



# PHILJA E-Alerts

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## JUDGES

### • Immorality; Serious Misconduct

The Code of Judicial Ethics mandates that the conduct of a judge must be free of a whiff of impropriety both in his professional and private conduct in order to preserve the good name and integrity of the court. As the judicial front-liners, judges must behave with propriety at all times as they are the intermediaries between conflicting interests and the embodiments of the people's sense of justice. These most exacting standards of decorum are demanded from the magistrates in order to promote public confidence in the integrity and impartiality of the Judiciary. No position is more demanding as regards moral righteousness and uprightness of any individual than a seat on the Bench. As the epitome of integrity and justice, a judge's personal behavior, both in the performance of his official duties and in private life should be above suspicion. For moral integrity is not only a virtue but a necessity in the judiciary.

In these cases at bench, the conduct of respondent judge fell short of this exacting standard. By carrying an affair with a married woman, respondent judge violated the trust reposed on his office and utterly failed to live up to noble ideals and strict standards of morality required of the members of the judiciary. As the Court wrote in *Re: Letter of Judge Augustus Diaz*, "a judge is the visible representation of the law and of justice. He must comport himself in a manner that his conduct must be free of a whiff of impropriety, not only with respect to the performance of his official duties but also as to his behavior outside his sala and as a private individual. His character must be able to withstand the most searching public scrutiny because the ethical principles and sense of propriety of a judge are essential to the preservation of the people's faith in the judicial system."

In these cases, both respondent judge and complainant A admitted the affair. x x x

x x x x

The illicit affair must have been known to the staff of the court because in their joint affidavit recounting the scene created by complainant A when she berated the judge in his office, none of them attempted to stop her harangue which was highly disrespectful of the judge's status. Respondent judge's inaction on the face of complainant's verbal attack was a strong indication that they had a relationship which was more than official or professional.

In finding respondent judge guilty of immorality, the Court is guided by the ruling in *Geroy v. Calderon* where it was written:

The bottom line is that respondent failed to adhere to the exacting standards of morality and decency which every member of the judiciary is expected to observe. Respondent is a married man, yet he engaged in a romantic relationship with complainant. *Granting arguendo that respondent's relationship with complainant never went physical or intimate*, still he cannot escape the charge of immorality, for his own

admissions show that his relationship with her was more than professional, more than acquaintanceship, more than friendly.

As the Court held in *Madredijo v. Loyao, Jr.*:

*[I]mmorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity and dissoluteness; or is willful, flagrant, or shameless conduct showing moral indifference to opinions of respectable members of the community and an inconsiderate attitude toward good order and public welfare.*

X X X X

The Court also finds respondent judge guilty of gross misconduct for violating the Code of Judicial Conduct. This is another serious charge under Rule 140, Section 8 of the Rules of Court. The illicit relationship started because complainant A sought the help of respondent judge with respect to her pending BP Blg. 22 cases and, apparently, he entertained the request for assistance. Canon 2 of the Code of Judicial Conduct provides:

Rule 2.04 – A judge shall refrain from influencing in any manner the outcome of litigation or dispute pending before another court or administrative agency.

Respondent judge admitted that complainant A had informed him about the four B.P. Blg. 22 cases against her one month after she was introduced to him. One of those cases was before respondent judge himself. The case was dismissed upon agreement of the parties. Another case was pending before the sala of another judge which was provisionally dismissed. The situation highly smacked of impropriety because respondent judge, at the very least, “aided” complainant A in a case pending before him and before another judge.

Another situation of impropriety was when respondent judge asked money from complainant A who was a litigant in a case pending before his court. This is also a serious charge under Section 8 Rule 140 of the Rules of Court. Complainant A and her spouse both alleged in their complaints that respondent judge continuously demanded money from complainant A which led to the sale of their houses and vehicles. x x x

All these conduct and behavior are contrary to the canons of judicial conduct and ethics. Judges are held to higher standards of integrity and ethical conduct than other persons not vested with public trust and confidence. Judges should uplift the honor of the judiciary rather than bring it to disrepute. Demanding money from a party-litigant who has a pending case before him is an act that this Court condemns in the strongest possible terms. In the words of *Velez v. Flores*, such act corrodes respect for the law and the courts, committed as it was by one who was tasked with administering the law and rendering justice.

Finding respondent judge guilty of Immorality and Serious Misconduct, the Court imposed upon him the maximum penalty of dismissal from the service, with forfeiture of all benefits except accrued leave credits. He is likewise disqualified from reinstatement or appointment to any public office, including government-owned or controlled corporations. **[A.M. No. MTJ-10-1755 and A.M. No. MTJ-10-1756, October 18, 2016]**

#### **CLERK OF COURT; CASH CLERK**

- **Serious Dishonesty; Grave Misconduct; Gross Neglect of Duty**

Dishonesty is the disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.

In this case, respondent A had admitted to misappropriating the court's funds for his own use, which resulted in the shortage in the FF. His justification that he used the court's money to help his daughter is no excuse for using judiciary funds in his custody. As a cash clerk, he is an accountable officer entrusted with the delicate task of collecting money for the court. This proprietary function imbues his position with trust and confidence, and acts of misappropriation clearly betray his integrity, much more evince his disposition to defraud the court. For whatever personal reason respondent A may proffer, it should be remembered that as a court personnel, he is expected, at all times, to uphold the public's interest over and above his personal interest. To stress, judicial employees should be living examples of uprightness and must bear in mind that the image of the court, as a true temple of justice, is mirrored in their conduct.

Equally unavailing is respondent A's defense that his superior, respondent B, never bothered to correct his infractions. The lack of proper supervision, much more tolerance of professional obliquity, cannot excuse one's own wrongdoing. A court employee, whether in the capacity of a subordinate or a superior, should be held accountable for his own actions. If it is indeed true that respondent B condoned his misappropriation of court funds, then the correct course of action is to hold them both liable. That said, the Court agrees with the OCA that respondent A is guilty of Dishonesty. Where respondent is an accountable officer, and the dishonest act directly involves property, accountable forms or money for which he is directly accountable and respondent shows an intent to commit material gain, graft and corruption, the dishonesty is considered serious, as in this case.

In addition, respondent A should also be held administratively liable for Grave Misconduct. In several cases, the Court has regarded the misappropriation of judicial funds not only as a form of Dishonesty, but also of Grave Misconduct. Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is considered grave when it is accompanied by the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, as respondent A's misappropriation of the FF in this case. Consequently, the Court modifies the OCA's recommendation to include respondent A's administrative liability for Grave Misconduct.

As for respondent B, the Court similarly adopts the OCA's finding of Gross Neglect of Duty, in view of the shortage in the FF, as well as his failure to timely remit collections and to submit the required monthly financial reports.

x x x x

The safeguarding of funds and collections, and the submission of monthly collection reports are essential to the orderly administration of justice. In this light, Supreme Court (SC) Circular No. 13-92 mandates clerks of court to immediately deposit fiduciary funds with the authorized government depository banks, specifically the Land Bank of the Philippines (LBP). Moreover, SC Circular No. 32-93 requires all clerks of court or accountable officers to submit a monthly report of collections for all funds not later than the 10<sup>th</sup> day of each succeeding month.

A clerk of court is the custodian of court funds. Hence, he is liable for any loss, shortage, destruction or impairment of these funds. Any shortage in the amounts to be remitted, as well as the delay in the actual remittance of these funds, constitutes Gross Neglect of Duty of a clerk of court. The Court has also ruled that a clerk of court who fails to timely deposit judiciary collections, as well as to submit monthly financial reports, is administratively liable for Gross Neglect of Duty.

In this case, respondent B clearly exhibited Gross Neglect of Duty when he completely left the task of remitting the court funds and submitting the collection reports to the cash clerk, respondent A. As clerk of court, he is duty-bound to timely remit the collections and submit the required financial reports even if he delegates these tasks to other court employees, which he failed to accomplish.

Further, respondent B, being the RTC's Clerk of Court, is primarily responsible for all its funds – such as the FF – and is further charged with administrative supervision over court personnel. As the records show, respondent B was undoubtedly remiss in performing his functions when he failed to supervise respondent A in the management of the court's funds, thus resulting in its misappropriation. To note, respondent A's admission of misappropriation of a substantial portion of the missing funds could not exculpate respondent B from his own negligence. As above-intimated, a clerk of court is primarily accountable for all funds that are collected for the court, whether received by him personally or by a duly appointed cashier who is under his supervision and control. Hence, respondent B cannot pass the blame onto his subordinate, respondent A. As such, he was properly held liable to return the FF shortage, including the unearned interest caused by the delay in its remittance.

Finding both respondents guilty of Serious Dishonesty, Grave Misconduct, and Gross Neglect of Duty, both were ordered dismissed from service effective immediately. Accordingly, their respective civil service eligibility were ordered cancelled, and their retirement and other benefits, except accrued leave credits, forfeited. Likewise, both are perpetually disqualified from re-employment in any government agency or instrumentality, including any government-owned and controlled corporation or government financial institution. **[A.M. No. P-15-3386 (Formerly A.M. No. 15-07-227-RTC), November 15, 2016]**

## **COURT EMPLOYEES**

- **Simple neglect of duty; Discourtesy in the course of official duties; Being notoriously undesirable**

### *Simple Neglect of Duty*

Neglect of duty is the failure of an employee to give one's attention to a task expected of him. Section 1, Canon IV of the Code of Conduct for Court Personnel commands court personnel to perform their official duties properly and diligently at all times. Since the image of the courts, as the administrators and dispensers of justice, is not only reflected in their decisions, resolutions or orders but also mirrored in the conduct of court personnel, it is incumbent upon every court personnel to observe the highest degree of efficiency and competency in his or her assigned tasks. The failure to meet these standards warrants the imposition of administrative sanctions.

In this case, respondent failed to timely process the service records of Atty. X (Court Attorney IV), and Ms. Y (Executive Assistant V), both employees under the Office of Associate Justice of the CTA. In finding respondent guilty, the hearing committee relied on the testimony of Complainant. She testified that the CSC had been following up the service records with her, prompting her to issue a Memorandum addressed to respondent instructing him to submit the documents to the CSC Field Office the next day. The submission of the service records may be considered as a clerical job, thus any delay in its performance is considered unreasonable. Respondent's inaction in processing the service records shows that he was remiss in his duty, and therefore guilty of simple neglect of duty.

### *Discourtesy in the Course of Official Duties*

The hearing committee also recommended that respondent be adjudged guilty of discourtesy in the course of official duties based on the following instances:

*First*, complainant alleged that she has been receiving complaints from CTA employees assigned to respondent regarding his rudeness, callousness, and notorious undesirability, which caused her to frequently change the employees assigned to him, as evidenced by a Memorandum dated May 10, 2013.

*Second*, respondent disregarded the hierarchy of positions and acted in excess of his authority when he bypassed the authority of complainant (as the Division Chief) by directly issuing a memorandum against Z, who was then Acting HRD Section Chief. In a Memorandum dated March 28, 2012, complainant reminded her staff of the proper protocol in case of intra-division disputes, and expressed that respondent's act was "prejudicial to [her] capacity as the Chief of the Division and to Ms. Z who [was] acting as Section Chief x x x."

*Third*, respondent accused A (HRMO III) of giving false instructions to B (HRMO I). In a letter addressed to complainant, he stated that in his view, A should "refrain from verbally instructing her subordinates especially in the performance of [their] duties and responsibilities, if she is not familiar to [sic] the same x x x." In response, A expressed that she was indignant with respondent's statement because it intended to malign her work value.

*Fourth*, respondent was rude and discourteous in his dealings with complainant. In one instance, respondent stormed out of the room while complainant was clarifying another incident involving respondent and a fellow HRMO. A also testified that respondent had a tendency to talk back to complainant in an arrogant manner. Another employee also attested to respondent's impolite behavior towards complainant.

Based on the foregoing, we find respondent guilty of discourtesy in the course of official duties. As a public officer, respondent is bound, in the performance of his official duties, to observe courtesy, civility, and self-restraint in his dealings with others. "All judicial employees must refrain from the use of abusive, offensive, scandalous, menacing or otherwise improper language. They are expected to accord due respect, not only to their superiors, but also to all others. Their every act and word should be characterized by prudence, restraint, courtesy and dignity." In this case, it has been shown that respondent failed to live up to these standards on several occasions.

x x x x

#### *Notorious Undesirability*

Finally, we agree with the hearing committee's finding that respondent's notorious undesirability is manifest from his general reputation among his co-workers in the HRD, as well as his previous transfers from different divisions of the CTA due to his inability to work well with others and his disrespect for his immediate supervisors. Complainant and several others testified that respondent was difficult to work with and that he had negative interactions with his co-employees. Respondent's former supervisor in the Budget Division also stated that respondent displayed unruly attitude towards him and had asked that he be transferred to another division.

In determining whether an employee is notoriously undesirable, the CSC prescribes a two-fold test: (1) whether it is common knowledge or generally known as universally believed to be true or manifest to the world that the employee committed the acts imputed against him; and (2) whether he had contracted the habit for any of the enumerated misdemeanors. We are satisfied that respondent's general reputation within the HRD as someone who is quarrelsome and difficult to work with, in addition to his history of rude and discourteous conduct towards his supervisors, adequately show that he is notoriously undesirable. Respondent's actions have

been substantiated and corroborated by the testimonies of the witnesses presented during the investigation.

An employee who cannot get along with his co-employees and superiors can upset and strain the working environment and is therefore detrimental to institution. Such instance calls for us to exercise our prerogative to take the necessary action to correct the situation and protect the judiciary.

Finding respondent guilty of simple neglect of duty, discourtesy in the course of official duties, frequent unauthorized absences, and being notoriously undesirable, he was meted the penalty of dismissal from the service with the accessory penalties of cancellation of his eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office, and barred from taking civil service examinations. **[A.M. No. 16-02-01-CTA, November 15, 2016]**