

EN BANC

[A.M. No. 2009-23-SC, February 26, 2010]

RE: SMOKING AT THE FIRE EXIT AREA AT THE BACK OF THE PUBLIC INFORMATION OFFICE

R E S O L U T I O N

BRION, J.:

We resolve in this Resolution the administrative case involving Atty. Brandon C. Domingo, Atty. Leo Felix S. Domingo, and Atty. Emiliana Helen R. Ubongen (*respondents*) for alleged violation of **(1) Section 6,^[1] in connection with Section 1,^[2] of Office Order No. 06-2009** entitled "Reiterating the Ban on Smoking as Provided for in Administrative Circular No. 09-99 and Reiterated and Clarified in Memorandum Circular No. 01-2008A," and **(2) Civil Service Commission (CSC) Memorandum Circular No. 17, Series of 2009,** entitled "Smoking Prohibition Based on a 100% Smoke-Free Environment Policy."^[3]

By 1st Indorsement dated October 29, 2009,^[4] Eduardo V. Escala (Chief Judicial Staff Officer of the Security Division of this Court) forwarded to Atty. Eden T. Candelaria (Deputy Clerk of Court and Chief Administrative Officer) for her information and appropriate action, the Incident Report^[5] dated October 29, 2009 of Gregorio Alvarez (*Alvarez*), Security Officer II.

Alvarez related that on October 27, 2009 at about 2:50 p.m., Roel Suyo (Watchman II) instructed him to proceed to the Public Information Office (*PIO*) because some staff members of that Office wanted to report violations of the Court's smoking ban. At the PIO, Atty. Dominadoranne Lim reported to him that she found one female and two male Supreme Court employees smoking in the fire exit at the back of the PIO. She further claimed that she recognized them as court attorneys from the Office of Associate Justice Diosdado M. Peralta, but was prevented from ascertaining their identities when one of the lawyers parried her hands as she tried to take a look at his Supreme Court identification card.

In a Memorandum dated November 13, 2009, the Office of Administrative Services (*OAS*) requested Atty. Lim to name and identify the employees she saw smoking inside the Court premises and to give additional details on the incident, so that the Office may act accordingly on the report.^[6] Atty. Lim responded with a letter dated November 18, 2009^[7] where she narrated that:

On 28 October 2009, at around noon time, upon inhaling second hand smoke in the PIO coming from the fire exit, my officemates and I discreetly went to the fire exit, and upon opening the door, were met with a strong smell of cigarette smoke. I heard people conversing upstairs. I

proceeded up a flight of stairs, and immediately saw outside the 4th floor door, three (3) people smoking, who were identified later as **Brandon Carlos Domingo, Leo Felix S. Domingo, and Emiliana Belen R. Ubongen**. Incidentally, they were in an area surrounded by stacks and piles of paper documents.

I also called my office mate, Erika Dy, who immediately showed up at the flight of stairs and saw the smokers. Moments after, office mates Dennis Balason and Jay Rempillo also arrived and also saw them.

Later in the day, the three smokers, accompanied by Atty. Josephine C. Yap, came to our office for a meeting attended by, [sic] all three, Brandon Carlos Domingo, Leo Felix S. Domingo, and Emiliana Belen R. Ubongen, and DCA Jose Midas P. Marquez, Atty. Yap and Erika Dy, and myself. During the meeting the three categorically admitted that they were indeed all smoking in the fire exit that afternoon.

On November 19, 2009, the OAS individually directed the respondents to submit their respective comments/explanations on why they should not be subjected to appropriate administrative disciplinary actions and sanctions for violating the ban on smoking within the Court premises.^[8] The respondents collectively filed their Comment dated November 27, 2009.^[9] They contended that Alvarez's report was not based on his personal knowledge of the incident; he completely relied on the account given by Atty. Lim. They also claimed that Atty. Lim uttered untruthful statements against them to retaliate for the administrative complaint lodged against her. They pointed out that while Alvarez reported that the incident occurred on October 27, 2009, Atty. Lim inconsistently maintained that it occurred on October 28, 2009.

The respondents further alleged that they were not informed of the particular memorandum or circular they were supposed to have violated. Nevertheless, they questioned the validity of the existing regulations on smoking within Court premises. They averred that the salient provisions of Memorandum Circular No. 01-2008A,^[10] particularly the implementation of smoking cessation programs within the Court and the designation of smoking areas within the premises, had not yet been implemented. Similarly, they noted that Republic Act No. 9211 (otherwise known as "The Tobacco Regulation Act of 2003") likewise requires that the appropriate places for cigarette smoking be designated. Moreover, the respondents consider an absolute ban on smoking within the Court premises to be unreasonable.^[11]

In the Memorandum^[12] dated December 21, 2009, Atty. Candelaria reviewed the respondents' assertions regarding the inaccuracies in the reports of Alvarez and Atty. Lim, but considered it more significant that the respondents did not deny that they were the persons found smoking in the fire exit. She also clarified that the facts contained in the reports consisted of violations of reasonable office rules and regulations, particularly Office Order No. 06-2009, and Civil Service Commission (CSC) Memorandum Circular No. 17, Series of 2009. She likewise cited a Memorandum dated October 6, 2009, issued by the OAS through Atty. Ma. Carina M. Cunanan, declaring that smoking is now strictly prohibited inside the Supreme Court's premises.

