



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.

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Issue 16-12
December 2016

JUDGES

- **Gross Insubordination; Gross Ignorance of the Law; Gross Misconduct; Grave Abuse of Authority; Oppression; and Conduct Unbecoming of a Judicial Official**

Gross Insubordination and Gross Misconduct

The resistance by respondent to the implementation of A.O. No. 19-2011 was unexpected. She was quite aware that A.O. No. 19-2011 was not a mere request for her to comply with only partially, inadequately or selectively, or for her to altogether disregard. At the very least, her resistance to A.O. No. 19-2011 manifested an uncommon arrogance on the part of a Judge of a court of the first level towards the Court itself. Such attitude smacked of her unbecoming condescension towards the Court and her judicial superiors. We cannot tolerate her attitude lest it needlessly sows the seeds of arrogance in others that can ultimately destroy the faith and trust in the hierarchy of courts so essential in the effective functioning of the administration of justice.

Moreover, respondent's resistance to the implementation of A.O. No. 19-2011 disrupted the orderliness of the other MeTCs to the prejudice of public interest. This effect became unavoidable, for the Executive Judge necessarily required the other courts to render additional night court duties to cope with her refusal to render night court duties.

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It is timely for the Court to use this occasion to remind respondent and other judicial officers of the land that although they may enjoy the freedoms of speech and expression as citizens of the Republic, they should always conduct themselves, while exercising such freedoms, in a manner that should preserve the dignity of their judicial offices and the impartiality and independence of the Judiciary. As to this duty to observe self-restraint, Section 6, Canon 4 of the *New Code of Judicial Conduct for the Philippine Judiciary* is clear and forthright, viz.:

SEC. 6. Judges, like any other citizen, are entitled to freedom of expression, belief, association and assembly, but in exercising such rights, they shall always conduct themselves in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

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According to *Himalin v. Balderian*, the refusal of a Judge to comply with any resolution or directive of the Court constituted insubordination and gross misconduct, viz.:

[A] judge who deliberately and continuously failed and refused to comply with a resolution of this Court was held guilty of gross misconduct and insubordination, the Supreme Court being the agency exclusively vested by our Constitution with administrative supervision over all courts and court personnel from the Presiding Justice of the Court of Appeals to the lowest municipal trial court clerk. The Court can hardly

discharge such constitutional mandate of overseeing judges and court personnel and taking proper administrative sanction against them if the judge or personnel concerned does not even recognize its administrative authority.

x x x x

Respondent's unwillingness to comply with A.O. No. 19-2011 was also a betrayal of her sworn duty to maintain fealty to the law, and brought dishonor to the Judiciary. x x x

x x x x

In all, respondent exhibited an unbecoming arrogance in committing insubordination and gross misconduct. By her refusal to adhere to and abide by A.O. No. 19-2011, she deliberately disregarded her duty to serve as the embodiment of the law at all times. She thus held herself above the law by refusing to be bound by the issuance of the Court as the duly constituted authority on court procedures and the supervision of the lower courts. To tolerate her insubordination and gross misconduct is to abet lawlessness on her part. x x x

Grave Abuse of Authority; Oppression

Although respondent insisted on the irregularity of the appointment of Ms. A for lack of personal endorsement from her as the Presiding Judge, and of the appointment of Ms. B due to a pending administrative complaint, the appointments of Ms. A and Ms. B were valid and regular. As such, respondent had no good reason to reject the appointments.

To start with, Ms. A and other applicants had undergone scrutiny and processing by the duly constituted committee, and the OCA had then signed and executed the appointment. Nonetheless, the authority to appoint still emanated from the Court itself. Respondent's objection to Ms. A's appointment for lack of her personal endorsement was not enough to negate the appointment. Respondent had no right to reject the appointment, making her rejection another instance of gross insubordination by her. This consequence has been elucidated in *Edaño v. Asdala*, as follows:

[R]espondent Judge, in insisting on the designation of respondent N as OIC, blithely and willfully disregarded the Memorandum of this Court, through the OCA, which approved the designation of B alone—and not in conjunction with respondent N—as OIC. **While the presiding judge, such as respondent judge, can recommend and endorse persons to a particular position, this recommendation has to be approved by this Court. Again, the respondent judge ought to know that the Constitution grants this Court administrative supervision over all the courts and personnel thereof.** In the case at bar, despite the Court's approval of B's designation, the respondent judge allowed, if not insisted on, the continued discharge of the duties of OIC by respondent N. Respondent judge even had the gall to insist that as presiding judge she has the authority and discretion to designate "anyone who works under her, as long as that person enjoys her trust and confidence." Coming from a judge, such arrogance, if not ignorance, is inexcusable. The memorandum from the OCA regarding the designation of court personnel is no less an order from this Court. Court officials and personnel, particularly judges, are expected to comply with the same. Respondent judge's gross insubordination cannot be countenanced.

x x x x

Secondly, respondent's rejection of the appointment of Ms. B was just as unwarranted.

Under Section 34, Rule II of the *Uniform Rules on Administrative Cases in the Civil Service* (URACCS), a pending administrative complaint shall not disqualify an employee from promotion, thus:

SEC. 34. Effect of the Pendency of an Administrative Case. – Pendency of an administrative case shall not disqualify respondent from promotion or from claiming maternity/paternity benefits.

For this purpose, a pending administrative case shall be construed as follows:

- a. When the disciplining authority has issued a formal charge; or
- b. In case of a complaint filed by a private person, a *prima facie* case is found to exist by the disciplining authority.

The rule, which is reiterated in Section 42 of the *Revised Rules on Administrative Cases in the Civil Service* (RRACCS) of 2011, cannot be interpreted otherwise.

Accordingly, respondent's administrative complaint had no bearing on Ms. B's appointment, more so because Ms. B was held liable only for simple misconduct, a less grave offense that did not merit termination from public service for the first offense. It is relevant to point out, too, that respondent had no personality to object to or oppose Ms. B's appointment, considering that only a qualified next-in-rank employee has been recognized as a party-in-interest to file the protest in accordance with paragraph 1.6.1, Article IX of the 2002 *Revised Manual of Clerks of Court*.

Thirdly, we also take respondent to task for disrespectful language uttered against the Court, no less. She characterized the appointment of Ms. A as "*void ab initio*" and "*a big joke*." The use of such language in assailing the Court's exercise of its absolute power of appointment was highly offensive and intemperate. She thereby disregarded her obligation to show respect and deference toward the Court and its officials. She was thereby guilty of another serious misconduct.

And, fourthly, respondent issued verbal threats of filing administrative, civil and criminal charges against Ms. A unless she withdrew her application. Respondent reiterated the threats in her letter dated June 14, 2011 addressed to Atty. Pabello. Ms. A felt intimidated enough because she actually withdrew her application (although she later went on with it). The making of the verbal threats by respondent to compel a subordinate to withdraw her application constituted grave abuse of authority on the part of respondent. Grave abuse of authority is committed by a public officer, who, under color of his office, wrongfully inflicts upon a person any bodily harm, imprisonment, or other injury; it is an act characterized with cruelty, severity, or excessive use of authority. Also, the intimidation exerted upon Ms. A amounted to oppression, which refers to an act of cruelty, severity, unlawful exaction, domination or excessive use of authority.

X X X X

Gross Ignorance of the Law

Respondent designated as OIC of her branch Mr. C, who occupied the position of Clerk III. Under the 2002 Revised Manual, the position of Clerk III fell under the first level position with a minimum educational requirement of two years of college studies, and a career service sub-professional eligible. The position of Clerk of Court III was a second level position with a minimum educational requirement of a Bachelor of Laws degree, at least one year relevant experience, four hours of relevant training, and a professional career service eligible.

On the other hand, the CSC Memorandum Circular No. 06-05 dated February 15, 2005 provides the following guidelines:

CSC MEMORANDUM CIRCULAR NO. 06-05

TO: All Heads of Constitutional Bodies; Departments, Bureaus and Agencies of the National Government; Local Government Units; Government-Owned or Controlled Corporations; and State Universities and Colleges

SUBJECT: Guidelines on Designation

In its Resolution No. 050157 dated February 7, 2005, the Commission has adopted the following guidelines on Designation in the civil service:

x x x x

- B. Designees can only be designated to positions within the level they are currently occupying. However, Division Chiefs may be designated to perform the duties of third level positions.

