



Republic of the Philippines  
 Supreme Court  
 Baguio City

THIRD DIVISION

**ROLANDO B. ZOLETA,**  
 Petitioner,

**G.R. No. 258888**

Present:

- versus -

**CAGUIOA, J.,**  
*Chairperson,*  
**LAZARO-JAVIER,\***  
**INTING,**  
**GAERLAN, and**  
**SINGH, JJ.**

**INVESTIGATING STAFF,  
 INTERNAL AFFAIRS BOARD,  
 OFFICE OF THE  
 OMBUDSMAN, represented by:  
 GIPO III ALFRED YANN G.  
 OGUIS and AGIO OMAR R.  
 LEANO,\*\***

Promulgated:

April 8, 2024

Respondents.

*Mic PCB-05*

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**DECISION**

**GAERLAN, J.:**

Before this Court is a Petition for Review on *Certiorari*,<sup>1</sup> assailing the Decision<sup>2</sup> dated January 7, 2021 and the Resolution<sup>3</sup> dated October 6, 2021 of the Court of Appeals (CA) in CA-G.R. SP No. 156298, which affirmed the Decision<sup>4</sup> dated January 17, 2018 and the Omnibus Order<sup>5</sup> dated May 21, 2018 of the Internal Affairs Board (IAB) of the Office of the Ombudsman (OMB) in OMB-C-A-17-0265.

\* Designated additional Member *vice* Dimaampao, J., per Raffle dated October 10, 2022.

\*\* Also referred to as "Omar R. Leño in some parts of the Records.

<sup>1</sup> *Rollo*, pp. 9-56.

<sup>2</sup> *Id.* at 370-384; penned by Associate Justice Alfredo D. Ampuan and concurred in by Associate Justices Japar B. Dimaampao (now a Member of this Court) and Pedro B. Corales, of the Third Division, Court of Appeals, Manila.

<sup>3</sup> *Id.* at 420-425.

<sup>4</sup> *Id.* at 257-269.

<sup>5</sup> *Id.* at 296-311.

*J*

### Antecedents

On July 21, 2017, Leonardo R. Nicolas, Jr. (Nicolas, Jr.), Associate Graft Investigation Officer III of the Intelligence Bureau-Field Investigation Office (IB-FIO) of the OMB, was arrested in an entrapment operation for extorting PHP 3,000,000.00 from Congressman Amado Espino in exchange for the closure of cases pending against Mayor Jumel Espino of Bugallon, Pangasinan. While detained in the National Bureau of Investigation Custodial Detention Center, Nicolas, Jr. executed an Affidavit dated August 2, 2017, stating that he has been transacting with petitioner Rolando B. Zoleta (Zoleta), previously the Assistant Ombudsman for Luzon then assigned at the Appeals Bureau of the Office of the Special Prosecutor, in fixing cases pending for preliminary investigation in exchange for a “tag price” ranging from PHP 200,000.00 to PHP 300,000.00.<sup>6</sup>

On August 4, 2017, Alfred Yann G. Oguis (Oguis), a member of the Internal Affairs Board-Investigating Staff (IAB-IS), filed a Complaint against Zoleta and Elias B. Caputolan Jr. (Caputolan, Jr.), an employee of the OMB, with the IAB for Serious Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service under Rule 10(A) Nos. 1 and 3 and (B) No. 8 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS),<sup>7</sup> and violation of Republic Act (RA) No. 6713,<sup>8</sup> otherwise known as the “Code of Conduct and Ethical Standards for Public Officials and Employees.”<sup>9</sup> It was alleged therein that Zoleta offered help to facilitate the dismissal of cases pending preliminary investigation and administrative adjudication before the OMB-Luzon and the OMB for the Military and Other Law Enforcement Offices (OMB-MOLEO).<sup>10</sup> Attached to the Complaint was an Affidavit allegedly executed on August 2, 2017 by Nicolas, Jr. stating that starting January 2017, he began transacting with high ranking officials. Zoleta allegedly fixed the cases of Provincial Assessor Nestor Quiambao, Mayor Percival Mallare, National Labor Relations Commission Labor Arbiter Irenarco Rimando, and Police Inspector Jaojoco Cagaoan (Cagaoan).<sup>11</sup> Also attached to the Complaint is the Letter addressed to the OMB and signed by Nicolas, Jr., printed screenshot of the Joint Resolution in the cases involving Cagaoan, several screenshots of the messages *via* Short Message Service (SMS) between Nicolas, Jr. and a certain “AO Roy Zoleta,” and a printed screenshot of the mobile phone number of AO Roy Zoleta.<sup>12</sup>

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<sup>6</sup> *Id.* at 371.

<sup>7</sup> Civil Service Commission Resolution No. 1101502 dated November 8, 2011.

<sup>8</sup> Dated February 20, 1989.

<sup>9</sup> *Rollo*, pp. 371–372.

<sup>10</sup> *Id.* at 372.

<sup>11</sup> *Id.* at 258.

<sup>12</sup> *Id.* at 372.

In an Order dated August 7, 2017, the IAB preventively suspended Zoleta for a period of six months. In another Order of even date, Zoleta was required to submit his counter-affidavit to the Complaint. However, instead of filing a counter-affidavit, Zoleta opted to file a Manifestation indicating the length of his government service and the history of his performance ratings, including his hospitalization for ruptured aneurysm.<sup>13</sup> He stated that he exercised this option because the Complaint executed on August 4, 2017 by Oguis was a mere scrap of paper because it was not based on the latter's personal knowledge and it was not supported by any affidavit or sworn statement of a witness naming Zoleta as the person being alluded to.<sup>14</sup> On the other hand, Oguis submitted a Motion to Admit Reply/Comment<sup>15</sup> dated September 14, 2017 with the attached Reply/Comment and the Judicial Affidavit<sup>16</sup> of Nicolas, Jr. executed on August 15, 2017. Zoleta filed his Opposition to the motion, praying for the denial of the motion, the lifting of the preventive suspension and the dismissal of the administrative complaint filed against him.<sup>17</sup> In an Order<sup>18</sup> dated October 10, 2017, parties were required to submit their respective verified position papers within a non-extendible period of 10 days from receipt of the Order.

Zoleta, in his Position Paper<sup>19</sup> dated October 23, 2017 attached the Joint Affidavit<sup>20</sup> dated September 7, 2017 and the Supplemental Joint Affidavit<sup>21</sup> dated October 9, 2017 of Joaquin F. Salazar and Dennis L. Garcia of the OMB-Luzon and the OMB-MOLEO, respectively. In turn, Oguis filed a Motion to Admit Position Paper<sup>22</sup> dated October 27, 2017 with his Position Paper.<sup>23</sup>

In the Decision<sup>24</sup> dated January 17, 2018, the OMB found Zoleta liable for Grave Misconduct, Serious Dishonesty, and Conduct Prejudicial to the Interest of the Service, and meted on him the penalty of dismissal from the service, to wit:

**WHEREFORE**, respondents Rolando B. Zoleta and Elias B. Caputolan, Jr. are found **GUILTY** of Grave Misconduct, Serious Dishonesty and [sic] Conduct Prejudicial to the Best Interest of the Service, and are meted the penalty of **Dismissal from the Service**, together with its accessory penalties. In the event that the penalty of Dismissal can no longer be enforced due to respondents' separation from the service, the same shall be converted

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<sup>13</sup> *Id.* at 372-373.

