G.R. No. 237330 – ALDRIN MADREO, *Petitioner* v. LUCILO R. BAYRON, *Respondent*; and G.R. No. 237579 – OFFICE OF THE OMBUDSMAN, *Petitioner* v. LUCILO R. BAYRON, *Respondent*.

Promulgated:
November 3, 2020

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CONCURRING AND DISSENTING OPINION

PERLAS-BERNABE, *J.*:

> *[W]hile the future may ultimately uncover a doctrine's error, it should be, as a general rule, recognized as "good law" prior to its abandonment.* ***Consequently, the people's reliance thereupon should be respected.***
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> – excerpt from *Carpio Morales v. Court of Appeals*[1] explaining why the condonation's abandonment should be prospective.

While I agree with the *ponencia*[2] that re-election is the determinative point to reckon condonation, which thus allows elective officials to still invoke the condonation doctrine for as long as they have been re-elected before its abandonment on April 12, 2016, **I dissent insofar as it extends the exculpatory effects of said doctrine to recall elections.**[3]

By creating jurisprudence that, for the first time, stretches the scope of the condonation doctrine to recall elections, the *ponencia* glosses over **the restrictive context in which said doctrine should be applied post-abandonment**. It should be remembered that condonation is a legally baseless, unconstitutional, and hence, void doctrine; nonetheless, it is still given limited recognition today if only to fairly account for the people's previous reliance thereupon at the time it was still subsisting. Therefore, **when applying condonation post-abandonment, the doctrine must be strictly limited and construed so that its present application does not go beyond what was previously relied upon by the public.**

As will be herein discussed, the condonation doctrine was *not only applied but was also intended to apply* to regular elections only. In contrast, **condonation was never applied to recall elections, whose concept and purpose are substantially different from regular elections**. Accordingly, those who won in a recall election had no right to rely on the condonation doctrine as a means to exculpate their previous administrative liability.

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1 772 Phil. 672, 775 (2015); emphasis supplied.
2 *Ponencia*, pp. 11-12.
3 Id. at 13, 17-19.

Neither was the voting public ever led to believe that a recall election may completely exonerate an official's previous administrative liability. Thus, I disagree with the *ponencia*'s contrary position in this case.

I.

Understanding the limited and strict approach to applying condonation post-abandonment must fittingly begin with a recollection of why condonation was abandoned in the first place.

The condonation doctrine had previously gained notoriety as a legal vehicle for elective officials to escape public accountability by merely asserting the fact of their re-election. As it had been applied, the condonation doctrine completely cut off the Ombudsman's authority to determine the administrative liability of elective officials for infractions committed during a prior term, since ultimately, condonation through re-election rendered such issue moot and academic.

Tracing its doctrinal roots, the condonation doctrine was a purely jurisprudential creation introduced in the Philippines in the 1959 case of *Pascual v. Hon. Provincial Board of Nueva Ecija (Pascual)*.[4] Its effect was to foreclose the removal of an elective official due to an administrative infraction once he is re-elected after his term of office. Notably, *Pascual* was decided under the 1935 Constitution, whose dated provisions do not reflect the experience of the Filipino People under the 1973 and 1987 Constitutions.[5] Eventually, to instill public accountability in the government because of the past experiences of political abuse, an independent Ombudsman was created under the 1987 Constitution. This was further strengthened under Republic Act No. 7660[6] by giving the Ombudsman disciplinary authority over all elective officials, including those in the local government.

Despite these attempts to strengthen the Ombudsman as an institution, the condonation doctrine in our jurisprudence gravely weakened the Ombudsman's authority to discipline elective officials. **The sheer impact of the condonation doctrine on public accountability necessitated *Pascual's* judicious re-examination.**[7] This was the setting when the Court, in the pivotal case of *Carpio Morales v. Court of Appeals (Carpio Morales)*,[8] categorically declared the **abandonment** of the condonation doctrine not only for **lacking constitutional and statutory basis** but also for being

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4 106 Phil. 466 (1959).

5 *Carpio Morales v. Court of Appeals*, supra note 1.

6 Entitled "AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES," otherwise known as "THE OMBUDSMAN ACT OF 1989" approved on November 17, 1989.

7 *Carpio Morales v. Court of Appeals*, supra note 1, at 760.

