

EN BANC

A.M. No. RTJ-17-2486 – RE: INVESTIGATION REPORT ON THE ALLEGED EXTORTION ACTIVITIES OF PRESIDING JUDGE GODOFREDO B. ABUL, JR., BRANCH 4, REGIONAL TRIAL COURT, BUTUAN CITY, AGUSAN DEL NORTE.

Promulgated:

September 8, 2020

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CONCURRING OPINION

LEONEN, J.:

I concur.

The death of respondent Judge Godofredo B. Abul, Jr., prior to the promulgation and finality of his administrative case, effectively renders the case moot. Proceeding further would be a gross violation of the fundamental right to due process.

Further, imposing any monetary penalty in lieu of dismissal only punishes respondent's wife and heirs: those who are innocent of the charges against respondent. Once a respondent in an administrative case dies, it is simply illogical and impractical for this Court to continue with the proceedings. There would be no one left to punish.

To recall, Rev. Father Antoni A. Sanial, Director of the Prison Ministry of the Diocese of Butuan, filed a complaint alleging that respondent was demanding money ranging from ₱200,000.00 to ₱300,000.00 from detainees of the Provincial Jail of Agusan in exchange for their release or dismissal of their cases.¹ The judicial audit team's investigation report confirmed these allegations.²

While the case was pending, or on August 5, 2017, respondent was killed by unidentified motorcycle-riding assailants outside his house.³

Nonetheless, the Office of the Court Administrator found respondent guilty of grave misconduct. Since the offense was punishable by dismissal

¹ Ponencia, p. 2.

² Id.

³ Id.

from service, the Office of the Court Administrator instead recommended the penalty of a fine of ₱500,000.00, to be deducted from respondent's retirement gratuity, in view of his death.⁴

In the September 3, 2019 Decision,⁵ this Court adopted the findings of the Office of the Court Administrator but modified the recommended penalty to the forfeiture of all benefits, including retirement gratuity, on the ground that the death of a respondent in an administrative case did not oust this Court of its jurisdiction to proceed with the case, or to impose accessory penalties on the respondent.⁶

Respondent's widow, Bernadita C. Abul, then filed a Motion for Reconsideration, arguing that the case should have been rendered moot since her husband was no longer in a position to assail the September 3, 2019 Decision of this Court, to plead his innocence, or to express remorse.⁷

This Court, guided by the able *ponencia* of Associate Justice Ramon Paul L. Hernando, has now seen it fit to: (1) reverse its earlier Decision; (2) grant the Motion for Reconsideration; and (3) dismiss the administrative case against respondent.

The *ponencia* is anchored on four (4) grounds: (1) Judge Abul still enjoyed the right to be presumed innocent, since his death preceded any final judgment on the charges against him; (2) administrative liability, like criminal liability, may be extinguished through death; (3) the imposition of a penalty would violate due process since Judge Abul can no longer exercise any of the remedies that would have been available to him; and (4) Judge Abul's mistakes should not unduly punish his heirs.

I concur.

I

The power granted by the Constitution to this Court to discipline members of the Bench and the Bar should always be read alongside the guarantee of any respondent's fundamental rights. In any disciplinary proceeding, respondents are, at all times, guaranteed the fundamental right to due process of law under Article I, Section 1:

⁴ Id.

⁵ *Re Alleged Extortion Activities of Judge Abul*, A.M. No. RTJ-17-2486, September 3, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65676>> [Per Curiam, En Banc].

⁶ Id.

⁷ *Ponencia*, p. 3.

ARTICLE III

Bill of Rights

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Disciplinary proceedings, being administrative in nature, do not necessarily require the strict procedural rules usually found in civil and criminal cases. It is a generally accepted rule that due process in administrative proceedings does not require that the respondent *must* be heard. It merely requires that the respondent is *given the opportunity* to be heard.⁸

This “lesser” standard, however, is not lost even after judgment is rendered. In administrative cases, the right to due process still grants respondents the opportunity to question any unfavorable judgment rendered against them. *Lumiqued v. Exevea*⁹ explains:

