

**VICE-EXECUTIVE JUDGE DIVINA LUZ P. AQUINO-SIMBULAN,
COMPLAINANT, VS. EDGARDO A. ZABAT, SHERIFF IV, REGIONAL
TRIAL COURT, SAN FERNANDO, PAMPANGA, RESPONDENT.**

A.M. NO. P-05-1993 (OCA I.P.I. NO. 04-1971-P). April 26, 2005

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

A public office is a public trust. Inherent in this mandate is the observance and the efficient use of every moment of the prescribed office hours to serve the public. Thus, officials and employees of the judiciary must observe official time to inspire public respect for the justice system.[1]

The Case and the Facts

This administrative case stems from an Affidavit-Complaint[2] filed by Vice-Executive Judge Divina Luz P. Aquino-Simbulan of the Regional Trial Court (RTC) of San Fernando, Pampanga, against Sheriff Edgardo Zabat of the same court. The pertinent portions of the Affidavit-Complaint read as follows:

“2. On September 15, 2003, at 11:20 in the morning, [Complainant-Judge Aquino-Simbulan] conducted attendance verification at the Office of the Clerk of Court, City of San Fernando, Pampanga. Based on the Attendance Logbook, Sheriff Zabat reported for work at 7:58 a.m. However, when [complainant] conducted a surprise attendance confirmation, Sheriff Zabat was not in his official station despite the absence of a Travel Order and entry in the Official Locator Logbook in the Office of the Clerk of Court. [Complainant] made queries x x x relative to the absence of Sheriff Zabat in his official station and no one could give a justifiable reason. Hence, [complainant] issued a Memorandum dated September 15, 2003 directing Sheriff Zabat to explain in writing why no administrative charge should be filed against him for falsifying the Official Attendance Logbook;

“3. On September 18, 2003, Sheriff Zabat submitted a written explanation x x x stating that he was forced to leave the office at 11:10 in the morning because of an illness evidenced by a Blood Chemistry Examination on September 12, 2003 where it was found that he ha[d] a high [level of] cholesterol and triglycerides x x x. He stated that his compadre Antonio Mercado fetched him to bring him to his physician, Dr. Angelito Medina for medical check-up and treatment and was advised to go home and take a rest for two (2) weeks.

x x x x x x x x

“9. Anent the second infraction x x x on October 3, 2003, [complainant] called for Sheriff Zabat relative to his permit to travel abroad. However, [complainant] was informed that Sheriff Zabat was not in his official station prompting [her] to conduct attendance verification at the Office of the Clerk of Court x x x. Based on the Attendance Logbook, Sheriff Zabat reported for work. However, again Sheriff Zabat was not in his official station despite the absence of a travel order and an entry in the Official Locator Logbook. Queries were made x x x relative to his absence and no one could give a justifiable reason[,] prompting [complainant] to issue a second memorandum to Sheriff Zabat directing him to explain in writing why no administrative charge should be filed against him x x x;

“10. In the Second Memorandum x x x, Sheriff Zabat was reminded that the incident was the second time he was not in his official station despite a stern warning given to him on his first infraction;

“11. In response to [complainant’s] Memorandum x x x, Sheriff Zabat x x x [stated] that he stayed in the office until quarter to 1:00 in the afternoon because he had to entertain people in the office relative to a writ of execution. Sheriff Zabat stated that he left the office at about 12:45 in the afternoon[,] took his lunch and was back at five (5) minutes to 2:00 in the afternoon and immediately proceeded to the courtroom of Judge Patrocinio Corpuz to seek personal advice and also to ask the condition of the ailing wife of Judge Corpuz. At 2:10 in the afternoon, Sheriff Zabat left the office of Judge Corpuz to resume his work and allegedly it was at that time that he saw [complainant] at the Office of the Clerk of Court[,] asking for his whereabouts.

