



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

AUXENCIO JOSEPH B.  
CLEMENTE, Clerk of Court,  
Metropolitan Trial Court, Branch  
48, Pasay City,

Complainant,

- versus -

A.M. No. P-10-2879  
(Formerly A.M. OCA I.P.I. No. 09-3048-P)

Present:

VELASCO, JR., J., Chairperson,  
PERALTA,  
ABAD,  
MENDOZA, and  
LEONEN, JJ.

ERWIN E. BAUTISTA, Clerk III,  
Metropolitan Trial Court, Branch  
48, Pasay City,

Respondent.

Promulgated:

JUN 03 2013

*Macapang*

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DECISION

PERALTA, J.:

This is an administrative case against respondent Erwin E. Bautista initiated by complainant Auxencio Joseph B. Clemente in his Affidavit-Complaint<sup>1</sup> for *Gross Insubordination, Gross Inefficiency, Gross Neglect of Duty, Grave Misconduct, Discourtesy, Laziness and Other Acts Prejudicial to the Interest of the Public Service*, dated January 15, 2009.

Respondent was an employee of the Metropolitan Trial Court, Branch 48 of Pasay City occupying the position of Clerk III whose assigned tasks include preparation of mails, docketing and indexing of criminal cases, and such other tasks as may be assigned to him by the Presiding Judge or the Branch Clerk of Court, the complainant herein.<sup>2</sup> Respondent's acts

<sup>1</sup> Rollo, pp. 2-7.

<sup>2</sup> Id. at 2.

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constituting the alleged administrative cases as enumerated above were embodied in various Memoranda issued by complainant to respondent.

In the November 15, 2005 Memorandum Re: Absences,<sup>3</sup> respondent was required to submit a written explanation why no disciplinary action should be taken against him for incurring absences (extended at times) without notice to the office and thus resulting in his failure to perform his job of preparing mails and computing the number of “CFM” cases. Another Memorandum<sup>4</sup> was served on respondent, dated January 17, 2006, requiring him to explain why he should not be recommended for suspension from service for failure to comply with the first memorandum, for incurring yet another unauthorized absences, for sleeping during office hours inside the courtroom while the court was in session, for spending more time for merienda, chatting inside the office, and loitering during office hours. On September 20, 2006, respondent was again served a Memorandum<sup>5</sup> with an order that he explain why he should not be considered absent without official leave (AWOL) because of his prolonged absences. On January 30, 2007, respondent’s attention was again called, still because of his absences, his act of dishonesty by making it appear in his bundy card that he was in the office but he was not, and his acts of discourtesy and insubordination because he was still munching food when he entered the courtroom.<sup>6</sup>

On July 29, 2008, respondent was made to submit proofs of mailing in answer to Mr. Ferdinand Cruz’s complaint of non-receipt of Orders from the court. Finally, in a Memorandum<sup>7</sup> dated August 20, 2008, respondent was made to explain why no administrative or criminal cases should be filed against him and why he should not be recommended for dropping from the rolls, for his failure to comply with the Memoranda previously issued. Meanwhile, on June 3, 2008, Judge Catherine P. Manodon (Judge Manodon) issued respondent Memorandum No. 08-01<sup>8</sup> requiring him to explain why he should not be dropped from the rolls for his continued unauthorized absences which greatly affected the service and the court proceedings. His absences, according to Judge Manodon, are the reasons why subpoenae and notices of hearing were belatedly sent to parties forcing the court to reset the cases contributing to the delayed disposition of cases.

Complainant further claims that when respondent was given an Unsatisfactory rating in his performance evaluation because of the above acts, he refused to sign the form indicating his defiance and disrespect to his superior.<sup>9</sup>

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<sup>3</sup> *Id.* at 8.

<sup>4</sup> *Id.* at 9.

<sup>5</sup> *Id.* at 10.

<sup>6</sup> Memorandum No. 01-07, *id.* at 11.

<sup>7</sup> *Rollo*, p. 17.

<sup>8</sup> *Id.* at 13-14.

<sup>9</sup> Memorandum dated January 17, 2006, *id.* at 9.

In its 1<sup>st</sup> Indorsement<sup>10</sup> dated February 2, 2009, the Office of the Court Administrator (OCA) referred the complaint to respondent for Comment. In his letter<sup>11</sup> dated February 20, 2009, respondent manifested his intention to comment on the complaint but asked for extension within which to do it as he needed to study and verify the documents attached to the complaint. Despite the granting of said motion for extension,<sup>12</sup> respondent still failed to comply with the OCA's directive. On May 4, 2009, the OCA sent respondent a Tracer Letter<sup>13</sup> informing him of his failure to file his comment and reiterating the directive to comply, otherwise, the case will be submitted for decision without his comment. To date, no comment was filed by respondent.

