

HILARIO P. SORIANO, PETITIONER, VS. OMBUDSMAN SIMEON V. MARCELO, HON. PLARIDEL OSCAR J. BOHOL, GRAFT INVESTIGATION OFFICER II, AND RAMON R. GARCIA, RESPONDENTS.

G.R. NO. 167743. November 22, 2006

Ponente: CALLEJO, SR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-167743/>

CALLEJO, SR., J.:

Before this Court is a Petition for Review on Certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 85319 dated January 20, 2005 and its Resolution[2] dated April 12, 2005 which denied the motion for reconsideration thereof.

On July 9, 2001, Hilario P. Soriano, the President of Rural Bank of San Miguel, Inc. (RBSM), filed a criminal complaint for violation of Republic Act (R.A.) No. 3019 against Norberto Nazareno, Philippine Deposit Insurance Corporation (PDIC) President and Chief Executive, charging the latter, among others, with illegal pre-termination of RBSM's lease contracts over certain lots while under receivership. Nazareno filed his counter-affidavit appending thereto the affidavit of Teodoro Jose B. Hiran, the Department Manager of the Takeover Center of the PDIC. Nazareno claimed that the notices of termination of the lease contracts were without prejudice to the claim for reimbursement for the remaining value of the bank buildings constructed on the leased lot with a book value of P5,728,000.70.[3]

Soriano filed a complaint for perjury against Hiran with the Office of the Manila City Prosecutor. Soriano claimed that the statement of Hiran in his affidavit is totally untrue and a deliberate falsehood because PDIC, or any of its authorized representatives, made no reservation whatsoever concerning the claim for reimbursement when the lease contracts were pre-terminated. Soriano relied on the letter of Deputy Receiver Mauricia Manzanara to one of the lessors, attached to the complaint as Annex "D" thereof. The complaint was docketed as I.S. No. 01J-43460.[4] The case was assigned to Assistant City Prosecutor Joel Lucasan.

Soriano likewise filed a complaint for libel against Nazareno. He alleged therein that Nazareno uttered malicious and libelous statements when he was interviewed by a reporter of Business World on July 16, 2001. Nazareno declared in the interview that a case for estafa filed in the Department of Justice (DOJ) against Soriano for alleged self-dealing after a P10.5 million RBSM loan was used by affiliate Coconut Rural Bank in Batangas, and that some other estafa cases for P100 million were also filed by the DOJ in the Regional Trial Court (RTC) of Manila.[5] The case was docketed as I.S. No. 01H-32904.

Thereafter, Soriano filed a third criminal complaint in the Office of the Manila City Prosecutor for violation of Articles 183 and 184 of the Revised Penal Code against Zenaida A. Cabais, the comptroller appointed by the Bangko Sentral ng Pilipinas (BSP) to oversee the operations of RBSM, particularly the proper utilization of emergency loans extended to it by the BSP. The complaint alleged that Cabais submitted an affidavit in support of the Monetary Board in the petition filed by RBSM against BSP with the CA. It further alleged that Cabais made a

false statement in the said affidavit when she stated that, before RBSM declared a bank holiday, it paid Force Collect Professional Solution, Inc. and Sure Collect Professional Solution, Inc., which are allegedly owned by Soriano and other RBSM officers, P5.3 million and P5.75 million, respectively, without any supporting documents as payment of 25% collection fee. Soriano averred that this statement is not correct as the manager's checks for the said amounts were, in fact, withheld and no payment was made to the two corporations.[6] The case, docketed as I.S. No. 00D-18089, was assigned to Assistant City Prosecutor Anabel Magabilin.

On January 14, 2002, Assistant City Prosecutor Joel A. Lucasan recommended the dismissal of the criminal complaint against Hiran in I.S. No. 01J-43460 for lack of probable cause. He noted that the Office of the Ombudsman had not yet made a finding that Hiran made a deliberate and willful assertion of falsehood in the affidavit submitted to it. He opined that without such finding, it cannot be concluded that Hiran had made such alleged falsehood which would constitute the crime of perjury.[7] First Assistant City Prosecutor Eufrosino A. Sulla approved this recommendation for City Prosecutor Ramon R. Garcia.[8] The criminal complaint was consequently dismissed. Soriano filed a petition for review of the resolution with the DOJ on March 21, 2002.[9]

