



PHILJA E-Alerts

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JUDGES

- **Grave Misconduct; Conduct Prejudicial to the Best Interest of Service**

We hold and find respondent judge guilty of grave misconduct and conduct prejudicial to the best interest of the service for solemnizing the marriage of the complainant and her husband outside his territorial jurisdiction, and in the office premises of the DLS Tour and Travel in Davao City.

Such place of solemnization was a blatant violation of Article 7 of the *Family Code*, which pertinently provides:

ART. 7. Marriage may be solemnized by:

(1) Any incumbent member of the judiciary within the court's jurisdiction;

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Furthermore, in solemnizing the marriage of the complainant and her husband in the office premises of the DLS Tour and Travel in Davao City despite the foregoing provision of the *Family Code*, respondent judge flagrantly violated the spirit of the law. Article 8 of the *Family Code* disallows solemnizing the marriage in a venue other than the judge's courtroom or chambers, *viz.*:

ART. 8. The marriage shall be solemnized publicly in the chambers of the judge or in open court, in the church, chapel or temple, or in the office the consul-general, consul or vice-consul, as the case may be, and not elsewhere, except in cases of marriages contracted on the point of death or in remote places in accordance with Article 29 of this Code, or where both of the parties request the solemnizing officer in writing in which case the marriage may be solemnized at a house or place designated by them in a sworn statement to that effect. (57a)

Respondent judge's explanation of having done so only out of pity for the complainant after she had supposedly claimed that her German fiancé was soon returning to Germany and wanted to bring with him the certified copy of the marriage certificate did not diminish his liability, but instead highlighted his dismissive and cavalier attitude towards express statutory requirements instituted to secure the solemnization of marriages from abuse. By agreeing to solemnize the marriage outside of his territorial jurisdiction and at a place that had nothing to do with the performance of his duties as a Municipal Trial Judge, he demeaned and cheapened the inviolable social institution of marriage. Article 8 of the *Family Code* contains the limiting phrase *and not elsewhere*, which emphasizes that the place of the solemnization of the marriage by a judge like him should only be in his office or courtroom. Indeed, the limiting phrase highlighted the nature and status of the marriage of the complainant and her husband as "a special contract of permanent union between a man and a woman," and as "the foundation of the family and an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation."

The only exceptions to the limitation are when the marriage was to be contracted on the point of death of one or both of the complainant and her husband, or in a remote place in accordance with Article 29 of the *Family Code*, or where both of the complainant and her husband had requested him as the solemnizing officer in writing to solemnize the marriage at a house or place designated by them in their sworn statement to that effect.

Finding respondent guilty of grave misconduct and conduct prejudicial to the best interest of the service, the Court declared respondent judge's retirement benefits as forfeited except for his accrued leaves, with prejudice to his appointment in the government service. **[A.M. No. MTJ-15-1860 (Formerly OCA I.P.I. No. 09-2224-MTJ), April 3, 2018]**

- **Gross Ignorance of the Law**

Section 17(a) of Rule 114 of the Rules of Court, as amended by Administrative Circular No. 12-94 which governs the approval of bail bonds for criminal cases pending outside the judge's territorial jurisdiction is instructive, to wit:

SEC. 17. Bail, where filed. — (a) Bail in the amount fixed may be filed with the court where the case is pending, or in the absence or unavailability of the judge thereof, with any regional trial judge, metropolitan trial judge, municipal trial judge, or municipal circuit trial judge in the province, city, or municipality. If the accused is arrested in a province, city, or municipality other than where the case is pending, bail may also be filed with any Regional Trial Court of said place, or if no judge thereof is available, with any metropolitan trial judge, municipal trial judge, or municipal circuit trial judge therein.

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The foregoing provision anticipates two situations. *First*, the accused is arrested in the same province, city or municipality where his case is pending. *Second*, the accused is arrested in the province, city or municipality other than where his case is pending. In the first situation, the accused may file bail in the court where his case is pending or, in the absence or unavailability of the judge thereof, with another branch of the same court within the province or city. In the second situation, the accused has two options. First, he may file bail in the court where his case is pending or, second, he may file bail with any regional trial court in the province, city or municipality where he was arrested. When no regional trial court judge is available, he may file bail with any metropolitan trial judge, municipal trial judge or municipal circuit trial judge therein.

