

**Office of the President  
of the Philippines  
Malacañang**

**ADMINISTRATIVE ORDER No. 93**

**IMPOSING THE ACCESSORY PENALTIES OF CANCELLATION OF  
ELIGIBILITY, FORFEITURE OF RETIREMENT BENEFITS AND  
DISQUALIFICATION FOR REEMPLOYMENT IN THE GOVERNMENT  
SERVICE ON RICARDO B. MACALA, FORMER DIRECTOR OF THE  
BUREAU OF CORRECTIONS**

This refers to the administrative complaint for Grave Misconduct and Nepotism filed by Department of Justice against Ricardo B. Macala, former Director of the Bureau of Corrections.

Records show that on April 2, 2003, the Presidential Anti-Graft Commission (PAGC) received from Department of Justice (DOJ) Secretary Simeon Datumanong a letter-request to investigate respondent Macala on the basis of the fact-finding report submitted by Senior State Prosecutor Teresita Reyes-Domingo recommending the filing of Grave Misconduct and Nepotism charges against respondent for alleged irregularities exposed in a series of newspaper articles and in two (2) anonymous complaints dated January 6 and 21, 2003, respectively, initiated by "concerned" employees of the Bureau of Corrections (BUCOR) Employees Association.

Convinced that sufficient basis exists to conduct an investigation, the PAGC issued an order on May 9, 2003, directing respondent to file a counter-affidavit/verified answer and the parties to attend the preliminary conference scheduled on May 19, 2003. Earlier, respondent had been placed under preventive suspension pursuant to Presidential Administrative Order No. 72, Series of 2003.

In his Counter-Affidavit and Position Paper, respondent stressed, anent the first charge, that the two (2) unsworn and anonymous letter-complaints are downright frivolous and that no substantial evidence has been presented to prove beyond cavil that he is guilty of extortion. He further averred that the amount of P1.5 Million was spent on the rehabilitation of the National Bilibid Prison (NBP) hospital because major, not minor, works were done thereon. To belie the imputation that he received kickbacks out of said rehabilitation, respondent presented a certification by the NBP General Service Chief to the effect that said allegations are untrue.


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Respondent further vehemently denied that his son, Arnel Macala, has been using the BUCOR official car in bringing shabu and liquor into the NBP maximum security compound, claiming that he had issued several memoranda to ensure that all vehicles and visitors entering the NBP premises are carefully checked and the inmates have no access whatsoever to prohibited articles. Likewise denied by respondent were the allegations that he allowed his son-in-law, Raymond Luz, to operate a videoke machine inside the NBP premises, financed the campaign sorties of former DOJ Secretary Hernando Perez, had acquired a 10-door apartment, and that said Raymond Luz had constructed a mansion. Refuting the charge that he received gifts from inmate Lyson Ivan Acedillo, respondent presented the latter's affidavit disclaiming the same.

On the Nepotism charge, respondent maintained that the appointment of Generoso Baustista who is a "fourth degree relative" is not violatiive of the law nor were the details of Noel Mendoza and Abner Macala, who are members of the Philippine National Police, nepotic being in pursuance of the letter-order of Police Senior Superintendent Chito De Los Santos. In the same breath, respondent maintained that the detail of Noel Mendoza, Abner Macala and Raymond Luz did not violate the rule on nepotism (Sec. 59[2] of E.O. No. 292 and Sec. 49 of PD No. 807), since they are holding primarily confidential positions.

Upon the other hand, the DOJ, in its Position Paper, postulated that respondent is guilty of the charges, more particularly of Grave Misconduct, as evidenced by BPI Bank Account No. 0883-016327 under the name of respondent in whose favor suppliers of foodstuff to the BUCOR deposit substantial sums of money in exchange for preferential treatment given by respondent, as corroborated by Mr. Kabungsuan Makilala, Executive Secretary of BUCOR Bidding Committee in his affidavit of April 3, 2003, who further declared that the bidding process was manipulated and influenced by respondent.

The DOJ further averred that respondent never denied that he authorized minor repairs at the NBP hospital at the staggering cost of P1.5 million, as alleged in the letter-complaints, nor belie the anomaly regarding the NBP waterproofing works at the maximum security compound, which leaves much to be desired, since "the place still gets soaked by something like a garden sprinkler."



Concerning the shabu and liquor proliferation issue, the DOJ maintained that respondent's son uses the BUCOR official vehicle to clandestinely smuggle said prohibited items inside the NBP compound.

Anent the complaint for Nepotism, the DOJ alleged that respondent employed his relatives both by affinity and consanguinity within the prohibited degree when he was still the BUCOR Director.

After due evaluation the PAGC issued a resolution on October 7, 2003 finding respondent guilty of Nepotism but absolving him from the charge of Grave Misconduct. The findings and recommendation of the PAGC are quoted hereunder:


"The sole issue now posed before the Commission is whether or not respondent Macala may be held liable for all the charges raised against him based on the evidence on record.

"We must qualify.