8 Id.

rendered obsolete **by the public accountability standard under the prevailing framework of the 1987 Constitution.**

However, the Court remained cognizant that its decisions, until reversed, are considered part of the law of the land, which people were bound to abide and hence, had a **right to rely** upon in good faith; thus, in *Carpio Morales*, the Court qualified that the **condonation doctrine's abandonment is only prospective in effect**.[9] The prospective abandonment of the condonation doctrine, despite its utter baselessness and unconstitutionality, was borne from fairness and practical considerations only; since the Court itself had led people to believe that an official's previous administrative liability could be condoned by voting for the same official to serve a new term of office, it could not simply undo the consequences of such reliance in the interim.

Notably, in *Crebello v. Office of the Ombudsman*,[10] the Court clarified that the prospective abandonment of condonation should be reckoned from April 12, 2016 when *Carpio Morales*'s ruling attained finality.[11] Hence, the limited application of condonation today subsists only to re-elections conducted prior to the April 12, 2016 cut-off date.

This case, however, presents a novel legal nuance to the application of the condonation doctrine which was never before encountered by the Court in any of its past cases. For the first time, the Court is currently confronted with the issue of whether or not it can apply condonation to recall elections, as opposed to its previous application only in regular election cases. Since condonation applies today only because of previous public reliance, this Court must necessarily determine *whether or not the public was led to believe by the Court that voting in favor of an official subjected to recall would result in the complete exoneration of his previous administrative liability*. As will be herein discussed, I submit that no such reliance existed. The Court had applied the effects of condonation only by and through regular elections which, in contrast to a recall, ushers in a new term of office.

II.

Previous public reliance on condonation necessitates an examination of the doctrine's actual scope as envisioned in the Court's past precedents.

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9 Id. at 775.

10 See G.R. No. 232325, April 10, 2019.

11 See id.

Prefatorily, a circumspect reading of *Carpio Morales* will show that: (1) condonation is not an original legal concept in our jurisdiction; and (2) there are various versions of condonation in the United States of America (US). "In fact, as pointed out during the oral arguments [in *Carpio Morales*], at least seventeen (17) states in the US have abandoned the condonation doctrine. The Ombudsman [in said case] aptly cite[d] several rulings of various US State courts, as well as literature published on the matter, to demonstrate the fact that **the doctrine is not uniformly applied across all state jurisdictions.**"[12] Thus, as the Court, in *Carpio Morales*, observed, "**[i]ndeed, the treatment is nuanced,**"[13] *viz.*:

> (1) For one, it has been widely recognized that the propriety of removing a public officer from his current term or office for misconduct which he allegedly committed in a prior term of office is governed by the language of the statute or constitutional provision applicable to the facts of a particular case (see *In Re Removal of Member of Council Coppola*). As an example, a Texas statute, on the one hand, expressly allows removal only for an act committed during a present term: "no officer shall be prosecuted or removed from office for any act he may have committed prior to his election to office" (see *State ex rel. Rawlings v. Loomis*). On the other hand, the Supreme Court of Oklahoma allows removal from office for "acts of commission, omission, or neglect committed, done or omitted during a previous or preceding term of office" (see *State v. Bailey*). Meanwhile, in some states where the removal statute is silent or unclear, the case's resolution was contingent upon the interpretation of the phrase "in office." On one end, the Supreme Court of Ohio strictly construed a removal statute containing the phrase "misfeasance of malfeasance in office" and thereby declared that, in the absence of clear legislative language making, the word "office" must be limited to the single term during which the offense charged against the public officer occurred (see *State ex rel. Stokes v. Probate Court of Cuyahoga County*). Similarly, the Common Pleas Court of Allegheny County, Pennsylvania decided that the phrase "in office" in its state constitution was a time limitation with regard to the grounds of removal, so that an officer could not be removed for misbehavior which occurred prior to the taking of the office (see *Commonwealth v. Rudman*). The opposite was construed in the Supreme Court of Louisiana which took the view that an officer's inability to hold an office resulted from the commission of certain offenses, and at once rendered him unfit to continue in office, adding the fact that the officer had been re-elected did not condone or purge the offense (see *State ex rel. Billon v. Bourgeois*). Also, in the Supreme Court of New York, Appellate Division, Fourth Department, the court construed the words "in office" to refer not to a particular term of office but to an entire tenure; it stated that the whole purpose of the legislature in enacting the statute in question could easily be lost sight of, and the intent of the law-making body be thwarted, if an unworthy official could not be removed during one term for misconduct for a previous one *(Newman v. Strobel)*.
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> (2) For another, condonation depended on whether or not the public officer was a successor in the same office for which he has been administratively charged. The "own-successor theory," which is

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12 See *Carpio Morales*, supra note 1, at 756; emphasis supplied.

