Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

EDWARD THOMAS F. JOSON, Petitioner,	**G.R. Nos. 210220-21**
	Present:
- versus -	CARPIO, *J.*, *Chairperson*, BRION, DEL CASTILLO, MENDOZA, and LEONEN, *JJ.*
THE OFFICE OF THE OMBUDSMAN, GOV. AURELIO M. UMALI, ALEJANDRO R. ABESAMIS, EDILBERTO M. PANCHO, MA. CHRISTINA G. ROXAS, and FERDINAND R. ABESAMIS, Respondents.	Promulgated: 06 APR 2016

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DECISION

MENDOZA, *J.*:

Before the Court is a petition for *certiorari* seeking to reverse and set aside the September 8, 2011 Joint Resolution[1] and the September 23, 2013 Joint Order[2] of the Office of the Ombudsman (*Ombudsman*) in OMB-L-C-08-0315-D and OMB-L-A-08-0245-D, dismissing the criminal and administrative complaints against the respondents.

The Antecedents

Petitioner Edward Thomas F. Joson *(Joson)* filed his Affidavit-Complaint,[3] dated April 21, 2008, before the Ombudsman charging the

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[1] *Rollo,* pp. 24-31.Penned by Graft Investigation and Prosecution Officer I Francis Euston R. Acero and Approved by Ombudsman Conchita Carpio Morales.
[2] Id. at 32-50. Penned by Assistant Ombudsman Atty. Leilanie Bernadette C. Cabras ansd Approved by Ombudsman Conchita Carpio Morales.
[3] Id. at 52-61.

respondents – Governor Aurelio M. Umali *(Governor Umali)*, Provincial Administrator Atty. Alejandro R. Abesamis *(Alejandro),* Consultant Atty. Ferdinand R. Abesamis *(Ferdinand),* Provincial Treasurer Edilberto M. Pancho *(Pancho),* and Officer-in Charge Ma. Cristina G. Roxas *(Roxas)* of the Office of the Provincial Accountant, all of the Province of Nueva Ecija, with the criminal offenses of Violation of Section 3(e) of Republic Act *(R.A.)* No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, and Unlawful Appointment, defined and penalized under Article 244 of the Revised Penal Code (*RPC*), docketed as OMB-L-C-08-0315-D, and offense of Grave Misconduct, docketed as OMB-L-A-08-0245-D.

The filing of the above charges stemmed from the alleged appointment of Ferdinand as Consultant - Technical Assistance in the Office of the Governor of Nueva Ecija.

In his affidavit-complaint, Joson alleged that on July 2, 2007, the Province of Nueva Ecija, represented by Governor Umali, entered into a contract of consultancy with Ferdinand wherein the latter was appointed or employed as Consultant - Technical Assistance in the Office of the Governor. On February 28, 2008, Governor Umali and Ferdinand entered into another contract of consultancy on February 28, 2008, wherein the former, representing the Provincial Government of Nueva Ecija, again appointed or re-employed the latter in the same position. Joson asserted that Governor Umali appointed Ferdinand despite his knowledge of the latter's disqualification for appointment or re-employment in any government position. He claimed that Ferdinand was dismissed from the service as Senior State Prosecutor of the Department of Justice for "conduct prejudicial to the best interest of the service" pursuant to Administrative Order (A.O.) No. 14, dated August 27, 1998; and that such penalty of dismissal carried with it his perpetual disqualification for re-employment in the government service. According to Joson, because Ferdinand was meted out the penalty of dismissal from service with all accessory penalties attached to it and that he was never granted any executive clemency, his appointment as legal consultant was unlawful, illegal and invalid being in violation of the Administrative Code of 1987 and the Civil Service Law, Rules and Regulations. Joson added that for the same reason as above, the twin contracts of consultancy were likewise invalid and unlawful.

Joson further averred that the execution of the contract of consultancy, dated February 28, 2008, was legally defective because its effectivity was made to retroact to January 2, 2008 in violation of the rule that *"[i]n no case shall an appointment take effect earlier than the date of its issuance*."[4] He argued that because no consultancy contract existed from January 2, 2008 to

[4] Rule IV, Effectivity of Appointment, Omnibus Rules on Appointment and Other Personnel Actions.

February 28, 2008, Ferdinand should not have been paid any honorarium for his alleged services rendered during the said period. With respect to the rest of the respondents, Joson asserted that they should be held liable for the above charges considering that they processed the payment of honoraria to Ferdinand arising out of the illegal and invalid contracts of consultancy.

