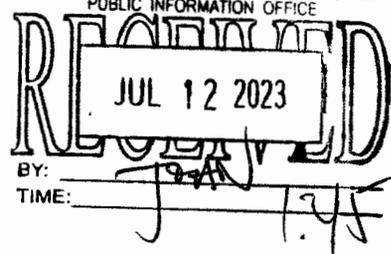




SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



Republic of the Philippines
Supreme Court
Baguio City

EN BANC

OFFICE OF THE COURT
ADMINISTRATOR,

Complainant,

A.M. No. P-14-3248

(Formerly A.M. No. 14-6-66-MTC)

Present:

- versus-

VIRGILIO M. FORTALEZA AND
NORBERTA R. FORTALEZA,

Respondents.

GESMUNDO, C.J.,
LEONEN,
CAGUIOA,
HERNANDO,*
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO,
MARQUEZ,**
KHO, and
SINGH, JJ.

Promulgated:

January 10, 2023

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DECISION

PER CURIAM:

This case stemmed from an audit of the books of accounts of the Municipal Trial Court of Catanauan, Quezon by the Financial Audit Team of

* On leave.

** No part.

the Court Management Office, Office of the Court Administrator. In the course of the audit, the Team discovered numerous irregularities which, it concluded, are attributable to respondents Virgilio M. Fortaleza, Clerk of Court II, and Norberta R. Fortaleza, Court Interpreter I, both of the Municipal Trial Court of Catanauan, Quezon.

The Facts

The audit of the books of the Municipal Trial Court of Catanauan, Quezon (MTC) led to the Financial Audit Team (Team) of the Court Management Office, Office of the Court Administrator (OCA) Team's discovery that Virgilio M. Fortaleza (Virgilio), alone and in certain instances in cooperation with his spouse Norberta R. Fortaleza (Norberta) (collectively, respondents), misappropriated a total of ₱779, 643.15 from the various judiciary funds under Virgilio's control, particularly the following: Fiduciary Fund, Judiciary Development Fund, Special Allowance for the Judiciary Fund, Clerk of Court General Fund, Mediation Fund, and Sheriff's Trust Fund.

During the Team's exit conference with the MTC's Acting Presiding Judge Rhoda Magdalene L. Mapile-Osinada (Presiding Judge) and Norberta, Norberta admitted all the anomalies which the Team discovered.¹ While Norberta claimed responsibility for all the irregularities, the Team found this untenable considering that the evidence show that, as early as 1994, Virgilio had actively carried out various schemes which facilitated the misappropriation of the court funds.²

The findings of the Team, as detailed in its "Report on the Financial Audit Conducted in the Municipal Trial Court (MTC), Catanauan, Quezon,"³ dated May 6, 2014 (Report), are as follows:

I. Fiduciary Fund

Virgilio, and on certain occasions in cooperation with Norberta, misappropriated a total of ₱656,345.00 intended for the Fiduciary Fund through various methods and in grave abuse of their positions.

A. Tampering with Official Receipts and Non-remittance of Collections in the Total Amount of ₱380,500.00

¹ *Rollo*, p. 15.

² *Id.*

³ *Id.* at 3-16. Approved by Associate Justice Jose Midas P. Marquez (then Court Administrator; now member of this Court)

Dec

The Team found that Norberta tampered with a total of 59 official receipts.⁴ In particular, in collecting payments intended to go to the various judiciary funds, Norberta used the originals of the official receipts to record collections for the Fiduciary Fund. However, instead of ensuring that the information provided in the originals of the official receipts were similarly reflected in the duplicate and triplicate copies, Norberta used these duplicate and triplicate copies to record payments for entirely different amounts pertaining to either the Judiciary Development Fund or the Special Allowance for the Judiciary Fund. In other words, the duplicate and triplicate copies reflected payments intended for judiciary funds entirely separate from the Fiduciary Fund. That it was Norberta who tampered with the official receipts is evidenced by the fact that her signature appears in all of the receipts.⁵ The same official receipts were also stamped with Virgilio's name as the Clerk of Court.⁶

Worse, the amounts covered by these 59 official receipts remain unaccounted for. Based on the Team's investigation, Virgilio did not report the Fiduciary Fund collections recorded in the 59 official receipts, in the total amount of ₱380,500.00, to the Revenue Section, Accounting Division, Financial Management Office of the OCA.⁷ Virgilio also did not record these Fiduciary Fund collections in the Fiduciary Fund cashbook or deposit the amount to the Fiduciary Fund account.⁸

