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considering his application for reinstatement to the practice of law, the duty of the Court is to determine whether he has established moral reformation and rehabilitation, disregarding its feeling of sympathy or pity. Surely at this point, this requirement was not met. Until such time when the respondent can demonstrate to the Court that he has completely rehabilitated himself and deserves to resume his membership in the Bar, Our decision to disbar him from the practice of law stands.

WHEREFORE, premises considered, the Profound Appeal for Judicial Clemency filed by Atty. Anastacio E. Revilla, Jr. is hereby **DENIED.**

SO ORDERED.

Carpio, Velasco, Jr., Leonardo-de Castro, Brion, del Castillo, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, Leonen, and *Jardeleza, JJ.,* concur.

Sereno, C.J., Bersamin, and *Peralta, JJ.,* on official leave.

EN BANC

[A.M. No. P-13-3156. November 11, 2014]
(Formerly A.M. OCA I.P.I. No. 3012-P)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **ISABEL A. SIWA, Stenographer, Metropolitan Trial Court, Branch 16, Manila,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMNISTRATIVE LAW; COURT PERSONNEL; STENOGRAPHER; FAILURE TO ACCOUNT FOR THE TSNs AMOUNTS TO GROSS NEGLECT OF DUTY.— Her failure to account for the TSNs amounts to Gross Neglect of Duty.

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In *Absin v. Montalla*, this Court held: The Court has ruled, in a number of cases, that the failure to submit the TSNs within the period prescribed under Administrative Circular No. 24-90 constitutes gross neglect of duty. Gross neglect of duty is classified as a grave offense and punishable by dismissal even if for the first offense pursuant to Section 52(A)(2) of Rule IV of the Uniform Rules on Administrative Cases in the Civil Service.

R E S OL U T I O N

VELASCO, JR., *J.*:

The Facts

The instant administrative matter is an off-shoot of A.M. No. P-08-2519 (formerly A.M. OCA IPI No. 05-2155-P) and A.M. No. P-08-2520 (formerly A.M. OCA IPI No. 05-2156-P). OCA IPI No. 05-2155-P is an undated anonymous letter-complaint against Atty. Miguel Morales (Morales), Branch Clerk of Court of Branch 17, Metropolitan Trial Court (MeTC) of the City of Manila.[1] OCA IPI No. 05-2156-P is also an anonymous letter-complaint against Morales, this time together with four other court employees among them herein respondent Isabel Siwa (Siwa), Court Stenographer of Branch 16, MeTC, City of Manila.[2]

OCA IPI No. 05-2155-P and OCA IPI No. 05-2156-P were referred to the Executive Judge of the MeTC of Manila for investigation and report.

The second letter-complaint alleged that Siwa has been engaged in lending activities and in the discounting of checks, and her services were availed of by employees from "MeTC, RTC, BIR, DPS, Manila City Hall, Schools, [h]ospital, *etc*."[3]

In her Comment, Siwa claimed that: (1) the anonymous letter-complaint should not have been given due course, because it

[1] *Rollo*, p. 139.

[2] *Id.* at 141.

[3] *Id.*

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contravened Section 46(c) of Executive Order No. 292; (2) the business of rediscounting checks is a legitimate business endeavour which other employees are engaged in too; (3) she had been mindful of her duties as a government employee, and she had maintained her own personnel to do the discounting business; (4) her business transactions occurred outside office premises, and in common or public areas, and her personnel should not be blamed for entertaining people during office hours, because these people are the ones coming to them; and (5) she never neglected her duty as a court stenographer, her last performance rating being "very satisfactory."[4]

In the meantime, Siwa applied for optional retirement, which this Court granted in a Resolution dated October 12, 2005 in A.M. No. 12096-Ret.

