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structure. Although the Bank implemented Wage Order Nos. NCR-01 and NCR-02 nationwide instead of regionally even after the effectivity of RA 6727, the Bank at the time was still uncertain about how to follow the new law. In any event, that single instance cannot be constitutive of "management practice."

WHEREFORE, the petition is *DENIED* and the assailed Decision is *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Romero, Vitug, Purisima, and *Gonzaga-Reyes, JJ.,* concur.

EN BANC

[A.M. No. 98-8-105-MTC. January 26, 1999]

Re: Leaves of Absence Without Approval of Judge Eric T. Calderon, Municipal Trial Court of Calumpit, Bulacan.

SYNOPSIS

This administrative matter was brought about following the report of the findings in the Office of the Court Administrator (OCA) of unapproved leaves of absence repeatedly incurred by Judge Eric T. Calderon, of the Municipal Trial Court of Calumpit, Bulacan. In a letter to the OCA, Judge Calderon explained that his lingering illness of malignant hypertensions has caused his absences. To support his claim, Judge Calderon presented medical certificates from an orthopedic doctor and a cardiologist. However, the results of the physical examination and the medical evaluation conducted by the Court's Clinic Services contradict his claim of malignant hypertension. The OCA recomended that *inter alia* Judge Calderon be declared absent without leave and his sala be declared vacant.

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The Supreme Court found Judge Calderon guilty of gross misconduct and abandonment of office. On the basis of the records presented, the Court was constrained to find Judge Calderon's frequent leaves of absence to be inexcusable and his explanation devoid of merit. These frequent absences for prolonged periods are deserving of serious sanctions including dismissal from the service if only to avoid very grave prejudice to the administration of justice. Judge Calderon should have been more conscious of his court duties, as well as more cautious of his actuations. Further, he should have been aware that, in frequently leaving his station, he has caused great disservice to many litigants and has denied them speedy justice. The Court therefore dismissed Judge Calderon from the service with forfeiture of all benefits and with prejudice to reemployment in any branch of the government, including government-owned and controlled corporations.

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; CHARGE OF MISCONDUCT AND ABANDONMENT OF OFFICE; RESPONDENT JUDGE'S INEXCUSABLE LEAVES OF ABSENCE FOR PROLONGED PERIODS DESERVE SERIOUS SANCTIONS INCLUDING DISMISSAL.**— On the basis of the records presented and the result of the foregoing medical examination and evaluation report, we are ineluctably constrained to find Judge Calderon's frequent leaves of absence to be inexcusable and his explanation devoid of merit. As recommended, these frequent absences for prolonged periods are deserving of serious sanctions including dismissal from the service if only to avoid very grave prejudice to the administration of justice.

2. **ID.; ID.; ID.; RESPONDENT JUDGE'S FREQUENT ABANDONMENT OF HIS SALA CONSTITUTES DENIAL OF LITIGANT'S RIGHT TO SPEEDY JUSTICE.**— He undoubtedly should have been more conscious of his court duties, as well as more cautious of his actuations, than he has heretofore shown in the performance of his functions and the discharge of his responsibilities to the Court and the citizenry. Further, he should have been aware that, in frequently leaving his station, he has caused great disservice to many litigants and has denied them speedy justice. It could be fairly concluded by just going over

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his record of frequent and prolonged leaves that he had habitually abandoned his sala in Calumpit, Bulacan, for no justifiable excuse at all.

3. **REMEDIAL LAW; "*RES IPSA LOQUITUR*"; DOCTRINE THEREOF APPLICABLE IN CASE AT BAR.** — The doctrine of *res ipsa loquitur, i.e.*, that the Court may impose its authority upon erring judges whose actuations, on their face, would show gross incompetence, ignorance of the law, or misconduct, is patently applicable to the instant case.

