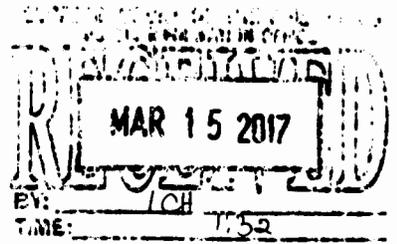




Republic of the Philippines
Supreme Court
Manila



EN BANC

JUDGE BENSAUDI A. A.M. No. SCC-10-14-P
ARABANI, JR., (Formerly OCA IPI No. 09-31-SCC-P)
Petitioner,

- versus -

RAHIM A. ARABANI, Junior
Process Server, and ABDURAJI
G. BAKIL, Utility Worker I, both
from Shari'a Circuit Court,
Maimbung, Sulu,
Respondents.

X ----- X
JUDGE BENSAUDI A.
ARABANI, JR., 4th Shari'a
Circuit Court, Maimbung, Sulu,
Petitioner,

A.M. No. SCC-10-15-P
(Formerly A.M. No. 06-3-03-SCC)

- versus -

RODRIGO RAMOS, JR., Clerk
of Court, 4th Shari'a Circuit
Court, Maimbung, Sulu,
Respondent.

X ----- X
Clerk of Court RODRIGO
RAMOS, JR., Process Server
RAHIM A. ARABANI and
Utility Worker I ABDURAJI G.
BAKIL, all of 4th Shari'a Circuit
Court, Maimbung, Sulu, and
Utility Clerk SHELDALYN* I.
MAHARAN, 5th Shari'a Circuit
Court, Patikul, Sulu,
Petitioners,

A.M. No. SCC-11-17
(Formerly A.M. No. 10-34-SCC)

Present:

SERENO, C.J., Chairperson,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
PERALTA,
BERSAMIN,

* "Sherdalyn" in some parts of the records.

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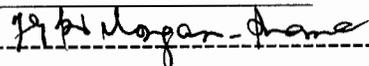
- versus -

**JUDGE BENSAUDI A.
ARABANI, JR., 4th Shari'a
Circuit Court, Maimbung, Sulu,
Respondent.**

**DEL CASTILLO,
MENDOZA,
REYES,**
PERLAS-BERNABE,
LEONEN,
JARDELEZA, and
CAGUIOA, JJ.**

Promulgated:

February 21, 2017

X -----  ----- X

DECISION

PERLAS-BERNABE, J.:

Before the Court are consolidated petitions involving the Judge and staff of the 4th Shari'a Circuit Court (4th SCC) of Maimbung, Sulu.

The Facts

1. In A.M. No. SCC-10-14-P:

In a letter¹ complaint dated July 17, 2009, Presiding Judge Bensaudi A. Arabani, Jr. (Judge Arabani) charged respondents Rahim A. Arabani (Rahim), Junior Process Server, and Abduraji G. Bakil (Abduraji), Utility Worker I, with conduct unbecoming of a court employee, dishonesty, insubordination, and misconduct² arising out of Bakil's alleged punching of Rahim's bundy card on three (3) occasions despite being repeatedly warned by Judge Arabani.³

In a joint letter⁴ reply dated October 22, 2009, Rahim and Abduraji countered that there were only two (2) instances of punching involved, *i.e.*: (a) when Abduraji accidentally punched Rahim's bundy card one afternoon that Rahim was absent, mistakenly thinking that it was his bundy card, but he immediately informed Judge Arabani of the mistake; and (b) when Abduraji punched Rahim's bundy card upon seeing the latter approximately 3 to 4 meters away from the bundy clock with his way blocked by another person, as it was "nearing time" already. The latter incident was seen by Judge Arabani who happened to be behind Rahim, and scolded them. However, Rahim immediately erased the time and punched his bundy card

** On official leave.

¹ *Rollo* (A.M. No. SCC-11-17), pp. 35-36.

² See 1st Indorsement dated September 25, 2009; *id.* at 33.

³ See *id.* at 35-36.

⁴ *Id.* at 51-55.

again. They both apologized to Judge Arabani and promised that it would not happen again.⁵

In the same letter, Rahim and Abduraji made counter-charges against Judge Arabani, which are among the subject matter of **A.M. No. SCC-11-17**, which will be discussed hereunder.

2. In **A.M. No. SCC-10-15-P**:

In a letter⁶ dated May 13, 2010, Judge Arabani charged Clerk of Court Rodrigo Ramos, Jr. (Rodrigo) with conduct unbecoming a court employee, alleging, among others, that, from the time Rodrigo reported back to his station at the 4th SCC in January 2010, after his detail to the 3rd SCC of Parang-Indanan, Sulu was revoked by the Court in a Resolution⁷ dated November 17, 2009 in **A.M. No. 06-3-03-SCC**, Rodrigo: (a) was constantly not at his assigned table; (b) roams in and out of the office openly; (c) does not attend to his work; (d) refused to comply with the directive to place his bundy card on the designated rack, thereby making it difficult to monitor the correctness and accuracy of the entries therein for the months of March and April 2010; and (e) did not properly fill-up his Application for Leave (leave application) filed in April 2010 with the specific dates of his intended leave of absence.⁸ In a letter⁹ dated May 17, 2010, Judge Arabani requested that all succeeding unverified/unsigned bundy cards of Rodrigo be made part of the complaint.

Responding to the Court's Resolution¹⁰ dated August 24, 2010 directing him to comment on the charges against him, Rodrigo averred that he kept with him his bundy cards for the months of January and February 2010¹¹ for reasons of convenience.¹² He, however, complied with Judge Arabani's directive to place his March 2010 bundy card on the designated rack¹³ but the latter took and hid the same in bad faith, and submitted the same to the Leave Division, Office of the Court Administrator (OCA) after a few months without signing the same.¹⁴ Accordingly, in a letter¹⁵ dated October 27, 2010 to the Leave Division, OCA, Rodrigo manifested that he is submitting his April to September 2010 Daily Time Records (DTRs) sans Judge Arabani's signature.¹⁶

⁵ See *id.* at 51.

