



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 19-2
February 2019

COURT PERSONNEL

- **Dishonesty; Grave misconduct; Insubordination; Conduct prejudicial to the best interest of the service**

In this matter, the OCA observed that respondent clerk had falsely promised XXX that the execution of the writ would be expedited in exchange for P9,500, and accepted the said amount. Meanwhile, respondent sheriffs A and B had joined sheriff C and the other sheriffs in implementing the writ, and even hired additional security in doing so, all without the authority of the judge, thereby incurring additional and unnecessary expenses on the part of XXX.

X X X X

As gleaned above, the evidence had established respondent clerk's intent to extort money from XXX by making her falsely believe that the execution of the writ would be expedited in exchange for P9,500 and actually accepting the said amount. Such display of dishonesty and misconduct not only gravely endangers the trust and confidence of the people in the judiciary, but also violates Section 3(b) of RA 3019 — an offense which, when committed by an official or personnel of the judiciary, would be a serious affront to the image of this hallowed branch of government.

With regard to respondent sheriffs A and B, their **unauthorized** acts of accompanying sheriff C and the other sheriffs in enforcing the writ and employing additional security had caused an additional and unnecessary financial burden on XXX, who had been patiently waiting for a long time for the writ to be fully implemented, and thus, they are considered prejudicial to the best interest of the service.

Finally, it also bears emphasizing that respondent clerk's and respondent sheriff A's failure to file their respective comments, despite the Court's directive for them to do so, shows their utter indifference thereto, and is tantamount to insubordination.

X X X X

In this regard, it is relevant to note that this is not the first time that respondent clerk and respondent sheriff A have been held administratively liable. In A.M. No. P-03-1685, the Court reprimanded respondent clerk for conduct unbecoming of an employee of the court after she had wilfully failed to pay the amount of P20,000 she had loaned from the complainant therein, Monica Villaseñor. Moreover, considering that respondent clerk had already been dropped from the rolls, the Court can only impose a fine or forfeiture of benefits to her.

Taking into account the number and gravity of respondent clerk's offenses in this matter and her previous administrative liability, the Court finds the fine of P40,000, as recommended by the OCA, too lenient. Therefore, the Court hereby forfeits all of her benefits, excluding her accrued leave credits, and perpetually disqualifies her from being re-employed in any

government agency or instrumentality, including government-owned and controlled corporations or government financial institutions, without prejudice to the filing of appropriate civil and criminal cases against her.

As for respondent sheriff A, the Court, in A.M. No. P-08-2521, had also previously reprimanded him for conduct unbecoming of an employee of the court after he joined sheriff C in verbally abusing the complainant therein, Christopher Manaog, when the latter tried to secure information with the OCC regarding certain parcels of land which were allegedly transferred to others through fraud. Hence, in view of this and the number and gravity of respondent sheriff A's offenses in the present matter, the Court also finds the fine of P20,000, as recommended by the OCA, less than commensurate to his infractions. Therefore, he should be, as he is hereby, suspended from the service without pay for one year.

X X X X

Wherefore, the Court found respondent clerk guilty of dishonesty, grave misconduct, and insubordination. Respondent clerk would have been dismissed from the service, had she not been earlier dropped from the rolls of court employees. All of respondent clerk's benefits, except accrued leave credits, if any, were forfeited, with prejudice to reemployment or appointment to any public office or employment, including government-owned or controlled corporations.

Respondent sheriff B was found guilty of conduct prejudicial to the best interest of the service and was suspended from the service for six months and one day without pay, with a stern warning that a repetition of the same or similar offense in the future shall be dealt with more severely.

As regards respondent sheriff A, he was found guilty of conduct prejudicial to the best interest of the service and insubordination, and was suspended from the service for one year without pay, with a stern warning that a repetition of the same or similar offense in the future shall be dealt with more severely. **[A.M. No. P-15-3400 (Formerly OCA IPI No. 12-3896-P), November 6, 2018]**

- **Less serious dishonesty; Conduct prejudicial to the best interest of the service**

In this case, the acts complained of were not related to or have no direct relation to respondent's work, official duties and functions. Nevertheless, respondent's private acts may still be reviewed by the Court because every court personnel are enjoined to conduct themselves toward maintaining the prestige and integrity of the judiciary for the very image of the latter is necessarily mirrored in their conduct, both official and otherwise. They must not forget that they are an integral part of that organ of the government sacredly tasked in dispensing justice. Their conduct and behavior, therefore, should not only be circumscribed with the heavy burden of responsibility but at all times be defined by propriety and decorum, and above all else beyond any suspicion.

