



PHILJA E-Alerts

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JUDGE

- **Gross inefficiency; Gross ignorance of the law**

After a perusal of the records, the Court concurs with the findings and recommendations of the OCA.

The foregoing are undisputed facts as they are based [on] court records. The irregularities speak for themselves and require no in-depth discussion. In effect, the evidence against respondent judge, speaks of his infractions as to justify the application of the doctrine of *res ipsa loquitur*.

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In the instant case, we have considered the justifications and explanations proffered by respondent judge, however, while they may be recognized as true and reasonable, they are not sufficient to exonerate him from liability. Indeed, as the OCA noted, respondent judge's explanations cannot exculpate him from his administrative liability for undue delay in deciding the two cases and in resolving the pending incidents for resolution in 46 cases. The inordinate delay was not just in terms of days or months, but delay in terms of years. Aside from the said undecided cases and unresolved incidents, there were, as of the date of the judicial audit, 84 pending incidents that remained to be resolved; 41 cases which were considered as dormant, there being no further action and/or further setting thereon; and the absence of hearings in some criminal cases for one to two years.

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The rules and jurisprudence are clear on the matter of delay. Failure to decide cases and other matters within the reglementary period constitutes gross inefficiency and warrants the imposition of administrative sanction against the erring magistrate. Judges must decide cases and resolve matters with dispatch because any delay in the administration of justice deprives litigants of their right to a speedy disposition of their case and undermines the people's faith in the judiciary. Indeed, justice delayed is justice denied.

Delay in rendering decisions and resolutions of pending incidents already submitted for resolution is a serious violation of Section 15, Article VIII of the Constitution, and a blatant violation of Rule 3.05 of the Code of Judicial Conduct and Section 5, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary, which require judges to dispose of court businesses promptly.

The audit report shows that in Criminal Case No. XX-XXX-G, the accused, who was released on bail, was arraigned on April 3, 2000. Thereafter, she jumped bail, prompting the subject court to issue the Order dated July 26, 2006, archiving the instant case for the reason that the accused had jumped bail. In his defense, respondent judge stated that the reason for

archiving the instant case was because “*the court wanted to afford accused full opportunity to be heard thus the subject court opted to archive the case pending arrest of the accused instead of having trial in absentia.*”

However, under OCA Circular No. 89-2004 dated August 12, 2004, a case may only be archived if the accused jumped bail before arraignment and she/he cannot be arrested by the bondsman. In the instant case, the accused was already arraigned prior to jumping bail, hence, respondent judge should have conducted trial in *absentia*, in accordance with Section 14(2), Article III of the 1987 Constitution, which provides that, “*after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.* As a consequence thereof, the instant case was dormant for five (5) years following the archiving, to the prejudice of the State and the offended party.

Also, in Civil Case No. FC-XX-XX-C, for Declaration of Absolute Nullity of Marriage, the Return on the Summons dated October 10, 2017 provided that “*the respondent is now in Manila with no address given for almost two years now.*” Petitioner filed an *Ex-Parte* Motion to Serve Summons Either by Substituted Service or by Publication on April 16, 2018, which respondent judge granted in the Order dated May 30, 2018, stating that “*the Sheriff is hereby directed to serve the Summons thru substituted service, should the same be futile, let the Summons and petition and the Order be published in a newspaper of general circulation in the Province of Negros Oriental and its component cities once a week for three consecutive weeks.*” The publication of the Summons, Petition and the said Order appeared in the *Dumaguete Star Informer* on July 22 and 29, and on August 5, 2018.

The audit report showed that the same procedure was repeated in Civil Case No. FC-XX-XX-C, for Annulment of Marriage, where the Return on the Summons, which was submitted on April 25, 2018, stated that it was unserved since respondent no longer resided in their ancestral home for almost three years, and that she has been living in Manila where she works as a lady guard. Petitioner filed a Motion for Leave to Serve Summons with a Copy of the Petition by way of Publication on May 11, 2018. Accordingly, respondent judge issued the Order dated June 4, 2018, directing the petitioner to publish a copy of the Petition and the Order in a newspaper of general circulation in the Province of Negros Oriental and its component cities once a week for three consecutive weeks. The same were published on July 29, August 5 and August 12, 2018 in the *Dumaguete Star Informer*.

Again, respondent judge justified the said orders by elucidating that “*the Rule provides that when the whereabouts of respondent is unknown as in this case, service may be effected upon him by publication in a newspaper of general circulation in such place as the court may order.*” However, the provision relied upon by respondent judge, which pertains to extraterritorial service under Section 15, Rule 14 of the Rules of Court, is misplaced since the subject cases involved nullity and annulment of marriages, respectively. x x x

Respondent judge likewise failed to direct the petitioners to comply with the additional requirement of serving summons on the respondents at their respective last known addresses by registered mail or by other means the subject court deemed sufficient.

