



REPUBLIC OF THE PHILIPPINES  
**Sandiganbayan**  
Quezon City

**SIXTH DIVISION**

**PEOPLE OF THE PHILIPPINES,** **SB-14-CRM-0107**  
**Plaintiff,** For: Violation of Section 3(e)  
of R.A. 3019

- versus -

**VIRGILIO PONCIANO A. OCAYA**  
**Accused.**

*Present*

**FERNANDEZ, SJ, J.,**  
Chairperson  
**MIRANDA, J. and**  
**VIVERO, J.**

*Promulgated:*

March 18, 2022 *[Signature]*

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**DECISION**

**FERNANDEZ, SJ, J.**

Accused Virgilio Ponciano A. Ocaya is charged with *Violation of Sec. 3(e) of Republic Act No. 3019 (R.A. No. 3019)* for allegedly accepting additional employment and double compensation from the Presidential Commission on Good Government (PCGG) while he was concurrently serving as Deputy Administrator for Administration and Legal Affairs of the Metropolitan Waterworks and Sewerage System Regulatory Office (MWSS-RO) from September 2002 to June 30, 2003.

The accusatory portion of the Information reads:

That for the period from September 2002 to June 30, 2003 or sometime prior or subsequent thereto, in Mandaluyong City, Philippines and within the jurisdiction of this Honorable Court, the accused **VIRGILIO P. APDUJAN OCAYA**, a public officer, being then Deputy Administrator for Administration and Legal Affairs of the Regulatory Office-Metropolitan Waterworks and Sewerage System (MWSS), committing the offense while in the performance of his official functions through manifest partiality and/or evident bad faith, did then and there willfully, unlawfully and criminally accept

*[Handwritten signatures]*

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additional employment and double compensation from the Presidential Commission on Good Government as Legal Counsel while concurrently serving as MWSS Deputy Administrator of the MWSS, with accused receiving additional double compensation from the Government in the total amount of Php240,000.00, causing damage or injury to the Government in the said amount.

**CONTRARY TO LAW.**

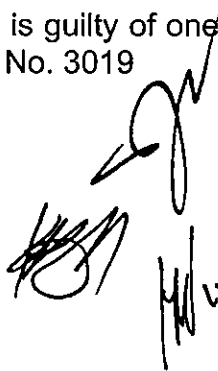
When arraigned, the accused entered his plea of "Not Guilty."<sup>1</sup>

During the pre-trial,<sup>2</sup> the parties stipulated as follows:<sup>3</sup>

1. Accused Virgilio P. Adujan Ocaya is the same person charged in this case;
2. At the time material to this case, the accused holds the position of Deputy Administrator for the Administration and Legal Affairs of the MWSS Regulatory Office starting from August 11, 2000 and for a term of five (5) years;
3. The existence and due execution of Exhibit F of the prosecution;
4. The existence and due execution of Exhibit G of the prosecution;
5. At the time material to this case, accused Ocaya's employment with the PCGG, while he was still employed with the MWSS RO, is not part of his primary functions as Deputy Administrator of MWSS RO.

The parties also agreed that the issue to be resolved is as follows:<sup>4</sup>

Whether the accused is guilty of one (1) count of violation of Section 3(e) of Republic Act No. 3019



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<sup>1</sup> Record, Vol. 1, pp. 438-439

<sup>2</sup> Pre-Trial Order dated May 2, 2018; Record, Vol. 2, pp. 233-241

<sup>3</sup> Pre-Trial Order dated May 2, 2018, p. 1; Record, Vol. 2, p. 233

<sup>4</sup> Pre-Trial Order dated May 2, 2018, p. 2; Record, Vol. 2, p. 234

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EVIDENCE FOR THE PROSECUTION

The prosecution presented as witnesses **Marita B. Villarica**,<sup>5</sup> **Virginia V. Octa**,<sup>6</sup> **Lourdes G. Navarro**,<sup>7</sup> **Ma. Cecilia C. Flores**,<sup>8</sup> **Ma. Nancy J. Uy**,<sup>9</sup> **Luzviminda R. Toren**,<sup>10</sup> **Jesus G. Salvador**,<sup>11</sup> **Elvira B. De Veyra**,<sup>12</sup> **Eduardo C. Santos**,<sup>13</sup> and **Atty. Emilio A. Asi, Jr.**<sup>14</sup>

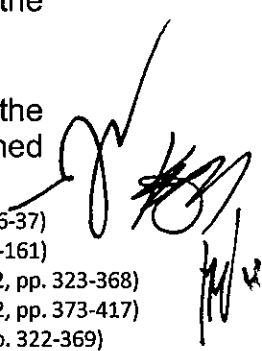
**Marita B. Villarica**, Chief of the Privatization Division of the Presidential Commission on Good Government (PCGG), was presented, and the parties stipulated as follows:<sup>15</sup>

- 1) She was the Officer-in-Charge (OIC) of the Human Resource Development Division (HRDD), under the Finance and Administrative Department (FAD) of the PCGG from October 2005 to September 2014;
- 2) Among her duties as OIC, HRDD was to act as overall custodian of 201 files of employees, including appointment papers, as well as payrolls and its supporting documents;
- 3) As such overall custodian and during her tenure as OIC, HRDD, she was authorized to issue certified true/xerox copies of documents in her custody, when requested by proper authorities or parties;
- 4) She can identify her judicial affidavit, her signature thereon and her signatures appearing in the attachments to her judicial affidavit which she certified as xerox or true copies.
- 5) She compared the certified xerox copy with the carbon copies of the documents in the custody of the PCGG.

In her Judicial Affidavit dated February 27, 2018, she identified Exhibits F, G, and N-4 to N-21. She further testified:

1. She did not prepare the engagement letters (Exhibits F and G). Neither did she witness the preparation and execution of the same.<sup>16</sup>
2. The originals of the said letters are not in the custody of the PCGG because the same were issued to the concerned

<sup>5</sup> TSN, July 24, 2018; *Judicial Affidavit of Marita B. Villarica* dated February 27, 2018 (Record, Vol. 2, pp. 6-37)  
<sup>6</sup> TSN, July 25, 2018; *Judicial Affidavit of Virginia V. Octa* dated February 28, 2018 (Record, Vol. 2, pp. 40-161)  
<sup>7</sup> TSN, September 11, 2018; *Judicial Affidavit of Lourdes G. Navarro* dated August 30, 2018 (Record, Vol. 2, pp. 323-368)  
<sup>8</sup> TSN, January 7, 2019; *Judicial Affidavit of Ma. Cecilia C. Flores* dated September 18, 2018 (Record, Vol. 2, pp. 373-417)  
<sup>9</sup> TSN, January 8, 2019; *Judicial Affidavit of Ma. Nancy J. Uy* dated December 11, 2018 (Record, Vol. 3, pp. 322-369)  
<sup>10</sup> TSN, January 9, 2019; *Judicial Affidavit of Luzviminda R. Toren* dated December 11, 2018 (Record, Vol. 3, pp. 322-369)  
<sup>11</sup> TSN, January 14, 2019; *Judicial Affidavit of Jesus G. Salvador* dated January 9, 2019 (Record, Vol. 4, pp. 15-254)  
<sup>12</sup> TSN, January 16, 2019; *Judicial Affidavit of Elvira B. De Veyra* dated January 8, 2019 (Record, Vol. 4, pp. 255-602)  
<sup>13</sup> TSNs, January 17, 2019 and January 22, 2019; *Complaint-Affidavit* dated October 13, 2003 (Record, Vol. 4, pp. 24-27)  
<sup>14</sup> TSN, January 31, 2019; *Judicial Affidavit of Atty. Emilio A. Asi, Jr.* dated January 15, 2019 (Record, Vol. 5, pp. 10-24)  
<sup>15</sup> Order dated July 24, 2018; Record, Vol. 2, p. 312  
<sup>16</sup> TSN, July 24, 2018, pp. 26-27



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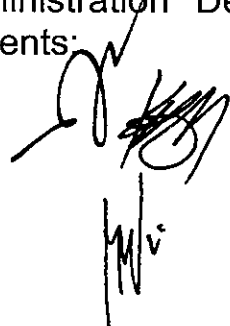
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- employees. They photocopied the letters before issuing the originals and retained the said photocopies and carbon copies.<sup>17</sup>
3. Exhibit F was copied from the original, which was given to Atty. Ocaya.<sup>18</sup>
  4. It is their office's practice to photocopy all the appointment papers before issuing the same. They release the original appointment to the concerned employee after the latter signs the conforme portion.<sup>19</sup>
  5. She did not participate in photocopying the said document.<sup>20</sup>
  6. The appointees do not sign the photocopy. They sign the original, and the signature is reproduced in the carbon copy.<sup>21</sup>
  7. She had no participation in the preparation of the payrolls (Exhibits N-4 to N-21). The same were prepared by her staff.<sup>22</sup>
  8. The HR Department photocopied the payrolls, and retained the said photocopies.<sup>23</sup>
  9. At the time the copies were made, she was designated as the OIC of HR.<sup>24</sup>
  10. The copies of the payrolls do not have signatures because they came from the file copies retained by the HR. The HR prepared four (4) copies of each payroll, and forwarded three (3) copies to Accounting.<sup>25</sup>
  11. They have to check with the Cashier to determine if the persons listed in the copies of the payroll actually received the amounts stated therein.<sup>26</sup>

In her Judicial Affidavit dated February 28, 2018, **Virginia V. Octa**, Department Manager-A, Administration Department of the MWSS, identified the following documents:



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<sup>17</sup> TSN, July 24, 2018, pp. 40-41  
<sup>18</sup> TSN, July 24, 2018, pp. 30-31  
<sup>19</sup> TSN, July 24, 2018, p. 48  
<sup>20</sup> TSN, July 24, 2018, pp. 32-33  
<sup>21</sup> TSN, July 24, 2018, p. 49  
<sup>22</sup> TSN, July 24, 2018, p. 33  
<sup>23</sup> TSN, July 24, 2018, p. 41  
<sup>24</sup> TSN, July 24, 2018, p. 42  
<sup>25</sup> TSN, July 24, 2018, p. 49  
<sup>26</sup> TSN, July 24, 2018, pp. 49-50

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1. The letter-instructions she issued (Exhibits M-1 to M-64), authorizing the bank to credit certain amounts to the payroll accounts of the employees;
2. Disbursement Voucher No. 2981 (Exhibit M-85); and,
3. Certified copies<sup>27</sup> of the payrolls covering the period January to June 2003 (Exhibits P-1 to P-32).

She further testified:

1. She has a Board Resolution that authorized her to sign the payrolls (Exhibits P-26 and P-27) on behalf of Mr. Ocaya, but she did not bring the said Board Resolution.<sup>28</sup>
2. She prepared the letters of instruction, and the same were approved by the authorized bank signatories, the Deputy Administrator, and the Chief Regulator.<sup>29</sup>
3. The documents she identified were photocopied from the documents on file in the Administration Department, Finance Unit of the MWSS-Regulatory Office.<sup>30</sup>

In her Judicial Affidavit dated August 30, 2018, **Lourdes G. Navarro**, Chief Accountant, Presidential Commission on Good Government (PCGG), identified Exhibits N-4 to N-32, and declared:

1. The process for releasing the initial salary of an employee is different from the process for releasing the succeeding salaries.<sup>31</sup>
2. The process for the release of the initial salary is as follows:<sup>32</sup>
  - a. The Human Resource Development Division (HRDD) computes the initial payment, prepares the personnel files, and endorses the documents to the Budget Division for availability of allotment.
  - b. The Budget Office prepares the Allotment and Obligation Slip (ALOPS) and forwards the documents to the Accounting Division for the preparation of the DV.

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<sup>27</sup> The originals were forwarded to the COA (*Judicial Affidavit of Virginia V. Octa* dated February 28, 2018, p. 21; Record, Vol. 2, p. 60)

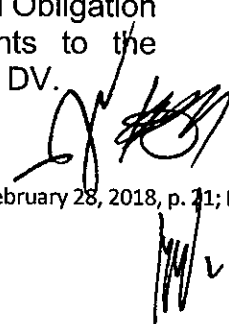
<sup>28</sup> TSN, July 25, 2018, p. 22

<sup>29</sup> TSN, July 25, 2018, p. 23

<sup>30</sup> TSN, July 25, 2018, pp. 30-31

<sup>31</sup> *Judicial Affidavit of Lourdes G. Navarro* dated August 30, 2018, p. 3 (Record, Vol. 2, p. 325)

<sup>32</sup> *Judicial Affidavit of Lourdes G. Navarro* dated August 30, 2018, pp. 3-4 (Record, Vol. 2, pp. 325-326)



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- c. The authorized official signs Box A of the DV, and the same, together with the attachments, is forwarded to the Accounting Division for pre-audit as to the supporting documents and availability of cash.
  - d. The Chief Accountant signs Box B of the DV.
  - e. The DV is forwarded to the Head of Agency for approval (Box C).
  - f. The approved DV and supporting documents are endorsed to the cashier's office for check preparation.
  - g. After the authorized signatories sign and counter-sign the check, the cashier's office releases the initial salary to the employee, who signs Box D of the DV.
3. For the succeeding salaries, the employee will already be included in the payroll prepared by the HRMO. The salaries are released to the employees in cash, and the employees affix their signatures in the payroll upon receipt of their salaries.<sup>33</sup>

She further testified:

1. She did not sign the disbursement voucher. It was her assistant who signed the same.<sup>34</sup>
2. She had no participation in the preparation of any of the supporting documents attached to the disbursement voucher.<sup>35</sup>
3. The documents in her custody are photocopies and duplicates. Her office does not have the originals of the said documents because the originals were submitted to the COA.<sup>36</sup>
4. The copies of the documents shown to her came from the COA, not from her office.<sup>37</sup>
5. She is not sure if her office has copies of all the documents shown to her.<sup>38</sup>

In her Judicial Affidavit dated September 18, 2018, **Ma. Cecilia C. Flores**, Supervising Administrative Officer of the Privatization Division of the PCGG, declared:

