

## **EN BANC**

**[ B.M. No. 2482, April 01, 2014 ]**

### **RE: MELCHOR TIONGSON, HEAD WATCHER, DURING THE 2011 BAR EXAMINATIONS**

### **R E S O L U T I O N**

#### **CARPIO, J.:**

This is an administrative case filed against Melchor Tiongson (Tiongson), head watcher of the 2011 bar examinations held at the University of Santo Tomas, Manila (UST), for bringing a digital camera inside the bar examination room, in violation of the Instructions to Head Watchers.

#### **The Facts**

The Office of the Bar Confidant (OBC) designated Tiongson, an employee of the Court of Appeals (CA), to serve as head watcher for the 2011 Bar Examinations on 6, 13, 20 and 27 November 2011. Tiongson, together with the designated watchers, namely, Eleonor V. Padilla (Padilla), Christian Jay S. Puruganan (Puruganan) and Aleli M. Padre (Padre), were assigned to Room No. 314 of St. Martin De Porres Building in UST.

On 13 November 2011 or during the second Sunday of the bar examinations, Tiongson brought his digital camera inside Room No. 314. Padilla, Puruganan and Padre alleged that after the morning examination in Civil Law, while they were counting the pages of the questionnaire, Tiongson took pictures of the Civil Law questionnaire using his digital camera. Tiongson allegedly repeated the same act and took pictures of the Mercantile Law questionnaire after the afternoon examination.

On the same day, Padilla reported Tiongson's actions to Deputy Clerk of Court and Bar Confidant Atty. Ma. Cristina B. Layusa, who immediately investigated the report. Padilla, Puruganan and Padre subsequently executed separate affidavits confirming Tiongson's actions. Upon demand by the OBC to explain, Tiongson admitted that he brought his digital camera inside the bar examination room. He explained that he did not surrender his new digital camera to the badge counter personnel because the counter personnel might be negligent in handling his camera.

In a Memorandum dated 16 November 2011 addressed to the CA Clerk of Court Atty. Teresita R. Marigomen, the OBC revoked and cancelled Tiongson's designation as head watcher for the remaining Sundays of the bar examinations.

In a Resolution dated 10 April 2012, the Court, upon recommendation of the Committee on Continuing Legal Education and Bar Matters, required Tiongson to file his comment.

In his Comment dated 25 May 2012, Tiongson restated his admission that he brought his digital camera inside the bar examination room. Tiongson reiterated his explanation for bringing his camera and apologized for his infraction.

### **The Report and Recommendation of the OBC**

In a Report and Recommendation dated 19 February 2014, the OBC recommended that Tiongson be disqualified indefinitely from serving as bar personnel, in any capacity, in succeeding bar examinations.<sup>[1]</sup> The OBC found Tiongson guilty of dishonesty and gross misconduct for violating a specific provision in the Instructions to Head Watchers prohibiting the bringing of cameras to the bar examination rooms. The OBC explained that:

During the conduct of the Annual Bar Examinations, the Office of the Bar Confidant meticulously processes the selections of qualified applicants preferably employees and officers from the Court of Appeals, Lower Courts and Outsiders. Qualified applicants who are considered and designated as bar personnel to serve the bar examinations are required to attend the scheduled briefing for them to be able to know their respective actual functions during the bar examinations, otherwise, their names would be deleted from the lists and would no longer be allowed to serve the bar examinations. During the briefing, the Bar Confidant explained well all the provisions in the instructions for them to be familiarized with and to understand their respective rules in the conduct of the Bar Examinations. They are given the Instructions setting forth their respective actual functions as well as the provisions on the causes for disqualification, revocation and cancellation of their designation/appointment as bar personnel to serve the bar examinations.

x x x Tiongson attended the required briefing. He cannot, thus, pose any reason at all bringing his digital camera inside the bar examinations room. This is [a] crystal clear violation of the provisions in the Bar Personnel Instructions for the 2011 Bar Examinations. x x x.<sup>[2]</sup>

### **The Ruling of the Court**

We adopt the findings of the OBC, with modification as to the penalty.

In administrative proceedings, substantial evidence is the quantum of proof required for a finding of guilt,<sup>[3]</sup> and this requirement is satisfied if the employer has reasonable ground to believe that the employee is responsible for the misconduct.<sup>[4]</sup> Misconduct means transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by an employee.<sup>[5]</sup> Any transgression or deviation from the established norm of conduct, work related or not, amounts to a misconduct.<sup>[6]</sup>

In the present case, the OBC has proven with substantial evidence that Tiongson committed a misconduct by violating the Instructions to Head Watchers for the bar