MALACAÑANG
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 372

IN RE ADMINISTRATIVE CASE AGAINST MR. FIDEL V. GIRON, FORMER FOREIGN AFFAIRS OFFICER CLASS I AND CONSUL GENERAL.

This is an administrative case against Mr. Fidel V. Giron as Foreign Affairs Officer Class I and Consul General, filed by Mr. Lucilo A. Purugganan, chief of Personnel Division, Department of Foreign Affairs, for grave misconduct and malfeasance in office allegedly committed as follows:

> "That during the months of February to April 1969, respondent Fidel V. Giron, while acting on the visa applications of Mary Siongco alias Leu Li and Sze Tan Gak alias Sze Tin Ngok, in his capacity as Chairman of the Committee established under Office Order No. 157-68 dated September 18, 1968, and a subsequent related Office Order No. 195-68 dated November 22, 1968, did ask, solicit, and receive from the attorney of the above-named applicants construction materials worth ₱3,500, more or less, which respondent used in the construction of his house at Dasmariñas Village, Makati, Rizal;
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> "That, subsequently, respondent Fidel Giron, as such Chairman, did favorably recommend to the Secretary of Foreign Affairs the approval of the applications of said applicants in his memorandum dated 26 March 1969."

On April 17, 1969, respondent was preventively suspended from office by the Secretary of Foreign Affairs pending investigation and disposition of the administrative complaint by the Board of the Foreign Service.

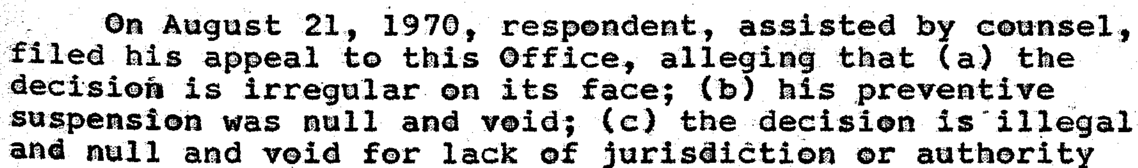
The records show that on March 4, 1969, Atty. Sergio Angeles, in behalf of then Congressman Angel Concepcion who was the attorney of record for certain Chinese applicants for visa registration, saw a house plan on the table of respondent. Informed that respondent was building a house, Atty. Angeles narrated his experience in constructing his own house and offered to secure some building materials

Giron Fidel V.

for respondent who told him that he was interested only in quotation for finishing materials. He asked Atty. Angeles the price quotation for narra which he would need 4 or 5 months later, or better still the name of the store, and Atty. Angeles gave him the quotation the following day (March 5). On the latter date Atty. Angeles was insistent on helping respondent secure other building materials like iron bars. So respondent called up his contractor who asked for a price quotation and agreed to get iron bars if they were of good quality and the price lower than that quoted by other stores. Atty. Angeles gave respondent the quotation on March 7. On March 18 and 21 the steel bars were delivered. Coincident-ally, on the same date (March 26) when the plumbing materials were delivered, the screening committee of which respondent was chairman unanimously recommended the granting of visas to all applicants, which was subsequently approved by the Foreign Affairs Secretary.

Unknown to respondent, Atty. Angeles had previously informed the Secretary of his request and showed him the former's handwritten specifications. When respondent, therefore, requested the invoices from Atty. Angeles at the time of the delivery of the plumbing materials, the latter did not accede thereto, as per instructions of the Secretary and the NBI Director. Also, at the behest of the NBI Director, Atty. Angeles paid the first order at the time of the delivery and the subsequent ones within 30 days.

After due hearing the Board found respondent guilty of impropriety amounting to misconduct for "entering into a business transaction with Angeles who was interested in a case pending before him" and recommended that he (a) be suspended from office for three (3) months without pay; (b) suffer a loss of seniority in his present class; and (c) be not assigned to a sensitive position for a period of two (2) years. Said findings and recommendation were concurred in by the then Acting Foreign Affairs Secretary in a decision dated June 27, 1970, and approved by the Secretary.



On August 21, 1970, respondent, assisted by counsel, filed his appeal to this Office, alleging that (a) the decision is irregular on its face; (b) his preventive suspension was null and void; (c) the decision is illegal and null and void for lack of jurisdiction or authority

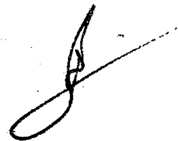
on the part of the officials who rendered and approved it; (d) the decision is contrary to law and the evidence adduced by the parties; and (e) the penalties imposed are excessive, arbitrary and grossly disproportionate to the offense allegedly proven.

Pusuant to the 1st indorsement of this Office dated August 28, 1970, requesting comment on respondent's appeal and submittal of the complete records of the case, the Department of Foreign Affairs in its 2nd indorsement of November 17, 1970, stated that respondent was charged under Section 1(b), Part B, Title IV of Republic Act No. 708, as amended, which reads:

> "The President, upon recommendation of the Secretary, may separate from the service any Foreign Affairs Officer on account of disloyalty to the Government, unsatisfactory performance of duty, misconduct, or malfeasance in office; but no such officer shall be separated from the service until he shall have been granted a hearing before the Board of the Foreign Service and his disloyalty to the Government, unsatisfactory performance of duty, misconduct, or malfeasance in office shall have been established at such hearing."

It was also stated that during the pendency of the appeal respondent filed his certificate of candidacy as delegate to the Constitutional Convention, and consequently ceased in office.