⁶ *Rollo* (A.M. No. SCC-10-15-P), pp. 2-4.

⁷ *Rollo* (A.M. No. 06-3-03-SCC), pp. 162-163.

⁸ *Rollo* (A.M. No. SCC-10-15-P), pp. 2-3.

⁹ *Rollo* (A.M. No. SCC-10-14-P), p. 149.

¹⁰ *Id.* at 158-159.

¹¹ See *rollo* (A.M. No. SCC-10-15-P), p. 74.

¹² See *id.* at 78.

¹³ See *id.* at 74.

¹⁴ See *id.* at 63.

¹⁵ *Id.* at 56.

¹⁶ *Id.*

Further, Rodrigo denied the charge of “loafing,” and alleged that since the court had no clients for the most part, and considering the strained relations between him and Judge Arabani who surrounded himself with bodyguards who tried to intimidate him, for his own protection, he started to place himself within close range of the security guards and the Philippine marines detailed at the Hall of Justice which is a stone’s throw away from his office, and where he can clearly see any client who goes to the adjoining Shari’a Building.¹⁷ He, thus, claimed that he started incurring absences as an act of self-preservation for fear of being killed.¹⁸

3. In A.M. No. SCC-11-17:

In separate Affidavits¹⁹ both dated May 31, 2010, Rahim and Abduraji charged Judge Arabani with conduct unbecoming of a Judge, and many abuses consisting, among others, of his absences without filing the corresponding leaves of absence, and toleration of the absences and tardiness of members of his family.²⁰ Rahim further claimed that Judge Arabani was courting a court employee, Sheldalyn A. Maharan (Sheldalyn), who he asked to accompany him on his motorcycle to go around town, professing his love and buying her gifts.²¹ At one time, Judge Arabani made a drawing of a vagina and a penis and tried to show it to Sheldalyn, but their Clerk, Mirad Ahmad (Mirad), grabbed the drawing, tore the same, and told Judge Arabani “Lummuh kaw sir.”²² The incident was reported to Rodrigo who even picked up the drawing from the wastebasket.²³

On the other hand, Sheldalyn, in an Affidavit²⁴ dated January 26, 2010, charged Judge Arabani of sexual harassment, alleging, among others, that: (a) when they were still holding office at the residence of Judge Arabani, he would take her for a ride on his motorcycle, and while going around town, he would court her; (b) there were instances when he would suddenly step on the brakes so that her body would touch his; (c) he once took her to a snack house, called her at home, and bought her lotion, baby powder, and other things; (d) he also made a drawing of a penis and a vagina on a piece of paper and tried to show it to her, but the same was crumpled by Mirad who threw it in a wastebasket; (e) one time, he forced her to learn karate, and while teaching her, she felt him caressing her arms; (f) when he professed his for love for her, she started avoiding him by going out with Rodrigo; and (g) because she was afraid, she and her officemate, Jean Maldisa (Mrs. Maldisa) would accompany each other in going to the

¹⁷ See id. at 64-65.

¹⁸ See id. at 64 and 69.

¹⁹ *Rollo* (A.M. No. SCC-11-17), pp. 10-12 (Affidavit of Rahim) and 23-24 (Affidavit of Abduraji). Their earlier Affidavits dated January 26, 2010 (Rahim; id. at 19-20) and January 18, 2010 (Abduraji; id. at 25) which were sworn to before Rodrigo, beyond the latter’s competence, were returned by Court Administrator Jose Midas P. Marquez for failure to comply with the required verification; see id. at 4-5.

²⁰ See id. at 9 and 11.

²¹ See id. at 10 and 21.

²² See id. at 10, 21, and 337.

²³ See id. at 10.

²⁴ Id. at 21-22.

comfort room.²⁵

In several letters dated May 8, 2010,²⁶ June 16, 2010,²⁷ and July 30, 2010,²⁸ Rodrigo charged Judge Arabani with grave abuse of authority, verbal abuses, dishonesty in his certificate of service, and sexual harassment,²⁹ arising out of the following acts, among others: (a) harassing him by taking and hiding his DTR for the month of March 2010; (b) surrounding himself with goons who tried to intimidate him with their “tiger look”;³⁰ (c) his wife’s tardiness;³¹ (d) irregularities in the conduct of flag ceremony;³² (e) molestation of a “labandera” and her teenage daughter;³³ and (f) courting Sheldalyn to whom he had shown a drawing of a penis and a vagina.³⁴

Responding to the Court’s directive³⁵ to comment on the charges against him, Judge Arabani filed his Comment³⁶ dated October 27, 2010 essentially denying the same, and claiming that the accusations were merely fabricated to muddle the issues involving the complaints he filed against Rodrigo, Rahim and Abduraji,³⁷ and were mere repetition of issues already resolved and terminated in **A.M. No. 06-3-03-SCC**,³⁸ like the one involving his wife’s purported tardiness in coming to office, which remained unsubstantiated and uncorroborated in the present complaints.³⁹ He further maintained that: (a) his absences were covered with the corresponding leave applications⁴⁰ and/or certificates of appearance;⁴¹ (b) he does not have even a single body guard;⁴² (c) Rodrigo was the only employee complaining about the location of the bundy clock and the placing of the bundy card on the designated rack;⁴³ (d) he did not steal Rodrigo’s bundy card, which was submitted to the OCA together with his leave application to support the complaint against him;⁴⁴ (e) it is not true that he was courting Sheldalyn who is publicly known to be a tomboy, and the story of immorality was fabricated to destroy his credibility; and (f) the drawing of a penis and vagina which purportedly occurred in 2005 when the court was still holding office in his residence was merely fabricated; otherwise, it would have been included in Rodrigo’s previous complaints against him between the years 2005 and 2006.⁴⁵

²⁵ See *id.* at 21.

