

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-15-CRM-0116-0118
For: Violation of Section 3(e)
of R.A. No. 3019

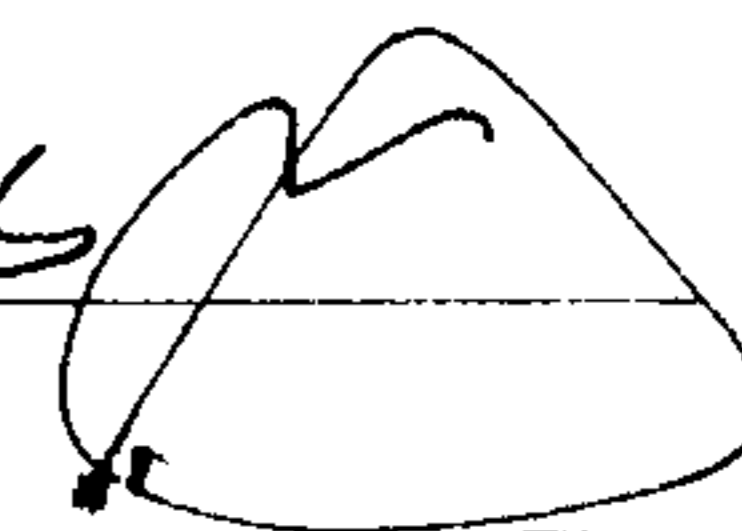
- versus -

Present:

JUANITO PADILLA ABERGAS,
Accused.

CABOTAJE-TANG, P.J.
Chairperson
MARTIRES, J.,
FERNANDEZ, J.

Promulgated:

JUNE 3, 2015 

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RESOLUTION

FERNANDEZ, J.:


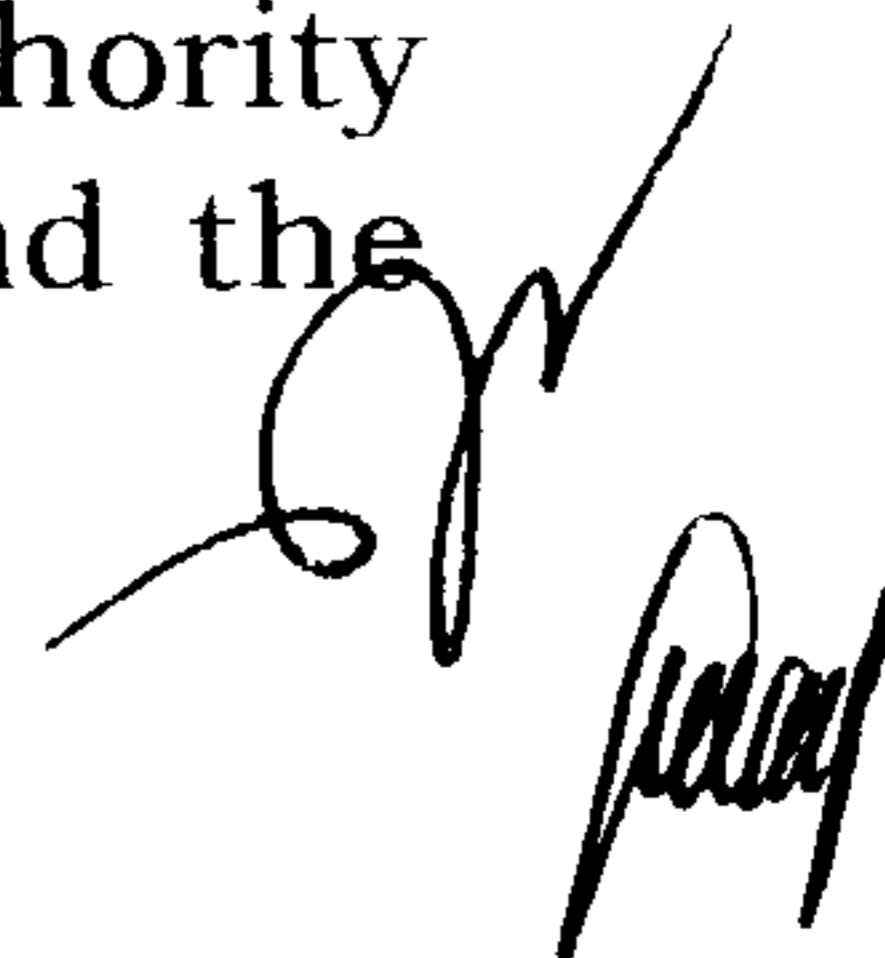
For resolution is the *Motion to Quash/Dismiss with Motion to Defer Proceedings*¹ filed by accused Juanito P. Abergas.

Accused moves for the quashal of the Informations² charging him for three (3) counts of violation of Section 3(e) of Republic Act No. 3019³ on the ground that the officer who filed the information had no authority to do so. According to the accused, the Office of the Ombudsman lost its authority to file the information against him when said Office and the

¹ Dated September 11, 2015, Record, pp. 192-203.

² All dated March 17, 2015, Record, pp. 1-3 and Folder Nos. 2 and 3.

³ *Anti-Graft and Corrupt Practices Act*

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Commission on Audit (COA) violated his constitutional right to the speedy disposition of his case.⁴ Accused points out:

1. A period of ten (10) years had elapsed from the time the COA commenced its fact-finding investigation up to the time the Office of the Ombudsman filed the Informations charging him for violation of Section 3(e) of R.A. No. 3019.⁵
2. It took COA almost six (6) years before it instituted a complaint before the Office of the Ombudsman.⁶
3. The 2 year period taken by the Office of the Ombudsman to resolve the cases against accused is deemed unreasonable delay. The 30-day period for the Office of the Ombudsman to resolve administrative cases under Section 6, Rule III of the Rules of Procedure of the Office of the Ombudsman must be applied to criminal cases pending with said agency.⁷
4. Because of the delay in the resolution of the cases against him, he was not able to obtain relevant documents from his previous offices to refute the charges against him, which he could have done were he still in government service.⁸

In its *Opposition to Accused's Motion to Quash/Dismiss with Motion to Defer Proceedings*,⁹ the prosecution argued that accused' Motion must be denied for the following reasons:

1. The ground relied upon by accused is not among those enumerated under Section 3, Rule 117 of the Rules of Court.¹⁰
2. The proceedings against accused was not attended by vexatious, capricious and oppressive delays. The alleged delays, if at all, are not entirely due to the COA's or the Office of the Ombudsman's fault, since accused requested for extensions of time to file pleadings, *i.e.*, Counter-Affidavit and Motion for

⁴ Motion to Quash dated September 11, 2015, pp. 3, 5 and 8, Record, pp. 194, 196 and 199.

⁵ Motion to Quash dated September 11, 2015, p. 7, Record, p. 198.