<sup>14</sup> *Id.* at 261.

<sup>15</sup> *Id.* at 179-203.

<sup>16</sup> *Id.* at 181-200.

<sup>17</sup> *Id.* at 204-210.

<sup>18</sup> *Id.* at 211-212.

<sup>19</sup> *Id.* at 213-228.

<sup>20</sup> *Id.* at 230.

<sup>21</sup> *Id.* at 231.

<sup>22</sup> *Id.* at 232-233.

<sup>23</sup> *Id.* at 234-252.

<sup>24</sup> *Id.* at 257-269.

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into a Fine in the amount equivalent to their salary for one (1) year, payable to the Office of the Ombudsman, and may be deductible from their retirement benefits, accrued leave credits or any receivables by respondents from their office. It shall be understood that the accessory penalties attached to the principal penalty of Dismissal shall continue to be imposed.

**SO ORDERED.**<sup>25</sup> (Emphases and underscoring in the original)

Zoleta moved that the Decision be reconsidered, that all the members of the IAB be recused, and that the entire proceedings in OMB-C-A-17-0265 be vacated. However, the motions were all denied in the Omnibus Order<sup>26</sup> dated May 21, 2018.

Zoleta filed a Petition for Review<sup>27</sup> with the CA alleging that the OMB committed reversible error: (1) in sustaining the validity of the premature preventive suspension imposed by the IAB on Zoleta based on evidence that was not strong, in violation of Section 24 of R.A. No. 6770;<sup>28</sup> (2) in admitting into evidence and giving probative value to the Judicial Affidavit of Nicolas, Jr., who was not presented to testify and to be cross-examined and the alleged screenshots of text messages and images of certain documents, which were not authenticated under the Electronic Evidence Rule and which were obtained without a court order;<sup>29</sup> (3) in finding Zoleta administratively liable for alleged Serious Dishonesty, Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service, and violation of R.A. No. 6713;<sup>30</sup> and (4) when it violated the right of Zoleta to due process of law and equal protection of the laws when it preventively suspended him and finally dismissed him from the government service.<sup>31</sup>

The CA, in its Decision<sup>32</sup> dated January 7, 2021, denied Zoleta's petition for review, *viz.*:

**WHEREFORE**, the Petition is **DENIED**.

**SO ORDERED.**<sup>33</sup> (Emphasis in the original)

The CA held that Zoleta was afforded due process of law. Zoleta was given reasonable opportunity to answer the accusations against him. Zoleta was directed to submit his counter-affidavit to put up his defenses against the

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<sup>25</sup> *Id.* at 374.

<sup>26</sup> *Id.* at 296–311.

<sup>27</sup> *Id.* at 312–342.

<sup>28</sup> *Id.* at 318.

<sup>29</sup> *Id.* at 319.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 370–384.

<sup>33</sup> *Id.* at 383.

administrative complaint. However, he opted not to submit a counter-affidavit, and instead, submitted a Manifestation showing his length of service, the awards and recognition he received, and his medical condition. In addition, through an Order, he was able to submit his Position Paper, and was even given the chance to be heard on his motion for reconsideration. The CA further held that the fact that Zoleta was not able to cross-examine Nicolas, Jr. does not render the contents of the Affidavit and Judicial Affidavit of Nicolas, Jr. inadmissible in evidence. Administrative bodies, like the IAB, are not bound by the technical niceties of law and procedure and the rules obtaining in courts of law. Technical rules of procedure and evidence are not strictly applied and administrative due process cannot be fully equated with due process in its strict judicial sense. Similarly, the withholding of the identity of the IAB investigator does not violate Zoleta's right to due process of law and equal protection of the law. Such anonymity is anchored on the existing internal rules of the IAB. Also, Zoleta failed to show proof of the alleged bias and impartiality on the part of the IAB investigator.<sup>34</sup>

Also, the CA resolved that the acts complained of were duly substantiated. The statements of Nicolas, Jr. categorically narrate Zoleta's acts of participating in the illegal case-fixing deals in exchange for money. The statements of Nicolas, Jr. are anchored on facts, of which he has personal knowledge. Nicolas, Jr. himself participated in the illegal scheme by receiving the bribe money and delivering the same to Zoleta as "fees" for the case-fixing deals. The fact that Oguis does not have personal knowledge of the facts stated by Nicolas, Jr. is immaterial. The complaint was anchored on the statement of Nicolas, Jr., not Oguis. More, the detailed statements of Nicolas, Jr. were corroborated by the text messages between him and Zoleta under the contact name "AO Roy Zoleta." Based on the text messages, Zoleta actually demanded and received bribe money in exchange for helping and fixing cases. Moreover, the OMB was able to verify the actual cases and real names mentioned in the text messages stored in the mobile phone of Nicolas, Jr. The mobile phone number noted by Nicolas, Jr. in his text message under the contact name "AO Roy Zoleta" was found to be the same mobile phone number belonging to Zoleta as evinced by his 2011 Personal Data Sheet (PDS). Zoleta failed to sufficiently explain his side and merely invoked his right to privacy of communication and correspondence. The text messages were voluntarily given by Nicolas, Jr., who was a party to the conversation. Zoleta's unlawful acts constitute conduct prejudicial to the best interest of the service.<sup>35</sup>

Lastly, the CA ruled that the penalty of dismissal was proper. Both Grave Misconduct and Serious Dishonesty, of which Zoleta was charged, are classified as grave offenses for which the penalty of dismissal is meted even for first time offenders. While in most cases, length of service is considered where

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<sup>34</sup> *Id.* at 377–379.

<sup>35</sup> *Id.* at 379–382.

the offense committed is found to be serious or grave; or when the length of service helped the offender commit the infraction. In this case, it was resolved by the CA that the offenses committed by Zoleta are both serious and grave, thus, has no other recourse but to sustain the penalty meted out to him.<sup>36</sup>

Zoleta filed his Motion for Reconsideration<sup>37</sup> of the Decision dated January 7, 2021 of the CA. It was reiterated, among others, that: (1) the OMB denied his right to due process of law in ordering his preventive suspension; (2) the rule that an administrative body is not bound by the rules of procedure and evidence strictly observed in judicial proceedings is not an unbridled license to disregard his constitutional rights; (3) the affidavit of Nicolas, Jr., is inadmissible in evidence; (4) the alleged text messages purportedly coming from “AO Roy Zoleta” are also inadmissible in evidence; and (5) the evidence presented by the complainant to establish his administrative liability is not sufficient as substantial evidence.<sup>38</sup> In addition, Zoleta argues anew that the mobile phone number in his 2011 PDS may not be used against him for any purpose, including the purpose of identifying the person with whom Nicolas, Jr. was communicating regarding case-fixing, because such information is protected under the Data Privacy Act of 2012 (DPA).<sup>39</sup> Zoleta insisted that his personal mobile phone number is personal information which is protected under the DPA and that what the law allows to be divulged is the government employee’s “office telephone number.” Consequently, Zoleta submitted a Motion for Leave of Court to File and Admit the Supplement to the Motion for Reconsideration of the Decision dated January 7, 2021,<sup>40</sup> stating that the related criminal case docketed as OMB-C-C-17-0328 for Direct Bribery, violation of Section 3(a) of R.A. No. 3019, otherwise known as the “Anti-Graft and Corrupt Practices Act,” and violation of R.A. No. 6713 was dismissed. Zoleta averred that the said criminal case arose from the same set of facts and involved the same evidence as in the instant administrative case.<sup>41</sup>

