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instrumentality or agency of the Government, including government-owned or controlled corporations.

SO ORDERED.

Davide, Jr., C.J., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, and *Gonzaga-Reyes, JJ.,* concur.

SECOND DIVISION

[A.M. No. P-94-1015. March 29, 1999]

JASMIN MAGUAD and REBECCA BRIOSO, *complainants, vs.* **NICOLAS DE GUZMAN and RUBY C. BARCENAS,** *respondents.*

SYNOPSIS

A complaint for Grave Misconduct, Falsification and Immorality was filed by Jasmin Maguad and Rebecca Brioso against respondent Sheriff Nicolas de Guzman of the Pasay City MTC and Court Social Worker Ruby Barcenas of the Makati City RTC. They alleged therein that in 1982, respondent de Guzman, lawfully married, and respondent Barcanas, single, unlawfully and scandalously cohabited as husband and wife which produced two children whose entries in their Birth Certificates were unlawfully and maliciously falsified by respondents, making it appear that respondents were lawfully married. During the hearing of the case, instead of presenting proofs in support of the accusation, complainants offered in evidence their joint affidavit of desistance so that investigating judge Alfredo Gustilo recommended that respondents be exonerated of the charges of Grave Misconduct and Falsification and both be found guilty of the charge of immorality taking into account the presence of mitigating circumstances in the imposition of the penalty. Additionally, the respondents should be admonished to terminate

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their cohabitation or to take such proper course of action as will legitimize the relationship between them.

The Supreme Court fully agreed with the findings and recommendations of the Investigating Judge that the respondents be absolved from the charges of grave misconduct and falsification, the same being duly supported by the evidence. With regard to the third accusation, this being the first offense of the respondents and taking into account the circumstances enumerated by the investigating Judge that may be considered to mitigate their liability, the Court, in order to temper justice with mercy, imposed a lighter penalty against respondent. Respondent de Guzman was suspended for two(2) months without pay and respondent Barcenas for fifteen (15) days also without pay, both for immorality.

SYLLABUS

1. **ADMINISTRATIVE LAW; CIVIL SERVICE COMMISSION; MEMORANDUM CIRCULAR NO. 30, SERIES OF 1989 THEREOF CATEGORIZES DISGRACEFUL AND IMMORAL CONDUCT A GRAVE OFFENSE; PENALTY THEREFOR.**— This Court held that illicit relations is considered disgraceful and immoral conduct subject to disciplinary action pointing out that Memorandum Circular No. 30, Series of 1989 of the Civil Service Commission has categorized disgraceful and immoral conduct as a grave offense for which a penalty of suspension for six (6) months and one (1) day shall be imposed for the first offense while the penalty of dismissal is imposed for the second offense.

2. **ID.; ID.; ID.; PENALTY IN CASE AT BAR.**— This being the first offense of the respondents and there being no allegation in the complaint that respondent Barcenas knew that de Guzman was married even before they started their relationship and came to know of it only when it was already too late to back out, with the birth of their children, and taking into account the circumstances enumerated by the Investigating Judge that may be considered to mitigate their liability, the Court, in order to temper justice with mercy is incline to impose a lighter penalty upon the respondents. Respondent de Guzman is *SUSPENDED* for two (2) months without pay and respondent Barcenas for fifteen (15) days also without pay, both for immorality.

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APPEARANCES OF COUNSEL

Manuel J. Laserna, Jr. for complainants.
Benjamin E. Paggao for respondents.

DECISION

BUENA, *J.*:

This is a complaint filed by Jasmin Maguad and Rebecca Brioso against Nicolas de Guzman, Sheriff of Branch 47 of the Metropolitan Trial Court of Pasay City and Ruby Barcenas, Court Social Worker in the Regional Trial Court of Makati, Metro Manila, for grave misconduct, falsification and immorality.

The complaint[1] alleges that sometime in 1982, respondent Nicolas de Guzman (lawfully married to Corazon Punzalan de Guzman), and respondent Ruby Barcenas, single, unlawfully and scandalously cohabited as husband and wife at 137 Ignacio St., Pasay City; that in October, 1983, when respondents' first illegitimate child Nathaniel Roy was born, respondents unlawfully and maliciously conspired to falsify an entry in the Birth Certificate of said child, making it appear that respondents were lawfully married on December 8, 1982; that when respondents' second illegitimate child Natalia, was born in 1984, respondents unlawfully and maliciously conspired to falsify an entry in the said child's Birth Certificate, making it appear that respondents were lawfully married on December 8, 1984 (perhaps a typographical error meant to be December 8, 1982 as in the first Birth Certificate).

In their joint comment and/or answer,[2] the respondents admitted that respondent Nicolas de Guzman was married to Corazon Punzalan in 1968 and has two legitimate children with her; de Guzman explained that he and Corazon Punzalan had long been separated in fact and a reconciliation between them for purposes of their living together again has become quite remote as she is now living with another man by the name of Eliseo Almero;

[1] *Rollo,* pp. 1-7.