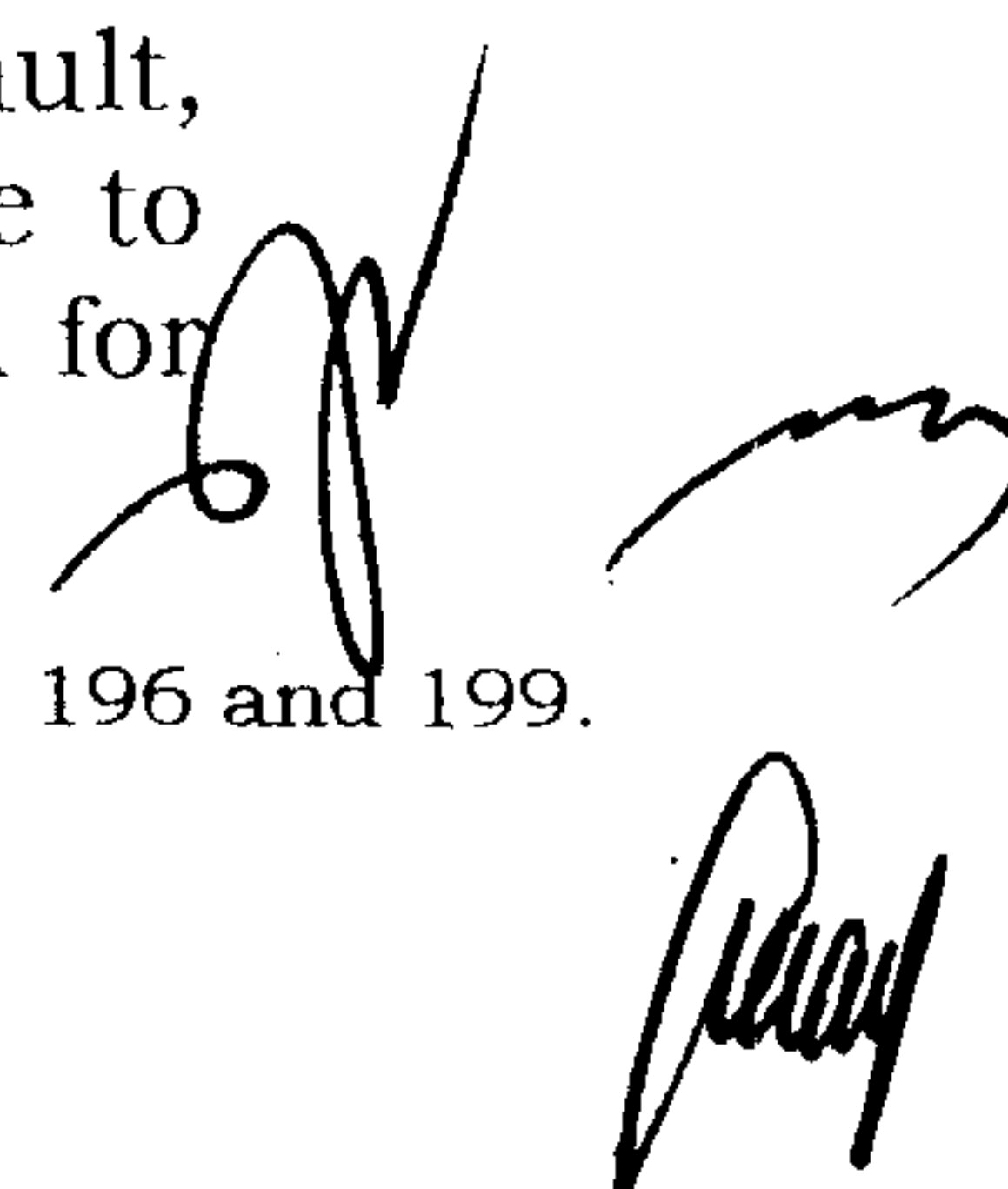
⁶ Motion to Quash dated September 11, 2015, p. 9, Record, p. 200.

⁷ Motion to Quash dated September 11, 2015, pp. 6-7, Record, pp. 197-198.

⁸ Motion to Quash dated September 11, 2015, p. 10, Record, p. 201.

⁹ Dated September 29, 2015, Record, pp. 266-273.

¹⁰ *Opposition to Accused's Motion to Quash/Dismiss with Motion to Defer Proceedings* dated September 29, 2015, pp. 1 and 3, Record, pp. 266 and 268.



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Reconsideration of the Ombudsman's Resolution dated December 10, 2014.¹¹

3. The fact-finding investigation involved transactions from January, 2002 to June, 2005, hence, it was reasonable for the COA to take some time before it was able to finish its investigation.¹²

In his *Reply (to the Prosecution's Opposition dated September 29, 2015)*,¹³ accused maintained that the State's violation of his constitutional right to the speedy disposition of his case had divested the Office of the Ombudsman of its authority to file the information. Accused argued:

1. Accused' Motion to Quash is grounded on one of the circumstances sanctioned by law, *i.e.*, the officer who filed the information had no authority to do so.¹⁴
2. In *Coscolluela vs. Sandiganbayan*,¹⁵ the Supreme Court ruled that a motion to quash may be granted on the ground that accused' constitutional right to the speedy disposition of the case was violated.¹⁶
3. In view of the long period of time which had elapsed since accused retired from government service, accused cannot be faulted for the extensions he requested in filing the appropriate pleadings.¹⁷

RELEVANT ANTECEDENTS

1. Acting on the letter complaint of concerned employees of the Department of Public Works and Highways Regional Office No. VII (DPWH-VII), the Commission on Audit-Regional Office No. VII (COA-VII) issued Office Order No. 2005-09 dated August 10, 2005 creating an Audit Team¹⁸ tasked to conduct a fact-finding investigation on the alleged irregularities committed by accused Juanito P. Abergas.

¹¹ Opposition dated September 29, 2015, pp. 3 and 5, Record, pp. 268 and 270.

¹² Opposition dated September 29, 2015, p. 6, Record, p. 271.

¹³ Dated October 8, 2015, Record, pp. 274-277.

¹⁴ Reply dated October 3, 2015, p.1, Record, p. 274.

¹⁵ 701 SCRA 188 [2013].

¹⁶ Reply dated October 3, 2015, p. 1, Record, p. 274.

¹⁷ Reply dated October 3, 2015, p. 3, Record, p. 276.

¹⁸ Composed of State Auditor IV Anecia M. Maglahus, State Auditors II Ma. Theresa Carillo and Ma. Elena Denton, Affidavit dated November 20, 2012, p. 1, Record, p. 35.

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Regional Director of DPWH-VII, Cebu City.¹⁹ The alleged irregularities included:

- a. Frequent travels to Manila;
- b. Excessive disbursements of Miscellaneous and Extraordinary Expenses which are the source of "pasalubong" to DPWH Central Office and other offices;
- c. Extravagant entertainment of visitors from DPWH Central Office and other offices;
- d. Payment of Honoraria and Signing/Incentive Bonus;
- e. Clearance given to retired personnel without the benefit of settlement of their accountabilities;
- f. Unfair dismissal of casual employees in the Regional Office;
- g. Inclusion of personal maid in the agency payroll; and
- h. Spurious overtime service rendered by secretaries; and Solicitation of financial assistance from District Engineers for Distribution to DPWH Central Office Officials.²⁰

2. On September 12, 2005, the Audit Team transmitted its Fact-Finding Report²¹ containing the team's findings and observations to the Regional Cluster Director, Cluster VII-Infrastructure, COA-Cebu City.²²

3. On March 31, 2011, COA Regional Director Delfin Aguilar submitted the aforementioned Report, together with State Auditor IV Anecia Maglahus' Affidavit-Complaint,²³ to Deputy Ombudsman Pelagio S. Apostol for his "review and evaluation and for the filing of the necessary and appropriate complaint/action."²⁴

4. On April 6, 2011, the Office of the Ombudsman-Visayas received the Report and the Complaint.²⁵

5. On June 1, 2011,²⁶ the Office of the Ombudsman-Visayas found the complaint against accused sufficient in

¹⁹ Office Order No. 2005-09 dated August 10, 2005 as cited in the Ombudsman Resolution dated December 10, 2014, p. 1, Record, p. 7.

