

SECOND DIVISION

[A.M. NO. P-06-2244 (FORMERLY OCA IPI NO. 06-2360-P), December 06, 2006]

SAGA DESIGN, INC., COMPLAINANT, VS. ATTY. EMELINE B. CABAUG, CLERK OF COURT V, REGIONAL TRIAL COURT, BRANCH 56, MANDAUE CITY, RESPONDENT.

R E S O L U T I O N

GARCIA, J.:

The instant administrative case stemmed from a verified complaint dated December 9, 2005 filed with the Office of the Court Administrator (OCA) by complainant Saga Design, Inc., through its representative, Benson Chua, charging the herein respondent, **Atty. Emeline B. Cabahug**, Branch Clerk of Court, Regional Trial Court (RTC), Branch 56, Mandaue City, with violation of the norm of conduct of public servants and arbitrariness and capriciousness in connection with the pre-marking of exhibits conducted by the respondent in Civil Case No. Man-4500, entitled *Saga Design, Inc. v. New Times Limited Philippines, et al.*

The facts:

Record shows that complainant Saga Design, Inc., is the plaintiff in *Civil Case No. Man-4500* pending before Branch 56 of the RTC, Mandaue City since December 2003. Pursuant to the new rules on pre-trial, the parties to the case and the respondent branch clerk of court agreed to have the pre-marking of exhibits on November 18, 2005.

On November 18, 2005, complainant's representative, Benson Chua, and its counsel, Atty. Francis M. Zosa, arrived at the office of the respondent at around 2:25 p.m. only to be informed that the respondent was attending her child's school function and that the scheduled pre-marking of exhibits had been reset to December 9, 2005, at 3:00 p.m.

On December 9, 2005, Chua and Atty. Zosa arrived at the respondent's office at about 3:13 p.m., which was only 13 minutes past the scheduled time. Inasmuch as by then, the defendants' representatives and counsel had already left, the respondent informed the two that she had agreed to reset the pre-marking of exhibits to January 25, 2006. Atty. Zosa refused to sign the re-setting because the case had been pending for two (2) years already.

To the complainant, the act of the respondent in unilaterally canceling the scheduled pre-marking of exhibits on November 18, 2005, violated the norm of conduct of public servants who should not put public service above personal consideration. It also averred that the respondent's act in agreeing to reset the pre-marking of exhibits just because complainant's representative and counsel were late by a few

minutes constituted arbitrariness, capriciousness and contributed to the delay in the resolution of its case.

On January 24, 2006, the then Court Administrator required the respondent to file her comment on the complaint, which she did on February 21, 2006.

In her comment, the respondent admitted having scheduled the pre-marking of exhibits on November 18, 2005 at 2:30 p.m. She explained, however, that at around 2:00 p.m. of that date, she received a call from her child's teacher asking her to go to the school as the guidance counselor wanted to have a talk with her about a very important matter concerning her child. With the permission of her presiding judge, she immediately proceeded to her child's school. On her way, she remembered the scheduled pre-marking of exhibits in Civil Case No. Man-4500. She then called up her officemate, Ana Añana, instructing her to ask the parties, through counsels, if they could wait until 3:30 p.m. Añana, however, told her that the counsels of both parties agreed to reset the pre-marking of exhibits to December 9, 2005.

On December 9, 2005, the counsel for the defendant Atty. Joseph Randi C. Torregosa and defendant Marivic Debolusan, arrived at the respondent's office at around 2:20 p.m., while the plaintiff's representative, Benson Chua, and its counsel, Atty. Zosa arrived at 3:30 p.m. By then, the defendant's counsel, and Debolusan had already left, with the scheduled pre-marking of exhibits reset to January 25, 2006. Atty. Zosa was furious upon being informed of the resetting and walked out from the respondent's office.

Ultimately, on motion of the plaintiff's representative, the pre-marking of exhibits was conducted and completed on January 5, 2006.

In its Memorandum Report, the OCA recommended that respondent be suspended for one (1) month and one (1) day for simple neglect of duty, saying, *inter alia*, thus:

In this case, respondent admitted to have tasked to conduct the pre-marking of exhibits in Civil Case No. Man-4500. Accordingly, she set the date for such exercise on November 18, 2005, and the parties, together, with their counsels, were duly notified therefor. At the appointed time of the pre-marking of exhibits, however, respondent hurriedly left her office to attend to a school function for her child, conveniently forgetting the task she had earlier set on that day. The parties and their counsels were, thus, left with no choice but to work out by themselves the resetting of the scheduled pre-marking of exhibits, thereby causing delay in the proceeding of the case.

Respondent's excuse that she sought permission from her presiding judge to go to her child's school does not alter the fact that she failed to give proper attention to a task she herself scheduled and of which she was expected to perform. As clerk of court, respondent is expected to act speedily on her assigned task to avoid clogging of cases in court and thereby assist in the administration of justice without delay. Corollarily, under the Code of Conduct of Court Personnel, court employees are required at all times to perform their official duties properly and with diligence, and to commit themselves exclusively to the business and