FRANCISCO C. TAGUINOD, COMPLAINANT, VS. DEPUTY SHERIFF ROLANDO TOMAS, REGIONAL TRIAL COURT, BRANCH 21, SANTIAGO CITY, RESPONDENT.

A.M. No. P-09-2660. November 29, 2011

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PER CURIAM:

This administrative matter is an offshoot of our ruling in Taguinod v. Madrid,[1] which, aside from holding the judge in the Regional Trial Court of Santiago City, Branch 21 (Branch 21), administratively liable for violating Section 2 of Presidential Decree No. 1079[2] (PD 1079) on the publication of judicial notices, also ordered the investigation of that court's deputy sheriff, respondent Rolando Tomas (respondent), for "possible violation of Section 5" of PD 1079.

Complainant Francisco Taguinod (Taguinod), publisher and editor of City Star, a newspaper locally published in Santiago City, and another individual[3] initiated in Taguinod v. Madrid an administrative complaint against Branch 21's presiding judge, Fe Albano Madrid (Madrid), for irregularities in the allocation of judicial notices for publication by local publishers. In the course of the investigation by the Office of the Court Administrator (OCA), Taguinod presented documentary evidence showing receipt by respondent of sums of money from March to November 1996 in exchange for City Star's publication of judicial notices. At that time, City Star was not yet accredited by Branch 21. As respondent was not impleaded as party in Taguinod v. Madrid, the OCA recommended respondent's separate investigation. We approved the recommendation, thus:

> The Court finds merit in the OCA's recommendation to investigate Deputy Sheriff Tomas. The evidence presented by complainant Taguinod warrants such investigation for possible violation of Section 5 of PD 1079 which prohibits any court employee from "directly or indirectly demand[ing] of or receiv[ing] from" publishers, editor, media personnel or any other person "money, commission or gifts of any kind in consideration of any publication x x x."[4]

In his comment to the charge, respondent readily admitted receiving payments from Taguinod in exchange for City Star's publication of judicial notices. By way of defense, respondent qualified that he "never demanded any money" from Taguinod:

> [I]n the process of causing publication through the CITY STAR, Mr. Taguinod confided to me that he is giving discount in the form of rebates to person or persons coming in as patrons or clients. In my case, he gave it in checks. I wanted to refuse but he assured me it is SOP in their line of business. I want to stress and assert, therefore, that I never demanded any money or any rebate from Mr. Taguinod. x x x x[5]

The OCA investigator[6] found respondent liable for violating Section 5 of PD 1079 and Section 2,[7] Canon 1 of the Code of Conduct for Court Personnel (Code of Conduct) and recommended respondent's suspension from service for six months. Further, the investigator recommended the criminal investigation of respondent for possible violation of Republic Act No. 3019 (RA 3019).

In its evaluation of the investigator's report, the OCA sustained the former's findings, taking into account

respondent's admission of receipt of "kickbacks" from Taguinod. As an alternative basis for respondent's liability, the OCA cites Section 2(e),[8] Canon III of the Code of Conduct. The OCA recommends holding respondent liable for Grave Misconduct and Dishonesty for which he should be suspended from service for the period the investigator recommended, that is, six months.

We approve the OCA's recommendation finding respondent liable for grave misconduct and dishonesty. We reject, however, the OCA's recommended penalty and order respondent's dismissal from service.

Section 5 of PD 1079, which provides -

> No publishers, editor, media personnel or any other person shall directly or indirectly offer or give money, commission or gift of any kind to executive judges of the court of first instance or any court employee in consideration of the award of legal and judicial notices and similar announcements defined in section 1 hereof. Neither shall the latter directly or indirectly demand of or receive from the former money, commission or gifts of any kind in consideration of any publication herein referred to. (Italicization and underscoring supplied)

regulates the conduct of both the members of local media and lower court personnel on the awarding of judicial notices for publication. Just as the former are prohibited from "offer[ing] or giv[ing] money, commission or gift of any kind" to lower court judges and personnel for the privilege of publishing judicial notices, so are the latter barred from "directly or indirectly demand[ing] of or receiv[ing] x x x money, commission or gifts of any kind" for the same purpose. The scope of prohibition on the part of the court personnel is broad, covering both demand or receipt of pay-offs.

