



PHILJA E-Alerts

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RTC JUDGES

• Gross ignorance of the law

The application for TRO for the second DOJ case was incorporated in the petition for injunction. However, the DOJ was not given any notice of AAA's Urgent Motion for *ex parte* resolution of his TRO application. And despite the parties' agreement in court to submit for resolution said petition for injunction only upon submission of their respective memoranda, respondent judge granted AAA's application for TRO without waiting for the DOJ's memorandum. He never conducted a hearing on either the application for TRO or on the motion for resolution of the TRO. Clearly, this is in violation of the DOJ's constitutional right to be heard and to due process. Respondent judge's wanton disregard of the DOJ's right to due process was repeated when he granted the TRO for the first DOJ case. Although the application for TRO was contained in a verified petition, the DOJ was not properly served with a copy of the petition or the urgent motion for hearing. It was not likewise served with any notice of hearing. And notwithstanding the lack of proof of service, respondent judge still proceeded to hear the application for TRO against the first DOJ case during the hearing on the petition for issuance of a writ of preliminary injunction against the second DOJ case.

Verily, respondent judge manifested serious lack of knowledge and understanding of the basic legal principles on prejudicial question and on jurisdiction in petitions for suspension of criminal action based on prejudicial questions, as prescribed by Sections 6 and 7, Rule 111 of the Revised Rules of Criminal Procedure. The OCA adopted the ruling of the Court of Appeals (17th Division) in CA-G.R. SP No. XXX, dated April 16, 2012, thus:

After a thorough and judicious study of the attendant factual and legal milieu, this Court has come to the conclusion that **no prejudicial question exists that would justify the issuance by public respondent Judge of the writ of preliminary injunction as both cases before the DOJ can proceed independently of that with the Makati RTC.**

This Court agrees with petitioner's contention that no prejudicial question exists with respect to the first DOJ case. A prejudicial question is understood in law as that which must precede the criminal action and which requires a decision before a final judgment can be rendered in the criminal action with which said question is closely connected. The civil action must be instituted prior to the institution of the criminal action. **As it was shown that the recommendation by the NBI for DOJ to investigate AAA and other officials of the GA for estafa was filed ahead of the civil case which Lee filed against HDMF before the Regional Trial Court of Makati City, the doctrine of prejudicial question is untenable in the first DOJ case.**

Moreover, it did not escape this Court's attention that when AAA moved for the issuance of a temporary restraining order to enjoin the DOJ, in the first DOJ case, x x x he did not file a petition for suspension of criminal action by reason of prejudicial question before the panel of DOJ prosecutors, in violation of the provisions of **Section 6, Rule 111 of the Revised Rules of Court x x x. The rule is clear that in filing a petition for**

suspension of criminal action based upon a pendency of a prejudicial action in a civil action, the same should be made before the office of the prosecutor or the court conducting the preliminary investigation. If an information had already been filed before the court for trial, the petition to suspend should be filed before the court where the information was filed.

Considering that no information has yet been filed against AAA and the action that was brought before the court *a quo* was one for injunction and damages, **the public respondent Judge gravely erred when he took cognizance of AAA's prematurely filed petition and granted his prayer for the issuance of a temporary restraining order.**

X X X X

Gross ignorance of the law is the disregard of basic rules and settled jurisprudence. A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence. Though not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, the same applies only in cases within the parameters of tolerable misjudgment. Such, however, is not the case with respondent judge. Where the law is straightforward and the facts so evident, failure to know it or to act as if one does not know it constitutes gross ignorance of the law. A judge is presumed to have acted with regularity and good faith in the performance of judicial functions. But a blatant disregard of the clear and unmistakable provisions of a statute, as well as Supreme Court circulars enjoining their strict compliance, upends this presumption and subjects the magistrate to corresponding administrative sanctions.

X X X X

Finding respondent judge guilty of gross ignorance of the law, the Court ordered him dismissed from the service with forfeiture of retirement benefits, except leave credits, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned and controlled corporations. **[A.M. No. RTJ-14-2369 (Formerly OCA IPI No. 12-3907-RTJ), July 26, 2016; A.M. No. RTJ-14-2372 (Formerly OCA IPI No. 11-3736-RTJ), July 26, 2016]**

CLERKS

• Gross misconduct

Respondent himself admittedly failed to refer the notices for publication to the Office of the Clerk of Court for the conduct of raffle. His failure to do so was in clear violation of A.M. No. 01-1-07-SC in relation to PD No. 1079. He claims that he directly gave notices for publication sans the required raffle, because "other newspapers charge very high amounts and he [took] pity [on] poor litigants." Yet he miserably failed to adduce evidence to support his allegation that there were indigent litigants who had sought his help for referrals to publishers that would charge lower rates than the others. Even then, compassion cannot be a justification for ignoring the law on the publication of judicial notices and the rules on raffle, as there are remedies provided for indigent litigants.

Moreover, his lame excuse of lack of knowledge of the process not only demonstrates his professional incompetence, but also casts serious doubt on his motives. This Court cannot countenance acts that tend to erode the faith of the people in the courts.

X X X X

Respondent clearly violated the rule on the raffle of judicial notices for publication. The importance of the raffle of individual notices, cannot be overemphasized. It is intended to protect the integrity of the process. Under PD No. 1079, the rationale for the conduct of a raffle is to better implement the philosophy behind the publication of notices and announcements and, more important, to prevent cross commercialism and unfair competition among community newspapers, which conditions prove to be inimical to the development of a truly free and responsible press. In turn, the Court issued A.M. No. 01-1-07-SC to ensure uniform compliance with PD No. 1079 to protect the interests of the public in general, and of litigants in particular.

It bears to stress that a disregard of Court directives constitutes grave or serious misconduct.

Furthermore, respondent admits to having contracted loans from AAA "whenever he needed money for his medicines." In support of this allegation, the latter testified that "whenever she collects the amount of P7,000 she would lend respondent P1,500 or P1,000 because she pitied him as he needed money for his medicines." Respondent admits his misconduct, apologizes to the Court, and promises not to repeat the offense in the future.

Notwithstanding respondent's remorseful appeal, the act of contracting a loan from a person having business relations with one's office is classified as a grave offense and is punishable by dismissal from service under Section 46A(9), Rule 10 on the Revised Rules on Administrative Cases in the Civil Service (RRACCS).

X X X X

In sum, we find respondent remiss in his duty as Clerk III or clerk in charge for not abiding by the procedures for the raffle as laid down by law. This offense, coupled with his act of receiving loans from a person (AAA) who had direct dealings or business with the court, constitutes gross misconduct on the part of a court employee.

X X X X

Finding respondent guilty of gross misconduct in his duties as Clerk III of the Regional Trial Court, respondent was ordered dismissed from the service, with forfeiture of all benefits, excluding leave credits, with prejudice to reemployment in any branch or agency of the government including government-owned or controlled corporations. **[A.M. No. P-14-3213 (Formerly A.M. No. 12-5-91-RTC), July 12, 2016]**