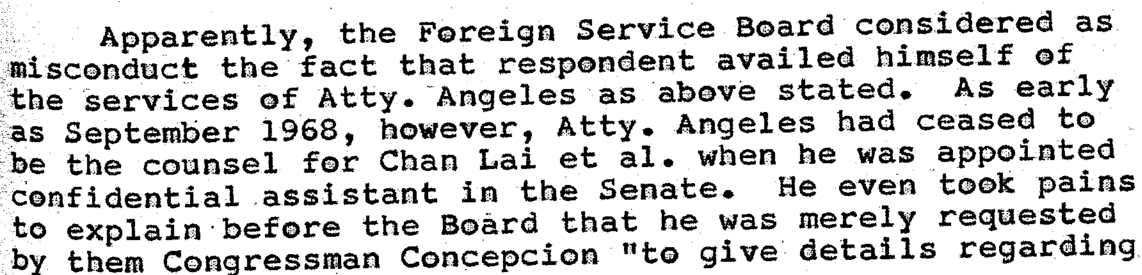
After a careful review of the records, I concur with respondent's counsel that the authority to preventively suspend and discipline respondent, being a presidential appointee, appertains to the President, based on existing laws, jurisprudence and precedents. The role of the Department on such matters is merely recommendatory, the power to remove being inherent in the power to appoint (Ang-angco v. Castillo, 9 SCRA 620; Villaluz v. Zaldivar et. al., 15 SCRA 710). The power to remove is, in the absence of a statutory provision to the contrary, an incident of the power to appoint, and the power to suspend is incidental to the power to remove (Burnap vs. United States, 252 U.S. 512, and cases cited therein). In fact, by express provision of the Civil Service Law, the power to suspend preventively presidential appointees is vested in the President (Sec. 34, RA 2260).



The legal provision relied upon by the Department, quoted elsewhere, cannot be considered as impliedly vesting it with authority to discipline foreign affairs officers if the penalty imposed is not removal but mere suspension as in this case. Said provision simply lays down the substantive and procedural due process that must be observed before a foreign affairs officer may be separated from the service, which must also be followed in any administrative case against foreign affairs officers regardless of the penalty that may be imposed. Precedents also abound, where foreign affairs officials were transferred, suspended, reprimanded and even merely admonished by former Presidents upon recommendation of the Secretary of Foreign Affairs.

With regard to the charge of misconduct against respondent, it bears noting that at the time of the first delivery of the construction materials and even after the filing of the complaint on April 17, 1969, respondent had demanded from Atty. Angeles the corresponding invoices so that he could effect the necessary payment, but to no avail. It was only at the time of the hearing that Atty. Angeles produced the first and subsequent invoices. The fact remains, however, that respondent did pay for the construction materials by issuing a check in the amount of ₱2,142.87 which, although Atty. Angeles insisted was accepted by his clerk without his (Angeles) authority, the latter subsequently withdrew as exhibit in order that he could cash it.

There is doubt that respondent made a favorable recommendation on the visa application of the Chinese involved in return for the assistance given by Atty. Angeles. The delivery of the plumbing materials happened to coincide with the date when respondent's committee favorably indorsed the visa applications in question because it was only on said date (March 26) that the corresponding recommendation was finalized. At any rate, the other members of the screening committee whom Atty. Angeles never saw were convinced on the evidence that a favorable recommendation was in order.



Apparently, the Foreign Service Board considered as misconduct the fact that respondent availed himself of the services of Atty. Angeles as above stated. As early as September 1968, however, Atty. Angeles had ceased to be the counsel for Chan Lai et al. when he was appointed confidential assistant in the Senate. He even took pains to explain before the Board that he was merely requested by them Congressman Concepcion "to give details regarding

the case" and to inform the Foreign Affairs Secretary of the progress thereof after verifying its status from respondent. No less than the Board itself recognized that the relationship between Atty. Angeles and the applicant was not that of attorney and client, nor could said relationship be likened to that of judge and party litigant or counsel. In this regard, jurisprudence is to the effect that "an interest exists in an action which creates or determines a liability or pecuniary loss or gain, depending on the result of a trial in court" (22 Words and Phrases, p. 120, citing Persky v. Greener, Tex Civ. App., 202 S.W. 2d 303, 306). "A person is interested in a suit when he has direct and substantial interest in outcome" (22 Words and Phrases, supra, citing People vs. Walsh, 174 N.E. 881, 882, 342 Ill. 445).

In short, respondent acted in his private, not official capacity when he entered into the aforesaid transaction and whatever benefits he derived therefrom, i.e., 10% discount, could not have influenced his decision to give due course to the visa application. Needless to say, had respondent not been prevented from effecting immediate payment on account of Atty. Angeles' refusal to deliver the invoices, the transaction would have been consummated and there would have been no occasion for filing the instant administrative complaint.

Be that as it may, respondent's act of accepting the proposal of Atty. Angeles, even assuming the transaction to be aboveboard, does not properly behoove a public official whose conduct should not only be actually beyond suspicion but appear to be so. For his actuation respondent deserves to be reprimanded. However, as he is no longer in the service, the imposition of the penalty would serve no useful purpose.

In view of the foregoing, Mr. Fidel V. Giron, former Foreign Affairs Officer Class I and Consul General, is hereby exonerated from the charges.

Done in the City of Manila, this 18th day of November, in the year of Our Lord, nineteen hundred and seventy-five.

By the President:

ROBERTO V. REYES
Deputy Executive Secretary