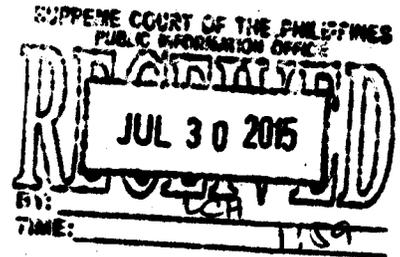




REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION



NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 20 July 2015 which reads as follows:

A.M. No. 13-11-104-MCTC: RE: HABITUAL TARDINESS OF ROSALINDA A. PACALNA, COURT STENOGRAPHER I, 3RD MUNICIPAL CIRCUIT TRIAL COURT, GANASSI-MADAMBA, PAGAYAWAN-PUALAS, LANA DEL SUR

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This resolves the Office of the Court Administrator's Report dated January 8, 2015¹ in relation to the Report dated September 25, 2013 by Ryan U. Lopez (Lopez), Officer-in-Charge, Employees' Leave Division, Office of Administrative Services-Office of the Court Administrator.² Lopez's Report stated that respondent Rosalinda A. Pacalna (Pacalna), Court Stenographer I of the 3rd Municipal Circuit Trial Court, Ganassi-Madamba, Pagayawan-Pualas, Lanao del Sur, incurred undertime and tardiness as summarized in the table below:³

Usual Time Observed by Pacalna	Total Hours of Undertime/ Tardiness	No. of Days of Undertime	Tardiness
May 2012 7:30 – 11:30 1:00 – 5:00	1.375	22 times in the morning	
June 2012 7:30 – 11:30 1:00 – 5:00	1.250	20 times in the morning	
July 2012 7:30 – 11:30 1:00 – 5:00	1.312	21 times in the morning	
August 2012 7:30 – 11:30 1:00 – 5:00	1.250	20 times in the morning	
September 2012 8:00 – 12:00 1:00 – 5:00	.706		17 times a month
October 2012 8:00 – 12:00 1:00 – 5:00	.840		18 times a month
November 2012 8:00 – 12:00 1:00 – 5:00	.642		14 times a month

¹ Rollo, pp. 12-19.

² Id. at 2-5.

³ Id. at 12.

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As shown in Lopez's Report, Pacalna's official working hours were from ~~8:00 a.m.~~ 8:00 a.m. to 12:00 noon and from 1:00 p.m. to 5:00 p.m.⁴

On February 3, 2014, the Office of the Court Administrator required Pacalna to submit her Comment on Lopez's Report.⁵

In the Comment⁶ dated February 24, 2014, Pacalna claimed that she had been following a flexible time (flexi-time) schedule of 7:30 a.m. to 4:30 p.m., which was allowed by this court.⁷ She did not know that permission or authorization from this court was required to avail herself of the flexi-time schedule.⁸

Furthermore, adopting the flexi-time schedule was more convenient for Pacalna as "Ganassi, Lanao del Sur[,] where [the] office [is located], is an interior municipality in Lanao del Sur where transportation is not abundant."⁹

In its Report dated January 8, 2015, the Office of the Court Administrator found Pacalna guilty of Simple Misconduct for habitual tardiness and incurred undertime. It recommended her suspension of one (1) month and (1) day.

According to the Office of the Court Administrator, Administrative Circular No. 02-2007¹⁰ states that office hours of all courts, without prejudice to the approved flexi-time schedule, is from Monday to Friday at 8:00 a.m. to 12:00 noon and 1:00 p.m. to 5:00 p.m.¹¹ In Resolution No. 00-0970¹² dated April 7, 2000, the Civil Service Commission defined habitual tardiness, undertime, and one-half day absence:

Tardiness is . . . the failure to arrive at the time set, lack of punctuality of not arriving on time. The definition inevitably implies that the office or employee may, in one working day, incur tardiness twice — one in the morning and another in the afternoon. Hence, in just five days (5) days, it is possible for the officer or employee to be tardy ten (10)

⁴ Id. at 2-5. Pacalna is one of the seven (7) employees of the Municipal Circuit Trial Court, Ganassi-Madamba, Lanao del Sur, who have incurred tardiness and undertime as per the September 25, 2013 Report.

