

**HON. HECTOR B. BARILLO, ACTING PRESIDING JUDGE, MTC
GUIHULNGAN, NEGROS ORIENTAL, PETITIONER, VS. HON. RALPH
LANTION, HON. MEHOL K. SADAIN AND HON. FLORENTINO A.
TUASON, JR., THE...**

G.R. No. 159117. March 10, 2010

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This treats of the two consolidated cases now before this Court, which are offshoots of an election protest case first filed before the Municipal Trial Court (MTC) of Guihulngan, Negros Oriental.

G.R. No. 159117 is a Petition for Certiorari[1] under Rule 65 of the Rules of Court, wherein petitioner Judge Hector B. Barillo (Judge Barillo) seeks the annulment of the Resolution[2] dated June 11, 2003 of the Second Division of the Commission on Elections (COMELEC) in SPR No. 2-2003, finding Judge Barillo, then Acting Presiding Judge at the MTC of Guihulngan, Negros Oriental, guilty of grave abuse of discretion amounting to lack or excess of jurisdiction in rendering the Decision[3] dated November 27, 2002 and the Resolution[4] dated December 9, 2002 in Election Case No. 7-2002.

A.M. No. MTJ-10-1752, on the other hand, is an administrative case, which arose from a Complaint[5] filed with this Court by the private respondent in G.R. No. 159117, Walter J. Aragon (Aragones), charging Judge Barillo with violation of Aragon's constitutional rights, violation of the Code of Judicial Conduct, manifest bias and partiality, gross ignorance of the law and abuse of authority.

The factual and procedural antecedents of the cases are as follows:

Aragones and Oscar C. Lasola (Lasola) vied for the position of Punong Barangay of Poblacion, Guihulngan, Negros Oriental in the July 15, 2002 Barangay Elections. After the votes were canvassed during the day of the elections, Aragon was proclaimed the winning candidate, having obtained a total of 1,614 votes, as compared to the 1,593 votes garnered by Lasola.

On July 24, 2002, Lasola duly filed an election protest[6] before the MTC of Guihulngan, which was docketed as Election Case No. 7-2002. Lasola accused the Board of Election Tellers in the various election precincts of Barangay Poblacion of illegally adopting their own procedures in the counting and appreciation of ballots, which led to his defeat. Lasola claimed that the alleged anomalous acts were committed upon the instructions of an election officer who was a nephew of Aragon. Lasola prayed, inter alia, for the appointment of as many Committees on Revision as may be necessary that will undertake a recount of the votes, in order that the true will of the electorate of Barangay Poblacion, Guihulngan, Negros Oriental may be finally determined.

On July 25, 2002, Judge Barillo, of the MTC of Guihulngan, issued an Order,[7] directing the Clerk of Court of the MTC to issue summonses to Aragon, the Acting Election Officer Raytheon Roy C. Aragon, the Board of Canvassers and the Board of Election Tellers of Barangay Poblacion, Guihulngan, Negros Oriental, requiring the

aforesaid individuals to file their respective answers within five days from receipt of the notice of the above Order. In accordance with Section 12, Rule 35[8] of the COMELEC Rules of Procedure, Judge Barillo likewise directed the Acting Election Officer and the Municipal Treasurer of Guihulngan, Negros Oriental to surrender to the custody of the MTC Clerk of Court all ballot boxes containing ballots and their keys, list of voters with voting records, book of voters, and other documents used in the July 15, 2002 Barangay Elections of Barangay Poblacion, Guihulngan, Negros Oriental.

Thereafter, Judge Barillo issued another Order on July 29, 2002,[9] which stated that there was a need for the revision of ballots in consonance with Sections 12, 13, 15 and 16 of Rule 35[10] of the COMELEC Rules of Procedure. The protestant was, thus, ordered to deposit in cash the amount of P150.00 for every ballot box for the compensation of the revisors in an amount to be fixed by the MTC. Judge Barillo also created a Revision Committee composed of the Provincial Election Officer of Negros Oriental, Atty. Rogelio S. Benjamin, as Chairman, with the Protestant (Lasola) and/or his counsel, the Protestee (Aragones) and/or his counsel, and the MTC Clerk of Court as members.

On July 31, 2002, the counsel of Aragones, Atty. Francisco D. Yap, filed an Entry of Appearance with Motion to Disqualify Counsel for Protestant[11] (Lasola) in Election Case No. 7-2002. Atty. Yap manifested before the MTC that Lasola's counsel, Atty. Justo J. Paras, was suspended from the practice of law by this Court in an administrative case docketed as A.C. No. 5333[12] and the latter has filed a Motion to Lift Suspension, which was yet to be acted upon. Pending a reinstatement, Atty. Yap asserted that Atty. Paras was not legally permitted to appear as counsel in any court in the Philippines. Furthermore, the law firm of Paras and Associates, of which Atty. Paras was a partner, was allegedly owned by the then incumbent Congressman Jacinto V. Paras, such that the law firm was disqualified to appear as counsel, in view of the prohibition found in Section 14, Article VI of the Constitution that "[n]o Senator or Member of the House of Representatives may personally appear as counsel before any court of justice." [13]

On even date, Aragones also filed an Answer with Affirmative Defenses and Counterclaim,[14] which denied the material averments in Lasola's Petition. Aragones argued that the same was based merely on the speculations, surmises and conclusions of a losing candidate, without any supporting affidavits attached thereto. Aragones pointed out that the Petition was not even based on Lasola's personal knowledge. As special and affirmative defenses, Aragones also claimed that Lasola failed to comply with the requisites for a proper petition for a recount of votes and that there was no allegation that the election returns involved would affect the results of the elections. Aragones prayed for the dismissal of the Petition and, by way of counterclaim, sought damages and attorney's fees.

On August 2, 2002, Judge Barillo issued an Order[15] in Election Case No. 7-2002, setting the hearing on the revision of official ballots on August 9, 2002. Likewise, the Order stated that:

In order not to delay the speedy administration of justice, Atty. Justo J. Paras (unless this court has received copy of the Supreme Court's Resolution for his suspension or disbarment from the practice of law), and/or his associates or any authorized counsel for Protestant Oscar C. Lasola are directed to appear during the hearing on August 9, 2002 at 8:30 o'clock in the morning and until such time that this case is terminated. Likewise, said Protestant's counsel and/or his associate are directed to appear on the above date and time of hearing. (Emphases ours.)

On August 7, 2002, Aragones filed a Motion for Reconsideration[16] of the Orders dated July 25, 2002 and July 29, 2002, as well as an Urgent Motion for Reconsideration of the Order dated August 2, 2002.

In an Order dated August 7, 2002, Judge Barillo resolved[17] to deny the above-stated motions of Aragones. As

regards the suspension of Lasola's counsel, Atty. Paras, Judge Barillo quoted in his Order the fallo of the Decision of the Court dated October 18, 2000 in A.C. No. 5333, which reads:

In the light of the foregoing, respondent [Atty. Paras] is hereby SUSPENDED from the practice of law for SIX (6) MONTHS on the charge of falsifying his wife's signature in bank documents and other related loan instruments; and for ONE (1) YEAR from the practice of law on the charges of immorality and abandonment of his own family, the penalties to be served simultaneously. Let notice of this decision be spread in respondent's record as an attorney, and notice of the same served on the Integrated Bar of the Philippines and on the Office of the Court Administrator for circulation to all the courts concerned. (Emphasis ours.)

Thereafter, Judge Barillo referred to what he described as a self-explanatory letter by then Acting Bar Confidant Atty. Ma. Cristina B. Layusa addressed to Judge Romeo L. Anasario, Acting Municipal Circuit Trial Judge in Bindoy, Negros Oriental. The letter reads:

Per Court resolution dated October 18, 2000, in Adm. Case No. 5333 (formerly CBD No. 371), Atty. Justo de Jesus Paras was ordered suspended from the practice of law for six (6) months on the charge of falsification and for one (1) year on the charge of immorality and abandonment. The said order of suspension [became] effective on May 23, 2001, when Atty. Paras received a copy of the resolution dated March 5, 2001, denying with finality his motion for reconsideration of the October 18, 2000 resolution. (Emphasis ours.)

Judge Barillo, however, did not elaborate any further. In quoting the above dispositive portion and letter, Judge Barillo appeared to rely on the fact that more than one year had already lapsed since the effectivity of the suspension order against Atty. Paras on May 23, 2001. Since the two periods of suspension imposed were ordered to be served simultaneously, Judge Barillo seemed to consider the suspension of Atty. Paras to have already been served out by the end of May 2002; and thus, when the election protest was instituted in the MTC by Lasola through Atty. Paras on July 24, 2002, said counsel was supposedly no longer suspended.

Concerning the Motion for Reconsideration questioning the Orders dated July 25, 2002 and July 29, 2002, Judge Barillo ruled that said Orders were consistent with the applicable provisions of the COMELEC Rules of Procedure. Judge Barillo apparently referred to the various sections of Rule 37 of the 1988 COMELEC Rules of Procedure, which were still in force at that time. Finally, Judge Barillo again directed all the parties and their respective counsels to appear before the MTC on August 9, 2002 for the revision of the official ballots.

Aggrieved by the above Resolution, Aragones instituted a Petition for Certiorari, Prohibition, (and) Mandamus, with Temporary Restraining Order and/or Preliminary Mandatory Injunction^[18] under Rule 65 of the Rules of Court before the Regional Trial Court (RTC) of Negros Oriental, which was docketed as Special Civil Action No. 02-01-G. Judge Barillo and Lasola were named as respondents in the petition. Aragones insisted that Judge Barillo committed grave abuse of discretion amounting to lack or excess of jurisdiction when: 1) he allowed a suspended lawyer to appear as counsel; and 2) he denied the Motion for Reconsideration filed by Aragones without any hearing and immediately upon receipt thereof on the same date, August 7, 2002. Aragones prayed that a writ of preliminary injunction be issued, directing Judge Barillo to cease and desist from hearing Election Case No. 7-2002 until further orders from the RTC; that the MTC Order dated August 7, 2002 be set aside; that an order be issued directing the MTC to disqualify Atty. Paras from appearing until the lifting of his suspension by the Court; and that Judge Barillo be ordered to voluntarily inhibit himself from handling the case.

On August 8, 2002, Atty. Paras filed a Comment on Atty. Francis D. Yap's Motion to Disqualify Protestant's (Lasola) Counsel in Election Case No. 7-2002.^[19] Therein, Atty. Paras admitted that he was indeed suspended by the Court for a period of one year, which commenced on May 23, 2001 and ended on May 22, 2002. Upon the expiration of the period of his suspension, Atty. Paras confirmed that he also filed a motion to lift the order of suspension, as advised by the Office of the Bar Confidant. Atty. Paras, however, disagreed with the theory of

Atty. Yap that a formal reinstatement by the Court was necessary before he could resume his practice of law. Atty. Paras alleged that the jurisprudence[20] cited by Atty. Yap, in support of the latter's Motion, were applicable only to cases where the penalty imposed upon an erring lawyer was either indefinite suspension or disbarment. Atty. Paras insisted that the cases cited were impertinent where the penalty meted out by the Court has a fixed and definite period of effectivity.

On August 9, 2002, Aragonés filed a Motion for Inhibition[21] in Election Case No. 7-2002 against Judge Barillo on the ground that the latter's demeanor, ruling and pronouncements demonstrated his bias and partiality towards Lasola, thereby violating the rights of Aragonés to due process and an impartial tribunal. Aragonés further ascribed grave abuse of discretion amounting to lack or excess of jurisdiction on the part of Judge Barillo, when the latter gave due course to the Petition filed by Lasola despite the deficiency of the cash deposit per ballot box and allowed a suspended lawyer to appear before the MTC.

Aragonés also filed on August 9, 2002 a Motion/Manifestation[22] in Election Case No. 7-2002, asserting that the Motion for Reconsideration that he filed on August 7, 2002 was set for hearing on August 16, 2002 and yet Judge Barillo promptly denied the motion on the same day it was filed. Aragonés stressed that the Order[23] dated August 7, 2002 revealed the manifest bias and partiality of Judge Barillo and denied the parties the chance to elevate to a higher court the issues raised in the motion. Aragonés pointed to the lack of jurisdiction of the MTC in view of the nonpayment of the proper docket fees and required expenses, as well as Judge Barillo's alleged act of contempt against this Court for allowing the appearance of Atty. Paras despite his suspension. Lastly, Aragonés disclosed that he also found out that Judge Barillo was a close relative of Atty. Paras.

In a Resolution[24] dated August 9, 2002, Judge Barillo denied the Motion for Inhibition in Election Case No. 7-2002, holding that the period of suspension of Atty. Paras had already expired; and that Lasola was, nevertheless, represented by two other counsels, Atty. Jose M. Estacion, Jr. and Atty. Carlos M. Cainglet. Judge Barillo likewise declared that he was not related to Atty. Paras, either by affinity or consanguinity, and that the applicable provisions of the COMELEC Rules of Procedure had been sufficiently complied with. On August 10, 2002, Judge Barillo issued an Order,[25] stating that the Revision Committee was able to finish its duties and it was, thus, directed to submit its Revision Report. After such submission, the case was deemed submitted for decision.

On August 12, 2002, the RTC of Negros Oriental, Branch 64, through Judge Felix G. Gaudiel, Jr. issued an Ex-Parte Order[26] in Special Civil Action No. 02-01-G, which required the respondents therein, Judge Barillo and Lasola, to comment on the Petition within ten days from receipt of a copy of the said order. The RTC stated that the Entry of Appearance with Motion to Disqualify Counsel for Protestant (Lasola) filed by Atty. Yap was a motion that was litigious; hence, it should have been heard and not denied outright. Furthermore, Judge Barillo was directed to cease and desist from proceeding with the hearing of Election Case No. 7-2002 within a period of 20 days from receipt of the order, given the perception of the RTC that the continuance of the acts of Judge Barillo complained of would probably work injustice to Aragonés. The RTC further cautioned Judge Barillo that any proceeding or action taken by the lower court after the filing of the Petition would be declared null and void.

On August 20, 2002, Lasola filed a Motion to Dismiss[27] the Petition in Special Civil Action No. 02-01-G, contending that the RTC had no appellate jurisdiction over the election case under consideration, since the same was lodged with the COMELEC, in accordance with Section 2(2), Article IX-C[28] of the Constitution and Section 1, Rule 28[29] of the COMELEC Rules of Procedure. Lasola said that the COMELEC Rules of Procedure, not the provisions of the Rules of Court, should govern the proceedings, since the latter rules merely have a suppletory effect.

On August 22, 2002, Judge Barillo likewise manifested[30] before the RTC in Special Civil Action No. 02-01-G that Rule 143 of the Rules of Court specifically provides that the said rules "shall not apply to land registration, cadastral and election cases, naturalization and insolvency proceedings, and other cases not herein provided for, except by analogy or in a suppletory character and whenever practicable and convenient."

Aragones opposed[31] the Motion to Dismiss the Petition in Special Civil Action No. 02-01-G, praying that the same be denied outright on the grounds that the said motion was not set for hearing by the applicant and the same was filed by Atty. Paras, who was still suspended from the practice of law. Moreover, Aragones argued that the action filed before the RTC was an independent action for certiorari under Rule 65 of the Rules of Court, not a petition for certiorari as a mode of appeal. The petition was also not a case filed with the RTC in aid of its appellate jurisdiction. More importantly, Aragones pointed out that the petition involved was not an election matter, but one that involved a violation of constitutional rights; a violation of the order of the Court suspending a lawyer, which suspension was yet to be lifted; and a violation of Section 14, Article VI of the Constitution, which prohibits a member of the Senate or the House of Representatives from personally appearing as counsel in any court of justice.

On September 2, 2002, Judge Barillo filed a Comment/Answer[32] in Special Civil Action No. 02-01-G, wherein he outlined the proceedings undertaken in the MTC and once more pleaded the lack of jurisdiction of the RTC over the Petition filed by Aragones.

On October 28, 2002, the RTC of Negros Oriental, Branch 64, promulgated a Decision[33] in Special Civil Action No. 02-01-G, disposing of the same in this wise:

WHEREFORE, premises considered, the petition is hereby GRANTED, let a writ of certiorari be issued. The proceedings had below are hereby declared null and void. (Emphases ours.)

The RTC adjudged that the issue in the case before it was entirely separate and distinct from the issue in Election Case No. 7-2002. As the authority of the COMELEC to hear and decide petitions for certiorari, prohibition and mandamus was limited to cases relating to election, returns and qualifications of barangay officials, the RTC, thus, had jurisdiction on matters not related to elections, returns and qualifications of candidates in barangay elections. The crux of Aragones' petition was the claim of grave abuse of discretion allegedly committed by Judge Barillo in issuing the Order dated August 2, 2002, which allowed Atty. Paras to appear for Lasola in the MTC; and the subsequent Resolution dated August 7, 2002 of said Judge, which denied the Urgent Motion for Reconsideration. The RTC reiterated that the Entry of Appearance with Motion to Disqualify Counsel for Protestant [Lasola] filed by Atty. Yap contained the requisite Notice of Hearing and specified the date and time of the hearing, which was within ten days after the filing of the said motion. Accordingly, Judge Barillo should not have denied the motion outright without giving the movant an opportunity to be heard.

Although the above RTC Decision in Special Civil Action No. 02-01-G was dated October 28, 2002, the same was released only on December 3, 2002.[34]

On November 25, 2002, presumably before he received a copy of the aforementioned RTC Decision, Judge Barillo filed an Urgent Motion for Immediate Resolution[35] of Special Civil Action No. 02-01-G. Insisting on the lack of jurisdiction of the RTC, Judge Barillo sought the immediate rendition of the RTC Decision on the said issue, given the impending retirement of RTC Judge Felix G. Gaudiel, Jr. on December 4, 2002 and in order that the decision in Election Case No. 7-2002 may be finally promulgated.

On November 27, 2002, the MTC of Guihulngan, through Judge Barillo, rendered a Decision[36] in Election Case No. 7-2002. On the matter of the jurisdiction of the RTC, Judge Barillo held that:

This decision is delayed by virtue of the Special Civil Action No. 02-01-G for Certiorari, Prohibition, Mandamus with Temporary Restraining Order and/or Preliminary Mandatory Injunction filed in the Regional Trial Court, Branch 64, Guihulngan, Negros Oriental by petitioner Walter J. Aragon against undersigned respondent [Judge Barillo].

The Regional Trial Court, Branch 64, Guihulngan, Negros Oriental has no jurisdiction to hear and decide said case involving this barangay election case because the same is vested or conferred by law to this Municipal Trial Court pursuant to Section 1, Rule 37 of the Comelec Rules of Procedure as quoted below:

"Section 1. Jurisdiction - Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts shall have exclusive original jurisdiction in all contests relating to the elections, returns and qualifications of barangay officials."

and the Commission on Elections, Manila under Section 1, Rule 28-Certiorari, Prohibition and Mandamus (D. Special Reliefs) that as quoted below:

"D. SPECIAL RELIEFS

Rule 28 -- Certiorari, Prohibition and Mandamus

Section 1. When Available - In aid of its appellate jurisdiction in election cases before courts of general jurisdiction relating to the elections, returns and qualifications of elective Municipal Officials, and before courts of limited jurisdiction in cases relating to the elections, returns and qualifications or elective barangay officials, the Commission en banc may hear and decide petitions for certiorari, prohibition or mandamus."

To allow the dilatory and frivolous proceedings or whatever would or will be the decision(s), resolution(s), order(s) and others of the Regional Trial Court who has no jurisdiction would constitute endless litigation and mockery to the speedy administration of justice. The first paragraph of Section 17, Rule 37 of the Comelec Rules of Procedure as quoted below:

"Sec. 17. Decision - The court shall decide the protest within fifteen (15) days from its filing and shall declare who among the parties has been elected, or in a proper case, that none of them has been legally elected. The party who in the judgment has been declared elected shall have the right to assume office as soon as the judgment becomes final."

Undersigned invoked also the doctrine of primary jurisdiction as cited in the case of *Machete vs. Court of Appeals*, 250 SCRA 176 wherein the Supreme Court pronounced that the "doctrine of primary jurisdiction" does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence. Consequently, as already stated, said Regional Trial Court has no jurisdiction to hear and decide said case involving this barangay election case as the same is vested in the Municipal Trial Court, Commission on Elections, Manila and Superior Court. x x x.

As regards the proceedings before the MTC and the outcome of the revision of ballots, Judge Barillo declared thus:

This case was filed pursuant to Rule 37 of the Comelec Rules of Procedure. According to the records, the excerpt from the minutes of the regular meeting of the Commission on Elections en banc held on May 12, 1994 is partly quoted below:

"94-2894. In the matter of the Memorandum dated 11 May 1994 of Atty. Erlinda C. Echavis, Director IV, Election Contents Adjudication Department, re adoption of Rule 37 (Election Contents) and Rule 38 (Quo Warranto) before courts of limited jurisdiction, considering that in the Comelec Rules of Procedure, adopted on 15 February 1993, the same has been omitted which left the litigants and their lawyers in a quandary as to the particular rules of procedure to apply in the cases arising from the just-concluded barangay elections.

"RESOLVED that with respect to Rules 37 and 38, Comelec Rules of Procedure of 1988, the same are still enforceable not having been superseded or amended by the Rules on Procedure adopted on 15 February 1993."

To recapitulate, before the filing of said Barangay Election protest, the court quoted below paragraph 7 of the Petition:

"7. That protestee [Aragones] had instead been proclaimed as the duly elected Punong Barangay of Barangay Poblacion, Guihulngan, Negros Oriental, in the afternoon of July 15, 2002 by the Board of Canvassers for having obtained a plurality of 1,614 votes as against that of Protestant [Lasola] who garnered the questionable total votes of 1,593 in the twenty-nine (29) voting precincts" (with a difference of twenty-one (21) votes in favor of protestee [Aragones].)

Based on the foregoing appreciation of official ballots, the Court found out that Protestant Oscar C. Lasola obtained plurality of votes of 1,669. Hence, said protestant won by 54 votes over protestee [Aragones]. Consequently, the official proclamation of the members of the Board of Canvassers of Barangay Poblacion, Guihulngan, Negros Oriental declaring and proclaiming protestee Walter J. Aragones as the winning candidate in the July 15, 2002 Barangay Elections is set aside or declared null and void. The winning candidate Oscar C. Lasola is hereby declared and proclaimed as the duly elected Punong Barangay of Brgy. Poblacion, of this Municipality in that Barangay Elections and directed him to assume office as Punong Barangay of Brgy. Poblacion, Guihulngan, Negros Oriental pursuant to Rule 37 of the Comelec Rules of Procedure. (Emphasis ours.)

Soon after, on December 2, 2002, Judge Barillo issued an Order[37] in Election Case No. 7-2002, disclosing the fact that he allegedly received on November 26, 2002 the Decision[38] of the RTC of Negros Oriental, Branch 64, in Special Civil Action No. 02-01-G, which dismissed the petition for lack of factual and legal merits. Judge Barillo then directed the Clerk of Court of the MTC to issue to the parties therein the Notices of Promulgation of the MTC Decision on December 9, 2002, in compliance with Section 19, Rule 37 of the COMELEC Rules of Procedure.[39] As stated in the said provision, Judge Barillo warned that no motion for reconsideration would be entertained.

On December 5, 2002, Aragones filed a Manifestation and Motion[40] in Election Case No. 7-2002, praying for the cancellation of the scheduled promulgation on December 9, 2002 of the MTC Decision dated November 27, 2002. Aragones declared that he had not yet received the Decision of the RTC of Negros Oriental, Branch 64, in Special Civil Action No. 02-01-G, purportedly dismissing his petition. As regards the prohibition on the filing of a motion for reconsideration, Aragones insisted that his constitutional right to due process should not be undermined by judicial pronouncements, which had no basis in law. Aragones also accused Judge Barillo of being biased and partial, seeing the latter's personal interest in resolving the election protest with undue haste in favor of Lasola.

In a Resolution[41] dated December 9, 2002 in Election Case No. 7-2002, Judge Barillo confirmed that the promulgation of the MTC Decision dated November 27, 2002 proceeded on said date.

On December 12, 2002, Judge Barillo filed a Manifestation[42] in Special Civil Action No. 02-01-G, notifying the RTC of the fact that on November 26, 2002, a day before the promulgation of the MTC Decision in Election Case No. 7-2002, the Clerk of Court of the MTC allegedly received through personal delivery by RTC personnel the RTC Decision[43] dated October 28, 2002. Said decision contained the following dispositive portion, to wit:

WHEREFORE, premises considered, the instant petition for Certiorari, Prohibition and Mandamus is hereby ordered DISMISSED for lack of merit. (Emphasis ours.)

Thus, on December 9, 2002, the promulgation of the MTC Decision proceeded as scheduled. On December 10, 2002, however, Judge Barillo received another RTC Decision[44] dated October 28, 2002, which, allegedly to his

surprise, had a dispositive portion completely opposite to the decision he previously received, viz:

WHEREFORE, premises considered, the petition is hereby GRANTED, let a writ of certiorari be issued. The proceedings had below are hereby declared null and void. (Emphasis ours.)

Nonetheless, Judge Barillo posited that the above RTC Decisions, whether or not affirmative of his actions, were null and void since the jurisdiction to hear and decide a barangay election case is vested in the MTC and the COMELEC. The second RTC Decision granting Aragones' petition, which was received only on December 10, 2002 by Judge Barillo, was already moot and academic and contravened the provisions of the COMELEC Rules of Procedure.

On December 16, 2002, Lasola filed a Motion for Execution^[45] of the MTC Decision dated November 27, 2002 in Election Case No. 7-2002, given the failure of Aragones to file an appeal thereof within five days after the promulgation of the said Decision on December 9, 2002. In a Resolution^[46] dated December 16, 2002, the MTC, through Judge Barillo, declared that Aragones had not yet filed an appeal of the MTC Decision seven days after the promulgation thereof. Judge Barillo, thus, ordered Lasola to assume and take his oath of office as the duly elected Punong Barangay of Poblacion, Guihulngan, Negros Oriental.

The next day, on December 17, 2002, the MTC Clerk of Court issued an Entry of Final Judgment,^[47] certifying that the MTC Decision dated November 27, 2002 in Election Case No. 7-2002 became final and executory on December 16, 2002.

Motion for Direct Contempt

On December 27, 2002, Aragones filed a Motion for Direct Contempt^[48] against Judge Barillo, which was lodged with the RTC of Negros Oriental, Branch 64, then presided over by Judge Rosendo B. Bandal, Jr.^[49] The case was docketed as Special Civil Action No. 02-03-G. Aragones maintained that the RTC already declared in the Decision dated October 28, 2002 in Special Civil Action No. 02-01-G that the proceedings carried out before the MTC were null and void, and that neither appeal nor a motion for reconsideration thereof was filed within 15 days from receipt of the Decision by any of the parties involved. Therefore, Aragones asserted that Judge Barillo was guilty of direct contempt for defying and reversing the ruling of the RTC, in utter disregard of the doctrine of hierarchy of courts and in violation of the constitutional rights of Aragones. Aragones also faulted Judge Barillo for filing a Manifestation in the certiorari proceedings before the RTC, where the judge was but a nominal party. Likewise, Aragones accused Judge Barillo of interfering with the administration of justice for alleging the existence of a Decision dated October 28, 2002 by the RTC in Special Civil Action No. 02-01-G, which supposedly dismissed Aragones' petition, considering that said Decision did not exist in the records of the case, and no satisfactory explanation was given on how a copy of the same was legally obtained. Finally, Aragones pointed out that the proper remedy to question the RTC Decision dated October 28, 2002 in Special Civil Action No. 02-01-G, which granted Aragones' petition, was for Lasola to file an appeal. Lasola, however, failed to do so.

On March 6, 2003, the RTC of Negros Oriental, Branch 64, through Judge Bandal, issued a Resolution,^[50] denying the above motion to cite Judge Barillo for Direct Contempt. Judge Bandal held that the Decision of Judge Felix G. Gaudiel, Jr. in Special Civil Action No. 02-01-G, which granted Aragones' petition and declared null and void the proceedings before the MTC, was without legal basis for absence of jurisdiction. Judge Bandal ruled that Regional Trial Courts have no jurisdiction over election cases involving barangay officials, and Judge Gaudiel ought to have limited his determination of the case to the issue of the propriety of the act of Judge Barillo in allowing a suspended lawyer to represent a litigant before the MTC. Judge Gaudiel was ruled to have exceeded his jurisdiction when he set aside the proceedings before the MTC.

Aragones filed a Notice of Appeal^[51] questioning the above Resolution, and the same was given due course^[52]

by the RTC, and the records of the case were ordered transmitted to the Court of Appeals.[53]

Petition to Declare Null and Void
the MTC Decision (SPR No. 2-2003)

On January 8, 2003, Aragonés instituted with the Comelec Second Division a Petition to Declare Null and Void the Decision dated November 27, 2002, Certiorari, Prohibition, [and] Mandamus, with Temporary Restraining Order and/or Preliminary Mandatory Injunction,[54] which was docketed as SPR No. 2-2003. Filed in accordance with Sections 1 and 2 of Rule 28 of the COMELEC Rules of Procedure,[55] the Petition of Aragonés alleged that Judge Barillo acted with grave abuse of discretion amounting to lack or excess of jurisdiction in rendering the Decision dated November 27, 2002 and the Resolution dated December 9, 2002 in Election Case No. 7-2002. Aragonés again insisted that the said issuances of Judge Barillo violated the RTC Decision dated October 28, 2002 and the constitutional rights of Aragonés to due process and an impartial tribunal. Thus, Aragonés opined that the MTC Decision dated November 27, 2002 and the Resolution dated December 9, 2002 in Election Case No. 7-2002 were null and void and should be so declared.

In a Comment/Answer[56] dated February 10, 2003, Judge Barillo again pleaded the lack of jurisdiction of the RTC in Special Civil Action No. 02-01-G, as well as the finality of the MTC Decision in Election Case No. 7-2002, in view of the failure of Aragonés to file an appeal.

After the issues were joined, the COMELEC Second Division required Aragonés and Lasola (the private respondent therein) to file their respective memoranda, after which the case was submitted for decision.[57] Records disclose that Judge Barillo filed his own Memorandum[58] in SPR No. 2-2003, reiterating the arguments contained in his Comment/Answer.

In a Resolution[59] dated June 11, 2003, the COMELEC Second Division granted the petition filed by Aragonés in SPR No. 2-2003, ratiocinating thus:

The petition is impressed with merit.

At the outset, the election protest [Election Case No. 7-2002] should have been dismissed for insufficiency in form and substance.

Notably, the instant petition [in Election Case No. 7-2002] failed to allege with specificity the grounds that would justify a re-appreciation of the ballots and only made bare allegations of the misappreciation of ballots and anomalous counting of votes made by the Board of Election Tellers. We cannot allow the election protest to prosper with these unsubstantiated accounts of electoral fraud as the allegations in the petition do not warrant a revision of the contested ballots. Respondent judge [Judge Barillo] even failed to take note that the petition was unverified. Well settled is the rule that a pleading which lacks a proper verification must be treated as an unsigned pleading.

x x x x

Moreover, the facts and circumstances clearly demonstrate the court a quo's bias and arbitrariness that should have warranted the setting aside of the questioned orders for grave abuse of discretion under Section 1, Rule 28 of the 1993 Comelec Rules of Procedure. Its capricious exercise of judicial prerogative was quite evident when respondent judge [Judge Barillo] allowed a suspended lawyer to appear before its court for the flimsy reason of avoiding delay. The persistent refusal of the trial court to promulgate the earlier Supreme Court decision suspending respondent's lawyer is a clear display of grave abuse of discretion.

Worse, respondent judge [Judge Barillo] allowed the commencement of revision proceedings despite timely motions from the petitioner [Aragonés] on the ground of incomplete payment of the revision costs, showing

manifest partiality towards private respondent [Lasola].

While public respondent [Judge Barillo] was correct in stating in his December 9, 2002 Resolution that the Regional Trial Court has no jurisdiction over the petition for certiorari, its December 16, 2002 Resolution granting the unverified Motion for Execution of Decision by respondent Lasola was issued with grave abuse of discretion, as the same failed to comply with the mandatory three-day notice rule prescribed by the Rules. Following the Supreme Court's pronouncement in *Ardosa vs. Gal-lang* [A.M. No. RTJ-97-1385, January 8, 1998, 284 SCRA 58, 64-65], a judge commits an abuse of discretion in hearing a motion on the same day the motion was filed.

The COMELEC Second Division, thus, decreed:

WHEREFORE, the petition is hereby GRANTED. We find respondent judge Hon. Hector B. Barillo, Presiding Judge of the Municipal Trial Court of Guihulngan, Negros Oriental guilty of grave abuse of discretion amounting to lack or excess of jurisdiction. The records of the case are hereby REMANDED to the lower court for proper disposition of the case with dispatch.

On August 13, 2003, the COMELEC Second Division issued an Order,[60] stating that the above Resolution dated June 11, 2003 became final and executory on July 9, 2003, as no Motion for Reconsideration thereof was filed by Lasola.

Disagreeing with the ruling of the COMELEC Second Division, Judge Barillo filed with the Court, on July 1, 2003, the instant Petition for Certiorari under Rule 65 of the Rules of Court, which was docketed as G.R. No. 159117.[61]

On August 5, 2003, another Petition for Certiorari[62] was filed with this Court, this time by Lasola, likewise assailing the Resolution dated June 11, 2003 of the COMELEC Second Division. Docketed as G.R. No. 159114, the petition contended that Aragoness should have filed an appeal to challenge the MTC Decision, instead of a Petition for Certiorari. In a Resolution[63] dated August 12, 2003, however, the Court dismissed the petition as the full deposit for costs was not paid and the petition was not accompanied by a legible duplicate original or certified true copy of the questioned resolution. Lasola sought a reconsideration of the aforesaid resolution, but the same was denied[64] with finality on October 21, 2003.

A.M. No. MTJ-10-1752

On January 8, 2003, the same day that the petition in SPR No. 2-2003 was filed with the COMELEC Second Division, Aragoness likewise filed a Complaint[65] with the Office of the Court Administrator (OCA), charging Judge Barillo with violations of his constitutional rights, violations of the Code of Judicial Conduct, manifest bias and partiality, gross ignorance of the law and abuse of authority. The charges in the complaint pertained to the acts of Judge Barillo of rendering and promulgating the Decision dated November 27, 2002 in Election Case No. 7-2002; allowing Atty. Paras to appear and represent a party in the MTC; and pleading the case of Lasola in Special Civil Action No. 02-01-G.

In his 1[st] Indorsement[66] dated January 30, 2003, then Court Administrator Presbitero J. Velasco, Jr.,[67] directed Judge Barillo to submit his comment on the Complaint. Judge Barillo, accordingly, filed a 2[nd] Indorsement,[68] disputing the above charges and containing a Counter-Complaint against Aragoness and the latter's counsel, Atty. Yap, for gross ignorance of the law for filing an allegedly malicious and dilatory case; as well as against former RTC Judge Felix G. Gaudiel, Jr., for gross ignorance of the law, inefficiency in the public service, contempt of court and gross usurpation of the powers and jurisdiction of the COMELEC.

Aragoness, thereafter, filed a Reply[69] to Judge Barillo's 2[nd] Indorsement on March 28, 2003, and Judge Barillo

accordingly filed his Rejoinder[70] thereto on June 12, 2003.

Consolidation of G.R. No. 159117 and
A.M. No. MTJ-10-1752

On January 30, 2004, Aragonés filed in G.R. No. 159117 a Manifestation and/or Motion for Consolidation with Leave of Court,[71] asking for the consolidation of the said petition filed by Judge Barillo with the administrative case (A.M. No. MTJ-10-1752) initiated by Aragonés. The Court referred the matter to then Clerk of Court En Banc Atty. Luzviminda D. Puno, who recommended that the two cases be consolidated.

On 17 March 2004, the OCA submitted its recommendation[72] that administrative case A.M. No. MTJ-10-1752 be referred to Judge Ismael O. Baldado, the Acting Presiding Judge of the RTC of Bais City, Negros Oriental, Branch 45, for investigation, report and recommendation, in view of the questions of fact involved. On 18 May 2004, the Court issued a Resolution[73] embodying such recommendation.

After conducting an investigation on A.M. No. MTJ-10-1752, Judge Baldado submitted on September 9, 2004 his Report and Recommendations[74] to the Court, identifying the fundamental issues to be resolved in the case as follows:

- Whether respondent Judge Barillo be administratively faulted for having allowed Atty. Justo Paras, a lawyer who was suspended to practice law by the Supreme Court, to appear as counsel for the petitioner [Lasola] in Election Protest No. 7-2002 which was heard and decided by respondent Judge Barillo, as Acting Presiding Judge of the Municipal Trial Court of Guihulngan;
- Whether respondent Judge Barillo issued orders and rendered a decision in Election Protest No. 7-2002 and issued execution order of his decision with undue haste and manifest bad faith and without observing due process of law;
- Whether respondent Judge Barillo be administratively faulted for filing his comment on Special Civil Action No. 02-01-G for Certiorari before Branch 64, RTC, Guihulngan, Negros Oriental, wherein he was only a nominal party as one of the respondents;
- Whether respondent Judge be administratively faulted for defying the decision of the higher court, RTC, Branch 64, dated October 28, 2002;
- Whether respondent Judge Barillo be administratively faulted in filing his comments in SPR No. 2-2003 with the Commission on Elections wherein he was a respondent;
- Whether respondent Judge Barillo be administratively faulted in instituting a petition before the Supreme Court in G.R. No. 159117 wherein he challenged the decision of the COMELEC in SPR No. 2-2003;
- Whether respondent Judge Barillo be administratively faulted for using a certified copy of the decision of RTC, Branch 64, which is allegedly a false copy, misrepresenting the same as an authentic decision.

As regards the first issue, Judge Baldado noted that the cases cited by Aragonés, in support of the latter's claim that an order from the Supreme Court lifting a suspension order is necessary before a suspended lawyer may resume his practice of law, were not applicable to the case against Judge Barillo. Judge Baldado stated that said cases involved the penalty of suspension from the practice of law for indefinite periods. Anent the second issue, Judge Baldado found that there appeared to be haste in the manner in which Judge Barillo conducted the proceedings in Election Case No. 7-2002; but the same could not be characterized as undue haste, as there was no showing that Judge Barillo's actuations were impelled by malice, bad faith, or manifest partiality. On the third issue, Judge Baldado opined that Judge Barillo could not be faulted for filing his Comment in Special Civil Action No. 02-01-G, given that the latter was ordered to do so by the RTC.

Concerning the fourth and seventh issues, Judge Baldado recommended that a further investigation should be conducted in order to uncover the "unrevealed factors or circumstances" surrounding the conflicting decisions of the RTC.

Apropos the fifth issue, Judge Baldado found that Judge Barillo filed his Answer and Memoranda in SPR No. 2-2003, without being specifically ordered to do so. Judge Baldado, thus, recommended that Judge Barillo be imposed a minimum fine of P2,000.00 for the said charge. Similarly, on the sixth issue, Judge Baldado upheld the claim of Aragonés that Judge Barillo was apparently "lawyering" for Lasola, inasmuch as the act of Judge Barillo of filing the petition in G.R. No. 159117 tended to protect the interest of the said party. For the said charge, Judge Baldado then recommended that Judge Barillo be imposed a fine of P5,000.00.

In its own Memorandum Report,[75] the OCA found merit in the Complaint filed by Aragonés. The OCA was of the opinion that Judge Barillo should be held administratively liable for allowing Atty. Paras to represent a party litigant before his sala, notwithstanding the absence of a Court order lifting the lawyer's suspension. Citing *Mercado and Sons Agricultural Enterprises, Inc. v. De Vera*,[76] the OCA pointed out that the lifting of a lawyer's suspension is not automatic upon the end of the period of suspension. An order from the Court lifting the suspension is necessary before the lawyer may properly resume the practice of law. The OCA also disregarded the excuse of Judge Barillo that he decided Election Case No. 7-2002 after he received the RTC Decision in Special Election Case No. 02-01-G, dismissing Aragonés' Petition for Certiorari, given that the existence of said decision could not be found in the records of Election Case No. 7-2002. The OCA concluded that Judge Barillo was guilty of trying to mislead the Court as to the existence of the two conflicting RTC Decisions. Finally, the OCA ascribed error on the part of Judge Barillo for filing a Petition for Certiorari before the Court, in violation of Section 5, Rule 65 of the Rules of Court, which mandates that the judge whose order is being assailed is a mere nominal party who does not have to appear in court or file any answer, comment or pleading, unless specifically directed to. The OCA recommended that:

WHEREFORE, IN VIEW OF THE FOREGOING, this Office respectfully recommends that:

- This matter be RE-DOCKETED as an administrative complaint against Judge Hector B. Barillo, former Acting Presiding Judge, MTC, Guihulngan, Negros Oriental; and
- Judge Hector B. Barillo be SUSPENDED from office for four (4) months for gross misconduct and gross ignorance of the law with WARNING that a repetition of the same or similar act in the future will warrant a more severe penalty.

In G.R. No. 159117, to assail the Resolution dated June 11, 2003 of the COMELEC Second Division in SPR No. 2-2003, Judge Barillo raises the following issues for our consideration:

1. Whether respondent Commissioners, sitting in Division not on Commission on Elections En Banc have the appellate jurisdiction to resolve the Barangay Decision in Election Case No. 7-2002 entitled Oscar C. Lasola (Protestant) vs. Walter J. Aragonés (Protestee) for: Recount of Votes docketed in MTC, Guihulngan, Negros Oriental which was already final and executory as there was no appeal from December 9, 2002, the date of the promulgation of the Decision, up to the present time;
2. Whether the failure of aggrieved party Protestee Walter J. Aragonés to appeal within five (5) days from the promulgation on December 9, 2002 in the Barangay Election Case can be given due course by the filing of the subject appealed COMELEC Case SPR No. 2-2003 entitled Walter J. Aragonés (Petitioner) versus Hon. Judge Hector B. Barillo, Acting Presiding Judge, MTC, Guihulngan, Negros Oriental and Oscar C. Lasola (Respondents) for: Petition to Declare Null and Void the Decision dated November 22, 2002, Certiorari, Prohibition, Mandamus with Temporary Restraining Order and/or Mandatory Injunction on January 8, 2003 or twenty-four (24) days had lapsed from the promulgation of the Barangay Election Case No. 7-2002;

3. Whether undersigned petitioner judge has committed grave abuse of discretion amounting to lack or excess of jurisdiction as shown in that dispositive portion of the COMELEC Resolution SPR No. 2-2003;
4. Whether the failure of undersigned petitioner to file a Motion for Reconsideration to the subject COMELEC Resolution would make the same legal, final and executory in spite of the filing of this Petition For Certiorari within the reglementary period; and
5. Whether the undersigned petitioner Judge has legal standing/right/duty to file the instant special action for certiorari.[77]

Judge Barillo primarily argues that the MTC Decision dated November 27, 2002 in Election Case No. 7-2002 already became final and executory on December 16, 2002, in view of the failure of Aragonés to appeal the same within five days after its promulgation on December 9, 2002. Such being the case, Aragonés could no longer assail the MTC Decision via the Petition filed before the COMELEC Second Division in SPR No. 2-2003. Contrary to the accusations of Aragonés that he was guilty of grave abuse of discretion, Judge Barillo insists that he had been faithfully complying with the provisions of Section 17, Rule 37[78] of the COMELEC Rules of Procedure, but the MTC Decision and its promulgation were, nonetheless, delayed by the harassment cases filed by Aragonés and his counsel, Atty. Yap. Judge Barillo avers that, despite the fact that he did not file a motion for reconsideration of the Resolution dated June 11, 2003 of the COMELEC Second Division, the instant Petition for Certiorari assailing the resolution was timely filed with this Court. Therefore, the said Resolution could not yet become final and executory. As regards his legal standing to file the instant petition, Judge Barillo points to *Montalban v. Canonoy*,[79] wherein the Court held that a judge may file an answer or take an active part in a proceeding in order to belie personal attacks of ignorance of the law and of bias, prejudice, favoritism, vindictiveness and other base motives.

We dismiss the petition in G.R. No. 159117.

Judge Barillo clearly has no legal standing to file the instant petition, since he is but a nominal party in this case. Section 5, Rule 65 of the Rules of Court is quite explicit in stating this rule, thus:

SEC. 5. Respondents and costs in certain cases. - When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents.

Unless otherwise specifically directed by the court where the petition is pending, the public respondents shall not appear in or file an answer or comment to the petition or any pleading therein. If the case is elevated to a higher court by either party, the public respondents shall be included therein as nominal parties. However, unless otherwise specifically directed by the court, they shall not appear or participate in the proceedings therein. (Emphasis ours.)

Specifically, the instant case calls to our mind *Calderon v. Solicitor General*,[80] wherein the petitioner in the special civil actions of certiorari and mandamus was the same judge whose orders were reversed by the appellate court. Being a nominal party, the petitioner therein was declared to be without legal standing to file the petitions involved. In no uncertain terms, the Court stated that:

Judge Calderon should be reminded of the well-known doctrine that a judge should detach himself from case where his decision is appealed to a higher court for review. The *raison d'être* for such doctrine is the fact that

the judge is not an active combatant in such proceeding and must leave the opposing parties to contend their individual positions and the appellate court to decide the issues without his active participation. By filing this case, petitioner in a way has ceased to be judicial and has become adversarial instead.

Turqueza v. Hernando[81] similarly cautions that "it is the duty of the private respondent to appear and defend, both in his/her behalf and in behalf of the Court or judge whose order or decision is at issue. The judge should maintain a detached attitude from the case and should not waste his time by taking an active part in a proceeding which relates to official actuations in a case but should apply himself to his principal task of hearing and adjudicating the cases in his court. He is merely a nominal party to the case and has no personal interest nor personality therein."

Judge Barillo cannot find succor in *Montalban v. Canonoy*,[82] which he cites to justify his act of filing the instant petition. In the said case, the Court considered as justified the act of the respondent judge in filing an answer before the appellate court, wherein the judge's orders were being questioned. The Court ruled that "when the actuations of a judge are assailed on grounds other than legal ones, and imputing to the judge personal motives, the judge cannot be blamed if he takes personal interest in trying to disprove the imputations."

In the instant case, Judge Barillo did not merely file a comment or an answer in the petition at bar. He himself filed the petition. Moreover, Judge Barillo failed to make any disputation and/or rebuttal of whatever ill motive that may have been imputed on his part. A close reading of the Petition for Certiorari filed before this Court reveals that the grounds invoked therein by Judge Barillo are purely legal ones, which tend to prove the validity and finality of the MTC Decision dated November 27, 2002, as well as the alleged absence of appellate jurisdiction of the COMELEC Second Division in SPR No. 2-2003. As Judge Barillo is not the proper party who should question the Resolution of the COMELEC Second Division, his petition must fail.

Additionally, even if Judge Barillo had the requisite legal standing to file the instant petition, the Court finds that the same must still be dismissed. Ultimately, it is already beyond the jurisdiction of this Court in the present petition to still look into the questions pertaining to the legality and enforceability of the MTC Decision dated November 27, 2002 in Election Case No. 7-2002. The same have since been rendered moot and academic by the expiration of the term of office originally contested in the said case.

To recall, Aragonese and Lasola vied for the position of Punong Barangay of Poblacion, Guihulngan, Negros Oriental during the July 15, 2002 barangay elections. Aragonese was initially proclaimed the duly elected Punong Barangay by the Board of Canvassers, but this proclamation was annulled by Judge Barillo in the MTC Decision dated November 27, 2002 in Election Case No. 7-2002. Aragonese challenged the MTC Decision before the COMELEC Second Division in SPR No. 2-2003. In the Resolution dated June 11, 2003, the COMELEC Second Division nullified the MTC Decision, thus, prompting Judge Barillo to file the instant petition.

Under Republic Act No. 9164,[83] the term of office of barangay officials elected in the July 15, 2002 synchronized barangay and sangguniang kabataan elections was 3 years, commencing on August 15, 2002, and ending at noon on November 30, 2005.[84]

On September 22, 2005, Republic Act No. 9340[85] was approved, whereby the date for the synchronized barangay and sangguniang kabataan elections was reset to the last Monday of October 2007 and every three years thereafter.[86] The terms of office of the barangay officials elected during the July 15, 2002 barangay elections were then extended up to and expired on November 30, 2007.

Indeed, in this very situation, *Basmala v. Commission on Elections*[87] fittingly states that "it is an exercise in futility indeed for the Court to still indulge itself in a review of the records and in an academic discussion of the applicable legal principles to determine who really won the elections, because whatever judgment is reached, the

same can no longer have any practical legal effect or, in the nature of things, can no longer be enforced."

Therefore, the Court now proceeds to determine the administrative liability of Judge Barillo in A.M. No. MTJ-10-1752.

In its Memorandum Report filed with this Court, the OCA recommended that Judge Barillo be suspended for gross misconduct and gross ignorance of the law.

The Code of Judicial Conduct ordains that a judge should be the embodiment of competence, integrity and independence.[88] Furthermore, a judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.[89] In every case, a judge shall endeavor diligently to ascertain the facts and the applicable law unswayed by partisan interests, public opinion or fear of criticism.[90]

In the case at bar, the Court finds that Judge Barillo's deportment fell below the level required of the members of the bench.

The Court did not fail to note that the various controversies in the case at bar began immediately after the filing of the election protest before the sala of Judge Barillo. Specifically, the conflict first arose when Judge Barillo allowed Atty. Paras to appear and represent Lasola despite the motion for the said counsel's disqualification filed by Aragonese. It was manifested that, on October 18, 2000, Atty. Paras was suspended by the Court in the administrative case A.C. No. 5333 for a period of one year and six months, to be served simultaneously. The suspension order became effective on May 23, 2001 when Atty. Paras received a copy of the Court's Resolution denying with finality his Motion for Reconsideration. Thus, his suspension should have lasted until May 23, 2002.

In the Order dated August 2, 2002 in Election Case No. 7-2002, Judge Barillo ordered Atty. Paras to appear during the subsequent scheduled hearings of the case, unless Judge Barillo received a copy of a Supreme Court resolution ordering the latter's suspension or disbarment. Subsequently, Judge Barillo tried to justify the said Order by claiming that the suspension of Atty. Paras was for a period of one year only, which has already lapsed before the filing of Election Case No. 7-2002 on July 24, 2002. Judge Barillo is grievously mistaken.

Verily, in a Resolution dated July 12, 2002 issued in the administrative case A.C. No. 3066, entitled *J.K. Mercado and Sons Agricultural Enterprises Inc. v. De Vera*, the Court had the occasion to state that "the lifting of an order of suspension is not automatic upon the end of the period stated in the Court's decision, and an order from the Court lifting the suspension at the end of the period is necessary in order to enable him to resume the practice of his profession."

To aggravate this mistake, there was no showing from Judge Barillo that he exerted any effort at all to ascertain the correct rule or procedure regarding the lifting of suspension of lawyers, or to determine if the suspension of Atty. Paras had indeed already been lifted before the said counsel was allowed to resume his practice of law. Significantly, upon verification by the Court of the status of the suspension of Atty. Paras, it appeared that, based on the records of the Office of the Bar Confidant, the suspension imposed on Atty. Paras in A.C. No. 3066 was yet to be lifted. In our opinion, Judge Barillo was negligent in failing to confirm such fact.

As regards the act of Judge Barillo of filing the Petition for Certiorari subject of the instant case, the Court finds the same to be highly irregular. As previously discussed herein, Judge Barillo should be a mere nominal party in the proceedings where his decisions or orders are being assailed. Section 5, Rule 65 of the Rules of Court is simple and straightforward enough in stating that "unless otherwise specifically directed by the court where the petition is pending, the public respondents shall not appear in or file an answer or comment to the petition or any pleading therein. If the case is elevated to a higher court by either party, the public respondents shall be included therein as nominal parties. However, unless otherwise specifically directed by the court, they shall not appear or

participate in the proceedings therein." In the instant case, Judge Barillo even pre-empted the petition filed by Lasola, the real party aggrieved by the COMELEC Resolution dated June 11, 2003. In so doing, Judge Barillo gave the impression of manifest bias and partiality in favor of Lasola, for which infraction the former should be held liable.

In connection with the two apparently conflicting Decisions of the RTC of Negros Oriental, Branch 64, in Special Civil Action No. 02-01-G, the Court finds, at the outset, that the behavior of Judge Barillo thereon was highly dissatisfactory.

On the hearings conducted by Judge Baldado during his investigation in A.M. No. MTJ-10-1752, Judge Barillo appeared on his own behalf. On the matter of the delivery of the RTC Decision allegedly dismissing the petition filed by Aragonés in Special Civil Action No. 02-01-G, Judge Barillo testified that the same was received then delivered to him by MTC Clerk of Court Lucia Tangeres, and that he did not inquire who was the RTC personnel who purportedly personally delivered it.[91] Judge Barillo said that he got hold of the first RTC Decision on November 26, 2002.[92] He likewise admitted that his curiosity was piqued upon noticing that the first RTC Decision was apparently promulgated on October 28, 2002, and yet he received it about one month later. Still, Judge Barillo did not verify the authenticity of the first Decision because the same was in his favor. Thereafter, he immediately scheduled the promulgation of the MTC Decision.[93]

Interestingly, Judge Barillo related that a few days after receiving and photocopying the purported duplicate original of the first RTC Decision dismissing Aragonés' petition, the same got lost. All that remained in the records was a photocopy of the decision. Judge Barillo testified that he investigated the matter, but the duplicate original could no longer be found.[94] Nevertheless, after losing the duplicate original of the first RTC Decision, Judge Barillo did not get another certified true copy thereof from the RTC, Branch 64.[95]

On December 10, 2002, Judge Barillo stated that he received the second RTC Decision granting the petition filed by Aragonés from a letter carrier from the post office.[96] However, despite the fact that the MTC of Guihulngan and the RTC, Branch 64 were housed in the same building, Judge Barillo did not go to the RTC to verify which of the two alleged decisions the correct one was.[97] Upon being asked what he did with the two conflicting decisions, Judge Barillo replied that he merely filed a manifestation with the RTC stating such fact.[98] In relation to the MTC Decision promulgated on December 9, 2002, Judge Barillo insisted that the two RTC Decisions, whether the same were in his favor or not, were illegal in view of the lack of jurisdiction of the RTC over the petition filed by Aragonés.[99]

The subsequent MTC Clerk of Court, Val Alfa Vidal, also testified in the investigation hearing conducted by Judge Baldado in A.M. No. MTJ-10-1752. He declared that he once asked the previous Clerk of Court, Lucia Tangeres, about the missing duplicate original of the first RTC Decision, dismissing Aragonés' petition in Special Civil Action No. 02-01-G. She allegedly replied that she gave it to Judge Barillo. When asked about what kind of copy of the first RTC Decision remained in the records of the MTC, Vidal answered that there was none left. Not even a photocopy thereof.[100]

Clearly from the above testimonies, the first RTC Decision purportedly dismissing the petition filed by Aragonés could not be established to be an authentic issuance from the RTC. The attitude of Judge Barillo towards the first RTC Decision was both cavalier and careless. What is baffling in the above scenario is that Judge Barillo did not care to question the dubious circumstances surrounding the first RTC Decision since, in his own words, the same was in his favor. Avowedly, Judge Barillo was candid enough to admit that after he received the first RTC Decision, he immediately promulgated the MTC Decision. With respect to the second RTC Decision, which was in fact certified by the RTC Clerk of Court to be the authentic Decision in Special Civil Action No. 02-01-G,

Judge Barillo was equally dismissive. He merely brushed aside the same on the ground of lack of jurisdiction on the part of the RTC over the petition filed by Aragones. The Court, therefore, finds that Judge Barillo was at the very least decidedly lackadaisical in the management of the affairs of his sala.

The above disquisition notwithstanding, the Court is not convinced that Judge Barillo should be held liable for gross misconduct and gross ignorance of the law absent any evidence showing outright bad faith.

To be sure, before any administrative liability may be imposed on an erring judge, *Dadizon v. Asis*[101] instructs that:

Any administrative complaint levelled against a judge must always be examined with a discriminating eye, for its consequential effects are by their nature highly penal, such that respondent stands to face the sanction of dismissal and/or disbarment. Mere suspicion, as in this case, that a judge was partial to a party is not enough. Inasmuch as what is imputed against respondent judge connotes a misconduct so grave that, if proven, it would entail dismissal from the service, the quantum of proof required should be more than substantial. Even in an administrative case, the rules demand that, if the respondent judge should be disciplined for grave misconduct or any grave offense, the evidence against him should be competent and should be derived from direct knowledge of the witness. The Judiciary to which herein respondent belongs demands no less. Before any of its members could be faulted, it should only be after due investigation and after the presentation of competent evidence, especially since the charge is penal in character.

To warrant a finding of gross ignorance of the law, as a ground for disciplinary action, the error must be so gross and patent as to produce an inference of bad faith or that the judge knowingly rendered an unjust decision. The error must be so grave and so fundamental to a point as to warrant condemnation of the judge as patently ignorant or negligent. Otherwise, to hold a judge administratively accountable for every erroneous ruling or decision he renders, assuming that the judge erred, would be nothing short of harassment and that would be intolerable.[102]

Similarly, in *Office of the Court Administrator v. Duque*,[103] the term misconduct was characterized as follows:

Misconduct is defined as any unlawful conduct on the part of a person concerned in the administration of justice prejudicial to the rights of parties or to the right determination of the cause. It generally means wrongful, improper, unlawful conduct motivated by a premeditated, obstinate or intentional purpose. The term, however, does not necessarily imply corruption or criminal intent. On the other hand, the term "gross" connotes something "out of all measure; beyond allowance; not to be excused; flagrant; shameful."

For administrative liability to attach it must be established that the respondent was moved by bad faith, dishonesty, hatred or some other like motive. As defined -

Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of a sworn duty though some motive or intent or ill-will; it partakes of the nature of fraud. It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill-will for ulterior purposes. Evident bad faith connotes a manifest deliberate intent on the part of the accused to do wrong or cause damage.

In the instant case, it may truly be said that the various faux pas committed by Judge Barillo are examples of poor judgment and negligence. However, equally important to note is the fact that there is no allegation, much less a genuine showing, that Judge Barillo was impelled by bad faith, dishonesty, hatred or some other corrupt motive in committing the acts for which he was charged. Neither were allegations of corruption nor imputations of pecuniary benefit ever asserted against him.

Such observation was likewise shared by RTC Judge Baldado in his Report and Recommendations before the Court. Judge Baldado also pointed out that while there appeared to be haste in the sequence of proceedings before

the MTC, Judge Baldado could not conclude that there was undue haste, given that there was no proof that the acts of Judge Barillo were tainted with malice, bad faith or manifest partiality.

Indeed, what Judge Barillo had been harking on during the entirety of the proceeding before him was the provision of Section 17, Rule 37 of the 1988 COMELEC Rules of Procedure, which mandates that "the court shall decide the protest within fifteen (15) days from its filing and shall declare who among the parties has been elected, or in a proper case, that none of them has been legally elected."

Thus, contrary to the findings of the OCA, the transgressions committed by Judge Barillo in this case are not flagrant enough or motivated by any ill motive so as to be classified as grave misconduct or to warrant a finding of gross ignorance of the law.

Nevertheless, the Court rules that Judge Barillo is guilty of simple misconduct in view of the commission of the above-enumerated acts, which subjected the MTC to distrust and accusations of partiality. Thus, we find that the penalty of suspension for a period of three months is in order.[104]

Last of all, the Court notes that both Judge Baldado and the OCA did not address in their Report and Recommendations and Memorandum Report, respectively, the Counter-Complaint in A.M. No. MTJ-10-1752 interposed by Judge Barillo against Aragonese; the latter's counsel, Atty. Francisco D. Yap; former RTC Judge Felix G. Gaudiel, Jr.; RTC Clerk of Court Atty. Jonathan L. Eleco; and the then Commissioners of the COMELEC Second Division Ralph Lantion, Mehol K. Sadain and Florentino A. Tuason, Jr.

In particular, Aragonese, Atty. Yap and former RTC Judge Felix G. Gaudiel, Jr. were charged with conspiracy in committing gross ignorance of the law, obstruction of justice and intentional malicious delay in the trial and decision in Election Case No. 7-2002 in view of the allegedly erroneous filing of the Petition for Certiorari (Special Civil Action No. 02-01-G) in the RTC, which, nonetheless assumed jurisdiction over the same and inexplicably appeared to have issued two conflicting decisions. Aragonese and Atty. Yap were also accused of violating the rule on forum shopping for filing Special Civil Action No. 02-01-G, Special Civil Action No. 02-03-G, A.M. No. MTJ-10-1752 and SPR No. 2-2003 almost simultaneously.

Finally, the then Second Division of the COMELEC was charged with gross ignorance of the law, obstruction of justice and intentional and malicious delay in Election Case No. 7-2002 by taking cognizance of the Petition to Declare Null and Void the MTC Decision (SPR No. 2-2003) despite the fact that the said MTC Decision already became final and executory.

Upon a close reading of the Counter-Complaint, the Court finds that the fundamental issues set forth therein are judicial matters, which should have been raised by the proper parties and addressed in the respective cases in the due course of the proceedings. Such matters are not subject to administrative scrutiny.

WHEREFORE, the Court rules as follows:

In G.R. No. 159117, the Petition for Certiorari under Rule 65 of the Rules of Court is hereby DISMISSED.

In A.M. No. MTJ-10-1752, Judge Hector B. Barillo is hereby SUSPENDED for a period of Three (3) Months and given a STERN WARNING that a repetition of the same or similar acts will be dealt with more severely.

Let a copy of this Decision be entered in Judge Barillo's personal record.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Nachura, Brion, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, and Mendoza, JJ., concur.

Velasco, Jr., J., no part due to prior action in OCA.

[1] Rollo (G.R. No. 159117), pp. 6-24.

[2] Penned by the then Presiding Commissioner Ralph C. Lantion with Commissioners Mehol K. Sadain and Florentino A. Tuason, Jr., concurring; rollo (G.R. No. 159117), pp. 26-34.

[3] Rollo (G.R. No. 159117), pp. 35-64.

[4] Id. at 85-88.

[5] Rollo (A.M. No. MTJ-10-1752), pp. 1-26.

[6] Id. at 27-30.

[7] Rollo (G.R. No. 159117), pp. 672-673.

[8] Rule 35 of the COMELEC Rules of Procedure pertains to Election Contests Before Courts of General Jurisdiction, Section 12 of which provides:

SEC. 12. Custody of Ballot Boxes, Election Documents and Paraphernalia. - Where allegations in a protest, or counter-protest or protest-in-intervention so warrant, or whenever in the opinion of the Court the interest of justice so demands, it shall immediately order the ballot boxes containing ballots and their keys, list of voters with voting records, books of voters, and other documents used in the election to be brought before it. Said election documents and paraphernalia shall be kept and held secure in a place to be designated by the Court in the care and custody of the Clerk of Court.

[9] Rollo (G.R. No. 159117), pp. 674-675.

[10] Sections 13, 15 and 16 of Rule 35 of the COMELEC Rules of Procedure state:

SEC. 13. Revision of Ballots. - For the purpose of revision of ballots, the court shall appoint a committee composed of a chairman and two members, one member and his substitute to be proposed by the protestant, and the other member and his substitute by the protestee.

The revision of the ballots by the Committee on revision shall be made in the office of the Clerk of Court or at such other place as may be designated by it, but in every case under the Court's strict supervision.

The revision of the ballots shall be completed within twenty (20) days from the date of the order, unless otherwise directed by the Court, subject to the time limits prescribed under Sec. 11 and Sec. 17 of this Rule.

SEC. 15. Report of the Committee on Revision. - The committee on revision shall make a statement of the condition in which the ballot boxes and their contents were found upon the opening of the same, classify the ballots so examined, and set forth clearly any objection that may have been offered to each ballot in the report to be submitted by it. Disputed ballots shall be numbered consecutively for purposes of identification in the presence and under the direction of the official designated by the Court. After examination, the ballots and other election documents shall be returned to their respective boxes, but disputed ballots shall be placed in a separate envelope duly sealed and signed by the members of the committee, after which said envelope shall then be returned to the

box. Thereafter, the boxes shall be locked. For purposes of making the report which shall be submitted in twelve (12) legible copies, the form prescribed by the Commission shall be followed.

SEC. 16. Prohibited Access. - During the revision of ballots no person other than the Judge, the Clerk of Court, members of the committee on revision of ballots, the parties, their duly authorized representatives shall have access to the place where said revision is taking place.

[11] Rollo (A.M. No. MTJ-10-1752), pp. 31-35.

[12] *Paras v. Paras*, October 18, 2000, 343 SCRA -414.

[13] The complete provision of Section 14, Article VI of the Constitution reads:

SEC. 14. No Senator or Member of the House of Representatives may personally appear as counsel before any court of justice or before the Electoral Tribunals, or quasi-judicial and other administrative bodies. Neither shall he, directly or indirectly, be interested financially in any contract with, or in any franchise or special privilege granted by the Government, or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation, or its subsidiary, during his term of office. He shall not intervene in any matter before any office of the Government for his pecuniary benefit or where he may be called upon to act on account of his office.

[14] Rollo (A.M. No. MTJ-10-1752), pp. 161-168.

[15] Rollo (G.R. No. 159117), pp. 676-679.

[16] *Id.* at 680-684.

[17] Rollo (A.M. No. MTJ-10-1752), pp. 40-43.

[18] *Id.* at 44-59.

[19] Records (A.M. No. MTJ-10-1752), Vol. IV, pp. 123-125.

[20] *Montecillo v. Gica*, G.R. No. L-36800, October 21, 1974, 60 SCRA 234; *Sebastiano v. Ceniza*, A.C. No. 1500, December 14, 1978, 87 SCRA 244; *Artiaga, Jr. v. Villanueva*, A.C. No. 1892, July 7, 1989, 175 SCRA 237; *Laguitan v. Tinio*, A.C. No. 3049, December 4, 1989, 179 SCRA 837.

[21] Records (A.M. No. MTJ-10-1752), Vol. III, pp. 64-68.

[22] *Id.* at 69-73.

[23] Rollo (A.M. No. MTJ-10-1752), pp. 40-43.

[24] *Id.* at 199-209.

[25] Records (A.M. No. MTJ-10-1752), Vol. III, p. 63.

[26] Rollo (A.M. No. MTJ-10-1752), pp. 61-63.

[27] *Id.* at 64-68.

[28] Section 2(2), Article IX-C of the Constitution reads:

SEC. 2. The Commission on Elections shall exercise the following powers and functions:

x x x x

2. Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.

Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable.

[29] Section 1, Rule 28 of the COMELEC Rules of Procedure states:

SEC. 1. When Available. - In aid of its appellate jurisdiction in election cases before courts of general jurisdiction relating to the elections, returns and qualifications of elective Municipal officials, and before courts of limited jurisdiction in cases relating to the elections, returns and qualifications of elective barangay officials, the Commission en banc may hear and decide petitions for certiorari, prohibition or mandamus.

[30] Rollo (A.M. No. MTJ-10-1752), pp. 550-554.

[31] Id. at 69-72.

[32] Id. at 78-91.

[33] Rollo (G.R. No. 159117), pp. 156-161.

[34] Id. at 161.

[35] Id. at 183-187.

[36] Id. at 35-64.

[37] Id. at 83-84.

[38] Id. at 319-325.

[39] The cited provision pertains to Section 19, Rule 37 of the 1988 COMELEC Rules of Procedure, which reads:

SEC. 19. Promulgation and finality of decision. - The decision of the court shall be promulgated on a date set by it of which due notice must be given the parties. It shall become final (5) days after its promulgation.

No motion for reconsideration shall be entertained.

[40] Rollo (A.M. No. MTJ-10-1752), pp. 98-100.

[41] Rollo (G.R. No. 159117), pp. 85-88.

[42] Id. at 332-338.

[43] Id. at 319-325.

[44] Id. at 156-161.

[45] Rollo (A.M. No. MTJ-10-1752), pp. 133-134.

[46] Rollo (G.R. No. 159117), pp. 89-90.

[47] Id. at 91.

[48] Rollo (A.M. No. MTJ-10-1752), pp. 580-592.

[49] Judge Felix G. Gaudiel, Jr., retired on December 4, 2002.

[50] Rollo (G.R. No. 159117), pp. 340-342.

[51] Rollo (A.M. No. MTJ-10-1752), pp. 352-353.

[52] Records (A.M. No. MTJ-10-1752), Vol. II, p. 86.

[53] Before the Court of Appeals, the appeal was docketed as CA-G.R. CR No. 27479. As of 17 June 2004, the appeal was considered submitted for decision. (Records, [A.M. No. MTJ-10-1752], Vol. III, p. 300.)

[54] Records (A.M. No. MTJ-10-1752), Vol. III, pp. 313-341.

[55] Sections 1 and 2 of Rule 28 of the COMELEC Rules of Procedure are as follows:

SEC. 1. When Available. - In aid of its appellate jurisdiction in election cases before courts of general jurisdiction relating to the elections, returns and qualifications of elective Municipal officials, and before courts of limited jurisdiction in cases relating to the elections, returns and qualifications of elective barangay officials, the Commission en banc may hear and decide petitions for certiorari, prohibition or mandamus.

SEC. 2. Petition for Certiorari or Prohibition. - When any court or judge hearing election cases has acted without or in excess of its or his jurisdiction or with grave abuse of discretion and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a petition for certiorari or prohibition with the Commission alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings, as the law requires, of such court or judge, or commanding it or him to desist from further proceeding with the action or matter specified therein, as the case may be.

The petition shall be accompanied by a certified true copy of the judgment or order subject thereof, together with all pleadings and documents relevant and pertinent thereto.

[56] Rollo (G.R. No. 159117), pp. 70-82.

[57] Records (A.M. No. MTJ-10-1752), Vol. III, pp. 355-356.

[58] Rollo (A.M. No. MTJ-10-1752), pp. 470-478.

[59] Rollo (G.R. No. 159117), pp. 26-34.

[60] Id. at 374-375.

[61] The COMELEC filed a Comment on the petition (Rollo, [G.R. No. 159117, pp. 220-233] but later manifested that it would no longer file a memorandum (Rollo, [G.R. No. 159117, pp. 563-566]).

[62] Id. at 200-206.

[63] Id. at 199.

[64] Id. at 265.

[65] Rollo (A.M. No. MTJ-10-1752), pp. 1-26.

[66] Rollo (G.R. No. 159117), p. 361.

[67] Now a member of this Court.

[68] Rollo (A.M. No. MTJ-10-1752), pp. 136-156.

[69] Id. at 274-286.

[70] Id. at 354-362, 545-548.

[71] Id. at 492-501.

[72] Id. at 540-543.

[73] Rollo (G.R. No. 159117), p. 478.

[74] Records (A.M. No. MTJ-10-1752), Vol. I, pp. 916-937.

[75] Id. at 938-942.

[76] A.C. No. 3066, July 12, 2000.

[77] Rollo (G.R. No. 159117), pp. 766-767.

[78] Judge Barillo was referring to the provisions of Section 17, Rule 37 of the 1988 COMELEC Rules of Procedure that applied to the instant case, which provides:

SEC. 17. Decision. - The court shall decide the protest within fifteen (15) days from its filing and shall declare who among the parties has been elected, or in a proper case, that none of them has been legally elected. The party who in the judgment has been declared elected shall have the right to assume office as soon as the judgment becomes final.

In case the court finds that the protestant, protestee or intervenor shall have an equal or highest number of votes, it shall order the drawing of lots by those who have tied and shall proclaim as elected the party who may have been favored by luck, and the party so proclaimed shall have the right to assume office in the same manner as if he had been elected by plurality vote. (Emphasis ours.)

[79] A.C. No. 179-J, March 15, 1971, 38 SCRA 1, 7-8.

[80] G.R. Nos. 103752-53, November 25, 1992, 215 SCRA 876, 881.

[81] 186 Phil. 341 (1980).

[82] Supra note 79 at 7-8.

[83] Entitled "AN ACT PROVIDING FOR SYNCHRONIZED BARANGAY AND SANGGUNIAN KABATAAN ELECTIONS, AMENDING REPUBLIC ACT NO. 7160, AS AMENDED, OTHERWISE KNOWN AS THE 'LOCAL GOVERNMENT CODE OF 1991,' AND FOR OTHER PURPOSES." Approved on March 19, 2002.

[84] The relevant provisions of Republic Act No. 9164 are as follows:

SEC. 1. Date of Election. - There shall be synchronized barangay and sangguniang kabataan elections which shall be held on July 15, 2002. Subsequent synchronized barangay and sangguniang kabataan elections shall be held on the last Monday of October and every three (3) years thereafter.

SEC. 2. Term of Office. - The term of office of all barangay and sangguniang kabataan officials after the effectivity of this Act shall be three (3) years.

No barangay elective official shall serve for more than three (3) consecutive terms in the same position: Provided, however, That the term of office shall be reckoned from the 1994 barangay elections. Voluntary renunciation of office for any length of time shall not be considered as an interruption in the continuity of service for the full term

for which the elective official was elected.

SEC. 4. Assumption of Office. - The term of office of the barangay and sangguniang kabataan officials elected under this Act shall commence on August 15, 2002. The term of office of the barangay and sangguniang kabataan officials elected in subsequent elections shall commence at noon of November 30 next following their election. (Emphasis ours.)

[85] AN ACT AMENDING REPUBLIC ACT NO. 9164, RESETTling THE BARANGAY AND SANGGUNlANG KABATAAN ELECTIONS, AND FOR OTHER PURPOSES.

[86] The pertinent portions of Republic Act No. 9340 recite:

SEC. 1. - Section 1 of Republic Act No. 9164 is hereby amended to read as follows:

"SECTION 1. Date of Election. There shall be synchronized barangay and sangguniang kabataan elections which shall be held on July 15, 2002. Subsequent synchronized barangay and sangguniang kabataan elections shall be held on the last Monday of October 2007 and every three (3) years thereafter."

SEC. 2. Section 4 of Republic Act No. 9164 is hereby amended to read as follows:

"SEC. 4. Assumption of Office. - The term of office of the barangay and sangguniang kabataan officials elected under this Act shall commence on August 15, 2002, next following their elections. The term of office of the barangay and sangguniang kabataan officials elected in the October 2007 election and subsequent elections shall commence at noon of November 30 next following their election."

[87] G.R. No. 176724, October 6, 2008, 567 SCRA 664-668.

[88] Rule 1.01.

[89] Rule 2.01.

[90] Rule 3.02.

[91] TSN, July 12, 2004; records (A.M. No. MTJ-10-1752), Vol. I, p. 708).

[92] TSN, July 14, 2004; id. at 781.

[93] Id. at 782-784.

[94] Id. at 785.

[95] Id. at 787.

[96] TSN, July 12, 2004; id. at 709.

[97] Id. at 711.

[98] Id. at 716.

[99] Id. at 717-718.

[100] Id. at 842-843.

[101] 464 Phil. 571, 582-583 (2004).

[102] Bengzon v. Adaoag, A.M. No. MTJ-95-1045, November 28, 1995, 250 SCRA 344, 348.

[103] 491 Phil. 128, 133-134 (2005), citing Office of the Court Administrator v. Judge Octavio A. Fernandez, 480

Phil. 495, 500 (2004).

[104] Simple misconduct, classified as a less serious charge, is punishable under paragraph B, Section 11 of Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, as follows:

B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed:

1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or
2. A fine of more than P10,000.00 but not exceeding P20,000.00.

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