



PHILJA E-Alerts

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JUDGES

- **Gross ignorance of the law**

Though not every judicial error bespeaks ignorance of the law or of the rules, and that, when committed in good faith, does not warrant administrative sanction, the rule applies only in cases within the parameters of tolerable misjudgement. When the law or the rule is so elementary, not to be aware of it or to act as if one does not know it, constitutes gross ignorance of the law. x x x

x x x x

In this case, the OCA correctly observed that respondent judge's failure to serve the summons on AAA after the issuance of the assailed 72-hour TRO cannot be cured by his claim that it was received by the sheriff, the person enjoined from implementing the writ of possession. The previous summons received by the sheriff was also no longer valid considering that the complaint was amended and admitted by virtue of respondent judge's Order dated September 18, 2017. Section 5, Rule 58 of the Rules, as bolstered by Administrative Circular No. 20-95, is explicit that the adverse party should be immediately served with the summons and a copy of the complaint.

Furthermore, the supposed extreme urgency of the issuance of the 72-hour TRO was belied by respondent judge's setting of summary hearing for the extension of the same, five days after the issuance thereof. Section 5, Rule 58 clearly states that such summary hearing must be conducted within the 72-hour period. Instead, respondent judge set the hearing on September 25, 2017, two days beyond the effectivity of the 72-hour TRO.

To make matters worse, respondent judge extended the 72-hour TRO, which had already expired, into a full 20-day TRO. An already expired TRO can no longer be extended. The TRO was issued on September 20, 2017. Section 5, Rule 58 of the Rules clearly provides that "[i]n no case shall the total period of effectivity of the [TRO] exceed 20 days, including the original 72 hours provided." The effectivity of the 72-hour TRO issued by respondent judge on September 20, 2017 therefore could only be extended until October 10, 2017, 20 days after its issuance. Thus, respondent judge erroneously extended the effectivity of the 72-hour TRO until October 12, 2017, two days beyond the period of effectivity of a TRO explicitly provided by the Rules.

In this case, respondent judge's failure to apply the settled laws and jurisprudence on the issuance of TROs constitutes gross ignorance of the law which merits administrative sanction. x x x

x x x x

Respondent judge was found guilty of gross ignorance of the law and was fined in the amount of P25,000, with a stern warning that a repetition of the same or any similar infraction shall be dealt with more severely. **[A.M. No. RTJ-18-2538 (Formerly OCA IPI No. 17-4782-RTJ), November 21, 2018]**

- **Violation of Supreme Court Rules, Directives and Circulars**

Under Section 8, Rule 140 of the Rules of Court, Gross Ignorance of the Law or Procedure is classified as a serious charge. For liability to attach, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found to be erroneous but, most importantly, it must be established that the issuance thereof was actuated by bad faith, dishonesty, hatred or some other like motive.

On the basis of the foregoing, it can be said that respondent's failure to refer the civil aspect of Criminal Case No. XX-XXXX to the mandatory CAM and JDR proceedings does not amount to Gross Ignorance of the Law. While respondent deviated from the required procedure under A.M. No. 11-1-6-SC-PHILJA, such act is not outrageous so as to constitute "gross ignorance." Records reveal that she is fairly acquainted with the guidelines prescribed for the CAM and JDR, as in fact, she readily implements the same by ordering the parties in other cases to report to the CAM mediator after arraignment. Moreover, she explicitly stated in the said orders that her referral to the said mediator is in accordance with the provisions of A.M. No. 11-1-6-SC-PHILJA. Verily, respondent is well-aware of the rules involving the CAM and JDR, as well as its application and implementation.

The fault of respondent, however, lies in her belief that an exception to the foregoing was warranted by the circumstances. Respondent pointed out that the parties had unequivocally expressed their disinterest in settling the civil aspect of the case. Thus, to her mind, referring the same to the CAM and JDR would be a mere exercise of futility, and would then cause further delay in the disposition of the case. As such, respondent decided to deviate from the normal course of procedure in order not to hamper and frustrate the ends of justice.

While respondent had good motives in not referring the case to the CAM and JDR, the Court still finds her administratively liable for not complying with the provisions of A.M. No. 11-1-6-SC-PHILJA. It bears stressing that under the said rules, cases involving less grave felonies, where the offended party is a private person, are required to be referred to the CAM and JDR proceedings, as in this case. Such requirement did not carve out any explicit exception and hence, evinces its mandatory nature, notwithstanding the parties' desire to forego with the settlement of the civil aspect of the case.

