

SECOND DIVISION

[G.R. No. 197613, November 22, 2017]

**PUBLIC ATTORNEY'S OFFICE, PETITIONER, VS. OFFICE OF THE
OMBUDSMAN AND ATTY. TERCENCIA S. ERNI-RIVERA,
RESPONDENTS.**

DECISION

CAGUIOA, J:

The Case

This is a Petition for *Certiorari*^[1] (Petition) filed under Rule 65 of the Rules of Court which seeks to annul the Resolution^[2] (Assailed Resolution) dated September 1, 2010 and Order^[3] (Assailed Order) dated November 30, 2010 issued by the Office of the Ombudsman (Ombudsman) in OMB: C-C-08-0419-I.

The Assailed Resolution and Order dismissed, for lack of probable cause, the separate criminal complaints (Criminal Complaints) filed against Atty. Terencia S. Erni-Rivera (Atty. Rivera) for violation of the following:

- (i) Section 7(b)(2) and (d)^[4] of Republic Act No. (RA) 6713,^[5] which prohibits public officers from engaging in the private practice of their profession while in the public service;
- (ii) Section 3(e)^[6] of RA 3019^[7] as amended, which prohibits public officers from causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence; and
- (iii) Article 171 (4)^[8] of Act No. 3815, otherwise known as the Revised Penal Code (RPC), which treats the crime of falsification by a public officer.

The Facts

Atty. Rivera is a Career Service Employee who joined the government service on July 18, 1978 as Trial Attorney II.^[9] Since then, Atty. Rivera had been promoted to several permanent positions, until she was appointed to the position of Public Attorney V (PA5) for PAO Regional Office No. III by virtue of a presidential appointment dated March 8, 2004.^[10]

Violation of RA 3019 (causing undue injury and/or giving unwarranted benefits/advantage to private parties) and RA 6713 (engaging in private practice)

After Atty. Rivera assumed her duties as PA5, PAO received a Letter and Affidavit dated August 13, 2004 and August 17, 2004, respectively, both by a certain Hazel F. Magabo (Magabo).^[11] Magabo alleged that **contrary to PAO's internal rules, Atty. Rivera agreed to handle the annulment case sought to be filed by her brother Isidro Fayloga (Fayloga), and received staggered payments therefor in the total amount of Ninety-Three Thousand Pesos (P93,000.00).**

^[12] Such amount consists of money sent by Fayloga from abroad, as well as money personally advanced by Magabo upon Atty. Rivera's promise that these advances would expedite Fayloga's annulment.^[13] However, Magabo later discovered that Atty. Rivera did not file any petition on Fayloga's behalf.^[14]

To support her claims, Magabo presented copies of bank slips showing that she made several deposits in varying amounts to Atty. Rivera's account. Magabo also presented a summary of payments showing that Atty. Rivera and her secretary also received cash on different dates.^[15]

In response, Atty. Rivera averred that while she did receive the amount of Ninety-Three Thousand Pesos (P93,000.00) as alleged, such amount was merely entrusted to her. Atty. Rivera explained that Magabo, her longtime friend, asked for her help in finding a private practitioner to take on Fayloga's case, and that the money she received was meant to cover the professional fees and litigation expenses that would be incurred in this connection.^[16] Atty. Rivera further averred that she returned the money entrusted to her as soon as it became apparent that Fayloga would no longer return to the Philippines to pursue the annulment case.^[17]

As Atty. Rivera subsequently assumed the position of Regional Public Attorney, PAO referred the letter to the Department of Justice (DOJ) for proper disposition.^[18]

Thereafter, the allegations in Magabo's Letter and Affidavit became subject of a formal administrative complaint filed on September 28, 2005 against Atty. Rivera for Grave Misconduct and violation of Civil Service Rules and Regulations (DOJ Proceeding).^[19]

After two (2) hearing dates, Magabo submitted an Affidavit of Desistance stating that she is no longer interested in pursuing the case, as it merely resulted from a misunderstanding between her and her siblings.^[20]

Nevertheless, on March 27, 2007, the DOJ issued a Resolution^[21] (DOJ Resolution) finding Atty. Rivera liable for conduct prejudicial to the best interest of the service, a lesser offense treated under Section 22(t) of Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292. She was meted with the penalty of suspension for a period of six (6) months and one (1) day without pay.^[22]

Falsification

On December 4, 2006 (during the pendency of the DOJ Proceeding), Atty. Rivera submitted a Certificate of Service anent her attendance for November 2006, which states in part:

I, TERCENCIA S. ERNI-RIVERA, do hereby certify that I reported for work and performed my duties and functions as Regional Public Attorney for PAO, Region IV-B, **for the month of November 2006.**^[23] (Emphasis supplied)

District Public Attorney Emilio G. Aclan (DPA Aclan) submitted a subsequent Certification dated December 19, 2006 which states:

This is to certify that ATTY. TERCENCIA E. RIVERA, Regional Director, Region IV-B (MIMAROPA), reported for work in this Office from **November 13, 2006 up to November 24, 2006.** x x x^[24] (Emphasis in the original; underscoring omitted.)

Thereafter, Deputy Chief Public Attorney Silvestre Mosing issued a Memorandum dated December 22, 2006 requiring Atty. Rivera to explain why she should not be held administratively and criminally liable for the "discrepancies" between her Certificate of Service and the Certification issued by DPA Aclan.^[25]

On December 27, 2006, Atty. Rivera submitted her Comment/Explanation which states, in part:

With due respect, there is no irregularity in [my Certificate of Service], as shown hereunder:

November 1, 2006 All Saints Day
November 2 & 3, 2006 On leave
November 4 & 5, 2006 Saturday & Sunday
November 6-10, 2006 PAO-convention, Manila Hotel
November 13-24, 2006 PAO-District Office, Batangas City
November 25 & 26, 2006 Saturday & Sunday
November 27-30, 2006 On leave

I do not see any need to attach a Certificate of Appearance or approved Travel Order when I am on leave.^[26]

After consideration, the PAO Legal Research Division issued its Report and Recommendation dated January 5, 2007 recommending that Atty. Rivera be held administratively liable for violation of: (i) Civil Service (CSC) Omnibus Rules on Leave; (ii) PAO Memorandum Circular No. 18, series of 2002 on reasonable office rules and regulations; (iii) Falsification of Official Documents treated under Section 52(A)(6), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service

(URACCS); and (iv) Dishonesty treated under Section 52(A)(1) of the URACCS.^[27] The Report and Recommendation was forwarded to the Presidential Anti-Graft Commission (PAGC) for action, Atty. Rivera being a presidential appointee.^[28]

Acting on the Report and Recommendation, Executive Secretary Eduardo Ermita issued an Order dated June 12, 2007, placing Atty. Rivera under preventive suspension for a period not exceeding ninety (90) days.^[29]

Report of the PAO Designated Resident Ombudsman

Later, on August 31, 2007, Atty. Melita S. Recto (Atty. Recto), the PAO Designated Resident Ombudsman, issued a Report^[30] recommending that Atty. Rivera be held administratively and criminally liable for the above-detailed acts committed during her incumbency as Public Attorney. In essence, the Report lent credence to the findings of the DOJ and PAO Legal Research Division. The penultimate portion of the Report states:

RECOMMENDATION

x x x In view of the above-stated disquisitions, the undersigned most respectfully recommends that [Atty. Rivera] be criminally charged for:

- a. Violation of [Section] 7 (D) of [RA 6713]
- b. Falsification of Official Document

Atty. Rivera should likewise be administratively charged for:

- c. Four (4) counts of Neglect of Duty [as] defined under Section 52 A (2), Rule IV of the [URACCS] in relation to Section 5 (B) of [RA 6713].

[d.] Simple Misconduct under Section 52 (B) (4) Rule IV of the [URACCS] in relation to violation of PAO Memorandum Circular No. 18, Series of 2002.^[31]

On the basis of the findings in said Report, Atty. Recto (as PAO Designated Resident Ombudsman), together with the National Bureau of Investigation (NBI), filed the Criminal Complaints against Atty. Rivera.

On September 1, 2010, the Ombudsman issued the Assailed Resolution dismissing the Criminal Complaints, thus:

PREMISES CONSIDERED, the separate complaints for alleged violation of Section 7, paragraph (b), subparagraph (2), and paragraph (d) of [RA 6713]; Section 3, paragraph (e), of [RA 3019], as amended; and Article 171, paragraph (4) of [the RPC], as amended; filed by [Atty. Recto] and the [NBI] against respondent [Atty. Rivera] are hereby **DISMISSED** for lack of probable cause.

SO ORDERED.^[32]

PAO filed a Motion for Reconsideration^[33] and subsequent Supplemental Motion for Reconsideration^[34] dated September 24, 2010 and October 26, 2010, respectively. Both motions were denied by the Ombudsman for lack of merit in the Assailed Order dated November 30, 2010.^[35]

PAO received a copy of the Assailed Order on June 1, 2011.^[36] Hence, PAO filed the present Petition on July 29, 2011.

The Issue

The sole issue for this Court's resolution is whether the Ombudsman acted in grave abuse of discretion when it directed the dismissal of the Criminal Complaints against Atty. Rivera for lack of probable cause.

The Court's Ruling

Time and again, this Court has consistently stressed that a petition for *certiorari* is a special civil action that may be resorted to only for the limited purpose of correcting errors of jurisdiction, and not errors of judgment.^[37] In turn, errors of jurisdiction proceed from grave abuse of discretion, or such capricious and whimsical exercise of judgment tantamount to lack of jurisdiction.^[38] In this Petition, such grave abuse discretion is imputed to the Ombudsman.

Under the 1987 Constitution, the Ombudsman is mandated to investigate acts or omissions of public officials or employees which appear to be illegal, unjust, improper, or inefficient.^[39] Accordingly, the Ombudsman is vested with investigatory and prosecutorial powers to fulfill its constitutional mandate.^[40] The Ombudsman's powers are plenary in nature, designed to insulate it from outside pressure and influence.^[41]

Nevertheless, the plenary nature of the Ombudsman's powers does not place it beyond the scope of the Court's power of review. Under its expanded jurisdiction, the Court may strike down the act of any branch or instrumentality of the government, including the Ombudsman, on the ground of grave abuse of discretion.^[42] However, for the extraordinary writ of *certiorari* to issue against the actions of the Ombudsman, the petitioner must show that the latter's exercise of power had been done in an arbitrary or despotic manner. Such abuse of power must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.^[43]

The allegations in the Petition failed to show that the Assailed Resolution and Order had been issued in the foregoing manner. Accordingly, the Court resolves to deny the instant Petition on this ground.

The Assailed Resolution and Order were issued within the bounds of the Ombudsman's investigatory and prosecutorial powers.

PAO asserts that the Ombudsman "overzealously exceeded its mandate by requiring more than the quantum of evidence needed to support a finding of probable cause." PAO claims that the Ombudsman effectively demanded it to present evidence