[2] *Ibid.,* pp. 30-32.

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de Guzman added that he has not been remiss in his obligations as a father to his two legitimate children, as he provided them within his means all that they needed for their sustenance. Respondents denied the complainants' allegation that they cohabited as husband and wife under scandalous circumstances; they also denied that they unlawfully and maliciously conspired to falsify the entries in the certificates of live birth of their two children. They claimed that the truth is that respondent de Guzman had no knowledge, much less any participation in the entries therein relating to their alleged marriage on December 8, 1982; that in the birth certificates of the children, the informant appearing therein is only respondent Barcenas. The respondents explained that Barcenas was "constrained to supply such erroneous information as regards her civil status solely for purposes of shielding her two children from the stigma of shame and disgrace that they might encounter in their later years in life by reason of their illegitimacy." De Guzman and Barcenas took exception to the claim of the complainants that they filed the present charges as "concerned citizens. According to the respondents, "for some ulterior designs," the complainants allow themselves to be the willing pawns of one Leoncio Cesar in the latter's attempts to unduly harass herein respondents because respondent Barcenas was one of the private complainants against Leoncio Cesar for Grave Oral Defamation before the Metropolitan Trial Court of Pasay City, Branch 46, in Crim. Cases Nos. 93-1300 to 1303.

In a resolution[3] dated March 23, 1994, the complaint was referred to Executive Judge Conchita Carpio Morales for investigation, report and recommendation. However, in view of the promotion of Executive Judge Morales to the Court of Appeals, this case was referred to Acting Executive Judge Alfredo J. Gustilo of Branch 116, Regional Trial Court of Pasay City for investigation, report and recommendation.[4]

During the hearing of the case, instead of presenting proofs in support of the accusation, the complainants offered in evidence

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[3] *Ibid.*, p. 44.

[4] *Ibid.*, p. 45.

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their joint Affidavit of Desistance,[5] dated August 12, 1994 stating, among others:

"x x x x x x x x x

"3. That, assisted by our private lawyer, we recently conferred with the said two accused about this case and we have realized: (a) that they had no malicious or criminal intent when they made that entry and that Ruby Barcenas innocently did it in the best interest of their said children to avoid future social stigma upon the persons of the said children when they grow up; and (b) that Mr. De Guzman had been separated for many years from his wife, who has likewise been living her own life with a common-law husband in Mindoro; and that his wife and two children with her had expressly condoned and consented to his relationship with Ms. Barcenas many years ago;

"4. That we are no longer interested to pursue this administrative case and that therefore, in the interest of justice, we hereby request the Supreme Court, thru the investigating Executive Judge of Pasay City to dismiss the same."

In his Investigation Report[6] dated November 2, 1994 Acting Executive Judge Alfredo J. Gustilo (now Associate Justice of the Sandiganbayan), made the following findings which the Court quotes with approval:

"Misconduct means intentional wrong doing or deliberate violation of a rule of law or standard of behavior, specially by a government official. (Webster's Third New International Dictionary). To constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. (*Lacson vs. Roque*, 92 Phil. 456) No act of the respondents appears or has been established which can be considered as misconduct in office. The charge of grave misconduct against them is therefore without any basis.

"With respect to the charge of falsification, the complainants allege that the respondents committed the offense when they made, through conspiracy, an entry in the birth certificates of their children that they were married on December 8, 1982, or December 8, 1984, in Davao City, when in fact they were not. Apparently, this accusation is

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[5] *Rollo*, pp. 69-70.

[6] *Rollo*, pp. 97-109.

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predicated on one of the ways of committing falsification, *i.e.,* by making untruthful statements in a narration of facts under Article 171 (4) of the Revised Penal Code. One essential element of this kind of falsification is that there must be a legal obligation to disclose the truth of the fact claimed to be false. In other words, there must be a law requiring, expressly or impliedly, the disclosure of the truth of the fact alleged to have been falsified. No law has been shown by the complainants making it either expressly or impliedly a duty of an informant in a record of birth to disclose the truth that the parents of the child covered by it are married or not. Consequently, the charge of falsification against the respondents cannot likewise prosper.

"It is alleged in the complaint that the respondents conspired with each other in making the entry in the birth certificates of their children that they were married. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. (Art. 8, Revised Penal Code). The rule is that conspiracy should be shown by strong and convincing evidence. No evidence has been adduced in this case indicating that the respondents agreed and decided to make the entry in the birth certificates of their children that they were married. Even on the assumption that such entry in the birth certificates of Nathaniel and Natalia would constitute falsification by making an untruthful statement in a narration of fact, only respondent Barcenas, the informant who made the entry, could be held liable therefor. Respondent De Guzman could not be made to answer for it, since there is no proof that he conspired with his co-respondent in making such entry.

