

## THIRD DIVISION

**[ A.M. No. P-02-1534, March 26, 2003 ]**

**JUDGE OSCAR S. AQUINO, PETITIONER, VS. RICARDO C. OLIVARES,<sup>[\*]</sup> CLERK OF COURT, MCTC, BABAK, DAVAO DEL NORTE, RESPONDENT.**

### R E S O L U T I O N

**SANDOVAL-GUTIERREZ, J.:**

In his letter-complaint dated November 4, 1999, addressed to former Court Administrator Alfredo L. Benipayo, Judge Oscar S. Aquino<sup>[1]</sup> reported that he issued a Memorandum dated October 19, 1999 to Ricardo C. Olivares, Clerk of Court of the said court, directing him to explain in writing under oath why he should not be administratively charged for violation of Supreme Court Circular No. 50-95 and/or malversation through falsification of public document for keeping in his possession for five (5) months the cash bond in the amount of P12,000.00, posted by the accused in Criminal Case No. 1948.

In his written explanation dated October 29, 1999,<sup>[2]</sup> Clerk of Court Olivares alleged that he incurred delay in depositing the bail bond of P12,000.00 to the Municipal Treasurer (now City Treasurer of Island Garden, Samal, Davao) due to oversight considering that he is old and sometimes forgetful. He noticed the bail bond contained in an envelope only when he was checking his records in preparation for his retirement. Immediately or on July 26, 1999, he deposited the amount with the Municipal Treasurer. He vehemently denied that he misappropriated the same. He claimed that for thirty (30) years as a public servant, he has maintained an unblemished reputation and has performed his duties efficiently with utmost dedication. He pleads that this case be resolved in his favor so that he and his family can enjoy his retirement benefits.

The evaluation of Court Administrator Presbitero J. Velasco, Jr. is reproduced as follows:

"x x x

"The respondent does not deny that there was delay in depositing the P12,000.00 cash bond with the proper municipal treasurer. He denies that he converted or used the money to his personal use. The brown envelope containing the money was still intact with the other envelopes inside the vault when he discovered it. There is nothing in the records to show that he ever falsified a public document in connection with cash bond. It can be presumed, absent any allegation to the contrary, that the money he deposited with the municipal treasurer was the same money he received as cash bond from the accused.

There is no question that the respondent incurred delay in depositing the cash bond with the municipal treasurer for a period of five (5) months. His plea for leniency deserves sympathy in the light of the fact that he had not used the cash bond for his personal benefit, and his protestation that the lapse was occasioned by his forgetfulness due to his advanced age. In fact the Supreme Court approved his application for optional retirement effective April 17, 2000."

Court Administrator Velasco, Jr. recommended that this case be re-docketed as a regular administrative case and that respondent Olivares be fined in the sum of P3,000.00 to be deducted from his retirement benefits.

Pursuant to the Resolution dated December 10, 2001 of this Court,<sup>[3]</sup> both parties manifested to submit this case for decision based on the pleadings/records already filed.

Supreme Court Circular No. 50-95 dated October 11, 1995 states that "all collections from bailbonds, rental deposits, and other fiduciary collections shall be deposited within twenty-four (24) hours by the Clerk of Court concerned, upon receipt thereof, with the land Bank of the Philippines." Supreme Court Circulars Nos. 5 dated November 25, 1982 and 5-A dated December 3, 1982 provide:

*Circular No. 5*

*"x x x All collections of funds of a fiduciary character including rental deposits shall be deposited immediately by the Clerk of Court concerned upon receipt thereof with the City, Municipal or Provincial treasurer where his Court is located. x x x.*

*Circular No. 5-A*

*"x x x By way of implementing Circular No. 5 dated November 25, 1982 directing the deposit of all collections of fiduciary funds including rental deposits by the Clerk of Court concerned with the City, Municipal or Provincial Treasurer where his Court of located, all Clerks of Court are hereby directed to use a Deposit Acceptance Order form for said purpose, a facsimile of which is hereto attached for their guidance and ready reference. x x x."*

Clearly, respondent Olivares violated the above Circulars. He should have deposited the cash bond immediately or within twenty-four (24) hours with the Municipal Treasurer. Instead, it took him about five (5) months to do so.

The charge of malversation through falsification of public document has no basis. One essential element of the crime of malversation is that a public officer must take public funds, money or property, and misappropriate it for his own private use or benefit.<sup>[4]</sup> In this case, there is no proof that respondent appropriated the amount.

Clerks of Court are the chief administrative officers of their respective courts. With regard to the collection of legal fees, they perform a delicate function as judicial officers entrusted with the correct and effective implementation of regulations thereon.<sup>[5]</sup> Hence, as custodians of court funds and revenues,<sup>[6]</sup> they have always