Joson also contended that the appointment of Ferdinand as consultant by Governor Umali in spite of being disqualified to hold public office, and the payment of his monthly honorarium from the coffers of the provincial government by the other respondents, were done with manifest partiality, evident bad faith or gross inexcusable negligence, giving unwarranted benefit to Ferdinand and causing great and irreparable damage and prejudice to the taxpayers of the Province of Nueva Ecija. In view of this, Joson submitted that the private respondents should be made liable for violation of Section 3(e) of R.A. No. 3019. Joson added that Governor Umali should also be held liable for violation of Article 244 of the RPC for knowingly extending appointments to Ferdinand as legal consultant regardless of the latter's lack of legal qualification to the said position. Lastly, Joson asserted that Governor Umali's act of illegally and unlawfully hiring the services of Ferdinand could be reasonably viewed as gross misconduct in office because such act involved the transgression of some established and definite rules.

In his Counter-Affidavit,[5] Governor Umali responded that the legal arguments advanced by Joson in his affidavit-complaint were fatally defective and had no basis in fact and in law. He averred that the consultancy services rendered by Ferdinand could not be considered as government service within the contemplation of law and, hence, not governed by the Civil Service Law, Rules and Regulations. He pointed out that under the twin contracts of consultancy, Ferdinand had been engaged to render lump sum consultancy services for a short duration of six (6) months on a daily basis and had not been paid any salary or given any benefits enjoyed by government employees such as PERA, COLA and RATA, but merely paid honoraria as stipulated in the contracts.

Governor Umali argued that if Ferdinand was indeed appointed or re-employed by the provincial government, as erroneously perceived by Joson, then there would be no need for him to execute the second consultancy contract which was merely a renewal of his previous contract of July 2, 2007. He submitted that the consultancy contracts were mere agreements to render service and could not in themselves create public office to which the Revised Omnibus Rules on Appointments and other Personnel Actions would apply. To bolster his claim, Governor Umali cited the Department of Interior and Local Government (*DILG*) Opinion No. 72 series of 2004, dated

[5] Id. at 73-80.

August 23, 2004[6] and DILG Opinion No. 100 series of 2004, dated October 14, 2004,[7] wherein then DILG Secretary Angelo T. Reyes opined that a consultancy service was not covered by the phrase "*any office in the government*." Governor Umali alleged that he could not be adjudged guilty of gross misconduct because prior to his signing of the subject consultancy contracts, he sought the legal opinion[8] of the Provincial Legal Office which assured him that there was no legal impediment in engaging the services of Ferdinand. He merely relied in good faith on its advice, which he presumed to be in accordance with law and existing jurisprudence.

Governor Umali averred that the true and actual date of the execution of the second consultancy contract was January 2, 2008 as clearly shown by the effectivity of the engagement of Ferdinand stated in paragraph 1 thereof. The said contract was a renewal of the earlier contract, dated July 2, 2007, which expired on December 31, 2007. He explained that the date of execution of the second contract was inadvertently left blank and the secretary of the notary public, Mary Grace Cauzon, mistakenly stamped the date of the notarial act, February 28, 2008, on the said blank space on the first page of the contract supposedly pertaining to its date of execution.

Ferdinand, on the other hand, posited in his Counter-Affidavit,[9] dated June 16, 2008, that although his dismissal from government service was not yet final as his motion for reconsideration had not yet been resolved by the Office of the President at the time of his appointment, there was no way that his service contract with the Provincial Government of Nueva Ecija could be construed as to create a public office. He alleged that his engagements squarely fell within the ambit of contracts of service/job orders under Section 2(a), Rule XI of the Civil Service Commission Circular No. 40 series of 1998. He insisted that he was not a government employee and the specifics of his contracts were governed by the Commission on Audit *(COA).* He adopted Governor Umali's explanation anent the true date of execution of the second consultancy contract.

In their Joint Counter-Affidavit,[10] Alejandro, Pancho and Roxas stressed that they committed no infraction of the law in affixing their respective signatures in the obligation requests and disbursement vouchers which authorized the payment of honoraria in favor of Ferdinand for the consultancy services he rendered. They explained that the signing of the obligation requests and disbursement vouchers were done in the ordinary course of business and in the normal processing of the said documents. They added that the charges against them were premature considering that the

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[6] Id. at 81-82.
[7] Id. at 83-84.
[8] Id. at 85.
[9] Id. at 87-93.
[10] Id. at 94-101.

payment of honoraria to Ferdinand had not yet been subjected to post audit by the COA which had the sole authority and jurisdiction to suspend or disallow disbursements of public funds.