B. Failure to Remit the Amount of ₱87,800.00 Intended for the Fiduciary Fund

Virgilio and Norberta reported total Fiduciary Fund collections in the amount of ₱2,396,557.00 from March 1996 to December 28, 2012. However, based on the Team's investigation, a total amount of ₱87,800.00 from this collection was not deposited to any of the MTC's bank accounts.⁹

C. Double Withdrawal of Cash Bonds Posted in Cases Pending Before the MTC

The Team discovered that there were several unauthorized withdrawals of the cash bonds posted in criminal cases pending before the MTC.¹⁰ These unauthorized withdrawals were perpetrated by withdrawing the cash bond for the same criminal case twice. As explained by the Team in the Report –

⁴ Id. at 19-59.

⁵ Id.

⁶ Id.

⁷ Id. at 8.

⁸ Id.

⁹ Id.

¹⁰ Id. at 9.

In Criminal Case No. 8961, the amount of cash bond posted under OR No. 1874498 dated 9 July 1998 was only P4,000. On 24 September 1998, P3,000.00 was withdrawn and another P4,000.00 was withdrawn on 28 December 1998, thus, resulted to overwithdrawal of P3,000.00. In Criminal Case No. 8987, cash bonds posted under OR Nos. 6050818 and 6050820 both dated 1 September 1998 amounted to P1,000.00 each only. Both bonds were withdrawn on 6 October 1998. However, on 31 August 2011 another withdrawal was made in the amount of P21,000.00 for each receipts by altering the amount in the OR from P1,000.00 to P21,000.00. Hence, an overwithdrawal of P21,000.00 for each receipt.¹¹

The bank withdrawals were, in turn, facilitated through a combination of unlawful acts. The signatures of the bondsmen were forged in the acknowledgment receipts which were submitted to the bank for purposes of withdrawing the cash bonds for a second time.¹² That these signatures were forged is readily apparent from an examination of the records. The signatures are entirely different from the authentic signatures of the bondsmen in earlier acknowledgement receipts.¹³ Further, the court orders presented to the bank were either old court orders already presented during the first withdrawal, or court orders which were not signed by the presiding judge but were instead merely stamped as "ORIGINAL SIGNED."¹⁴ Norberta certified these court orders as true copies of the originals.¹⁵ She also signed the relevant official receipts.¹⁶

D. Unauthorized Withdrawals of Cash Bonds resulting in the Misappropriation of a Total of P90,000.00

The Team discovered a series of unauthorized withdrawals of cash bonds posted by litigants in cases pending in the MTC. As in the case of the double withdrawals of cash bonds, the Team's investigation showed that the signatures of the bondsmen were forged in the acknowledgment receipts submitted to the bank. Similarly, the court orders presented to the bank were not actually signed by the presiding judge and were merely stamped as "ORIGINAL SIGNED."¹⁷

E. Unauthorized Withdrawal of the Amount of P4,045.00 from the MTC's Fiduciary Fund Account

The Team's examination of the MTC's bank transactions also revealed that there was a withdrawal from the MTC's Fiduciary Fund bank account in the amount of P4PHP 4,045.00 on July 28, 2010, which remains unaccounted for.¹⁸

¹¹ Id. at 9 -10.

¹² Id. at 9.

¹³ Id.

¹⁴ Id.

¹⁵ Id. at 90-116.

¹⁶ Id.

¹⁷ Id. at 10.

¹⁸ Id.

II. Judiciary Development Fund

Virgilio failed to account for a total amount of ₱35,496.40 which should have gone to the Judiciary Development Fund.

A. Tampering of Official Receipts

The team found 17 tampered official receipts representing marriage solemnization fees and bond fees. Norberta, who signed the official receipts, used the originals of the receipts to record the collection of amounts which were significantly higher than the amounts she recorded in the triplicate copy of the official receipt. This scheme allowed the respondents to misappropriate a total amount of ₱6,950.00.

