

RE: REPORT OF JUDGE MARIA ELISA SEMPIO DIY, METROPOLITAN TRIAL COURT, BRANCH 34, QUEZON CITY, ABOUT THE LOSS OF CERTAIN VALUABLES AND ITEMS WITHIN THE COURT PREMISES

A.M. No. 04-8-198-MeTC. January 31, 2008

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This case stemmed from the Letter[1] dated February 12, 2003 of then Presiding Judge Maria Elisa Sempio Diy of the Metropolitan Trial Court (MeTC) of Quezon City, Branch 34. In her letter, Judge Diy informed the Office of the Court Administrator (OCA) regarding the loss of (1) a .38 caliber Armscor gun with Serial No. 68966, an object evidence in a pending criminal case[2] before her court; and (2) a Nokia 3310 cellular phone, which was allegedly left by its owner, Mr. Gian Carlo A. Zamora,[3] inside her courtroom on December 18, 2002.

Judge Diy likewise informed the OCA that she had initiated a preliminary investigation regarding the missing items. For purposes of said investigation, all her court personnel were required to submit their respective affidavits on the matter and had been subjected to polygraph tests by the National Bureau of Investigation.

In our Resolution[4] dated September 1, 2004, we referred the case to Executive Judge Natividad G. Dizon of the Regional Trial Court of Quezon City for investigation, report and recommendation. Pursuant to our directive, Judge Dizon required all the personnel of the MeTC of Quezon City, Branch 34, to submit their respective affidavits regarding the missing items and to appear before her for questioning.[5]

From the two investigations conducted on this case, the following were determined: (1) Ma. Theresa M. Fernandez, the clerk assigned for criminal cases, tried to turn over the subject gun to Clerk of Court Celestina D. Rota on October 15, 2002;[6] (2) Rota refused to take custody of the gun because she allegedly thought that the gun was temporarily surrendered only and was not presented as evidence in the pending case;[7] (3) when Fernandez asked Rota where to place the gun, Rota told her to just place the gun somewhere inside the court premises;[8] (4) Fernandez placed the gun inside the steel cabinet of the court;[9] (5) Fernandez announced to the other members of the court staff that she placed the gun inside the said cabinet; (6) the lock of the cabinet was defective;[10] and (7) the loss of the gun was discovered only on the scheduled hearing of the said criminal case on December 5, 2002.[11]

While the investigation was on-going, Rota found the missing gun on January 27, 2006. She submitted the gun to Judge Dizon on February 1, 2006.[12]

In her Report/Recommendation[13] dated February 15, 2006, Judge Dizon found that Rota had been negligent in safekeeping the subject gun, and recommended that she be appropriately disciplined for the same. Judge Dizon likewise stated in her report that the subsequent discovery of the gun does not relieve Rota of liability.

Anent the cellular phone, Judge Dizon noted that Zamora had not attended any of the scheduled hearings for this case and that Zamora had reportedly gone overseas.[14]

In our Resolution[15] dated June 14, 2006, we referred the report and recommendation of Judge Dizon to the OCA for evaluation, report and recommendation.

After receipt of the OCA's Memorandum[16] dated July 25, 2006, we directed Rota to manifest if she is willing to submit the case for decision on the basis of the records already filed and submitted.[17] For her failure to file the required manifestation, however, we considered this case already submitted for decision in our Resolution[18] dated September 17, 2007.

In concurring with Judge Dizon's finding of negligence, the OCA pointed out that the control and management of case exhibits is one of the non-adjudicative functions of clerks of court.[19] It also cited our ruling in *Re: Loss of Court Exhibits at RTC, Br. 136, Makati City*,[20] where we reminded clerks of court that they cannot be permitted to slacken on their jobs under one pretext or another because of their key and vital role in the complement of the court.

The OCA found Rota liable for simple neglect of duty, but considered the subsequent discovery of the missing gun as a mitigating circumstance on her liability and recommended that we merely suspend Rota for fifteen (15) days without pay.

In connection with the cellular phone, the OCA said that it could not be established if Zamora had indeed left his phone within the premises of MeTC of Quezon City, Branch 34, since he did not show any interest in this case. No further action need now be taken on this matter.

In the matter of the Armscor gun, we agree with the OCA that Rota is guilty of simple neglect of duty. As the official custodian of case exhibits,[21] it was sheer negligence on Rota not to have accepted the subject gun from Fernandez. Moreover, she should have been especially vigilant in safekeeping the same, considering its importance as evidence and its lethal nature.

