



# Supreme Court of the Philippines Philippine Judicial Academy



## ***PHILJA Fax/Electronic Alerts***

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### **Judges: Violation of Canon 3, Sec. 2 and Canon 4, Sec. 1 of the New Code of Judicial Conduct for the Judiciary**

Section 2 of Canon 3 of the New Code of Judicial Conduct for the Judiciary provides that Judges shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary, and Section 1 of Canon 4 provides that propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

Respondent Executive Judge failed to avoid the appearance of partiality which offense the Investigating Justice correctly appreciated.

Respondent designated the OIC Clerk of Court, his alleged mistress, to receive evidence ex-parte in Special Proceeding No. R-936, instead of the Acting Branch Clerk of Court where the case is pending. The investigating Justice states in his report that if the Acting Branch Clerk of Court was really "busy", he should have dispensed with the ex-parte reception of evidence and conducted the hearing himself. That would have avoided any appearance of partiality.

The Court found him guilty of violating Canon 3 and Canon 4 of the New Code of Judicial Conduct for the Judiciary for which he was fined in the amount of P10,000. **(A.M. No. RTJ-08-2127, September 25, 2008)**

### **Judges: Gross ignorance of the law and basic rules of procedure**

The need for a preliminary investigation under Section 1 in relation to Section 8 of Rule 112 of the Rules of Criminal Procedure depends upon the imposable penalty for the crime charged in the complaint or information filed and not upon the imposable penalty for the offense which may be found to have been committed by the accused after a preliminary investigation. In the case of Grave Coercion, the Revised Penal Code provides a penalty of prision correccional or anywhere between six months and one day to six years; thus, a preliminary investigation must still be held since there is a possibility that the accused (complainants in this administrative case) would stand to suffer the maximum penalty imposable for the offense. The purpose of a preliminary investigation is to protect the innocent from hasty, malicious and oppressive prosecution, from an unnecessary open and public accusation of a crime, and from the trouble, expense and anxiety of a trial. It also protects the State from a useless and expensive litigation. Above all, it is a part of the guaranties of freedom and fair play.

As respondent judge was already without authority to conduct preliminary investigation since October 3, 2005 pursuant to A.M. No. 05-8-26-SC which removed the conduct of preliminary investigation from judges of first level courts, he should have referred the complaint against complainants to the office of the Provincial Prosecutor, instead of issuing a subpoena directing complainants to appear before his court for a "preliminary hearing". Although the hearing did not materialize after he voluntarily inhibited from the case, it is clear that he committed gross ignorance of an existing procedure which is basic and elementary.

Respondent judge was found guilty of gross ignorance of the law and basic rules of procedure for which he was fined P20,000 with a stern warning that a repetition of the same or similar acts in the future shall be dealt with more severely. **(A.M. No. MTJ-07-1670, July 23, 2008)**

**Judges: Gross ignorance of procedure**

Preliminary investigation is required under Section 1, Rule 112 of the Rules of Court when the imposable penalty exceeds four (4) years, two (2) months and one (1) day.

Respondent judge displayed gross ignorance of the Rules of Court in failing to refer the estafa charges to the Office of Provincial Prosecutor for preliminary investigation. He admitted that due to inadvertence, he proceeded with the estafa cases up to the arraignment and preliminary conference stage.

The lack of malicious intent cannot free respondent from liability. As a judge, he owes it to himself and his office to know by heart basic legal principles and to harness his legal know-how correctly and justly. When a judge displays an utter unfamiliarity with the law and the rules, he erodes the confidence of the public in the courts. When the law is elementary, not to know it constitutes gross ignorance of the law.

To compound his misery, respondent judge was also found to have failed in resolving a pending motion within the reglementary period.

For gross ignorance of procedure and undue delay in resolving a motion, respondent judge was fined P25,000.00 and sternly warned that a repetition of the same or similar acts will be dealt with more severely. **(A.M. No. MTJ-08-1700, July 23, 2008)**

**Judges: Violation of Canon 2 of the Code of Judicial Ethics and Rule 2.03 of the Code of Judicial Conduct**

The court's heading or letterhead, as per Report of the Court Administrator, serves as a primary identifier of the office. Written correspondence bearing the court's heading gives the impression that it has the imprimatur of the court, and that the signatory carries such representation. Considering this important implication, scrupulous use of the court's heading must be observed at all times.

According to the Report, respondent's use of the court's heading in his personal letter is inappropriate because respondent has unwittingly dragged the name of the court into his private affairs, giving the appearance that there is an implied consent of the court to his cause.

The Court agreed with the Report that what is involved is the rule that "Judges shall avoid impropriety and the appearance of impropriety in all of their activities".

However, the Court further ruled that a thin line exists between what is proper and what is improper in such use, and this was the line that respondent judge crossed when he used his letterhead and title the way he did. As the Report of the Court Administrator stated, respondent's use of the letterhead and his designation as a judge in a situation of potential dispute gave the appearance that there is an implied or assured consent of the court to his cause. This circumstance was what marked the respondent's use of his letterhead and title as improper. In other words, his transgression was not per se in the use of the letterhead, but in not being very careful and discerning in considering the circumstances surrounding the use of his letterhead and his title.

Respondent judge, even if he did not intend to take undue advantage of the use of his letterhead and his title, at least gave the appearance of impropriety when he did so under the circumstances of his use.

For violation of Canon 2 of the Code of Judicial Ethics and Rule 2.03 of the Code of Judicial Conduct, respondent was admonished. **(A.M. No. MTJ-08-1712, August 20, 2008)**

**Judges: Gross ignorance of the law**

The rules on summary procedure require that an answer be filed within ten (10) days from receipt of summons.

Respondent Judge overlooked a summary rule. However, the Court ruled that it is mindful of the fact that respondent is merely human and it has forgiven errors in the past. Thus, the Court fined respondent twenty thousand (P20,000.00) instead of thirty thousand (P30,000.00) as recommended by the Office of the Court Administrator, for gross ignorance of the law. **(A.M. No. MTJ-06-1631, September 30, 2008)**

### **OIC Clerk of Court: Gross negligence**

Rule 41, Section 10(d) of the Rules of Court provides that clerks of court of the lower courts are mandated to transmit the records of the case to the appellate court within 30 days from the perfection of the appeal.

Respondent transmitted the records to the appellate court after the lapse of more than three years from the time the notice of appeal was approved. He could not feign ignorance nor free himself of any liability as complainant herself had made several follow-ups to no avail. His argument that it was his staff who delayed the transmittal of the records was lame. He is responsible for the actuations of the people under his administrative supervision. He had the duty to ensure orderly and efficient record management in the court and to effectively manage the personnel under him. Their infraction was his as well.

For gross negligence in the performance of his duties, respondent was fined P15,000.00 said amount to be deducted from his retirement benefits. **(A.M. No. P-07-2372, July 23, 2008)**

### **Sheriff: Grave misconduct**

Section 9, Rule 141 of the Rules of Court requires the sheriff to secure the court's prior approval of the estimated expenses and fees needed to implement the writ. Hence, a sheriff is guilty of violating the Rules if he fails to (1) prepare an estimate of expenses to be incurred in executing the writ; (2) render an accounting; and (3) issue an official receipt for the total amount he received from the judgment debtor.

Respondent sheriff did not submit to the court for approval the estimated expenses for the execution of the writ before he demanded P10,000.00 from complainant. Neither did he render an accounting nor liquidated the said amount.

Further, respondent's refusal to conduct the execution sale allegedly due to the parties' refusal to pay the sales commission was baseless and illegal; and his act of unilaterally adjourning the execution sale was irregular and contrary to the Rules.

For all the foregoing, the Court found respondent sheriff guilty of grave misconduct and dismissed him from the service with forfeiture of all benefits and privileges except accrued leave credits with prejudice to re-employment in any branch or instrumentality of the government including GOCC. He was further ordered to return the amount of P10,000.00 to complainant. **(A.M. No. P-04-1898, July 28, 2008)**

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