B. Failure to Collect Mandatory Court Fees

Virgilio failed to collect cash bond and marriage solemnization fees, which are mandatory payments due to the MTC. Specifically, Virgilio did not collect the required cash bond fee for 66 cash bonds posted in criminal cases pending before the MTC. This negligence resulted in lost revenue in the total amount of ₱20,100.00 for the Fiduciary Fund and ₱13,400.00 for the Judiciary Development Fund and the Special Allowance for the Judiciary Fund.¹⁹

Virgilio also did not collect the required solemnization fees in 57 marriages that the Presiding Judge solemnized from April 1993 to June 2010.²⁰ This resulted in lost revenue in the total amount of ₱5,742.00 for the Judiciary Development Fund, ₱102.00 for the Clerk of Court General Fund, and ₱6.00 for Special Allowance for the Judiciary Fund.²¹

Similarly, Virgilio did not collect the required ₱50.00 clearance fee for 70 court clearances issued to various persons from February 2008 to August 2012. This resulted in lost revenue in the total amount of ₱2,828.00 and ₱672.00 for the Judiciary Development Fund and the Special Allowance for the Judiciary Fund, respectively.²²

III. Special Allowance for the Judiciary Fund

Virgilio's total liability for amounts misappropriated or uncollected under the Special Allowance for the Judiciary Fund is ₱44,951.15.

¹⁹ Id.

²⁰ Id. at 12.

²¹ Id.

²² Id. at 12.

The Team found that Virgilio and Norberta tampered with four official receipts representing fines and bond fees in the total amount of ₱30,600.00.²³ The records show that the Respondents followed the same scheme of tampering with the official receipts by reflecting different amounts in the originals of the official receipts and the triplicate copy.²⁴

Virgilio also has a cash shortage in the amount of ₱273.15 for this fund.²⁵

IV. Clerk of Court General Fund

Virgilio tampered an official receipt, specifically Official Receipt No. 10548438, dated September 13, 2000, representing the payment of a court fine in the amount of ₱22,000.00.²⁶ In addition, Virgilio also has a cash shortage of ₱48.60 for this fund.²⁷

V. Mediation Fund

Virgilio failed to deposit the amount of ₱3,500.00 to the MTC's Mediation Fund.²⁸ Virgilio has not explained what happened to this amount.

VI. Sheriff's Trust Fund

Virgilio served as the MTC's Process Server from December 3, 2010 to December 27, 2012. During this period, he accumulated Sheriff's Trust Fund collections in the total amount of ₱17,200.00. This amount was never deposited in the MTC's bank account.

Given the foregoing findings, the Team recommended the following:

1. This report be **DOCKETED** as a regular administrative matter against spouses **VIRGILIO M. FORTALEZA** and **NORBERTA R. FORTALEZA**, former Clerk of Court I and Interpreter I, respectively, both of the Municipal Trial Court, Catanauan, Quezon;
2. **NORBERTA R. FORTALEZA** be **SUSPENDED** from office pending resolution of this administrative matter;
3. **VIRGILIO M. FORTALEZA** be **DIRECTED** within ten (10) days from receipt of notice to **RESTITUTE** the incurred cash shortages in the Fiduciary Fund, Sheriff's Trust Fund, Judiciary Development Fund, Special

²³ Id. at 13.

²⁴ Id.

²⁵ Id.

²⁶ Id. at 14.

²⁷ Id.

²⁸ Id.

Allowance for the Judiciary Fund, Clerk of Court General Fund, and Mediation Fund in the amount of **P656,345.00**, **P17,200.00**, **P35,496.40**, **P44,951.15**, **P22,150.60**, and **P3,500.00**, respectively, or a total of **P779,643.15**; and **SUBMIT** to the Fiscal Monitoring Division, Court Management Office (FMD-CMO), the corresponding machine validated deposit slips as proof of compliance;

[4.] [The incumbent] Presiding Judge of the MTC, Catanauan, Quezon be **DIRECTED** to **PROPERLY MONITOR** the financial transactions of the incumbent Clerk of Court/Officer-in-Charge, to ensure strict adherence to circulars and other issuances of the Court regarding the proper handling of judiciary funds; and

[5.] A **Hold Departure Order** be issued against **Virgilio M. Fortaleza** and **Norberta R. Fortaleza** to prevent them from leaving the country.²⁹ (Emphases in the original)

This Court issued a Resolution,³⁰ dated August 6, 2014, which adopted the foregoing recommendations. Then, on October 1, 2014, the OCA received a letter,³¹ dated September 24, 2014, from Norberta. In the said letter, Norberta did not deny any of the charges against her and her husband Virgilio. Instead, Norberta impliedly admitted these charges by asking the OCA to allow Virgilio to retire so that the amount he is required to retribute may be deducted from his leave credits.