²⁶ Verified on May 17, 2010; *id.* at 1-2.

²⁷ *Id.* at 6-8.

²⁸ *Id.* at 37-38.

²⁹ *Id.* at 2.

³⁰ See *id.* at 6-7.

³¹ See *id.* at 37-38.

³² See *id.* at 1 and 38.

³³ *Id.* at 7.

³⁴ *Id.* at 37.

³⁵ See 1st Indorsement dated September 6, 2010; *id.* at 79.

³⁶ *Id.* at 100-131.

³⁷ *Id.* at 111.

³⁸ *Id.* at 104-105.

³⁹ See *id.* at 112 and 117.

⁴⁰ *Id.* at 165-167.

⁴¹ See *id.* at 105 and 120.

⁴² *Id.* at 109.

⁴³ *Id.* at 111.

⁴⁴ *Id.* at 115.

⁴⁵ *Id.* at 118.

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In a Resolution⁴⁶ dated November 15, 2011, the cases were consolidated, and referred for joint investigation, recommendation and report by the Presiding Judge of the Regional Trial Court of Jolo, Sulu, Branch 3.

The Investigating Judge's Findings and Recommendations

In a Joint Investigation, Report and Recommendation⁴⁷ dated April 8, 2013, the Investigating Judge, Betlee-Ian J. Barraquias (Judge Barraquias), made the following findings and recommendations:

With respect to **A.M. No. SCC-10-14-P**, Judge Barraquias found that there was an irregularity in the punching of the bundy card of Rahim by Abduraji, and Rahim's silence and inaction despite his awareness thereof made him equally responsible as he is deemed to have consented to the commission of the improper act.⁴⁸ This is bolstered by the fact that Abduraji: (a) admitted having punched the bundy card of Rahim sometime in the first week of June 2009 (first incident) but explained that he did the same by mistake, thinking that it was his own bundy card, and on June 16, 2009 (second incident), thinking that Rahim was already at the door of the office; and (b) averred that he could not recall whether or not he punched the bundy card of Rahim on June 30, 2009 (third incident; subject incidents).⁴⁹ Judge Barraquias then concluded that their collaboration (1) is a clear violation of (a) Office of the Court Administrator (OCA) Circular No. 7-2003 on the accomplishment/submission of Certificates of Service and Daily Time Records, and (b) Section 4, Rule XVII of the Omnibus Rules Implementing Book V of Executive Order No. 292⁵⁰ (Civil Service Rules); and (2) is an act of dishonesty. Noting, however, that it is the first offense of Abduraji and Rahim, he recommended that they be suspended for six (6) months without pay with a stern warning that similar acts would be dealt with more severely.⁵¹

On the charge of insubordination and conduct unbecoming of court employees, however, Judge Barraquias found no deliberate intent on the part of Abduraji and Rahim to defy the authority of Judge Arabani and, thus, deemed it proper to recommend that they be reprimanded and given a stern warning for their non-compliance with the latter's memorandum requiring them to explain the *subject incidents* in writing.⁵²

⁴⁶ *Rollo* (A.M. No. SCC-10-14-P), pp. 162-163; *rollo* (A.M. No. SCC-10-15-P), pp. 107-108; *rollo* (A.M. No. SCC-11-17), pp. 261-262.

⁴⁷ *Rollo* (A.M. No. SCC-10-14-P), pp. 112-127.

⁴⁸ *Id.*

⁴⁹ *Id.* at 115.

⁵⁰ Otherwise known as the Administrative Code of 1987.

⁵¹ *Rollo* (A.M. No. SCC-10-14-P), pp. 116-117.

⁵² *Id.* at 117-118.

Anent **A.M. No. SCC-10-15-P**, Judge Barraquias found sufficient evidence on record showing that Rodrigo (*a*) did not leave his Bundy card at the designated Bundy card rack,⁵³ and (*b*) failed to heed Judge Arabani's directive to refrain from bringing home and carrying in his possession his Bundy card, and to leave it in its designated rack. Consequently, he recommended that Rodrigo be meted a two (2) month forfeiture of salary (February and March 2010; *sic*) with a stern warning that any similar incident would be dealt with more severely. However, he found to be unsubstantiated the allegations that Rodrigo was constantly not at his assigned table, roams in and out of the office, and is not attending to his work. He further held that Rodrigo's failure to indicate the specific dates of his absence was a mere formal defect which can be remedied by specifying the dates of his leave.⁵⁴

As regards **A.M. No. SCC-11-17**, Judge Barraquias found that the issues raised by Rodrigo, Rahim and Abduraji against Judge Arabani were mere rehash of those already deliberated upon by the Court in A.M. No. 06-3-03-SCC, which was already closed and terminated. Accordingly, Judge Barraquias refused to pass upon the same.⁵⁵

On the other hand, Judge Barraquias recommended the dropping of the sexual harassment charge filed by Sheldalyn against Judge Arabani for insufficiency of evidence,⁵⁶ noting that other than her own account and the parties to this case who have declared their ill-feelings against Judge Arabani, Sheldalyn has no other witness to corroborate the said charge.⁵⁷ On the contrary, the charge was disputed by the testimony of Mrs. Maldisa which failed to show any single act of sexual harassment committed by Judge Arabani on Sheldalyn.⁵⁸ Nonetheless, Judge Barraquias found it an established fact that Judge Arabani made a drawing of a vagina and a penis in front of his staff, and recommended that the latter (*a*) be reprimanded therefor with a stern warning that any similar distasteful acts would be dealt with more severely; and (*b*) undergo mandatory gender sensitivity seminar so that he may be apprised of the value of giving due respect to the opposite sex.⁵⁹

In a Resolution⁶⁰ dated June 23, 2015, the Court referred Judge Barraquias' Joint Investigation, Report and Recommendation dated April 8, 2013 to the OCA for evaluation, report and recommendation.

⁵³ Id. at 120.

⁵⁴ Id. at 121.

⁵⁵ Id. at 122.

⁵⁶ Id. at 126.

⁵⁷ Id. at 124.

⁵⁸ Id. at 125.

⁵⁹ Id. at 126.

⁶⁰ *Rollo* (A.M. No. 06-3-03-SCC), pp. 240-241; *rollo* (A.M. No. SCC-10-14-P), pp. 176-177; *rollo* (A.M. No. SCC-11-17), pp. 584-585.

The OCA's Evaluation, Report and Recommendation

In a Memorandum⁶¹ dated August 25, 2016, the OCA adopted the findings⁶² contained in Judge Barraquias' Joint Investigation, Report and Recommendation dated April 8, 2013, and recommended:

1. in **A.M. No. SCC-10-14-P**, that: (a) Rahim and Abduraji be found guilty of committing irregularities in the punching of Rahim's bundy card on three (3) occasions (*i.e.*, on the subject incidents), which are also acts of dishonesty, and be suspended for six (6) months without pay with a stern warning that similar acts would be dealt with more severely; (b) the complaint for insubordination and conduct unbecoming a court employee against Rahim and Abduraji be dismissed for lack of intent to deliberately defy Judge Arabani's authority as the head of office; and (c) Rahim and Abduraji be reprimanded for their non-compliance with Judge Arabani's memorandum requiring them to explain the subject incidents in writing, and sternly warned that a repetition of the same or any similar act shall also be dealt with severely;⁶³

2. in **A.M. No. SCC-10-15-P**, that: (a) Rodrigo be found guilty of violation of reasonable office rules and regulations for his refusal to leave his bundy card on the designated rack, and be meted the penalty of forfeiture of two (2) months' salary (February and March 2010; *sic*) with a stern warning that the commission of the same or any similar act shall be dealt with more severely; (b) the complaint charging Rodrigo of being constantly not at his assigned table, roaming in and out of the office, and not attending to his work (loafing) be dismissed for insufficiency of evidence; and (c) Rodrigo be allowed to remedy his failure to indicate the specific dates of his leave of absence for April 2010 for being a mere formal defect;⁶⁴ and

3. in **A.M. No. SCC-11-17**, that: (a) the complaint of sexual harassment filed by Sheldalyn against Judge Arabani be dismissed for insufficiency of evidence; (b) Judge Arabani be found guilty of the distasteful act of drawing a vagina and a penis in front of his court staff, and be reprimanded and sternly warned that a repetition of the same or any similar act will be dealt with more severely; and (c) the other charges raised therein be dismissed for being a mere rehash of those already deliberated upon and resolved by the Court *En Banc* in the Resolution dated November 17, 2009 in **A.M. No. 06-3-03-SCC**.⁶⁵

⁶¹ *Rollo* (A.M. No. SCC-10-14-P), pp. 181-195.

⁶² *Id.* at 192.

⁶³ *Id.* at 194.

⁶⁴ *Id.*

⁶⁵ *Id.* at 195.

The Court's Ruling

The Court adopts the factual findings of the OCA, but differs in some of the conclusions and the imposed penalties as shall be hereunder discussed:

1. In A.M. No. SCC-10-14-P:

a. on the charge of dishonesty against Abduraji and Rahim:

Dishonesty is defined as the “disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack of integrity.”⁶⁶ As correctly ruled by the OCA, Abduraji and Rahim are guilty of dishonesty by committing irregularities in the punching of Rahim’s bundy card/DTR on three (3) occasions, *i.e.*, on the subject incidents. **The punching of a court employee’s DTR is a personal act of the holder which cannot and should not be delegated to anyone else.**⁶⁷ Moreover, every court employee has the duty to truthfully and accurately indicate the time of his arrival at and departure from the office.⁶⁸ Thus, case law holds that **falsification of DTRs is an act of dishonesty** and is reflective of respondent’s fitness to continue in office and of the level of discipline and morale in the service,⁶⁹ rendering him administratively liable in accordance with Section 4,⁷⁰ Rule XVII of the Civil Service Rules.

Under Section 22, Rule XIV of the Civil Service Rules, falsification of official documents (such as DTRs) and dishonesty are both grave offenses for which the penalty of dismissal is meted even for first time offenders. Nonetheless, while it is the Court’s duty to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, it also has the discretion to temper the harshness of its judgment with mercy, taking in mind that the objective for discipline is not their punishment, but the improvement of the public service, and the preservation of the public’s faith and confidence in the government.⁷¹

⁶⁶ *Light Rail Transit Authority v. Salvaña*, 736 Phil. 123, 151 (2014).

⁶⁷ *Garcia v. Bada*, 557 Phil. 526, 530 (2007).

⁶⁸ See Item 1 of OCA Circular No. 7-2003 dated January 9, 2003, which pertinently provides:

1. After the end of each month, every official and employee of each court shall accomplish the Daily Time Record (Civil Service Form No. 48)/Bundy Card, **indicating therein truthfully and accurately the time of arrival in and departure from the office.** x x x (Emphasis supplied)

⁶⁹ *Re: Report on the Irregularity in the Use of Bundy Clock by Alberto Salamat, Sheriff IV, RTC-Br. 80, Malolos City*, 592 Phil. 404, 414 (2008).

