

OFFICE OF THE COURT ADMINISTRATOR, Complainant, vs. EFREN F. VARELA, Respondent,*A.M. No. P-06-2113 (Formerly A.M. No. 05-12-357-MTC). February 06, 2008*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a-m-no-05-12-357/>**PER CURIAM**

Before the Court is an administrative case which arose from the audit of the Commission on Audit (COA) finding shortages in the accounts of Acting Clerk of Court Efren F. Varela (respondent) of the Municipal Trial Court (MTC) Catbalogan, Samar.

On February 26, 2004, State Auditors Rosario C. Cuña and Ethel R. Mendoza (Auditors) of COA Regional Office No. 8, Government Center, Candahug, Palo, Leyte, examined the cash and accounts of respondent, pursuant to COA Regional Office No. VIII Travel Order No. 2004-002 dated February 23, 2004. Respondent, who is a Court Interpreter of MTC, Catbalogan, was designated as Acting Clerk of Court thereof, effective August 10, 2000. The Auditors initially found that respondent incurred a shortage of P244,523.10 which amount, upon further investigation, increased to P459,702.96.[1] The COA sent letters of demand to respondent directing him to produce immediately the missing funds and to explain in writing how his shortage came about, but to no avail.[2] Thus, COA Regional Office No. VIII through Director Napoleon G. Montejo filed a letter/complaint against respondent dated October 12, 2004 with the Ombudsman, which in turn forwarded the same to this Court.[3] Attached to said letter/complaint is the affidavit of the Auditors dated September 20, 2004 stating the findings of their audit.[4]

The Office of the Court Administrator (OCA) directed respondent to comment on the complaint/affidavit of the Auditors, docketed as OCA IPI No. 05-2195-P, through a 1[st] Indorsement dated May 18, 2005.[5] Respondent did not comply; thus the OCA sent a 1[st] Tracer to respondent dated October 5, 2005 reiterating its order for him to file a comment.[6]

The OCA also sent a team from the Court Management Office (CMO), OCA, to conduct a financial audit in MTC, Catbalogan. The team later submitted a final report through a Memorandum docketed as Adm. Matter No. 05-12-357-MTC entitled "Final Report on the Financial Audit in the MTC-Catbalogan, Samar," now Adm. Matter No. P-06-2113, entitled "Office of the Court Administrator v. Efren F. Varela." [7] Parenthetically, the Court in a Resolution dated July 26, 2006, consolidated Adm. Matter OCA IPI No. 05-2195-P with Adm. Matter No. P-06-2113.[8]

The Report of the audit team dated November 25, 2005, stated that: there were several official receipts[9] unaccounted for; Judiciary Development Fund (JDF) collections were not properly remitted from September 1, 2000;[10] respondent did not submit monthly reports during his term as Officer-in-Charge (OIC)-Clerk of Court, prompting the Financial Management Office, OCA to withhold his salary effective October 2004 and exclude him from the payroll starting February 2005;[11] no official cash book was maintained anent the General Fund and no single report was ever made to the OCA regarding the same;[12] respondent failed to deposit the cash bond collections to the court's legitimate bank account maintained under Savings Account No. 0601-0739-19 with the

Landbank of the Philippines (LBP) Catbalogan; upon inquiry with Presiding Judge Odelon S. Mabutin, it was found out that the court's collections were deposited by respondent into his personal account maintained with the LBP under Savings Account No. 0601-1271-80;[13] said account was opened by respondent on February 21, 2002 and was the sole signatory to the same;[14] interests earned in respondent's personal account were also not transferred to the JDF account.[15]

The audit team then concluded that the total accountability of respondent is as follows:

Judiciary Development Fund P 236,619.10

General Fund 3,465.00

Special Allowance for the Judiciary Fund 4,846.00

Fiduciary Fund - Subject to refund upon presentation of the appropriate documents 780,489.86

TOTAL P 1,025,419.96

Respondent also failed to remit the interests earned in his personal savings account, in the sum of P7,706.63, which amount when added to P1,025,419.96 would sum up to P1,032,826.59.

