



# PHILJA E-Alerts

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## JUDGES

- **Violation of the rule on compulsory disqualification**

Here, what is involved is the application of respondent judge's wife for notarial commission and respondent judge's action thereon. Section 4, Rule III of the 2004 Rules on Notarial Practice requires the judge in whose sala an application for notarial commission is filed to conduct a summary hearing to determine whether a petition for notarial commission is sufficient in form and substance; whether the allegations contained in the petition are true; and whether the applicant has read and fully understood the Notarial Rules. Here, respondent judge's wife had to personally appear before him in court and prove she was qualified for a notarial commission.

Respondent judge, however, was disqualified and should have inhibited himself from "sitting in the case" involving his wife pursuant to Rule 137 of the Rules of Court and Section 5, Canon III of the New Code of Judicial Conduct. The case pertained to his wife's petition for notarial commission requiring him to ascertain first whether the petition was sufficient in form and substance; whether the allegations therein were true; and whether his wife had read and fully understood the Notarial Rules. Surely, these matters required respondent judge to exercise his discretion in passing upon whether or not his wife's compliance with the rules and qualifications to be commissioned as notary public.

The fact that a petition for notarial commission is summary and non-adversarial in nature does not remove it from the ambit of Section 1, Rule 137 of the Rules of Court. In ***Villaluz v. Judge Mijares***, the Court found Judge Mijares to have violated Section 1, Rule 137 of the Rules of Court when she failed to recuse herself from hearing her grandson's petition for correction of entry, albeit it was a non-adversarial proceeding:

Even on the assumption that the petition for correction of entry of respondent's grandson is not controversial in nature, this does not detract from the fact that she cannot be free from bias or partiality in resolving the case by reason of her close blood relationship to him. In fact, bias was clearly demonstrated when she waived the requirement of publication of the petition on the dubious ground of enabling the parents of the minor (her daughter and son-in-law) to save the publication fee as they were then just "starting to have a family."

We emphasize that judges, as officers of the court, have the duty to see to it that justice is dispensed with evenly and fairly. Not only must they be honest and impartial, but they must also ***appear*** to be honest and impartial in the dispensation of justice. Judges should make sure that their acts are circumspect and do not arouse suspicion in the minds of the public. This respondent judge failed to do.

All told, respondent judge is guilty of violating the rule on compulsory disqualification. Considering, however, that this is his first offense, reprimand with warning is deemed appropriate under the circumstances.

Respondent judge was reprimanded with warning that a repetition of the same or similar act shall be dealt with more severely. **[A.M. No. RTJ-20-2576 (Formerly OCA IPI No. 18-4864-RTJ), January 29, 2020]**

- **Violation of Supreme Court rules, directives and circulars, simple misconduct, gross inefficiency or undue delay and gross ignorance of the law**

At the outset, the Court finds that respondent judge failed to take cognizance of A.M. No. 01-10-5-SC-PHILJA in failing to refer the case to mediation. In *Re: Anonymous Complaints against Judge Bandong, RTC, Br. 59, Lucena City, Quezon Province*, the Court explained that to decongest court dockets and enhance access to justice, the Court, through A.M. No. 01-10-5-SC-PHILJA, approved the institutionalization of mediation in the Philippines through court-annexed mediation. Under this set of rules, mediatable cases where amicable settlement is possible must be referred by the trial courts to the Philippine Mediation Center (PMC).

Here, the case involved a petition for the allowance of the Deed of Donation *Mortis Causa*, which is governed by the rules on the Settlement of Estate of Deceased Persons under the Rules of Court. Being a mediatable case, respondent judge, who from his actuations, is presumed to have discerned the possibility of amicable settlement among the parties, should have referred the case to the PMC. However, respondent judge failed to do so.

In *Re: Anonymous Complaints against Judge Bandong, RTC, Br. 59, Lucena City, Quezon Province*, the Court ruled that the judge could not have feigned ignorance of A.M. No. 01-10-5-SC-PHILJA since the Philippine Judicial Academy frequently conducts conventions and seminars for judges and clerks of court nationwide regarding the implementation of court-annexed mediations and judicial dispute resolutions.

Further, as early as 2008, cases from MCTC X were already being referred to the PMC. Thus, there was no reason for respondent judge not to refer to the PMC Special Proceedings No. XXXX which was initiated in 2010.

x x x x

While the courts are enjoined to make the parties agree on an equitable compromise, the judges' efforts to make parties agree should be within the bounds of propriety and without the slightest perception of impartiality.