On July 17, 2008, Joson filed his Reply-Affidavit[11] in amplification of his contentions and arguments in his affidavit-complaint. He further argued that by entering in the subject consultancy contracts, Ferdinand became a government employee and a public officer because he was holding a non-career service position in accordance with Section 9, Chapter 2, Title I, Book V of Executive Order *(E.O.)* No. 292 (the Administrative Code of 1987).

The Ruling of the Ombudsman

On September 8, 2011, the Office of the Ombudsman issued a joint resolution dismissing the criminal and administrative complaints against all the respondents. The Ombudsman disposed of the case as follows:

> WHEREFORE, premises considered, it is respectfully recommended that:
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> 1. The criminal charges for Violation of Section 3(e) of the Anti- Graft and Corrupt Practices Act and for Unlawful Appointments against respondents Aurelio M. Umali, Alejandro R. Abesamis, Ferdinand R. Abesamis, Edilberto Pancho and Ma. Cristina G. Roxas be DISMISSED for lack of sufficient evidence; and
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> 2. The administrative charges for Grave Misconduct against respondents Aurelio M. Umali, Alejandro R. Abesamis, Ferdinand R. Abesamis, Edilberto Pancho and Ma. Cristina G. Roxas be DISMISSED for lack of merit.
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> SO RESOLVED.[12]

Joson moved for reconsideration of the joint resolution, but his motion was denied by the Ombudsman in its September 23, 2013 Joint Order. It decreed:

> WHEREFORE, the Motion for Reconsideration is hereby DENIED. The JOINT RESOLUTION dated September 8, 2011 DISMISSING OMB-L-C-08-0315-D and OMB-L-A-O8-0245-D STANDS.
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> SO ORDERED.[13]

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[11] Id. at 126-141.
[12] Id. at 30.
[13] Id. at 49.

Undaunted, Joson comes to this Court via a *certiorari* petition ascribing grave abuse of discretion on the part of the Ombudsman in dismissing the criminal charges for lack of probable cause and the administrative charges for lack of merit. Joson raised the following

ASSIGNMENT OF ERRORS

I. THE OFFICE OF THE OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE CHARGES AGAINST THE RESPONDENTS.

II. THE OFFICE OF THE OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DENIED THE PETITIONER'S MOTION FOR RECONSIDERATION.[14]

The Court's Ruling

The petition is devoid of merit.

The Court agrees with the findings of the Ombudsman that there was no sufficient evidence to indict the respondents for the crimes of violation of Section 3(e) of R.A. No. 3019 and unlawful appointment; and that the charge of grave misconduct was not established by substantial evidence.

The Ombudsman is endowed with wide latitude, in the exercise of its investigatory and prosecutory powers, to pass upon criminal complaints involving public officials and employees. Specifically, the determination of whether probable cause exists or not is a function that belongs to the Ombudsman. In other words, the Ombudsman has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not.[15]

In the present petition, the Court does not perceive any showing of manifest error or grave abuse of discretion on the part of the Ombudsman when it issued the assailed Joint Resolution, dated September 8, 2011 and Joint Order, dated September 23, 2013 which dismissed the criminal complaint against the private respondents for violation of Section 3(e) of R.A. No. 3019 and Unlawful Appointment for want of sufficient evidence.

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[14] Id. at 11.
[15] *Casing v. Hon. Ombudsman*, 687 Phil. 468, 475 (2012).

To begin with, a finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and that there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, or on evidence establishing absolute certainty of guilt. The case of *Vergara v. The Hon. Ombudsman*[16] is instructive on this score:

> Probable cause is defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. Probable cause need not be based on clear and convincing evidence of guilt, or on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt, but it certainly demands more than bare suspicion and can never be left to presupposition, conjecture, or even convincing logic.[17]

In this case, the allegations and evidence presented by the petitioners failed to prove that the Ombudsman acted in such a capricious and whimsical exercise of judgment in determining the non-existence of probable cause against the private respondents. The Ombudsman dismissed the petitioner's complaint for lack of probable cause based on its appreciation and review of the evidence presented. In the Joint Resolution, dated September 8, 2011, the Ombudsman stated that Ferdinand was not appointed to a public office through the contracts of consultancy because of the following factors:

1. The rights, authority and duties of Ferdinand arose from contract, not law;

2. Ferdinand was not vested with a portion of the sovereign authority;

3. The consultancy contracts were for a limited duration, as the same were valid for only six (6) months each and could be terminated by a mere written notice given five (5) days prior;

4. Ferdinand did not enjoy the benefits given to government employees such as PERA, COLA and RATA, but only received honoraria for consultancy services actually rendered; and

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[16] 600 Phil. 26 (2009).
[17] Id. at 44.

