Republic of the Philippines
Supreme Court
Manila

EN BANC

ILDEFONSO T. PATDU, JR.,
Petitioner,

- *versus* -

COMMISSION ON AUDIT,
Respondent.

G.R. No. 218461

Present:

GESMUNDO, *C.J.*,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO, and
LOPEZ, J., *JJ.*

Promulgated:

September 14, 2021

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D E C I S I O N

LOPEZ, J., *J.*:

Before the Court is a Petition for *Certiorari*[1] filed under Rule 64, in relation to Rule 65, of the Rules of Court assailing the December 13, 2010 Decision[2] and the April 6, 2015 Resolution[3] of respondent Commission on Audit (COA).

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1 *Rollo*, pp. 3-24.

2 Penned by Chairman Reynaldo A. Villar, with Commissioners Juanito G. Espino, Jr. and Evelyn R. San Buenaventura, concurring; *id.* at 28-35.

3 *Id.* at 36-43.

FACTUAL ANTECEDENTS

In 1992, the Government of the Republic of the Philippines, through the then Department of Transportation and Communications (DOTC), internationally bid out the construction of the Davao Fishing Port Complex under the National Fishing Development Program (project).[4] The undertaking is of the nature of a foreign-assisted project,[5] being funded by the Overseas Economic Cooperation Fund (OECF),[6] a funding institution in Japan, under the 17th Yen Credit Package (PH-126).[7]

Three proponents submitted their bids, namely: (i) Hanil Development Company; (ii) the consortium of C. Itoh, F.F. Cruz and DMC; and (iii) the joint venture of Engineering Equipment, Inc. and J.E. Manalo (EEI/Manalo Joint Venture).[8]

The EEI/Manalo Joint Venture offered the lowest bid at ₱347,000,005.00.[9] Hence, on December 7, 1992, the Pre-Qualification, Bids and Awards Committee of the DOTC recommended that the contract for the project be awarded to the EEI/Manalo Joint Venture.[10] Subsequently, the DOTC and the EEI/Manalo Joint Venture executed a construction contract dated April 20, 1993, entitled "*Construction of Davao Fishing Port Complex for the Nationwide Fishing Ports Development Program (Fishing Ports Package II)*" (Construction Contract), with DOTC as project owner and EEI/Manalo Joint Venture as project contractor therein.[11] Under the Construction Contract, EEI/Manalo Joint Venture was obligated to execute, complete and maintain construction works related to the project.[12]

During the period of the Construction Contract, the EEI/Manalo Joint Venture offered to construct the relevant construction works within a shorter period, from 1,096 days as stipulated in the bidding documents to a period of 910 days.[13] In consideration for the early completion of the project, DOTC agreed to pay EEI/Manalo Joint Venture an early completion incentive bonus in the amount of ₱35,445,070.35 (Incentive Bonus).[14]

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4 *Id.* at 5.
5 *Id.*
6 *Id.*
7 *Id.*
8 *Id.*
9 *Id.*
10 *Id.*
11 *Id.* at 66-69.
12 *Id.*
13 *Id.* at 5.
14 *Id.* at 7.

During construction, the DOTC issued several variation orders, amounting to ₱7,450,855.91 (Variation Orders).[15] The only Variation Orders at issue in this petition are the following: (i) Variation Order No. 5, which sought to change the original design of the preparation/landing wharf; (ii) Variation Order No. 7, which sought to change the design of the pavement and landscaping, and construction of certain parts of the drainage/sewerage system, fresh water supply, and masonry works; and (iii) Variation Order No. 8, which sought to change the quantity and materials of parts of the drainage system, fresh water supply, wharf, and breakwater.[16] Petitioner, as the project engineer, was responsible for reviewing the amounts as stated under Variation Order Nos. 5, 7 and 8.[17]

On June 18, 1997, the COA Auditor assigned to DOTC issued a Notice of Disallowance (ND) No. 97-011-102 (DOTC) (95), disallowing ₱53,951,955.03 of the project.[18] The disallowance stemmed from the findings of COA's Special Task Force on Flagship Projects (STFFP), which determined that the project's actual cost of ₱354,450,860.91 manifestly exceeded COA's estimated cost of the project that amounted to ₱300,498,905.88.

Pursuant to the mandate given to COA to review and evaluate contracts, and to inspect and appraise infrastructure projects,[19] it issued Resolution No. 91-052 dated September 17, 1991, which requires an auditorial review and evaluation of infrastructure contracts awarded as a result of public bidding, to determine its regularity and the reasonableness of the contract price. More specifically, Section 5 of the Resolution provides that "[f]or purposes of determining the reasonableness of the contract price as a technical aspect of the review and evaluation process, the Approved Agency Estimate (AAE) shall serve as a reference value for the formulation of the COA cost estimate." Section 7 provides that "[t]he total contract price should be equal to or less than the total COA estimate plus ten percent (10%) in order to sustain a finding of reasonableness, otherwise, the contract price will be deemed excessive."

Accordingly, upon the STFFP's determination that the project was in excess of ₱53,951,955.03 over the COA estimated cost (Excess Project Cost), the COA Auditor disallowed such excess amount.[20]

On December 12, 1997, the DOTC requested the Office of the COA Chairman to lift ND No. 97-011-102 (DOTC) (95) dated June 18, 1997.[21] The

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15 *Id.* at 5.
16 *Id.* at 6.
17 *Id.* at 41.
18 *Id.* at 70.
19 *See* Section 7(6), Chapter 3, Subtitle B, Title I, Book V, Administrative Code of 1987.
20 *Id.*
21 *Id.* at 83-97.

COA Chairman referred the DOTC request to the COA Auditor for appropriate action which the COA Auditor treated the request as a request for reconsideration.[22]

With respect to the incentive bonus, the COA Auditor determined on May 28, 1998 that the amount of ₱35,445,070.35 is excessive, and reduced the same to ₱20,129,354.80.[23] Hence, the COA Auditor disallowed the excess of ₱15,315,715.55 of the incentive bonus through ND No. 98-004-102 (DOTC) (96).[24]

On July 14, 1999, DOTC filed a motion to dismiss[25] with the Office of the COA Chairman on the ground that foreign-assisted projects of the government are exempt from the requirement of auditorial review as provided in the September 17, 1991 COA Resolution that formed the basis of the COA disallowance. The DOTC cited the exempting clause in the Implementing Rules and Regulations (IRR) of Presidential Decree (P.D.) No. 1594, which provides:

> The above notwithstanding, nothing in these implementing rules and regulations shall negate any existing and future commitments with respect to the bidding, award and execution of contracts financed partly or wholly with funds from international financial institutions, as well as from bilateral and other similar sources.[26]

The DOTC then stated that the above exempting clause excluded foreign-assisted projects from P.D. No. 1594 and its IRR. Hence, the September 17, 1991 COA Resolution, which lays down the rule on the reasonableness of the project cost of a contract pursuant to P.D. No. 1594 and its IRR, is not applicable.[27]

On January 31, 2000, the COA Auditor issued a letter entitled "4th Indorsement"[28] to the Director of National Government Audit Office (NGAO) II, recommending the lifting of ND No. 97-011-102 (DOTC) (95) dated June 18, 1997 on the ground that the project is a foreign-assisted or Official Development Assistance (ODA)-funded project of the Philippine Government, and therefore, Philippine procurement law and procedure, specifically P.D. No. 1594 and its IRR, is not applicable.[29] The COA Auditor relied on the clarification issued by the Secretary of Justice in his Opinion[30]

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22 *Id.* at 97-100.
23 *Id.*
24 *Id.*
25 *Id.* at 88.
26 Second paragraph, clause 1, Section VI of the IRR of P.D. No. 1594.
27 *Supra.*
28 *Rollo*, p. 7.
29 *Id.*
30 *Id.* at 90-91.

dated April 21, 1987 that the exempting clause in the IRR of P.D. No. 1594 effectively excluded foreign-assisted projects from the coverage of P.D. No. 1594 and its IRR, especially on the designation of ceiling in the amounts of contracts.

On July 19, 2001, the NGAO II Director issued a letter entitled "5th Indorsement"[31] to the COA Auditor, sustaining the lifting of ND No. 97-011-102 (DOTC) (95) dated June 18, 1997 based on the ground raised by the COA Auditor in the 4th Indorsement dated January 31, 2000.

On November 14, 2002, the DOTC requested the lifting of ND No. 98-004-102 (DOTC) (96) dated May 28, 1998 with the COA Auditor,[32] based on the same position taken by the NGAO II Director in the 5th Indorsement that was issued in ND No. 97-011-102 (DOTC) (95). The matter was then raised to the COA's Legal and Adjudication Office.

The COA's Legal and Adjudication Office denied the request for the lifting of ND No. 98-004-102 (DOTC) (96) dated May 28, 1998 in LAO-N Decision No. 2005-039 dated January 27, 2005 and LAO-N Resolution No. 2005-039A dated November 24, 2005, on the ground that P.D. No. 1594 and its IRR are applicable to the project and that, therefore, the notice of disallowance should be sustained.[33] The Legal and Adjudication Office found that the Construction Contract incorporated the content of the bidding documents for the project, and the bidding documents state that P.D. No. 1594 and its IRR shall be applicable.[34]

DOTC appealed LAO-N Decision No. 2005-039 dated January 27, 2005 and LAO-N Resolution No. 2005-039A dated November 24, 2005 to the COA Proper (COA-CP).

Ruling of the COA-CP

In Decision No. 2010-133[35] dated December 13, 2010, the COA-CP denied the appeal of the DOTC, and affirmed ND No. 98-004-102 (DOTC) (96) dated May 28, 1998.[36] In addition, the COA in the same appeal also set aside the 5th Indorsement dated July 19, 2001 of the NGAO II Director and reinstated ND No. 97-011-102 (DOTC) (95) dated June 18, 1997. The dispositive portion of the December 13, 2010 COA-CP Decision reads:

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31 *Id.* at 92-94.
32 *Id.* at 95-96.
33 *Id.*
34 *Id.* at 99-100.
35 *Id.* at 28-34.
36 *Id.* at 34.

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> **WHEREFORE**, premises considered, the herein appeal is **DENIED**. Accordingly, LAO-N Decision No. 2005-039 and LAO-N Resolution No. 2005-039A denying the request to lift ND No. 98-004-102 (DOTC) (96) are hereby **AFFIRMED**. Likewise, the 5th Indorsement dated July 19, 2001 of the Director of then NGAO II lifting ND No. 97-011-102 (DOTC) (95) is hereby **SET ASIDE**. The decision of the DOTC Department Auditor disallowing the project cost difference/excess is hereby **REINSTATED**.[37]

In the said Decision, the COA-CP found that the parties themselves voluntarily agreed on the applicability of P.D. No. 1594. Volume 1 of the Bid and Contract Documents which provides that "[t]he provisions of Presidential Decree No. 1594, and its implementing rules and regulations, and other relevant laws and employer regulations shall apply to this bidding and any contract based thereon."[38] The NGAO II Director therefore erroneously lifted ND No. 97-011-102 (DOTC) (95) dated June 18, 1997.

DOTC filed a motion for reconsideration from Decision No. 2010-133 dated December 13, 2010,[39] which the COA denied in Resolution No. 2015-135[40] dated April 6, 2015.

Petitioner Ildefonso Patdu, Jr. (*Petitioner*), who was held civilly liable under ND No. 97-011-102 (DOTC) (95), thereafter filed the instant petition to assail the December 13, 2010 Decision and April 6, 2015 Resolution of the COA.

ISSUES

I.

Whether the decision of the NGAO II Director to lift and set aside ND No. 97-011-102 (DOTC) (95) dated June 18, 1997 had attained finality, and hence, had become immutable and unalterable

II.

Whether ND No. 97-011-102 (DOTC) (95) dated June 18, 1997 and ND No. 98-004-102 (DOTC) (96) should be lifted and set aside

III.

Whether the petitioner should be held liable for the audit disallowance arising from Variation Order Nos. 5, 7 and 8

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37 *Id.*
38 *Id.* at 32.
39 *Id.* at 44-61.
40 *Id.* at 36-43.

COURT'S RULING

At the outset, it must be clarified that the assailed Decision dated December 13, 2010 and the Resolution dated April 6, 2015 rendered by the COA involved two notices of disallowance. Nevertheless, as petitioner was held civilly liable only under ND No. 97-011-102 (DOTC) (95), the resolution of this case shall be limited to the said notice of disallowance. With the two notices of disallowance involving different parties, and without any pronouncement on the liability of petitioner in ND No. 98-004-102 (DOTC) (96), this is not the proper forum for him to assail the COA Decision and Resolution insofar as the latter notice of disallowance is concerned. In the absence of a direct injury suffered by petitioner, he clearly lacks the legal standing to assail the affirmance of ND No. 98-004-102 (DOTC) (96) in this petition.