⁷⁰ Section 4. Falsification or irregularities in the keeping of time records will render the guilty officer or employee administratively liable without prejudice to criminal prosecutions as the circumstances warrant.

⁷¹ See *Exec. Judge Roman v. Fortaleza*, 650 Phil. 1, 8 (2010).

In this relation, Section 48,⁷² Rule 10 of the Revised Rules on Administrative Cases in the Civil Service grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty. Among the circumstances jurisprudentially held as mitigating include, among others, the erring individual's admission of guilt, remorse, high performance rating, and the fact that the infraction complained of is his/her first offense.⁷³ Thus, in several cases involving first time offenders,⁷⁴ as Abduraji and Rahim in this case, the Court has reduced the imposable penalty of dismissal to suspension of six (6) months without pay. Following judicial precedents, the Court adopts the penalty recommended by the OCA, and accordingly suspends Abduraji and Rahim for a period of six (6) months without pay.

b. On the charge of insubordination and conduct unbecoming a court employee against Abduraji and Rahim:

Insubordination is defined as a refusal to obey some order, which a superior officer is entitled to give and have obeyed, and imports a **willful or intentional disregard** of the lawful and reasonable instructions of the Judge.⁷⁵

In this case, the Court finds to be likewise well-taken the OCA's recommendation for the dropping of the said charges against Abduraji and Rahim considering the perceived absence of intent on their part to deliberately defy Judge Arabani's authority as the head of office. However, they should be reprimanded for their failure to comply with Judge Arabani's

⁷² Section 48. *Mitigating and Aggravating Circumstances*. – In the determination of the penalties to be imposed, mitigating and/or aggravating circumstances attendant to the commission of the offense shall be considered.

The following circumstances shall be appreciated:

- a. Physical illness;
- b. Good faith;
- c. Malice;
- d. Time and place of offense;
- e. Taking undue advantage of official position;
- f. Taking undue advantage of subordinate;
- g. Undue disclosure of confidential information;
- h. Use of government property in the commission of the offense;
- i. Habituality;
- j. Offense is committed during office hours and within the premises of the office or building;
- k. Employment of fraudulent means to commit or conceal the offense;
- l. First offense;
- m. Education
- n. Length of service; or
- o. Other analogous circumstances.

In the appreciation thereof, the same must be invoked or pleaded by the proper party, otherwise, said circumstances will not be considered in the imposition of the proper penalty. The disciplining authority, however, in the interest of substantial justice may take and consider these circumstances *motu proprio*.

⁷³ See *Office of the Court Administrator v. Capistrano*, 738 Phil. 1, 5 (2014).

⁷⁴ See *Re: Irregularity in the Use of Bundy Clock by Castro and Tayag, Social Welfare Officers II, both of the RTC, OCC, Angeles City*, 626 Phil. 16, 21 (2010); *Office of the Court Administrator v. Judge Indar*, 725 Phil. 164, 175 (2014); and *Office of the Court Administrator v. Capistrano*, *id.*

⁷⁵ See *Judge Buenaventura v. Mabalot*, 716 Phil. 476, 496 (2013).

memorandum requiring them to explain the subject incidents in writing, which constitutes a violation of reasonable office rules and regulations, a light offense punishable with reprimand for the first offense.⁷⁶

2. in A.M. No. SCC-10-15-P:

The OCA correctly found Rodrigo to have violated reasonable office rules and regulations when he refused to leave his bundy card or DTR on the designated rack despite orders from Judge Arabani. Records show that Rodrigo himself admitted that he did not leave his bundy card/DTR on the designated bundy card rack for the months of January and February 2010 (not the months complained of) for reasons of convenience, and from the months of April to September 2010 for fear of getting lost.⁷⁷ As aptly observed by the OCA, “[t]he reason he provided is not convincing enough and raises doubt as to its truthfulness since other court employees are able to comply and leave their bundy cards on the racks specifically provided therefor.”⁷⁸

Violation of reasonable office rules and regulations is only a light offense punishable with reprimand for the first offense.⁷⁹ Nonetheless, in addition to such non-compliance, Rodrigo likewise failed to secure the signature of Judge Arabani on his bundy cards for the months of March to September 2010 when they are required to be certified correct by the Presiding Judge.⁸⁰ Rodrigo’s avowed reason for his failure to leave his bundy cards on the designated rack having been found to be unjustified, the forfeiture of his entire salary for the said months should have been in order, if not for the Certification⁸¹ dated October 5, 2010 issued by Mirad, Clerk II/Timekeeper of the 4th SCC of Maimbung, Sulu, certifying the number of absences incurred by Rodrigo for the months of April through September 2010, which Judge Arabani submitted, thus, impliedly admitting that Rodrigo was present on the working days not so indicated therein.

In relation thereto, the failure of Rodrigo to specify the number of working days of leave applied for and the inclusive dates in his leave application⁸² filed on April 12, 2010, which merely indicated the type of leave as “SPL [special privilege leave] & VL” (vacation leave), is not a mere formal defect that may be remedied by the expedience of subsequently stating the specific dates of leave. It must be pointed out that leave of absence for any reason other than illness of an official or employee or of any member of his immediate family must be contingent upon the needs of the

⁷⁶ See Section 22, Rule XIV of the Civil Service Rules.

⁷⁷ See *rollo* (A.M. No. SCC-10-15-P), pp. 56 and 78.

⁷⁸ See *rollo* (A.M. No. SCC-10-14-P), p. 193.

⁷⁹ See Section 22, Rule XIV of the Civil Service Rules.

