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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.M. CA-15-32-P. July 29, 2015]
(Formerly OCA IPI No. 14-219-CA-P)

COMMITTEE ON ETHICS & SPECIAL CONCERNS, COURT OF APPEALS, MANILA, *complainant, vs.* **MARCELO B. NAIG, Utility Worker II, Maintenance and Utility Section, Court of Appeals, Manila,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; HIGHER STANDARD FOR MORALITY AND DECENCY DEMANDED; DISGRACEFUL AND IMMORAL CONDUCT; DISCUSSED.— Time and again, this Court has stressed that no other office in the government demands a higher standard for morality and decency than the judiciary. x x x As such this Court has issued codes of conduct, most notably A.M. No. 03-06-13-SC or the Code of Conduct for Court Personnel, in addition to the existing civil service rules under the Administrative Code and Civil Service Rules to guide court personnel in the performance of their duties and personal affairs. Section 1, Memorandum Circular No. 15 of the Civil Service Commission defines disgraceful and immoral conduct as a willful act that violates basic decency or morality of society. x x x It may be committed in a scandalous or discreet manner, within or out of the workplace. A complaint may be brought or initiated by the disciplining authority or any person against the parties involved. According to Section

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46 B.3, Rule 10 of the RRACCS, disgraceful and immoral conduct is a grave offense which is punishable by suspension from the service for six (6) months and one (1) day to one (1) year for the first offense, and dismissal for the second offense.

2. ID.; ID.; ID.; ID.; ID.; PROPER PENALTY FOR FIRST INFRACTION AND REPENTANT ATTITUDE IS SUSPENSION FOR SIX MONTHS AND ONE DAY.— [R]espondent admitted in his *Salaysay* to having relations with a woman not his wife, having a child with her and supporting all his children. He has stated that he and his wife had been separated for a period of more or less six years at the time he entered into a relationship with Emma and that he is repentant of his acts. x x x Considering that this is respondent's first infraction and his repentant attitude, we thus deem it proper to impose the penalty of suspension for a period of six months and one day. We would like to strenuously stress that respondent desist from furthering his relationship with Emma until there has been a legal resolution to his subsisting marriage with Elena.

R E S O L U T I O N

VILLARAMA, JR., *J.*:

Before us is the March 3, 2015 Evaluation and Recommendation[1] of the Office of the Court Administrator (OCA) affirming the January 9, 2014 Report and Recommendation[2] of complainant Committee on Ethics and Special Concerns, Court of Appeals (CA), Manila finding respondent Marcelo B. Naig liable for disgraceful and immoral conduct under Section 46 B.3,[3] Rule

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[1] *Rollo*, pp. 55-57.

[2] *Id*. at 2-7. Submitted by Assistant Clerk of Court Virginia C. Abella and noted by Clerk of Court Teresita R. Marigomen. The Report and Recommendation was recommended for approval by the Committee on Ethics and Special Concerns Chairperson Associate Justice Mariflor Punzalan Castillo and Members Associate Justices Francisco P. Acosta, Jane Aurora C. Lantion, Franchito N. Diamante and Manuel Barrios. The Report and Recommendation was approved by Presiding Justice Andres B. Reyes, Jr.

[3] REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE, Rule 10, Section 46 B.3 provides:

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10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS).

The case stemmed from a letter[4] dated June 25, 2013 of Associate Justice Eduardo B. Peralta, Jr. and Atty. Caroline G. Ocampo Peralta endorsing the *Salaysay*[5] of respondent Marcelo B. Naig. The letter was referred to Assistant Clerk of Court Atty. Virginia O. Abella for investigation and report.[6]

In his *Salaysay*, respondent narrated that he is a 48-year-old man working as Utility Worker II for the Maintenance and Utility Section of the CA. He states that he did part-time work for Justice Peralta and Atty. Peralta's household on weekends. It was during his time there that he met their house help, Emma[7] Sabado. Five years later, they met again and confessed their love for one another. Due to their expression of love around March 2013, it bore fruit. He said that Emma was aware that he was a married man with four children. They agreed that he would give to Emma ₱2,000.00 per month as support and pledged that he would do everything that he could to support their child. He asked for understanding and forgiveness for his transgression in loving Emma that he forgot that this was a sin against God and man.

