

PEDRO D. DIOQUINO, PETITIONER, VS. RODOLFO J. MARTIREZ, RESPONDENT.

A.M. No. P-195. May 10, 1976

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

On October 12, 1972, herein respondent Rodolfo J. Martirez Deputy Clerk of Court, filed with the Supreme Court a verified petition for the disbarment of Atty. Pedro Dioquino y Dolot (Adm. Case No. 1122) on the ground that therein respondent Dioquino, who was allegedly born on November 26, 1905, placed in both his information sheet, upon his appointment as Special Counsel in the Office of the Provincial Fiscal of Masbate, and in the Statement of Assets and Liabilities that he submitted upon collection of his initial salary, the date of his birth as November 26, 1912, which is allegedly false.

Atty. Dioquino retaliated by filing the instant administrative complaint against respondent Deputy Clerk of Court of Branch I of the Court of First instance of Masbate, charging him with:

- (1) Malversation of public funds
- (2) Theft of voucher
- (3) Usurpation of official function
- (4) Incriminatory machination
- (5) Land-grabbing, and
- (6) Serious misconduct.

In connection with another administrative complaint filed with the Department of Justice by Martirez against Special Counsel Dioquino, for misrepresentation and falsification, Chief State Prosecutor Rodolfo A. Nocon, in a letter dated March 1, 1973, informed Martirez that:

"* * * the resignation of said Special Counsel was already accepted by the Secretary of Justice effective February 23, 1973.

"Premises considered and, in view of the fact that the purpose of an administrative proceedings is the removal of a public officer from the service, your above cited complaint is now, therefore, rendered moot and academic" (Annex "B", p. 45, rec.).

In his comment dated March 21, 1973, herein respondent Martirez denied all the charges, thus:

Concerning charge (1) for malversation of public funds, respondent claimed that complainant's allegations were a mere concoction because respondent caused his separation from the service as of February 23, 1973.

Relative to charge (2) for theft of voucher, herein respondent said that Edison Medenilla (a "caminero" who had

earlier complained to the Provincial Auditor and the Provincial Treasurer, both of Masbate, about the loss of his voucher in the amount of P74.91, and filed a complaint against respondent and Filomeno Baldeo, the disbursing officer of the Provincial Treasurer's Office in Masbate, under I.S. No. 756'71 [p. 8, Answer]), had allegedly "actually encashed his own voucher" as per his affidavit of July 22, 1972 (Exh. "F") and later executed another affidavit, one of desistance, on October 17, 1972, a portion of which reads:

"That I am the complainant in the case filed with the Fiscal's Office against Rodolfo J. Martinez and Filomeno L. Baldeo;

"That I have desisted to prosecute this case in view of the fact that we have already settled it among ourselves and that I am no longer interested;

"I therefore request the Hon. Fiscal that this case be dismissed (p. 8 of Answer, p. 70, rec., italics supplied)."

Regarding charge (3) for usurpation of official function, respondent answered that complainant had merely trumped up said charge by inducing Edison Medenilla to execute an affidavit to the effect that his voucher amounting to P74.91 was fraudulently encashed with the cashier in the Provincial Treasurer's Office; that complainant likewise made said cashier, Filomeno Baldeo, execute an affidavit stating that it was respondent herein who encashed the aforesaid voucher with him (Baldeo), when in truth and in fact, said respondent had no participation whatsoever in the fraudulent encashment of such voucher of Medenilla (pp. 7 & 2, Answer), who had already executed on October 17, 1972 the aforequoted affidavit of desistance.

In connection with charge (4) for incriminatory machination, respondent merely denied it, claiming that it was a "willful and deliberate statement of falsehood" for the purpose of causing him harm and injury.