Here, from the very beginning, respondent judge has shown his predisposition to resolve the case by way of an amicable settlement when on August 19, 2010, he directed the parties to propose specific terms and conditions for possible amicable settlement, and constantly cajoled them to do so through his Orders. He did not deny that in his effort to persuade the parties, he committed the following acts: (1) he sent text messages to complainant's counsel urging the latter to work out a settlement with oppositor; (2) he conducted an *ex parte* meeting with complainant and her counsel inside his chambers to propose several options for a settlement; and (3) he convinced the oppositor to amicably settle during their accidental meeting in X City on August 4, 2011, or more than a year from the time of filing the Petition for the Allowance of the Deed of Donation *Mortis Causa*.

In *A.M. No. MTJ-15-1850*, the Court once admonished herein respondent judge for initiating a conference among the parties in a case pending before him. The conference was supposedly for the purpose of settling the cases pending not only before him but also those pending outside his *sala*. The Court ruled that such act cast doubt on respondent judge's impartiality. More importantly, the Court ruled that respondent judge's dealings with litigants'

counsel outside of the courtroom to discuss a possible settlement could give rise to doubts as to the propriety of the act. The Court ruled:

x x x While the explanation of respondent judge in holding the conference among the lawyers of the GGG siblings is laudable, the same, however, casts doubt on his impartiality and integrity as a judge and erodes the confidence of the people in the judicial system. No matter how noble his intentions may have been, it was improper for respondent judge to meet the lawyers in a restaurant to discuss a possible settlement, among others. Respondent judge should not have put himself in such a position as to arouse suspicion of improper conduct. He should have known that his dealings with the litigants' counsels outside of the courtroom would give rise to doubts as to the propriety of the same respondent judge failed to live up to the norm that "judges should not only be impartial, independent and honest but should be believed and perceived to be impartial, independent and honest.

Furthermore, OCA Circular No. 70-2003 cautions judges "to avoid in chamber sessions without the other party and his counsel present, and to observe prudence at all times in their conduct to the end that they not only act impartially and with propriety but are also perceived to be impartial and improper."

Notably, A.M. No. 03-1-09 SC, which was adverted to by respondent judge to justify his actions, mandates judges to persuade the parties to arrive at a settlement of the dispute. However, it does not give the judge an unbridled license to do this outside the confines of the official proceedings at the risk of putting into question the integrity of the judiciary.

While respondent judge may have been impelled by good motives in encouraging the parties to arrive at an amicable settlement, his aforementioned acts, particularly texting complainant's counsel and convincing the oppositor to amicably settle during their accidental meeting in X City, are not part of the court's official proceedings and thus, cast doubt on the integrity and impartiality of the courts. Moreover, respondent judge's *ex parte* meeting with complainant and her counsel done inside his chambers is specifically prohibited by OCA Circular No. 70-2003.

Worse, because of respondent judge's overbearing persistence to make the parties settle amicably, he has unduly hampered the proceedings in Special Proceedings No. XXXX.

x x x x

As regards respondent judge's issuance of the Extended Order, he again exceeded the bounds of propriety when he unduly castigated complainant's counsel, x x x

x x x x

Respondent judge should have refrained from using his position to browbeat complainant's counsel just because he did not agree with the latter's position. Further, he should have refrained from rendering the Extended Order considering that he already granted the withdrawal of the petition in Special Proceedings No. XXXX. Thus, there was no longer any occasion to issue the Extended Order.

The Court likewise finds respondent judge guilty of gross ignorance of the law.

x x x x

Respondent judge's gross ignorance of the law lies not so much in the issuance of the Order dated August 7, 2012, which appeared to incorporate a pre-trial order. The Court finds that

what appeared as a pre-trial order incorporated in the said Order is not final. In fact, after the pre-trial hearing, respondent judge issued a Pre-trial Order dated September 4, 2012.

