



PHILJA E-Alerts

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JUDGES

- **Gross Misconduct**

As regards respondent judge, she contends that respondent B applied for the position of Utility Worker in her court *after* his discharge from probation, but the records show that respondent B accomplished his Personal Data Sheet on June 12, 2008 or more than a month *before* he was discharged from probation on July 18, 2008. When respondent B applied for the position of Utility Worker I in her court, respondent judge knew that he was not yet discharged from probation and yet she recommended respondent B for the position in a recommendation letter dated June 3, 2008, which forms part of the employment record of respondent B in the Court. As the Presiding Judge of the Court, respondent judge should have been circumspect and waited for the final discharge of respondent B before she entertained his application and gave him her favorable recommendation, as it is only upon the final discharge of respondent B from probation that his case is deemed terminated and all his civil rights lost or suspended are restored. Her act violates Canon 2 of the Code of Judicial Conduct, thus:

**CANON 2 – A JUDGE SHOULD AVOID IMPROPRIETY AND
APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES**

RULE 2.01 – A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.

x x x x

RULE 2.03 – A judge shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.

Finding respondent Judge guilty of gross misconduct, she was penalized with a fine of P25,000. [**A.M. No. MTJ-16-1870 (Formerly OCA I.P.I. No. 16-2833-MTJ), June 6, 2017**]

- **Conduct unbecoming of a judge**

x x x After the conduct of hearing and the filing of the parties' respective memoranda, the Investigating Justice submitted his Report and Recommendation. There, he found that respondent judge conducted himself in an unbecoming manner, though not constitutive of grave misconduct, unbecoming of his stature as an esteemed officer of the court:

The circumstances presented above demonstrate how respondent judge conducted himself below the standard of decorum expected of a judge. His actions, words, and line of questioning appear to have been done arrogantly and uncalled for. In the first place, he should not have repeatedly asked complainant police officer A to sit beside him, stand up, and sit again beside him if his purpose was not to embarrass her. His

explanation that it was done by complainant in her own volition is simply unbelievable. Second, he should not have repeatedly asked complainant's name and said her rank "**PO1 ka lang**" because it was offensive and insulting. Third, he should not have held complainant's gun, much less cocked it in public because it was a deviation from protocol and/or from the norm of conduct.

As a magistrate, respondent judge is expected to be an embodiment of professionalism, but the exact opposite was shown towards complainant. Rather than giving respect to a police officer who was on-duty at the time, respondent judge expressed mockery and a condescending attitude, or with conceited show of superiority.

As to the altercation between respondent judge and police officer B, the Investigating Justice held that whatever the reason, respondent judge's manner of dealing with complainant and police officer B was unbecoming of his status as an esteemed officer of the court. Further, he rejected the claim that the complaint was a retaliatory act instigated by Executive Judge, finding the same to be "immaterial if not speculative." x x x

x x x x

Respondent judge's dissatisfaction with the Executive Judge's decision to post police officers in the Hall of Justice does not justify his acts of accosting complainant. While he may be security conscious, checking the booking of firearms is not part of his job. Further, his act of demanding for complainant's firearms and ARE in an aggressive manner effectively harassed the already nervous police officer. If, as respondent judge claims, he strongly believed that the presence of the police officers violates existing rules, the appropriate course of action would have been to take up the issue with the Executive Judge, not the police officers who are merely obeying orders.

We also agree with the Investigating Justice that regardless of the reason or motive behind the altercation, respondent judge, being a magistrate, should have observed judicial temperament which requires him to be always temperate, patient, and courteous, both in conduct and in language.

Finding him guilty of conduct unbecoming of a judge, respondent judge was fined in the amount P10,000 with a stern warning that a repetition of the same or any similar act will be dealt with more severely. **[A.M. No. RTJ-16-2450 (Formerly A.M. No. 14-4324-RTJ), June 23, 2017]**

CLERKS OF COURT

- **Gross neglect of duty**

As regards respondent clerk of court, we agree with the Office of the Court Administrator that she is liable for gross neglect of duty. By her own admission, she failed to refer the case to the presiding judge for resolution of the pending incidents "*even with the intermittent follow-ups of the x x x parties.*" She likewise failed to report to the presiding judge the damage in the records, thus, preventing the reconstitution of the records at the earliest time possible. As the administrative assistant of the presiding judge, it was respondent's duty to diligently supervise and manage court dockets and records, and to ensure that the records were complete and intact. She played a key role in the complement of the court and could not be permitted to slacken in her job.