In administrative proceedings, the essence of due process is simply the opportunity to explain one’s side. One may be heard, not solely by verbal presentation but also, and perhaps even much more creditably as it is more practicable than oral arguments, through pleadings. An actual hearing is not always an indispensable aspect of due process. As long as a party was given the opportunity to defend his interests in due course, he cannot be said to have been denied due process of law, for this opportunity to be heard is the very essence of due process. Moreover, *this constitutional mandate is deemed satisfied if a person is granted an opportunity to seek reconsideration of the action or ruling complained of.*¹⁰ (Citations omitted, emphasis supplied)

Criminal liability is immediately extinguished if the accused dies before final judgment is rendered.¹¹ The reason is simple: due process requires that the accused be informed of the evidence and findings against them, and be given the opportunity to appeal the conviction. As the *ponencia* correctly points out,¹² there is no reason why the same principle should not apply in administrative cases where a lower quantum of proof is required.

⁸ *Legarda v. Court of Appeals*, 345 Phil. 890, 905 (1997) [Per J. Romero, En Banc].

⁹ 346 Phil. 807 (1997) [Per J. Romero, En Banc].

¹⁰ *Id.* at 828 citing *Concerned Officials of MWSS v. Vasquez*, 310 Phil. 549 (1995) [Per J. Vitug, En Banc]; *Mutuc v. Court of Appeals*, 268 Phil. 37 (1990) [Per J. Paras, Second Division]; *Pamantasan ng Lungsod ng Maynila (PLM) v. Civil Service Commission*, 311 Phil. 573 [Per J. Vitug, En Banc]; and *Legarda v. Court of Appeals*, 345 Phil. 890 (1997) [Per J. Romero, En Banc].

¹¹ See REV. PEN. CODE, art. 89. How criminal liability is totally extinguished. — Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment[.]

¹² *Ponencia*, p. 5.

The opportunity to be heard is not a mere formality, but an intrinsic and substantial part of the constitutional right to due process. Thus, the opportunity to be heard must be present in *all* aspects of the proceeding until the finality of the judgment.

II

It is settled that this Court's jurisdiction over a disciplinary case of a court official or employee, once acquired, is not lost simply because the respondent has ceased to hold office during the pendency of the case.¹³ Thus, respondents cannot escape liability if they retire or resign from public office. Death, however, cannot be likened to these types of cessation from public office.

I explained in my previous Dissenting Opinion that the rationale for the rule on the continuation of proceedings, despite cessation from public office, must first take into account the nature of the cessation:

Cessation from public office during the pendency of the case may occur in three (3) different ways: (1) resignation; (2) retirement; or (3) death.

....

Resignation requires intent. It is a *voluntary* cessation from public office. Sometimes, however, respondents in disciplinary proceedings opt to resign to avoid being forcibly dismissed from service. Thus, this Court has stated that resignation "should be used neither as an escape nor as an easy way out to evade administrative liability by a court personnel facing administrative sanction."

Therefore, once this Court assumes jurisdiction—that is, after an administrative case has been filed—resignation from public office will not render the case moot. In *Pagano v. Nazarro, Jr.*:

....

A case becomes moot and academic only when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits of the case. The instant case is not moot and academic, despite the petitioner's separation from government service. Even if the most severe of administrative sanctions — that of separation from service — may no longer be imposed on the petitioner, there are other penalties which may be imposed on her if she is later found guilty of administrative offenses charged against her, namely, the disqualification to hold any government office and the forfeiture of benefits.

Moreover, this Court views with suspicion the

¹³ *Perez v. Abiera*, 159-A Phil. 575, 580-581 [Per J. Muñoz Palma, En Banc].

precipitate act of a government employee in effecting his or her separation from service, soon after an administrative case has been initiated against him or her. An employee's act of tendering his or her resignation immediately after the discovery of the anomalous transaction is indicative of his or her guilt as flight in criminal cases.

....

Retirement, meanwhile, may be optional or compulsory. Optional retirement for government employees may be availed after 20 to 30 years of service, regardless of age. Judges and justices may also opt to retire upon reaching 60 years old as long as they have rendered 15 years of service in the judiciary. Optional retirement, like resignation, is a *voluntary* cessation from public office. Thus, the same rationale is applied to those who avail of optional retirement during the pendency of an administrative case. In *Aquino, Jr. v. Miranda*:

A public servant whose career is on the line would normally want the investigating body to know his or her whereabouts for purposes of notice. The timing of respondent's application for leave, for optional retirement, and her sudden unexplained disappearance, taken together, leads us to conclude that hers is not a mere case of negligence. Respondent's acts reveal a calculated design to evade or derail the investigation against her. Her silence at the least serves as a tacit waiver of her opportunity to refute the charges made against her.