However, the Court finds that respondent judge committed a blatant error when in his Order dated August 7, 2012, he gave the oppositor the privilege of submitting at his option a pre-trial brief. x x x

x x x x

This contravenes the expressed rule under Section 6, Rule 18 of the Rules of Court that the filing of the respective pre-trial briefs by the parties at least three days before the date of pre-trial is mandatory. x x x

x x x x

Worse, during the pre-trial hearing, respondent judge expressed that in the absence of oppositor's pre-trial brief, he was treating oppositor's previous submissions to the court, *i.e., Opposition, Supplement to the Opposition in Lieu of Position Paper, and Compliance*, as containing the elements of a pre-trial brief. x x x

x x x x

Respondent judge's act of considering oppositor's submissions as his pre-trial brief is clearly not sanctioned by Section 6, Rule 18 of the Rules of Court which mandates the parties to file a pre-trial brief. Section 5 of the same Rule even provides that failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial, which in turn will result to allowing the plaintiff to present his evidence *ex parte* and for the court to render judgment on the basis thereof.

Thus, when he issued the Pre-Trial Order dated September 4, 2012, respondent judge disregarded the mandatory nature of the submission of pre-trial briefs considering that the oppositor did not submit his pre-trial brief.

Respondent judge's lack of understanding of the rules on pre-trial, constitutes gross ignorance of the law and procedure.

x x x x

Respondent judge's first, second, and third offenses are less serious charges. Specifically, the first offense constitutes a violation of Supreme Court rules, directives, and circulars under Section 9(4), Rule 140 of the Rules of Court. The second offense amounts to simple misconduct under Section 9(7), Rule 140 of the Rules of Court, there being no corrupt or wrongful motive on the part of respondent judge. On the other hand, the third offense which amounts to gross inefficiency or undue delay falls under Section 9(1), Rule 140 of the Rules of Court.

Applying Section 11, Rule 140, the Court deems it proper to impose a penalty of P12,000 each for the first and third offenses.

As to the second offense, the Court previously found respondent judge in A.M. No. MTJ-15-1850 guilty of violating Section 2, Canon 2 of the New Code of Judicial Conduct for initiating a conference among the parties in a pending case for the purpose of settling the cases pending not only before him but also those pending outside his *sala*. Thus, the Court deems it proper to impose the maximum penalty of P20,000.

As to the fourth charge, the Court likewise finds it as not attended by corrupt or wrongful motive on the part of respondent judge in issuing the Extended Order. Thus, it only amounts to simple misconduct which is a less serious charge under Section 9(7), Rule 140 of the Rules of Court. Thus, the Court deems it proper to impose a penalty of P12,000.

Lastly, the fifth offense constitutes gross ignorance of the law under Section 8(9), Rule 140 of the Rules of Court which is a serious charge. Thus, applying Section 11, Rule 140, the Court deems it proper to impose the penalty of P22,000.

The Court found respondent judge guilty of violation of Supreme Court rules, directives and circulars, simple misconduct, gross inefficiency or undue delay and gross ignorance of the law.

Respondent judge was ordered to pay the following fines: (1) P12,000 for failure to refer the case to the Philippine Mediation Center as prescribed in A.M. No. 01-10-5-SC-PHILJA; (2) P20,000 for pressing the parties to enter into an amicable settlement through means that exceeded the bounds of propriety; (3) P12,000 for causing undue delay in terminating the preliminary conference amounting to gross inefficiency; (4) P12,000 for issuing the Extended Order unduly castigating complainant's counsel after the withdrawal of the petition, thereby exceeding the bounds of propriety; and (5) P22,000 for giving the oppositor the option of submitting his pre-trial brief in contravention of its mandatory nature as stated in Section 6, Rule 18 of the Rules of Court.

Respondent judge was likewise sternly warned that a repetition of the same or similar acts in the future shall be dealt with more severely. [**A.M. No. MTJ-16-1880 (Formerly OCA IPI No. 13-2565-MTJ), February 4, 2020**]

- **Violation of paragraph 7, Section 8, Rule 140 of the Rules of Court and gross misconduct constituting violation of the New Code of Judicial Conduct**

After a judicious review of the records, the Court finds no cogent reason to reject or overturn the findings and recommendation of the CA's Investigating Justice, which we hereby adopt *in toto*:

Here, respondent Judge is accused by complainants, namely: AAA, BBB, CCC and spouses DDD, of borrowing money from them while their respective cases were pending before respondent judge's *sala*. To reiterate, the administrative charge for gross misconduct stemmed from sworn statements that complainants executed before Executive Judge E of the RTC in X City and forwarded to the OCA. The OCA endorsed the administrative case to the Supreme Court which gave due course to the complaint and referred the same to the investigating Justice for investigation, report and recommendation.

x x x x

The gist of complainants' respective complaints is that while their respective cases were pending before the sala of respondent judge, the latter sought them outside the courtroom and borrowed a large sum of money from them. In the case of spouses DDD, respondent judge and his wife even asked for speakers, driftwood, empty karaoke box and weekly delivery of fish for their daily consumption. The fact that they all have pending cases before respondent judge, complainants were thus constrained to accommodate respondent judge and give him money.

