



PHILJA E-Alerts

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JUDGES

- **Serious Misconduct**

At the outset, the Court stresses that respondent judge never refuted, much less denied the aforementioned judicial audit findings and observations. In fact, he even admitted that:

- a. he granted bail to some accused charged with capital offenses in criminal cases in which no bail was recommended, without conducting the mandatory bail hearing. He merely mentioned excuses such as “there is an ongoing settlement,” “private complainant is open to settlement,” “the prosecution did not object to the motion for bail,” “to decongest jail,” “upon agreement of the parties,” or “it was done without malice or bad faith”;
- b. with his permission, the court interpreter drafted the Decision in Civil Case No. XXXX, granting the petition for declaration of nullity of marriage based solely on the petition and the psychological report, and there were no copies of the Pre-trial Order, the Order showing that petitioner had been presented, and the minutes. No transcript of stenographic notes could likewise be seen in the records at the time of the judicial audit;
- c. he erred in proceeding to hear the case in Civil Case No. YYYY (for declaration of nullity of marriage) when the return of the summons states that it is unserved. He decided the case in favor of the petitioner despite the court’s lack of jurisdiction over the defendant;
- d. his act of proceeding to hear the case in Civil Case No. ZZZZ (for declaration of nullity of marriage) despite the question on the court’s jurisdiction was due to the words of the petitioner’s lawyer that his client was able to find a job in Bayugan and that he was renting a house in Purok II, Poblacion, Bayugan City;
- e. he failed to issue an Order directing the public prosecutor to conduct a background check in Civil Case Nos. AAAA and BBBB, both for declaration of nullity of marriage, due to a mere oversight and the same was without malice; and
- f. he allowed plea-bargaining in cases for violation of RA No. 9165 or the Dangerous Drugs Act of 2002, with the consent of the prosecution in order to decongest the jails.

Furthermore, respondent judge failed to refute several factual circumstances, showing an implied admission of their truthfulness and accuracy. It was established that he rendered a premature decision in Civil Case No. CCCC (for declaration of nullity of marriage) granting the petition without first ruling on the pending motions filed by the petitioner. He likewise

dismissed criminal cases on his own initiative, supposedly “for paucity of proof and dearth of evidence,” even after he had already determined, expressly or impliedly, that there was probable cause against the accused. He ordered the dismissal of these cases after either the accused had been arraigned or after the cases had been set for arraignment.

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Respondent judge also never refuted or denied the testimonies of his court personnel affirming his breaches and even saying that litigants and lawyers would frequent his chamber to personally verify their cases. He would call cases, although not included in the court’s calendar, “to the point of dismissing” the same. Worse, he was also reported to have issued and signed a Resolution in a case that was not in the court’s docket.

The aforementioned circumstances surrounding the proceedings and disposition of cases are far too flagrant to simply be ignored and their totality strongly indicates respondent judge’s corrupt tendencies. His assertions that his procedural lapses were committed in good faith and without any monetary consideration simply do not hold water. The number of cases involved and the manner by which he disposed of said cases clearly show a pattern of misdeeds and a propensity to violate the law and established procedural rules, particularly the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages, RA No. 9165, the Revised Rules of Criminal Procedure, and the Rules of Court.

Consequently, the Court finds respondent judge guilty of serious misconduct.

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 respondent judge’s acts contradict any claim of good faith.

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 under the law and established rules. For repeatedly and deliberately committing irregularities in the disposition of his cases, thereby manifesting corrupt inclinations, 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.

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x x x The Court has repeatedly and consistently held that the judge must not only be impartial but must also appear to be impartial as an added assurance to the parties that his decision will be just. The litigants are entitled to no less than that. They should be sure that when their rights are violated they can go to a judge who shall give them impartial justice. They must trust the judge; otherwise, they will not go to him at all. They must believe in his sense of fairness; otherwise, they will not seek his judgment. Without such confidence, there would be no point in invoking his action for the justice they expect. Respondent judge's acts indubitably violated said trust and confidence, seriously impairing the image of the judiciary to which he owes the duty of loyalty and obligation to keep it at all times above reproach and worthy of the people's trust.

