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WHEREFORE, respondent Loida B. Samar, Utility Aide, Regional Trial Court-Library, Legazpi City, is found guilty of misconduct, and she is hereby suspended for three (3) months, without pay, with a stern warning, however, that a repetition of similar infractions by her will be dealt with most severely.

SO ORDERED.

Melo (Chairman), Panganiban, Sandoval-Gutierrez, and *Carpio, JJ.,* concur.

THIRD DIVISION

[A.M. No. 00-4-06-SC. January 15, 2002]

RE: COMPLAINT OF EXECUTIVE JUDGE TITO GUSTILO, REGIONAL TRIAL COURT, ILOILO CITY, AGAINST CLERK OF COURT MAGDALENA LOMETILLO, REGIONAL TRIAL COURT, ILOILO CITY.

SYNOPSIS

Executive Judge Tito Gustilo of the Regional Trial Court (RTC) of Iloilo City charged Clerk of Court Magdalena Lometillo with gross neglect of duty in violation of Supreme Court Administrative Circular No. 2-99 and habitual tardiness. In her comment, respondent averred that assignments for the Saturdays work schedule of court personnel were made two months in advance. On 04 September 1999, two court employees were assigned. However, one employee had to leave at around 1:00 o'clock in the afternoon to attend to her ailing mother in the hospital, while the other one went home at 1:30 in the afternoon due to severe migraine, but the latter returned to the office at 3:45 in the afternoon. However, on 11 March 2000, respondent admitted that she was unable to monitor the attendance of the

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employees assigned on that particular day. She also admitted having been tardy during the months of October to November 1999 and January to February 2000, but reasoned out that it was because she was suffering from chronic back pain.

The Supreme Court found that respondent would appear to have complied with her obligation of assigning employees to report for work on Saturdays. Although respondent was not personally accountable for the failure of such personnel so assigned to actually report for work, she, nevertheless, was expected to at least monitor their attendance. All court personnel concerned should be reminded that they, like any other employee in the Judiciary, must be role models in the performance of their tasks and responsibilities. Respondent must be admonished that she is not exempted from this rule.

As to her tardiness, considering that respondent's infraction appeared to be her first offense, the proper penalty that should be imposed is reprimand.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; SUPREME COURT ADMINISTRATIVE CIRCULAR NO. 2-99; CLERK OF COURT EXPECTED TO MONITOR THE ATTENDANCE OF EMPLOYEES ASSIGNED TO REPORT FOR WORK ON SATURDAYS.** — Respondent would appear to have complied with her obligation of assigning employees to report for work on Saturdays. Although respondent was not personally accountable for the failure of such personnel so assigned to actually report for work, she, nevertheless, was expected to at least monitor their attendance. All court personnel concerned should be reminded that they, like any other employee in the Judiciary, must be role models in the performance of their tasks and responsibilities. Respondent must be admonished that she is not exempted from this rule.

2. **ID.; ID.; CIVIL SERVICE MEMORANDUM CIRCULAR NO. 19; HABITUAL TARDINESS; PROPER PENALTY.** — Respondent has admitted having been tardy during certain days in October and November 1999 and in January and February 2000. Memorandum Circular No. 19, dated 31 August 1999, of the Civil Service Commission, specifically Rule IV, Sec. 52, Article

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c(4) thereof, states: "c) The following are light offenses with corresponding penalties: x x x 4) frequent unauthorized tardiness (habitual tardiness): 1st offense – reprimand; 2nd offense – suspension 1-30 days; 3rd offense – dismissal[.]" Considering that respondent's infraction appears to be her first offense, the proper penalty that should be imposed is reprimand.

DECISION

VITUG, *J.*:

In a letter-complaint, dated 23 March 2000, Executive Judge Tito Gustilo of the Regional Trial Court ("RTC") of Iloilo City charged Atty. Magdalena Lometillo, the Clerk of Court, with gross neglect of duty and habitual tardiness.

In his complaint, Judge Gustilo stated that on 04 September 1999, a Saturday, the office of the Clerk of Court of the RTC was closed from 1:30 to 4:30, p.m., in violation of Supreme Court Administrative Circular No. 2-99, dated 15 January 1999, requiring offices of the Clerk of Court to maintain a skeletal force on Saturdays from 8:30 a.m. to 12 noon and from 12:30 to 4:30 p.m. Judge Gustilo had learned that the office of the RTC Clerk of Court remained closed on the date aforesaid when a criminal complaint for violation of Republic Act No. 6425 was directly received in his chambers instead of it being filed with the office of the Clerk of Court. The Judge issued a memorandum requiring respondent to explain why no administrative sanction should be taken against her and other personnel concerned for their failure to report for duty on 04 September 1999. A similar memorandum was issued when on 11 March 2000, also a Saturday, the office of the Clerk of Court was once again found to be closed from 1:30 to 4:30 in the afternoon. Additionally, complainant cited respondent for habitual tardiness on certain days in October and November of 1999 and in January and February of 2000.

