

## SECOND DIVISION

**[ A.M. No. P-01-1475 (formerly A.M. No. 00-10-220-MTC), October 17, 2003 ]**

**JUDGE MANUEL R. AQUINO, COMPLAINANT, VS. JOCELYN C. FERNANDEZ, STENOGRAPHER I, RESPONDENT.**

### R E S O L U T I O N

**AUSTRIA-MARTINEZ, J.:**

Judge Manuel R. Aquino of the Municipal Trial Court of Caba, La Union submitted to the Office of the Court Administrator his "Report/Findings" dated November 16, 1998 recommending that an appropriate disciplinary action be imposed upon Jocelyn Fernandez who holds the position of Stenographer I in his sala.<sup>[1]</sup>

According to complainant Judge, respondent failed to type the draft order in Criminal Case No. 4197, entitled "People of the Philippines vs. Jose Runes, et al." then pending in his court despite the instructions given by him on November 4, 1988. When asked to give a written explanation, respondent admitted her failure to accomplish said task with a promise not to commit the same offense, explaining that she had to prepare 18 copies of her daily time record and leave of absence. Respondent did not file any prior leave of absence for November 4 to 6, 1998 as required by law. Previously, respondent was reprimanded by the Clerk of Court for her absence in October of 1993 and by complainant Judge himself for her absences in October of 1996. Complainant Judge further complains that the stenographic notes of respondent were always submitted late and full of errors which caused her very low performance rating.<sup>[2]</sup>

Complainant Judge attached to his report several annexes, to wit: Annex "A," his letter dated November 5, 1998 addressed to respondent asking her to give an explanation for her failure to type the draft order in "People vs. Runes"; Annexes "B" and "B-1," respondent's explanation dated November 9, 1998, promising not to repeat the same offense; Annex "C", a memorandum of Clerk of Court Isabel D. Marquez reprimanding respondent for playing *mahjong* on November 8, 1993, a day she absented herself from work, and for being remiss in her duties particularly in drafting her stenographic notes; Annex "D", a memorandum dated November 6, 1996 of complainant Judge reprimanding respondent for her unauthorized absences on October 8 to 11, 1996 and October 18, 1996.<sup>[3]</sup>

On April 2, 2001, this Court issued a Resolution treating said "Report/Findings" submitted by Judge Aquino as a regular administrative matter, and referring to the then Acting Executive Judge of the Regional Trial Court of Bauang, La Union for investigation, report and recommendation.<sup>[4]</sup>

After due investigation, Judge Rose Mary R. Molina-Alim of the Regional Trial Court, Bauang La Union (Branch 33) submitted to the Court Administrator her Report and

Recommendation, with the following findings:

It appears that respondent committed several transgressions, thus:

- 1) Her failure to comply with the instruction to type the drafted order in Criminal Case No. 41978 entitled, "People of the Philippines vs. Jose Runas" on November 4, 1998;
- 2) For absenting herself from office for the period November 4,5,6, 1998 without prior leave of absence as required by law;
- 3) As early as October, 1993, Ms. Fernandez was again reprimanded by the court for her absence in office for allegedly playing "mahjong" particularly on October 8, 1993, and other transgressions;
- 4) For absenting herself from October 8 to 11, 1996 and October 18, 1996 without filing prior leave of absence, she was again reprimanded on November 6, 1996;
- 5) The stenographic notes transcribed by Ms. Fernandez are always full of errors and not transcribed on time despite constant reminders by the clerk of court.<sup>[5]</sup>

and conclusion:

To our mind, respondent is guilty of simple neglect of duty in failing to type the drafted order; gross dishonesty in being absent without any application for leave; serious misconduct in being absent just to play "mahjong". However, considering the prevailing circumstances of this case the respondent's absences, although unauthorized for not filing the required prior leave of absence, were not "habitual" and "frequent", that her failure to type the drafted order, was committed only once, her absence just to play "mahjong", an isolated case, this investigating Judge finds respondent nevertheless administratively guilty of the above-mentioned infractions. Taking into consideration her plea for understanding and compassion, respondent having practically admitted all her shortcomings, with the promise not to do similar acts again in the future, **it is respectfully recommended that respondent be meted out a penalty of suspension for one (1) month without pay, with a stern warning that commission of similar conduct in the future shall be dealt with, more severely.**<sup>[6]</sup> (Emphasis supplied)

In a Resolution dated May 27, 2002, the Court referred the Report and Recommendation of Judge Alim to the Office of the Court Administrator for evaluation, report and recommendation.<sup>[7]</sup>

In his Memorandum dated October 8, 2002, Deputy Court Administrator Jose P. Perez concurred in the report of the investigating judge, recommending the approval of the findings and recommendation of Judge Alim.

We do not entirely agree with the findings and recommendation of the Deputy Court Administrator.

