

**RE: (1) LOST CHECKS ISSUED TO THE LATE RODERICK ROY P. MELLIZA, FORMER CLERK II, MCTC, ZARAGGA, ILOILO; AND (2) DROPPING FROM THE ROLLS OF MS. ESTHER T. ANDRES.**

*A.M. NO. 2005-26-SC. November 22, 2006*

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**PER CURIAM:**

This case arose from the loss of checks issued in the name of the late Rodrigo Roy P. Melliza, former Clerk II, MCTC, Zaragga, Iloilo, and to respondent Esther T. Andres's Absence Without Official Leave (AWOL) from her job since 1 September 2005.

The circumstances surrounding the anomalous encashment of the said checks can be gleaned from the report of Lilian Barribal-Co, OIC-Chief of Office, Financial Management Office, thus:

Mr. Melliza died on July 28, 2004. When his surviving spouse processed his clearance for purposes of claiming the death benefits due to [his] surviving spouse, there appears to be an overpayment of salaries by Mr. Melliza.

Records show that the salaries of Mr. Melliza for the months of August, September, and October 2004 were still mailed to him considering that this office prepared the payroll in advance and the information of Mr. Melliza's death was only received by the office on a later date.

On the other hand, the surviving spouse of Mr. Melizza claimed that [she] no longer received the paychecks of Mr. Melizza for the months of August, September, and October 2004 since the latter died on July 28, 2004. Thus, the Chief of our Checks Releasing Division made an inquiry to the Clerk of Court of the 9[th] MCTC, Zarraga-Iloilo on the whereabouts of the paychecks. In reply to the inquiry, Clerk of Court Roberto Guillergan informed the Chief of the Checks Releasing Division that he returned all the unclaimed pay checks of Mr. Melliza. All his letters were addressed to the Court Administrator. The unclaimed pay checks of Mr. Melizza were returned by Clerk of Court Guillergan to the Court Administrator as follows:melo

Date of Letter

Paycheck for

Check Number

Amount

Date of Mailing

Registry Receipt No.

1. August 12, 2004

1[st] Quincena August 2004

LBP No. 1562262

P2,940.00

August 17, 2004

02385

2. August 19, 2004

2[nd] Quincena August 2004

LBP No. 1566163

P2,941.77

August 20, 2004

02397

3. September 9, 2004

1[st] Quincena September 2004

LBP No. 1571133

P2,940.00

September 9, 2004

02530

4. September 23, 2004

2[nd] Quincena September 2004

LBP No. 1575041

P2,941.00

September 23, 2004

02665

5. October 11, 2004

1[st] Quincena October 2004

LBP No. 1580041

P2,940.00

October 11, 2004

03814

In as much as the above-mentioned check[s] were not received by the Checks Releasing Division, an inquiry was made in the Post Office whether the aforementioned checks were indeed received by our Office. Verification from the Post Office disclosed that all the above-mentioned letters addressed to the Court Administrator were received by the Records Division, Office of the Administrative Services, by one ROD LANCHE. However, the letters with the paychecks were not forwarded to the Checks Releasing Division for the cancellation of the checks. Further inquiry by this office discovered that four (4) out of the five (5)

above-mentioned checks were negotiated. x x x.[1]

Thus, Lilian Barribal-Co recommended further investigation of the case to the Complaints and Investigation Division (CID), Office of the Administrative Services (OAS).

Per the recommendation, Hon. Presbitero J. Velasco, Jr., Court Administrator,[2] referred[3] the matter to the OAS for appropriate action.

In compliance, the OAS directed[4] Rod Lanche, Jr. (Lanche, Jr.) to submit his comment/explanation as to the missing checks within five days from receipt of the notice.

