

MARIA IRISH B. VALDEZ, COMPLAINANT, VS. ANDREW B. ALVIAR, SHERIFF IV AND RICARDO P. TAPAN, STENOGRAPHER III, BOTH OF THE REGIONAL TRIAL COURT, BRANCH 76, QUEZON CITY, RESPONDENTS

A.M. No. P-20-4042 (Formerly OCA IPI No. 16-4624-P). January 28, 2020

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PER CURIAM:

In a Letter-Complaint[1] dated July 12, 2016, complainant Maria Irish B. Valdez (Valdez) made the following averments: sometime in 2012, Valdez wanted to annul her marriage so she sought advice from a close friend of her sister, respondent Ricardo P. Tapan[2] (Tapan), Stenographer III, Branch 76, Regional Trial Court (RTC), Quezon City, who told Valdez that he knew someone who could help her; since Valdez and her sister were based in Singapore, they went to the Philippines to meet with Tapan and his contact; Valdez and her sister met with Tapan on June 18, 2012 at a bar and restaurant, and he introduced them to respondent Andrew B. Alviar (Alviar), Sheriff IV of the same court; in said bar, they discussed the process of annulment and the respondents initially gave the amount of P200,000.00 for speedy processing but eventually agreed to the amount of P150,000.00 after bargaining; since the respondents wanted the amount handed to them personally, instead of transferring or depositing to their bank accounts, Valdez gave the P150,000.00 wrapped in a black plastic bag to Tapan who immediately handed it to Alviar; Alviar told them that the processing of annulment would take six (6) months to one (1) year, and claimed that his wife was a prosecutor who could help them speed up the process; Alviar also told Valdez that she had to undergo a psychological test and this was scheduled on June 20, 2012; after the test, Alviar had asked for Valdez's contact details so he could send Valdez the documents; when Valdez asked for Alviar's contact number, Alviar told her to communicate with Tapan and he promised that he would file the case within two weeks; thereafter, Valdez went back to Singapore and waited for updates; Valdez repeatedly contacted Tapan, but it was only after three months that Tapan replied that the annulment proceedings were ongoing and that he would try to contact Alviar; months and years passed without any updates from Alviar, so Valdez asked her mother to follow-up with Alviar, but Alviar claimed that he was still getting/waiting for the required documents; at one point, when Valdez's mother was already contemplating to bring the matter to the authorities, Tapan had advised her to meet first with Alviar's wife, Fiscal Elenita Alviar (Fiscal Alviar); Valdez's mother met with Fiscal Alviar and requested the latter to return the money so she could start the annulment proceedings on her own, but Fiscal Alviar claimed that she had no money of that amount and told Valdez's mother that they could work this issue out; the annulment case was eventually filed a year later, but it was dismissed for lack of interest to prosecute because Fiscal Alviar had never contacted them or informed them about what happened to the annulment case.[3]

On September 7, 2016, the OCA sent a 1[st] Indorsement to Alviar[4] and Tapan[5] directing them to submit a comment on Valdez's complaint against them for grave misconduct. After filing a joint request for extension,[6] the respondents filed their respective comments. In a Comment (Ad Cautelam)[7] dated October 28, 2016, Tapan argued, among others, that: the acts alleged by Valdez were not work-related since they had nothing to do with his

performance as a court stenographer; the allegations in the complaint were mere hearsay because the complaint was signed not by Valdez, but by her mother; out of his desire to help Valdez, he merely introduced the latter to Alviar, who was knowledgeable on annulment proceedings, and said act did not constitute grave misconduct. Alviar, on the other hand, filed an undated Comment[8] which reproduced almost verbatim the contents of Tapan's Comment (Ad Cautelam) save for certain modifications appropriate to Alviar, such as changing the position from "court stenographer" to "court sheriff" and removing statements that were inapplicable to him.

On July 19, 2017, the Court referred[9] the administrative case against Tapan and Alviar to the Executive Judge of the RTC, Quezon City, for investigation, report, and recommendation within sixty (60) days from receipt of the records. On July 19, 2019, Executive Judge Cecilyn E. Burgos-Villavert (Executive Judge Villavert) submitted her Report,[10] which recommended that Alviar be found guilty of grave misconduct, be made to return the amount of P150,000.00 to Valdez, and accordingly be dismissed from the service. As to Tapan, the Report pointed out that there was no clear showing that he had received any share of the money given by Valdez and it recommended that Tapan be found guilty of simple misconduct punishable with suspension for a period of one (1) month and one (1) day without pay, with a stern warning that a repetition of the same or similar act shall be dealt with more severely.

In a Memorandum[11] dated September 25, 2019, the OCA adopted the findings of fact in the Report of Executive Judge Villavert and recommended that (i) Alviar be found administratively liable for grave misconduct punishable by dismissal, and (ii) Tapan be found administratively liable for conduct prejudicial to the best interest of the service punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense. However, after noting several circumstances that should be appreciated in favor of Tapan, the OCA recommended that his penalty be reduced to one (1) month suspension instead.

