

## SECOND DIVISION

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

**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**

### RESOLUTION

**QUISUMBING, J.:**

This case stemmed from the Letter<sup>[1]</sup> 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<sup>[2]</sup> before her court; and (2) a Nokia 3310 cellular phone, which was allegedly left by its owner, Mr. Gian Carlo A. Zamora,<sup>[3]</sup> 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<sup>[4]</sup> 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.<sup>[5]</sup>

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;<sup>[6]</sup> (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;<sup>[7]</sup> (3) when Fernandez asked Rota where to place the gun, Rota told her to just place the gun somewhere inside the court premises;<sup>[8]</sup> (4) Fernandez placed the gun inside the steel cabinet of the court;<sup>[9]</sup> (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;<sup>[10]</sup> and (7) the loss of the gun was discovered only on the scheduled hearing of the said criminal case on December 5, 2002.<sup>[11]</sup>

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.<sup>[12]</sup>

In her Report/Recommendation<sup>[13]</sup> 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.<sup>[14]</sup>

In our Resolution<sup>[15]</sup> 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<sup>[16]</sup> 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.<sup>[17]</sup> For her failure to file the required manifestation, however, we considered this case already submitted for decision in our Resolution<sup>[18]</sup> 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.<sup>[19]</sup> It also cited our ruling in *Re: Loss of Court Exhibits at RTC, Br. 136, Makati City*,<sup>[20]</sup> 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,<sup>[21]</sup> 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.<sup>[22]</sup> Moreover, the prescribed penalty for the second offense of simple neglect of duty is dismissal from the service.<sup>[23]</sup>

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