

EVA LUCIA Z. GEROY, VS. HON. DAN R. CALDERON, PRESIDING JUDGE, BRANCH 26 OF THE REGIONAL TRIAL COURT OF MEDINA, MISAMIS ORIENTAL, RESPONDENT.

A.M. No. RTJ-07-2092 (Formerly OCA I.P.I. No. 07-2685-RTJ). December 08, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

"A magistrate is judged not only by his official acts but also by his private morals, to the extent that such private morals are externalized. He should not only possess proficiency in law but should likewise possess moral integrity for the people look up to him as a virtuous and upright man."[1]

Before the Court is a letter-complaint dated June 13, 2007 filed by Eva Lucia Z. Geroy (complainant) charging Judge Dan R. Calderon (respondent) of the Regional Trial Court (RTC), Branch 26, Medina, Misamis Oriental, with gross immorality for having an extra-marital affair with her.

Complainant alleges: She was introduced by her cousin Cesar Badilas (Badilas) to respondent in a Rotary Club dinner on November 30, 2002. Thereafter, respondent always communicated with her, visited her at her house and showered her with food and gifts, making her believe that he was single or separated as he acted like a bachelor towards her. They spent most of their time in his house in Upper Balulang, Cagayan de Oro City where complainant would sleep over during weekdays and spend entire weekends with respondent. They would dine in public places, watch movies, go to malls, groceries and hear mass together. Respondent lent her money and she ran errands for him such as making reservations for his trips and purchasing items for his house, encode decisions, pay bills and encash checks for him. Respondent paid her tuition in a caregiver course and gave her a cell phone for an e-load business.[2]

There were times, however, when complainant felt she was being abused by respondent, such as when he wanted to take a picture of them naked after they had sexual contact, when he asked her to buy abortive pills because his son impregnated his girlfriend, and when he (respondent) forced her to utter vulgar words during their intercourse. In August 2005, complainant went to Xavier University where respondent was a professor, and respondent uttered hurtful words towards her. On December 24, 2005, complainant received a call from respondent and his wife degrading and threatening her. She also received a text message from respondent on December 29, 2005 saying that she had made herself a "despicable disease." Respondent's wife and daughter also called complainant, confronting and threatening her. On March 21, 2007, complainant saw respondent in a restaurant with a woman and when she approached respondent, he cursed and looked angrily at her and asked the guard to drive her out. Respondent then went to his car and locked the doors. Complainant knocked at the window near the driver's seat but respondent arrogantly looked at her and maneuvered his car, nearly hitting her, as he sped past her.[3]

Complainant avers that she was expecting that if her relationship with respondent would end, there should be a friendly talk and a peaceful closure between them, but none took place.[4] She further claims that respondent is in another relationship and she is filing the present case, not just to put an end to the immoral conduct of respondent,

but to prevent other women from being victimized by him.[5]

Attached to the complaint are transcripts of respondent's text messages to her from December 2002 to 2005, pictures of her taken inside respondent's house, pictures of complainant's diary, cellphones, gifts allegedly given to her by respondent, receipts showing the name of respondent, and a photocopy of a check showing that respondent lent her money.[6]

Respondent, in his Comment dated July 24, 2007, denies that he had any illicit relationship with complainant; and claims that her allegations are completely manufactured to suit her elaborate plan to extort money from him. He claims that he is the original complainant in the public prosecutor's office; thus, the present case is in the nature of a counter-charge. While respondent admits that he met complainant at a Rotary dinner sometime in late 2002 through Bardilas, a fellow Rotarian, he didn't realize that when she tagged along with respondent and Bardilas that night, a malicious plan had been set into motion. Respondent further claims that complainant had no regular job and expressed dire financial need; that out of charity, respondent hired her to encode simple case facts and test questions in her house using respondent's laptop; that it was arranged that he would stop by her house to hand her materials for typing, and later pick up the same from her residence; that she later offered to run other errands for him in exchange for a reasonable fee.[7]