In her Report and Recommendation dated September 1, 2006, the investigating judge recommended the dismissal of OCA IPI No. 05-2155-P for want of substantial evidence to prove the inculpatory acts complained of. Regarding OCA IPI No. 05-2156-P, the investigating judge recommended that it likewise be dismissed, but only against Morales and his three co-respondents. As to Siwa, the investigating judge recommended that she be directed to explain why she still has pending transcripts of stenographic notes (TSNs), despite having already availed of optional retirement.

By Resolution dated November 19, 2008,[5] the Court found Siwa administratively liable for engaging in the business of lending and discounting of checks. Her offense, the Court added, was compounded by the fact that she had ignored the verbal instruction of her superior, Judge Crispin B. Bravo (Judge Bravo), to stop using the court premises for her private business undertakings. The Court also took note of the written Memorandum dated January 18, 2005 issued by Judge Bravo, asking Siwa to explain

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[4] *Id.* at 142.

[5] In A.M. No. P-08-2519 (formerly A.M. OCA IPI No. 05-2155-P) and A.M. No. P-08-2520 (formerly A.M. OCA IPI No. 05-2156-P), penned by *J.* Austria-Martinez.

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why she was still using the office premises in her lending and discounting business. The Court held:

> Siwa conducted her business within the court's premises, which placed the image of the judiciary, of which she is part, into bad light. Time and again, the Court has held that the image of a court of justice mirrored in the conduct, official or otherwise, of the personnel who work thereat, thus the conduct of a person serving the judiciary must, at all times, be characterized by propriety and decorum, and above suspicion as to earn and keep the respect of the public for the judiciary.
>
> Siwa's infraction constitutes conduct prejudicial to the best interest of the service which, under Sec. 52 A (20) of Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, carries the penalty of suspension of 6 months and 1 day to 1 year for the first offense and dismissal for the second offense. Since this is her first offense and considering the October 5, 2005 Resolution of the Court in A.M. No. 12096-Ret. which approved Siwa's application for optional retirement, retaining only the amount of ₱30,000.00 from the money value of her earned leave credits pending resolution of the instant case, the Court finds that she should be imposed the penalty of fine in the amount of ₱30,000.00.

In the same November 19, 2008 Resolution, the Court, acting on the report about Siwa's failure to submit the complete TSNs pertaining to five cases assigned to her, directed the Office of the Court Administrator (OCA) to conduct an audit investigation on Siwa's TSNs. The Court ordered that the investigation be given a docket number.

In an Indorsement dated November 10, 2011, the OCA directed Siwa to comment on her alleged failure to submit and/or account for the TSNs for the five cases. The desired comment is yet to be submitted. Per the OCA's investigation, Siwa had already moved to the United States, without completing the clearance required for her retirement.

OCA Recommendation

In its report, the OCA recommended that Siwa be adjudged liable for gross neglect of duty, for her failure to submit the TSNs, despite Administrative Circular No. 24-90, which provides

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that "all stenographers are required to transcribe all stenographic notes and to attach the transcripts to the record of the case not later than twenty (20) days from the time the notes are taken." The OCA concluded:

> Had respondent not optionally retired from service, the penalty of dismissal from the service would have been warranted. However, her retirement cannot absolve her from the sanction which the Court will impose, given her infraction, her non-compliance with a Court directive and her purported flight abroad. In this regard, this Office finds the forfeiture of respondent's remaining retirement benefits, excluding her accrued leave credits, proper and justified.
>
> FOREGOING considered, it is respectfully recommended for the consideration of the Honorable Court that:
>
> 1. the instant case be re-docketed as a regular administrative matter;
>
> 2. respondent Isabel A. Siwa, former Court Stenographer, Branch 16, MeTC, Manila, be found **GUILTY** of Gross Neglect of Duty; and
>
> 3. the retirement benefits and other benefits due respondent Siwa be **FORFEITED** except her accrued leave credits.[6]

The Court's Ruling

The Court adopts *in toto* the findings and recommendations of the OCA. Respondent Siwa had indeed failed to submit the subject TSNs assigned to her. Despite the adequate opportunity given to her, she still failed to air her side and refute the findings of the Investigating Judge.