In view of the foregoing, the Court finds respondent administratively liable for the less serious charge of violation of Supreme Court Rules, Directives, and Circulars under Section 9, Rule 140 of the Rules of Court. x x x

Wherefore, the motion for reconsideration filed by respondent judge was partly granted. The Court's Resolution dated April 17, 2017 was modified reducing the administrative liability of respondent from gross ignorance of the law to violation of Supreme Court Rules, Directives, and Circulars and imposing the penalty of reprimand with a stern warning that a repetition of the same or similar acts in the future shall definitely be dealt with more severely. She was reminded to be more circumspect in the performance of her duties, which should be discharged in accordance with the duly issued rules, directives, and circulars by the Court. **[A.M. No. MTJ-17-1897 (Formerly OCA IPI No. 16-2832-MTJ), November 21, 2018]**

SHERIFFS

- **Grave misconduct; conduct prejudicial to the best interest of the service due to drug use**

x x x [I]n A.M. No. 06-1-01-SC dated January 17, 2006, the Court has adopted guidelines for a program to prevent drug use and eliminate the hazards of drug abuse in the Judiciary, specifically in the first and second level courts. Its objectives are as follows:

1. To detect the use of dangerous drugs among lower court employees, impose disciplinary sanctions, and provide administrative remedies in cases where an employee is found positive for dangerous drug use.
2. To discourage the use and abuse of dangerous drugs among first and second level court employees and enhance awareness of their adverse effects by information dissemination and periodic random drug testing.
3. To institute other measures that address the menace of drug abuse within the personnel of the Judiciary.

There is thus no reason to turn a blind eye, for purposes of this administrative proceeding, on the results of the confirmatory urine test when RA No. 9165 itself, as well as this Court's guidelines, sanction the conduct of a mandatory random drug testing of officers and employees of public and private offices. The character of the drug test being made at random actually dispenses with the usual requirement of probable cause. In the case of *Social Justice Society (SJS) v. Dangerous Drugs Board, et al.*, We upheld the validity and constitutionality of the mandatory but random drug testing of officers and employees of both public and private offices. This is allowed "for purposes of reducing the risk in the workplace." This legitimate intrusion of privacy in the workplace is upheld because an employee's privacy interest is "circumscribed by the company's work policies, the collective bargaining agreement, if any, entered into by management and the bargaining unit, and the inherent right of the employer to maintain discipline and efficiency in the workplace." Specifically, as regards public officers, this Court pronounced in *SJS* that:

Like their counterparts in the private sector, government officials and employees also labor under reasonable supervision and restrictions imposed by the Civil Service law and other laws on public officers, all enacted to promote a high standard of ethics in the public service. And if RA No. 9165 passes the norm of reasonableness for private employees, the more reason that it should pass the test for civil servants, who, by constitutional command, are required to be accountable at all times to the people and to serve them with utmost responsibility and efficiency.

Thus, despite the absence of probable cause, and the basis being only a positive drug test result, an employer is allowed by law to pursue an administrative case against the public or private officer or employee and thereafter, to suspend or terminate them.

Notably, in the instant administrative matter, respondent never questioned the authenticity, validity, and regularity of Chemistry Report No. CRIMDT-XXX-YY of the BBB Provincial Crime Laboratory Office. No objection or question was raised as to the regularity of the conduct of the confirmatory test. The finding of respondent's positive use of methamphetamine hydrochloride or *shabu* remains un rebutted. Certainly, such compelling evidence cannot merely be ignored.

The foregoing pieces of evidence thus constitute more than substantial evidence that respondent was found positive for illegal drugs use. The confirmatory drug test which yielded a positive result confirms respondent's admission of drug use and also, reflects respondent's

propensity to lie as it negates his statement in his admission that he already stopped using illegal drugs.

X X X X

There is no doubt that the use of prohibited drugs constitute grave misconduct. It is a flagrant violation of the law, in fact a crime in itself, thus considered as grave misconduct. In *Re: Administrative Charge of Misconduct Relative to the Alleged Use of Prohibited Drug ("Shabu") of BBB, Electrician II, Maintenance Division, Office of Administrative Services*, the Court ruled that under Section 46(A)(3), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), grave misconduct is a *grave offense* punishable by dismissal even for the first offense. Also, under Civil Service Memorandum Circular No. 13, series of 2010, any official or employee found positive for use of dangerous drugs shall be subjected to disciplinary/administrative proceedings with a penalty of dismissal from the service at first offense pursuant to Section 46(19) of Book V of Executive Order (E.O.) 292 and Section 22(c) of its Omnibus Rules Implementing Book V of E.O. No. 292 and other pertinent civil service laws.

Further, undeniably, respondent's conduct tarnished the very image and integrity of the Judiciary, constitutive of a conduct prejudicial to the best interest of the service. Conduct prejudicial to the best interest of the service is classified as a grave offense under Section 22(c) of the Omnibus Rules. x x x

X X X X

Finding respondent guilty of both grave misconduct and conduct prejudicial to the best interest of the service, We find the penalty of dismissal for grave misconduct, the most serious offense in this case, proper, pursuant to the aforecited provision. Besides, respondent's propensity to lie as above-mentioned, which bolsters a finding of moral turpitude, thus aggravating the offense, cannot go unnoticed.