Respondent further relates: later, complainant started visiting his house unannounced during weekdays saying she was in a nearby subdivision. Thinking it was innocent, respondent allowed her inside the house and told her to help herself to snacks, and then she would leave shortly. In the total of four or five unannounced visits of complainant, respondent noticed a shift in her conversation, relating to him lurid sex experiences with her previous boyfriends. She also insinuated that it was now accepted in society for married men to have paramours, upon which respondent bluntly told her, personally and in several text messages, that he had no such inclination. In her last unwelcome visit, complainant gave respondent letters professing her uncontrollable love for him. Unknown to respondent and his helpers, complainant had sneaked into his house and the upper bedrooms, where she took pictures alleging that sexual activity had taken place therein. Respondent started ignoring respondent in 2005, but she did not stop sending him text messages asking for a meeting. She also sent text messages to his wife, children, relatives and friends and even went to his wife's dental clinic in St. Luke's, Quezon City, telling her that she was his woman. She also tried to talk to his son by waiting for him in his company's shuttle bus. She kept every receipt which would show favors she received from him, taking advantage of his generous disposition. She borrowed from him her tuition fee for a caregiver course, as well to buy cellphones for an e-load business which loans respondent gave in good faith. When complainant realized that all the good things she was getting from him were coming to an end and that he was not falling for her blackmail, she started to become vicious and physically assaulted him, such as when she waited for him in the parking lot of Xavier University and tried to enter respondent's car. On March 21, 2007, complainant saw respondent in an eatery and then tried to board his car. In her frustration, she broke the car's side mirror and threw the same at the departing car. On April 24, 2007, while respondent was in his car along Pabayo St., complainant suddenly appeared and again tried to enter the locked car; failing to do so, she started hitting the car with her umbrella and blocked the car's way, forcing respondent to get down the car and wrest the umbrella away. As the car left, complainant grabbed the car's rear plate number, destroying its frame. It was at this time that respondent decided to file a case against her for malicious mischief and slander by deed. In her desperation to support her charge, complainant now concocts another malicious, baseless charge that he is presently involved with another woman. Respondent avers that he has gained the respect of the community as a nationally awarded outstanding prosecutor for Region X in 1994 and a Centennial Judge awardee in 2001 and therefore he cannot compromise such reputation through alleged extra-marital liaisons.[8]

Attached to said Comment is a copy of the Resolution of the Asst. City Prosecutor finding sufficient evidence to

support respondent's charge of malicious mischief and finding no sufficient basis to support respondent's charge of slander by deed and complainant's counter-charge for violation of Republic Act (R.A.) No. 9262 (Violence Against Women and Their Children Act).[9] He also attached affidavits of his gardener, caretaker, his wife's assistant, and that of Bardilas and his wife, corroborating his allegations.[10]

In the Resolution dated November 26, 2007, the Court, upon recommendation of the OCA, redocketed the complaint as a regular administrative matter and referred the same to the Executive Justice of the Court of Appeals (CA), Cagayan de Oro Station, for investigation, report and recommendation after a raffle of the case among the Justices.[11]

Complainant filed a Rejoinder dated October 31, 2007 refuting respondent's Comment[12] and a Motion for Early Resolution dated December 26, 2007,[13] which the Court referred to the Investigating Justice.[14]

The hearings before Investigating Justice Rodrigo F. Lim, Jr. were reset twice as complainant could not find any counsel, since no lawyer in the city or the province wanted to take her case. Thus, the summary hearing only commenced on June 3, 2008 and continued on June 12, 13, 20 and 23, 2008. Complainant and her witness, Ofelia Labitad, a neighbor, were cross-examined by the counsel of respondent; while respondent and his witness, Bardilas, were cross-examined by complainant herself without the assistance of any counsel.[15] Thereafter, the parties submitted their respective memoranda.[16]

In the Report which the Court received on July 31, 2008, Investigating Justice Rodrigo F. Lim found respondent guilty of immorality and recommended his suspension for six months without salary and other benefits.[17]

The Investigating Justice held: There were admissions on respondent's part which revealed the existence of an illicit affair. Complainant was able to disclose that respondent had skin tags between his thighs which respondent admitted. Complainant would not have had knowledge of such intimate and concealed marks unless she was able to see respondent naked. While respondent claimed that he may have divulged such fact in one of their casual conversations, such disclosure goes against respondent's very claim that what they had was only a platonic employer-employee relationship. The pictures taken by complainant showing the rooms in the house and her familiarity with the same proves that complainant had access to all the rooms in the house and would also show that some of their sexual trysts took place in respondent's house. Respondent also asked complainant to assist him in the solemnization of three marriages when he could have utilized a staff from his office. From these, it could be inferred that complainant's services were utilized so that they could be together in the evening after the reception. Respondent also asked complainant to encode his draft orders/decisions when he has four stenographers. Respondent, in doing so, disregarded the fact that by giving complainant such encoding jobs, he was compromising the integrity of the court records. Despite the finding of immorality, however, the ultimate penalty of dismissal from service, as prayed for by complainant, should not be imposed upon respondent, as records revealed that complainant was equally guilty, if not more so, in the whole sordid affair. Considering his length of service and the fact that this was the first time that respondent was charged with immorality or any other administrative offense, the penalty of six months suspension should suffice.[18]