In his undated comment,[5] Lanche, Jr. explained that in May 1997, he was assigned as the Receiving Clerk of all registered mails of the Supreme Court from all over the nation. He receives an average of 1 to 2 thousand letters/mails daily and it takes him the whole day or more just checking them one-by-one before signing the record book of the Post Office. He averred that his duty, after checking the addressees in the envelopes, is to countercheck said letters/mails with the list left by the Post Office courier/postman. His duty is basically to receive, check, and sign all the incoming letters/mails as Supreme Court receiver, and then sort-out all those pertaining to the Court Administrator in one file and the rest for the Supreme Court proper. Reynaldo Salazar (Salazar), an employee of the Court's Records Division, is the one in-charge of getting all of the Supreme Court's mailed communications from him while all letters addressed to the Court Administrator are handed over to Esther T. Andres (Andres), Records Officer III, and Diosdado Makasiar (Makasiar), Clerk II of the Office of the Court Administrator (OCA). Both of them are authorized to open all incoming mail matters addressed to the Court Administrator pursuant to Office Order No. 15-2004[6] dated 20 May 2004. This specific authority, delegated to the personnel of the Receiving and Releasing Section of the Records Division, OAS-OCA, to open said incoming mails and subsequently deliver them to the respective Offices/Divisions to which they are directed, was issued primarily to ensure the speedy delivery and routing of the voluminous mail matters addressed to the Court Administrator. Mail matters containing checks are then handed to Eduardo Espinola (Espinola) of the Checks Disbursement Division who, in turn, would list down those letters that came to him and subsequently deliver them to the Office/Division of the OCA to which they are directed. He added that it can be safely presumed that since all letters addressed to the Court Administrator's office are given to Andres and Makasiar, they are the right persons who should really look for said checks as they were the ones who opened the envelopes and saw the contents thereof. He added that if said envelopes with checks inside were released to the Checks Disbursement Division thru the authorized personnel Eduardo Espinola, then those should have been in the list of Espinola. Conspicuously, the subject checks were not in the list of Espinola.

On 1 September 2005, Andres filed her resignation and went on AWOL from then on.

On 9 September 2005 OAS directed, Makasiar,[7] and Lanche, Jr.,[8] and Andres[9] to appear for a formal investigation.

On 14 September 2005, the scheduled date of the investigation, only Lanche, Jr. and Makasiar, with Espinola as corroborating witness, appeared before the CID.

Records show that on 1 September 2005, before the scheduled formal investigation, Ms. Andres tendered her resignation,[10] effective 31 August 2005 and claimed her retirement under the provisions of Republic Act No. 8291.[11] She has since been on AWOL (absence without leave). On 7 September 2005, Mr. Joseph Bryan Hilary P. Davide, Chief Justice's Staff Head referred[12] her letter of resignation to Atty. Caridad A. Pabello, then OIC-OAS, OCA. Deputy Court Administrator Zenaida N. Elepaño, Officer-In-Charge, OCA, by way of 2<sup>nd</sup> Indorsement[13] dated 12 September 2005 forwarded the same to OAS for information and appropriate action

with recommendation to hold in abeyance the acceptance of Ms. Andres' resignation until such time that her name is cleared of her involvement in the missing mails, allegedly containing checks, pending investigation or until appropriate administrative charges are filed in Court in connection thereto. For failure to locate Ms. Andres at her address at No. 827-A Instruccion St., Sampaloc, Manila, the CID caused the service of summon to her at her provincial address in Maddela, Quirino, Cagayan, via registered mail.[14]

On 26 September 2005, respondent Ms. Andres submitted her reply, stating thus[15]:

That as in-charge of the Mailing and Receiving Section, I have not encountered, received or seen any checks during my stay in the office;

That from the time my husband was seriously ill in 2004 and up to now 2005 due to hypertension and enlargement of the heart, seldom I reported to office. I was on-leave for several months, and I have no knowledge of the missing check[s];

That realizing the fact that I can no longer cope up with my work in the office, I decided to tender my resignation last August 31, 2005 to attend to my ailing husband; and

That I respectfully request your goodness and sympathy that my resignation be approved as my terminal [leave] proceeds will be used for the medical treatment of my husband and be brought to a better medical institution. (Emphasis supplied.)

After investigation, OAS, thru Eden T. Candelaria, Deputy Clerk of Court and Chief of Administrative Services, submitted her report, concluding thus:

Regarding the lost checks, the issue on who the culprit is and who should bear full responsibility of the wrongful and illegal act must be resolved once and for all. Perusal of the records and the sworn statements given by Messrs. Lanche, Jr., Makasiar and Espinola before the investigating officers of the CID reveal that the name of Ms. Esther T. Andres has always been mentioned linking her to the loss of five (5) paychecks which after verification were indeed received by their office, the Records Control Division.