This Court has held:

Branch clerks of court must realize that their administrative functions are vital to the prompt and proper administration of justice. They are charged with the efficient

recording, filing and management of court records, besides having administrative supervision over court personnel. They play a key role in the complement of the court and cannot be permitted to slacken on their jobs under one pretext or another. They must be assiduous in performing their official duties and in supervising and managing court dockets and records. On their shoulders, as much as those of judges, rest the responsibility of closely following development of cases, such that delay in the disposition of cases is kept to a minimum. (citations omitted)

The presiding judge further pointed out that respondent had not improved despite being repeatedly called to task for her incompetence and negligence. In fact, the presiding judge added that while respondent held the position of branch clerk of court, her functions were delegated to other court personnel because of her poor performance. "More often than not, she [could] be seen either reading a novel, eating, or staring at the ceiling."

Despite these serious charges of incompetence and unsatisfactory performance against her, the only explanation that respondent could offer was the high volume of caseload in the court. The volume of work, however, cannot be an excuse for her being remiss in the performance of her functions. By her assumption of the position of clerk of court, it is understood that she was ready and competent to do her job with utmost devotion and efficiency. Respondent's apathy towards her duties and responsibilities as Branch Clerk of Court is inimical to the prompt and proper administration of justice.

x x x Gross neglect of duty is such neglect which, "from the gravity of the case or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare." x x x

x x x x

Respondent's neglect in this case is gross, bordering on utter carelessness or indifference, to the prejudice of the public she was duty-bound to serve. Her inattentiveness and lack of any effort to even look for the case records, despite several follow-ups from the complainant, caused unnecessary and undue delay in the progress of the ejectment case.

The Office of the Court Administrator recommended a penalty of suspension of six months in view of respondent's 20 years in government service. We disagree with the penalty.

This is not the first offense of respondent clerk of court. As reported by the Office of the Court Administrator, at least two administrative cases have been decided against her. x x x

Respondent clerk of court was found guilty of gross neglect of duty and was ordered dismissed from the service. All her benefits, except accrued leave credits, if any, were declared forfeited, with prejudice to reemployment in any branch or instrumentality of the government, including government-owned and controlled corporations and financial institutions. **[A.M. No. MTJ-17-1894 (Formerly OCA IPI No. 11-2355-MTJ), April 4, 2017]**

- **Simple neglect of duty**

Similarly, respondent clerk of court should be held administratively liable for her failure to take a more decisive action against respondent sheriff's unwarranted refusal to enforce the MCTC Decision in favor of complainants. Although she may have advised and/or reminded him with respect to the performance of his duties, her apparently lackadaisical attitude in this matter evinces a similar failure on her part to perform her duty of effectively supervising him. Moreover, instead of taking respondent sheriff's stance that a resurvey should be conducted on the subject property based on his groundless belief that a portion thereof should be excluded

from the judgment, she should have firmly reminded him of his mandated ministerial task of implementing writs promptly and expeditiously, and that he had no discretion with regard to the merits of the judgment. Respondent clerk of court's failure in this respect renders her administratively liable for simple neglect of duty.

Simple neglect of duty is defined as the failure of an employee to give attention to a task expected of him and signifies a disregard of a duty resulting from carelessness or indifference.
x x x.

Finding respondent guilty of simple neglect of duty, she was fined in the amount of P10,000 with a stern warning that a repetition of the same or any similar act shall be dealt with more severely. **[A.M. No. P-17-3676 (Formerly OCA IPI No. 12-3985-P), June 5, 2017]**

COURT STENOGRAPHER

- **Simple neglect of duty**

The duties of a Stenographer are clearly embodied under Section 17, Rule 136 of the Rules of Court, to wit:

SEC. 17. Stenographer. – It shall be the duty of the stenographer who has attended a session of a court either in the morning or in the afternoon, to deliver to the clerk of court, immediately at the close of such morning or afternoon session, all the notes he has taken, to be attached to the record of the case; and it shall likewise be the duty of the clerk to demand that the stenographer comply with said duty. The clerk of court shall stamp the date on which such notes are received by him. When such notes are transcribed the transcript shall be delivered to the clerk, duly initialed on each page thereof, to be attached to the record of the case. (Emphasis supplied)

x x x x

Under the afore-cited provision, stenographers are enjoined to immediately deliver to the clerk of court all the notes taken during the session of the court, which are to be attached to the record of the case. In this regard, Supreme Court Administrative Circular No. 24-90 requires stenographers to transcribe their notes and attach the transcripts to the record of the case within a period of 20 days from the time they were taken, thus:

2. (a) All stenographers are required to transcribe all stenographic notes and to attach the transcripts to the record of the case not later than 20 days from the time the notes are taken.

