

EDITHA P. ELAPE, Complainant, vs. ALBERTO R. ELAPE, Process Server, Regional Trial Court, Surigao City, Branch 30,[1] Respondent.

A.M. No. P-08-2431. April 16, 2008

Ponente: CORONA, J.

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CORONA, J.:

In her complaint dated May 26, 2003, the complainant Editha P. Elape charged her husband, respondent Alberto R. Elape, process server of the Regional Trial Court (RTC), Surigao City, Branch 30, with immorality.

The complainant is married to respondent and they have five children. On December 20, 2001,[1] she instituted an administrative complaint for immorality against respondent before the Executive Judge of the RTC, Surigao City but she withdrew the same because respondent apologized and promised to leave his mistress. She reconciled with the respondent to protect their children. However, despite the reconciliation, respondent rarely spent the night with his family.[2]

On May 7, 2003, the complainant discovered that respondent had resumed his extramarital affair, cohabiting with his mistress under scandalous circumstances. He was known to be a married man and a court employee at that.[3] Respondent later abandoned his family and stopped giving financial support to them.[4] Thus, the complainant filed this second administrative complaint on May 26, 2003.[5]

Respondent denied that he committed immorality. He averred that he discontinued his extramarital affair after the first complaint for immorality was filed. He insisted that he had faithfully responded to the needs of his family to the extent of borrowing money from his friends for their sustenance. He again sought reconciliation with the complainant but the latter refused.[6]

This Court, in its May 5, 2004 resolution, referred the case to Executive Judge Victor A. Tomaneng, RTC, Butuan City, Agusan del Norte, Branch 33, for investigation, report and recommendation.

Judge Tomaneng heard the parties. The complainant, her daughter Kathleen and Aloma Rodriguez Hadji[7] testified that respondent and his mistress were still living together and comporting themselves publicly as husband and wife.[8] Before presenting his evidence, respondent tried to settle the case by again asking the complainant's forgiveness, to no avail.[9] Respondent, in his testimony, denied that he had resumed his relationship with his mistress and stated that his encounters with her were mere coincidences.[10] But he admitted that it was his habit to engage in drinking sprees and to play mahjong whenever he had money.[11]

Judge Tomaneng ruled that respondent was guilty of immorality and should be punished by suspension for six months and one day.[12]

In its memorandum dated March 7, 2006, the Office of the Court Administrator (OCA) adopted the findings, conclusion and recommendation of the investigating judge:

This Office adopts the Investigator's findings, conclusions and recommendation which are a result of a careful analysis of the complainant and respondent's testimonial and documentary evidence. Aside from respondent's

admission [to complainant] that he is so attracted to [his mistress] and they are already living together, complainant and her eldest daughter positively testified that they saw respondent living with [his mistress] in a rented room in San Juan St., Surigao City since 2004. Aloma Hadji likewise declared that respondent and [his mistress] had been her neighbors in Tondo, Surigao City from July 2003 to January 2004 and they displayed their affection in public. The extract of the police blotter and the pictures showing respondent and [his mistress] embracing each other are supplemental proofs that respondent has continued his illicit relations with [her].

Respondent's explanation that his several meetings with [his mistress] on the following dates, 14 September 2002 when respondent saw [her] in Mabua, Surigao City and offered her a ride which resulted [in] a vehicular accident, 30 November 2004 in Medarda Videoke Bar where [she] is working as a guest relation officer and sometime in November 2004 inside a restaurant where they were seen together taking meals[,] were due to plain coincidence. His clarification and denial that he did not abandon his family and he stopped seeing [his mistress] after he was forgiven by complainant are not worthy of belief. His denial cannot prevail over the positive statements of the complainant and her witnesses.

From the evidence presented[,] there is no doubt that respondent has not reformed despite the dismissal of the first complaint for immorality against him. He has flaunted his paramour in the eyes of the public, living with her in different places and being seen around with her. Undeniably, he is maintaining an illicit relationship which is definitely contrary to the acceptable norms of morality, especially when the person involved is a court personnel who is supposed to maintain a high standard of morality in order to live up to his role as a model in society.

