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EN BANC

[A.M. No. P-98-1284. March 30, 2000]

JUDGE ABRAHAM D. CAÑA, *complainant, vs.* **ROBERTO B. GEBUSION, Sheriff IV, Regional Trial Court, Branch 58, San Carlos City, Negros Occidental,** *respondent.*

SYNOPSIS

Prior to 1994, respondent Sheriff often reported to the office with the smell of liquor in his breath and several times drunk and would easily pick trouble with anybody. On November 8, 1995, he filed an application for indefinite leave of absence in a half-size yellow pad, which was disapproved by the Branch Clerk of Court. Nonetheless, he went on leave for 5 months and again was absent without proper leave from June 1, 1998 to November 12, 1998. On May 25, 1998, during the election gun ban period, respondent was arrested while brandishing an unlicensed cal. .357 revolver. These became the bases of an administrative complaint filed against him by complainant. The complaint was withdrawn for the time being by complainant upon respondent's assurance that he will rehabilitate himself and to allow him to complete the 20-year service to qualify him to retire. Nevertheless, respondent did not reform but reverted to his habits. Thus, the revival of the complaint.

As an officer of the court, respondent should set an example for obedience to laws, not lawless conduct.

Habitual drunkenness does not necessarily warrant dismissal from the service except where the employee has become notoriously undesirable, has rendered him physically and mentally incapacitated to continue his present position, and caused strained relationship with his co-employees.

Self-restraint and civility are expected of civil service employees, and fighting with co-employees during office hours reflects adversely on the image of the judiciary. It discourages respect for the court.

Absence without leave for a prolonged period of time constitutes conduct prejudicial to the best interest of public

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service and justifies dismissal and forfeiture of benefits with prejudice to re-employment in the government.

Respondent was dismissed from the service with forfeiture to re-employment in any branch of the government.

SYLLABUS

1. **CONSTITUTIONAL LAW; SUPREME COURT; ADMINISTRATIVE SUPERVISION OVER COURT PERSONNEL; HABITUAL DRUNKENNESS DOES NOT NECESSARILY WARRANT DISMISSAL; EMPLOYEE IN CASE AT BAR HAS BECOME NOTORIOUSLY UNDESIRABLE BECAUSE OF DRUNKENNESS.** — While habitual drunkenness does not necessarily warrant dismissal from the service, we find that respondent has become notoriously undesirable and that his drinking has turned into a vicious habit which renders him physically and mentally incapacitated to continue in his present position as Sheriff IV. Not only has his habit hindered the proper performance of his duties, it has also caused a strain in his relationship with his co-employees. Once, while he was drunk, respondent picked a petty quarrel with one Julieta C. Moreno, utility worker of Branch 57, over the distribution of balloons during a fluvial parade. On another occasion, respondent went to court drunk and refused to leave the office until Atty. Mila Yap, the Branch Clerk of Court talked to him. He has thus become a disruptive presence in the courtroom.

2. **ID.; ID.; ID.; FIGHTING WITH CO-EMPLOYEES DURING OFFICE HOURS DISCOURAGES RESPECT FOR COURT.** — Self-restraint and civility are expected of civil service employees. Fighting with co-employees during office hours reflects adversely on the image of the judiciary. It discourages respect for the court.

3. **ID.; ID.; ID.; ABSENCE WITHOUT LEAVE FOR PROLONGED PERIOD JUSTIFIES DISMISSAL FROM SERVICE.** — Absence without leave for a prolonged period of time constitutes conduct prejudicial to the best interest of public service and justifies the dismissal of an employee and the forfeiture of benefits with prejudice to re-employment in the government.

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4. **REMEDIAL LAW; EVIDENCE; QUANTUM OF EVIDENCE REQUIRED IN ADMINISTRATIVE CASES AND IN CRIMINAL CASES.** — The quantum of evidence required in administrative cases is only substantial evidence, while in criminal cases proof beyond reasonable doubt is required. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. For another, the purpose of the administrative proceedings is mainly to protect the public service, based on the time-honored principle that a public office is a public trust. On the other hand, the purpose of the criminal prosecution is the punishment of crime.

5. **CONSTITUTIONAL LAW; SUPREME COURT; ADMINISTRATIVE SUPERVISION OVER COURT PERSONNEL; POSSESSION OF FIREARM WITHOUT LICENSE CONSTITUTES SERIOUS MISCONDUCT.** — On the basis of the evidence in the records, the Court is convinced that respondent, by possessing a firearm without the necessary license, committed serious misconduct. As an officer of the Court, respondent should set the example for obedience to the law, not lawless conduct. It is obvious respondent does not appreciate the importance of his position in the judicial system and the immense responsibility that goes with it.

D E C I S I O N

***PER CURIAM*:**

This is a complaint filed by Judge Abraham D. Caña of the Regional Trial Court, Branch 58, San Carlos City, charging Roberto B. Gebusion, Sheriff IV of the same court, with violation of the Civil Service Law (P.D. No. 807), the Firearms Law (P.D. No. 1866), and the Omnibus Election Code (B.P. Blg. 881), as amended. More specifically, respondent sheriff is accused of the following:

1. Habitual drunkenness (No. 15)
2. Misconduct (No. 5)
3. Going on indefinite leave of absence without prior approval of the immediate chief in violation of existing Civil Service Law and Rules (No. 12)

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4. Conduct prejudicial to the best interest of the service (No. 27)

5. Loafing or frequent or unauthorized absences during office hours (in connection with his compulsive drinking habit) (No. 14)

6. Mental incapacity due to vicious (drinking) habit (No. 19)

7. Being notoriously undesirable (No. 6), by

   a. his habitual drunkenness which has become [worse] in the course of time, which is of common and public knowledge;

   b. his picking needless quarrel with his co-employees when he is drunk;

   c. by his not honoring his word:

      — he tendered his irrevocable resignation in a letter dated February 16, 1996, effective said date according to him in said letter but he did not actually resign,

      — he requested in a letter dated August 05, 1996 addressed to the undersigned complainant, to be allowed to complete twenty (20) years of service as he told the undersigned that he would retire upon having rendered 20 years of service to the government to which the undersigned acceded but after having completed his 20 years of service, he did not retire;

      — In a letter, dated August 18, 1996 addressed to the undersigned complainant, he requested to be allowed to reconstruct his life by giving him his Christian blessing to pick up his broken pieces and form into one Bebot Gebusion. The undersigned granted his request by not pressing his administrative charge against him but he did not do what he requested to be allowed to do, instead his drinking habit became [worse] so much so that his health even deteriorated where he became very thin and emaciated as of this time;

      — In a letter, dated November 27, 1995, written by respondent, with the written conformity of his sisters Remia and Rafaelita Gebusion, he apologized for his having been drunk on November 7, 1995. The undersigned

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pardoned him but he kept on repeating the shameful habit again and again.

— All under Sec. 46(b), Civil Service Law.[1]

In addition, respondent is accused of carrying a cal. .357 revolver without a license and of threatening to kill complainant for having filed the above charges. Complainant prays that respondent be placed under preventive suspension considering his violent nature and the grave danger he posed to the safety of other employees of the court, most of whom were women.[2]

Complainant, through his Clerk of Court, Atty. Mila D. Yap, submitted (a) certified true copies of two informations,[3] docketed as Criminal Case Nos. 1596 and 1597, against respondent Roberto Gebusion for violation of sec. 261(q) of the Omnibus Election Code and for Illegal Possession of Firearms under Presidential Decree No. 1866, respectively; (b) the affidavit[4] of Police Officer III Benedicto P. Fajardo who arrested respondent for possession of a firearm without the requisite permit; (c) affidavit[5] of Neil Escala, driver of a PNP Patrol Vehicle, who accompanied PO3 Fajardo in arresting respondent; and (d) the warrants of arrest[6] issued against respondent as accused in Criminal Case Nos. 1596 and 1597.

In its resolution, dated November 16, 1998, the Court referred this case to the Hon. Roberto S.A. Javellana, Executive Judge, Regional Trial Court, San Carlos City, for investigation, report, and recommendation, and ordered the immediate suspension of respondent pending the investigation of his case.[7] However,

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[1] *Rollo*, pp. 2-3.

[2] *Id.*, pp. 29-30.

[3] Annexes A and B.

[4] Annex C.

[5] Annex D.

[6] Annexes E and F.

[7] *Rollo*, p. 98.

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on January 5, 1999, Judge Javellana inhibited himself from conducting an investigation due to close association with the complainant and personal knowledge of the facts of the case.[8] Hence, the matter was referred to Executive Judge Edgar V. Garvilles of the Regional Trial Court of Bacolod City. An investigation was thereafter held, and, on July 12, 1999, Executive Judge Garvilles submitted his report stating:

It appears from the copious evidence presented by complainant that since before 1994, respondent was already overly indulged in alcohol which resulted in some form of trouble involving him in RTC-Branch 58 of San Carlos City, Negros Occidental. For causing such trouble, respondent submitted a handwritten letter of apology dated November 16, 1994 (Exh. "A-10") duly signed by him (Exh. "A-10-A") to Judge Caña saying "I have examined myself and my conscience thoroughly and I admit (underlined) that I have offended you & members of Branch 58, Judiciary Family of what I have done in the past few weeks and also other people in the Hall of Justice." He attributed his "*faux pas*," among others, to "my drinking habit, & etc." (Exh "A-10-B").

Notwithstanding his repentance for the incident aforestated, respondent seemed not to have detached himself from his drinking habit for he often reported to his office at Branch 58 "with the smell of liquor in his breath and a good number of times literally drunk" and would easily "pick trouble with anybody." (Affidavit, Exh. "A-3" [direct testimony of Atty. Mila D. Yap]; see also Affidavit, Exh. "A-4" [direct testimony of Atty. Titania A. Leduna]). At about 3:45 in the afternoon of November 7, 1995, respondent entered the Hall of Justice drunk and even proudly exposed his drunken state and shouted at and argued with Julieta C. Moreno of Branch 57 over balloons distributed during a fluvial parade. (Affidavit, Exh "A-5" and testimony of Julieta Moreno). A commotion thus ensued, prompting Judge Caña to summon respondent to his office (chambers) because of the disturbance respondent was making. It took Executive Judge Roberto S. Javellana, who was caused to be called by Judge Caña to his chambers, a hard time, together with complainant, to convince respondent to admit he was drunk and to go home. (Affidavit of Atty. Yap, Exh. "A-3"; testimony of Judge Caña).

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[8] *Id.*, p. 104.

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A day after the November 7, 1995 incident, or on November 8, respondent filed an application for indefinite leave of absence in a half-size yellow pad, with an unrespectful addendum "I hope we understand each other on our office" (Exh. "A-11") which was disapproved by Atty. Mila D. Yap, Clerk of Court of Branch 58 for the following reasons: "(1) Not in an official Civil Service Form No. 6, Series of 1968; (2) For having taken the leave of absence even before the supposed effective date and before my approval; (3) No definite date of return to service stated on this unauthorized form; (4) There are pending works you left behind undone." (Exh. "A-12"). Notwithstanding such disapproval, respondent did not report to the office just the same (Testimony, Judge Caña).

On the foregoing commissions and omissions, plus respondent's loafing or leaving without permission the office during office hours to drink liquor in the make-shift store, under the santol tree at Corner Azcona and Azucena streets. San Julio Subdivision, near the San Carlos City Hall of Justice (testimony of Judge Caña), complainant, on November 14, 1995 initiated and filed an Administrative Complaint for (1) Habitual Drunkenness, (2) Misconduct, (3) Indefinite [L]eave of Absence without Prior Approval of his Immediate Chief, (4) Conduct Prejudicial to the Best Interest of Service, (5) Loafing or Frequent Unauthorized Absences During Office Hours, (6) Mental Incapacity Due to Vicious (drinking) Habit, and (7) Being Notoriously Undesirable (by your habitual drunkenness and your picking needless quarrels with your co-employees when you are drunk), and required respondent to Answer in writing and under oath the administrative complaint within seventy-two (72) hours (Exh. "A").

Respondent, in answer to the foregoing administrative charges, wrote a letter dated November 27, 1995 (Exh. "A-9") with the conformity of his sisters Remia B. Gebusion (Exh. "A-9-B") and Rafaelita G. Joven (Exh. "A-9-C") to Judge Caña, stating "Summing up all the charges you filed against me boils down all to my drinking habit which you thought I am only good in promising but proved nothing." He went on to explain, "The incident that occurred last November 7 arose out of the fact that I was under the influence of alcohol for which reason I sincerely apologize." Concluding, respondent said: "Thank you for pardoning me and giving me a chance for the second time and I am looking forward to a more harmonious working relation with you and the rest of the staff."

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Regarding respondent's application for indefinite leave of absence on November 8, 1995 (Exh. "A-11") which was disapproved by the Branch Clerk of Court Atty. Yap, aforestated respondent disregarded the disapproval and went on five (5) months leave without pay. On August 18, 1996, respondent wrote a letter to Judge Caña to again apologize (Exh. "A-8"). Acknowledging having offended and hurt complainant's feelings, respondent claimed "I have realized it when I am on leave without pay for five (5) months."

According to complainant, he acceded to the request of respondent to be given a second chance, hence, he did not pursue the administrative complaint anymore. But, the promised reform was elusive since respondent persisted in his old ways.

Earlier, or on February 16, 1996, respondent wrote the Honorable Chief Justice of the Supreme Court, thru Hon. Judge Abraham C. Caña, copy furnished Hon. Roberto S. Javellana, RTC-San Carlos Executive Judge (Exh. "A-21"), tendering his "irrevocable resignation effective today, February 16, 1996." The irrevocable resignation letter was forwarded by Judge Caña to the [O]ffice of the Court Administrator of the Supreme Court thru [Atty.] Zenaida N. Elepaño, Deputy Court Administrator, 6th Judicial Region, in the 1st Indorsement dated February 27, 1996 (Exh. "A-22"), recommending immediate acceptance thereof. Consequently, in a [series] of communication to the Check Disbursement Section and Atty. Corazon M. Ordoñez, Director IV, FMBO, Finance Department, Supreme Court (Exhs. "A-23", "A-24", "A-25", "A-26" and "A-27"[)]. Atty. Mila D. Yap returned the pay and other checks of respondent for March 15, 1996 to April 15, 1996.

On August 21, 1996, however, complainant wrote [Atty.] Zenaida N. Elepaño a letter (Exh. "A-32"), attaching thereto the letter of respondent dated November 27, 1995 (Exh. "A-9"), agreeing to respondent's request "that he be allowed to continue his service as Sheriff in Branch 41 or some other branches of the Regional Trial Court in Bacolod City, upon the condition that he will sincerely have himself rehabilitated of his drinking problem for his own good and that of his family and his service to the government. I, therefore, withdraw for the time being the administrative charges that I filed against him."

In his previous letter of August 5, 1996 (Exh. "A-33") to Judge Caña, respondent requested, for retirement purposes, to be allowed to continue his "government service (notwithstanding his resignation

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letter) with another sala stationed at San Carlos City, Negros Occidental or with the Regional Trial Court, Branch 41, Bacolod City." Respondent's request to be detailed to RTC-Branch 41, Bacolod City, was approved by Deputy Court Administrator Zenaida N. Elepaño on December 5, 1996 upon recommendation of Judge Caña, effective September 1, 1996 until March 31, 1997 unless sooner revoked (Exh. "A-35"). Respondent's letter-request dated February 28, 1997 for extension of his detail at the Office of the Clerk of Court, RTC-Bacolod City was favorably indorsed by Judge Caña in the 1st Indorsement dated March 4, 1997 (Exh. "A-34"). Considering that the detail of respondent to the Office of the Clerk of Court, RTC-Bacolod City "expired on 01 September 1997 pursuant to the letter of Hon. Deputy Court Administrator Zenaida N. Elepaño dated 07 March 1997," RTC-Bacolod Executive Judge Anastacio I. Lobaton issued Administrative Order No. 5-97 dated October 1, 1997 directing respondent Gebusion to immediately report to his mother agency, RTC-Branch 58, San Carlos City, Negros [O]ccidental (Exh. "A-29").

The detail of respondent to RTC-Bacolod City supposedly for treatment of his "drinking habit" and other ailments had not resulted in bringing a promised reform in respondent. In a report dated December 17, 1997 (Exh. "A-2"), San Carlos Hall of Justice Head (Security) Guard Manuel L. Leonor enumerated the dates and time when respondent reported to office "drunk": "September 22, 1997 at 2:15 P.M., noted by SG (Security Guard) Manuel L. Leonor; October 10, 1997 at 9:00 A.M., noted by SG Dionisio S. Roma; October 28, 1997 at 2:45 P.M., noted by SG Joel S. Puncion; October 29, 1997 at 3:00 P.M., noted by Joel S. Puncion." At about 9:30 o'clock in the morning of December 19, 1997, respondent came in blue shorts to RTC-Branch 58 "very drunk" and talked in a loud voice with his co-employees in an incoherent manner in the presence of people having official business dealings with the court personnel. This prompted Judge Caña to go out of his chambers and summon a security guard to get respondent out of the office and prevent him from creating further trouble and disturbance. The security guard had a difficult time getting respondent out since the latter was resisting. It took Clerk of Court Atty. Mila D. Yap's gentle persuasion to accompany him out of the office. There was a number of times in the past when respondent came to the office drunk. (Joint Affidavit [Exh. "A-1"], composing the direct testimony of Atty. Yap).

At about 1:00 o'clock in the afternoon of May 25, 1998, while Judge Caña was about to go back to his court in the San Carlos City

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Hall of Justice, he was informed in his boarding house that respondent was heard threatening to kill complainant for doing something that would result in depriving respondent of his means of livelihood (referring to the instant administrative complaint dated December 19, 1997). Respondent was then wielding a revolver. With security guard escorts, complainant proceeded to the Hall of Justice necessarily passing by the *bahay-kubo* snack place under the [s]antol tree at the Corner of Azucena Street and the boulevard, just near the court house where he saw respondent. He could not tell whether respondent also saw him. In the office of complainant, SPO3 Benedicto Fajardo with [c]ivilian driver Neil Escala who responded to a prior call, came. Upon instructions of Judge Caña, the law enforcers repaired to the place indicated and they saw respondent holding a .357 magnum revolver with live ammunitions. Respondent was arrested when he could not show any license to possess or permit to carry a firearm outside of [his] residence since that date, May 25, 1998, was still within the election gun ban period [January 11 to June 10, 1998] for the elections which were held on May 11, 1998 (Additional Administrative Complaint [Exh. "B"], which constitute[s] the direct testimony of complainant; Affidavit of SPO3 Benedicto P. Fajardo, [Exh. "B-1"], forming also his direct testimony). Accordingly, Roberto Gebusion *y* Borromeo, alias "*Bebot,*" was charged before the Regional Trial Court of San Carlos City [which fell in Branch 57] of: Violation of Sec. 261 [Q] of the Omnibus Election Code, as Amended by Sec. 32 of R.A. No. 7166, and as Implemented by Comelec Resolution No. 2946 dated September 16, 1997 in Criminal Case No. RTC-1596 (Information: Exh. "B-3"); and Illegal Possession of Firearm and Ammunitions [Viol. of Sec. 1, P.D. # 1866] in Criminal Case No. RTC-1597 (Information, Exh. "B-8"). A Certification dated August 7, 1998 issued by the Committee on Firearms and Security Personnel of the Commission on Elections showed that Roberto "*Bebot*" Gebusion *y* Borromeo Semillano "did not apply for gun ban exemption . . . for the May 11, 1998 National and Local Elections" (Exh. "B-6"). On the other hand, the Philippine National Police Firearms and Explosive Division, Camp Crame, Quezon City also issued a Certification dated June 17, 1998 that Roberto Gebusion *y* Borromeo alias "*Bebot*" is not licensed/registered firearm holder of any kind and caliber . . ." (Exh. "B-11").

In a communication dated November 12, 1998, the Office of the Administrative Services of the Office of the Court Administrator, thru Caridad M. Walse-Lutero, Assistant Officer-in-Charge, sent

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Judge Caña a letter (Exh. "A-13") requesting service upon Roberto B. Gebusion of the following: (a) letter dated Nov. 12, 1998 (unmarked as exhibit) to Gebusion [coming from same office] stating: "Our record shows that you have been continuously absent from office since June 1, 1998 up to the present without any approved application for leave of absence, a conduct prejudicial to the interest of the service and punishable under the Civil Service Law. You are therefore, directed to explain in writing within five (5) days from receipt hereof, why you should not be dealt with administratively, otherwise, this Office will be constrained to recommend that you be dropped from the roll;" (b) letter dated Sept. 16, 1998 to herein respondent (Exh. "A-14"), informing that he failed to submit his Daily Time Record(s) for "June 1998 DTR to present" and requiring submission within two (2) days from receipt hereof; (c) [t]elegram-letter dated 14 Oct. 1998 (Exh. "A-15") requiring respondent Gebusion to submit "DTRs June 1998 — July 1998" directly to Leave Division OCAD otherwise his salary will be withheld per June 15, 1973 MC #4; (d) memorandum dated Nov. 12, 1998 addressed to The Cashier, The Financial Officer, The Chief Accountant Office, by Hermogena F. Bayani, Officer-in-Charge, Leave Division, Office of the Court Administrator, Attn.: in Charge RTC BR. 58, San Carlos City, Neg. Occ. (Exh. "A-16") to "(P)lease withhold until further notice, the salaries of the following employee(s) as they failed to submit their Daily Time Records/Certificates of Service for the months indicated opposite their names: Mr. Roberto B. Gebusion — non-submission of DTRs for the months of June 1998 to present despite call-up dated 9/16/98 & telegrams dated 10/4/98 & 11/12/98. — AWOL effective June 1, 1998."[9]

The Investigating Judge finds respondent guilty of all the charges against him except those of grave threats, illegal possession of firearms, and violation of the election gun ban and recommends that respondent be suspended for six (6) months without pay.[10] On the other hand, the Office of the Court Administrator, although concurring in the factual findings of the Investigating Judge, recommends that respondent be dismissed

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[9] Report, pp. 3-10; *Rollo*, pp. 114-121.

[10] *Id.*, p. 128.

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from the service, with forfeiture of all retirement benefits and with prejudice to re-employment in any branch of the government, including government-owned and controlled corporations.[11]

The recommendation of the Court Administrator is well taken. On several occasions, he went to work reeking of liquor[12] His drinking habit is, in fact, a matter of public knowledge[13] Respondent himself admits he has a drinking problem. In a letter[14] to complainant, dated November 16, 1994, respondent apologized for his offensive behavior, which he attributed to his son's death, loneliness, family and financial problems, and his drinking habit. On November 27, 1995, he also wrote a letter[15] to complainant, apologizing for his misconduct which he said was due to the fact that he was under the influence of alcohol. More recently, in his Supplemental Answer,[16] dated May 18, 1998, respondent admits that the charge of habitual drunkenness against him is partly true. Indeed, in February 1999, he was found suffering from liver cirrhosis, a disease which is largely caused by alcohol abuse.[17]

All these circumstances lead us to conclude that because respondent has a personal problem, he cannot discharge his duties with competence, efficiency, and courtesy. While habitual drunkenness does not necessarily warrant dismissal from the service, we find that respondent has become notoriously undesirable and that his drinking problem has turned into a vicious habit which renders him physically and mentally incapacitated to continue in his present position as Sheriff IV. Not only has his habit hindered the proper performance of his duties, it has

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[11] Memorandum of the Office of the Court Administrator, p. 8.

[12] TSN, p. 17, May 28, 1999, Exh. A-2.

[13] *Id.*, Exh. A-3.

[14] Exh. A-10-B.

[15] Exh. A-9.

[16] *Rollo*, pp. 31-34.

[17] Exh. A-17 and Exh. A-19.

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also caused a strain in his relationship with his co-employees. Once, while he was drunk, respondent picked a petty quarrel with one Julieta C. Moreno, utility worker of Branch 57, over the distribution of balloons during a fluvial parade.[18] On another occasion, respondent went to court drunk and refused to leave the office until Atty. Mila Yap, the Branch Clerk of Court talked to him.[19] He has thus become a disruptive presence in the courtroom.

Although respondent has shown remorse for his conduct and apologized and promised to undergo rehabilitation for his alcoholism, he has time and again shown himself unable to overcome his addiction to alcohol.

His habits have affected his work and rendered him unfit for public service.[20] Self-restraint and civility are expected of civil service employees. Fighting with co-employees during office hours reflects adversely on the image of the judiciary. It discourages respect for the court.[21]

Respondent has also shown no respect for reasonable office rules. He went on AWOL from the office for five months beginning November 8, 1995.[22] Respondent wrote on a half-sheet of yellow paper[23] his intention to take an indefinite leave of absence beginning November 8, 1995. His application was disapproved, but just the same he went on leave. Respondent admitted this fact in his letter to complainant dated August 18, 1996,[24] but from June 1, 1998 to November 12, 1998, he was again absent without proper leave.[25]

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[18] TSN, pp. 15-17, May 21, 1999.

[19] TSN, p. 20, May 28, 1999.

[20] *Maningas vs. Barcenas,* A.M. No. P-99-1315, Nov. 3, 1999.

[21] *Quiroz vs. Orfila*, 338 Phil. 828 (1997).

[22] Exh. A-11.

[23] Exh. A-11.

[24] Exh. A-8.

[25] Exh. A-16.

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Under no circumstance can such behavior be tolerated. Absence without leave for a prolonged period of time constitutes conduct prejudicial to the best interest of public service and justifies the dismissal of an employee and the forfeiture of benefits with prejudice to re-employment in the government.[26]

Finally, a matter requiring mention is the incident of May 25, 1998 which prompted complainant's additional charges of grave threats, illegal possession of firearms, and violation of the election gun ban. As the Investigating Judge observed:

> It must be borne in mind that the alleged threats against the life of complainant by respondent was not directly made upon complainant personally. Judge Caña asserted in his verified additional charges (forming his direct testimony) that "his landlord told him that some civic-minded citizens sent a messenger to tell him and for him in turn to tell the undersigned that respondent has been heard by them saying that he would kill the undersigned because he was doing something" that could result in respondent being dismissed from service. Neither the person who heard the threats, nor the civic-minded citizens who sent the messenger, nor the messenger himself, nor the landlord who informed Judge Caña of the messenger's message, was presented as witness during the investigation. Judge Caña's declaration on the matter is therefore, to say the least, purely hearsay — quadruple hearsay. It is quite fundamental that hearsay testimony or evidence, whether objected to or not, has no probative value and cannot be given credence (*People vs. Damaso*, 212 SCRA 547; *People vs. Villaviray, et al.*, G.R. No. 105084, Sept. 18, 1996).
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> It may be true that in crimes consisting of threatening another with some future harm, it is not necessary that the offended party was present at the time of the threats; that it is sufficient that the threats, after they had been made in his absence, came to the knowledge of the offended party. But in the instant charge, nobody came forward to claim he heard the threats and the words allegedly uttered by respondent to constitute the threats. For sure, we cannot speculate and make a guesswork. Suffice it to state, the charge for grave threats was not shown by the necessary quantum of substantial evidence.

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[26] *Masadao, Jr. vs. Glorioso*, 345 Phil. 861 (1997).

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The arrest of respondent made by PO3 Fajardo on May 25, 1998, as per said police officer's affidavit (direct testimony), was for illegal possession of firearm and violation of the election gun ban, and not for grave threats. For these couple of offenses, respondent was accordingly charged in court under Criminal Cases Nos. 1596 and 1597, which are now pending before RTC Branch 59, San Carlos City. Despite his being indicted of these criminal offenses in the supplemental charges, respondent, as accused, enjoys the constitutional presumption of innocence, and it would be to the best interest of justice that we hold in abeyance any resolution on these criminal charges until the Regional Trial Court of San Carlos shall have rendered a verdict in the very criminal cases filed before it.[27]

We agree that the evidence is insufficient to prove that respondent really made threats against complainant. We do not agree, however, that resolution of the administrative charges in this case must be held in abeyance while charges of illegal possession of firearm without the requisite license are still pending against him in court. A finding that respondent is administratively liable is not inconsistent with the constitutional presumption of innocence. For one, the quantum of evidence required in administrative cases is only substantial evidence, while in criminal cases proof beyond reasonable doubt is required.[28] Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[29] For another, the purpose of the administrative proceedings is mainly to protect the public service, based on the time-honored principle that a public office is a public trust. On the other hand, the purpose of the criminal prosecution is the punishment of crime.

In this case, it has been proven that while in a store in front of the Hall of Justice, respondent carried a cal. .357 revolver without a license. The arresting officer, PO3 Benedicto Fajardo,

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[27] Investigation Report, pp. 16-17, *Rollo*, pp. 127-128.

[28] *Office of the Court Administrator vs. Diaz*, 303 SCRA 243 (1999).

[29] *Office of the Court Administrator vs. Sumilang*, 271 SCRA 316 (1997).

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testified[30] that respondent was brandishing the gun in the coffee shop and that when he asked respondent for his license to carry the gun, respondent could show none, for which reason he was arrested. Indeed, a certification[31] issued by the Firearms and Explosives Division of the Philippine National Police stated that respondent was not a licensed firearm holder of any kind and caliber. On the other hand, a certification from the Commission on Elections stated that respondent never applied for a gun ban exemption for the May 11, 1998 elections.[32]

On the basis of the evidence in the records, the Court is convinced that respondent, by possessing a firearm without the necessary license, committed serious misconduct [33] As an officer of the Court, respondent should set the example for obedience to the law, not lawless conduct. It is obvious respondent does not appreciate the importance of his position in the judicial system and the immense responsibility that goes with it. As we have stressed in a case:

> At the grassroots of our judicial machinery, sheriffs and deputy sheriffs are indispensably in close contact with the litigants; hence, their conduct should be geared towards maintaining the prestige and integrity of the court, for the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who worked thereat, from the judge to the least and lowest of its personnel; hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a temple of justice.[34]

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[30] TSN, pp. 8-10, May 21, 1999.

[31] Exh. B-11.

[32] Exh. B-6.

[33] Cf. *Manuel vs. Calimag*, A.M. No. RTJ-99-1441, May 28, 1999, citing *In re Impeachment of Horilleno*, 43 Phil. 214 (1922).

[34] *Jerez vs. Paninsuro*, A.M. No. P-99-1286, March 4, 1999 citing *Punzalan-Santos vs. Arquiza*, 244 SCRA 527 (1995).

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Respondent has abused the compassion shown to him. Instead of changing his ways as he promised to do several times, he reverted to his habit, as a dog returns to its vomit. We have, therefore, no other recourse but to remove respondent from his present position as Sheriff IV of the Regional Trial Court, Branch 58, San Carlos City, Negros Occidental.

WHEREFORE, respondent Roberto B. Gebusion, Sheriff IV, Regional Trial Court, Branch 58, San Carlos City is *DISMISSED* from the service, with forfeiture of benefits and with prejudice to his re-employment in any branch or office of the government, including government-owned and controlled corporations.

SO ORDERED.

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