In the case at bar, it is undisputed that respondent failed to comply with the 20 day period in the transcription of the stenographic notes for the Pre-Trial in Criminal Case No. 14405-10, and hence, guilty of violating Supreme Court Administrative Circular No. 24-90. The heavy work load proffered by respondent in her attempt to be exonerated from liability is not an adequate excuse for her to be remiss in the performance of her duties. To allow otherwise would permit every government employee charged with negligence and dereliction of duty to resort to the same convenient excuse to evade punishment.

It bears stressing that a court stenographer performs a function essential to the prompt and fair administration of justice. The conduct of every person connected with the administration of justice, from the presiding judge to the lowliest clerk, is circumscribed with a heavy burden of responsibility. All public officers are accountable to the people at all time and must perform their duties and responsibilities with utmost efficiency and competence. As administration of justice is a sacred task, the Court condemns any omission or act which would

erode public faith in the judiciary. A public office is a public trust, and a court stenographer, without doubt, violates this trust by failing to fulfill his duties.

While respondent admitted to incurring delay in the performance of her duties, records show that she nonetheless completed the same in time for the calendar of cases. Under the circumstances, her failure to timely transcribe the stenographic notes was correctly found by the Executive Judge to constitute simple neglect of duty, which is defined as a disregard of, or a failure to give proper attention to a task expected of an employee, simple neglect of duty signifies carelessness or indifference.

For simple neglect of duty, respondent stenographer was meted the penalty of suspension for three months without pay with a stern warning that a repetition of the same or similar offense shall be dealt with more severely. **[A.M. No. P-17-3709 (Formerly OCA IPI No. 13-4058-P), June 19, 2017]**

SHERIFF

- **Dereliction of duty; grave misconduct; dishonesty; conduct prejudicial to the best interest of the service**

Engraved in jurisprudence is the rule that the sheriff's duty in the execution of a writ is *purely ministerial*. Once the writ is placed in his or her hands, a sheriff is obligated to execute the order of the court strictly to the letter and with reasonable promptness, taking heed of the prescribed period required by the Rules.

In this case, respondent sheriff's mandated task was to implement the MCTC's Decision in favor of complainants. However, instead of doing so, he substituted his own judgment and acted on his own belief that a specific portion of the subject property should be excluded from the execution. He refused to demolish the house of defendant and vehemently insisted that the subject property must first be resurveyed, unduly causing delay in the implementation of the MCTC Decision, to the prejudice of the prevailing parties, *i.e.*, the complainants.

Respondent's failure to enforce the alias writ of execution and writ of demolition clearly renders him liable for dereliction of duty. He overstepped his authority and conveniently overlooked the ministerial nature of a sheriff's duty in the execution of judgments. Instead of enforcing the MCTC's orders, he exercised his discretion and supplanted his own judgment for that of the court's. To reiterate, the duty of a sheriff to execute a writ is purely ministerial, and he has no discretion to delay the execution thereof. Absent any instruction by a court to the contrary, he is mandated to proceed with reasonable celerity and promptness in implementing the writ. If for any reason, he cannot do so in part or in full, his duty is outlined in Section 14, Rule 39 of the Rules of Court which, unfortunately, he likewise failed to observe.

As regards the amount of P15,000 that respondent had admittedly received from complainants as additional expenses for the cancelled demolition and which he claimed had been distributed among the Mangyans who voluntarily vacated the premises, the Court concurs with the OCA's finding that the said money was beyond the ambit of allowable fees that a sheriff may receive in the implementation of writs. Moreover, respondent failed to observe the following procedure laid down in Section 10, Rule 141 of the Rules of Court with respect to sheriff's expenses: (1) the sheriff is required to secure the court's prior approval of the estimated expenses and fees needed to implement the court process; (2) the requesting party shall deposit such amount with the Clerk of Court and *Ex Officio* Sheriff, who shall disburse the same to the executing sheriff subject to his liquidation within the same period for rendering a return on the process or writ; and (3) any unspent amount shall be refunded to the requesting party who made the deposit.

Indisputably, the sum of P15,000 received by respondent without the approval of the court cannot be considered as lawful sheriff's fees. As such, his receipt thereof is tantamount to an unlawful exaction for which he must be held liable for grave misconduct and dishonesty. A sheriff's conduct of unilaterally demanding sums of money from a party-litigant purportedly to defray expenses of execution, without obtaining the approval of the trial court for such supposed expense and without rendering an accounting constitutes dishonesty and extortion and falls short of the required standards of public service. Such conduct threatens the very existence of the system of administration of justice.

For dereliction of duty, grave misconduct, dishonesty, conduct prejudicial to the best interest of the service, and in view of his previous dismissal from the service, respondent sheriff was meted the penalty of P40,000 to be deducted from the monetary value of his accumulated leave credits, if sufficient; otherwise, he is ordered to pay the amount directly to the Court.