Referring to charge (5) for land-grabbing, respondent stated that the residential lot claimed to have been grabbed by him from one Anacleto Espinas, is a public land reserved for public improvement by the Government, and that although said land was allegedly purchased by Espinas from one Victor Zurbito who earlier allegedly purchased the same property from one Maximo Estrella, the fact remains that the document showing ownership of the previous vendors and, subsequently, of the vendee, is a mere scrap of paper, of no value whatsoever; that furthermore, he applied to the Bureau of Lands for a revocable permit to occupy said lot in December, 1958, which application was given due course, subject to the conditions imposed by the Government.

And, as (6), containing six counts of serious misconduct, respondent commented thereon, as follows:

(a) It was not true that respondent tried to prevail on the Franciscos to replace complainant Atty. Dioquino, their counsel in Civil Case No. 1188 of the Court of First Instance of Masbate because said counsel is not liked by the court personnel, for over-acting; he admitted, however, that he jokingly told Eusebio, son of Melchor Francisco, the plaintiff in said civil case, that "in order that your lawyer will always attend to your case, you see to it that he is properly paid for his services, otherwise he will not work hard. You know a car will not run without gasoline." The complainant's averment that for this particular actuation respondent was called down by Judge Castañeda, was denied by respondent; but he however admitted having been summoned by said Judge to his chambers where he gave his explanation for it. Incidentally, Francisco's opponent was represented in said case by Atty. Oliva, a brother-in-law of respondent.

(b) He branded as mere falsehood and misrepresentation the allegation of complainant that he (respondent) failed to advise the court that the original complaint in Civil Case 1188 had been amended by bringing in two more defendants who had not yet been served with summons, so that when said original case was called for pre-trial, on motion of Atty. Oliva, respondent's brother-in-law adverted to above, the complaint was dismissed for failure of plaintiff and his counsel to appear; and that while respondent immediately furnished Atty. Oliva, his brother-in-law, with a copy of the order of dismissal, the complainant, as attorney of Melchor Francisco, was never furnished a copy of the same.

(c) Charged with nearly having had a fistfight with one Atty. Rallos because respondent was allegedly instrumental in an attempt to tamper with the approved Record on Appeal of a case won by Atty. Rallos' client in the Court of First Instance, respondent termed the accusation as a narration of twisted facts, the truth being that "the altercation arose from the fact of setting the approval of the amended Record on Appeal in the court's calendar on the date set by counsel for applicant, for failure of appellant's counsel to furnish Atty. Rallos with copy thereof".

(d) The fourth alleged misconduct refers to a land registration application of Alfredo Grageda, represented by herein complainant Dioquino as counsel. Being unopposed, the case was ordered by the court to be heard ex parte by the respondent as Deputy Clerk of Court, but he allegedly told Grageda that he was going to receive his evidence in his (Grageda's) home, instead of in his office, during office hours. Respondent merely dubbed the allegations as perversions of truth by "a master maker of misrepresentations and a master twister of true facts to sought (sic) his purpose".

(e) Answering the fifth charge of misconduct - that of accepting legal work from practicing lawyers, and getting double compensation by accepting an appointment as administrator of the estate of Teodorico Virtucio for which he was being paid, respondent countered with the following explanation:

"* * *. It is admitted, that respondent in order to earn an extra money thru hard and honest labor, he has to accept works offered to him by lawyers, such as in the preparation of records on appeal, drafting complaints and petitions, drafting appellant's or appellee's brief, drafting of documents and other pleadings for the signature of lawyers who sought the help of the herein respondent. Except the herein petitioner, most of the lawyers in Masbate, had solicited the services of the herein respondent to do their works, which are done at home at night time, on the afternoon of Saturdays, on Sundays and Legal Holidays, with the help of respondent's daughters who are proficient and good typists. Sometimes, respondent had to work in the houses of lawyers soliciting the help of respondent, if the work is being rushed up due to the short time limit given by the Court. * * * On this point, petitioner is envious if not mad to respondent for the reason that respondent had contributed a lot to petitioner's opposing counsels, latest decisions of the Supreme Court and jurisprudence on the particular case, thus decisions of the lower court favorable to petitioner's client were either reversed or modified by the appellate court" (pp. 12-13 of Answer, pp. 74-75, rec.).

