# ERLIND A. ALCUIZAR, COMPLAINANT, VS. JUDGE EMMANUEL C. CARPIO,O, ATTY. CRISOSTOMO S.J. UGALI, JR, AND MRS. DIVINAGRACIA BARCELONA, RESPONDENTS,

*A.M. RTJ-07-2068 (FORMERLY A.M. OCA IPI NO. 03-1854-RTJ). August 07, 2007*

Ponente: GARCIA, J.

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**GARCIA, J.:**

Four protagonists, all working in the Regional Trial Court (RTC) of Davao City, Branch 16, are involved in this administrative case which started when Court Stenographer Erlind A. Alcuizar filed a verified Complaint Affidavit[1] dated September 2, 2003 against Presiding Judge Emmanuel C. Carpio, Atty. Crisostomo S. J. Ugali Jr., Branch Clerk of Court, and Mrs. Divinagracia B. Barcelona, Clerk III. Complainant Erlind "Neneng" Alcuizar charges them with different offenses - respondent judge for sexual harassment, while respondents Ugali and Barcelona for misconduct.

Against respondent judge, complainant, in her complaint-affidavit, alleged, in gist, the following:

> - On the occasion of her birthday on August 29, 2002, while inside the comfort room (CR) washing a dishware, she was kissed by respondent judge, despite her earlier protestation for him not to pursue his intention. The CR is inside the judge's chamber. After the kissing incident, respondent judge slipped a P500-bill inside her pocket which she later used to buy food for officemates after respondent judge refused her offer to return what he insisted was a gift.
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> - Sometime in October 2002, respondent judge tried to kiss her while she was transcribing notes in the staff room after office hours. Respondent judge, who earlier locked the door from the inside, desisted when she threatened to shout and to throw a stapler at him. She related the incident to her husband after she got home.
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> - A week later, respondent judge scolded her for allegedly always being out of the office, with an embarrassing reminder that the government pays her salary.
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> - In a day in January 2003, respondent judge entered the staff room where her co-workers were eating and, there and then, the former asked if she can go inside the CR so he could kiss her.
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> - There were instances when respondent judge would touch her legs and give her a wink.
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> - On February 6, 2003, respondent judge again berated her for always being out. The reproach upset her and brought her to tears. The following day, she did not report for work. On February 11, 2003, she went to the office to type a letter for transfer and to accomplish an application for a two-month leave.
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> - There were times when respondent judge would place his gun on top of her table which would give her a scare.
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> - The harassment she was subjected to impelled her to confide and seek solace from co-employees and other judges and forced her to request transfer of assignment and to go on leave. She also did talk to and ask permission from respondent judge to transfer.

- On April 11, 2003, she entered respondent judge's chamber to ask for a clearance - which was granted - and permission to transfer which the respondent judge agreed to act on when he shall have talked to Atty. Ugali. A week after, she reiterated her request for transfer; and

- She received on June 4, 2003 a memorandum in which respondent judge asked her to report for work on or before June 9, 2003 or be declared AWOL.

Appended to and forming part of the sworn complaint are letters complainant wrote to several persons respecting her travails and her desire to transfer and to go on leave.

In his Comment[2] dated November 13, 2003 that he submitted in compliance with the Court's directive, respondent judge denied the charge of sexual harassment, particularly with respect to allegations about his having kissed or about his aborted attempt to kiss the complainant and making what amounts to sexual advances. In this regard, respondent judge stated that he cannot recall being with the complainant alone in his CR. As to a near-kissing incident after office hours, respondent judge stated that complainant had never rendered overtime service. And even as he denied touching her legs on one occasion, respondent judge went on to explain that the fact that complainant's table was veritably surrounded by those of her co-workers argues against the suggestion of an indecent behavior going unnoticed. If, according to respondent judge's logic, he subjected the complainant to sexual harassment, her having attended thereafter his birthday party, the retirement party of an office mate and her visits to his chamber on April 3 and 11, 2003 would make no sense.