R E S O L U T I O N

PER CURIAM:

This administrative matter was brought about following the report of the findings in the Office of the Court Administrator (OCA) of unapproved leaves of absence repeatedly incurred by Judge Eric T. Calderon, of the Municipal Trial Court of Calumpit, Bulacan. Judge Calderon was required by the OCA to show cause why no disciplinary action should be taken against him, through a Memorandum dated September 30, 1997 quoted hereunder:

"Our record shows that you had not reported to your official station on the following dates:

August 8 – September 8, 1995 – Vacation Leave (no medical certificate attached; no clearance accomplished)

September 12 – October 13, 1995 – Vacation Leave (no clearance accomplished)

February 22 – May 21, 1996 – Sick Leave (no medical certificate)

February 8 – 21, 1997 – Sick Leave (with medical certificate)

March 13 – 30, 1997 – Sick leave (with medical certificate)

April 2 – May 2, 1997 – Sick Leave (with medical certificate)

May 3 – 31, 1997 – no indication what type of leave was applied for but with medical certificate

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June 1 – 30, 1997 – Sick Leave (with medical certificate)

July 1 – 31, 1997 – Sick Leave (with medical certificate)

August 1 – 31, 1997 – Sick Leave (with medical certificate)

It is noted that your absences beginning the period of February 22, 1996 onwards were not covered by any *approved* leave of absence.

In view thereof, you are hereby required to SHOW CAUSE, within ten (10) days from receipt hereof, why no disciplinary action shall be taken against you for having gone on leave without any approved leave of absence."[1]

In a letter[2] to the OCA dated November 19, 1997, Judge Calderon presented an explanation of his absences, a portion of his letter reads as follows:

A. Regarding my leave of absence from *August 8, 1995 to September 8, 1995,*[3] my personal (201) file shows that actually I was able to submit a verified medical certificate. A copy of the approved application for leave with attachment verified medical certificate are hereto attached as Annexes *"1"* and *"1-A"*.

B. With regard to my vacation leave from *September 12, to October 13, 1995,*[4] may I most respectfully submit my application for leave which also shows that it had been approved by the Honorable Justice Reynaldo L. Suarez, a copy of which application for leave is hereto attached as Annex *"2"*.

C. In respect to my sick leave of absence from *February 22 to May 21, 1996,*[5] my personal (201) file shows that my leave of absence on February 22, 23, and 26, 1996 had been granted as 3 days sick leave with pay and that from February 27, 1996 to May 21, 1996 my 85 days sick leave without pay had been likewise granted, copies of the 1st indorsement dated April 24, 1996 signed by the Honorable

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[1] MEMORANDUM – *Rollo*, p. 5.

[2] Letter-*Rollo*, p. 6.

[3] Italics Supplied.

[4] Italics Supplied.

[5] Italics Supplied.

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Deputy Court Administrator Reynaldo L. Suarez and the application for leave dated February 22, 1996, Medical Certificate dated February 21, 1996 issued by his Physician as well as the undersigned's letter dated February 22, 1996 are hereto attached as Annexes "*3*", "*3-A*", "*3-B*", and "*3-C*", respectively.

D. Regarding my leave of absences from *February 8 to 21, 1997, from March 13, to 31, 1997, from April 2 to May 2, 1997, from May 3 to 31, 1997, from June 1 to 30, 1997, from July 1 to 31, 1997 and from August 1 to 31, 1997*[6] the undersigned submitted medical certificates issued on various dates by his family and personal physicians Sps. Federico M. Cruz and Angelina C. Cruz of the F.M. Cruz General and Orthopedic Hospital, may I most respectfully submit the letter of Dr. Federico M. Cruz dated November 18, 1997 (Annex "*5*") addressed to your Honor explaining briefly but substantially enough the undersigned's lingering illness of malignant hypertension for your broad and kind understanding and appreciation.

E May I most respectfully submit my sick leave of absence from *January 1 to February 7, 1997*[7] based on the same lingering illness of malignant hypertension which was approved by no less than Honorable Judge Reynaldo L. Suarez, copies of the 1st Indorsement dated February 12, 1997, application for leave dated January 7, 1997 signed by Executive Judge Natividad G. Dizon, another application for leave dated January 31, 1997 recommended for approval by Honorable Executive Judge Crisanto C. Concepcion and the medical certificate of Dr. Federico M. Cruz dated January 31, 1997 are hereto attached as Annexes "*4*", "*4-A*", "*4-B*" and "*4-C*", respectively. x x x.[8]

Judge Calderon submits for approval his leave of absences from *February 8 up to August 31, 1997*,[9] and in addition the subsequent months covering the *period* from *September 1 to 30, 1997, October 1 to 31 and the rest of November*[10] up to the date the letter was submitted. He reiterates that the same lingering illness of malignant hypertension has caused

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[6] Italics Supplied.

