



# Supreme Court of the Philippines Philippine Judicial Academy



## ***PHILJA Fax/Electronic Alerts***

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### **Judges: Gross ignorance of the law**

The Supreme Court in *Basco vs. Rapatalo*, 336 Phil, 214, 237 (1997) laid down the rules outlining the duties of a judge in case an application for bail is filed:

- (1) **Notify the prosecutor of the hearing** of the application for bail or require him to submit his recommendation x x x;
- (2) **Conduct a hearing** of the application for bail regardless of whether or not the prosecution refuses to present evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its discretion x x x;
- (3) Decide whether the evidence of guilt of the accused is strong based on the summary of evidence of the prosecution x x x; [and]
- (4) If the guilt of the accused is not strong, discharge the accused upon the approval of the [bail bond]. x x  
X Otherwise, petition should be denied.

Respondent granted the *ex-parte* motion to grant bail on the same day that it was filed by the accused. He did this without the required notice and hearing.

His justification that the offense charge was a bailable offense and that bail was a matter of right does not persuade. Rule 114, Section 18 of the 1985 Rules of Criminal Procedure and reiterated in the 2000 Rules of Criminal Procedure requires notice and hearing whether bail is a matter of right or discretion.

For gross ignorance of the law, respondent was fined P20,000.00. **(A.M. No. RTJ-08-2131, November 22, 2010)**

### **Clerk of Court: Loafing and Violation of Canon IV of the Code of Conduct for Court Personnel**

Section 1 of Canon IV of the Code of Conduct for Court Personnel mandates that court personnel shall commit themselves exclusively to the business and responsibilities of their office during working hours.

Loafing results in inefficiency and non-performance of duty, and it adversely affects the prompt delivery of justice.

Respondent usually left his office during office hours to read newspapers in the library or to discuss legal matters with the police.

For loafing and violation of the Code of Conduct for Court Personnel, respondent was suspended for six (6) months. **(A.M. No. P-10-2865, November 22, 2010)**

### **Legal Researcher: Grave misconduct**

Section 2, Canon 1 of the Code of Conduct for Court Personnel provides that court personnel shall not solicit or accept any gift, favor or benefit based on any explicit understanding that such gift, favor or benefit shall influence their official actions; and Section 1 of the same Code of Conduct provides that court personnel shall not use their official position to secure unwarranted benefits, privileges or exemptions for themselves or for others.

Respondent committed grave misconduct and violated the Rules when she accepted money

from complainant as payment for her services in assisting the latter in filing her case.

For grave misconduct, respondent was dismissed from the service. **(A.M. No. P-06-2225, November 23, 2010)**

### **Sheriff: Grave misconduct**

Section 10 (d), Rule 39 of the Rules of Court provides:

Sec. 10. *Execution of Judgment for specific act.*

x x x

(d) *Removal of improvements on property subject of execution.* – When the property subject of the execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements **except upon special order of the court**, issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.

Before the removal of an improvement from the subject premises, there must be a special order, hearing, and reasonable notice to remove.

Respondent was merely directed in the writ of execution to facilitate the issuance of the notice to vacate and to eject the complainants from the subject premises. As there was no order in the writ for the demolition of the improvements, respondent violated the rules when he demolished the improvements in the subject property of complainant.

For grave misconduct, respondent was suspended for 6 months and one (1) day. **(A.M. No. P-08-2584, November 15, 2010)**

### **Sheriff: Gross misconduct**

CSC Memorandum Circular No. 04, s. 1991, on Habitual Absenteeism states:

#### A. HABITUAL ABSENTEEISM

1. An officer or employee in the civil service shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the leave law for at least three (3) months in a semester or at least three (3) consecutive months during the year;

2. In case of claim of ill health, heads of department of agencies are encourage to verify the validity of such claim and, if not satisfied with the reason given, should disapprove the application for sick leave. On the other hand, cases of employees who absent themselves from work before approval of their application should be disapproved outright; and

3. In the discretion of the Head of any department, agency or office, any government physician may be authorized to do a spot check on employees who are supposed to be on sick leave. Those found violating the leave laws, rules or regulations shall be dealt with accordingly by filing appropriate administrative cases against them.

#### B. SANCTIONS

The following sanctions shall be imposed for violation of the policy on habitual absenteeism:

1<sup>st</sup> offense – Suspension for six (6) months and one (1) day to one (1) year.

2<sup>nd</sup> offense – Dismissal from the service

Respondent's absences seriously prejudiced the public service. His excessive unauthorized absences indicated an utter lack of a sense of responsibility for his position in the court and a basic disregard for the welfare of litigants.

For gross misconduct, respondent was dismissed from the service. **(A.M. No. P-09-2603, November 23, 2010)**

**Sheriff: Violation of Section 9 (b), Rule 39 of the Rules of Court**

A sheriff has no authority to levy on execution upon the property of any person other than that of the judgment debtor and he oversteps his authority when he disregards the distinct and separate personality of the corporation from that of an officer and stockholder of the corporation by levying on the property of the former in an action against the latter only.

Respondent was remiss in the performance of his duty as he failed to abide by what was ordained in the writ of execution. He levied on the property of complainant corporation which is not a party to the case.

For violation of Section 9 (b) of Rule 39 of the Rules of Court, respondent was fined P20,000.00. Parenthetically, respondent was dismissed from the service in a previous administrative case against him. **(A.M. No. P-07-2379, November 17, 2010)**

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