Respondent had been reprimanded on two occasions. First, she was reprimanded by Clerk of Court Isabel D. Marquez on October 13, 1993 for playing *mahjong* on a day

she absented herself and for submitting her work late and full of errors.<sup>[8]</sup> Second, respondent was reprimanded two years later or on November 6, 1996 by herein complainant Judge for her absences on October 8 to 11, 1996 and October 18, 1996. She failed to present a medical certificate attesting to her alleged sore eyes on October 8 to 11 and also failed to present a certificate of appearance from the court where she was allegedly required to appear on October 18, 1996.<sup>[9]</sup>

Circular No. 30-91 which quotes the Resolution of the Court *En Banc* dated February 26, 1991, provides that:

(1) Disciplinary matters involving light offenses as defined under the Civil Service Law (Administrative Code of 1987, and the Code of Conduct and Ethical Standards for Public Officials and Employees (Rep. Act. 6713) where the **penalty is reprimand, suspension for not more than thirty days, or a fine not exceeding thirty days' salary**, and as classified in Civil Service Resolution No. 30, Series of 1989, shall be acted upon by the appropriate supervisory official of the lower court concerned.

(2) The appropriate supervisory officials are the Presiding Justices/Presiding Judge of the lower collegiate courts and the Executive Judges of the trial courts with respect to the personnel of their respective courts, except those directly under the individual Justices and Judges, in which case, the latter shall be their appropriate supervisory officials. (*Emphasis supplied*).

Section A, Chapter VII of the 1991 Manual for Clerks of Court, which was in effect when said reprimands on respondent were meted out, provides:

"5. xxx The Clerk of Court *initiates* investigations of erring personnel and *recommends* appropriate action to the Executive Judge. (*Emphasis supplied*).

Thus, while it is clear that presiding judges have the authority to act upon disciplinary matters involving light offenses, clerks of court only have the duty to initiate investigations of erring personnel and to recommend appropriate action to the Executive Judge.

For this reason, we find the reprimand meted out by Clerk of Court Isabel Marquez dated October 13, 1993 to be improper for lack of authority. This notwithstanding, we find that there is no more need to punish respondent for her misconduct committed ten years ago, in the absence of a showing that she has committed similar offenses after she was given a reprimand by the Clerk of Court, albeit erroneously, for said act.

As to the reprimand imposed by complainant Judge on respondent for her absences in 1996, we find this to be in order only with respect to the October 18, 1996 incident. As to her sick leave of absence on October 8 and 11, 1996 because of sore eyes, a medical certificate is not necessary in case of sick leave of absence for less than five succeeding days.<sup>[10]</sup> At any rate, considering that respondent had already been reprimanded by complainant Judge, it would not be appropriate that she be penalized anew for the same acts.<sup>[11]</sup>

Hence, there are only two charges against respondent left for resolution of the Court: first, respondent's failure to type a draft order she was tasked by complainant Judge to accomplish on November 4, 1998 and second, her alleged unauthorized absences from November 4 to 6, 1998.

As correctly observed by the investigating judge and the Court Administrator, respondent committed a simple neglect of duty in failing to type a draft order which Judge Aquino asked her to finish. We have stated that simple neglect of duty signifies a disregard of a duty resulting from carelessness or indifference.<sup>[12]</sup> It is considered a less grave offense under Sec. 23 of the Omnibus Civil Service Rules and Regulations Implementing Book V of Executive Order No. 292 for which a penalty of suspension for one month and one day to six months shall be imposed for the first offense and dismissal for the second offense. Considering, however, her admission and plea for compassion with a promise not to commit the same acts in the future, a lighter penalty than suspension for one month and one day on respondent would suffice in this case.

Judge Aquino in his complaint, avers:

"Per verification from the Court's Clerk of Court, **Ms. Fernandez did not file any prior leave of absence** for November 4 to 6, 1998 as required by law."<sup>[13]</sup> (Emphasis supplied)

We note that the complaint does not indicate whether the absence of respondent on said dates was meant to be a vacation or due to illness. In either case, the governing rules are found in Rule XVI of the Omnibus Civil Service Rules and Regulations, to wit:

Sec. 49. *Period within which to act on leave application.* - Whenever the application for leave of absence, including terminal leave, is not acted upon by the head of agency or his duly authorized representative within five (5) working days after receipt thereof, the application for leave of absence shall be deemed approved.

**Sec. 50. Effect of unauthorized leave. - An official/employee who is absent without approved leave shall not be entitled to receive his salary corresponding to the period of his unauthorized leave of absence. It is understood, however, that his absence shall no longer be deducted from his accumulated leave credits, if there is any.** (Emphasis supplied).

Sec. 51. *Application for vacation leave.* - All applications for vacation leave of absence for one (1) full day or more shall be submitted on the prescribed form for action by the proper head of agency five (5) days in advance, **whenever possible**, of the effective date of such leave. (Emphasis supplied).

Sec. 52. *Approval of vacation leave.* - Leave of absence for any reason other than illness of an official or employee or of any member of his immediate family must be contingent upon the needs of the service. **Hence the grant of vacation leave shall be at the discretion of the head of department/agency.**