On February 8, 2006, the Court issued a Resolution directing respondent to explain the shortages found by the audit team, pay and deposit the same, pay and deposit to the JDF the interests earned from his personal account, submit to the Fiscal Monitoring Division, CMO-OCA the machine validated deposit slips as proof of remittance of the missing funds and to account for the missing Official Receipts.[16] The Court likewise directed Judge Odelon S. Mabutin, Presiding Judge of MTC, Catbalogan Samar to explain why he allowed the Court's Fiduciary Fund collections to be deposited in the personal account of respondent from February 21, 2002 to February 27, 2004.[17]

In his Compliance dated April 4, 2006, Judge Mabutin explained: he designated respondent as acting Clerk of Court from August 2000, with the continued leave of absence of then Clerk of Court Augusto J. Baybay. From that time, respondent performed the functions of both Interpreter and Clerk of Court. He did not allow respondent to deposit the cash collections into respondent's personal account, as he (Judge Mabutin) already had a joint account with Baybay as co-depositor, with LBP Catbalogan where the collections may be deposited. He was surprised to learn sometime in February 2003 that respondent had a personal account where respondent deposited his collections. He gave respondent several opportunities to put his books in order as he trusted him. Respondent, before his designation as Clerk of Court, consistently received Very Satisfactory rating, discharged his duties well, worked very hard in his two functions, and is known to be a leader in his church. He (Judge Mabutin) thought that respondent would not commit any act that would prejudice his promotion. He issued several memoranda reminding respondent to observe the Court's circulars regarding the proper deposit of accounts and the submission of records to the COA for audit. They held several meetings in order to pressure respondent to reconcile his accounts, and he gave respondent a week off from his chores just to be able to concentrate on his bookkeeping. He believes that he had done his part as respondent's immediate supervisor and whatever shortcoming he committed was not intentional. He allowed respondent to continue acting as Clerk of Court, even after discovering that the latter had a personal account in February 2003, because he believes in giving second chances. He also wanted respondent to rectify whatever lapses he committed. On February 27, 2004, he finally recalled respondent's designation. Judge Mabutin explains that he no longer had time to closely monitor respondent because he has a heavy caseload. He prays for soft-hearted treatment and vows not to allow this to happen again.[18]

On the other hand, respondent submitted a letter dated September 5, 2006 proposing a compromise in order to settle his shortages in the court funds. He is offering his withheld salaries for two years amounting to P230,904.00 and the remaining balance of P461,041.00 in a personal account. He prays that the combined amount of P691,945.00 be considered as full payment for his shortages and that the instant administrative case be dismissed considering that the amount of his proposed payment is already substantial.[19]

In the Resolution dated October 9, 2006, the Court referred the matter to the OCA for its evaluation, report and recommendation.[20]

In the Memorandum dated July 2, 2007, the OCA submitted the following recommendations:

- a) Mr. Efren F. Varela's proposed compromise to settle his shortages be ACCEPTED as partial payment of his shortages in court funds;
- b) Atty. Eustacio C. Raga, Jr., Clerk of Court V and Officer-in-Charge, RTC, Catbalogan, Samar be DIRECTED TO WITHDRAW the amount of P459,702.96 deposited by Mr. Varela in the OCC, RTC, Catbalogan Samar under Official Receipt No. 2269979 and DEPOSIT the same amount to the Fiduciary Account of MTC, Catbalogan, Samar under LBP SA No. 0601-0739-19 and FURNISH the Fiscal Monitoring Division, CMO, OCA with a copy of the machine validated deposit slip and passbook as proof of transfer thereof. The OIC of OCC, MTC, Catbalogan, Samar on the other hand should be ADVISED not to issue an Official Receipt to acknowledge the transfer of P459,702.96 from the RTC to MTC as this is a restitution of a previously recorded collection of MTC, Catbalogan, Samar to avoid double take up of collections;
- c) The Financial Management Office, OCA be DIRECTED to facilitate the remittance of the unpaid salaries of Mr. Efren F. Varela, covering the period September 1, 2004 to January 31, 2007 amounting to P326,430.86, to the accounts of MTC, Catbalogan, Samar found to have shortages. Of the P326,430.86, FMO, OCA be FURTHER DIRECTED to REMIT P321,584.86 to the Fiduciary Account of MTC-Catbalogan, Samar and the remaining balance of P4,846.00 be REMITTED to the Special Allowance for the Judiciary Fund of MTC-Catbalogan, Samar and to FURNISH the Fiscal Monitoring Division, CMO, OCA of the machine validated deposit slip as proof of such remittance;
- d) Mr. Efren F. Varela, Interpreter, MTC, Catbalogan, Samar be DISMISSED FROM THE SERVICE for Malversation of Funds, and that his retirement benefits excluding his accrued leave credits be FORFEITED in favor of the government;
- e) Mr. Efren F. Varela be DIRECTED to RESTITUTE the balance of P240,084.10 to the Judiciary Development Funds (P236,619.10) and General Fund (P3,465.00) accounts of MTC, Catbalogan, Samar, and to SUBMIT PROOF of such remittance to the FMD, CMO, OCA; and
- f) Hon. Odolon S. Mabutin, Presiding Judge, MTC, Catbalogan Samar, be SUSPENDED from office without salary and benefits for a period of one (1) month for misconduct.[21]

The OCA further elaborated, thus:

Upon inquiry with the FMO, respondent's withheld salaries from September 1, 2004 to January 1, 2007 is P326,430.86. This amount, together with the P461,041.00 in his account with Equitable-PCI, totaling P787,471.86 should be remitted to the accounts of the MTC-Catbalogan. In the application of payments, priority should be given to the Fiduciary Account as the funds therein are only held in trust by the court and are subject to refund upon presentation of appropriate documents.

The OCA further clarified that the Office of the Ombudsman-Visayas has filed a case for Malversation of Public Funds against respondent in the RTC-Catbalogan, in connection with the missing funds amounting to P459,702.96. Respondent then made an offer to enter a plea of guilty to a lesser offense, i.e., Failure of

Accountable Officer to Render Accounts, which offer the Prosecutor did not oppose nor reject. The Ombudsman however manifested that in cases involving malversation, it is their policy that first there must be full restitution of the missing funds before any plea bargaining may be entertained. Respondent withdrew the amount of P459,702.96 from his Equitable-PCI account and deposited the same with the OCC-RTC Catbalogan Samar on November 22, 2006. The amount of P459,702.96 was previously recorded as collection of MTC, Catbalogan; thus, the Clerk of Court of RTC Catbalogan should withdraw the said amount, deposit the same to the Fiduciary Account of MTC Catbalogan under LBP SA No. 0601-1739-19, and furnish the Fiscal Monitoring Division, CMO, OCA, a copy of the machine-validated deposit slip and passbook. The OIC of MTC Catbalogan, meanwhile should not issue an Official Receipt to acknowledge the transfer of P459,702.96 from the RTC as this is a restitution of a previously recorded collection of MTC, to avoid double take-up of collections.[22]

The Court agrees with the findings and recommendations of the OCA with certain modifications.