On the matter of the P500 he gave the complainant on her birthday, respondent judge offered that it was an office practice for the presiding judge and branch staff members to contribute something for the celebration. He denied insinuations of surreptitious giving, the amount adverted to having been handed out to the complainant in the presence of the process server for the purpose of buying food. Respondent judge also downplayed his having winked at complainant, noting that he winks at all the members of his staff, regardless of gender, as a greeting gesture.

Closing his 12-page comment, respondent judge stated that the complaint is actually an offshoot of four (4) incidents which bear on the performance by the complainant of her official duties.

Among the attachments to respondent judge's Comment, which would later be submitted in evidence, is Annex "1,"[3] a photograph taken during his birthday celebration on December 23, 2002.

Against respondent Ugali, the complaint alleged under paragraph No. 52 thereof, that he is liable for misconduct for "scolding," "yelling at" and "calling [the complainant] 'praning'" and "for his failure to take any action despite [her] report to him about the sexual harassment committed by [respondent judge]."

With respect to respondent Barcelona, complainant would also have her administratively adjudged guilty of and penalized for misconduct for not transmitting to the proper office her (complainant's) application for leave and the daily time records (DTRs). As would later be clarified, the leave application and the accompanying DTR covered the month of March 2003.

In their separate comments,[4] both respondents Ugali and Barcelona denied having committed acts that would constitute misconduct. For his part, respondent Ugali explained, at the outset, that when complainant reported back for work sometime in February 2003 expressing the sentiment that she can no longer stomach respondent judge and wanted a transfer or detail to another sala, he conveyed, in a voice louder than usual, the following message to the complainant and those then present: "If you have problems with the Presiding Judge, you either talk to him directly or take it up with me, instead of your going around the different salas and discussing your problem with them." According to respondent Ugali, on February 24, 2003, he confronted Judge Carpio who


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denied the nasty rumor about the complainant's gripe against him. Respondent Ugali would, however, assert that the complainant had never breathed a word about her being actually kissed by respondent judge, about the fondling of legs, the stapler incident and the open display of a gun.

When asked whether she wanted to press charges against the respondent judge, complainant, so respondent Ugali claims, replied in the negative, her only wish being that she be permitted to transfer. Respondent Ugali also denied calling her "praning."[5] He stated that what he, in context, told the complainant was: "Ang hirap sa iyo, hindi ka lang inconsiderate at selfish, nagiging praning ka na." Respondent Ugali then proceeded to explain that his outburst was in reaction to complainant's statements: (a) that her co-employees should not complain if she goes on leave since it is her salary anyway that would be affected, and (b) that she was complaining that he (Ugali), as her boss, was no longer minding her and was saying things indirectly.[6]

On the other hand, respondent Barcelona's curt answer to allegations that she did not transmit the complainant's leave application and DTRs was: She presented the complainant's leave application for April 2003 to respondent Ugali for the latter's signature, only to be instructed to inform the complainant about the presiding judge being the proper signing authority since she had been absent since February 7, 2003; and that being the case, her application should be refiled accompanied by requisite clearances;[7] that when complainant refiled her application for leave for April 2003 even without the needed clearances, she transmitted the same to the Supreme Court Leave Section[8] after the same had been duly signed.

As events would later develop, respondent Barcelona's reference to an April 2003 leave was not exactly responsive to the complainant's lament which contemplated the non-transmittal of the March 2003 application for leave.

Per an en banc Resolution[9] of March 16, 2004, the Court resolved to refer the case to the Court of Appeals (CA) for investigation, report and recommendation. The CA eventually designated Associate Justice Teresita Dy-Liacco Flores as Executive Justice Investigator.

By agreement of the parties, the affidavit of each affiant, including that of each of the protagonists, was considered his/her direct testimony, albeit clarifications on certain points were allowed.

Following a marathon hearing, the Investigating Justice submitted her Report dated June 2, 2006. In it, she recommended that respondent judge be adjudged guilty of sexual harassment under of Republic Act No. 7877,[10] Section 3 of which defines work- related sexual harassment in the following wise:

> Section 3. xxx Work ...related sexual harassment is committed by an employer, employee, manager, supervisor, agent of the employer ... who, having authority, influence, or moral ascendancy over another in a work ... environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the subject of said Act.
>
> (a) In a work-related or employment environment, sexual harassment is committed when:
>
> - The sexual favor is made as a condition in the hiring or the employment ... or in granting said individual favorable ... privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;
>
> xxx xxx xxx
>
> - The above acts would result in an intimidating, hostile, or offensive environment for the employee.

