



Republic of the Philippines  
**Supreme Court**  
 Manila

**EN BANC**

**REPORT ON THE FINANCIAL  
 AUDIT CONDUCTED IN THE  
 MUNICIPAL TRIAL COURT IN  
 CITIES, TAGUM CITY, DAVAO  
 DEL NORTE.**

**A.M. OCA IPI No. 09-3138-P**  
 (Formerly A.M. No. 09-1-19-MTCC)

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**OFFICE OF THE COURT  
 ADMINISTRATOR,**  
 Complainant,

**A.M. No. MTJ-05-1618**  
 (Formerly A.M. No. 05-10-282-MTCC)

Present:

-versus-

SERENO, C.J.,  
 CARPIO,  
 VELASCO, JR.,  
 LEONARDO-DE CASTRO,  
 BRION,  
 PERALTA,  
 BERSAMIN,  
 DEL CASTILLO,\*  
 ABAD,  
 VILLARAMA, JR.,  
 PEREZ,  
 MENDOZA,  
 REYES,  
 PERLAS-BERNABE, and  
 LEONEN, JJ.

**JUDGE ISMAEL L. SALUBRE,  
 MR. NERIO L. EDIG and MS.  
 BELLA LUNA C. ABELLA, MS.  
 DELIA R. PALERO and MR.  
 MACARIO HERMOGILDO S.  
 AVENTURADO, all of MUNICIPAL  
 TRIAL COURT IN CITIES,  
 TAGUM CITY, DAVAO DEL  
 NORTE,**

Promulgated:

Respondents.

OCTOBER 22, 2013

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\* On official leave.

## DECISION

### ***PER CURIAM:***

These consolidated administrative matters resulted from the two financial audits conducted on the books of accounts of the Municipal Trial Court in Cities (MTCC) of Tagum City, Davao del Norte.

The first financial audit conducted in said court in 2005 covered the period January 1, 1993 to January 31, 2005. The court was then presided by Judge Ismael L. Salubre. The audit was prompted by a report of the Commission on Audit (COA) regarding the violation of Nerio L. Edig, Clerk of Court IV, of Section 21 of the New Manual on the New Government Accounting System, which requires all collecting officers to deposit intact all their collections with the authorized government bank daily or not later than the next banking day, and Edig's non-submission of monthly reports. Edig failed to submit monthly reports for the Judiciary Development Fund (JDF) for the period February 2003 to December 31, 2004, the Clerk of Court General Fund (COCGF) for the period February 2003 to November 2003, the Special Allowance for the Judiciary Fund (SAJF) for the period December 2003 to December 31, 2004 and the Fiduciary Fund for the period April to December 31, 2004.<sup>1</sup> The second audit, done in 2008, covered the period February 1, 2005 to July 31, 2008 and was prompted by the successive changes in accountable officers in the court.<sup>2</sup>

During the 2005 audit, Edig informed the audit team that Bella Luna C. Abella was his cashier from the time he assumed office as Clerk of Court on February 16, 1978. Abella was later replaced by Delia R. Palero from January 1, 1996 until January 30, 2002 and then by Macario H.S. Aventurado from January 31, 2002 up to the time of the audit in 2005. Abella also acted as Officer-in-Charge from April 1, 2002 until October 6, 2002 while Edig was on study leave.<sup>3</sup>

Per Report<sup>4</sup> of the audit team dated September 2, 2005, the financial accountabilities of Edig, Salubre, Abella, Palero and Aventurado are as follows:

PARTICULARS	Judge Salubre	Edig	Abella	Palero	Aventurado
Received cash which was supposedly due to Government and the bondsman	P436,800.00				

<sup>1</sup> *Rollo* (A.M. No. MTJ-05-1618), p. 8.

<sup>2</sup> *Rollo* (A.M. OCA IPI No. 09-3138-P), p. 3.

<sup>3</sup> *Rollo* (A.M. No. MTJ-05-1618), p. 8.

<sup>4</sup> *Id.* at 8-30.

JDF		P11,340.50	P36,928.00		
General Fund		6,703.40	2,900.00		
Fiduciary Fund		11,496.00	5,000.00		
Deposit slips w/o machine validation (JDF/GF)		97,535.60			
Unauthorized Withdrawals (Fiduciary Fund)		5,684,875.00		P3,147,285.00	P2,537,590.00
Unidentified withdrawals (Fiduciary Fund)		206,500.00			
Uncollected Fines		2,480,656.16			
Unaccounted confiscated Bet Money		51,921.00			
Unremitted forfeited Cash bonds		149,800.00		110,800.00	P39,000.00
Uncollected forfeited surety bonds		105,400.00			
Dismissed Cash bonds applied to FINES		21,000.00		21,000.00 <sup>5</sup>	

The audit team likewise reported that “[b]y stroke of luck, the team was able to discover documents showing that Judge Salubre received on many occasions cash bonds of dismissed cases and forfeited cash bonds in the total amount of ₱436,800.00. This discovery would confirm the allegations of both Ms. Palero and Mr. Aventurado that the Judge has something to do with the unaccounted amount incurred by them. They further alleged that Mr. Edig knew about what was happening inside the court but can not do anything. All of them were pressured.”<sup>6</sup> The team also found several withdrawal slips with acknowledgments at the back signed by Judge Salubre evidencing receipts of cash bonds of dismissed cases. They also discovered conflicting orders of Judge Salubre in two criminal cases.

Other irregularities such as the keeping of court collections outside court premises by Aventurado and the failure of Sheriff Carlito B. Benemile to serve the writ of execution in two criminal cases were likewise found.

In its Memorandum<sup>7</sup> dated September 2, 2005 to then Chief Justice Hilario G. Davide, Jr., the Office of the Court Administrator (OCA) recommended that:

1. **MR. NERIO L. EDIG**, Clerk of Court, MTCC, Tagum City be **DIRECTED** to:

<sup>5</sup> Id. at 24-29, 1105, 1108-1110.

<sup>6</sup> Id. at 9. Italics supplied.

<sup>7</sup> Id. at 1-7.

- a. **PAY** the following amount in the manner herein indicated (see table below) **within fifteen (15) days** from receipt hereof:

<b>PARTICULARS</b>		<b>AMOUNT</b>	<b>Manner of Payment</b>
Judiciary Development Fund	P	11,340.50	By depositing the said amount to LBP SA#0591-0116-34. There must be an indication in the deposit slip that said amount is for the payment of the shortage incurred per audit dated January 31, 2005.
Clerk of Court General Fund		6,703.40	Through PMO, payable to the National Treasury and send to the OCA-Chief Accountant and the latter to remit it to the National Treasury.
Fiduciary Fund		11,496.00	Direct deposit to LBP SA#0341-0727-19. To be indicated in the deposit slip as payment of the shortage incurred per audit dated January 31, 2005.
<b>Total</b>		<b>29,539.90</b>	

Thereafter, to immediately **FURNISH** the Court, thru the Office of the Court Administrator (OCA) machine validated deposit slip[s] as proof of deposit in the JDF and Fiduciary Fund Account.

The remittance amounting to P97,535.60 (Schedule 1) which was considered not to have been deposited for failure of the accountable officer to present, upon demand, machine validated deposit slips as proof of its remittance shall be held in abeyance. However, if the accountable officer fail[s] to submit certification from the Land Bank that the said amount has been received and properly entered to the account maintained by the court for the General Fund, it shall be considered as final shortage after the lapse of fifteen (15) days from notice hereof.