As Clerk of Court, respondent is entrusted to perform delicate functions with regard to the collection of legal fees.[23] He acts as cashier and disbursement officer of the court and is tasked to collect and receive all monies paid as legal fees, deposits, fines and dues, and controls the disbursement of the same.[24] He is designated as custodian of the court's funds and revenues, records, properties and premises and shall be liable for any loss or shortage thereof.[25] His failure to account for the shortage in the funds he was handling and to turn over money deposited with him and to explain and present evidence thereon constitutes gross neglect of duty, dishonesty, grave misconduct and malversation which all carry the penalty of dismissal even for the first offense.[26] Indeed, 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.[27] All that is necessary to prove malversation is to show that the defendant received in his possession public funds or property, he could not account for them and did not have them in his possession when audited, and he could not give a satisfactory or reasonable excuse for the disappearance of said funds or property.[28]

As custodian of court funds and revenues, it is also his duty to immediately deposit the funds received by him to the authorized government depositories and not to keep the same in his custody.[29] Supreme Court Circulars Nos. 13-92 and 5-93 provide the guidelines for the proper administration of court fund. SC Circular No. 13-92 directs that all fiduciary collections be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized depository bank. Per SC Circular No. 5-93, LBP is designated as the authorized government depository.[30] Respondent however kept a personal savings account where he deposited the court's collections instead of depositing the same to the official savings account of the court.

Moreover, Circular No. 32-93 also requires all Clerks of Court/ Accountable Officers to submit to this Court a monthly report of collections for all funds not later than the 10th day of each succeeding month. The CMO audit team found however that respondent did not submit monthly reports, as the last monthly report of collections and remittances for the JDF was in March 1999. There was also no official cash book maintained anent the General Fund, and no single report was ever made to the OCA regarding the same.

The safeguarding of funds and collections, and the submission to this Court of a monthly report of collection for all funds are essential to an orderly administration of justice. Respondent's failure to comply with the Court's circulars and rules designed to promote full accountability for public funds constitutes gross neglect of duty and grave misconduct.[31]

While respondent discharged the functions of a Clerk of Court only in an acting capacity, still, the expectation for him to perform all the duties and responsibilities of a Clerk of Court is not diminished. Indeed, the fact that he is only an acting Clerk of Court cannot absolve him from liability.[32]

The Court finds that respondent is guilty of gross neglect of duty, dishonesty, grave misconduct and malversation, for which he should be dismissed from the service.

As to Judge Mabutin, the Court quotes with approval the following findings of the OCA:

More importantly, it is our opinion that Judge Mabutin should have reported the anomaly in court funds the moment he discovered it. It is incumbent on all trial judges to duly apprise the Court or the Office of the Court Administrator of problems they discover or encounter in the day-to-day affairs of their respective courts, so they may receive appropriate guidance and assistance. Judge Mabutin, however, decided to keep the matter to himself and gave Mr. Varela [sic] all the opportunity to clean his mess by allowing him to continue as Acting Clerk of Court.[33]

Although there is no evidence that Judge Mabutin personally benefited from the missing funds, it cannot be denied that he failed to properly monitor his personnel. He also did not call the attention of this Court through the Court Administrator regarding the personal savings account of respondent as soon as he (Judge Mabutin) learned about it in February 2003. It was only in February 2004 or a year after that he recalled respondent's designation as Clerk of Court; and it was only upon the audit of the COA that the discrepancies were discovered and upon the investigation of this Court that it was found out that respondent had a personal savings account.

Judge Mabutin should have taken the necessary steps to ensure that the correct procedure in the collections and deposits of court funds were dutifully carried out by his Clerk of Court.[34] As a judge, he should have organized and supervised his court personnel to ensure the prompt and efficient dispatch of business, and required at all times the observance of high standards of public service and fidelity.[35]

Indeed, a vital administrative function of a judge is the effective management of his court and this includes control of the conduct of the court's ministerial officers. The safekeeping of funds and collections is essential to the goal of an orderly administration of justice and no protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability for government funds.[36]

While Judge Mabutin claims that he is laden with heavy caseload, such fact cannot exculpate him from liability. A judge should constantly keep a watchful eye on the conduct of his employees as his constant scrutiny of the behavior of his employees would deter any abuse on the part of the latter in the exercise of their duties. His subordinates would then know that any misdemeanor will not remain unchecked.[37]

The Court finds Judge Mabutin guilty of simple neglect of duty[38] for which he should be reprimanded and sternly warned that the commission of the same or similar act in the future shall be dealt with more severely.

