

MALACAÑANG

Manila

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 199

DISMISSING 2ND ASSISTANT CITY PROSECUTOR ILUMINADO M. MANUEL OF QUEZON CITY FROM THE SERVICE.

This is an administrative case against 2nd Assistant City Prosecutor Iluminado M. Manuel of Quezon City for grave misconduct and conduct prejudicial to the best interest of the service.

The records show that Ms. Adelaida A. Viray filed an affidavit-complaint, dated December 20, 1989, against respondent before the City Prosecutor's Office of Quezon City, alleging that she is the respondent in a case filed by a certain Baron L. Buck, in representation of the Gucci Company, for unfair competition which was docketed as I.S. No. 89-7892; that said case was set for investigation by the respondent for the last time on October 18, 1989; that on October 19, 1989, respondent went to her (Ms. Viray) residence at No. 29 Congressional Ave. Ext., Visayas Avenue, Quezon City; that respondent informed her that she would need the amount of ₱15,000 as bail if the case for unfair competition against her is filed in court, but that she could give him instead the amount of ₱10,000 for the resolution of the case in her favor; that she told respondent that she could only give him an initial amount of ₱5,000; that respondent said that if she can bring the additional amount of ₱5,000 to his house, he will wait for her; that the following day, she, together with her brother and her son, Edgar V. Garcia, and the "tindera" of her brother, Amor, went to the house of respondent at Fairview; that she informed respondent that she did not bring along the additional ₱5,000; that respondent said it cannot be and so she left the place to borrow money from her brother Romy Viray, who lent her the amount; that she, together with her companions went back to the house of respondent who had already left, but whose wife informed them that whatever they have agreed upon will just be given to her; that she gave the amount of ₱5,000 to respondent's wife on that day; that about six weeks after, she together with her brother, Ric Viray, and her son, Edgar, returned to find out if there has been a resolution on the case; and that respondent answered that the resolution has not yet been finished.

Ms. Viray's son and witness, Edgar John V. Garcia, in his affidavit dated December 22, 1989, alleged, among others that on October 19, 1989, respondent went to their house with an offer to help them in the said case for a consideration

00000 368 0

ll

0002 368 1

of ₱10,000.00; that because his mother had then only ₱5,000.00 respondent asked them to bring the additional ₱5,000.00 at his residence; that after his mother gave respondent ₱5,000.00, the latter asked them to bring him home so they would know where he lives and where to deliver the additional amount of ₱5,000.00; that the next day, they went to respondent's residence pleading if they could just pay the additional amount after the case shall have been resolved; that respondent turned down the plea, prompting Ms. Viray to borrow money from his uncle Romy; and that when they returned to respondent's residence, they were met by his wife who informed them of respondent's message to entrust to her what was agreed upon and that his mother gave the additional ₱5,000.00 to respondent's wife.

bl

In a letter of January 3, 1990, the Resident Ombudsman of the Quezon City Prosecutor's Office informed the Secretary of Justice that, on the basis of the investigation conducted on Ms. Viray's complaint, the criminal and administrative prosecution of respondent was warranted.

The formal charge, dated April 2, 1990, against respondent, in part, reads:

"This Department has found, after an evaluation of the verified complaint dated December 20, 1989 of Adelaida A. Viray alleging that you demanded and received the amount of ₱10,000.00 in consideration for the dismissal of a case filed against her, and your Answer dated January 22, 1990, that a prima facie case of Grave Misconduct and Conduct prejudicial to the Best Interest of the Service exist against you."

In defense, respondent and his witnesses, namely Mrs. Silverita B. Manuel, Milagros Mallannao, Celso Manuel, and Atty. Sisenando Manuel, Jr., testified to disprove the allegations in the complaint.

Respondent affirmed the contents of his Answer, dated January 22, 1990, and adopted the same as his direct testimony. In the main, he denied having demanded and received money from Ms. Viray. In the same Answer, respondent alleged, among

0002 "368" 2

others, that October 18, 1989 was the first setting, not the last as averred by Ms. Viray, of the preliminary investigation of the case; that he had never met Ms. Viray until the scheduled hearing of October 25, 1989, and that Ms. Viray had attempted to bribe him in connection with I.S. No. 89-7892.

hd
In his Memorandum, dated May 8, 1990, respondent disclaims meeting, much less demanding and receiving money from, Ms. Viray on October 19 and 20, 1989, alleging that he, together with his brothers, drove to Baguio, San Fernando, and La Union in the morning of October 19, 1989, returning at midnight of the same day and that he did not see Ms. Viray the following day (October 20), as he hosted a family reunion attended only by relatives. Further, respondent invited attention to certain inconsistencies in the testimonies and affidavits of Ms. Viray and her witness. In closing, respondent deploras "the existence of official intrigue that motivated the fabrication of evidence against" him.

After due consideration of the testimonial and documentary evidence presented during the formal investigation, the Secretary of Justice submitted to me a Memorandum dated July 5, 1990, finding respondent guilty of grave misconduct and accordingly recommended that respondent be dismissed from the service, noting, among others that:

"Respondent puts up the defense of denial and alibi. He and his four (4) witnesses claim that about 7:00 a.m. on October 19, 1989, respondent went up to Baguio City and he arrived home only about midnight. They claim further that the following day, October 20, 1989, there was a family gathering held at the residence of respondent during which time from 11:00 a.m. to 3:00 p.m. no callers or visitors came.

"The issue to be resolved is whether there is substantial evidence to hold respondent administratively liable for grave misconduct and conduct prejudicial to the best interest of service, and this issue hinges on the credibility of the parties.

00002 " 368 " 3

"Based on the foregoing facts and evidence presented, we cannot give credence to respondent and we find that he is administratively liable for grave misconduct.

"The defense of alibi is weak where it is established mainly by the respondent and his immediate relatives (People vs. Cabanit, 139 SCRA 94 [1985]). Also, respondent, in his alibi, has not established physical impossibility and improper motive of complainant and her witness, both of whom gave unwavering statements (People vs. Urgel, 134 SCRA 483 [1985]).

sl

"A verified xerox copy of the Certificate of Service of respondent for October, 1989 which he filed with the Department of Justice (and now forms part of the records, p. 2) states that respondent certifies upon his honor that he has 'rendered full time service for the month of October 1989'. It is of judicial notice, aside from the testimony of defense witness Celso Manuel, that October 19, 1989 was a Thursday and the following day, October 20, 1989 was a Friday. Since October 19 and 20, 1989 were working days and based on the certificate of service of respondent himself, respondent could not have been in Baguio City on October 19, 1989 because he had reported for work on that day which was a Thursday and before noontime of that same day, he received the amount of ₱5,000.00 from complainant at her residence for the dismissal of I.S. No. 89-7892 which was filed against her. Likewise, respondent, per his certification has reported for work on Friday.

"It is noted that I.S. No. 89-7892 was submitted for resolution on October 25, 1989 after only two (2) settings and without the counter-affidavit of complainant. Normally, complainant as a respondent in I.S. No. 89-7892 would not have agreed thereto if she had no inkling about the outcome of her case. It is noted further that complainant's witness alleged

0002 368 4

that respondent has asked them on October 20, 1989 to come back after two (2) weeks and by then, the case will be resolved. Complainant and her witness went back after three (3) weeks and the case was not yet resolved. It is admitted that I.S. No. 89-7892 was resolved on October 30, 1989, typed only on November 29, 1989 and approved on December 5, 1989. This chain of events lend further credibility to the assertion of complainant that on October 19, 1989, respondent went to her residence where he received the initial amount of ₱5,000.00 and that the following day, October 20, 1989, complainant gave the additional amount of ₱5,000.00 to the wife of respondent.

bl

"Some inconsistencies appear in the testimonies and affidavits of complainant and her witness, such as the date of the first setting, the name of the complainant's mother, from whom the additional amount of ₱5,000.00 was really borrowed, and how many weeks have passed after October 20, 1989 when they went back to see respondent. They are only minor details and are of the nature as those which have been held to be badges of truth for only the testimonies of rehearsed witnesses will tally on every point (People vs. Banayo, 129 SCRA 725 [1984]. These minor inconsistencies do not affect their credibility (People vs. Padilla, 132 SCRA 682 [1984]; People vs. Seculles, 132 SCRA 652 [1984])." (Underscoring added.)

After careful review, I concur in the findings and recommendation of the Secretary of Justice.

The unequivocal testimonies of Ms. Viray and her witnesses permit the reasonable inference that respondent demanded and received the amount of ₱10,000.00 in consideration of the dismissal of I.S. No. 89-7892. There appears to be no enmity between complainant and respondent; no indication whatsoever that the former harbored ill-will against the latter as they were complete strangers to each other before the investigation

of I.S. No. 89-7892 commenced. Thus, it is difficult to accept that Ms. Viray would be disposed to charge respondent with so serious an offense, and testify against him unless the accusation stands on a firm basis. In this connection, it is noted from the records that Ms. Viray executed her verified affidavit-complaint on December 20, 1989, whereas respondent signed and the Quezon City Prosecutor approved on November 29, 1989, and December 7, 1989, respectively, the Resolution dismissing I.S. No. 89-7892. Given the above sequence of events, it would be illogical for Ms. Viray, after securing a favorable ruling from respondent, to impute on the latter an illegal act, unless the imputation is true.

The denial and alibi tendered by respondent, i.e., he motored to Baguio City, La Union and San Fernando in the morning of October 19, 1989 when the alleged pay off took place, and arrived back at his residence towards midnight of the same date, crumbles in the light of his Certificate of Service filed with the Department of Justice wherein he certified "upon his honor that he had rendered full time service for the month of October, 1989." As a matter of public notice, October 19, 1989 was a Thursday, a regular working day.

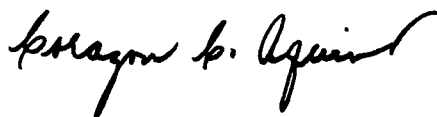
An alibi, so jurisprudence teaches, especially one established by the person proceeded against and by his immediate relatives, as here, is unconvincing (People v. Cabanit, supra) and cannot prevail over the positive assertion of one present in the commission of an offense (People v. Plateros, 83 SCRA 401).

Respondent draws attention to and the Secretary of Justice has noted certain inconsistencies in the testimonies and affidavits of Ms. Viray and her witness. However, relating as they do to minor details unconnected with the monetary demand and receipt by respondent on the dates as indicated, these inconsistencies cannot affect the credibility of Ms. Viray and her witness. As aptly observed by the Secretary of Justice, citing People v. Banayo, supra, only the testimonies of rehearsed witnesses will tally on every point.

0002-368-6
9" 895" 2000

WHEREFORE, and as recommended by the Secretary of Justice, Assistant City Prosecutor ILUMINADO M. MANUEL of Quezon City is hereby DISMISSED from the service, effective upon receipt of a copy of this Order.

Done in the City of Manila, this 12th day of October, in the year of Our Lord, nineteen hundred and ninety.



By the President:



CATALINO MACARAIG, JR.
Executive Secretary