

P/INSP. II GILBERT C. SAN DIEGO, PETITIONER, VS. FACT-FINDING INVESTIGATION COMMITTEE (UNDER THE OFFICE OF THE DEPUTY OMBUDSMAN FOR MILITARY AND OTHER LAW ENFORCEMENT OFFICERS),...

G.R. No. 214081. April 10, 2019

Ponente: PERALTA, J.

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PERALTA, J.:

This is a Petition for Review on Certiorari seeking to reverse and set aside the Court of Appeals (CA) Decision[1] dated October 31, 2013 and its Resolution[2] dated August 28, 2014 in CA-G.R. SP No. 125147. The CA denied the petition for review of the Decision dated June 30, 2011 and the Order dated January 2, 2012 of the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Officers (OMB-MOLEO) in OMB-P-A-09-0920-J. The OMB-MOLEO found petitioner P/Insp. II Gilbert C. San Diego guilty of sixteen (16) counts of Grave Misconduct and six (6) counts of Serious Dishonesty, and imposed upon him the penalty of dismissal from the service, including the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for re-employment in the government service.

The factual antecedents are as follows:

On June 2, 2008, a formal request was filed before the Office of the Ombudsman for a lifestyle check upon Gilbert C. San Diego, Special Investigator of the National Police Commission (NAPOLCOM), who was allegedly living a lifestyle not commensurate to his salary.

San Diego has supposedly exhibited extravagant spending by giving out large parties and shopping without limits in high-end establishments, and frequently traveled abroad with the use of several passports, bearing different middle names, i.e., "Carlos" and "Careon." He also owns two (2) vehicles, i.e., a 2004-2005 Toyota Vios Sedan and a Nissan Safari Sports Utility Vehicle (SUV) worth P2,000,000.00, as well as shares of stocks of A. Francisco Realty and Development Corporation worth P5,000,000.00.

On July 20, 2009, the OMB-MOLEO rendered a Fact-Finding Report,[3] recommending that criminal and administrative charges be filed against San Diego, and referring the case to the Criminal Investigation, Prosecution and Administrative Adjudication Bureau (CIPAAB), for the conduct of preliminary investigation and administrative investigation.

On September 29, 2009, the Fact-Finding Investigation Bureau (FFIB) of OMB-MOLEO filed separate Affidavit-Complaints[4] dated September 29, 2009, administratively charging San Diego with several counts of Grave Misconduct, Serious Dishonesty and Gross Neglect of Duty, thus:

1. One (1) count for Grave Misconduct and Serious Dishonesty for falsely declaring in his 2006 Statement of Assets, Liabilities, and Net Worth [SALN] that he owns a Nissan Patrol SUV worth P2.4 million when in fact the registered owner thereof is A. Francisco Realty and Development Corporation;[5]

2. One (1) count for Grave Misconduct and Serious Dishonesty for intentional failure to declare in his 2006 SALN his wife, the business interest and financial connection of his wife and his own business interest and financial connection in A. Francisco Realty and Development Corporation in the amount of P5 million pesos worth of stocks;[6]

3. One (1) count for Grave Misconduct and Dishonesty when he intentionally failed to declare a condominium unit he declared in 2005 and his licensed firearms in his 2007 SALN;[7]

4. One (1) count for Grave Misconduct and Serious Dishonesty for falsely declaring in the Application for Marriage License dated April 25, 2005 that Adalia B. Francisco is Adela Gloria B. Francisco and that her civil status is "Widow," the truth of the matter being that both San Diego and Adalia B. Francisco knew that the latter's name is not Adalia Gloria B. Francisco and that her civil status is not a widow;[8]

5. One (1) count for Grave Misconduct and Serious Dishonesty for not declaring in his 2005 SALN his wife, the business interest and financial connection of his wife and his own business interest and financial connection in A. Francisco Realty and Development Corporation in the amount of P5 million pesos worth of stocks;[9]

6. Two (2) counts for Grave Misconduct and Serious Dishonesty for misrepresenting and falsely declaring that his middle name is Careon in his passport application, hence, the Department of Foreign Affairs (DFA) issued to him Passport QQ0270116 dated April 9, 2005 and TT0400798 dated July 7, 2006, when, in fact, he knew fully well that his middle name is Carlos and not Careon;[10]

7. Ten (10) counts for Gross Neglect of Duty for not filing the requisite applications for leave relative to his foreign travels, and ten (10) counts for Serious Dishonesty for his failure to comply with Memorandum Circular No. 304 dated November 19, 1969, as amended by Executive Order No. 6 dated March 12, 1986, for not securing the necessary Authority to Travel in his foreign trips while in government service, considering that out of the 14 trips abroad, he was given only 5 travel authorities, thus:[11]

Date

Destination

Approved Travel Authority

September 1-5, 2003 (USA)

1. March 19-21, 2004

Bangkok

2. July 15-18, 2004

Singapore

October 12 - November 18, 2004 (USA)

3. August 6-17, 2005

Bangkok

4. August 26-29, 2005

Hongkong

5. September 1, 2005

Hongkong

6. October 26-29, 2005

Tokyo

7. February 8-15, 2006

Dubai

8. March 3-6, 2006

Hong Kong

9. May 11-13, 2007

Hongkong

10. June 26-July 15, 2007

Dubai

June 27-July 15, 2007 (England and United Kingdom)

11. October 6-23, 2007

Doha

12. January 10-21, 2008

Not reflected

January 16 - 31, 2008 (Australia) - Extension

13. February 29-March 3, 2008

Not reflected

February 29 - March 4, 2008 (Vietnam)

14. May 10-12, 2008

Not reflected

The FFIB of OMB-MOLEO also filed the corresponding Affidavit-Complaints dated September 29, 2009, criminally charging San Diego with six (6) counts of Falsification under Article 171 of the Revised Penal Code and violation of Republic Act (R.A.) No. 1379 (Act Declaring Forfeiture In Favor of the State Any Property Found To Have Been Unlawfully Acquired By Any Public Officer or Employee and Providing the Proceedings Therefor).

Attached to the Affidavit-Complaints are the following pieces of documentary evidence: (a) San Diego's SALNs for the years 2002, 2003, 2004, 2005, 2006 and 2007; (b) Certification from the Land Transportation Office on the Nissan Patrol registered under the name of A. Francisco Realty and Development Corporation; (c) the General Information Sheet of the said corporation for the year 2006; (d) the Certification of the Philippine National Police Firearms and Explosive Division on the guns registered under San Diego's name; (e) the Certificate of Marriage and the Application for Marriage License of San Diego and Atty. Francisco; (f) the Marriage Contract dated

October 28, 1955 between Noe Cangco Zarate and [Atty.] Adalia B. Francisco; (g) the Certificate of Death of one Enrique A. Agana, the supposed late husband of Atty. Francisco; (h) Certification from the National Statistics Office that it does not have a record of Agana's death certificate; (i) the Certificate of Death of Atty. Francisco; (j) the photocopies of the Passports and Passport Applications of San Diego; (k) the Certification of the Bureau of Immigration on his foreign travels; and (1) his travel authorities from the National Police Commission.

In a Consolidated Counter-Affidavit,[12] San Diego denied all the administrative and criminal charges against him, and raised the following defenses:

- Anent his failure to declare his and his wife's business interests in A. Francisco Realty and Development Corporation in his SALNs for 2005 and 2006, San Diego claimed that he was merely a nominal stockholder in the corporation owned and controlled by his late wife, Atty. Francisco, and that he had very little participation in its business, as all the decisions were made by her. He insisted that he was of the mistaken belief, in good faith, that there was no need to disclose his being stockholder, thinking that such disclosure was limited to that of his personal business interests, exclusive of that of his wife and family.
- Regarding the misdeclaration of the Nissan Patrol SUV in his 2006 SALN, San Diego explained that he was of the mistaken impression that he should declare it in his SALN because he, together with Atty. Francisco, used it for work and personal reasons.
- As for the non-disclosure in his 2007 SALN of the condominium unit in Libis, Quezon City, which was previously disclosed in the 2005 and 2006 SALNs, San Diego claimed that he was of the mistaken impression that he and his wife already owned it as a conjugal property, but no longer declared it in his SALN upon being advised that title over the property had not yet been transferred because it was purchased through a Contract to Sell, and had not yet been fully paid on installment basis.
- As for his failure to disclose his firearms (Machine Pistol Uzi, Caliber 9mm and the Pistol Flag Caliber .38), San Diego explained that he had already sold the former to his brother in 1999, while he was of the mistaken impression that the latter need no longer be disclosed, considering that there was a change of format of the 2008 SALN form, and that, firearms are not similar to or the same category as that of cash on hand in banks, mutual funds, bonds, etc.
- On his failure to secure the necessary leave to travel abroad, San Diego explained that he always applied for such leave, but during the periods in question (2003-2007), requests for leave were always processed at a relatively slow pace that results to leaves being granted only after the targeted period to travel has already lapsed or expired. At any rate, he claimed to have informed his immediate supervisors of his trip prior to leaving abroad, and filed the requisite application for such leave. He also stressed that none of his responsibilities as police investigator was compromised or neglected, and that all his personal trips were funded by his personal finances.
- On the alleged falsification of his passports, San Diego claimed that as early as 1995 when he initially applied for a passport, an error not of his own making was already committed when, despite stating that his middle name was "Carlos," it was erroneously stated as "Careon." Upon seeking advice from the DFA and from several travel agencies on how to go about correcting such error, he was told to go to court to have it corrected, but he could not afford the services of a lawyer. Eventually, upon being advised that he need not go to court to have his middle name corrected, he executed on January 10, 2007 an Affidavit of Discrepancy, for which the DFA issued him a passport bearing his correct middle name, "Carlos."
- On the alleged falsification of his application for marriage license, San Diego stressed that he and Atty. Francisco personally filled up their respective personal information in their application. He claimed that it is