The Recommendation of the OCA

In its Memorandum (Memorandum), dated December 20, 2016,³² the OCA recommended that:

1. respondent spouses Virgilio M. Fortaleza and Norberta R. Fortaleza, former Clerk of Court II, and Interpreter I, respectively, both of the Municipal Trial Court, Catanauan, Quezon be found **GUILTY** of grave misconduct, gross neglect of duty, and serious dishonesty pursuant to Section 46, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service;
2. respondent Norberta R. Fortaleza be **ORDERED** dismissed from government service with cancellation of [her] civil service eligibility, forfeiture of retirement benefits and other privileges, except accrued leave credits, if any, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations;
3. considering that respondent Virgilio M. Fortaleza had already retired from the service, thus making the imposition of the penalty of dismissal impossible, that the penalty of cancellation of eligibility, forfeiture of retirement benefits and other privileges, except accrued leave credits, if any, and with prejudice to re-employment in any branch or instrumentality of the

²⁹ Id. at 15-16.

³⁰ Id. at 155-156.

³¹ Id. at 152.

³² Id. at 160-168.

government, including government-owned or controlled corporations, be instead imposed on him; and

4. respondent Virgilio M. Fortaleza be **DIRECTED**, within thirty (30) days from receipt of notice to **RESTITUTE** the incurred cash shortages in the Fiduciary Fund, Sheriff's Trust Fund, Judiciary Development Fund, Special Allowance for the Judiciary Fund, Clerk of Court General Fund, and Mediation Fund in the amount of P656,345.00, P17,200.00, P35,496.40, P44,951.15, P22,150.60, and P3,500, respectively, or a **total of P779,643.15**, and **SUBMIT** to the Fiscal Monitoring Division of the Court Management Office the corresponding machine validated deposit slips as proof of compliance therewith.³³ (Emphases in the original)

The Issue

Are the respondents guilty of grave misconduct, gross neglect of duty, and serious dishonesty?

The Ruling of the Court

Court personnel are public officers and are thus subject to the highest standards for service and integrity expected of all public officers. In addition to this, court personnel are also subject to strict rules governing the performance of their duties as employees of the judiciary. In particular, the Code of Conduct for Court Personnel³⁴ imposes the following duties on court employees:

CANON 1

FIDELITY TO DUTY

SECTION 1. Court personnel shall not use their official position to secure unwarranted benefits, privileges or exemptions for themselves or for others.

x x x x

SECTION 5. Court personnel shall use the resources, property and funds under their official custody in a judicious manner and solely in accordance with the prescribed statutory and regulatory guidelines or procedures.

x x x x

CANON IV

PERFORMANCE OF DUTIES

SECTION 1. Court personnel shall at all times perform official duties properly and with diligence. They shall commit themselves exclusively to the business and responsibilities of their office during working hours.

³³ Id. at 167-168; emphasis in the original.

³⁴ SC Administrative Matter No. 03-06-13-SC, April 23, 2004.

xxx

SECTION 3. Court personnel shall not alter, falsify, destroy or mutilate any record within their control.

This provision does not prohibit amendment, correction, or expungement of records or documents pursuant to a court order.

The Court has consistently ruled that no other office in the government service requires a greater level of moral righteousness and uprightness than the judiciary. In *Rojas v. Mina*,³⁵ the Court held:

The Code of Conduct for Court Personnel stresses that employees of the judiciary serve as sentinels of justice, and any act of impropriety on their part immeasurably affects the honor and dignity of the Judiciary and the people's confidence in it. No other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than in the Judiciary. Thus, the failure of judicial employees to live up to their avowed duty constitutes a transgression of the trust reposed in them as court officers and inevitably leads to the exercise of disciplinary authority.³⁶

With respect specifically to clerks of court, the Court explained in *Office of the Court Administrator v. Elumbaring*:³⁷

Clerks of Court perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises. As such, they are generally regarded as treasurer, accountant, guard and physical plant manager thereof. It is the Clerks of Court's duty to faithfully perform their duties and responsibilities as such to the end that there was full compliance with function, that of being the custodians of the court's funds and revenues, records, properties and premises. They are the chief administrative officers of their respective courts. It is also their duty to ensure that the proper procedures are followed in the collection of cash bonds. Thus, their failure to faithfully perform their duties make them liable for any loss, shortage, destruction or impairment of such funds and property.³⁸

The respondents' conduct must be measured against these exacting standards. The OCA correctly concluded that the respondents failed to meet the stringent standards governing the conduct of employees in the judiciary. The respondents' unethical behavior must be penalized.