"As regards to the Estate of Teodorico Virtucio, respondent appoint (sic) as Special Administrator of the same was not his desire, but of the Court. And in order that the work of the respondent in the Office could not be hampered and prejudiced by virtue of his appointment to a delicate job, respondent had appointed an Overseer to look over and take care of the properties of the Estate. Respondent had not collected any salary for his services rendered therein as the same is subject to the appraisal of the Court who has the jurisdiction over the properties of the Estate" (p. 13, Answer, supra).

(f) The respondent likewise denied that he black-mailed his adversaries into dropping their charges against him by running after the investigators themselves or their chiefs, so much so that when complainant, then a Special Counsel in the Office of the Provincial Fiscal of Masbate, was conducting the investigation of the malversation case against him, respondent walked out of the room, saying in the presence of witnesses against him: "THIS INVESTIGATION MUST BE STOPPED!"; and that thereafter he filed all sorts of motions for the purpose of delaying the proceedings thereon.

The instant administrative complaint was investigated by the Hon. CFI Judge Pedro C. Quitain who at first refrained from trying the malversation charge, in view of the fact that a criminal case over this matter was then pending as No. CCCX-184 in the Circuit Criminal Court and he did not want to comment on a sub judice case (p. 4, Report and Recommendation). Limiting, therefore, his investigation to the other five charges, he eventually recommended the exoneration of the respondent and the corresponding dismissal of all the charges, except that of misconduct in office for which he recommended that the respondent be "severely reprimanded" (p. 21, Report and

Recommendation). The Supreme Court, in its resolution dated March 19, 1975, directed said Judge to proceed likewise with the investigation of the administrative charge of malversation (p. 155, rec.); and after compliance therewith, Judge Quitain recommended that, in view of his unfavorable findings, the respondent "be considered resigned with all retirement benefits, considering the length of service he had rendered the government" (p. 10, Supplemental Report and Recommendation).

A meticulous examination of the voluminous record of the case discloses that while the respondent may indeed be absolved from the charge of land-grabbing, which was satisfactorily explained by him, the complaint stands on sufficient basis as far as the other charges are concerned.

The first four (4) charges, being so closely inter-related, will be taken up together.

The findings of the Investigating Judge, which are borne out by the records, show that Atty. Artemio Raborar, counsel for plaintiffs in Civil Case No. 1241, consigned on November 21, 1969, under O.R. No. M-9067501 the sum of P11,040.00. On December 22, 1969, the same counsel requested the withdrawal of the consigned amount, for failure of the litigating parties to come to an agreement, resulting in the consequent loss of their (plaintiff's) interest to redeem the litigated property (Exh. 23, p. 1083, rec.).

The respondent has submitted no proof that he made an effort to deposit with the provincial treasurer the amount so consigned by Atty. Raborar, although he had the money for a whole month, contrary to regulations that clerks of court and their deputies should immediately deposit with the provincial treasurer all monies received by them. The fact that Atty. Raborar was able to withdraw subsequently the amount of the consignment from the clerk of court as evidenced by his personal receipt thereof, and not through the usual government voucher, further strengthens complainant's charge that he held on to the money until its withdrawal was made by the counsel-consignor.

On December 5, 1969, respondent paid certain employees a total amount of P1,635.15, "chargeable to their salary for the month of November, 1969" (Exh. "G", p. 425, rec.); and on December 15, 1969, he likewise paid the salary of other employees amounting to P8,841.12 (Exh. "V", p. 448, rec.), besides paying P147.00 to one P. Guevara on the same date; also to Baldeo, through C. Marcos, P470.00; and the salary of three (3) employees amounting to P384.70 (Exhs. "1-A", "1" and "1-C", pp. 1061-1062, rec.). It is not difficult to assume, therefore, that in paying these employees, or in buying their salary vouchers, respondent had made use of the P11,040.00 consignment deposited by Atty. Raborar, which amount totals just a little less than the sum of P11,877.96 he advanced to the aforesaid employees, so that when the withdrawal thereof was demanded by said counsel, respondent had to make good the payment thereof by giving "cash items" in the form of vouchers that had been paid or bought by him, which, as earlier adverted to, represented the salaries of employees of the provincial government of Masbate. His denial, therefore, that the "lost voucher" of Edison Medenilla amounting to P74.91 was received by him is belied by Exhibits "J" and "I" (pp. 427, 426, rec.), respectively reproduced below:

"November 3, 1970

"The Provincial Auditor
Masbate, Masbate

"Dear Sir:

"This is in connection with my voucher PA-02725, PT-2799 in the amount of P74.91, dated October 6, 1969. This voucher has not been collected by me, but as per record of your office the same has been cashed by another person.

"I have the honor to ask for a formal investigation in this regard as this means so much to me and my family.

"Thank you for your kind attention.

Very truly yours,

(SGD) EDISON MEDENILLA

Aroroy, Masbate

November 3, 1970"

"November 3, 1970

"Mr. Edison Medenilla

Aroroy, Masbate

"Sir:

"In reply to your letter of even date, please be informed that, according to the information given this office, your Voucher No. PT-2799 and PA-02725 in the amount of P74.91 was entered in the cash book on December 16, 1969, under Journal Voucher No. 2914. The same was part of checks and cash items amounting to P10,978.19 deposited by Mr. Rodolfo J. Martirez, Deputy Clerk of Court, on December 15, 1969. Mr. Martirez indicated in the voucher that it was paid by him.

"In view of the above, it is suggested that you settle the matter with Mr. Rodolfo Martirez, Deputy Clerk of Court.

"Very truly yours,

(SGD) A. M. ESPENILLA

Actg. Provincial Treasurer"

(Italics supplied).

The affidavit of desistance subsequently executed by Medenilla, Exhibit "M" (p. 431, rec.), wherein he stated "that I have desisted to prosecute this case in view of the fact that we have already mutually settled it among ourselves and that I am no longer interested", also proves that respondent did, at one time, hold Medenilla's salary voucher, contrary to his first statement that someone had fraudulently encashed it, and his later averment that Medenilla himself encashed it. That the affidavit states that they had something to mutually settle among themselves shows that an issue Medenilla's complaint about his lost voucher - really arose, and that respondent had been actually involved in it. As the investigating Judge rightly observed, "it is crystal clear that respondent turned it (Medenilla's voucher) over to the Provincial Treasurer of Masbate already paid by him" (p. 6, Report and

Recommendation).

Respondent's assertion in his formal offer of exhibits (p. 1031, rec.) that he had "sufficient income to earn savings, from which he had lent to Filomeno L. Baldeo (the disbursing officer) the total sum of P10,978.19 to pay the salaries of some employees of provincial government of Masbate, a part thereof having been borrowed by respondent from a friend" (in support thereof, respondent offered Exhs. 42, 42-A to 42-E, inclusive [pp. 1122-1127, rec.], being plainly ridiculous, are mere insinuations calculated to deflect his guilt towards Baldeo; and in the words of the investigating Judge, We are not convinced that respondent utilized his personal funds; for there is no "possible reason why the respondent could be, as he has been, so liberally liberal with his funds by paying the salaries and the vouchers of the employees" (p. 6, Supplemental Report and Recommendation). This practice of appropriating trust funds for unauthorized expenses, although replaced when the same is demanded, is fraught with danger, and should not be indulged in by any public officer worthy of the name.

Furthermore, respondent's financial position does not appear to be as stable as he had attempted to portray, considering his two handwritten notes (Exhs. "E" and "E-1", pp. 421, 423, rec.), asking money from the Virtucio estate as advances on his commission (p. 6, Suppl. Report and Recommendation). This also negates his statement that he "had not collected any salary for his services rendered therein" (Answer, p. 13, p. 75, rec.).

Of the six (6) counts (a to f) charged by complainant under "serious misconduct", most of them appear to be solidly based.