The Investigating Justice also found incredible complainant's claim that she was misled by respondent into thinking that he was single or unmarried, since she admitted in one of her affidavits that by his age and the way he carried himself, she knew that he was really a married man and it was up to her discretion whether to reciprocate respondent's affections knowing respondent's marital status.[19]

The Court finds the report and recommendation of the Investigating Justice to be well-taken.

The Court has not been sparing in its exhortation of judges that they should avoid impropriety and the appearance

of impropriety in all activities. No position is more demanding as regards the moral righteousness and uprightness of any individual than a seat on the Bench; thus, their personal behavior, not only while in the performance of official duties but also outside the court, must be beyond reproach, for they are, as they so aptly are perceived to be, the visible representation of law and of justice.[20] A judge traces a line around his official as well as personal conduct, a price he has to pay for occupying an exalted position in the judiciary, beyond which he may not freely venture.[21]

The complainant, in administrative proceedings, has the burden of proving by substantial evidence the allegations in her complaint,[22] i.e., that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion;[23] the Court finds that the complainant in this case was able to discharge such burden.

As correctly found by the Investigating Justice, the complainant was able to support her charge of immorality against respondent and has shown that the latter had not exhibited the ideals and principles expected of a magistrate. The disclosure by complainant of very intimate facts about respondent and respondent's own seemingly innocuous admissions clearly reveal the existence of an illicit affair. Complainant would not have known personal information about respondent, such as the skin tags in between his thighs, if they really did not have an intimate physical relationship.[24]

As respondent himself testified:

Q

Is it not that you have skin tags on the inner thigh of your body, Mr. Witness?

A

Yes, I told you about it and in fact it is not just in my thighs but also under my armpit and that was in the course of your asking about my physical features and my scars on my face, and may be that was also the time that I also told you the story about the scars on my face that I got during the fraternity rumble during my college days.[25]

Respondent's own admissions are also inconsistent with his claim that his relationship with complainant is purely platonic and professional. As gathered from the transcripts:

Q

Mr. Witness, do you recall that December 1, 2002 you have been calling up and then is it not that November 30 we've met, we were introduced, the following day you texted me and said in Annex A-1 it is there December 1, 2002 at 8:32:33 in the morning you were texting, "Gud am, just saying thanks for the wonderful evening"?

A

Yes, but I am not sure if that is accurate text message but I was being polite, it is in my nature.[26]

x x x x

Q

Do you remember then, Mr. Witness that after your family went back to Manila January 6 you were texting me again saying that was already 6 January 2003 you were texting, "knock, knock hello are you still there"?

A

This could be right because this was in reply to your earlier text message which I've read.[27]

x x x x

Q

In fact, Mr. Witness, you texted me in my Annex "I-c" it was there on December 8, 2002 at 1:24:9 early morning, do you remember because on December 7 I was with you, we were together we were in your house nobody was there and no son Ian Phillip was there, we savor our togetherness at that time, do you remember this text message, Mr. Witness which I quote, "I feel more 4 your comfort Tet, I felt u really nid d rest, I just can't resist it wen u're here u know."

A

I don't remember if this is the exact message that I sent you; but this would indicate that I gave you a lot of work, these were the first things that you were working for me but it is not that because you were in my house; that is a lie.[28]

x x x x

Q

Is it not also, Mr. Witness, you were always appreciating our togetherness and wonderful evening like what you said in your text message on 21 January 2003 2:43:44 in the morning you texted to me I quote, "Am in my room now thanks for a wonderful evening the songs and the towelets sleep tight", it was already 2:43:44 in the morning, do you remember that?