In determining the penalty that should be imposed on the respondents, the Court is guided by Rule 140 of the Rules of Court, as amended.³⁹ Rule 140, as amended, applies to the justices of the Court of Appeals, the

³⁵ 688 Phil. 241, 247 (2012).

³⁶ Id. at 247. Citations omitted.

³⁷ 673 Phil. 84 (2013).

³⁸ Id. at 91. Citations omitted.

³⁹ SC Administrative Matter No. 21-08-09-SC, February 21, 2022.

Sandiganbayan, the Court of Tax Appeals, the Shari'ah High Court, and the judges of the first and second level courts, including the Shari'ah District and Circuit Courts, as well as the officials, employees, and personnel of said courts and this Court.⁴⁰

Section 14 of Rule 140⁴¹ classifies gross (or grave) misconduct which constitutes a violation of the Code of Conduct for Court Personnel, serious dishonesty, and gross neglect of duty in the performance or non-performance of official functions, as serious charges.

In *Office of the Court Administrator v. Canque*,⁴² the Court defined grave misconduct, thus:

Grave misconduct is a malevolent transgression of some established and definite rule of action — more particularly, unlawful behavior or gross negligence by the public officer or employee — which threatens the very existence of the system of administration of justice. It manifests itself in corruption, clear intent to violate the law or flagrant disregard of established rules.⁴³

Further, in *Office of the Administrator v. Acampado*,⁴⁴ the Court defined dishonesty as the “[d]isposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.”⁴⁵

⁴⁰ RULES OF COURT, Rule 140, sec. 1.

⁴¹ SECTION 14. Serious Charges – Serious charges include:

- (a) Gross misconduct constituting violations of the Code of Judicial Conduct or of the Code of Conduct for Court Personnel;
- (b) Bribery, direct and indirect, and violations of the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019);
- (c) Serious dishonesty;
- (d) Gross neglect of duty in the performance or non-performance of official functions;
- (e) Knowingly rendering an unjust judgment or order;
- (f) Commission of a crime involving moral turpitude;
- (g) Falsification of official documents, including making untruthful statements in the certificates of service;
- (h) Borrowing money or property from lawyers and/or litigants in a case pending before the court;
- (i) Gross immorality;
- (j) Gross ignorance of the law or procedure;
- (k) Partisan political activities;
- (l) Grave abuse of authority, and/or prejudicial conduct that gravely besmirches or taints the reputation of the service;
- (m) Sexual harassment;
- (n) Gross insubordination; and
- (o) Possession and/or use of illegal drugs or substances.

⁴² 606 Phil. 209-221(2009).

⁴³ Id. at 218.

⁴⁴ 721 Phil. 12-33 (2013).

⁴⁵ Id. at 30.

In numerous cases, the Court has settled that the following acts constitute gross misconduct and serious dishonesty: stealing and encashing checks without authority;⁴⁶ demanding and receiving money from a litigant in exchange for the dismissal of his or her case;⁴⁷ the failure to update the court cashbook;⁴⁸ the failure to explain missing collection records for the judiciary funds;⁴⁹ shortage in cash collections;⁵⁰ and misappropriation of judiciary funds.⁵¹

Moreover, the Court has ruled that the following acts constitute gross neglect of duty: issuing a certified true copy of a document purporting to be a copy of a last will and testament without first examining it and confirming that it is a true copy of the original in the court records;⁵² incurring cash shortages in the judiciary funds;⁵³ and a failure to immediately deposit court fund and revenues to the authorized government depositories.⁵⁴

Guided by the foregoing, the Court finds that the OCA correctly concluded that Respondent Virgilio should be penalized for gross misconduct, serious dishonesty, and gross neglect of duty.

With respect to Norberta, however, the findings of the Team and the evidence on record only warrant that she be charged and penalized for gross misconduct and serious dishonesty for specific violations where she was found to have performed, or assisted Virgilio in the performance of, unlawful acts.

Respondents are liable for gross misconduct and serious dishonesty

The Court rules that the respondents are liable for gross misconduct and serious dishonesty for the following acts:

1. Tampering with official receipts and non-remittance of collections for the Fiduciary Fund in the total amount of ₱380,500.00;
2. Failure to remit the amount of ₱87,800.00 intended for the Fiduciary Fund;

⁴⁶ *Rojas v. Mina, supra note 36.*

⁴⁷ *Office of the Court Administrator v. Canque, supra.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Office of the Court Administrator v. Acampado, supra.*

⁵² *Court of Appeals v. Escalante*, 343 Phil. 105-114 (1997).

