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PROVIDING IMMUNITY TO WHISTLE-BLOWERS FROM PROSECUTION IN EXAMINATION IRREGULARITY CASES AND ACTIONS AGAINST FAKE PROFESSIONALS

PRC RESOLUTION NO. 2004-232, August 04, 2004

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WHEREAS, Section 2 of Republic Act No. 8981 mandates that "the State recognizes the important role of professionals in nation-building and, towards this end, promotes the sustained development of a reservoir of professionals whose competence has been determined by honest and credible licensure examinations and whose standards of professional service and practice are internationally recognized and considered world-class brought about by regulatory measures, programs and activities that foster professional growth and advancement".

WHEREAS, as a collegial body, the Professional Regulation Commission is duty bound to establish and maintain a high standard of admission to the practice of all professions and at all times ensure and safeguard the integrity of all licensure examination. Thus, in the exercise of this authority, the Commission may adopt measures to preserve the integrity and inviolability of licensure examinations.

WHEREAS, in the exercise of such powers, the Commission is mandated to investigate and decide administrative matters involving officers and employees under its jurisdiction and/or to initiate an investigation, upon complaint under oath by an aggrieved party, of any person, whether a private individual or professional, local or foreign, who practices the regulated profession or occupation without being authorized by law, or without being registered with and licensed by the concerned regulatory board and issued the corresponding license/professional identification card or temporary or special permit, or who commits any of the prohibited acts provided in the regulatory laws of the various professions, which acts are criminal in nature, and, if the evidence so warrants, to forward the records of the case to the office of the city or provincial prosecutor for the filing of the corresponding information in court by the lawyers of the legal services of the Commission who may prosecute said case/s upon being deputized by the Secretary of Justice.

WHEREAS, part of the thrusts and priorities of the Commission is to eliminate or reduce examination frauds and fake professionals. Thus, the Commission launched an intensive campaign against these nefarious activities. The National Bureau of Investigation, the Philippine National Police, and other concerned agencies were tapped to provide assistance in the conduct of discovery, investigation and prosecution. Organizations are likewise encouraged to join the fight against fixers.

WHEREAS, reports show that those who have been arrested for illegal fixing, examination frauds and illegal practice of profession alleged conspiracy with some PRC employees. Victims were likewise told the same story. Unfortunately, the initiative is not enough because many of the victims ought not to report for fear of retaliation or threat of prosecution.

WHEREAS, in order to intensify the campaign against these examination bandits and fake professionals, it is necessary to attract full cooperation from individuals who have witnessed, or who have knowledge of, or information on the commission, complicity of such offense, or who have actually participated in the commission

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thereof.

WHEREAS, Section 1 (e), Title I of the Implementing Rules and Regulations of the Witness Protection, Security and Benefit Act (Republic Act No. 6981 dated April 24, 1991) defines witness as any person who has witnessed or has knowledge of or information on the commission of a grave felony or its equivalent under special laws and has testified or is testifying before any judicial, quasi-judicial or legislative body or any investigating authority and admitted to the program.

WHEREAS, there is a similar grant of immunity from criminal prosecution and punishment under Presidential Decree No. 749 dated July 18, 1975, to any person who voluntarily gives information about any violation of Articles 210, 211 and 212 (referring to the crimes of Direct Bribery, Indirect Bribery and Corruption of Public Officials) of the Revised Penal Code, Anti-Graft and Corrupt Practices Act (R.A. 3019), Section 345 of the Internal Revenue Code and Section 3604 of the Tariff and Customs Code and other provisions of the said Codes penalizing abuse and dishonesty on the part of the public officials concerned; and other forms of official abuse.

WHEREAS, Presidential Decree No. 749 likewise grants the same immunity to any individual who voluntarily gives information and testimony against a person who is not a public official or employee but who is a principal, accomplice or accessory in the Commission of any of the violations enumerated therein.

WHEREAS, on the strength of the above definition of witness under R.A. No. 6981 and to encourage whistle-blowers to expose and help curb such transgression of Republic Act No. 8981 [PRC Modernization Act], the regulatory laws of the various professions and other rules and regulations, the Commission deems it just and equitable to assure these individuals who are victims or witnesses immunity from prosecution and shield them from possible retaliation.

WHEREFORE, in the light of the reforms initiated by the Commission and in pursuance to the Agency's statutory mandate to establish and maintain a high standard of admission to the practice of all professions and at all times ensure and safeguard the integrity of all licensure examinations, the following guidelines are hereby promulgated:

1. Who may avail of the immunity-

A) Any public official, employee or any person who voluntarily gives information pertaining to an examination irregularity and illegal practice of profession who willingly testifies therefore shall be exempt from administrative prosecution in the case/s his/her information and testimony were given. The giving of such information and testimony shall operate to bar his/her prosecution in the same case;

B) The informant public official, employee, or any person who bribed or gave a gift to another public official, employee or person, or is an accomplice for such gift or bribe-giving for the purpose of obtaining certificate of registration/professional license, professional identification card or passing examination rating in violation of the PRC Modernization Act, regulatory laws of the various professions and other rules and regulations, may likewise enjoy this immunity.

The following conditions must concur for the grant of immunity to the above informant or witness:

- The information or testimony must refer to the commission of examination irregularity or illegal practice of profession constituting the offense of dishonesty or grave misconduct pursuant to Section 52 of the Uniform Rules on Administrative Cases in the Civil Service;

- The information and testimony are necessary for the proper prosecution of the offense committed by the respondent public official or employee or of any private individual who is in conspiracy with him or her;

- Such information and testimony are not yet in the possession of the Professional Regulation Commission, or any government entity;

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- Such information and testimony can be substantially corroborated on their material points; and

- The informant or witness has not been previously convicted of a crime involving moral turpitude or perjury.

C) Any public official, employee or private individual who, after a prima facie case is found to exist, has been formally charged for having participated or acted in conspiracy with each other in the commission of an examination irregularity or illegal practice of profession and desires to be a witness shall likewise be exempt from administrative prosecution provided the following circumstances are present:

- The information or testimony must refer to the commission of examination irregularity or illegal practice of profession constituting the offense of dishonesty or grave misconduct pursuant to Section 52 of the Uniform Rules on Administrative Cases in the Civil Service;

- The information or testimony are necessary for the proper prosecution of the offense committed by the respondent public official or employee or of any private individual who is in conspiracy with him or her;

- Such information and testimony are not yet in the possession of the Professional Regulation Commission, or any government entity;

- Such information and testimony can be substantially corroborated on their material points;

- The informant or witness has not been previously convicted of a crime involving moral turpitude or perjury; and

- The informant does not appear to be the most guilty.

2. For this purpose, the Commission sets forth the procedure to be followed viz:

- The informant or witness must file the appropriate application for the grant of immunity accompanied by his/her sworn affidavit-complaint stating the circumstances of the alleged examination irregularity or illegal practice of profession and those of other witnesses, along with pertinent documents, if any, before the Legal Division of the Commission or any of its Regional Offices where the alleged examination irregularity or illegal practice of profession was committed.

In addition to the aforementioned documentary requirements, the informant or witness contemplated under Item 1 (c) shall be required to submit a motion for his or her discharge from the formal charge.

- If it is complete in form and substance, the Legal Division shall summon the applicant for a preliminary conference to determine the veracity of the information sought to be investigated, and whether he/she qualifies for the grant.

- With fifteen (15) days from termination of the preliminary conference, the Legal Division shall submit its fact-finding report and recommendation to the Office of the Chairperson. Thereafter, the Commission shall determine the propriety of the application for the grant of immunity and, if meritorious, the Commission en banc shall issue the appropriate Resolution.

The Commission, through the Legal Division, may summon the applicant and his or her witness, if any, for a clarificatory conference, if warranted. Otherwise, the Commission en banc shall resolve the application for the grant of immunity based on the fact-finding report, pertinent documents submitted by the Legal Division, and all other documents available to it.

On the other hand, if the Commission denies the application for the grant of immunity, all evidence adduced in support of the application for the grant of immunity, including the motion for discharge, shall be treated with strict confidentiality and inadmissible in evidence.

- Upon notice of the Commission en banc Resolution, the Legal Division shall conduct the preliminary

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investigation and issue the appropriate formal charge against the public official or employee involved if a prima facie exists and, thereafter conduct the formal investigation in accordance with due process and submits its recommendation to the Commission.

- The Commission shall then decide the case. The decision shall be appealable to the Civil Service Commission in accordance with the Uniform Rules on Administration of Cases in the Civil Service.

3. Should the information or testimony given turn out to be false and malicious; or made only for the purpose of harassing the public official or employee, this immunity will not attach. Under such circumstances, the public official, employee or any person wrongly accused can institute the appropriate civil, criminal or any other action against the said informant or witness to protect his or her rights under the law; and

4. All fact-finding or preliminary investigations conducted and all proceedings undertaken in connection therewith shall be strictly confidential to protect the reputation of the public official or employee under investigation in the event that the report proves to be unfounded or no prima facie case is established.

This resolution shall take effect fifteen (15) days from its date of publication in a newspaper of general circulation.

Adopted: 04 August 2004

(SGD.) ANTONIETA FORTUNA-IBE

Chairperson

(SGD.) AVELINA A. DE LA REA

(SGD.) LEONOR TRIPON-ROSERO

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