5. The Revised Omnibus Rules on Appointments and other Personnel Actions recognize that service contracts like the subject twin contracts of consultancy were not considered government service.

The Ombudsman concluded that there could be no legal basis to support a finding that Governor Umali violated Article 244 of the RPC considering that Ferdinand was not appointed to a government office; and that, there could be no finding that the respondents violated R.A. No. 3019 considering that the alleged irregularity in the engagements of Ferdinand was not shown by substantial evidence.

In *Posadas v. Sandiganbayan*,[18] the Court stated that a consultancy service is not considered government service.

> Pursuant to CSC Resolution No. 93-1881 dated May 25, 1993, **a contract for consultancy services is not covered by Civil Service Law, rules and regulations because the said position is not found in the index of position titles approved by DBM**. Accordingly, it does not need the approval of the CSC. xxx A "**consultant**" is defined as one who provides professional advice on matters within the field of his specific knowledge or training. **There is no employer-employee relationship in the engagement of a consultant but that of client-professional relationship.**[19]
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> [Emphases Supplied]

The Court notes that Ferdinand did not take an oath of office prior to his rendition of consultancy services for the Provincial Government of Nueva Ecija. All public officers and employees from the highest to the lowest rank are required to take an oath of office which marks their assumption to duty. It is well-settled that on oath of office is a qualifying requirement for public office, a prerequisite to the full investiture of the office.[20] Ferdinand was not required to take an oath of office because he rendered consultancy services for the provincial government not by virtue of an appointment or election to a specific public office or position but by a contractual engagement. In fine, those who have rendered services with the government, without occupying a public office or without having been elected or appointed as a public officer evidenced by a written appointment and recorded with the Civil Service Commission, did so outside the concept of government service.

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[18] 714 Phil. 248 (2003).
[19] Id. at 285.
[20] *Mendoza v. Laxina, Sr.*, 453 Phil. 1013, 1026-1027 (2003); *Chavez v. Ronidel*, 607 Phil. 76 (2009).

Although in its September 23, 2013 Joint Order, the Ombudsman stated that the engagement of Ferdinand as consultant "comes within the purview of the term 'public office' and therefore, his dismissal from the service disqualifies him from being hired as such xxx,"[21] it opined, and so held, that the private respondents could not be held criminally liable for violation of Section 3(e) of R.A. No. 3019 because the two elements of the offense are wanting. According to the Ombudsman, there was no undue injury amounting to actual damages to the government as it was not disputed that Ferdinand performed the tasks and duties required of him under the questioned contracts and, thus, the payment of honoraria to him was in order and did not cause damage to or result in prejudice to the provincial government. The Ombudsman was also of the opinion that the private respondents did not act with manifest partiality, evident bad faith or gross inexcusable negligence in entering into the consultancy contracts with Ferdinand because Governor Umali relied on the issuances of the Civil Service Commission and the opinions of the DILG and the Provincial Legal Office in good faith before proceeding to engage Ferdinand.

Moreover, the Ombudsman stated that Governor Umali could not be held liable for violation of Article 244 of the RPC for unlawful appointment explaining in this wise:

> Umali believed in good faith that Ferdinand's dismissal from the service did not disqualify him from being hired as a consultant, hence, Art. 244 cannot apply since to commit the crime, one must knowingly appoint the disqualified person. The term "knowingly" presupposes that the public officer knows of the disqualification and despite such, he appointed said person.[22]

Verily, the foregoing sufficiently shows that the Ombudsman did not commit grave abuse of discretion in dismissing the criminal charges against the private respondents. As defined by this Court in *United Coconut Planters Bank v. Looyuko*:[23]

> By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[24]

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[21] *Rollo*, p. 43.
[22] Id. at 47.
[23] 560 Phil. 581 (2007).
[24] Id. at 591-592.

It falls upon the petitioner to discharge the burden of proving there was grave abuse of discretion on the part of the Ombudsman, in accordance with the definition and standards set by law and jurisprudence. "Not every error in the proceedings, or every erroneous conclusion of law or fact, constitutes grave abuse of discretion. While the prosecutor, or in this case, the investigating officers of the Office of the Ombudsman, may err or even abuse the discretion lodged in them by law, such error or abuse alone does not render their act amenable to correction and annulment by the extraordinary remedy of *certiorari.*"[25] The requirement for judicial intrusion is still for the petitioner to show clearly that the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction. Joson, in this case, failed to do so. On the contrary, the record reveals that the Ombudsman carefully perused and studied the documents and meticulously weighed the evidence submitted by the parties before issuing the assailed joint resolution and joint order which strongly negated any averment that they were issued capriciously, whimsically, arbitrarily, or in a despotic manner.

