PHILJA E-Alerts

The PHILJA Electronic Alerts is published by the Research, Publications and Linkages Office of the Philippine Judicial Academy, with office at the 3rd Floor of the Supreme Court Centennial Building, Padre Faura Street corner Taft Avenue, Manila.

Tel. No: 02 5529524 Fax No: 02 5529621

E-mail address
philja@sc.judiciary.gov.ph
research_philja@yahoo.com

Website address
http://philja.judiciary.gov.ph

PHILIPPINE JUDICIAL ACADEMY
Justice Adolfo S. Azcuna
Chancellor

Dean Sedfrey M. Candelaria
Head, Research, Publications and Linkages Office

Atty. Ma. Melissa R. Dimson-Bautista
Editor

Editorial, Research and Circulation
Research, Publications and Linkages Office

Issue 18-4
April 2018

JUSTICES

- **Application of A.C. No. 58-2003**

The Special Committee on Retirement and Civil Service Benefits insists that A.C. No. 58-2003 should not be construed liberally to extend its benefits to those who retire optionally. It explains that the circular was issued, through A.M. No. 03-9-20-SC, in response to the request of Justice Bellosillo to adjust his longevity pay by tacking his earned leave credits to government service. Such issuance was already a liberal interpretation of Section 42 of BP Blg. 129 and must, accordingly, no longer be given further liberal interpretation without undermining the proscription against judicial legislation. The committee lengthily quotes this Court's discussion in *Re: Letter of Court of Appeals Justice Vicente S.E. Veloso for Entitlement to Longevity Pay for his Services as Commission Member III of the National Labor Relations Commission (Veloso case).*

We are not persuaded. It is unnecessary even to treat whatever beclouds the committee's mind in suggesting that the Court is crossing the realm of judicial legislation when it (the Court) topped the exercise of liberal interpretation in Section 42 of BP Blg. 129 with another liberal interpretation, as was this Court's fear in *Veloso.* Incidentally, we would be amiss not to mention that whatever result was reached by this Court in *Veloso* was later reversed in our 26 July 2016 resolution on the motion for reconsideration in A.M. No. 12-8-07-CA.

A.C. No. 58-2003 is an implementation of Section 42 of BP Blg. 129, or the basic provision on longevity pay granted by law to justices and judges in the judiciary.

Section 42 of BP Blg. 129 is intended to recompense justices and judges for each five-year period of continuous, efficient, and meritorious service rendered in the Judiciary. The purpose of the law is to reward long service, from the lowest to the highest court in the land.

A plain reading of Section 42 of BP Blg. 129 readily reveals that the longevity pay is given the justice or judge on a monthly basis together with his or her basic pay, provided that the justice or judge has completed at least 5 years of continuous, efficient, and meritorious service in the Judiciary. The amount is equivalent to 5 percent of the monthly basic pay, and it increases by an increment of 5 percent for every additional cycle of five years of continuous, efficient, and meritorious service. It is given while the justice or judge is still in active service *and* becomes part of the monthly pension benefit upon his or her retirement, or survivorship benefit upon his or her death after retirement.

In granting the longevity pay to the justice or judge still in active service, taking into consideration its salutary purpose, the law did not qualify whether the recipient is to subsequently retire compulsorily or optionally. Upon his or her retirement, whether compulsory or optional, the justice or judge continues to enjoy the longevity pay by receiving the same together with the monthly pension benefit. Thus, if a justice or judge has rendered long service in the judiciary, he or she must be rewarded even if the retirement is optional; and

the purpose of the law is served no more than it would be in the case of one who is retired compulsorily. Hence, there is no rhyme or reason why the benevolent objective of the law should be limited to justices or judges who retire compulsorily.

On the other hand, A.C. No. 58-2003 was issued by this Court pursuant to its constitutional power to interpret laws and, as such, has the force and effect of law. In crafting the circular, the Court duly considered the long-standing policy of according liberal construction to retirement laws covering government personnel. The liberal approach in construing retirement laws, which are enacted as social legislations, is necessary in order to achieve the humanitarian considerations of promoting the physical and mental well-being of public servants. Given this legal milieu, the Court allowed the tacking of earned leave credits to the length of judicial service in order to increase the longevity pay of justices and judges. Thus, the wisdom behind the issuance of A.C. No. 58-2003 is to ensure the comfort and security of ***retired*** justices and judges who had tirelessly and faithfully served the government.