<sup>33</sup> Judicial Affidavit of Lourdes G. Navarro dated August 30, 2018, p. 4 (Record, Vol. 2, p. 326)

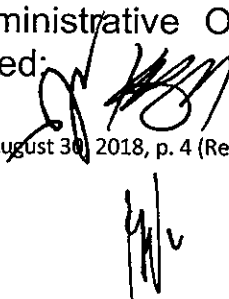
<sup>34</sup> TSN, September 11, 2018, p. 17

<sup>35</sup> TSN, September 11, 2018, p. 18

<sup>36</sup> TSN, September 11, 2018, pp. 20-22

<sup>37</sup> TSN, September 11, 2018, p. 22

<sup>38</sup> TSN, September 11, 2018, p. 22



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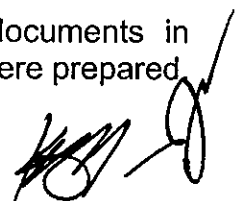
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1. Prior to her current position, she held the position of Human Resource Management Officer III (HRMO III) of the Human Resource Development Division (HRDD), under the Finance and Administration Department (FAD) of the PCGG from May 16, 1991 to March 20, 2005.<sup>39</sup>
2. Her duties as HRMO III include preparing the personnel hiring form and employment requirements that the employee will accomplish and submit, and preparing the initial salary.<sup>40</sup>
3. She prepared certain documents (Exhibits F, I, N-24 to N-31) in connection with the processing of Mr. Ocaya's initial salary.<sup>41</sup>
4. She signed some documents when Carmelita T. Sese, HRMO IV, was unavailable because she was the next in rank to the latter at the time.<sup>42</sup>
5. She made the computation of Mr. Ocaya's salary for the period September 2 to 30, 2002 (Exhibit N-25). The computation was based on Mr. Ocaya's monthly salary less his salary for one (1) day because he was appointed only on September 2, 2002, and was not able to complete the whole month.<sup>43</sup>
6. After the initial salary, Mr. Ocaya was paid on cash basis for his succeeding salaries because he was already included in the payroll (Exhibits N-4 to N-21).<sup>44</sup>

She further testified:

1. She did not prepare the payrolls (Exhibits N-4 to N-21). She merely checked them.<sup>45</sup>
2. She does not have the originals of the payrolls. They are with the COA. She has never seen the original documents with signatures.<sup>46</sup>
3. The last time she saw the originals of the documents in connection with the initial salary was when they were prepared.



<sup>39</sup> Judicial Affidavit of Ma. Cecilia C. Flores dated September 18, 2018, p. 3 (Record, Vol. 2, p. 374)

<sup>40</sup> Judicial Affidavit of Ma. Cecilia C. Flores dated September 18, 2018, p. 3 (Record, Vol. 2, p. 374)

<sup>41</sup> Judicial Affidavit of Ma. Cecilia C. Flores dated September 18, 2018, pp. 5-6 (Record, Vol. 2, pp. 377-378)

<sup>42</sup> Judicial Affidavit of Ma. Cecilia C. Flores dated September 18, 2018, pp. 6, 7 and 9 (Record, Vol. 2, pp. 378-379 and 381)

<sup>43</sup> Judicial Affidavit of Ma. Cecilia C. Flores dated September 18, 2018, p. 6 (Record, Vol. 2, p. 378)

<sup>44</sup> Judicial Affidavit of Ma. Cecilia C. Flores dated September 18, 2018, p. 8 (Record, Vol. 2, p. 380)

<sup>45</sup> TSN, January 7, 2019, p. 23

<sup>46</sup> TSN, January 7, 2019, pp. 23-24



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The documents were not returned to their office after they transmitted the same to Budget.<sup>47</sup>

4. She checked the payrolls by comparing the list of personnel with the alpha list for status, *i.e.*, permanent, contractual, casual, co-terminous.<sup>48</sup>
5. The "EE" in Exhibit 24 refers to the Expense Entitlement. It is a status that is unique to the PCGG. It is similar to the casual contractor status that they renew every three (3) or six (6) months.<sup>49</sup>
6. Under Expense Entitlement, there is no employer-employee relationship. It is not a plantilla position.<sup>50</sup>
7. In the payroll, there are no GSIS, PAG-IBIG and PhilHealth contributions. Only the tax was deducted.<sup>51</sup>
8. The employees listed in payrolls were not entitled to other benefits such as the 13<sup>th</sup> month pay. Instead of a time card, they submitted a certification of services rendered, signed by their supervisor.<sup>52</sup>
9. She knows that those who worked for the PCGG under expense entitlement were required to file their statements of assets and liabilities because she prepared the employment requirements for the newly hired personnel.<sup>53</sup>
10. Back then, there was no contract between an Expense Entitlement personnel and the PCGG. There was only a letter of engagement. At present, there is a more detailed contract.<sup>54</sup>

After the prosecution presented **Ma. Nancy J. Uy**, State Auditor IV/OIC-Supervising Auditor of COA-MWSS, the parties stipulated that she will testify as follows:<sup>55</sup>

- 1) She is the State Auditor IV/OIC-Supervising Auditor of COA-MWSS from November 2016 to present;
- 2) Among her duties as such State Auditor IV/OIC-Supervising Auditor was to act as the overall custodian of all records and documents under the safekeeping and custody of COA-MWSS;

<sup>47</sup> TSN, January 7, 2019, pp. 25-26

<sup>48</sup> TSN, January 7, 2019, p. 27

<sup>49</sup> TSN, January 7, 2019, pp. 27-28

<sup>50</sup> TSN, January 7, 2019, p. 29

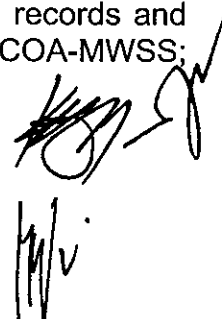
<sup>51</sup> TSN, January 7, 2019, pp. 29-30

<sup>52</sup> TSN, January 7, 2019, pp. 30-31

<sup>53</sup> TSN, January 7, 2019, p. 33

<sup>54</sup> TSN, January 7, 2019, p. 34

<sup>55</sup> Order dated January 8, 2019; Record, Vol. 4, pp. 9-A and 9-B





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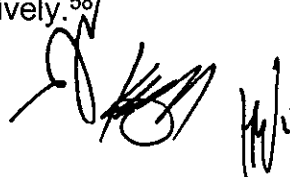
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- 3) As such overall custodian, she is authorized to certify/authenticate copies of such documents or cause its certification/authentication and issuance when requested by proper authorities or parties;
- 4) In connection with her duties and in connection with this case, she caused the issuance of certified true copies of payrolls of MWSS employees, including Virgilio P.A. Ocaya for the period January to June 2003, from the originals in her office' custody;
- 5) She can identify the foregoing payrolls for the period January to June 2003;
- 6) She can identify the signature of her subordinate, Administrative Assistant May Catherine Vergara, who certified the foregoing payrolls upon her instructions;
- 7) She can identify her Judicial Affidavit, her signature thereon as well as attachments thereto;
- 8) She has no personal knowledge of the truth or veracity of the contents of the documents attached to her judicial affidavit;
- 9) She was not the one who personally retrieved the supposed original documents from the records of COA-MWSS; and
- 10) The marked exhibits are faithful reproductions of the originals brought by the witness.

In her Judicial Affidavit dated January 3, 2019, she identified Exhibits M-85, and P-1 to P-32.

In her Judicial Affidavit dated December 11, 2018, **Luzviminda R. Toren**, retired employee, identified Exhibits F, I, and N-4 to N-31, and declared:

1. She held the position of Cashier III, Cash Unit, Budget Division of the PCGG from May 16, 1991 to February 2009.<sup>56</sup>
2. In 2002 and 2003, she signed the checks for the payment of the initial salary of employees after ensuring that the disbursement vouchers (DV) and the attached supporting documents are in order.<sup>57</sup>
3. For the succeeding salaries, she disbursed amounts to the employees after ensuring that the proper officers from the Human Resource Development Division (HRDD) and the Accounting Division certified as to the correctness of the payroll and the availability of funds, respectively.<sup>58</sup>



<sup>56</sup> Judicial Affidavit of Luzviminda R. Toren dated December 11, 2018, p. 3 (Record, Vol. 3, p. 324)

<sup>57</sup> Judicial Affidavit of Luzviminda R. Toren dated December 11, 2018, p. 3 (Record, Vol. 3, p. 324)

<sup>58</sup> Judicial Affidavit of Luzviminda R. Toren dated December 11, 2018, pp. 3-4 (Record, Vol. 3, pp. 324-325)

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4. An employee receives a check for the initial salary. Thereafter, the employee becomes part of the payroll and regularly receives salaries through pay envelopes.<sup>59</sup>
5. After the payment of the initial salary, Mr. Ocaya's succeeding salaries were paid through the release of pay envelopes.<sup>60</sup>
6. She knows that the signatures in the lines pertaining to Mr. Ocaya are his because he affixed his signature in their presence when their office released his salaries to him.<sup>61</sup>

She further testified:

1. She did not prepare the payrolls.<sup>62</sup>
2. The last time she saw the originals of the payrolls was before they were forwarded to the Accounting Department.<sup>63</sup>
3. She saw unsigned payrolls. The payrolls were returned to them after they were signed.<sup>64</sup>
4. The originals were not shown to her when she was interviewed for her Judicial Affidavit.<sup>65</sup>
5. The last time she saw the originals of the disbursement vouchers and supporting documents was at the time of the disbursement.<sup>66</sup>

The prosecution presented **Jesus G. Salvador**, Administrative Officer V, Central Records Division of the Office of the Ombudsman. The parties then stipulated as follows:<sup>67</sup>

1. Mr. Salvador executed a Judicial Affidavit in connection with the present case, which shall constitute as his direct testimony.
2. Mr. Salvador is presently employed as Administrative Officer V, Central Records Division (CRD), Office of the Ombudsman.
3. Among Mr. Salvador's important/duties and responsibilities as Administrative Officer V are:



<sup>59</sup> Judicial Affidavit of Luzviminda R. Toren dated December 11, 2018, p. 4 (Record, Vol. 3, p. 325)

<sup>60</sup> Judicial Affidavit of Luzviminda R. Toren dated December 11, 2018, p. 8 (Record, Vol. 3, p. 329)

<sup>61</sup> Judicial Affidavit of Luzviminda R. Toren dated December 11, 2018, pp. 10-11 (Record, Vol. 3, pp. 331-332)

<sup>62</sup> TSN, January 9, 2019, p. 31

<sup>63</sup> TSN, January 9, 2019, p. 31

<sup>64</sup> TSN, January 9, 2019, pp. 31-32

<sup>65</sup> TSN, January 9, 2019, p. 32

<sup>66</sup> TSN, January 9, 2019, p. 33

<sup>67</sup> Order dated January 14, 2019; Record, Vol. 4, pp. 605-606



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- a) to supervise the incoming communications, letters, and pleadings received by the front desk;
  - b) act as custodian of the active and archived files in criminal and administrative cases of the CRD;
  - c) certify documents on file with the CRD; and,
  - d) perform other duties as may be necessary or required.
4. In connection with Mr. Salvador's duties and in this case, he issued the certified true copies from the originals on file with the CRD of the following:
- a) Complaint-Affidavit dated October 13, 2003 of Eduardo C. Santos; and,
  - b) Counter-Affidavit dated June 3, 2004 of Virgilio P.A. Ocaya.
5. Mr. Salvador can identify the aforesaid Complaint-Affidavit, and Counter Affidavit.
6. Mr. Salvador can identify his Judicial Affidavit, his signature thereon, as well as the attachments thereto.
7. Mr. Salvador did not personally receive the Complaint (Exhibit Q) and the Counter Affidavit (Exhibit R) at the time of their filing.
8. Mr. Salvador has no personal knowledge as to the truth and veracity of the contents of the said Complaint, Counter Affidavit and the attachments thereto.
9. Mr. Salvador has no personal knowledge as to the authenticity of the signatures of the affiants.
10. Exhibits Q and R, which are the certified true copies of the Complaint and Counter Affidavit, are faithful reproductions of the originals thereof brought by the witness
11. All the attachments to the Complaint and Counter Affidavits are mere photocopies.

In his Judicial Affidavit dated January 9, 2019, he identified Exhibits Q and R.

The prosecution presented **Elvira B. De Veyra**, records custodian of the Commission on Audit-Presidential Commission on Good Government (COA-PCGG). However, before she could begin with her testimony, the parties agreed to stipulate as follows:<sup>68</sup>

1. Witness Elvira de Veyra executed a Judicial Affidavit dated January 8, 2019 in connection with the present case which shall constitute as her direct testimony;
2. She is the State Auditor IV/Audit Team Leader of the COA-PCGG from September 2016 to the present;



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<sup>68</sup> Order dated January 16, 2019, p. 1; Record, Vol. 5, p. 5-A

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3. Among her duties as State Auditor IV/Audit Team Leader, she was the over-all custodian of all records and documents under the safekeeping and custody of COA-PCGG;
4. As over-all custodian, she is authorized to certify/authenticate copies of such documents or cause their certification/authentication and issuance when requested by proper authorities or parties;
5. In connection with her duties and in this case, she caused the issuance of certified copies from the copies in her office's custody of the PCGG Expense Entitlement Payrolls for the period October 2002 to June 2003;
6. She can identify the foregoing payrolls which were previously marked as Exhs. ["N-4" to "N-21" and "N-22" to "N-32" and other documents related thereto;
7. She can identify the signatures of her subordinates, State Auditors Shirley Cabrera and Jared Guiang, who certified the foregoing audit issuances and documents related thereto upon her instruction; and
8. She can identify her Judicial Affidavit dated January 8, 2019, her signature therein, and the documents attached to the judicial affidavit which the Prosecution adopted as the direct testimony of the witness.