⁸⁰ See Item 3 of OCA Circular No. 7-2003 dated January 9, 2003 which pertinently provides:

“3. DTRs/Bundy Cards shall be **certified correct by the Executive/Presiding Judge** or, in his absence, by the Clerk of Court[.]” (Emphasis supplied)

⁸¹ *Rollo* (A.M. No. SCC-10-15-P), p. 34.

⁸² *Rollo* (A.M. No. SCC-10-14-P), p. 154.

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service. Hence, **the grant of vacation leave shall be at the discretion of the head of department/agency.**⁸³

In this case, Judge Arabani as the approving authority cannot properly act on Rodrigo's leave application because it was not filled-up completely, rendering the latter's immediately succeeding and continuous absence on the working days on April 19 to 23 and 26 to 30, 2010, and May 4 to 7, 2010 as **unauthorized**. Consequently, the latter shall not be entitled to receive his salary corresponding to the period of his unauthorized leave of absence, but said absences shall not be deducted from his accumulated leave credits, if any.⁸⁴

Records also show that Rodrigo further incurred numerous unauthorized⁸⁵ monthly absences from May to September 2010,⁸⁶ totalling 44 whole days and 12 half-days.⁸⁷ Notably, in letters dated July 30, 2010⁸⁸ and October 27, 2010,⁸⁹ Rodrigo admitted that he did not submit his bundy cards from April 2010, and his leave applications for Judge Arabani's signature.⁹⁰

While the mere failure to file a leave of absence in advance does not *ipso facto* render an employee administratively liable, **the unauthorized leave of absence becomes punishable if the absence is frequent or habitual**. 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 at least three (3) months in a semester or at least three (3) consecutive months during the year.⁹¹

In this case, Rodrigo incurred consecutive unauthorized monthly absences of more than 2.5 days from April to September 2010,⁹² rendering him administratively liable for the offense of **frequent unauthorized absences**. Moreover, contrary to the OCA's finding, the Court finds Rodrigo guilty of loafing or frequent unauthorized absences from duty during regular hours for more than once.⁹³ It is imperative that as Clerk of Court, Rodrigo should always be at his station during office hours.⁹⁴ However, records show

⁸³ See Chapter 10 (A) (2.1) of the 2002 Revised Manual for Clerks of Court. See also Section 51, Rule XVI of the Civil Service Rules, as amended.

⁸⁴ Chapter 10 (5) of the 2002 Revised Manual for Clerks of Court, and Section 50, Rule XVI of the Civil Service Rules, as amended, commonly provide:

"An official/employee who is absent without approved leave shall not be entitled to receive his salary corresponding to the period of his unauthorized leave of absence. It is understood, however that his absence shall no longer be deducted from his accumulated leave credits, if there are any."

⁸⁵ See *rollo* (A.M. No. SCC-10-15-P), p. 15.

⁸⁶ See *id.* at 57-60.

⁸⁷ *Id.* at 34.

⁸⁸ *Rollo* (A.M. No. SCC-11-17), pp. 37-38.

⁸⁹ *Rollo* (A.M. No. SCC-10-15-P), p. 56.

⁹⁰ *Rollo* (A.M. No. SCC-11-17), p. 38.

⁹¹ See Section 23 (q), Rule XIV of the Civil Service Rules.

⁹² *Rollo* (A.M. No. SCC-10-15-P), p. 34.

⁹³ *Branch Clerk of Court Grutas v. Madolaria*, 574 Phil. 526, 534-535 (2008).

⁹⁴ See *Office of the Court Administrator vs. Runes*, 730 Phil. 391, 397 (2014).

that he incurred 12 half day absences from May to September 2010,⁹⁵ which were undisputedly without previous notice to the Presiding Judge.

Section 1, Canon IV of the Code of Conduct for Court Personnel mandates that court personnel shall commit themselves *exclusively* to the business and responsibilities of their office during working hours. Court personnel should strictly observe the prescribed office hours and the efficient use of every moment thereof to inspire public respect for the justice system. Thus, court officials and employees are at all times behooved to *strictly* observe official time because the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the last and lowest of its employees.⁹⁶ Loafing results in inefficiency and non-performance of duty, and adversely affects the prompt delivery of justice.⁹⁷

Section 23 (q),⁹⁸ Rule XIV of the Civil Service Rules punishes “[f]requent unauthorized absences,⁹⁹ loafing or frequent unauthorized absences from duty during regular office hours” with suspension for six (6) months and one (1) day to one (1) year for the first offense, and dismissal for the second offense. Records are bereft of showing, however, that Rodrigo had been previously found guilty of such offense. Consequently, the Court deems it proper to impose upon him the penalty of six (6) months and one (1) day suspension. The OCA’s recommendation for the forfeiture of salary for the months of February (*sic*; not the month complained of) and March, 2010 must be, therefore, modified accordingly.

⁹⁵ See Certification dated October 5, 2010 (*rollo* [A.M. No. SCC-10-15-P], p. 34), and Rodrigo’s DTR’s for the said months (*id.* at 57 [May 12, 2010], 58 [May 26 & 28, 2010, and June 16, 2010], 59 [July 8, 12 & 13, 2010, and August 10, 2010], 60 [July 22 & 30, 2010, and September 27, 2010]).

⁹⁶ *Office of the Court Administrator vs. Runes*, *supra* note 96, at 398.

⁹⁷ *Exec. Judge Roman v. Fortaleza*, *supra* note 71, at 6.

⁹⁸ Section 23. x x x.