In a Resolution<sup>14</sup> dated December 8, 2010, the Court required the parties to manifest whether they are willing to submit the matter for resolution on the basis of the pleadings filed and the records submitted. For failure of both parties to make such manifestation, the Court deemed the parties to have submitted the case for resolution on the basis of the records on file.<sup>15</sup>

The OCA found merit in the complaint.

The OCA finds respondent liable for gross insubordination for the countless times that he failed to explain his unauthorized absences and poor performance as well as his failure to submit his comment on the complaint in this case.<sup>16</sup> Respondent is also guilty of simple neglect of duty for not giving attention to his assigned tasks.<sup>17</sup> The OCA likewise makes respondent liable for violation of office rules and regulations for non-observance with the prescribed office hours and the effective use of every moment thereof for public service.<sup>18</sup> With these infractions, the OCA finds the penalty of suspension for one year proper.<sup>19</sup> Considering, however, that he has been dropped from the rolls, the OCA recommends that he be fined ₱40,000.00 payable directly to the Court.<sup>20</sup>

The findings and recommendation of the OCA are well-taken. We find respondent guilty of insubordination, simple neglect of duty and violation of reasonable office rules and regulations.

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<sup>10</sup> *Rollo*, p. 19.

<sup>11</sup> *Id.* at 20.

<sup>12</sup> *Id.* at 22.

<sup>13</sup> *Id.* at 26.

<sup>14</sup> *Id.* at 37.

<sup>15</sup> Resolution dated August 8, 2011, *id.* at 41.

<sup>16</sup> OCA Memorandum dated August 12, 2010, *id.* at 32.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 33.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 34.

Respondent has been served several Memoranda on various dates requiring him to explain the complained acts but not a single occasion did he comply with the orders of his superior. Clearly, this shows his propensity to disregard and disobey lawful orders of his superior.<sup>21</sup> The Court also notes that when the OCA required him to comment on the complaint against him, respondent initially asked for extension within which to file the same, but to this date, no such compliance was made.

We would like to stress that all directives coming from the Court Administrator and his deputies are issued in the exercise of this Court's administrative supervision of trial courts and their personnel, hence, should be respected. These directives are not mere requests but should be complied with promptly and completely.<sup>22</sup> Clearly, respondent's indefensible disregard of the orders of the OCA, as well as of the complainant and Judge Manodon, for him to comment on the complaint and to explain his infractions, shows his disrespect for and contempt, not just for the OCA, but also for the Court, which exercises direct administrative supervision over trial court officers and employees through the OCA.<sup>23</sup> His indifference to, and disregard of, the directives issued to him clearly constituted insubordination.<sup>24</sup>

Compliance with the directive to comment on complaints filed against court personnel is not an empty requirement. As the Court held in *Mendoza v. Tablizo*:<sup>25</sup>

x x x Respondents in administrative complaints should comment on all accusations or allegations against them in the administrative complaints because it is their duty to preserve the integrity of the judiciary. This Court, being the agency exclusively vested by the Constitution with administrative supervision over all courts, can hardly discharge its constitutional mandate of overseeing judges and court personnel and taking proper administrative sanction against them if the judge or personnel concerned does not even recognize its administrative authority.<sup>26</sup>

It is likewise evident from the complaint and the attached memorandum served on respondent that respondent had been remiss in performing his assigned tasks, especially the preparation of mail matters because of his unauthorized absences. Several cases were, in fact,

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<sup>21</sup> *Alvarez v. Bulao*, 512 Phil. 26, 33 (2005).

<sup>22</sup> *Gonzalez v. Torres*, A.M. No. MTJ-06-1653 (Formerly OCA I.P.I. No. 03-1498-MTJ), July 30, 2007, 528 SCRA 490, 503-504.

<sup>23</sup> *Tan v. Sermonia*, A.M. No. P-08-2436 (Formerly OCA I.P.I. No. 06-2394-P, August 4, 2009), 595 SCRA 1, 13; *Judge Florendo v. Cadano*, 510 Phil. 230, 235 (2005).

<sup>24</sup> *Alvarez v. Bulao*, *supra* note 21, at 34; *Re: Request of Mr. Melito E. Cuadra, Process Server, RTC, Br. 100, Quezon City to the RTC, Br. 18, Tagaytay City*, 460 Phil. 115, 119 (2003).

<sup>25</sup> A.M. No. P-08-2553, August 28, 2009, 597 SCRA 381.

