

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS.
CLERK OF COURT MA. LUISA V. LISING, AND INTERPRETER/FORMER
OIC DELIA C. FERNANDEZ, MUNICIPAL TRIAL COURT, ANGONO,
RIZAL, RESP...**

A.M. NO. P-03-1736 (FORMERLY A.M. NO. 03-7-162-MTC). March 08, 2005

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PER CURIAM:

This case involves the accountabilities of Maria Luisa V. Lising, Clerk of Court, Municipal Trial Court, Angono Rizal, and Delia C. Fernandez, officer-in-charge/interpreter of the same court, for shortages in their collections of legal fees and deposits of collections for the Judiciary Development Fund and the Court Fiduciary Fund.

Respondent Lising, as Clerk of Court of the MTC, Angono Rizal, was responsible for the legal fee collections of the said Court from September 3, 1999 to October 30, 2000. On November 7, 2000, she went on leave for a period of 16 days ostensibly due to illness but she actually went abroad without permission from the court.

Although Lising's leave expired on November 28, 2000, she never returned to work. Presiding Judge Rosa M. Samson-Tatad was thus left with no choice but to designate respondent Fernandez, the court interpreter, as officer-in-charge (OIC) of the office of the Clerk of Court, effective December 15, 2000. Two weeks later, Mrs. Lising, through her daughter, sent Judge Tatad her resignation letter, effective December 29, 2000. Tatad endorsed this letter to the Office of the Court Administrator (OCA) for appropriate action on January 11, 2001. She did not, however, request an auditor from the Supreme Court to go over Lising's accounts because the representatives of the Commission on Audit had already issued a certificate of settlement and balances (CSB) stating that there were no balances due for any of the accounts held by Mrs. Lising as Clerk of Court. Nevertheless, a subsequent investigation conducted by the audit team of the OCA revealed some anomalies in the said accounts.

ACCOUNTABILITIES OF LUISA V. LISING

The team conducted intensive interrogations of respondent Fernandez and the rest of the staff. They also disclosed Lising's illegal and unsanctioned activities. They further revealed her extravagant lifestyle and the fact that her creditors were already running after her.

Mrs. Lourdes de Borja, her officemate, served as a guarantor for an unpaid bank loan of Lising, with the former's land title as collateral. De Borja had a special power of attorney to claim Lising's retirement pay as payment for the amount borrowed but she could not claim such benefits due to Lising's uncleared liabilities with the court.

As part of their investigation, the team broke open Lising's office vault, only to find it empty. However, the court's records contained ample evidence of her shortages.

Since the start of collections for the Judiciary Development Fund in February 1985, Lising repeatedly delayed her deposits of collections. She did not deposit her collections in full at the end of each month, in violation of Section

3 of Administrative Circular 5-93[1] which provides:

3. Duty of the Clerks of Court, Officers-in-Charge or accountable officers. – The Clerks of Court, Officers-in-Charge of the Office of the Clerk of Court, or their accountable duly authorized representatives designated by them in writing, who must be accountable officers, shall receive the Judiciary Development Fund collections, issue the proper receipt therefor, maintain a separate cash book properly marked CASH BOOK FOR JUDICIARY DEVELOPMENT FUND, deposit such collections in the manner herein prescribed, and render the proper Monthly Report of Collections for said Fund (emphasis ours).

According to the subsidiary ledger of the Accounting Division, Financial Management Office, OCA, the January 1987-December 1990 and January 1993-June 1994 reports of collections and deposit, which were supposed to be monthly, were recorded only on a yearly basis, while the period covering January 1991 to December 1992 contained no entries at all. Lising also failed to faithfully record her daily collections in the cashbook. These records were only updated after the OCA sent the checklist of requirements sometime in September 2002, and even then, the audit team found several erroneous entries.

In addition, the team found out that Lising opened several accounts in the name of the Court Fiduciary Fund (CFF), in certain rural banks aside from the Land Bank of the Philippines, in violation of Section 4 of Circular No. 50-95[2] which provides:

(4) 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 (emphasis ours).

She also made several unauthorized withdrawals from these accounts. She later made deposits of P143,000 and P100,000 in the LBP account as partial restitution after the COA audit revealed shortages amounting to P390,035.60 in her books of accounts.

When Fernandez assumed the functions of OIC clerk of court and the audit team took an inventory of accountable forms, the auditors discovered that several official receipts under Lising's accountability were missing. There was nothing to indicate whether these receipts were ever issued or cancelled.

Finally, the team discovered that Lising's total accountability to the CFF amounted to P152,500, computed as follows:

Balance per Bank

LBP SA # 2391-0092-39 10/31/00 P195,452.67

Less: Unwithdrawn Net Interest Earned

08/97-09/00

4,852.67

Adjusted Bank Balance as of 10/31/00 P190,600.00

Unwithdrawn Fiduciary Fund

(per cashbook) as of 10/31/00

P453,800.00

Balance of accountabilities
(undeposited collections) as of 10/31/00

P263,200.00

Less: Deposits/Restitutions made on
24 January 2001

P 4,000.00

15 February 2001

100,000.00

13 December 2001

6,700.00 110,700.00

Final Accountability (shortage) as of 10/31/00 P152,500.00

ACCOUNTABILITIES OF DELIA S. FERNANDEZ

In the course of the investigation, the audit team likewise unearthed several anomalies which occurred during respondent Fernandez's service as acting Clerk of Court.

For the entire period of her accountability, no monthly reports of collections and deposits for all funds were ever submitted to the Accounting Division, FMO, OCA. Fernandez also failed to properly deposit collections in accordance with the circulars of the Court. She likewise failed to regularly record her daily collections in the official cash book and to regularly deposit and remit her collections.