As noted above, A.C. No. 58-2003 was issued as the Court's response to the letter-request of Justice Bellosillo who sought the adjustment of his longevity pay by tacking his earned leave credits to the length of his judicial service *and* at the same time recognizing the fractional portion of the unexpired 5-year period of his service immediately prior to his ***compulsory*** retirement. In circularizing the tacking of earned leave credits and recognition of fractional longevity pay, however, the Court styled A.C. No. 58-2003 as *"ALLOWING THE TACKING OF EARNED LEAVE CREDITS IN THE COMPUTATION OF LONGEVITY PAY UPON **COMPULSORY** RETIREMENT OF JUSTICES AND JUDGES."* Under the circular, all those who may be similarly situated with Justice Bellosillo can then be entitled to its benefits.

The seeming express limitation of the benefits of A.C. No. 58-2003 only to justices and judges who retire compulsorily apparently developed the view that the circular's benevolent provisions are beyond the reach of those who retire optionally. This is the same view advanced by the committee when it mentioned in its memorandum that on the face and articulated rationale of A.C. No. 58-2003, it applies to and is intended only for those who retire compulsorily.

Upon deeper reflection, no discernible reason exists to deny optional retirees the tacking of leave credits for purposes of computing their longevity pay. If the rationale of such longevity pay is to reward loyalty to the government, then it makes no sense to limit the tacking of earned leave credits to the service of compulsory retirees only. The question therefore arises:

Are members of the judiciary who optionally retire necessarily considered less loyal, and therefore less deserving, than those who compulsorily retire?

An affirmative answer can hardly be justified. Otherwise, an absurd situation ensues when a justice or judge who had rendered, say, only seven years of judicial service but is compulsorily retired because he entered the judiciary at a late stage in his professional career, is allowed to tack earned but relatively few leave credits to his judicial service thus gaining from an increase in his longevity pay; as compared to another justice or judge, who had rendered 30 long years of service in the judiciary and had opted to retire before reaching the compulsory retirement age, yet is precluded from tacking a possibly substantial amount of earned leave credits, and is thus denied the reward intended for long and loyal service to the public.

When juxtaposed with Section 42 of BP Blg. 129, the very same law sought to be implemented by A.C. No. 58-2003, it becomes evident that limiting its scope only to justices and judges who retire compulsorily cannot stand. As previously discussed, the longevity pay is paid to justices or judges who had proven their loyalty to the judiciary, regardless of the manner by which they retire.

Thus, for purposes of computing longevity pay, the tacking of leave credits to the length of judicial service rendered by qualified justices and judges should be applied to optional retirees as well.

What comes to the fore in our discussion is that allowing the tacking of leave credits only to compulsory retirees is simply wrong. To avoid this error, A.C. No. 58-2003, regardless of its title and the contents of its dispositive portion, should be read to likewise cover justices and judges who retire optionally.

We believe it a better policy to consider A.C. No. 58-2003 as complete in its scope, effectively covering both compulsory and optional retirees. Not only is it consistent with the moral fiber of BP Blg. 129, it makes unnecessary the issuance of a separate circular to cover optional retirees only. ***[A.M. No. 15-11-01-SC, March 6, 2018]***

- **Conduct Unbecoming a Member of the Judiciary**

From the foregoing, it is opined that the term "government official connected directly to the operation of the government or any of its agencies" refers to any person employed by the government whose tasks is the performance and exercise of any of the functions and powers of such government or any agency thereof, as conferred on them by law, without any intervening agency. Simply put, a "government official connected directly to the operation of the government or any of its agencies" is a government officer who performs the functions of the government on his own judgment or discretion — essentially, a government officer under Section 2(14) of E.O. No. 292.

