



Supreme Court of the Philippines  
Philippine Judicial Academy



*PHILJA Fax/Electronic Alerts*

Issue 07-03  
March 2007

**EN BANC**

**A.M. No. 99-10-05-O**

**RE: PROCEDURE IN EXTRAJUDICIAL  
OR JUDICIAL FORECLOSURE  
OF REAL ESTATE MORTGAGES**

**RESOLUTION**

Acting on the recommendation of the Committee on Revision of the Rules of Court, the Court **RESOLVED** TO ADOPT THE FOLLOWING ADDITIONAL RULES WITH RESPECT TO Extrajudicial or Judicial Foreclosure of Real Estate Mortgages:

(1) no temporary restraining order or writ of preliminary injunction against the extrajudicial foreclosure of real estate mortgage shall be issued on the allegation that the loan secured by the mortgage has been paid or is not delinquent unless the application is verified and supported by evidence of payment.

(2) No temporary restraining order or writ of preliminary injunction against the extrajudicial foreclosure of real estate mortgage shall be issued on the allegation that the interest on the loan is unconscionable, unless the debtor pays the mortgagee at least twelve percent per annum interest on the principal obligation as stated in the application for foreclosure sale, which shall be updated monthly while the case is pending.

(3) Where a writ of preliminary injunction has been issued against a foreclosure of mortgage, the disposition of the case shall be speedily resolved. To this end, the court concerned shall submit to the Supreme Court, through the Office of the Court Administrator, quarterly reports on the progress of the cases involving ten million pesos and above.

(4) All requirements and restrictions prescribed for the issuance of a temporary restraining order/writ of preliminary injunction, such as the posting of a bond, which shall be equal to the amount of the outstanding debt, and the time limitation for its effectivity, shall apply as well to a *status quo* order.

Upon effectivity of these additional rules, all rules resolutions, orders and circulars of this Court, which are inconsistent therewith, are hereby repealed or modified accordingly.

These additional Rules in the Procedure in Extrajudicial or Judicial Foreclosure of the Real Estate Mortgages shall take effect on March 10, 2007 following their publication in a newspaper of general circulation not later than February 28, 2007.

February 20, 2007.

**(Sgd.) REYNATO S. PUNO**  
Chief Justice

**(Sgd.) LEONARDO A. QUISUMBING**  
Associate Justice

**(Sgd.) CONSUELO YNARES-SANTIAGO**  
Associate Justice

**(Sgd.) ANGELINA SANDOVAL-GUTIERREZ**  
Associate Justice

**(Sgd.) ANTONIO T. CARPIO**  
Associate Justice

**(Sgd.) MA. ALICIA AUSTRIA-MARTINEZ**  
Associate Justice

**(Sgd.) RENATO C. CORONA**  
Associate Justice

**(Sgd.) CONCHITA CARPIO MORALES**  
Associate Justice

**(Sgd.) ROMEO J. CALLEJO, Sr.**  
Associate Justice

**(Sgd.)ADOLFO S. AZCUNA**  
Associate Justice

**(Sgd.)DANTE O TINGA**  
Associate Justice

**(Sgd.)MINITA V. CHICO-NAZARIO**  
Associate Justice

**(Sgd.)CANCIO C. GARCIA**  
Associate Justice

**(Sgd.)PRESBITERO J. VELASCO, Jr.**  
Associate Justice

**(Sgd.)ANTONIO EDUARDO B. NACHURA**  
Associate Justice

#### **Judges: Gross Ignorance of the Law**

Settled is the rule that the filing of an administrative complaint is not the proper remedy for the correction of action of a judge perceived to have gone beyond the norms of propriety, where a sufficient judicial remedy exists. The law provides ample judicial remedies against errors or irregularities committed by the trial court in the exercise of its jurisdiction – i.e. (ordinary remedies) motion for reconsideration, motion for new trial, and appeal; (extraordinary remedies) special civil actions of certiorari, prohibition or mandamus, or a motion for inhibition, or a petition for change of venue, as the case may be.

The established policy is that disciplinary proceedings against judges are not complementary or suppletory of, nor a substitute for these judicial remedies. The pendency of the appeal is sufficient cause for the dismissal of the administrative complaint against respondent judge. The rationale is that if subsequent developments prove respondent judge's challenged act to be correct, as in the instant case where the Court of Appeals affirmed " *the assailed Default Judgment. Joint Resolution, and Order of the lower court*". There would be no occasion to proceed against him after all.

The Court will not shirk from its responsibility of imposing discipline upon erring members of the bench. At the same time, however, the Court should not hesitate to shield them from unfounded suits that only serve to disrupt rather than promote the orderly administration of justice.