- b. **EXPLAIN within fifteen (15) days** from receipt hereof why no administrative charge shall be taken against him for the following:
- 1) For the undeposited collections in the Judiciary Development Fund, Clerk of Court General Fund and Fiduciary Fund amounting to **P11,340.50**, **P6,703.40** and **P11,496.00**, respectively, **excluding temporary shortages** brought about by the absence of supporting documents such as **P97,535.60**, representing deposit slips without machine validation; **P5,684,875.00**, representing unauthorized withdrawals; and **P206,500.00**, representing unidentified withdrawals;
  - 2) Failure to monitor the status of cases, thereby resulting [in] two writ[s] of execution becoming stale or not being served for several years (Annex D) and several cases were not reported (Annex K);
  - 3) For allowing his cash clerk, Mr. Aventurado to bring court collections outside the court premises;
  - 4) For allowing Judge Salubre to receive the cash bonds intended for the concerned bondsmen without informing the court of such fact (Annex H);

- 5) For his failure to report cases (Schedule 14) as mentioned herein; and
- 6) For questionable supporting documents presented to this team (Annex F).
- c. **SHOW** cause **within fifteen (15) days** from receipt hereof why the following shall not be charged against him:
- 1) The amount of **P2,480,656.16** (Schedule 8) which represents uncollected fines;
  - 2) The amount of **P51,921.00** (Schedule 9.2) representing unreported confiscated bet money;
  - 3) The amount of **P105,400.00** (Schedule 12) representing uncollected personal bonds guaranteed by sureties which were forfeited due to non[-]production of the body of the accuse[d].
  - 4) The amount of **P21,000.00** (Schedule 13) representing forfeited cash bonds applied to fine; and
  - 5) The amount of **P149,800.00** (Schedule 10) representing unremitted forfeited cash bonds;
- d. **USE** the standard docket book where the status of the case, official receipts (where the amount, date and nature of payment are indicated) and the corresponding fees collected are entered; and
- e. **SUBMIT** the list of official receipts issued corresponding to the following withdrawn interest, otherwise said interest shall be considered as unremitted and will form part of his accountability:
1. P17,937.70 – withdrawn on January 21, 1998;
  2. 23,317.79 – withdrawn on March 5, 2002;
  3. 8,946.72 – withdrawn on April 10, 2003; and
  4. 4,719.52 – withdrawn on January 21, 2004
2. **MS. BELLA LUNA C. ABELLA**, Court Legal Researcher and former Officer-in-Charge, MTCC, Tagum City from April 1 to October 7, 2005 be **DIRECTED** to:
- a. **PAY** the following amount in the manner herein indicated (see table below) **within fifteen (15) days** from receipt hereof:

FUND		AMOUNT	Manner of Payment
Judiciary Development Fund	P	36,928.00	By depositing the said amount to LBP SA#0591-0116-34. Indicate in the deposit slip that such was the payment of the shortage incurred in JDF per audit dated January 31, 2005.
Clerk of Court General Fund		2,900.00	Through PMO payable to the National Treasury and send to the OCA-Chief Accountant and the latter to remit it to the National Treasury.
Fiduciary Fund		5,000.00	Direct deposit to LBP SA#0341-0727-19.

			Indicate in the deposit slip that said amount is for payment of the shortage incurred in Fiduciary Fund per audit dated January 31, 2005.
<b>Total</b>	<b>P</b>	<b>44,828.00</b>	

Thereafter, to immediately **FURNISH** the Court, thru the Office of the Court Administrator (OCA) machine validated deposit slip[s] as proof of deposit in the JDF and Fiduciary Fund Account[s].

b. **EXPLAIN within fifteen (15) days** from receipt hereof why no administrative charge shall be taken against her for the following:

- 1) For misappropriating the court collections amounting to **P44,828.00** (P2,900.00, COCGF incurred shortage; P36,928.00, JDF incurred shortage; and P5,000, FF shortage);
- 2) For issuing temporary receipts instead of the court issued official receipts in her JDF collections without the authority of the High Court from August 6, 1993 to August 31, 1994; and
- 3) For the cancellation of Official Receipt No. 5866705 which was issued for the forfeited exhibit money amounting to P4,537.50 in Criminal Case No. 16591-96.

c. **SUBMIT within fifteen (15) days** from receipt hereof the (1) temporary receipts issued from August 6, 1993 to August 31, 1994 and (2) missing triplicate Official Receipt No. 4390228.

d. **REFRAIN** from issuing official receipts, receiving court collections and doing tasks having connections with financial transactions.

3. **MS. DELIA [R.] PALERO**, Court Interpreter, MTCC, Tagum City, be **DIRECTED** to:

a. **SHOW** cause **within fifteen (15) days** from receipt hereof why she should not be held accountable for the following:

- 1) Withdrawals made without authority as shown by her failure to produce the supporting documents upon demand in the amount of **P3,147,285.00** (this amount was part of the P5,684,875.00 unauthorized withdrawals), Schedule 15;
- 2) Cash Bonds of dismissed cases ordered to be applied to fines but nothing in the records show that it was indeed applied to fines. The amount was **P21,000.00** (Schedule 13);
- 3) Forfeited cash bonds already withdrawn but were not deposited either to JDF, COCGF or SAJF in the amount of **P110,800.00** (Schedule 16);

b. **EXPLAIN** within the same period why no administrative charge shall be filed against her for the delay incurred in the remittance of collections in addition to the above infractions (Schedule 5, 6 and 7).

4. **MR. MACARIO H. S. AVENTURADO**, Cash Clerk III, MTCC, Tagum City, be **DIRECTED** to:

- a. **SHOW** cause **within fifteen (15) days** from receipt hereof why he should not be held accountable for the following:
    - 1) Withdrawals made without authority as shown by his failure to produce the supporting documents upon demand in the amount of **P2,537,590.00** (this amount was part of the P5,684,875.00 unauthorized withdrawals), Schedule 17; and
    - 2) Forfeited cash bonds already withdrawn but were not deposited either to JDF, COCGF or SAJF in the amount of **P39,000.00** (Schedule 18).
  - b. **EXPLAIN** within the same period why no administrative charge shall be filed against him for the delay incurred in the remittance of collections in addition to the above infractions (see Schedule 5, 6 and 7).
  - c. **SUBMIT within fifteen (15) days** from receipt of notice JDF, COCGF, SAJF cash books; for currently used cash books, photo copy thereof will suffice.
5. **MR. CARLITO B. BENEMILE**, Sheriff of MTCC, Tagum City be **DIRECTED** to **EXPLAIN within fifteen (15) days** from receipt hereof why no administrative charge shall be filed against him for his failure to serve the writ of execution in connection with the cases of People vs. Molde, Criminal Case Nos. 16486 to 16488-96 and People v. Elena Salipot, Criminal Case No. 26075-00 despite notice to him.
  6. **HON. ISMAEL L. SALUBRE**, Presiding Judge, MTCC, Tagum City be **DIRECTED** to show cause **within fifteen (15) days** from receipt hereof why he should not be administratively charged for his act of taking cash bonds intended for the bondsmen and for the government in the amount of **P436,800.00** as well as for issuing two conflicting orders in connection with the cases of People vs. Danilo Gomez, supra and People vs. Romar Ebol, supra.
  7. This report be docketed as a regular administrative matter against **MR. NERIO L. EDIG, MS. BELLA LUNA C. ABELLA, MS. DELIA R. PALERO, MR. MACARIO H. S. AVENTURADO and HON. ISMAEL L. SALUBRE** and the same be referred to the Executive Judge of Regional Trial Court (RTC), Tagum City for Investigation[,] Report and Recommendation within sixty (60) days from receipt of records.
  8. For the Honorable Court to allow the withdrawal of P13,000.00 from the Judiciary Development Fund Account and the same be deposited to the Fiduciary Fund Account (LBP SA#0341-0727-19) of the Municipal Trial Court in Cities, Tagum City.<sup>8</sup>

Acting upon the recommendations of the OCA, the Court, on November 23, 2005, issued a Resolution<sup>9</sup> adopting the same.

