) representing the shortages he incurred as herein determined in the following manner: (a) The amount of Twelve Thousand Four Hundred and Sixty-One Pesos and Seventy-Five Centavos (₱12,461.75) representing the Fiduciary Fund shortage must be deposited with the Land Bank of the Philippines, Panabo Branch, Davao del Norte, if there is such branch, otherwise, with the Municipal Treasurer of Panabo, within thirty (30) days from notice. The Official Receipt for such deposit must be submitted to this Court; and, (b) The remaining amount of Twenty-Five Thousand Two Hundred and Sixty-Two Pesos and Ninety Centavos (₱25,262.90) must be deposited with the LBP branch under the name of Judiciary Development Fund, otherwise remitted by Postal Money Order to the Cashier of this Court also within thirty (30) days notice.

To secure a more effective and systematic management of all trial courts, the Office of the Court Administrator is DIRECTED to prepare and submit to the Court within sixty (60) days from notice appropriate draft circulars aimed to prevent the recurrence of problems in court management such as those above described, subject to the approval of the Court.

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Let copies of this Resolution be furnished the Office of the Bar Confidant and the Integrated Bar of the Philippines for record purposes.

SO ORDERED.

Narvasa, C. J., Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Martinez, Quisumbing, and *Purisima JJ.*, concur.

THIRD DIVISION

[G.R. No. 116514. March 13, 1998]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROMEO MAGUAD y NICOR, NELSON LLONOR, PETER DOE and JOHNNY DOE,** *accused,* **NELSON LLONOR,** *accused-appellant.*

SYNOPSIS

On July 30, 1991, Josephine Pelayo was found dead with fourteen (14) stab wounds in a sugar plantation with her skirt inserted in her vagina. Accused Romeo Maguad and appellant, with two (2) others, were charged with "rape with murder and robbery." Both pleaded not guilty and interposed the defense of alibi, but offered no corroborating testimony. The records, however, showed that a knife was confiscated from appellant which blade exactly matched the punctures on the victim's shorts and skirt and which also tallied with the stab wounds suffered by her, that her cadaver was found inside Field No. 22, a sugarcane field within appellant's security area and which was 7-10 minutes away from appellant's house. Another incriminating evidence against the appellant was the positive identification made by Ireneo Cabuguason, a farm laborer, who declared that he saw appellant inside the sugarcane plantation, on top of the victim making the push and pull movement while