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The Honorable L. Ralph Mecham Director, Administrative Office of the U.S. Courts

Dear Mr. Mecham:

This letter is in response to your request that we relieve Mr. John Ramirez, Deputy Clerk and Mr. Jack L. Wagner, former Clerk of the U.S. Bankruptcy Court for the Central District of California at Los Angeles from liability for the loss of $1,250 of court fees. For the following reasons we grant relief. /1/

According to the record, on April 17, 1990, the court collected a total of $4,719 of which $2,060.50 was in cash and $2,658.80 was in checks. The receipts and transfers were reconciled and documented and the funds were secured overnight and transmitted to the joint custody of Rosa Martin and John Ramirez on the morning of April 18, 1990. That morning when the deposit was prepared, Mr. Ramirez put the deposits into two bags, one of cash and the other of checks, and indicated in the "cash discrepancy log" that the amount of the checks and cash were equal to the deposit slips. In accordance with the court's internal control procedures, Mr. Ramirez then sealed both bags with a crimping device. The bags were secured in the safe until a Brinks armored car picked up the deposits and delivered them to the Federal Reserve Bank at approximately 1 p.m. The Chief of Security for Brinks, Los Angeles, as well as Federal Reserve Bank officials noted that both bags were sealed when received. After opening the deposit bags, however, the Federal Reserve Bank reported that only $810.50 in cash had been received rather than the $2,060.50 collected by the court and indicated on the deposit slip. An internal court investigation was immediately begun and concluded that all internal control procedures had been followed and no negligence could be determined. The FBI was notified of the loss of funds on May 4, 1990 but it declined to investigate the matter.

Subsequently, the court's audit division performed a review of the loss. The audit indicated two significant factors relating to the lost funds. First, there was some question about whether all the cash was counted prior to placing it in the bags since Mr. Ramirez indicated the he didn't think he had counted the funds. However, two other deputy clerks stated that their recollection was that he did count the money before placing it into the deposit bag. Moreover, Mr. Ramirez did sign the log indicating that all the cash collections were placed in the bag. Secondly, the report noted that the court's sealing procedures for the deposit bags was flawed. When Mr. Ramirez sealed the bags he did it with a crimping device which is a plier like tool that is utilized with a plastic tie to crimp seal the bags. Although the bags were placed in a safe, three deputy clerks not only had access to the safe but also to the crimp sealer and the

ties. The crimp seals are unnumbered and have no locking device. Consequently, the audit report speculates that the bag containing the cash could have been opened and resealed in the hours prior to the Brinks pick-up.

Under 31 U.S.C. Sec. 3527, our Office is authorized to relieve accountable officers of responsibility for a physical loss of government funds if we concur in the determination by the head of an agency that: (a) the loss occurred while the officer or agent was acting in the discharge of his or her official duties and (b) that there was no fault or negligence on the part of the cashier which contributed to the loss. B-230796, Apr. 8, 1988. Anytime a physical loss of funds occurs there arises a rebuttable presumption of negligence on the part of an accountable officer. B-239724.2, Oct. 25, 1991. Ordinarily, cases of unexplained loss, such as this case, result in a denial of relief because of the absence of evidence to rebut the presumption of negligence on the part of the accountable officer. See B-217945, July 23, 1985.

We will, however, grant relief where faulty agency security precludes assigning definite responsibility for the loss. Cf. B-235167, Jan. 8, 1990. In this case, at least three people had access to the safe and, more importantly, to the crimping device. Furthermore, we have recognized that if there is no indication of fault or negligence on the part of the accountable officer, evidence of faulty agency security will rebut the presumption of negligence. B-235072, July 5, 1989; B-211649, Aug. 2, 1983. In this case, the record reflects that the crimping device for securing the deposit bags was readily accessible to several court employees. Because the crimp seals are not sequentially numbered and designed to lock, the bags could easily have been opened and resealed prior to the Brinks pick-up.

You submitted to our Office new internal control procedures for the court which require that a new pre-numbered sealing device be used to seal deposit bags. This would prevent anyone from opening and resealing the deposit bags without detection. You have also made the requisite determinations that Mr. Ramirez and Mr. Wagner /2/ were acting in the discharge of their official duties and that the loss was not due to their fault or negligence. Thus, we concur in your determination and therefore grant relief to Mr. Ramirez and Mr. Wagner. In accordance with 31 U.S.C. Sec. 3527, the loss may be charged, as you indicated in your letter, to account 10 20920.

Sincerely yours,

Gary L. Kepplinger Assistant General Counsel

1. GAO has permitted civilian agencies to grant relief to accountable officers for physical losses in their accounts in amounts not to exceed $1,000 for a single incident without submission to GAO. For future reference, our Office recently raised this threshhold amount from $1,000 to $3,000. B-243749, Oct. 22, 1991. We are currently revising Title 7 of the GAO Policy and Procedures Manual for the Guidance of Federal Agencies to incorporate this change.

2. We note that as former clerk of the bankruptcy court, Mr. Wagner is considered an accountable officer. See B-217136, May 22, 1985. He was primarily responsible for establishing and implementing internal control procedures for safeguarding government funds against loss. Guide to Judiciary Policies and Procedures, Chap. VII, Part N-1 (1990).