Her failure to account for the TSNs amounts to Gross Neglect of Duty. In *Absin v. Montalla*,[7] this Court held:

> The Court has ruled, in a number of cases, that the failure to submit the TSNs within the period prescribed under Administrative Circular No. 24-90 constitutes gross neglect of duty. Gross neglect of duty is classified as a grave offense and punishable by dismissal even if

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[6] Memorandum dated July 17, 2013, p. 3.

[7] A.M. No. P-10-2829, June 21, 2011, 652 SCRA 427, 432-433.

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for the first offense pursuant to Section 52(A)(2) of Rule IV of the Uniform Rules on Administrative Cases in the Civil Service.

xxx x x x xxx

As a stenographer, Montalla should realize that the performance of his duty is essential to the prompt and proper administration of justice, and his inaction hampers the administration of justice and erodes public faith in the judiciary. The Court has expressed its dismay over the negligence and indifference of persons involved in the administration of justice. No less than the Constitution mandates that public officers must serve the people with utmost respect and responsibility. Public office is a public trust, and Montalla has without a doubt violated this trust by his failure to execute his duty as a court stenographer.

WHEREFORE, we find respondent Edgardo A. Montalla, Stenographer, Regional Trial Court, Branch 29, San Miguel, Zamboanga del Sur, GUILTY of Gross Neglect of Duty. We **DISMISS** him from the service and **FORFEIT** his retirement benefits, except accrued leave credits. He is further disqualified from reemployment in the Judiciary. This judgment is immediately executory.

Absin is on all fours applicable. Here, it had been sufficiently established that despite the clear provision of Administrative Circular No. 24-90, respondent failed to submit and account for the TSNs assigned to her.

Respondent's infractions warrant the imposition of the penalty of dismissal from service, if not for the fact that she is already out of the service as a result of retirement. The Civil Service Commission's Memorandum Circular No. 30, Series of 1989,[8] however, provides that "the penalty of dismissal shall carry with it that of cancellation of eligibility, forfeiture of leave credits and retirement benefits, and the disqualifications for re-employment in the government service." Hence, in line with present jurisprudence, in lieu of dismissal from service, we deem it proper to impose the penalty of forfeiture of her retirement benefits, except accrued leave credits.[9]

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[8] Guidelines in the Application of Penalties in Administrative Cases, July 20, 1989.

[9] *Villaceran v. Rosete*, A.M. No. MTJ-08-1727 (Formerly A.M. OCA IPI No. 03-1465-MTJ), March 22, 2011, 646 SCRA 11, 20.

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IN VIEW OF THE FOREGOING, the Court finds respondent Isabel A. Siwa, former Court Stenographer, Branch 16, Metropolitan Trial Court, City of Manila, **GUILTY** of Gross Neglect of Duty. In lieu of dismissal from service, which may no longer be imposed owing to her retirement, as a penalty for her offense, all her retirement benefits, except accrued leave credits, are hereby **FORFEITED**. She is further disqualified from any reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations and financial institutions. This judgment is immediately executory.

SO ORDERED.

Carpio,[*] *Leonardo-de Castro, Brion, del Castillo, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, Leonen,* and *Jardeleza, JJ.,* concur.

Sereno, C.J., Peralta, and *Bersamin, JJ.,* on official leave.

EN BANC

[A.M. No. P-14-3272. November 11, 2014]
(Formerly OCA I.P.I. No. 14-4264-P)

FELICIANO O. FRANCIA, *complainant, vs.* **ROBERTO C. ESGUERRA, Sheriff IV, Regional Trial Court, Branch 14, Davao City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; SHERIFF; DUTIES IN IMPLEMENTATION OF WRITS.— The duties of sheriffs in the implementation of writs are explicitly laid down

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[*] Acting Chief Justice per Special Order No. 1860.