



Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

**DR. FERNANDO A. MELENDRES,**  
**M.D., Executive Director of the Lung**  
**Center of the Philippines (LCP),**  
Petitioner,

- versus -

**G.R. No. 163859**

Present:

**CARPIO, J.,\***  
**LEONARDO-DE CASTRO,\*\***  
*Acting Chairperson,*  
**BERSAMIN,**  
**DEL CASTILLO, and**  
**VILLARAMA, JR., JJ.**

**PRESIDENTIAL ANTI-GRAFT**  
**COMMISSION, acting through its**  
**duly authorized representative,**  
**COMMISSIONER CESAR D.**  
**BUENAFLOR, ALBERTO G.**  
**ROMULO, Executive Secretary,**  
**AND SUSAN SY NAVAL, THERESA**  
**M. ALCANTARA, JOSE PEPITO M.**  
**AMORES, VINCENT M.**  
**BALANAG, JR., GUILLERMO G.**  
**BARROA, JR., REY A. DESALES,**  
**NORBERTO A. FRANCISCO,**  
**DAVID F. GEOLLEGUE, BENILDA**  
**B. GALVEZ, LUISITO F. IDOLOR,**  
**VICTORIA C. IDOLOR,**  
**BUENAVENTURA V. MEDINA, JR.,**  
**NEWELL R. NACPIL, RAOUL C.**  
**VILLARETE and GUILLERMO T.**  
**MADLANG-AWA, all of the Lung**  
**Center of the Philippines (LCP),**  
Respondents.

Promulgated:

**15 AUG 2012**

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\* Designated Acting Member of the First Division per Special Order No. 1284 dated August 6, 2012.

\*\* Designated Acting Chairperson of the First Division per Special Order No. 1226 dated May 30, 2012.

## DECISION

### VILLARAMA, JR., J.:

The present petition under Rule 45 assails the Decision<sup>1</sup> dated February 27, 2004 and Resolution<sup>2</sup> dated May 28, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 74272 affirming the Order dated December 3, 2002 of the Presidential Anti-Graft Commission (PAGC).

The factual antecedents:

Petitioner Dr. Fernando A. Melendres was appointed Executive Director of the Lung Center of the Philippines (LCP) in 1999 by then President Joseph Ejercito Estrada.

Acting on a complaint lodged by 15 physicians of the LCP, the Secretary of Health issued Department Order No. 119, s. 2002, dated April 3, 2002 creating a Fact-Finding Committee to look into their charges against petitioner. The Committee simultaneously investigated the charges against petitioner, and the latter's counter-charges against Dr. Jose Pepito Amores, LCP Deputy Director for Hospital Support Services, and the 14 complainant-physicians.

On June 28, 2002, the Committee submitted its Final Report of its findings and recommendations to then Health Secretary Manuel M. Dayrit. Said report enumerated the complaints against petitioner as follows:

- i. Procurement of presentation banner without bidding, complexed with falsification of documents;
- ii. Unlawful/excessive availments of gasoline privileges;
- iii. Procurement/payment of the cellular phone and pager bills of respondent using LCP funds;

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<sup>1</sup> *Rollo*, pp. 46-59. Penned by Associate Justice Amelita G. Tolentino with Associate Justices Eloy R. Bello, Jr. and Magdangal M. De Leon concurring.

<sup>2</sup> *Id.* at 61.

- iv. Awarding of a Contract of Lease of a room/clinic in the LCP for respondent's own and direct benefit;
- v. Unlawful award of the Sports Consultant Services Agreement;
- vi. Appointment of Architect Federico R. Medina in which the second of two architectural service agreements was falsified;
- vii. Respondent's propensity to make special petty cash funds in substantial amounts to circumvent the public bidding/canvass requirement, particularly for the construction of the 2<sup>nd</sup> floor of the T-Block Building of the LCP;
- viii. Issuance of Center Order No. 155-A, s. 2001 on the use of alternative modes other than public bidding for purchases or acquisitions of a unit or system valued in excess of P1M;
- ix. Refusal or inaction to implement the Resolution of the Office of the Government Corporate Counsel (OGCC) finding Ms. Heidi Basobas guilty of gross neglect of duty, inefficiency and competence, and recommending her dismissal from the service;
- x. Issuance of Center Order No. 55, s. 2000 which granted double payment of RATA for the single position of Pharmacy Division Head;
- xi. Implementing reorganization and personnel movements within LCP not in accordance with the Department of Health (DOH) Rationalization and Streamlining Plan nor approved by the Department of Budget and Management, and without factual and legal bases;
- xii. Multiple demotion of Dr. Jose Pepito Amores by issuing orders removing from his supervision and jurisdiction the following Divisions: Accounting & Budget, Billing, Credit Collection, Nursing Service, and Research;
- xiii. Questionable personnel appointments made in the absence of any (1) announced vacancy in the plantilla positions; (2) list of applicants to the said positions; and (3) deliberations from LCP's Medical Staff Accreditation Committee;
- xiv. Use of Demerol and Nubaine, for which he had coerced Drs. Victoria Canlas Idolor and Theresa Alcantara to issue prescriptions for said drugs;