Here, the Court is spared from having to evaluate factual allegations on the question whether respondent, as deputy sheriff of Branch 21, violated Section 5 of PD 1079 because respondent admitted receiving pay-offs from Taguinod every time the City Star, the paper published by Taguinod, is awarded a judicial notice from Branch 21 for publication. Respondent's admission corroborates the documentary evidence Taguinod presented consisting of photocopies of 10 checks Taguinod issued, payable to respondent or "cash," for a total amount of P24,905.60 which respondent pocketed.

Respondent's defense that he "never demanded any money or any rebate" from Taguinod does not spare him from liability. Section 5 not only prohibits local court personnel from "demanding" pay-offs, it also bars receipt of such pay-offs. Respondent will take himself out of the ambit of Section 5 only if he did neither.

By accepting pay-offs from Taguinod, respondent also violated Section 2(e), Canon III of the Code of Conduct, mandating that Court personnel shall not –

> Solicit or accept any gift, loan, gratuity, discount, favor, hospitality or service under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the court personnel in performing official duties. (Emphasis supplied)

From March to November, 1996 when City Star published judicial notices from Branch 21, for which respondent accepted 10 checks from Taguinod, respondent controlled the distribution of Branch 21's judicial notices among Santiago City's publishers because Madrid delegated this task to respondent (in violation of Section 2 of PD 1079 requiring distribution of notices by raffle).[9] It was in Taguinod's interest, therefore, to give "discounts" to respondent to influence respondent to keep assigning judicial notices to City Star. The 10 checks Taguinod issued and respondent received speak volumes of this convenient, albeit unethical, arrangement. Section 2 (e), Canon III of the Code of Conduct was crafted precisely to punish court personnel who engage in such practices.

Respondent's violation of Section 5 of PD 1079 and Section 2(e), Canon III of the Code of Conduct constitutes grave misconduct or corrupt conduct in flagrant disregard of well-known legal rules.[10] Respondent, who

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entered the judiciary in 1996, ought to know these provisions; his multiple transactions with Taguinod show flagrant disregard of their proscriptions.

The administrative offense of dishonesty connotes "x x x untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle x x x."[11] We quote with approval the OCA investigator's explanation to hold respondent liable for this offense –

> The acts committed by Sheriff Tomas were clearly acts of dishonesty. If he had been a little scrupulous, he should have given the discounts or rebates to the persons who paid the fees, the mortgagees and the other parties who had to have notices or processes published in accordance with the Rules. By keeping them for himself and thereby profiting from them, he had committed a clear case of dishonesty.[12]

Indeed, respondent has no business receiving any amount, for whatever purpose, from Santiago City's newspaper publishers for the publication of judicial notices from Branch 21. Basic notions of propriety should have alerted respondent of the inherently unethical nature of such transaction. Instead of refusing the pay-offs, he readily accepted them, tainting not only his public service record but also the image of the institution he serves.

PD 1079 is a special law providing penal sanctions for its violation.[13] On the other hand, Section 3(b) of RA 3019 punishes as corrupt the practice of public officers of -

> Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law. (Emphasis supplied)

The documentary evidence on record coupled with respondent's admission warrant referral of this matter to the Santiago City Prosecutor's office for the preliminary investigation of respondent for violation of these penal provisions.

Under Section 52 of the Uniform Rules on Administrative Cases in the Civil Service (Uniform Rules),[14] dishonesty and grave misconduct are classified as grave offenses meriting the penalty of dismissal from service.[15] The OCA investigator, while adverting to this penalty, recommends the imposition on respondent of the lower penalty of suspension from service for six months. In the investigator's view, respondent's "unhesitant[ing] and candid[] admi[ssion]" of having received pay- offs from Taguinod is akin to "a plea of guilty [in criminal proceedings] that could attenuate the penalty imposed."[16] The OCA agrees.[17]

The Court finds the recommendation unwarranted. In several cases, we imposed the penalty of dismissal from service against sheriffs found liable for grave misconduct and dishonesty, regardless of any admission[18] or non-admission[19] of incriminating facts. In a recent ruling finding a sheriff liable for dishonesty, the OCA itself rejected the investigating judge's recommendation to merely suspend the respondent for six months, recommending instead the sheriff's dismissal.[20] We sustained the OCA's recommendation and imposed the higher penalty.