²⁰ Ombudsman Resolution dated December 10, 2014, pp. 1-2, Record, pp. 7-8.

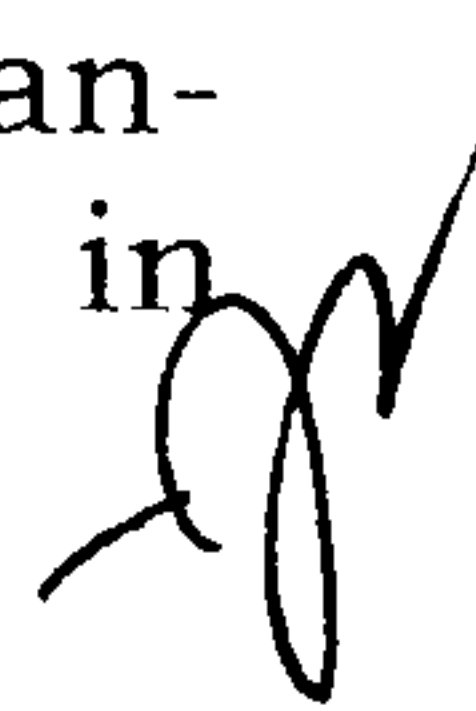
²¹ Record, pp. 43-127.

²² Memorandum dated September 12, 2005, Record, p. 42.

²³ Dated November 20, 2012, Record, pp. 35-40.

²⁴ Letter dated March 31, 2011, Record, p. 34.

²⁵ Letter dated March 31, 2011, Record, p. 34 and Opposition dated September 29, 2015, p. 4, Record, p. 269.



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form and substance. In an Order of even date, accused was directed to file his counter-affidavit together with his controverting evidence against the complaint filed by the COA.²⁷

6. On November 17, 2011, said Office ordered the parties to file their verified position papers.²⁸

7. On October 4, 2012, accused filed a Motion for Extension of Time, asking for 30 days or until November 10, 2012 to file Counter-Affidavit.²⁹

8. On December 27, 2012, the Office of the Ombudsman-Visayas received accused' Counter-Affidavit³⁰ dated November 20, 2012.³¹

9. In a Resolution dated December 10, 2014,³² the Office of the Ombudsman, through Acting Director Joefferon B. Toribio, found probable cause to indict accused for three (3) counts of violation of Section 3(e) of R.A. No. 3019.³³

10. On December 18, 2014, Ombudsman Conchita Carpio-Morales approved the aforementioned Resolution.³⁴

11. On February 11, 2015, accused filed a Motion for Reconsideration of the Resolution dated December 10, 2014.³⁵ The Office of the Ombudsman in an Order dated March 17, 2015 denied the Motion for Reconsideration.³⁶

12. Finally, on May 15, 2015, three Informations all dated March 17, 2015³⁷ and each charging accused with violation of Section 3(e) of R.A. No. 3019 were filed before the Sandiganbayan.

²⁶ Consolidated Evaluation Report dated June 1, 2011, issued by GIPO II Maria Regina F. Hagad-Fernandez and approved by Assistant Ombudsman Virginia Palanca-Santiago, as cited in the Ombudsman Resolution dated December 10, 2014, p. 4, Record, p. 10.

²⁷ Order dated June 1, 2011 as cited in the Ombudsman Resolution dated December 20, 2014, p. 4, Record, p. 10.

²⁸ Ombudsman Resolution dated December 10, 2014, p. 4, Record, p. 10.

²⁹ *Id.*

³⁰ Record, pp. 128-138.

³¹ Ombudsman Resolution dated December 10, 2014, p. 4, Record, p. 10.

³² Record, pp. 7-22.

³³ *Id.* at p. 15, Record, p. 21.

³⁴ *Id.*

³⁵ Motion to Quash dated September 11, 2015, p. 5, Record, p. 196 and Opposition dated September 29, 2015, p. 5, Record, p. 270.

³⁶ p. 9, Record, p. 33.

³⁷ Record, pp. 1-3 and Folder Nos. 2 and 3.



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13. On July 16, 2015, accused filed a Motion for Reinvestigation.³⁸

14. In a Resolution promulgated on September 2, 2015,³⁹ this Court denied the Motion for Reinvestigation.

Discussion

This Court resolves to deny the *Motion to Quash/Dismiss* on the following grounds:

1. Accused failed to establish that the alleged delay can be characterized as capricious, vexatious, and oppressive, or that which violates the right to a speedy disposition of cases;
2. Accused failed to seasonably invoke his right to speedy trial and the speedy disposition of the cases; and,
3. Accused failed to show that he was unduly prejudiced by the alleged delay in the preliminary investigation conducted by the Office of the Ombudsman.

There was no violation of accused' right to the speedy disposition of his case.

The right to speedy disposition of cases should be understood to be a relative or flexible concept such that a mere mathematical reckoning of the time involved would not be sufficient. Jurisprudence dictates that the right is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured; or even without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried.⁴⁰

³⁸ Entry of Appearance with Omnibus Motion 1. For Reinvestigation and 2. To Defer Arraignment dated July 15, 2015, Record, pp. 160-165.

³⁹ Record, pp. 185-188.

⁴⁰ *Coscolluela vs. Sandiganbayan*, 701 SCRA 188, 195 [2013].



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In *Lim vs. Court of Appeals*,⁴¹ the Supreme Court, citing the decision of the Court of Appeals, defined vexatious, capricious and oppressive delay which constitutes violation of the accused' right to speedy trial, viz:

The right has been defined by our Supreme Court in *Gregorio Kalaw versus Segundo Apostol, et al.*, 64 Phil. 852, as a trial conducted according to law of criminal procedure and the rules and regulations, free from vexatious, capricious and oppressive delays. As the Appellate Court put it in "Steward versus State, 13 Arkansas, 720": "what the constitution prohibits is vexatious, capricious and oppressive delays, manufactured by them ministers of justice." Not every delay in the trial is vexatious, capricious or oppressive. In the legal firmament. The terms have distinct connotations. Vexatious suggests an act which is willful and without reasonable cause, for the purpose of annoying and embarrassing another or one lacking justification and intended to harass (page 2548, Third Edition, Webster's International Dictionary). Oppressive connotes an unjust or cruel exercise of power or authority. Capricious action, on the other hand, means willful and unreasoning action.⁴²

In *Corpuz vs. Sandiganbayan*,⁴³ the Supreme Court explained that "the inquiry as to whether or not an accused has been denied such right is not susceptible by precise qualification."⁴⁴ The High Court said that "(A) balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an *ad hoc* basis."⁴⁵

Four (4) factors are to be considered in determining whether an accused was deprived of his right to a speedy trial and the speedy disposition of the case against him: a) length of delay; b) the reason for the delay; c) the defendant's assertion of his right; and d) prejudice caused to the defendant.⁴⁶ The test for determining whether an accused was deprived of his right to speedy trial and

⁴¹ 317 SCRA 521 [1999].