The Court adopts and affirms the findings of fact and recommendations of the OCA with modification as to the penalties imposed.

At the outset, the procedural issue raised by both Tapan and Alviar— that the person who filed the complaint, Valdez's mother, was not a real party-in-interest in this case and had no personal knowledge of the facts and circumstances surrounding Valdez's complaint - is unmeritorious. For one, Valdez had affirmed and confirmed the contents of her Letter of Complaint during the hearing conducted by Executive Judge Villavert, thus, the allegations therein were no longer hearsay. Moreover, as correctly pointed out by the OCA, jurisprudence[12] dictates that the issue in administrative cases is not whether the complainant has a cause of action against the respondent, but whether the employee concerned has breached the norms and standards of the judiciary. Thus, the fact that Valdez was not the one who filed the complaint is irrelevant in the case at bar.

Moving on to the substantial issues, the Court finds that Alviar is guilty of grave misconduct. Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer.[13] The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence.[14] Under the 2011 Revised Rules on Administrative Cases in the Civil Service (2011 RRACCS), grave misconduct is punishable by dismissal from service for the first offense.[15]

In *Pinlac v. Llamas*[16] (*Pinlac*), the Court found the respondent therein guilty of grave misconduct for offering assistance and introducing the complainant to the surveyor to facilitate the titling of the property. The discussion on why the said respondent was held liable for grave misconduct is instructive, viz.:

Under these circumstances, we consider it shortsighted to simply conclude, as the OCA did, that the respondent rendered a simple assistance and did not act as an active middleman in the transaction. The facts

before us relate to realities that we find often enough among the offenses that the Court addresses in its constitutional role of supervising judicial officials and employees — the offense that in common lay terms is referred to as "fixing." Fixing may range from the patently corrupt act of serving as middleman between a litigant and the decision maker, to rendering illegal and out-of-the-way assistance such as providing referral service to lawyers and other participants in court cases, or providing information such as the identity of the ponente, all for a fee, or, likewise for a fee, intervening to facilitate court processes such as the release of court papers or providing advance and illegitimate copies of drafts or final but unpromulgated decisions. To be sure, these are not newly-heard activities as invariably in many courts, even in this Court, there are officials and employees who can never seem to resist these kinds of tempting activities.

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Nor can we agree with the OCA's recommendation that the respondent be found guilty of violating reasonable office rules and regulations, as no particular office rule or regulation was shown to have been violated by him. We instead find the respondent liable for grave misconduct. Misconduct has been defined as an unacceptable behavior that transgresses the established rules of conduct for public officers. The misconduct is grave if it involves the additional elements of corruption, willful intent to violate the law or disregard of established rules. Otherwise, the misconduct is only simple.

In the present case, the respondent's act, more than anything else, is closer to the direct solicitation or acceptance of money in connection with an operation directly being acted upon by the court of which he was an employee, which the Civil Service Rules penalize as a grave offense. As the complaint states (and this was never disputed), the respondent offered assistance to the complainant, but the offer was for a fee that was in fact paid, although the fee was ostensibly handed over to the surveyor with whom a meeting had to be arranged by the respondent. In this role, the respondent acted as an active intermediary in a fee transaction between the surveyor and the complainant who was not even a friend, relative nor an acquaintance to whom, under unique Filipino cultural practices, one may understandably be beholden to render some assistance.

The respondent's acts would have squarely fallen under Section 52(A)(II), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (CSC Memorandum Circular No. 19, series of 1999), were it not for the proven turnover of the initially demanded P2,000.00 to the surveyor. Other than on the basis of this provision, however the respondent is liable under Section 52(A)(3) for grave misconduct.

It is a misconduct because the respondent acted as an active and willing intermediary who had demanded and received money in relation to a case pending before the court where he worked. It is grave because the offer to help for a fee shows his willingness and intent to commit acts of unacceptable behavior, transgressing established and serious rules of conduct for public officers and employees. In short, the respondent undertook acts amounting to fixing, that the Court must necessarily recognize and penalize, as they were made under circumstances that unavoidably leave a heavy and adverse taint on the image of the Judiciary.

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We particularly invite attention to this deplorable act to draw the attention of all concerned that between the act of beneficial and legitimate assistance and illegal fixing is a thin red line that judicial officials and employees must never cross; assistance should only be to the extent of what one can legitimately deliver, given as part of the duties as public servants, and with the best of motives; it can never go beyond the extent allowed us by law, and never for a fee, a gift, or for the promise of personal benefit to the assisting official or employee.

When that line is crossed, this Court will not hesitate to call the act for what it truly is illegality that must be condemned and for which the erring Judge, official or employee shall be severely penalized as a retribution for the harm done and as an example of how this Court acts to maintain public trust, by ensuring that the image and integrity of the Judiciary are not compromised.[17] (Additional emphasis and underscoring supplied)

Here, the evidence shows that Alviar had asked and received money from Valdez and made her believe that he could finish the annulment process within six (6) months to one (1) year. Alviar had also used his previous assignment with the Family Court to convince Valdez and even dropped the name of his wife, Fiscal Alviar, who would supposedly help them speed up the process. It is apparent that Valdez would not have parted with her money if not for these misrepresentations. Considering that the circumstances here in are analogous to Pinlac, and the acts herein are even more unscrupulous than the acts in said case, the Court finds that the act of Alviar in asking and receiving money from Valdez as some sort of a package deal for the purported speedy processing of the annulment proceedings constitutes grave misconduct.

On the other hand, as correctly highlighted by Executive Judge Villavert, there was no clear showing that Tapan had received any share from the money given by Valdez. While Tapan's acts may not squarely fall under the definition of "fixing" tantamount to grave misconduct since his participation did not involve the acceptance of fees, the Court finds that Tapan should still be held administratively liable.

Conduct prejudicial to the best interest of the service refers to acts or omissions that violate the norm of public accountability and diminish, or tend to diminish, the people's faith in the Judiciary.[18] Tapan cannot extricate himself from liability by claiming that he merely accommodated Valdez's request. From the facts, it is apparent that his acts and representations led to the negotiations between Valdez and Alviar. By getting personally involved, Tapan had transgressed the strict norm of conduct prescribed for court employees, that is, to avoid any impression of impropriety, misdeed, or misdemeanor, not only in the performance of his duty, but also in conducting himself outside or beyond his duties. It bears stressing that he must still maintain a hands-off attitude in dealing with party-litigants as an employee of the judiciary. Because his acts had, in effect, compromised the integrity of the service and jeopardized the public's faith in the impartiality of the courts, he should be held administratively liable for conduct prejudicial to the best interest of the service, which is punishable under the 2011 RRACCS by suspension of six (6) months and one (1) day to one (1) year for the first offense.[19]

As the OCA correctly pointed out, several circumstances should be appreciated in favor of Tapan, namely: the length of his service, the lack of clear showing that he had received any share from the money given by Valdez, and the lack of showing that he had taken advantage of his position.[20] There is no basis, however, for the OCA to further reduce his penalty to one (1) month. Section 49(a) of the 2011 RRACCS states that the minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present. Because there are only mitigating circumstances in favor of Tapan, the minimum of the penalty, i.e., suspension of six (6) months and one (1) day should be imposed.

WHEREFORE, the Court hereby resolves that:

1. Respondent ANDREW B. ALVIAR, Sheriff IV, Regional Trial Court, Branch 76, Quezon City, is GUILTY of grave misconduct punishable with DISMISSAL from the service with forfeiture of all his retirement and other benefits, except accrued leave credits, with prejudice to re-employment in any government office, including government-owned and controlled corporations; and
2. Respondent RICARDO P. TAPAN, Stenographer III, Regional Trial Court, Branch 76, Quezon City, is GUILTY of conduct prejudicial to the best interest of the service and is hereby SUSPENDED for a period of six (6) months and one (1) day from notice.

Respondent ANDREW B. ALVIAR is further DIRECTED to IMMEDIATELY RESTITUTE the money given to him by complainant Maria Irish B. Valdez amounting to P150,000.00, which shall be subject to the interest rate of six percent (6%) per annum from the finality of this Resolution until full payment.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, J. Reyes, Jr., Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, and Gaerlan, JJ., concur.

A. Reyes, Jr. and Hernando, JJ., on official leave.

[*] " Maria Irish Valdez Sy" in some parts of the rollo .

[1] Rollo, pp. 1-14.

[2] Also referred to as " Ojie Tapan " in some parts of the rollo.

[3] Rollo, pp. 87-88.

[4] Id. at 17.

[5] Id. at 18.

[6] Id. at 19-20.

[7] Id. at 21-24.

[8] Id. at 25-28.

[9] Id. at 32.

[10] Id. at 69-77.

[11] Id.at 175-186 .

[12] Faelden v . Lagura , 561 Phil. 368, 373-374 (2007) .

[13] Judge Agloro v. Burgos, 804 Phil. 621, 634 (2017).

[14] Id. at 634.

[15] RULE 10 SCHEDULE OF PENALTIES

Section 46. Classification of Offenses. - Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following grave offenses shall be punishable by dismissal from the service:

xxxx

3. Grave Misconduct[.]

[16] 650 Phil. 360 (2010).

[17] Id. at 367-371.

[18] Judge Agloro v. Burgos, supra note 13, at 634.

[19] RULE 10. SCHEDULE OF PENALTIES

Section 46. Classification of Offenses. - Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

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B. The following grave offenses shall be punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from the service for the second offense:

x x x x

8. Conducive to the best interest of the service[.]

[20] Rollo, pp. 183-184.

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