“12. x x x [Complainant] called for [a] conference to determine if a formal complaint should already be filed against Sheriff Zabat. Queries were made from Atty. Quimsay and Ms. Ordoñez, [who] stated that after the second infraction committed on October 3, 2003, Sheriff Zabat was seen in his official station and has complied with the office policies for attendance;

x x x x x x x x

“14. Despite the two (2) memoranda and stern warnings given to Sheriff Zabat, [he] again committed an infraction by not being present during the raffle of Extra-Judicial Foreclosure for sheriffs conducted on March 24, 2004 x x x. Sheriff Zabat was not present when the Extra-Judicial Foreclosure raffle was conducted at 11:00 in the morning at [complainant’s] courtroom[,] prompting [her] to issue a third memorandum to Sheriff Zabat x x x. At the end of the raffle x x x, Sheriff Zabat arrived at [her] courtroom at around ten (10) minutes to 12:00 noon. Immediately, [complainant] inquired from Sheriff Zabat about his whereabouts and he stated that he proceeded to MTCC, City of San Fernando, Pampanga, to return a writ of replevin raffled to him for execution. However, when [complainant] asked him to produce evidence for the return/transmittal, he failed to do so x x x. He immediately changed his reason and stated that he did not actually return the writ raffled to him for execution but in fact assisted a personal friend who had a hearing at MTCC x x x.

x x x x x x x x

“17. In response to [complainant’s] Memorandum dated March 24, 2004, Sheriff Zabat submitted a letter dated March 26, 2004. [He stated] that at 9:30 in the morning on March 24, 2004, a representative from BPI Family Bank went to his office regarding the implementation of a writ of replevin x x x. [He] entered his name in the locator logbook without indicating the purpose x x x to follow up the Special Order from Branch I in Civil Case No. 9017 entitled BPI Family Bank vs. Sps. Rosa/Francisco Olaya, regarding the implementation of the writ of replevin at Abucay, Bataan. Before he left the office on March 24, 2004, Administrative Officer Ordoñez initialed the logbook for her consent x x x. [N]obody told him that there was a raffle. He also stated that Executive Judge Adelaida Ala-Medina gave instructions to Ms. Ordoñez that the raffle for sheriffs would be conducted only once a month[.] [H]ence, it did not come to his mind that there was a raffle until after he learned x x x that there was indeed one. Allegedly, he proceeded immediately to [complainant’s] courtroom but was late for the activity.

x x x x x x x x

“19. [When asked to comment on Sheriff Zabat’s allegations,] Ms. Ordoñez submitted a written explanation dated March 29, 2004[,] stating that she did not ask Sheriff Zabat about his purpose in going to MTCC x x x since she presumed that it ha[d] something to do with his job as a sheriff.

x x x x x x x x

“25. Considering that Sheriff Zabat has already committed three (3) infractions resulting in the falsification of the Official Attendance Logbook as well as non-compliance with the requirements of Travel Orders and entries in Official Locator Logbook, I thus charge him [with] GRAVE MISCONDUCT and pray that he be dismissed

from the service and all his benefits forfeited[,] in consonance with the mandate that government officials and employees must give every minute of their prescribed official time in the service [of] the public and must comply with official requirements to ensure that government official[s] and employees must at all times be accountable to the people and exercise utmost responsibility, integrity, loyalty and efficiency.”[3]

In his August 20, 2004 Letter[4] to the OCA, Sheriff Zabat denied the charges. He explained that he had hurriedly left his post on the morning of September 15, 2003, because he felt ill and had to seek medical attention. Upon returning to work on October 1, 2003, he immediately filed the necessary leave of absence for the period September 15 to 26. The application was duly approved by complainant.

As to the second alleged infraction on October 3, 2003, respondent claims that he was absent from his post when complainant verified her attendance at 2:00 p.m., because he had logged out at 12:45 p.m. and was unduly delayed in taking his lunch.

Lastly, respondent was allegedly not informed that complainant had called for a raffle on the morning of March 24, 2004, and that he had proceeded to the Metropolitan Trial Court in Cities (MTCC)-Branch 1 of San Fernando on official business. He emphasizes that, contrary to her insinuations, he had no intention to peddle influence when he assisted his friend, a repossession officer of the Bank of the Philippine Islands, in connection with a special Order issued by the MTCC for the implementation of a writ of replevin in Bataan.

