

FIRST DIVISION

[A.M. No. P-08-2431, April 16, 2008]

EDITHA P. ELAPE, Complainant, vs. ALBERTO R. ELAPE, Process Server, Regional Trial Court, Surigao City, Branch 30, [] Respondent.**

R E S O L U T I O N

CORONA, J.:

In her complaint dated May 26, 2003, the complainant Editha P. Elape charged her husband, respondent Alberto R. Elape, process server of the Regional Trial Court (RTC), Surigao City, Branch 30, with immorality.

The complainant is married to respondent and they have five children. On December 20, 2001,^[1] she instituted an administrative complaint for immorality against respondent before the Executive Judge of the RTC, Surigao City but she withdrew the same because respondent apologized and promised to leave his mistress. She reconciled with the respondent to protect their children. However, despite the reconciliation, respondent rarely spent the night with his family.^[2]

On May 7, 2003, the complainant discovered that respondent had resumed his extramarital affair, cohabiting with his mistress under scandalous circumstances. He was known to be a married man and a court employee at that.^[3] Respondent later abandoned his family and stopped giving financial support to them.^[4] Thus, the complainant filed this second administrative complaint on May 26, 2003.^[5]

Respondent denied that he committed immorality. He averred that he discontinued his extramarital affair after the first complaint for immorality was filed. He insisted that he had faithfully responded to the needs of his family to the extent of borrowing money from his friends for their sustenance. He again sought reconciliation with the complainant but the latter refused.^[6]

This Court, in its May 5, 2004 resolution, referred the case to Executive Judge Victor A. Tomaneng, RTC, Butuan City, Agusan del Norte, Branch 33, for investigation, report and recommendation.

Judge Tomaneng heard the parties. The complainant, her daughter Kathleen and Aloma Rodriguez Hadji^[7] testified that respondent and his mistress were still living together and comporting themselves publicly as husband and wife.^[8] Before presenting his evidence, respondent tried to settle the case by again asking the complainant's forgiveness, to no avail.^[9] Respondent, in his testimony, denied that he had resumed his relationship with his mistress and stated that his encounters with her were mere coincidences.^[10] But he admitted that it was his habit to

engage in drinking sprees and to play *mahjong* whenever he had money.^[11]

Judge Tomaneng ruled that respondent was guilty of immorality and should be punished by suspension for six months and one day.^[12]

In its memorandum dated March 7, 2006, the Office of the Court Administrator (OCA) adopted the findings, conclusion and recommendation of the investigating judge:

This Office adopts the Investigator's findings, conclusions and recommendation which are a result of a careful analysis of the complainant and respondent's testimonial and documentary evidence. Aside from respondent's admission [to complainant] that he is so attracted to [his mistress] and they are already living together, complainant and her eldest daughter positively testified that they saw respondent living with [his mistress] in a rented room in San Juan St., Surigao City since 2004. Aloma Hadji likewise declared that respondent and [his mistress] had been her neighbors in Tondo, Surigao City from July 2003 to January 2004 and they displayed their affection in public. The extract of the police blotter and the pictures showing respondent and [his mistress] embracing each other are supplemental proofs that respondent has continued his illicit relations with [her].

Respondent's explanation that his several meetings with [his mistress] on the following dates, 14 September 2002 when respondent saw [her] in Mabua, Surigao City and offered her a ride which resulted [in] a vehicular accident, 30 November 2004 in Medarda Videoke Bar where [she] is working as a guest relation officer and sometime in November 2004 inside a restaurant where they were seen together taking meals[,] were due to plain coincidence. His clarification and denial that he did not abandon his family and he stopped seeing [his mistress] after he was forgiven by complainant are not worthy of belief. His denial cannot prevail over the positive statements of the complainant and her witnesses.

From the evidence presented[,] there is no doubt that respondent has not reformed despite the dismissal of the first complaint for immorality against him. He has flaunted his paramour in the eyes of the public, living with her in different places and being seen around with her. Undeniably, he is maintaining an illicit relationship which is definitely contrary to the acceptable norms of morality, especially when the person involved is a court personnel who is supposed to maintain a high standard of morality in order to live up to his role as a model in society.

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In view of the foregoing, it is respectfully recommended that respondent Alberto [R.] Elape be SUSPENDED for SIX (6) MONTHS and ONE (1) DAY without pay with stern warning that repetition of the same or similar offense in the future shall be dealt with more severely.^[13]