Finally, the team found that her total accountability to the CFF amounted to P57,800, computed as follows:

Balance per Bank

LBP SA # 2391-0092-39 10/31/02 P240,845.59

Less: Unwithdrawn Interest Earned 13,145.59

Adjusted Bank Balance as of 12/31/02 P227,700.00

Less: Deposits/Restitution made by former

Clerk of Court Lising on 24 January,

15 February and 13 December 2001

P110,700.00

Total deposits made by Delia Fernandez

During her tenure

P117,000.00

Unwithdrawn Fiduciary Fund

(per cashbook) as of 12/31/02

444,000.00

Balance of accountabilities P327,000.00

(undeposited collections) as of 12/31/02

Less: Deposit made by Delia Fernandez

Dated 6 January 2003

6,000.00

Final accountability (shortage) P321,000.00

Shortage incurred by Lising 263,200.00

Shortage of Delia Fernandez as of 12/31/02 P 57,800.00

In a Resolution dated August 13, 2003, we resolved to direct both Lising and Fernandez to restitute the amount of their shortages within 15 days and to explain in writing, within ten days, both from receipt of the Resolution why they should not be charged criminally and administratively for having incurred such shortages. Fernandez submitted her explanation in September while Lising submitted hers in October, both in 2003, to the Office of the Court Administrator. Both of them gave excuses for their negligence without, however, explaining the shortages in the CFF. Lising alleged that all her transactions were in accordance with Supreme Court guidelines but did not present any evidence to refute the findings of the OCA team.

In a memorandum dated February 11, 2004 of Deputy Court Administrator Jose P. Perez, approved by Court Administrator Presbitero Velasco, the OCA recommended the following:

- a) The acceptance of the resignation of the respondent Ma. Luisa V. Lising be WITHDRAWN and she be considered DISMISSED from the service with forfeiture of all separation benefits and with prejudice to re-employment in any branch or agency of the government including government owned or controlled corporation;
- b) DIRECT the Financial Management Office of OCA that the money value of terminal leave of respondent Lising be APPLIED to the shortage incurred by her in the amount of P152,500.00 and the balance thereof be FORFEITED in favor of the government;
- c) The Legal Office of OCA be DIRECTED to proceed with the filing of the criminal action against respondent Lising;
- d) Respondent Delia S. Fernandez be meted the penalty of SUSPENSION for a period of six (6) months without pay;
- e) Reiterate the previous recommendation of this Office directing respondent Fernandez to RESTITUTE the shortage she incurred on the Fiduciary Fund in the amount of P57,800.00 by depositing the said amount in the existing account of MTC, Angono, Rizal with the Landbank of the Philippines under SA No. 2391-0092-39, and to SUBMIT to the Office of the Court Administrator the copy of the validated deposit slip as proof of its remittance; and

f) To DEFER the filing of the criminal action against respondent Fernandez until after the termination of the present administrative matter.

We adopt in part the recommendations of the OCA.

With respect to respondent Lising, we find no merit in her unsubstantiated allegations of good faith. In addition to the unexplained shortages in the books, her acts of clearing out the vault in her office and of suddenly departing from the country without leave from her superior, could only indicate a grand design to evade punishment for her dishonesty. Even assuming she could justly claim good faith, however, she must still be held liable for the shortages she incurred.[3]

The Clerk of Court performs a very delicate function. He is the custodian of the court's funds and revenues, records, property and premises. Being the custodian thereof, he is liable for any loss, shortage, destruction or impairment of said funds or property.[4]

The failure of respondent to explain the shortage of funds in her custody leaves the Court with little choice but to dismiss her for dishonesty and gross misconduct in office.[5]

For respondent Lising, we therefore adopt the penalty of dismissal recommended by the OCA, the proper penalty under civil service rules.[6]

With respect, however, to respondent Fernandez, we cannot adopt the OCA's conclusion that she was guilty of negligence because there is no such offense contained in the aforementioned rules. There is only gross neglect of duty[7] which carries the penalty of dismissal or simple neglect of duty[8] which carries the penalty of suspension for one month and one day to six months. Based on the OCA's findings of fact, however, we find Fernandez guilty of inefficiency and incompetence in the performance of official duties, an offense which carries with it the penalty of suspension for six months and one day without pay.[9]

WHEREFORE, MA. LUISA V. LISING is hereby found GUILTY of dishonesty. Her resignation is deemed withdrawn and she is ordered DISMISSED from the service with forfeiture of all separation benefits except earned leaves, if any, and with prejudice to re-employment in any branch or agency of the government including government-owned or controlled corporations.

DELIA S. FERNANDEZ, on the other hand, is hereby found GUILTY of inefficiency and incompetence in the performance of official duties and is meted the penalty of SUSPENSION for six months and one day without pay, with a warning that a repetition of the same or similar acts in the future will be dealt with more severely.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Callejo, Sr., Azcuna, Tinga, Chico-Nazario and Garcia, JJ., concur.

Carpio-Morales, J., on leave.

[1] Issued on April 30, 1993, this Circular provided for, among others, the proper deposit of collections for the Judiciary Development Fund.

[2] Issued on October 11, 1995, this Circular created Court Fiduciary Funds and provided guidelines for "purposes of uniformity in the manner of collections and deposits."

[3] *Mallare v. Ferry*, 414 Phil. 286 (2001).

[4] *Cain v. Neri*, 369 Phil. 465 (1999).

[5] Office of the Court Administrator v. Orbigo-Marcelo, 416 Phil. 356 (2001).

[6] Uniform Rules on Administrative Cases in the Civil Service, Rule IV, Section 52, A, 1.

[7] Id., Rule IV, Section 52, A, 2.

[8] Id., Rule IV, Section 52, B, 3.

[9] Id., Rule IV, Section 52, A, 16

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