- xv. Invalid appointment as LCP Director which should be by the majority vote of all the members of the LCP Board of Trustees; and
- xvi. Undue Discrimination in the grant of privilege to engage in the private practice of medicine and other instances of discrimination against some medical staff.<sup>3</sup>

The Committee found *prima facie* case against petitioner for the following offenses: (a) procurement of presentation banner without public bidding complexed with falsification of documents; (b) falsification of documents in the hiring of architectural consultant; (c) violation of auditing rules on the drawing of petty cash advances to circumvent the law on public bidding of infrastructure projects; and (d) unauthorized implementation of a reorganization plan unapproved by the Board of Trustees.

Adopting the findings of the Fact-Finding Committee, the LCP Board of Trustees, chaired by the Secretary of Health, issued a Resolution<sup>4</sup> dated August 23, 2002 (1) recommending to the Office of the President (OP) the filing of formal administrative charges against petitioner and his preventive suspension pending investigation; (2) directing the separation from service of LCP Deputy Director Jose Pepito Amores effective September 30, 2002; and (3) directing the transmission of a copy of the Report of the Fact-Finding Committee to the Civil Service Commission (CSC) in relation to the complaint filed against the 14 LCP physicians.

Sometime in August 2002, the same physicians, including most of herein individual respondents, issued a Manifesto<sup>5</sup> addressed to President Gloria Macapagal-Arroyo expressing their disenchantment with petitioner whom they claimed does not deserve to continue holding the position of LCP Executive Director because of his abusive behavior such as making sarcastic and slanderous remarks to humiliate staff members, accusations against several doctors allegedly involved in the May 1998 fire which gutted

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<sup>3</sup> CA *rollo*, pp. 59-86.

<sup>4</sup> *Rollo*, pp. 108-112.

<sup>5</sup> The Manifesto was signed by Jose Pepito Amores, Theresa M. Alcantara, Vincent Balanag, Jr., Guillermo G. Barroa, Jr., Rey Desales, Norberto Francisco, David Geollegue, Benilda Galvez, Cynthia Habaluyas, Luisito Idolor, Victoria Idolor and Buenaventura Medina, Jr. (*Rollo*, pp. 166-171.)

the LCP and his predecessor Dr. Calixto Zaldivar for alleged anomalous contracts with the Department of Public Works and Highways, immorality (living-in with a mistress who is a former LCP nurse), unlawful personnel actions (designating his hand-picked staff to key positions and transferring those occupying such positions to other units or departments without diminution in rank or salary), harassment of staff members who are not in his good graces, nepotism, and entering into questionable contracts with suppliers. These acts imputed to petitioner allegedly caused demoralization among the LCP medical staff and rank and file.

On October 22, 2002, a Complaint-Affidavit was filed before the PAGC by herein individual respondents, 15 physicians of the LCP, containing the same 16 charges subject of the investigation conducted by the Fact-Finding Committee.<sup>6</sup>

On September 11, 2002, Executive Secretary Alberto G. Romulo issued Administrative Order (AO) No. 39 directing the PAGC to conduct a formal investigation against petitioner, ordering his preventive suspension for 90 days, and authorizing the Secretary of Health to appoint an *interim* officer-in-charge of the LCP.

AO No. 39 specifically stated that –

The PAGC shall observe the prevailing rules and procedures prescribed under existing Civil Service laws and regulations, and shall terminate the formal inquiry within ninety (90) days from receipt of this Order.

The PAGC shall, likewise, within twenty (20) days after receipt of the last pleading or evidence, if any, in case respondent Executive Director Melendres does not elect a formal investigation, or after the termination of the formal investigation, should respondent Executive Director Melendres elect one, forward to this Office the entire records of the case together with its findings and recommendations, as well as a draft decision for the approval of the President.<sup>7</sup>

Finding sufficient basis to commence an administrative investigation (PAGC-ADM-0112-02), PAGC Hearing Commissioner Cesar D. Buenaflor

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<sup>6</sup> Rollo, pp. 215-226.