For his numerous infractions, respondent judge was found guilty of serious misconduct and was ordered dismissed from the service, 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-18-2514 (Formerly A.M. No. 16-10-387-RTC), January 30, 2018]**

- **Grave Misconduct; Serious Dishonesty**

Public office is a public trust. This constitutional principle requires a judge, like any other public servant and more so because of his exalted position in the Judiciary, to exhibit at all times the highest degree of honesty and integrity. As the visible representation of the law tasked with dispensing justice, a judge should conduct himself at all times in a manner that would merit the respect and confidence of the people.

Respondent judge failed to live up to these exacting standards. In this case, the Court agrees with the findings of the OCA, which affirmed the evaluations of the Investigating Justice, "that official receipts were tampered and that there were overwithdrawals from the Fiduciary Fund account amounting to Nine Hundred Thirty Six [Thousand] Pesos (P936,000.00). The Audit Team's findings were not refuted by respondent judge and complainant officer in charge during the investigation." These acts of tampering of official receipts and overwithdrawals from court funds clearly constitute grave misconduct and serious dishonesty.

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The Court agrees with the OCA in rejecting respondent judge's contention that she did not include complainant as co-signatory because the latter is only an OIC. Being designated as acting Clerk of Court or OIC, complainant had the same duties and responsibilities of a regular clerk of court. Indeed, if respondent judge were uncomfortable that only an OIC was assigned to the Office of the Clerk of Court, she, as then Executive Judge, should have declared the position open so that a regular clerk of court could be appointed. However, respondent judge did not do so.

The Court likewise sustains the OCA's finding that respondent judge's only witness, A, then Court Legal Researcher, did not help her case as the latter had no knowledge of the tampering of official receipts. In his Judicial Affidavit, A stated that payments of bail bonds were made in the office of the OIC-Clerk of Court; that he had not seen payments of bail bonds made inside the office or chambers of respondent judge; that he had not participated in any transactions involving the payment of bail bond; and that it was the criminal docket clerk B who attended to the posting of bonds and his only participation was the review of documents after the requirements were completed.

On the other hand, the Judicial Affidavits of B, Court Interpreter, and C, Clerk III, both of Branch XX, Regional Trial Court, bolstered the fact that respondent judge manipulated the Fiduciary Fund collections and reports submitted to the OCA. C testified, among others, that respondent judge ordered the tampering of official receipts; and that she and complainant made a list to monitor respondent judge's overwithdrawals and undeposited amounts because complainant was already worried how much respondent judge would still order withdrawn.

Since respondent judge was found guilty of grave offenses, the penalty of dismissal from the service is proper even for the first offense in accordance with Section 46A (1), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service. However, since respondent judge has already retired from the service, the penalty of dismissal can no longer be imposed. Instead, all of her retirement benefits, except accrued leave benefits, were declared forfeited, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations. She was further directed to show cause why she should not be disbarred for violation of Canons 1 and 7 and Rule 1.01 of the Code of Professional Responsibility. **[A.M. No. P-09-2633 and A.M. No. RTJ-12-2338, January 30, 2018]**

CLERKS OF COURT

- **Grave Misconduct**

Respondent OIC-Clerk of Court is liable for grave misconduct for her participation in the tampering of receipts, non-deposit to and overwithdrawals from the Fiduciary Fund.

Respondent admitted having tampered some official receipts. However, she claims that the tamperings were upon the instructions of the presiding judge. This does not excuse her from any liability because obviously tampering of such official documents is unlawful which should never be countenanced. The Court sustains the OCA's statement that "as a public officer, her duty was not only to perform her assigned tasks, but to prevent the commission of acts inimical to the judiciary and to the public, in general." It is grave misconduct when respondent OIC participated or consented to the commission of the unlawful acts of tampering receipts and overwithdrawals from court funds simply because of following the orders or instructions of her superior.

As correctly found by the OCA, "[w]hen the presiding judge ordered respondent to alter an official receipt at the first instance, respondent should have reported the matter to the OCA who has supervision over all judges and court personnel of the lower court[s]. Rather, she kept silent and allowed herself to be used by the presiding judge and even facilitated the tampering of official receipts and overwithdrawals on several occasions. She knew the repercussions of her acts because she kept a record of the transactions on the tampering of bail bond receipts which, according to her, was a precautionary move and to keep track of the balances in the Fiduciary Fund account. She also failed to prove during the investigation that she was threatened, coerced or terrorized by the presiding judge into doing such unlawful acts."