This Office believes that a prima facie presumption of malversation through falsification of public document is committed considering the turn of the events and the sequence and trail of the letters containing the subject-checks. It is worth stressing that government checks were stolen and encashed, hence money was taken from the Government. These facts were confirmed from the records and testimonies of the following employees of the Court:

- MR. ROBERTO G. GUILLERGAN who informed the Office of the Court Administrator that all the unclaimed paychecks of Mr. Melliza were returned to said office through registered mail;

- MR. RODRIGO LANCHE, JR., who testified that he is the one-in-charge of receiving from the Post Office all registered mails addressed to the Supreme Court; that after receiving the mails, he sorts them out in one file those directed to the Court Administrator according to the office or division they are addressed and in another file those addressed to the Supreme Court proper; that he is not authorized to open all incoming mails matters; that what he is directed to do is to deliver and turn-over them to Mr. Makasiar;

- MR. DIOSDADO MAKASIAR who testified that as Clerk II, his job is to receive mails/letters addressed to the Court Administrator only; that he is only authorized to cut the edge of the mails/letters and subsequently give them all to Ms. Esther Andres who in turn is allowed to open the mails/letters and determines the content thereof;

- MR. EDUARDO ESPINOLA who stated under oath that as the one in-charge of receiving mails containing checks from Ms. Andres who determines the contents thereof, he maintains a list of the letter he receives from her; that right after the news came to him that some checks were missing, he instantly looked them from his list if those were duly recorded but found out they were not.

Taken together all their testimonies and the circumstances, it boils down to the question of whether or not Ms. Andres has any knowledge whatsoever of the missing paychecks issued to the late Mr. Melliza. Although none of them had actually seen that Ms. Andres took the subject-checks, strong and substantial circumstantial evidence abound linking her to the missing checks subject of the inquiry. Hence, the conclusion is inevitable that no person other than respondent Andres could have stolen, falsified the payees' signature, encashed the checks and misappropriated the proceeds thereof. First, her sudden leave of absence from work after the incident happened. Second, her failure to appear before the investigating body of this Office regarding the missing mails case (with checks inside). Third, her untimely submission or tender resignation while the case is awaiting investigation by this Office. And lastly, her continuous unauthorized absences that made her AWOL from office. If taken together, it leads to one fair and reasonable conclusion pointing to her, to the exclusion of all others, as the guilty person.

The question may arise therefore as to whether Ms. Andres was accorded the minimum requirement or measure of procedural due process warranted under the circumstances. This Office believes it does. In administrative proceedings, the essence of due process is simply the opportunity to explain one's side. Such process requires notice and an opportunity to be heard before judgment is rendered. One may be heard, not solely by verbal presentation but also, and perhaps even much more creditably as it is more practicable than oral arguments, through pleadings. In the case at bar, the basic requirement of notice and the opportunity to explain her side were not denied to her. The proceedings were conducted in accordance with the procedure under pertinent laws. Records show that this Office for failure to locate her at her city address caused the service of the summons to her provincial address at Poblacion Norte, Maddela, Quirino Cagayan by registered mail. Her letter dated 26 September 2005 addressed to DCA Elepaño shows she has knowledge of the investigation being conducted by this Office regarding her case. Indeed, if Ms. Andres has nothing to hide, she should have responded to the invitation for investigation and exerted efforts to clear her name. Yet, as found by this Office and based on the evidence on record Ms. Andres failed to appear, despite notice, and refute the allegations against her. Respondent's refusal to attend the scheduled hearings, despite due notice, was at her own peril. As held in *Garcia vs. Pajaro* the Court said that "so long as parties are given the opportunity to explain their side, the requirements of due process are satisfactorily complied with." In our view, Ms. Andres is deemed to have waived the rights the law has provided her i.e., to present her documentary and oral evidence. This Office therefore believes that the quantum of proof necessary for a finding of guilt in her case is substantial. In one case *Re: Loss of Extraordinary Allowance Check of Judge Eduardo Jovellanos*, the Court said that:

"The natural reaction of an innocent person confronted with a supposedly malicious accusation would be to face her accuser and clear her name. By stealing and encashing the check of Judge Jovellanos without the latter's knowledge and consent, respondent has shown herself unfit for the confidence and trust demanded by her work as check-processor. Her acts amounted to gross misconduct and dishonesty, and violated the time-honored constitutional principle that a public office is a public trust. Her actuation is a disgrace to the judiciary and erodes the people's faith in the judicial system."