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In view of the foregoing, it is respectfully recommended that respondent Alberto [R.] Elape be **SUSPENDED** for **SIX (6) MONTHS** and **ONE (1) DAY** without pay with stern warning that repetition of the same or similar offense in the future shall be dealt with more severely.[13]

We agree with the findings and evaluation of the OCA.

Immoral conduct is conduct which is "willful, flagrant or shameless, and which shows a moral indifference to the opinion of the good and respectable members of the community." [14] In several cases, we have ruled that the abandonment of one's wife and children, and cohabitation with a woman not his wife, constitutes immoral conduct that is subject to disciplinary action.[15]

Respondent's act of maintaining an illicit relationship with a woman not his wife is, within the purview of Section 46 (b) (5) of Subtitle A, Title I, Book V of the Administrative Code of 1987,[16] disgraceful and immoral conduct.[17] Under the Uniform Rules on Administrative Cases in the Civil Service Commission,[18] disgraceful and immoral conduct is a grave offense for which the penalty of suspension for six months and one day to one year shall be imposed for the first offense and dismissal for the second.[19]

Since this is respondent's first offense, the recommended penalty of six months and one day is in order.

It cannot be overstressed that -

[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.[20]

WHEREFORE, respondent Alberto R. Elape, process server, Regional Trial Court, Surigao City, Branch 30 is hereby found GUILTY of immorality. He is SUSPENDED for six (6) months and one (1) day without pay with STERN WARNING that commission of the same or similar offenses shall be dealt with more severely.

After he shall have served his suspension, respondent is hereby ordered to give the required financial support to his family. He is warned that failure to do so will be a ground for his dismissal from the service.

Let a copy of this resolution be filed in the personal record of respondent.

SO ORDERED.

Puno, C.J., (Chairperson), Azcuna and Leonardo-De Carpio, JJ., concur.
Carpio, J., on leave.

[**] The name Alberto B. Elape was mistakenly used in the title. He testified before the investigating judge that he was the process server of the Office of the Clerk of Court, RTC, Surigao City, Branch 30; rollo, p. 103.

[1] Id., p. 15.

[2] Id., p. 4.

[3] Id., p. 5.

[4] Id., p. 34.

[5] Id., p. 2.

[6] Id., p. 116.

[7] Neighbor of respondent and his mistress.

[8] Rollo, pp. 115-116.

[9] Id., pp. 116-117.

[10] Id., p. 117.

[11] Id., p. 104.

[12] Id., pp. 117-118.

[13] OCA Memorandum dated March 7, 2006, pp. 5-6, citations omitted.

[14] Cojuangco, Jr. v. Palma, A.C. No. 2474, 15 September 2004, 438 SCRA 306, 314.

[15] Sealana-Abbu v. Laurenciana-Huraño, A.M. No. P-05-2091, 28 August 2007; dela Torre-Yadao v. Cabanatan, A.M. Nos. P-05-1953 and P-05-1954, 8 June 2005, 459 SCRA 332, 338, citing Maguad v. de Guzman, A.M. No. P-94-1015, 29 March 1999, 305 SCRA 469, 476; Lauro v. Lauro, 411 Phil. 12, 17 (2001); Bucatcat v. Bucatcat, 380 Phil. 555, 566-567 (2000).

[16] EO 292.

[17] *Acebedo v. Arquero*, A.M. No. P-94-1054, 11 March 2003, 399 SCRA 10, 17; also under Rule XIV, Section 23 (o) of the Civil Service Rules; *Navarro v. Navarro*, 394 Phil. 226, 234 (2000).

[18] Adopted and approved by the Civil Service Commission in its Resolution No. 991936 dated August 31, 1999.

[19] Rule IV, Section 52 (A) (15).

[20] *Acebedo v. Arquero*, *supra* note 17, pp. 16-17, citations omitted.

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