

ROQUE R. MARTINEZ, MARIA ELENA M. FELIPE, ROBERT R. MIÑANO, ROSALINDA G. MACASA AND CIRIACO D. MARIVELES, JR., COMPLAINANTS, VS. NORVELL R. LIM, SHERIFF III, REGIONAL TRIAL COUR...

A.M. No. P-04-1795 [Formerly OCA I.P.I No. 02-1447-P]. March 25, 2009

Ponente: CORONA, J.

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CORONA, J.:

This complaint involves two interrelated administrative charges against respondent Norvell R. Lim, Sheriff III of the Regional Trial Court of Romblon, Romblon, Branch 81.

On March 11, 2002, respondent sent a letter to Arsenio

R.M. Almaddin, officer-in-charge of the Office of the Provincial Prosecutor (OPP) of Romblon stating:

I wish to inform you that today, Monday, March 11, 2002, at 8 a.m., and for the month of March 2002, [it] is the turn of the [OPP] to lead the flag ceremony.

However, this morning, this was not done because none of the personnel of your office was present.

We hope that we would be able to look forward to seeing all the personnel of [the OPP] in the Hall of Justice, Romblon, Romblon, participate in [the flag ceremony] every Monday morning and Friday afternoon.[1]

On May 16, 2002 complainants Roque R. Martinez, Maria Elena M. Felipe, Robert R. Miñano, Rosalinda G. Macasa and Ciriaco D. Mariveles, Jr., all employees of the OPP, filed an administrative complaint for grave misconduct against respondent in the Office of the Ombudsman.[2] They asserted that respondent's March 11, 2002 letter portrayed them as unpatriotic Filipinos, tarnished their reputation as public officers and cast dishonor, disrepute and contempt on their persons.

Respondent explained that, in the absence of the presiding judge, he was the administrative officer-in-charge of the Hall of Justice. As such, it was his duty to require complainants to attend the flag ceremony. Thus, he wrote Almaddin to remind him that the OPP had been assigned to lead the flag ceremony for the month of March 2002 and to inform him that no one from his office attended the ceremony that morning. Respondent denied ill-will against complainants.

Subsequently, complainants filed another complaint against respondent charging him of violation of PD[3] 26[4] which provides:

(1) Judges of the Courts of First Instance, Circuit Criminal Courts, Juvenile and Domestic Relations Courts, Courts of Agrarian Relations, Court of Industrial Relations, Military Tribunals and City and Municipal Courts, may transmit in the mail, free of charge, all official communications and papers directly connected with the conduct of judicial proceedings.

(2) The envelope or wrapper of the privileged mail matter shall bear on the left upper corner the name, official designation and station of the official sending such mail matter and on the right upper corner, the words: "Private or unauthorized use to avoid payment of postage is penalized by fine or imprisonment or both." (emphasis supplied)

Complainants stated that respondent did not pay for postage stamps when he mailed copies of his counter-affidavit to them. Since the mailed matter neither involved a court process nor was in any way connected to the conduct of judicial proceedings, he was guilty of violating the said decree.

Respondent asserted that the allegations against him were baseless. In fact, the Ombudsman dismissed for lack of probable cause the complaint for violation of PD 26.[5]

But the Ombudsman referred the administrative aspect of the complaints against respondent to the Office of the Court Administrator (OCA).[6]

With regard to the complaint for grave misconduct, the OCA found that respondent bore no malice when he sent the March 11, 2002 letter. It noted:

There is nothing in the letter that is suggestive of complainants' lack of patriotism as to impute bad faith on the part of respondent. Respondent was merely expressing his concern so that any similar incident may not happen again mindful of everyone's bounden duty to express and manifest their patriotism and love of country and respect for the flag.

Thus, it recommended the dismissal of the complaint for lack of merit.

With regard to the complaint for violation of PD 26, the OCA found that respondent mailed his counter-affidavit in the previous complaint (for grave misconduct) using envelopes intended for free postage. Inasmuch as the mailed matter was not an official communication related to the conduct of judicial proceedings, respondent was guilty of violating the law. Hence, it recommended that complainant be fined P1,000.

We adopt the findings of the OCA with a modification of the penalty.

Misconduct implies wrongful intention and not a mere error of judgment; an act that is corrupt or inspired by an intention to violate the law or a persistent disregard of well-known legal rules.[7]

Flag ceremonies inspire patriotism and evoke the finest sentiments of love of country and people.[8] Section 18 of RA[9] 8491 provides:

Section 18. All government offices and educational institutions shall henceforth observe the flag-raising ceremony every Monday morning and the flag lowering ceremony every Friday afternoon. The ceremony shall be simple and dignified and shall include the playing or singing of the Philippine National Anthem.

Pursuant to this mandate, Supreme Court Circular No. 62-2001 (dated September 21, 2001) provides:

All Executive Judges shall supervise the holding of the flag raising and flag lowering ceremonies in their respective Hall of Justice buildings or courthouses and shall ensure the attendance of all judges and court personnel in the rites.

In deference to these mandates, the Chief State Prosecutor directed the personnel of the OPP to attend the flag ceremony.[10]

Consequently, as administrative officer-in-charge of the Hall of Justice of Romblon, respondent was duty-bound to remind the employees to attend the flag ceremony. Furthermore, the March 11, 2002 letter (quoted above) was courteously written. Respondent neither used offensive language nor insinuated that complainants were

unpatriotic. Thus, there was no misconduct on the part of respondent.

Nonetheless, we agree that respondent violated PD 26. In *Bernadez v. Montejar*,^[11] we held that the franking privilege granted by PD 26 extended only to judges and referred to official communications and papers directly connected with the conduct of judicial proceedings.^[12] Respondent was not a judge nor was the mailed matter related to the discharge of judicial functions. Thus, respondent violated PD 26 for which a fine of P500 should be imposed on him. Considering that respondent compulsorily retired on September 7, 2003, the fine of P500 shall be deducted from his retirement benefits.

WHEREFORE, the complaint for grave misconduct against Sheriff Norvell R. Lim is hereby dismissed for lack of merit. But he is found guilty of violating Presidential Decree No. 26 and is hereby fined P500 which shall be deducted from his retirement benefits.

SO ORDERED.

Puno, C.J., (Chairperson), Ynares-Santiago[*], Carpio, and De-Castro, JJ., concur.

[*] Per Special Order No. 588 dated March 16, 2009.

[1] Rollo, p. 22.

[2] Docketed as Case No. OMB-L-A-02-0253-E. Id., pp. 5-7.

[3] Presidential Decree

[4] Docketed as Case No. OMB-L-A-02-0531-H.

[5] Resolution penned by by Graft Investigator Officer II Ma. Viviane Cacho-Calicdan and approved by Director Emilio A. Gonzales III. Dated December 9, 2002. Rollo, pp. 48-52.

[6] Resolutions in Case No. OMB-L-A-02-0253-E, penned by Graft Investigator Officer I Ma. Hazelina Tujan-Militante and approved by Director Emilio A. Gonzales III, dated June 10, 2002 and in Case No. OMB-L-A-02-0531-H penned by Graft Investigator Officer II Ma. Viviane Cacho-Calicdan and approved by Director Emilio A. Gonzales III, dated September 24, 2002. Id., pp. 2-4 and 38-40 respectively.

[7] *Cacatian v. Judge Liwanag*, 463 Phil. 1, 11 (2003).

[8] Separate of opinion of Justice Padilla. *Ebralinag v. The Division Superintended of Schools of Cebu*, G.R. Nos. 95770 and 95887, 1 March 1993, 219 SCRA 256, 276-277.

[9] Republic Act.

[10] Letter of chief state prosecutor Jovencito R. Zuño to Almaddin. Dated May 10, 2002. Rollo, p. 13.

[11] 428 Phil. 605 (2002).

[12] Id., pp. 609-610. See also *Cacatian v. Judge Liwanag*, supra note 8.

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