LEAVE DIVISION, OFFICE OF ADMINISTRATIVE SERVICES-OFFICE OF THE COURT ADMINISTRATOR (OCA), COMPLAINANT, VS. WILMA SALVACION P. HEUSDENS, CLERK IV MUNICIPAL TRIAL COURT IN CITIES...

A.M. No. P-11-2927 [Formerly A.M. OCA IPI No. 10-3532-P]. December 13, 2011

Ponente: MENDOZA, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/c20d3477ef24/

MENDOZA, J.:

This case stemmed from the leave application for foreign travel[1] sent through mail by Wilma Salvacion P. Heusdens (respondent), Staff Clerk IV of the Municipal Trial Court in Cities, Tagum City, Davao del Norte.

Records disclose that on July 10, 2009, the Employees Leave Division, Office of Administrative Services, Office of the Court Administrator (OCA), received respondent's leave application for foreign travel from September 11, 2009 to October 11, 2009. Respondent left for abroad without waiting for the result of her application. It turned out that no travel authority was issued in her favor because she was not cleared of all her accountabilities as evidenced by the Supreme Court Certificate of Clearance. Respondent reported back to work on October 19, 2009.[2]

The OCA, in its Memorandum[3] dated November 26, 2009, recommended the disapproval of respondent's leave application. It further advised that respondent be directed to make a written explanation of her failure to secure authority to travel abroad in violation of OCA Circular No. 49-2003. On December 7, 2009, then Chief Justice Reynato S. Puno approved the OCA recommendation.

Accordingly, in a letter[4] dated January 6, 2010, OCA Deputy Court Administrator Nimfa C. Vilches informed respondent that her leave application was disapproved and her travel was considered unauthorized. Respondent was likewise directed to explain within fifteen (15) days from notice her failure to comply with the OCA circular.

In her Comment[5] dated February 2, 2010, respondent admitted having travelled overseas without the required travel authority. She explained that it was not her intention to violate the rules as she, in fact, mailed her leave application which was approved by her superior, Judge Arlene Lirag-Palabrica, as early as June 26, 2009. She honestly believed that her leave application would be eventually approved by the Court.

The OCA, in its Report[6] dated March 8, 2011, found respondent to have violated OCA Circular No. 49-2003 for failing to secure the approval of her application for travel authority.

Hence, the OCA recommended that the administrative complaint be re-docketed as a regular administrative matter and that respondent be deemed guilty for violation of OCA Circular No. 49-2003 and be reprimanded with a warning that a repetition of the same or similar offense in the future would be dealt with more severely.

OCA Circular No. 49-2003 (B) specifically requires that:

> B. Vacation Leave to be Spent Abroad.

> Pursuant to the resolution in A.M. No. 99-12-08-SC dated 6 November 2000,[7] all foreign travels of judges and court personnel, regardless of the number of days, must be with prior permission from the Supreme Court through the Chief Justice and the Chairmen of the Divisions.
>
> 1. Judges and court personnel who wish to travel abroad must secure a travel authority from the Office of the Court Administrator. The judge or court personnel must submit the following:
>
> (a) For Judges
>
> x x x
>
> (b) For Court Personnel:
>
> - application or letter-request addressed to the Court Administrator stating the purpose of the travel abroad;
>
> - application for leave covering the period of the travel abroad, favorably recommended by the Presiding Judge or Executive Judge;
>
> - clearance as to money and property accountability;
>
> - clearance as to pending criminal and administrative case filed against him/her, if any;
>
> - for court stenographer, clearance as to pending stenographic notes for transcription from his/her court and from the Court of Appeals; and
>
> - Supreme Court clearance.
>
> 2. Complete requirements should be submitted to and received by the Office of the Court Administrator at least two weeks before the intended period. No action shall be taken on requests for travel authority with incomplete requirements. Likewise, applications for travel abroad received less than two weeks of the intended travel shall not be favorably acted upon. [Underscoring supplied]

Paragraph 4 of the said circular also provides that "judges and personnel who shall leave the country without travel authority issued by the Office of the Court Administrator shall be subject to disciplinary action." In addition, Section 67 of the Civil Service Omnibus Rules on Leave[8] expressly provides that "any violation of the leave laws, rules or regulations, or any misrepresentation or deception in connection with an application for leave, shall be a ground for disciplinary action." In fact, every government employee who files an application for leave of absence for at least thirty (30) calendar days is instructed to submit a clearance as to money and property accountabilities.[9]

In this case, respondent knew that she had to secure the appropriate clearance as to money and property accountability to support her application for travel authority. She cannot feign ignorance of this requirement because she had her application for clearance circulated through the various divisions. She, however, failed to secure clearance from the Supreme Court Savings and Loan Association (SCSLA) where she had an outstanding loan.

