

OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS. PRESIDING JUDGE JOSEPH CEDRICK O. RUIZ, REGIONAL TRIAL COURT, BRANCH 61, MAKATI CITY, RESPONDENT.

A.M. No. RTJ-13-2361 [Formerly OCA IPI No. 13-4144-RTJ]. February 02, 2016

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PER CURIAM:

Before us is the administrative complaint filed by the Office of the Court Administrator (OCA) against respondent Judge Joseph Cedrick O. Ruiz, Presiding Judge of the Regional Trial Court (RTC), Branch 61, Makati City.

This administrative case traces its roots to the Informations for violation of Section 3(e)[1] of Republic Act (R.A.) No. 3019 and malversation of public funds[2] filed by the People of the Philippines against the respondent judge before the Sandiganbayan. The case was docketed as Criminal Case Nos. 27467-68.

The Informations essentially alleged that the respondent, then the City Mayor of Dapitan City, had conspired with Police Inspector (P/Insp.) Pepe Nortal to facilitate the latter's withdrawal of P1 million from the Confidential and Intelligence Fund (CIF) and, thereafter, used this amount for his (the respondent's) personal benefit.

In its decision[3] dated April 29, 2013, the Sandiganbayan's First Division found the respondent guilty beyond reasonable doubt of the crimes charged.

The Sandiganbayan held that the prosecution successfully proved that the respondent "instigated" Nortal's withdrawal of a P1 million cash advance from the CIF allotted for the Mayor's Office, and that he (the respondent) received and used this amount for his personal benefit. The court found that the respondent directed Nortal's request for the cash advance because he (the respondent) already had four (4) unliquidated cash advances as of December 31, 2006, and that three of these cash advances (with a total of P1,384,280.00) already came from the CIF. The testimonies of the city treasurer, the city accountant, and the city budget officer supported the conclusion that the respondent actively worked for the approval of the P1 million cash advance.

The Sandiganbayan also found that the respondent acted in bad faith since the cash advance was made five (5) days after he had lost his bid for re-election, and that the proposed withdrawal covered the CIF appropriations for the entire year. The court likewise found no merit in the respondent's defense of denial.

The Sandiganbayan accordingly imposed the following penalties on the respondent: (a) the indeterminate penalty of six (6) years and one (1) month, as minimum, to eight (8) years, as maximum, in Criminal Case No. 27467 for violation of Section 3(e) of R.A. No. 3019; (b) the indeterminate penalty of twelve (12) years and one (1) day of reclusion temporal minimum, as minimum, to eighteen (18) years and one (1) day of reclusion temporal maximum, as maximum, in Criminal Case No. 27468 for malversation; and (c) perpetual special disqualification. The court also ordered him to pay a P950,000.00 fine; and P950,000.00 as indemnity to the City of Dapitan.

The respondent moved for the reconsideration of the judgment of conviction and likewise moved for a new trial, but the Sandiganbayan denied these motions in its resolution[4] of August 28, 2013.

The OCA received a copy of the Sandiganbayan's April 29, 2013 decision in Criminal Case Nos. 27467 and 27468, and in its Report[5] of October 4, 2013, made the following recommendations:

x x x Respectfully submitted for the consideration of this Honorable Court are the following recommendations:

- that the instant report be considered a formal complaint against Joseph Cedrick O. Ruiz, Presiding Judge, Branch 61, Regional Trial Court, Makati City, for conviction of a crime involving moral turpitude and that the same be RE-DOCKETED as a regular administrative matter;
- that Judge Joseph Cedrick O. Ruiz be FURNISHED a copy of this report and that he be required to comment thereon within ten (10) days from notice; and
- that Judge Joseph Cedrick O. Ruiz be SUSPENDED without pay and other monetary benefits effective immediately from his receipt of this Court's resolution, pending resolution of the instant administrative matter, or until lifted by this Honorable Court.[6]

x x x x (emphasis in the original)

The OCA reasoned out that conviction of a crime involving moral turpitude is classified as a serious charge under Section 8(b) of Rule 140 of the Rules of Court. It likewise explained that the Court's power to preventively suspend judges, although not clearly -delineated under Rule 140 of the Rules of Court, is inherent in its power of administrative supervision over all courts and their personnel, and that a judge can be preventively suspended until a final decision is reached in an administrative case against him.

The records also showed that on October 18, 2013, the respondent filed with this Court a petition for review on certiorari assailing his convictions by the Sandiganbayan in Criminal Case Nos. 27467 and 27468. This case was docketed as G.R. Nos. 209073-74.[7]

In its November 20, 2013 minute resolution,[8] the Court's Third Division resolved: (1) to re-docket the OCA report dated October 4, 2013, as a regular administrative matter, and to consider it as a formal complaint against the respondent for having been convicted of a crime involving moral turpitude; (2) to furnish the respondent a copy of the OCA's Report, and to require him to file a comment; and (3) to suspend the respondent from office without pay and other monetary benefits, effective immediately from his receipt of "this Court's Resolution, pending resolution of the instant administrative matter, or until lifted by this Court."

In his comment dated January 24, 2014, the respondent posited that the administrative complaint against him is premature because his Sandiganbayan convictions in Criminal Case Nos. 27467 and 27468 are not yet final. The respondent also stated that he went on leave of absence after his Sandiganbayan conviction, and had submitted his application for optional retirement on May 27, 2013 (to take effect on December 31, 2013). The respondent thus argued that there was no more need to suspend him from office because he should be considered already retired from government service when he received on January 9, 2014, a copy of the Court's November 20, 2013 Resolution.

THE COURT'S RULING

We resolve to dismiss the respondent from the service he has dishonored and to bar him from the ranks of legal professionals whose standards he has likewise transgressed.

I. The Court's disciplinary powers over justices and judges

We find no merit in the respondent's claim that the present administrative case against him is premature because his criminal convictions by the Sandiganbayan are not yet final.

Section 6, Article VIII of the 1987 Constitution grants the Supreme Court administrative supervision over all courts and their personnel. This grant empowers the Supreme Court to oversee the judges' and court personnel's administrative compliance with all laws, rules, and regulations,[9] and to take administrative actions against them if they violate these legal norms.[10]

In the exercise of this power, the Court has promulgated rules of procedure in the discipline of judges. Section 1, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, provides:

SECTION 1. How instituted. Proceedings for the discipline of Judges of regular and special courts and Justices of the Court of Appeals and the Sandiganbayan may be instituted motu proprio by the Supreme Court or upon a verified complaint, supported by affidavits of persons who have personal knowledge of the facts alleged therein or by documents which may substantiate said allegations, or upon an anonymous complaint, supported by public records of indubitable integrity. The complaint shall be in writing and shall state clearly and concisely the acts and omissions constituting violations of standards of conduct prescribed for Judges by law, the Rules of Court, or the Code of Judicial Conduct.

