

RE: HABITUAL ABSENTEEISM OF MR. NELSON G. MARCOS, SHERIFF III, METROPOLITAN TRIAL COURT, OFFICE OF THE CLERK OF COURT, CALOOCAN CITY.

A.M. No. P-09-2603 (Formerly A.M. No. 08-7-221-MeTC). November 23, 2010

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PER CURIAM:

In a letter dated June 26, 2008,[1] Court Administrator Zenaida N. Elepaño referred to the Chief of Office, Legal Office, Office of the Court Administrator (OCA), the June 16, 2008 report of the Leave Division, Office of Administrative Services, on the habitual absenteeism of Nelson G. Marcos, Sheriff III, Metropolitan Trial Court, Caloocan City. The report listed the number of days per month that Marcos was absent for the years 2005 to 2008 and showed that they inordinately exceeded what the law allows.[2] The Court Administrator recommended the filing of the appropriate administrative complaint, with the OCA as complainant.

Marcos was required to comment, which he did on August 11, 2008. In his comment,[3] Marcos mentioned that on October 31, 2004, he had an accident that fractured his left foot. It was placed in a cast and he "became literally incapacitated for about three (3) months, November 2004 to January 2005." [4] He also alleged that he was among those who complained to the executive judge in 2005 about the court staff's grievances against Atty. Monalisa Buencamino, his supervisor, that resulted in her hostile attitude to him. He also gave various excuses for his absences in 2006 to 2008.

Among the documents attached to Marcos' comment was the report of Dr. Ramon S. Armedilla of the Supreme Court Medical and Dental Services dated on August 30, 2005. Dr. Armedilla disapproved Marcos' application for sick leave covering January to April 2005 because Marcos failed to submit the X-ray film of his fractured foot and because the repeat X-ray showed "no evidence of fracture as shown by intact periosteum or callus or hard adult bone formation." [5] Dr. Armedilla stated that "[i]n the absence of which it is my opinion that there was no fracture or healed fracture thus, respectfully recommended that sick leave application be disapproved." [6] Marcos, on the other hand, alleged that he submitted the X-ray film to the SC Leave Division, together with his leave application, and the X-ray film "was probably misplaced and lost in the Leave Division." [7]

The Court Administrator[8] stated in his December 16, 2008 Report[9] that:

In the case at bar, respondent Marcos incurred unauthorized absences, more than that allowed by law in a given period. Under Civil Service Circular No. 30, Series of 1989, habitual absenteeism is classified as a grave offense. On the other hand, frequent unauthorized absences or tardiness in reporting for duty is, for the first offense, punishable with suspension of six (6) months and one (1) day to one (1) year, and with dismissal from the service for the second offense.

Respondent claimed that his absences was (sic) due to an injury that rendered him incapacitated for three (3) months, which allegedly happened in October, 2004. The explanation offered by herein respondent revolves mainly on his alleged ill-health which occurred before June 2005. No valid explanation was adduced by herein respondent, despite the opportunity given to him, to explain in view of the Certification issued by the Leave Division relative to the unauthorized leave that he incurred covering the period stated therein. Moreover, as

shown by the records on file, no substantial proof to justify his absences from 2005-2008 was presented by herein respondent.

Frequent and unauthorized absences without authorization are inimical to public service, and for this the respondent must be meted the proper penalty. Indeed, even with the fullest measure of sympathy and patience, the court cannot act otherwise since the exigencies of government service cannot and should never be subordinated to purely human equation (Re: Unauthorized absences of Rasen R. Cuenca, Clerk II, Property Division, Office of Administrative Services, A.M. No. 2005-03-SC, March 15, 2005, 453 SCRA 403, 408).

Respondent sheriff was repeatedly absent despite disapproval of his application for leave due to habitual absenteeism by his supervisor, Atty. Mona Liza A. Buencamino. Thus, respondent neglected to perform his duties as Sheriff to the detriment of the litigants, lawyers, and even the court where he was employed. His prolonged, continuous and unauthorized absences and neglect of duty showed that he failed to live-up to the exacting standards of public office.