First level personnel cannot be designated to perform the duties of second level positions.

x x x x (Emphasis supplied)

Designating a first level personnel like Mr. C as OIC defied CSC Memorandum Circular No. 06-05 because the position of OIC was reserved for personnel belonging to the second level. It becomes immaterial whether nobody from Branch 47 opposed the designation because the memorandum circular expressly prohibits designation of first level personnel to a second level position. It is emphasized that the memorandum is crafted in the negative; hence, the memorandum is mandatory, and imports that the act required shall not be done otherwise than designated.

Respondent's contention that the designation of the OIC was based on trust and confidence had no basis. We underscore that the OIC referred to here was the acting Branch Clerk of Court (Clerk of Court III). The 2002 Revised Manual enumerates the following duties and responsibilities of a branch clerk of court, *viz.*:

- 1.3.1 Adjudicative Support Functions
 - 1.3.1.1 Attends all court sessions
 - 1.3.1.2 Supervises the withdrawal of all records of cases to be heard and the preparation of the notices of hearings, court's calendar, reports, minutes, monthly reports, inventory of cases, index of exhibits, and paging of records of cases;
 - 1.3.1.3 Sees to it that all returns of notices are attached to the corresponding evidence properly marked during the hearing as collected in an exhibit folder; and
 - 1.3.1.4 Signs notices of orders and decisions for service to the parties, release papers of detained prisoners who are acquitted and/or who filed their corresponding bail bonds duly approved by the presiding judge.

x x x x

Clerks of court are officers of the law who perform vital functions in the prompt and sound administration of justice. Their office is the hub of adjudicative and administrative orders, processes and concerns. They perform delicate functions as designated custodians of the court's funds, revenues, records, properties and premises. The functions of a clerk of court require a higher degree of education as well as understanding of the law and court processes, that they cannot be delegated to first level personnel such as Mr. C. The position requires not only trust and confidence, but most importantly, education and experience. Ineluctably, the respondent ignored the clear import of CSC Memorandum Circular No. 06-05 in designating Mr. C as OIC.

x x x x

Conduct Unbecoming of a Judge

The denial lacked persuasion. In her October 3, 2009 message to complainant's Yahoo account, respondent apologized to complainant, and expressly clarified that complainant had not sent the "meal stub." Respondent even requested the complainant to "*forget all [her] emails x x x since June x x x*" This apologetic tone from respondent rendered her denial of responsibility devoid of substance.

Moreover, the barrage of messages, most of which were sent within the same day, makes us believe that they had all come from respondent. Although she insisted that complainant had sent the "meal stub," respondent did not offer any plausible explanation on the other messages containing sexual innuendos.

It is notable that the Facebook and Yahoo messages started in August 2009 when respondent was still a public prosecutor. Nonetheless, she could still be disciplined for such acts committed prior to her appointment to the Judiciary because her internet stalking of complainant continued after she had herself become an MeTC Judge in January 12, 2010 and lasted until July 2010.

Our reading of the messages supports the studied conclusions by the investigating justice that they did contain sexual insinuations that were ostensibly improper for a Judge to write and send to another. The messages, however they may be read and understood, were at least vexatious and annoying. In any case, the sender showed her deep-seated proclivities reflective of conduct unbecoming of a member of the Judiciary.

Finding the respondent guilty of gross insubordination; gross ignorance of the law; gross misconduct; grave abuse of authority; oppression; and conduct unbecoming of a judicial official, the Court ordered respondent's dismissal from the service, effective immediately, with the forfeiture of all her benefits, except accrued leave credits. She was likewise declared disqualified from reinstatement or appointment to any public office or employment, including to one in any government-owned or government-controlled corporations. **[A.M. No. MTJ-12-1813 (Formerly A.M. No. 12-5-42-MeTC); A.M. No. 12-1-09-MeTC; A.M. No. MTJ-13-1836 (Formerly A.M. No. 11-11-115-MeTC); A.M. No. MTJ-12-1815 (Formerly OCA IPI No. 11-2401-MTJ); OCA IPI No. 11-2398-MTJ; OCA IPI No. 11-2399-MTJ; OCA IPI No. 11-2378-MTJ; OCA IPI No. 12-2456-MTJ; A.M. No. MTJ-13-1821, November 22, 2016]**