Based on this rule, disciplinary proceedings against sitting judges and justices may be instituted: (a) motu proprio, by the Court itself; (b) upon verified complaint, supported by the affidavits of persons with personal knowledge of the facts alleged, or by documents substantiating the allegations; or (c) upon anonymous complaint supported by public records of indubitable integrity.[11]

It was pursuant to this power that the Court - on its own initiative -ordered the re-docketing of the OCA's report as a formal complaint against the respondent and as a regular administrative matter for the Court's consideration.

The Court likewise possesses the power to preventively suspend an administratively charged judge until a final decision is reached, particularly when a serious charge is involved and a strong likelihood of guilt exists. This power is inherent in the Court's power of administrative supervision over all courts and their personnel as a measure to allow unhampered formal investigation. It is likewise a preventive measure to shield the public from any further damage that the continued exercise by the judge of the functions of his office may cause.

In the present case, we placed the respondent under preventive suspension because he is alleged to have committed transgressions that are classified as serious under Section 8, Rule 140 of the Rules of Court, which provides:

SEC. 8. Serious charges. - Serious charges include:

- Bribery, direct or indirect;
- Dishonesty and violations of the Anti-Graft and Corrupt Practices Law (R.A. No. 3019);
- Gross misconduct constituting violations of the Code of Judicial Conduct;
- Knowingly rendering an unjust judgment or order as determined by a competent court in an appropriate proceeding;
- Conviction of a crime involving moral turpitude;
- Willful failure to pay a just debt;
- Borrowing money or property from lawyers and litigants in a case pending before the court;
- Immorality;
- Gross ignorance of the law or procedure;

- Partisan political activities; and
- Alcoholism and/or vicious habits. (emphasis supplied)

The respondent's convictions by the Sandiganbayan for violation of Section 3(e) of R.A. No. 3019 and for malversation of public funds confirm that the administrative charges for which he may be found liable are serious charges under Section 8(2) of Rule 140 of the Rules of Court, as amended. Malversation is likewise considered as a serious charge since it is a crime involving moral turpitude.

While the term moral turpitude does not have one specific definition that lends itself to easy and ready application,[12] it has been defined as an act of baseness, vileness, or the depravity in the performance of private and social duties that man owes to his fellow man or to society in general.[13]

Notably, jurisprudence has categorized the following acts as crimes involving moral turpitude: abduction with consent, bigamy, concubinage, smuggling, rape, attempted bribery, profiteering, robbery, murder, estafa, theft, illicit sexual relations with a fellow worker, violation of Batas Pambansa Blg. 22, intriguing against honor, violation of the Anti-Fencing Law, violation of the Dangerous Drugs Act, perjury, forgery, direct bribery, frustrated homicide, adultery, arson, evasion of income tax, barratry, blackmail, bribery, duelling, embezzlement, extortion, forgery, libel, making fraudulent proof of loss on insurance contract, mutilation of public records, fabrication of evidence, offenses against pension laws, perjury, seduction under the promise of marriage, estafa, falsification of public document, and estafa thru falsification of public document.

To our mind, malversation - considering its nature - should not be categorized any differently from the above listed crimes. The act of embezzling public funds or property is immoral in itself; it is a conduct clearly contrary to the accepted standards of justice, honesty, and good morals.[14]

The preventive suspension we impose pending investigation is not a penalty but serves only as a preventive measure as we explained above. Because it is not a penalty, its imposition does not violate the right of the accused to be presumed innocent. It also matters not that the offenses for which the respondent had been convicted were committed in 2001 when he was still the Mayor of Dapitan City.[15] As explained below, it is likewise immaterial that his criminal convictions by the Sandiganbayan are still on appeal with this Court.

Optional early retirement

The records show that the respondent wrote the Court a letter on May 27, 2013 (or soon after his Sandiganbayan convictions), requesting that he "be allowed to optionally retire effective November 30, 2013." [16] He later requested, in another letter, [17] that the effectivity date of his optional retirement be changed from November 30, 2013 to December 31, 2013.

The Court has not acted on the respondent's request for optional early retirement in view of his standing criminal convictions; he stands to suffer accessory penalties affecting his qualification to retire from office should his convictions stand.[18] The OCA records[19] also show that he is currently on "on leave of absence" status. In any case, that a judge has retired or has otherwise been separated from the service does not necessarily divest the Court of its jurisdiction to rule on complaints filed while he was still in the service. As we held in *Gallos v. Cordero*: [20]

The jurisdiction that was ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent had ceased in office during the pendency of his case. The Court retains jurisdiction either to pronounce the respondent public official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustice and pregnant with dreadful and dangerous implications x x x If innocent, respondent public official merits vindication of his name and integrity as he leaves the government

which he has served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.

Nor does separation from office render a pending administrative charge moot and academic.[21]

II. Administrative Liability

In the present case, our task is not to determine the correctness of the Sandiganbayan's ruling in Criminal Case Nos. 27467-68, a case that is separately pending before us and which we shall consider under the evidentiary rules and procedures of our criminal laws.

In the present proceedings, our function is limited to the determination of whether substantial evidence exists to hold the respondent administratively liable for acts he is alleged to have committed while he was still the mayor of Dapitan City.