[A.M. No. P-17-3676 (Formerly OCA IPI No. 12-3985-P), June 5, 2017]

PROCESS SERVER

- **Grave Misconduct**

The act of respondent process server in demanding and receiving money from complainant who had a pending case before the courts constituted serious misconduct in office. The transcript of stenographic notes (*TSN*), taken on October 23, 2013 during the clarificatory meeting before the investigating judge, clearly demonstrated how respondent fell short of the standards required of him as an employee of the court. In the said meeting, it was shown that he went to complainant, induced him to plead guilty to a lesser offense, and demanded the amount of P10,000 with the assurance that he would facilitate the approval of his plea. x x x

x x x x

The evidence on record undeniably shows that respondent solicited and received money from complainant. Respondent convinced complainant to plead guilty to a lesser offense and assured him that he could facilitate the approval of his plea in exchange of a sum of money. He gave the impression that he had the authority to influence the court on the outcome of the case. He then updated complainant on his case and kept on following up through text messages and phone calls. In the meeting called by investigating judge, complainant clearly and concisely narrated how respondent kept in touch with him and exacted money from him with a promise of a favorable result on his case. Complainant was direct and straightforward in his assertion that respondent went to him and threatened him that he would be facing a more serious charge unless he pleaded guilty to a lesser offense. For fear that he would be convicted of a more serious offense, complainant agreed to the offer and initially gave P3,000. Respondent accepted the P3,000 and made him promise to pay the remaining P7,000 after a favorable outcome of the case.

Respondent's alibi that the money he received would be used for the expenses that would be incurred in the filing of complainant's application for probation was a ludicrous defense. In the case of *Villahermosa, Sr. v. Sarcia*, the Court explicitly stated that "[t]he sole act of receiving money from litigants, whatever the reason may be, is antithesis to being a court employee." x x x

For grave misconduct, respondent process server was meted the penalty of dismissal from the service with forfeiture of all benefits except accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government including government-

owned or controlled corporation. **[A.M. No. P-16-3614 (Formerly OCA IPI No. 16-4630-P), June 20, 2017]**

UTILITY WORKER

- **Serious dishonesty**

However, the fact that respondent utility worker was still a probationer when he applied for the position of Utility Worker and accomplished his Personal Data Sheet did not disqualify him from applying for the position. In **Moreno v. Commission on Elections**, the Court clarified that the grant of probation suspends the imposition of the principal penalty of imprisonment as well as the accessory penalties of suspension from public office and from the right to follow a profession or calling, and that of perpetual special disqualification from the right of suffrage.

x x x

x x x x

From the foregoing jurisprudence, it is clear that when respondent was granted probation, not only was the imposition of the principal penalty of imprisonment suspended, but the accessory penalty of suspension from the right to follow a profession or calling was also suspended. Hence, respondent retained the right to seek employment and was, therefore, not disqualified to apply for the position of utility worker in the court when he was still a probationer. However, respondent had the obligation to disclose the fact that he had been formally charged and convicted of an offense in his Personal Data Sheet and cannot justify his non-disclosure of such fact by invoking the confidentiality of his records under the Probation Law.

Under Section 17 of the Probation Law, the confidentiality of records of a probationer refers to the investigation report and supervision history of a probationer taken under the said law, which records shall not be disclosed to anyone other than the Probation Administration or the court concerned. However, the Probation Administration and the court concerned have the discretion to allow disclosure of the confidential records to specific persons and the government office/agency stated in the Probation Law. The confidentiality of the said records is different from respondent's obligation to answer truthfully the questions in his Personal Data Sheet, as the accomplishment of the Personal Data Sheet is a requirement under the Civil Service Rules and Regulations in connection with employment in the government. The Personal Data Sheet is the repository of all information about any government employee and official regarding his personal background, qualification, and eligibility. Respondent, therefore, had the obligation to reveal the fact that he had been formally charged and convicted of a criminal offense to enable the Selection and Promotion Board for Lower Courts to correctly determine his qualification for the position applied for. The Office of the Court Administrator aptly stated that by respondent's false statement in his Personal Data Sheet making it appear that he had a spotless record, he gained unwarranted advantage over other qualified individuals, especially that he was also recommended by respondent Judge for the position.

The falsification in respondent utility worker's Personal Data Sheet is a dishonest act related to his employment. Dishonesty is the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive or betray and an intention to violate the truth.

For serious dishonesty, respondent utility worker was meted the penalty of suspension for six months without pay, with a stern warning that the commission of a similar offense shall be dealt with more severely. **[A.M. No. MTJ-16-1870 (Formerly OCA IPI No. 16-2833-MTJ), June 6, 2017]**