



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

MARITES FLORES-TUMBAGA, A.M. No. P-06-2196  
Complainant, (Formerly OCA I.P.I. No. 05-2272-P)

Present:

- versus -

VELASCO, JR., J., Chairperson,  
LEONARDO-DE CASTRO,\*  
PERALTA,  
ABAD, and  
MENDOZA, JJ.

JOSELITO S. TUMBAGA,  
Sheriff IV, Office of the Clerk of  
Court, Regional Trial Court, La  
Trinidad, Benguet,

Promulgated:

Respondent.

22 October 2012

X-----*[Signature]*X

DECISION

PERALTA, J.:

Before this Court is an Administrative Complaint<sup>1</sup> filed by Marites Flores-Tumbaga against her husband, Joselito S. Tumbaga, Sheriff IV, Office of the Clerk of Court, Regional Trial Court, La Trinidad, Benguet for Disgraceful and Immoral Conduct.

Complainant alleged that sometime in December 2002, respondent confessed to her that he was having an extra-marital affair with a woman albeit he promised to put an end to said affair. However, complainant

<sup>1</sup> Designated Acting Member, per Special Order No. 1343 dated October 9, 2012.

<sup>2</sup> *Rello*, pp. 1-6.

claimed that despite respondent's promise, he continued his illicit relation with another woman. In August 2003, respondent abandoned her. After their separation, complainant alleged that her husband and his woman were frequently seen together in public, acting as though they are husband and wife.

In support of her allegations, complainant submitted the Affidavit<sup>2</sup> dated August 2, 2005 of Perfecto B. Cabansag (Cabansag), one of their wedding sponsors. In the said Affidavit, Cabansag stated that complainant came to their house seeking assistance and advice because respondent left her. In order to help complainant, sometime in September 2003, Cabansag and complainant met with respondent wherein the latter tearfully admitted to be the one at fault for having an extra-marital affair. Cabansag claimed that respondent promised them that he would end his extra-marital relationship with his woman, but a month after their meeting, respondent filed a petition for annulment of marriage in court.

Also attached to the complaint was the transcript of stenographic notes (TSN)<sup>3</sup> of complainant's testimony on July 28, 2005 in Civil Case No. 03-F-1364, entitled "*Joselito S. Tumbaga vs. Marites F. Tumbaga*," for Declaration of Nullity of Marriage wherein complainant narrated anew when respondent (1) confessed his extra-marital affair with another woman; (2) pleaded forgiveness from her; (3) first abandoned her to be with the other woman to the time respondent returned to their conjugal home and again pleaded for forgiveness from her; and to the time he abandoned her for good in order to live with the other woman.

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<sup>2</sup>*Id.* at 5-6.<sup>3</sup>*Id.* at 7-34.

On August 30, 2005, the Office of the Court Administrator (OCA) directed respondent to Comment on the complaint against him.<sup>4</sup>

In his Comment<sup>5</sup> dated October 17, 2005, respondent denied having an extra-marital affair with another woman. He likewise denied admitting to anyone, much less to the complainant, having any extra-marital affairs. Respondent, however, admitted that their marriage has been dysfunctional and was besieged with constant conflicts that they were unable to resolve which prompted him to leave their conjugal dwelling.

In his defense, respondent submitted the Affidavit of Ardel Briones<sup>6</sup> who attested that respondent told him of his marital woes. Respondent likewise submitted the Affidavit of Arnel Delenela,<sup>7</sup> who attested that there is no truth to complainant's allegation that respondent and his sister are maintaining an illicit affair.

Due to the conflicting versions of the parties, the OCA recommended that the instant complaint be redocketed as a regular administrative matter and be referred to the Executive Judge of the Regional Trial Court of La Trinidad, Benguet for investigation, report and recommendation.<sup>8</sup>

In a Resolution<sup>9</sup> dated July 10, 2006, the Court resolved to refer this administrative matter to the Executive Judge of the Regional Trial Court, La Trinidad, Benguet for investigation, report and recommendation.

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<sup>4</sup> *Id.* at 35.  
<sup>5</sup> *Id.* at 39-48.  
<sup>6</sup> *Id.* at 45.  
<sup>7</sup> *Id.* at 46.  
<sup>8</sup> *Id.* at 51-52.  
<sup>9</sup> *Id.* at 53-54.

However, in a Letter<sup>10</sup> dated September 12, 2006, Executive Judge Francis A. Buliyat, Regional Trial Court, La Trinidad, Benguet, directed instead then Vice-Executive Judge Marybelle L. Demot Mariñas to conduct the investigation and thereafter submit a report and recommendation on the case, since he could not conduct an impartial investigation as the annulment case involving complainant and respondent is pending in the court which he presides.

In a Resolution<sup>11</sup> dated November 22, 2006, the Court confirmed the designation of then Vice-Executive Judge Mariñas to investigate this administrative matter and to submit her report and recommendation within sixty (60) days from receipt of the records. In an Order<sup>12</sup> dated February 27, 2007, Judge Mariñas confirmed receipt of the records of the instant case on February 16, 2007.

Upon her request, the Court gave Judge Mariñas a fresh period to investigate the case, or a period of ninety (90) days from April 25, 2007 within which to conduct an investigation and submit her report and recommendation.<sup>13</sup> However, Judge Mariñas failed to submit the required report and recommendation. Thus, in a Resolution dated December 13, 2010, the Court required her to “SHOW CAUSE” why she should not be disciplinarily dealt with or held in contempt for her failure to submit the investigation report on the case.

Finally, on May 2, 2011, Judge Mariñas submitted her Report and Recommendation dated March 18, 2011 wherein she apologized for the

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<sup>10</sup> *Id.* at 59-60.

<sup>11</sup> *Id.* at 259.

<sup>12</sup> *Id.* at 264.

<sup>13</sup> Resolution dated April 23, 2007, *id.* at 292.

delay in complying with the Court's directive to submit the report within the required period.

Meanwhile, in her report, after examination of the evidence, the testimonies of the witnesses as well as the demeanors of both complainant and respondent during the hearing of the case, Judge Mariñas believed that respondent is indeed guilty of immorality. The positive testimonies of the complainant and her witnesses *vis-a-vis* the mere denial of respondent, the former should prevail.

Thus, in a Memorandum dated October 27, 2011, the OCA recommended that: (a) the failure of Judge Mariñas to comply with the April 23, 2007 Resolution of the Court be treated as a separate administrative case against her; (b) Judge Mariñas be fined in the amount of ₱11,000.00 for violation of a Court directive, and (c) respondent Tumbaga, Sheriff IV, be suspended from the service without pay and benefits for six (6) months and one (1) day.

We adopt the findings and recommendation of the Investigating Judge.

In administrative proceedings, only substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, is required.<sup>14</sup> In the instant case, we find no room to doubt the Investigating Judge's findings of fact which we find to be a result of a meticulous examination of the testimonies of the complainant, the respondent, as well as their respective witnesses.

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*Evelyn V. Jallorina v. Richelle Taneo-Regner*, A.M. No. P-11-2948, April 23, 2012.

The presumption is that witnesses are not actuated by any improper motive absent any proof to the contrary and that their testimonies must accordingly be met with considerable, if not conclusive, favor under the rules of evidence because it is not expected that said witnesses would prevaricate and cause the damnation of one who brought them no harm or injury.<sup>15</sup> Thus, respondent's bare denial *vis-a-vis* the positive testimonies of the witnesses, the latter should prevail.

We likewise note that respondent had actually admitted to Atty. Cabansag that it was his fault that their marriage failed since he was engaged in an extra-marital affair with another woman. Indeed, while respondent claimed that he was pressured to make such admission to Atty. Cabansag, he however failed to show proof of such pressure to convince the court otherwise. Respondent's admission, coupled with the testimonies of the witnesses, satisfies the standard of substantial evidence required in administrative proceedings that there is reasonable ground to believe that respondent is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant.<sup>16</sup>

Immoral conduct is conduct which is “willful, flagrant, or shameless, and which shows a moral indifference to the opinion of the good and respectable members of the community.” In several cases, we have ruled that abandonment of one’s wife and children, and cohabitation with a woman not his wife, constitutes immoral conduct that is subject to disciplinary action.<sup>17</sup>

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<sup>15</sup> *Naval v. Panday*, A.M. No. RTJ-95-1283, December 21, 1999, 321 SCRA 290, 308; 378 Phil. 924, 942 (1999).

<sup>16</sup> See *Evelina C. Banaag v. Olivia C. Espeleta*, A.M. No. P-11-3011, December 16, 2011, 661 SCRA 513, 521.

<sup>17</sup> *Babante-Caples v. Caples*, A.M. No. HOJ-10-03, November 15, 2010, 634 SCRA 498, 503.

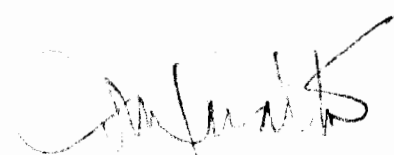
Under the *Revised Uniform Rules on Administrative Cases in the Civil Service Commission*, disgraceful and immoral conduct is a grave offense which merits a penalty of suspension for six (6) months and one (1) day to one (1) year for the first offense, and the penalty of dismissal for the second offense.

With regards to Judge Mariñas' delay in complying with the Court's directive, we find the OCA's recommendation to be a little too harsh considering that this is her first offense. Likewise, there was no showing that Judge Mariñas intentionally defied the Court's directive; and, coupled with her immediate offer of apology and submission of the report when she was required to explain the delay, we deem it fit that she be merely admonished for her actuation in this administrative case.

**WHEREFORE**, this Court finds respondent **JOSELITO S. TUMBAGA**, Sheriff IV, Office of the Clerk of Court, Regional Trial Court, La Trinidad, Benguet, **GUILTY** of Disgraceful and Immoral Conduct, and is hereby **SUSPENDED** from service for a period of six (6) months and one (1) day without pay, and **WARNED** that a repetition of the same or similar offense will warrant the imposition of a more severe penalty.

Likewise, **JUDGE MARYBELLE L. DEMOT MARIÑAS** is hereby **ADMONISHED** to exercise due care in the performance of her functions and duties.

**SO ORDERED.**



**DIOSDADO M. PERALTA**  
Associate Justice

**WE CONCUR:**

**PRESBITERO J. VELASCO, JR.**

Associate Justice  
Chairperson

*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

*Roberto A. Abad*  
**ROBERTO A. ABAD**  
Associate Justice

*Jose Catral Mendoza*  
**JOSE CATRAL MENDOZA**  
Associate Justice