The parties likewise agreed on the following counter-stipulations posed by the defense:<sup>69</sup>

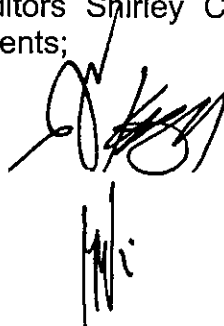
1. Witness Elvira de Veyra had no personal knowledge as to the truth and veracity of the documents that she identified in her judicial affidavit;
2. She did not personally retrieve the documents, more particularly the payrolls that were previously marked;
3. She did not personally prepare the copies of the said documents; and
4. She did not personally certify said documents.

Finally, the parties agreed on the following stipulations made by the prosecution:<sup>70</sup>

1. The original copies of the PCGG payrolls and other documents stated in the judicial affidavit were not found in the custody of the witness as records custodian;
2. The witness instructed State Auditors Shirley Cabrera and Jared Guiang to retrieve the documents;

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<sup>69</sup> Order dated January 16, 2019, p. 2; Record, Vol. 5, p. 5-B  
<sup>70</sup> *Ibid.*



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3. The witness personally checked the existence of the original copies of these documents in the records of the COA-PCGG; and
4. The witness found out that the original copies, specifically the payrolls of the PCGG, are not in the records of the COA-PCGG.

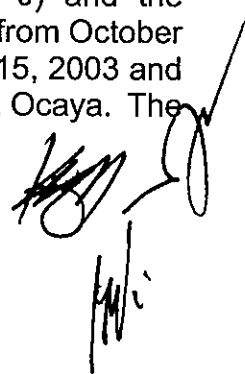
In her Judicial Affidavit dated January 8, 2019, she identified Exhibits N-4 to N-31.

The prosecution presented **Eduardo C. Santos**, Engineer, and the parties stipulated as follows:<sup>71</sup>

1. The witness can identify his Complaint-Affidavit and his signature thereon;
2. The witness can confirm and affirm the truthfulness and veracity of his statements in his Complaint-Affidavit;
3. The witness can identify the documents attached as Annex A to A-2 (Exhibits A and B) to the Complaint-Affidavit, and the document marked as Exhibit CCC; Exhibit B and CCC refer to the same document but Exhibit CCC, the MWSS appointment paper certified by the COA records custodian, came from a different source document;
4. The witness can identify the document marked as Exhibit S as well as his signature thereon;
5. The witness can identify the document marked as Exhibit C as a copy of the letter he received from PCGG Commissioner Avena;
6. The documents marked as Exhibits D and E are the letters received by the witness, when he was the Chief Regulator, from Atty. Nacion of COA, MWSS. The witness can identify the letters (Exhibits D and E), and their attachments (Exhibits F and G);
7. The documents marked as Exhibits F, G, H and H-1 are the documents received by the witness from COA-PCGG through COA Auditor, Atty. Emilio Asi, Jr.;
8. The witness can identify the timecard (Exhibit J) and the signatures of Atty. Ocaya thereon. The timecards from October 16 to 31, 2002, February 1 to 15, 2003, April 1 to 15, 2003 and May 1 to 15, 2003 do not bear the signature of Atty. Ocaya. The

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<sup>71</sup> Order dated January 17, 2019; Record, Vol. 5, pp. 7-A to 7-C



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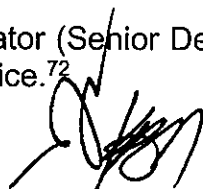
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witness secured the timecards from the MWSS Personnel Department;

9. Annex H-1 (Exhibit L) of the Complaint-Affidavit is the Certification requested and received by the witness from PNB-MWSS Branch;
10. The witness can identify Annexes G to G-9; (Annex G-2; Exhibits K and K-1; Annex G-3, Exhibits K-2 and K-3; Annex G-4: Exhibits K-4 and K-5) and, the signatures thereon. He secured the resolutions from the MWSS Administrative Department.
11. The witness can identify the bank transmittals (Exhibits F-1 to F-64), Disbursement Vouchers (Exhibit M-25) and payrolls (Exhibit T-1 to T-2) and the signatories thereon. He has the function and authority to approve the payrolls and bank remittances of MWSS-RO;
12. The witness can identify Annexes I and I-1 of the Complaint-Affidavit and the signatures thereon, except the signatures on the gasoline receipts. He secured Annexes I and I-1 from the MWSS Administrative Department;
13. The witness can identify Annex J (Exhibits M-65 and M-72); he secured the same from the Records Custodian of the MWSS Administrative Office;
14. He can identify the Entertainment Expense Payroll (Exhibit N-10 to N-21) as the documents he received from the PCGG; he can identify the signatures appearing thereon to be the signatures of accused Ocaya;
15. The witness can identify the documents attached as Annexes L to L-3, N and N-1 to the complaint-affidavit; he can identify the MWSS officials' signatures appearing thereon.
16. The witness can identify Annex M to M-2 and the signature appearing thereon.

In his Complaint-Affidavit (Exhibit Q) dated October 13, 2003, he declared:

1. He is the Chief Regulator (Senior Deputy Administrator) of the MWSS-Regulatory Office.<sup>72</sup>



<sup>72</sup> Complaint-Affidavit dated October 13, 2003, p. 1 (Record, Vol. 4, p. 24)



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2. Atty. Virgilio P.A. Ocaya was appointed Deputy Administrator for Admin. And Legal Affairs with a compensation of ₱278,388.00 per annum.<sup>73</sup>
3. After receiving information that Ocaya was employed with the Presidential Commission for Good Government (PCGG), they sent a letter to the PCGG on November 28, 2002 to verify the said information.<sup>74</sup>
4. In a letter, the PCGG, thru Commissioner Victoria A. Avena, replied: *"In view of the sensitive nature of the work in the Presidential Commission on Good Government ("PCGG"), we wish to know the MWSS-PCGG matter with respect to which the referenced inquiry is being posed."*<sup>75</sup>
5. On July 1, 2003, they received a letter from Atty. Janet Dublado-Nacion, State Auditor V, Office of the Auditor, MWSS, informing them that from September 2002 to June 30, 2003, the PCGG employed Ocaya as Legal Counsel on a full-time basis, with monthly remuneration of ₱24,000.00.<sup>76</sup>
6. Thereafter, they coordinated with the COA of the PCGG, and confirmed that Ocaya was appointed PCGG legal counsel during the said period.<sup>77</sup>
7. As Chief Regulator of the MWSS, he is fully aware that Ocaya is a regular employee of the MWSS-Regulatory Office.<sup>78</sup>
8. Ocaya's employment with the PCGG and the MWSS-Regulatory Office constitutes violations of Section 56, Chapter 7 of the Administrative Code, and Sections 7 and 8 of Article IX-B of the Constitution.<sup>79</sup>
9. Ocaya was not authorized by law or by the primary functions of his position to hold office or exercise the duties and functions of Legal Counsel of the PCGG.<sup>80</sup>
10. The total compensation in the amount of ₱240,000.00 that Ocaya received from the PCGG constitutes double or additional compensation.<sup>81</sup>

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<sup>73</sup> Complaint-Affidavit dated October 13, 2003, p. 1 (Record, Vol. 4, p. 24)

<sup>74</sup> Complaint-Affidavit dated October 13, 2003, p. 1 (Record, Vol. 4, p. 24)

<sup>75</sup> Complaint-Affidavit dated October 13, 2003, p. 1 (Record, Vol. 4, p. 24)

<sup>76</sup> Complaint-Affidavit dated October 13, 2003, p. 1 (Record, Vol. 4, p. 24)

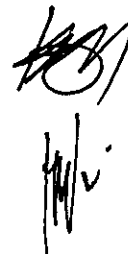
<sup>77</sup> Complaint-Affidavit dated October 13, 2003, p. 1 (Record, Vol. 4, p. 24)

<sup>78</sup> Complaint-Affidavit dated October 13, 2003, p. 2 (Record, Vol. 4, p. 25)

<sup>79</sup> Complaint-Affidavit dated October 13, 2003, p. 2 (Record, Vol. 4, p. 25)

<sup>80</sup> Complaint-Affidavit dated October 13, 2003, p. 3 (Record, Vol. 4, p. 26)

<sup>81</sup> Complaint-Affidavit dated October 13, 2003, p. 3 (Record, Vol. 4, p. 26)



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11. Ocaya was not able to perform his duties and functions in the MWSS-RO because of his full-time employment with the PCGG. Several memoranda were issued to him to remind him about the delays in his work.<sup>82</sup>
12. Ocaya also reneged on his obligation to liquidate various cash advances released to him in connection with his function as Deputy Administrator.<sup>83</sup>
13. Their office was damaged and prejudiced by Ocaya's unauthorized and illegal employment with the PCGG.<sup>84</sup>

He further testified:

1. After receiving Auditor Nacion's letter, they replied that neither he nor the board authorized Atty. Ocaya to be the Legal Counsel of the PCGG. They also attached the requested documents.<sup>85</sup>
2. He coordinated with the COA-PCGG by sending a letter and furnishing them copies of the time records, Ocaya's salaries and payments, and resolutions.<sup>86</sup>
3. Thereafter, the PCGG took action on Ocaya, and they filed a complaint against him.<sup>87</sup>
4. He is aware that the MWSS-Regulatory Office was created pursuant to Concession Agreements entered into by the said office with private concessionaires such as Maynilad and Manila Water.<sup>88</sup>
5. The accused was terminated from the MWSS-Regulatory Office in November 2001.<sup>89</sup>
6. He issued a certification stating that the accused did not receive salaries from the MWSS-Regulatory Office from September 1 to December 31, 2002.<sup>90</sup>
7. He did not respond to the PCGG Commissioner Avena's letter asking for the purpose of their inquiry.<sup>91</sup>

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<sup>82</sup> *Complaint-Affidavit* dated October 13, 2003, p. 3 (Record, Vol. 4, p. 26)

<sup>83</sup> *Complaint-Affidavit* dated October 13, 2003, p. 3 (Record, Vol. 4, p. 26)

<sup>84</sup> *Complaint-Affidavit* dated October 13, 2003, p. 3 (Record, Vol. 4, p. 26)

<sup>85</sup> TSN, January 17, 2019, p. 56

<sup>86</sup> TSN, January 17, 2019, pp. 58-60

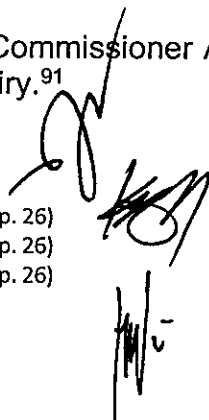
<sup>87</sup> TSN, January 17, 2019, p. 60

<sup>88</sup> TSN, January 17, 2019, p. 62

<sup>89</sup> TSN, January 17, 2019, p. 68

<sup>90</sup> TSN, January 17, 2019, pp. 69-70

<sup>91</sup> TSN, January 17, 2019, p. 72





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8. Between December 12, 2002 and July 1, 2003, he did not do anything in connection with Atty. Ocaya's alleged employment with the PCGG.<sup>92</sup>
9. He does not have proof that Mr. Ocaya received the memoranda (Annexes L to L-3 of Exhibit Q).<sup>93</sup>
10. His knowledge of Mr. Ocaya's employment with the PCGG was based on the documents attached to his Complaint-Affidavit. He did not confront Mr. Ocaya about the matter.<sup>94</sup>
11. His wife was employed by Manila Water.<sup>95</sup>
12. There might be occasions where Mr. Ocaya objected or dissented from his (Santos) votes in favor of Manila Water.<sup>96</sup>
13. The MWSS Board of Trustees terminated the services of then Deputy Administrator Ocaya. He was not a part of the said Board.<sup>97</sup>
14. After the termination of Mr. Ocaya's services, the Regional Trial Court issued a writ of preliminary injunction, ordering the MWSS-Regulatory Office to refrain from implementing the said termination. Consequently, Mr. Ocaya was reinstated to the office and he continued to receive his salaries.<sup>98</sup>
15. The grounds for the termination of Mr. Ocaya's services were loss of confidence and the double compensation issue.<sup>99</sup>
16. The Board of Trustees terminated Mr. Ocaya by issuing a resolution. The MWSS Board secured the conformance of the two (2) concessionaires.<sup>100</sup>
17. After Mr. Ocaya's reinstatement sometime after December 23, 2002, the MWSS Board of Trustees issued a resolution on September 23, 2003, terminating his services. Mr. Ocaya no longer filed a case against the MWSS for his reinstatement.<sup>101</sup>

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<sup>92</sup> TSN, January 17, 2019, p. 73

<sup>93</sup> TSN, January 17, 2019, pp. 75-76

<sup>94</sup> TSN, January 22, 2019, pp. 8-9

<sup>95</sup> TSN, January 22, 2019, pp. 13-15

<sup>96</sup> TSN, January 22, 2019, p. 16

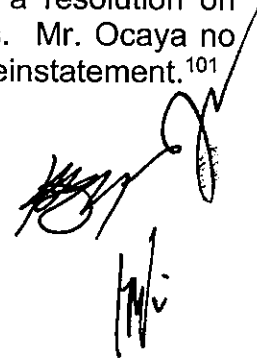
<sup>97</sup> TSN, January 22, 2019, p. 21

<sup>98</sup> TSN, January 22, 2019, pp. 23-25

<sup>99</sup> TSN, January 22, 2019, pp. 26-27

<sup>100</sup> TSN, January 22, 2019, pp. 31-32

<sup>101</sup> TSN, January 22, 2019, pp. 33-35

Handwritten signature and initials in black ink, located at the bottom right of the page. The signature is a cursive scribble, and the initials below it appear to be 'M/i'.