Report and Recommendation of the OCA

Although the OCA found no sufficient basis to hold respondent liable for gross misconduct or gross neglect of duties, acts that would have warranted the supreme penalty of dismissal, it nonetheless found him guilty of simple misconduct.

The OCA said that when respondent left his post without properly logging out on the third instance, he violated office regulations. It explained that since the MTCC-San Fernando had yet to issue a special order directing him to act as special sheriff in enforcing the writ of replevin, he could not claim any official business in that court when he left his post on March 24, 2004. He should have officially logged out and incurred undertime.

Considering that a one-month suspension can no longer be imposed in view of the retirement of respondent, the OCA recommended that he be fined an amount equivalent to his one-month salary.

The Court's Ruling

The Court agrees with the findings and recommendations of the OCA.

Administrative Liability of Respondent

This Court has held that habitual absenteeism and unreasonable tardiness are impermissible. It has emphasized the need to observe official time strictly, in order to inspire public respect for the justice system.[5]

Under Memorandum Circular No. 4 (Series of 1991) of the Civil Service Commission, [6] employees in the civil service shall be considered habitually absent if they incur unauthorized absences exceeding the allowable 2.5 days of monthly leave credits for at least three (3) months in a semester or for at least three (3) consecutive months during the year.

Under this standard, the absences of respondent cannot be said to be “habitual.” Neither has it been shown that he made false entries in his Daily Time Records to cover up his absences or tardiness.

We shall now take up his explanation in relation to complainant's September 15, 2003 Memorandum.

Concededly, complainant is responsible for checking on the acts of respondent during official hours and for seeing to it that his tasks are accomplished. After all, she is accountable for the proper functioning of the court she presides over. Corollary to this, respondent has the duty to see to it that his superior, who presumes him to be doing his tasks in the ordinary course of business, is promptly informed of his whereabouts, especially when he leaves the office during office hours. In this way, appropriate measures can be put in place to ensure the continued smooth rendition of service to the public.

On the other hand, respondent alleges a “severe headache and dizziness” as the reason for his absence. Indeed, absence from official post on that ground is justified.

However, because respondent failed to inform his superior (or anyone else) of his reason for leaving during office hours, a niggling doubt as to the veracity of his proffered excuse persists. If his excuse was indeed valid and he had nothing to hide, a proper sense of responsibility – or even of common courtesy, if not decency – required him to inform his superior (or even an office mate) of his whereabouts.

Nevertheless, as conceded even by complainant, the failure of respondent to follow office procedures was excusable, because this was his first recorded infraction.

Nonetheless, respondent was shown to have violated office regulations when he failed to log out before proceeding to the MTCC of San Fernando. As stressed by the OCA, he did not have any official business to transact at the said court, because no special order had been handed to him for enforcement. Even assuming otherwise, he should have followed office procedures, of which he had earlier been reminded. He ought to have secured a travel order and made known to his superior his purpose in proceeding to the MTCC of San Fernando.

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CSC Resolution No. 99-1936 dated August 31, 1999, classifies simple misconduct as a less grave offense carrying the penalty of suspension for one month and one day to six months for the first violation.

Considering the length of service of respondent, his openness to self-reformation, and his retirement, this Court agrees with the OCA’s recommended penalty.

WHEREFORE, Edgardo A. Zabat is found GUILTY of simple misconduct and is FINED an amount equivalent to his one-month salary, to be deducted from his retirement benefits.

SO ORDERED.

Sandoval-Gutierrez, Corona, Carpio-Morales, and Garcia, JJ., concur.

[1] Re: Imposition of Corresponding Penalties for Habitual Tardiness Committed During the First and Second Semesters of 2003, 425 SCRA 508, March 16, 2004.

[2] Rollo, pp. 3-8.

[3] Affidavit-Complaint, pp. 1-6; rollo, pp. 3-8.

[4] Rollo, pp. 35-40.

[5] Re: Habitual Tardiness Incurred by Gideon M. Alibang, AM No. 2003-11-SC, June 15, 2004.

[6] “Policy on Absenteeism and Tardiness,” January 22, 1991.

[7] Re: Imposition of Corresponding Penalties for Habitual Tardiness Committed During the First and Second Semesters of 2003, 425 SCRA 508, March 16, 2004.

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