13 Id.; emphasis supplied.

> recognized in numerous States as an exception to condonation doctrine, is premised on the idea that each term of a re-elected incumbent is not taken as separate and distinct, but rather, regarded as one continuous term of office. Thus, infractions committed in a previous term are grounds for removal because a re-elected incumbent has no prior term to speak of (see *Attorney-General v. Tufts*; *State v. Welsh; Hawkins v. Common Council of Grand Rapids*; *Territory v. Sanches*; and *Tibbs v. City of Atlanta*).
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> (3) Furthermore, some State courts took into consideration the continuing nature of an offense in cases where the condonation doctrine was invoked. In *State ex rel. Douglas v. Megaarden,* the public officer charged with malversation of public funds was denied the defense of condonation by the Supreme Court of Minnesota, observing that "the large sums of money illegally collected during the previous years are still retained by him." In *State ex rel. Beck v. Harvey*, the Supreme Court of Kansas ruled that "there is no necessity" of applying the condonation doctrine since "the misconduct continued in the present term of office[;] [thus] there was a duty upon defendant to restore this money on demand of the county commissioners." Moreover, in *State ex rel. Londerholm v. Schroeder*, the Supreme Court of Kansas held that "insofar as nondelivery and excessive prices are concerned, . . . there remains a continuing duty on the part of the defendant to make restitution to the country . . ., this duty extends into the present term, and neglect to discharge it constitutes misconduct."[14]

While there were different variants of the condonation doctrine as may be gleaned from American cases,[15] the version adopted in our jurisprudence was the **prior-term variant**.[16] This iteration proceeds from the "underlying theory x x x that **each term is separate from other terms**";[17] hence, as only regular elections could contemplate the existence of separate terms, condonation has been applied to regular elections only.

The factoring-in of prior and new terms in effecting condonation is not merely trivial or inconsequential but is, in fact, substantive and deliberate. This is demonstrated by the Court's discussion in the case of *Pascual*, where the condonation doctrine in the Philippines finds genesis. As pointed out in *Carpio Morales*, *Pascual*'s *ratio decidendi*, which embodies the reasons behind adopting condonation, has three (3) parts, the first part of which pertains to the concept of separateness and distinctiveness of terms, to wit:

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14 Id. at 756-759, citations omitted.

15 See id.

16 The variant adopted in *Pascual* contained three (3) interrelated parts: (1) "the penalty of removal may not be extended **beyond the term [for] which the public officer was elected, [as] each term is separate and distinct**"; (2) "an elective official's re-election serves as a condonation of previous misconduct, thereby cutting the right to remove him therefor"; and (3) "courts may not deprive the electorate, who are assumed to have known of the life and character of candidates, of their right to elect officers." (See id.; emphasis and underscoring supplied.)

17 See id. at 760-761; emphasis supplied.

> ***First***, the penalty of removal may not be extended beyond the term [for] which the public officer was elected, [as] each term is separate and distinct:
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> **Offenses committed, or acts done, during previous term are generally held not to furnish cause for removal** and this is especially true where the constitution provides that the penalty in proceedings for removal shall **not extend beyond the removal from office, and disqualification from holding office for the term for which the officer was elected or appointed.** (67 C.J.S. p. 248, citing *Rice vs. State*, 161 S.W. 2d. 401; *Montgomery vs. Nowell*, 40 S.W. 2d. 418; *People ex rel. Bagshaw vs. Thompson*, 130 P. 2d. 237; *Board of Com'rs of Kingfisher County vs. Shutler*, 281 P. 222; *State vs. Blake*, 280 P. 388; *In re Fudula*, 147 A. 67; *State vs. Ward*, 43 S.W. 2d. 217).
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> The underlying theory is that **each term is separate from other terms** x x x
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> ***Second***, an elective official's re-election serves as a condonation of previous misconduct, thereby cutting the right to remove him therefor; and
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> [T]hat the **reelection to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor.** (43 Am. Jur. p. 45, citing *Atty. Gen. vs. Hasty*, 184 Ala. 121, 63 So. 559, 50 L.R.A. (NS) 553. x x x.
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> ***Third***, courts may not deprive the electorate, who are assumed to have known the life and character of candidates, of their right to elect officers[.][18] (Emphases and underscoring in the original)