⁴² *Id.*, at p. 526. Underscoring supplied.

⁴³ 442 SCRA 294 [2004].

⁴⁴ *Id.*, at p. 312.

⁴⁵ *Id.*, at p. 313.

⁴⁶ *Coscolluela*, supra; *Braza vs. Sandiganbayan*, 691 SCRA 471, 492 [2013], citing *Dela Peña vs. Sandiganbayan*, 360 SCRA 478, 485 [2001].

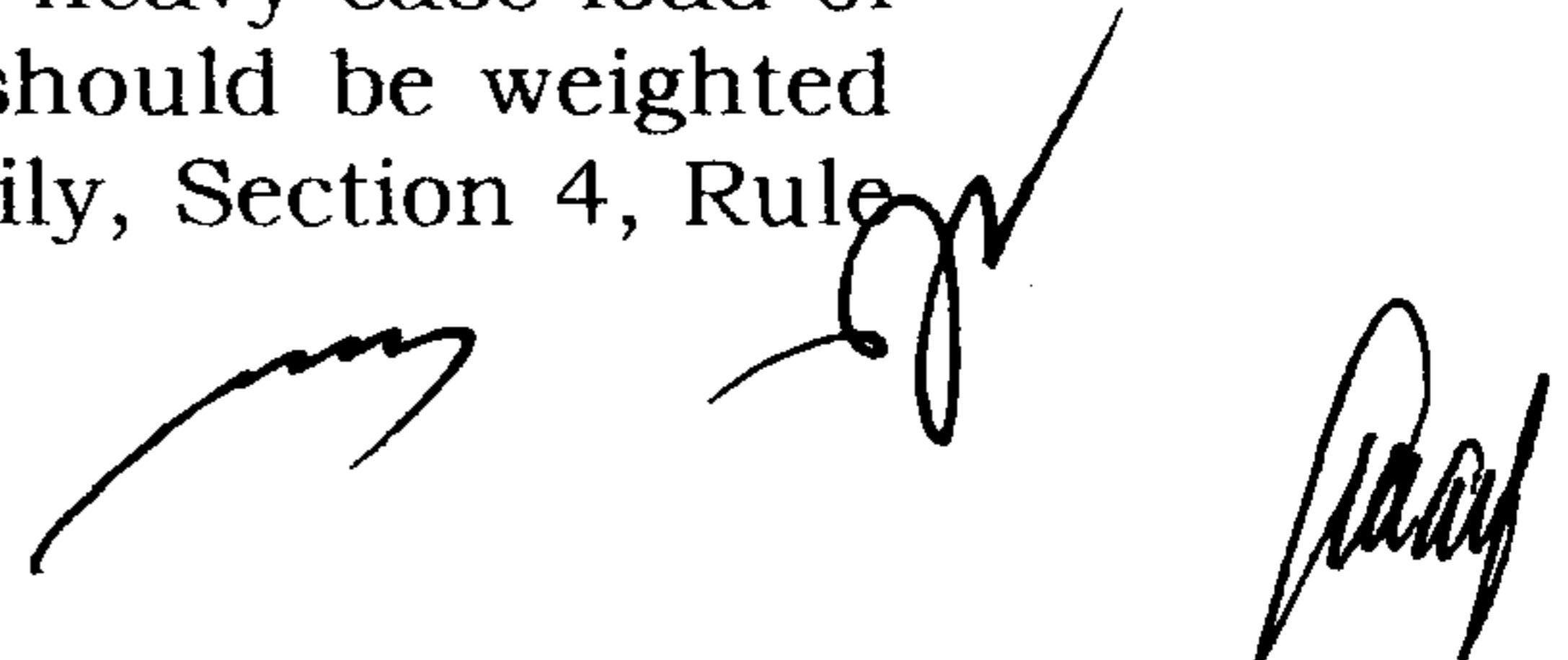
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disposition of the case against him, was explained as follows:

In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant. Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.

Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden. The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable opportunity of fairly prosecuting criminals. As held in *Williams v. United States*, for the government to sustain its right to try the accused despite a delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice.

Closely related to the length of delay is the reason or justification of the State for such delay. Different weights should be assigned to different reasons or justifications invoked by the State. For instance, a deliberate attempt to delay the trial in order to hamper or prejudice the defense should be weighted heavily against the State. Also, it is improper for the prosecutor to intentionally delay to gain some tactical advantage over the defendant or to harass or prejudice him. On the other hand, the heavy case load of the prosecution or a missing witness should be weighted less heavily against the State. Corollarily, Section 4, Rule



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119 of the Revised Rules of Criminal Procedure enumerates the factors for granting a continuance.⁴⁷

In *Ombudsman vs. Jurado*,⁴⁸ citing *Perez vs. People*,⁴⁹ the Supreme Court identified three interests of the accused which the speedy trial right was designed to protect:

1. To prevent oppressive pretrial incarceration;
2. To minimize anxiety and concern of the accused; and,
3. To limit the possibility that the defense will be impaired.

The Supreme Court explained why the last of the enumerated interests is the most serious:

A fourth factor is prejudice to the defendant. Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past. Loss of memory, however, is not always reflected in the record because what has been forgotten can rarely be shown.⁵⁰