Neither respondent's disappearance nor her retirement precludes the Court from holding her liable. Her disappearance constitutes a waiver of her right to present evidence in her behalf. The Court is not ousted of its jurisdiction over an administrative case by the mere fact that the respondent public official ceases to hold office during the pendency of respondent's case.

....

Respondents in an administrative case could apply for optional retirement to evade liability. Thus, optional retirement during the pendency of an administrative case, like resignation, will not render the case moot.

Unlike resignation, however, retirement may also be *involuntary*. Retirement from public service is compulsory for government employees who have reached 65 years old or for judges and justices who have reached 70 years old.

In the leading case of *Perez v. Abiera*, this Court was confronted with the issue of whether an administrative complaint against a judge, was rendered moot when he compulsorily retired while the case was pending. Citing *Diamalon v. Quintillan*,¹⁴ respondent Judge Carlos Abiera argued that he could not be meted the penalty of dismissal since he was no longer in service.

¹⁴ 139 Phil. 654 (1969) [Per J. Fernando, En Banc].

In *Quintillan*, this Court dismissed the complaint against Judge Jesus Quintillan since he had already resigned from service before a judgment could be rendered:

[T]he petition for dismissal must be granted. There is no need to inquire further into the charge imputed to respondent Judge that his actuation in this particular case failed to satisfy the due process requirement. As an administrative proceeding is predicated on the holding of an office or position in the Government and there being no doubt as to the resignation of respondent Judge having been accepted as of August 31, 1967, there is nothing to stand in the way of the dismissal prayed for.

In *Abiera*, however, this Court clarified that *Quintillan* was not meant to be a precedent to immediately dismiss complaints against judges who resigned or retired while the administrative cases were pending:

It was not the intent of the Court in the case of *Quintillan* to set down a hard and fast rule that the resignation or retirement of a respondent judge as the case may be renders [sic] moot and academic the administrative case pending against him; nor did the Court mean to divest itself of jurisdiction to impose certain penalties short of dismissal from the government service should there be a finding of guilt on the basis of the evidence. In other words, the jurisdiction that was Ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased to be in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications. For what remedy would the people have against a judge or any other public official who resorts to wrongful and illegal conduct during his last days in office? What would prevent some corrupt and unscrupulous magistrate from committing abuses and other condemnable acts knowing fully well that he would soon be beyond the pale of the law and immune to all administrative penalties? If only for reasons of public policy, this Court must assert and maintain its jurisdiction over members of the judiciary and other officials under its supervision and control for acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public. If innocent, respondent official merits vindication of his name and integrity as he leaves the government which he served well and faithfully, if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.

This Court, thus, established that:

In short, the cessation from office of a respondent Judge either because of resignation, retirement or some other similar cause does not per se warrant the dismissal of



an administrative complaint which was filed against him while still in the service. Each case is to be resolved in the context of the circumstances present thereat.

As this doctrine developed, this Court has interpreted "some other similar cause" to include death. Death, however, cannot be placed on the same footing as resignation or retirement. Resignation and optional retirement are *voluntary* modes of cessation. The respondent may avail of them as a way to escape or evade liability. This Court, therefore, should not be ousted of its jurisdiction to continue with the administrative complaint even if the resignation is accepted or the application for retirement is approved.

Death, unless self-inflicted, is *involuntary*. Respondents who die during the pendency of the administrative case against them do not do so with the intent to escape or evade liability. The rationale for proceeding with administrative cases despite resignation or optional retirement, therefore, cannot apply.

It is conceded that compulsory retirement is also involuntary. Respondents or this Court cannot fight against the passage of time.

Abiera, however, had a different rationale for respondents who have reached the compulsory age of retirement:

A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications. For what remedy would the people have against a judge or any other public official who resorts to wrongful and illegal conduct during his last days in office? What would prevent some corrupt and unscrupulous magistrate from committing abuses and other condemnable acts knowing fully well that he would soon be beyond the pale of the law and immune to all administrative penalties? If only for reasons of public policy, this Court must assert and maintain its jurisdiction over members of the judiciary and other officials under its supervision and control for acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public.