In her comment, respondent averred that pursuant to the Supreme Court Memorandum Order, dated 19 November 1973, the office of the Clerk of Court had since then been observing

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a Saturday work schedule. Respondent explained that two court personnel, Emilia Manikan and Genoveva Tacorda, were assigned to report for work on 04 September 1999 at the office of the Clerk of Court between 1:30 to 4:30 in the afternoon. Manikan, however, had to leave the office, around one o'clock in the afternoon, to attend to her ailing mother who was in the hospital in critical condition but by 2:30 p.m. Manikan was back at the office. Genoveva Tacorda, on the other hand, said that she went home at 1:30 p.m. due to a severe migraine but returned to the office at 3:45 p.m. Respondent confirmed that the two did report for work on that day. Relative to their absence from work on 11 March 2000, respondent stated that she had to leave town on that day, and she was thus unable to monitor the attendance of the personnel assigned that day at the office of the Clerk of Court. She added that the assignments for the Saturday work schedule of court personnel were made two months in advance. Anent the charge for habitual tardiness, respondent admitted having been tardy during the months of October to November 1999, and January to February 2000, during which time, she continued, she was suffering from chronic back pain. Indeed, on 25 to 29 January 2000, she was admitted at the Manila Doctor's Hospital for a diagnostic work-up and underwent constant check-up from 14 to 17 February 2000. Although she did arrive late for work on those days, she would, however, also leave the office late in the day in order to make-up for the hours missed.

The Court, in its Resolution of 25 October 2000, referred the matter to 2nd Executive Judge Jose Azarraga of the Regional Trial Court, Branch 27, of Iloilo City, for investigation, report and recommendation. His report, dated 30 March 2001, gave these findings; *viz:*

"To the mind of this Investigating Judge, respondent Magdalena Lometillo has not been remiss in her job, when on September 4, 1999 and on March 11, 2000, the office personnel on duty left the office. Inasmuch as what is required is only a skeletal force of the total office personnel to be on duty during Saturdays, it can be presumed that the head of the office has the discretion of selecting whom and how many are to be assigned to work on this particular day, provided

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that the required duties and responsibilities of the office are met. Neither is it required that the head of the office, should be physically present in the office during these Saturdays, so long as competence in the job is maintained by those who compose the skeletal force.

"Neither can the trust and confidence in the office personnel assigned to man the office on the two dates referred to by the respondent be questioned inasmuch as based on their length of service and track records, they are presumed to be familiar with their work and are expected to perform well. Besides, it is the respondent who is in the best position to gauge the competence and reliability of her subordinates in the office, so that when she claimed she trusted and had confidence in such personnel there is no reason to doubt or disbelieve her. That she was proven wrong when these trusted personnel has not lived to her expectations, that should not be taken against her especially so in this case, when she has shown that the lapse on the part of the personnel concerned cannot be traced to any wrongdoing on her part or direct participation in the commission or omission thereof.

"Besides, gross neglect connotes a willfull dereliction of duty and implies wrongful intent. The neglect must be of grave character and not merely trivial or unimportant. The charge in the instant case against respondent does not find ample support in the evidence on record that she is guilty thereof. If ever there was any lapse on the part of respondent Lometillo, it was in her failure to call up the office the whole day of March 11, 2000, to check on the personnel on duty that day resulting in her failure to know that these two left the office at noon and failed to come back for the rest of the day.

"Be that as it may, the fact remains that this lapse is not serious or of grievous character as to amount to a gross neglect of duty on her part. Besides, respondent has offered her apologies and took steps to discipline the personnel in her office and had been more vigilant in the performance of her duties as well as in the supervision of the office employees under her. This is shown by the fact that after this incident of March 11, 2000, nothing of this sort has again happened.

"On the charge of Habitual Tardiness.

"As earlier adverted to, respondent did not deny incurring those tardiness alleged in the letter complaint and her reasons for it are: poor health and traffic problem in Iloilo City.

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"Relevant hereto is Section 22 of the Omnibus Rules Implementing Book V of E.O. No. 292, which considers an officer or employee in the Civil Service to be 'habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly credit under the Leave Law for at least three months in a semester or at least three consecutive months during the year.' Also:

> 'Any employee shall be considered habitually tardy if he incurs tardiness regardless of number of minutes, ten (10) times a month for at least two months in a semester or at least two consecutive months during the year. In case of claim of ill-health, heads of departments or agencies are required 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 the approval of the application should be disapproved outright.* (Italics supplied.)'

"Respondent Lometillo for the months of October and November 1999, incurred 7 and 8 tardiness respectively. January and February 2000, she incurred 9 and 7 tardiness, respectively.

"October and November, 1999, are two successive months in a semester; so are January and February, 2000. However, her tardiness for each of the successive months are all less than ten (10). Can it still be considered habitual? Are her grounds for these repeated tardiness valid and legal?

"The law speaks of ten (10) as the least number of tardiness incurred in a month for two successive months in a semester before the tardiness can be considered habitual. Therefore, it leaves no room for an interpretation. Less than such number could not be considered habitual. However, her documentary evidence to support her being tardy for so many times, such as her medical certificates and her Applications for Leave are quite irrelevant. That she got sick and has undergone surgery does not necessarily mean that that prevented her from reporting for work punctually because, when she reported for work it only meant that she was physically fit and well, and therefore it follows that her being late to arrive in the office was not brought about by her illness but by some other forces independent thereof. As a matter of fact when she was ill or sick, she was on sick leave.