[7] Italics Supplied.

[8] *Supra* 2, pp. 6-7.

[9] *Supra* 2 at 7. Italics Supplied.

[10] *Ibid.*

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his absences on the abovementioned dates. The letter also gave explanation of his lingering illness as the reason why he has not yet submitted himself for a physical examination by Dr. Elmer Ruñez, one of this Court's physician.[11]

The Memoranda to this Court submitted by Court Administrator Alfredo Benipayo, dated August 21 and September 14, 1998 detailed its evaluation and report regarding Judge Calderon's absences, recommending that *inter alia* he be declared AWOL (absent without leave) and his sala at the Municipal Trial Court of Calumpit, Bulacan, be declared vacant.

Based on the records submitted, *prior to February 8, 1997*, Judge Calderon had gone on a series of absences albeit with approval. Thus, as of January 16, 1998, the Leave Division of the OCA submitted a summary showing that in 1995, a total of 109 days of absences were filed by Judge Calderon and approved by Deputy Court Administrator Reynaldo Suarez. For 1996, a total of 40 days' leave of absence were approved, together with a total of 309 days for the same year considered as sick leave without pay. In 1997, a total of only 38 days of sick leave without pay were also approved specifically from January 1 – February 7.[12] However, Judge Calderon's applications for sick leave for Febuary 8 – 21, March 13 – 30, April 2 – September 30 and for the succeeding months of October and November, 1997, were held in abeyance pending the evaluation, comment and recommendation of Dra. Rosa J. Mendoza, Chief, Clinic Services of the Supreme Court, which now appears to support OCA's recommendation that the foregoing applications be denied.

All these considered, together with the medical evaluation reports on record, lead us to inquire whether Judge Calderon's professed excuse of "malignant hypertension" as the cause of his prolonged absence for almost a straight period of 3 years could be deemed acceptable. Moreover, we have to ask if his

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[11] *Supra* 2 at 8.

[12] *Rollo*, p. 53.

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work ethic and professional attitude display that dedication to an honorable office which is expected of him as a dispenser of justice by the citizenry of Calumpit, Bulacan.

We take note that on February 21, 1997, through Administrative Order No. 16-97, he was designated as Assisting Judge of the Metropolitan Trial Court of Makati. The designation lasted until March 11, 1997, when through Administrative Order 37-97 the designation was revoked. During this entire period of designation, Judge Calderon reported for work regularly. But before February 21, 1997, he was on approved sick leave without pay from January 1 to February 7, and then he was on leave from February 8 to 21, the first instance of his leaves without prior approval. Noteworthy, for practically the whole year of 1996, he was on sick leave without pay. It is odd that when the designation at the Makati Trial court was revoked, Judge Calderon started getting sick again. And on March 13, 1997, he was once more on sick leave without approval. He was on unauthorized leave from his sala in Calumpit, Bulacan for the rest of the year until his letter of November 19, 1997, where he claimed to be suffering from lingering "malignant hyperstension."

Knowing that prolonged leaves by reason of illness should, after proper coordination, at least bear the notation by the Court's physician for record purposes, we find it unusual that Judge Calderon had not submitted himself to a medical examination by the Court's resident physicians promptly. The medical certificates which he submitted in support of his claimed illness were issued by his personal physician, Dr. Federico M. Cruz, whose prescription pads described him as an orthopedic doctor. Even if there was a referral to a certain Dr. Jose Estrada whose specialization lies in the field of internal medicine-cardiology, still, the letter appears to be less than convincing.[13]

A lingering illness which has caused Judge Calderon's absence for a prolonged period of almost 3 years requires a much more

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[13] *Ibid.*

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detailed documentation than mere notes from an orthopedic doctor and two notes from a cardiologist. When a written communication was sent to Judge Calderon on September 29, 1997, requesting him to proceed to the Court's Clinic Services at the earliest possible time to undergo a complete medical evaluation of his alleged illness, no immediate compliance was forthcoming. It was only on April 16, 1998, or over 6 months after the letter was sent, that he submitted himself for appropriate medical examination. Moreover the report on the physical examination findings of and the medical evaluation conducted by Dr. Elmer Ruñez, Medical Officer VI, and indorsed by Dra. Rosa Mendoza, Chief, Clinic Services,[14] appears to contradict his claim of malignant hypertension, thus:

"Except for an elevated blood pressure of 130/90 mmHg, the physical examination findings were essentially normal in this patient at the time of examination. Blood chemistry examination was requested and done at the St.Martin's Laboratory, revealed normal results. ECG was within normal limits.

x x x x x x x x x

Dr. Jose S. Estrada an Internist and Cardiologist issued a medical certificate on Oct. 27, 1997 with a diagnosis of Diastolic Hypertension Stage 1 and not malignant hypertension. The ECG was unremarkable except for LVH Voltage Criteria. He recommended special diagnostic work (2-D Echo for further medical evaluation).