The same is true in the case of *OCA vs. Sevilla*, where respondent Sevilla was dismissed from the service for gross dishonesty and grave misconduct. The Court said:

"By stealing mail matters he has blatantly degraded the judiciary and diminished the respect and regard of the people for the court and its personnel. Every employee of the judiciary should be an example of integrity, uprightness and honesty. Lamentably, respondent has become no better than a common thief; consequently, he does not deserve to stay a minute longer in the judicial service."

What Ms. Andres did while the case is under investigation, she filed her letter of resignation and went on AWOL (Absence Without Official Leave) from the service. Granting but without admitting when she said she has no knowledge of the missing checks because she was absent and on-leave for several months on the dates the missing checks were received by their office, how then on this point can she now explain such reasoning

when entries on her Daily Time Records (DTR) for the months of August, September and November 2004 reveal that she was present on the dates the checks were received by their office?

Considering the foregoing, the acts demonstrated by her are indubitable and unequivocal indicia of her guilt. That her immediate resignation from the service, granting it is accepted, is of no consequence to the charge against her as it is not lost by mere resignation. Resignation should be used neither as an escape nor as an easy way out to evade administrative liability by a court personnel facing administrative sanction.

This Office is convinced after examination of the records and testimonies, and left with no choice but to treat this case against Ms. Esther T. Andres for dishonesty and grave misconduct in stealing, encashing and converting for her personal use the amount represented by the checks issued to the late Mr. Melliza which warrant the extreme penalty of dismissal from the service with forfeiture of retirement benefits, except accrued leave if any, and perpetual disqualification for re-employment in the government service. Further, it may be imposed without prejudice to criminal or civil liability. This penalty is in accordance with Sections 9 and 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order 292.

Ms. Andres was given all the opportunity to answer and present her defense to the charge. Regrettably, the records show that despite receipts by Ms. Andres of the Memorandum, she has not taken any steps, reacted nor made any move to protect herself and answer the charge against her. This Office believes that Ms. Andres has been given all the opportunity to attend the scheduled investigation, present her evidence and substantiate her defense. However, she failed to do so. x x x.[16]

Consequently, she recommended the following:

PREMISES CONSIDERED, this Office respectfully recommends the following courses of action to be taken:

- That Ms. Esther T. Andres be found guilty of dishonesty and grave misconduct regarding the loss of five (5) paychecks issued to the late Mr. Melliza and encashing the same, and be meted the penalty of DISMISSAL from the service with forfeiture of her retirement and all other benefits, except accrued leave credits if any, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations and be ordered to pay the Court the amount of Eleven Thousand Seven Hundred Sixty Three and 54/100 (P11,763.54) equivalent to the four (4) checks she encashed for her benefit;
- That the following employees of the Court namely Messrs. Rodrigo Lanche, Jr., Diosdado Makasiar and Eduardo Espinola of the Records Control Division, OAS-OCA be absolved from any liability as regards the loss of five (5) paychecks issued to the late Roderick Roy P. Melliza; and
- That the alleged overpayment of Mr. Melliza be considered waived for purposes of the death benefits being claimed by his surviving spouse as the unclaimed paychecks were proven to have been returned and sent back to the Office of the Court Administrator.[17]

We agree in the recommendations of the OAS.

At the initial stage of the investigation, the OAS directed Makasiar, Lanche, Jr., and Ms. Andres to appear on 14 September 2005 for investigation. However, only Lanche, Makasiar and Espinola, as corroborating witness, appeared on the scheduled date.

As may be gleaned from their testimonies, their duties are as follows:

MR. RODRIGO LANCHE, JR., is the one-in-charge of receiving from the Post Office all registered mails addressed to the Supreme Court; that after receiving the mails, he sorts out in one file those directed to the Court Administrator according to the office or division to which they are addressed and in another, those addressed to the Supreme Court proper; that he is not authorized to open all incoming mails matters; that what he is directed to

do is deliver and turn them over to Mr. Makasiar.

MR. DIOSDADO MAKASIAR, as Clerk II, is to receive mails/letters addressed to the Court Administrator; that he is only authorized to cut the edges of the mails/letters and subsequently give them all to Ms. Esther Andres who in turn is allowed to open the mails/letters and determine the content thereof.

Ms. ESTER ANDRES' duty is to receive and open mails/letters cut on the edge by Makasiar, determines the contents thereof and sorts/delivers them to the office to which they are directed. If the mails contain checks, she would deliver them to Espinola who lists them down in his check-list as proof of his receipt of the same.

