

FIRST DIVISION

[A.M. NO. P-05-1982, August 28, 2007]

JUDGE JUANITA C. TIENZO, COMPLAINANT, VS. DOMINADOR R. FLORENDO, CLERK II, MUNICIPAL TRIAL COURT OF LUPAO, NUEVA ECIJA, RESPONDENT.

D E C I S I O N

GARCIA, J.:

This administrative matter was initiated by a Memorandum^[1] dated September 3, 2003 of Judge Juanita C. Tienzo, presiding judge, Municipal Trial Court of Lupao, Nueva Ecija charging respondent Dominador R. Florendo, Clerk II of the same court, with gambling during office hours and conduct unbecoming a government employee.

The report^[2] of the Office of the Court Administrator (OCA) on the administrative matter at hand reads as follows:

Judge Tienzo in her memorandum to respondent copy furnished this Office, stated the following:

She had caught respondent [Florendo] playing a game of chance "tong-it" in a hut at the back of the Municipal Building of Lupao despite warning on August 26, 2003.

For repeating the same act the third time she directed respondent to report in the office at 8:00 a.m. to 12:00 noon and from 1:00 to 5:00 p.m. Respondent was also warned to refrain from revealing confidential matters in the office by giving information as to the issuance of a warrant of arrest to those accused of a crime and for relaying fake information to people within the jurisdiction of the Court.

There were three (3) directives issued by this Office to respondent on the following dates, to wit:

1. 1st Indorsement dated October 16, 2003 to file Comment within ten (10) days from receipt;
2. First (1st) Tracer dated March 11, 2004 for Comment within five (5) days from receipt; and
3. Second (2nd) Indorsement dated July 2, 2004 for Comment and to explain failure to comply with the two (2) previous directives.

The registry return receipts for the above three (3) directives

indicate that respondent received them, but respondent has never submitted his comment.^[3]

On the basis of available records, the OCA recommended that the respondent be adjudged guilty of illegal gambling during office hours and he be meted the penalty of dismissal, but without forfeiture of his retirement benefits and leave credits. Cited to justify the imposition of the recommended penalty is Section 52 (c) (5), Rule IV of the Civil Service Commission Uniform Rules on Administrative Cases, which prescribes the penalty of dismissal upon a public officer for engaging in gambling, where said public officer commits the same offense a third time. The said Rule states:

C. The following are Light Offenses with corresponding penalties:

xxx xxx xxx

5. Gambling prohibited by law

1st Offense - Reprimand;

2nd Offense - Suspension for 1-30 days;

3rd Offense - Dismissal.

While it agrees with the OCA's recommendation as to the respondent's guilt, the Court excepts with respect to the imposable penalty. As it were, the Civil Service Uniform Rules prescribes the penalty of dismissal for gambling for the third offense. When the law speaks of "third offense," the reference is to a third final judgment of guilt after the erring officer has been duly charged with gambling. As it were, respondent was thrice warned to refrain from playing "*tong-its*" during office hours. The records reveal that, for the first two gambling infractions he appeared to have committed, respondent was not charged formally. What is clear is that he was merely warned. Judge Tienzo appeared to be open to the prospect of reform, and the good judge desisted from taking official action against the respondent, as her Office Memorandum to the respondent discloses.^[4] Respondent was formally charged only after the occurrence of the third gambling incident. As such, the penalty of dismissal prescribed under Section 52 (c) (5), Rule IV of the Civil Service Commission Uniform Rules on Administrative Cases cannot strictly apply. For all intents and purposes, this case may be considered as respondent's first gambling offense.

The Court, however, would be trivializing a misconduct if it lets go a recalcitrant court employee with a mere slap on the wrist, like a reprimand. As the Court clearly notes, respondent defied warnings from his superior not to engage anymore in any gambling activity. What is more, respondent did not even have the good sense of apologizing to the complaining judge about the error of his ways. Compounding the matter is his gall of not even submitting a comment to the charge of gambling, after being repeatedly required by the OCA. A fine with warning would be appropriate under the premises.

Time and again, the Court has emphasized the heavy burden and responsibility which court officials and employees are mandated to carry. They are constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. The Court will never countenance any conduct, act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and diminish the