Anent Civil Case No. FC-XX-XX-G, for Declaration of Nullity of Marriage, respondent judge issued the Order dated July 18, 2019, directing the petitioner to amend the petition for being defective, there being no specific address of the respondent therein. The judicial audit team flagged the said order as improper since the appropriate action should have been to dismiss the instant case without prejudice, for failure to prove residency. Respondent judge explained that the instant case was not outrightly dismissed because “[*petitioner*] has complied with the residency requirement, however, the court finds slight clerical error as to his specific

address and it would be too harsh to dismiss the cases, thus the court allowed the petitioner to amend his petition.”

However, in the Supreme Court Resolution dated October 2, 2018 in A.M. No. 02-11-10-SC (*Re: Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages*) and in A.M. No. 02-11-11-SC (*Re: Rule on Legal Separation*), approving the Proposed Guidelines to Validate Compliance with the Jurisdictional Requirement Set Forth in A.M. No. 02-11-10-SC, it provides that the petition shall immediately be dismissed if the petitioner fails to comply with the residency requirements, namely, failure to state the complete address of the parties in the petition (*i.e.*, house number, street, *purok*/village/subdivision, barangay, zone, town, city, and province), and the submission of the three (3) supporting documents that are enumerated under paragraph (a) of the said resolution. Clearly, the verified petition is dismissible on its face for not being compliant with the residency requirement.

Moreover, the audit team reported that in a number of cases involving annulment and nullity of marriages, where majority of said petitions were granted, respondent judge failed to conduct pre-trial, a mandatory stage of the proceedings as explicitly directed under Section 2, Rule 18 of the Rules of Court and under Section 11(1) of A.M. No. 02-11-10-SC. Notably, respondent judge did not offer any explanation as regards his failure to comply with the mandatory requirement of setting the subject cases for pre-trial.

In Criminal Case Nos. XX-XXX-V and XX-XXX-V; XX-XXY-V; XX-XXX-C and XX-XXY-C, and XX-XXZ-V, it has been observed that the subject court still issued orders directing the issuance of a warrant of arrest notwithstanding the fact that the respective accused were already in custody at the time of the filing of the instant cases. For these, respondent judge explained that it has been the practice of his branch clerk of court to attach a warrant of arrest in every criminal case record although the accused were already arrested at the time of the filing of the Informations.

However, said practice does not conform with the explicit provision in Section 5 of Rule 112 of the Rules of Court, that *“[i]f the [judge] finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested x x x when the complaint or information was filed pursuant to Section 6 of this Rule.”*

x x x x

In Criminal Case Nos. FC-XX-XX-G and FC-XX-XXY-G, the Court of Appeals rendered a Decision dated July 11, 2011, remanding the instant cases to the subject court for the reception of the prosecution's evidence. A copy of the said decision was received by the subject court on March 1, 2012. However, the same was only acted upon by respondent judge after more than six years, when he issued the Order dated September 13, 2018, resetting the hearing of the instant cases on March 14, 2019. As of the date of the judicial audit, the case was still on the initial trial stage of the proceedings.

Judging by the foregoing, the Court can only conclude that the actuations of respondent judge were not only gross ignorance of the law, but also grave abuse of discretion as well as defiance to the lawful directives/orders of the appellate courts. Indeed, as OCA observed, respondent judge repeatedly failed to apply even the very basic of laws, rules and procedures, which he cannot feign ignorance of, given his stature as a presiding judge of the second level court for 15 years.

No less than the Code of Judicial [C]onduct mandates that a judge shall be faithful to the laws and maintain professional competence. Indeed, competence is a mark of a good judge. A

judge must be acquainted with legal norms and precepts as well as with procedural rules. When a judge displays an utter lack of familiarity with the rules, he erodes the public's confidence in the competence of our courts. Such is gross ignorance of the law. One who accepts the exalted position of a judge owes the public and the court the duty to be proficient in the law. Unfamiliarity with the Rules of Court is a sign of incompetence. Basic rules of procedure must be at the palm of a judge's hands.

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 misjudgment. 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. One who accepts the exalted position of a judge owes the public and the court proficiency in the law, and the duty to maintain professional competence at all times. When a judge displays an utter lack of familiarity with the rules, he erodes the confidence of the public in the courts. A judge is expected to keep abreast of the developments and amendments thereto, as well as of prevailing jurisprudence. Ignorance of the law by a judge can easily be the mainspring of injustice.