⁵³ *Office of the Court Administrator v. Villanueva*, 630 Phil. 248-258 (2010).

⁵⁴ *Concerned Citizen v. Gabral, Jr.*, 514 Phil. 209-221 (2005).

3. Tampering with official receipts representing marriage solemnization fees and bond fees;
4. Tampering with official receipts representing fines and bond fees in the total amount of ₱30,600.00; and
5. Double withdrawal and unauthorized withdrawal of cash bonds posted in cases pending before the MTC.

There is substantial evidence on record proving that the respondents cooperated in the perpetration of the foregoing acts. The Team found in its audit that tampering with official receipts was a deliberate scheme which the Respondents employed to facilitate the misappropriation of funds. It is clear from the records that Norberta signed the official receipts while Virgilio stamped the official receipts with, or allowed the official receipts to be stamped with, his name as Clerk of Court. The respondents are also liable for the amount of ₱87,000.00 which they reported but failed to remit to the MTC's Fiduciary Fund.

As to the double withdrawal and unauthorized withdrawal of cash bonds posted in cases pending before the MTC, Virgilio, as the Clerk of Court, had access to the funds and to the documents, which banks require for the withdrawal of the MTC's fund. He was also in charge of ensuring that the MTC's bank accounts are properly managed and had the obligation to, or at the very least supervision over court staff who had the obligation to, deposit and withdraw funds from the MTC's bank accounts. Clearly, Virgilio was the court employee in a position to forge the signatures of bondsmen and fabricate court orders for the purpose of withdrawing cash bonds deposited in the MTC's bank accounts. Moreover, even assuming that it was not Virgilio who caused the withdrawal of the funds, that he failed to monitor the MTC's bank accounts and was never able to detect the anomalous transactions involving the double and unauthorized withdrawals confirms that he fell short in the performance of his duties as a clerk of court.

The various schemes which Virgilio and Norberta employed certainly amount to grave misconduct, or an unlawful behavior which threatens the very existence of the system of administration of justice. Indeed, if court employees cannot be trusted to handle court funds properly, the ability of courts to function is in great peril. Not only does this deprive the court of funds needed for its operations, it also weakens public confidence in the judiciary. Their conduct also amounts to serious dishonesty as it clearly reveals the respondents' propensity to lie, cheat, and defraud.

As regards Norberta's participation, it is worth noting that the court orders presented to the bank to justify the second and unauthorized withdrawal of the cash bonds were all certified by Noberta as true copies of the original.

This is strong evidence that Norberta actively participated in the scheme to withdraw the cash bonds.

With respect to Virgilio, as the Clerk of Court, he was the “designated custodian of the court’s funds, revenues, records, properties, and premises.”⁵⁵ As the Court explained in *Office of the Court Administrator v. Elumbaring*,⁵⁶ clerks of court are generally regarded as “treasurer, accountant, guard and physical plant manager”⁵⁷ and the “chief administrative officers” of their respective courts.⁵⁸ Their failure to “faithfully perform their duties make them liable for any loss, shortage, destruction or impairment of such funds and property.”⁵⁹

Given the duties of his office and the strict standards imposed on him as a clerk of court, Virgilio was patently remiss in the performance of his duties when he tampered with, or allowed Norberta to tamper with, the official receipts, which, in turn, led to the misappropriation of funds belonging to the judiciary. He was equally remiss in his duties when he failed to remit the amount of ₱87,800.00 intended for the Fiduciary Fund. This amounts to misappropriation of public funds.

To be sure, that Virgilio failed to ensure that the official receipts were properly used, that collections were accurately recorded and reported, and that funds were properly deposited in the proper MTC bank accounts, already constitute gross failure to perform his obligations. There is thus adequate evidence in this case that this was a deliberate scheme which Virgilio and Norberta carried out to misappropriate court funds amounting to gross misconduct and serious dishonesty.

*Virgilio is liable for gross misconduct
and serious dishonesty*

Respondent Virgilio is solely liable for gross misconduct and serious dishonesty for the following acts:

1. Tampering with an official receipt covering the amount of ₱22,000.00 pertaining to the Clerk of Court General Fund;
2. Failure to deposit the amount ₱3,500.00 to the MTC’s Mediation Fund;

⁵⁵ *Office of the Court Administrator v. Elumbaring*, supra note 37.

⁵⁶ Id.