Finality of Lifting of a COA Notice of Disallowance by the COA Director

Petitioner postulates that the lifting of ND No. 97-011-102 (DOTC) (95) dated June 18, 1997 by the NGAO II Director in the 5th Indorsement had attained finality and hence, has become immutable and unalterable.[41] Consequently, the COA-CP may no longer reverse and set aside, after almost ten (10) years, the lifting of ND No. 97-011-102 (DOTC) (95) dated June 18, 1997.[42] To support its contention, petitioner cites the doctrine of finality or immutability of judgments.[43]

On the other hand, respondent insists that the NGAO II Director did not elevate the decision for review, and that the State cannot be put in estoppel by the mistakes or errors of its officials or agents.[44] Thus, the NGAO II Director's decision did not attain finality.[45]

We uphold the arguments raised by the petitioner.

In *Civil Service Commission v. Moralde*,[46] We held that:

> [t]he doctrine of immutability of judgments applies as much to decisions of agencies exercising quasi-judicial powers as they do to judicial decisions. Jurisprudence is categorical: 'the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments of what

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41 *Id.* at 10-15.
42 *Id.*
43 *Id.*
44 *Id.* at 8-13.
45 *Id.*
46 838 Phil. 840, 856 (2018).

> are ordinarily known as courts, but extends to all bodies upon which judicial powers had been conferred.'"

Moreover, the related doctrine of *res judicata*, which bars a subsequent action when a former identical action has already lapsed into finality, equally applies to decisions rendered by quasi-judicial bodies.[47]

The exercise of quasi-judicial powers by administrative officers or bodies involves the investigation of facts or ascertainment of the existence of facts, holding of hearings, weighing of evidence, and drawing conclusions from them as basis for official action and exercise of discretion in a judicial nature.[48] In this case, the proceeding before the NGAO II Director was in the exercise of quasi-judicial functions as it involves the investigation of facts concerning (i) the expenditure of funds intended for a government project; (ii) ruling on appeal whether such expenditure is illegal, irregular, unnecessary, excessive, extravagant or unconscionable; and (iii) deciding on appeal whether to disallow such expenditure. Hence, the doctrine of immutability of judgments applies to the decision of the NGAO II Director.

Further, the manner by which a ruling attains finality depends on the peculiar relevant law and/or rules of procedure governing the proceeding before the adjudicating body. For proceedings before the COA, a ruling attains finality in accordance with Section 6, Rule V of the COA Revised Rules of Procedure, which provides:

> SECTION 6. *Power of Director on Appeal.* — The Director may reverse, modify, alter, or affirm the decision or ruling of the Auditor. However, should the Director render a decision reversing, modifying or altering the decision or ruling of the Auditor, the Director shall, within ten (10) days, certify the case and elevate the entire record to the Commission Proper for review and approval.

Based on this provision, it is only in cases where the NGAO II Director reverses, modifies, or alters the decision or ruling of the Auditor that the decision should be elevated to the COA-CP for automatic review. Conversely, when the NGAO II Director affirms or sustains the ruling of the Auditor, further elevation and review are unnecessary. Thus, as pointed out by Senior Associate Justice Estela Perlas-Bernabe (Justice Perlas-Bernabe) during the deliberations of this case, the affirmance, when not anymore appealed by an aggrieved party in accordance with the COA rules, will simply lapse into finality. The reason for the automatic review provision is palpable: the COA-CP is tasked to resolve the seeming conflict between the Auditor's and the Director's rulings to arrive at a proper conclusion on an audit case. However, if no conflict exists, then there is no need for the COA-CP to

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47 *Brillantes v. Castro*, 99 Phil. 497, 503 (1956).

48 *The Special Audit Team, Commission on Audit v. Court of Appeals and Government Service Insurance System*, 709 Phil. 167, 183 (2013).

automatically review the matter since both the Auditor and Director are already in agreement.

In this case, the Auditor lifted the original disallowance, and this decision was sustained by the NGAO II Director. Thus, in the final analysis, both the Auditor and Director were in agreement on the lifting of the disallowance, which negates the application of Section 6, Rule V of the 1997 COA Rules of Procedure.

The EEI/Manalo Joint Venture, as one of the persons held liable for the disallowed amount, wrote the Letter dated December 12, 1997 to the COA Auditor assailing the issuance of ND No. 97-011-102 (DOTC) (95). Treating the letter as a request for reconsideration, the COA Auditor eventually recommended the total lifting of the disallowance through a 4th Indorsement dated January 31, 2000. In turn, this recommendation was sustained in full by the NGAO II Director in a 5th Indorsement dated July 19, 2001.[49]

Given that the NGAO II Director decided to sustain the lifting of the disallowance, petitioner correctly pointed out that the elevation of the NGAO II Director's ruling to the COA-CP was not required under Section 6, Rule V of the 1997 COA Rules of Procedure. Hence, since the NGAO II Director's decision to sustain the Auditor's recommended lifting of disallowance was not anymore subjected to an appeal, the same had already lapsed into finality. As such, the conditions for the automatic review provision under the COA Rules was not validly met. Consequently, COA gravely abused its discretion in reinstating the same.

Likewise, We share the observation of Justice Perlas-Bernabe that the COA's reinstatement of the notice of disallowance came after the lapse of an inordinate period of almost ten (10) years. While the decision of the NGAO II Director was issued on July 19, 2001, the reinstatement of the COA was made only on December 13, 2010. Undoubtedly, it would be clearly unjust to resurrect a money claim against petitioner when an unreasonable length of time had already passed.

Accordingly, We rule that the lifting of ND No. 97-011-102 (DOTC) (95) dated June 18, 1997 by the NGAO II Director in the 5th Indorsement is final, immutable and unalterable. As such, COA should not have included the said notice of disallowance when it resolved the appeal of DOTC concerning the disallowance covered by ND No. 98-004-102 (DOTC) (96). Simply because the resolution of the two notices of disallowance was premised on the same issue concerning the interpretation of the applicability of P.D. No. 1594 to foreign-assisted projects, should not authorize the automatic application of a later issuance, now carrying a different interpretation, to reverse a previous

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49 *Rollo*, p. 93.

issuance. This is especially true in this case when the previous issuance involving ND No. 97-011-102 (DOTC) (95), with petitioner relying on the NGAO II Director's ruling that P.D. No. 1594 is not applicable to foreign-assisted projects, has already attained finality. Considerations of due process dictates that petitioner should not be hailed back to a proceeding that has already absolved him of liability because of a sudden change in the interpretation of a law, more so, when made in a proceeding involving a different notice of disallowance. As held in *Social Security System v. Isip*:[50]

> When a final judgment is executory, it becomes immutable and unalterable. It may no longer be modified in any respect either by the court which rendered it or even by this Court. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time.

Hence, the COA-CP is precluded from issuing Decision No. 2010-133 dated December 13, 2010 and Resolution No. 2015-135 dated April 6, 2015, insofar as it reinstated and affirmed ND No. 97-011-102 (DOTC) (95) dated June 18, 1997.

There is no malice, bad faith or negligence in the issuance of Variation Order Nos. 5, 7 and 8

We hasten to point out that while main reason for the issuance of the two notices of disallowance concerns the interpretation of the applicability of P.D. No. 1594 to foreign-assisted projects, we must exercise judicial restraint in issuing a ruling thereon, for two reasons: Firstly, the interpretation given by the COA NGAO Director II has already attained finality insofar as ND No. 97-011-102 (DOTC) (95) is concerned. This already constitutes the law of the case and could no longer be the subject of an appeal. Secondly, we could not rule on the different interpretation subsequently adopted by the COA in ND No. 98-004-102 (DOTC) (96) considering that the instant case was brought by petitioner, whose legal standing in court extends only insofar as ND No. 97-011-102 (DOTC) (95) is concerned.

Nonetheless, even if We examine the assailed COA Decision and Resolution concerning ND No. 97-011-102 (DOTC) (95) and apply the provisions of P.D. No. 1594, petitioner would still be absolved from liability. During the construction of the project, the DOTC issued Variation Orders in the total amount of ₱7,450,855.91.[51] This increased the total actual amount of the project,[52] as follows:

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50 549 Phil. 112, 116 (2007).
51 *Rollo*, p. 5.
52 *Id.* at 41.

Original Project Cost	₱347,000,005
Add: Cost on Variation Orders	7,450,855
Total Project Cost	**₱354,450,860**

The COA only allowed a project cost of ₱300,498,905.87. Thus, the Excess Project Cost, as per COA's finding, is ₱53,951,954.13,[53] computed as follows:

Total Project Cost	₱354,450,860.00
Add: COA-Allowed Project Cost	300,498,905.87
Excess Project Cost	**₱53,951,954.13**

It must be pointed out that the excess on the cost of the Variation Orders is only a portion of the aforementioned Excess Project Cost. With specific reference to the Variation Orders, the COA found that these are excessive by an amount of ₱5,210,744.29,[54] computed as follows:

Cost on Variation Orders	₱7,450,855.00
Less: COA-Allowed Cost on Variation Orders	2,240,110.71
Excess Cost on Variation Orders	**₱5,210,744.29**

The Variation Orders found to be in excess of the COA-allowed cost are as follows: (i) Variation Order No. 5, which sought to change the original design of the preparation/landing wharf; (ii) Variation Order No. 7, which sought to change the design of the pavement and landscaping, and construction of certain parts of the drainage/sewerage system, fresh water supply, and masonry works; and (iii) Variation Order No. 8, which sought to change the quantity and materials of parts of the drainage system, fresh water supply, wharf, and breakwater.[55] The other Variation Orders were not raised in issue in this petition.

Here, petitioner, as the project engineer, was responsible for reviewing the amounts of variation orders in Variation Order Nos. 5, 7 and 8. We quote the April 6, 2015 COA Resolution, thus:

> It can be gleaned from the above computation that the amounts of the variation orders reviewed by Mr. Patdu as Project Engineer were part of the total project cost, a portion of which was found excessive and disallowed in audit. Mr. Patdu failed to diligently review the variation orders which resulted in the overpricing of the project[.] However, his liability shall only

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53 *Id.*
54 *Id.*
55 *Id.* at 6.

> be on the excess costs for the variation orders he reviewed, in the total amount of [₱]5,210,744.29.[56]

Petitioner explains that Variation Order Nos. 5, 7 and 8, which he reviewed as the Project Engineer of the project, were necessary and are reasonable.[57]

We agree.

It bears pointing out that variation orders *per se* in government infrastructure contracts are not automatically invalid. In the IRR of P.D. No. 1594, variation orders involve the "increase/decrease in quantities or reclassification of items [x x x] usually due to change of plans, design or alignment to suit actual field conditions, or as a result of great disparity between the preconstruction plans used for purposes of bidding and the 'as staked plans' or construction drawings prepared after a joint survey by the contractor and the government after award of the contract."[58] The IRR of P.D. No. 1954 provides detailed requirements and standards for the execution, implementation, and payment of variation orders. Relevantly, this provision on variation orders has been reiterated in the 2016 Revised Implementing Rules and Regulations of the Government Procurement Reform Act, which recognizes variation orders as:

> x x x those orders issued by the procuring entity to cover any "increase/decrease in quantities, including the introduction of new work items that are not included in the original contract or reclassification of work items that are either due to change of plans, design or alignment to suit actual field conditions resulting in disparity between the preconstruction plans used for purposes of bidding and the 'as staked plans' or construction drawings prepared after a joint survey by the contractor and the Government after award of the contract, provided that the cumulative amount of the positive or additive Variation Order does not exceed ten percent (10%) of the original contract price.[59]

In short, variation orders are necessary adjustments to construction projects, and as long as they are within the general scope of the project and are compliant with the relevant audit and procurement rules, they are permissible.

In this case, the variation orders at issue sought to introduce adjustments to construction works relating to the fishing port, specifically adjustments in the design of the preparation/landing wharf, the design of the pavement and landscaping, construction of certain parts of the

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56 *Id.* at 41.
57 *Id.* at 15-23.
58 Section III.CI.1.1, IRR of P.D. No. 1594.
59 Annex E (*Contract Implementation Guidelines for the Procurement of Infrastructure Projects*), 2016 Revised Implementing Rules and Regulations of the Government Procurement Reform Act.

drainage/sewerage system, fresh water supply, and masonry works, and change in the quantity and materials of parts of the drainage system, fresh water supply, wharf, and breakwater. The relevance of these additional adjustments to the project is not in question. The respondent likewise did not dispute that these adjustments are within the general scope of the project. What is merely at issue is the excess cost of such variation orders, based on the COA estimate of the appropriate and justifiable cost of such orders.

In this case, petitioner justified the necessity of issuing the Variation Orders, as follows:

> 6.46.1. Variation Order No. 5 - Mobilization / Demobilization cost for dredging equipment was included in the aforementioned variation order because there is a new item of work, i.e., dredging, which is not included in the original contract and there is a need to bring in said equipment to the project site, hence the cost of mobilization/demobilization.
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> 6.46.2. Variation Order No. 7 - The original contract calls for the use of Concrete Asphalt for Roadway and Parking Area. Due to the absence of supply of concrete asphalt in the area, the Contractor in his desire not to delay the project, offered to use PCCP instead at the same cost as Concrete Asphalt. The said substitution resulted to an increase in the thickness of the pavement and a decrease in the thickness of the sub-base. This off-setting resulted to a cost difference of P10,902,431.33 in favour of the government.
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> 6.46.3. Variation Order No. 7E - Construction of Deepwell, the cost of deepwell for Variation Order No. 3 cannot be adopted because they vary in depth. Deepwell for V.O#3 is 42 meters deep, while for V.O. #7E, it is 75 meters deep.
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> 6.46.4. Variation Order No. 8 - The discrepancy between the quantity take-off and the B0Q resulted to an overestimate of quantities in V.O. No. 8, however, this [sic] quantities were rectified in the Final Quantification.[60]

Notably, these justifications were favorably considered by the Auditor when he recommended the lifting of (ND) No. 97-011-102 (DOTC) (95).[61]

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60 *Rollo*, p. 22 (citing the letter dated December 12, 1997).

61 *Id.* at 43.

With respect to the civil liability imposed for the excess cost of the variation orders, Sections 38[62] and 43[63] of the Administrative Code,[64] as interpreted in prevailing case law,[65] provides that the civil liability of approving/authorizing public officers for disallowances issued by the COA will only arise upon a clear showing of bad faith, malice, or gross negligence. Otherwise, such officers are presumed to have acted within the regular performance of their official functions and in good faith, and hence, are not accountable for the return of disallowed amounts.

In disallowances involving unlawful or irregular government contracts, the parameters on determining the civil liability of approving/authorizing officers are reflected under Rules 2 (a) and (b) of the recently established guidelines in *Torreta v. Commission on Audit*:[66]

> Accordingly, we hereby adopt the proposed guidelines on return of disallowed amounts in cases involving unlawful/irregular government contracts submitted by herein Justice Perlas-Bernabe, *to wit*:
>
> 1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.
>
> 2. If a Notice of Disallowance is upheld, the rules on return are as follows:
>
> > **a. Approving and certifying officers who acted in good faith, in the regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.**
> >
> > **b. Pursuant to Section 43 of the Administrative Code of 1987, approving and certifying officers who are clearly shown to have acted with bad faith, malice, or gross negligence, are solidarily liable together with the recipients for the return of the disallowed amount.**
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> > c. The civil liability for the disallowed amount may be reduced by the amounts due to the recipient based on the application of the principle of quantum meruit on a case to case basis.
> >
> > d. These rules are without prejudice to the application of the more specific provisions of law, COA rules and regulations,

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62 Section 38. *Liability of Superior Officers.* – (1) A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence.

63 Section 43. *Liability for Illegal Expenditures.* – Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.

64 Executive Order No. 292, entitled "Instituting the 'Administrative Code of 1987'" (August 3, 1988).

65 *See Madera v. Commission on Audit*, G.R. No. 244128, September 8, 2020.

66 G.R. No. 242925, November 10, 2020.

> and accounting principles depending on the nature of the government contract involved.[67]

Herein, as pointed by Justice Perlas-Bernabe, during the deliberations of this case, apart from the statement that "[petitioner] failed to diligently review VO Nos. 5, 7, and 8 which resulted in the overpricing of the project as computed by the [COA-STFFP]," there was nothing in COA's ruling that specifies any acts or omissions of petitioner amounting to bad faith, malice, or gross negligence relative to his participation on the project.[68] Indeed, in *Daplas v. Department of Finance*,[69] We ruled that "[a]n act done in good faith, which constitutes only an error of judgment and for no ulterior motives and/or purposes [x x x] is merely Simple Negligence." Accordingly, the lack of specific factual determination on the petitioner's bad faith, malice, or gross negligence is fatal to the COA's finding of his civil liability.

Moreover, petitioner justified the necessity of the Variation Orders by identifying the technical adjustments and rectifications made during the course of the project, which resulted in additional project costs.[70] These were not rebutted by the respondent in its Comment.

Perforce, in view of the foregoing, petitioner's civil liability in ND No. 97-011-102 (DOTC) (95) should not be reinstated.

ACCORDINGLY, the instant petition is **PARTIALLY GRANTED**. The December 13, 2010 Decision and April 6, 2015 Resolution No. 2015-135 of the Commission on Audit are **REVERSED** and **SET ASIDE** insofar as ND No. 97-011-102 (DOTC) (95) is concerned. Notice of Disallowance No. 97-011-102 (DOTC) (95) is hereby **LIFTED**.

SO ORDERED.

JHOSEP Y. LOPEZ
Associate Justice

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67 Id., emphases supplied.
68 Reflections, p. 11.
69 808 Phil. 763, 774 (2017).
70 *Rollo*, p. 30.

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

Please see Concurring Opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

ALEXANDER G. GESMUNDO
Chief Justice

CERTIFIED TRUE COPY
MARIFE M. LOMIBAO-CUEVAS
Clerk of Court
Supreme Court

EN BANC

G.R. No. 218461 – ILDEFONSO T. PATDU, JR., *Petitioner v.* **COMMISSION ON AUDIT,** *Respondent.*

Promulgated:

September 14, 2021

x----------x

CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur.

Petitioner Ildefonso T. Patdu, Jr. (Patdu, Jr.) filed the instant petition assailing the Decision[1] dated December 13, 2010 in Decision No. 2010-133 and the Resolution dated April 6, 2015[2] in Decision No. 2015-135 of respondent Commission on Audit (COA), which among others: (*a*) reinstated the Notice of Disallowance (ND) No. 97-011-102 (DOTC) (95) dated June 18, 1997 (***ND 95***) disallowing the excessive costs of construction of the Davao Fishing Port Complex (the Project) in the total amount of ₱53,951,955.03[3] for violating the rule on unreasonable excessiveness of government infrastructure contracts pursuant to Presidential Decree (PD) No. 1594 and its implementing rules and regulations (IRR); and (*b*) held Patdu, Jr., among other persons, civilly liable for the portion of ₱5,210,744.29 corresponding to the Variation Orders (VO) he reviewed that were found to be infirm.[4]

Pertinent portions of the disputed ND and assailed COA rulings read:

ND No. 97-011-102 (DOTC) (95) dated June 18, 1997[5]

PAYEE	AMOUNT DISALLOWED	PERSONS LIABLE	FACT AND/OR REASONS FOR DISALLOWANCE
EEI/JE Manalo Construction Joint Venture	₱53,951,955.03	PBAC for the award of the contract. 1. Jose R. Valdecanas – Chairman 2. Cesar T. Valbuena	Excess amount after re-evaluation of PMO justification on the result of COA technical review of

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1 *Rollo*, pp. 28-35. Signed by Chairman Reynaldo A. Villar and Commissioners Juanito G. Espino, Jr. and Evelyn R. San Buenaventura.

2 Id. at 36-43. Signed by Commissioners Heidi L. Mendoza and Jose A. Fabia.

3 "₱53,951,954.02" in the dispositive portion of April 6, 2015 Resolution; id. at 42.

4 See id. at 40-42.

5 Id. at 70; emphasis supplied.

		– Member 3. Wilfredo M. Trinidad – Member 4. Florencio T. Aricheta – Member 5. The Consultant: PCI/Basic which prepared the agency estimate. 6. Dir. Samuel C. Custodio – Project Director **7. Ildefonso Patdu** **– Project Manager. Responsible for the review of variation orders.** 8. EEI/JE Manalo construction Joint Venture	the contract for the construction of Davao Fishing Port.

COA Decision No. 2010-133 dated December 13, 2010

WHEREFORE, premises considered, the herein appeal is **DENIED**. Accordingly, LAO-N Decision No. 2005-039 and LAO-N Resolution No. 2005-039A denying the request to lift ND No. 98-004-102 (DOTC) (96) are hereby **AFFIRMED**. Likewise, the 5th Indorsement dated July 19, 2001 of the Director of then NGAO II lifting ND No. 97-011-102 (DOTC) (95) is hereby SET ASIDE. The decision of the DOTC Department Auditor disallowing the project cost difference/excess is hereby **REINSTATED.**

The incumbent Auditor is directed to inform the Management and the persons liable of the reinstated disallowance.[6] (Underscoring supplied)

COA Decision No. 2015-135 dated April 6, 2015

Consequently, the liability of Mr. Ildefonso T. Patdu, Jr. under ND No. 97-011-102 (DOTC) (95) is hereby **AFFIRMED.** However, Mr. Patdu should only be held liable for the excessive costs in the variation orders he reviewed, specifically, Variation Order Nos. 5, 7 and 8, in the total amount of [₱]5,210,744.29.

The **rest of the persons liable** under ND Nos. 97-011-102 (DOTC) (95) dated June 18, 1997 and 98-004-102 (DOTC) (96) dated May 28, 1998, and COA Decision No. 2010-133 dated December 13, 2010, **shall remain to be liable therefor**.[7] (Emphasis and underscoring supplied)

Notably, records show that the subject matter of the assailed rulings actually pertains to the appeal of the Notice of Disallowance (ND) No. 98-004-103 (DOTC) (96) (***ND 96***) which similarly relates to irregularities

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6 Id. at 34.
7 Id. at 42.

concerning the Davao Fishing Port Complex project but involves a different transaction and a different set of parties.[8] In this regard, it should be highlighted that **petitioner was not a party to *ND 96*** and thus, was not originally privy to the appeal before the COA Proper, which was brought by parties held civilly liable under the said disallowance. As may be gathered from the assailed COA rulings, **the reinstatement of *ND 95* – and along with it, Patdu, Jr.'s liability thereunder – was made only as a side incident in the appeal of *ND 96*.**[9]

In his petition before the Court, Patdu, Jr. essentially argues that the lifting of *ND 95* by the Director of the National Government Audit Office II (NGAO Director) through the 5th Indorsement dated July 19, 2001 had already attained finality. Thus, he posits that the COA gravely abused its discretion in reinstating the said disallowance following the doctrine of finality or immutability of judgments.[10] However, notwithstanding the fact that Patdu Jr.'s interest is limited to *ND 95*, he nevertheless prayed for the lifting and setting aside of both *ND 95* and *ND 96* in the prayer of his petition. The COA, on the other hand, primarily asserts that it is given wide latitude by the Constitution in terms of its audit functions.[11]

At the onset, it is well to note that, since he was not an aggrieved party insofar as *ND 96* is concerned, ***Patdu Jr. lacks the requisite standing to question the same before the Court.***[12] "Necessarily, the person availing of a judicial remedy must show that he possesses a legal interest or right to it, otherwise, the issue presented would be purely hypothetical and academic."[13] Hence, the *ponencia* is correct in limiting its ruling only to issues concerning *ND 95*.

The doctrine of immutability of judgments applies in the instant case.

Well-settled is the rule that once a judgment has become final and executory, it may no longer be modified in any respect. In *Heirs of Gabule v. Jumuad*,[14] the Court held that:

> It is a hornbook rule that once a judgment has become final and executory, it may no longer be modified in any respect, even if the modification is meant to correct an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land, as what remains to be done

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8 See id. at 31-34.
9 See id.
10 See id. at 10-15.
11 See Comment dated December 17, 2015; id. at 122-123.
12 See *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116 (2016).
13 Id. at 151-152.
14 See G.R. No. 211755, October 7, 2020.

> is the purely ministerial enforcement or execution of the judgment. This is known as the doctrine of immutability of judgments. x x x.[15]

Notably, the doctrine of immutability or finality of judgments is not a mere technical rule of procedure sourced solely from the Rules of Court, but is primarily a general principle borne from substantive considerations. Corollary to the well-enshrined policy that litigation must end at some point,[16] it ensures a winning party's right to reap the benefits of the finality of a favorable judgment. As held in numerous cases on the subject:[17]

> In staying its own hand in disturbing final judgments, this Court emphasized that **the immutability of final judgments is not a matter of mere technicality, "<u>but of substance and merit</u>."** In *Peña v. Government Service Insurance System*:
>
> > [I]t is axiomatic that final and executory judgments can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land. Just as the losing party has the right to file an appeal within the prescribed period, so also the **<u>winning party has the correlative right to enjoy the finality of the resolution of the case.</u>**
> >
> > x x x x
> >
> > The rule on finality of decisions, orders or resolutions of a judicial, quasi-judicial or administrative body **<u>is "not a question of technicality but of substance and merit," [as its] underlying consideration [is] . . . protecti[ng] . . . the winning party['s substantive rights]</u>** . . . *Nothing is more settled in law than that a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land.*[18] (Emphases and underscoring supplied)

In the instant case, the *ponencia* correctly holds that the doctrine of immutability of judgments is applicable to the decision of the NGAO Director.[19] As the Court has categorically declared in past cases, the said doctrine equally applies to judgments rendered by quasi-judicial bodies.[20] Verily, the interest of the winning party to reap the benefits of a judgment remains the same whether in the context of a judicial or an administrative proceeding.

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15 Id., citing O*ne Shipping Corporation v. Peñafiel*, 751 Phil. 204, 210 (2015).

16 See *Zarate v. Director of Lands*, 39 Phil. 747, 749 (1919).

17 See *Civil Service Commission v. Moralde*, 838 Phil. 840 (2018); *Torres v. Philippine Amusement and Gaming Corp.*, 677 Phil. 672 (2011); *Fua, Jr. v. COA*, 622 Phil. 368 (2009); and *Peña v. Government Service Insurance System*, 533 Phil. 670 (2006).