X X X X

Here, respondent is guilty of less serious dishonesty because he had not been honest in his dealings with complainants and he violated the trust reposed in him. In A's Amended Complaint-Affidavit against B, it was admitted that B had been defaulting in the payment of A's investment as early as January 2014. Respondent and A also had a meeting with B on May 12, 2014 to discuss their investments. Considering that respondent and A are brothers, it was improbable that the two would not share such crucial information regarding the failing investment business. Moreover, respondent had all the means to know of the doubtful

transactions because, as represented to complainants, A was able to monitor the financial transactions of B, including any suspect withdrawal, as the latter maintained an account with the BPI.

In spite of the knowledge regarding the collapsing investments and suspicious default payments of B, respondent continued to accommodate and accept the investments of complainants up to May 2014. If respondent was truly concerned for complainants' investments, he should have immediately disclosed the truth about the suspicious transactions at the very first instance and he should not have received any additional investments from complainants anymore. Instead, respondent turned a blind eye to the suspicious circumstances regarding B's payments, which eventually lead to the disappearance of complainants' investments.

Further, respondent committed another dishonesty when he did not truthfully disclose the actual rate of interest earned from the rediscounting business of B as stated in A's complaint-affidavit. x x x

x x x x

Respondent committed dishonesty as he failed to live up to the high ethical standards required of court employees. In this case, considering the two acts of dishonesty committed by respondent against the four complainants were made by taking advantage of the trust and confidence reposed upon him, the same can be considered as an analogous circumstance that would constitute the offense of less serious dishonesty. Nevertheless, there is no attending circumstance that would qualify the dishonesty committed as serious. It must be emphasized that respondent is only a recruiter; he is not the author of the check-rediscounting scheme. Thus, respondent is administratively guilty of committing less serious dishonesty.

Further, the Court finds that respondent committed conduct prejudicial to the best interest of service. Conduct is prejudicial to the public service if it violates the norm of public accountability and diminishes — or tends to diminish — the people's faith in the Judiciary. x x x

x x x x

In this case, although no direct evidence proved that he was in absolute partnership with A, his brother, and B, there is still basis to hold respondent administratively liable. In B's check-rediscounting business venture, it was established that respondent was a "recruiter" thereof. Indubitably, respondent actively participated in the series of transactions and dealings with complainants, from the time he accepted all the monies and placed it in the account of B. This constitutes as sufficient evidence to find that respondent had some involvement in the business of rediscounting checks as a "recruiter of third-party investors."

As correctly found by the OAS, if not through respondent's enticements, offers, assurances and facilitations, complainants would not be persuaded in placing their money in the investment scheme. Respondent should have refrained from engaging in such activity, particularly with employees of the Court who have reposed trust and confidence in him. He kept prodding complainants to invest their money in the rediscounting business until the investment ballooned to millions, which was eventually misappropriated.

Indeed, the transactions happened within the premises of the Court, in the duration of respondent's employment with the OAJ Perez and it placed the image of the Judiciary, of which he is part, in a bad light. The acts of respondent deviated from the norm of conduct required of a court employee, and constitutive of conduct prejudicial to the best interest of service. The said administrative offense need not be related or connected to the public officer's official

functions. As long as the questioned conduct tarnished the image and integrity of his public office, the corresponding penalty may be meted on the erring public officer or employee.

In addition, respondent committed other violations of various administrative rules. Respondent's conduct of business during office hours violated Section 1, Canon IV of the Code of Conduct for Court Personnel. It mandates that court personnel shall commit themselves exclusively to the business and responsibilities of their office during working hours. As a court employee, he should have exercised at all times a high degree of professionalism and responsibility, as service in the Judiciary is not only a duty; it is a mission. The acts of respondent are also in violation of Section 5, Canon III of the same code, which provides that the full-time position in the Judiciary of every court personnel shall be the personnel's primary employment.