⁵⁷ Id. at 91.

⁵⁸ Id. at 92.

⁵⁹ Id.

3. Failure to deposit the amount ₱17,200.00 pertaining to the Sheriff's Trust Fund; and
4. Unauthorized withdrawal of the amount ₱4,045.00 from the MTC's Fiduciary Fund account.

The Court's examination of the Report, the Memorandum, and the records reveals that the evidence directly point to Virgilio as the person responsible for the foregoing acts. However, the Court did not find adequate evidence establishing Norberta's liability for these acts.

As to the failure to deposit amounts collected for the mediation fund and the Sheriff's Trust Fund, the records show that (a) Virgilio received the money for deposit to these funds, and (b) no corresponding deposits were ever made.

There is no doubt that the failure to deposit funds due to the MTC is gross misconduct. As to Virgilio's act of tampering with an official receipt covering payment intended for the Clerk of Court General Fund, the Court's discussion above applies here.

Virgilio is liable for gross neglect of duty

Virgilio should also be further held liable for gross negligence for the following acts:

1. Failure to collect the required cash bond fee for 66 cash bonds posted in criminal cases pending before the MTC resulting in lost revenue in the total amount of ₱20,100.00 for the Fiduciary Fund and ₱13,400.00 for the Judiciary Development Fund;
2. Failure to collect the required solemnization fees in 57 marriages solemnized before the MTC from April 1993 to June 2010 resulting in lost revenue in the total amount of ₱5,742.00 for the Judiciary Development Fund, ₱102.00 for the General Fund, and ₱6.00 for Special Allowance Judiciary Fund;
3. Failure to collect the required ₱50.00 clearance fee for 70 court clearances; and
4. Cash shortages which remain unexplained to date.

Virgilio had the obligation to collect payments for mandatory court fees. Court personnel do not have the discretion not to collect these fees. Rule 141 of the Rules of Court specifically require courts, including first level courts, to collect fees for the performance of marriage ceremonies⁶⁰ and fees for cash bonds posted in civil cases.⁶¹ Here, the records show that, on multiple occasions spanning a long period of time, Virgilio failed or refused to collect fees due to the court. His failure to do so is a clear breach of his duties to collect the fees required to be collected under Rule 141 of the Rules of Court. This is no trivial matter because the failure to collect mandatory court fees deprives the judiciary of much needed funds essential to its continued operations.

Virgilio should also be held liable for the numerous cash shortages he incurred involving the various judiciary funds and his repeated failure to explain what happened to these amounts. Not only does this conduct confirm that Virgilio is remiss in the performance of his duties as the MTC's accountant and custodian of funds, it also reveals his utter disregard for the importance of his duties.

Under Section 17 of Rule 140 of the Rules of Court, gross misconduct, serious dishonesty, and gross negligence are serious charges which may be penalized with the following:

Section 17. Sanctions –

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

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

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

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

Given the gravity of the offenses which Norberta committed and the fact that the records show that she, along with Virgilio, perpetrated various schemes for years to facilitate the commission of these offenses, the Court agrees with the OCA's recommendation that the penalty of dismissal from the service should be imposed.⁶² Further, as provided in Section 17 of Rule 140, the penalty of dismissal shall carry with it the forfeiture of benefits, except accrued leave credits, and disqualification from reinstatement or appointment

⁶⁰ RULES OF COURT, Rule 141, sec. 8 (g).

⁶¹ RULES OF COURT, Rule 141, sec. 20 (c).

⁶² See RULES OF COURT, Rule 140, sec. 19 (b) (2).

to any public office, including government-owned and controlled corporations.

Virgilio, given the gravity of his offenses and the length of time that these offenses were perpetrated to the prejudice of the MTC, should also be penalized with dismissal from the service. However, considering that Virgilio has already retired and can no longer be dismissed from the service, Section 18 of Rule 140 applies here. Section 18 states:

Section 18. Penalty in Lieu of Dismissal on Account of Supervening Resignation, Retirement, or other Modes of Separation of Service. – If the respondent is found liable for an offense which merits the imposition of the penalty of dismissal from service but the same can no longer be imposed due to the respondent's supervening resignation, retirement, or other modes of separation from service, except for death, he or she may be meted out with the following penalties in lieu of dismissal:

- (a) Forfeiture of all or part of the benefits as the Supreme Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or -controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; and/or
- (b) Fine as stated in Section 17 (1) (c) of this Rule.