WHEREFORE, the Court finds respondent Efren F. Varela, Interpreter and Acting Clerk of Court of the Municipal Trial Court-Catbalogan Samar, guilty of gross neglect of duty, dishonesty, grave misconduct and malversation of public funds. He is **DISMISSED** from the service with forfeiture of all his retirement benefits excluding his accrued leave credits with prejudice to re-employment in any branch of the government or in any government-owned or controlled corporation.

As recommended by the Office of the Court Administrator, the Court further resolves as follows:

- Respondent Efren F. Varela's compromise to settle his shortages is **ACCEPTED** as partial payment of his shortages in court funds;
- Atty. Eustacio C. Raga, Jr., Clerk of Court V and Officer-in-Charge, RTC, Catbalogan, Samar is **DIRECTED** forthwith **TO WITHDRAW** the amount of P459,702.96 deposited by respondent Efren F. Varela in the OCC, RTC, Catbalogan Samar under Official Receipt No. 2269979 and **DEPOSIT** the same amount to the Fiduciary

Account of MTC, Catbalogan, Samar under LBP SA No. 0601-0739-19 and FURNISH the Fiscal Monitoring Division, CMO, OCA with a copy of the machine validated deposit slip and passbook as proof of transfer thereof. The Officer-in-Charge of the Office of the Clerk of Court, Municipal Trial Court, Catbalogan, Samar, on the other hand, is ADVISED not to issue an official receipt to acknowledge the transfer of P459,702.96 from the Regional Trial Court to the Municipal Trial Court as this is a restitution of a previously recorded collection of MTC, Catbalogan, Samar to avoid double take-up of collections;

- The Financial Management Office of the Office of the Court Administrator is DIRECTED further to facilitate the remittance of the unpaid salaries of respondent Efren F. Varela, covering the period September 1, 2004 to January 31, 2007 amounting to P326,430.86, to the accounts of MTC, Catbalogan, Samar found to have shortages. Of the P326,430.86, FMO, OCA is FURTHER DIRECTED to REMIT P321,584.86 to the Fiduciary Account of the Municipal Trial Court-Catbalogan, Samar and REMIT the remaining balance of P4,846.00 to the Special Allowance for the Judiciary Fund of Municipal Trial Court-Catbalogan, Samar and FURNISH the Fiscal Monitoring Division, CMO, OCA, the machine-validated deposit slip as proof of such remittance;

- Respondent Efren F. Varela is DIRECTED to RESTITUTE within ten (10) days from notice hereof, the balance of P240,084.10 to the Judiciary Development Funds (P236,619.10) and General Fund (P3,465.00) accounts of MTC, Catbalogan, Samar, and to SUBMIT PROOF of such remittance to the FMD, CMO, OCA; and

Hon. Odelon S. Mabutin, Presiding Judge, MTC, Catbalogan Samar, is found guilty of SIMPLE NEGLIGENCE OF DUTY for which he is REPRIMANDED with a stern warning that a repetition of the same or similar acts in the future shall be dealt with more severely.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Velasco, Jr., Nachura, Reyes, and Leonardo-De Castro, JJ., concur.
Chico-Nazario, J., on official leave.

[1] Broken down as follows: Fiduciary Fund of P215,179.86; Judiciary Development Fund, P236,219.00; and General Fund, P8,304.00, rollo, p. 5.

[2] Id. at 4-5.

[3] Id. at 7, 11.

[4] Id. at 13-14.

[5] Id. at 76.

[6] Id. at 77.

[7] Rollo, OCA IPI No. 05-2195-P, p. 105.

[8] Id. at 105.

[9] Nos. 9291301 to 40, rollo, P-06-2113 (formerly No. 05-12-357-MTC), p. 1.

[10] Id. at 2.

[11] Id. at 3.

[12] Id.

[13] Id. at 4.

[14] Id.

