

SECOND DIVISION

[A. C. No. 5305, March 17, 2003]

MARCIANO P. BRION, JR., PETITIONER, VS. FRANCISCO F. BRILLANTES, JR., RESPONDENT.

DECISION

QUISUMBING, J.:

In this petition for disbarment, complainant Marciano Brion, Jr., charges the respondent, Atty. Francisco Brillantes, Jr., of having willfully violated a lawful order of this Court in A.M. No. MTJ-92-706, entitled *Lupo Almodiel Atienza v. Judge Francisco F. Brillantes, Jr.*^[1] The decretal portion of our resolution in *Atienza* reads:

WHEREFORE, respondent is DISMISSED from the service with forfeiture of all leave and retirement benefits and with prejudice to reappointment in any branch, instrumentality or agency of the government, including government-owned and controlled corporations. This decision is immediately executory.

SO ORDERED.^[2]

Respondent's dismissal in the aforesaid case was ordered after he was found guilty of Gross Immorality and Appearance of Impropriety during his incumbency as presiding judge of the Metropolitan Trial Court, Branch 20, Manila.

Petitioner now avers that respondent violated our decree of perpetual disqualification imposed upon him from assuming any post in government service, including any posts in government-owned and controlled corporations, when he accepted a legal consultancy post at the Local Water Utilities Administration (LWUA), from 1998 to 2000. Said consultancy included an appointment by LWUA as 6th member of the Board of Directors of the Urdaneta (Pangasinan) Water District. Upon expiration of the legal consultancy agreement, this was subsequently renewed as a Special Consultancy Agreement.

Petitioner contends that while both consultancy agreements contained a proviso to the effect that nothing therein should be construed as establishing an employer-employee relationship between LWUA and respondent, the inclusion of this proviso was only a ploy to circumvent our order barring respondent from appointment to a government agency. Petitioner points out in reality, respondent enjoys the same rights and privileges as a regular employee, to wit:^[3]

1. Issuance of LWUA properties such as a cellular phone with accessories, as evidenced by the covering Property Issue Slips with respondent signing as "Accountable Employee";^[4]

2. Official travel to various places in the country as shown by Reports of Authorized Travel kept by LWUA's General Services Division^[5] and Report of Travel accomplished by respondent himself;^[6]
3. Designation as supervising officer over other LWUA employees as brought to light by written instructions personally signed by respondent;^[7]
4. Attendance in water district conventions and meetings held in various provinces;^[8]
5. Membership in several sensitive LWUA committees such as the Prequalification, Bids, and Awards Committee (PBAC), Build-Operate-Transfer (BOT) Committee, among others, with receipt of corresponding honoraria as borne out by various Disbursement Vouchers;^[9]
6. Sitting at meetings of the LWUA Board of Trustees as evidenced by the minutes of such meetings;^[10] and
7. Receipt of Productivity Incentive Bonus in 1999.

Petitioner submits that all of the foregoing constitute deceitful conduct, gross misconduct, and willful disobedience to a decree of this Court, and show that respondent is unfit to be a member of the Bar.

In his comment,^[11] respondent admits the existence of the Legal Consultancy Contract as well as the Special Consultancy Contract. However, he raises the affirmative defense that under Civil Service Commission (CSC) Memorandum Circular No. 27, Series of 1993, services rendered pursuant to a consultancy contract shall not be considered government services, and therefore, are not covered by Civil Service Law, rules and regulations.

Further, says respondent, according to the same Memorandum Circular issued by the Commission, consultancy contracts do not have to be submitted to the Commission for approval. With respect to his designation as the 6th Member of the Board of Directors of the Urdaneta Water District, respondent reasons out that the same is not a "reappointment", which is prohibited by our ruling in *Atienza*, as said designation is not an organic appointment to a LWUA plantilla position. Hence, according to respondent, the CSC need not pass approval upon his temporary designation.

Respondent also argues that all the members of the Urdaneta Water District Board, especially the 6th Member, who comes from the LWUA, assumed such functions merely by virtue of a designation and only in addition to their regular duties. In any event, says respondent, his designation as 6th Member was revoked in April 2000 and the Special Consultancy Contract was pre-terminated on April 30, 2000. It has never been renewed since then. With respect to his use of LWUA properties, respondent admits receiving the cellular phone unit but insists that he merely borrowed it from one Solomon Badoy, a former LWUA Board of Trustees Member.

In our Resolution of February 19, 2001, we referred this case to the Integrated Bar