On December 10, 2005, Abella succumbed to cancer.<sup>10</sup>

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<sup>8</sup> Id. at 1-6, 25-30.

<sup>9</sup> Id. at 716-722.

<sup>10</sup> Id. at 757.

In a letter dated January 5, 2006, then Deputy Court Administrator Christopher O. Lock issued a letter-directive to Executive Judge Oscar G. Tirol of the Regional Trial Court of Tagum City to conduct an investigation and submit a report/recommendation within 60 days from receipt of the endorsement.<sup>11</sup>

On January 11, 2006, Judge Salubre, Edig, Palero, Aventurado and Benemile received their copies of the November 23, 2005 Resolution.<sup>12</sup>

On February 13, 2006, Judge Tirol issued an Order<sup>13</sup> directing Judge Salubre, Edig, Abella, Palero, Aventurado and Benemile to submit their answers/comments to the charges outlined in the November 23, 2005 Resolution. Palero, Aventurado and Benemile received their copies of said order on the same day while Judge Salubre received his the following day or on February 14, 2006. Edig, on the other hand, received a copy on February 15, 2006.<sup>14</sup>

On March 1, 2006, Judge Salubre died of diabetic complications.<sup>15</sup>

As for Edig, his lawyer, Atty. Ruwel Peter S. Gonzaga, initially asked for a 30-day extension to file an answer citing the former's serious ailments.<sup>16</sup> But Antonieta Edig, Edig's wife, in a letter<sup>17</sup> dated March 17, 2006, informed the investigating judge that her husband was incapable of filing an answer and that she wanted to insulate him from stress that may affect his gradual recovery.

In Palero's Answer<sup>18</sup> dated March 20, 2006, she explained that the unaccounted withdrawals totaling ₱3,147,285 were authorized. She contended that the withdrawal slips were signed by either Judge Salubre or Clerk of Court Edig. Part of the amount was received by Judge Salubre who even signed the acknowledgment receipts. As to the ₱21,000 pertaining to the cash bonds of dismissed cases that were supposed to be applied to fines but were not, Palero claimed that Judge Salubre also took it without signing an acknowledgment receipt though she noted it for reference. As to the ₱110,800 forfeited cash bonds, Palero submitted acknowledgment receipts showing that ₱21,000 was received by Evelyn Molde, wife of an accused in three criminal cases; ₱14,000 was withdrawn and received by Ms. Ruth Ibaos; and ₱63,800 was taken by Judge Salubre.

Palero also admitted that the remittances were delayed but she was not even aware that they were "technically" delayed already. She claimed that it

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<sup>11</sup> Id. at 721, 724, 737.

<sup>12</sup> Id. at 719 and 721 (dorsal side).

<sup>13</sup> Id. at 737-738.

<sup>14</sup> Id. at 737.

<sup>15</sup> Id. at 758.

<sup>16</sup> Id. at 743-744.

<sup>17</sup> Id. at 759-760.

<sup>18</sup> Id. at 768-769.

has been the practice of the court to just make the remittance on the month following the month when the collections were actually made and that she was just doing the manual task of going to the bank to make the deposits. She likewise knew for a fact that the clerk of court would still wait for Judge Salubre to pay for his debt/advances in the collections, but the clerk of court would just use his own money in replenishing the collections when Judge Salubre throws invectives at them when they demand payment.

In Aventurado's Answer<sup>19</sup> dated March 21, 2006, he contended that he never benefited from the unaccounted amount he was made to explain. He claimed to be the newest and youngest employee in the court and only sought advice from his fellow employees. He alleged that Clerk of Court Edig, Legal Researcher Abella and Court Interpreter Palero advised him to let the bondsman sign at the back of the receipts but even if he did as told, there were instances when the bondsmen would leave immediately after receiving the money. He also claimed that he can no longer give a detailed explanation on the withdrawals and non-receipt of amounts by bondsmen because they were instructed to send all the pertinent records to the Supreme Court. As to the ₱39,000 unaccounted forfeited cash bonds, Aventurado submitted some receipts.

Aventurado likewise admitted to the delays in the remittance of collections but attributed said delays to Judge Salubre. He claimed that there were instances when the judge would call him to his chambers to ask about the cash on hand and thereafter order him to hand over some of the collections with a promise that he would return them after a day or two. As the judge was his superior, he would comply and as advised by his fellow employees, ask the judge to sign an acknowledgment receipt. He, however, alleged that there were times when the judge would get angry and refuse to sign the receipt. He further added that he had to wait for the incoming collections for the month to be able to deposit because there were instances when the judge would not pay what he got from the court collections.

In his letter<sup>20</sup> dated February 14, 2006, Benemile explained that records would show that he did not receive a writ of execution for *People v. Molde*<sup>21</sup> and that he only knew of the fact that the same was decided and gained finality when he received the administrative order. As to *People v. Salipot*,<sup>22</sup> he clarified that the writ of execution in said case was duly implemented but admitted that no return was made because the parties agreed that the losing party will pay in installment basis.

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<sup>19</sup> Id. at 771-774.

<sup>20</sup> Id. at 797.

<sup>21</sup> Criminal Case Nos. 16486-96 to 16488-96.

<sup>22</sup> Criminal Case No. 26075-00.

In his report<sup>23</sup> dated April 22, 2006, the investigating judge evaluated the liabilities of Palero, Aventurado and Benemile. He left to this Court's discretion the liabilities of Judge Salubre, Abella and Edig.

The investigating judge found Palero's explanation as inadequate and unsatisfactory because Palero failed to produce the acknowledgment receipts required except for 36 cases wherein she was able to present court orders directing the release of the bonds and the signatures of the persons who received them. Still, the investigating judge opined that in said 36 cases, Palero had been too lax and liberal, releasing to persons equipped with no authority to receive the money for cancelled cash bonds and failing in most instances to note down the names of the recipients. Palero, also by her explanation, betrayed her unreliability as custodian of funds if indeed it was true that Judge Salubre took the ₱1,630,439.70 and that Judge Salubre should be blamed for her failure to account for the ₱21,000 cash bonds that should be applied to fines, since she allowed it to happen.

The investigating judge also found unacceptable the reason posed by both Palero and Aventurado for the delay in the remittance of collections – that they had to wait for Judge Salubre to return the borrowed funds – as the duty to remit collections on time cannot be compromised.

As to Aventurado, while he was able to show that deposits of some of the forfeited cash bonds were duly effected and reported, he was not able to present proof of acknowledgments of bondsmen for withdrawn cash bonds in several cases.

The investigating judge ruled that there was no clear indication of dishonesty that can be imputed to Palero and Aventurado and held that it was perhaps out of inexperience in the job of cash clerk that made them grossly ineffective and incompetent resulting in so much loss.

As to Benemile, the investigating judge found that he cannot be held accountable for his failure to implement a writ which was never brought to his attention in *People v. Molde*, but he should be made to answer for failure to make a return on the writ of execution in *People v. Salipot*.