The act complained of is classified as a serious charge pursuant to Section 8(7), Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, which reads:

**SEC. 8. Serious charges.**—serious charges include:

X X X X

**7. Borrowing money or property from lawyers and litigants in a case pending before the court;**

X X X X

Anent the allegation that respondent judge borrowed money from litigants in cases pending before this court, there is substantial evidence to hold respondent judge liable for violation of Section 8(7) of Rule 140 of the Rules of Court.

While it is acknowledged that complainants do not have documentary evidence in support of the alleged loans, with the exception of the Cebuana Lhuiller receipt that spouses DDD offered in evidence to attest to the fact that they sent P5,000 to respondent judge on November 12, 2011, the investigating Justice is convinced of the veracity of their respective claims. Testimonies are to be weighed, not numbered; thus it has been said that a finding of guilt may be based on the uncorroborated testimony of a single witness when the tribunal finds such testimony positive and credible.

The sworn statements of the complainants as reiterated in their respective judicial affidavits are straightforward and uncomplicated. In the simplest of terms, they narrated how respondent judge separately approached them while they have cases pending before his court and borrowed money from them. The investigating Justice finds no reason to doubt their credibility. AAA, BBB and DDD respectively testified in a candid, straightforward and categorical manner. Complainants remained steadfast in their assertion that respondent judge borrowed from them despite the fact that it was respondent judge himself who cross-examined them.

It is noteworthy that during his exhaustive cross-examination of complainants, respondent judge did not in fact meet head on the allegations that he borrowed money from complainants. It would have been a perfect time for him to confront complainants and establish the falsity of their claim. Curiously, respondent judge instead opted to harp on his theory that complainants were just coerced to file a complaint against him as part of the grand design of Deputy Court Administrator XXX and Judges E, F, G and H to harass him and cause his dismissal from service. Respondent judge merely skimmed over the crux of the controversy which is the alleged borrowing of money from litigants who have cases in his court.

Even in his counter affidavit, respondent Judge only made a cursory denial of the alleged borrowing of money from complainants. Once, again, respondent judge was transfixed in his conspiracy theory that the aforementioned judges were out to get him. Unfortunately, respondent judge failed altogether to establish any motive on the part of the aforementioned personalities to falsely accuse him of gross misconduct. Respondent judge himself admitted that there was no animosity between him and the RTC judges that he claims are conspiring to cause his dismissal from service.

X X X X

Also, the investigating Justice cannot accord any probative weight on the certification that respondent judge presented in evidence, the sole purpose of which was to rebut the authenticity of the Cebuana Lhuillier receipt that spouses DDD submitted in evidence. Indeed, said certification has no probative value for being hearsay.

Well-entrenched is the rule that a private certification is hearsay where the person who issued the same was never presented as a witness. The same is true of letters. While hearsay evidence may be admitted because of lack of objection by the adverse party's counsel, it is nonetheless without probative value. Stated differently, the declarants of written statements pertaining to disputed facts must be presented at the trial for cross-examination. The lack of objection may make an incompetent evidence

admissible, but admissibility of evidence should not be equated with weight of evidence. Indeed, hearsay evidence whether objected to or not has no probative value.

In fine, respondent judge's general denial carries little weight. As the preceding paragraphs will show, the charge against respondent Judge is very specific, testified to by complainants, which respondent judge had the opportunity to directly address and explain, but he merely glossed over. Respondent judge's claim that the complaints against him are merely instigated by Judges E, F, G and H is uncorroborated and self-serving.

In view of the absence of a specific denial on the part of respondent judge, he is thereby deemed to have tacitly admitted the allegation that he had indeed obtained a loan from each of the complainants while their cases are pending before his court. It is settled that the purpose of requiring specific denials from the defendant is to make the defendant disclose the "matters alleged in the complaint which he [or she] succinctly intends to disprove at the trial, together with the matter which he [or she] relied upon to support the denial."

Even assuming *arguendo* that complainants were encouraged to come forward and disclose their experience with respondent Judge by Executive Judge E, the same does not detract from the veracity of the complainants' claim. The fact remains that respondent judge did borrow money from complainants who are litigants with pending cases before his court. The act alone is patently inappropriate and constitutes gross misconduct on the part of respondent judge.

