



# PHILJA E-Alerts

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## CLERK OF COURT AND CLERK

### • Gross neglect of duty

The Manual for Clerks of Court and the Rules of Court define the role of a clerk of court in the administration of justice. Section E(2), paragraph 2.2.3, Chapter VI of the 2002 Revised Manual for Clerks of Court reads:

All exhibits used as evidence and turned over to the court and before the case/s involving such evidence shall have been terminated shall be under the custody and safekeeping of the Clerk of Court.

Section 7 of Rule 136 of the Rules of Court also provides:

**SEC. 7. Safekeeping of property.** – The clerk shall safely keep all records, papers, files, exhibits, and public property committed to his charge, including the library of the court, and the seals and furniture belonging to his office.

A clerk of court's primary duty is the safekeeping of all the records and pieces of evidence submitted to the court in cases pending before it including the properties furnished to his office. This obligation extends to ensuring that the records and exhibits in each case are complete and accounted for, and continues even after the termination of the case as long as the same have yet to be disposed or destructed in accordance with the existing rules. Accordingly, it is the clerk of court who shall assume liability for any loss, shortage, damage or destruction of court records, exhibits and properties.

Respondent clerk of court miserably failed to establish a systematic and efficient documentation and record management in Branch XXX of the RTC of X City. He acknowledged that prior to the missing evidence incident, there was no inventory of the pieces of physical evidence in criminal cases pending before the court. Neither was there a logbook to keep track of the date and time when each evidence was placed in the steel cabinet, as well as the persons who had access to said evidence and got hold of the same. He likewise admitted that he had no idea what pieces of evidence were kept inside the court's steel cabinet. Obviously, respondent clerk of court failed to take the initial precaution to preserve and safeguard the evidence placed in the court's possession.

Respondent clerk of court's management blunder did not end there. In her Comment dated May 20, 2006, respondent clerk stated that she lacked the necessary training and experience in maintaining legal records and safely keeping the physical evidence in the custody of the court. She claimed that she had been performing clerical work since she was transferred to Branch XXX and that her task is limited to encoding subpoenas, court orders, decisions, resolutions, and issuances in criminal cases. She confirmed that when the key to the steel cabinet was turned over to her, there was no inventory of the evidence kept in the vault. She

also maintained that she did not know how to carry out her tasks as she was not apprised of the duties of an evidence custodian, respondent clerk's averments bare respondent clerk of court's carelessness in supervising the activities of his subordinates especially the court personnel to whom his administrative function was merely delegated. He relied entirely on respondent clerk and passed to her all the responsibilities of an evidence custodian without ensuring that she possesses the skill set to effectively perform custodial duties. Respondent clerk of court should have known better. As the Branch Clerk of Court, he remains responsible for the shortcomings of his subordinate to whom the administrative function pertaining to him was delegated.

x x x x

Equally accountable with respondent clerk of court was respondent clerk who also failed to exercise reasonable care and diligence in performing her duties as evidence custodian. x x x

Respondent clerk was clearly remiss in her duty as evidence custodian. She did not observe such diligence required under the circumstances when she ordered AAA to simply place the *shabu* evidence under her computer table, in total disregard of its legal value as the very *corpus delicti* of the offense. She cannot take refuge behind the claim that she had no training and experience in handling physical evidence in the court's custody. It would have been easier for her to approach respondent clerk of court and confess that she did not have the adequate training and experience for the job of an evidence custodian than pretend to know and fulfill the responsibilities mistakenly. As aptly pointed out by the OCA, all that is needed in the safekeeping of court evidence or property is the exercise of ordinary prudence and common sense, which respondent clerk of court obviously failed to do.

Moreover, even without a specific instruction from anyone, common sense should have impelled respondent clerk to list down the physical evidence received by the court for its safekeeping inclusive of the vital details pertaining thereto such as the date and time of reception and the identity of the person who handed the evidence to her. She should have conducted a periodic and continuous inventory of the evidence kept in the steel cabinet if only to ensure that they are intact, complete, and readily available for inspection or upon request of the parties. This precautionary measure could have averted an untoward incident as in the present case. After all, while the loss of court exhibits is an event that is unexpected, it can certainly be prevented.