Based on the above observations, the investigating judge made the following recommendations:

1. that respondents DELIA [R.] PALERO and MACARIO H.S. AVENTURADO be each suspended for a period of Six (6) Months without salary, and restitute whatever sums may be found owing from them as shortages in remittance/collections;

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<sup>23</sup> *Rollo* (A.M. No. MTJ-05-1618), pp. 725-736.

2. that Sheriff CARLITO B. BENEMILE be fined in the amount of One Thousand Pesos (₱1,000.00) for admittedly failing to make his return of the writ of execution issued in Criminal Case No. 26075-00.<sup>24</sup>

In its October 16, 2006 Memorandum<sup>25</sup> for then Associate Justice Reynato S. Puno, the OCA recommended, after considering the report of the investigating judge,

1. That the administrative complaint against the late Judge Ismael L. Salubre and Ms. Bella Luna C. Abella be **DISMISSED**;
2. That Respondent Nerio L. Edig be **DIRECTED** to file his Answer to the charges against him within fifteen (15) days from receipt hereof otherwise, his liability shall be determined based on the record of this case;
3. Respondent Delia R. Palero be **DISMISSED** from the service for gross neglect of duty, dishonesty and grave misconduct. All her retirement benefits, excluding earned leave credits, are ordered forfeited in favor of the government with prejudice to re[-]employment in any government office, including government[-]owned and [-]controlled corporations and that she be directed to pay the amount of P3,147,285.00 representing the shortage in the Fiduciary Fund, P21,000.00 and P74,800.00 representing the shortage in the Judiciary Development Fund;
4. Respondent Macario H.S. Aventurado be **DISMISSED** from the service for gross neglect of duty, dishonesty and grave misconduct. All his retirement benefits, excluding earned leave credits, are ordered forfeited in favor of the government with prejudice to re[-]employment in any government office, including government[-]owned and [-]controlled corporations and that he be directed to restitute the amount of P2,537,590.00 representing the shortage in the Fiduciary Fund and the amount of P39,000.00 representing the shortage in the Judiciary Development Fund; and
5. Respondent Carlito Benemile be **FINED** in the amount of P1,000.00 for admittedly failing to make his return of the writ of execution issued in Criminal Case No. 26075-00.<sup>26</sup>

On December 11, 2006, the Court issued a Resolution<sup>27</sup> (1) dismissing the administrative complaint against Judge Salubre and Abella in view of their death; (2) directing Edig to file his answer to the charges against him within 15 days from receipt, otherwise his liability shall be determined based on the records of the case; and (3) requiring Palero, Aventurado and Benemile to manifest to the Court whether they are submitting this matter for decision on the basis of the pleadings filed.

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<sup>24</sup> Id. at 736.

<sup>25</sup> Id. at 800-812.

<sup>26</sup> Id. at 811-812.

<sup>27</sup> Id. at 813-814.

On March 6, 2007, this Court received separate Manifestations<sup>28</sup> from Palero, Aventurado and Benemile indicating that they are submitting the matter for decision on the basis of the pleadings they have filed. On even date, the Court also received a Manifestation<sup>29</sup> from Antonieta Edig indicating that her husband was still suffering from the effects of the stroke he suffered two years ago and that every time he was confronted with problems, he undergoes seizures. She likewise informed the Court that she did not and will not allow anyone to discuss with him his problems related to his employment and that her husband was not physically and mentally capable to fully explain or submit an answer to the charges against him due to his sensitive condition.

On July 16, 2007, this Court directed Edig anew to file his answer to the charges against him within a non-extendible period of 15 days from notice, otherwise his liability shall be determined based on the records of the case.<sup>30</sup>

Meanwhile, on September 10, 2007, in A.M. No. 12749-Ret. (*Re: Application for Retirement/Gratuity Benefits under R.A. 910, as amended by R.A. 5095 and PD 1438, filed by Ms. Susana C. Salubre, surviving spouse of the late Judge Ismael L. Salubre, MTCC Tagum City*), the Court issued a Resolution<sup>31</sup> approving the application for retirement/gratuity benefits of the late Judge Salubre subject to the usual clearance requirements.

In an Explanation<sup>32</sup> dated October 5, 2007, Edig, through his wife, answered the charges hurled against him.

In a Memorandum<sup>33</sup> dated October 23, 2007 to then Chief Justice Reynato S. Puno, the OCA recommended the reconsideration of the Court's Resolution dismissing the administrative case against Judge Salubre and Abella and the reinstatement of the same. The OCA further recommended that the September 10, 2007 Resolution in A.M. No. 12749-Ret. be set aside and that the processing of the clearances of the two be held in abeyance pending resolution of the administrative case. The OCA's recommendations were based on two grounds: (1) the rudiments of due process were complied with; and (2) the death of the respondent is not in itself a ground for the dismissal of the administrative case.

On April 6, 2008, Edig passed away. In a Manifestation<sup>34</sup> dated April 21, 2008, his counsel prayed that Edig be dropped from the case and that his family be allowed to process and receive, if any, whatever is due them.

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<sup>28</sup> Id. at 815-822.

<sup>29</sup> Id. at 824-825.

<sup>30</sup> Id. at 944.

<sup>31</sup> Id. at 981.

<sup>32</sup> Id. at 957-961.

<sup>33</sup> Id. at 975-980.

<sup>34</sup> Id. at 997.

On June 2, 2008, this Court issued a Resolution<sup>35</sup> adopting the recommendations of the OCA in its October 23, 2007 Memorandum.

In the meantime, the second financial audit was conducted on the books of accounts of the MTCC of Tagum City covering the period February 1, 2005 to July 31, 2008. Following are the detailed periods of accountability<sup>36</sup> of each accountable officer, together with their respective Cash Clerks:

Clerk of Court*/Officer-in-Charge**	Cash Clerk	Period of Accountability		
Nerio L. Edig*	Delia R. Palero	February 1, 2005	-	February 28, 2005
Delia R. Palero**	Macario H. Aventurado	March 1, 2005	-	May 31, 2007
Runero S. Gonzaga**	Delia R. Palero	June 1, 2007	-	January 31, 2008
Edgar C. Perez*	Delia R. Palero	February 1, 2008	-	present

The audit team found shortages during the period of accountability of Palero. Below is the summary<sup>37</sup> of her remaining total accountability exclusive of the prior audit's findings:

Special Allowance for the Judiciary Fund (SAJF)	₱	43,124.70
Judiciary Development Fund (JDF)		322,625.30
Mediation Fund		9,500.00
Fiduciary Fund (FF) – undeposited collections		7,000.00
Fiduciary Fund (FF) – unauthorized withdrawals (no acknowledgment receipts)		607,290.00
<b>Total Accountability</b>	<b>₱</b>	<b>982,540.00</b>

Thus, the audit team recommended:

1. This report be treated as an administrative complaint against Ms. Delia R. Palero and Mr. Macario Hermogildo S. Aventurado and consolidated with A.M. No. MTJ-05-1618 [formerly OCA IPI No. 05-10-282-MTCC] entitled “Office of the Court Administrator v. Hon. Ismael L. Salubre, Mr. Nerio L. Edig, Ms. Bella Luna C. Abella, Ms. Delia R. Palero and Mr. Macario Hermogildo S. Aventurado, all of MTCC, Tagum City, Davao del Norte.”
2. **Ms. DELIA R. PALERO**, Court Interpreter II and former Acting Clerk of Court IV, together with **Mr. MACARIO HERMOGILDO S. AVENTURADO**, Cash Clerk III, both from MTCC Tagum City, Davao del Norte, be **DIRECTED**, within fifteen (15) days from notice to:
  - a. **SUBMIT** machine validated deposit slips or LBP certification supporting the remittances of the computed shortages on the following funds, otherwise **RESTITUTE** the same, to wit:

<sup>35</sup> Id. at 1022-1023.