absurd to fault him for entries made personally by his wife, and that he did not coerce or mislead his wife when she filled up her application. He insisted that there was merely an honest discrepancy on the part of his wife's official records. As explained by his late wife, her name as appearing in the Certificate of Live Birth and Marriage License is ADELIA GLORIA BLAS FRANCISCO, but when she became of discerning age, she decided to use ADALIA BLAS FRANCISCO. With respect to her birth date, the date October 7, 1932 as appearing in her Certificate of Live Birth, and the date October 7, 1946 stated in their marriage contract was a typographical error, as shown by Atty. Francisco's Sworn Affidavit of Discrepancy dated July 3, 2009. As for her stating in the marriage license application that her civil status is "Widow", this was a result of the fact that her previous husband, Mr. Enrique A. Agana, had died in 1996.

On June 30, 2011, the OMB-MOLEO rendered a Decision,[13] the dispositive portion of which reads:

WHEREFORE, premises considered, respondent P/INSP. II GILBERT C. SAN DIEGO is hereby found GUILTY of GRAVE MISCONDUCT on SIXTEEN (16) COUNTS and SERIOUS DISHONESTY on SIX (6) COUNTS for which the penalty of DISMISSAL from the service is hereby imposed, including the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification for re-employment in the government service, pursuant to Paragraph A(3), Sections 52 and 58(a), Rule IV of the Civil Service Commission Resolution No. 991936 otherwise known as the Uniform Rules on Administrative Cases in the Civil Service.

ACCORDINGLY, the Secretary, DILG and the Director General of the Philippine National Police are hereby directed to implement the subject Decision in accordance with law, with the request to promptly submit to this Office a Compliance Report thereof, indicating the subject OMB Case Number.

Compliance is respectfully enjoined consistent with Section 15(3) of R.A. 6770, otherwise known as the Ombudsman Act of 1989.

SO ORDERED.[14]

On January 2, 2012, the OMB-MOLEO found no convincing reason to disturb the findings of the investigating prosecutor, and ruled that the other grounds raised in San Diego's motion for reconsideration had been passed upon in its June 30, 2011 Decision.

Aggrieved, San Diego filed before the CA a petition for review under Rule 43 of the Rules of Court, raising two issues: (1) Whether or not the Office of the Ombudsman's Decision dated June 30, 2011 and Order dated January 2, 2012 violated petitioner's right to be informed of the charges against him; and (2) Whether or not the Office of the Ombudsman's findings of guilt against petitioner is supported by substantial evidence.

In a Decision dated October 31, 2013, the CA denied San Diego's petition for review. In a Resolution dated August 28, 2014, the CA also denied his motion for reconsideration. Hence, this petition for review on certiorari.

San Diego argues that "[t]he assailed Decision and Resolution issued by the Court of Appeals run counter to the Constitutional mandate of one's Right to be Informed of the charges made against him and of the principle of substantial evidence must support a finding of guilty by the Ombudsman." [15]

The petition is partly meritorious, but a modification of the designation of the administrative offenses and the corresponding penalties imposed, is in order.

San Diego argues that he was found guilty of numerous offenses that were not even charged against him, in violation of the right to be informed of the accusations against him and his right to due process. Contrary to the findings of the CA, he submits that he cannot be held guilty of grave misconduct for sixteen (16) counts when, in fact, he was only charged with six (6) counts thereof. He insists that his being found guilty of Serious Dishonesty

on 6 counts has no basis, as the acts constituting each count were neither described in the assailed CA Decision and Resolution, nor the reasons relied upon clearly explained.

San Diego's arguments have been raised and correctly passed upon by the CA. The Court finds no compelling reasons to disturb the exhaustive ruling of the CA, to wit:

The variance in the number and nature of charges filed against San Diego and in the offenses for which he was found guilty neither violates his right to due process nor warrants his exoneration from the said offenses.

The Supreme Court already ruled in *Dadubo v. Civil Service Commission* that the designation of the offense or offenses with which a person is charged in an administrative case is not controlling and one may be found guilty of another offense, where the substance of the allegations and evidence presented sufficiently proves one's guilt:

x x x x

The ruling in the *Dadubo* case was reiterated in the recent case of *PAGCOR v. Marquez*, where the Supreme Court stressed that the failure to designate the offense specifically and with precision is of no moment in an administrative case. The essence of due process in administrative proceedings is that a party be afforded a reasonable opportunity to be heard and to submit any evidence he may have in support of his defense: The law simply requires that the civil servant is informed of the nature and cause of accusation against him in a clear and concise manner to give the person a chance to answer the allegations intelligently.

In this case, the records reveal that San Diego was more than informed of the charges against him and he was given all the opportunities to controvert each and every accusation through the filing of his consolidated counter-affidavit. He was also given the chance to be heard on his motion for reconsideration; hence, he cannot rightfully assert violation of his right to due process.

It also bears stressing that the nature and cause of accusations against San Diego were presented in a clear and concise manner in the seven (7) affidavit-complaints filed against him. It gave us a clear picture of how San Diego violated R.A. No. 6713 and Memorandum Circular No. 304. These allegations should be the controlling factors in determining his liabilities and not the designation given by the FFIB to each offense.[16]

San Diego contends that he cannot be found guilty of misconduct in relation to the misrepresentations in his SALNs for 2005, 2006 and 2007, because the alleged misrepresentations do not relate to his official function or performance as a police investigator. He asserts that to be considered misconduct under the purview of the law, such transgression must affect the performance of his duties as an officer, and not only his character as a private individual. He points out that although required by law, the accomplishment of SALNs by every government employee does not affect, nor has any relation to, the specific and divergent functions of each government employee in their respective offices.

San Diego's argument is similar to that which was rejected by the Court in *Remolona v. Civil Service Commission*[17] where the petitioner insisted that his dismissal was a violation of his right to due process. Although the offense of Dishonesty is punishable under the Civil Service Law, *Remolona* argued that such act must have been committed in the performance of his function and duty as Postmaster. Considering that the charge of dishonesty involves the falsification of the certificate of rating of his wife, the same has no bearing on his office and, hence, he is deemed not to have been dismissed for cause. Rejecting the foregoing argument, however, the Court ruled in *Remolona*, thus:

It cannot be denied that dishonesty is considered a grave offense punishable by dismissal for the first offense under Section 23, Rule XIV of the Rules Implementing Book V of Executive Order No. 292. And the rule is that dishonesty, in order to warrant dismissal, need not be committed in the course of the performance of duty

by the person charged. The rationale for the rule is that if a government officer or employee is dishonest or is guilty of oppression or grave misconduct, even if said defects of character are not connected with his office, they affect his right to continue in office. The Government cannot tolerate in its service a dishonest official, even if he performs his duties correctly and well, because by reason of his government position, he is given more and ample opportunity to commit acts of dishonesty against his fellow men, even against offices and entities of the government other than the office where he is employed; and by reason of his office, he enjoys and possesses a certain influence and power which renders the victims of his grave misconduct, oppression and dishonesty less disposed and prepared to resist and to counteract his evil acts and actuations. The private life of an employee cannot be segregated from his public life. Dishonesty inevitably reflects on the fitness of the officer or employee to continue in office and the discipline and morale of the service.[18]

Contrary to San Diego's argument, the Court holds that if a government officer or employee is guilty of Dishonesty or Grave Misconduct, even if such defect of character was not connected with his office, it affects his right to continue in office. Be it stressed that when an officer or employee is disciplined, the object sought is not the punishment of such officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in the government.

San Diego further insists that he had satisfactorily explained in his Consolidated Counter-Affidavit that the omissions in his SALNs for 2005, 2006 and 2007 were caused by mere confusion and honest mistake, thus:

a)

He failed to declare his and his wife's interest in A. Francisco Realty because he believed that it was no longer necessary since he has only a nominal interest in the corporation, and that he thought that the SALN is limited only to his personal business interest.

b)

He included, in good faith, in his 2006 SALN a Nissan Patrol SUV due to the fact that he was of the mistaken impression that he should declare it because he uses it for work and personal purposes;

c)

He did not disclose in his 2007 SALN a condominium unit in Libis, Quezon City, because the property has not yet been fully paid, and he cannot be considered to possess ownership thereof.

d)

He did not fail to disclose certain firearms in his 2007 SALN because the Pistol Flag Caliber .38 has already been sold to his brother in 1999, and he was of the wrong impression that the Machine Pistol Uzi need not be included since it was similar with the items indicated in the SALN like bonds, mutual funds, etc.

