

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS.
DOMINIQUE D. JUAN, RESPONDENT.***A.M. No. P-03-1726. July 22, 2004*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/bd78d87b2bb4/>**PER CURIAM:**

This administrative case stemmed from a letter dated 8 May 2003 of Judge Ma. Theresa L. Dela Torre-Yadao (“Judge Dela Torre-Yadao”) of the Regional Trial Court of Quezon City, Branch 81 (“RTC-Branch 81”), addressed to Chief Justice Hilario G. Davide, Jr., informing him that a gun marked as an exhibit in a criminal case was missing.

During the hearing on 7 May 2003 of a criminal case for Parricide entitled “People of the Philippines v. Garchitorena”[1] assigned to Judge Dela Torre-Yadao of RTC-Branch 81, the defense counsel verbally requested the production of Exhibit “E.” Exhibit “E” was a 9mm CZ pistol with serial no. E5483 (“CZ Pistol”) involved in the shooting incident subject of the criminal case. Philander Rino del Castillo (“Del Castillo”), the Criminal Case Docket Clerk, could not find the CZ Pistol in the steel cabinet where exhibits were kept. Thus, in a letter dated 8 May 2003,[2] Judge Dela Torre-Yadao informed Chief Justice Hilario G. Davide, Jr., thru Court Administrator Presbitero J. Velasco, Jr., of the missing CZ Pistol. In a subsequent letter,[3] Judge Dela Torre-Yadao wrote that late in the afternoon of 19 May 2003, Dominique D. Juan (“respondent”), the Branch Process Server, confessed to her in the presence of the Branch Clerk of Court Atty. Arthur A. Pefianco (“Pefianco”) and Del Castillo that respondent took the CZ Pistol including the magazine and cartridges. On 20 May 2003, respondent surrendered and turned over the CZ Pistol, including the magazine and cartridges, to Del Castillo in the presence of Pefianco and Court Legal Researcher Faustina Fernandez.[4] On the same date, respondent tendered his resignation as branch process server.[5]

In the Resolution dated 30 July 2003, this Court, on recommendation of the Office of the Court Administrator (“OCA”), referred the matter to Vice-Executive Judge Natividad G. Dizon (“Investigating Judge”) of the Regional Trial Court of Quezon City, Branch 106, for investigation, report and recommendation. This Court also considered the resignation of respondent from the service as without prejudice to the outcome of the investigation and further held in abeyance the grant of clearance and release of benefits to him.

Respondent did not appear during the entire investigation despite notices to him.[6] Judge Dela Torre-Yadao appeared and submitted her Affidavit narrating the circumstances on the missing CZ Pistol. Pefianco and Del Castillo also appeared at the investigation and submitted a Joint Affidavit.

The Investigating Judge found that respondent took the CZ Pistol without the knowledge and consent of the accountable officer of the court. Respondent later surrendered the CZ Pistol with its magazine and cartridges as evidenced by a receipt.[7] The Investigating Judge recommended that respondent be dismissed from the service with forfeiture of all benefits and that the proper criminal action be filed against him.

The case was referred to OCA for evaluation, report and recommendation.[8] The OCA found respondent guilty of dishonesty and grave misconduct when he took the CZ Pistol. Respondent admitted his guilt when he

voluntarily returned the CZ Pistol to the court. The OCA reiterated that court personnel should always act beyond reproach, ever conscious of their heavy responsibility. The OCA recommended the dismissal of respondent from the service with forfeiture of benefits, except accrued leave credits, and with prejudice to re-employment in any branch of the government or any of its agencies, including government owned and controlled corporation.

We agree with the recommendation of the OCA and the Investigating Judge to dismiss respondent from the service.

Annex “C”[9] of the Report of Branch Clerk of Court Pefianco is the receipt, signed by respondent himself, showing that Del Castillo received from respondent the following marked evidence for the prosecution:

- one (1) 9mm CZ 75 compact pistol with serial no. E5483 marked as Exh. E;
- one (1) 9mm fired cartridge case marked as Exh. F;
- one (1) deformed metallic jacket of 9mm fired bullet marked as Exh. F (unrecovered);
- one (1) magazine for 9mm pistol marked as Exh. G;
- eleven (11) 9mm cartridges marked as Exh. H.