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In the instant case, the judicial audit revealed that there were many cases that were undecided notwithstanding the lapse of the 90-day reglementary period within which they should be disposed, apart from those that have remained dormant or unacted upon for several years. There was inordinate delay in deciding two cases and pending incidents for resolution in 46 cases. Aside from the said undecided cases and unresolved incidents, there were, as of the date of the judicial audit, 84 pending incidents that remained to be resolved; 41 cases which were considered as dormant; and the absence of hearings in some criminal cases for one to two years. In the absence of an extension of time within which to decide these cases, respondent judge's failure to diligently perform his judicial duties is simply inexcusable. Failure to decide cases and other matters within the reglementary period constitutes *gross inefficiency* and warrants the imposition of administrative sanction against the erring magistrate.

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The Court found respondent judge guilty of gross inefficiency and gross ignorance of the law. In *lieu* of dismissal from the service which the Court can no longer impose, respondent judge's retirement benefits were instead declared forfeited as penalty for his offenses, except accrued leave credits. He was, likewise, barred from reemployment in any branch or instrumentality of government, including government-owned or controlled corporations.

This Resolution was immediately executory. **[A.M. No. 20-07-96-RTC, September 1, 2020]**

SHERIFF

- **Oppression or grave abuse of authority and violation of A.M. No. 3-06-13-SC (Code of Conduct for Court Personnel)**

Sheriffs play an important role in the administration of justice and as agents of the law, high standards are expected of them. They are duty-bound to know and to comply with the very basic rules relative to the implementation of writs. They are required to live up to the strict standards of honesty and integrity in public service.

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Thus, the primary duty of a sheriff is to serve and/or execute all writs and processes of the courts for the effective administration of justice.

The OCA found that respondent sheriff was guilty of oppression. Oppression is an administrative offense classified and penalized under Section 46(B)(2), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS) x x x

x x x x

In the instant case, it is undisputed that on March 4, 2008, the trial court issued a writ of preliminary injunction and a writ of execution relative to Civil Case No. XX-XX14. On March 10, 2008, a motion to dissolve the writ of preliminary mandatory injunction was then filed by JJJ (complainant's daughter). Thereafter, the trial court in an Order dated April 14, 2008, granted the motion to dissolve the writ of preliminary mandatory injunction conditioned upon JJJ's posting of a counter-bond. However, from April 25–29, 2008, respondent sheriff proceeded to implement the previously issued writ of execution, despite having knowledge of the Order dissolving the writ of preliminary injunction. In justifying his acts, respondent sheriff insisted that it was his ministerial duty to enforce the writ issued by the courts. He further argued that he was not remiss in his duty as a sheriff, as he made several follow-ups and reminders to complainant and the City Engineer's Office of X City, of the impending demolition, unless complainant can come up with the required counter-bond. There being no answer from complainant, respondent sheriff proceeded with the demolition.

The argument of respondent sheriff is misplaced. It must be reiterated that an order granting to dissolve the writ of preliminary mandatory injunction was issued by the trial court, conditioned with the posting of a counter-bond. In proceeding with the enforcement of the dissolved writ of execution, respondent sheriff acted beyond his ministerial function. It must be stressed that the determination of the sufficiency of the counter-bond or compliance thereof, is within the discretion of the court, and not of the sheriff. Thus, such act of respondent sheriff constitutes oppression or grave abuse of authority. The OCA was correct when it held that respondent sheriff violated Section 6, Canon IV of A.M. No. 03-06-13-SC and that "[g]ood faith on the part of respondent [s]heriff, or lack of it, in proceeding to properly execute his mandate is of no moment, for he is chargeable with the knowledge that being an officer of the court tasked therewith, it behooves him to make due compliance."

We find that the charges of conduct unbecoming a public servant, conduct prejudicial to the best interest of the service, and violation of Section 3(e) of RA No. 3019, should be dismissed for lack of evidence.

x x x x

Here, respondent sheriff is guilty of both oppression and violation of A.M. No. 03-06-13-SC, thus, the proper penalty is suspension for 6 months and 1 day to 1 year for the first offense. The recommended penalty of the OCA of payment of fine in the amount of P30,000 as penalty is insufficient. Considering that respondent sheriff has a previous administrative case, the proper penalty to be imposed should be suspension for 1 year.

