

MALACANANG

MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER No. 261

REMOVING MR. ERNESTO A. ATIENZA FROM
OFFICE AS SENIOR SPECIAL ATTORNEY OF
THE AGRARIAN COUNSEL, NAGA CITY.

This is an administrative case filed by Messrs. Eulogio and Fermin Tayas (brothers) against Mr. Ernesto A. Atienza, senior special attorney, Office of the Agrarian Counsel, Naga City, for dishonesty and conduct unbecoming a public official. The case was investigated by a supervising special attorney of the Office of the Agrarian Counsel (OTAC).

It appears that respondent was counsel for complainants as defendants in CAR Case No. 262-CN-67, Daet, Camarines Norte, for ejectment filed by Mrs. Felisa Villamonte. On March 12, 1968, the Court rendered a decision evicting the Tayas brothers from their landholding in Bagacay, Labo, Camarines Norte, and ordering Mrs. Villamonte to pay them P1,582.50 as indemnity for their improvements thereon. On March 30, 1968, Mrs. Villamonte filed a motion for reconsideration of the decision but before the same could be heard the parties on May 30, 1968, entered into a compromise agreement whereby complainants, for a specified monetary consideration, waived their claims to the award, while Mrs. Villamonte agreed to withdraw her motion. The agreement was approved by the Court on the same day.

On June 11, 1968, complainants filed with the Court a petition for reconsideration of and/or relief from its resolution dated May 30, 1968, on the ground that respondent committed fraud and abuse of confidence as their compromise negotiator, which petition was, however, denied on May 26, 1969. Similarly, complainants filed with the Commissioner of Civil Service a verified complaint charging respondent with (1) requesting transportation money from them every time there was a hearing of CAR Case No. 262-CN-67; (2) misleading them into signing the compromise agreement that they would receive the whole amount of P1,582.50 awarded them by the Court; and (3) appropriating P250 as service fee out of the P700 actually received by them.

As regards the first charge (a) Eulogio Tayas testified that respondent requested from his transportation money every time there was a hearing of CAR Case No. 262-CN-67; and (b) Atty. Concepcion R. Noble, Acting OTAC officer in charge, Region V, Naga City, declared that re-

spondent's treatment of tenants who had pending cases in the Court of Agrarian Relations depended upon the amount given him and that he was a habitual borrower in constant need of transportation money.

Also submitted were affidavits of certain tenants-clients of respondent from Camarines Sur, namely, Nemesio Babia of Barrio San Rafael, Buhí, Antonio Pragata and Claudio Galon of Himaa, Pili, Telesporo Ravina of San Ramon, Pamplona, and Cecilio Bayrante of San Antonio, Ocampo, averring that respondent demanded from them transportation and hotel expenses.

Concerning the second charge (a) Eulogio Tayas declared that respondent made him sign papers, i.e. the "recibo" and the compromise agreement, which were not first read to him; and (b) Fermin Tayas testified that he signed the papers first before the contents were explained to them by respondent.

Asent the third and last charge, (a) Eulogio Tayas claimed that he received P250 only from Atty. Atienza; and (b) Fermin Tayas admitted that he did not actually see Atty. Atienza get P250 from the P700 but was informed by his brother Eulogio of the amount received by him from respondent.

Respondent, on the other hand, made a blanket denial of the charges against him, averring as a defense that the Tayas brothers were duly informed of the CAR decision awarding them damages in the amount of P1,582.50; that the Tayases voluntarily entered into a compromise agreement and signed the receipt of payment in the presence of witnesses before whom every line or phrase in the document was read and explained; that he (respondent) helped the parties by conducting the negotiations of the compromise agreement between the Tayases and Mrs. Villamonte; and that he prepared the compromise agreement and the receipt of payment on May 29, 1969.

Other than denying the first charge, respondent offered no proof in support thereof. He, however, adduced evidence in support of his defense to the last two charges, to wit: (a) testimony of Mr. Dominador Policarpio who stated that he was witness to the payment of money when seven bundles of P100 per bundle were turned over to Eulogio Tayas and that Atty. Atienza read the contents of the "recibo" and the compromise agreement to complainants; (b) affidavit of Mrs. Felisa Villamonte which corroborated respondent's averments; and (c) the receipt of payment for the full amount of P700 actually signed by the Tayas brothers.

The Agrarian Counsel concluded that the complainants failed to establish their charges against the respondent and recommended his exoneration.

After going over the records of the case, I find the stand of the Agrarian Counsel well taken insofar as the second and third charges are concerned. I disagree, however, with his conclusions on the first charge (a) that the testimony of Eulogio Tayas to the effect that respondent on several occasions obtained money from him in connection with the hearings of the case in question was uncorroborated; (b) that his testimony was untrustworthy because of his previous criminal conviction; and (c) that as against the uncorroborated testimony of Eulogio Tayas the denial of respondent should be given more credence.

The spontaneous testimony of Eulogio Tayas was given without assistance of counsel. His statements were unequivocal and positive. As against the bare denial of respondent I consider the positive testimony of Eulogio Tayas more deserving, it being axiomatic that a mere denial cannot prevail over positive testimony. Furthermore, it would not be fair to take the previous conviction of Eulogio Tayas as depreciatory of the value of his testimony in the face of his positive assertion, which was not otherwise controverted by the respondent.

Respondent, as the records disclose, admitted that he found difficulty in stretching his monthly pay which was not enough and that he had outstanding accounts and small loans from other friends. This admission which, on first impression, would look as having no bearing at all on the first charge, on closer examination tends to bear out the assertion of Eulogio Tayas that respondent asked him money "every time there was a hearing." Besides, the testimony of Atty. Noble that respondent's attitude towards tenants-clients depended on the amount of money given to him was never controverted by respondent or by any of his witnesses. Atty. Noble's testimony, to my mind, serves as basis for a reasonable inference that respondent must have, as claimed by Eulogio Tayas, demanded money from him during the hearings of his case, a fact which the aforementioned tenants-clients of respondent had attested to in their affidavits subscribed before OTAC officials, among others. It may also be noted that these affidavits, which were offered in evidence, were not objected to by respondent. Hence, the contents thereof must perforce be given due weight.

The offense committed by respondent clearly shows that he is guilty of conduct unbecoming a public official and that he is unfit to remain in the public service.

Wherefore, and as recommended by the Secretary of Justice, Mr. Ernesto A. Atienza is hereby removed from office as senior special attorney, Office of the Agrarian Counsel, Naga City, effective upon receipt of a copy of this order.

JANUARY 4, 1971

OFFICIAL GAZETTE

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

(Sgd.) FERDINAND E. MARCOS
President of the Philippines

By the President:

(Sgd.) ALEJANDRO MELCHOR
Executive Secretary