We note that this is not the first time that we find Rota to have been negligent in the performance of her duties as clerk of court. Thus, in our view, the OCA's recommended penalty in her case is too light.[22] Moreover, the prescribed penalty for the second offense of simple neglect of duty is dismissal from the service.[23]

Following the prescribed penalty, Rota ought to be dismissed from the service. However, the subsequent discovery of the missing gun and for humanitarian considerations, we are agreeable to impose a penalty that is less severe than dismissal.[24] In the recent case of *Seangio v. Parce*,[25] we said that while we are duty-bound to sternly wield a corrective hand to discipline our errant employees and to weed out those who are undesirable, we also have the discretion to temper the harshness of our judgment with mercy.[26] Thus, we find that a suspension of three months without pay is sufficient punishment for Rota's negligence.

Finally, we take this occasion to remind Rota and all other clerks of court that as ranking officers of our judicial system who perform delicate administrative functions vital to the prompt and proper administration of justice,[27] they should perform their duties with diligence and competence in order to uphold the good name and integrity of the judiciary, and to serve as role models for their subordinates.

WHEREFORE, Celestina D. Rota, Clerk of Court of the Metropolitan Trial Court of Quezon City, Branch 34, is hereby found GUILTY of simple neglect of duty. She is thus SUSPENDED for three (3) months without pay and STERNLY WARNED that her commission of another or similar offense shall be dealt with more severely.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and Velasco, Jr., JJ., concur.

- [1] Rollo, pp. 5-7.
- [2] Id. at 5. *People of the Philippines v. Dennis Lim*, Criminal Case Nos. 101176-77.
- [3] Id. at 6. The dance instructor hired by the court staff for the MeTC Quezon City Christmas Party.
- [4] Id. at 64.
- [5] Id. at 83.
- [6] Id. at 104.
- [7] Id. at 95.
- [8] *Supra* note 6.
- [9] Id.
- [10] Id. at 12.
- [11] Id. at 95, 104.
- [12] Id. at 114-115.
- [13] Id. at 118-120.
- [14] Id. at 119.
- [15] Id. at 134.
- [16] Id. at 135-138.
- [17] Id. at 139.
- [18] Id. at 140.
- [19] Id. at 137.
- [20] A.M. No. 93-9-1237-RTC, August 21, 1997, 278 SCRA 1, 7.
- [21] Vol. I, *The 2002 Revised Manual for Clerks of Court* 620 (2002).

x x x x

D. GENERAL FUNCTIONS AND DUTIES OF CLERKS OF COURT AND OTHER COURT PERSONNEL

x x x x

1.1.1.2 Non-Adjudicative Functions:

x x x x

b. Controls and manages all court records, exhibits, documents, properties and supplies;

x x x x

[22] See *Arevalo v. Loria*, A.M. No. P-02-1600, April 30, 2003, 402 SCRA 40, 47-48. We found Branch Clerk of Court Rota to be negligent in the performance of her duties when she issued a writ of demolition that was not strictly in accordance with the tenor of the judgment issued in the case of *Manila Paper Mills, Inc. v. Members of the Urban Poor United Neighborhood Association, Inc.*

[23] CIVIL SERVICE COMMISSION (CSC) Resolution No. 99-1936 (1999), Rule IV, Section 52 B (1).

Section 52. Classification of Offenses. – Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

x x x x

B. The following are less grave offenses with the corresponding penalties:

1. Simple Neglect of Duty

1[st] Offense – Suspension 1 mo. 1 day to 6 mos.

2[nd] Offense – Dismissal

x x x x

[24] See *Martillano v. Arimado*, A.M. No. P-06-2134, August 9, 2006, 498 SCRA 240, 245; *Re: Imposition of Corresponding Penalties for Habitual Tardiness Committed During the First and Second Semesters of 2003*, A.M. No. 00-06-09-SC, March 16, 2004, 425 SCRA 508, 518; *Re: Imposition of Corresponding Penalties on Employees of this Court for Habitual Tardiness Committed During the Second Sem. of 2000*, A.M. No. 00-6-09-SC, November 27, 2002, 393 SCRA 1, 9.

[25] A.M. No. P-06-2252, July 9, 2007, 527 SCRA 24.

[26] *Id.* at 37-38.

[27] *Reyes-Domingo v. Morales*, A.M. No. P-99-1285, October 4, 2000, 342 SCRA 6, 15.

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