EN BANC

A.M. No. RTJ-17-2486 – RE: INVESTIGATION REPORT ON THE ALLEGED EXTORTION ACTIVITIES OF PRESIDING JUDGE GODOFREDO B. ABUL, JR., BRANCH 4, REGIONAL TRIAL COURT, BUTUAN CITY, AGUSAN DEL NORTE.

Promulgated:
September 3, 2019

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DISSENTING OPINION

LEONEN, *J.*:

I join the able dissent of Associate Justice Ramon Paul Hernando and add the following thoughts for emphasis. In my view, the death of respondent Judge Godofredo B. Abul, Jr. prior to the promulgation and finality of a decision moots the administrative case against him. Proceeding further and imposing any penalty that will be suffered by his widow violates the principle of due process of law, a fundamental part of our Constitution.

To recall, a judicial audit was conducted based on a complaint filed by Reverend Father Antoni A. Saniel, the director of the Prison Ministry of the Diocese of Butuan, alleging that respondent was demanding money ranging from ₱200,000.00 to ₱300,000.00 from detainees of the Provincial Jail of Agusan in exchange for their release or the cases' dismissal.[1]

The judicial audit team subsequently filed their investigation report, in which the witnesses interviewed confirmed respondent's alleged extortion activities. On February 28, 2017, this Court issued a Resolution placing him on preventive suspension and requiring him to comment on the complaint and investigation report.[2]

In his Comment/Answer, respondent denied the charges against him and claimed that they were "false, baseless[,] and concocted by an evil and malicious mind with the sole purpose of besmirching his unblemished record of service in the judiciary."[3]

On August 5, 2017, respondent was killed by an unidentified

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1 Ponencia, p. 2.
2 Id. at 3.
3 Id. at 3–4.

motorcycle-riding assailant outside his house.[4] This Court was informed of his death in a September 13, 2017 letter sent by his widow.[5]

In a February 20, 2018 Report and Recommendation, the Office of the Court Administrator found respondent guilty of grave misconduct. While the offense is punishable by dismissal from service, the Office of the Court Administrator instead recommended the penalty of a fine of ₱500,000.00, to be deducted from respondent's retirement gratuity in view of his death.[6]

The majority adopted the Office of the Court Administrator's findings. However, it modified the recommended penalty to the forfeiture of all benefits, including retirement gratuity, on the ground that the death of a respondent in an administrative case does not oust this Court of its jurisdiction to proceed with the case or to impose accessory penalties.[7]

I disagree.

I

The fundamental right to due process of law is found in Article I, Section 1 of the Constitution:

> ARTICLE III
> Bill of Rights
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> SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Procedural due process is canonically a part of this provision. Due process has no controlling and precise definition but is generally premised on the idea of fairness or "freedom from arbitrariness."[8] It is considered to be "the embodiment of the sporting idea of fair play."[9] In *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*:[10]

> There is no controlling and precise definition of due process. It furnishes though a standard to which governmental action should conform in order that deprivation of life, liberty or property, in each appropriate case, be valid. What then is the standard of due process which must exist both as a

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4 J. Hernando, Opinion, p. 2.
5 Ponencia, p. 4.
6 Id.
7 Id. at 10.
8 *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, 127 Phil. 306, 319 (1967) [Per J. Fernando, En Banc].
9 Id. *citing* FELIX FRANKFURTER, MR. JUSTICE HOLMES AND THE SUPREME COURT 32–33 (1938).
10 127 Phil. 306 (1967) [Per J. Fernando, En Banc].

> procedural and as substantive requisite to free the challenged ordinance, or any government action for that matter, from the imputation of legal infirmity; sufficient to spell its doom? It is responsiveness to the supremacy of reason, obedience to the dictates of justice. Negatively put, arbitrariness is ruled out and unfairness avoided. To satisfy the due process requirement, official action, to paraphrase Cardozo, must not outrun the bounds of reasons and result in sheer oppression. Due process is thus hostile to any official action marred by lack of reasonableness. Correctly has it been identified as freedom from arbitrariness. It is the embodiment of the sporting idea of fair play. It exacts fealty "to those strivings for justice" and judges the act of officialdom of whatever branch" in the light of reason drawn from considerations of fairness that reflect [democratic] traditions of legal and political thought." It is not a narrow or "technical conception with fixed content unrelated to time, place and circumstances," decisions based on such a clause requiring a "close and perceptive inquiry into fundamental principles of our society." Questions of due process are not to be treated narrowly or pedantically in slavery to form or phrases.[11]

Due process encompasses both procedural and substantive due process. Procedural due process "concerns itself with government action adhering to the established process when it makes an intrusion into the private sphere."[12] In his opinion in *Perez v. Philippine Telegraph and Telephone Company*,[13] now-retired Associate Justice Arturo Brion traced the history of procedural due process:

> At its most basic, procedural due process is about fairness in the mode of procedure to be followed. It is not a novel concept, but one that traces its roots in the common law principle of natural justice.
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> Natural justice connotes the requirement that administrative tribunals, when reaching a decision, must do so with procedural fairness. If they err, the superior courts will step in to quash the decision by certiorari or prevent the error by a writ of prohibition. The requirement was initially applied in a purely judicial context, but was subsequently extended to executive regulatory fact-finding, as the administrative powers of the English justices of the peace were transferred to administrative bodies that were required to adopt some of the procedures reminiscent of those used in a courtroom. Natural justice was comprised of two main sub-rules: *audi alteram partem* — that a person must know the case against him and be given an opportunity to answer it; and *nemo judex in sua cause debe esse* — the rule against bias. Still much later, the natural justice principle gave rise to the duty to be fair to cover governmental decisions which cannot be characterized as judicial or quasi-judicial in nature.
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> While the *audi alteram partem* rule provided for the right to be notified of the case against him, the right to bring evidence, and to make

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11 Id. at 318–319 *citing* FELIX FRANKFURTER, MR. JUSTICE HOLMES AND THE SUPREME COURT 32–33 (1938); *Hannah v. Larche*, 363 U.S. 420, 487 (1960); *Cafeteria Workers v. McElroy*, 367 U.S. 1230 (1961); *Bartkus v. Illinois*, 359 U.S. 121 (1959); and Pearson v. McGraw, 308 U.S. 313 (1939).

12 *White Light Corporation v. City of Manila,* 596 Phil. 444, 461 (2009) [Per J. Tinga, En Banc].

13 602 Phil. 522, 544 (2009) [Per J. Corona, En Banc].

> argument — whether in the traditional judicial or the administrative setting — common law maintained a distinction between the two settings. "An administrative tribunal had a duty to act in good faith and to listen fairly to both sides, but not to treat the question as if it were a trial. There would be no need to examine under oath, nor even to examine witnesses at all. Any other procedure could be utilized which would obtain the information required, as long as the parties had an opportunity to know and to contradict anything which might be prejudicial to their case."[14]

In *Medenilla v. Civil Service Commission*,[15] procedural due process has been summarized as:

> . . . the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, and property in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of the right in the matter involved.[16]

In this jurisdiction, *Ang Tibay v. Court of Industrial Relations*[17] states the seven (7) cardinal primary rights in "trials and investigations of an administrative character"[18] for due process to be satisfied:

> (1) The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. In the language of Chief Justice Hughes, in *Morgan v. U.S.*, . . ., "the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play."
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> (2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented. In the language of this court in *Edwards vs. McCoy*, . . ., "the right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration."
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> (3) "While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision. A decision with absolutely nothing to support it is a nullity, a place when directly attached." This principle emanates from the more fundamental principle that the genius of constitutional government is contrary to the vesting of unlimited power anywhere. Law is both a grant and a limitation upon power.

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14 Id. at 545–546 *citing* DAVID PHILLIP JONES AND ANNE DE VILLARS, PRINCIPLES OF ADMINISTRATIVE LAW 148–149, 157–160 (1985 ed.), and *Ridge v. Baldwin*, [1963] 2 All E.R. 66 (H.L.).

15 272 Phil. 107 (1991) [Per J. Gutierrez, Jr., En Banc].

16 Id. at 115 *citing* BLACK'S LAW DICTIONARY, 590 (4th ed.).

17 69 Phil. 635 (1940) [Per J. Laurel, En Banc].

18 Id. at 641–642.

> (4) Not only must there be some evidence to support a finding or conclusion, but the evidence must be "substantial." "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." . . . The statute provides that 'the rules of evidence prevailing in courts of law and equity shall not be controlling.' The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order. But this assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence.
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> (5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected. Only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them. It should not, however, detract from their duty actively to see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy. . . .
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> (6) [The tribunal or officer], therefore, must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision. . . .
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> (7) [The tribunal or officer] should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered. The performance of this duty is inseparable from the authority conferred upon it.[19] (Citations omitted)

In *Gas Corporation of the Philippines v. Inciong*,[20] this Court clarified that while *Ang Tibay* remains to be good law, the failure to strictly apply the formalities of an adversarial proceeding before an administrative tribunal does not necessarily result in a denial of due process:

> The vigor with which counsel for petitioner pressed the claim that there was a denial of procedural due process is inversely proportional to the merit of this certiorari and prohibition suit as is quite evident from the Comment of the office of the Solicitor General. It is undoubted that the due process mandate must be satisfied by an administrative tribunal or agency. So it was announced by Justice Laurel in the landmark case of *Ang Tibay v. Court of Industrial Relations*. That is still good law. It follows, therefore, that if procedural due process were in fact denied, then this petition must prosper. It is equally well-settled, however, that the standard of due process that must be met in proceedings before administrative tribunals allows a certain latitude as long as the element of fairness is not ignored. So the following recent cases have uniformly held: *Maglasang v. Ople, Nation Multi Service Labor Union v. Agcaoili,*

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19 Id. at 642–644.

20 182 Phil. 215 (1979) [Per CJ. Fernando, Second Division].