"That there is a monstrous traffic problem in Iloilo City and its environs is not a valid reason to arrive late for work. That is not

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beyond remedy. The solution to such problem is as simple as adding two one-digit numbers: Start the day early and leave for office early to beat the traffic. It is a common experience and knowledge that traffic snarls happen only late in the morning and not otherwise.

"It is not however correct to conclude that just because the respondent incurred less than ten (10) tardiness in one month for two consecutive months in a semester that she has to be excused. The ten (10) times requirement is only for the purpose of qualifying such tardiness as habitual, which has of course a more severe penalty. To let such number of tardiness of respondent go unheeded would be opening a floodgate of abuse; meaning, one can go on getting tardy for work without getting punished for it provided these number of tardiness do not reach the magic number TEN for each month, which is a very dangerous precedent. Such is not the purpose of the law. Tardiness, except for a very valid and urgent reasons, has got to be stopped as such is the root cause of inefficiency. The number of times that respondent incurred tardiness in this particular case cannot be considered minimal to be ignored. Her reasons for incurring those are likewise less than acceptable."

Thus, the Investigating Judge recommended that —

"1) For Gross Neglect of Duty, the evidence on record do not warrant a finding that respondent has committed the act or acts that would make her liable therefore;

"2) For Habitual Tardiness, the evidence on record shows that respondent has incurred repeated tardiness each month for two successive months in a semester, twice, without sufficient and justifiable reasons, but considering that these are not habitual, the lesser penalty of REPRIMAND is hereby recommended."

The OCA, in its memorandum, dated 04 May 2001, however, disagreed with the Investigating Judge on his recommendation and, instead, suggested —

"1. that respondent Magdalena L. Lometillo, Clerk of Court, RTC, Iloilo City be FOUND GUILTY of simple neglect of duty in twice failing to observe Saturday court duty as mandated by Administrative Circular No. 2-99 dated 15 January 1999 and accordingly, be SUSPENDED for a period of one (1) month and one (1) day;

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"2. that respondent be REPRIMANDED for twice incurring repeated tardiness each month for two successive months in a semester, without sufficient and justifiable reasons; and

"3. in both instances, respondent be WARNED that a repetition of the same or similar acts in the future shall be dealt with more severely."

Supreme Court Administrative Circular No. 2-99,[1] issued by the Chief Justice on 15 January 1999, provides thusly:

"B. Court offices (*e.g.* Office of the Clerk) and units which deal directly with the public, such as receiving, process-serving and cashier's units, shall maintain a skeletal force on Saturdays from 8:00 A.M. to noon, and from 12:30 P.M. to 4:30 P.M. Those assigned to work on Saturdays shall be notified of their assignment at least three days in advance. An employee so assigned shall have a full day-off the following week, on a day to be specified by the Justice/Judge concerned."

Respondent would appear to have complied with her obligation of assigning employees to report for work on Saturdays. Although respondent was not personally accountable for the failure of such personnel so assigned to actually report for work, she, nevertheless, was expected to at least monitor their attendance. All court personnel concerned should be reminded that they, like any other employee in the Judiciary, must be role models in the performance of their tasks and responsibilities. Respondent must be admonished that she is not exempted from this rule.

Respondent has admitted having been tardy during certain days in October and November 1999 and in January and February 2000. Memorandum Circular No. 19, dated 31 August 1999, of the Civil Service Commission, specifically Rule IV, Sec. 52, Article c(4) thereof, states:

c) The following are light offenses with corresponding penalties:

xxx xxx xxx

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[1] Strict observance of working hours and disciplinary action for absenteeism and tardiness.

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4) frequent unauthorized tardiness (habitual tardiness):

1st offense — reprimand
2nd offense — suspension 1-30 days
3rd offense — dismissal

Considering that respondent's infraction appears to be her first offense, the proper penalty that should be imposed is reprimand.

WHEREFORE, for her failure to properly supervise the personnel under her, respondent Atty. Magdalena Lometillo, Clerk of Court, Regional Trial Court, Iloilo City, is ADMONISHED to be more circumspect in the discharge of her official duties and, for her tardiness, she is REPRIMANDED with warning that a repetition of the same or similar offense would be dealt with severely.

SO ORDERED.

Melo (Chairman), Panganiban, Sandoval-Gutierrez, and *Carpio, JJ.,* concur.

FIRST DIVISION

[A.M. No. RTJ-00-1590. January 15, 2002]

GINA B. ANG, *complainant, vs.* **JUDGE ENRIQUE C. ASIS, Regional Trial Court, Branch 16, Naval, Biliran,** *respondent.*

SYNOPSIS

Complainant Gina B. Ang charged Judge Enrique C. Asis with Bribery, Extortion and Violation of the Anti-Graft and Practices Act. In his comment, respondent judge vehemently denied the charges of complainant and instead, cited various citations he