18 *Civil Service Commission v. Moralde*, id. at 855, citing *Peña v. Government Service Insurance System*, id. at 683-690.

19 *Ponencia*, p. 8.

20 See *Civil Service Commission v. Moralde*, supra at 856.

The COA gravely abused its discretion in reinstating ND 95, which lifting should already be deemed final and immutable.

The foregoing general premises notwithstanding, it is important to highlight that the manner by which a ruling attains finality remains to be governed by the applicable laws or rules of procedure of the pertinent adjudicating body.

For judicial cases in which the Rules of Court apply, Rule 36 (Judgments, Final Orders and Entry Thereof) in relation to Rule 39 (Execution, Satisfaction, and Effect of Judgments) are the primary governing rules with respect to the attainment of finality. On the other hand, for COA cases, a ruling attains finality based on the COA's own rules of procedure. Specifically, Section 6, Rule V of the 1997 COA Revised Rules of Procedure[21] (COA Rules), which was in effect during the pendency of the case, provides:

> Section 6. *Power of Director on Appeal.* — The Director may reverse, modify, alter, or affirm the decision or ruling of the Auditor. However, should the Director render a decision reversing, modifying or altering the decision or ruling of the Auditor, the Director shall, within ten (10) days, certify the case and elevate the entire record to the Commission Proper for review and approval.

As may be gleaned from the above-cited provision, it is only in cases where the NGAO Director *reverses, modifies*, or *alters* the decision or ruling of the Auditor that the decision should be elevated to the COA Proper for automatic review. Conversely, when the NGAO Director *affirms* or *sustains* the ruling of the Auditor, further elevation and review are unnecessary. As such, the affirmance, when not anymore appealed by an aggrieved party in accordance with the COA rules, will simply lapse into finality. The reason for the automatic review provision is palpable: the COA Proper is tasked to resolve the seeming conflict between the Auditor and Director's rulings to arrive at a proper conclusion on an audit case. However, if no conflict exists, then there is no need for the COA Proper to automatically review the matter since both the Auditor and Director are already in agreement.

In this case, the NGAO Director **sustained** the COA Auditor's 4th Indorsement dated January 31, 2000 recommending the lifting of the disallowance. Considering that the NGAO Director's decision was not appealed, the same had already lapsed into finality. Notably, this is, in fact, the thrust of Patdu, Jr.'s petition before this Court:

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[21] Approved January 23, 1997.

6.4. It must be recalled that the Auditor favorably considered Mr. Custodio's Motion for Reconsideration of ND No. 97-011-102 (DOTC) (95). Guided by Sec. 7, Rule IV, 1997 Revised Rules of Procedure of the COA, the Auditor elevated his decision lifting the audit disallowance to the Director, NGAO II, for automatic review. Through his 4th Indorsement, the Auditor recommended to the Director the lifting of the audit disallowance.

6.5. On review, NGAO II Director Tobias P. Lozada sustained the decision of the Auditor to lift ND No. 97-011-102 (DOTC) (95). The pertinent portion of his decision contained in a 5th Indorsement dated July 19, 2001 reads:

> *Premises considered, pursuant to the Revised CSE Manual,* ***this Office sustains the DOTC Auditor's decision lifting the disallowance*** *under ND No. 97-011-102 (DOTC) dated June 18, 1997 in the amount of [₱]53,951,955.03.*

6.6. **It can be readily seen from the Decision of the Director, NGAO II, that the latter did not reverse, modify or alter the decision or ruling of the Auditor**. Of pertinence to the said decision of the Director is Section 6, Rule V, 1997 Revised Rules of Procedure of the COA, relating to Appeal front Auditor to Director. Sec. 6 of the Rules reads:

> RULE V
> APPEAL FROM AUDITOR TO DIRECTOR
>
> x x x x
>
> Section 6. *Power of Director on Appeal.* - The Director may reverse, modify, alter, or affirm the decision or ruling of the Auditor. However, should the Director render a decision reversing, modifying or altering the decision or ruling of the Auditor, the Director shall, within ten (10) days, certify the case and elevate the entire record to the Commission Proper for review and approval.

6.7. From the foregoing provision, it is crystal clear that it is only when the Director reverses, modifies or alters the decision or ruling of the Auditor that the rule on automatic review by the Commission Proper sets in. **If the Director affirms the decision or recommendation of the Auditor as in the present case, the rule on automatic review does not apply**.

6.8. Considering that the Director affirmed the decision or ruling of the Auditor to lift ND No. 97-011-102 (DOTC) (95), the rule on automatic review provided under Section 6, Rule V of the 1997 Revised Rules of Procedure of the COA did not set in. Accordingly, Director Lozada was correct in not elevating the matter to the Commission Proper for Automatic Review.

6.9. It must be accentuated that decision of the NGAO II Director sustaining and affirming the decision of the Auditor to lift ND No. 97-011-102 (DOTC) (95) remained uncontested for almost 10 years. This being so, it has attained finality. Consequently, it became immutable and unalterable.[22] (Emphases and underscoring supplied)

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22 *Rollo*, pp. 11-12.

Patdu, Jr.'s foregoing contention is consistent with what appears on record. As the records show, the contractor, *i.e.*, EEI/JE Manalo Construction Joint Venture, wrote a Letter dated December 12, 1997 to the COA Auditor assailing the issuance of *ND 95*. As stated, the COA Auditor treated the letter as a request for reconsideration and eventually recommended the total lifting of the disallowance through a 4th Indorsement dated January 31, 2000. The NGAO Director, in turn, sustained in full this recommendation in a 5th Indorsement[23] dated July 19, 2001, which reads in relevant part:

> In a **4th Indorsement dated January 31, 2000, the DOTC Auditor recommended the total lifting** of the disallowance amount to ₱53,951,955.03
>
> x x x x
>
> In accordance with the Revised Manual on CSB, the lifting of the ND's should be concurred in by the Director of the issuing Auditor.
>
> x x x x
>
> Premises considered, pursuant to the Revised CSB Manual, **this Office sustains DOTC Auditor's decision lifting the disallowance under ND No. 97-011-102 (DOTC) dated June 18, 1997 in the amount of ₱53,951,955.03**.[24] (Emphases supplied)

Based on the foregoing disposition, Patdu, Jr. correctly averred that the elevation of the NGAO ruling to the COA Proper was not required under Section 6, Rule V of the COA Rules. Hence, as the same was not anymore appealed, the NGAO Director's decision had lapsed into finality.

At this juncture, it is noteworthy to also highlight that the COA Proper's reinstatement came after the lapse of an inordinate period of **almost ten (10) years**. To recall, while the decision of the NGAO Director was issued way back on **July 19, 2001**, the reinstatement by the COA Proper was made only on **December 13, 2010**. Undoubtedly, aside from its impropriety, the COA Proper's course of action is riddled with inordinate delay.

For its part, the COA, in its *Comment*,[25] merely traverses this issue by asserting that it is given wide latitude by the Constitution in terms of its audit functions. However, the COA should be reminded that while it does enjoy wide latitude in conducting its audit, it should also not arbitrarily apply its own rules to the undue prejudice of the public. It should be stressed that, in past cases,[26] the Court had already exhorted quasi-judicial tribunals to "be the first to respect and obey its own rules, if only to provide the proper example

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23 Id. at 92-94.

24 Id. at 93-94..

25 Dated December 17, 2015. Id. at 114-126.

26 See *Basarte v. Commission on Elections*, 551 Phil. 76, 84-85 (2007), citing *Agbayani v. Commission on Elections*, 264 Phil. 861, 868 (1990). See also *Republic v. Sandiganbayan*, 328 Phil. 210 (1996).

to those appearing before it and to avoid all suspicion of bias or arbitrariness in its proceedings."[27]

Given the circumstances of this case where automatic review is not warranted under the COA Rules and further considering the lapse of almost ten (10) long years from the time Patdu, Jr. was led on to believe that the disallowance had already been lifted, it would be the height of injustice to sustain the COA's blanket assertion of its authority to audit without any reasonable or fair regard to the application of its own rules to the parties before it. As the records itself bear out, the lifting of *ND 95* had already lapsed into finality and, hence, should not have been revived by the COA Proper based on its own caprice and whim. Accordingly, the COA committed grave abuse of discretion in reinstating the same.

At any rate, Patdu, Jr.'s civil liability for the disallowance remains suspect based on prevailing jurisprudence.

At any rate, even if one were to discount the issue of finality, Patdu, Jr. should not be held civilly liable under prevailing jurisprudence.

Under Section 38,[28] Chapter 9, Book I and Section 43,[29] Chapter 5, Book VI of the Administrative Code,[30] as interpreted in prevailing case law,[31] the civil liability of approving/authorizing public officers for disallowances issued by the COA will only arise upon a **clear showing of bad faith, malice, or gross negligence**. Otherwise, such officers are presumed to have acted within the regular performance of their official functions and in good faith, and hence, are not accountable for the return of disallowed amounts.

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27 *Agbayani v. Commission on Elections*, id.

28 Which reads:

> Section 38. *Liability of Superior Officers.* – (1) A public officer shall **not be civilly liable** for acts done in the performance of his official duties, unless there is a **clear showing of bad faith, malice or gross negligence**.
>
> x x x x (Emphases and underscoring supplied)

29 Which reads:

> Section 43. *Liability for Illegal Expenditures.* – Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of **said provisions** shall be illegal and **every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable** to the Government for the full amount so paid or received.
>
> x x x x (Emphases and underscoring supplied)

30 Executive Order No. 292, entitled "Instituting the 'Administrative Code of 1987'" (August 3, 1988).

31 See *Madera v. COA*, G.R. No. 244128, September 8, 2020.

In disallowance cases involving government contracts, the foregoing precepts are reflected under Rules 2 (a) and (b) of the guidelines recently established in *Torreta v. COA*,[32] to wit:

> Accordingly, we hereby adopt the proposed guidelines on return of disallowed amounts in cases involving unlawful/irregular **government contracts** submitted by herein Justice Perlas-Bernabe, to wit:
>
> 1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.
>
> 2. If a Notice of Disallowance is upheld, the rules on return are as follows:
>
> **a. Approving and certifying officers who acted in good faith, in the regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.**
>
> **b. Pursuant to Section 43 of the Administrative Code of 1987, approving and certifying officers who are clearly shown to have acted with bad faith, malice, or gross negligence, are solidarily liable together with the recipients for the return of the disallowed amount.**
>
> c. The civil liability for the disallowed amount may be reduced by the amounts due to the recipient based on the application of the principle of quantum meruit on a case to case basis.
>
> d. These rules are without prejudice to the application of the more specific provisions of law, COA rules and regulations, and accounting principles depending on the nature of the government contract involved. (Emphases and underscoring supplied)

In holding Patdu, Jr. civilly liable for the disallowance, the COA Proper in this case advanced the following ratiocination:

> **Mr. Patdu was included among the persons liable under ND No. 97-011-102 (DOTC) (95) for reviewing the variation orders.** Based on Decision No. 2010-133 dated December 13, 2010, the project cost was found to be excessive by [₱]53,951,954.13, computed as follows:
>
> x x x x
>
> It can be gleaned from the above computation that **the amounts of the variation orders reviewed by Mr. Patdu as Project Engineer were part of the total project cost, a portion of which was found excessive**

[32] See G.R. No. 242925, November 10, 2020.

> **and disallowed in audit. Mr. Patdu failed to diligently review the variation orders which resulted in the overpricing of the project as computed by the COA-STTFP**. However, his liability shall only be on the excess costs for the variation orders he reviewed, in the total amount of [₱]5,210,744.29.[33] (Emphases and underscoring supplied)

However, apart from the statement that "[petitioner] failed to diligently review [VO Nos. 5, 7, and 8] which resulted in the overpricing of the project as computed by the COA-[Special Task Force on Flagship Project (STFFP)]," the COA Proper's ruling was silent with respect to Patdu, Jr.'s bad faith, malice, or gross negligence relative to his participation in the project.

More significantly, contrary to the COA Proper's action, Patdu, Jr. amply justified his participation with respect to the questioned VOs relative to the Davao Fishing Port Complex project:

> 6.45. The construction of the project was already underway when petitioner reviewed the "variations orders". Significantly, these orders were recommended by the consultants during the construction stage as they were necessary in the implementation of the project.
>
> 6.46. It must be recalled that in his letter dated December 12, 1997, Mr. Custodio presented the justifications on these Variation Orders, to wit:
>
> **6.46.1. Variation Order No. 5** – ***Mobilization / Demobilization cost for dredging equipment was included in the aforementioned variation order because there is a new item of work, i.e., dredging, which is not included in the original contract and there is a need to bring in said equipment to the project site, hence the cost of mobilization/demobilization.***
>
> **6.46.2. Variation Order No. 7** – ***The original contract calls for the use of Concrete Asphalt for Roadway and Parking Area. Due to the absence of supply of concrete asphalt in the area, the Contractor in his desire not to delay the project, offered to use PCCP instead at the same cost as Concrete Asphalt. The said substitution resulted to an increase in the thickness of the pavement and a decrease in the thickness of the sub-base. This off-setting resulted to a cost difference of P10,902,431.33 in favour of the government.***
>
> **6.46.3. Variation Order No. 7E** – ***Construction of Deepwell, the cost of deepwell for Variation Order No. 3 can not be adopted because they vary in depth. Deepwell for V.O #3 is 42 meters deep, while for V.O. #7E, it is 75 meters deep.***
>
> **6.46.4. Variation Order No. 8** – ***The discrepancy between the quantity take-off and the BOQ resulted to an overestimate of quantities in V.O. No. 8, however, this quantities were rectified in the Final Quantification.***

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[33] *Rollo*, p. 41.

> 6.47. Apparently, these justifications were favourably considered by the Auditor when he recommended the lifting of (ND) No. 97-011-102 (DOTC) (95) which included the audit disallowances on these variations orders.
>
> 6.48. Significantly, the justifications were not refuted by the STFFP. There was nothing from the records to dispute the justification that Variation Order No. 5 included an item of work that was included in the original contract. Since this was a new item of work that requires the use of equipment, it is imperative to mobilize these equipment to the project site. Obviously, they will be demobilized after the completion of the variation order. There was also nothing to show that the equipment mobilized for the original contract included the same equipment used for the new item of work covered by Variation Order No. 5.
>
> 6.49. As has been explained in the December 12, 1997 letter of Mr. Custodio, the contractor used Portland Cement Concrete Pavement instead of concrete asphalt because of the absence of supply of the latter in the area. It was not disputed either that indeed Portland Cement Concrete Pavement was used Roadway and Parking Area. Difference in thickness alone will not sustain the audit disallowance covered by Variation Order No. 7 simply because the use of Portland Cement Concrete Pavement on one hand, and the use of concrete asphalt on the other hand, involved different scope of work and different cost.[34] (Emphases and underscoring supplied)

Evidently, his justifications pertain to technical adjustments/rectifications made during the course of the Project, which resulted in additional costs to the government. To note, the foregoing contentions were not rebutted by the COA in its *Comment*.

Case law explains that for negligence to be characterized as gross, the breach of duty must be flagrant or palpable, otherwise a mere error of judgment only amounts to simple negligence, which is compatible with the defense of good faith:

> Negligence is the omission of the diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time, and of the place. In the case of public officials, **there is negligence when there is a breach of duty or failure to perform the obligation, and there is gross negligence when a breach of duty is flagrant and palpable. An act done in good faith, which constitutes only an error of judgment and for no ulterior motives and/or purposes, as in the present case, is merely Simple Negligence**.[35]

Hence, considering the prevailing jurisprudential parameters on civil liability and taking into account Patdu, Jr.'s unrebutted defenses in his petition, the imposition of civil liability on the latter's part cannot be maintained.

---

[34] Id. at 22-23.

[35] *Daplas v. Department of Finance*, 808 Phil. 763, 774 (2017).

In any event, as afore-discussed, since the 5th Indorsement dated July 19, 2001 issued by the NGAO Director had sustained the COA Auditor's decision recommending the lifting of *ND 95*, the same was not required to be elevated to the COA Proper. Such decision, therefore, had already lapsed into finality. Consequently, Patdu, Jr.'s petition should be granted in part.

Accordingly, I vote to **PARTIALLY GRANT** the petition. The Decision dated December 13, 2010 in Decision No. 2010-133 and the Resolution dated April 6, 2015 in Decision No. 2015-135 of the Commission on Audit are **REVERSED** and **SET ASIDE** insofar as Notice of Disallowance (ND) No. 97-011-102 (DOTC) (95) dated June 18, 1997 is concerned. The Notice of Disallowance (ND) No. 97-011-102 (DOTC) (95) is hereby **LIFTED**.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice

REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

EN BANC

DAISY D. PANAGSAGAN,
Complainant,

- versus-

A.C. No. 7733

ATTY. BERNIE E. PANAGSAGAN,
Respondent.
x - x

NOTICE OF JUDGMENT

Sirs/Mesdames:

I am sending herewith copy of the Per Curiam Decision which was promulgated on October 1, 2019, with the information that the middle initial "Y" is corrected to "E" on pages 1 and 7 of the said decision.

Very truly yours,

MARIFE M. LOMIBAO-CUEVAS
Clerk of Court

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-over-

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Office of the Bar Confidant
Supreme Court, Manila

****THE COURT ADMINISTRATOR (x)**
Deputy Court Administrators
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HON. JENNY LIND R. ALDECOA-DELORINO (x)
HON. LEO T. MADRAZO (x)
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JBC Executive Officer
SECRETARIAT (x)
Judicial and Bar Council
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)
OFFICE OF THE CHIEF ATTORNEY (x)
PHILIPPINE JUDICIAL ACADEMY (x)
LIBRARY (x)
Supreme Court, Manila

***Copy of this Decision to be attached to Atty. Bernie E. Panagsagan's personal record.**

****Copy of this Decision for their information and guidance.**

*****Copy of this Decision for dissemination to all courts in the Philippines.**

Republic of the Philippines
Supreme Court
Manila

EN BANC

DAISY D. PANAGSAGAN,
Complainant,

- versus -

ATTY. BERNIE Y. PANAGSAGAN,
Respondent.

A.C. No. 7733

Present:

BERSAMIN, *C.J.*
CARPIO,
PERALTA,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
REYES, A., JR.,
GESMUNDO,
REYES, J., JR.,
HERNANDO,
*CARANDANG,
LAZARO-JAVIER,
INTING, and
ZALAMEDA, *JJ.*

Promulgated:
October 1, 2019

x----------x

D E C I S I O N

PER CURIAM:

Once again, the Court is confronted with the issue of gross immorality being raised against a lawyer for turning his back on his legitimate wife and family in order to cohabit with another woman.

The present administrative complaint for disbarment was initiated by Daisy D. Panagsagan against her husband, Atty. Bernie Y. Panagsagan, charging him with having become unfit to continue as a member of the Bar by reason of his immorality, infidelity, and abandonment of his family.

* On official leave.

Antecedents

The Office of the Bar Confidant (OBC) summarized the facts in this manner:

> In her complaint, Daisy Panagsagan gave the following accounts:
>
> Complainant got married to respondent on 18 December 2000. At the start, the marriage was strong but respondent entered into an illicit relationship with a fellow employee named Corazon Igtos at the Land Transportation Franchising and Regulatory Board (LTFRB). Respondent and Igtos begot two children born on May 2004 and July 2006.
>
> Complainant avers that respondent's immoral conduct was known not only by their officemates, but by the community. Their illicit affair showing pictures of the romantic relations of respondent with his paramour were uploaded in an online social networking site.
>
> On 3 November 2002, respondent packed his things and told complainant he was leaving the conjugal home. When asked, respondent only replied that he wanted to try a bachelor's life. On 2 December 2002, respondent came home to complainant and stayed until the New Year. During this time, respondent told complainant that he cannot stay at home anymore because of his love to his mistress, and he made complainant to choose whether he spend the weekdays with his paramour or she file a petition for declaration of nullity of their marriage, so that he can marry Corazon Igtos. Complainant declined to choose.
>
> On May 3, 2003, upon a tip from a friend, complainant found respondent living with Corazon Igtos in San Rafael, Mandaluyong. Inside their residence, complainant saw a picture of respondent with his concubine together and took it. When respondent noticed the picture missing, she asked complainant to return it but the latter refused. Respondent then got mad and boxed complainant several times and bumped her head against the cement wall. The mauling of complainant was witnessed by their minor child who was with her.
>
> On 24 May 2003, respondent returned to their house to get all the things they acquired together as spouses. Since then, respondent never returned home and instead decided to live for good with his concubine. This time respondent completely abandoned complainant and their child. Even the educational plan of their child and support has been stopped.
>
> In his Answer, respondent alleges that it was complainant that left the conjugal dwelling on 2003. He claims that marriage with complainant was a mistake as she was difficult to live with due to her suicidal tendencies, violent outbursts and delusional episodes. He denies any extra-marital affair with anybody more so with Corazon Igtos. However, respondent admits having fathered Igtos' children. Respondent further alleges that, while being sweethearts since 1993, respondent alleges that he had constant quarrels with complainant owing to her attitude and worse because of her alleged admitted infidelity with a certain Vhein with whom

complainant was allegedly living with. Respondent, while having doubts with the paternity of their child, he nonetheless still married complainant in 2000.

On February 2003, Respondent avers that it was the complainant who was the one who asked for "a break and space" and told him that she would need another place of her own. Complainant allegedly confessed of having an illicit affair with a Jason Santos, a grandchild of her patient in PGH. Enraged, respondent finally burned the bridge between him and complainant. After a few days, respondent went back to the place of complainant and took all of his personal belongings and tried to talk to her regarding their conjugal properties. Complainant remained indifferent even after respondent took their child and entrusted her under the temporary care of his mother.

On June 2003, complainant forcefully took the child without informing respondent. He never saw his child or was able to locate their whereabouts. Sometime on June 2004, respondent was able to locate the residence of complainant and their child and after a confrontational and physical "tug-of-war", respondent relented as not to traumatize the child. Weeks after, respondent learned that complainant moved out of the place, presumably to hide the child from him. Since then, respondent has been trying to locate complainant to no avail.

Within the same year, respondent converted to Islam and fell in love with a woman. On January 2003, respondent chose his second partner in life as a Muslim.[1]

IBP Report and Recommendation

In his Report and Recommendation,[2] IBP Bar Discipline Commissioner Edmund T. Espina found the respondent guilty of grossly immoral conduct for having engaged in a scandalous and illicit relationship with a woman by whom he sired two children during the subsistence of his marriage with the complainant; that he had committed violence against the complainant; that he had failed to provide support to his child with her; and that he had failed to substantiate his allegations that the complainant had borne suicidal and delusional tendencies, committed violent outbursts, and engaged in adulterous affairs.

IBP Commissioner Espina observed that the respondent's disregard of his obligations as husband and father had made him unfit to remain as a member of the Bar,[3] and that he should be suspended from the practice of law for two years.[4]

---

1 *Rollo*, pp. 452-453.
2 Id. at 404-412.
3 Id. at 410.
4 Id. at 412.

On June 21, 2013, the IBP Board of Governors issued a resolution, adopting and approving the recommendation of IBP Commissioner.[5]

The complainant sought partial reconsideration,[6] arguing that the respondent should instead be disbarred in view of the very grave acts that he had committed.

In the extended resolution dated September 5, 2014,[7] the IBP Board of Governors granted the complainant's motion for reconsideration, and recommended the disbarment of the respondent, thusly:

> **WHEREFORE**, premises considered, the Board resolves to partially **GRANT** complainant's Motion for Reconsideration taking into consideration the grossly immoral conduct of respondent in maintaining an illicit affair with another woman and fathering two children by her; by completely abandoning his family and for converting himself to Islam with the intention to marry his paramour. Thus, the Board resolves to **AFFIRM with modification** Resolution NO. XX-2013-715 dated 21 June 2013 and accordingly increase the penalty of suspension for two years of Atty. Bernie Panagsagan to **DISBARMENT.**
>
> **SO ORDERED.**[8]

OBC Report and Recommendation

On October 5, 2016, the Court referred the case to the Office of the Bar Confidant (OBC) for evaluation, report and recommendation.[9]

In compliance, the OBC submitted its Report and Recommendation,[10] wherein it concluded that the respondent's illicit affair with his mistress, the violence committed against the complainant, and his refusal to support his child with the complainant, constituted immoral conduct that warranted his disbarment.[11]

Issue

Should the respondent be disbarred from the practice of law due to his immoral acts and abandonment of family?

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5 Id. at 432-433.
6 Id. at 413-416.
7 Id. at 428-431.
8 Id. at 431.
9 Id. at 450.
10 Id. at 452- 455.
11 Id. at 454.

Ruling of the Court

We concur with the OBC's findings and recommendation that the complainant had presented evidence sufficient to substantiate her allegation that the respondent's acts constituted gross immorality.

The *Code of Professional Responsibility* mandates all lawyers to possess good moral character at the time of their application for admission to the Bar, and requires them to maintain such character until their retirement from the practice of law.[12] Rule 1.01 and Rule 7.03 of the *Code* further state:

> Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.
>
> xxxx xxxx xxxx
>
> Rule 7.03 – A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor should he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

For a lawyer to be imposed the extreme penalty of disbarment for immorality, the conduct complained of must not only be immoral, but must be *grossly* immoral. Grossly immoral conduct is one that is so corrupt as to constitute a criminal act, or so unprincipled as to be reprehensible to a high degree or committed under such scandalous or revolting circumstances as to shock the common sense of decency.[13] A married attorney's abandonment of his spouse in order to live and cohabit with another unquestionably constitutes gross immorality because it amounts to criminal concubinage or adultery.[14]

The respondent merely denied his immoral affair with the mistress, albeit admitting having sired her two children. The denial was found to be insincere, for the OBC astutely pointed out that:

> Complainant have presented documentary evidence consisting of the birth certificates of Vernie Mikhaela and Stephanie Beatriz, both surnamed Panagsagan and the signed admission of paternity of respondent to prove the fact that respondent sired two illegitimate children out of his illicit affair with Corazon Igtos. Such acknowledgment coming from respondent negates his own claim that he did not have any extra-marital relationship with Igtos. Complainant further gathered numerous

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12 *Advincula v. Advincula*, A.C. No. 9226, June 14, 2016, 793 SCRA 236, 247.
13 *Narag v. Narag*, A.C. No. 3405, June 29, 1998, 291 SCRA 451, 464.
14 *Ceniza v. Ceniza*, Jr., A.C. No. 8335, April 10, 2019.

> photographs from an online social networking site of respondent with his paramour which depicts their romantic relationship. Clearly, respondent have no shame to flaunt his adulterous conduct with his paramour, not minding the exacting moral standards set for the members of the legal profession.

Indeed, the respondent's admission of siring two children by the mistress, and his abandonment of his wife and family to cohabit with the mistress sufficiently established that he had transgressed the high standards of morality required of him as a lawyer. His transgression was made worse because he flaunted his illicit relationship with his mistress in social media, thereby manifesting his insensitivity towards the harsh effects of his immorality on his wife and their child. In *Advincula v. Advincula*,[15] we pointed out that a member of the Bar not only refrains from adulterous relationships or from keeping a mistress but must also conduct himself as to avoid scandalizing the public by creating the belief that he was flouting the moral standards. This is necessary considering that the practice of law must remain an honorable profession in the eyes of the public in order to attain its basic ideals.[16] In this respect, the respondent did not live up to the stringent standards required of him by the law profession.

The respondent would justify his actuations by claiming that he had already converted to the Islamic faith. We remain unconvinced of the sincerity of his defense, however, and must still hold him accountable.

Firstly, the certificate submitted by the respondent showed that he had converted to Islam in 2003. Yet, the certificate itself indicated that it was registered only on June 16, 2010, which was just two weeks before he submitted his answer to the complaint. Secondly, around that time, the respondent had already sired two children by the mistress. Thirdly, in the birth certificates of the children with the mistress, he stated that his religion was "Catholic." And, lastly, both birth certificates indicated that the respondent and the mother were "Not Married."[17] These circumstances demonstrated how his defense were really unworthy.

Indeed, the IBP-Board of Governors fittingly indicated that after taking all the circumstances together, the conversion of the respondent to Islam was a feeble attempt to shield himself from the complaint, and to conceal his immoral conduct, to wit:

> From the foregoing, it is crystal clear that respondent attempts to hide his infidelity and gross immoral conduct behind a flimsy claim of having converted to Islam. Assuming for the sake of argument that he indeed converted to Islam, he could have only done so after the birth of his

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15 Supra note 12.
16 Id. at 247-248.
17 *Rollo*, p. 454.

> second child with Igtos which indicates that he did so as a way to legitimize his illicit affair with Corazon Igtos. Either way, his act is reprehensible and cannot be tolerated in a lawyer.[18]

The Court has consistently expressed its intolerance towards lawyers who openly engaged in illicit affairs during the subsistence of their marriages. In *Ceniza v. Ceniza,*[19] and in *Bustamante-Alejandro v. Alejandro*,[20] we imposed the extreme penalty of disbarment on the respondent attorneys for having abandoned their respective spouses and having maintained illicit affairs with other partners. In *Guevarra v. Eala*,[21] we disbarred the respondent attorney for engaging in an extra-marital affair with a married woman. In *Perez v. Catindig*,[22] we declared that the respondent's subsequent marriage during the subsistence of his previous one warranted his disbarment because he thereby displayed his deliberate disregard of the sanctity of marriage and the marital vows protected by the 1987 Constitution.

Every lawyer is expected to be honorable and reliable *at all times*. This must be so, because any lawyer who cannot abide by the laws in his private life cannot be expected to do so in his professional dealings.[23] By his scandalous and highly immoral conduct, therefore, the respondent committed grossly immoral conduct, and violated the fundamental canons of ethics expected to be obeyed by the members of the legal profession. Accordingly, we find the need to impose the extreme penalty of disbarment.

WHEREFORE, the Court **FINDS** and **DECLARES** respondent **ATTY. BERNIE Y. PANAGSAGAN** guilty of gross immorality committed in violation of Rule 1.01 and Rule 7.03 of the *Code of Professional Responsibility*; **DISBARS** him from the practice of law effective upon receipt of this decision; and **ORDERS** his name stricken off the Roll of Attorneys.

Let copies of this decision be furnished to the Office of the Bar Confidant for immediate implementation; the Office of the Court Administrator for dissemination to all courts of the country; and to the Integrated Bar of the Philippines for its information and guidance.

SO ORDERED.

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18 Id. at 430.
19 Supra note 14.
20 *Bustamante-Alejandro v. Alejandro*, A.C. No. 4256, February 13, 2004, 422 SCRA 527.
21 A.C. No. 7136, August 1, 2007, 529 SCRA 1.
22 A.C. No. 5816, March 10, 2015, 752 SCRA 185.
23 *Ceniza v. Ceniza, Jr.*, supra note 14.

LUCAS P. BERSAMIN
Chief Justice

ANTONIO T. CARPIO
Senior Associate Justice

DIOSDADO M. PERALTA
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

JOSE C. REYES, JR.
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

(On Official Leave)
ROSMARI D. CARANDANG
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

CERTIFIED TRUE COPY
MARIFE M. LOMIBAO-CUEVAS
Clerk of Court
Supreme Court

REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

EN BANC

MARIA CELIA A. FLORES (Legal Researcher II, Regional Trial Court, Branch 217, Quezon City),
Complainant,

- versus –

OCA IPI No. 10-3450-P

CLARENCE JOHN R. HIPOLITO (Clerk III, Regional Trial Court, Branch 217, Quezon City),
Respondent.

x - x

CLARENCE JOHN R. HIPOLITO (Clerk III, Regional Trial Court, Branch 217, Quezon City),
Complainant,

- versus -

A.M. No. P-21-018 [Formerly OCA IPI No. 11-3761-P]

MARIA CELIA A. FLORES (Legal Researcher II, Regional Trial Court, Branch 217, Quezon City),
Respondent.

x - x

MYRLA P. NICANDRO, SARAH S. MIRANDILLA (Court Stenographers), NAOMI C. PADEN (Court Interpreter III), CLARENCE HIPOLITO (Clerk-in-Charge), and RONALD B. OYA (Utility Worker),
Complainants,

- versus –

A.M. No. P-21-017 [Formerly OCA IPI No. 10-3485-P]

MARIA CELIA A. FLORES (Legal Researcher II, Regional Trial Court, Branch 217, Quezon City),
Respondent.

x - x

-over-

MARIA CELIA A. FLORES (Legal Researcher II, Regional Trial Court, Branch 217, Quezon City),
Complainant,

-versus-

OCA IPI No. 11-3762-P

MYRLA P. NICANDRO, SARAH S. MIRANDILLA (Court Stenographers, Regional Trial Court, Branch 217, Quezon City), and NAOMI C. PADEN (Court Interpreter III), Regional Trial Court, Branch 217, Quezon City),
Respondents.
x - x

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on May 11, 2021 a Per Curiam Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled cases, the original of which was received by this Office on December 21, 2021 at 10:30 a.m.

Very truly yours,

MARIFE M. LOMIBAO-CUEVAS
Clerk of Court

THE COURT ADMINISTRATOR (x)
Deputy Court Administrators
HON. RAUL B. VILLANUEVA (x)
HON. JENNY LIND R. ALDECOA-DELORINO (x)
HON. LEO T. MADRAZO (x)
Assistant Court Administrators
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NAOMI C. PADEN (x) and
RONALD B. OYA (x)
Regional Trial Court, Branch 217
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ATTY. GILDA SUMPO-GARCIA (x)
Asst. Chief of Office
Financial Management Office
ATTY. MARILOU MARZAN-ANIGAN (x)
Chief, Court Management Office
ATTY. WILHELMINA D. GERONGA (x)
Chief, Legal Office
DOCKET & CLEARANCE DIVISION (x)
RECORDS DIVISION (x)
EMPLOYEE WELFARE AND
BENEFITS DIVISION (x)
LEAVE DIVISION (x)
Office of the Court Administrator
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)
OFFICE OF THE CHIEF ATTORNEY (x)
PHILIPPINE JUDICIAL ACADEMY (x)
LIBRARY (x)
Supreme Court, Manila

THE MANAGER (x)
Claims Department
Government Service Insurance System
GSIS Headquarters, Financial Center
Reclamation Area, Roxas Boulevard
Pasay City

THE PRESIDING JUDGE (x)
Regional Trial Court, Branch 217
Quezon City

HON. ROMEO J. CALLEJO (x)
Chairperson
HON. ANGELINA SANDOVAL-GUTIERREZ (x)
Vice Chairperson
HON. SESINANDO E. VILLON (x)
First Regular Member
HON. RODOLFO A. PONFERRADA (x)
Second Regular Member
Judicial Integrity Board
Ground Floor, Old Building
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Supreme Court

THE CHAIRPERSON (x)
Civil Service Commission
Constitution Hills, Batasang Pambansa
Complex, Diliman, Quezon City

Republic of the Philippines
Supreme Court
Manila

EN BANC

MARIA CELIA A. FLORES (Legal Researcher II, Regional Trial Court, Branch 217, Quezon City),	**OCA IPI No. 10-3450-P**
Complainant,	
- versus -	
CLARENCE JOHN R. HIPOLITO (Clerk III, Regional Trial Court, Branch 217, Quezon City),	
Respondent.	
x----------x	
CLARENCE JOHN R. HIPOLITO (Clerk III, Regional Trial Court, Branch 217, Quezon City),	**A.M. No. P-21-018 [Formerly OCA IPI No. 11-3761-P]**
Complainant,	
- versus -	
MARIA CELIA A. FLORES (Legal Researcher II, Regional Trial Court, Branch 217, Quezon City),	
Respondent.	
x----------x	
MYRLA P. NICANDRO, SARAH S. MIRANDILLA (Court Stenographers), NAOMI C. PADEN (Court Interpreter), CLARENCE HIPOLITO (Clerk-in-charge), and RONALD B. OYA (Utility Worker),	**A.M. No. P-21-017 [Formerly OCA IPI No. 10-3485-P]**

Complainants,

- versus -

MARIA CELIA A. FLORES (Legal Researcher II, Regional Trial Court, Branch 217, Quezon City),

Respondent.

x---x

MARIA CELIA A. FLORES (Legal Researcher II, Regional Trial Court, Branch 217, Quezon City),

Complainant,

- versus -

MYRLA NICANDRO, SARAH S. MIRANDILLA (Court Stenographers, Regional Trial Court, Branch 217, Quezon City), and NAOMI C. PADEN (Court Interpreter III, Regional Trial Court, Branch 217, Quezon City),

Respondents.

OCA IPI No. 11-3762-P

Present:

GESMUNDO, *C.J.*,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
DELOS SANTOS,
GAERLAN,
ROSARIO,
LOPEZ, J., *JJ.*

Promulgated:

May 11, 2021

x- x

DECISION

PER CURIAM

Judicial office demands the best possible men and women in the service to support efforts towards effective administration of justice. Hence, the Court will not condone any improper conduct of court employees constituting infringement of and encroachment upon judicial authority, and whose acts overstep their powers and responsibilities.

The Case

In these consolidated cases, Maria Celia A. Flores (Flores), a court legal researcher II, charged Clarence John R. Hipolito (Hipolito) of conduct prejudicial to the best interest of service and usurpation of function of the court process server or sheriff. She also accused Myrla P. Nicandro (Nicandro), Sarah S. Mirandilla (Mirandilla), both court stenographers, and Naomi C. Paden, a court interpreter III, of habitual tardiness and excessive absenteeism. Meanwhile, Hipolito, Nicandro, Mirandilla, Paden and Ronald B. Oya (Oya) charged Flores with willful disregard of a Supreme Court ruling, conduct unbecoming of a court employee and usurpation of authority. Hipolito, in his counter-charge, also accused Flores of malfeasance.

Antecedents

OCA IPI No. 10-3450-P

The first administrative complaint[1] was filed on 27 July 2010 by Flores, a court legal researcher II of Regional Trial Court, Branch 127 of Quezon City (RTC), against Hipolito, the clerk-in-charge of criminal cases in their court, for conduct prejudicial to the best interest of the service and usurpation of function of the court's process server or sheriff.[2]

According to Flores, Hipolito has been selling Avon products inside the court premises instead of performing his official duties. Hipolito also usurped the function of the court's process server or deputy sheriff by releasing a detainee without authority from Flores, who was then the officer-in-charge (OIC).[3]

---

1 *Rollo* (OCA IPI No. 10-3450-P), p. 1.
2 *Id.* at p. 281.
3 *Id.*

Hipolito, however, branded the allegations of Flores as baseless and unfounded. He claimed that he stopped being a sales dealer of Avon after he was appointed to the Judiciary in 2001. However, his co-employees learned that his mother-in-law was a sales agent and started placing orders thru him to avail of discounts. However, he never profited from such transactions and only delivered the products upon reporting for work.[4]

Likewise, contrary to the allegation of usurpation of function, Hipolito averred he was duly authorized by Presiding Judge Santiago M. Arenas (Judge Arenas) to serve the release order of an accused by virtue of a Certification dated 21 October 2010 and an Official Business (OB) Pass, both signed by the Judge Arenas himself.[5]

In her Reply, Flores insisted that the lack of monetary gain by Hipolito is irrelevant. The mere fact of selling Avon products in the Hall of Justice is a violation of Civil Service Rules. As to the service of the release order, Flores claimed that the certification and OB pass were irregularly issued and only served to validate an otherwise unauthorized act of Hipolito.[6]

A.M. No. P-21-018 [Formerly OCA IPI No. 11-3761-P]

The administrative complaint, docketed as A.M. No. OCA IPI No. 11-3761-P, arose from the counter-charge of malfeasance filed by Hipolito against Flores. Hipolito maintained that the complaint filed by Flores against him is an act of harassment as the latter was obviously nursing a grudge against him after he informed Judge Arenas of Flores' illegal act of preparing pleadings for litigants during office hours for a fee. Attempts by Judge Arenas to settle the differences between them proved futile and Flores tried to further throw her weight around the court disrupting the court's functions.[7]

Moreover, Flores' complaint allegedly showed her flawed character, constantly monitoring the staff so she could use the slightest infraction as some form of blackmail later. Instead of doing her work, she would dig out old files to use against her perceived enemies and even use her knowledge of

4 *Id.*
5 *Id.*
6 *Id.* at 281-282.
7 *Id.* at 282.

the law as her weapon and instrument against the helpless and for intimidation.[8]

A.M. No. P-21-017 [Formerly OCA IPI No. 10-3485-P]

On 03 September 2010, Court Stenographers Nicandro, Mirandilla, and Paden, together with Clerk II Hipolito and Utility Worker Oya (complainants) filed a verified complaint-affidavit[9] against Flores for willful disregard of a Supreme Court ruling, conduct unbecoming of a court employee and usurpation of authority.[10]

As alleged by complainants in this case, Flores openly defied a six-month suspension ordered by the Supreme Court through a Resolution[11] dated 16 April 2009 relative to a previous administrative case for dishonesty entitled, *Office of the Court of Administrator v. Maria Celia A. Flores.*[12] Flores allegedly continued to report for work from 04 May to 25 May 2009 despite having received the order for suspension on 30 April 2009. She eventually complied with the suspension order on 26 May 2009 but reported to work on 03 November 2009 before she completed her six-month suspension. Moreover, Flores sowed discord among the employees through different controlling acts. She would allegedly adjust the clock in the staffroom to coincide with her watch, which was five or more minutes earlier than the time reflected in the clock in the courtroom and in the judge's chambers.[13]

Complainants also cited the following questionable acts of Flores as OIC of their court: (1) signing a writ of possession in a case pending before their court, which resulted to the filing of an administrative case against her by the party-litigant, Ms. Mary Sze, before the Office of the Court Administrator (OCA); (2) signing an order of release dated 31 May 2010 in Criminal Case No. Q09-158926; (3) instructing Hipolito to prepare a writ of execution to be signed by her; and (4) scrutinizing the daily time cards of the employees for the months of April and May 2010 when she was designated as the OIC of their court.[14]

8 *Id.*
9 *Rollo* (A.M. No. P-21-017 [Formerly OCA IPI No. 10-3485-P]), pp. 1-12.
10 *Id.*
11 603 Phil. 84, 84-94(2009) [Per *J.* Tinga, Second Division].
12 *Id.*
13 *Rollo (*OCA IPI No. 10-3450-P), pp. 282-283.
14 *Id. at* 283.

Nonetheless, Flores denied ever defying the suspension order of the Court in the Resolution dated 16 April 2009. As there was no specific date for the commencement of her suspension, she had to inquire as to when the effectivity of her suspension will begin. The Court, thereafter, issued a Resolution dated 24 August 2009 declaring the suspension of Flores from 26 May 2009 to 25 November 2009.[15]

Anent the allegation of conduct unbecoming of a court employee, usurpation of authority and sowing discord among employees, Flores claimed these to be frivolous and meant only to divert the attention of the Court from the wrongdoings incurred by the complainants themselves. Although her designation as OIC was not permanently confirmed by the Court, her actions were nevertheless done under the authority of Judge Arenas. The Court also issued a Resolution dated 10 August 2010 for her designation as OIC specifically from 13 April 2010 to 31 May 2010, considering she had already performed the functions of said office before she received the notice of non-confirmation of her designation.[16]

Flores also explained that her acts were merely to enforce strict adherence to office rules. Complainants allegedly viewed these in a bad light since these prevented their practice of falsifying daily time records to cover up their habitual tardiness, sleeping during office hours, excessive absences, usurpation of functions, and selling within the court premises.[17]

OCA IPI No. 11-3762-P

The fourth administrative complaint was borne by Flores' counter-charges against Nicandro, Mirandilla and Paden for habitual tardiness and excessive absenteeism. The Court is also urged to look into the history of Nicandro's "notoriety" as borne by her previous administrative cases. It was alleged that Nicandro was given three (3) "unsatisfactory ratings" for the years 1996 and 1998 while Miranda has a habit of surreptitiously opening documents and objects without the consent of the owner. Paden, on the other hand, is accused of sleeping during office hours and insubordination for failure to comply with the transfer orders.[18]

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[15] *Id.* at 283-284.
[16] *Id.* at 284.
[17] *Id.* at 283-285.
[18] *Rollo* (OCA IPI No. 11-3762-P), pp. 1-5.

Nicandro, Mirandilla and Paden denied the charges of habitual tardiness and excessive absenteeism. They could not have made false entries in their daily time record since Flores was constantly monitoring them. Mirandilla also explained that her request for flexi-time of 8:30 o'clock in the morning until 5 o'clock in the afternoon was approved by the Court.[19]

As to the individual allegations, Nicandro argued that Flores' presentation of her 1996 and 1998 performance rating sheets only showed the latter's propensity to research old files of her perceived enemies. Moreover, Flores only cited her old performance ratings but never bothered to check her succeeding ones. Paden also decried the charge of sleeping during office hours. She explained that everybody in their court would rest during break time. She, however, admitted that there were times when she would wake up five to ten minutes before 1 o'clock in the afternoon. She also denied the allegation of insubordination and explained that the issue was merely on room/office arrangement. She and Atty. Marizen B. Grutas (Atty. Grutas), their Branch Clerk of Court, already had an agreement as to her office spot. Lastly, Mirandilla denied opening papers or drawers in the staff room as she could not have possibly done such acts with Flores recording any kind of error.[20]

Report of the Investigating Judge

After consolidating the cases, the Court, through a Resolution[21] dated 16 November 2011, referred the administrative matters to the Executive Judge of the RTC of Quezon City for investigation, report and recommendation.[22]

On 26 March 2012, then Executive Judge Ma. Luisa C. Quijano-Padilla (investigating Judge)[23] issued a Report[24] with the following recommendations:

> In view of the foregoing, it (sic) respectfully recommended that:

[19] *Id.* at 75-76.
[20] *Id.* at 33-40, 49 & 76-78.
[21] *Rollo* (A.M. No. P-21-017 [Formerly OCA IPI No. 10-3485-P]), pp. 125-126.
[22] *Id.*
[23] Now, an Associate Justice of the Court of Appeals.
[24] *Rollo* (OCA IPI No. 10-3450-P), pp. 280-300.

(1) The administrative complaint filed by complainant Ma. Celia A. Flores, Legal Researcher against respondent Clarence John R. Hipolito, Clerk-in-charge of criminal cases *(docketed as OCA I.P.I. No. 10-3450-P),* to be **dismissed** for lack of merit;

(2) The respondent Ma. Celia A. Flores *(in administrative complaint No. OCA I.P.I. No. 10-3485-P)* be meted out the proper penalty as provided under pertinent Civil Service Rules *(Civil Service Memorandum Circular No. 30, s. 1989)* openly defying the 6-month suspension order dated April 16, 2009;

(3) The charge of habitual tardiness and excessive absenteeism against respondents Myrla Nicandro, Sarah Mirandilla, and Naomi Paden *(OCA I.P.I. No. 11-3762-P),* be **dismissed**;

(4) The charge of surreptitiously opening closed drawers against respondent Sarah Mirandilla *(OCA I.P.I. No. 11-3762-P)* be **dropped** as she has effectively resigned from the service on July 2011 **or** that the complaint be deemed instituted with the administrative complaint filed by Ms. Mary Sze before the Office of the Court Administrator; be dismissed (sic);

(5) The charge of insubordination against respondent Naomi Paden *(OCA I.P.I. No. 11-3762-P)* be **dismissed** for lack of merit;

(6) The respondent Naomi Paden *(OCA I.P.I. No. 11-3762-P)* be administratively sanctioned by a **reprimand** for sleeping during office hours;

(7) The charge of notoriety of respondent Myrla Nicandro *(OCA I.P.I. No. 11-3762-P)* be **dismissed**; and

(8) The respondent Ma. Celia Flores *(OCA I.P.I. No. 11-3761-P and OCA I.P.I No. 11-3762-P)* be held **administratively liable for usurpation** of the functions of the Presiding Judge, with the recommended penalty of Fine in the amount of Two Thousand Pesos (₱2,000.00) with stern warning that a repetition of a similar offense shall be dealt with more severely; while all other charges against her be **dismissed** for lack of merit.

Respectfully submitted.

The investigating Judge, aside from hearing the parties involved in the case, summoned the other members of the staff of the RTC to shed light on the allegations. After a thorough review, she recommended for Paden to be reprimanded for sleeping during office hours. The rest of the charges against

her, as well the charges against Hipolito, Mirandilla and Nicandro were recommended to be dismissed. However, proof was shown through the RTC's Daily Attendance Sheet that Flores indeed reported for work before her suspension was fully served. Flores also issued a release order, which is an act of usurpation of judicial authority.[25]

Recommendation of the OCA

The OCA, in a Memorandum[26] dated 29 April 2013, made the following recommendations, *viz:*

> **WHEREFORE,** in view of the foregoing discussions, it is respectfully recommended for the consideration of the Honorable Court that:
>
> 1. the administrative complaint against respondent **Clarence John R. Hipolito** docketed as **A.M. OCA IPI No. 10-3450-P** be **DISMISSED** for lack of merit;
>
> 2. the administrative complaints against respondent **Maria Celia A. Flores,** Legal Researcher, same court, in **A.M. OCA IPI Nos. 11-3761-P** and **10-3485-P** be **RE-DOCKETED** as a regular administrative matter;
>
> 3. respondent **Flores** be found **GUILTY** of usurpation of the judicial functions of the Presiding Judge in **A.M. OCA IPI No. 11-3761-P** and be **FINED** in the amount of **Five Thousand Pesos (₱5,000.00)** to be paid within a non-extendible period of thirty (30) days from notice, with a stern warning that a repetition of the same or similar act shall be dealt with more severely, and that all other charges therein be **DISMISSED** for lack of merit;
>
> 4. respondent **Flores** be also found **GUILTY** of simple misconduct in **A.M. OCA IPI No. 10-3485-P** and be meted the penalty of **SUSPENSION** for a period of six (6) months without pay, with **STERN WARNING** that a repetition of the same or similar offense shall be dealt with more severely;
>
> 5. respondent **Naomi Paden,** Court Stenographer, same court, be **STERNLY WARNED** in **A.M. OCA IPI No. 11-3762-P** for sleeping during office hours;
>
> 6. the charges of habitual tardiness and excessive absenteeism against respondents **Myrla Nicandro, Sarah Mirandilla**, and **Naomi Paden**, all

[25] *Id.* at 289-299.
[26] *see* Memorandum (OCA IPI No. 10-3450-P) dated 29 April 2013, pp. 1-13.

Court Stenographers, same court, in **A.M. OCA IPI No. 11-3762-P** be **DISMISSED** for lack of merit; and

7. the charge of notoriety against respondent **Myrla Nicandro** in **A.M. OCA IPI No. 11-3762-P** be **DISMISSED** for insufficiency of evidence.

Respectfully submitted.[27]

The OCA, after taking into consideration the report of the investigating Judge, agreed with her recommendations but increased the fine imposed on Flores in A.M. OCA IPI No. 11-3761-P since the earlier fine recommendation of ₱2,000.00 was a "mere slap on the wrist." It also recommended a six-month suspension for Flores' failure to faithfully comply with her earlier suspension.

Ruling of the Court

The Court adopts the findings of fact of the OCA but modifies the penalty to be imposed on Flores.

Charges against Hipolito for selling inside the court and usurpation of functions.

The Court agrees with the dismissal of the charges against Hipolito for lack of merit.

Based on the inquiry conducted by the investigating Judge, as affirmed by the OCA, there was no evidence showing that Hipolito was moonlighting as a seller of Avon products. All four witnesses summoned by the investigating Judge, who were part of the staff of the RTC, denied that Hipolito sold Avon products in court. According to Atty. Grutas, the staff usually ordered products from a certain outsider named Gigi. However, due to delays in the delivery, they decided to place their orders with Hipolito, who just brought the products after his arrival at work. She also affirmed the

[27] *Id.* at 12-13.

other witnesses' statements saying that there was never a time when Hipolito made rounds in the corridors of the Hall of Justice to offer Avon products for sale. In fact, Hipolito stopped delivering products for them when the complaint was filed. Ultimately, Hipolito's acts never affected his work and was even given a "very satisfactory rating."[28] Further noting Hipolito's explanation of just being the delivery guy for his mother-in-law, the Court finds no merit in the charge against him for selling products in court during office hours.

Anent Hipolito's alleged act of usurping the functions of the Process Server or the Sheriff, the Court notes in agreement that Hipolito served the Order dated 29 April 2010 for the release of a detainee with full authority from Judge Arenas himself, who issued a certification confirming such acts.[29] Hence, Hipolito cannot be held guilty of usurping the functions of the Process Server or the Sheriff. Indeed, Hipolito cannot be faulted for merely performing a task specifically assigned to him by the Presiding Judge.

Charges against Nicandro, Paden and Mirandill.

The Court finds no proof or basis to hold Nicandro, Paden and Mirandilla administratively liable for habitual tardiness, excessive absences and notoriety. The infractions pointed out by Flores were committed way back in the year 1998 for which the concerned employees were already given a warning by the OCA. After the issuance of the warnings, there was no further proof showing Nicandro, Paden or Mirandilla continued to commit said infractions. At the same time, Atty. Grutas, who monitors the daily time record of the staff, belied Flores' claims regarding the said employees' attendance and tardiness. She also stated that there is no truth to the allegation anent Nicandro's constant loafing.[30]

Flores also proffered no proof, other than her bare allegations, to support her claim of Mirandilla surreptitiously opened closed drawers from the staff room. In addition, the charge of notoriety against Nicandro has no leg to stand on. Penalties or sanctions previously imposed on Nicandro were

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[28] *Rollo* (OCA IPI No. 10-3450-P), pp. 289-290.
[29] Supra note 2.
[30] *Rollo* (OCA IPI No. 10-3450-P), pp. 292-293.

already served.[31] Her history of previous administrative cases cannot be an offense in itself and may only be considered in determining the appropriate penalty in succeeding offenses.

Likewise, the Court agrees with the recommendation to dismiss the insubordination charge against Paden in relation to her alleged refusal to comply with the memorandum of Atty. Grutas asking her to transfer from the court room to the staff room. Atty. Grutas explained that she later allowed Paden to remain working in the court room for lack of space in the staff room.[32] However, Paden admitted taking naps during lunch time, which sometimes extended up to five or ten minutes before 1 o'clock in the afternoon. This is an act violative of office rules and regulations[33] categorized as a light offense with a penalty of reprimand for the first offense, suspension of one (1) to thirty (30) days for the second offense; and dismissal from the service for the third offense.[34] Considering this is Paden's first offense, the penalty of reprimand is appropriate.

Charges against Flores for failure to comply with her suspension order and usurpation of judicial functions.

In *Office of the Court Administrator v. Flores,*[35] Flores was found guilty of serious dishonesty and thereafter was suspended for six months for failing to declare her previous administrative charges, suspension and dismissal from previous employment in her Personal Data Sheet (PDS) when she applied for the position of Court Legal Researcher II. As explained by Flores, the Court, in its Resolution dated 24 August 2009, resolved that her six-month suspension shall be from 26 May 2009 to 25 November 2009. However, based on the Daily Attendance Sheet of the RTC, as certified by its Branch Clerk of Court, Flores already reported to work on 3 November 2009 before her suspension was scheduled to end. Instead of explaining her transgression, Flores refused to squarely address the same and merely claimed the allegation was based on self-serving opinions of complainants in OCA IPI No. 10-3485-P (now, A.M. No P-21-017).

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[31] *Id.* at 293-294.

[32] *Id.* at 295.

[33] *Garcia v. Buencamino,* 745 Phil. 214, 231 (2014) [Per J. Mendoza, Second Division].

[34] Uniform Rules on Administrative Cases in the Civil Service, CSC Resolution No. 991936, dated 31 August 1999; See also Revised Rules on Administrative Cases in the Civil Service, CSC Resolution No. 1101502, 08 November 2011.

[35] *Supra* note 11.

Flores' unjustified refusal to faithfully comply with her suspension order is tantamount to insubordination. As consistently held in our jurisprudence, the unjustified refusal to follow the resolution of the Court constitutes defiance of authority or insubordination, which is considered a less grave penalty under the Uniform Rules on Administrative Cases in the Civil Service (URACCS).[36] Said offense is penalized with suspension of one (1) month and one (1) day to six (6) months for the first offense and dismissal for the second offense.[37]

Anent the second charge, the investigating Judge and the OCA are both in agreement in declaring Flores guilty of usurpation of authority when she signed the order of release in a criminal case pending before the RTC. The findings of the investigating Judge are well taken:

> A careful perusal of the Order of Release dated May 31, 2010 shows that the same was clearly copied and patterned after the Order of Discharge from Custody *(Form 3.13. in the 2002 Revised Manual for Clerks of Court, Volume I, page 537)*, which should be signed by the Presiding Judge. Here, respondent Flores signed the Order of Release in her capacity as "Legal Researcher & Officer-in-Charge" despite the fact that the form clearly indicates that said Order may only be signed by the Presiding Judge.
>
> Furthermore, Form 3.13. specifically indicates that a copy of the Order or Decision must be attached therein, while in the Order of Release signed by respondent Flores merely stated that the case against the accused/detainee "has been provisionally dismissed today."
>
> x x x
>
> In this case, even assuming that Judge Arenas already left the office on that day, May 31, 2010, leaving the Order of provisional dismissal unsinged, the undersigned sees no urgency in causing the release of the detainee without waiting for the Order duly signed by Judge Arenas. The reason for this is that May 31, 2010 falls on a Monday and the order of dismissal may still be reasonably forwarded to the jail authorities on the next working day.
>
> At any rate, whether or not a judge opts to issue a separate order of discharge, it is undisputed that the authority to order the release of an accused/detainee is purely a judicial function and the Clerk of Court or an Officer-in-Charge, for that matter, may not be allowed to usurp this

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[36] See *Re: Ramil*, 588 Phil. 1, 9 (2008) [Per J. Austria-Martinez, First Division]; See also *Himalin v. Balderian*, 456 Phil. 934, 941-943 (2003) [Per Curiam, En Banc].

[37] *Supra* note 35.

> judicial prerogative which belongs exclusively to the Presiding judge. xxx[38]

The investigating Judge recommended the penalty of a fine in the amount of ₱2,000.00 but the OCA increased the same to ₱5,000.00. *We*, however, disagree with the recommended penalty.

The Court, in previous cases,[39] had considered the act of usurping judicial functions as grave misconduct punishable by dismissal from service along with the accessory penalties of cancellation of eligibility, perpetual disqualification from holding public office, bar from taking civil service examinations, and forfeiture of retirement benefits under the URACCS.[40]

It must be noted that on 02 October 2018, the Court issued A.M. No. 18-01-05-SC, amending Rule 140 of the Rules of Court, and extending its application to personnel of the lower courts, to wit:

> Rule 140
> *Discipline of Judges of Regular and Special Courts, Justices of the Court of Appeals, the Sandiganbayan, Court of Tax Appeals, Court Administrator, Deputy Court Administrator and Assistant Court Administrator*
>
> SECTION 1. *How Instituted.* — Proceedings for the discipline of Justices of the Court of Appeals, the Sandiganbayan, Court of Tax Appeals and Judges and **personnel of the lower courts**, including the Shari'a Courts, and the officials and employees of the Office of the Jurisconsult, Court Administrator, Deputy Court Administrator, Assistant Court Administrator and their personnel, may be instituted, motu proprio, by the Supreme Court, in the Judicial Integrity Board.[41] (Emphasis supplied)

Rule 140 has its own nomenclature and classification of penalties distinct from those in the URACCS.[42] Under the said rule, Flores' act of usurpation of judicial functions would constitute as gross misconduct which is considered a serious charge[43] and her insubordination would constitute as

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38 *Rollo (A.M. OCA IPI No. 10-3450-P)*, p. 299.

39 See *Albior v. Auguis,* 452 Phil. 936, 948 (2003), [per *C.J.* Bersamin, En Banc]; See also *Biag v. Gubatanga,* 376 Phil. 870, 875-876 (1999) [Per *J.* Gonzaga-Reyes, Third Division].

40 *Supra* note 29.

41 Creating the Judicial Integrity Board and the Corruption Prevention and Investigation Office, A.M. No. 18-01-05-SC, 02 October 2018.

42 Supra note 35.

43 See Section 22, A.M. No. 18-01-05-SC, 07 July 2020.

a violation of a Supreme Court directive considered a less serious one.[44] Since Rule 140 is the prevailing rule, the Court should already apply the same in the resolution of administrative cases in furtherance of the interest of a uniform application of charges and imposition of penalties against Judiciary personnel, **unless the retroactive application of Rule 140 would not be favorable to the employee.**

If the Court applies Rule 140 to the present case, Flores would be charged and penalized with two separate offenses in line with the ruling in *Boston Finance and Investment Corp. v. Gonzalez,*[45] where the Court held that in administrative cases under Rule 140, separate penalties shall be imposed for every offense. In contrast, only the penalty for the most serious charge shall be imposed if the URACCS is to be applied, thus:

> SECTION 55. *Penalty for the Most Serious Offense*. — If the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count and the rest shall be considered as aggravating circumstances.

Considering that the penalty under the URACCS is more favorable to Flores, the Court deems it best to apply the said rule and hold Flores guilty of grave misconduct, which is the more serious offense, aggravated by insubordination. Since this is not Flores' first administrative infraction – the first being an administrative complaint where she was found guilty of serious dishonesty and was suspended instead of being dismissed[46] – the penalty of dismissal in the present case is more than proper.

Despite Flores' retirement on 18 September 2018, the Court retains jurisdiction to declare her either innocent or guilty of the charges against her and to impose upon her the proper penalties under the rules. "Where a respondent is found guilty of a grave offense but the penalty of dismissal is no longer possible because of his compulsory retirement, the Court has nevertheless imposed the just and appropriate disciplinary measures and sanctions by decreeing the forfeiture of all benefits to which he may be entitled, except accrued leave credits, with prejudice to re-employment in any branch or instrumentality of the Government, including Government-Owned and Government-Controlled Corporations[.]"[47]

44. See Section 23, A.M. No. 18-01-05-SC, 07 July 2020.
45. See A.M. No. RTJ-18-2520, 09 October 2018 [Per J. Perlas-Bernabe, En Banc].
46. *Supra* note 11; the penalty for serious dishonesty is dismissal.
47. *Alleged loss of various boxes of copy paper during their transfer from Property Division (OAS) to*

WHEREFORE, in view of the foregoing, the Court resolves these consolidated cases as follows:

1. The administrative complaint against respondent Clarence John R. Hipolito docketed as OCA IPI No. 10-3450-P is **DISMISSED** for lack of merit;

2. The administrative complaint against respondent Maria Celia A. Flores in OCA IPI Nos. 11-3761-P and 10-3485-P are **RE-DOCKETED** as regular administrative matters;

3. Respondent Maria Celia A. Flores is held **GUILTY** of **GRAVE MISCONDUCT** in OCA IPI No. 11-3761-P aggravated by **INSUBORDINATION** in OCA IPI No. 10-3485-P. In view of her retirement, all benefits due her are hereby **FORFEITED** in favor of the government except accrued leave benefits, if any, with prejudice to her re-employment in any branch or instrumentality in the government, including government-owned and controlled corporations;

4. Respondent Naomi C. Paden, OCA IPI No. 11-3762-P, is found **GUILTY** of violating office rules and regulations. She is meted the penalty of **REPRIMAND** and is further **WARNED** that the commission of the same or similar acts in the future will be dealt with more severely by this Court; and

5. The charges of habitual tardiness and excessive absenteeism against respondents Myrla P. Nicandro, Sarah S. Mirandilla and Naomi C. Paden in OCA IPI No. 11-3762-P are **DISMISSED** for lack of merit. The charge of notoriety against Myrla P. Nicandro is likewise **DISMISSED** for insufficiency of evidence.

SO ORDERED.

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various rooms of PHILJA, 744 Phil. 526, 536 (2014) [per C.J. Bersamin, En Banc], citing *Re Complaint of Mrs. Corazon S. Salvador against Spouses Noel and Amelia Serafico*, 629 Phil. 192, 211-212 (2010) [Per Curiam, En Banc].

ALEXANDER G. GESMUNDO
Chief Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

EDGARDO L. DELOS SANTOS
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MARIFE M. LOMIBAO-CUEVAS
Clerk of Court
Supreme Court