It is not clear why and how respondent took the CZ Pistol.

As a process server, respondent (1) serves court processes such as subpoenas, subpoenas duces tecum, summonses, court orders and notices; (2) prepares and submits returns of service of processes, (3) monitors messages or delivers court mail matters; (4) keeps in custody and maintains a record book of all mail matters received and dispatched by the court; and (5) performs such other duties as may be assigned by the Presiding Judge or Clerk of Court.[10] Thus, as a process server, respondent had no right or duty to take possession of the CZ Pistol.

The clerk of court is the custodian of the records, papers, files, exhibits and public property of the court. It is the clerk of court’s duty to keep safely all records, papers, files, exhibits and public property committed to his charge, including the library of the court and the seal and furniture belonging to his office.[11] This custodial duty of the clerk of court extends to evidence submitted by the parties and marked as exhibits.

The CZ Pistol was discovered missing during the hearing on 7 May 2003 in the criminal case for Parricide when the defense counsel requested the production of the CZ Pistol. It was only on 19 May 2003 that respondent confessed that he took the CZ Pistol with its magazine and cartridges. During the investigation on the missing CZ Pistol, respondent failed to appear despite notices sent to him. Respondent’s refusal to appear before the investigating judge, and his precipitate resignation from the service, are clear indicia of guilt. Respondent’s act of taking the CZ Pistol constitutes dishonesty and grave misconduct.

Under Section 22, Rule IV of the Civil Service Rules, dishonesty and grave misconduct are grave offenses punishable by dismissal from the service even if it is the first offense. Respondent’s resignation does not render the case moot. Resignation is not a way out to evade administrative liability when a court personnel is facing administrative sanction.[12] In one case,[13] we found a utility worker guilty of dishonesty and grave misconduct in the loss of a .45 caliber pistol offered in evidence in a criminal case, despite the court’s acceptance of his resignation.

Once again, we stress that court employees, from the presiding judge to the lowliest clerk, being public servants in an office dispensing justice, should always act with a high degree of professionalism and responsibility. Their conduct must not only be characterized by propriety and decorum, but must also be in accordance with the law

and court regulations.[14] No position demands greater moral righteousness and uprightness from its holder than an office in the judiciary. Court employees should be models of uprightness, fairness and honesty to maintain the people's respect and faith in the judiciary. They should avoid any act or conduct that would diminish public trust and confidence in the courts. Indeed, those connected with dispensing justice bear a heavy burden of responsibility.[15]

WHEREFORE, we find respondent Dominique D. Juan GUILTY of dishonesty and grave misconduct. Accordingly, his retirement and all other benefits, except accrued leave credits, are FORFEITED. Respondent is also DISQUALIFIED from re-employment in any branch of the government or any of its agencies or instrumentalities, including government owned and controlled corporations.

SO ORDERED.

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

[1] Docketed as Criminal Case No. Q-00-94720.

[2] Rollo, p. 5.

[3] Ibid., p. 4.

[4] Ibid., p. 6.

[5] Ibid., p. 7.

[6] Report of the Investigating Judge, p. 6.

[7] See note 3.

[8] Resolution of 21 January 2004.

[9] Rollo, p. 20.

[10] *Musni v. Morales*, 373 Phil. 703 (1999) citing the Manual for Clerks of Court.

[11] Rules of Court, Rule 136, Section 7; Manual for Clerks of Court, Chapter II, Section A.

[12] *Clerk of Court Marbas-Vizcarra v. Florendo*, 369 Phil. 840 (1999); *Judge Cajot v. Cledera*, 349 Phil. 907 (1998).

[13] *Office of the Court Administrator v. Ferrer*, 347 Phil. 667 (1997).

[14] *Albior v. Auguis*, A.M. No. P-01-1472, 26 June 2003, 405 SCRA 1.

[15] *Castelo v. Florendo*, A.M. No. P-96-1179, 10 October 2003.

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