However, in the instant case, the case where respondent judge approved A's bail bond and issued release order was not pending before his sala. As correctly pointed out by the OCA, although accused A was detained at the Station Detention Cell, X City Police Station, he was nevertheless arrested at his residence in Y City. Considering that A was arrested in Y City, he could also file his bail application before any branch at the Regional Trial Court of Y City, and in the absence of any judge thereat, then before any branch of the Metropolitan Trial Court of Y City. A could have also filed his bail application before the MTCC, Z City, where his case was pending.

Indeed, the only circumstance where respondent judge can exercise authority to rule on A's bail application is if the latter, who was detained in X City, was not yet charged with a criminal offense in another court, pursuant to Section 17(c), Rule 114 of the Rules of Criminal Procedure. However, in the instant case, there was already a pending criminal case against A before the MTCC, Z City as shown in the Certificate of Detention attached in A's application of bail. In fact, A's arrest was by virtue of a warrant of arrest issued by Judge B of the MTCC, Y City. More importantly, respondent judge likewise failed to prove that

there was no available judge to act on A's application of bail in the said respective courts. Clearly, respondent judge's approval of A's bail constituted an irregularity arising from his lack of the authority to do so.

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It must be emphasized that rules of procedure have been formulated and promulgated by this Court to ensure the speedy and efficient administration of justice. Failure to abide by these rules undermines the wisdom behind them and diminishes respect for the law. Judges should ensure strict compliance therewith at all times in their respective jurisdictions. Respondent judge cannot excuse himself from the consequences of his action by invoking good faith. As a judge, he must have the basic rules at the palm of his hands as he is expected to maintain professional competence at all times. Since respondent judge presides over MeTC-Br. 78 in X City, his territorial jurisdiction is confined therein. Therefore, to approve bail applications and issue corresponding release orders in a case pending in courts outside his territorial jurisdiction, constitute ignorance of the law so gross as to amount to incompetence.

Time and again, the Court has adverted to the solemn obligation of judges to be very zealous in the discharge of their bounden duties. Nonetheless, the earnest efforts of judges to promote a speedy administration of justice must at all times be exercised with due recognition of the boundaries and limits of their jurisdiction or authority. Respondent judge might have the noble objective to expedite the case and render prompt justice but he cannot do in violation of the rules of procedure.

Finding respondent judge guilty of gross ignorance of the law, the Court penalized him with a fine equivalent to P40,000. He is, likewise, sternly warned that the commission of the same offense or a similar act in the future will be dealt with more severely. **[A.M. No. MTJ-17-1893 (Formerly OCA I.P.I. No. 15-2773-MTJ), February 19, 2018]**

CLERKS OF COURT

• Gross Neglect of Duty; Grave Misconduct

No less than the Constitution mandates that a public office is a public trust and that all public officers must be accountable to the people, and serve them with responsibility, integrity, loyalty and efficiency. This constitutional mandate should always be in the minds of all public servants to guide them in their actions during their entire tenure in the government service. As frontliners in the administration of justice, court personnel should live up to the strictest standards of honesty and integrity in the public service.

Clerks of Court such as the respondent have general administrative supervision over all the personnel of the court. They perform a delicate function as designated custodians of the court's funds, revenues, records, properties, and premises. Their administrative functions are as vital to the prompt and proper administration of justice as their judicial duties. As custodian of court funds and revenues, clerks of court are primarily accountable for all funds that are collected for the court, whether personally received by them, or by a duly-appointed cashier who is under their supervision and control.

Time and again, this Court has held that it will not countenance any conduct, act or omission on the part of those involved in the administration of justice which violates the norm of public accountability and diminishes the faith of the people in the Judiciary. In this case, respondent's failure to remit and/or deposit her judiciary collections for the period covering April 2015 to December 2015, her unauthorized withdrawals from the court's FF savings account, and the fact that she appropriated for her personal use her judiciary collections

amounting to P1,903,148 are evident manifestations of her inability to efficiently and conscientiously discharge her duties as the administrative officer of the court. Such actions constitute gross neglect of duty and grave misconduct in violation of OCA Circular No. 50-95 dated October 11, 1995, Amended Administrative Circular No. 35-2004 dated August 16, 2004, and OCA Circular No. 113-2004 dated September 16, 2004.