The Court likewise rejects respondent's claim that when she assumed the position of OIC, the court's financial records were not formally turned over to her and she was not knowledgeable in accounting procedures. Unfamiliarity with procedures will not exempt respondent from liability. As a Clerk of Court, she is expected to keep abreast of all applicable laws, jurisprudence and administrative circulars pertinent to her office. Further, respondent had been the OIC for nine years when the financial audit was conducted, and therefore, she was presumed to know her functions and responsibilities. Prior to this instant case, respondent has been administratively held liable in two previous cases.

Considering the foregoing, the Court found respondent OIC-Clerk of Court guilty of grave misconduct. Considering her retirement from the service, the Court ordered the forfeiture of all her retirement benefits, except her accrued leave benefits, with prejudice to re-employment in any branch of the government, including government-owned or controlled corporations. **[A.M. No. P-09-2633 and A.M. No. RTJ-12-2338, January 30, 2018]**

- **Conduct Unbecoming of a Court Employee**

It must be remembered that public office is a public trust. As this Court held in *Marasigan v. Buena*:

Public officers and employees are at all times accountable to the people; must serve them with utmost responsibility, integrity, loyalty and efficiency; and must lead modest lives. [RA No. 6713] additionally provides that every public servant shall uphold public interest over his or her personal interest at all times. Court personnel, from the presiding judge to the lowliest clerk, are further required to conduct themselves always beyond reproach, circumscribed with the heavy burden of responsibility as to free them from any suspicion that may taint the good image of the judiciary. Indeed, “(t)he nature and responsibilities of public officers enshrined in the 1987 Constitution and oft-repeated in our case law are not mere rhetorical words. Not to be taken as idealistic sentiments but as working standards and attainable goals that should be matched with actual deeds.”

With this principle in mind, We find that respondent clerk of court has transgressed the established norm of conduct for court employees, and, thus, is administratively guilty of the offense charged.

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The following amply established the allegations of the complainant by substantial evidence:

First, the contents of the executive judge’s letter-report, coupled with the affidavits of A, B and Mrs. C, point to one conclusion, *i.e.*, respondent clerk of court demanded from A and B the amount of P7,000 for D’s cash bail bond.

Specifically, in his letter-report, the executive judge echoed the complaint of A and B regarding respondent’s act of demanding and collecting from them the amount of P7,000 for D’s cash bail bond. According to A and B, they stated in their affidavit that they gave P7,000 to respondent, through Mrs. C. For her part, Mrs. C confirmed that she handed the said amount to respondent.

Against these statements, respondent’s rebuttal was merely in the form of a denial. Although she denied that she personally received the amount of P7,000, respondent said that the cash bail bond was returned to A and B only after the court ordered the release of D. In fact, A maintained that B repeatedly followed-up with respondent the release of D and the return of the money. B even went to respondent’s house, but the latter simply told her to “*keep on waiting.*” Respondent likewise told A and B that “*she cannot as yet release the said money considering that the resolution of the investigating prosecutor has no approval yet of the City Prosecutor.*” Curiously, respondent failed to rebut these statements. If it was true that she did not have the P7,000 in her possession, respondent could have easily told A and B such fact. But she did not give any explanation at all.

Even so, it is illogical to believe that respondent did not receive the cash bail bond, and yet, she was the one who returned the same. In practice, the proper procedure in the handling of cash submitted or given to the municipal court as bail bond is for the court to formally direct the clerk of court to officially receive the cash and to immediately deposit it with the persons with whom a cash bail bond may be deposited namely: the collector of internal revenue, or the provincial, city or municipal treasurer.

Thus, being the clerk of court; respondent had the duty to immediately deposit with authorized government depositories the cash bail bond she had collected, because she is not authorized to keep funds in her custody. Unfortunately, the records are bereft of any showing that respondent deposited the cash bail bond. Apparently, she kept the amount for herself since she admitted that she was the one who personally returned it to A and B. In her desperate attempt to exonerate herself, respondent could only impute malicious motive to a certain Sheriff X, averring that he was the one who blew this issue out of proportion.

In view of respondent's acts, she clearly violated the provision of Sec. 7(d) of RA No. 6713, which reads, in part:

SEC. 7. Prohibited Acts and Transactions. – In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

x x x x

(d) Solicitation or acceptance of gifts. – **Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties** or in connection with any operation being regulated by, **or any transaction which may be affected by the functions of their office.** [Emphasis Supplied.]

As can be gleaned from the prohibition in Sec. 7(d), it is the commission of that act as defined by the law, and not the character or effect thereof, that determines whether or not the provision has been violated. Therefore, it is immaterial whether respondent received the money directly from A and B or indirectly through Mrs. C; and whether she returned the cash bail bond to A and B. What is material is that from the circumstances of the case, respondent demanded, collected and received from A and B the amount of P7,000 purportedly to be applied to D's bail bond.

Second, anent the lost EPSON printer, respondent was not able to account for it. What she attached in one of her pleadings is a photo of a printer with serial number DCAV 101692. But this is not the serial number of the printer which is the subject of the executive judge's complaint. Instead of explaining the whereabouts of the lost printer, respondent blamed Sheriff X again. She claimed that Sheriff X *"twisted the fact and made an issue as to the serial number of the computer printer x x x. the insidious sheriff made it appear as DCAV 101692 when he personally reported it to the complainant."* It has been held that the conduct of court personnel, must not only be, but must also be perceived to be, free from any whiff of impropriety, both with respect to their duties in the judiciary and to their behavior outside the court. This conduct, respondent failed to observe.

Finally, respondent should be reminded that the position of a clerk of court is an essential and ranking officer of our judicial system who performs delicate administrative functions vital to the prompt and proper administration of justice. A clerk of court's office is the nucleus of activities both adjudicative and administrative, performing, among others, the

functions of keeping the records and seal, issuing processes, entering judgments and orders and giving, upon request, certified copies from the records.

The Court found respondent guilty of conduct unbecoming of a court employee for which she was ordered suspended for two months. **[A.M. No. P-17-3771 (Formerly OCA IPI No. 11-3689-P), January 24, 2018]**

PROCESS SERVERS

- **Disgraceful and immoral conduct**

Immoral conduct has been defined as conduct that is willful, flagrant or shameless, showing moral indifference to the opinion of the good and respectable members of the community, and includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity and dissoluteness. Section 1 of the Civil Service Commission Memorandum Circular No. 15, Series of 2010 particularly defines disgraceful and immoral conduct as a willful act that violates the basic norm of decency, morality and decorum abhorred and condemned by the society.

In this case, the OCA's findings that respondent deliberately exposed his private organ to complainant and exhibited "gross sexual innuendo" are well supported by the records. In this relation, the Court notes that respondent was found guilty beyond reasonable doubt of Unjust Vexation for the same acts by the Municipal Trial Court in a Decision dated May 14, 2014, which conviction was subsequently affirmed, on appeal, by the Regional Trial Court on December 23, 2014. It should be emphasized that in administrative proceedings, only substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, is required. All things considered, this standard of substantial evidence has been satisfied in this case.

What made matters worse for respondent is the fact that this is his second offense of the same nature. As correctly noted by the OCA, respondent had been found guilty of disgraceful and immoral conduct and was sanctioned with "six months suspension without pay with a warning that a repetition of the same act in the future will be dealt with more severely" in a Resolution dated October 15, 2014 in A.M. No. P-XX-XXXX x x x. Clearly, respondent has not learned his lesson, thus, calling for the harsh penalty of dismissal from the service pursuant to Section 46(B)(3), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), in relation to Section 46(b)(5), Chapter 7, Subtitle A, Title I, Book V of Executive Order No. (EO) 292, otherwise known as the "Administrative Code of 1987." x x x

A final word. "It cannot be overstressed that the image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work thereat, from the judge to the lowest of its personnel." Court employees should be circumspect on how they conduct themselves in their professional and private affairs in order to preserve the good name and integrity of courts of justice. Respondent's actuation in this case is reprehensible and has no place in any decent society, more so in the premises of the halls of justice (HOJ) that deserves respect from its employees even during unofficial hours. This is a clearly offensive and indecent behavior which the Court cannot countenance.

The Court found respondent guilty of disgraceful and immoral conduct for which he was ordered dismissed from the service effective immediately, with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to re-employment in any branch or agency of the government, including government-owned or controlled corporations, without prejudice to his criminal liabilities. **[A.M. No. P-17-3772 (Formerly OCA IPI No. 12-3999-P), January 10, 2018]**