The Investigating Justice predicated her recommendation on the strength of the following main findings and

observations:

> The testimony of [complainant] Alcuizar against the [respondent] Judge is credible. She was consistent and unambiguous in her claim that on several incidents while in the workplace, the [respondent] judge, who is her superior, sought her permission to kiss her which she refused and at other times directed her to go to the comfort room so that he could kiss her. While Alcuizar's testimony is uncorroborated on these incidents but (sic) her narration thereof in a direct and unhesitating manner convinces one that she is sincere in her revelations. Her demeanor in the witness stand leaves no doubt that she was speaking the truth. She was spontaneous and frank.
>
> xxx xxx xxx
>
> From Alcuizar's answers, one can feel the directness and spontaneity with which they were uttered. And that can only spring from the lips of one who has gone through an offensive experience.
>
> xxx xxx xxx
>
> The [respondent] Judge's soliciting a favor from Alcuizar that he be allowed to kiss her and at other times directing Alcuizar to go to the comfort room so he can kiss her are requests made in a workplace for sexual favor from his underling. It made the workplace intimidating, hostile or offensive environment for his employee, Alcuizar.
>
> Considering that in administrative proceedings only substantial evidence is required to make a finding of guilt, such quantum has even been exceeded in this case. The evidence proves the commission of sexual harassment by the [respondent] Judge. (Words in brackets added)

The Report also recommended the suspension from office of respondent judge for three (3) months for the offense.

The Court is unable to agree with the recommendation and the premises and findings holding it together.

We start off with the matter of proof. In administrative or disciplinary proceedings, the burden of proving the allegations in the complaint rests on the complainant.[11] While substantial evidence would ordinarily suffice to support a finding of guilt, the rule is a bit different where the proceedings involve judges charged with grave offense. Administrative proceedings against judges are, by nature, highly penal in character and are to be governed by the rules applicable to criminal cases. The quantum of proof required to support the administrative charges or to establish the ground/s for the removal of a judicial officer should thus be more than substantial; they must be proven beyond reasonable doubt.[12] To borrow from Reyes v. Mangino:[13]

> Inasmuch as what is imputed against respondent Judge connotes a misconduct so grave that, if proven, would entail dismissal from the bench, the quantum of proof required should be more than substantial.

Going over the testimonial and documentary evidence thus adduced during the investigation, the proof-beyond-reasonable-doubt threshold required under the premises has not been hurdled. As it were, circumstances obtained and/or credible evidence presented tended to cast a heavy cloud on complainant's credibility and, necessarily, her case. For instance, Alfredo Tayabas, a court aide, contradicting complainant's account of washing food containers ("pyrex") inside the CR, testified that "[O]n August 29, 2002, after the [birthday] lunch, [he] and Mr. Michael Monje cleared the table ..., brought the plates and utensils used to the comfort room and washed them all inside."[14] And then there is the complainant's allegation that on a day in October 2002, while working past the regular working hours, respondent judge attempted to kiss her. This incident could not have happened as the complainant narrated for the simple reason that not once did she render overtime service for the month of October 2002. The entries in her DTR[15] for the period which show her being

out of the office by 5 p.m. of every working day negate the idea of overtime work.

Complainant also asserted that there were instances when respondent judge touched her legs while she was working at her computer[16] and placed his gun on top of her table.[17] This assertions are hardly credible. Complainant's working desk was inside the staff room, which the Investigating Justice describes as "quite small " for the number of personnel it houses ... [where] the distance of tables from an occupant's chair to the next table provides only a passage for a normal sized person."[18] It is thus unthinkable that respondent judge would be so callous and boorish as to perform the highly disgraceful acts thus ascribed to him by the complainant in the staff room during office hours in full view of branch employees. Respondent Ugali, among other court personnel,[19] swears to not having observed respondent judge putting his gun on top of complainant's table, let alone touching her legs during all the years he (Ugali) was seated beside her.[20]

If respondent judge had, indeed, made overt sexual overtures towards, and blatantly demanded a kiss from, the complainant within court premises, good sense would dictate that the matter be immediately reported to the proper authorities. Per the complainant's own account, respondent Judge allegedly made his indecent advances from August 2002 to January 2003. However, she decided to make a formal complaint with this Court only in September 2003, albeit she appeared to have sought counsel from her office mates, among other co-workers in the judiciary. Reckoned from the alleged first incident, complainant herself testified that it took her "more than thirteen (13) months" to file this case.[21] This seeming lack of urgency on the part of the complainant in taking concrete administrative action against a wayward judge bears heavily on her case.

The Court has certainly taken stock of the fact that even after the alleged "sexual harassment" incidents transpired, complainant still dared to repair, in several instances, to respondent Judge's chamber all by her lonesome self when the natural thing to do is to avoid occasions likely to further exacerbate an already difficult situation. What is more, complainant, by her own admission[22] even attended the birthday party of respondent judge in his residence and, judging from photographs[23] of smiling, clapping and swinging court staff personnel, complainant definitely appeared to be having much fun. To be sure, complainant is not exactly a picture of one recently sexually harassed by her offending host.

With the view we thus take of the case, complainant has failed to prove her charge against the respondent judge with the quantum of proof required under the premises. Given this perspective, the dismissal of the complaint as against respondent judge for insufficiency of evidence is indicated. The Court, however, stresses that this ruling does not necessarily reflect on the bona fides of the filing of the complainant, let alone what complainant perceives to be the righteousness of her grievances. However, the facts of the case and applicable jurisprudence leave no room for another kind of disposition.

The misconduct charge against respondent Ugali is, as recommended by the Investigating Justice, also dismissed. To be sure, respondent Ugali has adequately addressed and very well acquitted himself of the allegations against him. His evidence showed that, upon being informed of complainant's beef against respondent Judge Carpio, he inquired what the complainant exactly wanted (she just wanted a transfer, at that time[24]), confessing at the same time that he cannot plausibly order respondent Judge Carpio's dismissal from the service.

To be sure, respondent Ugali was in an awkward position. For here was an underling pouring out her concerns and needing the kind of help which could undermine the delivery of public service and offend a superior. Yet, he tried to do something about a delicate situation by confronting the respondent judge about what had been reported to him (Ugali).

And with respect to the complainant's request for transfer, respondent Ugali could not be held liable for not favorably acting thereon, given that her absences had, as aptly observed by the Investigating Justice, already


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brought havoc to the office in general and to Acuizar's co-employees, in particular, since they have to perform the tasks that pertain to the complainant in whole or in part.

Vis-á-vis the scolding and yelling incidents adverted to by the complainant, the Court, like the Investigating Justice, finds them of little moment to merit belaboring. Criticisms and scoldings from a superior, particularly if deserved, or being yelled at occasionally happen in any organization and are not necessarily counter-productive. And Clerks of Courts, like any mortal, have their own idiosyncrasies and are subject to human limitations which everyone is heir to. Well-intentioned outbursts cannot, without more, plausibly be the subject of an administrative complaint. Nonetheless, it may not be amiss to state that humility, patience, self-restraint and civility are virtues usually credited not to bullies and wimps, but to the strong in character.

With respect to the charge against respondent Barcelona, the Court finds that complainant submitted her March 2003 DTR to Barcelona, the latter's denial notwithstanding. Respondent Barcelona's initials on the DTR in question which she admitted to be her own prove the fact of submission. Her failure to transmit the complainant's March 2003 DTR to the Leave Section of the Court does not, however, translate to misconduct, a term denoting an improper conduct, or a transgression of some established and definite rule of action, a dereliction of duty, willful in character, that implies wrongful intent.[25] In the strict civil service law viewpoint, misconduct and negligence are different concepts, albeit gross negligence by a public officer may constitute misconduct.[26]

As reported by the Investigating Justice, accomplished DTR forms, once submitted by the personnel concerned, pass the area of two employees, i.e., Ms. Barcelona, who puts the DTRs in the folder, and Atty. Ugali who signs them. Once signed, the DTRs are returned to Ms. Barcelona who keeps a copy, gives one to the accomplishing employee, and sends two copies (original and duplicate) to the Leave Division of the Court.

Clearly, when Atty. Ugali returned the signed bunch of DTRs to respondent Barcelona, complainant's March 2003 DTR was still in the folder. That a copy of the March 2003 DTR found its way back to the complainant can only mean that respondent Barcelona received it and sorted the copies. How it failed to be included in the bunch of DTRs said respondent transmitted to the Court remains unexplained. Did respondent Barcelona lose it unintentionally? Or did she arrange the loss?

As we see it, the loss could have not been intentional or the product of willful behavior so as to support a charge of misconduct. By complainant's own account, before she filed this administrative complaint, no bad blood existed between her and respondent Barcelona,[27] who even stood as a sponsor in her (complainant's) wedding.[28] It would thus be difficult to adjudge respondent Barcelona guilty of misconduct for what appears to be a clear case of carelessness. Considering, however, the loss also of the April and May 2003 DTRs of complainant which impelled her, upon respondent Barcelona's urging, to refile new ones, the Court finds respondent Barcelona guilty of simple negligence for which she ought to be reprimanded, as the Investigating Justice recommends.

IN VIEW WHEREOF, the Court rules as follows:

(a) The complaint as against respondent Judge Emmanuel C. Carpio for sexual harassment is DISMISSED for insufficiency of evidence. He is, however, admonished, to avoid any act or conduct that would in any way diminish public trust and confidence in the courts and the individuals representing the institution.

(b) The complaint insofar as it charges Atty. Crisostomo S.J. Umali for misconduct is also DISMISSED for insufficiency of evidence.

(c) Mrs. Divinagracia B. Barcelona is adjudged guilty of SIMPLE NEGLIGENCE and is hereby REPRIMANDED, and warned to be more diligent and careful in the performance of her assigned duties and

functions.

**SO ORDERED.**

Puno, C.J., (Chairperson), Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Azcuna, Tinga, Chico-Nazario, and Nachura, JJ., concur.
Carpio, and Carpio-Morales, JJ., no part, due to prior inhibition.
Velasco, Jr., J., no part, due to prior action in OCA.
[1] Rollo, pp. 2 et seq.

[2] Id. at 108 et seq.
[3] Marked and presented in evidence as Exh. "3" for Judge Carpio.

[4] Rollo, pp. 187 et seq., for Ugali, and pp. 220-221 for Barcelona.

[5] The parties did agree that word "praning" means paranoid.

[6] Page 9 of Comment; rollo, p, 205.

[7] Rollo, p. 210.

[8] Id. at 232.

[9] Id. at 295.

[10] An Act Declaring Sexual Harassment Unlawful in the Employment, Education or Training Environment, and for other Purposes.

[11] Susa v. Pena, A.M. No. P-03-1740, September 17, 2003, 411 SCRA 182.

[12] Duduaco v. Laquindanum, A.M. No. MTJ-05-1601, August 11, 2005, 466 SCRA 428, citing In Re Impeachment of Horrilleno, 43 Phil. 212 (1922).

[13] A.M. No. MTJ-05-1575, January 31, 2005, 450 SCRA 27.

[14] See Exh. "13" for Carpio.

[15] Exh. "1," for Carpio.

[16] Exh. "B," par. 11.

[17] Exh. "B," par. 50.

[18] Page 1 of the Report.

[19] Ms. Barcelona, per TSN, March 8, 2006, Vol. X, p. 64.

[20] Exh. "7" for respondent Carpio.

[21] TSN, March 7, 2006, Vol. IV, p. 3.

[22] TSN, March 6, 2006, Vol. I, p. 83.

[23] Exh. "FF" and Exh. "3," for respondent Carpio.

[24] TSN, March 6, 2006, Vol. 1, p. 109.

[25] Samson v. NLRC, G.R. No. 121035, April 12, 2000, 330 SCRA 460.


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[26] Civil Service Commission v. Ledesma, G.R. No. 154521, September 30, 2005, 471 SCRA 624.

[27] TSN, March 6, 2006, Vol. I, pp. 63-64.

[28] TSN, March 8, 2006, Vol. X, pp. 36 and 64.


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