



PHILJA E-Alerts

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JUDGES

- **Gross Misconduct; Immorality**

A certification issued by the PNP Firearms and Explosives Office also disclosed that respondent judge is not a licensed/registered firearm holder of any kind and calibre. Even assuming that he *is* licensed to own, possess, or carry firearms, he can only carry those classified by law as small arms pursuant to RA No. 10591 which provides that only small arms may be registered by licensed citizens or juridical entities for ownership, possession, and concealed carry. x x x An M-16 armalite rifle does not fall within this definition. Being a light weapon, only the Armed Forces of the Philippines, PNP, and other law enforcement agencies authorized by the President in the performance of their duties can lawfully acquire or possess an M-16 armalite rifle. It baffles us how respondent came to possess such a high-powered weapon. Worse, he had the audacity to brandish it in front of the police and other civilians.

In light of these findings, we concur with the OCA's conclusion that respondent is guilty of gross misconduct. Misconduct has been defined as an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior, especially by a government official. Misconduct is considered grave where the elements of corruption, clear intent to violate the law, or flagrant disregard of established rules are present.

Respondent's actuations, as recorded in the video, are unacceptable for a member of the bench and should merit a finding of administrative liability. This is without prejudice to any criminal action that may also be filed against him. **[A.M. No. MTJ-16-1886 (Formerly OCA IPI No. 16-2869-MTJ), July 25, 2017]**

- **Immorality**

We also agree with the OCA's findings that respondent is guilty of immorality.

Immorality is a recognized ground for the discipline of judges and justices under the Rules of Court. The New Canon of Judicial Conduct for the Philippine Judiciary requires judges to avoid "impropriety and the appearance of impropriety in all their activities."

x x x x

Thus, in *Castillo*, we dismissed a judge from service for siring a child outside of wedlock and for engaging in an extramarital affair. The absence of a public and private dichotomy when it comes to the ethical standards expected of judges and justices has since become an unyielding doctrine as consistently applied by the Court in subsequent cases.

Here, the record is clear. The certificate of live birth of "B's" male child indicates that respondent is the father as shown by his signature in the affidavit of acknowledgment of

paternity. The date of birth is during the subsistence of respondent's marriage to "A," there being neither proof nor allegation that said marriage was annulled or voided in the meantime. Respondent himself admits to the paternity of his son with "B." He does not dispute the entry in the certificate of live birth attesting to his paternity. He admits his mistake and merely pleads for the Court's forgiveness.

x x x x

Time and again, this Court has reminded judges that their acts of immorality are proscribed and punished, even if committed in their private life and outside of their *salas*, because such acts erode the faith and confidence of the public in the administration of justice and in the integrity and impartiality of the judiciary. The public's continued faith and confidence in our justice system is no less a victim of the commission of acts of immorality by a judge. The resulting harm to the justice system vests the State with the interest to discipline judges who commit acts of immorality, independent of the view or feelings of the judge's spouse and their children.

For society, judges are the most tangible representation of the Judiciary. Judges, in particular, are not just magistrates who hear and decide cases; they are immersed in the community and, therefore, in the best position to either bolster or weaken the judicial system's legitimacy. x x x

x x x x

For the Judiciary, this is the legal and social context within which we must understand immorality in connection with extramarital affairs. In penalizing judges for engaging in extramarital affairs, we merely seek to dis-incentivize judges' propensity to disregard accepted standards of morality because these acts impact their capacity to properly perform their jobs. These acts affect the judiciary's legitimacy—an element essential in its role as a branch of government charged with interpreting rules. We value monogamous marriages and consider them worthy of strict legal protection. A judge who disregards this fundamental value opens himself or herself up to questions about his or her capacity to act with justice in his or her own dealings. This affects the people's perception of his or her moral fitness. As we said in *Resngit-Marquez v. Llamas, Jr.*, a magistrate "cannot judge the conduct of others when his own needs judgment."

No one is forced to be a judge. The Judiciary is an institution reserved for those who, when they apply for a judicial position, are expected to have a thorough understanding of community standards and values which impose exacting standards of decorum and strict standards of morality. We highlight that judges are bound to uphold secular, not religious, morality. Thus, the values that a judge must uphold are those in consonance with the dictates of the conscience of his or her community. Among these community values is respect for the sanctity of marriage. All applicants to the Judiciary must, therefore, decide for themselves whether the community values that the Court has recognized conform to their own personal values, lifestyle, or proclivities. All who desire to be part of the Judiciary must first decide if he or she can live up to the highest standards of morality expected of judges and justices.