A

I remember this particularly and I checked a mistake, this was a Friday and we had our rotary meeting here in the rotary bar site, when I went home I read your text because I believe before I went to the rotary meeting I passed by your house and we talked and you gave me something, I think it was a CD or a recording that you gave me, I do not remember about the towelets but you gave me some CDs and then I went home from the rotary I read your text that was the only time I read your text and I answered, but I do not think it was this late also it could have been that you received my text message late or you intentionally erroneously typed this wrong time, this late time.[29] (Emphasis supplied).

While respondent insists that his relationship with complainant is purely professional, the text messages which admittedly came from him are not of the kind an employer would ordinarily send an employee. Try as he might, respondent's own admissions betray his claim of innocence.

Complainant's witness, her neighbor Ofelia Labitad, also testified that she believed complainant and respondent had an intimate relationship because they were always together, i.e., there were times that she saw respondent's car parked in front of the house of the complainant or across the street.[30]

To this, respondent tried to explain that it was arranged that coming from the Hall of Justice in Cagayan de Oro City and subsequently from Medina, Misamis Oriental, he would stop at the corner or near complainant's residence, which was on the way to his residence, and would hand over to her from the car any encoding job that had to be done for a reasonable fee.[31]

Respondent also admitted that complainant assisted him in at least two weddings which he solemnized.[32]

As correctly observed by the Investigating Justice, however, respondent as RTC judge has several employees under him --- a branch clerk of court, four stenographers, a legal researcher, a branch sheriff, personnel in charged of the civil and criminal records plus a utility worker. He could have asked any of his stenographers to do the encoding for him, especially the encoding of decisions, and any of his staff to assist him in the solemnization of

weddings. His resort to complainant's services could be nothing but just a convenient excuse for them to be able to spend more time together. Also, as correctly observed by the Investigating Justice, his utilization of complainant's services especially in encoding cases also compromised the integrity of court records. A person who is not a regular court employee should not be allowed to type decisions and to have access to court records.[33]

Complainant related in detail her relationship with respondent and respondent could only offer general denials. Even then, he could not completely deny some communications which transpired between him and complainant which betrayed his claim of a purely platonic relationship.

As the Court has held, mere denial does not overturn the relative weight and probative value of an affirmative assertion. Denial is an inherently weak defense. To be believed, it must be buttressed by strong evidence of non-culpability; otherwise, such denial is purely self-serving and has no evidentiary value.[34]

The bottom line is that respondent failed to adhere to the exacting standards of morality and decency which every member of the judiciary is expected to observe.[35] Respondent is a married man, yet he engaged in a romantic relationship with complainant. Granting arguendo that respondent's relationship with complainant never went physical or intimate, still he cannot escape the charge of immorality, for his own admissions show that his relationship with her was more than professional, more than acquaintanceship, more than friendly.

As the Court held in *Madredijo v. Layao, Jr.*:[36]

[I]mmorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity and dissoluteness; or is willful, flagrant, or shameless conduct showing moral indifference to opinions of respectable members of the community and an inconsiderate attitude toward good order and public welfare.[37]

Immorality under Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC dated September 11, 2001 on the discipline of Justices and Judges, is a serious charge which carries any of the following sanctions: (1) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations, provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; (2) suspension from office without salary and other benefits for more than three but not exceeding six months; or (3) a fine of more than P20,000.00 but not exceeding P40,000.00.[38]

In recommending the penalty of suspension for six months without salary and other benefits, instead of the ultimate penalty of dismissal from the service, the Investigating Justice gave weight to the fact that complainant was equally, if not more guilty in the whole sordid affair.[39] He also considered respondent's length of service and the fact that this was the first time respondent had been charged with immorality, and it did not appear from the records that he had been previously charged with any offense or that there was any pending administrative case against him.[40]

The Court agrees that complainant clearly consented to the illicit affair. The Investigating Justice correctly observed that complainant was a clearly enamored and highly obsessed woman, as proven by her propensity to be at the exact place and time where respondent happened to be and her insistence on having a "formal closure" between them. Records also revealed that complainant sought out respondent's wife, parents and children, meeting them personally or texting them, when respondent started ignoring her. The Investigating Justice also correctly found incredible complainant's claim that she was misled by respondent into thinking that he was an unmarried man, as complainant could have easily verified respondent's status, he being a public figure, which information was readily available to anyone. Complainant also admitted in one of her affidavits that the very first time she met

respondent, she knew by the way he carried himself and his age that he was a married man; but because of his perseverance, her heart was won.[41]

As aptly observed by the Investigating Justice in his Report:

x x x the present case was merely borne out [of] the sentiments of a woman whose affections were unreciprocated, even spurned and not really out of a noble cause to purge the judiciary of magistrates undeserving of the robes they wear. Indeed, she is the epitome of the saying that: "Hell hath no fury like a woman scorned." [42]

However, the Court does not agree that complainant's guilt or intentions should mitigate respondent's liability.