Moreover, the Court agrees with the OCA's recommendation to reject Norberta's request to allow Virgilio to retire and receive his retirement benefits so that his liabilities may be deducted from such benefits. As stated above, Virgilio's retirement benefits are forfeited. The Court requires Virgilio to retribute, within 30 days from notice, the total amount of ₱779,643.15.

WHEREFORE, Norberta R. Fortaleza is found **GUILTY** of gross misconduct and serious dishonesty. She is ordered **DISMISSED** from the service with forfeiture of all retirement benefits, except accrued leave credits. She is also disqualified from being re-employed in the government, including government-owned and controlled corporations.

Virgilio M. Fortaleza is found **GUILTY** of gross misconduct, serious dishonesty, and gross neglect of duty. His retirement benefits, except accrued leave credits, are declared **FORFEITED**. He is likewise disqualified from being re-employed in the government, including government-owned and controlled corporations.

Finally, Respondent Virgilio Fortaleza is ordered to **RESTITUTE** the incurred cash shortages in the Fiduciary Fund, Sheriff's Trust Fund, Judiciary Development Fund, Special Allowance for the Judiciary Fund, Clerk of Court

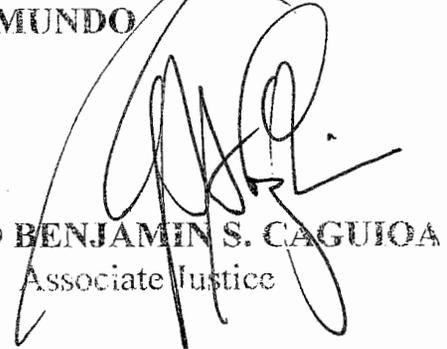
General Fund, and Mediation Fund in the amount of ₱656,345.00, ₱17,200.00, ₱35,496.40, ₱44,951.15, ₱22,150.60, and ₱3,500.00, respectively, or a total of ₱779,643.15 to the Municipal Trial Court of Catanauan, Quezon, within 30 days from notice, and to **SUBMIT** to the Fiscal Monitoring Division of the Court Management Office the corresponding machine validated deposit slips as proof of compliance.

The case against the Respondent Virgilio M. Fortaleza is referred to the Office of the Ombudsman for appropriate action.

SO ORDERED.

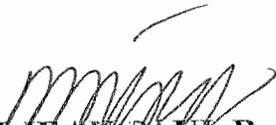

ALEXANDER G. GESMUNDO
Chief Justice

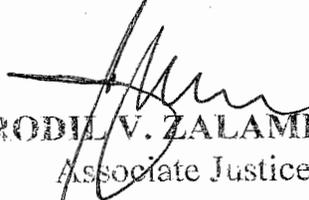

MARVIC M.V.F. LEONEN
Senior Associate Justice

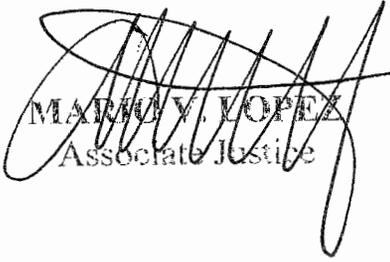

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

(on leave)
RAMON PAUL L. HERNANDO
Associate Justice

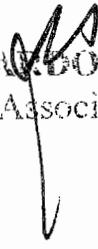

AMY C. LAZARO-JAVIER
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice

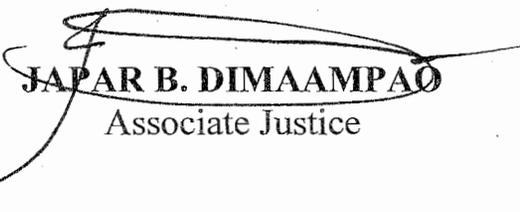

RODIL V. ZALAMEDA
Associate Justice


MARIO V. LOPEZ
Associate Justice


SAMUEL H. GAERLAN
Associate Justice


RICARDO R. ROSARIO
Associate Justice

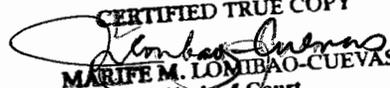

JHOSEP Y. LOPEZ
Associate Justice


JAPAR B. DIMAAMPAO
Associate Justice

No Part
JOSE MIDAS P. MARQUEZ
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice


MARIA FILOMENA D. SINGH
Associate Justice


MARIFE M. LOMIBAO-CUEVAS
Clerk of Court
Supreme Court