The Court agrees with the findings of the OCA that respondent clerk of court and respondent clerk have both been negligent in the performance of their duty to safely keep the physical evidence in the court's custody. However, we find them guilty of gross neglect of duty and not merely simple neglect of duty.

Simple neglect of duty is defined as "the failure to give proper attention to a task expected of an employee resulting from either carelessness or indifference." However, when an employee's negligence displays want of even the slightest care or conscious indifference to the consequences or by flagrant and palpable breach of duty, the omission is regarded as gross neglect of duty. More precisely, there is gross neglect of duty when a public official or employee's negligence is characterized by the glaring want of care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected."

The Court cannot take a blind eye on the quantity of the unaccounted drug evidence and the manner by which the fact of loss was discovered by the employees of Branch XXX. CCC, the trial court's legal researcher, was preparing his report in Criminal Case No. XX-XX29 when he found out that the 960.20 grams of drugs subject of the said case was not mentioned in the transcript of stenographic notes. He then inquired from respondent clerk who immediately

inspected the steel cabinet where the physical evidence were stored. Clearly, the loss of the drug evidence would not have been uncovered had CCC not asked about it. If that were not enough, it was only in the course of the inspection intended to locate the 960.20 grams of *shabu* when it was found out that the drug evidence in Criminal Case No. XX-XX08 weighing 293.92 grams was also missing. Thus, a total of 1.254 kilograms of *shabu* in *custodia legis* disappeared without a trace. Respondent clerk of court and respondent clerk could have prevented this had they taken precautionary measures to safely keep and monitor the physical evidence in the court's custody.

Further, the close proximity of the relevant dates in this case does not escape the Court's attention. The ocular inspection was conducted and the drug evidence were discovered missing on November 11, 2003. The RTC Decision in Criminal Case No. XX-XX29 was rendered on November 10, 2003 while the decision in Criminal Case No. XX-XX08 was promulgated on December 22, 2003. Because of respondent clerk's and respondent clerk of court's display of laxity in the custody of evidence, the *corpora delicti* in these two criminal cases vanished even before the actions were terminated. To the mind of the Court, their inexcusable lapses in the safekeeping of the drug evidence constitute flagrant and palpable breach tantamount to gross neglect of duty as they undermine the integrity of the decisions rendered in Criminal Case No. XX-XX29 and Criminal Case No. XX-XX08.

We have repeatedly stressed that the conduct and behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, should be circumscribed with the heavy burden of responsibility. Conduct at all times must not only be characterized with propriety and decorum, but above all else, must be above suspicion. Respondent clerk of court was appointed Clerk of Court of Branch XXX in 1996 while respondent clerk was transferred to said court as clerk in 1994. At that time, Branch XXX was already designated as a special, court for heinous crimes. In 2000, it was designated as a special court for drug cases. These considerations reasonably tell us that respondent clerk of court and respondent clerk were well aware of the degree of responsibility imposed upon them as evidence custodians and the efficiency expected of them in the reception and storage of evidence considering the nature of the cases that Branch XXX handles. Regrettably, they failed to exercise utmost prudence and diligence in the performance of their duties and adhere to the exacting standards expected of court employees. x x x

In 2008, respondent clerk of court had been administratively charged for violation of the lawyer's oath, violation of the Code of Professional Responsibility, oppression, dishonesty, harassment, and immorality in A.M. No. P-XX-XX03 where the OCA recommended his suspension for a period of three months for conduct unbecoming a public official and a court employee. Although the Court dismissed the complaint, it reminded respondent clerk of court to be more circumspect in his public and private dealings. With the loss of court exhibits under his watch, respondent clerk of court apparently disregarded the Court's warning and continued to show lack of diligence in his administrative function, completely unmindful of the heavy burden and responsibility he carries in the dispensation of justice.

In view of the above disquisitions, we, thus, find respondent clerk of court and respondent clerk liable for gross neglect of duty which merits the penalty of dismissal from the service even if the offense was committed for the first time under the Revised Rules of Administrative Cases in the Civil Service.

