

**ATTYS. GRACE S. BELVIS AND FRANCISCO D. ARAÑA, JR.,
COMPLAINANTS, VS. FERDINAND MIGUEL S. FERNANDEZ, CLERK III,
RESPONDENT.**

A.M. No. P-95-1147. April 25, 1996

Ponente: PADILLA, J.

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PADILLA, J.:

This is an Administrative Complaint against Ferdinand Miguel S. Fernandez, Clerk III of Branch 152, Regional Trial Court, Pasig City, and presently detailed with the office of the Clerk of Court, for violation of Memorandum Circular No. 30 of the Civil Service Commission series of 1989 for Frequent Unauthorized Absences and/or Tardiness.

Complainants Atty. Grace S. Belvis and Atty. Francisco D. Araña, Jr., Clerk of Court and Assistant Clerk of Court respectively, of the Regional Trial Court, Pasig City, averred that on 13 September 1994, a memorandum was issued to respondent Fernandez requiring him to explain why no administrative sanction should be taken against him for frequent unauthorized absences from October 1993 to September 1994, including three (3) weeks of straight absences from 22 August to 9 September 1994. In his letter-explanation dated 15 September 1994, respondent pleaded for compassion and promised not to commit the same offense again.[1]

Despite his promise, respondent reported late for work on 2, 3, and 4 January 1995 and did not report for work at all from 5 to 31 January 1995. For the month of February 1995, respondent was absent on the 14th and 28th thereof and was late for work on the 15th, 16th, 17th, 22nd, 23rd, 24th and 27th. For the month of March 1995, respondent was absent for a total number of fourteen (14) days and during the few times that he reported for work on said month, he was late.

Respondent was again required to explain in writing his frequent unauthorized absences and tardiness. In his letter dated 31 March 1995, respondent explained that his absences were due to personal problems as his wife, a former teacher of Southern Rizal Institute, had been accused of unlawfully trespassing the school premises and of taking items not belonging to her.[2] Complainants were not satisfied with respondent's explanation and recommended his suspension for one (1) month without pay with warning that a repetition of the same offense will warrant his dismissal from the service.[3]

Executive Judge Martin S. Villarama, Regional Trial Court, Pasig City, in his 1st Indorsement dated 26 April 1995, recommended that the present complaint be favorably acted upon.

On 3 May 1995, the Office of the Court Administrator received a letter from respondent requesting that he be furnished with a copy of the Complaint and that he be given fifteen (15) days within which to explain his absences. The Court, in a Resolution dated 3 July 1995, required respondent to file his Comment on the Complaint within ten (10) days from notice.

On 9 November 1995, respondent filed with the Court his Manifestation/Motion as well as his Comment stating

that he received a copy of the Resolution dated 3 July 1995 only on 12 September 1995. In answer to the charges of complainants, respondent claims that all his absences were due to either his own sickness or sicknesses of other members of his immediate family. He further claims that his absences were all supported by proper application for leave which is why all his vacation and sick leave credits have already been consumed.[4]

Thereafter, the Court, in a Resolution dated 11 December 1995, referred this case to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.

In its Report dated 20 March 1996, the OCA made the following findings and recommendation:

"x x x.

Under Memorandum Circular No. 04 S. of 1989 "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."

"In the case before us, while it is true that respondent incurred absences in excess of the 2.5 monthly leave credit in the first semester of 1995 he applied for vacation and sick leaves for the period covered by his absences which were all approved by his superior. Under this circumstance, respondent's absences cannot be deemed unauthorized to consider him a habitual absentee. However, the fact remains that he incurred absences successively. This does not speak well of a disciplined, diligent and industrious government employee that he should be. As such he should be held liable for conduct grossly prejudicial to the best interest of the service.

Likewise under Memorandum Circular No. 4, S. 1991 "any employee shall be considered habitually tardy if he incurs tardiness, regardless of the number of minutes ten (10) times a month for at least two (2) months in a semester or at least two (2) consecutive months during the year."

Respondent, however has committed habitual tardiness because the court's logbook for 1994 shows that he was tardy on:

1. January

- nine

(9)

times

2. February

- two

(2)

"

3. March

- fourteen

(14)

"

4. April

-thirteen

(13)

"

5.May

-three

(3)

"

6.June

-ten

(10)

"

7.July

-eight

(8)

"

8.August

-nine

(9)

"

9.September

-ten

(10)

"

10.October

-fourteen

(14)

"

11.November

-fourteen

(14)

"

12.December

-twelve

(12)

"

Respondent also reported late for work in 1995 ten (10) times in February, twelve (12) times in April, twelve (12) times in June and twelve (12) times in July.

The records of the Administrative Services show that respondent went on sick leave without pay from December 5, 1995 up to February 29, 1996 due to Acute Myocardial Infraction. Additionally, information from RTC, Branch 152 reveals that he reported for duty last 4 March 11996 but was again absent from 12 to 14 March 1996.

Respondent has been in the Judiciary for nine (9) years already and he is due to retire in the year 2028.

All the foregoing considered, it is respectfully recommended to the Honorable Court that respondent Ferdinand Miguel S. Fernandez be SUSPENDED for conduct prejudicial to the best interest of the service and tardiness for a period of one (1) month without pay to commence upon receipt of notice with warning that a repetition of the same and similar offense will be dealt with more severely."

The Court agrees with the foregoing findings of the OCA and finds that the recommendation for respondent's suspension for one (1) month without pay is justified. There is no question that respondent is prejudicing public service with frequent absences and tardiness. His conduct certainly falls short of the standards prescribed by the Constitution for public officer and employees, to wit: "A public office is a public trust. Public Officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives." [5]

It also bears repeating that the conduct and behavior of everyone connected with an office charged with the dispensation of justice should be circumscribed with the heavy burden of responsibility. [6] The Court cannot countenance any act or omission on the part of those involved in the administration of justice which would violate this norm of public accountability and diminish or even just tend to diminish the faith of the people in the Judiciary. [7]

ACCORDINGLY, respondent Ferdinand Miguel S. Fernandez, Clerk III, Branch 152, RTC, Pasig City is hereby SUSPENDED from the service for a period of one (1) month without pay to commence upon his receipt of this Resolution, with WARNING that a repetition of the same and similar offense will be dealt with more severely. This Resolution is immediately executory.
SO ORDERED.

Bellosillo, Vitug, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Rollo, p. 6.

[2] Rollo, p. 7.

[3] Rollo, p. 4.

[4] Rollo, pp. 9-10.

[5] Sec. 1, Art. XI, 1987 Constitution.

[6] Garcia v. Eullaran, 196 SCRA 1 [1991].

[7] Re: Ms. Teresita S. Sabido, 242 SCRA 432 [1995].

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