<sup>7</sup> CA rollo, pp. 42-42-A.

issued an Order on November 8, 2002 directing the petitioner to submit within 10 days his Counter-Affidavit/Verified Answer. On November 18, 2002, petitioner submitted his Counter-Affidavit. The preliminary conference was then set on November 21, 2002.<sup>8</sup>

At the preliminary conference, petitioner appeared with his counsel. During the continuation of preliminary conference on November 28, 2002, the parties were directed to submit within five days or until December 4, 2002 their respective Position Paper/Memorandum. The designated hearing officer, Commissioner Buenaflor, likewise declared that based on the records/pleadings and the position papers submitted, the case shall be deemed submitted for resolution. Petitioner's counsel questioned the order and the jurisdiction of the PAGC. Commissioner Buenaflor advised said counsel to bring the issues raised by him before the proper forum, and reiterated his order for the parties to file their respective position papers.<sup>9</sup>

On November 29, 2002, petitioner through counsel filed a Motion for Formal Hearing and/or Investigation, invoking Section 22 of the Revised Uniform Rules on Administrative Cases in the Civil Service (URACC).<sup>10</sup>

On even date, petitioner filed a Motion for Inhibition alleging bias and partiality on the part of Commissioner Buenaflor in terminating the case which deprived him of his right to due process as required by the URACC, which should be observed and complied with by the said hearing officer.<sup>11</sup>

In an Order<sup>12</sup> dated December 3, 2002, Commissioner Buenaflor denied for lack of merit both motions filed by petitioner. Complainants submitted their position paper as required.

Petitioner did not file a position paper but instead filed before the CA a petition for certiorari with prayer for temporary restraining order and/or

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<sup>8</sup> Id. at 110-123; *rollo*, pp. 314-315.

<sup>9</sup> *Rollo*, pp. 316-319.

<sup>10</sup> *CA rollo*, pp. 44-48.

<sup>11</sup> *Rollo*, pp. 267-278.

<sup>12</sup> *CA rollo*, pp. 40-41.

writ of preliminary injunction. Petitioner argued that the PAGC order is a patent nullity because Commissioner Buenaflor terminated the proceedings with undue haste, in violation of petitioner's right to substantive and procedural due process, as it deprived him of the opportunity to submit a supplemental affidavit for which he had made a reservation, as well as records and taped proceedings of the Fact-Finding Committee.<sup>13</sup>

Meanwhile, the PAGC submitted to the OP its investigation report. On February 4, 2003, the OP issued AO No. 59 declaring that the PAGC's findings and recommendation are in order. Thus, as recommended by the PAGC, the OP dismissed petitioner from the service, with forfeiture of his leave credits and retirement benefits, and disqualification from re-employment in the government service, effective immediately upon receipt of the order.<sup>14</sup>

By Decision dated February 27, 2004, the CA dismissed the petition and affirmed the assailed orders of the PAGC.

The CA held that petitioner's right to due process was not violated since Section 3, Rule III of the New Rules of Procedure of the PAGC authorizes the PAGC hearing commissioner to determine whether or not there is a necessity for conducting formal hearings. Moreover, petitioner was given ample opportunity to present his side and defend himself when he was required to file his Counter-Affidavit/Verified Answer, he appeared with his counsel in the preliminary conference held on November 21 and 28, 2002, and he was given the opportunity to submit his Position Paper/Memorandum. Accordingly, the CA ruled that no grave abuse of discretion was committed by public respondent Commissioner in issuing the assailed orders.

Petitioner's motion for reconsideration was likewise denied by the CA in its Resolution dated May 28, 2004.

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<sup>13</sup> Id. at 5-37.

<sup>14</sup> *Rollo*, pp. 320-353.

Hence, this petition setting forth the following arguments:

I.

WITH DUE RESPECT, THE APPELLATE COURT COMMITTED GRAVE ERROR IN DECLARING THAT THE ORDER ISSUED BY PUBLIC RESPONDENT PAGC DID NOT VIOLATE THE RIGHT OF PETITIONER MELENDRES TO BE ACCORDED OF HIS CONSTITUTIONALLY GUARANTEED RIGHT TO DUE PROCESS

II.