> *Jacqueline Industries v. National Labor Relations Commission*, *Philippine Association of Free Labor Unions v. Bureau of Labor Relations*, *Philippine Labor Alliance Council v. Bureau of Labor Relations*, and *Montemayor v. Araneta University Foundation*. From the Comment of the office of the Solicitor General, it is quite clear that no imputation of arbitrariness can be justified. The opportunity to present its side of the case was given both parties to the controversy. If, for reasons best known to itself, petitioner did not avail of its right to do so, then it has only itself to blame. No constitutional infirmity could then be imputed to the proceeding before the labor arbiter.[21] (Citations omitted)

Thus, due process in administrative proceedings generally does not require that the respondent *must* be heard. It merely requires that the respondent is *given the opportunity* to be heard.[22] This opportunity to be heard, however, is not lost even after a judgment is rendered. Due process in administrative proceedings requires that the respondent still be given the opportunity to question the unfavorable judgment.

In *Lumiqued v. Exevea*,[23] this Court further explains:

> In administrative proceedings, the essence of due process is simply the opportunity to explain one's side. One may be heard, not solely by verbal presentation but also, and perhaps even much more creditably as it is more practicable than oral arguments, through pleadings. An actual hearing is not always an indispensable aspect of due process. As long as a party was given the opportunity to defend his interests in due course, he cannot be said to have been denied due process of law, for this opportunity to be heard is the very essence of due process. Moreover, *this constitutional mandate is deemed satisfied if a person is granted an opportunity to seek reconsideration of the action or ruling complained of.*[24] (Emphasis supplied)

The opportunity to be heard should be present in *all* aspects of the procedure until the finality of the judgment, decision, or resolution. It is not a mere formality but an intrinsic and substantial part of the constitutional right to due process. This is what inspires the Revised Penal Code provision that dismisses a case against an accused for *any* crime when he or she dies.[25]

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21 Id. at 220–221.

22 *Legarda v. Court of Appeals*, 345 Phil. 890, 905 (1997) [Per J. Romero, En Banc].

23 346 Phil. 807 (1997) [Per J. Romero, En Banc].

24 Id. at 828 *citing Concerned Officials of MWSS v. Vasquez*, 310 Phil. 549 (1995) [Per J. Vitug, En Banc]; *Mutuc v. Court of Appeals*, 268 Phil. 37 (1990) [Per J. Paras, Second Division]; *Pamantasan ng Lungsod ng Maynila (PLM) v. Civil Service Commission*, 311 Phil. 573 (1995) [Per J. Vitug, En Banc]; *Legarda v. Court of Appeals*, 345 Phil. 890, 905 (1997) [Per J. Romero, En Banc]; and *Pizza Hut/Progressive Development Corporation v. National Labor Relations Commission*, 322 Phil. 579 (1996) [Per J. Puno, Second Division].

25 *See* REV. PEN. CODE, art. 89, which provides:

ARTICLE 89. How criminal liability is totally extinguished. — Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment[.]

II

This Court's disciplinary powers should always be read alongside the guarantee of any respondent's fundamental rights. After all, it is this Court that is granted both the power of judicial review and the competence to promulgate rules for the enhancement and protection of constitutional rights.

It is settled that this Court's jurisdiction over a disciplinary case against a court official or employee, once acquired, is not lost simply because the respondent has ceased holding office during the pendency of the case.[26]

Cessation from public office during the pendency of the case may occur in three (3) different ways: (1) resignation; (2) retirement; or (3) death.

On resignation, this Court stated:

> [T]o constitute a complete and operative resignation of public office, there must be an intention to relinquish a part of the term, accompanied by the act of relinquishment . . . and a resignation implies an expression by the incumbent in some form, express or implied of the intention to surrender, renounce, or relinquish, the office, and an acceptance by competent and lawful authority.[27]

Resignation requires intent. It is a *voluntary* cessation from public office. Sometimes, however, respondents in disciplinary proceedings opt to resign to avoid being forcibly dismissed from service. Thus, this Court has stated that resignation "should be used neither as an escape nor as an easy way out to evade administrative liability by a court personnel facing administrative sanction."[28]

Therefore, once this Court assumes jurisdiction—that is, after an administrative case has been filed—resignation from public office will not render the case moot. In *Pagano v. Nazarro, Jr.*:[29]

> Petitioner argues that a government employee who has been separated from service, whether by voluntary resignation or by operation of law, can no longer be administratively charged. Such argument is devoid of merit.

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26 *Perez v. Abiera*, 159-A Phil. 575, 580 (1975) [Per J. Muñoz Palma, En Banc].

27 *Gonzales v. Hernandez*, 112 Phil. 160, 165 (1961) [Per J. Labrador, En Banc] *citing* 43 Am. Jur. p. 22; *Nome v. Rice*, 3 Alaska 602; and 2 BOUVIER'S LAW DICTIONARY, p. 2407.

28 *Cajot v. Cledera*, 349 Phil. 907, 912 (1998) [Per Curiam, En Banc].

29 560 Phil. 96 (2007) [Per J. Chico-Nazaro, Third Division].