Moreover, a finding of probable cause, or lack of it, is a finding of fact which is generally not reviewable by this Court. Only when there is a clear case of grave abuse of discretion will this Court interfere with the findings of the Office of the Ombudsman. As a general rule, the Court does not interfere with the Ombudsman's determination of the existence or absence of probable cause. As the Court is not a trier of facts, it reposes immense respect to the factual determination and appreciation made by the Ombudsman. The rationale behind this rule is explained in *Republic v. Desierto,*[26] in this wise:

> The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.[27]

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[25] *Agdeppa v. Honorable Office of the Ombudsman*, G.R. No. 146376, April 23, 2014, 723 SCRA 293, 332-333.
[26] 541 Phil. 57 (2007), citing *Ocampo v. Ombudsman*, G.R. Nos. 103446-47, August 30, 1993, 225 SCRA 725, 730.
[27] Id. at 67-68.

It is readily apparent from Joson's assertion in the petition that he was questioning the correctness of the appreciation of facts by the Ombudsman. He presented an issue which touched on the factual findings of the Ombudsman. Such issue is not reviewable by this Court via *certiorari*.[28]

With respect to the dismissal of the administrative charge for gross misconduct, the Court finds that the same has already attained finality because Joson failed to file a petition for *certiorari* before the Court of Appeals *(CA).*

The assailed ruling of the Ombudsman absolving the private respondents of the administrative charge possesses the character of finality and, thus, not subject to appeal. Section 7, Rule III of the Ombudsman Rules provides:

> SECTION 7. Finality 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 and unappealable**. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for certiorari shall have been filed by him as prescribed in Section 27 of RA 6770.
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> [Emphasis Supplied]

In *Reyes, Jr. v. Belisario*,[29] the Court wrote:

> The clear import of Section 7, Rule III of the Ombudsman Rules is to deny the complainant in an administrative complaint the right to appeal where the Ombudsman has exonerated the respondent of the administrative charge, as in this case. The complainant, therefore, is not entitled to any corrective recourse, whether by motion for reconsideration in the Office of the Ombudsman, or by appeal to the courts, to effect a reversal of the exoneration. Only the respondent is granted the right to appeal but only in case he is found liable and the penalty imposed is higher than public censure, reprimand, one-month suspension or fine a equivalent to one month salary.[30]

Though final and unappealable in the administrative level, the decisions of administrative agencies are still subject to judicial review if they fail the test of arbitrariness, or upon proof of grave abuse of discretion, fraud

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[28] *Brito v. Office of the Deputy Ombudsman for Luzon*, 554 Phil. 112, 127 (2007).
[29] 612 Phil. 936 (2009).
[30] Id. at 954.

or error of law, or when such administrative or quasi-judicial bodies grossly misappreciate evidence of such nature as to compel a contrary conclusion.[31] Specifically, the correct procedure is to file a petition for *certiorari* before the CA to question the Ombudsman's decision of dismissal of the administrative charge.[32] Joson, however, failed to do this. Hence, the decision of the Ombudsman exonerating the private respondents from the charge of grave misconduct had already become final. In any event, the subject petition failed to show any grave abuse of discretion or any reversible error on the part of the Ombudsman to compel this Court to overturn its assailed administrative ruling.

This Court has maintained its policy of non-interference with the Ombudsman's exercise of its investigatory and prosecutory powers in the absence of grave abuse of discretion, not only out of respect for these constitutionally mandated powers but also for practical considerations owing to the myriad functions of the courts. In the case at bench, the Court will uphold the findings of the Ombudsman absent a clear showing of grave abuse of discretion on its part.

At any rate, the Court notes that upon motion for reconsideration, A.O. No. 14, which decreed the dismissal from service of respondent Atty. Ferdinand Abesamis as Senior State Prosecutor, was already reversed and set aside per Resolution,[33] dated March 11, 2010, issued by the Office of the President. In effect, it affirmed the May 21, 1998 Resolution[34] of then Justice Secretary Silvestre Bello III which strongly admonished Ferdinand to be more circumspect in the discharge of his public office.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

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[31] *Orais v. Almirante*, 710 Phil. 662, 673 (2013).
[32] *Ruivivar v. Office of the Ombudsman*, 587 Phil. 100, 113 (2008).
[33] *Rollo*, pp. 223-225.
[34] Id. at 219-222.

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

MARVIC M.V.F. LEONEN
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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII 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.

MARIA LOURDES P. A. SERENO
Chief Justice