The following are grave offenses with corresponding penalties:

x x x x

(q) Frequent unauthorized absences, loafing or frequent unauthorized absences from duty during regular office hours

1st offense – Suspension for six (6) months and one (1) day to one (1) year

2nd offense – Dismissal

x x x x

Section 46 (B) (5), Rule 10 of the Revised Rules on Administrative Cases in the Civil likewise provides:

Section 52. *Classification of Offenses.* – Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

x x x x

B. The following grave offenses shall be punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from service for the second offense:

5. Frequent unauthorized absences, or tardiness in reporting for duty, loafing from duty during regular office hours;

x x x x

⁹⁹ Jurisprudence dictates that unauthorized absence shall also become punishable if it is detrimental to the service under Section 23 (r) or the official or employee falsified his daily time record under Section 23 (a) or (f) of the same Civil Service Rules. (*Judge Aquino v. Fernandez*, 460 Phil. 1, 12 (2003)).

3. In A.M. No. SCC-11-17:

a. On the various charges hurled by Rodrigo, Rahim and Abduraji against Judge Arabani:

The Court finds no reason to disturb the OCA's recommendation upholding Judge Barraquias' finding that the issues raised by Rodrigo, Rahim and Abduraji against Judge Arabani, save as shall be hereunder discussed, were mere rehash of those already deliberated upon by the Court in A.M. No. 06-3-03-SCC,¹⁰⁰ which was already closed and terminated.¹⁰¹ Moreover, other than their own testimonies which must be taken with a grain of salt considering their manifest ill-feelings towards Judge Arabani, they failed to present sufficient evidence to corroborate their charges against him.

b. On the charge of sexual harassment against Judge Arabani, and of making a drawing of a vagina and a penis in front of his court staff:

Section 3 of the "Rule on Administrative Procedure in Sexual Harassment Cases and Guidelines on Proper Work Decorum in the Judiciary"¹⁰² defines work-related sexual harassment as follows:

Section 3. *Work-related Sexual harassment; definition.* – Work-related sexual harassment is committed by an official or an employee in the Judiciary who, having authority, influence or moral ascendancy over another in a work environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the latter.

Section 4 of the same rules provides the modes of commission of the said act, to wit:

Section 4. *Work-related Sexual harassment; how committed.*—
Work-related sexual harassment is committed when:
(a) The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in anyway would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee. It shall include, but shall not be limited to, the following modes:

¹⁰⁰ *Rollo* (A.M. No. SCC-10-14-P), p. 193.

¹⁰¹ *Id.* at 122.

¹⁰² A.M. No. 03-03-13-SC, effective January 3, 2005. Section 3, Rule III of CSC Resolution No. 01-0940, otherwise known as the "Administrative Disciplinary Rules on Sexual Harassment Cases," defines the **administrative offense of sexual harassment** as "an act, or a series of acts, involving any unwelcome sexual advance, request or demand for a sexual favor, or other verbal or physical behavior of a sexual nature, committed by a government employee or official in a work-related, training or education related environment of the person complained of." (Emphasis supplied)

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1. Physical, such as malicious touching, overt sexual advances, and gestures with lewd insinuation.
2. Verbal, such as requests or demands for sexual favors, and lurid remarks.
3. Use of objects, pictures or graphics, letters or written notes with sexual underpinnings.
4. Other acts analogous to the foregoing.

(b) The above acts would impair the employee's rights or privileges under existing laws; or

(c) The above acts would result in an intimidating, hostile, or offensive environment for the employee.¹⁰³ (Emphasis supplied)

Section 53, Rule X of Civil Service Commission (CSC) Resolution No. 01-0940, otherwise known as the "Administrative Disciplinary Rules on Sexual Harassment Cases", classifies sexual harassment into grave, less grave and light offenses, *viz.*:

Section 53. Sexual harassment is classified as grave, less grave and light offenses.

A. Grave Offenses shall include, but are not limited to:

1. unwanted touching of private parts of the body (genitalia, buttocks and breast);
2. sexual assault;
3. malicious touching;
4. requesting for sexual favor in exchange for employment, promotion, local or foreign travels, favorable working conditions or assignments, a passing grade, the granting of honors or scholarship, or the grant of benefits or payment of a stipend or allowance, and
5. other analogous cases.

¹⁰³ Section 3 (a), Rule III of CSC Resolution No. 01-0940 provides the modes of commission of the said act as follows:

Section 3. x x x.

(a) Work related sexual harassment is committed under the following circumstances:

- (1) **submission to or rejection of the act or series of acts is used as a basis for any employment decision** (including, but not limited to, matters related to hiring, promotion, raise in salary, job security, benefits and any other personnel action) affecting the applicant/employee; or
- (2) the act or series of acts have the purpose or effect of **interfering with the complainant's work performance, or creating an intimidating, hostile or offensive work environment**; or
- (3) the act or series of acts might **reasonably be expected to cause discrimination, insecurity, discomfort, offense or humiliation** to a complainant who may be a co-employee, applicant, customer, or word of the person complained of.

x x x x (Emphasis supplied)

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B. Less Grave Offenses shall include, but are not limited to:

1. unwanted touching or brushing against a victim's body;
2. pinching not falling under grave offenses;
3. derogatory or degrading remarks or innuendoes directed toward the members of one sex, or one's sexual orientation or used to describe a person;
- 4. verbal abuse with sexual overtones; and**
- 5. other analogous cases.**

C. The following shall be considered Light Offenses;

1. surreptitiously looking or staring a look of a person's private part or worn undergarments;
2. telling sexist/smitty jokes or sending these through text, electronic mail or other similar means, causing embarrassment or offense and carried out after the offender has been advised that they are offensive or embarrassing or, even without such advise, when they are by their nature clearly embarrassing, offensive or vulgar;
3. malicious leering or ogling;
4. the display of sexually offensive pictures, materials or graffiti;
5. unwelcome inquiries or comments about a person's sex life;
6. unwelcome sexual flirtation, advances, propositions;
7. making offensive hand or body gestures at an employee;
8. persistent unwanted attention with sexual overtones;
9. unwelcome phone calls with sexual overtones causing discomfort, embarrassment, offense or insult to the receiver; and
10. other analogous cases. (Emphases supplied)

Despite his protestations, the charge that Judge Arabani made a drawing of a vagina and a penis, and thereafter showed it to Sheldalyn was corroborated by Mirad, a disinterested witness, who categorically declared that it was Judge Arabani who made the drawing, and affirmed that it was he (Mirad) who crumpled it.¹⁰⁴ The act was enough to create an intimidating, hostile, or offensive environment for Sheldalyn such that all subsequent interaction with Judge Arabani became unwelcome on her part. In fact, the substantial evidence on record showed that Sheldalyn became afraid of Judge Arabani¹⁰⁵ and started to avoid him.¹⁰⁶

¹⁰⁴ See *rollo* (A.M. No. SCC-11-17), p. 349.