However, the *ponencia* conveniently ignores *Pascual*'s first consideration, and instead, confines condonation to the second and third considerations as above-quoted.[19] Thus, with its disregard of the first consideration in *Pascual*, the *ponencia* removes the substantive barrier of applying condonation to recall elections and extends its scope thereto accordingly.

To my mind, this the Court cannot do in novel jurisprudence. **Not only will this course of action amount to a substantive modification of the condonation doctrine, this will also defy the public reliance rationale behind the condonation's prospective abandonment.** *Condonation has always been pronounced and hence, relied upon by the public relative to regular elections and its effect of ushering new terms that are separate and distinct.* As stated in *Carpio Morales*:

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18 Id.

19 *Ponencia*, pp. 16-19.

> With respect to its applicability to administrative cases, **the core premise of condonation** — that is, **an elective official's re-election cuts off the right to remove him for an administrative offense committed during a prior term** — was adopted hook, line, and sinker in our jurisprudence largely because the legality of that doctrine was never tested against existing legal norms. [20] (Emphases and underscoring supplied)

Further, in *Salalima v. Guingona, Jr.*,[21] the Court explained that the condonation doctrine prevented the danger of having an elective official devote the entire **subsequent or "second term"** "to defend x x x himself" "for acts alleged to have been committed during his **previous term**." Practically speaking, condonation prevented the official from being "hounded" by administrative cases filed by his "political enemies" during a new term, for which he has to defend himself "to the detriment of public service."[22]

In this regard, it is therefore no coincidence that, based on existing Philippine cases, the condonation doctrine has been applied only in the context of a regular election wherein the winning candidate serves a separate term of office. Conversely, it was never applied in a situation involving a recall election where there is no new term of office.

On this score, it is immaterial that recall elections were formally established only during the passage of the Local Government Code (LGC) of 1991,[23] and hence, was not existing back when condonation was conceived in the *Pascual* case. The reasons for this immateriality are as follows:

First, it should be observed that jurisprudence is replete with condonation doctrine cases post-enactment of the LGC[24] including the famed *Aguinaldo v. Santos*[25] case. As such, it was not legally impossible for the Court to adjudicate on the inclusion of recall as a variant of condonation and make it part of our jurisprudence. In fact, the non-existence of a condonation-recall case – spanning the entire twenty-five (25) year period, more or less, from the enactment of the LGC up until the condonation's abandonment in 2016 – is evidence to show that indeed, the public never relied on recall as a form of condoning administrative liability.

Second, and more importantly, the abandonment of condonation as an unconstitutional and legally baseless doctrine bars its further expansion to a novel application that was never relied upon by the public. At the risk of belaboring the point, the application of condonation post-abandonment is

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20 See supra note 1, at 764-765.
21 326 Phil. 847, 921 (1996).
22 See *Carpio Morales*, supra note 1, at 762-763.
23 See Associate Justice Alfredo Benjamin S. Caguioa's Concurring Opinion, pp. 2-3.
24 See *Salalima v. Guingona, Jr.*, supra note 21, *Garcia v. Mojica*, 372 Phil. 892 (1999), *Civil Service Commission v. Sojor*, 577 Phil. 52 (2008), *Valencia v. Sandiganbayan*, 477 Phil. 103 (2004).
25 G.R. No. 94115, August 21, 1992, 212 SCRA 768.

circumscribed by the public reliance element. Since the public was never led by the Court to believe that administrative liability can be condoned through a recall election, there is no right to invoke condonation as a defense in this novel sense.

III.