Respondent sheriff was found guilty of oppression or grave abuse of authority, and violation of A.M. No. 03-06-13-SC, otherwise known as the Code of Conduct for Court Personnel. He was suspended from service for one year. **[A.M. No. P-19-3960, September 7, 2020]**

CLERK III

- **Grave misconduct**

At the outset, while respondent clerk was ordered to be dropped from the rolls “effective May 2, 2014” and the instant complaint was filed only on May 26, 2014 or 24 days after respondent clerk was retroactively dropped from the rolls, the Court notes that jurisdiction over the instant administrative complaint has already attached considering that respondent clerk was deemed a *de facto* employee of the Court when the written-complaint was filed on May 26, 2014.

For one, the Resolution which ordered the dropping of respondent clerk from the rolls was issued only on March 18, 2015. For another, the records of the case clearly show that respondent clerk was still active in the plantilla records at the time that the instant complaint was filed.

“Jurisprudence is replete with rulings that in order for the Court to acquire jurisdiction over an administrative proceeding, the complaint must be filed during the incumbency of the respondent public official or employee. This is because the filing of an administrative case is predicated on the holding of a position or office in the government service. *However, once jurisdiction has attached, the same is not lost by the mere fact that the public official or employee was no longer in office during the pendency of the case.*” Consequently, the supervening Resolution retroactively dropping respondent clerk from the rolls is not a reason to exculpate her from administrative liability.

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In light of the foregoing, the Court concurs with the OCA’s recommendation that respondent clerk be held guilty of [g]rave [m]isconduct.

Grave misconduct is defined as “a serious transgression of some established and definite rule of action (such as unlawful behavior or gross negligence by the public officer or employee) that tends to threaten the very existence of the system of administration of justice an official or employee serves.” It is a grave offense punishable by dismissal for the first offense.

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As found by the OCA, respondent clerk admitted that she received the amount of P20,500 from complainants so that she could pay the required bond for the accused at the Office of the Clerk of Court. Furthermore, respondent clerk also confessed that she was not able to return the exact amount of P20,500 upon demand by the complainants despite her failure to process the bail bond.

It is well-settled in our jurisdiction that the court personnel’s sole act of receiving money from litigants, whatever the reason may be, constitutes grave misconduct, and no matter how nominal the amount involved is, such act erodes the respect for law and the courts.

It is true that when the present administrative case was filed before the OCA, through the 3rd Indorsement of EJ MMM, respondent clerk was no longer an employee of the judiciary as she was dropped from the rolls effective May 2, 2014. However, this fact, as correctly held by the OCA, does not render the present complaint moot.

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The Court adopted the report and recommendation of the Office of the Court Administrator. Respondent clerk was found guilty of grave misconduct and would have been

meted the penalty of dismissal from the service had she not been earlier dropped from the rolls effective May 2, 2014 pursuant to the Resolution dated March 18, 2015 in A.M. No. 15-01-26-RTC. Consequently, respondent clerk's civil service eligibility was cancelled, her retirement and other benefits, except accrued leave credits were forfeited. She was also perpetually disqualified from reemployment in any government agency or instrumentality, including any government-owned and controlled corporation. **[A.M. No. P-16-3578 (Formerly A.M. No. 14-6-203-RTC), September 1, 2020]**

JUNIOR PROCESS SERVER AND CLERK II

- **Disgraceful and immoral conduct**

The image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel—hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a true temple of justice.

Although every office in the government service is a public trust, no position exacts a greater demand for moral righteousness and uprightness from an individual than in the judiciary. That is why this Court has firmly laid down exacting standards of morality and decency expected of those in the service of the judiciary. Their conduct, not to mention behavior, is circumscribed with the heavy burden of responsibility, characterized by, among other things, propriety and decorum so as to earn and keep the public's respect and confidence in the judicial service. It must be free from any whiff of impropriety, not only with respect to their duties in the judicial branch but also to their behavior outside the court as private individuals. There is no dichotomy of morality; court employees are also judged by their private morals. Regrettably, in this case, respondent junior process server and respondent clerk fell short of the exacting standards required of them as employees of the court of justice by engaging in disgraceful and immoral conduct.

Immorality has been defined to include not only sexual matters but also “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.”

Without question, it is morally reprehensible for a married man to maintain an illicit affair with a woman not his wife, as it is equally disgraceful for a woman to engage in an amorous relationship with a married man. The actions of respondent junior process server and respondent clerk do not only violate the moral standards expected of employees of the judiciary, but also desecrate the sanctity of the institution of marriage which this Court abhors and punishes.

On several occasions, the Court has held that an illicit affair constitutes disgraceful and immoral conduct and accordingly, subjected the respondent junior process server and respondent clerk to disciplinary action. The resignation of respondent junior process server and respondent clerk from service does not render the administrative case against them moot and academic; neither does it free them from liability. The resignation of a public servant does not preclude the finding of administrative liability to which he or she shall still be answerable. Cessation from office because of resignation does not warrant the dismissal of the administrative complaint filed while the respondent was still in the service.