¹⁰⁵ See *id.* at 342.

¹⁰⁶ See *id.* at 21.

The distasteful act by Judge Arabani of making a drawing of a vagina and a penis, and thereafter showing it to an employee of the court of which he is an officer constitutes sexual harassment. It is an act that constitutes a physical behavior of a sexual nature; a gesture with lewd insinuation. To the Court's mind, Judge Arabani deliberately utilized this form of expression, *i.e.*, drawing, to maliciously convey to Sheldalyn his sexual desires over her; hence, his conduct cannot be classified as a mere display of sexually offensive pictures, materials or graffiti under Section 53 (C) (4), Rule X of CSC Resolution No. 01-0940, such as one who is caught watching or reading pornographic materials. Rather, Judge Arabani's behavior should be classified as an analogous case (Section 53 [B] [5]) of verbal abuse with sexual overtones under Section 53 (B) (4) of the same issuance, which thus, qualifies the same as a less grave offense. Section 56 (B), Rule XI of CSC Resolution No. 01-0940 states the penalties for less grave offenses:

B. For less grave offenses:

1st offense – Fine or suspension of not less than thirty (30) days and not exceeding six (6) months

2nd offense – Dismissal

Accordingly, as it appears that this is Judge Arabani's first infraction of this kind, the Court imposes upon him the penalty of suspension for a period of six (6) months.

WHEREFORE, judgment is hereby rendered as follows:

1. in A.M. No. SCC-10-14-P:

- a. respondents Rahim A. Arabani (Rahim), Junior Process Server, and Abduraji G. Bakil (Abduraji), Utility Worker I, both of the 4th Shari'a Circuit Court (4th SCC) of Maimbung, Sulu, are found **GUILTY** of committing irregularities in the punching of Rahim's bundy card/DTR on the subject incidents, and hereby **SUSPENDED** for six (6) months without pay, with a **STERN WARNING** that similar acts would be dealt with more severely;
- b. the complaint for insubordination and conduct unbecoming a court employee against Rahim and Abduraji are **DISMISSED** for lack of merit;
- c. Rahim and Abduraji are **REPRIMANDED** for failing to comply with Judge Arabani's memorandum requiring them to explain the subject incidents in writing, and **STERNLY WARNED** that a repetition of the same or any similar act shall be dealt with more severely.

2. in A.M. No. SCC-10-15-P:

- a. respondent Rodrigo Ramos, Jr. (Rodrigo), Clerk of Court of the 4th SCC of Maimbung, Sulu is found **GUILTY** of violation of reasonable office rules and regulations, and is hereby **REPRIMANDED**, and **STERNLY WARNED** that the commission of the same or any similar act shall be dealt with more severely;
- b. Rodrigo is declared **GUILTY** of frequent unauthorized absences, and loafing or frequent unauthorized absences from duty during regular office hours, and is accordingly **SUSPENDED** for six (6) months and one (1) day without pay, with a **STERN WARNING** that similar acts would be dealt with more severely. He shall not be entitled to receive his salary corresponding to the period of his unauthorized leave of absence as afore-discussed, but said absences shall not be deducted from his accumulated leave credits, if any; and

3. in A.M. No. SCC-11-17:

- a. respondent Judge Arabani, Presiding Judge of the 4th SCC of Maimbung, Sulu, is found **GUILTY** of sexual harassment classified as a less grave offense under Section 53 (B) (5), Rule X of Civil Service Commission Resolution No. 01-0940, and is accordingly **SUSPENDED** for six (6) months without pay, with a **STERN WARNING** that a repetition of the same or any similar act will be dealt with more severely; and
- b. the other charges raised in the case are **DISMISSED** for being mere rehash of those already deliberated upon and resolved by the Court in the Resolution dated November 17, 2009 in A.M. No. 06-3-03-SCC, and for being unsubstantiated.

Let copies of this Decision be furnished the Office of the Court Administrator and the Office of the Bar Confidant to be attached to respondents' respective records.

SO ORDERED.

Ms. Bern
ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

[Signature]
MARIA LOURDES P. A. SERENO
Chief Justice

[Signature]
ANTONIO T. CARPIO
Associate Justice

[Signature]
PRESBITERO J. VELASCO, JR.
Associate Justice

[Signature]
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

[Signature]
DIOSDADO M. PERALTA
Associate Justice

[Signature]
LUCAS P. BERSAMIN
Associate Justice

[Signature]
MARIANO C. DEL CASTILLO
Associate Justice

[Signature]
JOSE CATRAL MENDOZA
Associate Justice

On Official Leave
BIENVENIDO L. REYES
Associate Justice

[Signature]
MARVIC M. V. F. LEONEN
Associate Justice

[Signature]
FRANCIS H. JARDELEZA
Associate Justice

[Signature]
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFIED XEROX COPY:

[Signature]
FELIPA B. ANANA
CLERK OF COURT, EN BANC
SUPREME COURT