

THIRD DIVISION

[**A.M. No. P-06-2280 (Formerly AM No. OCA IPI No. 06-2457-P), January 31, 2008**]

ELLEN BELARMINO LOPENA, Complainant, vs. MARY JANE L. SALOMA, Clerk of Court IV, Metropolitan Trial Court, Marikina City, Respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before this Court is a complaint filed by Ellen Belarmino Lopena (complainant) against Mary Jane L. Saloma, Clerk of Court IV (respondent) of the Metropolitan Trial Court (MeTC) Marikina City for dishonesty and misrepresentation.^[1]

Complainant alleges that respondent represents herself as a lawyer when the truth is that she is not; that respondent is arrogant, quarrelsome and displays unethical behavior improper for a court employee; and that respondent, who filed several cases before the *barangay* and the Office of the Prosecutor, attends hearings during office hours.^[2]

Respondent denies the allegations against her and claims that the complaint is false, malicious and is only meant to harass her.^[3] She avers that she has served the judiciary in various capacities ^[4] and her recent nomination as Most Outstanding Clerk of Court of the First Level Courts would show her worth as a court employee. She explains that the misunderstanding between her and complainant started with the dispute over the titling of their respective properties. After the surveyor found that respondent was the actual occupant of the property, respondent tried to make peace with complainant's family; however, complainant shouted expletives at her in front of their neighbors, prompting respondent to file civil and criminal cases against her. In the process, respondent incurred absences and asked to be excused temporarily in order to be able to attend hearings. She reports to the office on Saturdays in order to be able to attend the hearings at the *barangay* and the prosecutor's office during weekdays. There are times when she goes back to the office after office hours especially when she has to prepare monthly collection reports. Most of the time, however, the hearings at the *barangay* were done at night.^[5]

On October 13, 2006, the Office of the Court Administrator (OCA) submitted its report finding that a formal investigation is needed to determine (1) the veracity of complainant's allegations that respondent utilized official time to attend hearings in the *barangay*, and (2) whether respondent was authorized pursuant to Administrative Circular No. 2-99 dated January 15, 1999 to report for work during Saturdays and take her day off on week days. ^[6] The OCA explained that the investigation should be limited to the determination of these two issues, as there is

no cogent proof supporting complainant's other allegations. [7]

In a Resolution dated December 4, 2006, the Court referred the complaint to the Executive Judge of the Regional Trial Court (RTC) of Marikina City for investigation, report and recommendation and directed her to resolve the two issues aforesaid. [8]

Executive Judge Geraldine C. Fiel-Macaraig submitted her Report dated June 26, 2007, finding the following undisputed facts: at the hearing before the *barangay* on January 17, 2006, respondent left her office at 2:00 p.m. to attend the selection of the *Lupong Tagapamayapa* and returned to the office after she found out that the selection did not push through. However, respondent failed to present her time card to show that she indeed returned to her office. At the hearings on March 29 and May 3, 2006, both set for 2:00 p.m. before the Office of the Prosecutor of Taguig, respondent attended the same *but* claims to have returned to her office right away without, however, showing her time cards. With respect to the hearings on May 17 and 24, 2006, set at 9:30 a.m. at the Office of the Prosecutor, respondent admitted having attended the same *but* claims that she asked permission from the Executive Judge, and that she returned to her office after the hearing. Respondent again did not submit her time card; neither did she submit a certification from the Executive Judge to support her claim. On June 6 and 20, 2006, respondent claims that she went on half-day; however, it was not shown that she filed the appropriate application for leave. As for her June 20, 2006 half-day, respondent claims that it was an off-set for the duty she rendered in the afternoon of June 17, 2006, which is a Saturday; yet, there is nothing to show that there was prior approval from the Executive Judge before she rendered the half-day. [9]

Judge Macaraig concluded that respondent is liable for unauthorized half-day off and unauthorized absences from the office on those days when she attended hearings during office hours without the corresponding authority from the Executive Judge. She qualified, however, that since respondent's absences were only few and far between, the same cannot be considered as Frequent Unauthorized Absences. She recommended that respondent be meted the penalty of reprimand or fine, or suspension from one day to ten days for utilizing official time to attend the hearings of her personal cases. [10]

In a Resolution dated July 30, 2007, the Court referred the report of Judge Macaraig to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.

In the Memorandum dated October 24, 2007, the OCA agreed with the findings of the investigating judge that respondent utilized official time to attend hearings for her personal cases before the *barangay* and the Office of the City Prosecutor in Taguig. The OCA found that following Rule IV of Civil Service Commission (CSC) Memorandum Circular No. 19-99, respondent is guilty of the grave offense of loafing or frequent unauthorized absences from duty during regular office hours, which is punishable for first offenders by suspension from six months and one day to one year. The OCA also found that respondent has a long record of satisfactory service in the judiciary, and that this is her first administrative offense. Thus, the OCA recommended that she be suspended from the service for three months. [11]

The Court agrees with the OCA's findings and recommended penalty.

The infractions committed by respondent constitute *loafing*, which is defined as "unauthorized absences from duty during regular hours," with the word "frequent" connoting that the employees absent themselves from duty more than once. It constitutes inefficiency and dereliction of duty which adversely affects the prompt delivery of justice.^[12]

Respondent claims that she often goes back to work, even after office hours, after attending the hearings of her personal cases.^[13] Such claim cannot exculpate her from liability, as the practice of off-setting tardiness or absence, by working for an equivalent number of minutes or hours beyond the regular or approved working hours of the employee concerned is not allowed under the Civil Service Rules.^[14]

Her claim that her absence during office hours on May 17 and 24, 2006 was with the permission of the Executive Judge is also not worthy of merit because not only did she fail to present any document to substantiate such claim, the Executive Judge's permission, even if it was truly given in this case, is insufficient. The rules require that when the head of office, in the exercise of his discretion, allows a government employee to leave the office during office hours and not for official business, the same shall be reflected in the employee's time card and charged to his leave credits.^[15] Respondent should have applied for the proper leave with the OCA with the indorsement of the Executive Judge, and such absence during office hours should have been reflected in her time card and charged to her leave credits. Mere permission from the Executive Judge would not suffice.

For her June 20, 2006 half-day, respondent likewise claims that it was an off-set of her June 17, 2006 duty which is a Saturday. Said off-set does not comply with Administrative Circular No. 2-99, Section I(B) which provides that an employee assigned to work on Saturday shall have a full day-off the following week, on a day to be specified by the judge concerned.^[16] The said provision does not provide for off-sets of half-days; neither did respondent show that her Saturday duty was with the prior approval of the Executive Judge; thus, the same cannot be considered excused.

Under the premises, it is clear that respondent is liable for loafing or frequent unauthorized absences from duty during regular office hours, which offense, together with frequent unauthorized absences or tardiness in reporting for duty, is punishable by suspension for six months and one day to one year for the first offense following Rule IV Section 52 A(17) of the Uniform Rules on Administrative Cases in the Civil Service or CSC Memorandum Circular No. 19-99.^[17]

Respondent's nomination as Most Outstanding Clerk of Court in the First Level Courts does not give her a privileged status so as to consider it as a mitigating circumstance. Considering however that this is respondent's first infraction in her 24 years of service in the judiciary, the Court finds that the mitigated penalty of suspension for three months with severe warning to be sufficient.^[18]

The Court has made clear that while it is its duty to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, this