Aside from gross misconduct, respondent was likewise found guilty of immorality and was ordered dismissed from the service with forfeiture of his retirement benefits except accrued leave credits, and perpetually disqualified from reemployment in any government agency or instrumentality, including government-owned and controlled corporation or government financial institution. **[A.M. No. MTJ-16-1886 (Formerly OCA IPI No. 16-2869-MTJ), July 25, 2017]**

- **Gross Misconduct**

Administrative Order No. 125-2007 dated August 9, 2007 provided for the *Guidelines on the Solemnization of Marriage by the Members of the Judiciary* and laid down the rules “to enable the solemnizing authorities of the Judiciary to secure and safeguard the sanctity of marriage as a social institution.” The pertinent portions of AO No. 125-2007 provide as follows:

SEC. 3. Venue of marriage ceremony solemnized by Judges. – As a general rule, a marriage shall be solemnized publicly in the chambers of the judge or in open court except in the following instances:

x x x x

- b. A marriage where both parties submit a written request to the solemnizing officer that the marriage be solemnized at a house or place designated by them in a sworn statement to this effect.

SEC. 4. Duties of solemnizing officer before the performance of marriage ceremony. – Before performing the marriage ceremony, the solemnizing officer shall:

- a. Ensure that the parties appear personally and are the same contracting parties to the marriage;
- b. Personally interview the contracting parties and examine the documents submitted to ascertain if there is compliance with the essential and formal requisites of marriage under the Family Code; and

x x x x

SEC. 6. Duty of solemnizing officer during the solemnization of the marriage. – The solemnizing officer shall require the contracting parties to personally declare before him and in the presence of not less than two witnesses of legal age that the said parties take each other as husband and wife.

SEC. 7. Duties of solemnizing officer after solemnization of the marriage. – After performing the marriage ceremony, the solemnizing officer shall:

- a. Ensure that the marriage certificate is properly accomplished and has the complete entries, x x x;
- b. See to it that the marriage is properly documented x x x

x x x x

SEC. 9. Recording of marriages solemnized and safekeeping of documents.

- a. The solemnizing officer shall cause to be kept in the court a record book of all marriages solemnized. x x x
- b. The solemnizing officer shall cause to be filed in the court the quadruplicate copy of the marriage certificate, the original of the marriage license, x x x when applicable, the affidavit of the contracting parties regarding the request for change in the venue for the marriage. All documents pertaining to a marriage shall be kept in one file x x x.

SEC. 18. Fees for the Solemnization of Marriage. – For the performance of marriage ceremony and issuance of marriage certificate and subject to further provisions of AM No. 04-2-04-SC (August 16, 2004) the legal fees in the following amounts shall be collected:

x x x x

(c) For marriages solemnized by Judges of the Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, Municipal Circuit Trial Courts and Shari'a Circuit Courts – Three hundred (P300) pesos.

x x x x

SEC. 19. Payment of legal fees in Philippine legal tender. – All fees shall be x x x properly officially received.

Records show that respondent judges both violated AO No. 125-2007. Although both judges were clothed with authority to solemnize marriages, in this instance however, they overstepped the bounds of their authority.

As correctly found by the OCA, respondent judge A affixed his signature in the Marriage Contract of AA and BB without actually solemnizing their marriage. Respondent judge A's claim that the contracting parties personally appeared before him was belied by the groom himself, AA. When confronted by the investigating team from OCA, AA denied knowing or appearing before respondent judge A; moreover, he asserted that he was not married in the sala of respondent judge A but at their residence in X City. AA also narrated that it was respondent judge B, and not judge A, who acted as the solemnizing officer. AA even presented pictures which were taken during the wedding at their residence showing judge B as the solemnizing officer.

x x x In addition, it was unearthed during the proceedings that no solemnization fee was received by the court, no receipt was issued corresponding therefor, and no remittance to the Judiciary Development Fund pertaining to said solemnization fee was made. In fine, it was established that by signing the Certificate of Marriage, judge A made it appear that he solemnized the marriage of AA and BB without the contracting parties and their witnesses personally appearing before him and sans payment of the solemnization fee.

Having been found guilty of gross misconduct, both respondent judges were fined in the amount of P40,000. **[A.M. No. RTJ-10-2223 (Formerly A.M. OCA IPI No. 08-3003-RTJ), August 30, 2017]**

- **Violation of Supreme Court Rules**

Finally, we hold Judge A and Atty. C administratively liable for **simple misconduct**, in their capacities as the Executive Judge and the Clerk of Court of the RTC of X City, respectively, for imposing their own *internal policies and practices* in lieu of the existing rules in the raffle of applications involving ordinary cases covered by Chapter V of the Guidelines on the Selection and Designation of Executive Judges and Defining Their Powers, Prerogatives and Duties (Guidelines).

To be specific, Judge A and Atty. C failed to observe the pertinent portion of Section 6 of the Guidelines which requires the search warrant applications assigned to a branch during the special raffle to be deducted from the number of cases allotted to on the next scheduled regular raffle. This, however, was **not** implemented in the RTC of X City.