<sup>36</sup> *Rollo* (A.M. OCA IPI No. 09-3138-P), p. 8.

<sup>37</sup> Id. at 16.

Special allowance for the Judiciary Fund (SAJF) (Schedule 1)	₱ 43,124.70
Judiciary Development Fund (JDF) (Schedule 2)	322,625.30
Mediation Fund (MF) (Schedule 3)	9,500.00
Fiduciary Fund (FF) – undeposited collections (Schedule 4)	7,000.00
<b>Total Accountability</b>	<b>₱382,250.00</b>

- b. SUBMIT** valid acknowledgment receipts to support the withdrawals of the attached list of unauthorized withdrawals amounting to P607,290.00 (Schedule 5), otherwise **RESTITUTE** the same.
- c. EXPLAIN** the occurrence of the above computed shortages and delay incurred in the remittance of the Mediation Fund collections.
- d. REITERATE** the full compliance with the directives in the Resolution of the Court dated November 23, 2005 (Court Resolution Attached).
3. **Mr. Carlito Benemile, Sheriff III, Mr. Ramonito Catubag, Clerk III, Mr. Alvin Obero, Clerk II, Mr. Joseph Casimura, Process Server, Mr. Renato Ilagan, Process Server, all from MTCC, Tagum City, Davao del Norte, be DIRECTED** within fifteen (15) days from notice to liquidate their respective cash advances (see attached statement of accounts) from the Sheriff's Trust Fund, to wit:

Payee	Position		Amount
Alvin Obero	Clerk II	P	41,641.00
Ramonito Catubag	Clerk III		37,042.00
Joseph Casimura	Process Server		28,579.00
Carlito Benemile	Sheriff III		11,800.00
Renato Ilagan	Process Server		1,300.00
<b>TOTAL</b>		P	<b>120,362.00</b>

4. **MR. EDGAR C. PEREZ**, Clerk of Court IV, MTCC, Tagum City, Davao del Norte, be **DIRECTED** to:
- a. TRACE and IDENTIFY** the employee who received the cash advances from the Sheriff's Trust Fund amounting to P2,000.00 each on June 14, 2007 and July 14, 2007 and **DIRECT** to liquidate the same; and
- b. STRICTLY ADHERE** to the provisions of Amended Administrative Circular No. 35-2004, Sec. 10, with regard[s] to the proper handling of the Sheriff's Trust Fund and all Circulars issued by the Honorable Court.
5. **Hon. ARLENE LIRAG-PALABRICA**, Presiding Judge, MTCC, Tagum City, Davao del Norte, be **DIRECTED** to **MONITOR** the financial transactions of the court to avoid the occurrence of irregularity in the collection, deposit and withdrawal of court funds.
6. That the terminal leave benefits payable to the heirs of the late Judge Ismael L. Salubre, Ms. Bella Luna C. Abella and Mr. Nerio L. Edig be **FORFEITED** in favor of the Supreme Court to answer for the computed shortages found by the Financial Audit Team on the financial audit conducted on January 31, 2005.

7. The Office of the Administrative Services and Financial Management Office be **DIRECTED** to **PROCESS** and **COMPUTE** the terminal leave pay of the respondents Judge Salubre, Ms. Abella and Mr. Edig, dispensing [with] the usual documentary requirements and to **APPLY** the same to the computed shortages on the financial audit conducted on January 31, 2005.<sup>38</sup>

The recommendations of the audit team were approved and adopted by then Court Administrator Jose P. Perez (now Supreme Court Justice) in his Memorandum<sup>39</sup> dated January 19, 2009 to then Chief Justice Reynato S. Puno. The Court, in its Resolution<sup>40</sup> dated February 18, 2009 in turn adopted the recommendations of the OCA.

On July 22, 2009, the OCA received the compliance<sup>41</sup> of Obero, Catubag, Camisura, Benemile and Iligan with the February 18, 2009 Resolution particularly the directives in paragraphs 3 and 4(a).

Through a Memorandum<sup>42</sup> dated July 20, 2010 to then Chief Justice Renato C. Corona, the OCA submitted its evaluation and recommendations on the liabilities of Judge Salubre, Edig and Abella.

As to Judge Salubre and Edig, the OCA opined that while they died before the investigating judge was able to finish and submit his report, records show that they were duly notified of the proceedings and were directed to file their answers but their spouses chose not to because of their failing health. Having complied with the rudiments of due process, the OCA is of the opinion that the Court can proceed in determining the administrative liability of Judge Salubre and Edig.

The OCA found that the evidence gathered during the audit, such as the acknowledgments signed by Judge Salubre evidencing receipt of dismissed and forfeited cash bonds and the statements of Palero and Aventurado, established his culpability. It ruled that Judge Salubre's act of receiving and appropriating for himself the cash bonds of dismissed cases and forfeited cash bonds which were due to the government and to the bondsmen constitute grave misconduct.

As to Edig, the OCA ruled that the evidence gathered by the audit team clearly establish the unauthorized withdrawals from the Fiduciary Fund amounting to ₱5,684,875. Being the clerk of court and custodian of the court's funds, Edig is primarily accountable for the unauthorized withdrawals from the Fiduciary Fund. It held that Edig's failure to fulfill the responsibility of closely supervising the proper handling of collections and deposits to avoid any mishandling of government funds deserves

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<sup>38</sup> Id. at 16-17.

<sup>39</sup> Id. at 1-2.

<sup>40</sup> Id. at 61-64.

<sup>41</sup> Id. at 81-109.

<sup>42</sup> *Rollo* (A.M. No. MTJ-05-1618), pp. 1104-1117.

administrative sanction and not even the full payment of the shortages shall exempt him from liability.

As to Abella, the OCA found that while she died on December 10, 2005, after the issuance of the November 23, 2005 Resolution of the Court directing her to pay the shortages and to explain the charges against her, the directive was only received on January 11, 2006. Thus, there was no actual service of notice to Abella since she was already dead at that time. Because of lack of due process, the OCA opined that the administrative complaint against Abella should be dismissed.

Given the above findings, the OCA recommended that:

A) Judge ISMAEL L. SALUBRE be found **GUILTY** of grave misconduct. Considering that the Court can no longer dismiss respondent Judge SALUBRE in view of his death, a penalty of **FINE** equivalent to his salary for six (6) months may be imposed to be deducted from his retirement gratuity benefits;

B) The Financial Management Office (FMO), OCA, be **DIRECTED** to:

(B.1) **PROCESS** the money value of [the] terminal leave benefits of respondent Judge ISMAEL L. SALUBRE subject to the submission of the documentary requirements and **APPLY** the same to the computed shortage in the Fiduciary Fund account in the amount of Four Hundred Thirty Six Thousand Eight Hundred Pesos (Php436,800.00) and the remaining balance of the shortage shall be **DEDUCTED** from the retirement gratuity benefits due to Judge ISMAEL L. SALUBRE to be remitted to the Fiduciary Fund account of the Municipal Trial Court in Cities, Tagum City. The FMO, OCA is further **DIRECTED** to coordinate with the Fiscal Monitoring Division (FMD), Court Management Office (CMO), OCA, before the release of the check issued in favor of the MTCC, Tagum City, Davao del Norte for the preparation of the necessary communication with the incumbent Clerk of Court of MTCC, Tagum City, Davao del Norte;

(B.2) The balance of the retirement gratuity benefits of the late Judge ISMAEL L. SALUBRE after deducting the abovementioned shortages be **RELEASED to his legal heirs**, unless he is charged in some other administrative complaint or the same is otherwise withheld for some lawful cause, subject to the usual required clearances and accounting and auditing procedures;

C) Clerk of Court NERIO L. EDIG be found **GUILTY** of grave misconduct and dishonesty. Considering, however, that the dismissal from the service can no longer be imposed in view of the respondent's demise, a penalty of **FINE** equivalent to his salary for six (6) months may be imposed to be deducted from his retirement benefits;

D) The Financial Management Office, OCA, be **DIRECTED** to **PROCESS** the money value of [the] terminal leave benefits of the late respondent NERIO L. EDIG dispensing with the usual documentary requirements and **APPLY** the same to the computed shortage in the Fiduciary Fund account in the amount of Eight Million Eight Hundred Twenty[-]Seven Thousand Two Hundred Twenty[-]Seven Pesos and

66/100 (Php8,827,227.66). The FMO, OCA is further **DIRECTED** to coordinate with the Fiscal Monitoring Division (FMD), Court Management Office (CMO), OCA, before the release of the check issued in favor of the MTCC, Tagum City, Davao del Norte, for the preparation of the necessary communication with the incumbent Clerk of Court of MTCC, Tagum City, Davao del Norte;

- E) The administrative case against the late respondent **BELLA LUNA C. ABELLA** be **DISMISSED**; and the Financial Management Office, OCA, be **DIRECTED** to:

(E.1) **PROCESS** the money value of [the] terminal leave benefits of the late respondent BELLA LUNA C. ABELLA subject to the submission of the documentary requirements and **APPLY** the same to the computed shortage in the Fiduciary Fund account in the amount of Forty[-]Four Thousand Eight Hundred Twenty[-]Eight Pesos (Php44,828.00). The FMO, OCA is further **DIRECTED** to coordinate with the Fiscal Monitoring Division (FMD), Court Management Office (CMO), OCA, before the release of the check [issued] in favor of the MTCC, Tagum City, Davao del Norte, for the preparation of the necessary communication with the incumbent Clerk of Court of MTCC, Tagum City; and

(E.2) The balance of the money value of [the] terminal leave benefits of the late respondent BELLA LUNA C. ABELLA after deducting the shortage incurred on her books of accounts be **RELEASED** to his legal heirs, unless she is charged in some other administrative complaint or the same is otherwise withheld for some lawful cause, subject to the usual required clearances and accounting and auditing procedures.

- F) Presiding Judge **ARLENE L. PALABRICA**, MTCC, Tagum City, Davao del Norte, be **DIRECTED** to **CLOSELY MONITOR** the financial transactions of the Court, and to **STUDY** and **IMPLEMENT** procedures that shall strengthen the internal control over financial transactions otherwise she shall be held equally liable for the infractions committed by the employees under her command/supervision.<sup>43</sup>

Starting March 2012 up to the present, the OCA has been receiving several Manifestations<sup>44</sup> from Palero and Aventurado as partial compliance with this Court's directive in its February 18, 2009 Resolution for them to submit valid acknowledgment receipts to support the unauthorized withdrawals amounting to ₱607,290 of the same resolution.

We note that it has been eight years since the first audit and no one yet has been held administratively liable for the shortages found. To avoid further delay and to prevent any occurrence of shortages in the court's funds, this Court will proceed with the resolution of the consolidated cases without prejudice to the evaluation of the OCA of the compliances to directives in the February 18, 2009 Resolution pertaining to the second audit

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<sup>43</sup> Id. at 1115-1117.

<sup>44</sup> *Rollo* (A.M. OCA IPI No. 09-3138-P), pp. 119-143, 147-161, 163-193, 197-204, 209-215.

submitted by Palero, Aventurado, Benemile, Catubag, Obero, Camisura and Iligan.

The Court is confronted with two main issues in the instant cases: (1) Is the death of the respondent in an administrative case a ground for the dismissal of the case against him? (2) Should respondents be held administratively liable for the shortages in the court's funds found by the audit team?

***The death of the respondent in an administrative case does not automatically divest this Court of jurisdiction over the case.***

Jurisprudence is settled that the death of a respondent does not preclude a finding of administrative liability subject to certain exceptions. In the case of *Gonzales v. Escalona*,<sup>45</sup> this Court expounded on this doctrine:

While his death intervened after the completion of the investigation, it has been settled that the Court is not ousted of its jurisdiction over an administrative matter by the mere fact that the respondent public official ceases to hold office during the pendency of the respondent's case; jurisdiction once acquired, continues to exist until the final resolution of the case. In *Layao, Jr. v. Caube*, we held that the death of the respondent in an administrative case does not preclude a finding of administrative liability:

“This jurisdiction that was ours at the time of the filing of the administrative complainant was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent public official innocent of the charges or declared him guilty thereof. A contrary rule would be fraught with injustice and pregnant with dreadful and dangerous implications ... If innocent, respondent public official merits vindication of his name and integrity as he leaves the government which he has served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.”

The above rule is not without exceptions, as we explained in the case of *Limliman v. Judge Ulat-Marrero*, where we said that death of the respondent necessitates the dismissal of the administrative case upon a consideration of any of the following factors: *first*, the observance of respondent's right to due process; *second*, the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons; and *third*, it may also depend on the kind of penalty imposed. None of these exceptional considerations are present in the case.

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<sup>45</sup> A.M. No. P-03-1715, September 19, 2008, 566 SCRA 1.

The dismissal of an administrative case against a deceased respondent on the ground of lack of due process is proper under the circumstances of a given case when, because of his death, the respondent can no longer defend himself. Conversely, the resolution of the case may continue to its due resolution notwithstanding the death of the respondent if the latter has been given the opportunity to be heard, as in this case, or in instances where the continuance thereof will be more advantageous and beneficial to the respondent's heirs.

In *Judicial Audit Report, Branches 21, 32 and 36*, we recognized the dismissal of an administrative case by reason of the respondent's death for equitable and humanitarian considerations; the liability was incurred by reason of the respondent's poor health. We had occasion, too, to take into account the imposable administrative penalty in determining whether an administrative case should be continued. We observed in several cases that the penalty of fine could still be imposed notwithstanding the death of the respondent, enforceable against his or her estate.<sup>46</sup> (Citations omitted.)

As in *Gonzales*, none of the exceptions exist in the cases of Judge Salubre and Edig. As correctly found by the OCA, both were served copies of this Court's Resolution dated November 23, 2005 as well as the directive of the investigating judge for them to answer the charges against them. Thus, there was no violation of their right to due process as they were given the opportunity to be heard. Humanitarian considerations can neither be a ground for dismissal since there was no allegation or proof that the liabilities were incurred due to poor health. Also, if the imposable penalty is to be considered to determine if the instant cases against them should still continue, a fine may still be imposed or even a forfeiture of their retirement benefits if deemed proper.

On the other hand, Abella's case is different. She died before a copy of the November 23, 2005 Resolution was served on her. As no actual service was made, Abella did not have the chance to defend herself against the charges hurled against her. Hence, the dismissal of the administrative case against her is in order.

We now go to the administrative liabilities of Judge Salubre, Edig, Palero, Aventurado and Benemile.

### ***Re: Judge Ismael Salubre***

A vital administrative function of a judge is effective management of his court, and this includes control of the conduct of the court's ministerial officers.<sup>47</sup> He has the responsibility to see to it that his clerk of court performs his duties and observes the circulars issued by the Supreme Court<sup>48</sup> and that includes the safekeeping and on-time remittance of the legal fees

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<sup>46</sup> Id. at 14-16.

<sup>47</sup> *Report on the Financial Audit in RTC, General Santos City*, 384 Phil. 155, 167 (2000).

<sup>48</sup> See *Re: Report on the Judicial and Financial Audit, MTC, Bayombong & Solano & MCTC, Aritao-Sta. Fe, Nueva Vizcaya*, 561 Phil. 349, 363 (2007).

collected. Clearly, Judge Salubre miserably failed to fulfill this duty. Worse, he even borrowed money from the court funds. The audit team discovered several withdrawal slips containing acknowledgments by Judge Salubre evidencing that he received the cash bonds of dismissed cases and forfeited cash bonds. Based on the statements of Palero and Aventurado, this was one of the primary reasons why there were delays in the remittances—because the clerk of court or the cash clerk had to wait for Judge Salubre to return the amounts he borrowed before they can deposit them. The shortages attributed to Judge Salubre totaling to ₱436,800, on the other hand, pertain to the amounts he borrowed but failed to return. Having remained uncontroverted, all these pieces of evidence undoubtedly establish the culpability of Judge Salubre for gross misconduct.

***Re: Nerio L. Edig***

As can be gathered from the documentary evidence collected by the audit team, it was established that there were unauthorized withdrawals from the Fiduciary Fund amounting to ₱5,684,875 while Edig was Clerk of Court. As Clerk of Court, he is primarily accountable for all funds that are collected for the court, whether personally received by him or by a duly appointed cashier who is under his supervision and control. Being the custodian of the court's funds, revenues, and records, Edig is likewise liable for any loss, shortage, destruction, or impairment of said funds and property.<sup>49</sup> Moreover, it was likewise found that there were delays in the remittances of the court funds during his tenure. Clerks of Court have always been reminded of their duty to immediately deposit the various funds received by them to the authorized government depositories for they are not supposed to keep funds in their custody.<sup>50</sup> The non-remittance of said amounts deprived the Court of the interest that may be earned if the amounts were deposited in a bank, as prudently required. Shortages in the amounts to be remitted and the years of delay in the actual remittance constitute gross neglect of duty for which Edig should be held administratively liable.<sup>51</sup>

***Re: Delia R. Palero and Macario H.S. Aventurado***

We agree with the OCA that both Palero and Aventurado were remiss in their duties as cash clerks. They tried to exculpate themselves from liability by blaming others for the shortages discovered and delay in the remittances. In several decisions, the Court has ruled that the 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

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<sup>49</sup> *Report on the Financial Audit Conducted on the Books of Account of Sonia L. Dy and Atty. Graciano D. Cuanico, Jr., RTC, Catarman, Northern Samar*, A.M. Nos. P-07-2364 & P-11-2902, January 25, 2011, 640 SCRA 376, 388.

<sup>50</sup> *Report on the Financial Audit on the Books of Accounts of Mr. Delfin T. Polido*, 518 Phil. 1, 5 (2006).

<sup>51</sup> *Soria v. Oliveros*, 497 Phil. 709, 722 (2005).

funds or property to personal use.<sup>52</sup> Thus, they are not only guilty of gross neglect of duty in the performance of their duty for their failure to timely turn over the cash deposited with them but also gross dishonesty.

***Re: Sheriff Carlito B. Benemile***

As found by the OCA, Benemile should be made to answer for his failure to file a return in one criminal case. Section 14, Rule 39 of the 1997 Rules of Civil Procedure, as amended, provides that it is mandatory for sheriffs to execute and make a return on the writ of execution within 30 days from receipt of the writ and every 30 days thereafter until it is satisfied in full or its effectivity expires. Even if the writs are unsatisfied or only partially satisfied, sheriffs must still file the reports so that the court, as well as the litigants, may be informed of the proceedings undertaken to implement the writ.<sup>53</sup> For said omission, Benemile is guilty of simple neglect of duty.

***The penalties***

Grave misconduct, gross neglect of duty and gross dishonesty of which Judge Salubre, Edig, Palero and Aventurado are found guilty, even if committed for the first time, are punishable by dismissal and carries with it the forfeiture of retirement benefits, except accrued leave benefits, and the perpetual disqualification for reemployment in the government service.

As to Judge Salubre and Edig, however, in view of their deaths, the supreme penalty of dismissal cannot be imposed on them anymore. We however do not agree with the OCA's recommendation that they will only be fined but their heirs will still be entitled to their retirement benefits. It is only the penalty of dismissal that is rendered futile by their passing since they are not in the service anymore, but it is still within the Court's power to forfeit their retirement benefits as in the recent case of *Office of the Court Administrator v. Noel R. Ong, Deputy Sheriff, Branch 49, and Alvin A. Buencamino, Deputy Sheriff, Branch 53 of the Metropolitan Trial Court, Caloocan City*.<sup>54</sup> In said case, the Court ordered the forfeiture of the retirement benefits, except accrued leave credits, of Buencamino, who was found guilty of grave misconduct and gross neglect of duty, but died during the pendency of the case.

As to Benemile, instead of the ₱1,000 fine recommended by the OCA, a suspension of one month and one day is meted on him for being found guilty of simple neglect of duty, a less grave offense, pursuant to Section

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<sup>52</sup> *Office of the Court Administrator v. Jamora*, A.M. No. P-08-2441, November 14, 2012, 685 SCRA 412, 415.

<sup>53</sup> *Judge Badoles-Algodon v. Zaldivar*, 529 Phil. 436, 447-448 (2006).

<sup>54</sup> A.M. No. P-09-2690, July 9, 2013.

52.B (1), Rule IV of the *Uniform Rules in Administrative Cases in the Civil Service*.

***The restitution of shortages***

In this Court's February 18, 2009 Resolution, the terminal leave benefits of Judge Salubre, Edig and Abella were ordered forfeited to answer for the computed shortages found by the audit team. Upon computations of the Office of Administrative Services (OAS) and the Financial Management Office (FMO) of the OCA, the equivalent monetary value of their earned leave credits as against the total computed shortages for which they are accountable are as follows:

<b>PARTICULARS</b>	<b>Judge SALUBRE</b>	<b>Mr. EDIG</b>	<b>Ms. ABELLA</b>
Total Earned Leave (days)	95.584	107.957	28.067
Highest Emoluments Received	₱ 57,615.27	₱ 21,035.00	₱ 11,446.00
Constant Factor	0.0478087	0.0478087	0.0478087
<b>Total Money Value</b>	<b>₱ 263,287.19</b>	<b>₱108,567.60</b>	<b>₱ 15,358.78<sup>55</sup></b>
<b>Total Computed Shortages</b>	<b>₱ 436,800.00</b>	<b>₱ 8,827,227.66</b>	<b>₱ 44,828.00</b>
<b>Unsettled Balance</b>	<b>₱ 173,512.81</b>	<b>₱ 8,718,660.06<sup>56</sup></b>	<b>₱ 29,469.22<sup>57</sup></b>

The OCA recommended that the unsettled balance of the shortages shall be deducted from the retirement benefits of the three. This recommendation, however, is now only possible for Abella since the retirement benefits of Judge Salubre and Edig are ordered forfeited in favor of the Court.

As for Palero and Aventurado, on top of the shortages for which they are individually accountable, they are deemed secondarily liable for the ₱5,684,875 of the computed shortages attributed to Edig: Palero for ₱3,147,285 and Aventurado for ₱2,537,590. Said amounts should be taken from the total monetary value of their earned leave credits. The remaining balance, if any, should in the meantime be withheld pending the evaluation of their compliances to the directives of the Court in its February 18, 2009 Resolution pertaining to the second audit.

**WHEREFORE**, judgment is hereby rendered finding:

1. Judge Ismael L. Salubre **LIABLE** for grave misconduct. All his retirement benefits, except his accrued leave credits, are ordered **FORFEITED** in favor of the government. The Financial

<sup>55</sup> Erroneously stated as ₱15,358.78.

<sup>56</sup> Erroneously stated as ₱8,871,660.06.

<sup>57</sup> *Rollo* (A.M. No. MTJ-05-1618), p. 1105.

Management Office (FMO) of the Office of the Court Administrator (OCA) is directed to **PROCESS** the monetary value of his accrued leave credits subject to the submission of the documentary requirements and **APPLY** the same to the computed shortage in the Fiduciary Fund account in the amount of ₱436,800 to be remitted to the Fiduciary Fund account of the Municipal Trial Court in Cities, Tagum City. The FMO, OCA is further **DIRECTED** to coordinate with the Fiscal Monitoring Division (FMD), Court Management Office (CMO), OCA, before the release of the check issued in favor of MTCC, Tagum City, Davao del Norte for preparation of the necessary communication with the incumbent Clerk of Court of MTCC, Tagum City, Davao del Norte;

2. Nerio L. Edig **LIABLE** for gross neglect of duty. All his retirement benefits, except his accrued leave credits, are ordered **FORFEITED** in favor of the government. The FMO, OCA is directed to **PROCESS** the monetary value of his accrued leave credits subject to the submission of the documentary requirements and **APPLY** the same to the computed shortage in the Fiduciary Fund account in the amount of ₱8,827,227.66. The FMO, OCA is further **DIRECTED** to coordinate with the FMD, CMO, OCA, before the release of the check in favor of the MTCC, Tagum City, Davao del Norte, for the preparation of the necessary communication with the incumbent Clerk of Court of MTCC, Tagum City, Davao del Norte;
3. Delia R. Palero **LIABLE** for gross neglect of duty. She is ordered **DISMISSED** from the service with forfeiture of all retirement benefits, except accrued leave credits, and with perpetual disqualification from re-employment in any government agency, including government-owned and -controlled corporations. She is further directed to **PAY** the amount of ₱3,147,285 representing the shortage in the Fiduciary Fund, ₱21,000 and ₱74,800 representing the shortage in the Judiciary Development Fund. The FMO, OCA is directed to **WITHHOLD** the release of the monetary value of her accrued leave credits to answer for any unsettled balance in the shortages she was directed to pay and pending the evaluation of the OCA of her compliances to the directives of this Court in its February 18, 2009 Resolution.
4. Macario H.S. Aventurado **LIABLE** for gross neglect of duty. He is ordered **DISMISSED** from the service with forfeiture of all retirement benefits, except accrued leave credits, and with perpetual disqualification from re-employment in any government agency, including government-owned and -controlled corporations. He is further directed to **PAY** the amount of ₱2,537,590 representing the shortage in the Fiduciary Fund and the amount of

₱39,000.00 representing the shortage in the Judiciary Development Fund. The FMO, OCA is directed to **WITHHOLD** the release of the monetary value of his accrued leave credits to answer for any unsettled balance in the shortages he was directed to pay and pending the evaluation of the OCA of her compliances to the directives of this Court in its February 18, 2009 Resolution.

5. Carlito B. Benemile **LIABLE** for simple neglect of duty. He is hereby **SUSPENDED** for a period one (1) month and one (1) day with a **STERN WARNING** that a repetition of the same or similar acts shall be dealt with more severely.

On the other hand, the administrative case against Bella Luna C. Abella is ordered **DISMISSED**. The FMO, OCA is **DIRECTED** to process the monetary value of her accrued leave credits subject to the submission of the documentary requirements and apply the same to the computed shortage in the Fiduciary Fund account in the amount of ₱44,828. The FMO, OCA is further **DIRECTED** to coordinate with the FMD, CMO, OCA, before the release of the check in favor of the MTCC, Tagum City, Davao del Norte, for the preparation of the necessary communication with the incumbent Clerk of Court of MTCC, Tagum City, Davao del Norte. The balance of the money value of her terminal leave benefits after deducting the shortage incurred on her books of accounts shall be **RELEASED** to her legal heirs, unless she is charged in some other administrative complaint or the same is otherwise withheld for some lawful cause, subject to the usual required clearances and accounting and auditing procedures.

The compliances submitted by Delia R. Palero, Macario H.S. Aventurado, Carlito P. Benemile, Ramonito Catubag, Joseph Casimura, Alvin Obrero and Renato Ilagan to this Court's Resolution dated February 18, 2009 is hereby **REFERRED** to the OCA for evaluation, report and recommendation to be submitted within 30 days from receipt of the records.

Presiding Judge Arlene L. Palabrica, MTCC, Tagum City, Davao del Norte, is **DIRECTED** to closely monitor the financial transactions of the Court, and to study and implement procedures that shall strengthen the internal control over financial transactions otherwise she shall be held equally liable for the infractions committed by the employees under her command/supervision.

This Decision is immediately **EXECUTORY**.

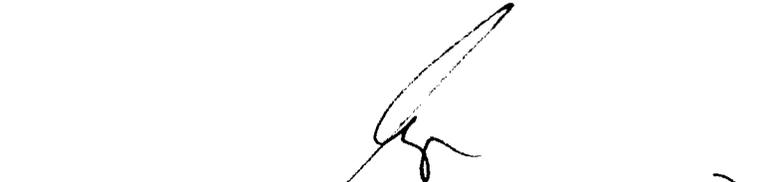
**SO ORDERED.**



MARIA LOURDES P. A. SERENO  
Chief Justice



  
**ANTONIO T. CARPIO**  
Associate Justice

  
*No part due to prior action in OCA*  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**ARTURO D. BRION**  
Associate Justice

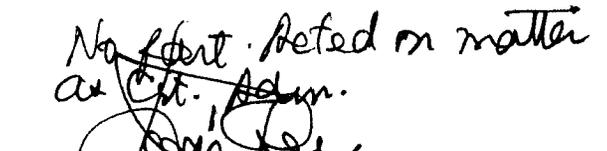
  
**DIOSDADO M. PERALTA**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
Associate Justice

**(On official leave)**  
**MARIANO C. DEL CASTILLO**  
Associate Justice

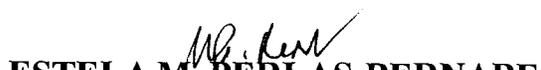
  
**ROBERTO A. ABAD**  
Associate Justice

  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

*No part. Reted on matter as Ct. Adm.*  
  
**JOSE PORTUGAL PEREZ**  
Associate Justice

  
**JOSE CATRAL MENDOZA**  
Associate Justice

  
**BIENVENIDO L. REYES**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

  
**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice

