

EN BANC

[A.M. No. P-93-989, September 21, 1999]

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS.
ATTY. RODRIGO B. GALO, CLERK OF COURT, RTC-BR. 30,
BAMBANG, NUEVA VIZCAYA, RESPONDENT.**

DECISION

PER CURIAM:

On 31 January 1989 the Office of the Provincial Auditor of Nueva Vizcaya conducted an audit examination of the cash and accounts of Atty. Rodrigo B. Galo, Clerk of Court, RTC-Br. 30, Bambang, Nueva Vizcaya, covering the period from 1 October 1983, that is, the date Atty. Galo assumed office as Clerk of Court, to 31 January 1989, the date of the audit. The examination yielded the following findings:

1. The accountable officer, Atty. Rodrigo B. Galo, incurred a total cash shortage in the amount of P29,131.20 broken down as follows:

(a)	Legal	Research	Fund	-----
				P2,903.20
(b)		Judiciary		-----
				-10,103.00
(c)	Land	Registration	Commission	-----
				-2,890.00
(d)	Sheriff's	Fee		-----
				-1,837.00
(e)	Judiciary	Development	Fund	-----
				-11,398.00

TOTAL----- P29,131.20

2. Two (2) booklets of one hundred (100) pieces of official receipts serially numbered 8710001-8710100 were missing;

3. The accountable officer used temporary receipts in his collection of legal fees and official receipts were not promptly issued for collections received in violation of Section 68 of P.D. 1445.

4. Some official receipts were issued out of numerical sequence violating internal control procedure in the collection of cash.

5. The accountable officer did not deposit/remit his collections regularly and had not deposited his collections since February 1986 in violation of COA/MOF Joint Circular No. 1-81 dated January 1, 1981.

6. Cash examination period was prolonged because of unupdated cashbooks and other accounting records.

On 13 February 1989 Ms. Florentina N. Sagabaen, State Auditor I of the Office of the Provincial Auditor, wrote Atty. Galo demanding the restitution of the missing P29,131.20 as well as submission within seventy-two (72) hours from receipt of a written explanation on how the shortage occurred in the first place. In response, Atty. Galo appealed for humane consideration and asked for a grace period of not less than thirty (30) days within which to comply.^[1] However, on 7 April 1989 Auditor Sagabaen finally informed the Provincial Auditor that Atty. Galo had not restored the missing funds as of that date. Hence, in her Final Report dated 28 April 1989 she recommended the filing of appropriate charges against Atty. Galo.

On 11 August 1989 the records of Atty. Galo's case were forwarded to the Provincial Prosecutor of Nueva Vizcaya for preliminary investigation. Atty. Galo neither filed a counter-affidavit nor presented evidence in his favor. Therefore, on 2 May 1990 the Provincial Prosecutor issued a Resolution finding a *prima facie* case against Atty. Galo for (a) malversation of public funds committed on or about the various months of 1985 to 31 January 1989 in violation of Art. 217 of the Revised Penal Code; (b) failure of accountable officer to render accounts committed during the same period, in violation of Art. 218 of the same Code; and, (c) violation of Sec. 68 of P.D. No. 1445 known as the "*Government Auditing Code of the Philippines*."

On 13 January 1993 an information for malversation of public funds^[2] was filed against Atty. Galo before the Sandiganbayan which was docketed as Crim. Case No. 18458. In addition, the Office of the Special Prosecutor/Ombudsman referred Atty. Galo's case to this Court for appropriate action.

In our Resolution of 25 May 1993 we (a) authorized the Office of the Court Administrator (OCA) to send an audit team to the RTC-Br. 30, Bambang, Nueva Vizcaya, to determine the total cash shortage of Atty. Galo and, thereafter, *motu proprio* file an administrative complaint against him; and, (b) placed Atty. Galo under preventive suspension effective immediately and continuing until further orders from the Court.