"On grave misconduct. In a plethora of cases, the Supreme Court declared that:

*'Misconduct in Office has a definite and well-understood legal meaning. By uniform legal definition it must affect the performance of his duties as an officer and not such only as a private individual. In such case, it has been said at all times, it is necessary to separate the character of the man from the character of the officer. It is settled that misconduct, misfeasance warranting removal from office of an officer must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office.'*

"In the present case, the DOJ failed to adduce substantial evidence, which is the quantum of proof required in administrative cases, to show that the respondent committed maladministration or willful, intentional neglect and a failure to discharge the duties of his office. Substantial evidence is such relevant evidence which a reasonable mind might accept as adequate to support a conclusion. It is axiomatic that he who alleges must prove the same; Otherwise, the presumption of regularity in the performance of official duties must remain.



"An assiduous perusal of the bank deposit slips that were adduced in evidence will readily reveal that there is no showing that the subject bank deposit being linked to the respondent had been utilized by him in the collection of extortion money from BuCOR suppliers, nor is it clear that the same is for the respondent's account since the respondent's name does not appear thereon. In fact one of the supplier, a certain Lyson Ivan Acedillo, had executed an affidavit to deny the truthfulness of this allegation.

"Relative to the waterproofing works at the NBP, no proof was proffered to establish that the costs thereof are excessive. In the absence of sufficient evidence, again the presumption of regularity must be respected.

"Similarly, the imputations that the respondent allowed shabu and liquor to be smuggled into the NBP compound are not substantiated by substantial evidence on record. The DOJ failed to present, at the least, an affidavit of a witness, who has personal knowledge of these particular anomalies to support its charge.

"On nepotism. Section 59 (10, Subtitle A. Title 1, Book V of the Administrative Code describes nepotism, to wit:

*'Nepotism-(1) All appointments in the national, provincial, city and municipal governments or in any branch or instrumentality thereof, including government owned and controlled corporations, made in favor of a relative (within the third degree) of the appointing or recommending authority, or of the chief of the bureau or office, or of the persons exercising immediate supervision over him, are hereby prohibited.*

*'As used in this Section, the word 'relative' and members of the family referred to are those related within the third degree either consanguinity or of affinity.'*

"The Commission notes that the relationship of the respondent Macala to Mr. Raymund Luz was never denied by the former. In his position paper, the respondent did not refute the allegation that he is a first degree relative by affinity (son-in-law) of Raymond Luz. He even continued by saying that:

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*'The position of Mr. Raymond Luz is also considered primarily confidential, in spite of the fact that his designation X X X is that of a Utility Worker.*

*'This is for the reason that in the determination of which position is primarily confidential of (sic) not, it is the nature of the work and not the designation which is controlling.'*

"While it is true that the respondent had no hand in the appointment nor in the recommendation of his son-in-law, he was, however, the chief of the bureau (BUCOR) where his son-in-law was assigned to work; hence, within the prohibition of the law.

"The defense that the position of Mr. Luz, as Utility Worker, is confidential position must likewise fail. In Civil Service Commission vs. Salas, the Supreme Court clarified the term 'primarily confidential position', by stating:

*'Every appointment implies confidence, but much more than ordinary confidence is reposed in the occupant of a position that is primarily confidential. The latter phrase denotes not only confidence in the aptitude of the appointee for the duties of the office but primarily close intimacy which ensures freedom of intercourse without embarrassment or freedom from misgivings of betrayals of personal trust or confidential matter of state. X X X'*

"It must be noted that the respondent contradicts himself by saying that the person, who is merely detailed in his office, is now occupying a confidential position, or a position that requires trust and confidence. Peremptorily, since the relationship between the public respondent and Mr. Luz is one that is prohibited by the law, the former is liable for violating the rule against nepotism.

"As earlier said, the quantum of proof necessary for a finding of guilt in administrative case is only substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The pieces of evidence against the herein respondent are more than adequate to support a conclusion that, with regard to nepotism, he is liable as charged.

"The Uniform Rules on Administrative Case in the Civil Service, Section 52, Rule IV on Penalties provides that the imposable penalty on

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Nepotism shall be Dismissal from public office. The penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of retirement benefits, and the disqualification for reemployment in the government service. However, considering the fact that the respondent Macala was replaced as BUCOR Director by General Santiago, only the accessory penalties can be imposed on him and not the principal penalty.

**"WHEREFORE,** the Commission finds the respondent Ricardo B. Macala liable for violation of the law on nepotism. Considering the removal of the respondent as Bureau of Corrections Director, the Commission recommends to her Excellency, President Gloria Macapagal-Arroyo, that the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and disqualification for reemployment in the government service be imposed.

**"SO RESOLVED."**

After careful review, this Office concurs in toto with the findings and recommendation of the PAGC, the same being in full accord with the evidence presented and fairly reflective of the facts proven.

**WHEREFORE,** and as recommended by the Presidential Anti-Graft Commission, the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and disqualification for reemployment in the government service are hereby **IMPOSED** on Mr. Ricardo B. Macala, former Director of the Bureau of Corrections.

**SO ORDERED.**

Manila, Philippines, 15 JAN 2004

By authority of the President:



**MANUEL B. GAITE**  
Deputy Executive Secretary  
For Legal Affairs  
*NSCC/evr*