Further, the recruitment of third-party investors to the check-rediscouting business likewise constitutes violation of the SC-A.C. No. 5-88, which provides:

In line with Section 12, Rule XVIII of the Revised Civil Service Rules, the Executive Department issued Memorandum Circular No. 17 dated September 4, 1986 authorizing heads of government offices to grant their employees permission to engage directly in any private business, vocation or profession x x x outside office hours.

However, in its En Banc Resolution dated October 1, 1987, denying the request of Atty. Froilan L. Valdez of the Office of Associate Justice Ameurfina Melencio-Herrera, to be commissioned as a Notary Public, the Court expressed the view that **the provisions of Memorandum Circular No. 17 of the Executive Department are not applicable to officials or employees of the courts considering the express prohibition in the Rules of Court and the nature of their work which requires them to serve with the highest degree of efficiency and responsibility, in order to maintain public confidence in the Judiciary.** The same policy was adopted in Administrative Matter No. 88-6-002-SC, June 21, 1988, where the court denied the request of Ms. Esther C. Rabanal, Technical Assistant II, Leave Section, Office of the Administrative Services of this Court, to work as an insurance agent after office hours including Saturdays, Sundays and holidays. **Indeed, the entire time of Judiciary officials and employees must be devoted to government service to insure efficient and speedy administration of justice.**

ACCORDING[LY], **all officials and employees of the Judiciary are hereby enjoined from being commissioned as insurance agents or from engaging in any such related activities**, and, to immediately desist therefrom if presently engaged thereat.

It must be emphasized that all court employees, being public servants in the Judiciary, must always act with a high degree of professionalism and responsibility. Their conduct must not only be characterized by propriety and decorum, but must also be in accordance with the law and court regulations. To maintain the people's respect and faith in the Judiciary, they should be upright, fair and honest. Respondent should avoid any act or conduct that tends to diminish public trust and confidence in the courts.

x x x x

The Court found respondent guilty of less serious dishonesty, conduct prejudicial to the best interest of the service, violations of Supreme Court Administrative Circular No. 5-88, and Section 5 of Canon III (Conflict of Interest) and Section 1 of Canon IV (Performance of Duties) of the Code of Conduct for Court Personnel. He was fined in the amount equivalent to his salary for one year in the service to be deducted from whatever benefits he may be entitled to. **[A.M. No. 2014-16-SC, January 15, 2019]**

SOCIAL WORKER

- **Serious dishonesty**

Indeed, while the OMB has no authority to discipline respondent, the latter being a court employee already at the time of the institution of the administrative complaint against her for an act done while she was still employed by the municipality, this Court's disciplinary power is plenary. As we have ruled in the case of *Office of the Court Administrator v. Ampong*,

[T]hat she committed the dishonest act before she joined the RTC does not take her case out of the administrative reach of the Supreme Court.

The bottom line is administrative jurisdiction over a court employee belongs to the Supreme Court, regardless of whether the offense was committed before or after employment in the judiciary.

Hence, in the exercise of our disciplinary power, we now proceed to examine if there is substantial evidence to hold respondent administratively liable. The OCA correctly found that overwhelming evidence supports the finding that respondent was responsible for the receipt of the loan payments and the failure to turn them over to the Municipal Treasurer. These are public funds that respondent failed to account and used for personal consumption.

Jurisprudence states that the “[f]ailure of a public officer to remit funds upon demand by an authorized officer constitutes *prima facie* evidence that the public officer has put such missing funds or property to personal use.” In this case, more than *prima facie* evidence is available in the records. The list of specific names of borrowers and the payment made by each received by the respondent, coupled with the written demands given by the Municipal Treasurer to the respondent to turn over the same which went unheeded, constitute substantial evidence to support the conclusion that respondent is guilty of misappropriating public funds. More importantly, the Agreement/Promissory Note that respondent executed, admitting to the charge and promising to settle her accountability, is more than telling. Noteworthy is the fact that said document was subscribed and sworn to before Mayor C.