<sup>26</sup> *Mendoza v. Tablizo*, *supra*, at 389-390.

rescheduled because notices were belatedly sent to the parties. The OCA characterizes this infraction as simple neglect of duty.

Neglect of duty is the failure of an employee to give one's attention to a task expected of him. Gross neglect is such neglect which, from the gravity of the case or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare.<sup>27</sup> The term does not necessarily include willful neglect or intentional official wrongdoing.<sup>28</sup> Simple neglect of duty, on the other hand, signifies a disregard of a duty resulting from carelessness or indifference.<sup>29</sup>

In this case, we agree with the OCA that respondent is liable for simple neglect of duty. In the November 15, 2005 Memorandum, respondent had already been made to explain why mail preparation has always been delayed and why he failed to compute the number of "CFM" cases. In Memorandum No. 08-01 issued by Judge Manodon, respondent was required to explain the delay in mailing the subpoena and notices of hearing in several cases. In the July 29, 2008 Memorandum issued by complainant, respondent was required to show proofs of mailing of the court's orders to a certain Mr. Ferdinand Cruz relative to several cases. No such explanation was made by respondent. Neither did he defend himself before the Court by his failure to file the required comment. Evidently, he neglected his duty because of his indifference. Thus, the OCA is correct in making him liable for simple neglect of duty.

Complainant likewise claims that respondent's attention had been called several times because of his acts of sleeping during office hours, loitering around the premises, and munching food while inside the courtroom. Respondent's failure to explain his side is tantamount to his admission of the charges against him. He definitely failed to strictly observe working hours and, as aptly held by the OCA, these acts constitute violation of office rules and regulations.

Now on the proper penalty.

Under the Civil Service Rules, the penalty that should be imposed on an employee who is guilty of two or more offenses is that corresponding to the most serious offense. The rest of the offenses shall be considered as aggravating circumstances only.<sup>30</sup>

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<sup>27</sup> *Marquez v. Pablico*, A.M. No. P-06-2201 (Formerly A.M. OCA I.P.I. No. 03-1649-P), June 30, 2008, 556 SCRA 531, 537-538; *Report on the Alleged Spurious Bailbonds and Release Orders Issued by the RTC, Br. 27, Sta. Rosa, Laguna*, 521 Phil. 1, 18 (2006).

<sup>28</sup> *Report on the Alleged Spurious Bailbonds and Release Orders Issued by the RTC, Br. 27, Sta. Rosa, Laguna, supra*.

<sup>29</sup> *Seangio v. Parce*, 553 Phil. 697, 710 (2007).

<sup>30</sup> *Atty. Talion v. Ayupan*, 425 Phil. 41, 53-54 (2002).

Respondent is liable for three offenses, namely, insubordination, simple neglect of duty and violation of office rules and regulations. Under the *Uniform Rules on Administrative Cases in the Civil Service*, simple neglect of duty is a less grave offense wherein the imposable penalty is suspension for a period of one (1) month and one (1) day to six (6) months for the first violation.<sup>31</sup> The Rules prescribe the same penalty for insubordination.<sup>32</sup> For violation of reasonable office rules and regulations, reprimand is the imposable penalty for the first offense. In view of the circumstances, respondent should be meted the maximum penalty of suspension for six (6) months. Considering, however, that respondent had already been dropped from the rolls, having been AWOL per Resolution of the Court, dated December 16, 2009, in A.M No. 09-11-192-MeTC,<sup>33</sup> such penalty is no longer practicable. Hence, we deem it proper to impose the penalty of fine equivalent to his three (3) months salary.

**WHEREFORE**, premises considered, respondent Erwin E. Bautista is hereby found **GUILTY** of Insubordination, Simple Neglect of Duty and Violation of Reasonable Office Rules and Regulations, and is meted the penalty of **FINE** equivalent to his three (3) months salary.

**SO ORDERED.**



**DIOSDADO M. PERALTA**  
Associate Justice

**WE CONCUR:**



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson

<sup>31</sup> *Report on the Alleged Spurious Bailbonds and Release Orders Issued by the RTC, Br. 27, Sta. Rosa, Laguna, supra note 27, at 19-20.*

<sup>32</sup> *Re: Request of Mr. Melito E. Cuadra, Process Server, RTC, Br. 100, Quezon City to the RTC, Br. 18, Tagaytay City, supra note 24, at 120.*

<sup>33</sup> *Re: Dropping from the Rolls of Mr. Erwin E. Bautista, Clerk III, Metropolitan Trial Court, Br. 48, Pasay City.*

  
**ROBERTO A. ABAD**  
Associate Justice

  
**JOSE CATRAL MENDOZA**  
Associate Justice

  
**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice