

MARCIANO P. BRION, JR., PETITIONER, VS. FRANCISCO F. BRILLANTES, JR., RESPONDENT.

A.C. No. 5305. March 17, 2003

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

In this petition for disbarment, complainant Marciano Brion, Jr., charges the respondent, Atty. Francisco Brillantes, Jr., of having willfully violated a lawful order of this Court in A.M. No. MTJ-92-706, entitled *Lupo Almodiel Atienza v. Judge Francisco F. Brillantes, Jr.*[1] The decretal portion of our resolution in *Atienza* reads:

WHEREFORE, respondent is DISMISSED from the service with forfeiture of all leave and retirement benefits and with prejudice to reappointment in any branch, instrumentality or agency of the government, including government-owned and controlled corporations. This decision is immediately executory.

SO ORDERED.[2]

Respondent's dismissal in the aforesaid case was ordered after he was found guilty of Gross Immorality and Appearance of Impropriety during his incumbency as presiding judge of the Metropolitan Trial Court, Branch 20, Manila.

Petitioner now avers that respondent violated our decree of perpetual disqualification imposed upon him from assuming any post in government service, including any posts in government-owned and controlled corporations, when he accepted a legal consultancy post at the Local Water Utilities Administration (LWUA), from 1998 to 2000. Said consultancy included an appointment by LWUA as 6th member of the Board of Directors of the Urdaneta (Pangasinan) Water District. Upon expiration of the legal consultancy agreement, this was subsequently renewed as a Special Consultancy Agreement.

Petitioner contends that while both consultancy agreements contained a proviso to the effect that nothing therein should be construed as establishing an employer-employee relationship between LWUA and respondent, the inclusion of this proviso was only a ploy to circumvent our order barring respondent from appointment to a government agency. Petitioner points out in reality, respondent enjoys the same rights and privileges as a regular employee, to wit:[3]

- Issuance of LWUA properties such as a cellular phone with accessories, as evidenced by the covering Property Issue Slips with respondent signing as "Accountable Employee";[4]
- Official travel to various places in the country as shown by Reports of Authorized Travel kept by LWUA's General Services Division[5] and Report of Travel accomplished by respondent himself;[6]
- Designation as supervising officer over other LWUA employees as brought to light by written instructions personally signed by respondent;[7]
- Attendance in water district conventions and meetings held in various provinces;[8]

- Membership in several sensitive LWUA committees such as the Prequalification, Bids, and Awards Committee (PBAC), Build-Operate-Transfer (BOT) Committee, among others, with receipt of corresponding honoraria as borne out by various Disbursement Vouchers;^[9]
- Sitting at meetings of the LWUA Board of Trustees as evidenced by the minutes of such meetings;^[10] and
- Receipt of Productivity Incentive Bonus in 1999.

Petitioner submits that all of the foregoing constitute deceitful conduct, gross misconduct, and willful disobedience to a decree of this Court, and show that respondent is unfit to be a member of the Bar.

In his comment,^[11] respondent admits the existence of the Legal Consultancy Contract as well as the Special Consultancy Contract. However, he raises the affirmative defense that under Civil Service Commission (CSC) Memorandum Circular No. 27, Series of 1993, services rendered pursuant to a consultancy contract shall not be considered government services, and therefore, are not covered by Civil Service Law, rules and regulations.

Further, says respondent, according to the same Memorandum Circular issued by the Commission, consultancy contracts do not have to be submitted to the Commission for approval. With respect to his designation as the 6th Member of the Board of Directors of the Urdaneta Water District, respondent reasons out that the same is not a “reappointment”, which is prohibited by our ruling in *Atienza*, as said designation is not an organic appointment to a LWUA plantilla position. Hence, according to respondent, the CSC need not pass approval upon his temporary designation.

Respondent also argues that all the members of the Urdaneta Water District Board, especially the 6th Member, who comes from the LWUA, assumed such functions merely by virtue of a designation and only in addition to their regular duties. In any event, says respondent, his designation as 6th Member was revoked in April 2000 and the Special Consultancy Contract was pre-terminated on April 30, 2000. It has never been renewed since then. With respect to his use of LWUA properties, respondent admits receiving the cellular phone unit but insists that he merely borrowed it from one Solomon Badoy, a former LWUA Board of Trustees Member.

In our Resolution of February 19, 2001, we referred this case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation. The IBP Commission on Bar Discipline found that respondent willfully violated a lawful order of this Court and recommended that respondent be suspended from the practice of law for one (1) year and fined ten thousand (P10,000) pesos.

There is no question that the LWUA is a government-owned and controlled corporation, created by virtue of Presidential Decree No. 198.^[12] As such, our ruling in the *Atienza* case, A.M. No. MTJ-92-706, which categorically prohibits respondent’s appointment to any position in any government-owned and controlled corporation, clearly encompasses and extends to LWUA positions.

In the instant case the respondent does not deny the petitioner’s allegations.^[13] Instead, he offers the existence of Memorandum Circular No. 27, Series of 1993 (MC No. 27, s. 1993) to exculpate himself from the charge against him. However, it does not escape our attention that the very Memorandum Circular that respondent cites before this Court provides that the duties enumerated in the consultancy contract are mainly advisory in nature.^[14]

Without belaboring the definition of “advisory,”^[15] it appears obvious to us that the tasks and duties that respondent performed pursuant to the consultancy contract cannot, by any stretch of imagination, be deemed merely advisory in nature.

An adviser does not exercise supervisory powers over LWUA employees nor does he issue written instructions to them. An adviser is not entitled to a seat in such vital LWUA committees like PBAC and the BOT Committee.

Also, respondent's continuous receipt of honoraria for sitting as a member of certain LWUA Committees, particularly the BOT Committee, belies his claim that he is a mere consultant for the LWUA. The evidence on record clearly shows that the LWUA Office Order implementing National Compensation Circular No. 75-95[16] refers to payments of honoraria to officials/employees in consideration of services rendered.

Most telling, in our view, is respondent's acceptance of his 1998 Productivity Incentive Bonus (PIB). The Board of Trustees Resolution No. 26, Series of 1999, of the LWUA,[17] which governed the release of the PIB, limited the entitlement to said bonus only to "officials" and "employees" (permanent, temporary, casual, or contractual) of LWUA.

In sum, we find that for all intents and purposes, respondent performed duties and functions of a non-advisory nature, which pertain to a contractual employee of LWUA. As stated by petitioner in his reply,[18] there is a difference between a consultant hired on a contractual basis (which is governed by CSC M.C. No. 27, s. 1993) and a contractual employee (whose appointment is governed, among others, by the CSC Omnibus Rules on Appointment and other Personnel Actions). By performing duties and functions, which clearly pertain to a contractual employee, albeit in the guise of an advisor or consultant, respondent has transgressed both letter and spirit of this Court's decree in *Atienza*.

The lawyer's primary duty as enunciated in the Attorney's Oath is to uphold the Constitution, obey the laws of the land, and promote respect for law and legal processes.[19] That duty in its irreducible minimum entails obedience to the legal orders of the courts. Respondent's disobedience to this Court's order prohibiting his reappointment to any branch, instrumentality, or agency of government, including government owned and controlled corporations, cannot be camouflaged by a legal consultancy or a special consultancy contract. By performing duties and functions of a contractual employee of LWUA, by way of a consultancy, and receiving compensation and perquisites as such, he displayed acts of open defiance of the Court's authority, and a deliberate rejection of his oath as an officer of the court. It is also destructive of the harmonious relations that should prevail between Bench and Bar, a harmony necessary for the proper administration of justice. Such defiance not only erodes respect for the Court but also corrodes public confidence in the rule of law.

What aggravates respondent's offense is the fact that respondent is no ordinary lawyer. Having served in the judiciary for eight (8) years, he is very well aware of the standards of moral fitness for membership in the legal profession. His propensity to try to "get away" with an indiscretion becomes apparent and inexcusable when he entered into a legal "consultancy" contract with the LWUA. Perhaps realizing its own mistake, LWUA terminated said contract with respondent, but then proceeded to give him a "special consultancy." This travesty could not be long hidden from public awareness, hence the instant complaint for disbarment filed by petitioner. Given the factual circumstances found by Commission on Bar Discipline, we have no hesitation in accepting the recommendation of the Board of Governors, Integrated Bar of the Philippines, that respondent be fined and suspended from the practice of law. The Code of Professional Responsibility, Rule 1.01, provides that a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct. For violating the Code as well as transgressing his oath as an officer of the court, his suspension for one (1) year and a fine of ten thousand (P10,000) pesos are in order.

WHEREFORE, respondent Atty. Francisco Brillantes, Jr., is found liable for having willfully violated a lawful order of this Court in our decision of March 29, 1995 rendered in A.M. No. MTJ-92-706, entitled *Lupo Almodiel Atienza vs. Judge Francisco F. Brillantes, Jr.* He is hereby **SUSPENDED** from the practice of law for one (1) year and ordered to pay a **FINE** of Ten Thousand (P10,000.00) Pesos, with a **STERN WARNING** that a repetition of the same or similar conduct shall be dealt with more severely. Let a copy of this Decision be furnished to the Bar Confidant and the Integrated Bar of the Philippines and spread on the personal records of respondent as well as

circulated to all courts in the Philippines. This decision is immediately executory.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Austria-Martinez, and Callejo, Sr., JJ., concur.

[1] 312 Phil. 939 (1995).

[2] Supra, note 1 at 944.

[3] Rollo, pp. 2-3.

[4] Id. at 13-17.

[5] Id. at 18-21.

[6] Id. at 22-26.

[7] Id. at 27-29.

[8] Id. at 30-33.

[9] Id. at 34-35.

[10] Id. at 36-40.

[11] Id. at 2-5.

[12] Declaring A National Policy Favoring Local Operation and Control of Water System; Authorizing the Formation of Local Water Districts and Providing for the Government and Administration of Such Districts; Chartering a National Administration to Facilitate Improvement of Local Water Utilities; Granting Said Administration Such Powers as are Necessary to Optimize Public Service From Water Utility Operations; and for Other Purposes.

[13] Rollo, pp. 5-7.

[14] Rollo, p. 70. (Emphasis Supplied)

[15] Advisory, according to Webster's International Dictionary, 3rd ed., means "having or exercising power to advise."

[16] Id. at 84-89.

[17] Id. at 71-73.

[18] Id. at 77.

[19] See also Code of Professional Responsibility, Canon 1. "A lawyer shall uphold the Constitution, obey the laws of the land, and promote respect for law and legal processes."

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