

EN BANC

[A.M. NO. 2005-20-SC, March 23, 2006]

**RE: VIOLATION OF ADMINISTRATIVE CIRCULAR NO. 14-2002 BY
MR. GEMINIANO P. PEREZ,**

D E C I S I O N

CARPIO, J.:

The Facts

In a Memorandum dated 15 July 2005, the Office of Administrative Services ("OAS") directed Geminiano P. Perez ("Perez"), SC Supervising Judicial Staff Officer of the Records Control Division of this Court, to submit his Comment/Explanation for having been late or tardy for a total of 46 times covering the period from January to June 2005, as follows:

<u>DATE</u>	<u>TIME</u>	<u>DATE</u>	<u>TIME</u>
Jan. 04, 2005	11:49	Apr. 04, 2005	12:58
Jan. 05, 2005	12:52	Apr. 07, 2005	13:21
Jan. 06, 2005	13:57	Apr. 11, 2005	11:41
Jan. 11, 2005	14:00	Apr. 14, 2005	13:24
Jan. 13, 2005	14:29	Apr. 18, 2005	12:02
Jan. 14, 2005	13:53	Apr. 25, 2005	12:24
Jan. 19, 2005	12:54	May 03, 2005	09:05
Jan. 20, 2005	12:34	May 09, 2005	12:26
Feb. 01, 2005	13:00	May 10, 2005	12:09
Feb. 07, 2005	15:29	May 13, 2005	12:24
Feb. 08, 2005	09:22	May 16, 2005	12:44
Feb. 09, 2005	09:39	May 17, 2005	12:23
Feb. 14, 2005	14:00	May 20, 2005	10:31
Feb. 24, 2005	15:03	May 25, 2005	14:41
Feb. 28, 2005	14:45	May 26, 2005	10:59
Mar. 01, 2005	09:32	May 30, 2005	12:16
Mar. 04, 2005	14:33	June 09, 2005	14:05
Mar. 08, 2005	14:15	June 14, 2005	13:26
Mar. 11, 2005	09:29	June 15, 2005	11:21
Mar. 15, 2005	14:00	June 17, 2005	14:59
Mar. 18, 2005	10:21	June 20, 2005	11:59
Mar. 21, 2005	10:31	June 27, 2005	11:45
Mar. 28, 2005	09:31	June 29, 2005	12:27

The OAS charges respondent for tardiness in violation of Administrative Circular No. 14-2002 (A.C. No. 14-2002).

In his Comment, Perez admitted he had incurred numerous tardiness during the months from January to June 2005 but he has not violated the Civil Service Commission's rule on tardiness, i.e., 10 times or more in a month for two months in a semester, or for two consecutive months in a year. He alleges, however, that employees of the judiciary affected by A.C. No. 14-2002 are burdened twice by the rule because for the same class of offense, government employees including employees of the judiciary are already covered by the pertinent rules of the Civil Service Commission. He posits the view that the additional burden on judiciary employees is violative of the equal protection clause of the Constitution.

OAS Memorandum

The OAS asserts that A.C. No. 14-2002 is an office rule on attendance and tardiness and any violation thereof is a ground for disciplinary action. The willful failure to follow reasonable office rules and regulation is subject to disciplinary action under Section 22(c) on Light Offenses, Rule XIV of the Omnibus Rules Implementing Book V of the Revised Administrative Code, as amended by CSC Memorandum Circular No. 19, s. 1999.

As regards the 46 times Perez was late for work, the OAS is of the opinion that "even if the absences and habitual tardiness do not qualify as 'habitual' or 'frequent' under CSC MC No. 04, s.1991," the same can already be dealt with severity.

The OAS recommends that since this is the second infraction of Perez, the penalty of suspension for 30 days without pay should be imposed.

The Court's Ruling

It is the opinion of OAS that since this is the second infraction of Perez, the penalty of suspension without pay should be imposed. It should be recalled that it was the OAS that recommended the dismissal of the first administrative case. It cannot be said that there was a second offense when the first offense was considered dismissed through no fault of Perez. The first administrative case should not be counted in determining the penalty to be imposed in the case at bar since that first administrative case was dismissed.

It should be stressed here that Perez is being charged for being late or tardy for 46 times for the period covering January to June 2005 allegedly in violation of an office rule, specifically A.C. No. 14-2002. A.C. No. 14-2002^[1] is a reiteration of the Civil Service Commission's policy on habitual absenteeism. A.C. No. 14-2002 particularly deals with habitual absenteeism, not tardiness. The title of the circular itself is clear: "Reiterating the Civil Service Commission's Policy on Habitual Absenteeism." The circular provided, thus:

WHEREAS, there is a need to further reiterate the provisions of said Memorandum Circular particularly that portion pertaining to **habitual absenteeism** as records show that there are several employees who incurred absences which are more than the allowable 2.5 days monthly