> In *Office of the Court Administrator v. Juan*, this Court categorically ruled that the precipitate resignation of a government employee charged with an offense punishable by dismissal from the service does not render moot the administrative case against him. Resignation is not a way out to evade administrative liability when facing administrative sanction. The resignation of a public servant does not preclude the finding of any administrative liability to which he or she shall still be answerable.
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> A case becomes moot and academic only when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits of the case. The instant case is not moot and academic, despite the petitioner's separation from government service. Even if the most severe of administrative sanctions — that of separation from service — may no longer be imposed on the petitioner, there are other penalties which may be imposed on her if she is later found guilty of administrative offenses charged against her, namely, the disqualification to hold any government office and the forfeiture of benefits.
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> Moreover, this Court views with suspicion the precipitate act of a government employee in effecting his or her separation from service, soon after an administrative case has been initiated against him or her. An employee's act of tendering his or her resignation immediately after the discovery of the anomalous transaction is indicative of his or her guilt as flight in criminal cases.[30]

Likewise, in *Baquerfo v. Sanchez*:[31]

> Cessation from office of respondent by resignation or retirement neither warrants the dismissal of the administrative complaint filed against him while he was still in the service nor does it render said administrative case moot and academic. The jurisdiction that was this Court's at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case. Respondent's resignation does not preclude the finding of any administrative liability to which he shall still be answerable.[32]

Retirement, meanwhile, may be optional or compulsory. Optional retirement for government employees may be availed after 20 to 30 years of

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30 Id. at 104–105 *citing Office of the Court Administrator v. Juan*, 478 Phil. 823 (2004) [Per Curiam, En Banc]; *Baquerfo v. Sanchez*, 495 Phil. 10 (2005) [Per Curiam, En Banc]; *Tantoy, Sr. v. Abrogar*, 497 Phil. 615 (2005) [Per J. Quisumbing, First Division]; and *Re: (1) Lost Checks Issued to the Late Roderick Roy P. Melliza, Former Clerk II, MCTC, Zaragga, Iloilo and (2) Dropping from the Rolls of Ms. Esther T. Andres*, 537 Phil. 634 (2006) [Per Curiam, En Banc].

31 495 Phil. 10 (2005) [Per Curiam, En Banc].

32 Id. at 16–17 *citing Reyes v. Cristi*, 470 Phil. 617 (2004) [Per J. Callejo, Sr., Second Division]; *Re: Complaint Filed by Atty. Francis Allan A. Rubio on the Alleged Falsification of Public Documents and Malversation of Public Funds*, 482 Phil. 318 (2004) [Per J. Tinga, En Banc]; *Caja v. Nanquil*, 481 Phil. 488 (2004) [Per J. Chico-Nazario, En Banc]; *Tuliao v. Ramos*, 348 Phil. 404, 416 (1998) [Per J. Bellosillo, First Division]; *Perez v. Abiera*, 159-A Phil. 575 [Per J. Muñoz Palma, En Banc]; *Secretary of Justice v. Marcos*, 167 Phil. 42 (1977) [Per J. Fernando, En Banc]; *Sy Bang v. Mendez*, 350 Phil. 524, 533 (1998) [Per J. Kapunan, Third Division]; *Flores v. Sumaljag*, 353 Phil. 10, 21 (1998) [Per J. Mendoza, Second Division]; and *Office of the Court Administrator v. Fernandez*, 480 Phil. 495 (2004) [Per J. Ynares-Santiago, First Division].

service, regardless of age.[33] Judges and justices may also opt to retire upon reaching 60 years old as long as they have rendered 15 years of service in the judiciary.[34] Optional retirement, like resignation, is a *voluntary* cessation from public office. Thus, the same rationale is applied to those who avail of optional retirement during the pendency of an administrative case. In *Aquino, Jr. v. Miranda*:[35]

> A public servant whose career is on the line would normally want the investigating body to know his or her whereabouts for purposes of notice. The timing of respondent's application for leave, for optional retirement, and her sudden unexplained disappearance, taken together, leads us to conclude that hers is not a mere case of negligence. Respondent's acts reveal a calculated design to evade or derail the investigation against her. Her silence at the least serves as a tacit waiver of her opportunity to refute the charges made against her.
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> Neither respondent's disappearance nor her retirement precludes the Court from holding her liable. Her disappearance constitutes a waiver of her right to present evidence in her behalf. The Court is not ousted of its jurisdiction over an administrative case by the mere fact that the respondent public official ceases to hold office during the pendency of respondent's case.[36]

In *Office of the Court Administrator v. Ruiz*:[37]

> The records show that the respondent wrote the Court a letter on May 27, 2013 (or soon after his Sandiganbayan convictions), requesting that he "be allowed to optionally retire effective November 30, 2013." He later requested, in another letter, that the effectivity date of his optional retirement be changed from November 30, 2013 to December 31, 2013.
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> The Court has not acted on the respondent's request for optional early retirement in view of his standing criminal convictions; he stands to suffer accessory penalties affecting his qualification to retire from office should his convictions stand. The OCA records also show that he is currently on "on leave of absence" status. In any case, that a judge has retired or has otherwise been separated from the service does not necessarily divest the Court of its jurisdiction to rule on complaints filed while he was still in the service.[38] (Citations omitted)

In *Re: Report on the Judicial Audit Conducted in the RTC, Branch 4, Dolores, Eastern Samar*:[39]

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33 *See* Republic Act No. 1616 (1957), sec. 1.

34 *See Re: Requests for survivorship benefits of spouses of justices and judges who died prior to the effectivity of Republic Act (R.A.) No. 9946*, A.M. No. 17-08-01-SC, September 19, 2017, 840 SCRA 62, 75 [Per J. Martires, En Banc].

35 473 Phil. 216 (2004) [Per Curiam, En Banc].

36 Id. at 227–228 *citing Perez v. Abiera*, 159-A Phil. 575 (1975) [Per J. Muñoz Palma, En Banc].

37 780 Phil. 133 (2016) [Per Curiam, En Banc].

38 Id. at 153–154.

39 562 Phil. 301 (2007) [Per Curiam, En Banc].

> Judge Bugtas contended that the Court lacked jurisdiction over the instant case because of the approval of his optional retirement effective 31 January 2006. This is unacceptable. In *Concerned Trial Lawyers of Manila v. Veneracion*, the Court held that cessation from office because of retirement does not render the administrative case moot or warrant its dismissal[.][40]

Respondents in an administrative case could apply for optional retirement to evade liability. Thus, optional retirement during the pendency of an administrative case, like resignation, will not render the case moot.

Unlike resignation, however, retirement may also be *involuntary*. Retirement from public service is compulsory for government employees who have reached 65 years old[41] or for judges and justices who have reached 70 years old.[42]

In the leading case of *Perez v. Abiera*,[43] this Court was confronted with the issue of whether an administrative complaint against a judge was rendered moot when he compulsorily retired while the case was pending. Citing *Diamalon v. Quintillan*,[44] respondent Judge Carlos Abiera argued that he could not be meted the penalty of dismissal since he was no longer in service.

In *Quintillan*, this Court dismissed the complaint against Judge Jesus Quintillan since he had already resigned from service before a judgment could be rendered:

> [T]he petition for dismissal must be granted. There is no need to inquire further into the charge imputed to respondent Judge that his actuation in this particular case failed to satisfy the due process requirement. As an administrative proceeding is predicated on the holding of an office or position in the Government and there being no doubt as to the resignation of respondent Judge having been accepted as of August 31, 1967, there is nothing to stand in the way of the dismissal prayed for.[45]

In *Abiera*, however, this Court clarified that *Quintillan* was not meant to be a precedent to immediately dismiss complaints against judges who resigned or retired while the administrative cases were pending:

> It was not the intent of the Court in the case of *Quintillan* to set down a hard and fast rule that the resignation or retirement of a respondent

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40 Id. at 325 *citing Concerned Trial Lawyers of Manila v. Veneracion*, 522 Phil. 247 (2006) [Per J. Corona, Second Division].

41 *See* Presidential Decree No. 1146 (1977), sec. 11(b).

42 *See* Republic Act No. 9946 (2010), sec. 1.

43 159-A Phil. 575 (1975) [Per J. Muñoz Palma, En Banc].

44 139 Phil. 654 (1969) [Per J. Fernando, En Banc].

45 Id. at 656–657.

> judge as the case may be renders (*sic*) moot and academic the administrative case pending against him; nor did the Court mean to divest itself of jurisdiction to impose certain penalties short of dismissal from the government service should there be a finding of guilt on the basis of the evidence. In other words, *the jurisdiction that was Ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased to be in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof.* A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications. For what remedy would the people have against a judge or any other public official who resorts to wrongful and illegal conduct during his last days in office? What would prevent some corrupt and unscrupulous magistrate from committing abuses and other condemnable acts knowing fully well that he would soon be beyond the pale of the law and immune to all administrative penalties? If only for reasons of public policy, this Court must assert and maintain its jurisdiction over members of the judiciary and other officials under its supervision and control for acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public. If innocent, respondent official merits vindication of his name and integrity as he leaves the government which he served well and faithfully, if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.[46] (Emphasis supplied)

This Court, thus, established that:

> In short, the cessation from office of a respondent Judge either because of resignation, retirement or some other similar cause does not per se warrant the dismissal of an administrative complaint which was filed against him while still in the service. Each case is to be resolved in the context of the circumstances present thereat.[47]

As this doctrine developed, this Court has interpreted "some other similar cause" to include death. Death, however, cannot be placed on the same footing as resignation or retirement. Resignation and optional retirement are *voluntary* modes of cessation. The respondent may avail of them as a way to escape or evade liability. This Court, therefore, should not be ousted of its jurisdiction to continue with the administrative complaint even if the resignation is accepted or the application for retirement is approved.

Death, unless self-inflicted, is *involuntary*. Respondents who die during the pendency of the administrative case against them do not do so with the intent to escape or evade liability. The rationale for proceeding with administrative cases despite resignation or optional retirement, therefore, cannot apply.

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46 *Perez v. Abiera*, 159-A Phil. 575, 580–581 (1975) [Per J. Muñoz Palma, En Banc].

47 Id. at 582.

It is conceded that compulsory retirement is also involuntary. Respondents or this Court cannot fight against the passage of time.

Abiera, however, had a different rationale for respondents who have reached the compulsory age of retirement:

> A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications. *For what remedy would the people have against a judge or any other public official who resorts to wrongful and illegal conduct during his last days in office? What would prevent some corrupt and unscrupulous magistrate from committing abuses and other condemnable acts knowing fully well that he would soon be beyond the pale of the law and immune to all administrative penalties?* If only for reasons of public policy, this Court must assert and maintain its jurisdiction over members of the judiciary and other officials under its supervision and control for acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public.[48] (Emphasis supplied)

In formulating the doctrine, this Court was trying to guard against corrupt and unscrupulous magistrates who would commit abuses knowing fully well that after retirement, they could no longer be punished.

It is this *certainty of cessation* that differentiates compulsory retirement from death as a mode of cessation from public service. A respondent judge knows when he or she will compulsorily retire. In contrast, nobody knows when one will die, unless the cause of death is self-inflicted. Even those with terminal illnesses cannot pinpoint the exact day when they will die.

The essence of due process in administrative cases is simply the opportunity to be heard. Respondents must be given the opportunity to be informed of and refute the charges against them in all stages of the proceedings.

Only in resignation and retirement can there be a guarantee that respondents will be given the opportunity to be heard. Even if they resign or retire during the pendency of the administrative case, they can still be aware of the proceedings and actively submit pleadings. Thus, they should not be allowed to evade liability by the simple expediency of separation from public service.

It would be illogical and impractical to treat dead respondents as equal to resigned or retired respondents. Dead respondents are neither aware of

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[48] Id. at 580–581.

the continuation of the proceedings against them, nor are in any position to submit pleadings. Death forecloses any opportunity to be heard. Continuing with the administrative proceedings even after the respondent's death, therefore, is a violation of the right to due process.

III

Indeed, here, had respondent's liability been proven, the penalty of dismissal should have been meted out to him. However, the entire process had not yet been completed before he died.

It is settled that "[p]ublic office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives."[49] Public trust requires mechanisms for public officers and employees to be accountable to the people. Any party may file administrative complaints against any erring public officer or employee. If, after investigation, the public officer or employee is found guilty, he or she is penalized accordingly.

Penalties against erring public officers or employees will vary according to the type of infraction or the frequency of its commission. What is certain, however, is that civil service regulations and jurisprudence reserve the *highest* penalty for the *gravest* infraction: dismissal from service.

Thus, the Revised Rules on Administrative Cases in the Civil Service provides:

> SECTION 46. Classification of Offenses. — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.
>
> A. The following grave offenses shall be punishable by dismissal from the service:
>
> 1. Serious Dishonesty;
> 2. Gross Neglect of Duty;
> 3. Grave Misconduct;
> 4. Being Notoriously Undesirable;
> 5. Conviction of a crime involving moral turpitude;
> 6. Falsification of official document;
> 7. Physical or mental incapacity or disability due to immoral or vicious habits;
> 8. Receiving for personal use of a fee, gift or other valuable thing in the course of official duties or in connection therewith when

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[49] CONST., art. XI, sec. 1.

such fee, gift or other valuable thing is given by any person in the hope or expectation of receiving a favor or better treatment than that accorded to other persons, or committing acts punishable under the anti-graft laws;

9. Contracting loans of money or other property from persons with whom the office of the employee has business relations;
10. Soliciting or accepting directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value which in the course of his/her official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of his/her office. The propriety or impropriety of the foregoing shall be determined by its value, kinship, or relationship between giver and receiver and the motivation. A thing of monetary value is one which is evidently or manifestly excessive by its very nature;
11. Nepotism; and
12. Disloyalty to the Republic of the Philippines and to the Filipino people.

When a civil servant commits the most deplorable of crimes against the Republic and the Filipino people, it is in the public interest to *remove* him or her from public service, so that this person can no longer pollute the ranks of civil service and diminish the public's confidence in its government institutions. In *City Mayor of Zamboanga v. Court of Appeals*,[50] this Court meted out the penalty of dismissal on a city veterinarian found guilty of grave misconduct by the Civil Service Commission, instead of reinstatement with full backwages as previously declared by the Court of Appeals. It explained:

> Indeed, to reinstate private respondent to his former position with full backwages would make a mockery of the fundamental rule that a public office is a public trust and would render futile the constitutional dictates on the promotion of morale, efficiency, integrity, responsiveness, progressiveness and courtesy in the government service. Likewise, reinstatement would place private respondent in such a position where the persons whom he is supposed to lead have already lost their respect for him and where his tarnished reputation would continue to hound him.[51]

Members of the judiciary are held to an even *higher* standard. In *Astillazo v. Jamlid*:[52]

> The Court has said time and time again that the conduct and behavior of everyone connected with an office charged with the administration and disposition of justice — from the presiding judge to the lowliest clerk — should be circumscribed with the heavy burden of responsibility as to let them be free from any suspicion that may taint the well-guarded image of the judiciary. It has always been emphasized that the conduct of judges and court personnel must not only be characterized

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50 261 Phil. 936 (1990) [Per J. Gancayco, First Division].
51 Id. at 945.
52 342 Phil. 219 (1997) [Per Curiam, En Banc].

> by propriety and decorum at all times, but must also be above suspicion. Verily, the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women, from the judge to the least and lowest of its personnel, hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a true temple of justice. Thus, every employee of the court should be an exemplar of integrity, uprightness, and honesty.[53] (Citations omitted)

A.M. No. 01-8-10-SC[54] provides that justices and judges found guilty of serious charges, or the worst possible offenses that may be committed, are sanctioned with the following penalties:

> SECTION 11. Sanctions. — A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:
>
> 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;
>
> 2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or
>
> 3. A fine of more than P20,000.00 but not exceeding P40,000.00.

For the first two (2) sanctions to be satisfied, they require the respondent judge or justice to *still be in public service*.

For obvious reasons, a person who is no longer in the public service cannot be removed, either temporarily or permanently, from public service. This was why this Court formulated the doctrine in *Abiera*, ruling that its jurisdiction "at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased to be in office during the pendency of his case."[55]

This doctrine was further refined in *Gonzales v. Escalona*:[56]

> Respondent Escalona had already resigned from the service. His resignation, however, does not render this case moot, nor does it free him from liability. In fact, the Court views respondent Escalona's resignation before the investigation as indication of his guilt, in the same way that flight by an accused in a criminal case is indicative of guilt. In short, his

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53 Id. at 232–233.

54 *Amendment of Rule 140 of the Rules of Court Re: the Discipline of Justices and Judges* (2001).

55 *Perez v. Abiera*, 159-A Phil. 575, 580 (1975) [Per J. Muñoz Palma, En Banc].

56 587 Phil. 448 (2008) [Per J. Brion, Second Division].

> resignation will not be a way out of the administrative liability he incurred while in the active service. While we can no longer dismiss him, we can still impose a penalty sufficiently commensurate with the offense he committed.
>
> We treat respondent Superada no differently. While his death intervened after the completion of the investigation, it has been settled that the Court is not ousted of its jurisdiction over an administrative matter by the mere fact that the respondent public official ceases to hold office during the pendency of the respondent's case; jurisdiction once acquired, continues to exist until the final resolution of the case. *In Loyao, Jr. v. Caube, we held that the death of the respondent in an administrative case does not preclude a finding of administrative liability*[.][57] (Emphasis supplied, citations omitted)

In its *ponencia*, the majority merely reiterates *Gonzales* as basis for continuing with the case against respondent, who had died before the judgment was rendered.[58] What *Gonzales* failed to explain, however, was that in *Loyao, Jr. v. Caube*,[59] while this Court asserted its jurisdiction despite the respondent's death, it also conceded that the penalty could no longer be served. Thus, this Court was constrained to actually *dismiss the case and consider it closed and terminated*:

> To be sure, respondent Caube's death has permanently foreclosed the prosecution of any other actions, be it criminal or civil, against him for his malfeasance in office. We are, however, not precluded from imposing the appropriate administrative sanctions against him. Respondent's misconduct is so grave as to merit his dismissal from the service, were it not for his untimely demise during the pendency of these proceedings. However, since the penalty can no longer be carried out, this case is now declared closed and terminated.[60]

Indeed, if the respondent could no longer be removed from the Bench, the full effect of the penalty can no longer be carried out. Even this Court in *Gonzales* found that the respondent's liability must be tempered "with compassion in light of his untimely demise"[61] and limited the imposable penalty to a ₱10,000.00 fine.

This is not the first time that this Court addresses the impracticability of imposing an administrative penalty on a respondent who had already died.

In *Government Service Insurance System v. Civil Service Commission*,[62] this Court upheld the Civil Service Commission's ruling that

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57 Id. at 462–463.
58 Ponencia, p. 9.
59 450 Phil. 38 (2003) [Per Curiam, En Banc].
60 Id. at 47.
61 *Gonzalez v. Escalona*, 587 Phil. 448, 465 (2008) [Per J. Brion, Second Division].
62 279 Phil. 866 (1991) [Per J. Narvasa, En Banc].

back salaries could be released to the deceased employees' heirs. This, despite this Court's prior Resolution that any payment should await the outcome of the disciplinary cases filed by the Government Service Insurance System against them:

> The Court agrees that the challenged orders of the Civil Service Commission should be upheld, and not merely upon compassionate grounds, but simply because there is no fair and feasible alternative in the circumstances. To be sure, if the deceased employees were still alive, it would at least be arguable, positing the primacy of this Court's final dispositions, that the issue of payment of their back salaries should properly await the outcome of the disciplinary proceedings referred to in the Second Division's Resolution of July 4, 1988.
>
> Death, however, has already sealed that outcome, foreclosing the initiation of disciplinary administrative proceedings, *or the continuation of any then pending*, against the deceased employees. Whatever may be said of the binding force of the Resolution of July 4, 1988 so far as, to all intents and purposes, it makes exoneration in the administrative proceedings a condition precedent to payment of back salaries, it cannot exact an impossible performance or decree a useless exercise. Even in the case of crimes, the death of the offender extinguishes criminal liability, not only as to the personal, but also as to the pecuniary, penalties if it occurs before final judgment. *In this context, the subsequent disciplinary proceedings, even if not assailable on grounds of due process, would be an inutile, empty procedure in so far as the deceased employees are concerned*; they could not possibly be bound by any substantiation in said proceedings of the original charges: irregularities in the canvass of supplies and materials. The questioned orders of the Civil Service Commission merely recognized the impossibility of complying with the Resolution of July 4, 1988 and the legal futility of attempting a post-mortem investigation of the character contemplated.[63] (Emphasis supplied)

Even the doctrine in *Gonzales* was not without exceptions. There, this Court held that when the respondent dies while the disciplinary case was pending, the presence of any of the following circumstances is enough to warrant the dismissal of the case against him or her: "first, the observance of respondent's right to due process; second, the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons; and third, it may also depend on the kind of penalty imposed."[64]

In *Baikong Akang Camsa vs. Judge Aurelio Rendon*,[65] this Court found it inappropriate to proceed with the investigation of a judge "who could no longer be in any position to defend himself" as it "would be a denial of his right to be heard, our most basic understanding of due process."[66]

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63 Id. at 876.

64 *Gonzalez v. Escalona*, 587 Phil. 448, 463 (2008) [Per J. Brion, Second Division].

65 427 Phil. 518 (2003) [Per J. Vitug, Third Division].

66 Id. at 525.

The respondent judge's submission of a comment or explanation before death is likewise not enough to satisfy the requirements of due process. As stated in *Lumiqued*, the right to due process "is deemed satisfied if a person is granted an opportunity to seek reconsideration of the action or ruling complained of."[67]

In *Apiag v. Cantero*,[68] respondent Judge Esmeraldo Cantero (Judge Cantero), who had been charged with gross misconduct for committing bigamy and falsification of public documents, was able to submit a comment. The Office of the Court Administrator later submitted a Report and Recommendation finding him guilty and recommending his dismissal from service. However, Judge Cantero died while the case was pending before this Court. In dismissing the case and allowing the release of his retirement benefits to his heirs, this Court held:

> [W]e . . . cannot just gloss over the fact that he was remiss in attending to the needs of his children of his first marriage — children whose filiation he did not deny. He neglected them and refused to support them until they came up with this administrative charge. For such conduct, this Court would have imposed a penalty. But in view of his death prior to the promulgation of this Decision, dismissal of the case is now in order.[69]

In *Re: Judicial Audit Conducted in the Municipal Trial Court (MTC) of Tambulig and the 11th Municipal Circuit Trial Court (MCTC) of Mahayag-Dumingag-Josefina, both in Zamboanga del Sur*,[70] Judge Ricardo Salvanera was able to submit his explanation but died before this Court could rule on his case. Thus, despite finding him guilty of gross inefficiency and gross ignorance of the law, this Court was constrained to dismiss the case and release his retirement benefits to his heirs.

The same procedural antecedents are present here. This Court was informed of respondent's death in a September 13, 2017 letter[71] after he had been killed by an unidentified motorcycle-riding assailant.[72] While he was able to submit his Comment/Answer to the investigation report of the judicial audit team, the Office of the Court Administrator only concluded its investigation on the allegations against respondent on February 20, 2018, when it submitted its Report and Recommendation to this Court.[73]

The Office of the Court Administrator is not precluded from making

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67 *Lumiqued v. Exevea*, 346 Phil. 807, 828 (1997) [Per J. Romero, En Banc].
68 335 Phil. 511 (1997) [Per J. Panganiban, Third Division].
69 Id. at 526.
70 509 Phil. 401 (2005) [Per CJ. Davide, Jr., First Division].
71 Ponencia, p. 4.
72 J. Hernando, Opinion, p. 2.
73 Ponencia, p. 4.

its own findings on the administrative complaint, or even to make contrary or additional findings of fact. It is not exclusively bound by the factual findings of the judicial audit team. Just the same, this Court has the full discretion *not* to adopt the Office of the Court Administrator's findings, or to consider other evidence that it may have taken for granted. Thus, a respondent's knowledge of and comment on the judicial audit team's initial findings cannot be sufficient to satisfy the requirements of due process. He or she must also be informed of the eventual findings of the Office of the Court Administrator or this Court.

In this instance, respondent had only been aware of the investigation report at the time of his death. His Comment/Answer was in response only to the judicial audit team's findings. It would have been impossible for him to know, before his sudden death, that the Office of the Court Administrator and this Court would merely adopt the factual findings of the judicial audit team.

Respondent is no longer in a position to defend himself from the Office of the Court Administrator's findings. He can no longer be informed of the conclusions of this Court. The recommended penalty can no longer be served. He is not in any position to move for reconsideration, to plead his innocence, or to express his remorse. It would be inappropriate to impose a penalty without running afoul of the basic tenets of procedural due process.

Likewise, the forfeiture of respondent's retirement benefits is unusually cruel. The only people who will be affected by the penalty are his heirs, who had nothing to do with the administrative charges against him. It will punish respondent's widow, who had sustained gunshot wounds during the attack on him, and who had explained before this Court that she was a homemaker without any other source of income.[74] This Court should not make respondent's grieving family bear the burden of his faults.

I disagree with the majority that the dismissal of this case weakens our ability to retain integrity within the ranks of the judiciary.

In the first place, respondent did not choose to die. In all indications, he was assassinated. To believe, then, that death would be a way to escape administrative liability is beyond the rational. Besides, perhaps death is a penalty supreme to what this Court could ever impose. Perhaps, even, it is a judgment that the universe has imposed more definitely and profoundly than this Court.

ACCORDINGLY, I vote to **DISMISS** the administrative complaint

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[74] J. Hernando, Opinion, p. 7.

against respondent Judge Godofredo B. Abul, Jr. of Branch 4, Regional Trial Court, Butuan City, Agusan del Norte, in view of his death during the pendency of this case.

MARVIC M.V. F. LEONEN
Associate Justice

CERTIFIED TRUE COPY

EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court