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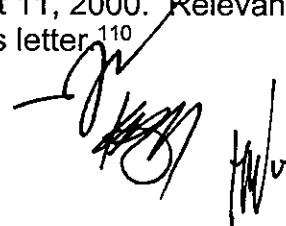
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18. Between the time Mr. Ocaya was terminated for the first time and the time he was reinstated, he did not receive his salaries.<sup>102</sup>
19. Although Mr. Ocaya was terminated, he continued to punch his card and sign in his daily time record.<sup>103</sup>

In his Judicial Affidavit dated January 15, 2019,<sup>104</sup> **Atty. Emilio A. Asi, Jr.**, Supervising Auditor of the Commission on Audit-Department of Health, identified Exhibit E-2, J-1 to J-9, M-1 to M-64, M-85, P-1 to P-32, ZZ, and CCC, and declared:

1. In 2003, he held the position of State Auditor IV/Audit Team Leader (SA IV/ATL) of COA-Presidential Commission on Good Government (COA-PCGG).<sup>105</sup>
2. He issued Audit Observation Memorandum (AOM) No. 2003-008.<sup>106</sup>
3. The AOM was issued on the basis of the investigation he conducted after the COA-PCGG learned that Atty. Ocaya was an active employee of the MWSS, and at the same time, was also engaged as PCGG Legal Counsel.<sup>107</sup>
4. He learned about the matter after he read the June 20, 2003 issue of *People's Journal*, which published MWSS-Regulatory Office Resolution No. 03-014-CA, series of 2003.<sup>108</sup>
5. After reading the said MWSS resolution, he sent a letter to the Chief Regulator, requesting information and the pertinent documents on Atty. Ocaya's employment with the MWSS.<sup>109</sup>
6. In response to his letter, Atty. Janet Dublado Nacion, the MWSS Corporate Auditor sent a letter informing him that Atty. Ocaya was appointed as MWSS Deputy Administrator for Administration and Legal Affairs on August 11, 2000. Relevant documents were attached to Atty. Nacion's letter.<sup>110</sup>



<sup>102</sup> TSN, January 22, 2019, p. 36

<sup>103</sup> TSN, January 22, 2019, p. 37

<sup>104</sup> Questions and Answers No. 5, 6 (pertaining to Exhibits AA and CC), 7, 10, 11, 17 and 18 (pertaining to Exhibits XX, VV and AAA), 21 to 24, and 27 to 28, were stricken off upon motion of the defense (Order dated January 31, 2019; Record, Vol. 5, p. 35-A)

<sup>105</sup> Judicial Affidavit of Atty. Emilio A. Asi, Jr. dated January 15, 2019, p. 4 (Record, Vol. 5, p. 13)

<sup>106</sup> Judicial Affidavit of Atty. Emilio A. Asi, Jr. dated January 15, 2019, p. 4 (Record, Vol. 5, p. 13)

<sup>107</sup> Judicial Affidavit of Atty. Emilio A. Asi, Jr. dated January 15, 2019, pp. 5-6 (Record, Vol. 5, pp. 14-15)

<sup>108</sup> Judicial Affidavit of Atty. Emilio A. Asi, Jr. dated January 15, 2019, p. 6 (Record, Vol. 5, p. 15)

<sup>109</sup> Judicial Affidavit of Atty. Emilio A. Asi, Jr. dated January 15, 2019, p. 6 (Record, Vol. 5, p. 15)

<sup>110</sup> Judicial Affidavit of Atty. Emilio A. Asi, Jr. dated January 15, 2019, p. 6 (Record, Vol. 5, p. 15)

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7. After reviewing the documents sent by the COA-MWSS, he issued AOM No. 2003-008, addressed to PCGG Chairperson Haydee Yorac, with the audit observation that Atty. Ocaya was engaged as PCGG Legal Counsel on a full-time basis on September 2, 2002 without authority from the MWSS-RO, where he was Deputy Administrator for Administration and Legal Affairs.<sup>111</sup>
8. PCGG Management, through Commissioner Vyva Victoria M. Aguirre sent a letter explaining that her office was not officially informed of Atty. Ocaya's full-time employment with the MWSS-RO. She attached her letter to Atty. Ocaya, requiring him (a) to explain the matter, and (b) to return what he received from the PCGG during the period he was also receiving compensation from the MWSS-RO.<sup>112</sup>

During cross-examination, he testified that he did not see Mr. Ocaya report at the MWSS-Regulatory Office, and that he did not look into the nature of the said office.<sup>113</sup>

In the Resolution dated April 26, 2019, the Court admitted into evidence the following exhibits offered by the prosecution:<sup>114</sup>

Exhibit	Document
A	Excerpts from the Minutes of the Fifteenth Regular Meeting of the MWSS Board of Trustees held on 10 August 2000
B	Appointment paper of Virgilio P.A. Ocaya as Deputy Administrator for Administration and Legal at the MWSS-Regulatory Office, signed on August 11, 2000
C	Letter dated December 12, 2002 of Commissioner Victoria A. Avena
D	Letter dated July 1, 2003 of Atty. Janet Dublado Nacion
E	Letter dated July 1, 2003 of Atty. Emilio A. Asi, Jr.
F	Letter dated September 3, 2002 advising Atty. Virgilio P.A. Ocaya of his engagement as PCGG Legal Counsel for the period September 2, 2002 to December 31, 2002
G	Undated letter advising Atty. Virgilio P.A. Ocaya of the extension of his engagement as PCGG Legal Counsel for the period January 1, 2003 to June 30, 2003
H-1	Personal Data Sheet of Ocaya Virgilio P. Adujan
I	Sworn Statements of Assets, Liabilities and Net Worth, Disclosure of Business Interests and Financial

<sup>111</sup> *Judicial Affidavit of Atty. Emilio A. Asi, Jr.* dated January 15, 2019, p. 8 (Record, Vol. 5, p. 17)

<sup>112</sup> *Judicial Affidavit of Atty. Emilio A. Asi, Jr.* dated January 15, 2019, p. 8 (Record, Vol. 5, p. 17)

<sup>113</sup> TSN, January 31, 2019, pp. 25-26

<sup>114</sup> Resolution dated April 26, 2019; Record, Vol. 6, pp. 349-350

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	Connections and Identification of Relatives in the Government Service dated September 20, 2002
J to J-9	Time Cards of Ocaya Virgilio P.A. covering the periods from September 1, 2002 to June 30, 2003
K	Resolution No. 03-012-CA Series of 2003 dated April 21, 2003
K-2	Resolution No. 03-013-CA Series of 2003 dated April 21, 2003
K-4	Resolution No. 03-014-CA Series of 2003 dated April 28, 2003
L	Certification dated October 1, 2003 from the Philippine National Bank MWSS Branch
M-1 to M-64	Letters requesting the bank to debit the MWSS-RO's account and to credit amounts to the accounts of the employees for the payment of salaries and allowances
M-65	Summary of Prepaid Callcards Issued to Atty. V. P. Ocaya from January to July 2003
M-66 to M-72	Acknowledgement Receipts of Prepaid Callcards Issued for the months January 2003 to July 2003
M-85 and submarkings	Disbursement Voucher No. 2981 and attachments
N-4 to N-21	PCGG Payrolls covering the periods from October 2002 to June 30, 2003
N-22	Land Bank of the Philippines Check No. 0000557979 dated October 23, 2002
N-23	Allotment and Obligation Slip (ALOBS) No. 02-10-A0078 dated October 10, 2002
N-24	Memorandum dated October 8, 2002
N-25	Computation of initial EE of Atty. Virgilio P.A. Ocaya
N-26	Certification issued by Carmelita T. Sese, HRMO-IV
N-27	Certification issued by Carmelita T. Sese, HRMO V
N-28	Personnel Hiring Form
N-29	Memorandum dated September 2, 2002 of Commissioner Victoria A. Avena
N-30	Certification dated September 30, 2002 issued by Victoria A. Avena
N-31	Work accomplishment report for the period September 3-30, 2002 of Ocaya, Virgilio Ponciano A.
N-32	Disbursement Voucher No. 2002-10-073 dated October 9, 2002
P	Summary of MWSS-RO Payrolls
P-1 to P-32	MWSS-RO Payrolls covering the periods from January 1, 2003 to June 30, 2003
Q and series	Complaint-Affidavit dated October 13, 2003 of Eduardo C. Santos (with annexes)
R	Counter-Affidavit dated June 3, 2004 of Virgilio P.A. Ocaya
S	Letter dated November 28, 2002 of Eduardo C. Santos

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HH	Certification dated July 13, 2004 issued by Eduardo C. Santos
CCC and submarkings	Appointment paper of Virgilio P.A. Ocaya as Deputy Administrator for Administration and Legal at the MWSS-Regulatory Office, signed on August 11, 2000 (COA-certified)

The Court noted the prosecution's tender of excluded documentary evidence in the same Resolution.

In the Resolution dated July 18, 2019,<sup>115</sup> the Court denied the accused's *Motion for Leave to File Demurrer to Evidence*,<sup>116</sup> and in the Resolution dated October 4, 2019,<sup>117</sup> it denied the accused's *Motion for Reconsideration*.<sup>118</sup> The accused then manifested that he will not file a Demurrer to Evidence without leave of court.<sup>119</sup>

### EVIDENCE FOR THE DEFENSE

The sole witness for the defense was accused **Virgilio Ponciano A. Ocaya**.<sup>120</sup> In his Judicial Affidavit dated October 3, 2019, he declared:

1. He was Deputy Administrator for Administration and Legal Affairs of the Regulatory Office from August 11, 2000 to November 2001, when he was wrongfully terminated.<sup>121</sup>
2. The MWSS Board of Trustees terminated him from the service on the ground of loss of trust and confidence. However, he believes that Eduardo C. Santos, then the Chief Regulator, Rex V. Tantiongco, and the members of the MWSS Board of Trustees, were determined to remove, persecute and harass him because he consistently opposed their attempts to increase the water tariffs in Metro Manila.<sup>122</sup>
3. After he was wrongfully terminated, he sought new work and filed a Complaint against Mr. Santos and his co-conspirators with the Regional Trial Court (RTC) in Quezon City. He prayed

<sup>115</sup> Record, Vol. 7, pp. 246-250

<sup>116</sup> Dated May 27, 2019; Record, Vol. 6, pp. 360-367

<sup>117</sup> Record, Vol. 7, pp. 340-344

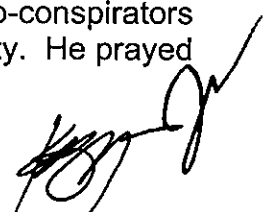
<sup>118</sup> Dated August 2, 2019; Record, Vol. 7, pp. 291-318

<sup>119</sup> Record, Vol. 7, pp. 350-352

<sup>120</sup> TSNs, October 23, 2019 and January 20, 2020; *Judicial Affidavit of Accused Virgilio Ponciano A. Ocaya* dated October 3, 2019 (Record, Vol. 7, pp. 360-535, and Vol. 8, pp. 4-135)

<sup>121</sup> *Judicial Affidavit of Accused Virgilio Ponciano A. Ocaya* dated October 3, 2019, p. 2 (Record, Vol. 7, p. 361)

<sup>122</sup> *Judicial Affidavit of Accused Virgilio Ponciano A. Ocaya* dated October 3, 2019, p. 2 (Record, Vol. 7, p. 361)



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for the issuance of a writ of preliminary injunction to enjoin the implementation of his termination from the Regulatory Office.<sup>123</sup>

4. He filed the injunction case to keep his position as Deputy Administrator, but he still sought employment elsewhere because he needed a source of income for his family's needs and the medical bills of his wife, who, at the time, was suffering from stage IV breast cancer.<sup>124</sup>
5. He found work in the PCGG, where he was appointed as Legal Counsel from September 2 to December 31, 2002.<sup>125</sup>
6. He was reinstated as Deputy Administrator sometime in January 2003 after the RTC issued the Writ of Preliminary Injunction (Exhibit 4) dated December 23, 2002, enjoining the implementation of his termination.<sup>126</sup>
7. Despite his reinstatement, he continued working with the PCGG because:<sup>127</sup>
  - a. He believed, in good faith, that his employment with the PCGG would not be a problem;
  - b. As he understood, his position in the Regulatory Office was not a public office;
  - c. He needed the money for his wife's medical bills;
  - d. The case before the RTC was still ongoing, and the RTC could still deny his prayer for a permanent injunctive writ; and,
  - e. He was uncertain of his tenure in the Regulatory Office, considering that his relationship with the MWSS Board of Trustees and Mr. Santos was already strained.
8. His basis for saying that his position as Deputy Administrator was not a public office is that the Regulatory Office was not created by law, but by virtue of the Concession Agreements dated February 21, 1997 (Exhibits 1 and 2), between the MWSS and Manila Water Company, Inc. (MWCI), and between the MWSS and Maynilad Water Services, Inc. (Maynilad). Furthermore, the Regulatory Office operates by using the concession fees paid by MWCI and Maynilad, which are not

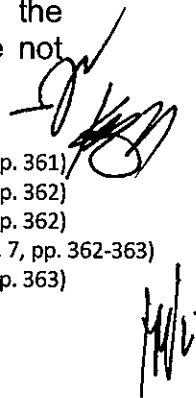
<sup>123</sup> Judicial Affidavit of Accused Virgilio Ponciano A. Ocaya dated October 3, 2019, p. 2 (Record, Vol. 7, p. 361)

<sup>124</sup> Judicial Affidavit of Accused Virgilio Ponciano A. Ocaya dated October 3, 2019, p. 3 (Record, Vol. 7, p. 362)

<sup>125</sup> Judicial Affidavit of Accused Virgilio Ponciano A. Ocaya dated October 3, 2019, p. 3 (Record, Vol. 7, p. 362)

<sup>126</sup> Judicial Affidavit of Accused Virgilio Ponciano A. Ocaya dated October 3, 2019, pp. 3-4 (Record, Vol. 7, pp. 362-363)

<sup>127</sup> Judicial Affidavit of Accused Virgilio Ponciano A. Ocaya dated October 3, 2019, p. 4 (Record, Vol. 7, p. 363)



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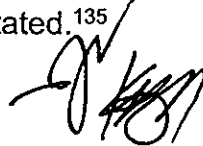
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public funds. Hence, the compensation he received from the Regulatory Office were not public funds.<sup>128</sup>