⁵ Id. at 10.

⁶ Id. at 11. Pacalna, together with other respondents, submitted a consolidated comment on the September 25, 2013 Report.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Re: Reiteration of Administrative Circular No. 2-99 dated 15 January 1999 on "Strict Observance of Working Hours and Disciplinary Action for Absenteeism and Tardiness."

¹¹ *Rollo*, p. 13.

¹² Re: Tardiness; Undertime of Carmelita P. Yadao-Guno.

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The same [Civil Service Commission] Resolution defines undertime as working time that is less than the full[-]time required minimum. This is usually incurred by an officer or an employee who leaves and quits from work earlier than the usual eight[-]hour work schedule in a given work day. This being so, one who incurs an undertime cannot be considered to be tardy.¹³

Under Office of the Court Administrator Circular No. 52-2007 dated May 17, 2007, the flexi-time schedule is allowed outside the National Capital Judicial Region from Monday to Friday at 7:30 a.m. to 11:30 a.m. and at 12:30 p.m. to 4:30 p.m. For valid and justifiable reasons, a different flexi-time schedule may be allowed: Monday to Friday, 8:30 a.m. to 12:30 p.m. and 1:30 p.m. to 5:30 p.m.¹⁴

In Civil Service Commission Resolution No. 10-1357 dated July 6, 2010, the Civil Service Commission provided the guidelines for undertime, particularly that “while undertime is not classified as tardiness and is not considered [an] administrative offense, there is a need to set a limit as to the number of times an officer or employee is allowed to go on undertime.”¹⁵ Certainly, “undertime for more than that allowed shall be considered as falling under the administrative offenses of Simple Misconduct and/or Conduct Prejudicial to the Best Interest of the Service[.]”¹⁶ In sum, “[a]ny officer or employee who incurs undertime, regardless of the number of minutes/hours, ten (10) times a month for at least two months in a semester shall be liable for Simple Misconduct and/or Conduct Prejudicial to the Best Interest of the Service, as the case may be.”¹⁷

In Civil Service Commission Memorandum Circular No. 17, Series of 2010, it was provided that “[a]ny officer or employee who is absent in the morning is considered . . . tardy and is subject to the provisions on Habitual Tardiness[.]”¹⁸ Likewise, “[a]ny officer or employee who is absent in the afternoon is considered to have incurred undertime, subject to the provisions on Undertime.”¹⁹

The Office of the Court Administrator reiterated the Civil Service Commission’s policy on undertime in Office of the Court Administrator Circular No. 118-2010²⁰ dated September 3, 2010:

¹³ *Rollo*, pp. 13–14.

¹⁴ *Id.* at 14.

¹⁵ *Id.* at 15.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 16.

¹⁹ *Id.* at 16–17.

²⁰ This circular is entitled “Policy on Undertime and Half Day Absence.”

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1. Any officer or employee who incurs undertime, regardless of the number of minutes/hours, ten (10) times a month for at least two months in a semester shall be liable for Simple Misconduct and/or Conduct Prejudicial to the Best Interest of the Service, as the case may be; and

2. Any officer or employee who incurs undertime, regardless of the number of minutes/hours, ten (10) times a month for at least two (2) consecutive months during the year shall be liable for Simple Misconduct and/or Conduct Prejudicial to the Best Interest of the Service, as the case may be.²¹

Pursuant to these guidelines on undertime, the Office of the Court Administrator found that Pacalna incurred undertime more than ten (10) times a month for at least two (2) months (from May to August 2012) in a semester. It found that Pacalna was liable for Simple Misconduct and/or Conduct Prejudicial to the Best Interest of the Service. Pacalna's explanation that she observed the flexi-time schedule in good faith did not absolve her from administrative sanction.²²

Based on Civil Service Commission Memorandum Circular No. 23, Series of 1998, it is clear that Pacalna had been habitually tardy. Pacalna's explanation did not deserve consideration because this court has consistently held that "moral obligations, performance of household chores, traffic problems and health, domestic and financial concerns are not sufficient reason[s] to excuse habitual tardiness."²³