Respondent was found guilty of gross neglect of duty and grave misconduct, and was declared dismissed from the service, with forfeiture of retirement benefits, perpetual disqualification from holding public office in any branch or instrumentality of the government, including government-owned or controlled corporations. Respondent was likewise ordered to restate the total amount of P1,903,148 representing her shortages in the following: Fiduciary Fund – P1,574,600; Judiciary Development Fund – P70,008.40; Special Allowance for the Judiciary Fund – P204,039.60; Mediation Fund – P39,500; and General Fund – New – P6,000. The Court Administrator was directed to file the appropriate criminal charges against respondent. **[A.M. No. P-17-3638 (Formerly A.M. No. 17-01-03-MCTC), March 13, 2018]**

COURT INTERPRETERS

- **Habitual Absenteeism**

Under Memorandum Circular No. 4, Series of 1991, of the Civil Service Commission (CSC), an officer or employee in the civil service shall be considered habitually absent if he or she incurs **unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the leave law for at least three months in a semester; or at least three consecutive months during the year.** To stress, mere failure to file leave of absence does not by itself result in any administrative liability. However, unauthorized absence is punishable if the same becomes frequent or habitual. Absences become habitual only when an officer or employee in the civil service exceeds the allowable monthly leave credit, which is 2.5 days within the given time frame.

Applying the foregoing rule, respondent is considered to have incurred unauthorized absences exceeding the allowable period by law. Respondent incurred 72.5 absences in the year 2012, while in 2013, he incurred 61 unauthorized absences. In sum, respondent incurred a total of 133.5 unauthorized absences. Clearly, beyond what is allowed by law. This is aggravated by the fact that he made no effort to offer any reasonable explanation as to why he should not be penalized.

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By reason of the nature and functions of their office, officials and employees of the Judiciary must faithfully observe the constitutional canon that public office is a public trust. This duty calls for the observance of prescribed office hours and the efficient use of official time for public service, if only to recompense the Government, and, ultimately, the people who shoulder the cost of maintaining the judiciary. Thus, to inspire public respect for the justice system, court officials and employees should, at all times, strictly observe official time. Frequent unauthorized absences are inimical to public service, and for this, the respondent must be meted the proper penalty. Indeed, even with the fullest measure of sympathy and patience, the Court cannot act otherwise since the exigencies of government service cannot and should never be subordinated to purely human equations.

Finding respondent court interpreter guilty of habitual absenteeism, the Court ordered him dismissed from the service, with prejudice to re-employment in any government agency, including government-owned or controlled corporations, and with forfeiture of

retirement benefits, except accrued leave credits. **[A.M. No. P-17-3710 (Formerly A.M. No. 13-6-44-MeTC) and A.M. No. P-18-3822 (Formerly A.M. No. 13-7-62-MeTC), March 13, 2018]**

UTILITY WORKERS

- **Disgraceful and Immoral Conduct; Violation of AC No. 5, s. 1988; Violation of Section 8 RA No. 6713;**

On the issue of immorality, respondent admitted to cohabiting with a woman who was not his wife and to having a child with her despite his marriage to his wife not having been legally severed. As such, the finding of the OCA that respondent was guilty of disgraceful and immoral conduct is upheld. In *Anonymous v. Radam* the Court declared that “if the father of the child born out of wedlock is himself married to a woman other than the mother, there is a cause for administrative sanction against either the father or the mother. In such a case, the ‘disgraceful and immoral conduct’ consists of having extramarital relations with a married person.”

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We also uphold the recommendation of the OCA on respondent’s surety bail fixing activities. Prosecutor A attested that it was public knowledge in the RTC that respondent was the man to approach if any party wanted to post surety bail because he could facilitate the reduction of the recommended amounts of the bail; and that respondent transacted in behalf of the X Surety and Insurance Company, the only surety company authorized to transact in Branch XX of the RTC. Notwithstanding the lack of direct evidence proving his having acquired financial gain from the bond transactions, the fact that he had assisted and facilitated the processing of the bail requirements for parties with cases in the RTC constituted substantial evidence of such financial gain on his part. x x x

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Finally, the finding that Camay did not consistently declare his true assets and actual net worth in his SALNs is upheld. He declared the house and lot located in Taytayan Hills in his SALNs for 2001, 2003, and 2004 but did not indicate the date of acquisition of such property. He again intermittently declared the property in 2009 and 2011. He did not declare the property in 2002, 2007, 2008 and 2010. His omissions violated the letter and spirit of Section 8 of Republic Act No. 6713, which requires all public officials and employees to accomplish and submit a declaration of assets, liabilities, net worth and financial and business interests, including information on real property, its improvements, acquisition costs, assessed value and current fair market value. Section 11 of the same law provides that a violation of the requirement is penalized by fine not exceeding, the equivalent of the public official or employee’s salary for six months.

