

FIRST DIVISION

[A.M. No. P-95-1147, April 25, 1996]

**ATTYS. GRACE S. BELVIS AND FRANCISCO D. ARAÑA, JR.,
COMPLAINANTS, VS. FERDINAND MIGUEL S. FERNANDEZ, CLERK
III, RESPONDENT.**

R E S O L U T I O N

PADILLA, J.:

This is an Administrative Complaint against Ferdinand Miguel S. Fernandez, Clerk III of Branch 152, Regional Trial Court, Pasig City, and presently detailed with the office of the Clerk of Court, for violation of Memorandum Circular No. 30 of the Civil Service Commission series of 1989 for Frequent Unauthorized Absences and/or Tardiness.

Complainants Atty. Grace S. Belvis and Atty. Francisco D. Araña, Jr., Clerk of Court and Assistant Clerk of Court respectively, of the Regional Trial Court, Pasig City, averred that on 13 September 1994, a memorandum was issued to respondent Fernandez requiring him to explain why no administrative sanction should be taken against him for frequent unauthorized absences from October 1993 to September 1994, including three (3) weeks of straight absences from 22 August to 9 September 1994. In his letter-explanation dated 15 September 1994, respondent pleaded for compassion and promised not to commit the same offense again.^[1]

Despite his promise, respondent reported late for work on 2, 3, and 4 January 1995 and did not report for work at all from 5 to 31 January 1995. For the month of February 1995, respondent was absent on the 14th and 28th thereof and was late for work on the 15th, 16th, 17th, 22nd, 23rd, 24th and 27th. For the month of March 1995, respondent was absent for a total number of fourteen (14) days and during the few times that he reported for work on said month, he was late.

Respondent was again required to explain in writing his frequent unauthorized absences and tardiness. In his letter dated 31 March 1995, respondent explained that his absences were due to personal problems as his wife, a former teacher of Southern Rizal Institute, had been accused of unlawfully trespassing the school premises and of taking items not belonging to her.^[2] Complainants were not satisfied with respondent's explanation and recommended his suspension for one (1) month without pay with warning that a repetition of the same offense will warrant his dismissal from the service.^[3]

Executive Judge Martin S. Villarama, Regional Trial Court, Pasig City, in his 1st Indorsement dated 26 April 1995, recommended that the present complaint be favorably acted upon.

On 3 May 1995, the Office of the Court Administrator received a letter from

respondent requesting that he be furnished with a copy of the Complaint and that he be given fifteen (15) days within which to explain his absences. The Court, in a Resolution dated 3 July 1995, required respondent to file his Comment on the Complaint within ten (10) days from notice.

On 9 November 1995, respondent filed with the Court his Manifestation/Motion as well as his Comment stating that he received a copy of the Resolution dated 3 July 1995 only on 12 September 1995. In answer to the charges of complainants, respondent claims that all his absences were due to either his own sickness or sicknesses of other members of his immediate family. He further claims that his absences were all supported by proper application for leave which is why all his vacation and sick leave credits have already been consumed.^[4]

Thereafter, the Court, in a Resolution dated 11 December 1995, referred this case to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.

In its Report dated 20 March 1996, the OCA made the following findings and recommendation:

"x x x.

Under Memorandum Circular No. 04 S. of 1989 "an officer or employee in the civil service shall be considered 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."

"In the case before us, while it is true that respondent incurred absences in excess of the 2.5 monthly leave credit in the first semester of 1995 he applied for vacation and sick leaves for the period covered by his absences which were all approved by his superior. Under this circumstance, respondent's absences cannot be deemed unauthorized to consider him a habitual absentee. However, the fact remains that he incurred absences successively. This does not speak well of a disciplined, diligent and industrious government employee that he should be. As such he should be held liable for conduct grossly prejudicial to the best interest of the service.

Likewise under Memorandum Circular No. 4, S. 1991 "any employee shall be considered habitually tardy if he incurs tardiness, regardless of the number of minutes ten (10) times a month for at least two (2) months in a semester or at least two (2) consecutive months during the year."

Respondent, however has committed habitual tardiness because the court's logbook for 1994 shows that he was tardy on:

1. January	- nine	(9)	times
2. February	- two	(2)	"
3. March	- fourteen	(14)	"