



Republic of the Philippines
Supreme Court
 Manila
SECOND DIVISION

**SPOUSES EDWIN B. BUFFE and
 KAREN M. SILVERIO-BUFFE,**
 Complainants,

A.C. No. 8168

Present:

CARPIO, *Acting, C.J.*,
 Chairperson,
 BRION,
 DEL CASTILLO,
 MENDOZA, and
 LEONEN,* *JJ.*

- versus -

**SEC. RAUL M. GONZALEZ,
 USEC. FIDEL J. EXCONDE, JR.,
 and CONGRESSMAN ELEANDRO
 JESUS F. MADRONA,**
 Respondents.

Promulgated:
12 OCT 2016

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DECISION

CARPIO, *Acting C.J.*:

The Case

Before this Court is a disbarment complaint filed by Spouses Edwin B. Buffe and Karen M. Silverio-Buffe (complainants) against former Secretary of Justice Raul M. Gonzalez,¹ former Undersecretary of Justice Fidel J. Exconde, Jr., and former Congressman Eleandro Jesus F. Madrona (respondents), for committing an unethical act in violation of the Code of Professional Responsibility, and the Lawyer’s Oath, particularly the willful violation of Republic Act Nos. (RA) 6713, 3019, and civil service law and rules.

The Facts

The undisputed facts, as culled from the records, are as follows:

On 15 July 2008, former President Gloria Macapagal Arroyo appointed Karen M. Silverio-Buffe (Silverio-Buffe) as Prosecutor I/

* On official business.

¹ Also referred to in the Records as “Raul M. Gonzales.”

Assistant Provincial Prosecutor of Romblon province. On 15 August 2008, Silverio-Buffe took her oath of office before Metropolitan Trial Court of Manila, Branch 24, Judge Jesusa P. Maningas (Judge Maningas). She, then, furnished the Office of the President, Civil Service Commission and Department of Justice (DOJ) with copies of her oath of office. On 19 August 2008, Silverio-Buffe informed the Office of the Provincial Prosecutor of Romblon that she was officially reporting for work beginning that day.

In a letter dated 26 August 2008, Romblon Provincial Prosecutor Arsenio R.M. Almadin asked former Secretary of Justice Raul M. Gonzalez (Gonzalez) to confirm the appointment of Silverio-Buffe since the Provincial Prosecution Office did not receive any official communication regarding Silverio-Buffe's appointment.

In a Memorandum Order dated 19 December 2008, Gonzalez ordered Silverio-Buffe "to cease and desist from acting as prosecutor in the Office of the Provincial Prosecutor of Romblon, or in any Prosecutor's Office for that matter, considering that [she has] no appointment to act as such, otherwise [she] will be charged of usurpation of public office."²

On 11 February 2009, Silverio-Buffe, together with her husband Edwin B. Buffe, filed with the Office of the Bar Confidant (OBC) a Joint Complaint-Affidavit³ alleging that former Congressman Eleandro Jesus F. Madrona (Madrona), acting out of spite or revenge, persuaded and influenced Gonzalez and Undersecretary Fidel J. Exconde, Jr. (Exconde) into refusing to administer Silverio-Buffe's oath of office and into withholding the transmittal of her appointment papers to the DOJ Regional Office. Madrona allegedly acted out of spite or revenge against Silverio-Buffe because she was one of the plaintiffs in a civil case for enforcement of a Radio Broadcast Contract, which was cancelled by the radio station due to adverse commentaries against Madrona and his allies in Romblon.

In their Joint Complaint-Affidavit, they narrated that: (1) on 1 August 2008, the Malacañang Records Office transmitted Silverio-Buffe's appointment papers to the DOJ and they were received by a clerk named Gino Dela Peña; (2) on 13 August 2008, a certain Cora from the Personnel Division of the DOJ asked Silverio-Buffe if she had any "connection" in the Office of the Secretary because her papers were being withheld by Exconde, and when she said none, Cora told her to come back the following day; (3) on 14 August 2008, Silverio-Buffe was introduced to Gonzalez, who informed her that Madrona strongly opposed her appointment and advised her to work it out with Madrona; (4) since Gonzalez refused to administer her oath of office, Silverio-Buffe took her oath before Judge Maningas on 15 August 2008; (5) Silverio-Buffe twice wrote a letter to Gonzalez pleading

² *Rollo*, p. 41.