Hence, the Office of the Court Administrator recommended the penalty of suspension for one (1) month and one (1) day:

Rule 10 (Schedule of Penalties) Section 46, paragraph D (2) and paragraph (F) of Revised Rules on Administrative Cases in the Civil Service classifies Simple Misconduct as a less grave offense punishable by suspension for one (1) month and one (1) day to six months for the first offense; and dismissal from the service for the second. Paragraph F (4) of the same rule classifies frequent unauthorized tardiness (Habitual Tardiness) as light offense, punishable by reprimand – 1st offense, suspension for one (1) to thirty (30) days – 2nd offense, and dismissal from the service – 3rd offense.

Under Section 48 of the same rule, it is provided that "in the determination of penalties to be imposed, mitigating and/or aggravating circumstances attendant to the commission of the offense shall be

²¹ *Rollo*, p. 16.

²² *Id.* at 17.

²³ *Id.*

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considered.” Respondent Pacalna’s admission of guilt, the fact that [this] is the first time she incurred undertime, and her observance of the flexi-time schedule in good faith should be treated as mitigating circumstances vis-à-vis the imposition of the appropriate penalty. However, Section 50 (Penalty for the Most Serious Offense) of the same rule provides, that . . . if the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating.

In the instant case, respondent Pacalna incurred habitual tardiness and undertime and pursuant to these aforementioned provisions, the Office deems it proper to impose a penalty of suspension for one (1) month and one (1) day.

Respondent’s tardiness cannot be condoned. In one case, the Supreme Court held that habitual tardiness is a form of neglect of duty. Lack of initiative, diligence, and discipline to come to work on time everyday exhibit the employee’s deportment towards work. Habitual and excessive tardiness is inimical to the general productivity and business of the employer. This is especially true when the tardiness and/or absenteeism occur frequently and repeatedly within an extensive period of time.²⁴

We affirm the findings of the Office Court Administrator and accept its recommendations. Respondent Rosalinda A. Pacalna is guilty of simple misconduct for her habitual tardiness and for incurring undertime.

Trial court employees are required to observe the following office hours as prescribed by Administrative Circular No. 02-2007 dated January 12, 2007:²⁵

- I. Accordingly, all courts must observe the following office hours, without, however, prejudice to the approved flexi-time of certain personnel;

MONDAY TO FRIDAY

8:00 A.M. to 12:00 NN

1:00 P.M. to 5:00 P.M.

An employee may, thus, be considered tardy twice in a day—one in the morning and one in the afternoon.²⁶ As found by the Office of the Court Administrator, the official working hours of employees at the 3rd Municipal Circuit Trial Court, Ganassi-Madamba, Pagayawan-Pualas, Lanao del Sur

²⁴ Id. at 17–18.

²⁵ Re: Reiteration Of Administrative Circular No. 2-99 Dated January 15, 1999 On “Strict Observance Of Working Hours And Disciplinary Action For Absenteeism And Tardiness”

²⁶ See Re: Tardiness; Undertime of Carmelita P. Yadao-Guno, Civil Service Resolution No. 00-0970 dated April 7, 2000.

are from 8:00 a.m. to 12:00 noon and from 1:00 p.m. to 5:00 p.m. Respondent incurred both habitual tardiness and undertime.

Under Civil Service Commission Memorandum Circular No. 23, Series of 1998, an employee shall be considered habitually tardy if “he [or she] 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.” Lopez’s Report showed that respondent incurred tardiness 17 times in September, 18 times in October, and 14 times in November of 2012.

Respondent did not deny Lopez’s findings in his Report. She only claimed difficulty with transportation to and from the office as justification for her attendance records. It is settled that “justifications for . . . tardiness falling under the categories of illness, moral obligation to family and relatives, performance of household chores, traffic and health or physical condition are neither novel nor persuasive, and hardly evoke sympathy. If at all, such justifications may only mitigate liability.”²⁷ Consequently, she is guilty of habitual tardiness.