The CA resolved to deny Zoleta’s Motion for Reconsideration, to wit:

**WHEREFORE**, the Motion for Reconsideration is **DENIED** for lack of merit.

**SO ORDERED.**<sup>42</sup> (Emphasis in the original)

Except for Zoleta’s argument that his mobile phone number is confidential under the DPA, a review of Zoleta’s Motion for Reconsideration

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<sup>36</sup> *Id.* at 382–383.

<sup>37</sup> *Id.* at 385–404.

<sup>38</sup> *Id.* at 387–388.

<sup>39</sup> REPUBLIC ACT NO. 10173 dated August 15, 2012.

<sup>40</sup> *Rollo*, pp. 405–410.

<sup>41</sup> *Id.* at 406.

<sup>42</sup> *Id.* at 425.

shows that it neither raised new matters of substance nor did it add or amplify the arguments already sufficiently discussed and passed upon by the CA.

As to Zoleta's argument that the mobile phone number in his 2011 PDS is protected by the DPA, the CA also found the same to be bereft of merit. The CA noted that Zoleta's 2011 PDS preceded the enactment of the DPA. The DPA was signed into law by the president on August 15, 2012, while Zoleta's 2011 PDS, which is attached to the administrative complaint against him, and which shows his mobile phone number, was executed in the year 2011. More, it was ruled that the contents of the PDS are not beyond the reach of the courts to scrutinize. The accomplishment of the PDS is a requirement under the Civil Service Rules and Regulations in connection with employment in the government. Thus, the contents of Zoleta's 2011 PDS may be investigated to determine whether he should be held administratively liable for his actions in relation to his position in the government.

In addition, duly accomplished forms of the Civil Service Commission (CSC) are considered official documents, which, by their very nature are in the same category as public documents and become admissible in evidence without need of further proof.

Lastly, the CA held that the dismissal of Zoleta's criminal complaint docketed as OMB-C-C-17-0328 is not *per se* a bar to administrative sanctions when called for by the malfeasance, misfeasance, or nonfeasance of a public officer. An administrative case, is, as a rule, independent from criminal proceedings. The CA emphasized the well-settled rule that a criminal case is different from an administrative case, and each must be disposed of according to the facts and the law applicable to each case.<sup>43</sup>

Aggrieved, Zoleta now comes before Us *via* the present Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, based on the following grounds, to wit:

#### I

The Court of Appeals erred in not invalidating the premature preventive suspension imposed by the IAB Chairman on petitioner Zoleta based on evidence that was not strong, in violation of Section 24 of the Ombudsman Act of 1989 (R.A. No. 6770).

#### II

The Court of Appeals committed a reversible error in not ruling that the Office of the Ombudsman had violated the right to due process of law petitioner Zoleta when it did not give him the opportunity to cross-examine

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<sup>43</sup> *Id.* at 421-424.

the nominal complainant's representative and the witness against him and admitted the nominal complainant's evidence not formally offered.

### III

The Court of Appeals erred in not ruling that the Office of the Ombudsman's decision dismissing petitioner Zoleta from the government service is void because it was based on the pieces of evidence that are incompetent, inadmissible and devoid of probative value under the Bill of Rights of the Constitution, special laws, rules on evidence and settled jurisprudence. These pieces of evidence are:

1. The sworn Complaint of the nominal complainant's representative and its annexes, which such representative did not have any personal knowledge.
2. The Affidavit executed on August 2, 2017 by Nicolas, Jr., which did not name petitioner Zoleta as one of the officers involved.
3. The undated letter to the Ombudsman, which was coursed through the Deputy Ombudsman for Luzon, purportedly prepared and signed by Nicolas, Jr., which was not under oath.
4. The Judicial Affidavit of Nicolas, Jr., which mentions the name of petitioner Zoleta and which lacks probative value for lack of opportunity for such petitioner to cross-examine the affiant.
5. The unauthenticated printouts of the alleged text messages and images of documents purportedly coming from the contact name "AO Roy," which were obtained without a court order and were not formally offered in evidence.
6. The mobile phone number under the 2011 Personal Data Sheet of petitioner Zoleta, which is protected under the Data Privacy Act of 2012.

### IV

The Court of Appeals erred in not declaring that the Office of the Ombudsman violated the right of petitioner Zoleta to a fair hearing when it ignored the evidence presented by him, which includes the respective affidavits of the ranking officers of the Office of the Ombudsman, denying any transaction with petitioner Zoleta.

### V

The Court of Appeals erred in not ruling that the dismissal of the criminal case by the Office of the Ombudsman itself which arose from the same set of facts and involved the same evidence as in the administrative case is repugnant to a finding of administrative liability.

### VI

The Court of Appeals erred in not ruling that the probability of involvement in the offense charged is the same as substantial evidence and does not meet the requisite quantum of evidence in an administrative disciplinary proceeding.<sup>44</sup>

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<sup>44</sup> *Id.* at 22-24.

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On November 23, 2022, this Court required the OMB to file its Comment on the Petition for Review on *Certiorari* filed by Zoleta.<sup>45</sup> The Office of the Ombudsman, through the Office of the Solicitor General (OSG), submitted a Manifestation and Motion (In Lieu of Comment)<sup>46</sup> that the petition essentially raises the same issues and arguments, which have all been refuted by the OSG in its Comment<sup>47</sup> dated November 27, 2018 filed in the CA. Any comment, therefore, would constitute a mere rehash and/or reiteration of the matters already presented. Further, the facts, issues, and arguments involved in the present controversy have likewise been judicially resolved by the CA. Attached to the Manifestation is the said Comment.

### **Ruling of the Court**

As a general rule, factual findings of the OMB are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when affirmed by the CA.<sup>48</sup> Section 27<sup>49</sup> of R.A. No. 6770<sup>50</sup> mandates that the findings of fact by the OMB are conclusive when supported by substantial evidence.

In administrative and quasi-judicial proceedings, only substantial evidence is necessary to establish the case for or against a party. Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>51</sup> In administrative proceedings, the complainant has the duty to prove by substantial evidence the allegations in their administrative complaint.<sup>52</sup>

In reviewing administrative decisions, it is beyond the province of this Court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency with respect to the sufficiency of evidence. However, while it is not the function of the Court to analyze and weigh the parties' evidence all over again, an exception thereto lies as when there is serious ground to believe that a possible

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<sup>45</sup> *Id.* at 446–447.

<sup>46</sup> *Id.* at 448–449.

<sup>47</sup> *Id.* at 452–470.

<sup>48</sup> *Ombudsman v. PS/Supt. Espina*, 807 Phil. 529, 540 (2017) [*Per Curiam*, First Division].

<sup>49</sup> Section 27. *Effectivity and Finality of Decisions*. . . .

. . . .

Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable.

<sup>50</sup> An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for other Purposes dated November 17, 1989.

<sup>51</sup> *Sen. Estrada v. Ombudsman*, 751 Phil. 821, 866 (2015) [Per J. Carpio, *En Banc*].

<sup>52</sup> *Morales, Jr. v. Ombudsman*, 791 Phil. 539, 556 (2016) [Per J. Carpio, Second Division].

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miscarriage of justice would thereby result.<sup>53</sup> This exception is not present in this case.

Zoleta was charged with Grave Misconduct, Serious Dishonesty, and Conduct Prejudicial to the Best Interest of the Service – grave offenses for which the penalty of dismissal is meted even for first-time offenders.<sup>54</sup> The OMB found Zoleta guilty of Grave Misconduct, Serious Dishonesty, and Conduct Prejudicial to the Best Interest of the Service, and imposed upon him the penalty of dismissal from government service with all its accessory penalties. The CA, on appeal, affirmed the ruling of the OMB.

After a careful review of the records of the case, this Court resolves to deny the Petition for Review on *Certiorari*.

**Zoleta's liability for Serious Dishonesty and Grave Misconduct**

Dishonesty is defined as the disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack of integrity.<sup>55</sup> CSC Resolution No. 06-0538 or the Rules on the Administrative Offense of Dishonesty, as amended<sup>56</sup> classifies dishonesty as either serious, less serious, or simple dishonesty.<sup>57</sup> Section 3 of the said rules provides for the circumstances as to when dishonesty is considered serious, to wit:

- (a) The dishonest act caused serious damage and grave prejudice to the government such as when the integrity of the office is tarnished, or the operations of the office are affected.
- (b) The respondent gravely abused his/her authority in order to commit the dishonest act.
- (c) Where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he/she is directly accountable and the respondent shows an intent to commit material gain, graft and corruption.
- (d) The dishonest act exhibits moral depravity on the part of the respondent whether or not said act was committed in the performance of his/her duties.

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<sup>53</sup> *Canlas v. Bongolan*, 832 Phil. 293, 327 (2018) [Per J. Leonen, Third Division].

<sup>54</sup> Section 46(A)(1) and (3), Rule 10 of the RRACCS. *See also Sabio v. Field Investigation Office*, 825 Phil. 848, 859 (2018) [*Per Curiam, En Banc*] and *Ombudsman v. PS/Supt. Espina*, 807 Phil. 529, 542 (2017) [*Per Curiam, First Division*].

<sup>55</sup> *Pantaleon v. Ombudsman-Mindanao*, G.R. No. 248819, January 13, 2021 [Per J. Inting, Third Division].

<sup>56</sup> As amended by Memorandum Circular No. 13, series of 2021.

<sup>57</sup> CSC Resolution No. 06-0538, Section 2.

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(e) The dishonest act involves a civil service examination irregularity or fake civil service eligibility such as, but not limited to, impersonation, cheating and use of crib sheets.

(f) The dishonest act relates to the respondent's employment such as but not limited to misrepresentation on his/her qualifications as to education, experience, training and eligibility in order to qualify for a particular position, and/or the submission of fake and/or spurious credentials.

(g) Other analogous circumstances.

In this case, the acts complained of were duly substantiated. The evidence submitted by the parties consisted of, among others, the sworn Complaint and its annexes, the Affidavit executed on August 2, 2017 by Nicolas, Jr., the letter to the OMB prepared and signed by Nicolas, Jr., the Judicial Affidavit of Nicolas, Jr, dated August 15, 2017, and the printouts of the alleged text messages and images of documents coming from the contact name "AO Roy Zoleta."

In Nicolas, Jr.'s Affidavit, he categorically narrated Zoleta's acts of participating in the illegal case-fixing deals in exchange for money. His statements are anchored on facts that he has personal knowledge of since he, himself, participated in the illegal scheme by receiving the bribe money and delivering the same to Zoleta as fees for the case-fixing deals. In addition, the detailed statements of Nicolas, Jr. were corroborated by the text messages between him and Zoleta allegedly under the contact name "AO Roy Zoleta." Based on these text messages, Zoleta actually demanded and received bribe money in exchange for helping and fixing cases. The OMB was able to verify the actual cases and real names mentioned in the text messages stored in the mobile phone of Nicolas, Jr. The mobile phone number noted by Nicolas, Jr. in his text messages under the contact name "AO Roy Zoleta" was found to be the same mobile phone number belonging to Zoleta as evinced by his 2011 PDS.

On the other hand, the Court characterized the administrative offenses of Misconduct and Grave Misconduct as follows: Misconduct means intentional wrongdoing or deliberate violation of a rule of law or standard of behavior. In Grave Misconduct, as distinguished from Simple Misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rules must be manifest. Corruption as an element of Grave Misconduct consists in the act of an official who unlawfully or wrongfully uses his station or character to procure some benefit for himself, contrary to the rights of others.<sup>58</sup>

To warrant dismissal from service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must

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<sup>58</sup> *Ombudsman v. Reyes*, 674 Phil. 416, 429 (2011) [Per J. Leonardo-De Castro, First Division].

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imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office.<sup>59</sup> The elements of corruption, clear intent to violate the law, or flagrant disregard of established an rule, must be manifest in gross misconduct.<sup>60</sup>

In *Rodil v. Posadas (Rodil)*,<sup>61</sup> this Court emphasized that to constitute an administrative offense, misconduct should relate to or be connected with the performance of official functions and duties of a public officer. Without the nexus between the act complained of and the discharge of duty, the charge of misconduct shall necessarily fail. More, where the misconduct committed was not in connection with the performance of duty, the proper designation of the offense should not be Misconduct, but rather, Conduct Prejudicial to the Best Interest of the Service.<sup>62</sup>

Here, Zoleta served in the OMB as a Graft Investigation and Prosecution Officer. He was later promoted to the position of Assistant Ombudsman assigned at the Office of the Deputy Ombudsman for Luzon. However, he was re-assigned to the Office of the Special Prosecutor. There, he was tasked to handle both trial and appellate work, as well as other related legal duties such as serving as member of the COA-OMB joint investigation team.<sup>63</sup> Undeniably, he had the capability and the position to influence cases.

Based on the attendant circumstances, there is no doubt about Zoleta's culpability, being a party to the commission of the corrupt acts. As duly held by the CA and the OMB, demanding and actually receiving money from the parties involved in cases exhibited Zoleta's moral depravity and constituted dishonest acts so serious of such degree that it damaged not only the name of the OMB but the public service as well. Additionally, his misconduct is connected with the performance of his official functions as Assistant Ombudsman, a position subjected to a high standard of integrity and accountability. There is, indeed, a nexus between the acts complained of and the discharge of his duties. As such, the CA correctly affirmed the finding that Zoleta is guilty of Serious Dishonesty and Grave Misconduct.

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<sup>59</sup> *Ombudsman v. De Zosa*, 751 Phil. 293, 300 (2015) [Per J. Perlas-Bernabe, First Division]. See also *Re: Anonymous Letter v. Soluren*, 745 Phil. 22 (2014) [Per J. Perlas-Bernabe, First Division].

<sup>60</sup> *Id.* See also *Pantaleon v. Ombudsman-Mindanao*, G.R. No. 248819, January 13, 2021 [Per J. Inting, Third Division] and *Ganzon v. Arlos*, 720 Phil. 104, 113 (2013) [Per J. Bersamin, *En Banc*].

<sup>61</sup> A.M. No. CA-20-36-P, August 3, 2021 [*Per Curiam, En Banc*].

<sup>62</sup> *Id.*

<sup>63</sup> *Rollo*, pp. 13–14 and 370.

**Zoleta's liability for Conduct Prejudicial to the Best Interest of the Service**

Zoleta is also charged with the administrative offense of Conduct Prejudicial to the Best Interest of the Service. While there is no concrete description of what specific acts constitute the grave offense of Conduct Prejudicial to the Best Interest of the Service, the Court explained in *Pia v. Hon. Gervacio, Jr.*,<sup>64</sup> that acts may constitute Conduct Prejudicial to the Best Interest of the Service as long as they tarnish the image and integrity of his or her public office. Conduct grossly prejudicial to the best interest of the service may or may not be characterized by corruption or a willful intent to violate the law or to disregard rules.<sup>65</sup> Such act need not be related to or connected with the public officer's official functions.<sup>66</sup>

The Court has treated the following acts or omissions as Conduct Prejudicial to the Best Interest of the Service: (a) misappropriation of public funds; (b) abandonment of office; (c) failure to report back to work without prior notice; (d) failure to safe-keep public records and property; (e) making false entries in public documents; (f) falsification of court orders; (g) a judge's act of brandishing a gun; and (h) threatening the complainants during a traffic altercation.<sup>67</sup>

Notwithstanding the doctrine emphasized in *Rodil*, the Court, in a number of cases found erring public officials and employees liable for both Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service. For instance, the Court in *Suyat v. Court of Appeals*,<sup>68</sup> affirmed the CA's finding that petitioner Anecita C. Suyat, municipal treasurer and budget officer, petitioner Marcelino P. Endi, municipal accountant, and petitioner Asano E. Aban, municipal agricultural officer, whom, are all connected to the Bids and Awards Committee (BAC) of Baguias, Benguet, liable for both Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service for being involved in anomalies in the procurement process in their local government.

In *Task Force Abono-Field Investigation Office v. Durusan*,<sup>69</sup> the Court found most of the respondents, who are members of the Province of Rizal's BAC, guilty of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service for colluding with each other to ensure that a specific corporation

<sup>64</sup> 710 Phil. 196 (2013) [Per J. Reyes, First Division].

<sup>65</sup> *Id.* at 27. See also *Samonte v. Jumawak*, G.R. No. 249135, January 11, 2023 [Per J. Inting, Third Division].

<sup>66</sup> *Office of the Ombudsman-Visayas v. Castro*, 759 Phil. 68, 79 (2015) [Per J. Brion, Second Division].

<sup>67</sup> *Samonte v. Jumawak*, G.R. No. 249135, January 11, 2023 [Per J. Inting, Third Division]. *Domingo v. Civil Service Commission*, 874 Phil. 587, 611 (2020) [Per J. Lazaro-Javier, First Division], citing *Catipon v. Japson*, 761 Phil. 205, 221–222 (2015) [Per J. Del Castillo, Second Division].

<sup>68</sup> G.R. Nos. 251978–80, January 24, 2023 [Per J. Gaerlan, *En Banc*]

<sup>69</sup> G.R. Nos. 229026–31, April 27, 2022 [Per J. Leonen, Third Division].

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would get the contract to supply the Province of Rizal with a grossly overpriced liquid organic fertilizer.

In *Miñao v. Office of the Ombudsman*,<sup>70</sup> the Court found petitioner Arturo O. Miñao, who was then Officer-In-Charge District Engineer of the Department of Public Works and Highways Zamboanga del Norte 1<sup>st</sup> District Engineering Office, Dipolog City, guilty of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service, among others, for violating Republic Act No. 9184 when he resorted to splitting of government contracts, failing to conduct public bidding as required by law, and procuring substandard and overpriced materials from a single supplier.

In *Ubalde v. Hon. Morales*,<sup>71</sup> the Court found petitioner Herold G. Ubalde, a member of the Philippine National Police Headquarters BAC, guilty of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service, for giving unwarranted benefits and advantages to a private corporation and blatantly disregarding procurement rules to the damage and prejudice of the government.

As can be gleaned from the cases cited above, Conduct Prejudicial to the Best Interest of the Service is not confined to those acts which are unrelated to the performance of duty. The determining factor in the administrative charge of Conduct Prejudicial to the Best Interest of the Service is the effect of the conduct, which is to tarnish the image and integrity of his or her public office.

In this case, Zoleta, an official of the OMB, has a mandate of protecting the interest of the Filipino people, by acting promptly on complaints filed against employees and officers of the government, or of any subdivision, agency, or instrumentality thereof, including government-owned and controlled corporations, and enforcing their administrative, civil, and/or criminal liability. Undoubtedly, Zoleta's engagement in the corrupt acts of case-fixing tainted the image and integrity of his public office and goes against the mandate of the office he is holding.

**There is no violation of Zoleta's right to due process**

Zoleta makes issue on the fact that the Sworn Complaint of the nominal complainant's representative did not have any personal knowledge. However, Oguis, the person who signed the administrative complaint, did such act in his capacity as a member of the IAB-IS. Oguis, as part of the IAB-IS, conducts the

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<sup>70</sup> G.R. No. 231042, February 23, 2022 [Per J. Hernando, Second Division].

<sup>71</sup> G.R. No. 216771, March 27, 2022 [Per J. Lopez, J.Y., Third Division].

necessary intelligence operation or fact-finding investigation, preliminary investigation and/or administrative adjudication, and renders such other legal technical and administrative assistance as the IAB may require in the performance of its functions.<sup>72</sup> The CA correctly ruled that the fact the Oguis does not have personal knowledge of the facts stated by Nicolas, Jr. is immaterial since the complaint was anchored on the statement of Nicolas, Jr., not of Oguis.

Zoleta also argues that he was denied of his right to due process of law because the OMB had not given him the opportunity to cross-examine the nominal complainant's representative, Nicolas, Jr. Zoleta is mistaken.

Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.<sup>73</sup>

The case of *Ang Tibay v. Court of Industrial Relations*<sup>74</sup> enumerates the constitutional requirements of due process, which the said case described as the "fundamental and essential requirements of due process in trials and investigations of an administrative character."<sup>75</sup> Due process in administrative proceedings requires compliance with the following cardinal principles: (1) the respondents' right to a hearing, which includes the right to present one's case and submit supporting evidence, must be observed; (2) the tribunal must consider the evidence presented; (3) the decision must have some basis to support itself; (4) there must be substantial evidence; (5) the decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected; (6) in arriving at a decision, the tribunal must have acted on its own consideration of the law and the facts of the controversy and must not have simply accepted the views of a subordinate; and (7) the decision must be rendered in such manner that respondents would know the reasons for it and the various issues involved.<sup>76</sup>

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<sup>72</sup> Administrative Order No. 23, Series of 2016, entitled "Revised Rules of the Internal Affairs Board, as Further Amended," III(C).

<sup>73</sup> *Ledesma v. Court of Appeals*, 565 Phil. 731, 740 (2007) [Per J. Tinga, Second Division].

<sup>74</sup> 69 Phil. 635 (1940) [Per J. Laurel, *En Banc*].

<sup>75</sup> *Id.* at 641-642.

<sup>76</sup> *Id.* at 641-644.

In the present case, all the requirements stated above were complied with. Zoleta was properly apprised of the pieces of evidence offered against him, which were eventually made the bases of the decision that found him guilty of Grave Misconduct, Serious Dishonesty, and Conduct Prejudicial to the Best Interest of the Service.

To recall, Zoleta was given reasonable opportunity to answer the accusations against him. Zoleta was directed to submit his counter-affidavit to set forth his defenses against the administrative complaint. Yet, Zoleta opted not to submit a counter-affidavit, instead, he submitted a Manifestation showing his length of service, the awards and recognition he received, and his medical condition. He was later on required to submit his verified position paper which he did on October 23, 2017. Zoleta was even given the chance to be heard on his motion for reconsideration. The fact that Zoleta was not able to cross-examine Nicolas, Jr. does not render the contents of the Affidavit and Judicial Affidavit of Nicolas, Jr. inadmissible in evidence.

*First*, in administrative proceedings, technical rules of procedure and evidence are not strictly applied and administrative due process cannot be fully equated with due process in its strict judicial sense.<sup>77</sup> Administrative bodies are not bound by the technical niceties of law and procedure and the rules obtaining in courts of law.<sup>78</sup> *Second*, cross-examination of witnesses is not an indispensable requirement of administrative due process.<sup>79</sup> In administrative proceedings, a formal or trial-type hearing is not always necessary and technical rules of procedure are not strictly applied.<sup>80</sup> Hence, the right to cross-examine is not an indispensable aspect of administrative due process.<sup>81</sup> Zoleta cannot therefore, argue that the affidavit of Nicolas, Jr. is hearsay and insufficient to prove his guilt. *Lastly*, Administrative Order No. 17, Series of 2003<sup>82</sup> lays down the procedure in administrative cases, to wit:

RULE III  
PROCEDURE IN ADMINISTRATIVE CASES

....

Section 5. Administrative adjudication; How conducted. –

....

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<sup>77</sup> *Cordero v. Board of Nursing*, 795 Phil. 735, 745 (2016) [Per J. Jardeleza, Third Division].

<sup>78</sup> *Samalio v. Court of Appeals*, 494 Phil. 456, 464 (2005) [Per J. Corona, *En Banc*].

<sup>79</sup> *Pat-Og, Sr. v. Civil Service Commission*, 710 Phil. 501, 515–516 (2013) [Per J. Mendoza, Third Division].

<sup>80</sup> *Imperial v. GSIS*, 674 Phil. 286, 295 (2011) [Per J. Brion, *En Banc*].

<sup>81</sup> *Velez v. De Vera*, 528 Phil. 763, 802 (2006) [Per Curiam, *En Banc*].

<sup>82</sup> Dated September 15, 2003.

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- b) If the hearing officer finds no sufficient cause to warrant further proceedings on the basis of the affidavits and other evidence submitted by the parties, the complaint may be dismissed. Otherwise, he shall issue an Order (or Orders) for any of the following purposes:

....

- 2) If the Hearing Officer decides not to consider the case submitted for resolution after the filing of the position papers, affidavits and pleadings, to conduct a clarificatory hearing regarding facts material to the case as appearing in the respective position papers, affidavits and pleadings filed by the parties. At this stage, he may, at his discretion and for the purpose of determining whether there is a need for a formal trial or hearing, ask clarificatory questions to further elicit facts or information;

In the conduct of clarificatory hearings, the parties shall be afforded the opportunity to be present but without the right to examine or cross-examine the party/witness being questioned. The parties may be allowed to raise clarificatory questions and elicit answers from the opposing party/witness, which shall be coursed through the Hearing Officer who shall determine whether or not the proposed questions are necessary and relevant. In such cases, the Hearing Officer shall ask the question in such manner and phrasing as he may deem appropriate;

- 3) If the Hearing Officer finds no necessity for further proceedings on the basis of the clarificatory hearings, affidavits, pleadings and position papers filed by the parties, he shall issue an Order declaring the case submitted for resolution. The Hearing Officer may also require the parties to simultaneously submit, within ten (10) days from receipt of the Order, their Reply Position Papers. The parties, if new affidavits and/or exhibits are attached to the other party's Position Paper, may submit only rebutting evidence with their Reply Position Papers.
- 4) If the Hearing Officer finds the need to conduct a formal investigation on the basis of the clarificatory hearings, pleadings, affidavits and the position papers filed by the parties, an Order shall be issued for the purpose. . .
- c. The conduct of formal proceedings by the Office of the Ombudsman in administrative cases shall be non-litigious in nature. Subject to the requirements of due process in administrative cases, the technicalities of law, procedure and evidence shall not strictly apply thereto. . .
- d. In the conduct of formal administrative investigation, the Hearing Officer shall set the case for continuous trial. The parties shall be notified at least ten (10) days before the date of the initial hearing.

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Failure of any or both of the parties to appear at the scheduled hearing(s) is not necessarily a cause for the dismissal of the complaint. A party who appears may be allowed to present his evidence in the absence of the adverse party who was duly notified of the hearing; however, if the absent party is able to show that there is a valid cause of his absence, he shall be afforded the opportunity to cross examine the witness(es) presented during his absence. In case of two (2) successive unjustified non-appearances of any party in the proceedings, it shall be the option of the party who is present to submit the case for resolution on the basis of the records of the case and evidence so far presented;

- e. Only witnesses whose affidavits have been submitted by the parties and served on the adverse party prior to the issuance of the Order directing the conduct of a formal investigation may be allowed to testify at the hearing. The affidavit of any witness shall constitute his direct testimony, subject to cross examination, re-direct examination and re-cross examination. Unless the testimony of the witness involves newly discovered evidence, the Hearing Officer may not allow the presentation of witnesses whose affidavits have not been filed by the parties and served on the adverse party prior to the issuance of the Order to conduct formal investigation. If a witness whose testimony involves newly discovered evidence is allowed to testify, the adverse party shall be the right to cross-examine such witness and to submit rebuttal evidence, if any, relevant to said newly discovered evidence;

....

As gleaned from the foregoing, the rules on procedure of administrative cases of the OMB is clear as to when a party may cross-examine a witness. In this case, it was found that there was no necessity for further proceedings on the basis of the affidavits, pleadings, and position papers filed by the parties. The records are bereft of the fact that the OMB found it necessary to conduct formal proceedings. It is also worthy to note that the conduct of formal proceedings by the OMB in administrative cases are non-litigious in nature. The technicalities of law, procedure and evidence shall not strictly apply thereto.

Taken altogether, it cannot be said that the OMB had violated Zoleta's right to due process of law.

**Technical rules of procedure and evidence are not strictly applied in administrative proceedings**

Zoleta further contends that the evidentiary rule on *res inter alios acta* applies in this case. Also, he avers that printouts of the alleged text messages and images of documents purportedly coming from the contact name "AO Roy

Zoleta” are inadmissible and lack probative value. The alleged printouts of screenshots of the exchange of text messages and images of documents were not authenticated under A.M. No. 01-7-01-SC, or the Rules on Electronic Evidence and that they did not comply with the Best Evidence Rule under the same rules.

It is reiterated that technical rules of procedure and evidence are not strictly applied to administrative proceedings. The weight of evidence in administrative investigations is substantial evidence. A fact may be established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable person might accept as adequate to justify a conclusion.<sup>83</sup>

As aptly found by the OMB and the CA, the Affidavit of Nicolas, Jr. and its supporting documents, including the printouts of the text messages and images of documents, are sufficient to establish respondent’s involvement in the illegal scheme. Through the text messages between Nicolas, Jr. and Zoleta, and the copies of documents that reflected the actual cases they have purportedly “fixed” for monetary considerations, Zoleta’s involvement in the illegal scheme was sufficiently established. As correctly found, the text messages were actually sent to Zoleta’s mobile phone number and the documents were personally handed over to him and vice-versa. Nicolas, Jr. received the bribe money, and in some instances, delivered them to Zoleta as fees for the cases mentioned in the text messages. Further, the cases stated in the Judicial Affidavit of Nicolas, Jr. and the names mentioned in the text messages were verified and validated to have been actual cases or real names of parties with pending cases before the OMB.

**There is no violation of Zoleta’s right to privacy**

According to Zoleta, the alleged mobile phone number reflected in Zoleta’s 2011 PDS is protected under the DPA of 2012, and such cannot be used against him for any purpose, including the purpose of establishing his identity with the one allegedly noted by Nicolas, Jr. in his text message exchanges. On this note, Zoleta is correct in stating that the mobile phone number under his 2011 PDS is protected under the DPA of 2012.

As defined under the DPA of 2012 and its Implementing Rules and Regulations (IRR) “[p]rocessing” refers to “any operation or any set of operations performed upon personal data including, but not limited to, the collection, recording, organization, storage, updating or modification, retrieval, consultation, use, consolidation, blocking, erasure or destruction of data.

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<sup>83</sup> *Dela Cruz v. Malunao*, 684 Phil. 493, 502 (2012) [*Per Curiam, En Banc*].

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Processing may be performed through automated means, or manual processing, if the personal data are contained or are intended to be contained in a filing system.”<sup>84</sup>

Personal information refers to “any information, whether recorded in a material form or not, from which the identity of an individual is apparent or can be reasonably and directly ascertained by the entity holding the information, or when put together with other information would directly and certainly identify an individual.”<sup>85</sup> Sensitive personal information, on the other hand refers to personal information:

1. About an individual’s race, ethnic origin, marital status, age, color, and religious, philosophical or political affiliations;
2. About an individual’s health, education, genetic or sexual life of a person, or to any proceeding for any offense committed or alleged to have been committed by such individual, the disposal of such proceedings, or the sentence of any court in such proceedings;
3. Issued by government agencies peculiar to an individual which includes, but is not limited to, social security numbers, previous or current health records, licenses or its denials, suspension or revocation, and tax returns; and
4. Specifically established by an executive order or an act of Congress to be kept classified.<sup>86</sup>

In addition, the law defines privileged information as “any and all forms of data which under the Rules of Court and other pertinent laws constitute privileged communication.”<sup>87</sup>

Both sensitive personal information and privileged information has a special regime of protection in the Philippine privacy law. Sensitive personal information, as compared to a non-sensitive or a non-privileged information, is more highly protected by laws due to its vulnerable nature. These types of personal information is subject to more stringent requirements before such could be lawfully processed.

Distinguishing between personal information and sensitive personal information is important because the law treats both kinds of personal information differently. Personal information may be processed, provided that the requirements of the DPA, along with its IRR, are complied with. On the other hand, the processing of sensitive personal information is, in general,

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<sup>84</sup> Rule I, Section 3(j).

<sup>85</sup> *Id.* at Section 3(g).

<sup>86</sup> *Id.* at Section 3(t).

<sup>87</sup> *Id.* at Section 3(q).

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prohibited. The Rule V, Section 22, IRR of the DPA provides specific cases where processing of sensitive personal information is allowed:

Section 22. *Sensitive Personal Information and Privileged Information.* The processing of sensitive personal and privileged information is prohibited, except in any of the following cases:

a. Consent is given by data subject, or by the parties to the exchange of privileged information, prior to the processing of the sensitive personal information or privileged information, which shall be undertaken pursuant to a declared, specified, and legitimate purpose;

b. The processing of the sensitive personal information or privileged information is provided for by existing laws and regulations: Provided, that said laws and regulations do not require the consent of the data subject for the processing, and guarantee the protection of personal data;

c. The processing is necessary to protect the life and health of the data subject or another person, and the data subject is not legally or physically able to express his or her consent prior to the processing;

d. The processing is necessary to achieve the lawful and noncommercial objectives of public organizations and their associations provided that:

1. Processing is confined and related to the bona fide members of these organizations or their associations;

2. The sensitive personal information are not transferred to third parties; and

3. Consent of the data subject was obtained prior to processing;

e. The processing is necessary for the purpose of medical treatment: *Provided*, that it is carried out by a medical practitioner or a medical treatment institution, and an adequate level of protection of personal data is ensured; or

f. The processing concerns sensitive personal information or privileged information necessary for the protection of lawful rights and interests of natural or legal persons in court proceedings, or the establishment, exercise, or defense of legal claims, or when provided to government or public authority pursuant to a constitutional or statutory mandate.

Here, the mobile phone number under the PDS is considered personal information. In Advisory Opinion No. 2017-68,<sup>88</sup> the National Privacy Commission considered the mobile phone number of an individual as personal information because when these are combined with other information, the same would identify such person.

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<sup>88</sup> Privacy Policy Office Advisory Opinion No. 2017-68 dated November 22, 2017.

However, Zoleta's contention that such personal information cannot be used against him for any purpose, including the purpose of establishing his identity with the one allegedly noted by Nicolas, Jr. in his text message exchanges, cannot hold water.

