



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **June 27, 2022** which reads as follows:

“A.M. No. 2022-02-SC (*Re: Habitual Absenteeism of Mr. Antonio L. Javier, Clerk III, Legal Office, OCA*). — This Court resolves a Memorandum from the Office of Administrative Services (*OAS*) recommending the penalty of suspension for one year against Antonio L. Javier (*Javier*), with a warning that a repetition of the same will warrant the imposition of a more severe penalty.

The Antecedents

The instant administrative matter involves the absences incurred by Javier, Clerk III of the Legal Office under the Office of the Court Administrator (*OCA*), during the year 2021.¹

Following A.M. No. 21-08-09-SC or the Further Amendments to Rule 140 of the Rules of Court, the Judicial Integrity Board (*JIB*) delegated the conduct of disciplinary investigation and hearing for this administrative case to the Complaints and Investigation Division (*CID*) of the *OAS* for personnel of the Supreme Court.²

In a Memorandum³ dated March 22, 2022, the Deputy Clerk of Court and Chief Administrative Officer, Atty. Maria Carina M. Cunanan (*Atty. Cunanan*) called the attention of Javier with respect to the report of the Leave Division on his absences as follows:

Month / Year	Dates	Number of Days Absent
January 2021	Jan. 4, 6, 8, 11, 13, 14, 15, 18, 22, 27, and 28	11
February 2021	Feb. 1, 4, 8, 10, 11, 22, 23, and 24	8
May 2021	May 18, 24, and 26	3
July 2021	June 7, 8, 13, 21 and 28	5 ⁴

¹ Rollo, p. 1.

² Id. at 3.

³ Id. at 1-6.

⁴ Id. at 1.

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Atty. Cunanan included a directive for Javier to submit an explanation within five (5) days from receipt, thus:⁵

As Civil Service Memorandum Circular No. 23, Series of 1998, provides that an officer or employee of the Civil Service shall be habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credits under the Leave Law for at least three (3) months in a semester, or at least three (3) consecutive months during the year, you are hereby **DIRECTED** to submit a written explanation within five (5) days from receipt, as to why no disciplinary action should be taken against you for the foregoing.⁶

After Javier's request for an extension was granted, he submitted his written explanation on March 15, 2022.⁷

For the month of January 2021, he explained that there were several urgent family matters that he had to personally attend to. Javier went home to Tuguegarao City, Cagayan, where he spent holidays. At that time, some of his family members were afflicted with the COVID-19 Delta Variant, which required his immediate assistance since their household was composed mostly of senior citizens. He said that he did not have the heart to leave under such conditions. He also claimed that he immediately filed for a leave of absence for the said period, but the same was denied.⁸

As to his absences from February to March of 2021, Javier stated that he contracted COVID-19 and attached a February 23, 2021 positive laboratory result from the Sta. Ana Hospital and a certificate from the Bureau of Quarantine (*BOQ*) attesting to his completion of the mandatory isolation period until March 6, 2021.⁹

In May 2021, Javier stated that he incurred three absences because he felt feverish, had a cough with some body malaise on the dates in question, and that he was merely complying with the directive from this Court that an employee must not even have the slightest symptoms of illness, otherwise they should refrain from reporting and go on self-quarantine. He stated that he did not secure a medical certificate for this because his absences did not exceed five days.¹⁰

⁵ Id. at 16.

⁶ Id.

⁷ Id. at 2.

⁸ Id.

⁹ Id.

¹⁰ Id. at 2-3.

Finally, he attributed his absences in July 2021 to family emergencies, and concluded his explanation that all his absences were for “legitimate, necessary and mandatory” reasons. He likewise begged for humanitarian consideration and understanding, and a chance to redeem himself.

Attached to his explanation was a COVID-19 positive result dated February 23, 2021; a Certificate from the BOQ ascertaining that Javier had completed the 10-day isolation period; a print-out of a news article reporting that Tuguegarao City was placed under Enhanced Community Quarantine (*ECQ*) from January 20 until January 29, 2021, suspending public transportation; and disapproved sick leave forms for the months of January, February, March, May, and July 2021. Notably, all these leave forms were filed the next year, February 21, 2022, and bore ticked “disapproved” boxes by Analiza O. Thomas-Parra (*Atty. Parra*), Acting Assistant Chief of the Legal Office of OCA.

On March 22, 2022, Atty. Cunanan issued a Memorandum addressed to Atty. Marife M. Lomibao-Cuevas, Clerk of Court, stating that the excuses offered by Javier were not convincing. The recommendation stated thus:

IN VIEW OF THE FOREGOING, this Office respectfully submits for the consideration of the Honorable Court that Respondent Antonio L. Javier, Clerk III, Docket and Clearance Division, Legal Office, Office of the Court Administrator, be found administratively liable for “Habitual Absenteeism”, and correspondingly issued the penalty of **SUSPENSION for one (1) year** with a warning that a repetition of the same will warrant the imposition of a more severe penalty.¹¹

Issue

The sole issue for consideration is whether Javier is guilty of habitual absenteeism and should be suspended for a period of one year.

Our Ruling

Under A.M. No. 21-08-09-SC, Habitual Absenteeism is considered a Less Serious Offense. As stated in Administrative Circular No. 14-2002, which reiterated the Civil Service Commission (*CSC*) policy on habitual absenteeism, judicial personnel are considered habitually absent if they incur unauthorized absences exceeding the allowable 2.5 days’ monthly leave credits under the law for at least three months in a semester or at least three consecutive months during the year.

¹¹ Id. at 6.

In order to assess whether an absence is deemed authorized or unauthorized, We refer to the definition and requirements for the application for and approval of sick leave under the CSC rules.

Sick leave refers to leave of absence granted only on account of sickness or disability on the part of the employee concerned or any member of his immediate family.¹²

The same CSC rules provide that all applications for sick leave for one full day or more shall be made on the prescribed form and shall be filed immediately upon the employee's return from such leave. Notice of absence, however, should be sent to the immediate supervisor and/or to the agency head. Application for sick leave in excess of five successive days shall be accompanied by a proper medical certificate. In an ordinary application for sick leave already taken not exceeding five days, the head of the department or agency concerned may duly determine whether or not the grant of sick leave is proper under the circumstances. In case of doubt, a medical certificate may be required.¹³

In Javier's case, it is glaring from the record that all of the sick leaves that he applied for were belatedly done after more than a year from the occurrence of the absences. He likewise did not attach any proof that he gave notice of such absences to his superior, Atty. Parra.

While Javier was able to provide documentation for his COVID-19 positive result and isolation from February 23, 2021 to March 6, 2021, this does not account for his absences prior to this period, specifically February 1, 4, 8, 10, 11, and 22.

In the same vein, while Javier provided proof *via* a news article that his hometown Tuguegarao was placed under ECQ effective January 20, 2021 which suspended public transportation, such does not account for his prior absences on the month of January, namely January 4, 6, 8, 11, 13, 14, 15, and 18.

As for the month of May 2021, We recognize that this Court indeed gave a directive that employees with COVID-19 symptoms should refrain from reporting to work and undergo self-quarantine. The issue, once again, lies with Javier's failure to comply with the standard protocols of giving notice to his superior and to apply for a sick leave as soon as he returned to work.

¹² Civil Service Commission Memorandum Circular No. 41, s. 1998, Omnibus Rules on Leave, Rule I, Item 5, December 24, 1998.

¹³ Rule VXI, Sec. 53; *id.*

Finally, for the month of July 2021, Javier cites “family emergencies” in general, without providing details or specifications. As found by Atty. Cunanan in her Memorandum, unspecified family emergencies for his absences on July 7, 8, 13, 21 and 28 without further elaboration are not valid grounds for approval of leave.

It goes without saying that this Court commiserates with all those whose families afflicted with health crises brought by the pandemic. Regrettably, his failure to give any notice to his superiors about his situation, as well as his neglect in securing the appropriate approvals as soon as his circumstances permitted, indicates a lack of conscientiousness which is expected from all government employees, most especially those in the court.

Administrative Circular No. 14-2002 provides that in case of an employee’s claim of ill health, the head of the appropriate department of the court is encouraged to verify the validity of such claim and, if not satisfied with the reason given, should disapprove the application for sick leave. On the other hand, cases of employees who absent themselves from work before approval of their application should be disapproved outright.¹⁴ The assiduous review by Atty. Parra of Javier’s sick leave applications, as well as her eventual disallowance, was well within the parameters of her duties.

Given that Atty. Parra’s disapprovals of Javier’s applications for sick leaves were grounded on existing rules, We agree with Atty. Cunanan’s recommendation that Javier’s absences for the months of January, February, May and July 2021 fall within the definition of habitual absenteeism, having exceeded the allowable 2.5 days’ monthly leave credits under the law for at least three months in a semester.

Nonetheless, We modify the penalty to be imposed. In her Memorandum, Atty. Cunanan recommended a penalty based on the 2017 Rules on Administrative Cases in the Civil Service (*2017 RACCS*), which considers habitual absenteeism a grave offense punishable with six months and one day to one year’s suspension on the first commission. Atty. Cunanan recommended the maximum penalty of suspension for one year, due to the aggravating circumstance of a previous administrative sanction,¹⁵ with a warning that a repetition of the same will warrant the imposition of a more severe penalty.

However, under the recently issued A.M. No. 21-08-09-SC, habitual absenteeism is considered a less serious offense and is meted with a different penalty from that provided by the 2017 RACCS:

¹⁴ Administrative Circular No. 14-2002, March 18, 2002.

¹⁵ This was based on the OAS’ perusal of his 201 file which discloses two (2) previous administrative sanctions for habitual tardiness: first under A.M. No. 2012-13-SC on October 2, 2012 with a severe warning, and second under A.M. No. 2013-09-SC on July 14, 2015 with suspension for five (5) days.

- (a) Suspension from office without salary and other benefits for not less than one (1) month nor more than six (6) months; or
- (b) A fine of more than ₱35,000.00 but not exceeding ₱100,000.00.¹⁶

The same circular explicitly provides for its retroactive effect to all pending administrative cases involving the discipline of members, officials, employees and personnel of the Judiciary, such as this case.¹⁷

While Section 20 of the same administrative matter provides that “the Court may impose the penalties of suspension or fine for a period or amount not exceeding double of the maximum prescribed,”¹⁸ its permissive language denotes the consideration this Court may take, with due regard to each case’s circumstances.

In several administrative cases, mitigating circumstances such as acknowledgment of infractions, feeling of remorse, and family circumstances, among other things, play an important role in the imposition of penalties which have merited the leniency of the Court.¹⁹

As We have stated in *Re: Habitual Absenteeism of Mr. Fernando P. Pascual*,²⁰ where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe.²¹ It is not only because of the law's concern for the worker; there is, in addition, their families to consider.²² In said case, Pascual was a Utility Worker II in the Office of the Court Administrator who incurred a total of 21 days of absence during the months of March, April, and May 2005. This Court considered his length of service, medical records, and promises of reform, and imposed a fine of ₱2,000.00 payable in 10 months.²³

On the other hand, the case of *Re: Habitual Absenteeism of Mr. Erwin A. Abdon (Abdon)*,²⁴ Utility Worker II of the OAS, Abdon incurred a total of 31 days of absence during the months of January, February and June 2007. Considering his length of service and promises to reform, the Court imposed a penalty of suspension for one month.

Remarkably, the penalty meted out in the case of *In re: Abdon* was far less punitive despite more absences involved. While the case of *In re: Pascual* concerned marginally fewer absences than in the instant case, the fine of

¹⁶ Rule 140, Section 17 (2), February 22, 2022.

¹⁷ Section 24; *id.*

¹⁸ Section 20; *id.*

¹⁹ *Judge Dayaon v. De Leon*, 680 Phil. 521, 525 (2012). (Citation omitted)

²⁰ 507 Phil. 546 (2005).

²¹ *Id.* at 550.

²² *Id.*

²³ *Id.*

²⁴ 574 Phil. 287 (2008).