San Diego asserts that while his educational attainment goes beyond the average, he is still susceptible to committing mistakes, such as confusion as to the nature, ownership or benefits derived from the items he omitted to declare in good faith. He also faults the Ombudsman for failing to take into consideration his evidence when it concluded that he could not have committed such mistake in accomplishing his SALN. He submits that it does not follow that if a government employee is well, educated, he can accomplish all government forms with utmost accuracy because, even the simplest act of filling up a form may be complicated by confusion, ambiguity, and lack of focus or simply a mistake.

San Diego's assertion fails to persuade.

San Diego is not just an ordinary rank-and-file employee. He is a Police Inspector II of the Inspection, Monitoring

and Investigation Service of the NAPOLCOM. He is not just an average college degree holder in Political Science; he also has post graduate degrees in Public Administration and Law. San Diego cannot claim that he has just a nominal interest in A. Francisco Realty and Development Corporation, because the General Information Sheet shows that he is the Vice-President thereof with 50,000 common shares worth P5,000,000.00 in a corporation with a total subscribed shares of 56,500,000.00 and paid-up capital of P56,500,000.00. His shares are even equal to those of Atty. Francisco's four (4) children who are merely Directors of the corporation. Nevertheless, the Court does not find substantial evidence to prove that San Diego is guilty for Grave Misconduct and Serious Dishonesty for non-disclosure of his shares in A. Francisco Realty Corp. There being no proof of intent to commit a wrong on his part, and considering that the source of the "undisclosed wealth" is evidently his wife Atty. Francisco, San Diego cannot be adjudged guilty of the charge of Grave Misconduct and Serious Dishonesty, but is liable for Simple Negligence for failure to disclose his business interest in the SALN.

In *Daplas v. Department of Finance*,^[19] the Court held that the failure to file a truthful SALN puts in doubt the integrity of the public officer or employee, and would normally amount to dishonesty. However, mere non-declaration of the required data in the SALN does not automatically amount to such an offense. "Dishonesty requires malicious intent; to conceal the truth or to make false statements. In addition, a public officer or a public officer or employee becomes susceptible to dishonesty only when such non-declaration results in the accumulated wealth becoming manifestly disproportionate to his/her income, and income from other sources, and he/she fails to properly account or explain these sources of acquisitions."^[20]

The Court stressed in *Daplas* that the laws on SALN aim to curtail the acquisition of unexplained wealth. In several cases where the source of the undisclosed wealth was properly accounted for, the Court deemed the undisclosed wealth as properly accounted for, and deemed the same as an "explained wealth" which the law does not penalize. Consequently, absent any intent to commit a wrong, and having accounted for the source of the "undisclosed wealth," one cannot be adjudged guilty of the charge of Dishonesty; but at the most, of mere negligence for having failed to accomplish one's SALN properly and accurately.

The Court further discussed in *Daplas* the distinction between simple and gross negligence. Negligence is the omission of the diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time, and of the place. In the case of public officials, there is negligence when there is a breach of duty or failure to perform the obligation, and there is gross negligence when a breach of duty is flagrant and palpable. An act done in good faith, which constitutes only an error of judgment and for no ulterior motives and/or constitutes only an error of judgment and for no ulterior motives and/or purposes, is merely simple negligence.

In *Casimiro v. Rigor*,^[21] the Court explained the concept of Dishonesty and the rationale for filing SALN, in this wise:

Dishonesty, as juridically understood, implies the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty or probity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. It is a malevolent act that puts serious doubt on one's ability to perform duties with the integrity and uprightness demanded of a public officer or employee. The requirement of filing a SALN is enshrined in the Constitution to promote transparency in the civil service and serves as a deterrent against government officials bent on enriching themselves through unlawful means. By mandate of law, every government official or employee must make a complete disclosure of his assets, liabilities and net worth in order to avoid any issue regarding questionable accumulation of wealth. The importance of requiring the submission of a complete, truthful, and sworn SALN as a measure to defeat corruption in the bureaucracy cannot be gainsaid. Full disclosure of wealth in the SALN is necessary to particularly minimize, if not altogether eradicate, the opportunities for official corruption, and maintain a

standard of honesty in the public service. Through the SALN, the public can monitor movement in the fortune of a public official; it serves as a valid check and balance mechanism to verify undisclosed properties and wealth. The failure to file a truthful SALN reasonably puts in doubts the integrity of the officer and normally amounts to dishonesty.

With respect to the non-disclosure of his ownership of common shares and his being a Vice-President in A. Francisco Realty Corp., San Diego explained in his Consolidated Counter-Affidavit[22] that he had very little participation and was merely a nominal stockholder of the corporation which was owned and controlled by his wife, Atty. Adalia Francisco, who was in a better position to make all business decisions. After a careful perusal of the Deed of Extra-Judicial Settlement of the Estate of Adalia Bias Francisco[23] and the Agreement[24] dated December 20, 2013 attached to his Supplemental Petition for Review[25] dated May 11, 2015, the Court is convinced that the provenance of the means to acquire the 50,000 common shares worth P5,000,000.00 under his name in the eponymous corporation is no less than San Diego's wife, Atty. Francisco, who, at the time of her demise, left wealth so substantial in terms of prime real estate and valuable personal properties, that would make the value of his common shares look like a paltry sum. Malicious intent to conceal the truth on the part of San Diego is also absent because he disclosed in his 2007 SALN that Atty. Francisco is his wife and is the President of A. Francisco Realty. With the source of his undisclosed wealth having been traced to the generosity of his wife, the Court rules that San Diego cannot be held liable for Serious Dishonesty or Grave Misconduct, but only for Simple Negligence due to his failure to disclose his financial interest in the corporation of his wife.

As to the false declaration in his 2006 SALN of the Nissan Patrol SUV with plate number GNA-88, registered under the name of A. Francisco Realty Corp., San Diego cannot be held liable with Grave Misconduct and Serious Dishonesty, but only for Simple Negligence. There is no substantial evidence of an intent to commit a wrong, to deceive the authorities, and to conceal the properties under the name of San Diego. What San Diego did was to erroneously declare in his 2006 SALN the Nissan Patrol SUV registered under the name of A. Francisco Realty Corp., for the simple reason that he uses it for work and other personal purposes. Such disclosure in his 2006 SALN is not a sufficient badge of dishonesty in the absence of bad faith, or any malicious intent to conceal the truth or make false statements. Bad faith does not simply connote bad judgment or negligence, but contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill-will for ulterior purposes.[26] What would constitute Serious Dishonesty on the part of San Diego would be if a luxury vehicle were found to be registered under his name, but he failed to declare it: in his SALN and to explain how he acquired such wealth.

San Diego cannot also be faulted with Serious Dishonesty or Gross Misconduct for the non-disclosure in his 2007 SALN of a condominium unit in Libis, Quezon City. As noted by the OMB-MOLEO, he has been consistently declaring the same property in his 2005 and 2006 SALNs, and had admitted in his counter-affidavit that it was purchased through a Contract to Sell and was then being paid on installment basis. The OMB-MOLEO, nonetheless, correctly pointed out that the fact that the property was conjugal and purchased on installment basis, does not preclude its non-disclosure in his 2007 SALN. The proper recourse under the circumstances, which San Diego failed to take, is to make the necessary correction and explanation as to the nature of his acquisition of the real property. For this, San Diego can only be held liable for Simple Negligence.

San Diego asserts that he cannot be held liable with Serious Dishonesty or Gross Misconduct for failure to disclose certain firearms in his 2007 SALN. He states that the Pistol Flag Caliber .38 (issued/approved on October 16, 1998) has already been sold to his brother in 1999. He also claims of having the mistaken impression that his Machine Pistol Uzi need not be included, considering that a firearm is not similar to, or of the same category as that of, cash on hand/in banks, mutual funds, bonds, etc. According to him, the forms of the SALN at that time were changed, and that said forms listed down in detail the list of "Investments, other personal properties, and

liabilities of Declarant/Spouse/Declarant's Children Below 18 years of Age x x x" which included the cash on hand in banks, bonds, mutual funds, trust funds, time deposits, pre-need plans, etc.

San Diego's explanations are untenable. Aside from his bare and self-serving claim, there is nothing in the records to substantiate that he sold his Pistol Flag Caliber .38 to his brother in 1999. Against the Certification[27] dated March 12, 2009 issued by the Philippine National Police Firearms and Explosives Division, stating that he is the registered owner of said firearm, San Diego failed to present proof of sale or registration of the said firearm under the name of his brother. Meanwhile, the omission of the Machine Pistol Uzi in San Diego's 2007 SALN is also unacceptable, because there are spaces in the said SALN form where details about "Other Personal Property" and "Acquisition Cost" thereof may be provided, but he hardly filled them up without justifiable reason. For such non-declaration of personal properties in his SALN, he can be held liable for Simple Negligence, but not for Dishonesty, because there is no showing that such omission resulted in the accumulated wealth becoming manifestly disproportionate to his income as a police investigator, or that he failed to properly account or explain the sources of acquiring the said firearms.

For the omissions in his SALNs, San Diego seeks relief from administrative liabilities by invoking *Pleyto v. PNP-CIDG*[28] where it was held that "the petitioner's candid admission of his shortcomings in properly and completely filling out his SALN, his endeavor to clarify the entries therein and provide all other necessary information, and submission of supporting documents as to the acquisition of properties in his and his wife's names, negate any intention on his part to conceal his properties." San Diego's reliance in *Pleyto* is misplaced. He cannot claim good faith for his failure to properly declare personal and real properties in his SALNs because the defenses raised in his Consolidated Counter-Affidavit are merely uncorroborated and self-serving denial, and his lame excuses for non-compliance only show lack of regard for the importance of filing SALNs. To recall, it was only when he filed his Supplemental Petition for Review dated May 11, 2015, together with the Deed of Extra-Judicial Settlement of the Estate of Adalia Bias Francisco and the Agreement dated December 20, 2013, that the Court gathered that the source of his undisclosed financial interest in A. Francisco Realty Corp. is none other than his wife.

With respect to the alleged falsification of his passport applications, San Diego claimed that, as early as 1995 when he initially applied for a Philippine Passport, it was erroneously stated that his middle name was "Careon" despite the fact that he used "Carlos" in his passport application. When he sought advice from the DFA and from several travel agencies on how to correct such error, San Diego deferred the correction of such error because he was told to go to court, and he cannot afford the services of a lawyer. Upon learning that he need not go to court to effect such correction, San Diego executed an Affidavit of Discrepancy[29] on January 10, 2007 and was able to secure from the DFA a passport stating his correct middle name "Carlos."

The CA upheld the findings of the OMB-MOLEO that San Diego was guilty of Serious Dishonesty when he made false declarations in his passport applications by using "Careon" as his middle name instead of his real middle name "Carlos." Having given the same erroneous information twice and belatedly taking action to correct said errors, the CA held that San Diego really intended to make it appear that his middle name is "Careon." The CA further noted that the presumption of authenticity enjoyed by his Affidavit of Discrepancy was destroyed by the Certification issued by Clerk of Court Perlita Vitan-Ele, stating that the document number appearing on the said affidavit allegedly notarized by Atty. Donato C. Manguiat refers to an Extrajudicial Settlement of Estate of a certain individual.

The Court disagrees with the ruling of the CA. In *Del Rosario v. Pascua*,[30] it was held that dishonesty means "the concealment of truth in a matter of fact relevant to one's office or connected with the performance of his duties. It is an absence of integrity, a disposition to betray, cheat, deceive or defraud, bad faith." The Rules on

Administrative Offense of Dishonesty considers dishonesty as serious when it "causes serious damage and grave prejudice to the government." [31] After a careful review of the passport applications [32] attached to the Affidavit-Complaint, the Court finds no substantial evidence to prove deliberate intent to mislead, deceive or defraud which causes such serious damage or grave prejudice to the government.

Included in the passport application dated April 26, 2005 is a checklist of documents that may be submitted to establish the identity of the applicant and to comply with the requirements for securing passport. The same passport application reveals that San Diego secured and submitted an authenticated birth certificate, which shows that "Gilbert Carlos San Diego" was born on November 1, 1973 to spouses Melencio del Rosario San Diego and Corazon Alarilla Carlos. [33] While it was wrong for San Diego to indicate in his passport applications that his middle name is "Careon," such act alone does not constitute Dishonesty, because the veracity of such information ought to have been verified by the DFA from his birth certificate before issuing him a new passport. If it were really the intention of San Diego to conceal his real middle name, he would have submitted a fake birth certificate, and he would not indicate in both his passport applications his correct date of birth [November 1, 1973], his exact office address [Napolcom, Makati] and the true names of his parents [Melencio and Corazon San Diego].

Besides, San Diego's erroneous statement of his middle name in his passport application is not a fact directly relevant to his functions and qualifications to office, or connected with the performance of his duties as police investigator. Even if San Diego's Affidavit of Discrepancy was not entered in the notarial register, such circumstance may give rise to a different administrative or criminal liability, but does negate the fact that he was able to correct his middle name in his passport in 2007, even prior to the filing of a string of affidavit-complaints against him by the OMB-MOLEO in September 29, 2009:

Anent the charge of falsification of application for marriage license, San Diego was accused of falsely declaring in the Application for Marriage License [34] dated April 25, 2005 that "Adalia B. Francisco" is "Adela Gloria B. Francisco," and that her civil status is "Widow." San Diego explained that both he and his wife personally filled up their respective personal information in their application; thus, it is absurd that he should be faulted for entries made personally by his wife. As supposedly explained to San Diego by his wife, her name as appearing in the Certificate of Live Birth and Marriage License is ADELIA GLORIA BLAS FRANCISCO, but when she became of discerning age, she decided to use ADALIA BLAS FRANCISCO. Citing the Affidavit of Discrepancy executed by Atty. Francisco, San Diego further claimed that her date of birth is "October 7, 1932" as appearing in her Certificate of Live Birth, and that the date "October 7, 1946" stated in the marriage contract was a mere typographical error. As for her stating in the application of marriage license that her civil status was "Widow," such was the result of the fact that her previous husband, Mr. Enrique A. Agana, had died in 1996.

The Court finds no substantial evidence that San Diego was the one who gave false information on the personal circumstances of Atty. Francisco in their application for marriage license. It is disputably presumed that a person is innocent of a wrong, and intends the ordinary consequences of her voluntary act, as well as takes ordinary care of her concerns. [35] Presumption of regularity dictates that Atty. Francisco herself provided her complete name, birth date and civil status in the said application, because such matters may be based on her personal knowledge or based on authentic records at her disposal. The OMB-MOLEO failed to present clear and convincing evidence to overturn the foregoing disputable presumptions, let alone controvert the Affidavit of Discrepancy [36] dated July 3, 2009 executed by Atty. Francisco. Hence, San Diego cannot be held responsible for the incorrect entries in the personal information of Atty. Francisco in their application for marriage license dated April 25, 2005, even if it was unclear who between the him — who was just thirty-one (31) years old — and her — who was then seventy-two (72) — was in a rush to solemnize their union before a Municipal Trial Court of Meycauayan,

Bulacan, on May 5, 2005.

Regarding the ten (10) counts of Serious Dishonesty for failure to secure authority for his foreign travels charged in the Affidavit-Complaint[37] dated September 29, 2009, San Diego insists that he always applied for leave to travel abroad, but points out that during the periods in question (2003-2007), requests for leave to travel abroad were always processed at a relatively slow pace that results to leaves being granted only after the target period to travel has already lapsed or expired. Constrained to travel without leave, San Diego insists that he informed his immediate supervisors about his trips, which were all funded by his personal finances, and that none of his responsibilities as police investigator was neglected or compromised while he was on official leave.

In affirming the finding of the OMB-MOLEO, the CA gave credence to the certification issued by the Bureau of Immigration that San Diego had fourteen (14) foreign trips between 2003 to 2007, and copies of his purported authorities to travel do not pertain to any of these 14 trips. The CA noted that San Diego admitted that he left the country without securing the required authority to travel because its processing would take time. The CA ruled that such excuse clearly shows his willful intent to violate the mandate of Memorandum Circular No. 304, series of 1969 that every public employee must secure authority to travel for his foreign trips while in government service, and that his repeated violation constitutes Gross Misconduct.

The Court agrees with the finding of the CA that San Diego travelled abroad without proper approval as required by the said Circular, but holds that he can only be held liable for as many counts of Simple Misconduct, but not for Serious Dishonesty.

In *Civil Service Commission v. Ledesma*,[38] the Court held that "misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be proved by substantial evidence. Otherwise, the misconduct is only simple. A person charged with grave misconduct may be held liable for simple misconduct if the misconduct does not involve any of the additional elements to qualify the misconduct as grave."

No substantial evidence was presented by the OMB-MOLEO to show that elements of corruption, willful intent to violate the law or to disregard established rules were present on the part of San Diego. While the OMB-MOLEO does not deny the fact that approval of foreign travel authority takes a snail's pace, and admits that there were at least five (5) instances when he secured such travel authority,[39] the Court considers that such attempts to comply with the Circular negates willful intent to violate established rules on the part of San Diego.

Meanwhile, San Diego cannot be held liable for Serious Dishonesty, which means the concealment of truth in a matter of fact relevant to one's office or connected with the performance of his duties, that causes serious damage and grave prejudice to the government. This is because the OMB-MOLEO failed to present proof that he failed to file the required leave of absences during the times that he undertook his questioned foreign travels, and that his said absences caused serious damage or prejudice to the government.

Be that as it may, San Diego cannot be excused from seeking such prior approval despite being then granted belatedly, because such requirement is still provided for by reasonable rules and regulations. Issued in view of the need to pursue more vigorous efforts at conserving foreign exchange and the imperativeness of redoubling efforts in the public service towards national progress, Memorandum Circular No. 304[40] is explicit that even those who intended to travel abroad while on leave of absence must secure prior approval, inasmuch as vacation leave must be contingent upon the exigencies of the service. Since he does not deny the allegation of having travelled abroad eleven (11) times[41] without such prior approval, the Court holds San Diego for 11 counts of Simple Misconduct.

In sum, the Court finds that the CA erred in denying the petition for review under Rule 43 of the Rules of Court, and in effect upholding the Decision of the OMB-MOLEO, finding San Diego liable for sixteen (16) counts of Serious Dishonesty and seven (7) counts of Grave Misconduct, with the corresponding penalty of dismissal from service, plus the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification for re-employment in the government service.

Instead, the Court holds that San Diego is liable for four (4) counts of Simple Negligence for violation of the law on the filing of Statement of Assets, Liabilities and Net Worth (SALN) with regard to the non-disclosure of (a) his financial interest in A. Francisco Realty, Corp.; (b) of his ownership of two firearms; (c) his conjugal ownership of a condominium unit; and (d) for misdeclaration in his SALN of the Nissan Patrol SUV registered under the name of said corporation. Moreover, San Diego is liable for eleven (11) counts of Simple Misconduct for admittedly failing to secure prior approval to travel abroad pursuant to Memorandum Circular No. 304, series of 1969.

Section 55 of the Uniform Rules on Administrative Cases in the Civil Service[42] (URACCS) states that if the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count, and the rest shall be considered as aggravating circumstances.

In *Daplas*,[43] the Court held that omission to include the subject properties in petitioner's SALNs, by itself, does not amount to Grave Misconduct, in the absence of showing that such omission had, in some way, hindered the rendition of sound public service for there is no direct relation or connection between the two. The Court found no reason to hold petitioner liable for the charges of Dishonesty and Grave Misconduct, but declared her guilty, instead of Simple Negligence, which is akin to Simple Neglect of Duty — a less grave offense punishable with suspension without pay for one (1) month and one (1) day to six (6) months, for the first offense.[44]

In this case, while there are four (4) counts for violation of the laws on filing SALN[45] which arose from separate Affidavit-Complaints[46] dated September 29, 2009 filed by the OMB-MOLEO, this is the first time that San Diego is being held to account for Simple Negligence. Considering the quadruple count of his violation of the SALN Law, and the fact that he is just a first-time offender, the Court finds the penalty of suspension for four (4) months without pay to be reasonable. Meanwhile, considering that there are actually 11 counts for which San Diego was charged in the Affidavit-Complaint dated September 29, 2009 for admittedly travelling abroad without prior approval, and since this is, likewise, the first time that he is being held liable for Simple Misconduct — a less grave offense under the URACCS punishable with suspension without pay for 1 month and 1 day to 6 months for the first offense — the Court finds it proper to sentence San Diego to a penalty of suspension for three (3) months without pay.

Considering further that the penalty imposed upon San Diego is reduced from dismissal from service to a mere suspension of a total period of seven (7) months without pay, the Court finds it reasonable to rule as follows: (1) to deem the period during which his case is pending appeal as service of his penalty of suspension, (2) to immediately reinstate him to his original position without loss of seniority rights, and (3) to restore all of his rights and benefits under the laws without payment of back salaries.

Records show that San Diego has already been preventively suspended for six (6) months without pay in an Order of Preventive Suspension[47] dated March 8, 2010, which was immediately executory pursuant to Section 27, paragraph 1 of R.A. No. 6770, or the Ombudsman Act of 1989. Aggrieved, San Diego elevated the OMB-MOLEO's Decision and Resolution on a petition for review under Rule 43 before the CA. Dissatisfied with the denial of his petition by the CA, San Diego filed before the Court a petition for review on certiorari under Rule 45. It is well settled under jurisprudence[48] that the Ombudsman's decision, even if the penalty imposed is

dismissal from the service, is immediately executory despite the pendency of a motion for reconsideration or an appeal and cannot be stayed by mere filing of such motion or appeal.

Section 7, Rule III of the OMB Rules of Procedure, as amended by Administrative Order No. 17 dated September 15, 2003, explicitly provides:

Section, 7. Finality and execution of decision. - Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer.

Also, Memorandum Circular (MC) No. 01, Series of 2006, of the OMB states:

Section 7, Rule III of Administrative Order No. 07, otherwise known as, the "Ombudsman Rules of Procedure" provides that: "A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course."

In order that the foregoing rule may be strictly observed, all concerned are hereby enjoined to implement all Ombudsman decisions, orders or resolutions in administrative disciplinary cases, immediately upon receipt thereof by their respective offices.

The filing of a motion for reconsideration or a petition for review before the Office of the Ombudsman does not operate to stay the immediate implementation of the foregoing Ombudsman decisions, orders or resolutions.

Since San Diego was dismissed from service by the OMB-MOLEO, and his petition for review under Rule 43 was later denied by the CA, the filing of his petition for review on certiorari before the Court did not stay the immediate implementation of the Ombudsman's order of dismissal. Because a decision of the Ombudsman in administrative cases shall be executed as a matter of course under the afore-quoted Section 7, and inasmuch as he also prays for reinstatement and restoration of his rights and benefits under the law, it is safe to state that San Diego has been out of government service from the time the Ombudsman ordered his dismissal until the pendency of his appeal. Thus, the Court rules that San Diego should be immediately reinstated to his original position without loss of seniority rights, and be, henceforth, restored of all his rights and benefits under the law without payment of back salaries. Be it stressed that San Diego did not prevail in his appeal, and the Court hardly exonerated him, but only corrected the designation of the administrative offenses he committed, and reduced the corresponding penalties. This is in light of his ready admission that he travelled abroad without prior approval because of the delay in securing the same, and in view of the Deed of Extra-judicial Settlement of the Estate of Adalia Blas Francisco[49] and the Agreement[50] dated December 20, 2013 submitted for the first time before the Court, which traced the origin of his undeclared wealth to that of his wife.

WHEREFORE, the Petition for Review on Certiorari is PARTLY GRANTED. The assailed Court of Appeals Decision dated October 31, 2013 and its Resolution dated August 28, 2014 in CA-G.R. SP No. 125147 are MODIFIED in that petitioner P/Insp. II Gilbert C. San Diego is found guilty of the following:

1.

Four (4) counts of Simple Negligence for violation of the law on the filing of Statement of Assets, Liabilities and Net Worth (SALN) with regard to the non-disclosure of his financial interest in A. Francisco Realty, Corp., of his ownership of a Pistol Flag .38 caliber and a Machine Pistol Uzi caliber 9mm, and of his conjugal ownership of a condominium unit in Libis, Quezon City, and for the misdeclaration in his SALN of the Nissan Patrol SUV with Plate No. GNA-88 registered under the name of said Corporation; and

2.

Eleven (11) counts of Simple Misconduct for failure to secure the prior approval to travel abroad, pursuant to Memorandum Circular No. 304, series of 1969.

Appellant San Diego is hereby sentenced to suffer the penalty of suspension of four (4) months for all four (4) counts of Simple Negligence, and suspension of three (3) months for all eleven (11) counts of Simple Misconduct, or a total of seven (7) months suspension without pay, and with a warning that a repetition of the same or similar offenses would be dealt with more severely.

Considering that appellant San Diego is deemed to have served the foregoing period of suspension during the time that his petition for review is pending before the Court of Appeals and this Court, he is hereby immediately reinstated to his original position without loss of seniority rights, and is, henceforth, restored of all of his rights and benefits under the law without payment of back salaries.

SO ORDERED.

Leonen, A. Reyes, Jr., Hernando, and Carandang,[**] JJ., concur.

[*] Fact-Finding and Investigating Bureau (FFIB) in some parts of the rollo.

[**] Designated Additional Member per Special Order No. 2624 dated November 28, 2018.

[1] Penned by Associate Justice Pedro B. Corales, with Associate Justices Sesinando E. Villon and Florito S. Macalino, concurring; rollo, pp. 39-52.

[2] Id. at 54-55.

[3] Penned by Associate Graft Investigation Officer III, with approval of Fact-Finding and Investigation Bureau Officer-in-Charge Director Francisco P. Felizmenio and Deputy Ombudsman for MOLEO Emilio A. Gonzalez III.

[4] Signed by Associate Graft Investigation Officer III Don A. Esquivel.

[5] CA rollo, p. 356.

[6] Id. at 361-362.

[7] Id. at 371-372.

[8] Id. at 379-381.

[9] Id. at 389-391.

[10] Id. at 399-400.

[11] Id. at 410-412 and 422-423.

[12] Rollo, pp. 56-67.

[13] Penned by Graft Investigation and Prosecution Officer Myra T. Zipagan, with the concurrence of Director Dennis L. Garcia, and with approval of Assistant Ombudsman Eulogio S. Cecilio and Overall Deputy Ombudsman Orlando S. Casimiro; CA rollo, pp. 112-120.

[14] Id. at 120.

[15] Rollo, p. 21.

[16] Id. at 259-260. (Citations omitted).

[17] 414 Phil. 590 (2001).

[18] Id. at 600-601. (Emphasis added).

[19] G.R. No. 221153, April 17, 2017, 823 SCRA 44.

[20] Id. at 54-55.