On 6 January 1994 the OCA filed an administrative complaint charging Atty. Rodrigo B. Galo with grave misconduct and conduct prejudicial to the best interest of the service, thus reiterating the findings of the Provincial Auditor of Nueva Vizcaya. In addition, the OCA imputed another cash shortage against respondent in the amount of P33,700.00 representing unwithdrawn fiduciary fund not properly deposited with the PNB. This cash shortage was discovered during the audit examination conducted by the Fiscal Audit Division, Field Finance Operations Division, this Court, covering the period from 1 February 1989^[3] to 31 March 1993.^[4]

In his Answer with Special and Affirmative Defenses respondent alleged that he already paid the total cash shortage of P29,130.20 on two (2) separate dates, i.e., on 21 May 1990 for P24,103.00 and on 14 April 1993 for P5,028.20; that he had already released P31,700.00 of the alleged unwithdrawn fiduciary fund in the total amount of P33,700.00 upon proper demand by the parties concerned; and, that he was ready and willing to do the same with respect to the remaining P2,000.00. However, respondent did not present proof that the P31,700.00 was indeed released

as he alleged. Finally, respondent insisted that he did not maliciously intend to commit so grave a wrong but only acted in "*good faith due to honest mistake and excusable neglect being a mere human being prone to commit mistakes and succumb to temptations.*"^[5]

On 4 August 1994, upon Atty. Galo's request, we authorized the OCA to manifest before the Sandiganbayan our amenability to Atty. Galo's desire to plea bargain in Crim. Case No. 18458, i.e., change his plea of "not guilty" to the crime of malversation of public funds to "guilty" to the lesser offense of failure to render accounts, provided "that his obligation be paid in full and that he be considered resigned from the service."^[6]

Respondent Atty. Galo did so on 28 September 1994, hence, was considered effectively resigned on said date.^[7] However, in the same Resolution of 24 November 1994 we stressed that the final resolution of this case would be held in abeyance pending submission by respondent of concrete proofs that his other accountabilities in the amount of P33,700.00 representing unwithdrawn fiduciary fund had in fact been paid.

Thus, in our Resolution of 6 June 1995 we required respondent to submit the required proofs within fifteen (15) days from notice. However, respondent failed to comply even long after 22 August 1995, the expiration of the period allotted him. Hence, we ordered him to show cause why no disciplinary action should be taken against him for his non-compliance.^[8] Still with no compliance forthcoming, we imposed a P500.00 fine and ordered respondent's imprisonment for five (5) days in the event of non-payment of the fine.^[9]

On 8 October 1996 respondent requested for an extension within which to present the required proofs on the P33,700.00 unwithdrawn fiduciary fund, reasoning that he had been in great financial distress ever since he was considered by the Court as resigned from the service. We granted the request for extension in our Resolution of 12 November 1996. However, in his Partial Compliance dated 11 October 1996 respondent accounted for only P12,900.00 of the P33,700.00 by attaching Acknowledgement Receipts dated 16 June 1986 and 15 January 1991 for P9,400.00 and P3,500.00, respectively, issued by Rodolfo Manalac^[10] and Fructuoso Villanueva, Jr.^[11]

On 11 November 1997, more than one (1) year after respondent promised to fully account for the remaining P20,800.00, we issued another show-cause resolution on account of his failure to complete his compliance as promised. In response, Atty. Galo manifested that he had been encountering difficulties in producing the P20,800.00 because he was jobless.^[12] Consequently, on 24 February 1998 we directed the Fiscal Management Officer of the OCA to just deduct the amount from respondent's receivable terminal leave pay leaving a balance of P141,961.62. In its Memorandum dated 21 April 1999 the OCA recommended that (a) authority be given to Atty. Galo to work on his clearance so that the same could be processed; and, (b) that the balance of Atty. Galo's terminal leave pay be released to him.

Considering however that full payment of shortage from collections does not exempt the accountable officer from liability,^[13] we simply cannot accept the