

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.**

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

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 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:

"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.