The proscription against borrowing money or property from lawyers and litigants in a case pending before the court is imposed on Judges to avoid the impression that the judge would rule in favor of a litigant because the former is indebted to the latter.

The impropriety of borrowing money from litigants in cases before the court is underscored by the broad tenets of Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary. Under Section 13 of Canon 4, "judges and members of their families shall neither ask for, nor accept, any gifts, bequest, loan or favor in relation to anything done or to be done or omitted to be done by him or her in connection with the performance of judicial duties."

Once again, there is a need to stress that judges must adhere to the highest tenets of judicial conduct. Because of the sensitivity of his position, a judge is required to exhibit, at all times, the highest degree of honesty and integrity and to observe exacting standards of morality, decency and competence. He should adhere to the highest standards of public accountability lest his action erode the public faith in the Judiciary.

As a magistrate, the respondent judge should have known that he is the visible representation of the law, and more importantly, of justice. It is from him that the people draw their will and awareness to obey the law. For the judge to return that regard, he must be the first to abide by the law and weave an example for others to follow. On this point, respondent judge clearly failed in his mandate when he unabashedly sought out complainants who are litigants with pending cases before his court and repeatedly borrowed money from them, even going so far as asking spouses DDD to provide fish/viand for respondent Judge's family for more than a month. The repetitiveness of respondent judge's acts shows his proclivity in transgressing the law and conducting himself in a manner that is unbecoming a member of the bench.

X X X X

The Court found respondent judge guilty of violating paragraph 7, Section 8, Rule 140 of the Rules of Court (borrowing money from litigants in cases pending before the court) which is also a gross misconduct constituting violation of the New Code of Judicial Conduct. He was dismissed from the service, with forfeiture of all retirement benefits, (except accrued leave

credits), with prejudice to reemployment in any government agency or instrumentality. Immediately upon receipt by respondent of this decision, he was deemed to have vacated his office and his authority to act as judge was considered automatically terminated. **[A.M. No. RTJ-16-2475 (Formerly A.M. No. 16-07-261-RTC), February 4, 2020]**

- **Dishonesty**

We have repeatedly held that although every office in the government service is a public trust, no position exacts a greater demand on moral righteousness and uprightness of an individual than a seat in the judiciary. Members of the judiciary should conduct themselves in such a manner as to be beyond reproach and suspicion, and free from any appearance of impropriety in their personal behavior, not only in the discharge of their official duties but also in their everyday life. They are strictly mandated to maintain good moral character at all times and to observe irreproachable behavior so as not to outrage public decency.

Here, respondent judge is indeed guilty of dishonest conduct. Jurisprudence defines dishonesty as “a 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 receiving his monthly allowances despite notice of his suspension by the Court, respondent judge knowingly received money not due to him and in effect defrauded the LGUs concerned of public funds that could have been used for a worthy governmental purpose.

Under civil service rules, a government employee is not entitled to all monetary benefits including leave credits during the period of suspension. The seriousness of respondent’s offense lies in the fact that as a judge, he was “expected to exhibit more than just a cursory acquaintance with statutes and procedural rules and to apply them properly in all good faith.” Worse, his act of receiving allowances was in clear contravention of this Court’s decision suspending him for 6 months without salary or benefits. The amount (P16,000) that respondent judge received may seem insubstantial but that is precisely why he should have foregone it or immediately refunded the same instead of risking disobeying a lawful order of this Court or tarnishing the dignity of his public position for so paltry a sum.

x x x x

The Court must take into account, however, that respondent judge was already dismissed from the service with forfeiture of his benefits, save his accrued leave credits, and with perpetual disqualification from reemployment in the government in our June 26, 2012 Decision in ***State Prosecutor Comilang v. Respondent judge***. x x x

x x x x

Finally, respondent judge should be directed to reimburse the local government units concerned the amount of P16,000 which he unlawfully received during the period of his suspension.

Respondent judge was found guilty of dishonesty. He was ordered to pay a fine in the amount of P40,000, which shall be deducted from his accrued leave credits. He was further directed to reimburse the local government units concerned the amount of P16,000 which he received as allowance during the period of his suspension. **[A.M. No. RTJ-11-2286 (Formerly OCA IPI No. 09-3291-RTJ), February 12, 2020]**