MR. EDUARDO ESPINOLA is in-charge of receiving mails containing checks from Ms. Andres who determines the contents thereof. He maintains a list of the letters he receives from her. Right after the news came to him that some checks were missing, he instantly looked at his list if the said letter and/or checks were duly recorded therein but found out that they were not.

There is no question that the letter containing the questioned checks of Mr. Melliza were returned to OCA as shown by receipt of Lanche, Jr. from the post office and received by the Records Division. Based on the testimonies of Lanche, Makasiar and Espinola, it is a standard operating procedure that Makasiar cuts the edges of all letters addressed to the Office of the Court Administrator while respondent Andres opens them and determine their contents. When the mails contain checks, Andres would deliver them to Espinola who records the receipt thereof on his list. It appears that the checks were not listed on his list as having been received from Andres.

Instead of appearing during the scheduled investigation to refute the charges associating her to the loss of the checks, respondent Andres tendered her resignation prior to the date of investigation. On 26 September 2005, she merely denied in writing the charges.[18]

The defense of denial proffered by respondent is hardly convincing. It is settled that denial is inherently a weak defense. To be believed, it must be buttressed by a strong evidence of non-culpability; otherwise, such denial is purely self-serving and is with nil evidentiary value.[19]

We deplore respondent's lackadaisical deportment from the inception of this case, when she failed to appear and testify in the hearing. Respondent opted to file the above-quoted delayed explanation instead of attending the investigation. The respondent's refusal to face head-on the charges against her is contrary to common experience that "the first impulse of an innocent man when accused of wrongdoing is to express his innocence at the first opportune time." [20]

Also, we view respondent's act of filing her resignation before the investigation as indicative of her guilt. Indeed, an employee's act of tendering her resignation immediately after the discovery of the anomalous transaction is indicative of her guilt as flight in criminal cases.[21] And, resignation is not a way out to evade administrative liability when a court employee is facing administrative sanction.[22]

Lastly, respondent Andres's AWOL from her job since 1 September 2005, shortly before the scheduled formal investigation on 14 September 2005, constitutes a clear violation of the Civil Service Law on AWOL. Respondent Andres is still an employee of this Court in spite of the resignation letter earlier filed, as verification from this Office revealed that her resignation has not been accepted nor acted upon. While indeed Andres, under the Civil Service Rules, may be allowed to resign pending decision of her case, it is without prejudice to the continuation of the proceedings until finally terminated. To constitute a complete and operative resignation from public office, there must be: (a) an intention to relinquish a part of the term; (b) an act of relinquishment; and (c) an acceptance by the proper authority.[23] The effectivity of her resignation commences from the time this Office approves the

same after she is cleared from all her obligations for purposes of determining her entitlement to her separation benefits. Records is bereft of any indication that her resignation was accepted.

Respondent's letter of resignation on 1 September 2005 and explanation in her letter dated 26 September 2005 that she tendered her resignation because she could not cope with her work in the office as she had to attend to her ailing husband does not work in her favor. The resignation letter does not alter the fact that she had abandoned her office by failing to report to work or to file the appropriate leave. Her absence without official leave, during the investigation of the administrative case, is indicative of her guilt in the same way as flight in criminal cases.[24]

Up until today, Ms. Andres has not appeared before the Court nor reported back for work. This makes her AWOL for more than a year now which will warrant her being dropped from the rolls.

Ms. Andres falls within the purview of Section 63, Rule XVI of the Omnibus Civil Service Rules and Regulations, as amended:

Sec. 63. Effect of absences without approval leave. – An official or an employee who is continuously absent without approved leave for at least thirty (30) calendar days shall be considered on absence without official leave (AWOL) and shall be separated from the service or dropped from the rolls without prior notice. He shall, however, be informed, at his address appearing on his 201 files of his separation from the service, not later than five (5) days from its effectivity.

The above provision does not require prior notice to drop from the rolls the name of the employee who has been continuously on AWOL for at least 30 days.[25] Defying the express directive of the Court for Ms. Andres to report back to work, she chose not to report for work since 1 September 2005, to the prejudice of public service. A court employee's AWOL for a prolonged period of time constitutes conduct prejudicial to the best interest of public service and warrants the penalty of dismissal from the service with forfeiture of benefits.[26]

Respondent could not even claim that she was denied due process. She was accorded the opportunity to be heard. She was required to answer and to attend the investigation to adduce evidence on her behalf. She filed her answer but she merely generally denied having received the subject checks or any other involvement therein. The essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to seek reconsideration of the action or ruling complained of. For as long as the parties were given the opportunity to be heard before judgment was rendered, the demand of due process were sufficiently met.[27] "To be heard" does not mean only verbal arguments in court; one may be heard also thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.[28] In this case, respondent was given ample opportunity to be heard and to present her case.

In fine, we find that there is substantial evidence to support respondent's dismissal. In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.[29] Well-entrenched is the rule that substantial proof, and not clear and convincing evidence or proof beyond reasonable doubt, is sufficient as basis for the imposition of any disciplinary action upon the employee. The standard of substantial evidence is satisfied where the employer, as in this case the Court, has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of trust and confidence demanded by his position.[30]

While there is no direct evidence to suggest that respondent actually stole and encashed the questioned checks, the surrounding circumstances point towards her administrative liability. He established flow of work in the OAS-OCA regarding mail matters received by the office; respondent Andres's repeated failure to appear in the investigation despite due notice to adduce evidence on her behalf; her act of tendering resignation before the

investigation of the case; and her being AWOL since 1 September 2005, are clear indicia of her guilt. With these, respondent has shown herself unfit for the confidence and trust demanded by her work. Her acts amounted to gross misconduct and dishonesty, and violated the time honored constitutional principle that a public office is a public trust. Her actuation is a disgrace and erodes the people's faith in the judicial system.

Indeed, dishonesty is a malevolent act that has no place in the judiciary.[31] This Court has defined dishonesty as the "(d)isposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.[32]

Misconduct is a transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior,[33] while "gross" has been defined as "out of all measure; beyond allowance; flagrant; shameful; such conduct as is not to be excused." [34]

Time and again, this Court has exhorted that any act which falls short of the existing standards for public service, especially on the part of those expected to preserve the image of the judiciary, shall not be countenanced. Public office is a public trust. Public officers must at all times be accountable to the people, serve them with utmost degree of responsibility, integrity, loyalty and efficiency.

Public service requires utmost integrity and discipline. A public servant must exhibit at all times the highest sense of honesty and integrity for no less than the Constitution mandates the principle that "a public office is a public trust and all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency." [35] As the administration of justice is a sacred task, the persons involved in it ought to live up to the strictest standard of honesty and integrity.[36] Their conduct, at all times, must not only be characterized by propriety and decorum but, above all else, must be above suspicion. Thus, every employee of the judiciary should be an example of integrity, uprightness and honesty.[37]

Be it noted also that this is not the first infraction of respondent Andres. In A.M. No. 2004-40-SC, this Court found her guilty of Conduct Prejudicial to the Best Interest of the Service and Willful Failure to Pay just debts and was meted the penalty of suspension of one month.[38] In that case, she refused to pay her debts despite numerous opportunities given her. Moreso, her acts of giving the complainant therein her Automated Teller Machine (ATM) card and Personal Identification Number (PIN) to an account which had a zero balance; making a promissory note and later on reneging on it; verbally promising to tender cash payment; using the OAS to make credible her verbal promise to pay her indebtedness in cash; and issuing a check in favor of the complainant only to tell the latter a few days later not to deposit it as a cash payment which did not materialize, would be given instead, establish her fraudulent and mendacious nature.

Pursuant to Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order 292, Dishonesty and Grave Misconduct, being in the nature of grave offenses, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification for reemployment in government service.[39]

Thus, the Court is left with no choice but to declare respondent guilty of dishonesty and gross misconduct, which are grave offenses punishable by dismissal.

WHEREFORE, Respondent Esther Andres is found GUILTY of Dishonesty and Gross Misconduct. She is DISMISSED from service effective immediately, with forfeiture of all retirement benefits, except accrued leave credits, with prejudice to reemployment in any branch or instrumentality of the government, including government-owned and controlled corporations. The OAS-SC is further directed to deduct from her accrued leave credits the amount of Eleven Thousand Seven Hundred Sixty Three and 54/100 (P11,763.54) Pesos representing

the face value of the four (4) checks she encashed.

**SO ORDERED.**

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

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[1] Rollo, pp. 36-37.

[2] Now Associate Justice of the Supreme Court.

[3] Rollo, p. 35.

[4] Memorandum dated 25 August 2005.

[5] Rollo, pp. 29-30.

[6] Rollo, p. 34.

[7] Id. at 28.

[8] Id. at 25.

[9] Id. at 26.

[10] Id. at 23. Letter dated 1 September 2005.

[11] GSIS Act of 1997.

[12] Id. at 22.

[13] Id. at 21.

[14] Id. at 4.

[15] Id. at 12.

[16] Id. at 6-10.

[17] Id. at 10.

[18] Rollo, p. 18.

[19] Ruperto G. Jugueta v. Ricardo Estacio, A.M. No. CA-04-17-P, 25 November 2004, 444 SCRA 10.

[20] Jaclyn Chua v. Rey F. Paas, Clerk III, Metropolitan Trial Court, Office of the Clerk of Court, Pasay City, A.M. No. P-05-1933, 9 September 2005, citing People v. Castillo, G.R. Nos. 111734-35, 16 June 2000, 352 SCRA 264.

[21] Re: Loss of Extraordinary Allowance Check No.1106739 of Judge Ediardo O. Jovellanos, A.M. No. 02-9-24-0, 27 November 2002, 393 SCRA 22

[22] Withholding of the Salary and Benefits of Michael A. Latiza, Court Aide, Regional Trial Court, Branch 14, Cebu City, for Unexplained Absences and Involvement in the Loss of Evidence, A. M. No. 03-3-179-RTC, and A.M.No. 03-10-576 RTC, RE: Resignation of Michael Latiza, Utility Worker I, Regional Trial Court, Branch 14, Cebu City, 26 January 2005; Clerk of Court Marbas-Vizcarra v. Florendo, 369 Phil. 840 (1999); Judge CAjot v.

Cledera, 349 Phil. 907 (1998)

[23] Sangguniang Bayan of San Andres, Catanduanes vs CA, 16 January 1998.

[24] Jovita Casal v. Roberto Concepcion, Jr., Deputy Sheriff, Regional Trial Court, Branch 78, Quezon City, A.M. No. P-93-942, 6 April 1995

[25] Lameyra v. Mayor Pangilinan, 379 Phil. 116, 123 (2000).

[26] Judge Loyao, Jr. v. Manatad, 387 Phil. 337, 344 (2000), citing Judge Masadao, Jr. v. Glorioso, 345 Phil. 859, 864 (1997).

[27] Delia Bangalisan, v. Court of Appeals, G.R. No. 124678, 31 July 1997

[28] George Salonga v. Court of Appeals, G.R. No. 11478, 13 March 1997.

[29] Inocencio D. Ebero and Juanito D. Ebero v. Makati City Sheriffs Raul T. Camposano and Bayani T. Acle, A.M. No. P-04-1792, 12 March 2004.

[30] Francisco Reyno v. Manila Electric Company, G.R. No. 148105, 22 July 2004.

[31] Cabanatan v. Molina, 421 Phil. 664, 674 (2001); Lacurom v. Magbanua, 443 Phil. 711, 718 (2003), citing Pizarro v. Villegas, 398 Phil. 837, 838 (2000).

[32] Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Sec. I & Angelita C. Esmerio, Clerk III, Off. Clerk of Court, A. M. No. 2001-7-SC & No. 2001-8-SC, 22 July 2005, 464 SCRA 1.

[33] BLACK'S LAW DICTIONARY, 5[th] Edition, p. 901, cited in Associate Justice Delilah Vidallon-Magtolis, Court of Appeals v. Cielito M. Salud, Clerk IV, Court of Appeals, A.M. No. CA-05-20-P, 9 September 2005.

[34] Id. at 632, citing State Board of Dental Examiners v. Savelle, 90 Colo. 177, 8 P. 2d 693, 697, cited in A.M. No. CA-05-20-P, Associate Justice Delilah Vidallon-Magtolis, Court of Appeals v. Cielito M. Salud, Clerk IV, Court of Appeals, 9 September 2005.

[35] Section 1, Article XI, 1987 Constitution.

[36] Hernandez v. Borja, 312 Phil. 199, 204 (1995).

[37] Basco v. Gregorio, 315 Phil. 681, 688 (1995).

[38] In Re: Complaint for Failure to pay Just Debts Against Esther Andres, A.M. No. 2004-40-SC, 1 March 2005.

[39] Office of the Court Administrator v. Magno, 419 Phil. 593, 602 (2001); Sec. 22(a), Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 ( Administrative Code of 1987), as amended by CSC Memorandum Circular No. 19, s. 1999 (a).

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