9. After he was reinstated, he stayed with the Regulatory Office only for, more or less, eight (8) months. The MWSS Board of Trustees, again, dismissed him on September 23, 2003 (Exhibit 3), on the ground of his purported violation of the prohibition against additional or double compensation.<sup>129</sup>
10. As in his first termination, his second termination was baseless, and was driven by their desire to remove him from the Regulatory Office. At the time of his termination on September 23, 2003, he was no longer working with the PCGG. They filed the present case against him to further persecute and harass him.<sup>130</sup>

He further testified:

1. The Administration Department and the Legal Department were under his office (Deputy Administrator).<sup>131</sup>
2. When he assumed his position as Deputy Administrator, he participated in meetings involving rate rebasing. He also signed papers regarding administration and legal affairs.<sup>132</sup>
3. As Deputy Administrator, he signed resolutions of the Regulatory Office, payrolls, legal opinions, and other papers endorsed to him in the regular course of business.<sup>133</sup>
4. In the legal opinions, he contested or disagreed with certain policies which, he thought, were contrary to good sense and good manners. The said legal opinions or memoranda were addressed to the Regulatory Board, of which he was one of the five (5) members.<sup>134</sup>
5. Before he was terminated, he received compensation for his services as Deputy Administrator. He stopped receiving his salaries when he was terminated, and started to receive them again after he was reinstated.<sup>135</sup>



<sup>128</sup> Judicial Affidavit of Accused Virgilio Ponciano A. Ocaya dated October 3, 2019, pp. 4-5 (Record, Vol. 7, pp. 363-364)

<sup>129</sup> Judicial Affidavit of Accused Virgilio Ponciano A. Ocaya dated October 3, 2019, p. 7 (Record, Vol. 7, p. 366)

<sup>130</sup> Judicial Affidavit of Accused Virgilio Ponciano A. Ocaya dated October 3, 2019, p. 8 (Record, Vol. 7, p. 367)

<sup>131</sup> TSN, October 23, 2019, pp. 21-23

<sup>132</sup> TSN, October 23, 2019, p. 27

<sup>133</sup> TSN, October 23, 2019, pp. 27-29

<sup>134</sup> TSN, October 23, 2019, p. 29

<sup>135</sup> TSN, October 23, 2019, pp. 32-33



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6. He was terminated by letter of the concessionaires, either co-signed or with the approval of the MWSS.<sup>136</sup>
7. Mr. Tantiongco and Mr. Santos connived because they saw him as a thorn on their side.<sup>137</sup>
8. At the time he filed the Complaint, Mr. Santos was Deputy Administrator for Technical Regulation. He was not the Chief Regulator at the time.<sup>138</sup>
9. He did not file a Complaint for illegal dismissal with the National Labor Relations Commission.<sup>139</sup>
10. He received compensation when he worked as legal counsel for the PCGG.<sup>140</sup>
11. When he was first appointed to the PCGG, he disclosed to PCGG Chairperson Haydee Yorac his employment with the MWSS and the Complaint that he filed.<sup>141</sup>
12. He no longer worked as legal counsel for the PCGG after June 30, 2003.<sup>142</sup>
13. For the second termination, he did not file a case because he was in a quandary as to how to raise funds to pay for his wife's chemotherapy and medicines, as well as for his family's house expenses.<sup>143</sup>
14. No PhilHealth or GSIS contributions were deducted from the compensation he received from the PCGG.<sup>144</sup>
15. He was assigned to the office of Commissioner Victoria Avena. He did not have mandated work hours.<sup>145</sup>
16. He filed the complaint for injunction with the Quezon City RTC instead of appealing the termination to the Office of the President or filing a complaint for illegal dismissal with the National Labor Relations Commission because two (2) concessionaires violated the terms of the Concession Agreement. Annex 1 of the said Concession Agreement

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<sup>136</sup> TSN, October 23, 2019, p. 34

<sup>137</sup> TSN, October 23, 2019, p. 36

<sup>138</sup> TSN, October 23, 2019, p. 37

<sup>139</sup> TSN, October 23, 2019, p. 38

<sup>140</sup> TSN, October 23, 2019, pp. 39-40

<sup>141</sup> TSN, October 23, 2019, p. 40

<sup>142</sup> TSN, October 23, 2019, p. 41

<sup>143</sup> TSN, October 23, 2019, pp. 46-47

<sup>144</sup> TSN, January 20, 2020, p. 5

<sup>145</sup> TSN, January 20, 2020, p. 5



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provides that members of the Regulatory Office can only be removed by the appeals panel.<sup>146</sup>

The testimony of **Renee Josephine Inting** was dispensed with after the parties stipulated as follows:<sup>147</sup>

1. Renee Josephine Inting is the Officer-In-Charge, Office of the Board Secretariat of MWSS effective July 1, 2019;
2. she has custody of the original Concession Agreements;
3. the certified true copies of said Concession Agreements marked as Exhibits "1" and "2" and sub-markings are faithful reproductions of the originals;
4. said Concession Agreements are public documents;
5. Renee Josephine Inting has no personal knowledge of the contents of the said Concession Agreements; and
6. With the counter-stipulation from Prosecutor Casares that the certified true copies brought by the witness are faithful reproductions of the originals as well as the marked exhibits.

The following exhibits offered by the defense were admitted in evidence:<sup>148</sup>

Exhibit	Document
1 <sup>149</sup> and 6 <sup>150</sup>	Concession Agreement dated February 21, 1997 between Metropolitan Waterworks and Sewerage System and Manila Water Company, Inc.
1-A and 6-A	Article 11.1
1-B and 6-B	Article 11.2
1-C and 6-C	Article 12.2
6-D	Exhibit A, 4 <sup>th</sup> paragraph, page A-1
2 <sup>151</sup> and 5 <sup>152</sup>	Concession Agreement dated February 21, 1997 between Metropolitan Waterworks and Sewerage System and Maynilad Water Services, Inc.
2-A and 5-A	Article 11.1
2-B and 5-B	Article 11.2
2-C and 5-C	Article 12.2
5-D	Exhibit A, 4 <sup>th</sup> paragraph, page A-1
3	Certification dated July 13, 2004 issued by Eduardo C. Santos, Chief Regulator
3-A	4 <sup>th</sup> paragraph

<sup>146</sup> TSN, January 20, 2020, p. 6

<sup>147</sup> Order dated November 13, 2019; Record, Vol. 8, p. 155

<sup>148</sup> Resolution dated March 2, 2020; Record, Vol. 8, p. 478-A

<sup>149</sup> Part of the records of the case

<sup>150</sup> Certified True Copy

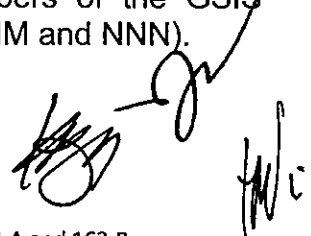
<sup>151</sup> Part of the records of the case

<sup>152</sup> Certified True Copy

REBUTTAL

On rebuttal, the prosecution presented **Atty. Claudine B. Orocio-Isorena**,<sup>154</sup> Deputy Administrator (DA) for Administration and Legal Affairs (ALA) of the Metropolitan Waterworks and Sewerage System-Regulatory Office (MWSS-RO). In her Judicial Affidavit dated March 10, 2020, she declared:

1. She has held her position from March 16, 2016 to the present.<sup>155</sup>
2. The MWSS-RO monitors the Concession Agreements executed between the MWSS and the water concessionaires, and regulates water and sewerage services.<sup>156</sup>
3. As DA for ALA, she is in charge of the Administration Department and the Legal Department of the MWSS-RO.<sup>157</sup>
4. The MWSS-RO is a public office.<sup>158</sup>
  - a. It is a government-owned and -controlled corporation (GOCC).
  - b. Its organizational structure is approved by the Department of Budget and Management (DBM), and, also by the Governance Commission for GOCCs (GCG) after the passage of R.A. No. 10149 (Exhibits CCC to CCC-7 [Rebuttal], DDD and EEE).
  - c. It is under the jurisdiction of the CSC (Exhibits FFF, GGG and HHH), and must comply with the CSC's programs and requirements (Exhibits III and JJJ).
  - d. Its employees are mandatory members of the GSIS (Exhibits KKK to KKK-11, LLL-11, MMM and NNN).



<sup>153</sup> Admitted in the Resolution dated August 24, 2020; Record, Vol. 9, pp. 163-A and 163-B

<sup>154</sup> TSN, January 12, 2021; *Judicial Affidavit of Atty. Claudine B. Orocio-Isorena* dated March 10, 2020 (Record, Vol. 8, pp. 479-509, and Vol. 9, pp. 4-91)

<sup>155</sup> *Judicial Affidavit of Atty. Claudine B. Orocio-Isorena* dated March 10, 2020, p. 3 (Record, Vol. 8, p. 481)

<sup>156</sup> *Judicial Affidavit of Atty. Claudine B. Orocio-Isorena* dated March 10, 2020, pp. 3-4 (Record, Vol. 8, pp. 481-482)

<sup>157</sup> *Judicial Affidavit of Atty. Claudine B. Orocio-Isorena* dated March 10, 2020, p. 4 (Record, Vol. 8, p. 482)

<sup>158</sup> *Judicial Affidavit of Atty. Claudine B. Orocio-Isorena* dated March 10, 2020, pp. 5-10 (Record, Vol. 8, pp. 483-488)

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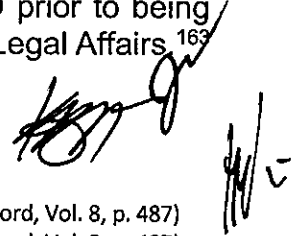
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- e. It is under the audit jurisdiction of the COA. As head of the Legal Department, she responds to the audit issuances of the COA auditor assigned to their office.
  - f. It is under the jurisdiction of the GCG, which monitors and evaluates the MWSS-RO's performance (Exhibits OOO, and PPP to PPP-4).
  - g. In cases filed against it, the MWSS-RO is represented by the OGCC, the statutory legal counsel of GOCCs. The Legal Department coordinates with the OGCC regarding cases involving the MWSS-RO.
  - h. Its annual budget is subject to the final approval of the DBM (Exhibits QQQ to QQQ-1, RRR to RRR-1, and SSS to SSS-1).
  - i. It is subject to the rules on government procurement (Exhibits TTT and TTT-1).
5. At the start of each year, the MWSS Corporate Office (MWSS-CO) bills the two (2) concessionaires for the payment of the Concession Fees. The MWSS-CO releases the amount to the MWSS-RO based on the MWSS-RO's Corporate Operating Budget (COB).<sup>159</sup>
6. The COB prepared by the MWSS-RO is submitted to the MWSS Board of Trustees. After the latter's approval, it is submitted to the DBM for final approval.<sup>160</sup>
7. The concessionaire fees are obligations of the water concessionaires to the MWSS in consideration of the grant of the concession under Art. 2.1 of the Concession Agreements.<sup>161</sup>
8. In the COBs, the item "Personal Services" refers to the budget for payment of salaries, allowances, and other employee benefits.<sup>162</sup>

She further testified:

- 1. She did not hold any position in the MWSS-RO prior to being the Deputy Administrator for Administration and Legal Affairs.<sup>163</sup>



<sup>159</sup> Judicial Affidavit of Atty. Claudine B. Orocio-Isorena dated March 10, 2020, p. 9 (Record, Vol. 8, p. 487)

<sup>160</sup> Judicial Affidavit of Atty. Claudine B. Orocio-Isorena dated March 10, 2020, p. 9 (Record, Vol. 8, p. 487)

<sup>161</sup> Judicial Affidavit of Atty. Claudine B. Orocio-Isorena dated March 10, 2020, p. 9 (Record, Vol. 8, p. 487)

<sup>162</sup> Judicial Affidavit of Atty. Claudine B. Orocio-Isorena dated March 10, 2020, p. 10 (Record, Vol. 8, p. 488)

<sup>163</sup> TSN, January 12, 2021, p. 21

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2. She does not personally know Atty. Virgilio Ocaya, but she is aware that he was Deputy Administrator for Administration and Legal Affairs sometime early in 2000. At the time, she was not yet an employee of the office.<sup>164</sup>
3. The documents attached to her Judicial Affidavit were retrieved under her supervision.<sup>165</sup>
4. She is not the custodian of the documents.<sup>166</sup>
5. The custodian of the particular document certified the document in her presence or under her supervision.<sup>167</sup>
6. The Organizational Structure (Exhibit CCC [Rebuttal]) is an interim OSSP.<sup>168</sup>
7. The position of Deputy Administrator for Administration and Legal Affairs is not in Exhibits FFF, GGG and HHH, but the said documents show the other positions in the office.<sup>169</sup>
8. The Performance Agreement (Exhibit OOO) is effective only from October 31, 2013 to December 2014 because there is an agreement executed almost every year.<sup>170</sup>
9. Under Republic Act 10149, all GOCCs are under the jurisdiction of the GCG, so they have to comply with the requirements. The Performance Agreement refers to the targets indicated, which are negotiated and agreed upon by the particular agency and the GCG.<sup>171</sup>
10. What is being monitored in the Performance Agreement is the performance of the GOCC—the MWSS-RO—not the performance of the concessionaires.<sup>172</sup>
11. Their funds come from the MWSS Corporate Office Board of Trustees, not from the concessionaires.<sup>173</sup>
12. The RO's funds are sourced from the concession fees paid for by the concessionaires, but the said fees are given to the Corporate Office.<sup>174</sup>

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<sup>164</sup> TSN, January 12, 2021, pp. 21-22

<sup>165</sup> TSN, January 12, 2021, p. 23

<sup>166</sup> TSN, January 12, 2021, p. 43

<sup>167</sup> TSN, January 12, 2021, p. 42

<sup>168</sup> TSN, January 12, 2021, p. 25

<sup>169</sup> TSN, January 12, 2021, pp. 30-32

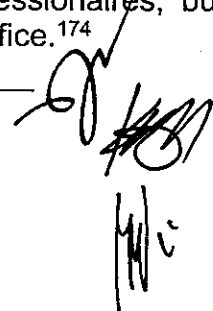
<sup>170</sup> TSN, January 12, 2021, pp. 34-35

<sup>171</sup> TSN, January 12, 2021, pp. 34-35

<sup>172</sup> TSN, January 12, 2021, pp. 35-36

<sup>173</sup> TSN, January 12, 2021, p. 37

<sup>174</sup> TSN, January 12, 2021, p. 46

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13. Their budget is sufficient. Sometimes, they generate savings, which are added to the next year's budget so they do not need to ask for as much concession fee allocation.<sup>175</sup>
14. She is unaware of any occasion where the budget was insufficient for their operational and other expenses.<sup>176</sup>
15. The concession fees are paid by the concessionaires to the MWSS Corporate Office. The RO asks for the operating budget from the Board of Trustees, not from the concessionaires.<sup>177</sup>
16. In Exhibit QQQ, "Personal Services" is a typo. It should be "personnel services," which pays for the salaries and other benefits of the talents or the employees of the office.<sup>178</sup>
17. The Regulatory Office itself does not have a charter, but it was created by virtue of R.A. 8041 or the National Water Crisis Act of 1995, which was implemented by Executive Orders No. 286 and No. 311, signed by then President Fidel V. Ramos. The foregoing led to the execution of the Concession Agreement.<sup>179</sup>
18. Under Article 12 of the Concession Agreement, disputes shall be settled by an arbitration panel in accordance with Arbitration Rules of the United Nations Commission and International Trade Law. The said provision covers only disputes relating to the Concession Agreement, and not to all disputes.<sup>180</sup>
19. For disputes not arising from the Concession Agreement, the rules that will govern will depend on the dispute.<sup>181</sup>
20. A person occupying her position can be held accountable by the Ombudsman and the Sandiganbayan.<sup>182</sup>
21. The position of Deputy Administrator for Administration and Legal Affairs has been in existence since 1997 and has not been removed.<sup>183</sup>
22. There was an amendment to the Concession Agreement, but none with respect to the Regulatory Office. There is no

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<sup>175</sup> TSN, January 12, 2021, pp. 46-47

<sup>176</sup> TSN, January 12, 2021, p. 47

<sup>177</sup> TSN, January 12, 2021, p. 37

<sup>178</sup> TSN, January 12, 2021, pp. 37-38

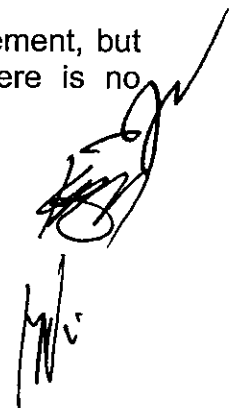
<sup>179</sup> TSN, January 12, 2021, p. 38

<sup>180</sup> TSN, January 12, 2021, p. 40

<sup>181</sup> TSN, January 12, 2021, p. 40

<sup>182</sup> TSN, January 12, 2021, p. 42

<sup>183</sup> TSN, January 12, 2021, p. 42

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supplement or addendum insofar as the said office is concerned.<sup>184</sup>

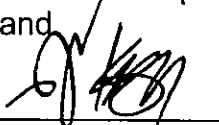
23. The Regulatory Office has been paying for the GSIS premiums of its employees since its inception.<sup>185</sup>

The prosecution presented **Aurora R. Dacanay**,<sup>186</sup> State Auditor IV, Audit Team Leader, Commission on Audit – Presidential Commission on Good Government. Before she testified, the parties stipulated as follows:<sup>187</sup>

- 1) She is State Auditor IV/Audit Team Leader, Commission on Audit – Presidential Commission on Good Government (COA-PCGG) from December 1, 2020 to present;
- 2) Among her duties as State Auditor IV/Audit Team Leader is to act as the over-all custodian of all records and documents under the safekeeping and custody of COA-PCGG;
- 3) She caused the preparation and issuance of certification/authentication when requested by proper authorities or parties;
- 4) She can identify the signatures of her subordinate, State Auditor Jimmy Joe V. Miranda, who certified the audit issuances and documents related thereto attached to her judicial affidavit upon her instruction;
- 5) She can identify her Judicial Affidavit dated January 6, 2021, her signature therein, as well as documents attached thereto; and
- 6) She can affirm and confirm the contents of her Judicial Affidavit, dated January 6, 2021.

The parties likewise agreed on the following counter-stipulations of the defense:<sup>188</sup>

- 1) The witness did not participate in the audit conducted by the COA which resulted in the issuance or acquisition of the said documents;
- 2) The witness has no personal knowledge as to the truth or veracity of the documents that she identified in her Judicial Affidavit dated January 6, 2021;
- 3) She did not personally retrieve the documents;
- 4) She did not personally prepare the copies of said documents; and



<sup>184</sup> TSN, January 12, 2021, p. 46

<sup>185</sup> TSN, January 12, 2021, pp. 47-48

<sup>186</sup> TSN, January 13, 2021; *Judicial Affidavit of Aurora R. Dacanay* dated January 6, 2021 (Record, Vol. 9, pp. 208-235)

<sup>187</sup> Order dated January 13, 2021, p. 1; Record, Vol. 9, p. 242-A

<sup>188</sup> *ibid.*



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- 5) She did not see the signatories personally sign the said documents.

The defense agreed to the following additional stipulations made by the prosecution:<sup>189</sup>

- 1) She instructed State Auditor Jimmy Joe V. Miranda to retrieve the said documents from the official records;
- 2) She personally checked the documents retrieved by State Auditor Miranda;
- 3) She instructed State Auditor Miranda to certify the documents by signing his signature on the documents;
- 4) She compared the source documents and the certified copies and found them to be faithful reproductions with the qualification from the Defense that if asked, the witness would be able to answer them;
- 5) The original copies of the documents that are certified photocopies were not found in the office records of the witness with the qualification from the Defense that if the witness is asked, that is the answer of the witness; and
- 6) The witness saw State Auditor Miranda sign the said certifications.

In her Judicial Affidavit dated January 6, 2021, she identified Exhibits T, U, V, W, X, Y, Z, AA, BB and TT.

The following exhibits offered by the prosecution on rebuttal were admitted in evidence:<sup>190</sup>

Exhibit	Document
T	Memorandum dated September 30, 2005
U	Commission on Audit Legal and Adjudication Office – National, Decision LAO-N-2005-300 dated September 13, 2005
V	Letter dated May 11, 2005 of Michael R. Bacani, Audit Team Leader
W	Motion for Reconsideration dated April 27, 2005 of PCGG Chairperson Haydee B. Yorac
X	Memorandum dated March 21, 2005
Y	11 <sup>th</sup> Indorsement dated March 2, 2005
Y-1	Routing Slip
Z	Notice of Disallowance (ND) No. 2005-008 dated March 2, 2005
AA	Audit Observation Memorandum (AOM) No. 2003-08 dated July 23, 2003

<sup>189</sup> Order dated January 13, 2021, p. 2; Record, Vol. 9, p. 242-B

<sup>190</sup> Resolution dated March 16, 2021; Record, Vol. 9, pp. 430-431

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BB	Memorandum dated July 31, 2003 of Commissioner Vyva Victoria M. Aguirre
TT	Memorandum dated July 30, 2003 of Commissioner Vyva Victoria M. Aguirre
ZZ	Writ of Preliminary Injunction in Civil Case No. Q-45468
CCC to CCC-7 (rebuttal)	DBM-Approved Interim Organization Structure For Period June 1, 1997 to May 31, 1998 with cover letter
DDD	Metropolitan Waterworks and Sewerage System Regulatory Office Organizational Structure As of December 2003
EEE	Metropolitan Waterworks and Sewerage System Regulatory Office Organizational Structure As of December 2020
FFF	Appointment Transmittal Form for 2002
GGG	Appointment Transmittal Form for 2003
HHH	Report on Appointments Issued (RAI) For the month of September 2019
III to III-3	CSC Resolution No. 1302048 dated September 9, 2013
JJJ	MWSS Regulatory Office Merit Selection Plan
KKK to KKK-11	Government Service Insurance System official receipts for 2002
LLL to LLL-11	Government Service Insurance System official receipts for 2003
MMM	Government Service Insurance System Official Receipt dated February 7, 2020
NNN	Government Service Insurance System eBilling and Collection System Summary of Totals Due Month – JAN, 2020
OOO	Performance Agreement dated October 31, 2013 between the Governance Commission for GOCCs (GCG) and Metropolitan Waterworks and Sewerage System – Regulatory Office (MWSS-RO)
PPP to PPP-4	Performance Scorecard for 2019
QQQ to QQQ-1	Corporate Operating Budget for Calendar Year 2002
RRR to RRR-1	Corporate Operating Budget for Calendar Year 2003
SSS to SSS-1	Corporate Operating Budget for Fiscal Year 2019
TTT	MWSS Regulatory Office Annual Procurement Plan for FY 2020
TTT-1	Metropolitan Waterworks and Sewerage System Board Resolution No. 2019-171-RO dated November 14, 2019



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The accused manifested that he will no longer present sur-rebuttal evidence.<sup>191</sup> The accused filed his *Memorandum*<sup>192</sup> on November 23, 2021, and the Court received the *Prosecution's Memorandum*<sup>193</sup> on December 1, 2021.

### THE FINDINGS OF FACTS

The facts are simple. Accused Virgilio Ponciano A. Ocaya was appointed as Deputy Administrator for Administration and Legal of the Metropolitan Waterworks and Sewerage System Regulatory Office (MWSS-RO) on August 11, 2000,<sup>194</sup> and was terminated from the said position on November 2, 2001.<sup>195</sup> Sometime thereafter, believing that he was wrongfully terminated, he filed a complaint with the Regional Trial Court (RTC), Branch 105 in Quezon City.<sup>196</sup> The case for injunction was docketed as Civil Case No. Q-45468.<sup>197</sup>

Needing a source of income for his family's daily needs and for the medical bills of his wife, who, at the time, was suffering from breast cancer, the accused sought employment elsewhere.<sup>198</sup> From September 2, 2002 to December 31, 2002, the accused was engaged as PCGG Legal Counsel at the Presidential Commission on Good Government (PCGG) on a full-time basis with monthly remuneration of ₱24,000.<sup>199</sup>

The RTC then issued the *Writ of Preliminary Injunction* dated December 23, 2002,<sup>200</sup> directing the defendants to refrain from implementing the letter of termination dated October 11, 2001. Consequently, the accused was reinstated to his position in the MWSS-RO sometime in January 2003.<sup>201</sup> Notwithstanding the said reinstatement, the accused's engagement as PCGG Legal Counsel

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<sup>191</sup> Order dated January 13, 2021; Record, Vol. 9, pp. 242-A and 242-B

<sup>192</sup> Dated November 22, 2021

<sup>193</sup> Dated October 26, 2021, filed by registered mail

<sup>194</sup> Exhibit B/CCC

<sup>195</sup> Exhibits HH/3

<sup>196</sup> *Judicial Affidavit of Accused Virgilio Ponciano A. Ocaya* dated October 3, 2019, p. 2 (Record, Vol. 7, p. 361)

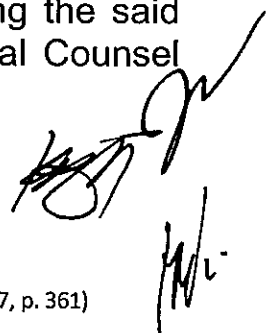
<sup>197</sup> Exhibits ZZ/4

<sup>198</sup> *Judicial Affidavit of Accused Virgilio Ponciano A. Ocaya* dated October 3, 2019, p. 3 (Record, Vol. 7, p. 362)

<sup>199</sup> Exhibit F

<sup>200</sup> Exhibits ZZ/4

<sup>201</sup> *Judicial Affidavit of Accused Virgilio Ponciano A. Ocaya* dated October 3, 2019, p. 4 (Record, Vol. 7, p. 363)



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was extended for the period January 1, 2003 to June 30, 2003.<sup>202</sup> During the said period, *i.e.*, January to June 2003, the accused received his salaries, allowances and other benefits from the MWSS-RO.<sup>203</sup> He also received his remuneration from the PCGG during the same period.<sup>204</sup>

The accused was, again, terminated from his position in the MWSS-RO on September 23, 2003, on the ground that he violated the constitutional prohibition against additional or double compensation.<sup>205</sup> Thereafter, on October 14, 2003, Eduardo C. Santos, then the Chief Regulator of the MWSS-RO, filed with the Office of the Ombudsman his *Complaint-Affidavit* dated October 13, 2003,<sup>206</sup> which led to the filing of the Information in the present case.

DISCUSSION

Sec. 3(e) of R.A. No. 3019 provides:

**Section 3. Corrupt practices of public officers.** – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

In *Leonardo v. People*,<sup>207</sup> it was held that the elements of the offense are as follows:

The elements of the offense are: (1) the accused must be a public officer discharging administrative, judicial or official functions; (2) he or she must have acted with manifest partiality, evident bad

<sup>202</sup> Exhibit G  
<sup>203</sup> Exhibits L, M-1 to M-72, M-85, and P-1 to P-32  
<sup>204</sup> Exhibits N-10 to N-21  
<sup>205</sup> Exhibits HH/3  
<sup>206</sup> Exhibit Q  
<sup>207</sup> G.R. No. 246451, February 3, 2021

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faith or inexcusable negligence; and (3) his or her action caused injury to any party, including the government, or giving any party unwarranted benefits, advantage or preference in the discharge of his or her official functions.

*First element*

There is no dispute as to the accused's position at the time material to the present case. He was Deputy Administrator for Administration and Legal Affairs of the MWSS-RO.<sup>208</sup> His appointment paper<sup>209</sup> shows that such position is appointive, and with permanent status. The accused, however, insists that he did not hold public office by virtue of the said position. According to him, the MWSS-RO was not created by law, but by the Concession Agreements between the MWSS and the concessionaires, *i.e.*, Manila Water Company Inc. (Manila water) and Maynilad Water Services, Inc. (Maynilad). Moreover, the MWSS-RO's funds came from the concession fees, and were therefore, not public funds.