In any event, contrary to the *ponencia*'s stance,[26] the "*same considerations*" behind the condonation doctrine being applied to a regular election do **not** exist in a recall election. Arguing for the inclusion of recall elections within the scope of condonation, the *ponencia* posits that: "once reelected, the public official already had the *vested right* not to be removed from office by reason of the condonation doctrine, which cannot be divested or impaired by a new law or a new doctrine without violating the Constitution."[27]

I disagree.

Historically, the recall mechanism was introduced in our legal system as an ***additional layer of exacting public accountability*** in the local government level. Its creation in the LGC[28] hearkens back to the need to provide a "responsive and **accountable local government structure**."[29] Section 3, Article X of the 1987 Constitution even mentions "recall" as distinct from "election." To my mind, it would be illogical if such innovation meant to advance public accountability will be used as a means to breathe new life to the unconstitutional condonation doctrine, which was already abandoned in *Carpio Morales*.

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26 *Ponencia*, p. 17.

27 Id. at 11.

28 Republic Act No. 7160 entitled "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991," otherwise known as the "LOCAL GOVERNMENT CODE OF 1991" (January 1, 1992).

29 See Section 2, Chapter I, Title I, Book 1, Republic Act No. 7160; emphasis and underscoring supplied.

Section 2, Article XI of the 1973 Constitution states:

> Section 2. The *Batasang Pambansa* shall enact a local government code which may not thereafter be amended except by a majority vote of all its Members, defining a more responsive and ***accountable*** local government structure **with an effective system of recall**, allocating among the different local government units their powers, responsibilities, and resources, and providing for the qualifications, **election** and removal x x x." (Emphases and underscoring supplied)

Section 3, Article X of the 1987 Constitution states:

> Section 3. The Congress shall enact a local government code which shall provide for a more responsive and ***accountable*** local government structure instituted through a system of *decentralization* with **effective mechanisms of recall**, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal x x x" (Emphases and underscoring supplied)

Moreover, by its nature, recall is a scrutiny on an incumbent official's fitness to **continue in office**.[30] Essentially, it is a check on the official's capability to continue leading his constituents for the same term in which he is originally elected. On the other hand, in a regular election, the voting public is given a slew of candidates to choose from, the purpose of which is not to administratively check an official already voted in, but rather, to purely express their sovereign mandate by deciding who will govern them for a new term of office. In this regard, **a recall election is therefore not the true expression of democratic will contemplated by the condonation doctrine**. In fact, as the Ombudsman expresses, the conduct of recall and regular elections is logistically different: as in this case, the recall is an isolated event which was conducted during a working day,[31] whereas a regular election is a traditionally expected and highly-anticipated event that is conducted on a non-working holiday, hence, allowing the voting public to fully participate.

Furthermore, to construe that recall may produce the same effects of a regular election in terms of condonation would practically allow the candidate, whose integrity to lead is being questioned, to benefit from his own questionable conduct or circumstance that subjected him to the recall process in the first place. Likewise, an official who is subjected to recall would actually be placed in a better position than one who is not because the former can be completely exonerated from any administrative liability by gaining enough votes to hurdle a recall challenge. In my opinion, the Court, even in the past, could not have intended this unfairness.

At this juncture, it must be reiterated that an important consideration underlying the condonation doctrine is the policy to afford the public official a full term to serve his constituents without being hounded "during his new term" with administrative cases for acts committed "during his previous term."[32] Clearly, this consideration does not apply in a recall election but only in a regular election where a winning candidate is given a full term of office. In contrast, **recall** is a mode of removal of elective local official by the people **before the end of one's term**.[33] The election happens **within a term**, and is conducted primarily to oust an incumbent; **there is no "prior term" to speak of** and the winning candidate therein serves only the unexpired portion of the present term. Hence, it **varies from the concept of re-election** as used in the context of the condonation doctrine. If anything, applying the condonation doctrine in a recall election only confers an unwarranted benefit to a local elective official whose original term of office should not have been even tainted by the recall process.

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30 While the petition for recall has to briefly indicate the "reasons and justifications" for the loss of confidence (see Section 70 of the Local Government Code), these do not necessarily relate to any administrative infraction subject to the discipline authority of the Ombudsman.

31 *Rollo* (G.R. No. 237579), p. 732.

32 See *Salalima v. Guingona, Jr.*, supra note 21.

33 See *Garcia v. Commission of Elections*, G.R. No. 111511, October 5, 1993, 227 SCRA 100 (1993).

IV.

Applying the foregoing discussion in this case, it is therefore my view that the successful bid of then City Mayor Lucilo R. Bayron (Lucilo) in the 2015 recall election did not constitute as a condonation of his previous administrative misconduct. He had **no right to rely on the condonation doctrine** because in no instance did the Court pronounce, in any of its previous decisions, that winning a recall election amounts to condonation. The version of condonation doctrine that existed in our legal system never encompassed a recall election and Lucilo had no right to rely upon such doctrine, or assume that such doctrine applies to him. Hence, without any reliance therefor, he cannot invoke condonation as a defense to escape administrative liability.

Having stated that condonation does not apply to Lucilo's case, his administrative liability must now be determined.

To recapitulate, Lucilo and his son, Karl Bayron (Karl), were charged before the Ombudsman for executing a Contract of Services[34] with this provision: "the *SECOND PARTY hereby attests that: a. He/she is not related within the fourth degree of consanguinity/affinity with the Hiring Authority.*"[35] In a Decision[36] dated November 18, 2016, the Ombudsman initially found Lucilo and Karl liable for Serious Dishonesty and Grave Misconduct, particularly for making an untruthful statement in the contract. Upon Lucilo and Karl's motion for reconsideration,[37] the Ombudsman issued **Joint Order[38] dated March 20, 2017 wherein the Ombudsman reduced their liability to Simple Dishonesty**.[39] However, in an Order[40] dated July 6, 2017, the Ombudsman overturned the latter ruling "insofar as it affects [Lucilo],"[41] explaining that it "had lost jurisdiction over the administrative case as against [L]ucilo upon the abandonment of his motion for reconsideration before the Ombudsman and the perfection on 2 February 2017 of his appeal with the Court of Appeals,"[42] both of which occurred before the issuance of the Joint Order. Thereafter, the Court of Appeals no longer ruled on Lucilo's administrative liability believing that the latter's victory during the 2015 recall elections amounted to condonation.

Petitioners Ombudsman and Aldrin Madreo (petitioners) now come before the Court praying to declare the condonation doctrine inapplicable to

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34 *Rollo* (G.R. No. 237579), pp. 141-142.
35 Id. at 141.
36 *Rollo* (G.R. No. 237330), pp. 32-42 and *rollo* (G.R. No. 237579), pp. 92-102.
37 Dated February 1, 2017. *Rollo* (G.R. No. 237579), pp. 188-203. See also *rollo* (G.R. No. 237330), p. 147 and *rollo* (G.R. No. 237579), p. 103.
38 *Rollo* (G.R. No. 237330), pp. 147-158 and *rollo* (G.R. No. 237579), pp. 103-114.
39 *Rollo* (G.R. No. 237330), p. 156 and *rollo* (G.R. No. 237579), p. 112.
40 *Rollo* (G.R. No. 237330), pp. 168-178 and *rollo* (G.R. No. 237579), pp. 115-125.
41 *Rollo* (G.R. No. 237330), p. 177 and *rollo* (G.R. No. 237579), p. 124.
42 *Rollo* (G.R. No. 237330), p. 173 and *rollo* (G.R. No. 237579), p. 120.

Lucilo and to reinstate the Ombudsman's *initial ruling* (pronouncing Serious Dishonesty and Grave Misconduct) with respect to Lucilo's liability.

As exhaustively discussed above, the condonation doctrine is not available to Lucilo as a defense. This notwithstanding, petitioners' prayer to reinstate the Ombudsman's initial ruling finding Lucilo liable for Serious Dishonesty and Grave Misconduct should still not be granted.

Dishonesty has been defined as the "disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."[43] Notably, in the Ombudsman's Joint Order wherein it lowered Lucilo's liability to **Simple Dishonesty**, it gave credence to Lucilo and Karl's explanations that: (*i*) there was no reason to conceal their relationship which was of common knowledge to the constituents of Puerto Princesa; (*ii*) the contract was prepared by the Office of the City Legal Officer on whom they relied in good faith to ensure that it did not bear any infirmity; and (*iii*) they signed the contract with the defective attestation only by sheer inadvertence. I echo the Ombudsman's finding therein that Lucilo should only be held liable for Simple Dishonesty, to wit:

> These explanations, to note, were likewise pleaded by respondent Lucilo in his previous pleadings. **The totality of these circumstances provides a basis to set aside the finding of Serious Dishonesty but does not totally absolve respondents Karl and Lucilo of administrative liability[,] considering that they, in fact, made a misrepresentation in the Contract of Service, for which they are found guilty only of Simple Dishonesty**.
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> [Moreover,] the prohibition on persons covered under the rules on nepotism from being hired under a contract of services has been abandoned and the submission of the contract to the [Civil Service Commission] is no longer required. Such repeal leaves no more ground on which the charge of [falsification] can rest. It likewise renders the administrative charge for Gross Misconduct with no more leg to stand on.[44] (Emphasis and underscoring supplied)

On this score, I agree with the Ombudsman that Lucilo should be found liable only for Simple Dishonesty, for which a penalty of suspension

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[43] Dishonesty covers a broad spectrum of conduct ranging from serious, less serious, to simple. Criteria has been set to determine the severity of the act. The act is considered one of simple dishonesty if when it is attended by the presence of any of the following circumstances: (1) the dishonest act did not cause damage or prejudice to the government; (2) The dishonest act had no direct relation to or does not involve the duties and responsibilities of the respondent; (3) in falsification of any official document, where the information falsified is not related to his/her employment; (4) the dishonest act did not result in any gain or benefit to the offender; and (5) other analogous circumstances. (See Civil Service Commission Resolution No. 06-0538 and *Committee on Security and Safety v. Dianco*, 760 Phil. 169, 188-190 [2015]).

[44] *Rollo* (G.R. No. 237330), pp. 69-72.

without pay for three (3) months may be imposed.[45] Considering, however, that based on Section 66 (b) of the Local Government Code,[46] the penalty of suspension can no longer be imposed on Lucilo beyond his term in office, he may be imposed the penalty of fine in lieu of suspension[47] in the amount equivalent to his basic salary for three (3) months. To note, said penalty does not carry with it the accessory penalty of perpetual disqualification from holding public office. Hence, Lucilo is still qualified to hold public office, which he did after he won in the 2016 regular elections.

V.

A final word. Cognizant of the deep-seated reasons for the condonation doctrine's abandonment, I cannot, in good conscience, support the proposed expansion of the same unconstitutional doctrine to once again weaken the public accountability standard under our present legal regime. To overextend the interpretation of a now-abandoned doctrine is to effectively create a specter of that dead doctrine to loom in the present. Verily, by unduly expanding the scope of the condonation doctrine in this case, the Court would once again be weakening the Ombudsman's disciplinary authority – which is the same institutional error that *Carpio Morales* already sought to address. Since the condonation doctrine is only being applied today because of previous public reliance at the time that it was still subsisting, the Court should not conjure something from the old doctrine which was never there.

The unfairness and impracticality borne from the public's previous reliance in this Court's decisions constitute the true essence behind condonation's prospective abandonment; hence, without any public reliance that condonation may be applied to a recall election, it is neither unfair nor impractical to deny condonation as a defense to those who have hurdled a recall challenge. Indeed, in the Ombudsman's own strident words, "all doubts in the prospective application of the condonation doctrine's abandonment must be construed in favor of public trust and accountability, which must prevail over the x x x elective official's privilege to seek employment in government or perform a public service."[48]

ACCORDINGLY, I vote to **PARTLY GRANT** the petitions. The condonation doctrine is not an available defense in Lucilo R. Bayron's case. Nevertheless, he should be held administratively liable only for Simple

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45 Rule 10, Section 46 (E) of the Revised Rules on Administrative Cases in the Civil Service (November 18, 2011) (RRACCS) states that: "Simple Dishonesty is punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense x x x."

46 The provision reads: "The penalty of suspension shall not exceed the unexpired term of the respondent or a period of six (6) months for every administrative offense, nor shall said penalty be a bar to the candidacy of the respondent so suspended as long as he meets the qualifications required for the office."

47 See RRACCS, Rule 10, Section 47.

48 Rollo (G.R. No. 237579), p. 38.

Dishonesty, which is meted with the appropriate penalty of fine equivalent to his basic salary for three (3) months.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice