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[A.M. No. P-05-1953. June 8, 2005]
(Formerly OCA IPI No. 00-846-P)

JUDGE MA. THERESA L. DELA TORRE-YADAO, *complainant, vs.* **MARILOU A. CABANATAN, Stenographer III, Regional Trial Court, Branch 38, Maddela, Quirino,** *respondent.*

[A.M. No. P-05-1954. June 8, 2005]
(Formerly OCA IPI No. 00-818-P)

REMEGIA R. PAGADUAN, *complainant, vs.* **MARILOU A. CABANATAN, Stenographer III, Regional Trial Court, Branch 38, Maddela, Quirino,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; WHEN CONSIDERED HABITUALLY ABSENT.— Under Section 23(q), Rule XIV of the Omnibus Rules Implementing Book V of E.O. No. 292, an officer or employee is considered to be habitually absent "if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the Leave Law for at least three (3) months in a semester or at least three (3) consecutive months during the year." Beyond a shadow of doubt, respondent violated this provision, which resulted in her unsatisfactory performance in the office.

2. ID.; ID.; ID.; FREQUENT UNAUTHORIZED ABSENCES OR TARDINESS; PENALTY.— Under Civil Service Resolution No. 991936, dated August 31, 1999, "frequent unauthorized absences, or tardiness in reporting for duty, loafing or frequent unauthorized absences from duty during regular office hours" is classified as a *grave offense*, punishable by suspension for the first offense (6 mos. 1 day to 1 year) or dismissal for the second offense. In view of the resolution in A.M. No. 02-12-716-RTC and the present report of the Investigating Judge, respondent is indeed guilty of repeated violations of Civil Service rules and regulations, for which dismissal is now the fitting penalty.

3. ID.; ID.; ID.; DISGRACEFUL AND IMMORAL CONDUCT; PENALTY.— On several occasions, we have held that an illicit relation is considered disgraceful and immoral conduct which is subject to disciplinary action.

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Under the *Uniform Rules on Administrative Cases in the Civil Service Commission* adopted and approved by the Civil Service Commission in its Resolution No. 991936 dated August 31, 1999, disgraceful and immoral conduct is a grave offense for which a penalty of suspension for six (6) months and one (1) day to one (1) year shall be imposed for the first offense while the penalty of dismissal is imposed for the second offense.

DECISION

***PER CURIAM*:**

These consolidated administrative cases arose from complaints filed against respondent Marilou A. Cabanatan, Stenographer III, Regional Trial Court of Maddela, Quirino, Branch 38.

In a *letter-report*[1] dated March 1, 2000, Judge Ma. Theresa L. Dela Torre-Yadao notified the Office of the Court Administrator (OCA) of respondent's habitual absenteeism, tardiness, falsification of daily time record, serious misconduct, disobedience, gross neglect of duty, and gross immorality.

In a separate verified *complaint*[2] for immorality, Remegia R. Pagaduan charged respondent of unlawfully cohabiting with complainant's husband, Rodney Pagaduan, in Sitio San Marcos, Cabarroguis, Quirino. Complainant Remegia Pagaduan attached to her complaint the copy of her marriage certificate to Rodney Pagaduan.

In her *letter-comment*[3] dated May 12, 2000, respondent admitted that she purposely absented herself for some days in September 1999 out of fear of Judge Yadao who frequently scolded and insulted her. She alleged that Judge Yadao harassed her, withheld her salary, forced her not to log-in her actual time of arrival and, eventually, disallowed her to log-in. Respondent also admitted that she was tardy a few times, but not on all the dates reported, because her residence was located 40 kilometers away from the court and few buses plied the route. Respondent denied falsifying the entries

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[1] *Rollo* (A.M. No. P-05-1953), pp. 1-7.

[2] *Rollo* (A.M. No. P-05-1954), pp. 1-3.

[3] *Supra*, note 1 at 44-51.

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in her daily time record (DTR). For the charge of misconduct, she averred being harassed by the OIC Clerk of Court, who was then intoxicated and did not allow her to borrow the logbook.

In another *letter-comment*[4] dated April 26, 2000, respondent denied having an affair with one Rodney Pagaduan. She claimed that the complainant, Remegia R. Pagaduan, was merely fed false and malicious information by persons who wanted to ruin the respondent, and that the complaint for immorality was just another act of harassment by Judge Yadao.

The Court referred the case to Judge Moises M. Pardo, Executive Judge of the Regional Trial Court of Cabarroguis, Quirino, for investigation, report and recommendation. As found by the Investigating Judge, the Daily Time Records, the Monthly Report of Absences and Tardiness, and the Monthly Report of Employees' Attendance showed that herein respondent was absent for more than 40 days and late numerous times, particularly as follows:

Month	Dates Respondent was Absent	Dates Respondent was Late
February 1999	19, 22, 24, 26	4, 5, 9, 10, 12, 16, 17, 18
September 1999	17, 30	9, 14,16, 20, 22, 24, 27,29
October 1999	1, 14, 19, 21, 25, 26, 27, 28,29	4, 5, 11, 13, 20
November 1999	3, 12, 15, 22, 23, 24, 25, 26	4, 18, 29
December 1999	2, 3, 13, 14, 15, 17, 24, 28	1, 6, 7, 9, 10, 22, 27, 29
January 2000	13, 17, 18, 19, 25, 26, 27, 28	4, 6, 11, 12, 20, 24
February 2000	4, 7, 8, 10, 17, 18, 24, 28	3, 15, 16, 22, 23, 24,29
Total	47	45

[4] *Supra*, note 2 at 6.

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Judge Yadao testified during the investigation that the OIC Clerk of Court informed her that respondent brought the logbook outside the court building without permission, constituting a serious misconduct. She submitted a letter from the Legal Researcher, Will Geer T. Andres, stating that he had not allowed respondent to borrow the logbook.

Judge Yadao confirmed that respondent repeatedly failed to timely submit the transcript of stenographic notes (TSNs) taken in several cases. She presented the memoranda she gave to respondent requiring her to explain why she did not submit the required TSNs.

To support the complaint concerning respondent's immorality, Judge Yadao submitted (1) the marriage certificate of respondent and Maximo Cabanatan, and (2) the hospital's birth records of respondent's youngest child, showing one Rodney Pagaduan as the baby's father. She added that she had gone to the house where respondent and Rodney lived as man and wife.

Noli Pagbilao, Court Process Server, and Norman Ruaboro, former docket clerk of RTC Branch 38, corroborated Judge Yadao's testimony. Noli Pagbilao testified that respondent and Rodney Pagaduan shared the same room in Mangandingay, Cabarroguis, Quirino. There, they sold motorcycle parts. Norman Ruaboro stated that the respondent and Rodney lived together. They co-owned the store for motorcycle parts. Ruaboro said that he often accompanied Rodney Pagaduan to the town market. He said that he believed Rodney fathered respondent's youngest child, because Rodney took care of the baby and because the respondent and her legal husband were estranged, although the case for annulment of their marriage was denied.

Respondent failed to appear and controvert the evidence against her during the investigation for habitual absenteeism and serious misconduct, but she appeared with counsel during the investigation for immorality. She did state in her answer to the verified complaint for immorality, that she had reconciled with her husband, Maximo Cabanatan, for the sake of their children.

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The Investigating Judge found both complaints meritorious and recommended to the OCA respondent's dismissal from the service with forfeiture of her retirement benefits and with prejudice to re-employment in any branch of service of the government.

In its report, OCA stated that, during the pendency of the case for habitual absenteeism and gross misconduct, respondent was dropped from the rolls for having been absent without leave (AWOL) since May 17, 2002, in violation of Section 63, Rule XVI of the Omnibus Rules on Leave,[5] as amended by Resolution 99-1885, and her position was declared vacant in A.M. No. 02-12-716-RTC.[6] The OCA also found respondent guilty on both charges now and recommended corresponding sanctions against her.

