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WHEREFORE, respondent Exequiel C. Rojas is hereby FINED FIVE THOUSAND (₱5,000.00) PESOS and warned that a repetition of the same act or omission will be dealt with more severely.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and *De Leon, Jr., JJ.*, concur.

FIRST DIVISION

[A.M. No. P-99-1285. October 4, 2000]

ATTY. TERESITA REYES-DOMINGO, Senior State Prosecutor, Department of Justice, *complainant, vs.* **BRANCH CLERK OF COURT, MIGUEL MORALES, METROPOLITAN TRIAL COURT, BRANCH 17, MANILA,** *respondent.*

SYNOPSIS

Complainant Atty. Domingo filed a complaint against respondent branch clerk of court charging the latter with dishonesty and grave misconduct. Complainant alleged that respondent, instead of being at his office, was elsewhere on May 10 and May 13, 1996 but respondent did not indicate his absences in his daily time record. Respondent filed a countercomplaint for disbarment against the complainant allegedly for misusing the Katarungan Village's Trust Fund. Pending investigation, respondent filed a manifestation averring that the case be deferred to give them reasonable time to amicably settle their differences.

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As recommended by the OCA, the Supreme Court held that administrative cases cannot be made a subject of amicable settlements; that as a clerk of court, he is required to be a person of competence, honesty and probity since he is imbued with the mandate of safeguarding the integrity of the court and its proceedings; but that instead of being dismissed, he should be fined Five Thousand Pesos for falsification of his daily time record, considering the circumstances of this case and his absences were merely for short periods of time.

SYLLABUS

1. **LEGAL AND JUDICIAL ETHICS; ADMINISTRATIVE COMPLAINT AGAINST ATTORNEYS; COMPLAINT CANNOT BE TERMINATED BY REASON OF DESISTANCE, COMPROMISE, OR LACK OF INTEREST OF COMPLAINANT.** — With regard to the recommended denial of the deferment sought by respondent, the governing rule on this point states in no uncertain terms that "no investigation shall be interrupted or terminated by reason of desistance, *settlement, compromise*, restitution, withdrawal of the charges, or failure of the complainant to prosecute the same." Any person may bring to the Court's attention the misconduct of any lawyer, and action will usually be taken regardless of interest or lack of interest of the complainant if the facts proven so warrant; the power to discipline lawyers, as officers of the court, may not be cut short by a compromise and withdrawal of charges. The Court has consistently adhered to the foregoing rule in a plethora of cases and has continued doing so even in its most recent pronouncements.

2. **ID; ID; CLERKS OF COURT MUST BE PERSONS OF COMPETENCE, HONESTY AND PROBITY.** — A Clerk of Court is an essential and a ranking officer of our judicial system who performs delicate administrative functions vital to the prompt and proper administration of justice. A Clerk of Court's Office is the nucleus of activities both adjudicative and administrative, performing, among others, the functions of keeping the records and seal, issuing processes, entering judgments and orders and giving, upon request, certified copies from the records. Owing to the delicate position occupied by Clerks of Court in the judicial system, they are required to be persons of competence, honesty

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and probity since they are specifically imbued with the mandate of safeguarding the integrity of the court and its proceedings, to earn and preserve respect therefor, to maintain loyalty thereto and to the judge as superior officer, to maintain the authenticity and correctness of court records and to uphold the confidence of the public in the administration of justice. Respondent should be reminded in this regard that the nature and responsibilities of public officers enshrined in the Constitution and oft-repeated in our case law are not mere rhetorical words to be taken lightly as idealistic sentiments, but as working standards and attainable goals that should be matched with actual deeds. Those involved in the administration of justice must live up to the *strictest* standards of honesty and integrity in the public service, much more so Clerks of Court who play a key role in the complement of the court and, thus, can not be permitted to slacken on their jobs under one pretext or another.

3. ID; ID; ID; **RESPONDENT LIABLE FOR FALSIFICATION OF DAILY TIME RECORD; PROPER PENALTY IN CASE AT BAR.** — The Court agrees that respondent is culpable. Indeed, respondent has admitted the wrongdoing complained of ... in his Comment to complainant's supplemental complaint... [His] averments, taken in conjunction with respondent's earlier statements in his comment of March 31, 1997, — where he tried to mislead the Court into believing that he *never* went to the DENR Office in Quezon City, and insisted that his falsified Daily Time Record is the best evidence of proving he was at the MeTC, Branch 80, Muntinlupa City on said date — is a mute but eloquent testimony of his deplorable lack of candor as well as his insolent disregard for the observance of prescribed working hours. It also, more disturbingly, betrays a flawed sense of priorities and, worse, a haughty disdain for his duties and responsibilities which require his presence at his place of work rather than out of it... Considering *the* prevailing circumstances of this case *vis-à-vis* the attendant dishonesty in concealing the same albeit the absence was merely for short periods of time, respondent should be meted a fine of Five Thousand (₱5,000.00) for what practically amounts to a falsification of his daily time record.

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RESOLUTION

YNARES-SANTIAGO, *J.*:

On December 10, 1996, the Office of the Court Administrator (OCA) received an affidavit-complaint from Atty. Teresita B. Domingo[1] charging Branch Clerk of Court Miguel C. Morales[2] with dishonesty and grave misconduct.

Complainant alleges that on May 10, 1996, a Friday, at about 4:00 p.m. instead of being at his office, respondent was at Katarungan Village interfering with the construction of the Sports Complex thereat and that on May 13, 1996, a Monday, respondent again, instead of being at his office, was at the DENR-NCR Office at Quezon City. These absences were allegedly not indicated by the respondent in his daily time record for the said month. Neither did the respondent file any vacation leave for the corresponding dates he was alleged to be absent.

In a Resolution dated February 3, 1997,[3] the Court required the respondent to comment on the complaint within ten (10) days from notice.

On March 31, 1997, respondent filed his Comment With Counter-Complaint For Administrative Penalty of Disbarment[4] denying the allegations imputed to him by the complainant. In a Resolution dated June 11, 1997,[5] the Court referred the case to the OCA for evaluation.

In compliance with the Court's directive, the OCA subsequently submitted a Memorandum dated July 17 1997[6]

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[1] *Rollo*, p. 1.

[2] Formerly detailed with Branch 80, Metropolitan Trial Court, Muntinlupa City.

[3] *Rollo*, p. 12.

[4] *Ibid.*, pp. 14-40.

[5] *Id.*, p. 111.

[6] *Id.*, pp. 112-115.

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finding respondent guilty of dishonesty and grave misconduct. Considering that the act complained of was respondent's first offense, the OCA recommended a fine of One Thousand Pesos (₱1,000.00) with stern warning that a commission of a similar offense would cause his dismissal.

Before the Court could act on the OCA's recommendation, complainant filed a supplemental complaint,[7] submitting in support thereof the letters of Forest Management Services Regional Director Rogelio O. Andrada[8] dated June 4, 1997 addressed to respondent informing him that an allegedly illegal tree-cutting incident complained of by respondent had the permission of the Forest Management Services and that respondent was actually aware of this. Also attached to the supplemental complaint was a tree-cutting permit dated May 4, 1996[9] issued by Clarence I. Baguilat addressed to complainant which bore the signature of respondent thus showing that the latter was aware that the DOJ had been allowed to cut trees at Katarungan Village and that he was at the DENR Office in Quezon City on May 13, 1996.

On October 8, 1997, respondent filed a comment[10] where he admitted having been at the DENR Office on the 13th of May 1996. He, however, argued that he "did not reflect the correct time in his DTR and left the office at 12:00 p.m. and returned to Muntinlupa at 2:00 p.m. because the one (1) hour is unsubstantial and unprejudicial to the service." He further contended that even if he was indeed absent from the office, "he could have charged the 13 May 1996 [absence] from his compulsory five (5) days forced leave." Finally, respondent claimed that Clerks of Court are not required to keep daily time records.

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[7] *Id.*, pp. 116-117.

[8] *Id.*, p. 120.

[9] *Id.*, p. 118.

[10] *Id.*, pp. 124-134.

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In the same comment, respondent filed a counter complaint for disbarment against complainant for allegedly abusing her position as OIC of the DOJ Housing Committee's Technical Staff by allegedly participating and conspiring in the misuse and mismanagement of the Katarungan Village's Trust Fund and forcefully removing the Bulletin Board erected by the homeowners' association of the subdivision.

In a Resolution dated November 12, 1997,[11] the Court, among others, referred the supplemental complaint and comment to the OCA for evaluation, report and recommendation within sixty (60) days from notice.

Pursuant to the foregoing resolution, the OCA thereafter submitted a Memorandum dated January 21, 1998.[12] Considering that the supplemental complaint and the comment thereto raised no new issues, the OCA reiterated its recommendation in its earlier Memorandum of July 17, 1997 with the addition that the counter-complaint of respondent for disbarment of the complainant be referred to the Office of the Bar Confidant for appropriate action.

In a Resolution dated March 18, 1998,[13] the Court resolved to: a.] require the parties to manifest if they are submitting the case for resolution on the basis of the pleadings already filed within thirty (30) days from notice; and b.] refer the counter-complaint to the Department of Justice for appropriate action.

On April 27, 1998 complainant filed a Manifestation[14] expressing her willingness to submit the case for resolution on the basis of the pleadings already filed. For his part, respondent filed a Manifestation and Motion on June 16, 1998[15] averring that complainant had met with respondent for a possible settlement

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[11] *Id.*, p. 175.

[12] *Id.*, pp. 177-178.

[13] *Id.*, p. 180.

[14] *Id.*, p. 181.

[15] *Id.*, p. 185.

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of their dispute and prayed that action on the case be deferred to give the parties a reasonable time to amicably settle their differences.

In response to the foregoing manifestation and motion of respondent, the OCA, in a Memorandum dated September 23, 1998,[16] recommended, among others, the denial thereof reasoning "that administrative cases cannot be made a subject of compromise agreements or amicable settlements. The reason for the rule is simple: administrative cases are imbued with public interest. Hence, whenever a public servant falls short of his/her duties, the same is not considered as a transgression against the person directly affected by such misdeed only but is considered as an offense against the public in general as well. Consequently, this administrative matter can proceed notwithstanding the settlement of the issue between the complainant and the respondent. The Court has nothing to do with the personal rift between them. Our concern is to protect the dignity of the judiciary and protect the public from persons who are unfit for public service such as respondent."

Acting on the foregoing recommendation of the OCA, the Court, in a Resolution dated November 18, 1998,[17] required respondent to manifest whether he is willing to submit the case on the basis of the pleadings filed within ten (10) days from notice.

On February 17, 1999, respondent manifested[18] his willingness to submit the above-captioned case for resolution on the basis of the pleadings filed together with the *Sangbahayang Katarungan, Inc.* (SKI), the homeowners' association of the Katarungan Village, Muntinlupa City. Respondent additionally prayed that counter-complaint for disbarment against complainant which had not been acted upon by the DOJ for almost a year be initiated.

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[16] *Id.*, pp. 189-193.

[17] *Id.*, p. 194.

[18] *Id.*, p. 199.

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With regard to the recommended denial of the deferment sought by respondent, the governing rule on this point states in no uncertain terms that "no investigation shall be interrupted or terminated by reason of desistance, *settlement, compromise,* restitution, withdrawal of the charges, or failure of the complainant to prosecute the same."[19] Any person may bring to the Court's attention the misconduct of any lawyer, and action will usually be taken regardless of interest or lack of interest of the complainant if the facts proven so warrant; the power to discipline lawyers, as officers of the court, may not be cut short by a compromise and withdrawal of charges.[20]

The Court has consistently adhered to the foregoing rule in a plethora of cases and has continued doing so even in its most recent pronouncements. In *Orlando Lapena v. Jovito Pamarang,*[21] the Court said that:

The withdrawal of a complaint for lack of interest of a complainant does not necessarily warrant the dismissal of an administrative complaint.[22] *The Court cannot be bound by the unilateral decision of a complainant to desist from prosecuting a case involving the discipline of parties subject to its administrative supervision.*[23] *The need to maintain the faith and confidence of our people in the government and its agencies and instrumentalities demands that proceedings in administrative cases against public officers and employees should not be made to depend on the whims and caprices of complainants who are, in a real sense, only witnesses.*[24]

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[19] Rule 139-B, Section 5, Revised Rules of Court; *Tejada v. Hernando*, 208 SCRA 517 [1992].

[20] *Bolivar v. Simbol,* 16 SCRA 623 [1966], citing *Katalbas v. Tupas,* Admin. Case No. 328, 30 April 1959 and *In re Davies,* 39 American Reports, 729, 731.

[21] A.M. No. P-00-1362, 15 February 2000, pp. 4-5.

[22] *Dagsa-an v. Conag,* 290 SCRA 12 [1998].

[23] *Zamora v. Jumamoy*, 238 SCRA 587 [1994].

[24] *Sy v. Academia,* 198 SCRA 705 [1991].

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The later case of *Executive Judge Pacifico S. Bulado v. Domingo Tiu, Jr.,*[25] more pointedly stated that —

> While complainant in this case may have forgiven respondent, this Court, charged as it is with enforcing discipline in the judiciary, cannot simply close its eyes to respondent's acts of extreme intransigence. *Withdrawal of the complaint will not free respondent from his administrative liability,*[26] *particularly because administrative proceedings are imbued with public interest, public office being a public trust.*[27]

The need to maintain the faith and confidence of the people in the government, its agencies and its instrumentalities requires that proceedings in administrative cases should not be made to depend on the whims and caprices of the complainants who are, in a real sense, only witnesses therein.[28] The court cannot be bound by the unilateral act of a complainant in a matter that involves its disciplinary authority over all employees of the judiciary; otherwise, our disciplinary power may be put to naught.[29]

The foregoing dicta were reiterated still much later, in *Johnny Gomez v. Rodolfo A. Concepcion,*[30] where the Court added that "[t]he apparent lack of interest of herein complainant to pursue the matter will not be enough to warrant the dismissal of the case *since the records on hand could amply show the culpability of respondent* for which he should be held administratively liable."

Radically changing its benevolent stance in its July 17, 1997 Memorandum where it merely recommended the imposition on respondent of a fine of One Thousand Pesos (₱1,000.00), with a stern warning that a commission of similar offenses will cause

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[25] A.M. No. P-96-1211, 31 March 2000, pp. 5-4.

[26] *Estreller v. Manatad, Jr.*, 268 SCRA 608 [1997].

[27] *Gacho v. Fuentes, Jr.*, 291 SCRA 474 [1998].

[28] *Estreller v. Manatad, supra; Gacho v. Fuentes, supra.*

[29] *Sandoval v. Manalo,* 260 SCRA 611 [1962].

[30] A.M. No. P-98-1283, 9 May 2000, pp. 4-5.

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his dismissal from the service, the OCA, in its September 23, 1998 Memorandum, now recommends respondent's dismissal from the service with forfeiture of all benefits due him and with prejudice to his re-employment to any government agency or instrumentality including government-owned and controlled corporations, reasoning that—

As we have pointed out in our memorandum dated 17 July 1997, respondent is manifestly guilty of dishonesty and misconduct for utilizing office hours in pursuing his personal business on 13 May 1996.

In addition to the foregoing conclusion, we wish to invite the attention of the Honorable Court to the remarks of the respondent in his pleadings which, in our opinion, should warrant a severe sanction considering that the same is wittingly committed against the Honorable Court in order to escape responsibility.

In his comment on 31 March 1997, respondent tried to mislead the Court into believing that he never went to the DENR Office at Quezon City and insisted that his Daily Time Record is the best evidence of proving that he was at the MeTC, Branch 80, Muntinlupa City on the said date. But when complainant furnished us with a photocopy of the logbook of DENR for the said date, respondent made a turnabout in his declarations. He now alleges that although he was there, he only used an hour of the regular eight-hour work prescribed by the Civil Service. He was even very presumptuous in declaring that the one hour lost is "unsubstantial and unprejudicial to the service."

To aggravate the situation further, respondent, in his 8 October 1997 comment, alleged that he left his office at 12:00 nn. and returned thereto at 2:00 p.m. But a perusal of the photocopy of the logbook submitted by the complainant reveals that respondent arrived at the DENR Office at 3:00 p.m.

It is quite clear from the facts presented that respondent has the habit of falsifying his Daily Time Record and for lying in order to save his skin. And in so doing, he does not feel any remorse at all because of his misplaced belief that robbing the government of an hour in the services rendered is inconsequential and will not prejudice public service.

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A public office is a public trust. Public officers and employees must at all times be accountable to the people, *serve them with utmost responsibility, integrity, loyalty and efficiency,* act with patriotism, justice, and lead modest lives.

Clearly, respondent failed to measure up to the above standards fixed by the Constitution. His acts did not simply constitute dishonesty, but gross dishonesty not only against the public but against the Court as well. Surely, such conduct is very unbecoming of a court personnel.

Under the Civil Service Rules, dishonesty and misconduct, though committed for the first time only by a public servant, has a corresponding penalty of dismissal. We find justification to recommend the penalty of dismissal of the respondent in this case.

The Court agrees that respondent is culpable. Indeed, respondent has admitted the wrongdoing complained of when he averred, *inter alia,* in his Comment to complainant's supplemental complaint that —

6. Respondent in his honest belief and good faith, *did not reflect the correct time in his DTR* and he left the office at 12:00 p.m and return (*sic*) to Muntinlupa at 2:00 p.m *because the one (1) hour is unsubstantial and unprejudicial to the service.*

xxx xxx xxx

8. If respondent was indeed absent from the office and never performed his duties and responsibilities, he could have charged the May 13, 1996 [absence] from his compulsory five (5) days forced leave, which is deductible whether or not such leaves be consumed and applied. Diligently, respondent had a perfect attendance from November 1995 to August 1997, if his calculation is correct.

9. In addition, Clerks of Courts (*sic*) are not required to keep daily time records of attendance (Ruling of the Commissioner of Civil Service, 1st Indorsement, 7 November 1970, re proper interpretation of Civil Service Rule XV, Sec. 4).[31]

The foregoing averments, taken in conjunction with respondent's earlier statements in his comment of March 31,

[31] *Id.*, p. 126.

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1997, — where he tried to mislead the Court into believing that he *never* went to the DENR Office in Quezon City, and insisted that his falsified Daily Time Record is the best evidence of proving he was at the MeTC, Branch 80, Muntinlupa City on said date — is a mute but eloquent testimony of his deplorable lack of candor as well as his insolent disregard for the observance of prescribed working hours. It also, more disturbingly, betrays a flawed sense of priorities and, worse, a haughty disdain for his duties and responsibilities which require his presence *at* his place of work rather than out of it.

A Clerk of Court is an essential and a ranking officer of our judicial system who performs delicate administrative functions vital to the prompt and proper administration of justice.[32] A Clerk of Court's Office is the nucleus of activities both adjudicative and administrative,[33] performing, among others, the functions of keeping the records and seal, issuing processes, entering judgments and orders and giving, upon request, certified copies from the records.[34]

Owing to the delicate position occupied by Clerks of Court in the judicial system, they are required to be persons of competence, honesty and probity since they are specifically imbued with the mandate of safeguarding the integrity of the court and its proceedings, to earn and preserve respect therefor, to maintain loyalty thereto and to the judge as superior officer, to maintain the authenticity and correctness of court records and to uphold the confidence of the public in the administration of justice.[35]

Respondent should be reminded in this regard that the nature and responsibilities of public officers enshrined in the Constitution

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[32] *Re: Report on the Judicial Audit Conducted in the RTC, Branches 29 and 59, Toledo City*, 292 SCRA 8 [1998], citing *Juntilla v. Calleja*, 262 SCRA 291 [1996].

[33] *Basco v. Gregorio*, 245 SCRA 614 [1995].

[34] *Court of Appeals v. Escalante*, 277 SCRA 331 [1997], citing *Angeles v. Bantug*, 209 SCRA 413 [1992] and *Juntilla v. Calleja, supra.*

[35] *Marasigan v. Buena*, 284 SCRA 1 (1998).

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and oft-repeated in our case law are not mere rhetorical words to be taken lightly as idealistic sentiments, but as working standards and attainable goals that should be matched with actual deeds.[36] Those involved in the administration of justice must live up to the *strictest* standards of honesty and integrity in the public service,[37] much more so Clerks of Court who play a key role in the complement of the court and, thus, can not be permitted to slacken on their jobs under one pretext or another.[38]

The Court has consistently held that the nature of work of those connected with an office charged with the dispensation of justice, from the presiding judge to the lowest clerk, requires them to serve with the highest degree of efficiency and responsibility, in order to maintain public confidence in the judiciary.[39] In sanctioning errant officers and employees involved in the administration of justice, the Court succinctly stated only recently in *Executive Judge Leandro T. Loyao, Jr. v. Louciano P. Armecin, et al.*,[40] "Since the administration of justice is a sacred task, the persons involved in it ought to live up to the strictest standard of honesty, integrity and uprightness.[41] It bears stressing once again that public service requires utmost integrity and the strictest discipline possible of every public servant. A public office is a public trust that enjoins all public officers and employees, particularly those serving in the judiciary to respond

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[36] *RTC Makati Movement Against Graft and Corruption v. Dumlao*, 247 SCRA 108 [1995].

[37] *Solidbank Corporation v. Capoon*, 289 SCRA 9 [1998], citing *Mejia v. Pamaran*, 160 SCRA 457 [1988].

[38] *Re: Report on the Judicial and Financial Audit of RTC, Br. 4, Panabo, Davao Del Norte*, 287 SCRA 510 [1998], citing *Callejo, Jr. v. Garcia*, 206 SCRA 491 [1992].

[39] *Re: Report on the Judicial Audit Conducted in RTC, Br. 82, Odiongan, Romblon*, 292 SCRA 1 [1998], citing *Orfila v. Quiroz*, 272 SCRA 324 [1997].

[40] A.M. No. P-99-1329, 1 August 2000, pp. 5-6.

[41] *Anonymous v. Geverola*, 279 SCRA 279 [1997], citing *Basco v. Gregorio*, 245 SCRA 614 [1995].

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to the highest degree of dedication often *even beyond personal interest.*"[42] It must be remembered in this regard that —

> . . . the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women, from the judge to the least and lowest of its personnel, hence, it becomes the imperative sacred duty of each and every one in the court to maintain its good name and standing as a true temple of justice.[43]

All too often, this Court has declared that any act which falls short of the exacting standards for public office, especially on the part of those expected to preserve the image of the judiciary shall not be countenanced.[44] To reiterate, public office is a public trust. Public officers must at all time be accountable to the people, serve them with the utmost degree of responsibility, integrity, loyalty and efficiency.[45] Needless to state, respondent, in his misplaced sense of loyalty and responsibility to his co-homeowners rather than to his sworn judicial duties and obligations, acted in disregard of such standards. Furthermore, respondent's act of trying to justify himself for acting the way he did by picturing complainant as not being faultless herself, going to the extent of initiating a counter-complaint for disbarment, is foolish and unethical.[46]

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[42] *Re: Report of Senior Chief Staff Officer Antonina A. Soria*, 299 SCRA 63 [1998]; citing *Code of Ethical Standards for Public Officers and Employees; Report on Audit and Physical Inventory of the Records of Cases in MTC of Peñaranda, Nueva Ecija*, 276 SCRA 257 [1997], reiterating *JDF Anomaly in the RTC of Ligao, Albay*, 255 SCRA 221 [1996] and *Gamo v. Leonen*, 232 SCRA 98 [1994].

[43] *Antonio Yu-Asensi v. Judge Francisco D. Villanueva, MTC, Branch 36, Quezon City*, A.M. No. MTJ-00-1245, 19 January 2000, p. 18, citing *Re: Report on Audit and Physical Inventory of the Records of Cases in MTC of Penaranda, Nueva Ecija*, 276 SCRA 257 [1997], citing *Miro v. Tan*, 235 SCRA 400 [1994], citing *Recto v. Raulis*, 70 SCRA 438 [1976].

[44] *Re: Absence without Official Leave (AWOL) of Antonio Macalintal, Process Server, Office of the Clerk of Court*, A.M. No. 99-11-06-SC, 15 February 2000, p. 4.

[45] *Ibid.*, citing *Rangel-Roque v. Rivota*, 302 SCRA 502 [1999], citing *Gamo v. Leonen, supra.*

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In *Office of the Court Administrator v. Sheriff IV Julius G. Cabe,* RTC, Branch 28, Catbalogan, Samar,[47] the Court said:

Time and again, we have emphasized the heavy burden and responsibility which court personnel are saddled with in view of their exalted positions as keepers of the public faith. They must be constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. As we have held in the case *of Mendoza v. Mabutas*,[48] this Court condemns and would never countenance such conduct, act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the Judiciary.