Section 46. *Classification of Offenses*. – Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

x x x x x x x x x

B. The following grave offenses shall be punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from the service for the second offense:

x x x x x x x x x

3. Disgraceful and immoral conduct;

x x x x x x x x x

[4] Docketed as Administrative Case No. 07-2013-ABR. *Rollo*, p. 11.

[5] Dated June 11, 2013. *Id*. at 10.

[6] *Id*. at 13.

[7] Also referred to as Emaline, Emalene and Ema in other parts of the *rollo*.

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Upon receipt of the June 25, 2013 letter and *Salaysay*, the CA Assistant Clerk of Court directed respondent to submit his comment.[8]

In his July 25, 2013 *Salaysay*,[9] respondent stated that he and Emma met at the Cubao Bus terminal when she arrived from her province. They discussed that he would give the ₱2,000.00 support for their child.

In its August 30, 2013 Report and Recommendation,[10] the Assistant Clerk of Court noted that respondent admitted in his *Salaysay* that he was having an illicit relationship with Emma, a woman who was not his wife, and begot a child. This according to jurisprudence constituted disgraceful and immoral conduct making him liable under Section 46 B.3, Rule 10 of the RRACCS. Thus it was recommended that:

> **IN VIEW OF ALL THE FOREGOING CONSIDERATIONS**, [i]t is most respectfully submitted that there is substantial evidence establishing probable cause and to warrant the filing of a Formal Charge for Disgraceful and Immoral Conduct against Mr. Marcelo B. Naig under Section 46 B.3., Rule 10 of the [RRACCS].[11]

The formal charge against respondent for violation of Section 46 B.3, Rule 10 of the RRACCS was thus filed on November 7, 2013.[12] Respondent was directed to answer the charges in writing under oath.

Respondent submitted his November 12, 2013 *Salaysay*[13] reiterating his commitment to support his child with Emma.

In its November 26, 2013 Order, the Assistant Clerk of Court directed respondent to appear for preliminary investigation on

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[8] Memorandum dated July 18, 2013. *Rollo*, p. 16.

[9] *Id*. at 17.

[10] *Id*. at 19-22.

[11] *Id*. at 21.

[12] *Id*. at 24.

[13] *Id*. at 26-27.

December 2, 2013.[14] Justice Peralta and Atty. Peralta informed the CA that they could not attend the preliminary investigation as they would be out of the country on that day.[15]

On December 2, 2013, the preliminary investigation proceeded. Respondent stated that he did not wish to pursue a formal investigation nor did he wish to be represented by counsel.[16] He also stated that he wanted to bring Emma but could not since she was still confined at the Philippine General Hospital after prematurely giving birth to their child.[17] She would instead write a letter addressed to Justice Peralta to apologize. He said that he could not find his wife since they had separated five years ago and is currently living with another man. He asked for additional time to locate his wife, Elena Eliang Naig, and submit additional evidence.[18]

On December 4, 2013, respondent submitted a letter from his wife Elena stating that she and respondent had been separated for six years and her willingness to appear before the Court to testify on the truth of the matter.[19] He also submitted a letter written by Nina Sabado, a cousin of Emma, who wrote the letter in view of Emma's illiteracy and confinement. The letter stated that Emma is of sound mind and her wish to see Atty. Peralta and seek her forgiveness.[20]

In its January 9, 2014 Report and Recommendation, the Committee on Ethics and Special Concerns found no compelling evidence to justify respondent's conduct in engaging in an amorous relationship with another woman not his wife. Letters submitted by respondent by Elena and Emma had no probative value since

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[14] *Id*. at 28.

[15] *Id*. at 29-31.

[16] *Id*. at 33.

[17] *Id*. at 34.

[18] *Id*.

[19] *Id*. at 38.

[20] Letter was signed by Emma Sabado. *Id*. at 39.