There is no dispute, therefore, that although respondent submitted her leave application for foreign travel, she failed to comply with the clearance and accountability requirements. As the OCA Circular specifically cautions that "no action shall be taken on requests for travel authority with incomplete requirements," it was expected that her leave application would, as a consequence, be disapproved by the OCA.

Considering that respondent was aware that she was not able to complete the requirements, her explanation that she honestly believed that her application would be approved is unacceptable. Thus, her leaving the country, without first awaiting the approval or non-approval of her application to travel abroad from the OCA, was

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

violative of the rules.

On the Constitutional Right to Travel

It has been argued that OCA Circular No. 49-2003 (B) on vacation leave to be spent abroad unduly restricts a citizen's right to travel guaranteed by Section 6, Article III of the 1987 Constitution.[10] Section 6 reads:

> Sec. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law. [Emphases supplied]

Let there be no doubt that the Court recognizes a citizen's constitutional right to travel. It is, however, not the issue in this case. The only issue in this case is the non-compliance with the Court's rules and regulations. It should be noted that respondent, in her Comment, did not raise any constitutional concerns. In fact, she was apologetic and openly admitted that she went abroad without the required travel authority. Hence, this is not the proper vehicle to thresh out issues on one's constitutional right to travel.

Nonetheless, granting that it is an issue, the exercise of one's right to travel or the freedom to move from one place to another,[11] as assured by the Constitution, is not absolute. There are constitutional, statutory and inherent limitations regulating the right to travel. Section 6 itself provides that "neither shall the right to travel be impaired except in the interest of national security, public safety or public health, as may be provided by law." Some of these statutory limitations are the following:

> 1] The Human Security Act of 2010 or Republic Act (R.A.) No. 9372. The law restricts the right to travel of an individual charged with the crime of terrorism even though such person is out on bail.
>
> 2] The Philippine Passport Act of 1996 or R.A. No. 8239. Pursuant to said law, the Secretary of Foreign Affairs or his authorized consular officer may refuse the issuance of, restrict the use of, or withdraw, a passport of a Filipino citizen.
>
> 3] The "Anti- Trafficking in Persons Act of 2003" or R.A. No. 9208. Pursuant to the provisions thereof, the Bureau of Immigration, in order to manage migration and curb trafficking in persons, issued Memorandum Order Radjr No. 2011-011,[12] allowing its Travel Control and Enforcement Unit to "offload passengers with fraudulent travel documents, doubtful purpose of travel, including possible victims of human trafficking" from our ports.
>
> 4] The Migrant Workers and Overseas Filipinos Act of 1995 or R. A. No. 8042, as amended by R.A. No. 10022. In enforcement of said law, the Philippine Overseas Employment Administration (POEA) may refuse to issue deployment permit to a specific country that effectively prevents our migrant workers to enter such country.
>
> 5] The Act on Violence against Women and Children or R.A. No. 9262. The law restricts movement of an individual against whom the protection order is intended.
>
> 6] Inter-Country Adoption Act of 1995 or R.A. No. 8043. Pursuant thereto, the Inter-Country Adoption Board may issue rules restrictive of an adoptee's right to travel "to protect the Filipino child from abuse, exploitation, trafficking and/or sale or any other practice in connection with adoption which is harmful, detrimental, or prejudicial to the child."

Inherent limitations on the right to travel are those that naturally emanate from the source. These are very basic and are built-in with the power. An example of such inherent limitation is the power of the trial courts to prohibit persons charged with a crime to leave the country.[13] In such a case, permission of the court is necessary. Another is the inherent power of the legislative department to conduct a congressional inquiry in aid of

legislation. In the exercise of legislative inquiry, Congress has the power to issue a subpoena and subpoena duces tecum to a witness in any part of the country, signed by the chairperson or acting chairperson and the Speaker or acting Speaker of the House;[14] or in the case of the Senate, signed by its Chairman or in his absence by the Acting Chairman, and approved by the Senate President.[15]

Supreme Court has administrative supervision
over all courts and the personnel thereof

With respect to the power of the Court, Section 5 (6), Article VIII of the 1987 Constitution provides that the "Supreme Court shall have administrative supervision over all courts and the personnel thereof." This provision empowers the Court to oversee all matters relating to the effective supervision and management of all courts and personnel under it. Recognizing this mandate, Memorandum Circular No. 26 of the Office of the President, dated July 31, 1986,[16] considers the Supreme Court exempt and with authority to promulgate its own rules and regulations on foreign travels. Thus, the Court came out with OCA Circular No. 49-2003 (B).

Where a person joins the Judiciary or the government in general, he or she swears to faithfully adhere to, and abide with, the law and the corresponding office rules and regulations. These rules and regulations, to which one submits himself or herself, have been issued to guide the government officers and employees in the efficient performance of their obligations. When one becomes a public servant, he or she assumes certain duties with their concomitant responsibilities and gives up some rights like the absolute right to travel so that public service would not be prejudiced.

As earlier stated, with respect to members and employees of the Judiciary, the Court issued OCA Circular No. 49-2003 to regulate their foreign travel in an unofficial capacity. Such regulation is necessary for the orderly administration of justice. If judges and court personnel can go on leave and travel abroad at will and without restrictions or regulations, there could be a disruption in the administration of justice. A situation where the employees go on mass leave and travel together, despite the fact that their invaluable services are urgently needed, could possibly arise. For said reason, members and employees of the Judiciary cannot just invoke and demand their right to travel.

To permit such unrestricted freedom can result in disorder, if not chaos, in the Judiciary and the society as well. In a situation where there is a delay in the dispensation of justice, litigants can get disappointed and disheartened. If their expectations are frustrated, they may take the law into their own hands which results in public disorder undermining public safety. In this limited sense, it can even be considered that the restriction or regulation of a court personnel's right to travel is a concern for public safety, one of the exceptions to the non-impairment of one's constitutional right to travel.

Given the exacting standard expected from each individual called upon to serve in the Judiciary, it is imperative that every court employee comply with the travel notification and authority requirements as mandated by OCA Circular No. 49-2003. A court employee who plans to travel abroad must file his leave application prior to his intended date of travel with sufficient time allotted for his application to be processed and approved first by the Court. He cannot leave the country without his application being approved, much less assume that his leave application would be favorably acted upon. In the case at bench, respondent should have exercised prudence and asked for the status of her leave application before leaving for abroad.

Indeed, under the Omnibus Rules Implementing Book V of Executive Order (EO) No. 292, a leave application should be acted upon within five (5) working days after its receipt, otherwise the leave application shall be deemed approved. Section 49, Rule XVI of the Omnibus Rules on Leave reads:

> SEC. 49. Period within which to act on leave applications. – Whenever the application for leave of absence,

> including terminal leave, is not acted upon by the head of agency or his duly authorized representative within five (5) working days after receipt thereof, the application for leave of absence shall be deemed approved.

Applying this provision, the Court held in the case of Commission on Appointments v. Paler[17] that an employee could not be considered absent without leave since his application was deemed approved. In said case, there was no action on his application within five (5) working days from receipt thereof.[18]

The ruling in Paler, however, is not squarely applicable in this case. First, the employee in said case was governed by CSC Rules only. In the case of respondent, like the others who are serving the Judiciary, she is governed not only by CSC Rules but also by OCA Circular No. 49-2003 which imposes guidelines on requests for travel abroad for judges and court personnel. Second, in Paler, the employee submitted his leave application with complete requirements before his intended travel date. No additional requirement was asked to be filed. In the case of respondent, she submitted her leave application but did not fully comply with the clearance and accountability requirements enumerated in OCA Circular No. 49-2003. Third, in Paler, there was no approval or disapproval of his application within 5 working days from the submission of the requirements. In this case, there was no submission of the clearance requirements and, hence, the leave application could not have been favorably acted upon.

SCSLA membership is voluntary

Regarding the requirement of the OCA that an employee must also seek clearance from the SCSLA, the Court finds nothing improper in it. OCA is not enforcing the collection of a loan extended to such employee.[19] Although SCSLA is a private entity, it cannot be denied that its functions and operations are inextricably connected with the Court. First, SCSLA was primarily established as a savings vehicle for Supreme Court and lower court employees. The membership, which is voluntary, is open only to Supreme Court justices, officials, and employees with permanent, coterminous, or casual appointment, as well as to first and second-level court judges and their personnel.[20] An eligible employee who applies for membership with SCSLA must submit, together with his application, his latest appointment papers issued by the Supreme Court.[21] Second, when an employee-member applies for a SCSLA loan, he or she is asked to authorize the Supreme Court payroll office to deduct the amount due and remit it to SCSLA. Third, the employee-borrower likewise undertakes to assign in favor of SCSLA, in case of non-payment, his capital deposit, including earned dividends, all monies and monetary benefits due or would be due from his office, Government Service Insurance System or from any government office or other sources, to answer the remaining balance of his loan.[22] Fourth, every employee-borrower must procure SCSLA members to sign as co-makers for the loan[23] and in case of leave applications that would require the processing of a Supreme Court clearance, another co-maker’s undertaking would be needed.

The Court stresses that it is not sanctioning respondent for going abroad with an unpaid debt but for failing to comply with the requirements laid down by the office of which she is an employee. When respondent joined the Judiciary and volunteered to join the SCSLA, she agreed to follow the requirements and regulations set forth by both offices. When she applied for a loan, she was not forced or coerced to accomplish the requirements. Everything was of her own volition.

In this regard, having elected to become a member of the SCSLA, respondent voluntarily and knowingly committed herself to honor these undertakings. By accomplishing and submitting the said undertakings, respondent has clearly agreed to the limitations that would probably affect her constitutional right to travel. By her non-compliance with the requirement, it can be said that she has waived, if not constricted, her right. An employee cannot be allowed to enjoy the benefits and privileges of SCSLA membership and at the same time be exempted from her voluntary obligations and undertakings.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

A judiciary employee who leaves for
abroad without authority must be prepared
to face the consequences

Lest it be misunderstood, a judge or a member of the Judiciary, who is not being restricted by a criminal court or any other agency pursuant to any statutory limitation, can leave for abroad without permission but he or she must be prepared to face the consequences for his or her violation of the Court's rules and regulations. Stated otherwise, he or she should expect to be subjected to a disciplinary action. In the past, the Court was not hesitant to impose the appropriate sanctions and penalties.

In Office of the Administrative Services (OAS)-Office of the Court Administrator (OCA) v. Calacal,[24] a utility worker of the Metropolitan Trial Court was found guilty of violating OCA Circular No. 49-2003 for going overseas without the required travel authority and was reprimanded and warned that a repetition of the same or similar offense would be penalized more severely. In that case, the Court stressed that unawareness of the circular was not an excuse from non-compliance therewith.[25]

In Reyes v. Bautista,[26] a court stenographer was found guilty of violation of OCA Circular No. 49-2003 for traveling abroad without securing the necessary permission for foreign travel. She was also found guilty of dishonesty when she indicated in her application that her leave would be spent in the Philippines, when in truth it was spent abroad. Because of the employee's numerous infractions, she was dismissed from the service with forfeiture of all benefits and privileges, except accrued leave credits, with prejudice to re-employment in any branch or instrumentality of the government, including government owned or controlled corporations.

In Concerned Employees of the Municipal Trial Court of Meycauayan, Bulacan v. Paguio-Bacani,[27] a branch clerk of court of the Municipal Trial Court of Meycauayan, Bulacan, was found guilty of dishonesty for falsifying her Daily Time Record and leaving the country without the requisite travel authority. She was suspended from the service for one (1) year without pay, with a warning that a repetition of the same or similar offense would be dealt with more severely.

Following the Uniform Rules on Administrative Cases in the Civil Service, the Court considers a violation of reasonable office rules and regulations as a light offense and punishable with reprimand on the first offense; suspension for one to thirty days on the second; and dismissal from the service on the third infraction. Considering that this appears to be respondent's first infraction, the OCA recommended that she be penalized with a reprimand and warned that a repetition of the same or similar offense would be dealt with more severely.

The Court, nonetheless, takes note of the belated action (4 months) of the Leave Division on her application for leave which she submitted two months before her intended departure date. The Leave Division should have acted on the application, favorably or unfavorably, before the intended date with sufficient time to communicate it to the applicant. If an applicant has not complied with the requirements, the Leave Division should deny the same and inform him or her of the adverse action. As respondent was not informed of the denial of her application within a reasonable time, respondent should only be admonished.

WHEREFORE, respondent Wilma Salvacion P. Heusdens, Clerk IV Municipal Trial Court in Cities, Tagum City, is hereby ADMONISHED for traveling abroad without any travel authority in violation of OCA Circular No. 49-2003, with a WARNING that a repetition of the same or similar offense would be dealt with more severely.

The Leave Division, OAS-OCA, is hereby directed to act upon applications for travel abroad at least five (5) working days before the intended date of departure.

SO ORDERED.

Corona, C.J., Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Villarama, Jr., Reyes, and Perlas-Bernabe JJ., concur.
Carpio, J., see dissenting opinion.
Abad, J., I join the dissenting opinion of Justice A.T. Carpio
Perez, J., No part.
Sereno, J., I join the dissent of J. Carpio.

---

[1] Rollo, p. 5.

[2] Id. at 5-8.

[3] Id. at 5-6.

[4] Id. at 4.

[5] Id. at 3.

[6] Id. at 9-11.

[7] Reiterated in SC Memorandum No. 32-2011 dated September 20, 2011 entitled “Reiterating the Policy on Foreign Travels even at the Traveller’s Expense.”

[8] Amended by CSC MC No. 41, s. 1998.

[9] See instructions at the back of Application for Leave, Civil Service Form No. 6, Revised 1984.

[10] Dissenting Opinion of Mr. Justice Carpio, dated November 9, 2011, p. 7.

[11] Mirasol v. Department of Public Works and Highways, G.R. No. 158793, June 8, 2006, 490 SCRA 318, 353.

[12] Entitled “Strengthening the Travel Control and Enforcement Unit (TCEU) under Airport Operations Division (AOD) and defining the duties and functions thereof;” dated June 30, 2011.

[13] Silverio v. Court of Appeals, G.R. No. 94284, April 8, 1991, 195 SCRA 760, 765.

[14] House Rules and Procedure Governing Inquiries in Aid of Legislation, adopted on August 28, 2001, Section 7

[15] Senate Rules of Procedure Governing Inquiries in Aid of Legislation, adopted on August 21, 1995, Section 17.

[16] Executive Order No. 6 is hereby modified to the extent that the Chief Justice and Associate Justices of the Supreme Court are hereby exempted from the provisions thereof requiring them to secure the prior approval of the Office of the President in connection with the travel abroad.

The Supreme Court may promulgate guidelines on travels abroad for its members and that of the lower court and their respective employees.

Requests for permission to travel abroad from members and employees of the judiciary shall henceforth be obtained from the Supreme Court.

[17] G.R. No. 172623, March 3, 2010, 614 SCRA 127.

[18] Case initially cited in the Dissenting Opinion of Mr. Justice Carpio, November 15, 2011, p. 5.

[19] Dissenting Opinion of Mr. Justice Carpio, dated November 9, 2011, p. 6.

[20] Last of Two Parts: How to Avail of Loans from the SCSLA, Benchmark Online October 2007, (visited October 5, 2011).

[21] SCSLA Membership Application Form (Revised Form 22-For Lower Court Members).

[22] Undertaking found under Promissory Note in SCSLA Loan Application for Supreme Court Members (Form 23) and Lower Court Members (Form 25).

[23] Undertaking found under Co-makers Understanding in SCSLA Loan Application for Supreme Court Members (Form 23) and Lower Court Members (Form 25).

[24] A.M. No. P-09-2670, October 16, 2009, 604 SCRA 1.

[25] Id., citing Noynay-Arlos v. Conag, A.M. No. P-01-1503, January 27, 2004, 421 SCRA 138, 146; Reports on the Financial Audit Conducted on the Books of Accounts of OIC Melinda Deseo, MTC, General Trias, Cavite, A.M. No. 99-11-157-MTC, August 7, 2000, 337 SCRA 347, 352; Re: Financial Audit in RTC, General Santos City, A.M. No. 96-1-25-RTC, April 18, 1997, 271 SCRA 302, 311.

[26] 489 Phil. 85, 91-92 (2005).

[27] A.M. No. P-06-2217, July 30, 2009, 594 SCRA 242, 258.

DISSENTING OPINION

CARPIO, J.:

This case involves a government employee’s constitutional right to travel abroad.

Respondent Wilma Salvacion P. Heusdens (respondent), Clerk IV of the Municipal Trial Court in Cities in Tagum City, traveled abroad without travel authority as required by OCA Circular No. 49-2003. The majority holds that respondent has violated OCA Circular No. 49-2003, and must accordingly be admonished.

I disagree.

The pertinent provisions of OCA Circular No. 49-20031 read:

> B. VACATION LEAVE TO BE SPENT ABROAD
>
> Pursuant to the resolution in A.M. No. 99-12-08-SC dated 06 November 2000, all foreign travels of judges and court personnel, regardless of the number of days, must be with prior permission from the Supreme Court through the Chief Justice and the Chairmen of the Divisions.
>
> 1. Judges and court personnel who wish to travel abroad must secure a travel authority from the Office of the Court Administrator. The judge or court personnel must submit the following:
>
> (a) For Judges:
>
> - application or letter-request addressed to the Court Administrator stating the purpose of the travel abroad
>
> - application for leave covering the period of the travel abroad, favorably recommended by the Executive Judge

- certification from the Statistics Division, Court Management Office, OCA as to the condition of the docket

(b) For Court Personnel:

- application or letter-request addressed to the Court Administrator stating the purpose of the travel abroad

- application for leave covering the period of the travel abroad, favorably recommended by the Presiding Judge or Executive Judge

- clearance as to money and property accountability

- clearance as to pending criminal and administrative case filed against him/her, if any

- for court stenographer, clearance as to pending stenographic notes for transcription from his/her court and from the Court of Appeals

- Supreme Court clearance

2. Complete requirements should be submitted to and received by the Office of the Court Administrator at least two weeks before the intended period. No action shall be taken on requests for travel authority with incomplete requirements. Likewise, applications for travel abroad received less than two weeks of the intended travel shall not be favorably acted upon.

x x x

4. Judges and personnel who shall leave the country without travel authority issued by Office of the Court Administrator shall be subject to disciplinary action. (Emphasis supplied)

Respondent filed a leave application for travel abroad covering the period from 11 September 2009 to 11 October 2009. Respondent's leave application, favorably recommended by Presiding Judge Lirag-Palabrica, was received by the Employees Leave Division, Office of the Administrative Services, Office of the Court Administrator (OCA) on 10 July 2009. When respondent did not receive any action from the OCA on her leave application, she went ahead with her intended leave and travel abroad believing that her leave application would be eventually approved by the Court. Respondent reported back to work after her leave.

On 26 November 2009, more than two months after the start of respondent's intended leave, the OCA issued a memorandum recommending disapproval of respondent's leave application. Thus, in a letter dated 6 January 2010, the OCA informed respondent that her leave application was disapproved and her travel abroad was unauthorized. The OCA subsequently recommended that respondent be reprimanded for violating OCA Circular No. 49-2003.

Under Section 60 of Executive Order No. 292[2] (EO 292), officers and employees in the Civil Service are entitled to leave of absence, with or without pay, as may be provided by law and the rules and regulations of the Civil Service Commission.

Executive Order No. 6[3] (EO 6), issued by then President Corazon C. Aquino on 12 March 1986, provides for the procedure in the disposition of requests of government officials and employees for authority to travel abroad.[4] EO 6 states:

[T]he travels abroad of government officials and employees shall be authorized by the heads of the ministries and government-owned or controlled corporations, except those of the following government officials which shall be submitted to the Office of the President for decision:

- Members of the Cabinet, Deputy Ministers and heads of Financial Institutions.

- Justices of the Supreme Court and Intermediate Appellate Court.

- Members of Constitutional Commissions.

- Those which require full powers.

On 31 July 1986, Memorandum Order No. 26[5] was issued, modifying EO 6, thus:

> Executive Order No. 6 is hereby modified to the extent that the Chief Justice and Associate Justices of the Supreme Court are hereby exempted from the provisions thereof requiring them to secure the prior approval of the Office of the President in connection with their travel abroad.
>
> The Supreme Court may promulgate guidelines on travels abroad for its members and that of the lower courts and their respective employees.
>
> Requests for permission to travel abroad from members and employees of the judiciary shall henceforth be obtained from the Supreme Court.

In accordance with Memorandum Order No. 26, the Supreme Court issued A.M. No. 96-3-06-0 dated 19 March 1996, providing guidelines on requests for travel abroad on official business or official time by all members and personnel of the Judiciary. In A.M. No. 99-12-08-SC dated 6 November 2000, administrative matters relating to foreign travel of judges and court personnel were referred to the Chief Justice and the Chairmen of the Divisions for their appropriate action.

On 20 May 2003, OCA Circular No. 49-2003 was issued, containing the guidelines on requests for travel abroad for judges and court personnel pursuant to the Supreme Court resolutions in A.M. No. 96-3-06-0 and A.M. No. 99-12-08-SC. OCA Circular No. 49-2003 provides that complete requirements should be submitted to the OCA at least two weeks before the intended period of travel.

Respondent's leave application for travel abroad was received by the OCA on 10 July 2009, or two months before her intended leave from 11 September 2009 to 11 October 2009. However, it was only on 26 November 2009, or after respondent's intended leave, that the OCA issued a memorandum recommending disapproval of her leave application. Furthermore, it was only in a letter dated 6 January 2010 that the OCA informed respondent of the disapproval of her leave application. Clearly, the OCA's letter dated 6 January 2010 disapproving the leave application came too late. Although OCA Circular No. 49-2003 does not provide for the time frame within which to act on the leave application, it is understood that it should be prior to the applicant's intended leave. The requirement that the leave application be submitted to the OCA at least two weeks before the intended leave for travel is to give sufficient time for its approval or disapproval before the intended leave.

Under the Omnibus Rules Implementing Book V of EO 292, a leave application should be acted upon within five (5) working days after its receipt, otherwise the leave application is deemed approved. Section 49, Rule XVI of the Omnibus Rules on Leave reads:

> SEC. 49. Period within which to act on leave application. – Whenever the application for leave of absence, including terminal leave, is not acted upon by the head of agency or his duly authorized representative within five (5) working days after receipt thereof, the application for leave of absence shall be deemed approved. (Emphasis supplied)

Thus, this Court, in the recent case of Commission on Appointments v. Paler,[6] held that respondent Paler could not be considered absent without leave since his leave application was deemed approved. There was no final approval or disapproval of Paler's application within five working days from receipt of his leave application as required by Section 49. More so in this case, where the leave application was received by the OCA two months

before the intended leave but was only acted upon after the intended leave. Thus, respondent's leave of absence was deemed approved as of 15 July 2009 pursuant to Section 49, Rule XVI of the Omnibus Rules on Leave.

The majority states that although respondent submitted her leave application for foreign travel, she failed to comply with the clearance and accountability requirements because she "failed to secure clearance from the Supreme Court Savings and Loan Association (SCSLA) where she had an outstanding loan." Thus, since OCA Circular No. 49-2003 specifically provides that "no action shall be taken on requests for travel authority with incomplete requirements," the majority rationalizes that respondent should have expected that her leave application would be disapproved.

I disagree with the majority's view that clearance from the SCSLA is required before a court employee can exercise his or her constitutional right to travel abroad. The SCSLA is a private association with private funds, even if some of its investors are Supreme Court officials. The OCA has no power to enforce the collection of loans extended by a private lender, under pain of denying a constitutional right of a citizen if he does not secure clearance from the private lender. Although OCA Circular No. 49-2003 provides that "clearance as to money and property accountability" is one of the requirements to be submitted, this refers to accountability to the government, not to a private company like the SCSLA. Even if the OCA's Certificate of Clearance Form requires the SCSLA's conformity, such requirement has no legal basis. The OCA does not have jurisdiction to require such clearance because that would be tantamount to making the Court a collecting agent of the SCSLA which is a private association.

Indeed, the OCA has no right to deny a court employee's constitutional right to travel just to enforce collection of the SCSLA's loans to its members. There is no law prohibiting a person from traveling abroad just because he has an existing debt or financial obligation. Requiring the court employee clearance from the SCSLA is no different from requiring the court employee to secure a clearance from his or her creditor banks before he or she can travel abroad. That would unduly restrict a citizen's right to travel which is guaranteed by Section 6, Article III of the 1987 Constitution:

> SEC. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law. (Emphasis supplied)

Although the constitutional right to travel is not absolute, it can only be restricted in the interest of national security, public safety, or public health, as may be provided by law. As held in Silverio v. Court of Appeals:[7]

> Article III, Section 6 of the 1987 Constitution should be interpreted to mean that while the liberty of travel may be impaired even without court order, the appropriate executive officers or administrative authorities are not armed with arbitrary discretion to impose limitations. They can impose limits only on the basis of "national security, public safety, or public health" and "as may be provided by law," a limitive phrase which did not appear in the 1973 text (The Constitution, Bernas, Joaquin G., S.J., Vol. I, First Edition, 1987, p. 263). Apparently, the phraseology in the 1987 Constitution was a reaction to the ban on international travel imposed under the previous regime when there was a Travel Processing Center, which issued certificates of eligibility to travel upon application of an interested party (See Salonga v. Hermoso & Travel Processing Center, No. L-53622, 25 April 1980, 97 SCRA 121).[8] (Emphasis supplied)

The constitutional right to travel cannot be impaired without due process of law. Here, due process of law requires the existence of a law regulating travel abroad, in the interest of national security, public safety or public health. There is no such law applicable to the travel abroad of respondent. Neither the OCA nor the majority can point to the existence of such a law. In the absence of such a law, the denial of respondent's right to travel abroad is a gross violation of a fundamental constitutional right. The only exception recognized so far is when a court orders

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

the impairment of the right to travel abroad in connection with a pending criminal case.[9] Another possible exception is if Congress, pursuant to its power of legislative inquiry, issues a subpoena or arrest order against a person. These exceptions, however, do not apply in the present case. Here, respondent was not even facing a preliminary investigation or an administrative complaint when she left the country.

The SCSLA clearance is not required by any law before a court employee can travel abroad. The SCSLA clearance is not even specifically required under OCA Circular No. 49-2003. Clearly, respondent has submitted to the OCA all the requirements for her leave application two months prior to her intended leave. Thus, respondent's leave application was deemed approved as of 15 July 2009 pursuant to Section 49, Rule XVI of the Omnibus Rules on Leave and the Omnibus Rules Implementing Book V of EO 292.[10]

During her approved leave of absence, respondent's time was her own personal time and she could be wherever she wanted to be. The Court cannot inquire what respondent does during her leave of absence since that would constitute unwarranted interference into her private affairs and would encroach on her right to privacy. The right to privacy is "the right of an individual to be let alone, or to be free from unwarranted publicity, or to live without unwarranted interference by the public in matters in which the public is not necessarily concerned."[11] Under Article 26 of the Civil Code, the right to privacy is expressly protected:

> Art. 26. Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:
>
> (1) Prying into the privacy of another's residence;
> (2) Meddling with or disturbing the private life or family relations of another;
> (3) Intriguing to cause another to be alienated from his friends;
> (4) Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition. (Emphasis supplied)

Furthermore, respondent's travel abroad, during her approved leave, did not require approval from anyone because respondent, like any other citizen, enjoys the constitutional right to travel within the Philippines or abroad. Respondent's right to travel abroad, during her approved leave, cannot be impaired "except in the interest of national security, public safety, or public health, as may be provided by law." Not one of these grounds is present in this case.

There is no doubt that the use of leave of absence can be regulated without impairing the employees' right to privacy and to travel. In fact, the Civil Service Commission has promulgated the Omnibus Rules Implementing Book V of Executive Order No. 292, of which Rule XVI is the Omnibus Rules on Leave. Such rules and regulations are adopted to balance the well-being and benefit of the government employees and the efficiency and productivity in the government service. Thus, the requirement of securing approval for any leave of absence is a reasonable and valid regulation to insure continuity of service in the government. However, once a leave of absence is approved, any restriction during the approved leave on the right to travel of the government employee violates his or her constitutional right to travel.

This Court should be the first to protect the right to travel of its employees, a right enshrined not only in the Bill of Rights but also in the United Nations Universal Declaration of Human Rights as well as in the International Covenant on Civil and Political Rights.[12] The Philippines is a signatory to the Declaration[13] and a state party to the Covenant.[14] In fact, the duty of this Court under Section 5(5), Article VIII of the Constitution is to "promulgate rules concerning the protection and enforcement of constitutional rights," not to curtail such rights. Neither can this Court promulgate rules that "diminish" or even "modify" substantive rights[15] like the constitutional right to travel.

Accordingly, I vote to DISMISS the administrative complaint against Wilma Salvacion P. Heusdens, Clerk IV, Municipal Trial Court in Cities, Tagum City.

---

[1] GUIDELINES ON REQUESTS FOR TRAVEL ABROAD AND EXTENSIONS FOR TRAVEL/STAY ABROAD.

[2] Administrative Code of 1987.

[3] PROVIDING PROCEDURES IN THE DISPOSITION OF REQUESTS OF GOVERNMENT OFFICIALS AND EMPLOYEES FOR AUTHORITY TO TRAVEL ABROAD.

[4] On 27 October 1992, then President Fidel V. Ramos issued Memorandum Circular No. 18, which clarified the rules and regulations on travel abroad of government officials and employees. The procedure regarding requests for travel authority was further streamlined under Executive Order No. 459, issued by then President Gloria Macapagal-Arroyo on 1 September 2005.

[5] MODIFYING EXECUTIVE ORDER NO. 6 PROVIDING PROCEDURES RELATIVE TO REQUESTS OF GOVERNMENT OFFICIALS AND EMPLOYEES FOR AUTHORITY TO TRAVEL ABROAD. Issued on 31 July 1986.

[6] G.R. No. 172623, 3 March 2010, 614 SCRA 127.

[7] G.R. No. 94284, 8 April 1991, 195 SCRA 760.

[8]Id. at 765.

[9] Dr. Cruz v. Judge Iturralde, 450 Phil. 77 (2003); Hold-Departure Order issued by Judge Occiano, 431 Phil. 408 (2002); Silverio v. Court of Appeals, G.R. No. 94284, 8 April 1991, 195 SCRA 760.

[10] Section 49, Rule XVI of the Omnibus Rules on Leave reads:

SEC. 49. Period within which to act on leave application. – Whenever the application for leave of absence, including terminal leave, is not acted upon by the head of agency or his duly authorized representative within five (5) working days after receipt thereof, the application for leave of absence shall be deemed approved. (Emphasis supplied)

[11] 1 A. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, 108 (1990).

[12] Article 13 of the UN Universal Declaration of Human Rights provides: “Everyone has the right to leave any country, including his own, and to return to his country.” Article 12 of the International Covenant on Civil and Political Rights provides: “Everyone shall be free to leave any country, including his own.”

[13] In Mejoff v. Director of Prisons (90 Phil. 70 [1951]), this Court held that the principles set forth in the Declaration are part of the law of the land. See also Government of Hongkong Special Administrative Region v. Olalia, Jr. and Muñoz, G.R. No. 153675, 19 April 2007, 521 SCRA 470.

[14] Ratified by the Philippines on 23 October 1986.

[15] Section 5(5), Article VIII of the Constitution provides: “Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and

shall not diminish, increase, or modify substantive rights. Rules of Procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court."

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.