While the Court is in accord with the findings of the OCA that respondent should indeed be punished for his malfeasance, the Court finds the recommended penalty for what is admittedly a first offense too severe a sanction for the act complained of. That being a first offense is a mitigating circumstance in respondent's favor has been settled by controlling case law on the matter.[49]

The crux of the case involves the charge of respondent's dishonesty in not reflecting the correct time on his daily time record on the dates complained of.

Under pertinent rules, "unauthorized absences are punishable by suspension of six months and one day to one year for the first offense, and the penalty of dismissal for the second offense"[50] with the degree of absenteeism and tardiness which

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[46] *Sy v. Cruz*, 250 SCRA 639 [1995].

[47] A.M. No. P-96-1185. 26 June 2000, p. 12.

[48] 223 SCRA 411 [1993], citing *Sy v. Academia*, 198 SCRA 705 [1991].

[49] *OCA v. Panganiban*, 277 SCRA 499 [1997], citing *Report on the Judicial Audit and Physical Inventory of the Records of Cases in MTCC-Br. 2, Batangas City*, 248 SCRA 36 [1995]; *Re: Judge Fernando Agdamag, supra.*

[50] *Betguen v. Masangcay,* 238 SCRA 475 [1994].

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would merit the supreme penalty of dismissal characterized as *frequent, habitual and unauthorized.*[51] Under Civil Service Commission Memorandum Circular No. 4, Series of 1991, an officer or employee of the civil service shall be considered 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.[52]

It need not be overemphasized, given the foregoing yardsticks, that respondent's malfeasance can neither be classified as frequent nor habitual. Be that as it may, Section II of Administrative Circular No. 2-99 entitled *"Strict Observance Of Working Hours And Disciplinary Action for Absenteeism And Tardiness"* lays down the degree of stringency which must be adopted in the determination of the proper sanctions to be imposed, *viz*:

> II. Absenteeism and tardiness, *even if such do not qualify as "habitual" or "frequent"* under Civil Service Commission Memorandum Circular No. 04, Series of 1991, *shall be dealt with severely*, and any falsification of daily time records to cover up for such absenteeism and/or tardiness shall constitute gross dishonesty or serious misconduct.

Considering the prevailing circumstances of this case *vis-a-vis* the attendant dishonesty in concealing the same albeit the absence was merely for short periods of time, respondent should be meted a fine of Five Thousand (₱5,000.00) for what practically amounts to a falsification of his daily time record.

WHEREFORE, in view of all the foregoing, respondent Branch Clerk of Court Miguel C. Morales, Metropolitan Trial Court, Branch 17, Manila, is hereby FINED Five Thousand

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[51] *OCA v. Grecia*, 246 SCRA 139 [1995]; *Municipality of Casiguran, Quezon v. Morales*, 61 SCRA 13 [1974].

[52] *Re: Absence without Official Leave (AWOL) of Antonio Macalintal, Process Server, Office of the Clerk of Court*, A.M. No. 99-11-06-SC, 15 February 2000, p. 3.

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(₱5,000.00) Pesos and *STERNLY WARNED* that the commission of similar offenses will be dealt with more severely.

SO ORDERED.

Davide, Jr., C.J., Puno, Kapunan, and *Pardo, JJ.*, concur.

FIRST DIVISION

[G.R. No. 127405. October 4, 2000]

MARJORIE TOCAO and WILLIAM T. BELO, *petitioners, vs.* **COURT OF APPEALS and NENITA A. ANAY,** *respondents.*

SYNOPSIS

For having been excluded from the partnership "Geminesse Enterprises," Nenita Anay brought a complaint for sum of money with damages against Marjorie D. Tocao and William Belo before the Regional Trial Court of Makati. In their answer, Tocao and Belo asserted that Geminesse Enterprises was the sole proprietorship of Tocao and that Anay merely acted as Marketing Demonstrator of Geminesse. Thus, Tocao and Belo theorized that Anay's complaint which pertains to her compensation or dismissal, should have been lodged with the Department of Labor. At the pre-trial, the parties defined as the main issue, the question of whether or not Anay was a partner of Tocao and Belo. The trial court ruled that she was.

Tocao and Belo admitted that Anay had the expertise to engage in the business of distributorship of cookware. Anay contributed such expertise to the partnership and, hence, under the law, she was the industrial or managing partner. It was through her reputation that the partnership was able to open the business of distributorship; it was through the same efforts that the business was propelled to financial success. Moreover,