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these were unsworn and unauthenticated and are thus hearsay and self-serving. The Committee thus declared respondent guilty of disgraceful and immoral conduct under Section 46 B.3, Rule 10 of the RRACCS. Thus:

> **IN THE LIGHT OF ALL THE FOREGOING CONSIDERATIONS**, this Office most respectfully submits that respondent Marcelo B. Naig is **GUILTY** of Disgraceful and Immoral Conduct under Section 46 B.3., Rule 10 of the [RRACCS], and that being a first offense, a penalty of One (1) year suspension without pay be imposed.[21]

On February 11, 2014, the January 9, 2014 Report and Recommendation was indorsed to the OCA for appropriate action.[22]

On February 21, 2014, the OCA required respondent to submit his comment.[23] Respondent moved to extend the period granted as he was still looking for a lawyer to represent him.[24] The OCA granted the extension.[25]

On May 5, 2014, respondent filed his Verified Comment[26] stating that his wife, Elena, whom he has been separated with for around six years, raised no complaint and neither had Emma. The relationship also did not affect the performance of his duties in the CA. No one knew of their relationship prior to the complaint brought forward by Justice Peralta and Atty. Peralta when Emma left their employ, which inconvenienced them. He stated that the recommended penalty was too harsh given that this was his first infraction. Since he is remorseful and that he is rearing his children as a solo parent, he prayed that the recommended penalty be reduced to three months.

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[21] *Id*. at 6.

[22] *Id*. at 1.

[23] *Id*. at 45.

[24] *Id*. at 46.

[25] *Id*. at 47.

[26] *Id*. at 48-51.

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In its March 3, 2015 Evaluation and Recommendation, the OCA affirmed that respondent is guilty of disgraceful and immoral conduct under Section 46 B.3, Rule 10 of RRACCS. However, the OCA modified the penalty taking into account the following factors: (1) that this is respondent's first infraction; (2) his separation from his wife for a period of almost six years; and (3) his expression of remorse and offer of apology. The OCA thus deemed it proper to impose a fine of ₱10,000.00 and ordered respondent to discontinue his relationship with Emma until his marriage could be legally terminated. It stated:

RECOMMENDATION: It is respectfully recommended for the consideration of the Honorable Court that:

1) the instant administrative complaint be **RE-DOCKETED** as a regular administrative matter against Marcelo B. Naig, Utility Worker II, Maintenance and Utility Section, Court of Appeals, Manila for disgraceful and immoral conduct;

2) respondent Marcelo B. Naig be **FINED** in the amount of Php10,000.00, and **ORDERED** to discontinue his extramarital relationship with Emma Sabado until he has legally terminated his marriage with his estranged wife.[27]

We agree with the Committee on Ethics and Special Concerns, CA and OCA's finding that respondent is guilty of disgraceful and immoral conduct when he engaged in an illicit relationship.

Time and again, this Court has stressed that no other office in the government demands a higher standard for morality and decency than the judiciary. In fact the Court has stated:

x x x this Court has firmly laid down exacting standards [of] morality and decency expected of those in the service of the judiciary. Their conduct, not to mention behavior, is circumscribed with the heavy burden of responsibility, characterized by, among other things, propriety and decorum so as to earn and keep the public's respect and confidence in the judicial service. It must be free from any whiff of impropriety, not only with respect to their duties in the judicial branch but also to their behaviour outside the court as private

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[27] *Id*. at 57.

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individuals. There is no dichotomy of morality; court employees are also judged by their private morals.[28]

As such this Court has issued codes of conduct,[29] most notably A.M. No. 03-06-13-SC or the Code of Conduct for Court Personnel, in addition to the existing civil service rules under the Administrative Code and Civil Service Rules to guide court personnel in the performance of their duties and personal affairs.

Section 1, Memorandum Circular No. 15[30] of the Civil Service Commission defines disgraceful and immoral conduct as a willful act that violates basic decency or morality of society. It states:

Section 1. Definition of Disgraceful and Immoral conduct – *Disgraceful and Immoral Conduct refers to an act which violates the basic norm or decency, morality and decorum abhorred and condemned by the society. It refers to conduct which is willful, flagrant or shameless, and which shows a moral indifference to the opinions of the good and respectable members of the community.*

It may be committed in a scandalous or discreet manner, within or out of the workplace.[31] A complaint may be brought or initiated by the disciplining authority or any person against the parties involved.[32]

According to Section 46 B.3, Rule 10 of the RRACCS, disgraceful and immoral conduct is a grave offense which is

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[28] *Acebedo v. Arquero*, 447 Phil. 76, 85 (2003).