In fact, as aptly ratiocinated by the OCA, the resignation of respondent junior process server and respondent clerk when the complaint was filed and their refusal to comment on the complaint and to refute the charges against them strongly manifest their guilt. In administrative

proceedings, only substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, is required. The standard of substantial evidence is satisfied when there is reasonable ground to believe that the person indicted was responsible for the alleged wrongdoing or misconduct. In this case, substantial evidence weighs against the respondent junior process server and respondent clerk.

The OCA acted judiciously in proceeding with the prosecution of the case despite the filing of the affidavit of desistance by complainant. The affidavit of desistance executed by complainant stating that she is no longer interested in further prosecuting the case does not *ipso facto* warrant the dismissal of the case against respondent junior process server and respondent clerk. Once administrative charges have been filed, this Court may not be divested of its jurisdiction to investigate and to ascertain the truth thereof. For it has an interest in the conduct of those in the service of the Judiciary and in improving the delivery of justice to the people, and its efforts in the direction may not be derailed by complainant's desistance from prosecuting the case she initiated.

Respondent junior process server and respondent clerk were found guilty of disgraceful and immoral conduct and were each ordered to pay a fine of P50,000 to be deducted from their respective accrued leave credits, while the balance shall be paid directly to the Court. **[A.M. No. P-15-3411, September 8, 2020]**

JUDICIAL STAFF EMPLOYEE II

- **Violation of reasonable office rules and regulations, disgraceful and immoral conduct and dishonesty**

Violation of Reasonable Office Rules and Regulations

By his own admission that he in fact entered the premises of NN's quarters in Room 110 instead of meeting her in the lounge as required by the House Rules, respondent judicial staff employee is deemed liable for [v]iolation of [r]easonable [o]ffice [r]ules and [r]egulations under Section 46(F)(3), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS). Whether NN is respondent judicial staff employee's legal or common-law spouse is of no moment. Needless to state, the rules are clear that all guests, regardless of their relation to the occupants of the PHILJA Training Center, are only allowed to conduct visits in the lounge.

Disgraceful and Immoral Conduct

Respondent judicial staff employee is also guilty of [d]isgraceful and [i]mmoral [c]onduct as defined under Civil Service Commission (CSC) Memorandum Circular (MC) No. 15, Series of 2010, which provides:

SECTION 1. Definition of Disgraceful and Immoral conduct—Disgraceful and Immoral Conduct refers to an act which violates the basic norm of decency, morality and decorum abhorred and condemned by the society. It refers to conduct which is willful, flagrant or shameless, and which shows a moral indifference to the opinions of the good and respectable members of the community.

The same Circular highlights that “[d]isgraceful and [i]mmoral conduct may be committed in a scandalous or discreet manner, within or out of the workplace.”

This Court has held in a number of cases that a man having an illicit relationship with a woman not his wife is within the purview of “disgraceful and immoral conduct” under Civil Service Laws. Here, respondent judicial staff employee admitted in his June 13, 2019 and August 5, 2019 Letters that he has cohabited; and continues to cohabit with NN, a woman who is not his wife, with whom he begot two children.

Notably, respondent judicial staff employee, in his Letters, admitted that he entered into a relationship with NN in 2005, or two years after QQ supposedly abandoned him for another man. This is not the place for determining QQ's infidelity and abandonment of her family. What is material in this case is the fact that without his marriage being first dissolved, respondent judicial staff employee lived with another woman not his wife, and with whom he found another family.

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Dishonesty

It is undisputed even by respondent judicial staff employee that he remains legally married to QQ. There is no confusion here. In this connection, we agree with the OAS that respondent judicial staff employee's deliberate omission of this fact in his SALNs for several years constitutes [d]ishonesty. "Dishonesty has been defined as the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray and an intent to violate the truth."

Here, respondent judicial staff employee's lack of honesty is evident when, on several occasions, he deliberately placed "N/A" in his SALNs from 2007 to 2011; including his SALNs beginning 2013, despite knowledge that he is still legally married to QQ. The fact that respondent judicial staff employee omitted such information in his SALNs on different and various occasions is a clear manifestation of his propensity to lie and to distort the truth just to suit his personal interest and purpose. This, the Court cannot countenance.

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The Court found respondent judicial staff employee guilty of the administrative offenses of violation of reasonable office rules and regulations, disgraceful and immoral conduct, and dishonesty. He was suspended for one year, with a warning that a repetition of the same or similar infraction shall be dealt with more severely.

This Decision took effect immediately. ***[A.M. No. 2019-14-SC, February 10, 2020]***