WITH DUE RESPECT, THE APPELLATE COURT EGREGIOUSLY COMMITTED ERROR IN NOT RECOGNIZING, AS IN FACT IT IGNORED, THE FACT THAT THE ORDER ISSUED BY RESPONDENT PAGC WAS IN VIOLATION OF ADMINISTRATIVE ORDER NO. 39 WHICH DIRECTED PAGC TO CONDUCT A FORMAL INVESTIGATION AND TO OBSERVE THE PREVAILING RULES AND PROCEDURES PRESCRIBED UNDER EXISTING CIVIL SERVICE RULES AND REGULATIONS, AND SHALL TERMINATE THE FORMAL INQUIRY WITHIN NINETY (90) DAYS FROM THE RECEIPT OF AO NO. 39.

III.

THE APPELLATE COURT, IN SUSTAINING AND AFFIRMING THE DECEMBER 3, 2003 ORDER OF PAGC IGNORED, AS IN FACT IT VIRTUALLY CLOSED, ANY OPPORTUNITY FOR PETITIONER MELENDRES TO A FORMAL HEARING AND TO ADDUCE EVIDENCE IN HIS BEHALF WHEN PUBLIC RESPONDENT PAGC WITH UNDUE HASTE TERMINATED THE PROCEEDINGS WITHOUT A HEARING AND IGNORED THE PLEA OF PETITIONER TO SUBMIT A SUPPLEMENTAL AFFIDAVIT IN CLEAR VIOLATION OF THE ELEMENTARY REQUIREMENTS OF ADMINISTRATIVE DUE PROCESS.

IV.

THE APPELLATE COURT, IN AFFIRMING AND SUSTAINING THE DECEMBER 3, 2003 ORDER OF PAGC, BLINDED ITSELF TO THE REALITY THAT PAGC DESPOTICALLY, WHIMSICALLY AND CAPRICIOUSLY SWEEP ASIDE ITS OWN ADMINISTRATIVE INVESTIGATION PARAMETERS EMBODIED IN ITS ORDER OF NOVEMBER 11, 2002, LET ALONE THE DIRECTIVE EMBODIED IN AO NO. 39 MANDATING PAGC TO OBSERVE PREVAILING RULES AND PROCEDURES PRESCRIBED UNDER CIVIL SERVICE LAWS AND REGULATIONS.

V.

THE APPELLATE COURT, IN PROMULGATING ITS DECISION ALONG WITH ITS RESOLUTION DENYING PETITIONER MELENDRES'S MOTION FOR RECONSIDERATION, REFUSED TO SEE THE GRAVE ABUSE OF DISCRETION OF PUBLIC RESPONDENT PAGC IN ISSUING THE ORDER VIOLATING PETITIONER MELENDRES'S RIGHT TO DUE PROCESS WHEN IT



DISREGARDED SECTION 22, RULE II OF THE UNIFORM RULES  
ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE.<sup>15</sup>

The petition has no merit.

Petitioner's claim that he was denied due process is anchored on Section 22, Rule II of the URACC, which provides:

SEC. 22. *Conduct of Formal Investigation.* – Although the respondent does not request a formal investigation, one shall nevertheless be conducted by the disciplining authority where from the allegations of the complaint and the answer of the respondent, including the supporting documents of both parties, the merits of the case cannot be decided judiciously without conducting such investigation.

The investigation shall be held not earlier than five (5) days nor later than ten (10) days from receipt of the respondent's answer. Said investigation shall be finished within thirty (30) days from the issuance of the formal charge, or the receipt of the answer unless the period is extended by the disciplining authority in meritorious cases.

For this purpose, the Commission may entrust the formal investigation to lawyers of other agencies pursuant to Section 79.

The URACC, however, does not preclude the adoption of procedural rules for administrative cases by other government agencies. This is evident from Section 2, Rule I thereof, which states in part:

SEC. 2. *Coverage and Definition of Terms.* – These Rules shall be applicable to all cases brought before the Civil Service Commission and other government agencies, **except where a special law provides otherwise.** (Emphasis supplied.)

Executive Order (EO) No. 12 issued on April 16, 2001 created the PAGC which replaced the Presidential Commission Against Graft and Corruption (PCAGC) established under EO No. 151 (both offices now *defunct*). EO No. 12 authorized the PAGC to investigate presidential appointees and non-presidential appointees who may have acted in conspiracy with such presidential appointees. Pursuant to Section 17 of EO No. 12, the PAGC promulgated on March 14, 2002 its New Rules of Procedure to govern the investigations conducted by the Commission En Banc and Panel of Hearing Officers.

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<sup>15</sup> Id. at 22-23.

The pertinent rules on the investigation of formal complaints are found in Rule III of the PAGC New Rules of Procedure, as follows:

Section 1. **How Respondent Charged.** – Where a *prima facie* case is determined to have been established, the respondent shall be required, through an ORDER, to file his or her counter-affidavit/verified answer (not a Motion to Dismiss or Motion for Bill of Particulars) to the charges against him or her, furnishing him or her with copies of the complaint, the sworn statements and other documents submitted by the complainant.

Respondent is given an inextendible period of ten (10) days from receipt of the Order to file his Counter-Affidavit/verified Answer (not a Motion to Dismiss or Motion for Bill of Particulars), together with the affidavits of his or her witnesses and other documents in his or her defense and proof of service on the complainant or his or her counsel.

Any motion to dismiss or for a bill of particulars that may be filed shall be expunged from the records, and the filing thereof shall not suspend the proceedings nor the period for the filing of the respondent's Counter-Affidavit/verified Answer.

The filing or submission of reply-affidavits and/or rejoinders shall not be required or allowed except where new issues of fact or questions of law which are material and substantial in nature are raised or invoked in the counter-affidavit or subsequent pleadings and there exists a need for said issues or questions to be controverted or rebutted, clarified or explained to enable the Commission to arrive at a fair and judicious resolution of the case.

If allowed or required by the Commission, the period for the submission of reply affidavits or rejoinders shall not exceed five (5) days.

Sec. 2. **Failure to file Response.** – The respondent's failure to file his Counter-Affidavit/verified Answer within the ten (10) day period given him or her shall be considered a waiver of his or her right to file the same and to present evidence in his or her behalf, and the Commissioner assigned shall recommend the appropriate action to the Commission, on the basis of the complaint and documents on record.

Sec. 3. **Action After Respondent's Response.** – *If upon evaluation of the documents submitted by both parties, it should appear* either that the charge or charges have been satisfactorily traversed by the respondent in his Counter-Affidavit/verified Answer, or **that the Counter-Affidavit/verified Answer does not tender a genuine issue, the Commissioner assigned shall forthwith**, or after a clarificatory hearing to ascertain the authenticity and/or significance of the relevant documents, **submit for adoption by the Commission the appropriate recommendation to the President.**

The Commissioner assigned may, at his sole discretion, set a *hearing to propound clarificatory questions* to the parties or their witnesses if he or she believes that there are matters which need to be inquired into personally by him or her. In said hearing, the parties shall be afforded the opportunity to be present but without the right to examine or cross-examine. If they so desire, they may submit written questions to the

Commissioner assigned who may propound such questions to the parties or witnesses concerned. **Thereafter, the parties be required, to file with the Commission, within an inextendible period of five (5) days, and serve on the adverse party his verified Position Paper.**

Sec. 4. **Summary Resolution After Preliminary Conference.** – Should it be determined prior to the first hearing date, that the issues can be resolved without need for setting the case for clarificatory questioning, the Commissioner assigned shall forthwith, submit for adoption by this Commission, the appropriate recommendation to the President.<sup>15-a</sup> (Underscoring and boldfacing of headings in the original; italicization and other boldfacing supplied.)

In this case, petitioner as directed submitted his Counter-Affidavit within the ten-day period given by Commissioner Buenaflor in his Order dated November 21, 2002 during the preliminary conference where petitioner appeared with his counsel. In the same order, the complainants were given three days to submit their Reply to the Counter-Affidavit if they deemed it necessary, and the respondent was granted a similar period within which to submit his Rejoinder to the Reply, if there is any. On November 28, 2002, during the continuation of the preliminary conference, since there was no Reply filed by the complainants, Commissioner Buenaflor directed the parties to submit their respective Position Paper/Memorandum within five days or until December 4, 2002, and declared that based on the records/pleadings and the Position Papers to be submitted, the case shall be deemed submitted for resolution.

Commissioner Buenaflor observed the procedure laid down in the 2002 PAGC New Rules of Procedure and exercised his discretion not to conduct further hearings for clarificatory questions after finding from the pleadings and evidence submitted by the parties, that a hearing for clarificatory questions is not necessary. Petitioner failed to show that such act of Commissioner Buenaflor submitting the case for resolution on the basis of the records/pleadings and the Position Papers, was tainted with grave abuse of discretion. In the same vein, no grave abuse of discretion attended the denial of petitioner's Motion for Formal hearing and/or Investigation, in which petitioner invoked Section 22 of the URACC. It may be noted that under the 2007 PAGC Rules of Procedure, the Commission is

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<sup>15-a</sup> Id. at 364-366.

also allowed, after the submission of the Answer by the respondent or conduct of hearing for clarificatory questions, to require the parties to submit position papers to argue their case.<sup>16</sup>

As to the Motion for Inhibition of Commissioner Buenaflor, the same is grounded on his earlier order submitting the case for resolution on the basis of pleadings on record and position papers. Said motion was properly denied as no iota of evidence had been adduced by the petitioner to substantiate his allegation of bias and partiality. Indeed, bias and partiality cannot be presumed.<sup>17</sup> Mere suspicion of partiality is not enough. There should be hard evidence to prove it, as well as manifest showing of bias and partiality stemming from an extrajudicial source or some other basis.<sup>18</sup>

Petitioner nonetheless asserts that the assailed order was contrary to the directive in AO No. 39 which specifically recognized his right to elect a formal investigation. Having requested for such formal investigation, petitioner claims the PAGC violated his right to due process when it denied his motion for a formal investigation.

We are not persuaded.

Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. It is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. More often, this opportunity is conferred through written pleadings that the parties submit to present their charges and defenses.<sup>19</sup> But as long as

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<sup>16</sup> PAGC NEW RULES OF PROCEDURE issued March 14, 2007, Sections 5 and 6.

<sup>17</sup> *Casimiro v. Tandog*, G.R. No. 146137, June 8, 2005, 459 SCRA 624, 632.

<sup>18</sup> *Id.*, citing *Hizon v. Dela Fuente*, G.R. No. 152328, March 23, 2004, 426 SCRA 211, 216.

<sup>19</sup> *Cabalit v. Commission on Audit-Region VII*, G.R. Nos. 180236, 180341 & 180342, January 17, 2012, p. 12, citing *Office of the Ombudsman v. Galicia*, G.R. No. 167711, October 10, 2008, 568 SCRA 327, 344.

a party is given the opportunity to defend his or her interests in due course, said party is not denied due process.<sup>20</sup>

As this Court held in *Medina v. Commission on Audit*<sup>21</sup>:

As correctly pointed out by the OSG, **the denial of petitioner's request for a formal investigation is not tantamount to a denial of her right to due process.** Petitioner was required to file a counter-affidavit and position paper and later on, was given a chance to file two motions for reconsideration of the decision of the deputy ombudsman. The essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. **As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met.**<sup>22</sup> (Emphasis supplied.)

Since petitioner was given the opportunity to defend himself from the charges against him, as in fact he submitted a Counter-Affidavit with the PAGC, though he failed to comply with the order for the submission of position paper, he cannot complain of denial of due process. It may be noted that while petitioner in his Counter-Affidavit made a reservation to submit a supplemental counter-affidavit because he was supposedly still in the process of completing the review of all documents including the tape recording of the proceedings of the Fact-Finding Committee and the sworn statements given by the witnesses to provide details of his defense, said reservation was conditioned on whether the stenographic notes will be made available at all "after the review and completion of the review and evaluation of the proceedings by the Committee Investigator." However, as mentioned in the same pleading, petitioner's request for a copy of the transcript of stenographic notes was already denied by the Chairman of the Fact-Finding Committee under the letter dated November 11, 2002<sup>23</sup> which stated that the Committee never took stenographic notes in the course of its investigation. Moreover, the Committee had long completed its investigation as in fact the Final Report on its findings and recommendations became the

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<sup>20</sup> Id., citing *Cayago v. Lina*, G.R. No. 149539, January 19, 2005, 449 SCRA 29, 44-45.

<sup>21</sup> G.R. No. 176478, February 4, 2008, 543 SCRA 684.

<sup>22</sup> Id. at 696-697, citing *Montemayor v. Bundalian*, 453 Phil. 158, 165 (2003).

<sup>23</sup> *Rollo*, p. 160.

basis of the LCP Board of Trustees Resolution dated August 23, 2002 adopting the Committee's findings and recommendations.

We note that in AO No. 59 imposing the penalty of dismissal on petitioner, the OP found no error or abuse committed by the PAGC in issuing the assailed orders, thus:

PAGC correctly denied respondent Executive Director Melendres' motions for a formal hearing and for inhibition. A formal hearing is not a mandatory requirement of due process in administrative proceedings. One may be heard not solely by verbal presentation, but also and perhaps even many times creditably and practicably than oral argument, through pleadings. Thus, it is enough that the parties are given the opportunity to be heard by means of the submission of pleadings, memoranda and/or position papers. In fact, aside from counter-affidavit, respondent Executive Director Melendres was also required by PAGC to submit his position paper but he failed to do so. Such failure amounts to a waiver to present addition[al] evidence on his behalf. It is, therefore, puzzling why respondent Executive Director was asking for a full-blown formal hearing when he could not even submit a position paper. Moreover, in his counter-affidavit, respondent Executive Director Melendres admitted that "the same complaint [subject of this case] had already been investigated, reviewed, evaluated, heard, and terminated by the [Fact-Finding] Committee [created by Secretary Manuel M. Dayrit of the Department of Health]". Thus, one may validly ask why respondent Executive Director Melendres wanted another full-blown investigation. Undoubtedly, the inescapable conclusion that can be made from the filing of the motion for a formal hearing is that respondent Executive Director Melendres was merely buying time by trying to prolong the disposition of the case in order to unduly perpetuate himself as the head of the Lung Center of the Philippines.

On the other hand, the denial of the motion for inhibition against Commissioner Cesar Buenaflor for alleged bias and impartiality is in order considering that the grounds adduced are not grounds for mandatory disqualification or inhibition of judges. Rule 137, Section 1 of the Rules of Court enumerates the grounds for the absolute disqualification of judges, x x x

x x x x

Th[e] rule enumerates the grounds under which a judge is legally disqualified from sitting in a case, and excludes all other grounds not specified therein. The judge may, however, "in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above. Hence, the decision to inhibit is left to the sound discretion of the judge himself. No one has the right to supplant the exercise of such discretion provided the exercise of the same is devoid of grave abuse."<sup>24</sup>

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<sup>24</sup> Id. at 351-352. Citations omitted.

As to petitioner's contention that the PAGC should not have entertained the affidavit-complaint filed on October 22, 2002 as it is a "brand new" complaint which was not that indicated by AO No. 39, suffice it to state that the said affidavit-complaint merely reiterated the charges for which petitioner was already investigated by the Fact-Finding Committee created by the Secretary of Health. Petitioner being a presidential appointee, the OP is the disciplining authority which can properly impose disciplinary actions on him; hence, it is the OP through AO No. 39 which ordered his preventive suspension pending investigation on the same charges against him by the PAGC. There was no "new" complaint because the respondent-physicians simply instituted a formal complaint, this time before the OP which is by law the disciplining authority over presidential appointees, the DOH being merely the investigating authority.

Initiation of administrative complaints before the PAGC is provided for in Section 1, Rule II of the PAGC New Rules of Procedure, which states:

Section 1. **Administrative Charge; How Initiated.** – An administrative charge within the jurisdiction of the Commission may be initiated and prosecuted by:

- (a) written complaint under oath accompanied by affidavits of witnesses and other evidences in support of the charge(s), or
- (b) upon written charge by the disciplining authority.

In this case, the administrative charge against petitioner was initiated under both (a) and (b), the complainant-physicians having filed their own formal complaint after the OP had issued AO No. 39 ordering that petitioner be investigated on those charges for which the LCP Board of Trustees had found *prima facie* evidence of his culpability based on the findings and recommendations of the Fact-Finding Committee. Notably, the allegations set forth in the Affidavit-Complaint filed on October 22, 2002 and the LCP Board of Trustees Resolution are practically the same. The PAGC can thus properly take cognizance of the findings and evidence submitted in both written complaints/charges.

Finally, we find no merit in petitioner's suggestion that in the disposition of this case, the dismissal of the following criminal complaints should be considered: (1) Criminal Case No. SB 08-CRM-0282 for Falsification of Public Documents under Article 171(6) of the Revised Penal Code, as per Resolution<sup>25</sup> dated June 2, 2010 of the Sandiganbayan's Fourth Division granting petitioner's demurrer to evidence based on insufficiency of evidence; (2) Criminal Case No. SB 08-CRM-0281 dismissed for lack of probable cause as per the Minutes<sup>26</sup> of the proceedings of the Third Division held on June 16, 2008, and Memorandum<sup>27</sup> dated July 2, 2008 of the Office of the Special Prosecutor, Office of the Ombudsman; (3) OMB-C-C-02-0507-I for Violation of Executive Order No. 301 (1987), Section 3, Implementing Rules and Regulations of EO No. 262 and Section 3(a) of Republic Act (R.A.) No. 3019, as amended, as per Resolution<sup>28</sup> dated April 8, 2003; and (4) Memorandum<sup>29</sup> dated June 4, 2007 of the Office of the Special Prosecutor in OMB-C-C-03-0258-D approving the recommendation of Assistant Special Prosecutor II Ma. Christina T. Marallag for the dismissal of several charges constituting Violation of Section 3(e) of R.A. No. 3019, and Article 171, paragraph 6 of the Revised Penal Code (RPC), except for Falsification of Public Documents under Article 171, RPC "for making an erasure in the Purchase Order dated December 21, 2001 by erasing the word 'EXCLUSIVE DISTRIBUTOR' and changing it with the word 'CANVASS' to make it appear that it is the mode of procurement of the presidential banner, when in truth and in fact no canvass was conducted."

We have ruled that dismissal of a criminal action does not foreclose institution of an administrative proceeding against the same respondent, nor carry with it the relief from administrative liability.<sup>30</sup> It is a basic rule in administrative law that public officials are under a three-fold responsibility for a violation of their duty or for a wrongful act or omission, such that they

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<sup>25</sup> Id. at 459-469.

<sup>26</sup> Id. at 470.

<sup>27</sup> Id. at 471-474.

<sup>28</sup> Id. at 476-488.

<sup>29</sup> Id. at 489-514.

<sup>30</sup> *Flores v. Montemayor*, G.R. No. 170146, June 8, 2011, 651 SCRA 396, 402-403, citing *Office of the Court Administrator v. Enriquez*, A.M. No. P-89-290, January 29, 1993, 218 SCRA 1, 10 and *Office of the Court Administrator v. Cañete*, A.M. No. P-91-621, November 10, 2004, 441 SCRA 512, 520.




may be held civilly, criminally and administratively liable for the same act. Administrative liability is thus separate and distinct from penal and civil liability.<sup>31</sup>

Moreover, the fact that the administrative case and the case filed before the Ombudsman are based on the same subject matter is of no moment. It is a fundamental principle of administrative law that the administrative case may generally proceed against a respondent independently of a criminal action for the same act or omission and requires only a preponderance of evidence to establish administrative guilt as against proof beyond reasonable doubt of the criminal charge.<sup>32</sup> Accordingly, the dismissal of two criminal cases by the Sandiganbayan and of several criminal complaints by the Ombudsman did not result in the absolution of petitioner from the administrative charges.

**WHEREFORE**, the petition for review on certiorari is **DENIED**. The Decision dated February 27, 2004 and Resolution dated May 28, 2004 of the Court of Appeals in CA-G.R. SP No. 74272 are **AFFIRMED and UPHELD**.

With costs against the petitioner.

**SO ORDERED.**


  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

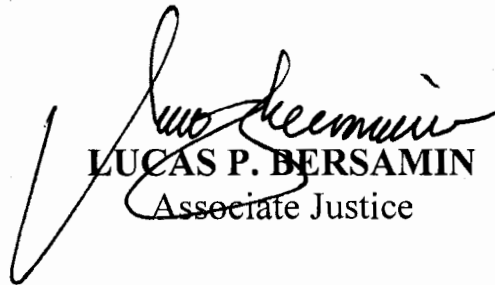
WE CONCUR:

  
**ANTONIO T. CARPIO**  
Senior Associate Justice

<sup>31</sup> *Office of the President v. Cataquiz*, G.R. No. 183445, September 14, 2011, 657 SCRA 681, 706, citing *Tecson v. Sandiganbayan*, 376 Phil. 191, 198 (1999) and *Veloso v. Sandiganbayan*, G.R. Nos. 89043-65, July 16, 1990, 187 SCRA 504, 509-510.

<sup>32</sup> *Amadore v. Romulo*, G.R. No. 161608, August 9, 2005, 466 SCRA 397, 418, citing *The Police Commission v. Lood*, No. L-34230, March 31, 1980, 96 SCRA 819, 825; *Larin v. Executive Secretary*, G.R. No. 112745, October 16, 1997, 280 SCRA 713, 727; and *People v. Toledano*, G.R. No. 110220, May 18, 2000, 332 SCRA 210, 216-217.

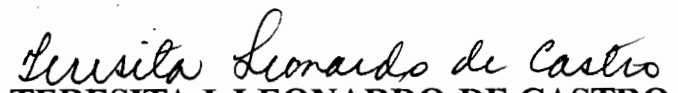
  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice  
Acting Chairperson

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

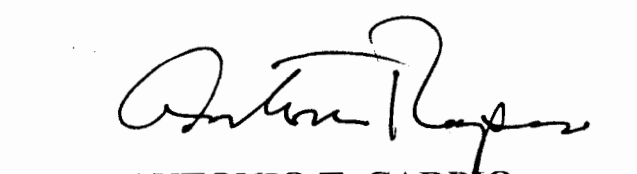
### ATTESTATION

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

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice  
Acting Chairperson

### CERTIFICATION

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

  
**ANTONIO T. CARPIO**  
Senior Associate Justice  
(Per Section 12, R.A. 296,  
The Judiciary Act of 1948, as amended)