X X X X

The Court found respondent sheriff liable for grave misconduct and conduct prejudicial to the best interest of the service due to his drug use. The Court also ordered his dismissal from service with forfeiture of all benefits, except accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government including government-owned or controlled corporations. **[A.M. No. 15-05-136-RTC and A.M. No. P-16-3450 (Formerly A.M. No. 15-12-379-RTC), December 4, 2018]**

- **Prolonged unauthorized absence**

Section 107, Rule 20 of the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS) authorizes and provides the procedure for the dropping from the rolls of employees who are absent without approved leave for an extended period of time. x x x

X X X X

This provision is in consonance with Section 63, Rule XVI of the Omnibus Rules on Leave, as amended by Memorandum Circular No. 13, s. 2007. x x x

X X X X

Based on these provisions, respondent sheriff should be separated from the service or dropped from the rolls in view of her continued absence since March 1, 2018.

Indeed, prolonged unauthorized absence causes inefficiency in the public service. A court employee's continued absence without leave disrupts the normal functions of the court. It contravenes the duty of a public servant to serve with the utmost degree of responsibility, integrity, loyalty, and efficiency. The Court stresses that a court personnel's conduct is laden with the heavy burden of responsibility to uphold public accountability and maintain people's faith in the judiciary.

By failing to report for work without filing any leave application since March 1, 2018, respondent sheriff grossly disregarded and neglected the duties of her office. Undeniably, she failed to adhere to the high standards of public accountability imposed on all those in the government service.

In view of the foregoing, the Court is constrained to drop respondent sheriff from the rolls. At this point, the Court deems it worthy to stress that the instant case is non-disciplinary in nature. Thus, respondent sheriff's separation from the service shall result neither in the forfeiture of any benefits which have accrued in her favor, nor in her disqualification in the government service. x x x

Respondent sheriff was dropped from the rolls effective March 1, 2018 and her position was declared vacant. However, she is still qualified to receive the benefits she may be entitled to under existing laws and may still be reemployed in the government, without prejudice to the outcome of the administrative cases pending against her. **[A.M. No. 18-07-153-RTC, January 7, 2019]**

CLERK

- **Gross neglect of duty, gross insubordination, gross inefficiency and incompetence in performance of official duties**

As Clerk III, the respondent was tasked, among others, to take custody of the records of criminal cases raffled to and being heard by Branch CCC; to update said records; and to prepare the accompanying documents for transmittal of the records of appealed criminal cases to the CA as the appellate court. Regrettably, he was frequently grossly remiss in discharging his duties. He repeatedly failed to update the criminal dockets under his custody; was careless in attaching documents to their corresponding case records; and did not prepare the case records for prompt transmission to the CA despite the specific instructions and constant reminders from his superiors. In addition, parts of the records of some criminal cases went missing while under his custody. Such loss of court records while in his custody reflected his lack of diligence in performing his duties, and indubitably revealed his uncharacteristic indifference to and wanton abandonment of his regular assigned duties and responsibilities. He thereby became guilty of **gross neglect of duty**.

But **gross neglect of duty** was not the respondent's only sin. He further frequently disobeyed or ignored without any valid justification his superiors' directives and instructions for the conscientious performance of his duties. He persisted on his errant conduct and bad attitude despite the several opportunities that his superiors accorded to him to mend his ways. He thereby manifested his brazen disrespect for and defiance towards his superiors. He was thus also guilty of **gross insubordination**, which is the inexplicable and unjustified refusal to obey some order that a superior is entitled to give and have obeyed, and imports a willful or intentional disregard of the lawful and reasonable instructions of the superior.

Lastly, the respondent received unsatisfactory ratings for two consecutive semesters, a true demonstration of how poorly and ineptly he had discharged his assigned tasks. In that regard the OCA aptly observed:

On respondent's performance ratings, we are convinced that he failed miserably to perform the duties and tasks assigned to him. Aside from the two unsatisfactory semestral performance ratings from July 1, 2014 to June 30, 2015[h]e merely obtained satisfactory ratings during the previous years which demonstrate his lack of industry, efforts, enthusiasm, and determination to attain at least a very satisfactory rating. He gave unreasonable and unacceptable alibis for his poor performance but did not endeavor to really change and improve his work attitude and ethic.

As such, he was likewise guilty of **inefficiency and gross incompetence in the performance of his official duties.**

x x x x

The Court found respondent clerk guilty of gross neglect of duty, gross insubordination and gross inefficiency and incompetence in the performance of official duties; and, accordingly, dismissed him from the service with forfeiture of all his benefits, except accrued leave credits, and disqualified him from reemployment in the government service, including government-owned and controlled operations. ***[A.M. No. P-18-3791 (Formerly OCA IPI No. 15-4447-P), January 29, 2019]***