Habitual tardiness is a light offense “punishable by reprimand for the first offense; suspension of one (1) to thirty (30) days for the second offense; and dismissal from the service for the third offense.”²⁸

Undertime is not tardiness.²⁹ Undertime is committed when “an officer or employee fails to observe the prescribed eight-hour work schedule in a day.”³⁰ It is also “working time that is less than the full time or required minimum.”³¹

Undertime for more than the allowed times set by the Rules constitutes Simple Misconduct and/or Conduct Prejudicial to the Best Interest of the Service.³² Hence, “[a]ny officer or employee who incurs undertime, regardless of the number of minutes/hours, ten (10) times a month for at least two months in a semester shall be liable for Simple Misconduct and/or Conduct Prejudicial to the Best Interest of the Service, as

²⁷ *Re: Employees Incurring Habitual Tardiness in the Second Semester of 2009*, 660 Phil. 608 (2011) [Per J. Bersamin, En Banc]. See *Re: Employees Incurring Habitual Tardiness in the 1st Semester of 2007*, 596 Phil. 133 (2009) [Per J. Chico-Nazario, En Banc].

²⁸ REV. RULES ON ADM. CASES IN THE CIVIL SERVICE, Rule 10, sec. 46, par. F (4).

²⁹ Civil Service Commission Res. No. 10-1357 (2010), 5th and 8th whereas clauses. See Office of the Court Administrator Circular No. 118-2010 (2010).

³⁰ Civil Service Commission Res. No. 10-1357 (2010), 3rd whereas clause.

³¹ Civil Service Commission Reso. No. 10-1357 (2010), 4th whereas clause, citing Civil Service Reso. No. 00-0970 (2000).

³² Civil Service Commission Reso. No. 10-1357 (2010), 9th whereas clause.

the case may be.”³³ The same rule was reiterated in Office of the Court Administrator Circular No. 118-2010 dated September 3, 2010.³⁴

Records showed that respondent had incurred undertime from May to August 2012.³⁵ She readily admitted that she would leave work at 4:30 p.m. following a flexi-time schedule without prior permission from this court.³⁶ Under Office of the Court Administrator Circular No. 52-2007 dated May 17, 2007,³⁷ flexi-time may be allowed following the given schedule:

3. a. By reason of the nature and functions of the lower courts, the earliest flexi-time allowable shall be as follows:

For National Capital Judicial Region:

Monday to Friday	7:30 A.M. to 11:30 A.M. 12:00 Noon to 4:00 P.M.
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Outside National Capital Judicial Region:

Monday to Friday	7:30 A.M. to 11:30 A.M. 12:30 P.M. to 4:30 P.M.
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For exceptional cases, a different flexi-time schedule may be permitted but not beyond the following:

For National Capital Judicial Region:

Monday to Friday	8:30 A.M. to 12:30 P.M. 1:00 P.M. to 5:00 P.M.
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Outside National Capital Judicial Region:

Monday to Friday	8:30 A.M. to 12:30 P.M. 1:30 P.M. to 5:30 P.M.
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³³ Civil Service Commission Resolution No. 10-1357 (2010), 9th whereas clause.

³⁴ Re: Policy on Undertime and Half Day Absence: “1. Any officer or employee who incurs undertime, regardless of the number of minutes/hours, ten (10) times a month for at least two months in a semester shall be liable for Simple Misconduct and/or Conduct Prejudicial to the Best Interest of the Service, as the case may be[.]” See also Civil Service Memorandum Circular No. 17, series of 2010.

³⁵ *Rollo*, p. 12.

³⁶ *Id.* at 11.

³⁷ Re: Amendment of Paragraph 3 of OCA Circular No. 99-2003 dated August 5, 2003, “Re: Guidelines For Flexitime.”

Respondent did not have prior leave from this court to adopt a flexi-time schedule. Aside from her admission, Lopez's Report showed that respondent incurred undertime multiple times from May to August 2012: 22 times in the morning for May 2012; 20 times in the morning for June 2012; 21 times in the morning for July 2012; and 20 times in the morning for August 2012. Respondent, thus, committed undertime and is liable for Simple Misconduct.

