



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.

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Issue 17-3

March 2017

JUDGES

• Sexual Harassment

Despite his protestations, the charge that respondent judge made a drawing of a vagina and a penis, and thereafter showed it to A, a utility clerk, was corroborated by the clerk B, a disinterested witness, who categorically declared that it was respondent judge who made the drawing, and affirmed that it was he (B) who crumpled it. The act was enough to create an intimidating, hostile, or offensive environment for A such that all subsequent interaction with respondent judge became unwelcome on her part. In fact, the substantial evidence on record showed that A became afraid of respondent judge and started to avoid him.

The distasteful act by respondent judge of making a drawing of a vagina and a penis, and thereafter showing it to an employee of the court of which he is an officer constitutes sexual harassment. It is an act that constitutes a physical behavior of a sexual nature; a gesture with lewd insinuation. To the Court's mind, respondent judge deliberately utilized this form of expression, *i.e.*, drawing, to maliciously convey to A his sexual desires over her; hence, his conduct cannot be classified as a mere display of sexually offensive pictures, materials or graffiti under Section 53(C)(4), Rule X of CSC Resolution No. 01-0940, such as one who is caught watching or reading pornographic materials. Rather, respondent judge's behavior should be classified as an analogous case (Section 53[B][5]) of verbal abuse with sexual overtones under Section 53(B)(4) of the same issuance, which, thus, qualifies the same as a less grave offense.

x x x

Having been found guilty of sexual harassment, respondent judge was ordered suspended for six months without pay, with a stern warning that a repetition of the same or any similar act will be dealt with more severely. [**A.M. No. SCC-11-17 (Formerly OCA IPI No. 10-34-SCC), February 21, 2017**]

• Gross ignorance of the law

The evidence on record shows that respondent judge employed procedural shortcuts and disregarded relevant rules of procedure in granting the Petition for Divorce. These, in turn, resulted in the grant of a fraudulent Petition for Divorce.

First. There was no service of summons and presentation of evidence *ex parte* as required under the Special Rules.

To achieve an expedited and inexpensive determination of cases under the Muslim Code, the Court promulgated the *Ijra-At Al Mahakim Al Shari'a* or Special Rules of Procedure in Shari'a Courts. Section 3 of the Special Rules requires the service of summons with the copy of the complaint upon the defendant. The defendant shall thereafter file an answer within 10 days from receipt of summons. Should the defendant fail to answer the complaint within 10 days

from service, the court shall proceed to receive the evidence *ex parte* upon which the judgment shall be rendered.

Apart from respondent judge's bare claim, there is nothing on record to show that summons was served on defendant A. Thus, and as can be expected, no answer was forthcoming since the defendant did not even know of the existence of the Petition for Divorce.

Even assuming that summons *was* served, defendant's failure to file an answer did not justify the outright grant of the petition. Section 5 of the Special Rules requires the reception of evidence *ex parte* upon which the judgment shall be rendered. Here, no such presentation of evidence appears to have been conducted. The order granting the petition was therefore issued without basis in fact and in law.

Second. Respondent judge failed to apply the Judicial Affidavit Rule which was well in effect at the time the petition was allegedly filed on September 13, 2013.

By its explicit provision, the Judicial Affidavit Rule applies to all lower courts, including the Shari'a Circuit Courts. x x x

x x x x

In this case, respondent judge should have required complainant to file her judicial affidavit in lieu of direct examination during the presentation of evidence *ex parte*. This, in turn, could have been the basis of his clarificatory questions, if any, to determine the veracity of petitioner's claim. Indeed, as the investigating judge contends, the erroneous grant of the fraudulent divorce petition could have been averted had respondent judge complied with the Special Rules and the Judicial Affidavit Rule.

Finding respondent guilty of gross ignorance of the law, the Court ordered him suspended from office for six months without salary and benefits with a stern warning that a repetition of the same or similar acts will be dealt with more severely. [*A.M. No. SCC-16-23-J, February 22, 2017*]

CLERKS OF COURT

- **Violation of reasonable office rules and regulations; frequent unauthorized absences, loafing or frequent unauthorized absences from duty during regular office hours**

The OCA correctly found respondent clerk of court to have violated reasonable office rules and regulations when he refused to leave his bundy card or DTR on the designated rack despite orders from the Presiding Judge. Records show that respondent himself admitted that he did not leave his bundy card/DTR on the designated bundy card rack for the months of January and February 2010 (not the months complained of) for reasons of convenience, and from the months of April to September 2010 for fear of getting lost. As aptly observed by the OCA, "[t]he reason he provided is not convincing enough and raises doubt as to its truthfulness since other court employees are able to comply and leave their bundy cards on the racks specifically provided therefor."

x x x x

x x x the failure of respondent to specify the number of working days of leave applied for and the inclusive dates in his leave application filed on April 12, 2010, which merely indicated the type of leave as "SPL [special privilege leave] & VL" (vacation leave), is not a mere formal defect that may be remedied by the expedience of subsequently stating the specific

dates of leave. It must be pointed out that leave of absence for any reason other than illness of an official or employee or of any member of his immediate family must be contingent upon the needs of the service. Hence, **the grant of vacation leave shall be at the discretion of the head of department/agency.**

In this case, the Presiding Judge as the approving authority cannot properly act on respondent's leave application because it was not filled-up completely, rendering the latter's immediately succeeding and continuous absence on the working days on April 19 to 23 and 26 to 30, 2010, and May 4 to 7, 2010 as unauthorized. x x x

Records also show that respondent further incurred numerous unauthorized monthly absences from May to September 2010, totalling 44 whole days and 12 half-days. Notably, in letters dated July 30, 2010 and October 27, 2010, respondent admitted that he did not submit his Bundy cards from April 2010, and his leave applications for the Presiding Judge's signature.

While the mere failure to file a leave of absence in advance does not *ipso facto* render an employee administratively liable, **the unauthorized leave of absence becomes punishable if the absence is frequent or habitual.** An officer or employee in the civil service shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the Leave law at least three months in a semester or at least three consecutive months during the year.

In this case, respondent incurred consecutive unauthorized monthly absences of more than 2.5 days from April to September 2010, rendering him administratively liable for the offense of **frequent unauthorized absences.** Moreover, contrary to the OCA's finding, the Court finds respondent guilty of loafing or frequent unauthorized absences from duty during regular hours for more than once. It is imperative that as Clerk of Court, respondent should always be at his station during office hours. However, records show that he incurred 12 half-day absences from May to September 2010, which were undisputedly without previous notice to the Presiding Judge.

Section 1, Canon IV of the Code of Conduct for Court Personnel mandates that court personnel shall commit themselves *exclusively* to the business and responsibilities of their office during working hours. Court personnel should strictly observe the prescribed office hours and the efficient use of every moment thereof to inspire public respect for the justice system. Thus, court officials and employees are at all times behooved to *strictly* observe official time because the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the last and lowest of its employees. Loafing results in inefficiency and non-performance of duty, and adversely affects the prompt delivery of justice.

For violation of reasonable office rules, respondent was reprimanded and sternly warned that the commission of the same or any similar act shall be dealt with more severely. For frequent unauthorized absences, loafing or frequent unauthorized absences from duty during regular office hours, respondent was suspended for 6 months and 1 day without pay with a stern warning that similar acts would be dealt with more severely. **[A.M. No. SCC-10-15-P (Formerly OCA IPI No. 06-3-03-SCC), February 21, 2017]**

- **Willful failure to pay just debts; conduct prejudicial to the best interest of the service**

Executive Order No. (EO) 292, otherwise known as the Administrative Code of 1987, provides that a public employee's failure to pay just debts is a ground for disciplinary action. Section 22, Rule XIV of the Rules Implementing Book V of EO No. 292, as modified by Section 46, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), defines "just debts" as

those: (a) claims adjudicated by a court of law; or (b) claims the existence and justness of which are admitted by the debtor.

Classified as a light offense, willful failure to pay just debts is punishable by reprimand for the first offense, suspension of one to 30 days for the second offense, and dismissal from the service for the third offense.

Record shows that respondent clerk of court admitted the existence of her debt to the complainant spouses. First, she admitted in her Comment that she owed sums of money to the spouses, but she is only contesting the amount of the debt. She also executed an Undertaking acknowledging the debt. The record likewise shows that respondent did not exert any sincere effort to settle her obligation to the spouses. As the OCA correctly observed, respondent allowed her obligation to remain unpaid from November 2010 to May 2013. The total amount of P93,000 she paid from December 2010 to February 2013 was indeed paltry as to provide a significant dent on her million-peso obligation. As the OCA also aptly observed, this is not the first instance that she faces a complaint for not paying her debts.

x x x x

Public employees may likewise be penalized for conduct prejudicial to the best interest of the service. Acts may constitute conduct prejudicial to the best interest of the service as long as they tarnish the image and integrity of his/her public office. Such violation is classified as a grave offense, punishable by suspension of six months and one day to one year for the first offense and dismissal from the service for the second offense.

We agree with the OCA that respondent's repeated acts of contracting loans and paying them with worthless checks reflect bad faith on her part. We must note that respondent, as clerk of court, is not a mere public employee. She is both an employee of the Court and a member of the Bar. Thus, she is expected to meet a high standard of uprightness and propriety. By deliberately failing to meet her contractual obligations, she fell short of such standard.

We likewise agree that respondent holds a position of trust and confidence with concomitant duties and responsibilities that require from its holder competence, honesty, and integrity so essential for the proper and effective administration of justice. Her actuation, although arising from a private transaction, tarnished the image of the Judiciary.

Respondent was found guilty of willful failure to pay just debts and conduct prejudicial to the best interest of the service, for which she was ordered suspended for a period of one year, and sternly warned that commission of the same or similar acts in the future shall be dealt with more severely. **[A.M. No. P-15-3315 (Formerly OCA IPI No. 12-3978-P), February 6, 2017]**

COURT EMPLOYEES

- **Grave Misconduct; simple neglect of duty**

Corruption, as an element of grave misconduct, is present when an official or fiduciary person unlawfully and wrongfully uses his station or character *to procure some benefit* for himself or for another person, contrary to duty and the rights of others.

For misconduct to warrant removal from office of an officer, the act should directly relate to or be connected with the performance of the official functions and duties of a public officer amounting either to maladministration or to willful, intentional neglect and failure to discharge the duties of the office.

In the present case, it is clear that respondents took advantage of their positions as casual utility workers assigned as the caretakers of Cottages J and F, respectively, in order to engage in treasure-hunting activities in search for hidden Japanese treasures within court premises. These actions could only have been perpetrated for their own personal enrichment, considering that such activities were covertly carried out without the knowledge and permission of the Court.

Note, too, that when respondents engaged in these treasure-hunting activities, they violated Section 1 of the Code of Conduct for Court Personnel which mandates court personnel to perform their official duties properly and with diligence at all times and to commit themselves exclusively to the business and responsibilities of their office during working hours.

Consequently, we hold respondents administratively liable for grave misconduct for participating in illegal and unauthorized digging and excavation activities within the court premises, and for conduct prejudicial to the best interest of the service, as their actions unquestionably tarnish the image and integrity of his/her public office.

x x x x

As for the administrative liability of respondent supervisor, we find him guilty of simple neglect of duty for his failure to act appropriately upon having been informed about the unauthorized excavation activities near Cottage J. It is simply inexcusable that upon learning of the existence of the digging site near the cottage, he directed the site's immediate closure *without initiating an investigation on the matter* to determine whether those involved in the excavation activities should be administratively sanctioned, or at the very least, *without reporting the incident to higher management for proper action*.

Having been found guilty of grave misconduct, respondent utility workers' casual employment was ordered terminated effective immediately, with forfeiture of all benefits, except accrued leave benefits and with prejudice to reinstatement or reappointment to any public office, including government-owned and controlled corporations.

The respondent supervisor on the other hand was found guilty of simple neglect of duty for which he was ordered suspended from office for two years without pay, with a final warning that a repetition of the same or similar acts will be dealt with more seriously. **[A.M. No. 2016-03-SC, February 21, 2017]**