[29] See A.M. No. 03-05-01-SC and A.M. No. 03-06-13-SC.

[30] AMENDING CERTAIN PROVISIONS OF THE RULES ON THE ADMINISTRATIVE OFFENSE OF DISGRACEFUL AND IMMORAL CONDUCT.

[31] Memorandum Circular No. 15, Section 4 provides:

Section 4. Manner of Commission of the Offense – *The acts consisting of the administrative offense of Disgraceful and Immoral conduct may be committed in a scandalous or discreet manner, within or out of the workplace.*

[32] Memorandum Circular No. 15, Section 2 provides:

Section 2. Complaint for Disgraceful and Immoral Conduct; Who may Initiate/File: – *A complaint for Disgraceful and Immoral Conduct may be initiated by the disciplining authority or filed by any person against the parties involved, whether married or unmarried.*

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punishable by suspension from the service for six (6) months and one (1) day to one (1) year for the first offense, and dismissal for the second offense.[33]

In *Sealana-Abbu v. Laurenciana-Huraño*,[34] this Court suspended for a period of one year two court stenographers who were engaged in an illicit relationship and were morally indifferent to and callously disregarded the feelings of others.

In *Banaag v. Espeleta*,[35] a court interpreter for the Regional Trial Court of Quezon City would have been suspended for six months and one day for engaging in an amorous relationship with a married man had she not peremptorily resigned from her post.[36]

Here, respondent admitted in his *Salaysay* to having relations with a woman not his wife, having a child with her and supporting all his children. He has stated that he and his wife had been separated for a period of more or less six years at the time he entered into a relationship with Emma and that he is repentant of his acts.

Respecting the proper penalty to be meted out, we cannot agree with the OCA that a fine would suffice. To reiterate court personnel, from the judge to the *lowest clerk*, are invested with the sacred duty to maintain the good name and standing of the institution they serve.[37] This Court cannot countenance any transgressions committed by court personnel as they reflect on the judiciary as an institution. Considering that this is respondent's first infraction and his repentant attitude, we thus deem it proper to impose the penalty of suspension for a period of six months and one day. We would like to strenuously stress that respondent desist from furthering his relationship with Emma until there has been a legal resolution to his subsisting marriage with Elena.

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[33] *Supra* note 3.

[34] 558 Phil. 24 (2007).

[35] 677 Phil. 552 (2011).

[36] Ms. Espeleta was instead fined ₱50,000.00 for her infraction. *Id*. at 560.

[37] *Lledo v. Lledo*, 360 Phil. 500, 502 (1998).

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WHEREFORE, we find respondent **MARCELO B. NAIG** guilty of engaging in disgraceful and immoral conduct. Pursuant to Section 46 B.3, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service, he is **SUSPENDED** for six (6) months and one (1) day without pay with **STERN WARNING** that commission of the same or similar offenses shall be dealt with more severely.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Perez,[*] and *Jardeleza, JJ.,* concur.

SECOND DIVISION

[A.M. No. P-15-3347. July 29, 2015]
(Formerly OCA IPI No. 13-4067-P)

AMADEL C. ABOS, *complainant, vs.* **SALVADOR A. BORROMEO IV, Clerk III, Regional Trial Court, Br. 45, San Jose, Occidental Mindoro,** *respondent*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE; RA NO. 6713, OR THE CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES; VIOLATION THEREOF CONSTITUTES CONDUCT UNBECOMING A PUBLIC OFFICER; PENALTIES.— "Public service is a public trust." Republic Act No. 6713, or the Code of Conduct and Ethical Standards for Public Officials and Employees, was enacted

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[*] Designated Acting Member in lieu of Associate Justice Bienvenido L. Reyes, per Special Order No. 2084 dated June 29, 2015.