Under CSC Resolution No. 06-0538, it is considered serious dishonesty when the “respondent is an accountable officer, [and] the dishonest act directly involves property, accountable forms or money for which such officer is directly accountable and the respondent shows an intent to commit material gain.” Clearly, respondent's act constitutes serious dishonesty for her dishonest act deals with money for which she was accountable, and that the mere failure to account therefor showed an intent to commit material gain. In fact, respondent admitted to have used such public funds on her account for personal consumption.

Respondent's explanation regarding her alleged true intent in executing the Agreement/Promissory Note, *i.e.*, merely to obtain clearance for her transfer to the RTC not to admit accountability, can only be given scant consideration. The terms of the said document are clear: respondent expressly acknowledged receipt of certain payments from SEA-K loan borrowers with an aggregate amount of P107,550, expressly admitted that she did not turn over the same to the Municipal Treasurer but instead used them for personal consumption, acknowledging fault, and that she voluntarily bound herself to pay said amount. We are thus constrained to give more weight to the documentary evidence over respondent's bare allegation. While technical rules of procedure and evidence are not strictly applied in administrative proceedings, such liberal interpretation in administrative cases does not allow unsupported claim to prevail over a written document. “The parole evidence rule forbids any addition to or contradiction of the terms of a written instrument by testimony.”

In another attempt to relieve herself from administrative liability, respondent argue[d] that she cannot be sanctioned anymore as she had already paid or given back to the municipality the misappropriated amount. Such payment was received and acknowledged by Mayor C and thus, the latter relieved her of any responsibility as regards the same. The fact of restitution is of no moment. Inasmuch as an affidavit of desistance or withdrawal of complaint will not divest this Court of its jurisdiction to investigate and discipline its employees, settlement of accountability cannot exculpate respondent from liability. This is because the act of dishonesty was already consummated. The only issue in an administrative case is whether the employees of the judiciary have breached the norms and standards of the courts.

X X X X

In the present case, we consider the following circumstances to mitigate her culpability, to wit: (1) that respondent is a first time offender; (2) respondent acknowledged her fault; and (3) respondent already settled her accountability to the municipality, to mitigate her culpability. Thus, instead of dismissal from service with its corresponding accessory penalties, the Court found the penalty of suspension for three months without pay to be just and reasonable. x x x

The Court found respondent guilty of serious dishonesty. Considering respondent's retirement, respondent was fined in the amount corresponding to three months of her last salary, which shall be deducted from her retirement benefits. **[A.M. No. P-18-3882 (Formerly OCA IPI No. 13-4207-P), December 4, 2018]**

COURT STENOGRAPHER

- **Grave misconduct; Serious dishonesty**

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. It is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior and to constitute an administrative offense, the misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, and not a mere error of judgment, or flagrant disregard of established rule, must be manifest in the former.

On the other hand, dishonesty means "a disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity, lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."

Respondent's actuations clearly demonstrate an intent to violate the law or a persistent disregard of well-known rules. Respondent deceived complainant into believing he had the power to obtain an annulment order in complainant's favor. Receiving money from complainant, on the consideration that he can obtain a favorable decision from the court, falsifying a court decision, and forging the signature of the trial court judge, undeniably constitute grave misconduct and serious dishonesty.

A public servant is expected to exhibit, at all times, the highest degree of honesty and integrity and should be made accountable to all those whom he serves. The same principle applies from the judge to the least and lowest of the judiciary's employees and personnel. Unfortunately, respondent failed to exact the same integrity, propriety, decorum, and honesty. Without a doubt, therefore, respondent patently committed grave misconduct and dishonesty.

X X X X

The Court found respondent guilty of grave misconduct and serious dishonesty. He was dismissed from service, with forfeiture of all benefits, except accrued leave credits, if any, and perpetually disqualified from reemployment in any government instrumentality, including government-owned and controlled corporations, without prejudice to the filing of appropriate criminal and civil cases. ***[A.M. No. P-16-3505 (Formerly OCA IPI No. 13-4134-P), January 22, 2019]***