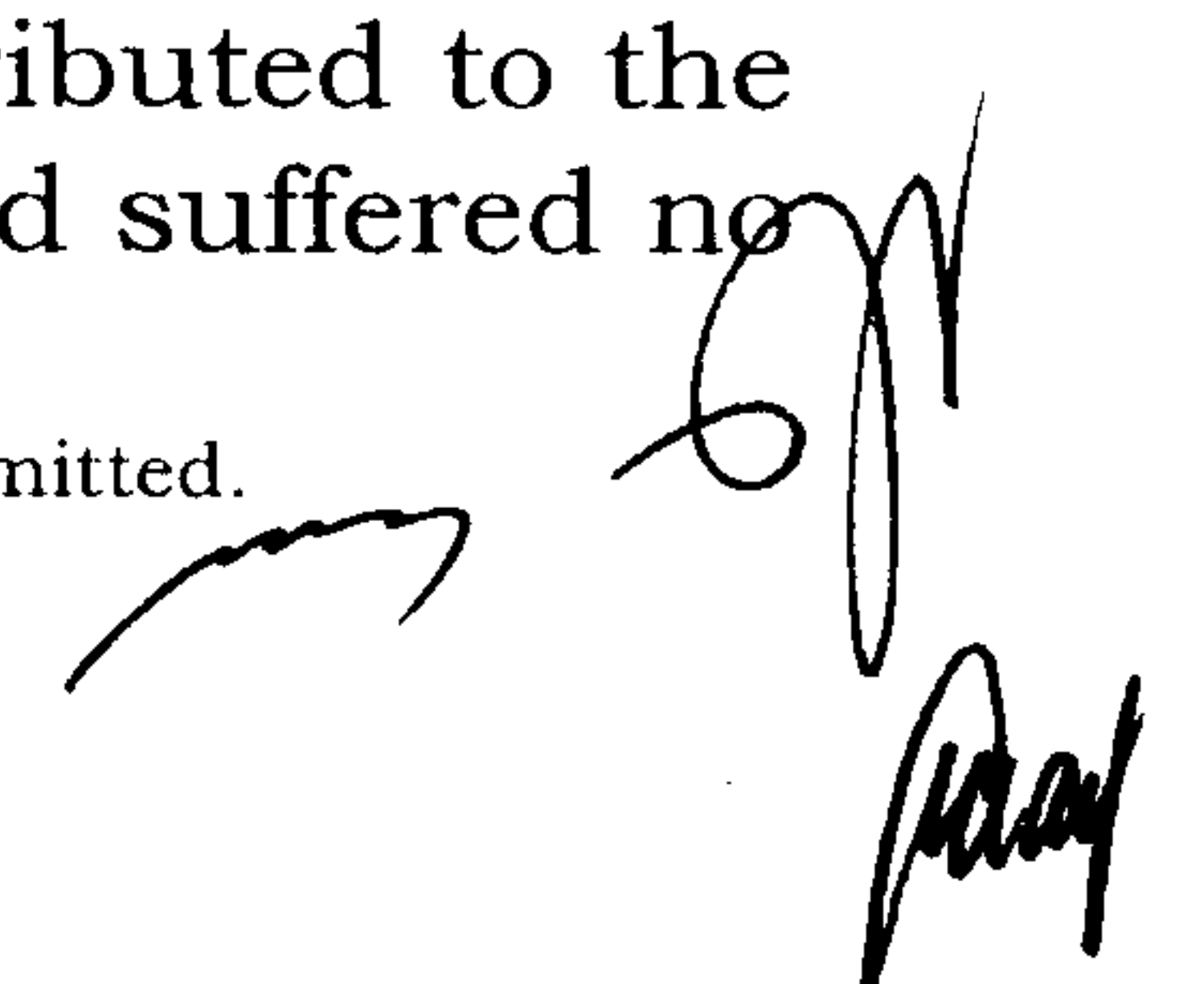
In *Corpuz*, the Supreme Court underscored that the accused had the burden of proving the factual basis for their motion for the dismissal of the Information on the ground of a denial of their right to a speedy trial and to a speedy disposition of the cases against them. They are burdened to prove that such delay caused by the prosecution was vexatious, capricious or whimsical. On the other hand, the prosecutor is burdened to present evidence to establish that the delay in the submission of his report on the reinvestigation of the cases was reasonably attributed to the ordinary process of justice, and that the accused suffered no

⁴⁷ *Corpuz vs. Sandiganbayan*, 442 SCRA 294, 313-314 [2004]. Citations omitted.

⁴⁸ 561 SCRA 135 [2008].

⁴⁹ 544 SCRA 532 [2008].

⁵⁰ *Jurado*, supra, at p. 150.



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serious prejudice beyond that which ensued after an inevitable and ordinary delay.⁵¹

- a. The Length of the Delay.
- b. Reason for the Delay.

The period consumed by COA in its Fact-Finding Investigation must not be tacked to the period utilized in the conduct of the preliminary investigation.

The right of a person to a speedy disposition of the case against him before judicial, quasi-judicial and administrative bodies is enshrined in Section 16, Article III of the 1987 Philippine Constitution.⁵² No doubt, COA, in the exercise of its quasi-judicial and administrative functions, is equally bound by the Constitutional directive on the speedy disposition of cases.

However, the consequences on the administrative liabilities of the accused resulting from the alleged delay in the fact-finding investigation conducted by COA, Region VII, is not within the jurisdiction of this Court. It is a matter for COA, Proper, to decide on.

On the other hand, the mere fact that the results of the fact-finding investigation led to the filing of the Complaint by an official of COA, Region VII in the present case does not make the COA investigation part of the preliminary investigation conducted by the Office of the Ombudsman. COA was not ordered by the Office of the Ombudsman to conduct the preliminary investigation. COA did so upon its receipt of the complaint submitted by DPWH employees.

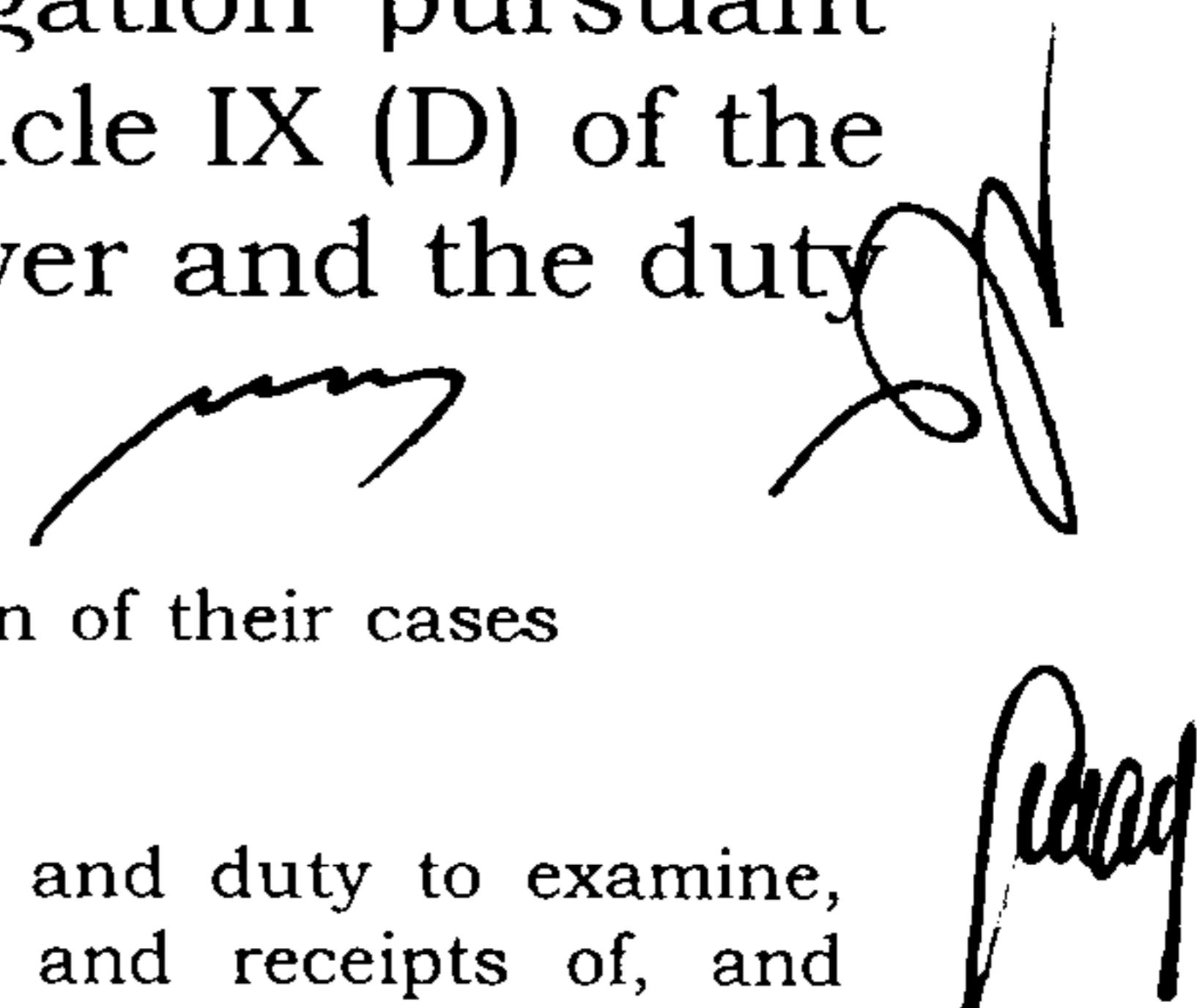
COA conducted the fact-finding investigation pursuant to its regulatory powers under Section 2, Article IX (D) of the 1987 Constitution⁵³ which gives COA the power and the duty

⁵¹ *Supra*, at p. 318.

⁵² **Section 16.** All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

⁵³ **Section 2.**

1. The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis:



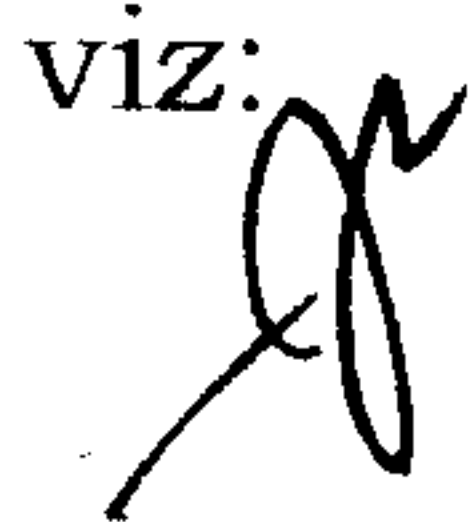
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to, among others, examine, audit and settle all accounts pertaining to public funds and/or property. COA undertook an investigation to determine whether accused properly disbursed public funds.

To be sure, it is COA's obligation to initiate the necessary action if it finds a violation of law or regulation. This is clear under Section 31 of Volume I: Government Auditing Rules and Regulations of the Government Accounting and Auditing Manual, viz:

Sec. 31. Initiation of criminal, civil, or administrative action.- Pursuant to its constitutional power to examine, audit, and settle accounts of the government, the Commission may initiate, in the proper forum, an appropriate criminal, civil or administrative action against any government officer or employee, or even private persons, whenever upon examination, audit, or settlement of an account or claim, a violation of law or regulation is discovered or disclosed.

The Supreme Court explained in *Aguinaldo vs. Sandiganbayan*,⁵⁴ that COA's review of an official's disbursement is related to the administrative aspect of an official's accountability. The Ombudsman is given the power to investigate the illegal act or omission of a public official, viz:







- a. constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution;
 - b. autonomous state colleges and universities;
 - c. other government-owned or controlled corporations and their subsidiaries; and
 - d. such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.
2. The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.

⁵⁴ 265 SCRA 121 [1996]

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COA's approval of petitioner's disbursements only relates to the administrative aspect of the matter of his accountability but it does not foreclose the Ombudsman's authority to investigate and determine whether there is a crime to be prosecuted for which petitioner is answerable. Therefore, as correctly stated by the Sandiganbayan in its order of April 12, 1996, while the COA may assist in gathering evidence to substantiate a charge of malversation, any determination made by it will not be conclusive as to whether adequate cause exists to prosecute a case. This is so because the Ombudsman is given the power to investigate on its own an illegal act or omission of a public official.⁵⁵

The Supreme Court also explained in *Dimayuga vs. Office of the Ombudsman*,⁵⁶ that the preliminary investigation conducted by the Office of the Ombudsman is independent from the special audit conducted by COA. The COA report is not a prerequisite to the conduct of the preliminary investigation. The Supreme Court, citing *Cabrera vs. Marcelo*,⁵⁷ again emphasized that the interest of COA is solely administrative. Thus:

Furthermore, although the Commission on Audit (COA) report may aid the Office of the Ombudsman in conducting its preliminary investigation, such report is not a prerequisite. Both the Constitution and the Ombudsman Act of 1989 state that the Office of the Ombudsman may undertake an investigation on complaint or on its own initiative. Therefore, with or without the report from COA, the Ombudsman can conduct a preliminary investigation. This Court has declared that the findings in a COA report or the finality or lack of finality of such report is irrelevant to the investigation of the Office of the Ombudsman in its determination of probable cause. In *Cabrera v. Marcelo*, this Court declared:

Petitioners cannot fault the Ombudsman for relying on the COA Audit Report, notwithstanding that it had not yet attained finality. The initial basis for the Ombudsman's investigation was not the COA Audit Report, but the complaints filed by Casanova. **While the allegations in the complaint happened to be similar with those contained in the COA Audit Report, the**

⁵⁵ *Id.*, at pp. 134-135. Underscoring supplied.

⁵⁶ 495 SCRA 461 [2006].

⁵⁷ 496 SCRA 771 [2006].

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Ombudsman could very well conduct an independent investigation based on the complaints for the purpose of whether criminal charges should be filed against the petitioners. The Ombudsman is reposed with broad investigatory powers in the pursuit and of its constitutional mandate as protector of the people and investigator of complaints filed against public officials. It is even empowered to request from any government agency such as the COA, the information necessary in the discharge of its responsibilities and to examine, if necessary, pertinent records and documents.

It should be borne in mind that **the interest of the COA is solely administrative, and that its investigation does not foreclose the Ombudsman's authority to investigate and determine whether there is a crime to be prosecuted for which a public official is answerable.** In *Ramos v. Aquino*, the Court ruled that the fact that petitioners' accounts and vouchers had passed in audit is not a ground for enjoining the provincial fiscal from conducting a preliminary investigation for the purpose of determining the criminal liability of petitioners for malversation. **Clearly then, a finding of probable cause does not derive its veracity from the findings of the COA, but from the independent determination of the Ombudsman.**⁵⁸

Further, in *Tilendo vs. Ombudsman*,⁵⁹ the Supreme Court did not consider the fact-finding investigation conducted by another government agency, *i.e.*, National Bureau of Investigation, as part of the preliminary investigation, and said that the referral of the case to the NBI did not constitute an abdication of the Ombudsman's authority to conduct a preliminary investigation. The Supreme Court, thus, ruled that the Ombudsman's resolution of therein petitioner's case was not attended with unreasonable delay since the preliminary investigation stage officially began when the NBI filed before the Ombudsman a complaint against therein petitioner, viz:



⁵⁸ *Supra*, at pp. 467-468. Original emphasis retained; citations omitted.

⁵⁹ 533 SCRA 331 [2007].

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In this case, there was no unreasonable delay to speak of because the preliminary investigation stage officially began when the NBI filed before the Ombudsman a complaint against Tilendo for violation of the relevant provisions of RA 3019 and the RPC. Contrary to Tilendo's view, the preliminary investigation did not automatically commence upon the filing of the anonymous letters in the Ombudsman.