Respondent utility worker was found guilty of disgraceful and immoral conduct, violation of Administrative Circular No. 5, Series of 1988, and violation of Section 8 of RA No. 6713, for which the Court ordered him dismissed from the service with forfeiture of all retirement benefits (excluding earned leave credits), and with prejudice to his re-employment in the Government, including in government-owned or government-controlled corporations. **[A.M. No. P-17-3659, March 20, 2018]**

SHERIFFS

- **Grave Abuse of Authority**

It is settled that an ejectment suit is an action *in personam*, wherein the judgment is conclusive and binding, not against the whole world, but only upon parties properly

impleaded and given an opportunity to be heard. This rule, however, is not cast in stone as there are several exceptions where a non-party in an ejectment case is bound by the judgment therein, such as when he is one of the following: (1) trespassers, squatters, agents of the defendant fraudulently occupying the property to frustrate the judgment; (2) guests or other occupants of the premises with the permission of the defendant; (3) transferees *pendente lite*; (4) sub-lessees; (5) co-lessees; (6) members of the family, relatives and other privies of the defendant.

In such cases, court hearing is essential to determine the character of possession that the non-parties hold over the litigated property. If the execution court finds that they are mere successors-in-interest, guests, agents of the defendant, the order of execution shall be enforced against them.

Here, there is no quibble that complainant A was not impleaded as a defendant in Civil Case No. XXX and was therefore not given his day in court to present proof that his possession of the property is legal or to establish that his property is indeed outside the litigated property. While a pre-demolition conference was conducted, there was no showing that complainant A was called to attend the same to show the legality of his possession or to prove that he was a mere successor-in-interest of his parents, who were defendants in Civil Case No. XXX. Also, the fact that his parents were defendants therein will not operate against complainant A because it has been shown that the latter claims ownership of a house that is distinct and far removed from that of his parents. Moreover, it was not established that complainant A derived his right to take possession of the subject land from his parents. Thus, the issue of whether he is bound by the decision in the ejectment case is still disputed. Yet, respondent sheriff, in utter disregard of the rights of complainant A, included the latter's house in the demolition.

In a vain attempt to justify his actions, respondent sheriff claims that he merely implemented a lawful order of the court. This contention is devoid of merit, even if he claims good faith, for he is chargeable with the knowledge that being an officer of the court tasked therefore, it behooves him to make proper compliance.

More significantly, the dispositive portion of the Decision dated January 26, 2006 of the MTCC of X City expressly ordered the defendants to "*vacate from Lot 4444 of the cadastral survey of X and remove/demolish all structures existing thereon within a period of two months from receipt of this judgment at defendants' expenses.*" The Writ of Demolition dated August 16, 2010 was clearly worded that the demolition must be enforced only against the defendants in Civil Case No. XXX who were illegally occupying a portion of Lot No. 4444 covered by the plaintiff B's TCT No. ZZZZ.

Prudence and reasonableness dictate that any ambiguity confronting respondent sheriff in the implementation of the Writ of Demolition dated August 16, 2010 must be brought to the attention of the trial court for clarification. This must be so considering that a sheriff's duty is ministerial and must be performed within the confines of the order or writ to be implemented. Exercising discretion in the implementation of the writ when the same is not warranted plainly constitutes grave abuse of authority or oppression.

Respondent sheriff was held guilty of grave abuse of authority for which the Court imposed a fine in the amount of Twenty Thousand Pesos (P20,000), with a warning that a repetition of the same or other similar act shall be dealt with more severely. **[A.M. No. P-18-3829 (Formerly OCA I.P.I. No. 15-4406-P, March 12, 2018)]**