The accused's contentions are without merit.

Sec. 2(b) of R.A. No. 3019 provides for the definition of "public officer." Paragraphs (a) and (b) of the said Section read:

**Sec. 2. Definition of terms.** – As used in this Act, the term –

(a) "Government" includes the national government, the local governments, the government-owned and government-controlled corporations, and all other instrumentalities or agencies of the Republic of the Philippines and their branches.

(b) "Public officer" includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government as defined in the preceding subparagraph.

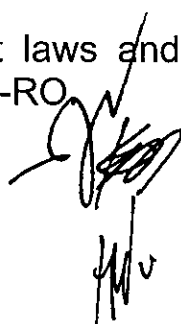
The MWSS-RO falls within the definition of "government" under Sec. 2(a) of R.A. No. 3019.

First, a discussion on the pertinent laws and issuances that eventually led to the creation of the MWSS-RO

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<sup>208</sup> Pre-Trial Order dated May 2, 2018, p. 1; Record, Vol. 2, p. 233

<sup>209</sup> Exhibits B/CCC



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The MWSS is a government corporation created in 1971, under Republic Act No. 6234 (R.A. No. 6234). Under the said law, the MWSS shall “own and/or have jurisdiction, supervision and control over all waterworks and sewerage system in the territory comprising the cities of Manila, Pasay, Quezon, Cavite and Caloocan, and the municipalities of Antipolo, Cainta, Las Piñas, Makati, Malabon, Mandaluyong, Marikina, Montalban, Navotas, Parañaque, Pasig, Pateros, San Juan, San Mateo, Taguig, Taytay, all of Rizal Province, the municipalities of Bacoor, Imus, Kawit, Noveleta, Rosario, all of Cavite province and Valenzuela, Bulacan.”<sup>210</sup>

More than two decades later, in 1995, Republic Act No. 8041 (R.A. No. 8041) was enacted, and authorized the President to “enter into negotiated contracts for the financing, construction, repair, rehabilitation, improvement and operation of water facilities and projects related to increasing water supply, its treatment and its distribution to industrial and household consumers,” and to reorganize the MWSS and the Local Waterworks and Utilities Administration (LWUA), including the privatization of any or all segments of the said agencies, their operations or facilities, if necessary, to make them more effective and innovative in addressing the looming water crisis.<sup>211</sup>

Pursuant to R.A. No. 8041, then President Fidel V. Ramos issued Executive Order (E.O.) No. 286 (1995), ordering the reorganization of the MWSS and the LWUA; and E.O. No. 311 (1996), ordering the MWSS to enter into arrangements that will result in the involvement or participation of the private sector in the segments, operations and/or facilities of the MWSS. Under E.O. No. 311, such participation includes franchising, concession, management, or other such arrangements.

On February 21, 1997, pursuant to R.A. No. 8041 and the said Executive Orders, the MWSS entered into separate Concession Agreements with Manila Water,<sup>212</sup> and with Maynilad.<sup>213</sup> Art. 11.1 of the Concession Agreements provided for the organization of the MWSS-RO, the functions of which include monitoring the awarded Concession Agreements, and reviewing and monitoring water supply and sewerage rates. Article 11.1 of Concession Agreements reads:


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<sup>210</sup> R.A. No. 6234. Sec. 2(c)

<sup>211</sup> R.A. No. 8041. Sections 6 and 7

<sup>212</sup> Exhibits 1 and 6

<sup>213</sup> Exhibits 2 and 5



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## ARTICLE 11. REGULATORY OFFICE

### 11.1 Organization

The MWSS Board of Trustees shall establish and fund a regulatory office (the "Regulatory Office") to be organized and operated in a manner consistent with the description contained in Exhibit A hereto, subject to such changes thereto that the MWSS Board of Trustees may make from time to time, and shall have the functions and powers described in that Exhibit. Decisions of the Regulatory Office requiring action by the MWSS Board of Trustees, including decisions affecting the level of Standard Rates, shall promptly be submitted to the Board in accordance with Section 7.1 hereof.

(emphasis and underscoring supplied)

Item 1 of the "Exhibit A" mentioned in Article 11.1 reads:

### Organization and Operation of the Regulatory Office

#### 1. General

The Regulatory Office shall be established under the jurisdiction of the MWSS Board of Directors, pursuant to Section 4(c) of the MWSS Charter and in accordance with other applicable laws and regulations, not less than 30 days after the Commencement Date. No change will be made to the MWSS Charter in connection with the establishment of the Regulatory Office. Rather, the powers and responsibilities of the Regulatory Office shall be as set out in the Concessionaire Agreement, including this Exhibit A.

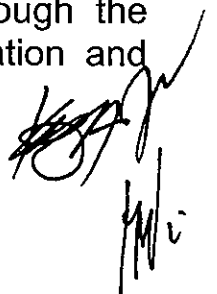
(underscoring supplied)

From a cursory reading of the aforementioned portions of the Concession Agreements, it is immediately apparent that although the Concession Agreements indeed provide for the organization of the MWSS-RO, the said office was not created by the Concession Agreements, but pursuant to the MWSS Board of Trustees' power to organize and reorganize the MWSS, as provided in the MWSS Charter.

In *Secretary of the Department of Transportation and Communications (DOTC) v. Mabalot*,<sup>214</sup> the Supreme Court was called upon to resolve the issue of whether the President, through the Secretary of the DOTC, may issue an order for the creation and

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<sup>214</sup> G.R. No. 138200, February 26, 2002



x-----x

establishment of the Land Transportation Franchising Regulatory Board – Cordillera Administrative Region (LTFRB-CAR) Regional Office. Ruling in the affirmative, the Supreme Court explained that there are three modes by which a public office may be created, *i.e.*, (1) by the Constitution, (2) by law, or (3) by authority of law. The creation and establishment of the LTFRB-CAR Regional Office was made pursuant to the third mode. *Viz.:*

At this point, it is *apropos* to reiterate the elementary rule in administrative law and the law on public officers that a public office may be created through any of the following modes, to wit, either (1) *by the Constitution (fundamental law)*, (2) *by law (statute duly enacted by Congress)*, or (3) *by authority of law*.

Verily, Congress can delegate the power to create positions. This has been settled by decisions of the Court upholding the validity of reorganization statutes authorizing the President to create, abolish or merge offices in the executive department. Thus, at various times, Congress has vested power in the President to reorganize executive agencies and redistribute functions, and particular transfers under such statutes have been held to be within the authority of the President.

(underscoring supplied)

Similar to the LTFRB-CAR Regional Office, the MWSS-RO was created by authority of law. The pertinent provisions of R.A. No. 6234, as amended by Presidential Decree No. 425 (1974), read:

**Sec. 2. Creation, Name, Domicile and Jurisdiction.**

x x x

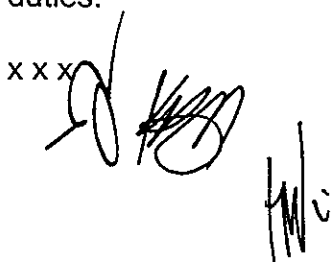
(b) The domicile and principal place of business of the System shall be in the City of Manila. The System shall have such branches and agencies as may be necessary for the proper conduct of its affairs.

x x x

**Sec. 4. The Board of Trustees; Composition, Qualifications; Tenure; Power and Duties. – x x x**

The Board, moreover, shall have the following specific powers and duties:

x x x

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X-----X

(c) Subject to the provisions of existing laws and regulations, and upon the recommendations of the General Manger, or motu proprio, to organize, reorganize in a manner other than what is provided for under this Act and Section 3 of Republic Act No. 4177, and determine the System's staffing pattern and the number of personnel, to fix their salaries including other emoluments, and to define their power and duties. WAPCO rules and regulations shall not apply to the System; however, for the above purpose, the Board shall take into consideration similar staffing patterns and salary ranges obtaining in other government corporations of the same category as the System;

(underscoring supplied)

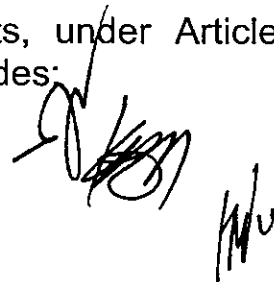
The aforequoted provisions show that the MWSS-RO was created by authority of law, and is a part, or an agency, of the MWSS. In R.A. No. 6234, the Congress delegated to the MWSS—which acts through its Board of Trustees—the power to create branches and agencies necessary for the conduct of its affairs. Thereafter, then President Ferdinand E. Marcos, exercising legislative powers, issued Presidential Decree No. 425, which expressly authorized the MWSS Board of Trustees to create positions in the MWSS. Notably, Exhibit A of the Concession Agreements cited Sec. 4(c) of the MWSS Charter as the legal basis for the establishment of the MWSS-RO.

Next, verily, the source of MWSS-RO's funds will not change its nature as an agency of a government corporation. The Court, nonetheless, finds it necessary to discuss the nature of MWSS-RO's funds. Art. 11.2 of the Concession Agreements provides for the funding of the MWSS-RO. *Viz.:*

11.2 Funding

Not later than 10 days after the Commencement Date, MWSS shall allocate from the Concession Fees received from the Concessionaire and the Other Operator the amount of 100 million Pesos which shall constitute the budget of the Regulatory Office for the year 1997. Not later than January 10 of each subsequent year, MWSS shall allocate from the Concession Fees paid in that year by the Concessionaire and the Other Operator the annual budget for the Regulatory Office and MWSS for that year; provided that such annual budget shall not for any year exceed 200 million Pesos, subject to annual CPI adjustments, 100 million Pesos of which, as so adjusted, shall be allocated by MWSS for the Regulatory Office.

6.4 of the Concession Agreements, under Article 6 (Other Obligations of the Concessionaires), provides:



X-----X

6.4 Concession Fee

By January 15 of each calendar year, MWSS shall provide the Concessionaire with a schedule of all anticipated amounts due in connection with the Concession Fee payable during that year, as described in (a) and (b) below:

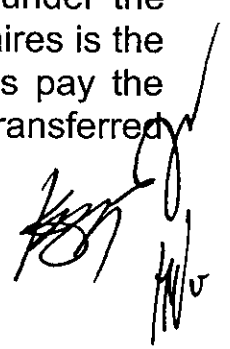
(a) Not later than 14 days prior to the date on which any scheduled payment of principal, interest, fees or other amount is due under an MWSS Loan, MWSS shall notify the Concessionaire in writing of the total amount due on that payment date and of the Peso equivalent thereof (the "Peso Equivalent") calculated at the then prevailing exchange rate. Not later than one business day prior to each such payment date, the Concessionaire shall remit to such account as MWSS shall instruct an amount, in Pesos, exclusive of any penalties or default interest charges not attributable to a late payment of the Concession Fee by the Concessionaire (each such payment being referred to herein as a "Concession Fee"), equal to the sum of:

x x x

(b) Not later than five days after the Commencement Date, the Concessionaire shall pay to MWSS the amount of 50 million Pesos, which MWSS shall use and allocate in accordance with Section 11.2 for the establishment and budget of the Regulatory Office during 1997. In addition, the Concessionaire shall pay to MWSS on the first business day of January of each year thereafter an amount equal to one-half of the annual budget for MWSS for that year, provided that such annual budget shall not for any year exceed 200 million Pesos, subject to annual CPI adjustments. MWSS may request adjustments to the level of the annual contribution of the Concessionaire provided in this Section 6.4(b). If the Concessionaire objects to any such requested revision, it may refer the matter to the Appeals Panel.

To be sure, the budget of the MWSS-RO is allocated from the concession fees paid by the concessionaires to the MWSS. However, this does not mean that the MWSS-RO's funds are not public funds. As consideration for the grant of the concession, which allows the concessionaire to perform certain functions and to act as an agent of the MWSS for the exercise of certain rights and powers under the MWSS Charter,<sup>215</sup> one of the obligations of the concessionaires is the payment of the concession fee. After the concessionaires pay the concession fee to the MWSS, the ownership of the funds is transferred

<sup>215</sup> Article 2.1 of the Concession Agreements





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to the latter. It bears stressing that the funds of a GOCC are public funds.<sup>216</sup> Thus, salaries received by the accused from the MWSS-RO were, without doubt, public funds.

It is clear that at the time material to the present case, the accused, as Deputy Administrator for Administration and Legal Affairs of the MWSS-RO, was a public officer, as defined in Sec. 2(b) of R.A. No. 3019. He was an appointive official, and he received compensation from the government, which includes GOCCs. The next question is whether he was discharging administrative, judicial or official functions. The Court, again, rules in the affirmative.

In *Consigna v. People*,<sup>217</sup> the Supreme Court interpreted the phrase “discharging administrative, judicial or official functions” as “committing the offense in relation to the office.”<sup>218</sup> The pertinent portion of the Supreme Court’s Decision reads:

There is no doubt that petitioner, being a municipal treasurer, was a public officer discharging official functions when she misused such position to be able to take out a loan from Moleta, who was misled into the belief that petitioner, as municipal treasurer, was acting on behalf of the municipality.

In *Montilla v. Hilario*, this Court described the “offense committed in relation to the office” as:

[T]he relation between the crime and office contemplated by the Constitution is, in our opinion, direct and not accidental. To fall into the intent of the Constitution, the relation has to be such that, in the legal sense, the offense cannot exist without the office. In other words, the office must be a constituent element of the crime as defined in the statute, such as, for instance, the crimes defined and punished in Chapter Two to Six, Title Seven, of the Revised Penal Code.

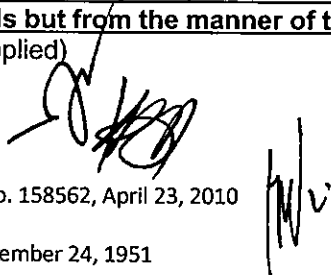
Public office is not of the essence of murder. The taking of human life is either murder or homicide whether done by a private citizen or public servant, and the penalty is the same except when the perpetrator, being a public functionary took advantage of his office, as alleged in this case, in which event the penalty is increased.

But the use or abuse of office does not adhere to the crime as an element; and even as an aggravating circumstance, **its materiality arises not from the allegations but on the proof, not from the fact that the criminals are public officials but from the manner of the commission of the crime.** (Emphasis supplied)

<sup>216</sup> Please see *Yap v. Commission on Audit*, G.R. No. 158562, April 23, 2010

<sup>217</sup> G.R. No. 175750-51, April 2, 2014

<sup>218</sup> Citing *Montilla v. Hilario*, G.R. No. L-4922, September 24, 1951



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Here, the Information alleges that the accused accepted additional employment and double compensation from the PCGG while concurrently serving as Deputy Administrator for Administration and Legal Affairs of the MWSS-RO. The act he is charged with was committed in relation to his office, considering the prohibition against dual employment and double compensation. Had the accused not held his position in the MWSS-RO, there would have been no prohibited dual employment or double compensation if he, at the same time, accepted employment and compensation from another government agency, and there would be no offense, as charged, to speak of.

In fine, the first element of *Violation of Sec. 3(e) of R.A. No. 3019* is present.

*Second element*

In *Uriarte v. People*,<sup>219</sup> the Supreme Court discussed the three modes by which *Violation of Sec. 3(e) of R.A. No. 3019* may be committed. To wit:

Section 3(e) of R.A. 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa* as when the accused committed gross inexcusable negligence. There is “**manifest partiality**” when there is a clear, notorious or plain inclination or predilection to favor one side or person rather than another. “**Evident bad faith**” connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. “**Gross inexcusable negligence**” refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.

The accused is charged with accepting additional employment and double compensation from the PCGG from September 2002 to June 30, 2003. The prosecution proved beyond reasonable doubt that the accused was employed by, and received compensation from, the PCGG during the said period. However, there was no additional employment and double compensation when the accused was

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<sup>219</sup> G.R. No. 169251, December 20, 2006

x-----x

employed with the PCGG from September to December 2002 because he had been terminated from the MWSS-RO on November 2, 2001, and was not reinstated to his position therein until sometime in January 2003. There was additional employment and double compensation only after he was reinstated to, and he reassumed, his position in the MWSS-RO in January 2003, and at the same time, he was employed with the PCGG from January to June 30, 2003.

The prohibition against additional employment and double compensation is embodied in Sec. 7, Art. IX-B of the Constitution, which reads:

**Section 7.** No elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure.

Unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries.

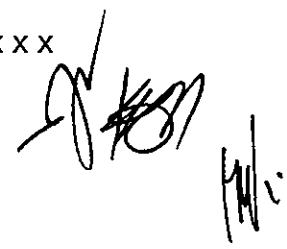
(underscoring supplied)

Furthermore, the pertinent provisions of Book V, Title I, Subtitle A, Chapter 8 of Executive Order No. 292, or the Administrative Code of 1987, read:

**Sec. 54. Limitation on Appointment.** – (1) No elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure.

(2) No candidate who has lost in any election shall, within one year after election, be appointed to any office in the Government or any government-owned or controlled corporations or in any of its subsidiaries.

(3) Unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries.

x x x  


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**Sec. 56. Additional or Double Compensation.** – No elective or appointive public officer or employees shall receive additional or double compensation unless specifically authorized by law nor accept without the consent of the President, any present, emolument, office, or title of any kind from any foreign state.

Pensions and gratuities shall not be considered as additional, double or indirect compensation.

(underscoring supplied)

As previously discussed, the accused, as Deputy Administrator for Administration and Legal Affairs, was an appointive official of the MWSS-RO. He has neither cited any law that allows, nor shown that his primary office allows,<sup>220</sup> his employment as Legal Counsel of the PCGG. Likewise, he has not cited any law specifically authorizing him to receive compensation from the PCGG.

It is undisputed that from January to June 30, 2003, the accused accepted employment with the PCGG when he held his position in the MWSS-RO. The accused even admits the same, but claims that he accepted employment with the PCGG, believing in good faith, that his position in the MWSS-RO was not a public office, and that he did not receive public funds.<sup>221</sup> This Court is not convinced.

In *Philippine National Bank v. De Jesus*,<sup>222</sup> the Supreme Court discussed the nature of good faith, thus:

Good faith, here understood, is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage. An individual's personal good faith is a concept of his own mind and, therefore, may not conclusively be determined by his protestations alone. It implies honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry. The essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim, and absence of intention to overreach another. x x x

(underscoring supplied)

<sup>220</sup> During the pre-trial, the parties stipulated that the accused's employment with the PCGG was not part of his primary functions as Deputy Administrator of the MWSS-RO. (Pre-Trial Order dated May 2, 2018, p. 1; Record, Vol. 2, p. 233)

<sup>221</sup> *Judicial Affidavit of Accused Virgilio Ponciano A. Ocaya* dated October 3, 2019, p. 4 (Record, Vol. 7, p. 363)

<sup>222</sup> G.R. No. 149295, September 23, 2003

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Here, the accused could not have been unaware that he held public office in the MWSS-RO. In his appointment paper,<sup>223</sup> Virginia V. Octa, Personnel Officer/HRMO, certified that all requirements and supporting papers pursuant to MC# 40 s. 1998<sup>224</sup> have been complied with, reviewed and found to be in order. Under the said memorandum circular, one of the requirements for regular appointments is the Personal Data Sheet. The pertinent provision of the said memorandum circular reads:

**Rule III  
COMMON REQUIREMENTS FOR REGULAR APPOINTMENTS**

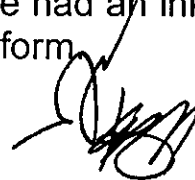
**Sec. 1.** Appointments submitted to the CSC office concerned should meet the requirements listed hereunder. Non-compliance with such requirements shall be ground for disapproval of said appointments.

X X X

- i. **Personal Data Sheet.** The appointee's Personal Data Sheet (CS Form 212, Revised, 1998) which should be properly and completely accomplished by the appointee, shall be attached to the appointment. For reappointment of substitute teachers and renewal of appointment of contractual and casual personnel updated Personal Data Sheet shall be required.

(underscoring supplied)

That the accused's appointment as Deputy Administrator for Administration and Legal was processed, and was eventually approved by the CSC, shows, in the absence of evidence to the contrary, that all the requirements and supporting papers—including the Personal Data Sheet accomplished by the accused, as appointee—were submitted. When the accused accomplished the said Personal Data Sheet, he would have noticed that he was accomplishing a Civil Service form. Even if he truly believed that the MWSS-RO was not a government agency prior to accomplishing the said form, he would have known, or would have had an inkling, that it was one by the time he accomplished the said form.



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<sup>223</sup> Exhibits B/CCC

<sup>224</sup> Civil Service Commission Memorandum Circular No. 40, s. 1998 (Revised Omnibus Rules on Appointments and Other Personnel Actions)



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After the accused was reinstated to his position in the MWSS-RO sometime in January 2003, he still accepted full-time employment with the PCGG. His acceptance of additional employment with, and his receipt of remuneration from, the PCGG from January to June 2003, despite holding public office in the MWSS-RO and also receiving his salaries and other benefits therefrom during the same period, were done knowingly, and for the purpose of collecting compensation from both the MWSS-RO and the PCGG, or for self-enrichment. This falls within the definition of “evident bad faith,” and is precisely the situation sought to be prevented by Sec. 7 of Art. IX-B of the Constitution.<sup>225</sup>

This Court is not unaware that at the time material to the case, the accused needed a source of income to cover his family’s needs and his wife’s medical bills. He cannot be faulted for, and was fully justified in, seeking employment with the PCGG in September 2002. At the time, he was already terminated from his position in the MWSS-RO, and was not receiving his salaries and other benefits therefrom. However, when he was reinstated as Deputy Administrator for Administration and Legal Affairs in January 2003, his source of income was restored, and he should not have accepted additional employment with the PCGG. His acceptance of employment and compensation from the PCGG was in violation of the prohibition against dual employment and double compensation.

*Third element*

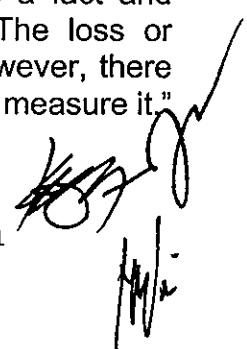
In *Cabrera v. People*,<sup>226</sup> the Supreme Court explained the third element of *Violation of Sec. 3(e) of R.A. No. 3019* as follows:

The *third* element refers to two (2) separate acts that qualify as a violation of Section 3(e) of R.A. No. 3019. An accused may be charged with the commission of either or both. The use of the disjunctive term “or” connotes that either act qualifies as a violation of Section 3(e) of R.A. No. 3019.

The *first* punishable act is that the accused is said to have caused undue injury to the government or any party when the latter sustains actual loss or damage, which must exist as a fact and cannot be based on speculations or conjectures. The loss or damage need not be proven with actual certainty. However, there must be “some reasonable basis by which the court can measure it.”

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<sup>225</sup> Please see *Civil Liberties Union v. Executive Secretary*, G.R. No. 83896, February 22, 1991  
<sup>226</sup> G.R. No. 191611-14, July 29, 2019



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Aside from this, the loss or damage must be substantial. It must be "more than necessary, excessive, improper or illegal."

The *second* punishable act is that the accused is said to have given unwarranted benefits, advantage, or preference to a private party. Proof of the extent or *quantum* of damage is not thus essential. It is sufficient that the accused has given "unjustified favor or benefit to another."

The prosecution failed to prove beyond reasonable doubt that the accused's acceptance of additional employment with, and receipt of double compensation from, the PCGG caused undue injury, but it was able to prove that the accused received unwarranted benefits as a result of the said acts. Thus, the third element of *Violation of Sec. 3(e) of R.A. No. 3019* is present.

According to prosecution witness Eduardo C. Santos, the accused's employment with the PCGG adversely affected the performance of his functions in the MWSS-RO. The accused devoted very little time to his work, and as a result, delays were caused.<sup>227</sup>

Without doubt, the accused's concurrent employment with the PCGG could have adversely affected the performance of his functions as Deputy Administrator for Administration and Legal Affairs in the MWSS-RO, but to convict the accused on the basis of causing undue injury, it should be shown that the delays were caused by his employment with the PCGG. This, the prosecution failed to show.

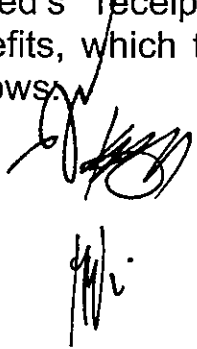
Without evidence to convincingly show that the accused's employment with the PCGG adversely affected the performance of his functions in the MWSS-RO, and therefore, caused prejudice to the government, the Court cannot conclude that undue injury was caused as a result of the accused's actions. The undue injury caused by the acts of the accused must be specified, quantified and proven to the point of moral certainty,<sup>228</sup> and cannot be based on speculations or conjectures.

The third element of *Violation of Sec. 3(e) of R.A. No. 3019* is nonetheless present because the accused's receipt of double compensation constitutes unwarranted benefits, which the Supreme Court discussed in *Sison v. People*<sup>229</sup> as follows:

<sup>227</sup> *Complaint-Affidavit* dated October 13, 2003, p. 3 (Record, Vol. 4, p. 26)

<sup>228</sup> *Llorente v. Sandiganbayan*, G.R. No. 122166, March 11, 1998

<sup>229</sup> G.R. Nos. 170339, 170398-403, March 9, 2010



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The word "unwarranted" means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefits from some course of action. "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another.

As previously discussed, the Constitution and law prohibit dual employment and double compensation. Hence, in view of such prohibition, the compensation the accused received from the PCGG was unauthorized or without justification.

CONCLUSION

The prosecution proved beyond reasonable doubt all the elements of *Violation of Sec. 3(e) of R.A. No. 3019*.

**WHEREFORE**, accused VIRGILIO PONCIANO A. OCAYA is found **GUILTY** beyond reasonable doubt of *Violation of Sec. 3(e) of Republic Act No. 3019*, and is accordingly sentenced to suffer the penalty of imprisonment of six (6) years and one (1) month, as minimum, to eight (8) years, as maximum, with perpetual disqualification from public office.

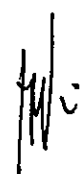
The accused is **DIRECTED** to return to the Presidential Commission on Good Government (PCGG) the amount of One Hundred Twenty-Nine Thousand Six Hundred Pesos (₱129,600.00), which he received as double compensation therefrom from January to June 2003.<sup>230</sup>

SO ORDERED.

  
**SARAH JANE T. FERNANDEZ**  
Associate Justice  
Chairperson



<sup>230</sup> Exhibits N-10 to N-21

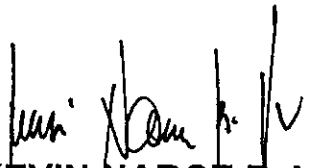




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**We Concur:**

  
**KARL B. MIRANDA**  
Associate Justice

  
**KEVIN NARCE B. VIVERO**  
Associate Justice

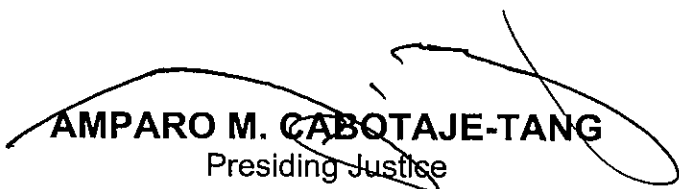
**ATTESTATION**

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

  
**SARAH JANE T. FERNANDEZ**  
Associate Justice  
Chairperson

**CERTIFICATION**

Pursuant to Article VIII, Section 13, of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**AMPARO M. CABOTAJE-TANG**  
Presiding Justice