Indeed, the rule in criminal proceedings treating confessions as mitigating circumstance[21] finds no rigorous application in administrative proceedings where the respondent, unlike the accused, stands to lose neither liberty nor property but a public trust to render service, a privilege burdened with numerous prohibitions such as those respondent violated. To treat factual admissions of court personnel in disciplinary proceedings as standard basis to relax penalties not only renders nugatory the penalty structure carefully calibrated in the Uniform Rules but also provides incentive for erring employees to make strategic admissions calculated to spare them from receiving stiff penalties. The interest of maintaining a disciplined, ethical, and efficient corps of judicial employees militates against adopting such policy.

Hence, we apply Section 52 of the Uniform Rules in its full rigor commensurate to respondent's transgressions. By committing grave misconduct and dishonesty, respondent lamentably failed to live up to his position as "an officer of the court, and x x x agent[] of the law."[22] Let this ruling serve as a reminder to all court personnel to strictly adhere to the ethical rules binding judicial employees and render public service in the faithful discharge of their duties.

WHEREFORE, we FIND respondent Rolando Tomas, Deputy Sheriff, Regional Trial Court of Santiago City, Branch 21, GUILTY of Grave Misconduct and Dishonesty and DISMISS him from service with forfeiture of all retirement benefits, except his accrued leave credits, with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations.

The Legal Office of the Office of the Court Administrator is DIRECTED to file with the City Prosecutor, Santiago City, the appropriate criminal complaints against respondent Rolando Tomas in connection with the criminal aspect of this case under Section 5 of Presidential Decree No. 1079 and Section 3(b) of Republic Act No. 3019.

SO ORDERED.

Corona, C.J. Carpio, Velasco, Jr., Leonardo- De Castro Brion Peralta Bersamin Del Castillo Abad Villarama, Jr. Perez, Mendoza, Sereno, Reyes, and Perlas-Bernabe, JJ., concur.

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[1] 489 Phil. 283 (2005), promulgated on 17 January 2005.

[2] Entitled "Revising and Consolidating All Laws and Decrees Regulating the Publication of Judicial Notices, Advertisements for Public Biddings, Notices of Auction Sales and Other Similar Notices."

[3] Andres R. Cabanlong, representing another Santiago City based newspaper, Valley Times.

[4] Taguinod v. Madrid, 489 Phil. 283, 295-296 (2005) (internal citation omitted).

[5] Rollo, p. 345.

[6] Romulo S. Quimbo.

[7]"Court personnel shall not solicit or accept any gift, favor or benefit based on any or explicit understanding that such gift, favor or benefit shall influence their official actions."

[8]"Solicit or accept any gift, loan, gratuity, discount, favor, hospitality or service under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the court personnel in performing official duties."

[9] Taguinod v. Madrid, supra note 4 at 289.

[10] Miro v. Dosono, G.R. No. 170697, 30 April 2010, 619 SCRA 653 citing Mitsubishi Motors Phils. Corporation v. Simon, G.R. No. 164081, 16 April 2008, 551 SCRA 555.

[11] Philippine Amusement and Gaming Corporation v. Rilloraza, 412 Phil. 114, 133 (2001).

[12] Report dated 7 November 2005 (Report), pp. 11-12.

[13] Section 6 provides: "Violation of any provision of this Decree shall be punished by a fine or not less than five thousand pesos (P5,000.00) nor more than twenty thousand pesos (P20,000.00) and imprisonment for not less than (6) months nor more than two (2) years. The offending executive judge or court personnel shall be

perpetually disqualified from holding any public office in the government."

[14] Civil Service Commission Resolution No. 991936, 31 August 1999.

[15] Section 52 provides in relevant parts:

> 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.
>
> 1. The following are grave offenses with their corresponding penalties:
>
> 1. Dishonesty
> 1st offense – Dismissal
> x x x x
>
> 3. Grave Misconduct
>
> 1st offense – Dismissal.
> x x x x

[16] Report, p. 12.

[17] Memorandum, dated 12 March 2007, p. 5.

[18] E.g., Angeles v. Gernale, Jr., A.M. No. P-96-1221, 19 June 1997, 274 SCRA 10 (where the respondent sheriff, in the course of executing a judgment, admitted receiving money allegedly given by a litigant as "token of appreciation.")

[19] E.g., Cabanatan v. Molina, 421 Phil. 664 (2001).

[20] Romero v. Villarosa, Jr., A.M. No. P-11-2913, 12 April 2011.

[21] Act No. 3815 (Revised Penal Code), as amended, Article 13(7).

[22] Philippine Judicial Academy, A Handbook for Sheriffs 1 (2003).

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