COMMENTS AND RECOMMENDATIONS:

Based on medical certificates of the cardiologist and physical findings on P.E. and medical evaluation at the S.C. Clinic, the undersigned concurs with the opinion of the cardiologist that the applicant Judge is suffering from Hypertension, Diastolic, Stage 1 and does not fall within the category of malignant hypertension.

Malignat hypertension refers to a syndrome characterized by a persistently elevated blood pressure that is difficult to control and is further associated with the presence of the following: Nephropathy (kidney disease) encephalopathy (behavioral and mental changes), retinopathy, heart failure and myocardial ischemia, which were not

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[14] INDORSEMENT – *Rollo*, p. 65.

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seen in this patient at the time of the physical and laboratory examination."[15]

On the basis of the records presented and the result of the foregoing medical examination and evaluation report, we are ineluctably constrained to find Judge Calderon's frequent leaves of absence to be inexcusable and his explanation devoid merit. As recommended, these frequent absences for prolonged periods are deserving of serious sanctions including dismissal from the service if only to avoid very grave prejudice to the administration of justice.

He undoubtedly should have been more conscious of his court duties, as well as more cautious of his actuations, than he has heretofore shown in the performance of his functions and the discharge of his responsibilities to the Court and the citizenry. Further, he should have been aware that, in frequently leaving his station, he has caused great disservice to many litigants and has denied them speedy justice.[16] It could be fairly concluded by just going over his record of frequent and prolonged leaves that he had habitually abandoned his sala in Calumpit, Bulacan, for no justifiable excuse at all.

The doctrine of *res ipsa loquitur*, *i.e.*, that the Court may impose its authority upon erring judges whose actuations, on their face, would show gross incompetence, ignorance of the law, or misconduct, is patently applicable to the instant case.[17]

WHEREFORE, FINDING Judge Eric T. Calderon guilty of gross misconduct and abandonment of office, the Court hereby *DISMISSES* him from service with forfeiture of all benefits and with prejudice to re-employment in any branch, instrumentality or agency of the government, including government-owned and controlled corporations.

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[15] MEDICAL EVALUATION – *Rollo*, pp. 66-67.

[16] *Re: Judge Eduardo F. Cartagena*, 282 SCRA 370, 376.

[17] *Ibid.*, citing *Macalintal vs. Judge Teh*, A.M. No. RTJ-97-1375, 16 October 1997; *Consolidated Bank and Trust Corporation vs. Capistrano*, 159 SCRA 47.

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Judge Eric T. Calderon is hereby enjoined upon notice of this resolution to cease and desist from performing any and all acts pertaining to his office.

This decision is immediately executory.

Let a copy of this decision be attached to the record of Judge Eric T. Calderon with this Court.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 109242. January 26, 1999]

LITO C. MARCELO, *petitioner, vs.* **THE HON. SANDIGANBAYAN (First Division) and the PEOPLE OF THE PHILIPPINES,** *respondents.*

SYNOPSIS

The First Division of the Sandiganbayan convicted as charged Arnold Pasicolan, Ronnie Romero and Lito Marcelo for the crime of Qualified Theft. The conviction was based on the evidence presented by the prosecution that on February 10, 1989, Jacinto Merete a letter carrier in the Makati Central Post Office disclosed to his Chief, Projecto Tumagan, the existence of a group responsible for the pilferage of mail matter in the post office. Pursuant thereto, Tumagan sought the aid of the National Bureau of Investigation (NBI) to apprehend members of the said group. On February 17, 1989, NBI agents, together with Tumagan, conducted an operation at the Legaspi Village, Makati. They observed that at around 2:00 p.m. Pasicolan, an emergency laborer of the Makati Post Office,