Judge A and Atty. C also failed to observe the *proper ratio* of the raffling of cases prescribed under par. 1, Chapter V of Administrative Order No. 6 dated June 30, 1975, which states:

V. CASELOAD AND HONORARIUM

1. The caseload of the Executive Judge shall be as follows:

x x x x

- c. In case of multiple branches (salas) of more than five, the distribution of cases shall be in the proportion of **one case for the Executive Judge and two for each of the other judges.**

Their use of an *improvised system of counting* the applicants (instead of the applications) in the special raffle is simply unacceptable, as the Executive Judge, much less the Clerk of Court, has absolutely no discretion to deviate from the prescribed ratio for the raffling of cases without prior approval from this Court.

This resulted in an inequitable distribution of search warrant applications between Branches XX and YY at a ratio of almost 6:1, or a six out of seven chance that an application will be raffled to Branch XX, thereby removing the unpredictability of the raffling process, so much so that some applicants already indicate that their applications are being filed with Branch XX.

Respondent Judge A was declared guilty of violation of Supreme Court rules and circulars for which he was fined in the amount of P20,000 with a stern warning that a repetition of the same or similar acts shall be dealt with more severely. **[A.M. No. 16-05-142-RTC, September 5, 2017]**

- **Gross Neglect of Duty**

Nevertheless, we find sufficient evidence to hold Judge B administratively liable for **gross neglect of duty** for the serious mismanagement of search warrant applications in Branch XX.

Section 12, Rule 126 of the Rules of Court provides:

SEC. 12. Delivery of property and inventory thereof to court; return and proceedings thereon.

- a) The officer must forthwith deliver the property seized to the judge who issued the warrant, together with a true inventory thereof duly verified under oath.
- b) Ten days after issuance of the search warrant, **the issuing judge shall ascertain if the return has been made, and if none, shall summon the person to whom the warrant was issued and require him to explain why no return was made.** If the return has been made, the judge shall ascertain whether Section 11 of this Rule has been complied with and shall require that the property seized be delivered to him. **The judge shall see to it that subsection (a) hereof has been complied with.**
- c) The return on the search warrant shall be filed and kept by the custodian of the log book on search warrants who shall enter therein the date of the return, the result, and other actions of the judge.

The records show that Judge B has failed to properly monitor the submission of returns as required under Section 12(b) and (c) of Rule 126, considering that:

1. the returns on 172 search warrants have yet to be submitted, and Judge B failed to summon each of the 39 applicants thereof to court to explain why no return was made.
2. 350 returns were filed by applicants well beyond the 10-day period to do so, with the delay ranging from 11 days up to 6 months and 5 days (in SW 15-477).

3. 43 returns were not immediately acted upon, with the delay ranging from 1 month and 22 days up to 5 months and 12 days (in SW 15-435).
4. 29 returns have yet to be acted upon.

Judge B likewise committed several lapses in ascertaining whether Section 12(a) of Rule 126 was complied with by the applicants in: a) SW 15-503-MN, where mere photocopies of the inventory of the seized items were submitted; b) in SW 16-286-MN, where the inventories are not under oath and the signatures of the witnesses are unidentifiable because their printed names are not indicated in the inventory; and c) in SW 16- 273-MN, where only one witness signed the inventory sheet.

We also find that Judge B failed to comply with his administrative responsibilities under Rules 3.08 and 3.09 of the Code of Judicial Conduct which provide:

RULE 3.08 – A judge should diligently discharge administrative responsibilities, maintain professional competence in court management, and **facilitate the performance of the administrative functions of other judges and court personnel.**

RULE 3.09 – A judge should **organize and supervise the court personnel to ensure the prompt and efficient dispatch of business**, and require at all times the observance of high standards of public service and fidelity.

as it appears that the concerned court personnel in Branch XX, namely C, the Branch Clerk of Court, D, the Clerk-in-Charge, together with E, F, G, and H, all court stenographers, too, are all guilty of **simple neglect of duty** for failure to diligently perform their respective administrative duties.

X X X X

It is settled that “[a] judge presiding over a branch of a court is, in legal contemplation, the head thereof having effective control and authority to discipline all employees within the branch.” Consequently, Judge B **shares accountability** for the administrative lapses of his staff that contributed to the clearly *disorganized* and *inefficient* dispatch of business in Branch XX.

For gross neglect of duty, respondent judge was suspended from office for a period of two years without pay, with a stern warning that a repetition of the same or similar acts will be dealt with more severely. [*A.M. No. 16-05-142-RTC, September 5, 2017*]

CLERKS OF COURT

- **Simple Neglect of duty**

We cannot overemphasize that those charged or connected with the task of dispensing justice carry a heavy burden of responsibility. The clerk of court is the administrative officer of a court and has, *inter alia*, control and supervision over all court records. The Rules of Court charge her with the duty of faithfully keeping the records, papers, files and exhibits in cases pending before her court. As custodian of the records of the court, it is her duty to ensure that the records are complete and intact. She plays a key role in the complement of the court and cannot be permitted to slacken off in his job under one pretext or another.