The Court found respondent clerk of court and respondent clerk guilty of gross neglect of duty and were dismissed from the service. Their respective civil service eligibility were cancelled and their retirement and other benefits, except accrued leave credits were forfeited. Likewise, they were perpetually disqualified from reemployment in any government agency or

instrumentality, including any government-owned and controlled corporation or government financial institution. *[A.M. No. P-13-3124, February 4, 2020]*

## COURT INTERPRETER

- **Gross neglect of duty**

It cannot be gainsaid that the duty of a court interpreter to keep complete and accurate minutes is vital to the efficient administration of justice. The Court observed in *Atty. Bandong v. Ching*:

Among the duties of court interpreters is to prepare and sign “all Minutes of the session.” (Manual for Clerks of Court, 32). After every session they must prepare the Minutes and attach it to the record. It will not take an hour to prepare it. **The Minutes is a very important document because it gives a brief summary of the events that took place at the session or hearing of a case. It is in fact a capsulized history of the case at a given session or hearing, for it states the date and time of the session; the names of the judge, clerk of court, court stenographer, and court interpreter who were present; the names of the counsel for the parties who appeared; the party presenting evidence; the name of witnesses who testified; the documentary evidence marked; and the date of the next hearing** (*Id.*, 543). In criminal cases, the Minutes also includes data concerning the number of pages of the stenographic notes (*Id.*, 589).

As the OCA aptly noted, respondent court interpreter had repeatedly failed to prepare complete and accurate minutes in various cases. This often resulted in mistakes in the calendaring of cases and inconsistencies in the court records. Even taking into account that his neglect might not have been willful or deliberate, the sheer frequency of his lapses had caused great inconvenience to the judge and the litigants appearing before the court as respondent court interpreter’s errors had to be remedied in subsequent orders and proceedings. To aggravate matters, he continued to commit the same mistakes over and over despite the presiding judge’s directives and his co-employees’ reminders. Respondent court interpreter’s well-documented carelessness and inefficiency in the performance of his assigned tasks indeed warranted a finding of guilt for gross neglect of duty.

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We do not hesitate to impose the supreme penalty of dismissal on respondent court interpreter. Time and again, we held that:

The Constitution mandates that a public office is a public trust and that all **public officers must be accountable to the people and must serve them with responsibility, integrity, loyalty, and efficiency**. The demand for moral uprightness is more pronounced for members and personnel of the judiciary who are involved in the dispensation of justice. **As front liners in the administration of justice, court personnel should live up to the strictest standards of honesty and integrity** in the public service, and in this light, are always expected to act in a manner free from reproach. Thus, **any conduct, act, or omission that may diminish the people’s faith in the Judiciary should not be tolerated**.

Based on the evidence on record, the Court is not surprised that respondent court interpreter had long since been dropped from the rolls for his unsatisfactory performance ratings for four consecutive rating periods as there is no place for such delinquency in honorable public service.

This means, however, that the imposition of the penalty of dismissal can no longer be implemented. The penalty of dismissal from the service includes the accessory penalties of

forfeiture of all his retirement benefits, except accrued leave credits, and prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations. On the other hand, the dropping of a government employee from the rolls is not disciplinary in nature and does not result in the forfeiture of any benefit of the official or employee concerned nor in the said official or employee's disqualification from reemployment in the government. In several cases, where the proper penalty was dismissal but it could not be imposed since the respondent had been previously dropped from the rolls, the Court deemed it sufficient to impose the accessory penalties of forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations. We, therefore, find the OCA's recommendation as to the penalty to be appropriate.

The Court resolved to re-docket the administrative complaint as a regular administrative matter against respondent court interpreter. He was found guilty of gross neglect of duty. The Court would have dismissed him from the service had he not been earlier dropped from the rolls. His retirement and other benefits, except accrued leave credits, were forfeited. He was also perpetually disqualified from reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations. ***[A.M. No. P-20-4035 (Formerly OCA IPI No. 17-4777-P), January 28, 2020]***