Atty. Candelaria found that the respondents' acts constituted a violation of reasonable office rules and regulations--a light offense under Section 52(C)(3) of Rule IV on Penalties of the Uniform Rules on Administrative Cases in the Civil Service,^[13] for which the penalty is Reprimand.^[14] Nevertheless, she recommended that a WARNING be issued to the respondents, as well as a reminder that a repetition of the same or similar acts be dealt with more strictly in the future. In merely admonishing the respondents instead of issuing a reprimand, Atty. Candelaria considered that the respondents had never been charged with any offense prior to this incident.^[15]

We agree with Atty. Candelaria's recommendation that a WARNING issued to the respondents is sufficient. We appreciate Atty. Candelaria's submitted reason that this is the respondents' first offense, and is in fact the first case in this Court involving smoking. Separately from these reasons, we take into account compelling considerations that dissuade us from imposing the full sanctions on the respondents.

The statute that actually penalizes smoking is Republic Act (R.A.) No. 9211 or the Tobacco Regulation Act of 2003^[16] which, in order to foster a healthful environment, absolutely prohibits smoking in specified public places^[17] and designates smoking and non-smoking areas in places where the absolute ban on smoking does not apply.^[18] Under this law, the Court is generally considered a place where smoking is restricted, rather than absolutely banned. Exceptions to this characterization are the Court's elevators and stairwells; the Court's medical and dental clinics; and the Court's *cafeteria* and other dining areas (including the Justices' Lounge), together with their food preparation areas, where an absolute ban applies. In the areas where smoking restriction applies, the law requires that the Court designate smoking and non-smoking areas. Significantly, the law carries specific penalties for violations, ranging from a low of a P500.00 fine for the first offense, to a high of not more than P10,000.00 fine for the third offense.^[19]

In the present case, the respondents were caught smoking (as Atty. Candelaria found and we have no reason to dispute this finding) at the Court's stairwell - an area subject to an absolute ban on smoking. Thus, technically, a smoking violation under R.A. No. 9211 exists.

We note, however, that the respondents were never held to account for violation of R.A. No. 9211 and, in fact, had raised the question of under which law or regulation they were being held accountable. In response, the OAS pointed to Section 6, in connection with Section 1, of Office Order No. 06-2009; and Civil Service Commission (CSC) Memorandum Circular No. 17, series of 2009.^[20] *Thus, the respondents never defended themselves against any charged violation of R.A. No. 9211 and cannot be held liable under this law pursuant to the present charge against them.*

Office Order No. 06-2009, under which the respondents are charged, covers absolute smoking prohibition areas greater than those covered by R.A. 921, which include all interior areas of the buildings of the courts and the areas immediately adjacent to these buildings. The Office Order still allows smoking within court premises (apparently referring to exterior areas), but such smoking has to be done

in designated places. Sections 2 and 3 of Office Order No. 06-2009 provides for the designation of smoking areas:

Sec. 2. Smoking Areas.-Court personnel who choose to smoke shall do so in open locations at reasonable distance (five or more meters) from any building, enclosed area, or vehicle where smoking is prohibited to ensure that environmental tobacco smoke does not enter the building, enclosed area, or vehicle through entrances, windows, ventilation or exhaust systems or any other means.

Sec. 3. Designation of smoking areas. - (a) In the Supreme Court, Court of Appeals, Sandiganbayan, and Court of Tax Appeals, their respective Chief Administrative Officers shall designate the smoking areas in their compounds.

Compliance with the Office Order is enforced under its Section 6 on Administrative Sanction.^[21]

Implicit, to our mind, in these provisions is that appropriate smoking areas should be designated to give full effect to the Office Order. The smokers within the courts must know not only where they cannot smoke, but also where they can legitimately smoke.

Unfortunately, no designation of the smoking areas was immediately made. In fact, a clarificatory Memorandum dated October 6, 2009 states that *"smoking is now strictly prohibited inside the Supreme Court's premises,"* since there are no open areas that are five or more meters away from any building, enclosed area or vehicle where smoking is absolutely prohibited.

After the smoking incident involving the respondents on October 27, 2009, the Court clarified the interpretation of the issuances on smoking to reflect the interpretation the Court believes to be correct. On December 15, 2009, the Court *En Banc* promulgated the Resolution directing the OAS to recommend smoking areas within the Court pursuant to Sections 2 and 3 of Memorandum Circular No. 01-2008A.^[22] In compliance with this December 15, 2009 Resolution, the OAS addressed a Memorandum to the Chief Justice recommending two areas in the Court that may be designated as smoking areas: (1) a portion of the Taft side parking area in the Old Compound; and (2) a space between the DOJ building and the front exit gate in the New Compound. *In effect, the Court invalidated the October 6, 2009 Memorandum declaring a total smoking prohibition within court premises,* but it was not until February 9, 2010 that the matter was clarified when the Court *En Banc* approved the OAS Memorandum to the Chief Justice on the designated smoking areas.

To be sure, the stairwell where the respondents smoked is considered a completely banned area under the Office Order and does not need the issuance of any clarificatory smoking area designation. The lack of designation, however, raises questions about the status of the Office Order and the issuances it seeks to implement (specifically, Administrative Circular No. 09-99, Memorandum Circular No. 01-2008A, as well as the related Civil Service Memorandum Circular No. 17,