Applying the above definition to the present case, it is clear that respondent justice is covered by the term "government official connected directly with the operation of the government." Indeed, one of the functions of the government, through the Judiciary, is the administration of justice within its territorial jurisdiction. Respondent Justice, as a magistrate, is clearly a government official directly involved in the administration of justice; and in the performance of such function, he exercises discretion. Thus, by gambling in a casino, respondent justice violated the prohibition from gambling in casinos as provided under Section 14(4)(a) of PD No. 1869.

Although PD No. 1869 did not provide for a penalty for any act done in contravention of its provisions particularly the prohibition on gambling, in *City Government of Tagbilaran v. Hontanosas, Jr.,* it was held that such transgression constitutes violations of Paragraphs 3 and 22 of the Canons of Judicial Ethics, which respectively provide:

> 3. Avoidance of appearance of impropriety –
>
> A judge's official conduct should be free from the appearance of impropriety, and his personal behavior, not only upon the bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach.
>
> x x x x
>
> 22. Infractions of law –
>
> The judge should be studiously careful himself to avoid even the slightest infraction of the law, lest it be a demoralizing example to others.

Further, respondent justice also violated Canons 2 and 4 of the New Code of Judicial Conduct for the Philippine Judiciary which pertinently provides:

CANON 2
INTEGRITY

Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

SECTION 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

SECTION 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

x x x x

CANON 4
PROPRIETY

Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

SECTION 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

SECTION 2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office.

The Court has repeatedly reminded judges to conduct themselves irreproachably, not only while in the discharge of official duties but also in their personal behavior every day. No position demands greater moral righteousness and uprightness from its occupant than does the judicial office. Judges in particular must be individuals of competence, honesty and probity, charged as they are with safeguarding the integrity of the court and its proceedings. Judges should behave at all times so as to promote public confidence in the integrity and impartiality of the judiciary, and avoid impropriety and the appearance of impropriety in all their activities. A judge's personal behavior outside the court, and not only while in the performance of his official duties, must be beyond reproach, for he is perceived to be the personification of law and justice. Thus, any demeaning act of a judge degrades the institution he represents.

Accordingly, the Court finds respondent justice guilty of conduct unbecoming of a member of the judiciary. Considering, however, that this is the respondent justice's first transgression, and further bearing in mind his immediate admission of his indiscretion as well as the number of years he has been in government service, the Court finds the imposition of a fine in the amount of P100,000 sufficient in this case. ***[A.M. No. 17-11-06-CA, March 13, 2018]***

JUDGES

- **Habitual tardiness; Oppression (gross misconduct constituting violations of the Code of Judicial Conduct)**

Section 5 of Supervisory Circular No. 14 issued by the Court on October 22, 1985 states:

5. *Session Hours.* – Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts **shall hold daily sessions from Monday to Friday, from 8:30 to 12:00 noon and from 2:00 to 4:30 p.m.** assisted by a skeletal force, also on rotation, primarily to act on petitions for bail and other urgent matters.

Circular No. 13 dated July 1, 1987 entitled, *"Guidelines in the Administration of Justice"* provides that:

> Guidelines for Trial Courts
>
> x x x x
>
> 1. Punctuality and strict observance of office hours. – Punctuality in the holding of scheduled hearings is an imperative. Trial judges should strictly observe the requirement of at least eight hours of service a day, five hours of which should be devoted to trial, specifically from 8:30 a.m. to 12:00 noon and from 2:00 to 4:30 as required by paragraph 5 of the Interim Rules issued by Supreme Court on January 11, 1983, pursuant to Section 16 of BP 129.