In formulating the doctrine, this Court was trying to guard against corrupt and unscrupulous magistrates who would commit abuses knowing fully well that after retirement, they could no longer be punished.

It is this *certainty of cessation* that differentiates compulsory retirement from death as a mode of cessation from public service. A respondent judge knows when he or she will compulsorily retire. In contrast, nobody knows when one will die, unless the cause of death is self-inflicted. Even those with terminal illnesses cannot pinpoint the exact day when they will die.

The essence of due process in administrative cases is simply the opportunity to be heard. Respondents must be given the opportunity to be informed of and refute the charges against them in all stages of the proceedings.

Only in resignation and retirement can there be a guarantee that

respondents will be given the opportunity to be heard. Even if they resign or retire during the pendency of the administrative case, they can still be aware of the proceedings and actively submit pleadings. Thus, they should not be allowed to evade liability by the simple expediency of separation from public service.

It would be illogical and impractical to treat dead respondents as equal to resigned or retired respondents. Dead respondents are neither aware of the continuation of the proceedings against them, nor are in any position to submit pleadings. Death forecloses any opportunity to be heard. Continuing with the administrative proceedings even after the respondent's death, therefore, is a violation of the right to due process.¹⁵ (Citations omitted)

Here, respondent only knew of the conclusions of the judicial audit team before his death. He had no knowledge that the Office of the Court Administrator would adopt the findings of the judicial audit team. He certainly would not have known that this Court would adopt the findings of the Office of the Court Administrator. As was demonstrated by the subsequent events of this case, his widow was the one who filed a Motion for Reconsideration—not to ask for clemency, but rather, to have the case dismissed, because her husband did not know he would be found guilty of the charges against him.

At the risk of being repetitive, I must reiterate: death forecloses *any* opportunity to be heard. Resigned or retired respondents should not be treated in the same manner as dead respondents. The reason should be easy enough to comprehend: only respondents who are still alive can speak, and, ultimately, be heard.

III

This Court has already repeatedly been confronted with this issue and has even repeatedly been constrained to dismiss the case due to the sheer impracticability of the punishment.

In *Baikong Akang Camsa vs. Judge Aurelio Rendon*,¹⁶ this Court found it inappropriate to proceed in the investigation of a judge “who could no longer be in any position to defend himself[,] [which] would be a denial

¹⁵ Dissenting Opinion of J. Leonen in *Re Alleged Extortion Activities of Judge Abul*, A.M. No. RTJ-17-2486, September 3, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65676>> [Per Curiam, En Banc] citing *Pagano v. Nazarro, Jr.*, 560 Phil. 96, 104–105 (2007) [Per J. Chico-Nazaro, Third Division]; Republic Act 1616 (1957), sec. 1; *Re: Requests for survivorship benefits of spouses of justices and judges who died prior to the effectivity of Republic Act (R.A.) No. 9946*, 818 Phil. 344 (2017) [Per J. Martires, En Banc]; *Aquino, Jr. v. Miranda*, 473 Phil. 216, 227 (2004) [Per Curiam, En Banc]; Pres. Decree No. 1146 (1977), sec. 11 (b); Republic Act No. 9946 (2010), sec. 1; *Diamalon v. Quintillan*, 139 Phil. 654, 656–657 (1969) [Per J. Fernando, En Banc]; *Perez v. Abiera*, 159-A Phil. 575, 580–581 (1975) [Per J. Muñoz Palma, En Banc].

¹⁶ 427 Phil. 518 (2003) [Per J. Vitug, First Division].

of his right to be heard, our most basic understanding of due process.”¹⁷

In *Apiag v. Cantero*,¹⁸ this Court dismissed the case and allowed the release of his retirement benefits, even if respondent was able to submit his comment before his untimely death:

[We] cannot just gloss over the fact that he was remiss in attending to the needs of his children of his first marriage – children whose filiation he did not deny. He neglected them and refused to support them until they came up with this administrative charge. For such conduct, this Court would have imposed a penalty. But in view of his death prior to the promulgation of this Decision, dismissal of the case is now in order.¹⁹

In *Re: Judicial Audit Conducted in the Municipal Trial Court (MTC) of Tambulig and the 11th Municipal Circuit Trial Court (MCTC) of Mahayag-Dumingag-Josefina, both in Zamboanga del Sur*,²⁰ this Court found that respondent was constrained to dismiss the case and release his retirement benefits to his heirs despite finding him guilty of gross inefficiency and gross ignorance of the law.