₱2,000.00 payable in 10 months is indicative of this Court's inclination to impose a less severe consequence if it would already meet its disciplinary objectives.²⁵ As We have previously discussed in the case of *In re: Pascual*, unemployment brings untold hardships and sorrows on those dependent on the wage-earner.²⁶

Here, Javier's 27 absences occurred during a pandemic that caused disruption to the health and lives of thousands of Filipinos. We note his positive COVID-19 result and claims that his senior family members fell ill with the virus, coupled with the fluctuating and unpredictable community quarantines in his hometown which caused the suspension of public transportation on several occasions.²⁷ We take judicial notice that Tuguegarao City, his hometown, has already been placed under ECQ five times by early August of the year 2021.²⁸ In his written explanation to Atty. Cunanan, Javier begged for understanding, citing the priority he gave his family, and for a chance to redeem himself.

Under Section 20 of A.M. No. 21-08-09-SC, if there are both aggravating and mitigating circumstances present, this Court may offset each other. Here, a perusal by the OAS of respondent's 201 file disclosed that he already incurred two previous administrative sanctions for habitual tardiness: first under A.M. No. 2012-13-SC on October 2, 2012 with a severe warning, and second under A.M. No. 2013-09-SC on July 14, 2015 with suspension for five days. While his previous administrative sanction constitutes an aggravating circumstance, Javier's acknowledgment of his infractions and feeling of remorse, coupled with his family circumstances during the pandemic, operate as mitigating circumstances that serve to offset the aggravating circumstances present.

All the relevant factors considered, We deem it reasonable to impose upon Javier suspension for a period of three months, a penalty within the period imposed by A.M. No. 21-08-09-SC for the administrative offense of habitual absenteeism.

²⁵ See *Re: Habitual Absenteeism of Mr. Fernando P. Pascual*, *supra* note 13, at 550. (Citation omitted)

²⁶ *Id.*

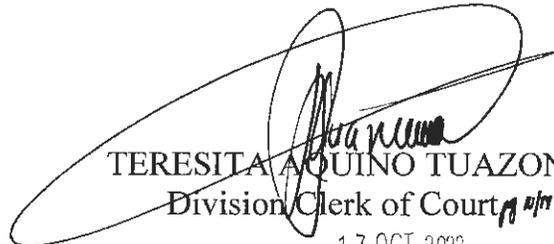
²⁷ *Tuguegarao shifts to ECQ for 10 days*, January 19, 2021. <<https://www.cnnphilippines.com/regional/2021/1/19/Tuguegarao-ECQ.html>> (visited April 29, 2022); *Tuguegarao City stays under ECQ until Feb. 3, January 30, 2021*, <<https://www.cnnphilippines.com/regional/2021/1/30/Tuguegarao-City-ECQ-extended.html>> (visited April 29, 2022); *Tuguegarao placed under 10-day ECQ amid COVID surge*, March 30, 2021 <<https://www.cnnphilippines.com/regional/2021/3/30/Tuguegarao-returns-to-ECQ.html>> (visited April 29, 2022).

²⁸ *Tuguegarao City to be under 10-day ECQ starting August 12*, published August 11, 2021 <https://www.cnnphilippines.com/regional/2021/8/11/Tuguegarao-City-10-day-ECQ.html> (visited April 29, 2022).

FOR THESE REASONS, respondent Antonio L. Javier, Clerk III, Docket and Clearance Division, Legal Office, Office of the Court Administrator, is found **GUILTY** of habitual absenteeism. He is **SUSPENDED for three months** with a **WARNING** that a repetition of the same or similar act will be dealt with more severely.

SO ORDERED.”

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court
17 OCT 2022

FISCAL MANAGEMENT & BUDGET OFFICE (x)
OFFICE OF ADMINISTRATIVE SERVICES (x)
LEAVE DIVISION (x)
Supreme Court, Manila

ANTONIO L. JAVIER (x)
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-and/or-
Docket and Clearance Division
Legal Office, Office of the Court Administrator
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)
LIBRARY SERVICES (x)
[For uploading pursuant to A.M. No. 12-7-SC]

OFFICE OF THE CHIEF ATTORNEY (x)
PHILIPPINE JUDICIAL ACADEMY (x)
Supreme Court, Manila

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