Administrative Circular No. 3-99 dated January 15, 1999 entitled, *"Strict Observance of Session Hours of Trial Courts and Effective Management of Cases to Ensure Their Speedy Disposition,"* reiterates the mandate for trial judges to exercise punctuality in the performance of their duties, thus:

> To insure speedy disposition of cases, the following guidelines must be faithfully observed:
>
> I. The session hours of all Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, and Municipal Circuit Trial Courts shall be from 8:30 A.M. to noon and from 2:00 P.M. to 4:30 P.M., from Monday to Friday. The hours in the morning shall be devoted to the conduct of trial, while the hours in the afternoon shall be utilized for (1) the conduct of pre-trial conferences; (2) writing of decisions, resolutions or orders, or (3) the continuation of trial on the merits, whenever rendered necessary, as may be required by the Rules of Court, statutes, or circular in specified cases.
>
> x x x x
>
> II. *Judges must be punctual at all times.*
>
> x x x x
>
> IV. There should be strict adherence to the policy on avoiding postponements and needless delay.
>
> x x x x
>
> VI. All trial judges must strictly comply with Circular No. 38-98, entitled "Implementing the Provisions of Republic Act No. 8493" ("An Act to Ensure a Speedy Trial of All Cases before the Sandiganbayan, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court and Municipal Circuit Trial Court, Appropriating Funds Therefor, and for Other Purposes") issued by the Honorable Chief Justice Andres R. Narvasa on 11 August 1998 and which took effect on 15 September 1998.

The aforesaid circulars are restatements of the Canons of Judicial Ethics which enjoin judges to be punctual in the performance of their judicial duties, recognizing that the time of litigants, witnesses, and attorneys is of value, and that if the judge is not punctual in his habits, he sets a bad example to the bar and tends to create dissatisfaction in the administration of justice.

The OCA aptly found that the testimonies of the prosecutors and the court staff unquestionably proved that respondent judge failed to observe the prescribed official hours as repeatedly enjoined by the Court. Respondent Judge's own branch clerk of court even testified that court sessions commenced between 9:00 a.m. and 10:00 a.m. although the Minutes of the Proceedings reflected the time at 8:30 a.m.

The OCA also correctly observed that respondent judge failed to show compassion, patience, courtesy and civility to lawyers who appear before her in contravention of the mandates of the Code of Judicial Ethics, which sets the high standards of demeanor all judges must observe.

Section 3, Canon 5 of the New Code of Judicial Conduct clearly provides:

> **SEC. 3.** Judges shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

In relation to Rule 3.04, Canon 3 of the Code of Judicial Conduct, provides that judges must always be courteous and patient with lawyers, litigants and witnesses appearing in his/her court, thus:

> **RULE 3.04** – A judge should be patient, attentive, and courteous to lawyers, especially the inexperienced, to litigants, witnesses and others appearing before the court. A judge should avoid unconsciously falling into the attitude of mind that the litigants are made for the courts, instead of the courts to the litigants.

Section 6, Canon 6 of the New Code of Judicial Conduct likewise states:

> **SEC. 6.** Judges shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others with whom the judge deals in an official capacity. Judges shall require similar conduct of legal representatives, court staff and others subject to their influence, direction or control.

The Court is convinced that respondent judge is guilty of Oppression as shown in several incidents of misbehavior by respondent judge, some of which are stated below:

1) Respondent Judge displayed antagonistic behavior towards complainant who appeared as defense counsel in three criminal cases and who might have increased the tone of his voice in their verbal tussle. He filed with the court apologizing for the incident but prayed for respondent Judge to extend a little respect to all lawyers who appear before her court in the presence of their clients and other litigants.

x x x x

5) Another court staff also experienced being berated and humiliated by respondent judge. In correcting the court staffs 11 draft orders, respondent judge humiliated her by repeatedly pointing at her mistakes in an elevated voice in the presence of a friend of respondent judge, who happened to be a party in a civil case pending before their court. Nearly in tears, the court staff went out of the chambers and told her co-workers that she would no longer help in drafting orders in bail bond applications so she could concentrate on her drafts. Respondent judge found court staffs reaction to be improper, so respondent judge followed her to the staff room and continued to scold her in front of the other staff members, and even called for an emergency staff meeting where respondent judge even called the court staff *"punyeta ka, buwisit ka"* in front of the other staff.

The Court has previously ruled that "[a] display of petulance and impatience in the conduct of trial is a norm of behavior incompatible with the needful attitude and sobriety of a good judge."

Thus, the Court finds the imposition of fines amounting to Forty Thousand Pesos (P40,000) for oppression and Twenty Thousand Pesos (P20,000) for habitual tardiness, appropriate given the prevailing facts of the present case vis-à-vis respondent judge's record for

habitual malfeasance in office. ***[A.M. No. RTJ-16-2470 (Formerly OCA IPI No. 12-3987-RTJ), January 10, 2018]***

- **Gross ignorance of the law or procedure; gross misconduct**

Under Canon 3 of the New Code of Judicial Conduct, impartiality applies not only to the decision itself, but also to the process by which the decision is made. When respondent judge chose to simply ignore all the evidence showing that the accused still pursued the victim after the latter had already run away, not even bothering to explain the irrelevance or lack of weight of the same, such act necessarily put the integrity of his entire Decision in question.

Likewise, his failure to cite in the Decision his factual and legal bases for finding the presence of the ordinary mitigating circumstance of voluntary surrender is not a mere matter of judicial ethics. No less than the Constitution provides that no decision shall be rendered by any court without expressing clearly and distinctly the facts and the law on which it is based.

The Court cannot simply accept the lame excuse that respondent judge failed to cite said bases due to a mere oversight on his part that was made in good faith.

Moreover, even if respondent judge's explanation to such omission was acceptable, he still failed to sufficiently justify why he appreciated the ordinary mitigating circumstance of voluntary surrender on the part of the accused. For voluntary surrender to be appreciated, the following requisites must be present: 1) the offender has not been actually arrested; 2) the offender surrendered himself to a person in authority or the latter's agent; and 3) the surrender was voluntary. The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself to the authorities either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture. In the case at bar, it was not shown from the evidence presented that the accused intended to surrender and admit the commission of the crime; they did not even invoke self-defense during trial. On the contrary and far from being spontaneous, security guard A even testified that accused warned him not to report the incident or note their plate number as they were fleeing the scene of the incident.

Indeed, it is settled that, unless the acts were committed with fraud, dishonesty, corruption, malice or ill-will, bad faith, or deliberate intent to do an injustice, the respondent judge may not be administratively liable for gross misconduct, ignorance of the law, or incompetence of official acts in the exercise of judicial functions and duties, particularly in the adjudication of cases. However, when the inefficiency springs from a failure to recognize such a basic and fundamental rule, law, or principle, the judge is either too incompetent and undeserving of the position and title vested upon him, or he is too vicious that he deliberately committed the oversight or omission in bad faith and in grave abuse of authority. Here, the attendant circumstances would reveal that the acts of respondent judge contradict any claim of good faith. And since the violated constitutional provision is so elementary, failure to abide by it constitutes gross ignorance of the law, without even a need for the complainant to prove any malice or bad faith on the part of the judge.

x x x x

For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other similar motive. Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in all good faith. Judicial competence requires no less. Thus, unfamiliarity with the rules is a sign of

incompetence. Basic rules must be at the palm of his hand. When a judge displays utter lack of familiarity with the rules, he betrays the confidence of the public in the courts. Ignorance of the law is the mainspring of injustice. Judges owe it to the public to be knowledgeable, hence, they are expected to have more than just a modicum of acquaintance with the statutes and procedural rules; they must know them by heart.

Although a judge may not always be subjected to disciplinary actions for every erroneous order or decision he issues, that relative immunity is not a license to be negligent or abusive and arbitrary in performing his adjudicatory prerogatives. If judges wantonly misuse the powers granted to them by the law, there will be, not only confusion in the administration of justice, but also oppressive disregard of the basic requirements of due process. For showing partiality towards the accused, respondent judge can be said to have misused said powers.

Indubitably, respondent judge violated the Code of Judicial Conduct ordering judges to ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary. He simply used oversight, inadvertence, and honest mistake as convenient excuses. He acted with conscious indifference to the possible undesirable consequences to the parties involved.

The Court found respondent judge guilty of gross ignorance of the law and gross misconduct for which he was meted out the penalty of dismissal with forfeiture of retirement benefits except accrued leave credits and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations. ***[A.M. No. RTJ-15-2435 (Formerly A.M. No. 15-08-246-RTC), March 6, 2018]***