The report summarized Marcos' unauthorized absences between 2005 and 2008 - he was absent for 65 days from June to December 2005, 130 days in 2006, 131.5 days in 2007, and 97 days in 2008. Notably, in September 2005, he was absent for 19 days; in 2006, he was absent for 19.5 days in January, and 20.5 days in March; in 2007, he was absent for 19 days in January, 20 days in February, and 22 days in March; and in 2008, he was absent for 18 days in January, 19 days in February, 23.5 days in March, and 20 days in April.

The Court Administrator recommended that the complaint be re-docketed as a regular administrative matter and that Marcos be held liable for gross misconduct and habitual absenteeism, and be meted the penalty of dismissal from the service with forfeiture of retirement benefits, except earned leave credits, if any, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

We agree with the Court Administrator's recommendation.

CSC Memorandum Circular No. 04, s. 1991, on Habitual Absenteeism[10] states:

A. HABITUAL ABSENTEEISM

1. An officer or employee in the civil service shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the leave law for at least three (3) months in a semester or at least three (3) consecutive months during the year;
2. In case of claim of ill health, heads of department of agencies are encouraged to verify the validity of such claim and, if not satisfied with the reason given, should disapprove the application for sick leave. On the other hand, cases of employees who absent themselves from work before approval of their application should be disapproved outright; and
3. In the discretion of the Head of any department, agency or office, any government physician may be authorized to do a spot check on employees who are supposed to be on sick leave. Those found violating the leave laws, rules or regulations shall be dealt with accordingly by filing appropriate administrative cases against them.

B. SANCTIONS

The following sanctions shall be imposed for violation of the policy on habitual absenteeism:

- 1st offense - Suspension for six (6) months and one (1) day to one (1) year.
2nd offense -- Dismissal from the service.

Sheriff Marcos' absences seriously prejudiced the public service. His excessive unauthorized absences indicated an utter lack of a sense of responsibility for his position in the court and a basic disregard for the welfare of litigants. As we held in *Juntilla v. Calleja*:^[11]

Public office is a public trust. All public officers are accountable to the people at all times. Their duties and responsibilities must be strictly performed. As administration of justice is a sacred task, this Court condemns any omission or act which would tend to diminish the faith of the people in the Judiciary. Every employee or officer involved in the dispensation of justice should be circumscribed with the heavy burden of responsibility and their conduct must, at all times, be above suspicion.

We find that Nelson Marcos' habitual absences constitute gross misconduct and conduct prejudicial to the best interest of the public service that warrant his dismissal from the service.

WHEREFORE, premises considered, the Court finds Nelson G. Marcos, Sheriff III of the Metropolitan Trial Court, Caloocan City, guilty of gross misconduct and conduct prejudicial to the best interest of the public service, and hereby **DISMISSES** him from the service, with forfeiture of retirement benefits, except earned leave credits, if any, and with prejudice to reinstatement or re-employment in any agency of the government, including government-owned or controlled corporations.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Nachura, Leonardo-De Castro, Brion, Peralta, Bersamin, Abad, Villarama, Jr., Mendoza, and Sereno, JJ., concur.

Velasco, Jr., J., no part due to prior action.

Del Castillo, J., on wellness leave.

Perez, J., no part. acted on the matter as Court Administrator.

[1] Rollo, p. 1.

[2] Id. at 2-3.

[3] Id. at 6-10.

[4] Id. at 6.

[5] Id. at 26.

[6] Ibid.

[7] Id. at 7.

[8] Jose P. Perez, now a member of this Court.

[9] Rollo, pp. 39-42.

[10] Supreme Court Administrative Circular No. 14-02 "Reiterating the Civil Service Commission's Policy on Habitual Absenteeism."

[11] A.M. No. P-96-1225 (Formerly OCA I.P.I. No. 95-56-P), September 23, 1996, 262 SCRA 291, 297.

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