

JUDGE NUMERIANO G. ESTENZO, AS EXECUTIVE JUDGE OF THE COURT OF FIRST INSTANCE OF LEYTE, ORMOC CITY BRANCH V, COMPLAINANT, VS. LEONARDO C. DEJAÑO, AS CLERK OF COURT, COURT OF FIR...

A.M. No. P-2082. September 20, 1979

Ponente: AQUINO, J.

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AQUINO, J.:

The city auditor of Ormoc City in her report of September 25, 1978 found that there was a shortage amounting to eighty-one thousand three hundred fifty-nine pesos and sixty-six centavos P81,359.66) in the accounts (fiduciary and judiciary funds) of Leonardo C. Dejaño, a lawyer functioning since 1971 as clerk of court, Branch V of the Court of First Instance of Leyte located at Ormoc City.

Acting on that report, Executive Judge Numeriano G. Estenzo required Dejaño to show cause within seventy-two hours why disciplinary action should not be taken against him.

Dejaño in his answer said that it was not clarified in the auditor's report that the shortage included disallowed withdrawals. He requested that he be allowed to present evidence on the said withdrawals.

In the resolution of November 28, 1978, this Court confirmed Judge Estenzo's order suspending Dejaño and designating the lower court's legal researcher to take his place. Judge Estenzo was directed to proceed with the investigation of Dejaño (Administrative Matter No. 2483-CFI).

After a hearing, during which Dejaño presented evidence, it was established that the sum of P23,770.49 which was paid to twelve witnesses, as shown in the receipts, Exhibits 1 to 13, should be credited in favor of the respondent, thus reducing the shortage to fifty-seven thousand five hundred eighty-nine pesos and sixteen centavos (P57,589.16).

Dejaño did not present any explanation and evidence that would exculpate him from any responsibility for that shortage. Nor did he make any restitution thereof as demanded by the auditor.

The Executive Judge and the Court Administrator recommended that the respondent be dismissed for dishonesty and gross misconduct in office. That recommendation is well-founded. (See *Dioquino vs. Martinez*, Administrative Matter No. P-195, May 10, 1976, 71 SCRA 93.)

WHEREFORE, the respondent is dismissed from the service with forfeiture of retirement privileges.

SO ORDERED.

Teehankee (Acting C.J.), Barredo, Concepcion Jr., Fernandez, Guerrero, Abad Santos, De Castro, and Melencio Herrera, JJ., concur.

Fernando (C.J.), Makasiar, Antonio and Santos, JJ., are abroad.

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