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Rule XII, Section 2.2 of the Omnibus Rules on Appointments and Personnel Actions[5] provides:

2.2 Unsatisfactory or Poor Performance.

(a) **An official or employee who is given two (2) consecutive unsatisfactory ratings may be dropped from the rolls after due notice.** Notice shall mean that the officer or employee concerned is informed in writing of his unsatisfactory performance for a semester and is sufficiently warned that a succeeding unsatisfactory performance shall warrant his separation from the service. Such notice shall be given not later than 30 days from the end of the semester and shall contain sufficient information which shall enable the employee to prepare an explanation. (emphasis supplied)

Despite the notice and warning regarding her performance, Batadlan's work continued to be unsatisfactory.

Public accountability essentially includes discharging one's duties as a public officer with utmost responsibility, integrity, competence, loyalty and efficiency. Incompetence and inefficiency have no place in the public service, specially in the dispensation of justice.

WHEREFORE, Ms. Lolita B. Batadlan, court stenographer III in Branch 26 of the Regional Trial Court of Surallah, South Cotabato, is hereby *DROPPED* from the rolls and her position declared *VACANT*.

SO ORDERED.

Puno, C.J. (Chairperson), Sandoval-Gutierrez, Azcuna, and *Garcia, JJ.,* concur.

FIRST DIVISION

[A.M. NO. P-06-2177. APRIL 13, 2007]

RE: REPORT ON THE FINANCIAL AUDIT CONDUCTED ON THE BOOKS OF ACCOUNTS OF ATTY. RAQUEL

[5] Civil Service Commission Memorandum Circular No. 40, s. 1998.

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G. KHO, CLERK OF COURT IV, REGIONAL TRIAL COURT, ORAS, EASTERN SAMAR

SYLLABUS

LEGAL ETHICS; ATTORNEYS; DUTY OF A LAWYER TO UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND FOR LEGAL PROCESSES, VIOLATED IN CASE AT BAR.— Atty. Kho's apparent good faith and his ready admission of the infraction, although certainly mitigating, cannot negate the fact that his failure to remit ₱65,000 in judiciary funds for over a year was contrary to the mandatory provisions of OCA Circular 8A-93. That omission was a breach of his oath to obey the laws as well as the legal orders of the duly constituted authorities and of his duties under Canon 1, Rule 1.01 of the Code of Professional Responsibility: "CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND FOR LEGAL PROCESSES. RULE 1.01. A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." It is no accident that these are the first edicts laid down in the Code of Professional Responsibility for these are a lawyer's foremost duties. Lawyers should always keep in mind that, although upholding the Constitution and obeying the law is an obligation imposed on every citizen, a lawyer's responsibilities under Canon 1 mean more than just staying out of trouble with the law. As servants of the law and officers of the court, lawyers are required to be at the forefront of observing and maintaining the rule of law. They are expected to make themselves exemplars worthy of emulation. This, in fact, is what a lawyer's obligation to promote respect for law and legal processes entails. The least a lawyer can do in compliance with Canon 1 is to refrain from engaging in unlawful conduct. By definition, any act or omission contrary to law is unlawful. It does not necessarily imply the element of criminality although it is broad enough to include it. Thus, the presence of evil intent on the part of the lawyer is not essential in order to bring his act or omission within the terms of Rule 1.01 which specifically prohibits lawyers from engaging in unlawful conduct.

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RESOLUTION

CORONA, *J.*:

In our resolution dated June 27, 2006, we found Atty. Raquel G. Kho, former clerk of court of the Regional Trial Court, Branch 5, Oras, Eastern Samar, guilty of gross misconduct for his failure to make a timely remittance of judiciary funds in his custody as required by OCA Circular No. 8A-93.[1] We ordered him to pay a fine of ₱10,000 for his transgression. The matter did not end there, however. Because his malfeasance *prima facie* contravened Canon 1, Rule 1.01[2] of the Code of Professional Responsibility, we ordered him to show cause why he should not be disciplined as a lawyer and as an officer of the court. Atty. Kho submitted his explanation in compliance with our directive. We shall now resolve this pending matter and bring to a close this regrettable chapter in his career as a government lawyer.

In his explanation, Atty. Kho admitted that his failure to make a timely remittance of the cash deposited with him was

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[1] The pertinent portions of OCA Circular No. 8A-93 dated April 21, 1993 read:

Effective March 1, 1993, all Clerks of Courts of lower Courts are hereby DIRECTED to deposit all collections from bailbonds, rental deposits and other fiduciary collections, upon receipt thereof, following the same guidelines laid out in Circular No. 13-92 of this Court dated March 1, 1992, with the LAND BANK OF THE PHILIPPINES (LBP), the authorized government depository bank for the Judiciary.

In localities where the LBP has no branches, the Clerk of Court shall deposit all collections with any Rural Bank in the area furnishing the ACCOUNTING DIVISION, SUPREME COURT, the selected Rural Bank.

Where there is no LBP branch at the station of the judge concerned, the collections shall be sent by postal money order payable to the Chief Accountant of the Supreme Court, at the latest before 3:00 P.M. of that particular week.

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Strict compliance is hereby enjoined.

[2] *Infra*.

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inexcusable. He maintained, however, that he kept the money in the court's safety vault and never once used it for his own benefit.

Atty. Kho's apparent good faith and his ready admission of the infraction, although certainly mitigating, cannot negate the fact that his failure to remit ₱65,000 in judiciary funds for over a year was contrary to the mandatory provisions of OCA Circular 8A-93. That omission was a breach of his oath to obey the laws as well as the legal orders of the duly constituted authorities[3] and of his duties under Canon 1, Rule 1.01 of the Code of Professional Responsibility:

CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND FOR LEGAL PROCESSES.

RULE 1.01. A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

It is no accident that these are the first edicts laid down in the Code of Professional Responsibility for these are a lawyer's foremost duties. Lawyers should always keep in mind that, although upholding the Constitution and obeying the law is an obligation imposed on every citizen, a lawyer's responsibilities under Canon 1 mean more than just staying out of trouble with the law. As servants of the law and officers of the court, lawyers are required to be at the forefront of observing and maintaining the rule of law. They are expected to make themselves exemplars worthy of emulation.[4] This, in fact, is what a lawyer's obligation to promote respect for law and legal processes entails.

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[3] Attorney's Oath. This is substantially reiterated in Sec. 20(a), Rule 138 of the Rules of Court, which reads:

> Sec. 20. *Duties of attorneys*. — It is the duty of an attorney:
> *(a)* To maintain allegiance to the Republic of the Philippines and to support the Constitution and obey the laws of the Philippines.

[4] *See* AGPALO, *COMMENTS ON THE CODE OF PROFESSIONAL RESPONSIBILITY AND THE CODE OF JUDICIAL CONDUCT* 18 (2001 ed.).

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The least a lawyer can do in compliance with Canon 1 is to refrain from engaging in unlawful conduct.[5] By definition, any act or omission contrary to law is unlawful.[6] It does not necessarily imply the element of criminality although it is broad enough to include it.[7] Thus, the presence of evil intent on the part of the lawyer is not essential in order to bring his act or omission within the terms of Rule 1.01 which specifically prohibits lawyers from engaging in unlawful conduct.

Atty. Kho's conduct was not only far from exemplary, it was unlawful as well. For this, he must be called to account. However, his candid and repentant admission of his error, his lack of intent to gain and the fact that this is his first offense should temper his culpability considerably. Under the circumstances, a fine of ₱5,000 should suffice.

WHEREFORE, Atty. Raquel G. Kho is hereby found *GUILTY* of unlawful conduct in violation of the Attorney's Oath, Section 20(a), Rule 138 of the Rules of Court, and Canon 1, Rule 1.01 of the Code of Professional Responsibility. He is ordered to pay a *FINE* of ₱5,000 within ten days from receipt of this resolution.

The Financial Management Office, Office of the Court Administrator, is hereby *DIRECTED* to deduct from Atty. Kho's accrued leave credits as a former clerk of court of the Regional Trial Court, Branch 5, Oras, Eastern Samar the fines imposed in this resolution and in the resolution dated June 27, 2006.

SO ORDERED.

Puno, C.J. (Chairperson), Sandoval-Gutierrez, Azcuna, and *Garcia, JJ.,* concur.

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[5] CODE OF PROFESSIONAL RESPONSIBILITY, Rule 1.01, *supra*.

[6] *BLACK'S LAW DICTIONARY* 1705 (4th ed.).

[7] *Id*.