In the instant case, after considering the records and the investigations conducted on the matter, it is undisputed that respondent failed to meet the requirement expected of her as a clerk of court. Section 7 of Rule 136 of the Rules of Court is explicit that the clerk shall **safely keep** all records, papers, files, **exhibits**, and public property committed to her charge. The Office of the Clerk of Court performs a very delicate function, having control and management

of all court records, exhibits, documents, properties and supplies. Being the custodian thereof, the clerk of court is liable for any loss, shortage, destruction or impairment of said funds and properties.

As clerk of court, respondent's duties include conducting periodic inventory of dockets, records and exhibits and ensuring that the said records and exhibits of each case are accounted for. If she has been regularly conducting inventory of these, she could not have missed the subject firearms which has been sitting in the cabinet for more than 15 years. Also, the fact that she was unaware that the firearms were exhibits of cases which has been terminated for a very long time will tell that she has been remiss in the performance of her duties. Suffice it to say, it is incumbent upon her as the clerk of court to ensure an orderly and efficient record management in the court. Clearly, due to respondent's failure to take precautionary measures to prevent loss of court exhibits, respondent was negligent in her responsibility as custodian of records/exhibits.

Moreover, under the 2002 Revised Manual for Clerks of Court, the clerk of court, being the officer in charge of the court's exhibits is mandated to observe the prescribed procedure in the disposal and/or destruction of court exhibits when they are no longer needed, to wit:

CHAPTER XII

Disposal and/or Destruction of Court Records, Papers and Exhibits

A. PROCEDURE

To establish a uniform procedure in the disposal or destruction of records, papers and exhibits pertaining to court cases terminated for at least 15 years, it is hereby provided that all Courts, except the Supreme Court, are enjoined to strictly comply with the following rules:

x x x x

B. DISPOSITION OF EXHIBITS IN THE CUSTODY OF COURTS WHICH ARE NO LONGER NEEDED AS EVIDENCE

x x x x

2. *Firearms, Ammunitions and Explosives*

Courts are directed to turn over to the nearest Constabulary Command all firearms in their custody after the cases involving such shall have been terminated.

In Metro Manila, the firearms may be turned over to the Firearms and Explosives Unit at Camp Crame, Quezon City, while in the provinces, the firearms may be turned over to the respective PC Provincial Commands. (emphasis ours)

Following the foregoing procedure, the subject firearms which are court exhibits should have been turned over to the Firearms and Explosives Unit of the Philippine National Police pursuant to the directive in the Manual for Clerks of Court. Moreso, considering that the criminal cases related thereto had long been terminated. The fact that the court retained custody of the said firearms for more than 15 years after the dismissal of the cases in 1998 is clearly in violation of the above-cited procedures. Had respondent prudently complied with said directive, the loss of the firearms could have been avoided.

A clerk of court's office is the hub of activities, and he or she is expected to be assiduous in performing official duties and in supervising and managing the court's dockets, records and

exhibits. The image of the judiciary is the shadow of its officers and employees. A simple misfeasance or nonfeasance may have disastrous repercussions on that image. Thus, a simple act of neglect resulting to loss of funds, documents, properties or exhibits in *custodia legis* ruins the confidence lodged by the parties to a suit or the citizenry in our judicial process. Those responsible for such act or omission cannot escape the disciplinary power of this Court.

Having been found guilty of simple neglect of duty, respondent was fined in the amount equivalent to her three month's salary. She was 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. P-16-3521 (Formerly OCA IPI No. 15-4493-P), September 4, 2017]**

- **Simple Neglect of duty**

Atty. B, as the administrative officer in Branch XX, fell short of the diligence and care required of him in the following instances:

- a. Case records have no minutes of the proceedings.
- b. Some search warrants are incorrectly dated, thus making it appear that they were issued ahead of the date of filing of their respective applications.
- c. Some search warrants were handed over to the witnesses instead of the applicants.
- d. There is no date and time of receipt of the case folder by Branch XX on the face of the search warrant applications.
- e. The search warrant case folders in Branch XX are not paginated.
- f. In several applications, some documents attached thereto are not original copies.
- g. Case folders are not property stitched, and some folders have loose pages. Other folders, too, are merely attached using fasteners.

For the foregoing lapses of respondent clerk of court, he was found guilty of simple neglect of duty and was ordered suspended from office for a period of one month without pay, with a stern warning that a repetition of the same or similar acts will be dealt with more severely. **[A.M. No. 16-05-142-RTC, September 5, 2017]**