In this Court’s September 3, 2019 Decision, the majority held that the death of the respondent in an administrative case did not preclude the finding of liability, citing *Gonzales v. Escalona*,²¹ which found:

Respondent Escalona had already resigned from the service. His resignation, however, does not render this case moot, nor does it free him from liability. In fact, the Court views respondent Escalona’s resignation before the investigation as indication of his guilt, in the same way that flight by an accused in a criminal case is indicative of guilt. In short, his resignation will not be a way out of the administrative liability he incurred while in the active service. While we can no longer dismiss him, we can still impose a penalty sufficiently commensurate with the offense he committed.

We treat respondent Superada no differently. While his death intervened after the completion of the investigation, it has been settled that the Court is not ousted of its jurisdiction over an administrative matter by the mere fact that the respondent public official ceases to hold office during the pendency of the respondent’s case; jurisdiction once acquired, continues to exist until the final resolution of the case. In *Loyao, Jr. v. Caube*, we held that the death of the respondent in an administrative case does not preclude a finding of administrative liability[.]²² (Citations omitted; emphasis supplied)

¹⁷ Id. at 525–526.

¹⁸ 335 Phil. 511 (1997) [Per J. Panganiban, Third Division].

¹⁹ Id. at 526.

²⁰ 509 Phil. 401 (2005) [Per CJ. Davide, Jr., First Division].

²¹ 587 Phil. 448 (2008) [Per J. Brion, Second Division].

²² Id. at 462–463.

ℓ

However, in *Loyao, Jr. v. Caube*,²³ the case that *Gonzales* cites as basis, this Court was constrained to *dismiss the case and consider it closed and terminated, since the penalty could no longer be served*:

To be sure, respondent Caube's death has permanently foreclosed the prosecution of any other actions, be it criminal or civil, against him for his malfeasance in office. We are, however, not precluded from imposing the appropriate administrative sanctions against him. Respondent's misconduct is so grave as to merit his dismissal from the service, were it not for his untimely demise during the pendency of these proceedings. However, since the penalty can no longer be carried out, this case is now declared closed and terminated.²⁴ (Citations omitted)

Gonzales even discusses several exceptions to the general rule. It stated that the presence of the following circumstances is enough to warrant the dismissal of the case: "first, the observance of respondent's right to due process; second, the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons; and third, it may also depend on the kind of penalty imposed."²⁵

As previously discussed, there can be no due process when one does not have the corporeal presence to speak and be heard. Respondent is no longer in a position to defend himself from the findings of the Office of the Court Administrator. He can no longer be informed of the conclusions of this Court. The recommended penalty can no longer be served. On top of that, he is not in any position to file a motion for reconsideration, to plead his innocence, or to express his remorse.

Equitable and humanitarian reasons must also be taken into account in the imposition of the penalty. The forfeiture of respondent's retirement benefits will only punish his heirs, who had nothing to do with the administrative case filed against respondent.

I harbor no illusion that respondent did not commit any of the allegations meted against him. On the contrary, had respondent not died, his dismissal and all its accessory penalties, including the forfeiture of all benefits, would have been the correct penalty. His heirs, however, were not the ones who committed his infractions. It would be cruel for this Court to make his grieving family bear the burden of his faults.

Death has already removed respondent from our ranks, in a manner more permanent than dismissal. Respondent can no longer betray the public trust. He will no longer be a stain on this Court's reputation.

²³ 450 Phil. 38 (2003) [Per Curiam, En Banc].

²⁴ Id. at 47.

²⁵ *Gonzalez v. Escalona*, 587 Phil. 448, 463 (2008) [Per J. Brion, Second Division].

This Court should be humble enough to accept that there are limits to our disciplinary power that cannot be crossed. Death is one of them.

ACCORDINGLY, I vote to **DISMISS** the complaint against Presiding Judge Godofredo B. Abul, Jr. of Branch 4, Regional Trial Court, Butuan City, Agusan del Norte, in view of his death during the pendency of this case.



MARVIC M.V. F. LEONEN
Associate Justice

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EDGAR O. ARICHETA
Clerk of Court