[15] Id.

[16] Rollo, P-06-2113 (formerly No. 05-12-357-MTC), pp. 44-47.

[17] Id. at 47.

[18] Rollo, P-06-2113 (formerly No. 05-12-357-MTC), pp. 53-60.

[19] Id. at 90.

[20] Rollo, P-06-2113 (formerly No. 05-12-357-MTC), p. 97.

[21] Rollo, OCA IPI No. 05-2195-P, pp. 115-116.

[22] Id. at 114.

[23] Re:Initial Report on the Financial Audit Conducted in the Municipal Trial Court of Pulilan, Bulacan, A.M. No. 01-11-291-MTC, July 7, 2004, 433 SCRA 486, 494; *Gutierrez v. Quitalig*, 448 Phil. 469 (2003).

[24] *Commission on Audit v. Pamposa*, AM No. P-07-2291, June 25, 2007, 525 SCRA 471.

[25] *Commission on Audit v. Pamposa*, id. at 475; *Office of the Court Administrator v. Dureza-Aldevera*, A.M. No. P-01-1499, September 26, 2006, 503 SCRA 18; *Concerned Citizen v. Gabral, Jr.*, A.M. No. P-05-2098, December 15, 2005, 478 SCRA 13, 22; Re:Initial Report on the Financial Audit Conducted in the Municipal Trial Court of Pulilan, Bulacan, id. at 494.

[26] *Office of the Court Administrator v. Dureza-Aldevera*, id. at 46; *Office of the Court Administrator v. Fortaleza*, 434 Phil. 511 (2002).

[27] Re: Report on the Financial Audit Conducted in the MTCC-OCC, Angeles City, A.M. No. P-06-2140, June 26, 2006, 492 SCRA 469, 481.

[28] *Concerned Citizen v. Gabral, Jr.*, id.

[29] *Commission on Audit v. Pamposa*, supra note 24, at 475; *Office of the Court Administrator v. Dureza-Aldevera*, supra note 25, at 46; Re: Report on the Financial Audit Conducted in the MTCC-OCC, Angeles City, supra note 27, at 481; Re:Initial Report on the Financial Audit Conducted in the Municipal Trial Court of Pulilan, Bulacan, supra note 23, at 492.

[30] See Re: Report on the Financial Audit Conducted in the MTCC-OCC, Angeles City, supra note 27, at 481; *Cabato-Cortes v. Agtarap*, 445 Phil. 66, 74 (2003).

[31] *Office of the Court Administrator v. Dureza-Aldevera*, supra note 25, at 46.

[32] *Gutierrez v. Quitalig*, supra note 23, at 480-481; Report on the Financial Audit Conducted on the Books of Accounts of OIC Melinda Deseo, MTC General Trias, Cavite, 392 Phil. 122, 128 (2000).

[33] Memorandum dated July 2, 2007, p. 4.

[34] See Re: Report of Acting Presiding Judge Wilfredo F. Herico on Missing Cash Bonds in Criminal Case Nos. 750 and 812, A.M. No. 00-3-108-RTC, January 28, 2005, 449 SCRA 407, 432.

[35] *Office of the Court Administrator v. Trocino*, A.M. No. RTJ-05-1936, May 29, 2007, 523 SCRA 262, 276.

[36] Report on the Financial Audit in RTC, General Santos City and the RTC and MTC of Polomolok, South Cotabato, 384 Phil. 155, 167 (2000).

[37] Concerned Litigants v. Araya, Jr., A.M. No. P-05-1960, January 26, 2007, 513 SCRA 9, 21 citing Lacurom v. Magbanua, 443 Phil 711, 720-721 (2003) and Buenaventura v. Benedicto, 148 Phil. 63, 71 (1971).

[38] Balderama v. Alagar, A.M. No. RTJ-99-1449, January 18, 2002, 374 SCRA 59; Santos v. Silva, A.M. No. RTJ-00-1579, January 18, 2001.

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