On (6-a), respondent's admission that he made certain statements to Eusebio Francisco, and that later he was summoned by Judge Castañeda to render an explanation, lends credence to the allegation that he had tried to convince the Franciscos to replace their counsel, the herein complainant.

On (6-b), although the charge was not sufficiently established, still respondent should be admonished to be more circumspect in his dealings with litigants so as not to lead anyone into believing that he is unduly favoring one party to the prejudice of the other.

On (6-c), respondent's admission that an altercation between him and an attorney indeed took place, speaks very poorly of his self-control and public relations. For this, he deserves to be censured and directed to conduct himself in a more composed manner and keep his pose as befits ranking officials who officially deal with the public.

On (6-d), the positive testimony of the stenographer himself, Mr. Adonis A. Bajar, who took the proceedings of the ex-parte hearing for the reception of evidence of the applicant in the land registration case entitled "Pedro Solomon, substituted by Wilfredo L. Grageda, versus Director of Lands, et al.", to the effect that said hearing was held at the house of the applicant, cannot be subordinated to Jesus S. Lupangco's version that the hearing was held in the office of the clerk of court, for the reason that said Lupangco, having been once a clerk in the office of the respondent until he was allegedly dismissed for cause, could be biased in favor of the respondent.

On (6-e), respondent has naively, if brashly, admitted the charge, and in so doing, he betrayed a perverted sense of values. In an expansive mood, he inordinately prides in his preparing legal work or pleadings for monetary considerations, for almost all attorneys practicing in the Court of First Instance of Masbate wherein he serves. Naturally, complainant being one of the few who do not patronize respondent's extra-official operations or activities, accuses the respondent of discriminating against him, such as intentionally failing to send him notices, etc., as though pressurizing complainant to come to terms with him. This unusual relationship with the favored attorneys renders him beholden to them, causing him to succumb to a human trait, that of becoming biased in their favor, which may extend to tipping them off on matters which may be treated by the court as confidential.

WE ruled in Jose Rañosa vs. Jose R. Garcia (Adm. Mat. No. P-113, decided February 25, 1975):

"Respondent's duties and responsibilities as branch clerk of court require that his entire time be at the disposal of the court served by him (sections 58 & 59 of the Judiciary Act, as amended) and hence under the cited civil service rule, respondent is well nigh absolutely prohibited from engaging in the practice of law and appearing as counsel or giving professional advice to litigants in a lawsuit as the same is clearly incompatible with the duties and functions of his office. The rule is designed to help maintain public confidence in the courts of justice and their officers and personnel and to remove from the latter any temptation or occasion for using their official position for private ends or gains, whether or not monetary compensation be involved, as well as to assure that full-time officers of the courts such as respondent render the full time service required by their office so that there may be no undue delay in the administration of justice and in the disposition of cases as required by the Rules of Court" (*italics supplied*).

WHEREFORE, WE FIND RESPONDENT DEPUTY CLERK OF COURT RODOLFO J. MARTIREZ GUILTY OF MALVERSATION OF TRUST FUNDS AND OF SERIOUS MISCONDUCT IN OFFICE, FOR WHICH HE IS HEREBY DISMISSED FROM THE SERVICE WITH FORFEITURE OF RETIREMENT PRIVILEGES AND WITH PREJUDICE TO REINSTATEMENT IN THE GOVERNMENT SERVICE, WHETHER PERTAINING TO THE NATIONAL GOVERNMENT, LOCAL POLITICAL SUBDIVISIONS, OR OTHER GOVERNMENTAL INSTRUMENTALITIES AND AGENCIES, INCLUDING GOVERNMENT OWNED OR CONTROLLED CORPORATIONS OR ENTITIES.

Fernando (Acting C.J.), Teehankee, Barredo, Esguerra, Muñoz Palma, Aquino, and Martin, JJ., concur.

Antonio, J., concurs only in the dismissal of respondent from the service.

Concepcion, Jr., J., did not take part.

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