# SENIOR STATE PROSECUTOR EMMANUEL Y. VELASCO, PETITIONER, VS. JUDGE ADORACION G. ANGELES, RESPONDENT.

*A.M. OCA IPI No. 05-2353-RTJ. September 06, 2010*

Ponente: CARPIO MORALES, J.

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**CARPIO MORALES, J.:**

Subject of the present Resolution is the second Motion for Partial Reconsideration of this Court's Resolution issued on April 28, 2008 reading:

> The Court resolves to ADOPT and APPROVE the findings of fact, conclusions of law, and recommendation of Associate Justice Magdangal M. de Leon, Court of Appeals, in the attached Sealed Report and Recommendation dated 31 March 2008 (Annex "A"). Accordingly, the Court (1) REPRIMANDS respondent Judge Adoracion G. Angeles for her unauthorized absences for failing to file the necessary leave on 3 May 2005 and 3 August 2005, when there were no subpoenas requiring her court attendance at the RTC of Manila, with WARNING that a repetition of the same or a similar offense shall be dealt with more severely, and (2) DISMISSES the complaint against Judge Adoracion G. Angeles for falsification of certificates of service for lack of merit.[1] (emphasis in the original; underscoring supplied)

Respondent, Judge Adoracion G. Angeles, Presiding Judge of the Caloocan Regional Trial Court (RTC), Branch 121 (until her retirement on May 23, 2010), was charged by then Senior State Prosecutor Emmanuel Y. Velasco (petitioner) with violation of Supreme Court Circulars, the Canons of Judicial Ethics and the Code of Judicial Conduct, specifically for unauthorized practice of law, unauthorized absences and falsification of certificate of service.

Per the evaluation of the Office of the Court Administrator[2] the charge of illegal practice of law was deemed without merit, hence, the Court's Third Division by Resolution of June 5, 2006[3] noted the recommendation and referred the complaint, viz:

> . . . resolve[d] to REFER this case to a Presiding Justice of the Court of Appeals for investigation, report and recommendation within sixty (60) days from receipt of the records of this case.[4]

The case was raffled to Court of Appeals Associate Justice Magdangal M. de Leon for investigation, report and recommendation.

By petitioner's allegation, respondent actively participated in the prosecution of Criminal Case No. 04-230908, for libel, which was, on her complaint, filed against him before the Manila RTC, she appearing at Branch 26 thereof (to which the case was raffled) without her filing leaves of absence on the following dates - February 2, 2005, May 3 and 19, 2005, June 14, 15, 22 and 30, 2005, July 12-13, 2005 and August 3 and 11, 2005.

Petitioner thus concluded that when respondent indicated in her Certificates of Service that she had rendered service during the questioned dates, she is guilty of falsification and of violation of Canons 3 and 5 of the Code of Judicial Conduct and Canons 3, 7, 22 and 31 of the Canons of Judicial Ethics.[5]

After concluding his investigation, the Investigating Justice considering only the remaining issues of falsification and incurring unauthorized absences, reported that respondent is guilty of unauthorized absences on May 3 and August 3, 2005. With respect to the rest of the questioned dates, he held that respondent's absence thereon was "legally justified" as she merely complied with the subpoenas issued by the trial court.

On her appearance at the trial court for the May 3, 2005 hearing, respondent asserted, however, that that date was merely an "offshoot" of an earlier postponed hearing which was covered by a subpoena. She thus concluded that a subpoena was not required for her to attend the hearing on May 3, 2005.

As for her appearance at the trial court on August 3, 2005, respondent explained that she went there lunch time on her honest belief that a hearing was set that day, only to be told that it was not, hence, she immediately returned to her office at the Caloocan City RTC and reduced into writing the orders she gave in open court in the cases which were calendared/heard in the morning.

The Investigating Justice brushed aside respondent's explanation-justifications as lame. He concluded that by not filing "any leave of absence to cover such fraction of her official time devoted to other activities outside of her functions as a Judge, she committed absences that are unauthorized," hence, is guilty of violating Canons 3, 7 and 22 of the Canons of Judicial Ethics, as well as Canon 2 of the Code of Judicial Conduct.

On the charge of falsification of respondent's Certificates of Service, the Investigating Justice dismissed the same as "it was never shown, much less proven, that respondent judge's failure to indicate in her Certificates of Service the fact of her attendance at the court hearings amounted to an obstinate refusal to disclose, or a deliberate concealment of such fact."

The Investigating Justice thus recommended that respondent be reprimanded for her unauthorized absences on May 3, 2005 and August 3, 2005 and that the charge of falsification be dismissed.

As reflected early on, the Court, in its above-quoted Resolution of June 5, 2006, adopted the findings of the Investigating Justice and approved his Recommendation.

Respondent filed a Motion for Partial Reconsideration which was denied by Resolution[6] of February 22, 2010 of the Court in this wise:

> Considering the Report and Recommendation dated 4 January 2010 of Investigating Justice Magdangal M. de Leon, Court of Appeals, Manila, on respondent's motion for partial reconsideration of the Resolution dated 28 April 2008, and it appearing that the lone issue raised by respondent in her motion for partial reconsideration is whether she incurred unauthorized absences during her attendance at the hearing in the Regional Trial Court (RTC) of Manila on 3 May 2005 (where her attendance thereat as a private complainant was without subpoena which resulted in her unjustified absence from her own court) and on 3 August 2005 (where respondent failed to file a leave of absence rationalizing that she was out only for a few minutes which she compensated by staying in the office and working beyond office hours and the forfeiture of her leave credits in the name of public service); that since her attendance at the hearing at the RTC of Manila was not in connection with her judicial functions at the RTC of Caloocan, the same should not be considered as an extension of her judicial duties but done in her personal capacity necessitating the filing of leave of absence, and considering further the case of Office of the Court Administrator vs. Judge Delia H. Panganiban (A.M. No. RTJ-96-1350, 18 August 1997), where the Court held that neither good faith nor long, unblemished and above average service in the judiciary can fully justify respondent's lapses, and that as an officer of the Court, respondent should conduct herself strictly in accordance with the highest standards of ethics, the Court resolves to DENY respondent's motion for partial reconsideration of the Resolution dated 28 April 2008.

Hence, the present second Motion for Partial Reconsideration.[7]


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While as a general rule the Court does not give due course to second motions for reconsideration,[8] this is not without exceptions, as when there is an extraordinarily persuasive reason and after an express leave has been obtained, both of which are present in this case. In denying respondent's first motion for partial reconsideration, the Court in its February 22, 2010 Resolution, applied the ruling in Office of the Court Administrator v. Judge Delia H. Panganiban where it was held that a Judge's unblemished record will not justify her lapses. However, as correctly pointed out by respondent in her second motion for partial reconsideration, said case should not have been applied, as it presupposes that respondent indeed committed lapses which her long service and unblemished reputation would not justify while she has always maintained that she had not committed the act complained of, that is, the non-filing of the leaves of absence for May 3 and August 3, 2005 because she did not have to. Indeed, if respondent committed no lapse or violation, then the Court's denial of her first motion for partial reconsideration on the basis of the Panganiban decision deserves to be reviewed.

After a considered, hard look at the case, the Court finds respondent's second Motion for Partial Reconsideration to be impressed with merit.

Respecting respondent's presence at the trial court on May 3, 2005, while admittedly no subpoena was served on her to appear on said date, that was a re-scheduled date of hearing, the earlier-scheduled hearing having been postponed. There was thus no absolute need for her to be subpoenaed for the purpose.

As to the Investigating Judge's observation that assuming that respondent's attendance in the May 3, 2005 hearing was covered by subpoena, she still needed to secure a Certificate of Service because she was the private complainant: The Court notes that this is merely a matter of practice for government employees who need such certification to show to their superiors that they indeed attended the hearing. In any case, the minutes of a hearing show the parties who are present, hence, such certification becomes a mere surplusage.

Respecting respondent's going to the trial court on August 3, 2005, the same did not require the filing of a leave of absence. The Investigating Justice himself noted that her absence involved only a "fraction of her official time." Section 28 of the Omnibus Rules on Leave [Rule XVI of the Omnibus Rules Implementing Book V of E.O. 292] promulgated by the Civil Service Commission on May, 2008, which reiterates earlier rules governing leaves, provides:

> Sec. 28. Actual service defined. â”€ The term "actual service" refers to the period of continuous service since the appointment of the official or employee concerned, including the period or periods covered by any previously approved leave with pay.
>
> Leave of absence without pay for any reason other than illness shall not be counted as part of the actual service rendered: Provided, that in computing the length of service of an employee paid on the daily wage basis, Saturdays, Sundays or holidays occurring within a period of service shall be considered as service although he did not receive pay on those days inasmuch as his service was not then required.
>
> A fraction of one-fourth or more but less than three-fourth shall be considered as one-half day and a fraction of three-fourths or more shall be counted as one full day for purposes of granting leave of absence (amended by CSC MC No. 41, s. 1998). (emphasis, italics and underscoring supplied)

For a civil servant to thus be required to file a leave of absence, he/she should have been absent for a fraction of three-fourths or more of a full day. In the present case, complainant failed to prove that respondent was away from her office for at least six hours (3/4 of 8 hours working) on August 3, 2005. Upon the other hand, respondent reported for work in the morning, as shown by copies of orders which she issued in open court on cases calendared for consideration in the morning of August 3, 2005.

At all events, at most, respondent's absence on August 3, 2005 amounted to half-day or undertime under the

aforementioned CSC rule which does not require the filing of a leave of absence, albeit it is deductible against vacation leave credits.[9]

WHEREFORE, the second Motion for Partial Reconsideration of respondent, who in the meantime retired last May 23, 2010, is GRANTED. The Resolutions of April 28, 2008 and February 22, 2010 are SET ASIDE and another is rendered dismissing the complaint against respondent.

**SO ORDERED.**

Del Castillo,[*] Abad,[**] Villarama, Jr., and Sereno, JJ., concur.

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[*] Additional member per Special Order No. 879 dated August 13, 2010.

[**] Additional member per raffle dated August 25, 2010.

[1] Rollo, p. 646.

[2] Vide Administrative Supervision of Courts Administrative Matter for Agenda , rollo, p. 59.

[3] Ibid.

[4] Ibid.

[5] CANON 3. - A JUDGE SHOULD PERFORM OFFICIAL DUTIES WITH HONESTY, AND WITH IMPARTIALITY AND DILIGENCE.

RULE 3.08 â”€ A judge should diligently discharge administrative responsibilities x x x

x x x x

CANON 5 - A JUDGE SHOULD REGULATE EXTRA-JUDICIAL ACTIVITIES TO MNIMIZE THE RISK FO CONFLICT WITH JUDICIAL DUTIES.

Rule 5.07 â”€ A Judge shall not engage in the private practice of law. x x x "

and Canons of Judicial Ethics:

3. AVOIDANCE OF APPERANCE OF IMPROPRIETY â”€ A judge's official conduct should be free from the appearance of impropriety, and his personal behaviour, not only upon the bench and in performance of judicial duties, but also in his everyday life, should be beyond reproach.

x x x x

7. PUNCTUALITY â”€ He should be punctual in the performance of his judicial duties, recognizing that the time of litigants, witnesses and attorney's is of value and if the judge is unpunctual in his habits, he sets a bad example to the bar and tends to create dissatisfaction with the administration of justice.

x x x x

22. INFRACTIONS OF LAW - The judge should be studiously careful to avoid even the slightest infraction of law, lest it be a demoralizing example to others

x x x x

31. SUMMARY OF JUDICIAL OBLIGATION â”€ A judge's conduct should be above reproach and in the


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discharge of his judicial duties he should be conscientious, studious, thorough, courteous, patient, punctual, just xxx; and he should not allow outside matters or his private interests to interfere with the prompt and proper performance of his office.

[6] Rollo, pp. 816-817.

[7] Id. at 818-825. The case was raffled to the herein ponente after the Justice in the Third Division to whom the case was unloaded inhibited.

[8] Sec. 2, Rule 52 of the Rules of Court.

[9] Sec. 34. Tardiness and undertime are deducted against vacation leave credits. - Tardiness and undertime are deducted from vacation leave credits and shall not be charged against sick leave credits, unless the undertime is for health reasons supported by medical certificate and application for leave.


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