³ *Id.* at 1-11.

for the transmittal of her appointment papers, but Gonzalez never replied; and (6) on 13 November 2008, they went to the DOJ and met Exconde, who informed them that they should think of a solution regarding Madrona's opposition to her appointment. Exconde asked for the reason of Madrona's opposition and Silverio-Buffe replied that she supported Madrona's rival, Eduardo Firmalo, during the elections. Exconde persuaded Silverio-Buffe to talk with Madrona, but she insisted on not approaching Madrona because of their diverse principles. Exconde, then, suggested that Silverio-Buffe write Gonzalez a letter stating that she already approached Madrona yet the latter ignored her plea, but Silverio-Buffe refused the suggestion.

In a Resolution dated 15 April 2009,⁴ the Court, through the First Division, required the respondents to comment on the complaint.

In his Comment with Counter-Complaint dated 23 June 2009,⁵ Madrona denied that he acted out of spite or revenge against Silverio-Buffe or that he persuaded, induced, or influenced anyone to refuse to administer oath to Silverio-Buffe and to withhold the transmittal of her appointment papers. Madrona insisted that the allegations against him are without proof, and based on general conjectures and hearsay. On the other hand, Madrona alleged that complainants should be accountable for their dishonest and deceitful conduct in submitting to the Court as annexes a complaint without its last two pages and a contract altered by Silverio-Buffe.

In a joint Comment dated 1 July 2009,⁶ Gonzalez and Exconde claimed that: (1) the complaint is unfounded and purely for harassment because Silverio-Buffe's appointment papers were not endorsed by the Office of the President to the DOJ for implementation; (2) the Court has no jurisdiction over the complaint because a case for violation of RA 6713 and civil service rules should be filed with the Civil Service Commission and a case for violation of RA 3019 should be filed with the Sandiganbayan; (3) the proper venue for her grievance is with the Office of the President; (4) assuming that her appointment papers were withheld, such act was presumed to be the act of the President herself, with the presumption of regularity of official functions; and (5) Exconde was erroneously impleaded since he never signed any document relating to Silverio-Buffe's appointment.

In her Reply dated 17 July 2009,⁷ Silverio-Buffe insisted that her appointment papers were endorsed by the Office of the President to the Office of the Secretary of Justice, as evidenced by the Endorsement Letter of then Executive Secretary Eduardo R. Ermita. However, Exconde, as Chief of Personnel Management and Development under the Office of the Secretary

⁴ Id. at 43-44.

⁵ Id. at 48-55.

⁶ Id. at 95-103.

⁷ Id. at 110-122.



of Justice, refused to forward her appointment letter to the Personnel Division of DOJ for implementation.

In a Resolution dated 21 October 2009,⁸ the Court, through the Third Division, referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.

In a Memorandum dated 12 July 2010,⁹ then DOJ Secretary Leila M. De Lima transmitted Silverio-Buffe's appointment papers to the Office of the Provincial Prosecutor of Romblon.

In a Resolution dated 20 October 2010,¹⁰ the Court, through the Second Division, referred the Motion to Dismiss¹¹ filed by Madrona to the IBP. Madrona sought to dismiss the present administrative complaint on the ground of forum-shopping, because he received an order from the Office of the Ombudsman directing him to file a counter-affidavit based on the same administrative complaint filed before the OBC.

The IBP's Report and Recommendation

In a Report and Recommendation dated 5 October 2011,¹² Investigating Commissioner Oliver A. Cachapero (Investigating Commissioner) found the complaint impressed with merit, and recommended the penalty of censure against the respondents.¹³ The Investigating Commissioner found respondents' united action of stopping the appointment of Silverio-Buffe unethical.

In Resolution No. XX-2012-215¹⁴ issued on 28 June 2012, the IBP Board of Governors reversed the Investigating Commissioner's Report and Recommendation, to wit:

RESOLVED to REVERSE as it is hereby unanimously REVERSED, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and considering that the complaint lacks merit the case against Respondents is hereby DISMISSED.

Complainants then filed a motion for reconsideration.

⁸ Id. at 152-153.

⁹ Id. at 453.

¹⁰ Id. at 185.

¹¹ Id. at 179-181.

¹² Id. at 606-609.

¹³ Id. at 609. "Foregoing premises considered, the undersigned believes and so holds that the complaint is meritorious. Accordingly, he recommends that the three (3) Respondents be meted with the penalty of CENSURE."

¹⁴ Id. at 572-573.



In Resolution No. XX-2013-307¹⁵ issued on 21 March 2013, the IBP Board of Governors denied the motion for reconsideration, to wit:

RESOLVED to unanimously DENY Complainants' Motion for Reconsideration, there being no cogent reason to reverse the Resolution and it being a mere reiteration of the matters which had already been threshed out and taken into consideration. Thus, Resolution No. XX-2012-215 dated June 28, 2012 is hereby AFFIRMED.

Hence, complainants filed a petition before this Court.

The Issue

The issue in this case is whether Gonzalez, Exconde, and Madrona should be administratively disciplined based on the allegations in the complaint.

The Ruling of the Court

We dismiss the administrative case against Exconde and Madrona for lack of jurisdiction. The present administrative case should be resolved by the Office of the Ombudsman, considering that complainants have filed a complaint before it on 12 February 2009.¹⁶ In the case of Gonzalez, his death on 7 September 2014 forecloses any administrative case against him.¹⁷

The authority of the Ombudsman to act on complainants' administrative complaint is anchored on Section 13(1), Article XI of the 1987 Constitution, which provides that: "[t]he Office of the Ombudsman shall have the following powers, functions, and duties: (1) investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient."

Under Section 16¹⁸ of RA 6770, otherwise known as the Ombudsman Act of 1989, the jurisdiction of the Ombudsman encompasses all kinds of malfeasance, misfeasance, and nonfeasance committed by any public officer or employee during his or her tenure.¹⁹ Section 19²⁰ of RA 6770 also states

¹⁵ Id. at 603.

¹⁶ Id. at 183.

¹⁷ In *Caoile v. Atty. Macaraeg*, A.C. No. 720, 17 June 2015, citing *Apiag v. Cantero*, 335 Phil. 511 (1997), the Court dismissed the administrative case against respondent and no longer imposed any sanction against him in view of his death during the pendency of the case.

¹⁸ Republic Act No. 6770, Section 16. *Applicability*. - The provisions of this Act shall apply to all kinds of malfeasance, misfeasance, and nonfeasance that have been committed by any officer or employee as mentioned in Section 13 hereof, during his tenure of office.

¹⁹ *Samson v. Restrivera*, 662 Phil. 45 (2011).

²⁰ Republic Act No. 6770, Section 19. *Administrative Complaints*. - The Ombudsman shall act on all complaints relating, but not limited to acts or omissions which:

that the Ombudsman shall act on all complaints relating, but not limited, to acts or omissions which are unreasonable, unfair, oppressive, or discriminatory.

Considering that both Exconde and Madrona are public officers being charged for actions, which are allegedly unfair and discriminatory, involving their official functions during their tenure, the present case should be resolved by the Office of the Ombudsman as the appropriate government agency. Indeed, the IBP has no jurisdiction over government lawyers who are charged with administrative offenses involving their official duties. For such acts, government lawyers fall under the disciplinary authority of either their superior²¹ or the Ombudsman.²² Moreover, an anomalous situation will arise if the IBP asserts jurisdiction and decides against a government lawyer, while the disciplinary authority finds in favor of the government lawyer.

WHEREFORE, we **DISMISS** the administrative complaint against now deceased Secretary of Justice Raul M. Gonzalez for being moot. We also **DISMISS** the administrative complaint against respondents, former Undersecretary of Justice Fidel J. Exconde, Jr. and former Congressman Eleandro Jesus F. Madrona, for lack of jurisdiction.

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- (1) Are contrary to law or regulation;
 - (2) Are unreasonable, unfair, oppressive or discriminatory;
 - (3) Are inconsistent with the general course of an agency's functions, though in accordance with law;
 - (4) Proceed from a mistake of law or an arbitrary ascertainment of facts;
 - (5) Are in the exercise of discretionary powers but for an improper purpose; or
 - (6) Are otherwise irregular, immoral or devoid of justification.

²¹ Executive Order No. 292, or "Administrative Code of 1987," Book V, Title I, Chapter 7, Section 47. *Disciplinary Jurisdiction*. - (1) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from office. A complaint may be filed directly with the Commission by a private citizen against a government official or employee in which case it may hear and decide the case or it may deputize any department or agency or official or group of officials to conduct the investigation. The results of the investigation shall be submitted to the Commission with recommendation as to the penalty to be imposed or other action to be taken.

(2) **The Secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction.** Their decisions shall be final in case the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days' salary. In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned.

x x x x (Emphasis supplied)

²² Republic Act No. 6770, Section 21. *Officials Subject to Disciplinary Authority; Exceptions*. - The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary.

Let a copy of this Decision be furnished the Office of the Ombudsman for whatever appropriate action the Ombudsman may wish to take with respect to the possible administrative and criminal liability of respondents Fidel J. Exconde, Jr. and Eleandro Jesus F. Madrona.

SO ORDERED.



ANTONIO T. CARPIO
Acting Chief Justice

WE CONCUR:



ARTURO D. BRION
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice

(on official business)
MARVIC M.V.F. LEONEN
Associate Justice