On January 24, 2002, Assistant City Prosecutor Yvonne G. Corpuz also recommended the dismissal of the complaint for libel against Nazareno for lack of probable cause. Prosecutor Corpuz made the following findings:

A perusal of the subject article shows that they are true and fair reports on a matter of public interest. It must be noted that when respondent Nazareno was interviewed by the reporter, Ms. Yap, he just mentioned facts which the public was entitled to know because complainant Soriano headed a bank that dealt with the public. These are matters of public interests and concerns of which the citizenry has the right to be informed especially when it affects the integrity of the banking system. Being a matter of public interest, the alleged defamatory articles are protected by the mantle of privilege communication, which does away with presumption of malice. The privilege character of the news article in question stems from constitutional guarantee of free speech and free press.

Moreover, malice in fact has not been shown in the case at bar. Respondent was not prompted by ill will or spite. He merely makes a disclosure of facts and not an imputation affecting character.[10]

City Prosecutor Ramon R. Garcia approved the recommendation of Prosecutor Corpuz and the criminal complaint was therefore dismissed.[11] Soriano filed a petition for review of the resolution with the DOJ.

On the other hand, in I.S. No. 00D-18089, Assistant City Prosecutor Anabel D. Magabilin recommended that the complaint against Cabais be dismissed for lack of probable cause. However, City Prosecutor Garcia merely recommended to the Ombudsman the approval of Prosecutor Magabilin's findings. In a March 4, 2002 Indorsement,[12] he forwarded the records of the said complaint to the Office of the Ombudsman upon his finding that Cabais was a public officer and that the complaint imputed against her was related to the performance of her duties.

On July 2, 2002, Soriano filed an Affidavit-Complaint[13] charging City Prosecutor Ramon Garcia with gross inexcusable negligence or manifest partiality in the performance of his duties as City Prosecutor which resulted in unwarranted benefits to Hiran and Nazareno, compromising public interest and injuring complainant's private rights, and violation of Section 3(e) of R.A. No. 3019. Soriano alleged in his affidavit-complaint that respondent erred in forwarding the records of I.S. No. 00D-18089 for perjury to the Ombudsman because in perjury, public office is not an essential ingredient. Soriano averred that if public office was an ingredient for perjury, then respondent should have forwarded his complaints against Hiran and Nazareno to the Office of the Ombudsman together with his recommendations thereon for final resolution, conformably with paragraph 1 of OMB-DOJ Joint Circular No. 95-001 dated October 5, 1995. The Circular states that preliminary investigation and prosecution of offenses committed by public officers and employees in relation to office whether cognizable by the

Sandiganbayan or the regular courts, and whether filed with the Office of the Provincial/City Prosecutor shall be under the control and supervision of the Office of the Ombudsman.

Soriano likewise relied on Section 4(8), Rule II of the Rules of Procedure of the Office of the Ombudsman, which provides that, upon the termination of the preliminary investigation, the investigating officer shall forward the records of the case together with his resolution to the designated authorities for appropriate action; and that no information may be filed and no complaint may be dismissed without the written authority or approval of the Ombudsman in cases falling within the jurisdiction of the Sandiganbayan or of the proper Deputy Ombudsman in all other cases.[14] Soriano alleged that Hiran and Nazareno committed the crime charged against them in relation to their office; hence, respondent Garcia should not have dismissed the Hiran and Nazareno complaints without the written authority or approval of the Deputy Ombudsman.

Soriano averred that respondent acted unlawfully in authorizing the dismissal of the complaints against Hiran and Nazareno instead of endorsing the complaints to the Office of the Ombudsman, together with the recommendations for dismissal, in the same way that the Cabais case was endorsed. He insisted that the special treatment of the Nazareno and Hiran cases, which resulted in their dismissal without having been reviewed by the Office of the Ombudsman, was uncalled for.[15]

The Office of the Ombudsman docketed the criminal aspect of the complaint as OMB-C-C-02-0416-G, and the administrative aspect as OMB-C-A-02-0287-G.

In his Counter-Affidavit,[16] respondent declared that although Nazareno was a public officer (being the President and Chief Executive Officer of PDIC, a government-owned or controlled corporation), since the offense of libel for which he was charged does not appear to have been committed in relation to his office, it is the regular courts, particularly the RTC, not the Sandiganbayan, that has jurisdiction over the case. The Business World interview was his personal and private undertaking which was not related to the performance of his duty as PDIC President and Chief Executive Officer. Hence, respondent retained the authority to conduct the preliminary investigation of a complaint conformably with OMB-DOJ Joint Circular No. 95-001, Series of 1995 which reads, thus:

(2) Unless the OMBUDSMAN under his constitutional mandate finds reason to believe otherwise, offenses NOT IN RELATION TO OFFICE and cognizable by the REGULAR COURTS shall be investigated and prosecuted by the OFFICE OF THE PROVINCIAL/CITY PROSECUTOR, which shall rule thereon with finality.[17]

He cannot be faulted for the dismissal of the Hiran case because the recommendation of the Investigating Prosecutor was approved by First Assistant City Prosecutor Eufrosino A. Sulla. Under Office Order No. 24 which he issued on February 5, 1996 and which remained in effect, only those cases involving offenses which are within the trial jurisdiction of the RTCs shall be forwarded to him for final disposition. Those cases for offenses cognizable by the Metropolitan Trial Courts (MeTCs) are forwarded to then First Assistant City Prosecutor Vicenta Ofilada, whose functions were performed by incumbent First Assistant City Prosecutor Sulla upon Ofilada's retirement from the service.[18]

Respondent further averred that perjury is within the trial jurisdiction of the MeTC. The final disposition of the said case, which includes the determination of whether or not it should be endorsed to the Office of the Ombudsman, is vested with Prosecutor Sulla. He explained that he ordered the indorsement of the case against Cabais to the Ombudsman for final disposition because Cabais, being the comptroller appointed by the BSP to oversee the operations of the RBSM while the latter was under receivership, was a public officer. Hence, his actions in the Hiran, Nazareno and Cabais cases cannot be considered as unlawful, irregular or inconsistent or in

total disregard of established procedure. Respondent averred that even if he erred in his actions on said cases, said error cannot be made the basis of a criminal or administrative action especially in the absence of any allegation, much less any evidence, showing that such disposition was done out of certain extraneous consideration other than plain appreciation of the evidence on hand. The remedy of complainant was to file a motion for the reconsideration of his resolutions in the said cases and/or appeal to the DOJ which he, in fact, did. Respondent pointed out that, on March 13, 2002, complainant, through counsel, filed a 20-page petition for review with the DOJ in the Nazareno case. On March 21, 2002, he appealed the Hiran case to the DOJ.[19]

After due proceedings, the Ombudsman, through Graft Investigator Plaridel Oscar J. Bohol, dismissed the administrative complaint against respondent Garcia on October 25, 2002.[20] The dispositive portion of the decision reads:

WHEREFORE, the foregoing premises considered, the instant administrative case against RAMON R. GARCIA, City Prosecutor of the Office of the City Prosecutor of Manila, with address at Room 208, City Hall Building, Manila, is hereby DISMISSED.

SO ORDERED.[21]

The Ombudsman held that Soriano's complaint was premature. It is not within the province of its administrative disciplinary jurisdiction to review the quasi-judicial findings and decisions of government officials such as the City Prosecutor of Manila. If complainant was dissatisfied with such findings of the City Prosecutor, his remedy was to move for reconsideration or file a petition for review with the DOJ, the proper office mandated by law to review the resolutions of the Office of the City Prosecutor of Manila. The Ombudsman noted that, on March 13, 2002 and March 21, 2002, complainant had, in fact, filed the appropriate petition with the DOJ seeking the review of the Nazareno and Hiran cases.

Moreover, Section 20(1) of R.A. No. 6770, the Ombudsman Act of 1989, provides that the Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that the complainant has an adequate remedy in another judicial or quasi-judicial body. The Ombudsman opined that, unless there is a final determination by the appropriate office that, indeed, respondent Garcia abused his position and/or violated pertinent rules in issuing the questioned resolution, any administrative complaint against respondent was premature.[22]

Soriano filed a Motion for Reconsideration[23] which was likewise denied on February 16, 2004.[24] Thereafter, he filed a petition for certiorari under Rule 65 with the CA submitting the sole issue —

Whether or not public respondents gravely abused their discretion in rendering the impugned Order exonerating respondent Ramon Garcia from any administrative liability and the Order denying petitioner's Motion for Reconsideration.[25]

On January 20, 2005, the CA dismissed the petition.[26] It stressed that under Section 3(e) of R.A. No. 3019, the public officer complained of should have acted with manifest partiality, evident bad faith or gross inexcusable negligence. The appellate court held that the assailed orders of the Ombudsman dismissing the complaint against respondent were justified considering that there was no evident bad faith on his part nor was there any act of irregularity from which an inference of malice or bad faith could be made. The CA found satisfactory respondent Garcia's explanation on why he could not be made liable. He explained that, in Nazareno's case, the alleged libelous act appears not to have been committed in relation to the performance of his duty as PDIC Chief but as a personal remark based on existing records. As for the Hiran case, he had no participation thereon, as the same was not forwarded to his office for final disposition.[27]

On April 12, 2005, the CA resolved to deny Soriano's motion for reconsideration of its decision.[28] Dissatisfied, Soriano filed this petition for review.

In this petition, Soriano as petitioner avers that he is not asking the Office of the Ombudsman to review or reverse or do any act relative to the resolutions of the Hiran and Nazareno complaints. He avers that what he is questioning is respondent Garcia's failure to comply with OMB-DOJ Joint Circular No. 95-001[29] which calls for the endorsement of said resolutions to the Office of the Ombudsman for final action.[30]

Petitioner contends that respondent acted in bad faith, or, at the very least, committed acts of irregularity from which an inference of malice or bad faith could be made. He points out that Nazareno could not have had access to said information and would not have disclosed such information against Soriano if he was not the PDIC President. He, therefore, concludes that the impugned remarks were made in relation to office or in the performance of public duties.[31]

Respondents, through the Office of the Solicitor General, point out that the dismissal of the administrative complaint against respondent is final and immediately executory, and unappealable. Nonetheless, they aver that the ruling of the CA, that there was no grave abuse of discretion on the part of the Ombudsman when he dismissed the administrative case, was correct. They maintain that the factual findings of the Ombudsman in administrative disciplinary proceedings are entitled to great respect and finality.[32]

The petition is without merit.

Section 1, Rule 65 of the Rules of Court reads:

Sec. 1. Petition for certiorari. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

A writ for certiorari may issue only when the following requirements are set out in the petition and established:

- (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions;
- (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and
- (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.[33]

The Court has invariably defined "grave abuse of discretion" as follows:

x x x By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the discretion was exercised arbitrarily or despotically. For certiorari to lie, there must be a capricious, arbitrary and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions.[34]

Mere abuse of discretion is not enough.[35] The only question involved is jurisdiction, either the lack or excess thereof, and abuse of discretion warrants the issuance of the extraordinary remedy of certiorari only when the

same is grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal hostility. A writ of certiorari is a remedy designed for the correction of errors of jurisdiction and not errors of judgment.[36] An error of judgment is one in which the court may commit in the exercise of its jurisdiction, which error is reversible only by an appeal.[37]

We quote with approval the following discussion of the Ombudsman on its finding that petitioner's complaint was premature:

After a careful study of the records, we find no sufficient cause to warrant further proceeding in the instant administrative case. The complainant, by filing the instant administrative case, in effect, would like this Office to, among others, rule on the legality of the resolution of the Office of the City Prosecutor of Manila in I.S. No. 01J-43460 entitled "Soriano v. Hiran" and I.S. No. 01H-32904 entitled "Soriano v. Nazareno."

It must be emphasized that it is not within the province of this Office's administrative disciplinary jurisdiction to review the quasi-judicial findings and decisions of government officials. If the complainant is dissatisfied with the said findings, his remedy is to move for reconsideration, and/or file a Petition for Review with the Department of Justice, the proper office mandated by law to review the resolutions of the Office of the City Prosecutor of Manila. In fact, on March 13, 2002 and March 21, 2002, the herein complainant, through counsel, filed the appropriate Petition for Review in the Nazareno and Hiran cases, respectively.

Besides, it may be pointed out that Section 20(1) of Republic Act 6770, otherwise known as the Ombudsman Act of 1989, provides, thus:

"Section 20. Exceptions. – The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that:

(1) The complainant has an adequate remedy in another judicial or quasi-judicial body x x x"

This is not to say, however, that the herein complainant totally has no recourse to this Office. Should there be a final determination by the appropriate office that, indeed, the herein respondent abused his position and/or violated pertinent rules in issuing the questioned resolutions, the complainant may very well file before this Office the appropriate complaint against the latter. Until then, therefore, the instant administrative complaint is premature.[38]

It appears on record that, on January 27, 2003, the DOJ had dismissed the petition for review of respondent in I.S. No. 01H-32904 (for libel) for lack of merit. The DOJ ruled as follows:

Verily, we are not inclined to impute any form of malice on the part of respondent. There is no sufficient overt acts performed by him from which we can deduce that he, in providing the information that became the basis of the subject news item, was motivated by personal ill-will, hatred, animosity, vengeance, resentment and aversion against complainant (see *People v. Quemel*, CA 02583-CR, March 18, 1964; *People v. Dianelan*, 13 CAR 34). These would have shown his malice or, at least, his intention to inflict ulterior and unjustifiable injury on complainant's reputation, honor and credit (see *People v. Canete*, 38 Phil. 253). What constitutes libel is not only the defamatory matter but also the malicious attitude of the accused (*Esteban v. Veneracion*, et al., 16 CAR 1171).

On the basis of the presumption of regularity in the performance of official function and on evidence extant on record, it readily appears that respondent narrated the information to the reporter exactly as they are reflected on the records of PDIC. Even then, he relayed the information merely in response to questions in an interview made by a reporter of a newspaper. Besides, respondent, as head of the PDIC, merely performed his legal duty to fully disclose to the public all the transactions of his office involving public interest. Certainly, the information disclosed by respondent is a matter of public concern where everyone has an interest. Since respondent merely discharged a legal duty, the presumption of malice in a defamatory statement is necessarily

negated. His statements in this regard are well within the mantle of protection of privileged communication. It now behooves upon complainant to show that respondent had, in fact, acted with malice. As stated above, it has not been shown that respondent had acted with ill-motive in the publication of the subject news item.[39]

Earlier on July 26, 2002, the DOJ had, *motu proprio*, resolved to dismiss the petition for review of petitioner in I.S. No. 01J-43460, thus:

This resolves the petition for review of the resolution of the Office of the City Prosecutor of Manila in the above-captioned case dismissing the complaint against Teodoro Jose D. Hirang for perjury.

Section 12(c) of Department Circular No. 70 dated July 3, 2000 provides that the Secretary of Justice may, *motu proprio*, dismiss the petition if there is no showing of any reversible error in the appealed resolution.

We considered the arguments raised and discussed in the petition, as well as respondent's comment thereon, but found no cogent reason to justify a reversal of the assailed resolution. The evidence on record, by and large, does not engender enough faith that respondent is guilty of the charge. Here, respondent, at least, believes that the facts stated in his affidavit are true at the time he subscribes the same, not to mention that, through the footnote on the affidavit, respondent did, likewise, explain why no claim for reimbursement was made in some of the notices.

In passing, the date September 13, 2001 therein cited was just a typographical error in the light of the attendant circumstances.

WHEREFORE, we resolve to DISMISS the instant petition.[40]

Patently, petitioner filed his complaint against respondent with the Ombudsman despite the pendency of his petition for review in the DOJ. It turned out that the DOJ would sustain the rulings of First Assistant Sulla and respondent, respectively. There was thus no factual and legal basis to file any administrative complaint against respondent.

In this case, petitioner failed to establish his claim that the Ombudsman committed a grave abuse of discretion amounting to excess or lack of jurisdiction in dismissing his complaint. Indeed, the Ombudsman was justified in dismissing the administrative case against respondent. The latter cannot be held administratively liable for the dismissal of the complaint of petitioner against Nazareno and Hirang without the authority or approval of the Ombudsman. It bears emphasizing that the Ombudsman and the City Prosecutor have concurrent jurisdiction to investigate offenses involving public officers and employees. It is only in cases cognizable by the Sandiganbayan that the Ombudsman has the primary jurisdiction to investigate; hence, in such cases, it may take over, at any stage, from any investigating agency of the government, the investigation of such cases.[41]

Section 4, Rule 112 of the Revised Rules on Criminal Procedure likewise provides:

SEC. 4. Resolution of investigating prosecutor and its review. – If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.

Within five (5) days from his resolution, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the Sandiganbayan in the exercise of its original jurisdiction. They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.

No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor of the Ombudsman or his deputy.

Where the investigating prosecutor recommends the dismissal of the complaint but his recommendation is disapproved by the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy on the ground that a probable cause exists, the latter may, by himself file the information against the respondent, or direct another assistant prosecutor or state prosecutor to do so without conducting another preliminary investigation.

If upon petition by a proper party under such rules as the Department of Justice may prescribe or *motu proprio*, the Secretary of Justice reverses or modifies the resolution of the provincial or city prosecutor or chief state prosecutor, he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties. The same Rule shall apply in preliminary investigations conducted by the officers of the Office of the Ombudsman. (Emphasis supplied.)

Hence, in cases within the jurisdiction of the Sandiganbayan, the prosecutor has the duty to forward the case to the Ombudsman for proper disposition. In such cases, Section 4 provides that no complaint may be dismissed by an investigating prosecutor without the prior written authority or approval of the Ombudsman or his deputy.

However, the impugned dismissals in the present case involve complaints over offenses which were found to be committed not in relation to office and within the jurisdiction of the regular courts (I.S. No. 01J-43460 is a complaint for perjury while I.S. No. 01H-32904 is a complaint for libel). When the case involves an offense not in relation to office and cognizable by the regular courts, the investigating prosecutor is under no obligation to forward his recommendations together with the records of the case to the Ombudsman for a final disposition.

Petitioner ascribes administrative liability to respondent for allegedly not following OMB-DOJ Joint Circular No. 95-001 when he dismissed the Nazareno and Hirang cases. We are not convinced.

For one, respondent did not actually ignore OMB-DOJ Joint Circular No. 95-001. In fact, respondent dismissed the Nazareno case on the honest belief that he was complying with the guidelines set forth in said circular. The Nazareno case was dismissed by respondent based on the finding that the offense committed by respondent therein was not in relation to office. Paragraph 2 of OMB-DOJ Joint Circular No. 95-001 provides that offenses not in relation to office and cognizable by the regular courts shall be investigated and prosecuted by the Office of the Provincial/City Prosecutor, which shall rule thereon with finality. Respondent is not obliged to forward cases involving offenses not in relation to office to the Office of the Ombudsman.

An offense is deemed to be committed in relation to the accused's office when such office is an element of the crime charged or when the offense charged is intimately connected with the discharge of the official function of the accused.[42] Respondent found that the interview Nazareno had given to Business World was his personal and private undertaking, and not related to the performance of his duty as a PDIC officer. Whether or not such finding is correct is beyond the reach of the administrative case filed against him; such question should be properly resolved in the petition for review of the City Prosecutor's resolution with the DOJ.

Neither can respondent be made administratively liable for the dismissal of the Hirang case in which he had no participation. The negligence of the subordinate cannot be ascribed to his superior in the absence of evidence of the latter's own negligence.[43]

Finally, it has been declared that OMB-DOJ Joint Circular No. 95-001 is just an internal agreement between the Ombudsman and the DOJ.[44]

WHEREFORE, premises considered, the petition is DENIED DUE COURSE. The Decision of the Court of Appeals dated January 20, 2005 and its Resolution dated April 12, 2005 are AFFIRMED.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Jose Catral Mendoza, with Associate Justices Godardo A. Jacinto and Edgardo P. Cruz, concurring; rollo, pp. 27-35.

[2] Rollo, pp. 38-39.

[3] Rollo, p. 53.

[4] Id.

[5] Id. at 57-58.

[6] Id. at 75.

[7] Id. at 53-55.

[8] Id. at 69.

[9] Id. at 80.

[10] Id. at 73.

[11] Id.

[12] Id. at 52.

[13] Id. at 47-51.

[14] Id. at 48.

[15] Id. at 51.

[16] Id. at 61-66.

[17] Id. at 131.

[18] Id.

[19] Id. at 131-132.

[20] Id. at 129-134.

[21] Id. at 134.

[22] Id. at 133-134.

[23] Id. at 136-142.

[24] Id. at 147-152.

[25] Id. at 159.

[26] Id. at 27-35.

[27] Id. at 32-35.

[28] Id. at 38-39.

[29] The Joint Circular reads:

TO: ALL GRAFT INVESTIGATION/SPECIAL PROSECUTION OFFICERS OF THE OFFICE OF THE OMBUDSMAN

ALL REGIONAL STATE PROSECUTORS AND THEIR ASSISTANTS, PROVINCIAL/CITY PROSECUTORS AND THEIR ASSISTANTS, STATE PROSECUTORS AND PROSECUTING ATTORNEYS OF THE DEPARTMENT OF JUSTICE

SUBJECT: HANDLING COMPLAINTS FILED AGAINST PUBLIC OFFICERS AND EMPLOYEES, THE CONDUCT OF PRELIMINARY INVESTIGATION, PREPARATION OF RESOLUTIONS AND INFORMATIONS, AND PROSECUTION OF CASES BY PROVINCIAL AND CITY PROSECUTORS AND THEIR ASSISTANTS.

X-----X

In a recent dialogue between the OFFICE OF THE OMBUDSMAN and the DEPARTMENT OF JUSTICE, discussion centered around the latest pronouncement of the SUPREME COURT on the extent to which the OMBUDSMAN may call upon the government prosecutors for assistance in the investigation and prosecution of criminal cases cognizable by his office and the conditions under which he may do so. Also discussed was Republic Act No. 7975 otherwise known as "AN ACT TO STRENGTHEN THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE SANDIGANBAYAN, AMENDING FOR THE PURPOSE PRESIDENTIAL DECREE NO. 1606, AS AMENDED" and its implications on the jurisdiction of the Office of the Ombudsman on criminal offenses committed by public officers and employees.

Concerns were expressed on unnecessary delays that could be caused by discussions on jurisdiction between the OFFICE OF THE OMBUDSMAN and the DEPARTMENT OF JUSTICE, and by procedural conflicts in the filing of complaints against the public officers and employees, the conduct of preliminary investigations, the preparation of resolutions and informations, and the prosecution of cases by provincial and city prosecutors and their assistants as DEPUTIZED PROSECUTORS OF THE OMBUDSMAN.

Recognizing the concerns, the OFFICE OF THE OMBUDSMAN and the DEPARTMENT OF JUSTICE, in a series of consultations, have agreed on the following guidelines to be observed in the investigation and prosecution of cases against public officers and employees:

- Preliminary investigation and prosecution of offenses committed by public officers and employees IN RELATION TO OFFICE whether cognizable by the SANDIGANBAYAN or the REGULAR COURTS, and whether filed with the OFFICE OF THE PROVINCIAL/CITY PROSECUTOR shall be under the control and supervision of the OFFICE OF THE OMBUDSMAN.
- Unless the Ombudsman under its Constitutional mandate finds reason to believe otherwise, offenses NOT IN RELATION TO OFFICE and cognizable by the REGULAR COURTS shall be investigated and prosecuted, by the OFFICE OF THE PROVINCIAL/CITY PROSECUTOR, which shall rule thereon with finality.
- Preparation of criminal information shall be the responsibility of the investigating officer who conducted the preliminary investigation. Resolutions recommending prosecution together with the duly accomplished criminal

informations shall be forwarded to the appropriate approving authority.

- Considering that the OFFICE OF THE OMBUDSMAN has jurisdiction over public officers and employees and for effective monitoring of all investigations and prosecutions of cases involving public officers and employees, the OFFICE OF THE PROVINCIAL/CITY PROSECUTOR shall submit to the OFFICE OF THE OMBUDSMAN a monthly list of complaints filed with their respective offices against public officers and employees.

Manila, Philippines, October 5, 1995.

(Sgd.) (Sgd.)

TEOFISTO T. GUINGONA, JR. ANIANO A. DESIERTO

Secretary

Department of Justice Ombudsman

Office of the Ombudsman

[30] Id. at 18-19.

[31] Id. at 19-21.

[32] Id. at 233-241.

[33] Land Bank of the Philippines v. Court of Appeals, 456 Phil. 755, 784-785 (2003).

[34] Rodson Philippines, Inc. v. Court of Appeals, G.R. No. 141857, June 9, 2004, 431 SCRA 469, 480.

[35] People of the Philippines v. Court of Appeals, G.R. No. 144332, June 10, 2004, 431 SCRA 610, 617.

[36] Philippine Rabbit Bus Lines, Inc. v. Galauran & Pilaes Construction Co., 204 Phil. 296, 300 (1982).

[37] People of the Philippines v. Court of Appeals, *supra*, at 617.

[38] Rollo, pp. 132-134.

[39] Id. at 90.

[40] Id. at 92-93.

[41] Honasan II v. The Panel of Investigating Prosecutors of the Department of Justice, G.R. No.159747, April 13, 2004, 427 SCRA 46, 70.

[42] Zapatos v. People of the Philippines, 457 Phil. 969, 983 (2003).

[43] Reyes v. Rural Bank of San Miguel (Bulacan), Inc., G.R. No. 154499, February 27, 2004, 424 SCRA 135, 142.

[44] Honasan II v. The Panel of Investigating Prosecutors of the Department of Justice, *supra* note 32, at 72.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.