In this determination, it is immaterial that the respondent was not yet a member of the Judiciary when he allegedly committed the acts imputed to him; judges may be disciplined for acts committed prior to their appointment to the judiciary. Our Rules itself recognizes this situation, as it provides for the immediate forwarding to the Supreme Court for disposition and adjudication of charges against justices and judges before the IBP, including those filed prior to their appointment to the judiciary. It need not be shown that the respondent continued to do the act or acts complained of; it is sufficient that the evidence on record supports the charge/s against the respondent through proof that the respondent committed the imputed act/s violative of the Code of Judicial Conduct and the applicable provisions of the Rules of Court.[22]

In *Office of the Court Administrator v. Judge Sardido*,[23] the Court definitively ruled that:

The acts or omissions of a judge may well constitute at the same time both a criminal act and an administrative offense. Whether the criminal case against Judge Hurtado relates to an act committed before or after he became a judge is of no moment. Neither is it material that an MTC judge will be trying an RTC judge in the criminal case. A criminal case against an attorney or judge is distinct and separate from an administrative case against him. The dismissal of the criminal case does not warrant the dismissal of an administrative case arising from the same set of facts. x x x (emphases supplied)

We reiterate that only substantial evidence is required to support our conclusions in administrative proceedings.[24] Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. The standard of substantial is satisfied when there is reasonable ground to believe that the respondent is responsible for the misconduct complained of, even if such might not be overwhelming or even preponderant.[25] That the respondent committed acts constituting malversation or violations of the Anti-Graft and Corrupt Practices Act should be adjudged in the same manner that other acts classified as serious charges under Rule 140 (such as bribery, immorality, gross misconduct, dishonesty, and partisan political activities) should be weighed — through substantial evidence.[26] Expressed from the point of view of criminal law, evidence to support a conviction in a criminal case is not necessary in an administrative proceeding like the present case.

The Sandiganbayan, in considering the respondent's guilt in the criminal case before it, gave full probative value to the testimonies of Fatima Ruda (OIC-City Budget Officer), Jose R. Torres (OIC-City Treasurer), Glendora Deloria (City Accountant), and Pepe Nortal (Police Inspector of the Dapitan City Police). These conclusions and approach do not mean that we shall not examine, on our own in the present proceedings, the evidence on record before us.

For purposes of the original administrative proceeding before us and to fully accord the respondent the due

process owed him in these proceedings, we shall examine all the evidence adduced and apply to these pieces of evidence the substantial evidence rule that the present proceedings require. This approach is only proper, as the present proceeding is not an appeal from the Sandiganbayan ruling but is an original one for purposes of establishing or negating the claimed administrative liability on the part of the respondent.

What do the evidence on record show?

Torres testified that when his office received a Request for Obligation Allotment (ROA)[27] and a Disbursement Voucher (DV)[28] on May 16, 2001, for a P1 million cash advance payable to Nortal, he immediately sent a letter to the respondent (through the City Budget Officer) informing him that he could not accommodate the request because the CIF appropriation covered the whole of 2001, and that Nortal was not properly bonded.

On the same day, Torres' letter was returned with the respondent's handwritten notation asking him to reconsider his position. Torres eventually signed the ROA after the respondent prevailed upon him to reconsider,[29] although he still noted his objection to the payment of the claim when he received the disbursement voucher from the accounting office, on the belief that the disbursement should only cover two quarters, not the whole year.

In his affidavit, Torres stated that the CIF could not be released without the respondent's approval because this fund was an appropriation under the Office of the City Mayor.

Ruda declared on the witness stand that right after the May 11, 2001 elections, the respondent directed her to release the whole appropriation (totalling P1 million) for the CIF. Ruda hesitated to do as told considering that the respondent's term would end on June 30, 2001, while the amount to be released corresponded to the appropriation for the entire 2001. Ruda gave in to the respondent's request after the latter stressed to her that he (respondent) was still the mayor until the end of June 2001.

In her affidavit, Ruda stated that it was not customary for her office to release, in the middle of the year, the whole intelligence fund appropriation for the year.

Deloria testified that when she received a ROA and a DV for a P1 million CIF cash advance, she informed the respondent that the amount requested covered the appropriations for the entire 2001. The respondent informed her that the city government needed the money badly. Ruda reviewed the request and found out that the payee, Nortal, had not yet posted a fidelity bond. The respondent told Ruda that he had already applied for Nortal's bond.

In her affidavit, Deloria stated that it was the first time that her office processed a request for funds intended for the entire year.

Nortal, for his part, narrated that the respondent asked him on May 16, 2001, to withdraw P1 million from the CIF on his (respondent's) behalf. Nortal initially refused since he might not be able to liquidate this amount as the respondent had lost in the elections. Instead, Nortal suggested that the Chief of Police be asked to make the withdrawal. The respondent, however, assured Nortal that one of his men would help him liquidate the requested amount. Nortal thus yielded to the respondent's request and proceeded to the City Budget Office to sign the covering ROA and DV.

Nortal added that the respondent's private secretary picked him up at his house on May 30, 2001, informing him that the check of P1 million was already at the Treasurer's Office. After securing the check, they proceeded to the Philippine National Bank (PNB) in Dipolog City to encash it. Thereafter, they went to the respondent's office where Nortal handed him the P1 million. Nortal asked the respondent for a receipt, but the latter refused to issue one; instead, the respondent gave him P50,000.00 to be used in the city's drug operations.

In his affidavit, Nortal stated that the respondent told him that he (respondent) could no longer make any cash'

advances since he had unliquidated cash advances.

Leonilo Morales, State Auditor of the City Auditor's Office from 1997 to 2000, corroborated Nortal's affidavit when he testified that the respondent had not liquidated his cash advances from the CIF.

Aside from the testimonies of these witnesses and their respective affidavits, the records before the Sandiganbayan are replete with documentary proof showing that the respondent committed the acts attributed to him. The respondent failed to refute these pieces of evidence before the Sandiganbayan or in the comment he filed with this Court.

The respondent's signature on the following documents showed that he facilitated Nortal's withdrawal of P1 million from the CIF: (a) Disbursement Voucher No. 105.0105.3888; (b) Request for Obligation Allotment; and (c) PNB Check No. 0001097358.

The respondent's signature, as approving officer, on Disbursement Voucher No. 105.0105.3888, proved that he authorized the disbursement of a P1 million cash advance "to defray Confidential and Intelligence Expenses." [30] The respondent's signature on the ROA also showed that he (and Nortal) requested P1 million to be used for confidential expenses. Finally, the respondent's signature on the PNB check established that he allowed Nortal to withdraw the requested amount.

Considering that the CIF was an appropriation under the Mayor's Office, it is unlikely that Nortal would attempt to withdraw the P1 million CIF cash advance without the respondent's imprimatur. In other words, Nortal — even if he wanted to — could not have withdrawn any amount from the CIF without the approval and authority of the respondent City Mayor.

That the respondent authorized the withdrawal of the entire CIF for the year 2001 after he lost in his reelection bid (and less than two months before the expiration of his term) is indicative of his bad faith. We note that several of the city's financial officers, no less, made known to him their objections to the request due to its patent irregularity.