We agree with the OCA's recommendation that the respondent be held liable for the charges against her. The report of the Investigating Judge, with the supporting documents, clearly established that respondent was habitually absent and oftentimes late. Respondent gave unsatisfactory explanations for her frequent tardiness and absences without securing prior leave.

Under Section 23(q), Rule XIV of the Omnibus Rules Implementing Book V of E.O. No. 292,[7] an officer or employee is considered to be habitually absent "if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the Leave Law for at least three (3) months in a semester

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[5] SEC. 63. *Effect of absences without approved leave.* — An official or an employee who is continuously absent without approved leave for at least thirty (30) working days shall be considered on absence without official leave (AWOL) and shall be separated from the service or dropped from the rolls without prior notice. He shall, however, be informed, at his address appearing on his 201 files or at his last known written address, of his separation from the service, not later than five (5) days from its effectivity.

. . . . . .

[6] Re: Absence Without Official Leave (AWOL) of Ms. Marilou A. Cabanatan, Court Stenographer III, Regional Trial Court, Maddela, Quirino, Branch 38, 13 January 2003.

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or at least three (3) consecutive months during the year." Beyond a shadow of doubt, respondent violated this provision, which resulted in her unsatisfactory performance in the office.

Under Civil Service Resolution No. 991936,[8] dated August 31, 1999, "frequent unauthorized absences, or tardiness in reporting for duty, loafing or frequent unauthorized absences from duty during regular office hours" is classified as a *grave offense*, punishable by suspension for the first offense (6 mos. 1 day to 1 year) or dismissal for the second offense.[9] In view of the resolution in A.M. No. 02-12-716-RTC and the present report of the Investigating Judge, respondent is indeed guilty of repeated violations of Civil Service rules and regulations, for which dismissal is now the fitting penalty.

Anent the issue of immorality, there is sufficient and substantial evidence showing that respondent, a married woman although separated *de facto* from her husband, cohabited with another man, one Rodney Pagaduan. On several occasions, we have held that an illicit relation is considered disgraceful and immoral conduct which is subject to disciplinary action.[10] Under the *Uniform Rules on Administrative Cases in the Civil Service Commission* adopted and approved by the Civil Service Commission in its Resolution No. 991936 dated August 31, 1999, disgraceful and immoral conduct is a grave offense for which a penalty of suspension for six (6) months and one (1) day to one (1) year shall be imposed for the first offense while the penalty of dismissal is imposed for the second offense.[11] While

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[7] Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws dated December 27, 1991.

[8] Uniform Rules on Administrative Cases in the Civil Service Commission.

[9] *Id.* at Rule IV, Section 52 (A)(17).

[10] *Maguad v. De Guzman*, A.M. No. P-94-1015, 29 March 1999, 305 SCRA 469, 476.

[11] Rule IV, Sec. 52 (A)(15).

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respondent tried to deny the accusation in the second complaint, we have no hesitance in accepting the truth of the testimony of Judge Yadao and other witnesses, together with the documentary evidence, as basis for the finding by the Investigating Judge, that indeed she is liable for immorality. Respondent's unexplained tardiness and habitual absences, coupled with immorality, no doubt constitute gross misconduct and conduct prejudicial to the best interest of the public service, which could warrant the penalty of dismissal.[12]

WHEREFORE, respondent *MARILOU A. CABANATAN,* Stenographer III of the Regional Trial Court of Maddela, Quirino, Branch 38, is found *GUILTY* of habitual absenteeism, falsification of her daily time record, and grave misconduct, gross neglect of duty, and immorality. She is hereby declared *DISMISSED* from the service, with forfeiture of all benefits except accrued leaves, if any, and with prejudice to re-employment in any branch of service of the government including government owned and/or controlled corporations.

SO ORDERED.

Davide, Jr., C.J., Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and *Garcia, JJ.,* concur.

Puno, J., on official business.

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[12] See *Mercado, Jr. vs. Manalo*, A.M. No. P-02-1541, (Formerly OCA IPI No. 00-813-P), 6 February 2002, 376 SCRA 168, 171.