[21] 749 Phil. 917, 929-930 (2014).

[22] Rollo, pp. 56-67, 164-175.

[23] Id. at 101-108.

[24] Id. at 111-112.

[25] Id. at 87-94.

[26] *Daplas v. Department of Finance*, supra note 19, at 55.

[27] CA rollo, p. 375.

[28] 563 Phil. 842, 909 (2007).

[29] Rollo, p. 71.

[30] 683 Phil. 1, 6 (2012).

[31] Civil Service Resolution No. 06-0538 dated April 4, 2006, Sec. 3.

[32] CA rollo, pp. 402-403, 408.

[33] Id. at 400.

[34] Id. at 462.

[35] Rules of Court, Rule 131, Sec. 3.

[36] Rollo, pp. 181, 190.

[37] CA rollo, pp. 422-424.

[38] 508 Phil. 569, 579 (2005); Santos v. Rasalan, 544 Phil. 35, 43 (2007).

[39] CA rollo, pp. 429-433.

[40] Signed on November 19, 1969, Entitled: Reminding All Concerned of the Need For Prior Approval by the Office of the President of Trips Abroad of Government Personnel.

[41] See CA rollo, pp. 422-423:

Date

Destination

Approved Travel Authority

September 1 - 5, 2003 (USA)

1. March 19-21, 2004

Bangkok

None

2. July 15-18, 2004

Singapore

None

October 12 - November 18, 2004 (USA)

3. August 6-17, 2005

Bangkok

None

4. August 26-29, 2005

Hongkong

None

5. September 1, 2005

Hongkong

None

6. October 26-29, 2005

Tokyo

None

7. February 8-15, 2006

Dubai

None

8. March 3-6, 2006

Hong Kong

None

9. May 11-13, 2007

Hongkong

None

10. June 26-July 15, 2007

Dubai

June 27- July 15, 2007 (England and United Kingdom)

11. October 6-23, 2007

Doha

None

12. January 10-21, 2008

Not reflected

January 16 - 31, 2008 (Australia) - Extension

13. February 29-March 3, 2008

Not reflected

February 29 - March 4, 2008 (Vietnam)

14. May 10-12, 2008

Not reflected

None

[42] Memorandum Circular No. 19, Series of 1999.

[43] Supra note 19.

[44] *Daplas v. Department of Finance*, id.

[45] Section 8, R.A. No. 6713, or the Code of Conduct and Ethical Standards for Public Officials and Employees and Section 7, R.A. No. 3019, or the Anti-Graft and Corrupt Practices Act.

[46] CA rollo, pp. 356-357, 361-362 and 371-372.

[47] Id. at 525-530.

[48] *Cobarde-Gamallo v. Escandor*, G.R. No. 184464, June 21, 2017.

[49] Rollo, pp. 101-108.

[50] Id. at 111-112.

SEPARATE CONCURRING AND DISSENTING OPINION

LEONEN, J.:

By law, public officers should not be held liable for inaccuracies in their statements of assets, liabilities, and net worth without first being given an opportunity to correct the defects.

The laws requiring public officers to submit declarations of their assets, liabilities, net worth, and financial and business interests, are: (1) Republic Act No. 6713, or the Code of Conduct and Ethical Standards for Public Officials and Employees; and (2) Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act.

Section 7 of the Anti-Graft and Corrupt Practices Act mandates every public officer to file a statement of assets, liabilities, and net worth with the office of his or her Department Head, Office of the President, or Office of the Secretary of the House of Representatives or Senate, wherever applicable. Violating this provision is sufficient to remove or dismiss a public officer, who shall be punished with a fine and/or imprisonment. However, the law was passed decades before the enactment of Republic Act No. 6713, which particularly governs the conduct and ethical standards of public officials and employees.

The Code of Conduct and Ethical Standards for Public Officials and Employees specifies that a review and compliance procedure must be established to determine the existence of certain defects in a public officer's statement of assets, liabilities, and net worth. Under the procedure, if it is found that the statement of assets, liabilities, and net worth was: (1) not tiled on time; (2) incomplete; or (3) not in proper form, the reporting individual must be informed of this defect and directed to take corrective action.[1]

The law places the responsibility of establishing these procedures on designated committees in the House of Representatives and the Senate, as well as heads of offices, subject to the approval of the Department of Justice Secretary or the Supreme Court Chief Justice, for the executive branch and the judiciary, respectively.[2] The law further provides:

SECTION 10. Review and Compliance Procedure. — . . .

. . . .

(b) In order to carry out their responsibilities under this Act, the designated Committees of both Houses of Congress shall have the power within their respective jurisdictions, to render any opinion interpreting this Act, in writing, to persons covered by this Act, subject in each instance to the approval by affirmative vote of the majority of the particular House concerned.

The individual to whom an opinion is rendered, and any other individual involved in a similar factual situation, and who, after issuance of the opinion acts in good faith in accordance with it shall not be subject to any sanction provided in this Act.[3]

Thus, the law clearly recognizes that a defect in the statement of assets, liabilities, and net worth may have occurred despite the reporting individual's good faith, and despite his or her lack of intent to conceal wealth. Moreover, once an opinion is rendered to a reporting individual, if he or she subsequently acts upon the opinion in good faith, he or she may not be sanctioned under Republic Act No. 6713.

Here, the majority accepts that petitioner's deceased wife, Atty. Adalia Francisco, left substantial wealth that makes the value of his financial interest in A. Francisco Realty and Development Corporation (A. Francisco Realty) look paltry. It also accepts that petitioner's interest in the company, which had been owned and controlled by petitioner's wife, was because of his wife's generosity.

Nonetheless, the majority finds petitioner liable for simple negligence for: (1) not disclosing his financial interest, rejecting the explanation that he was merely a nominal stockholder of the corporation for his wife, who could better make business decisions; (2) not disclosing several firearms in his 2007 statement of assets, liabilities, and net worth; (3) declaring a Nissan Patrol SUV in 2006, when the vehicle was registered under the name of A. Francisco Realty; and (4) not disclosing in 2007 a condominium unit in Libis, Quezon City, despite declaring it in 2005 and 2006.

The majority notes, however, that the condominium unit was conjugal and purchased per installment, stating that the proper recourse would be to make the necessary corrections and explanation of the nature of the acquisition. Nonetheless, it still found him liable for simple negligence.

Regretfully, the majority does not specify the standards that petitioner failed to follow. Instead, it relies on *Daplas v. Department of Finance*[4] to justify holding petitioner liable for simple negligence.

In *Daplas*, an officer's liability was downgraded from gross negligence to simple negligence. There, this Court explained that since the goal of the laws on statements of assets, liabilities, and net worth is to curtail the acquisition of unexplained wealth, when public officers explain their wealth and have no intent to commit a wrong, they cannot be found guilty of dishonesty. At most, when there is undisclosed but explained wealth, the officers may be held liable for negligence in failing to properly and accurately accomplish their statements of assets, liabilities, and net worth.[5]

Daplas, however, similarly fails to specify the standards under which the public officer was negligent. It broadly held that she may be adjudged guilty, "at the most, of mere negligence for having failed to accomplish her [statement of assets, liabilities, and net worth] properly and accurately." [6] There is negligence, it added, when there is a breach of duty or failure to perform an obligation.

In *Daplas*, no particular duty breached or obligation unfulfilled was defined. Instead, this Court cited *Imperial, Jr. v. Government Service Insurance System*, [7] *Pleyto v. PNP-Criminal Investigation & Detection Group*, [8] *Navarro v. Office of the Ombudsman*, [9] and *Office of the Ombudsman v. Bernardo*. [10]

Notably, *Imperial, Jr.* did not involve the completion of a statement of assets, liabilities, and net worth. There, a public officer approved the salary loans of eight (8) employees despite the absence of requirements for the loan under the Government Service Insurance System Policy and Procedural Guidelines. This Court found him liable for only simple misconduct.

In *Pleyto*, [11] this Court found a public officer liable for simple negligence for failing to declare all his assets and business interests in his statement of assets, liabilities, and net worth. Readily admitting and attempting to rectify his faults, he was found by this Court to have neither any intention of concealing information nor any intent to commit a wrong.

Further, this Court found that the public officer had lawfully acquired all his properties without reason to hide them. As such, he could not be held liable for gross misconduct or dishonesty.

Nonetheless, he was still held liable for negligence after failing to make sure that his statement of assets, liabilities, and net worth was accomplished properly, constituting an omission of the diligence required by his

position. This included: (1) not providing a detailed list of his assets and business interests; and (2) relying on his family bookkeeper/accountant to accomplish it without verifying the entries in it.

In *Bernardo*,^[12] this Court was again faced with the question of whether to find a public officer liable for dishonesty in relation to his statement of assets, liabilities, and net worth. In response to the question "Do you have any business interest and other financial connections including those of your spouse and unmarried children below 18 years living in your household?" he wrote, "Not Applicable."

Since there was no clear showing of any intent to conceal information, this Court held that the public officer was not liable for dishonesty in failing to truthfully declare the business interests and financial connections attributable to himself, his spouse, and his unmarried children below 18 years old living in his household.

This Court further pointed out that he had clearly indicated on two (2) of his statements of assets, liabilities, and net worth that his spouse was a "businesswoman." This denotes that his wife had business interests, which meant that he had no intention to conceal such fact.

However, while the public officer was not held liable for dishonesty, this Court nonetheless found him liable for simple negligence, ostensibly because his indication of "Not Applicable" was an omission of the diligence required of him, or a breach of his duty, or a failure to perform his obligation.

In *Atty. Navarro v. Office of the Ombudsman*,^[13] this Court exonerated the reporting individual, respondent *Atty. Amado Q. Navarro* (respondent *Navarro*), for: (1) "lumping" his properties in his statements of assets, liabilities, and net worth; and (2) inadvertently over-declaring P200,000.00 in them.

There, this Court noted that inaccuracies are likely due to the practice of copying entries from previous years and adding subsequent acquisitions. This was why, it added, officials should be alerted to these issues. Thus, it emphasized both the importance of informing a reporting individual of the defect in his or her statement of assets, liabilities, and net worth, and giving him or her the opportunity to take corrective action for it:

Although it is the duty of every public official/employee to properly accomplish his/her SALN, it is not too much to ask for the head of the appropriate department/office to have called his attention should there be any incorrectness in his SALN. The DOF, which has supervision over the BIR, could have directed Navarro to correct his SALN. This is in consonance with the above-quoted Review and Compliance Procedure under R.A. No. 6713, as well as its Implementing Rules and Regulations (IRR), providing for the procedure for review of statements to determine whether they have been properly accomplished. To reiterate, it is provided in the IRR that in the event authorities determine that a SALN is not properly filed, they should inform the reporting individual and direct him to take the necessary corrective action.

In this case, however, Navarro was not given the chance to rectify the nebulous entries in his SALNs. Instead, the DOF, through its RIPS, filed a complaint-affidavit with the Ombudsman on the ground that his SALN was "generalized." Regardless, Navarro was able to show and explain the details of his SALN when he submitted his counter-affidavit with the necessary documents, to which the DOF-RIPS and the Ombudsman and the CA coldly closed their eyes.

As there was only a failure to give proper attention to a task expected of an employee because of either carelessness or indifference, Navarro should have been informed so he could have made the necessary explanation or correction. There is nothing wrong with a generalized SALN if the entries therein can be satisfactorily explained and verified.

....

The Court is mindful of the duty of public officials and employees to disclose their assets, liabilities and net worth accurately and truthfully. In keeping up with the constantly changing and fervent society and for the

purpose of eliminating corruption in the government, the new SALN is stricter, especially with regard to the details of real properties, to address the pressing issue of transparency among those in the government service. Although due regard is given to those charged with the duty of filtering malicious elements in the government service, it must still be stressed that such duty must be exercised with great caution as grave consequences result therefrom. Thus, some leeway should be accorded the public officials. They must be given the opportunity to explain any prima facie appearance of discrepancy. To repeat, where his explanation is adequate, convincing and verifiable, his assets cannot be considered unexplained wealth or illegally obtained.[14] (Emphasis supplied, citation omitted)

This was reiterated in *Republic v. Sereno*.^[15] There, however, it was stressed that authorized officials could only provide for limited corrective action:

The Rules implementing R.A. No. 6713 thus authorize only certain officials of the Legislative, Executive and Judicial Departments, and the Constitutional Commissions and Constitutional offices to establish compliance procedures for the review of statements in the SALN to determine whether said statements have been properly accomplished. The said officials are also authorized to render opinions interpreting the provisions on the review and compliance procedures and to determine whether or not a SALN is properly filed. If the SALN was not properly filed, the authorized officials are required to inform the reporting individual and direct him/her to take the necessary corrective action. The records do not show that at the time respondent assumed her post as a professor in U.P., or at any time thereafter until her resignation, that concerned authorized official/s of the Office of the President or the Ombudsman had established compliance procedures for the review of SALNs filed by officials and employees of State Colleges and Universities, like U.P.

The ministerial duty of the head of office to issue compliance order came about only on April 16, 2006 when the Civil Service Commission (CSC) issued Memorandum Circular No. 10, s. 2006 amending Rule VIII. This was pursuant to CSC Resolution No. 06-0231 dated February 1, 2006 wherein the CSC adopted the revised rules on review and compliance procedure. . . .

At any rate, *Navarro v. Office of the Ombudsman* clarifies on the limited corrective action which the head of office can perform as regards the review of SALNs:

. . . .

Lest it be misunderstood, the corrective action to be allowed should only refer to typographical or mathematical rectifications and explanation of disclosed entries. It does not pertain to hidden, undisclosed or undeclared acquired assets which the official concerned intentionally concealed by one way or another like, for instance, the use of dummies. There is actually no hard and fast rule. If income has been actually reported to the BIR in one's ITR, such fact can be considered a sign of good faith.

. . . .

The Court is mindful of the duty of public officials and employees to disclose their assets, liabilities and net worth accurately and truthfully. In keeping up with the constantly changing and fervent society and for the purpose of eliminating corruption in the government, the new SALN is stricter, especially with regard to the details of real properties, to address the pressing issue of transparency among those in the government service. Although due regard is given to those charged with the duty of filtering malicious elements in the government service, it must still be stressed that such duty must be exercised with great caution as grave consequences result therefrom. Thus, some leeway should be accorded the public officials. They must be given the opportunity to explain any prima facie appearance of discrepancy. To repeat, where his explanation is adequate, convincing and verifiable, his assets cannot be considered unexplained wealth or illegally obtained.

5. Respondent's inclusion in the matrix of candidates with complete requirements and in the shortlist nominated by the JBC confirms or ratifies her compliance with the SALN requirement.^[16] (Emphasis in the original)

In Atty. Navarro, this Court emphasized that under Republic Act No. 6713, respondent Navarro should have been given the opportunity to rectify unclear entries in his statement of assets, liabilities, and net worth:

Given the opportunity, Navarro could have disclosed the acquisition costs and cost of the improvements in a more detailed way. His failure to amend his presentation, without his attention on the matter being called, cannot be considered as indicative of an untruthful declaration of his assets. Unless there is a concrete proof that the values or acquisition costs stated in Navarro's SALNs were not what they were supposed to be, then a conclusion that the same were untruthful cannot be reached.

Dishonesty and Grave Misconduct

Dishonesty is committed when an individual intentionally makes a false statement of any material fact, practices or attempts to practice any deception or fraud in order to secure his examination, registration, appointment, or promotion. It is understood to imply the disposition to lie, cheat, deceive, betray or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; and the lack of fairness and straightforwardness.

Misconduct, on the other hand, is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior. To constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be manifest.

From the given definitions above, the element of intent to commit a wrong exists in both administrative offenses of dishonesty and grave misconduct which, under the law, merit the penalty of dismissal from service. Thus, without any malice or wrongful intent, administrative liability cannot attach.

Here, there was no substantial evidence showing any malice or intent to deceive on the part of Navarro in accomplishing the questioned SALNs. Navarro would not have endeavored to produce voluminous documents to prove that he truthfully declared his properties, albeit lumped together, if his intention was to conceal them. The documents he submitted showed the veracity of the acquisitions he made and their respective costs as reflected in his SALNs. The physical impression of the DOF-RIPS of what and how the properties actually looked, without anything more concrete than mere conjectures that the said properties commanded a higher value or that the amounts did not match the kind of buildings constructed thereon, would not make Navarro's SALNs any less truthful.

The Court cannot help but observe that the charges filed by the DOF-RIPS against Navarro, that his SALNs bore misdeclarations, over-declarations and nondeclarations, are based on mere speculations and conjectures. Without concrete corroborating evidence to substantiate the charges, the Court cannot simply rely on such surmises as they are "not equivalent to proof; they have little, if any, probative value and, surely, cannot be the basis of a sound judgment." The Court's decision must be based upon competent proof "for the truth must have to be determined by the hard rules of admissibility and proof."

The Court has once emphasized that a mere misdeclaration in the SALN does not automatically amount to dishonesty. Only when the accumulated wealth becomes manifestly disproportionate to the income or other sources of income of the public officer/employee and he fails to properly account or explain his other sources of income, does he become susceptible to dishonesty. Although there appeared to have a prima facie evidence giving rise to the presumption of accumulation of wealth disproportionate to his income, Navarro was able to overcome such presumption by coming out with documentary evidence to prove his financial capacity to make the subject acquisitions and to prove that the amounts he stated in his SALNs were true. It should be understood that the laws on SALN aim to curtail the acquisition of unexplained wealth. Where the source of the undisclosed wealth can be properly accounted for, then it is "explained wealth" which the law does not penalize.

Considering that Navarro sufficiently explained his acquisitions as well as his other lawful sources of income to show his and his wife's financial capacity to acquire the subject real properties, he cannot be deemed to have committed dishonesty. He cannot be adjudged guilty of grave misconduct either as his alleged "lumping" of real properties in his SALN did not affect the discharge of his duties as a revenue officer.

The question now is: did he commit simple negligence for improperly accomplishing his SALNs?

A review of the case and the applicable rules and jurisprudence guides the Court to a negative finding.

Negligence is the omission of the diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. In the case of public officials, there is negligence when there is a breach of duty or failure to perform the obligation, and there is gross negligence when the breach of duty is flagrant and palpable.

As previously discussed, however, evident bad faith was wanting on the part of Navarro. Although it is the duty of every public official/employee to properly accomplish his/her SALN, it is not too much to ask for the head of the appropriate department/office to have called his attention should there be any incorrectness in his SALN. The DOF, which has supervision over the BIR, could have directed Navarro to correct his SALN. This is in consonance with the above-quoted Review and Compliance Procedure under R.A. No. 6713, as well as its Implementing Rules and Regulations (IRR), providing for the procedure for review of statements to determine whether they have been properly accomplished. To reiterate, it is provided in the IRR that in the event authorities determine that a SALN is not properly filed, they should inform the reporting individual and direct him to take the necessary corrective action.

In this case, however, Navarro was not given the chance to rectify the nebulous entries in his SALNs. Instead, the DOF, through its RIPS, filed a complaint-affidavit with the Ombudsman on the ground that his SALN was "generalized." Regardless, Navarro was able to show and explain the details of his SALN when he submitted his counter-affidavit with the necessary documents, to which the DOF-RIPS and the Ombudsman and the CA coldly closed their eyes.

As there was only a failure to give proper attention to a task expected of an employee because of either carelessness or indifference, Navarro should have been informed so he could have made the necessary explanation or correction. There is nothing wrong with a generalized SALN if the entries therein can be satisfactorily explained and verified.

Lest it be misunderstood, the corrective action to be allowed should only refer to typographical or mathematical rectifications and explanation of disclosed entries. It does not pertain to hidden, undisclosed or undeclared acquired assets which the official concerned intentionally concealed by one way or another like, for instance, the use of dummies. There is actually no hard and fast rule. If income has been actually reported to the BIR in one's ITR, such fact can be considered a sign of good faith.[17] (Emphasis in the original)

The purpose of requiring the submission statements of assets, liabilities, and net worth is to defeat corruption, not to subject public officials to annoying harassment due to inaccuracies, which they may have committed in good faith. Providing an opportunity to correct a defect before being sanctioned is more aligned with the purpose and text of the law.

Thus, the proper procedure should be: if a committee has determined that a statement of assets, liabilities, and net worth: (1) was not submitted on time; (2) was incomplete; or (3) was not in proper form, the filer must be given the opportunity to take corrective action. Only then can the authorities discern if there is unexplained wealth. Without this opportunity, he or she should not be held administratively liable.

Here, petitioner should not be held liable for his failure to enumerate his firearms in his 2007 Statement of Assets, Liabilities, and Net Worth. He explained that he did not sense the need to declare his Machine Pistol Uzi in 2007

because the form provided required the list of "Investments, other personal properties, and liabilities of Declarant/Spouse/Declarant's Children Below 18 years of Age," which included items such as cash on hand in banks, bonds, mutual funds, trust funds, time deposits, and pre-need plans.

The majority rejected this explanation, stating that the form contains spaces for details pertaining to "Other Personal Property" and "Acquisition Cost" of this property, where petitioner should have indicated his Machine Pistol Uzi.[18]

To recall, Section 8 of Republic Act No. 6713 requires that statements of assets, liabilities, and net worth contain information on the following:

SECTION 8. Statements and Disclosure. — . . .

. . . .

(a)

real property, its improvements, acquisition costs, assessed value and current fair market value;

(b)

personal property and acquisition cost;

(c)

all other assets such as investments, cash on hand or in banks, stocks, bonds, and the like;

(d)

liabilities, and;

(e)

all business interests and financial connections.

Under this provision, it is difficult to see how failure to disclose ownership of a firearm is a clear breach of duty, considering that information on firearms is not expressly required. While firearms are classified as "personal property," to require a statement of assets, liabilities, and net worth to contain a comprehensive list of all of one's personal properties without discrimination—such that omission of any item owned constitutes simple negligence—would be oppressive and unreasonable.

There is no clear standard under which a reporting individual may discern which types of property may be omitted from the list without being subject to administrative sanction.

Thus, absent a clear requirement that firearms must be specifically itemized in a statement of assets, liabilities, and net worth, or without clear basis to interpret the rules as tantamount to such a requirement, petitioner should not be held administratively liable for not disclosing his firearms.

Again, public officers are required to submit statements of their assets, liabilities, and net worth to provide a method of ascertaining whether an officer has illegally acquired wealth. This is not a tool to oppress public officers. If there is a defect in their statements of assets, liabilities, and net worth, public officers must be given the opportunity to correct it. If they had no such opportunity, and if, despite this, it has also been decisively found that public officers have not illegally acquired wealth, as in this case, they should not be held administratively liable.

Aside from the issue of petitioner's statements of assets, liabilities, and net worth, the majority further ruled that in traveling abroad without a travel authority, petitioner is held liable for simple misconduct. It notes that Memorandum Circular No. 304 has explicitly indicated that those who intend to travel abroad, even when on leave of absence, must still secure prior approval.[19]

With all due respect, Memorandum Circular No. 304 was issued in 1969 amid the need to conserve foreign exchange and redouble efforts in public service toward national progress. In its entirety, it reads:

MEMORANDUM CIRCULAR NO. 304

REMINDING ALL CONCERNED OF THE NEED FOR PRIOR APPROVAL BY THE OFFICE OF THE PRESIDENT OF TRIPS ABROAD OF GOVERNMENT PERSONNEL.

It has been observed that certain officials and employees in some government offices and agencies have undertaken trips abroad without the prior authority of this Office as required under existing regulations.

In view of the pressing need to pursue more vigorously the Administration's efforts at conserving foreign exchange and considering the imperativeness of redoubling efforts in the public service towards national progress, all concerned particularly by the heads of departments and chiefs of bureaus and offices, including local subdivisions and government-owned or controlled corporations, are hereby reminded of the need of obtaining the prior permission of the Office of the President for all trips aboard of personnel in their jurisdictions.

This requirement shall henceforth apply even to those who intended to travel abroad while on leave of absence, inasmuch as vacation leave must be contingent upon the exigencies of the service.

Notably, the constitution in effect when the memorandum circular was issued contained no express protection of the right to travel. On the other hand, Article III, Section 6 of the current Constitution, states:

ARTICLE III
Bill of Rights

....

SECTION 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law. (Emphasis in the original)

In line with such constitutional guarantee, this Court has protected the right to travel more closely. In *Genuino v. De Lima*,[20] this Court, invoking Article III, Section 6, reiterated that the 1987 Constitution limits situations where the State may impinge on the right to travel. When the State so impinges, it must be in accord with laws or the Rules of Court:

Clearly, under the provision, there are only three considerations that may permit a restriction on the right to travel: national security, public safety or public health. As a further requirement, there must be an explicit provision of statutory law or the Rules of Court providing for the impairment. The requirement for a legislative enactment was purposely added to prevent inordinate restraints on the person's right to travel by administrative officials who may be tempted to wield authority under the guise of national security, public safety or public health. This is in keeping with the principle that ours is a government of laws and not of men and also with the canon that provisions of law limiting the enjoyment of liberty should be construed against the government and in favor of the individual.[21]

Assuming that petitioner indeed obtained permission from and informed his immediate superiors regarding his

travel—and without any legislative enactment, or any consideration of national security, public safety, or public health, by which petitioner's right to travel may have been curtailed—then he should not be sanctioned for his failure to obtain an official travel authority prior to traveling abroad.

On all other points, I concur with the majority.

ACCORDINGLY, I vote to GRANT the Petition.

[1] Rep. Act No. 6713 (1989), sec. 10(a).

[2] Rep. Act No. 6713 (1989), sees. 10(a) and (c).

[3] Rep. Act No. 6713 (1989), sec. 10(b).

[4] G.R. No. 221153, April 17, 2017, 823 SCRA 44 [Per J. Perlas-Bernabe, First Division].

[5] Id. at 55-56.

[6] Id. at 56.

[7] 674 Phil. 286 (2011) [Per J. Brion, En Banc].

[8] 563 Phil. 842 (2007) [Per J. Chico-Nazario, Third Division].

[9] 793 Phil. 453 (2016) [Per J. Mendoza, Second Division].

[10] 705 Phil. 524 (2013) [Per J. Leonardo-De Castro, First Division].

[11] 563 Phil. 842 (2007) [Per J. Chico-Nazario, Third Division].

[12] 705 Phil. 524 (2013) [Per J. Leonardo-De Castro, First Division].

[13] 793 Phil. 453 (2016) [Per J. Mendoza, Second Division].

[14] Id. at 476-478.

[15] G.R. No. 237428, May 11, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64003>> [Per J. Tijam, En Banc].

[16] Id.

[17] Atty. Navarro v. Office of the Ombudsman, 793 Phil. 453, 473-477 (2016) [Per J. Mendoza, Second Division].

[18] Ponencia, pp. 13-14.

[19] Ponencia, p. 18.

[20] G.R. No. 197930, April 17, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64165>> [Per J. Reyes, Jr., En Banc].

[21] Id.

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