Indeed, if the request for cash advance request had been legitimate, there would have been no need for Nortal's intervention in effecting a withdrawal as the respondent was the City Mayor and the CIF was a fund under his office. This reality validates Nortal's claim that the respondent could no longer withdraw from the CIF because he already had existing unliquidated advances.

Significantly, the records show that the withdrawn amount was never liquidated as shown by the Commission on Audit's schedule of unliquidated cash advances as of January 31, 2013. No evidence also exists showing that the withdrawn fund had been used for its intended purposes, i.e., for confidential or intelligence activities.

Viewed against the positive declarations of the prosecution witnesses, which are supported by the documents on record, the respondent's denial cannot stand. The respondent even failed to substantiate his claim that the charges against him had been politically motivated. Thus, by substantial evidence, we consider it fully established that the respondent actively worked for the approval of the P1 million cash advance from the CIF; that he facilitated the withdrawal of the P1 million by Nortal; and that he received and used this withdrawn amount for his personal benefit.

III. The Appropriate Penalty

Section 11 of Rule 140, as amended, states that [i]f the respondent is guilty of a serious charge, any of the following sanctions may be imposed: (a) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including

government-owned or -controlled corporations; (b) suspension from office without salary and other benefits for more than three but not exceeding six months; or (c) a fine of more than P20,000.00 but not exceeding P40,000.00.

Considering the nature and extent of the respondent's transgressions, we find the imposition of the supreme administrative penalty of dismissal to be appropriate. The people's confidence in the judicial system is founded not only on the competence and diligence of the members of the bench, but also on their integrity and moral uprightness.[31] We would violate this standard and unduly tarnish the image of the Judiciary if we allow the respondent's continued presence in the bench. We would likewise insult the legal profession if we allow him to remain within the ranks of legal professionals.

We emphasize that judges should be the embodiment of competence, integrity, and independence, and their conduct should be above reproach. They must adhere to exacting standards of morality, decency, and probity. A magistrate is judged, not only by his official acts, but also by his private morality and actions. Our people can only look up to him as an upright man worthy of judging his fellow citizens' acts if he is both qualified and proficient in law, and equipped with the morality that qualifies him for that higher plane that standing as a judge entails.

In *Conrado Abe Lopez v. Judge Rogelio S. Lucmayon*,[32] we ruled that:

The Code of Judicial Ethics mandates that the conduct of a judge must be free of a whiff of impropriety not only with respect to his performance of his judicial duties, but also to his behavior outside his sala as a private individual. There is no dichotomy of morality: a public official is also judged by his private morals. The Code dictates that a judge, in order to promote public confidence in the integrity and impartiality of the judiciary, must behave with propriety at all times. As we have recently explained, a judge's official life cannot simply be detached or separated from his personal existence. (emphasis ours)

The conduct of judges, official or otherwise, must always be beyond reproach and must be free from any suspicion tainting him, his exalted office, and the Judiciary. A conduct, act, or -omission repugnant to the standards of public accountability and which tends to diminish the people's faith and confidence in the Judiciary, must invariably be handled with the required resolve through the imposition of the appropriate sanctions imposed by law[33] and by the standards and penalties applicable to the legal profession.

Administrative Matter No. 02-9-02-SC (which took effect on October 1, 2002) provides that an administrative case against a judge of a regular court based on grounds which are also grounds for the disciplinary action against members of the Bar, shall be considered as disciplinary proceedings against such judge as a member of the Bar. It also states that judgment in both respects may be incorporated in one decision or resolution.

Section 27, Rule 138 of the Rules of Court, on the other hand, provides that a lawyer may be removed or suspended from the practice of law, among others, for conviction of a crime involving moral turpitude:

Sec. 27. Attorneys removed or suspended by the Supreme Court on what grounds. — A member of the bar may be removed or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a wilfull disobedience of any lawful order of a superior court, or for corruptly or willful appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

In *Bengco v. Bernardo*,[34] we ruled that it is not sound judicial policy to await the final resolution of a criminal case before a complaint against a lawyer may be acted upon; otherwise, this Court will be rendered helpless to

apply the rules on admission to, and continuing membership in the legal profession during the whole period that the criminal case is pending final disposition, when the objectives of the two proceedings are vastly disparate. Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare and to save courts of justice from persons unfit to practice law. The attorney is called to answer to the court for his conduct as an officer of the court.

WHEREFORE, premises considered, Judge Joseph Cedrick O. Ruiz is hereby DISMISSED FROM THE SERVICE with forfeiture of all benefits, except accrued leave credits, and with prejudice to reemployment in the Government or any of its subdivisions, instrumentalities, or agencies including government-owned and -controlled corporations. As a consequence of this ruling, Judge Ruiz is likewise declared DISBARRED and STRICKEN FROM the roll of attorneys.

Let a copy of this Decision be (1) attached to the records of Judge Ruiz with the Office of the Bar Confidant of this Court and with the Integrated Bar of the Philippines, and (2) posted at the Supreme Court website for the information of the Bench, the Bar, and the general public.

SO ORDERED.

Sereno, C. J., Carpio, Leonardo-De Castro, Brion, Del Castillo, Mendoza, Reyes, Perlas-Bernabe, and Jardeleza, JJ., concur.

Velasco, Jr., J., I join the Dissent of J. Bersamin.

Peralta, J., No part.

Bersamin, J., Please see Dissent.

Perez, J., I join J. Bersamin in his Dissent.

Leonen, J., See separate Concurring.

Caguioa, J., On official leave.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on February 2, 2016 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled administrative matter, the original of which was received by this Office on February 26, 2016 at 2:25 p.m.

Very truly yours,

(SGD)FELIPA G. BORLONGAN-ANAMA

Clerk of Court

[1] Section 3(e) of R.A. No. 3019 provides:

SEC. 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) 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. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[2] Art. 217. Malversation of public funds or property. - Presumption of malversation. - Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer: x x x

[3] Rollo, pp. 1-26; penned by Associate Justice Efren N. Dela Cruz, and concurred in by Associate Justices Rodolfo A. Ponferrada and Rafael R. Lagos.

[4] Id. at 27-35. In the same resolution, the Sandiganbayan granted the respondent's request for correction of errors in his motion for reconsideration.

[5] Id. at 36-42. The Report was signed by Court Administrator Midas P. Marquez and OCA Chief of Office (Legal) Wilhelmina D. Geronga.

[6] Id. at 42.

[7] On October 2, 2013, the respondent filed a motion for extension of time to file a petition for review on certiorari, but the Court denied this motion in its resolution dated October 16, 2013 for failure to show that petitioner has not lost the 15-day reglementary period to appeal, in view of the lack of statement of material date of receipt of the resolution denying the motion for reconsideration. The Court, however, granted the respondent's motion for reconsideration, and admitted the respondent's petition for review on certiorari in its resolution of January 27, 2014. In the same resolution, the Court also required the People of the Philippines to file its Comment to the petition.

[8] Rollo, p. 43.

[9] See Civil Service Commission v. Andal, G.R. No. 185749, December 16, 2009, 608 SCRA 370, 377.

[10] Agpalo, Legal and Judicial Ethics (2009), Eighth Edition, p. 686.

[11] See Lubaton v. Lazaro, A.M. No. RTJ-12-2320, September 2, 2013, 704 SCRA 404, 409-410.

[12] See Concurring Opinion of J. Brion in Teves v. Commission on Elections, G.R. No. 180363, April 28, 2009, 587 SCRA 1, 27.

[13] See Re: SC Decision Dated May 20, 2008 in G.R. No. 161455 Under Rule 139-B of the Rules of Court v. Atty. Rodolfo D. Pactolin, A.C. No. 7940, April 24, 2012, 670 SCRA 366, 371.

[14] Supra note 12, at 25-27.

[15] The respondent was appointed as Presiding Judge of Branch 49 of the RTC of Iloilo Normal 0 false false false EN-US X-NONE X-NONE MicrosoftInternetExplorer4 /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-priority:99; mso-style-qformat:yes; mso-style-parent:""; mso-padding-alt:0cm 5.4pt 0cm 5.4pt; mso-para-margin-top:0cm; mso-para-margin-right:0cm; mso-para-margin-bottom:10.0pt; mso-para-margin-left:0cm; line-height:115%; mso-pagination:widow-orphan; font-size:11.0pt; font-family:"Calibri","sans-serif"; mso-ascii-font-family:Calibri; mso-ascii-theme-font:minor-latin; mso-hansi-font-family:Calibri; mso-hansi-theme-font:minor-latin; mso-bidi-font-family:"Times New Roman";

mso-bidi-theme-font:minor-bidi;} City on December 17, 2003; and as Presiding Judge of the RTC, Branch 61, Makati City on July 1, 2009.

[16] Rollo, p. 348.

[17] Id. at 350.

[18] See Articles 30-33 and 40-45, Revised Penal Code, as amended.

[19] <http://oca.judiciary.gov.ph/wp>, visited on April 27, 2015. The records also disclosed that the respondent filed an application for leave on the following dates: May 6-10, 14-17, 20-24, 27-31, 2013; June 3-7, 10-11, 13-14, 17-21, 24-28, 2013; July 1-5; 8-12, 15-19, 22-31, 2013; August 1-2, 5-8, 12-16, 19-20, 22-23, 27-30, 2013; September 2-6, 9-13, 16-20, 23-27, and 30, 2013; October 2-4, 7-11, 14-18, 21-25, and 28-31, 2013; November 4-8, 11-15, 18-20, 25-29, 2013; and December 2-6, 9-13, 16-20, 23, 26-27, 2013.

[20] See *Gallo v. Cordero*, A.M. No. MTJ-95-1035, June 21, 1995, 245 SCRA 219, 226, citing *Zarate v. Romanillos*, 312 Phil. 679 (1995).

[21] See *Concerned Trial Lawyers of Manila v. Veneracion*, A.M. No. RTJ-05-1920 (Formerly OCA I.P.I. No. 01-1141-RTJ), April 26, 2006, 488 SCRA 285, 298-299, citing *Office of the Court Administrator v. Fernandez*, A.M. No. MTJ-03-1511, August 20, 2004, 437 SCRA 81.

[22] *Heck v. Judge Santos*, 467 Phil. 798, 818 (2004).

[23] 449 Phil. 619, 628 (2003).

[24] *Re: Allegations Made Under Oath that the Senate Blue Ribbon Committee Hearing Held on September 26, 2013 Against Associate Justice Gregory S. Ong, Sandiganbayan*, A.M. No. SB-14-21-J (Formerly A.M. No. 13-10-06-SB), September 23, 2014, 736 SCRA 120.

[25] See *Liquid v. Judge Camano*, 435 Phil. 695, 706-707 (2002).

[26] See similar discussions in Separate Concurring Opinion of Justice Arturo D. Brion in *Re: Allegations Made Under Oath that the Senate Blue Ribbon Committee Hearing Held on September 26, 2013 Against Associate Justice Gregory S. Ong, Sandiganbayan*, *supra* note 24.

[27] No. 101-1011-05-0204-01.

[28] No. 101-0105-3888.

[29] Torres signed the ROA, but wrote, "Provided that Police Inspector Nortal is duly bonded."

[30] Rollo, p. 170.

[31] *P/S Insp. Fidel v. Judge Caraos*, 442 Phil. 236, 242 (2002).

[32] A.M. No. MTJ-13-1837 [formerly OCA IPI No. 12-2463-MTJ], September 24, 2014, 736 SCRA 291, citing *Vadana v. Valencia*, 356 Phil. 317, 329-330 (1998).

[33] See *En Banc's Resolution in In Re: Undated Letter Mr. Louis C. Diraogo, Petitioner in Biraogo v. Limkaichong*, G.R. No. 179120, A.M. No. 09-2-19, August 11, 2009.

[34] A.C. No. 6368, June 13, 2012, 672 SCRA 8, 19, citing *Yu v. Palaña*, A.C. No. 7747, July 14, 2008, 558 SCRA 21.

CONCURRING OPINION

LEONEN, J.:

This court resolves an administrative Complaint filed by the Office of the Court Administrator against respondent Judge Joseph Cedrick O. Ruiz, Presiding Judge of Branch 61 of the Regional Trial Court, Makati City, for violation of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Law, and for conviction of a crime involving moral turpitude, which are serious charges under Rule 140, Section 8 of the Rules of Court.

Informations for violation of Section 3(e)(1) of Republic Act No. 3019 and malversation of public funds were filed against respondent before the Sandiganbayan.[1] The case was docketed as Criminal Case Nos. 27467-68.

It was alleged that respondent, as then Mayor of Dapitan City, conspired with and facilitated Police Inspector Pepe Nortal's withdrawal of P1 million from the Confidential and Intelligence Fund of the Mayor's Office and used it for his own benefit.[2]

On April 29, 2013, the First Division of the Sandiganbayan found respondent guilty beyond reasonable doubt.[3] Respondent moved for reconsideration and new trial; however, the Sandiganbayan denied his Motions in its August 28, 2013 Resolution.[4]

On October 18, 2013, respondent filed before this court a Petition for Review on certiorari assailing his convictions in Criminal Case Nos. 27467-68. This was docketed as G.R. Nos. 209073-74.[5]

Respondent was found administratively liable. Respondent's convictions before the Sandiganbayan constitute serious charges under Rule 140, Section 8(2) and (5) of the Rules of Court:[6]

The respondent's convictions by the Sandiganbayan for violation of Section 3(e) of R.A. No. 3019 and for malversation of public funds confirm that the administrative charges for which he may be found liable are serious charges under Section 8(2) of Rule 140 of the Rules of Court, as amended. Malversation is likewise considered as a serious charge since it is a crime involving moral turpitude.[7]

In finding respondent administratively liable, the ponencia laid down the pieces of evidence amounting to substantial evidence that respondent committed the acts complained of and is, thus, guilty of serious charges.[8]

I concur with the finding of respondent's administrative liability. Rule 140, Section 11 of the Rules of Court provides the sanctions a judge may suffer if he or she is found guilty of a serious charge:

SEC. 11. Sanctions.—A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations: Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;
2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or
3. A fine of more than P20,000.00 but not exceeding P40,000.00.[9]

In *National Bureau of Investigation v. Reyes*,[10] the respondent judge was dismissed from service and disbarred

for being guilty of malfeasance through bribery, which is a serious charge under the Rules of Court. In *Office of the Court Administrator v. Indar*,^[11] the respondent judge was dismissed for issuing decisions without conducting judicial proceedings. This constituted a serious charge under Rule 14.0, Section 8 of the Rules of Court.^[12]

However, I must clarify that the acts committed by judges or justices prior to their appointment to the judiciary must not be automatically taken to affect their standing or qualification as members of the judiciary.

The ponencia stated that:

In this determination, it is immaterial that the respondent was not yet a member of the Judiciary when he allegedly committed the acts imputed to him; judges may be disciplined for acts committed prior to their appointment to the judiciary. Our Rules itself recognizes this situation, as it provides for the immediate forwarding to the Supreme Court for disposition and adjudication of charges against justices and judges before the IBP, including those filed prior to their appointment to the judiciary. It need not be shown that the respondent continued to do the act or acts complained of; it is sufficient that the evidence on record supports the charge/s against the respondent through proof that the respondent committed the imputed act/s violative of Code of Judicial Conduct and the applicable provisions of the Rules of Court.^[13] (Emphasis supplied)

While it is true that the acts of judges or justices committed prior to appointment to the judiciary may be a basis for disciplinary measures by this court, qualifications as to when a judge or justice may be removed must be made.

There may be situations where a closer review of the facts and corresponding charges or crimes is necessary. For example, the Judicial and Bar Council may have known about an applicant's pending case but chose to regard him or her as qualified. Before an applicant is appointed to the judiciary, he or she is subjected to the rigorous application and nomination procedure by the Judicial and Bar Council.^[14] The Rules of the Judicial and Bar Council prescribes the minimum requirements for nominations: constitutional and statutory qualifications; competence, which includes educational preparation, experience, performance, and other accomplishments; integrity; independence; and sound physical, mental, and emotional condition.^[15]

In Rule 4, Section 5 of the Rules of the Judicial and Bar Council, persons are disqualified from being nominated for appointment to the judiciary when they have pending criminal or administrative cases before courts:

SEC. 5. Disqualification. - The following are disqualified from being nominated for appointment to any judicial post or as Ombudsman or Deputy Ombudsman:

1. Those with pending criminal or regular administrative cases;
2. Those with pending criminal cases in foreign courts or tribunals; and
3. Those who have been convicted in any criminal case; or in an administrative case, where the penalty imposed is at least a fine of more than P10,000, unless he has been granted judicial clemency.

By nominating an applicant for appointment, the Judicial and Bar Council gives its imprimatur to the applicant. It deems the applicant to have the "reputation for honesty, integrity, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards."^[16] If we do not carefully consider the prior acts of judges or justices in relation to their judicial functions and automatically find convictions or pronouncements of guilt as a reflection of the qualifications of the judge or justice, then we disregard the Judicial and Bar Council's nomination process. This disregard is even more apparent when the appointing authority—the President— appoints a nominee from the Judicial and Bar Council's list. To automatically dismiss a judge or justice based on the above grounds undermines the President's appointment.

In another situation, an applicant may not have any pending criminal or administrative charge when he or she applies for a post in the judiciary. After the applicant's appointment to the judiciary, a disgruntled party-litigant decides to look into the judge's past and files criminal charges against him or her. The case may or may not be relevant to the functions of the judge or may not constitute a crime of moral turpitude. However, damage to the judge's perceived integrity and probity has already been made.

The judiciary must find a balance between maintaining the integrity and competence of its judges, justices, and other personnel and protecting its members from harassment that aims to prevent the miscarriage of justice. As this court has said before:

[I]t is established that any administrative complaint leveled against a judge must always be examined with a discriminating eye, for its consequential effects are, by their nature, highly penal, such that the respondent judge stands to face the sanction of dismissal or disbarment. As aforementioned, the filing of criminal cases against judges may be used as tools to harass them and may in the long run create adverse consequences.[17]

ACCORDINGLY, I vote that respondent Judge Joseph Cedrick O. Ruiz, Presiding Judge of Branch 61 of the Regional Trial Court, Makati City, be **DISMISSED** from the service, with forfeiture of all benefits except accrued leave credits, and with prejudice to re-employment in Government or any of its subdivisions, instrumentalities, or agencies, including government-owned and controlled corporations. Respondent should also be **DISBARRED** and his name be stricken from the Roll of Attorneys.

[1] Ponencia, p. 2.

[2] Id.

[3] Id.

[4] Id. at 3.

[5] Id. at 4.

[6] As amended by A.M. No. 01-8-10-SC (2001).

SEC. 8. Serious charges.—Serious charges include:

- Bribery, direct or indirect;
- Dishonesty and violations of the Anti-Graft and Corrupt Practices Law (R.A. No. 3019);
- Gross misconduct constituting violations of the Code of Judicial Conduct;
- Knowingly rendering an unjust judgment or order as determined by a competent court in an appropriate proceeding;
- Conviction of a crime involving moral turpitude;
- Willful failure to pay a just debt;
- Borrowing money or property from lawyers and litigants in a case pending before the court;
- Immorality;
- Gross ignorance of the law or procedure;
- Partisan political activities; and

- Alcoholism and/or vicious habits.

[7] Ponencia, p. 6.

[8] Id. at 12.

[9] As amended by A.M. No. 01-8-10-SC (2001).

[10] 382 Phil. 872 (2000) [Per Curiam, En Banc].

[11] 685 Phil. 272 (2012) [Per Curiam, En Banc].

[12] This was Judge Cader Indar's third offense.

[13] Ponencia, p. 8.

[14] See CONST., art. VIII, sec. 8 and 9.

[15] See JBC - 009, Rules of the Judicial and Bar Council (2000), as amended.

[16] JBC - 009, Rules of the Judicial and Bar Council (2000), as amended, Rule 4, sec. 1.

[17] See Re: Judge Adoracion Angeles, A.M. No. 06-9-545-RTC, 567 Phil. 189 (2008) [Per J. Nachura, Third Division], citing Emmanuel Ymson Velasco v. Judge Adoracion G. Angeles, 557 Phil. 1 (2007) [Per J. Carpio, En Banc] and Mataga v. Judge Rosete, 483 Phil. 235 (2004) [Per J. Ynares-Santiago, First Division].

DISSENT

BERSAMIN, J.:

The Majority of the Court vote to dismiss the respondent Judge from the Judiciary, and to disbar him as well.

I DISSENT. I humbly submit that this administrative matter may be prematurely adjudicated in the light of the pending appeal by the respondent of his convictions. But if it is unavoidable that we find him guilty on the basis of the convictions, I urge that his dismissal from the service and his disbarment are penalties too heavy and too harsh to mete on him under the circumstance of the case.

This administrative matter has been brought about by the receipt by the Office of the Court Administrator (OCA) of a copy of the decision rendered on April 29, 2013 in Criminal Case No. 27467 and Criminal Case No. 27468 entitled *People v. Joseph Cedrick O. Ruiz and Police Inspector Pepe Nortal* respectively charging the accused with violation of Section 3(e) of Republic Act No. 3019 and malversation of public funds, whereby the Sandiganbayan found the respondent guilty beyond reasonable doubt of the crimes charged, and sentenced him to suffer the corresponding indeterminate sentences.

In its ensuing report, the OCA recommended to the Court that the respondent, the incumbent Presiding Judge of Branch 61 of the Regional Trial Court in Makati City, be formally charged for being convicted of crimes involving moral turpitude, and that he be forthwith suspended without pay pending the resolution of the administrative matter, unless the suspension would be lifted by the Court.

I wish to point out, however, that the convictions are not yet final, but are in fact undergoing a timely appeal. By pronouncing him guilty in this administrative matter as to dismiss him from the Judiciary and to disbar him as a member of the Bar, the Majority of the Court are likely prejudicing his appeal. In order not to be unjust, I humbly opine that we should exercise self-restraint, and await the outcome of the appeal before deciding this

administrative matter.

Although there is a distinction between administrative liability and criminal liability, for the purpose of administrative proceedings is mainly to protect the public service to enforce the constitutional tenet that a public office is a public trust, while the objective of the criminal prosecution is the punishment of the crime, any judgment in this administrative matter effectively removes the distinction considering that the Majority predicate their action against the respondent on the same evidence that will be considered in the appellate review of the convictions. Thus, the very adverse factual findings made in the Majority's opinion will prejudicially influence the review of the convictions against him.

Nonetheless, the harsh outcome, if it is now unavoidable such that we must sanction the respondent, should be mitigated. It will not be unprecedented to do so here, because the Court has refrained from imposing the administrative penalties expressly prescribed by law or regulation in consideration of the presence of mitigating factors, like, among others, the respondent's length of service, his ready acknowledgement of his infractions, his remorse, his family circumstances, his advanced age, and even humanitarian and equitable considerations, and impose the lower or lesser penalty.[1]

I urge the Court to show compassion to the respondent in light of the following mitigating factors in his favor, to wit:

- He has devoted nearly 30 years of his life in the service of the Government in various capacities as a local appointed and elective public officer, and as a member of the Judiciary;[2]
- This administrative charge relates to an act done when he was the Mayor of Dapitan City, and had nothing to do with the discharge of his office as Judge of the RTC;
- He is being administratively sanctioned for the first time in this case. The other administrative complaints previously brought against him, according to the records of the Court, were already either dismissed,[3] or cancelled,[4] or closed and terminated.[5]
- His convictions by the Sandiganbayan that furnished the ground for this administrative matter are still under appeal.[6] Without touching on the propriety of the convictions, I submit that the criminal trial included peculiar circumstances of relevance in the determination of the imposable penalty.

Let me focus on the last of the foregoing mitigating factors. I begin by noting that the convictions largely depended on the direct testimony of Police Inspector Pepe E. Nortal, the respondent's co-accused, from which the trial court inferred that the respondent had actually received the amount of P1,000,000.00 as cash advance sourced from the Confidential Intelligence Fund (CIF) of Dapitan City for 2001. In contrast, the other testimonial and documentary evidence adduced by the Prosecution tended to show only that the respondent had merely actively facilitated the processing and withdrawal of the amount. To me, however, Nortal's testimony should not determine the respondent's administrative liability, for how could Nortal be a reliable witness if he was himself charged in conspiracy with the respondent with having committed the crimes charged.

A co-accused like Nortal — a co-conspirator at that — is not allowed to testify against another accused in the same case unless he is first discharged as a state witness. The discharge is necessary to avoid the self-incrimination of the witness. The process of discharge is delineated in Section 17, Rule 119 of the Rules of Court, viz.:

Section 17. Discharge of accused to be state witness. — When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when, after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:

- (a) There is absolute necessity for the testimony of the accused whose discharge is requested;
- (b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;
- (c) The testimony of said accused can be substantially corroborated in its material points;
- (d) Said accused does not appear to be the most guilty; and
- (e) Said accused has not at any time been convicted of any offense involving moral turpitude.

Evidence adduced in support of the discharge shall automatically form part of the trial. If the court denies the motion for discharge of the accused as state witness, his sworn statement shall be inadmissible in evidence.

The rule requires the discharged witness not to appear to be the most guilty, a requirement that has been accorded the following understanding in *Jimenez, Jr. v. People*,^[7] viz.:

By jurisprudence, "most guilty" refers to the highest degree of culpability in terms of participation in the commission of the offense and does not necessarily mean the severity of the penalty imposed. While all the accused may be given the same penalty by reason of conspiracy, yet one may be considered to have lesser or the least guilt taking into account his degree of participation in the commission of the offense.

Before Nortal's testimony is appreciated against the respondent, there ought to be the showing that the proper procedure for his discharge was followed. If the April 29, 2013 decision of the Sandiganbayan did not indicate why Nortal was not himself tried for any criminal liability for the crimes charged against him and the respondent, then the Court, in this administrative matter, should at the very least first satisfy itself that Nortal did not appear to be the more guilty between himself and the respondent. Otherwise, we would have incriminating testimony that is tainted by the witness' desire to save himself and lay the blame on the respondent.

Moreover, the person liable in malversation is the public officer who, by reason of the duties of his office, is accountable for public funds or property, and appropriates the same.^[8] Here, that public official was Nortal, not the respondent, because the three documents relevant to the transaction - specifically, Disbursement Voucher No. 105.0105.3888,^[9] Check No. 1097358,^[10] and the Special Ledger^[11] - all indicated that the cash advance of P1,000,000.00 was payable to Nortal. Under the pertinent laws - specifically, Section 101 of Presidential Decree No. 1445 (The State Audit Code of the Philippines) and Section 5 of Commission on Audit (COA) Circular No. 97-002 - Nortal should liquidate the cash advance. The respondent, being only the approving authority for the release of the CIF, was liable only to explain his participation, which he was not made to do.

Nortal's ineligibility for the discharge to be a witness against the respondent due to his being the person directly accountable for the P1,000,000.00 cash advance was validated when the Ombudsman dismissed him from the service for grave misconduct.^[12] The Ombudsman concluded in its resolution dated April 20, 2007 as follows:

x x x Pepe E. Nortal, [he] admitted all the material allegations against him but interposed the defense of coercion and tremendous pressure from then Mayor Ruiz, which forced him to commit the unlawful act complained of even against his will.

His defense is untenable, outright unbelievable and not supported with any credible evidence. Other than the self-serving claim of respondent Nortal, there is nothing on record to show that he was coerced or intimidated into committing the wrongful act of withdrawing the amount of P1 Million from the CIF of the Office of the Mayor for the FY 2001. In fact, the wrongful act did not end with the simple withdrawal of the said amount because, as admitted by Nortal himself, he also benefited from the proceeds thereof when he received an aggregate amount of P55,000.00 as his share, and which amount remained unliquidated up to the present time. Having benefited therefrom, he cannot now profess innocence to escape liability as he knew all along about the

highly questionable nature of the said transaction. By all indications, and knowing fully well that a new local chief executive was about to succeed, he, together with the outgoing Mayor, devised a plan to withdraw the entire CIF for the year 2001, appropriating the same for their own private interests and, consequently, depriving the city government of the said funds. It was, therefore, a deliberate act on their part to defraud the city government of its appropriated funds, which is a patent indicia of bad faith and deceit. As such, there can be no doubt that respondent Nortal committed a misconduct of a grave nature, which is a clear deviation from the established norms of conduct required of a public servant.[13] (bold underscoring supplied for emphasis)

What should be the mitigated liability of the respondent?

The Court is sanctioning him now as an incumbent Judge of the RTC. Under Section 11, Rule 140 of the Rules of Court, a judge found guilty of a serious charge may be subjected to any of the following penalties:

Section 11. Sanctions. A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

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

Dismissal from the service should not be imposed because of the mitigating factors I have noted. The next penalty is suspension, but in the light of the respondent's manifestation of his intention to exercise his option for early retirement pursuant to Section 1 of Republic Act No. 910, as amended by Republic Act No. 9946,[14] he could no longer be suspended. Thus, I recommend that he be fined in the amount of P40,000.00, which is the next lower penalty.

Lastly, I consider the disbarment of the respondent unfounded. The act complained against was done by him when he was the Mayor of Dapitan City, and did not involve his professional or ethical conduct as an attorney. Hence, disbaring him is unfair, because such penalty becomes proper only when the attorney commits any misconduct of a very serious or gross nature in connection to the discharge of his professional responsibilities. I also urge that at the very least we should first hear him fully on the matter.

ACCORDINGLY, I vote to punish respondent Judge JOSEPH CEDRICK O. RUIZ with the maximum fine of P40,000.00, conformably with Section 11, 3, Rule 140 of the Rules of Court; and to lift the sanction of his disbarment.

[1] See, e.g., *Office of the Court Administrator v. Judge Aguilar*, Regional Trial Court, Branch 70, Burgos, Pangasinan, A.M. No. RTJ-07-2087 (Formerly OCA I.P.I. No. 07-2621-RTJ), June 7, 2011.

[2] Rollo, pp. 348-349 (his judicial service started on December 17, 2003, upon his appointment as the Presiding Judge of Branch 49 of the RTC in Iloilo City; he was designated on July 1, 2009 as the Presiding Judge of Branch 61 of the RTC in Makati City).

[3] OCA IPI No. 04-2121-RTJ; OCA IPI No. 10-3549-RTJ; OCA IPI No. 13-4060-RTJ; OCA IPI 09-3232-RTJ; OCA IPI No. 10-3358-RTJ; OCA IPI No. 12-3825-RTJ; OCA IPI No. 09-3169-RTJ; OCA IPI No. 12-3958-RTJ.

- [4] OCA IPI No. 14-4247-RTJ.
- [5] OCA IPI No. 11-10-193-RTC.
- [6] Docketed as G.R. No. 209073-74.
- [7] G.R. No. 209195 & 209215, September 17, 2014.
- [8] Article 217, Revised Penal Code.
- [9] Rollo, p. 161.
- [10] Id. at 164.
- [11] Id. at 197.
- [12] Id. at 209.
- [13] Id. at 208.
- [14] Id. at 348.

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