Rule V, Section 21, IRR of the DPA lays down the criteria for lawful processing to wit:

Section 21. *Criteria for Lawful Processing of Personal Information.* Processing of personal information is allowed, unless prohibited by law. For processing to be lawful, any of the following conditions must be complied with:

- a. The data subject must have given his or her consent prior to the collection, or as soon as practicable and reasonable;
- b. The processing involves the personal information of a data subject who is a party to a contractual agreement, in order to fulfill obligations under the contract or to take steps at the request of the data subject prior to entering the said agreement;
- c. The processing is necessary for compliance with a legal obligation to which the personal information controller is subject;
- d. The processing is necessary to protect vitally important interests of the data subject, including his or her life and health;
- e. The processing of personal information is necessary to respond to national emergency or to comply with the requirements of public order and safety, as prescribed by law;
- f. The processing of personal information is necessary for the fulfillment of the constitutional or statutory mandate of a public authority; or**
- g. The processing is necessary to pursue the legitimate interests of the personal information controller, or by a third party or parties to whom the data is disclosed, except where such interests are overridden by fundamental rights and freedoms of the data subject, which require protection under the Philippine Constitution. (Emphasis supplied)

In this case, Zoleta's personal information, i.e., the mobile phone number, was obtained through his PDS in the OMB. A PDS is an official document required of a government employee and official, and it is the repository of all information regarding his or her personal background, qualification, and eligibility.<sup>89</sup> Because the PDS contains personal information, its processing, may find basis under the DPA. It is important to note that the PDS is already under the custody of the OMB, presumably since the office maintains the employees files as required under the applicable CSC rules and regulations. Thus, what will

<sup>89</sup> *Advincula v. Dicen*, 497 Phil. 979, 984-985 (2005) [Per J. Callejo, Sr., Second Division].

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be controlling is the OMB's own internal policies and procedure on access to employee files in relation to the handling of administrative investigations. Consequently, the determination of admissibility of evidence of the personal information processed from Zoleta's PDS is governed by the OMB's internal rules and regulations governing administrative investigations.

Zoleta's personal information was lawfully processed as such was done in relation to an administrative investigation by the OMB involving an illegal scheme. The acts complained of involve Grave Misconduct, Serious Dishonesty, and Conduct Prejudicial to the Best Interest of the Service. These acts taints the image and integrity of the OMB – a public office. The OMB, through its mandate, was, thus, justified when it processed Zoleta's personal information. Through this processing of Zoleta's personal information, the OMB was able to verify that the mobile phone number noted by Nicolas, Jr. in his text message under the contact name "AO Roy Zoleta" to be the same mobile phone number belonging to Zoleta found in his PDS.

Notably, the OMB is an independent constitutional office with the power, the authority, and the duty to investigate and prosecute complaints in any form or manner against public officials or employees of the Government, or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations. The OMB, thus, has the authority to process personal information pursuant to its mandate. However, while the DPA recognizes such mandate, the law is also clear that processing of personal information must adhere to the principles of transparency, legitimacy, and proportionality.

Personal information must be processed for specified and legitimate purposes determined and declared before, or as soon as reasonably practicable after collection.<sup>90</sup> The OMB, or any other office, body, or authority with a similar mandate, which would necessarily process personal information or data, still bears responsibility of following the rules and regulations laid out in the DPA and its IRR. Personal data must be processed lawfully and fairly, with strict adherence to the principles of general data privacy: transparency, legitimacy, and proportionality. Processing of personal data must be proportionate, adequate, and not excessive to the purpose for which the data was processed.

***The dismissal of the criminal case has no bearing on the administrative aspect of the present case***

Lastly, Zoleta argues that the dismissal of the criminal case by the OMB itself, which arose from the same set of facts and involved the same evidence as in the administrative case is repugnant to a finding of administrative liability.

<sup>90</sup> National Privacy Commission Advisory Opinion No. 2018-049 dated November 26, 2018.



Such contention is bereft of merit. The dismissal of the criminal case is not a ground for the dismissal of the administrative case, in consonance with the rule that a criminal case is separate from an administrative case, and each must be disposed of according to the facts and law applicable to each case.<sup>91</sup> In vice-versa, the dismissal of an administrative case does not lead to the dismissal of a criminal case because these cases are separate and distinct from each other, with different quantum of evidence required, rules of procedure, and sanctions to be imposed.<sup>92</sup> The determination of probable cause is independent from the administrative case.<sup>93</sup>

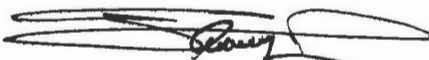
### **Penalty**

In view of all the foregoing, this Court sustains the OMB's and the CA's decisions finding Zoleta administratively liable for Grave Misconduct, Serious Dishonesty, and Conduct Prejudicial to the Best Interest of the Service.

As to the penalty imposed, the CA is correct in finding that the penalty of dismissal was proper. To reiterate, both Grave Misconduct and Serious Dishonesty, of which Zoleta was charged, are classified as grave offenses for which the penalty of dismissal is meted even for first time offenders. Public office is a public trust and public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.<sup>94</sup>

**ACCORDINGLY**, the Petition for Review on *Certiorari* is hereby **DENIED**.

**SO ORDERED.**



**SAMUEL H. GAERLAN**  
Associate Justice

<sup>91</sup> *Ombudsman v. Borja*, 772 Phil. 470, 481 (2015) [Per J. Perlas-Bernabe, First Division].

<sup>92</sup> *See Paredes v. Court of Appeals*, 555 Phil. 538, 549 (2007) [Per J. Chico-Nazario, Third Division].

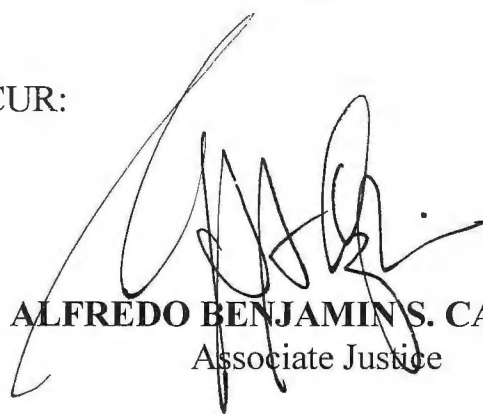
<sup>93</sup> *See Teves v. Office of the Ombudsman*, G.R. No. 237558, April 26, 2023 [Per J. Leonen, Second Division].

<sup>94</sup> PHILIPPINE CONSTITUTION, Article XI, Section 1.

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WE CONCUR:



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



**AMY C. LAZARO-JAVIER**  
Associate Justice



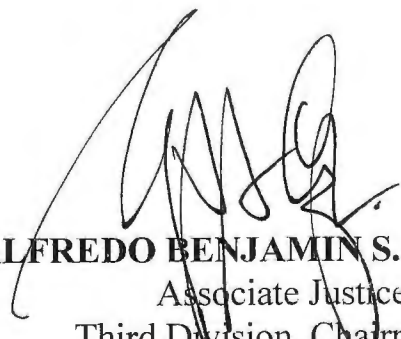
**HENRI JEAN PAUL B. INTING**  
Associate Justice



**MARIA FILOMENA D. SINGH**  
Associate Justice

### ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice  
Third Division, Chairperson



## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
ALEXANDER G. GESMUNDO  
Chief Justice

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