Whatever intentions complainant may have has no bearing on the instant case. As the Court has explained, the purpose of an administrative proceeding is to protect the public service, based on the time-honored principle that a public office is a public trust. And complainants are, in a real sense, only witnesses therein.[43]

The Court agrees, however, that this is respondent's first administrative infraction since he took his office as judge on January 3, 1997.[44] It should be considered as mitigating his liability.[45] In view thereof, the Court finds the recommended penalty of suspension for six months without salary and other benefits, with a stern warning as recommended by the OCA, to be sufficient in this case.

WHEREFORE, Presiding Judge Dan R. Calderon, Branch 26 of the Regional Trial Court of Medina, Misamis Oriental is hereby found GUILTY of IMMORALITY for which he is meted the penalty of SUSPENSION for six months without salary and other benefits, with a STERN WARNING that a repetition of the same or similar acts in the future shall be dealt with more severely.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

[1] Tan v. Pacuribot, A.M. No. RTJ-06-1982, December 14, 2007, 540 SCRA 246, 298.

[2] Rollo, pp. 11-13.

[3] Id. at 14-17.

[4] Rollo, p. 13.

[5] Id. at 16-17.

[6] Id. at 18-145.

[7] Id. at 152-153.

[8] Rollo, pp. 152-157.

[9] Id. at 168-173.

[10] Id. at 176-182.

[11] Id. at 229; see also rollo, p. 7.

[12] Id. at 231-235.

[13] Id. at 273-274.

- [14] Id. at 295.
- [15] Investigation Report, pp. 1-2.
- [16] Rollo, pp. 402-412, 413-424.
- [17] Investigation Report, p. 25.
- [18] Investigation Report, pp. 16-21.
- [19] Id. at 23.
- [20] *Resngit-Marquez v. Llamas, Jr.*, A.M. No. RTJ-02-1708, July 23, 2002, 385 SCRA 6, 21.
- [21] Id.
- [22] *Tan v. Pacuribot*, supra note 1.
- [23] *Resngit-Marquez v. Llamas, Jr.*, supra note 20.
- [24] Cross examination of respondent, TSN, June 20, 2003, p. 48, TSN, June 23, 2003, 2:00 p.m., pp. 32-33.
- [25] TSN, June 23, 2008, 2:00 p.m., p. 33.
- [26] Id. at 40-41.
- [27] TSN, June 23, 2008, 2:00 p.m., p. 43.
- [28] Id. at 44-45.
- [29] TSN, June 23, 2008, 2:00 p.m., pp. 34-35.
- [30] TSN, June 12, 2008, pp. 181-189.
- [31] Comment, rollo, p. 153.
- [32] Id. at 153.
- [33] *Office of the Court Administrator v. Sayo, Jr.*, A.M. Nos. RTJ-00-1587, May 7, 2002, 381 SCRA 659, 678.
- [34] *Tan v. Pacuribot*, supra note 1.
- [35] *Jamin v. De Castro*, A.M. No. MTJ-05-1616, October 17, 2007, 536 SCRA 359, 368.
- [36] A.M. No. RTJ-98-1424, October 13, 1999, 316 SCRA 544.
- [37] Id. at 559.
- [38] Rules of Court, Rule 140, Sections 8 and 11.
- [39] Investigation Report, p. 21.
- [40] Id. at 25.
- [41] Id. at 23, see also rollo, p. 323.
- [42] Rollo, p. 24.
- [43] *Carman v. Zerrudo*, A.M. No. MTJ-98-1146, February 5, 2004, 422 SCRA 1, 9.
- [44] Through OAS-OCA Docket Legal and Records Division.

[45] See *Apiag v. Cantero*, A.M. No. MTJ-95-1079, February 12, 1997, 268 SCRA 47.

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