"On the other hand, the circumstances in this case admitted by the respondents are sufficient to sustain the charge of immorality. It is not in accordance with the norms of morality for a man who is legally married to cohabit with another woman during the subsistence of such marriage. In the same manner, it is against the tenets of morality for a woman to be living together with a married man not her husband. The stigma of immorality attaches to this kind of relationship even if the married man is separated from his wife and the woman living with him is single. This is specially so when the persons concerned are public officers who are supposed to maintain a high standard of morality so as to live up to their role to be looked upon as models in society.

"However, to temper justice with mercy, these circumstances may be considered to mitigate the liability of the respondents:

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"1. They have voluntarily admitted that they are living together as husband and wife without benefit of marriage.

"2. Respondent De Guzman and his lawful wife have been separated in fact for a long time and his wife is already cohabiting with another man, thereby rendering reconciliation between them improbable.

"3. Notwithstanding their separation, respondent De Guzman has continued giving support to his children with Punzalan.

"4. The relationship between the respondents is one of the realities of life which is difficult to prevent from happening, more so because respondent De Guzman has been separated for a long time from his wife.

"5. Apparently, the lawful wife and legitimate children of respondent De Guzman have tolerated the relationship between the respondents as can be implied from the fact that none of them has filed a complaint against them.

"6. There is no indication that the relationship between the respondents has caused prejudice to any person or has adversely affected the performance of their functions and duties as officers of the government to the detriment of the public service.

"7. The complainants have desisted from further prosecuting their complaint and asked for its dismissal, admitting that the filing of the present charges was an offshoot of a civil case involving complainant Maguad and the respondents."

The investigating Judge made the following recommendation:

"1. Respondents Nicolas de Guzman and Ruby Barcenas be exonerated of the charges of grave misconduct and falsification; and

"2. Both respondents be found guilty of the charge of immorality.

"However, because of the aforementioned mitigating circumstances, only the penalty of suspension from office for one (1) month without pay be imposed on them.

"Additionally, the respondents should be admonished to terminate their cohabitation or to take such proper course of action as will legitimize the relationship between them."

The Court fully agrees with the findings and recommendation of the Investigating Judge that the respondents be absolved from

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the charges of grave misconduct and falsification, the same being duly supported by the evidence on record and jurisprudence on the matter.

With regard to the third accusation, the stigma of immorality attaches to the kind of relationship between the respondents, the same being improper, notwithstanding the fact that respondent de Guzman was separated from his wife (who is now living with another man) and respondent Barcenas was single. In *Nalupta, Jr. vs. Tapec*,[7] this Court held that illicit relations is considered disgraceful and immoral conduct subject to disciplinary action pointing out that Memorandum Circular No. 30, Series of 1989 of the Civil Service Commission has categorized disgraceful and immoral conduct as a grave offense for which a penalty of suspension for six (6) months and one (1) day shall be imposed for the first offense while the penalty of dismissal is imposed for the second offense.

However, this being the first offense of the respondents and there being no allegation in the complaint that respondent Barcenas knew that de Guzman was married even before they started their relationship and came to know of it only when it was already too late to back out, with the birth of their children, and taking into account the circumstances enumerated by the Investigating Judge that may be considered to mitigate their liability, the Court, in order to temper justice with mercy is inclined to impose a lighter penalty upon the respondents.

In a Memorandum[8] for the Chief Justice dated September 28, 1998, the Court Administrator recommended that the respondents Deputy Sheriff Nicolas de Guzman and Social Worker Ruby Barcenas be absolved from the charges of grave misconduct and falsification, but respondent de Guzman should be suspended for two (2) months without pay for immorality and respondent Barcenas be suspended for fifteen (15) days without pay and that both respondents be admonished to terminate

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[7] 220 SCRA 505 (1993).

[8] *Rollo*, pp. 111-117.

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their relationship or to take the necessary steps to legitimize the same.

Parenthetically, on February 5, 1999, the respondents filed a Manifestation[9] stating among others:

x x x x x x x x x

"5. That on May 25, 1995, respondent Nicolas de Guzman filed a Petition for Annulment of Marriage before the Regional Trial Court, Branch 90, Imus, Cavite;

"6. On August 12, 1998, a Decision was rendered by the Honorable Judge Dolores C. Español in favor of the respondent;

"7. That on November 27, 1998, Entry of Final Judgment regarding the Annulment of Marriage was issued by the Clerk of Court of Regional Trial Court Branch 90, Imus, Cavite; and,

"8. That on October 19, 1998, the respondents had tied their marriage knot before the Honorable Judge Leticia P. Morales of Regional Trial Court, Makati."

WHEREFORE, respondents Deputy Sheriff Nicolas de Guzman and Court Social Worker Ruby Barcenas are absolved from the charge of grave misconduct and falsification, but respondent de Guzman is *SUSPENDED* for two (2) months without pay and respondent Barcenas for fifteen (15) days also without pay, both for immorality.

SO ORDERED.

Bellosillo (Chairman), Puno, Mendoza, and *Quisumbing, JJ.*, concur.

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[9] *Rollo,* pp. 118-124.