**ACCORDINGLY**, the administrative complaint against the respondent judge was **DISMISSED**. **(A.M. OCA IPI No. 06-2456-RTJ, January 29, 2007)**

#### **Judges: Ignorance of the Law, Bias and partiality, and violation of RA 8291**

For a judge to be administratively liable for ignorance of the law, the acts complained of must be gross and patent. To constitute gross ignorance of the law, such acts must not only be contrary to existing law and jurisprudence but also motivated by bad faith, fraud, malice or dishonesty.

In the same vein, we hold that respondent judge was neither biased nor partial against petitioner when he issued the alias writ of execution. Petitioner's assertion that respondent judge precipitately issued the alias writ is not supported by the records.

Assuming *et gratia argumenti* that respondent judge erred in issuing the alias writ, his act would still not merit administrative sanction absent malice or bad faith. Bad faith does not simply connote poor or flawed judgment; it imports a dishonest purpose, moral obliquity or conscious doing of a wrong.

Furthermore, for allegations of bias and partiality to stand, petitioner should have demonstrated that respondent judge's decisions and orders came from extrajudicial sources or from some bases other than what he had learned from his study of the case. Decisions formed in the course of judicial proceedings, although they appear erroneous, are not necessarily partial as long as they are culled from the arguments and evidence of the parties. The party who alleges partiality must prove it with clear and convincing evidence. Petitioner failed in that aspect.

The complaint for ignorance of the law, bias and partiality, and violation of RA 8291 was **DISMISSED**. **(A.M. No. RTJ-04-1831, February 2, 2007)**

#### **Sheriffs: Dereliction of Duty and Abuse of Authority; Simple Neglect of Duty**

This court has pointed out, time and again, the heavy burden and responsibility of court personnel are saddled with in view of their exalted positions as keepers of the public faith. Any impression of impropriety, misdeed or negligence in the performance of official functions must therefore be avoided. Court personnel should be examples of responsibility, competence and efficiency and must discharge their duties with due care and utmost diligence. Any conduct, act or omission on the part of those who would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary shall not be countenanced.

Sheriffs play an important role in the administration of justice and as agents of the law high standards are expected of them. Being ranking officers of the court and agents of the law, they must discharge their duties

with great care and diligence. It cannot be overstressed that the image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who works there, from the judge to the lowest employee. As such, the Court will not tolerate or condone any conduct of judicial agents or employees which would tend to or actually diminish the faith of the people in the judiciary.

Settled is the rule that the duty of a sheriff is purely ministerial; he is to execute the order of the court strictly to the letter. His functions are not discretionary. In this case, respondent cannot be faulted for not conducting the auction sale as he is without discretion absent any court order requiring him to do so.

Accordingly, the Court found the respondent **GUILTY** of simple neglect of duty and was **FINED** in the amount of Five Thousand Pesos P5,000.00 with the **STERN WARNING** that a repetition of the same or similar acts in the future shall be dealt with more severely. **(A.M. No. P-02-1655, February 6, 2007)**

#### **Clerk of Court: Dishonesty, Misappropriation and Acts Unbecoming**

A Clerk of Court is an essential and a ranking officer of our judicial system who performs delicate administrative functions vital to the prompt and proper administration of justice.

Time and again, we have reminded court personnel tasked with collections of court funds, such as clerks of courts and cash clerks, to deposit immediately with authorized government depositories the various funds they have collected because they are not authorized to keep funds in their custody. Failure 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.

A public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism, justice, and lead modest lives.

The Court found herein respondent guilty of dishonesty and conduct unbecoming of a clerk of court. Respondent was **SUSPENDED** for **ONE YEAR WITHOUT PAY** with **STERN WARNING** that a repetition of the same or similar act shall be dealt with more severely. **(A.M. No. P-06-2276, February 5, 2007)**

#### **Utility Worker: Dishonesty and Grave misconduct**

This Court cannot let such a brazen and outrageous betrayal of public trust go unsanctioned.

The Court cannot overemphasize the need for honesty and integrity on the part of all those who are in the service of the judiciary. As reiterated in the "Whereas: clauses of the Code of Conduct for Court Personnel, "in performing their duties and responsibilities, court personnel serve as sentinels of justice [;] and any act of impropriety on their part immeasurably affects the honor and dignity of the Judiciary and the people's confidence in it."

The image of the court as a bastion of justice depends to a large extent on the personal and official conduct of its employees. Thus, from the judge to the lowest clerk, judicial personnel have the sacred duty to maintain the good name of the Judiciary.

All employees in the judiciary should be examples of responsibility, competence and efficiency. As officers of the court and agents of the law, they must discharge their duties with due care and utmost diligence. Any conduct they exhibit tending to diminish the faith of the people in the judiciary will not be condoned.

Respondents were found **GUILTY OF GRAVE MISCONDUCT** and were meted the penalty of **DISMISSAL**. **(A.M. No. 04-5-20-SC, March 14, 2007)**

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