Simple Misconduct is a less grave offense "punishable by suspension of one (1) month and one (1) day suspension to six (6) months for the first offense; and dismissal from the service for the second offense."³⁸

The Office of the Court Administrator noted that mitigating circumstances exist in favor of respondent, such as admission of guilt, first offense, and good faith. Under Rule 10, Section 48 of the Revised Rules on Administrative Cases in the Civil Service, mitigating and/or aggravating circumstances may be considered in determining the appropriate penalty to be imposed.³⁹ However, Section 50 of the same Rule provides:

Section 50. Penalty for the Most Serious Offense. - If the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances.

³⁸ REV. RULES ON ADM. CASES IN THE CIVIL SERVICE, Rule 10, sec. 46, par. D (2).

³⁹ 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.

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Since respondent committed both habitual tardiness and undertime, the Office of the Court Administrator was, therefore, correct when it recommended the penalty of suspension of one (1) month and (1) day.

We have held that “[a] public office is a public trust. Inherent in this mandate is the observance and the efficient use of every moment of the prescribed office hours to serve the public.”⁴⁰ Though made in good faith, we cannot allow court employees’ circumvention of the rules. It is often repeated that members and employees of the judiciary are subject to a more stringent standard of rules and behavior:

By being habitually tardy, these employees have fallen short of the stringent standard of conduct demanded from everyone connected with the administration of justice. By reason of the nature and functions of their office, officials and employees of the Judiciary must be role models in the faithful observance of the constitutional canon that public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives. Inherent in this mandate is the observance of prescribed office hours and the efficient use of every moment thereof for public service, if only to recompense the Government, and ultimately, the people who shoulder the cost of maintaining the Judiciary. Thus, to inspire public respect for the justice system, court officials and employees are at all times behooved to strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible.⁴¹

WHEREFORE, respondent Rosalinda A. Pacalna is **GUILTY** of Simple Misconduct. She is **SUSPENDED** for one (1) month and one (1) day and **WARNED** that a repetition of the same offense will warrant the imposition of a more severe penalty. Judge Anuar A. Edres of the 3rd Municipal Circuit Trial Court, Ganassi-Madamba, Pagayawan-Pualas, Lanao del Sur is **DIRECTED** to ensure the observance of the official working hours by all personnel, without prejudice to their option to avail of the flexible time schedule as prescribed under the Rules.

SO ORDERED.

Very truly yours,

MA. LOURDES C. PERFECTO
 MA. LOURDES C. PERFECTO
 Division Clerk of Court *by 7/29*

⁴⁰ *Aquino-Simbulan v. Zabat*, 496 Phil. 497, 505 [Per J. Panganiban, Third Division].

⁴¹ *Re: Employees Incurring Habitual Tardiness in the 1st Semester of 2007*, 596 Phil. 133, 146 (2009) [Per J. Chico-Nazario, En Banc].

HON. COURT ADMINISTRATOR

Jose Midas P. Marquez (x)

HON. DEPUTY COURT ADMINISTRATOR

Raul B. Villanueva (x)

Jenny Lind Aldecoa-Delorino (x)

Thelma C. Bahia (x)

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Office of Administrative Services (x)

Office of the Court Administrator

Supreme Court, Manila

EMPLOYEE'S LEAVE DIVISION (x)

OAS-OCA

Supreme Court, Manila

ROSALINDA A. PACALNA (reg)

Court Stenographer I

3rd Municipal Circuit Trial Court

Ganassi-Madamba, Pagayawan-Pualas, Lanao del Sur

HON. ANUAR A. EDRES (reg)

Presiding Judge

3rd Municipal Circuit Trial Court

Ganassi-Madamba, Pagayawan-Pualas, Lanao del Sur

OFFICE OF THE CHIEF ATTORNEY (x)

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A.M. No. 13-11-104-MCTC. 07/20/15 (109)URES

10/11/15