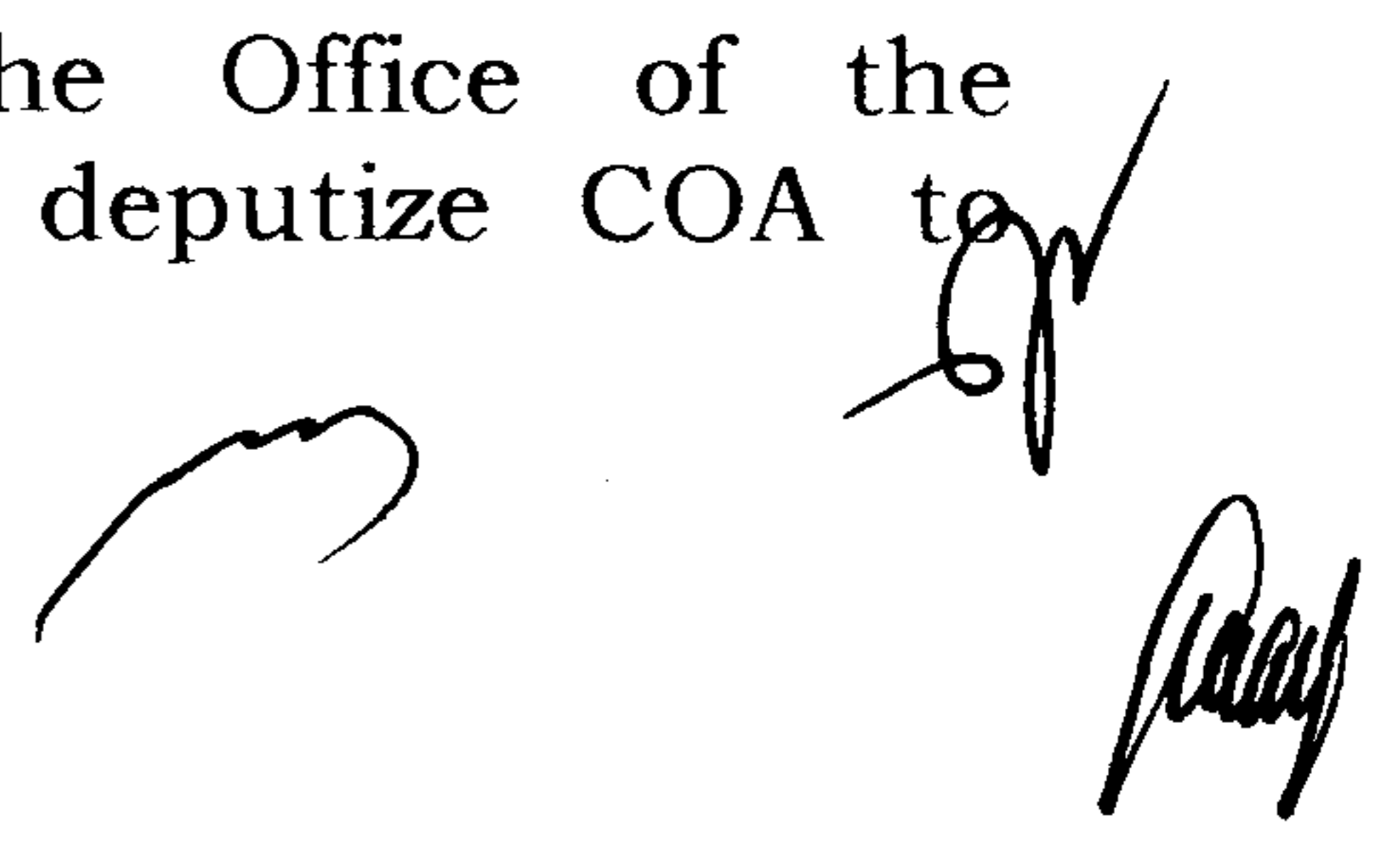
Administrative Order No. 07 (AO 7), as amended, or the Rules of Procedure of the Office of the Ombudsman outlines the procedure applicable to all criminal and administrative complaints cognizable by the Ombudsman. Section 2, Rule II of AO 7 clearly states that "upon evaluating the complaint, the investigating officer shall recommend whether it may be: (a) dismissed outright for want of palpable merit; (b) referred to respondent for comment; (c) endorsed to the proper government office or agency which has jurisdiction over the case; (d) forwarded to the appropriate office or official for fact-finding investigation; or (e) referred for administrative adjudication; or (f) subjected to a preliminary investigation."

Significantly, the Court held in *Raro v. Sandiganbayan*, that by referring the complaint to the NBI, the Ombudsman did not thereby delegate the conduct of the preliminary investigation of the case to the NBI. What was delegated was only the fact-finding function, preparatory to the preliminary investigation still to be conducted by the Ombudsman.

In this case, after the fact-finding investigation, the NBI reported its findings to the Ombudsman and consequently filed a complaint against Tilendo for various criminal charges. If we consider the fact-finding investigation conducted by the NBI as part of the preliminary investigation stage, then the NBI served a conflicting role. The NBI acted as the investigating body on the charges against Tilendo, and thereafter, acted as the complainant against Tilendo. This is absurd. What the NBI clearly did, in accordance with Section 2(d) of Rule II of AO 7, was to analyze the facts and gather evidence which could either exonerate or further implicate Tilendo in the offenses charged.⁶⁰

Here, as previously discussed, the Office of the Ombudsman did not even delegate or deputize COA to

⁶⁰ *Id.*, at pp. 343-344. Underscoring supplied, citations omitted.



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conduct the investigation. The period utilized by COA in its fact-finding investigation, therefore, should not be tacked to the period for preliminary investigation in this Court's determination of whether there was unreasonable delay in the disposition of the case filed against the accused before the Office of the Ombudsman.

This Court does not find that there was undue delay in the disposition of the case before the Office of the Ombudsman.

The relevant timeline in this case is as follows:

Date	Event	Period elapsed
March 31, 2011	COA-Cebu transmitted the Fact-Finding Report, together with the Complaint, to Deputy Ombudsman Apostol for review and filing of appropriate complaint. ⁶¹	
April 6, 2011	Office of the Ombudsman-Visayas received the Fact-Finding Report and the Complaint. ⁶²	
June 1, 2011	Office of the Ombudsman-Visayas issued a Consolidated Report finding the Complaint against accused sufficient in form and substance. ⁶³ Said Office directed accused to file his counter-affidavit, together with his controverting evidence against the COA's complaint. ⁶⁴	2 months from the date the Ombudsman received the Fact-Finding Report and the Complaint.
November 17, 2011	Office of the Ombudsman-Visayas	5 months

⁶¹ Letter dated March 31, 2011, Record, p. 34.

⁶² Letter dated March 31, 2011, Record, p. 34 and Opposition dated September 29, 2015, p. 4, Record, p. 269.

⁶³ Consolidated Evaluation Report dated June 1, 2011 as cited in the Ombudsman Resolution dated December 10, 2014, p. 4, Record, p. 10.

⁶⁴ Order dated June 1, 2011 as cited in the Ombudsman Resolution dated December 20, 2014, p. 4, Record, p. 10.

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	directed the parties to file their verified position papers. ⁶⁵	from the date the Ombudsman directed accused to file his counter-affidavit.
October 4, 2012	Accused moved for a 30-day extension of time to file his Counter-Affidavit. ⁶⁶	1 year & 4 months or 16 months from the date the Ombudsman directed accused to file Counter-Affidavit.
December 27, 2012	Office of the Ombudsman-Visayas received accused' Counter-Affidavit dated November 20, 2012. ⁶⁷	1 year & 6 months or 18 months from the date the Ombudsman directed accused to file Counter-Affidavit.
December 10, 2014	Office of the Ombudsman found probable cause to indict accused for 3 counts of violation of R.A. No. 3019. ⁶⁸	1 year, 11 months & 14 days from the date the Ombudsman received accused' Counter-Affidavit (submission for resolution).
December 18, 2014	Ombudsman Carpio-Morales approved Resolution finding probable cause to indict accused. ⁶⁹	8 days from the date Prosecutor Toribio submitted the Resolution finding probable cause to charge accused.
February 11, 2015	Accused moved for reconsideration of the Resolution dated December 10, 2014. ⁷⁰	2 months from the date Ombudsman Morales approved the filing of Information against accused.
March 17, 2015	Office of the Ombudsman denied accused' Motion for Reconsideration of the Resolution dated December 10, 2014. ⁷¹	1 month from the date accused filed a Motion for Reconsideration of the Resolution dated

⁶⁵ Ombudsman Resolution dated December 10, 2014, p. 4, Record, p. 10.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Ombudsman Resolution dated December 10, 2014, p. 15, Record, p. 21.

⁶⁹ *Id.*

⁷⁰ Motion to Quash dated September 11, 2015, p. 5, Record, p. 196 and Opposition dated September 29, 2015, p. 5, Record, p. 270.

⁷¹ Order dated March 17, 2015, p. 9, Record, p. 33.

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		December 10, 2014.
May 15, 2015	3 Informations for violation of R.A. No. 3019 were filed with the Sandiganbayan. ⁷²	2 months from the date the Ombudsman denied accused' Motion for Reconsideration of the Resolution dated December 10, 2014. 4 years, 1 month and 9 days from the date the Office of the Ombudsman-Visayas received the Fact-Finding Report and the Complaint.

From the foregoing, it can be easily seen that four (4) years and one (1) month had elapsed from the date the Office of the Ombudsman received the complaint against accused Abergas on April 6, 2011⁷³ until the time the Information was filed on May 15, 2015. But it is also readily apparent that it took accused almost eighteen (18) months to file his counter-affidavit. Accused' filing of a Motion for Reconsideration also contributed to the five-month delay in the filing of the Information.

To justify the delay in the filing of the Counter-Affidavit, accused claims that he only received a copy of the June 1, 2011 Order directing him to file Counter-Affidavit on October 1, 2012.⁷⁴ But he did not present any proof to support his claim.

In *Dela Rosa vs. Court of Appeals*,⁷⁵ the Supreme Court said that the several postponements sought and obtained by therein accused-petitioner, in effect, amounted to a waiver or abandonment of his right to a speedy trial; delay of his own making cannot be oppressive to him.⁷⁶

⁷² Record, pp. 1-3 and Folder Nos. 2 and 3.

⁷³ Letter dated March 31, 2011, Record, p. 34 and Opposition dated September 29, 2015, p. 4, Record, p. 269.

⁷⁴ Motion to Quash/Dismiss dated September 11, 2015, p. 5, Record, p. 196.

⁷⁵ 253 SCRA 499 [1996].

⁷⁶ *Id.*, at p. 505.

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Clearly, the extended duration of the preliminary investigation is not entirely attributable to the Office of the Ombudsman.

On the other hand, it appears that it took the Office of the Ombudsman almost two (2) years, from the date it received accused Abergas' Counter-Affidavit, to resolve the case. Accused claims that the 30-day period provided under Section 6, Rule III of the Rules of Procedure of the Office of the Ombudsman⁷⁷ to resolve administrative cases must be similarly applied to criminal cases.⁷⁸

Accused' contention is untenable.

The Supreme Court explained, in *Dansal vs. Fernandez, Sr.*,⁷⁹ that while the Rules of Procedure of the Office of the Ombudsman does not provide for a specific period to resolve criminal cases, the same Rules adopt the Rules of Court on preliminary investigation as modified by the Rules of the Office of the Ombudsman. Nonetheless, the Supreme Court stressed that the 10-day period provided by the Rules of Court to conduct preliminary investigation is merely directory, although it cannot be disregarded with absolute impunity, viz:

The Court is not unmindful of the duty of the Ombudsman under the Constitution and Republic Act No. 6770 to act promptly on Complaints brought before him. But such duty should not be mistaken with a hasty resolution of cases at the expense of thoroughness and correctness. Judicial notice should be taken of the fact that the nature of the Office of the Ombudsman encourages individuals who clamor for efficient government service to freely lodge their Complaints against wrongdoings of government personnel, thus resulting in a steady stream of cases reaching the Office of the Ombudsman.

⁷⁷ Section 6. Rendition of decision. - Not later than thirty (30) days after the case is declared submitted for resolution, the Hearing Officer shall submit a proposed decision containing his findings and recommendation for the approval of the Ombudsman. Said proposed decision shall be reviewed by the Directors, Assistant Ombudsmen and Deputy Ombudsmen concerned. With respect to low ranking public officials, the Deputy Ombudsman concerned shall be the approving authority. Upon approval, copies thereof shall be served upon the parties and the head of the office or agency of which the respondent is an official or employee for his information and compliance with the appropriate directive contained therein.

⁷⁸ Motion to Quash dated September 11, 2015, pp. 6-7, Record, pp. 197-198.

⁷⁹ 327 SCRA 145 [2000].

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As stressed upon by the Solicitor General, the Rules of Procedure of the Ombudsman do not specifically prescribe a period within which a criminal complaint may be investigated and decided. But the same Rules adopt the Rules of Court on Preliminary Investigation, as modified by the Rules of Procedure of the Ombudsman. Under the Rules of Court, the Investigating Officer has ten (10) days from submission of the case to come out with the resolution.

But it bears stressing that the period fixed by law is merely "directory", although it cannot be disregarded or ignored completely, with absolute impunity. xxx⁸⁰

Here, the Court finds that the two-year period it took the Office of the Ombudsman to resolve the present case is justified.

First, accused, in his Counter-Affidavit, reserved "his right to present documents to support [the] allegations and to file a Supplement to [his] counter-affidavit."⁸¹

Second, it appears from the Resolution of the preliminary investigation that Acting Director⁸² Joefferson Toribio exerted efforts to make a thorough evaluation of accused' case on the basis of COA's Fact-Finding Report,⁸³ State Auditor IV Maglahus' Affidavit,⁸⁴ and accused' Counter-Affidavit.⁸⁵ The Resolution dated December 10, 2014⁸⁶ disposed of the complaint against accused involving the following alleged excesses for the years 2002 to 2005:

- a. Frequent travels to Manila;
- b. Excessive disbursements of Miscellaneous and Extraordinary Expenses which are the source of "pasalubong" to DPWH Central Office and other offices;
- c. Extravagant entertainment of visitors from DPWH Central Office and other offices;
- d. Payment of Honoraria and Signing/Incentive Bonus;
- e. Clearance given to retired personnel without the benefit of settlement of their accountabilities;

⁸⁰ *Id.*, at p. 156. Underscoring supplied.

⁸¹ Counter-Affidavit dated November 20, 2012, p. 10, Record, p. 137.

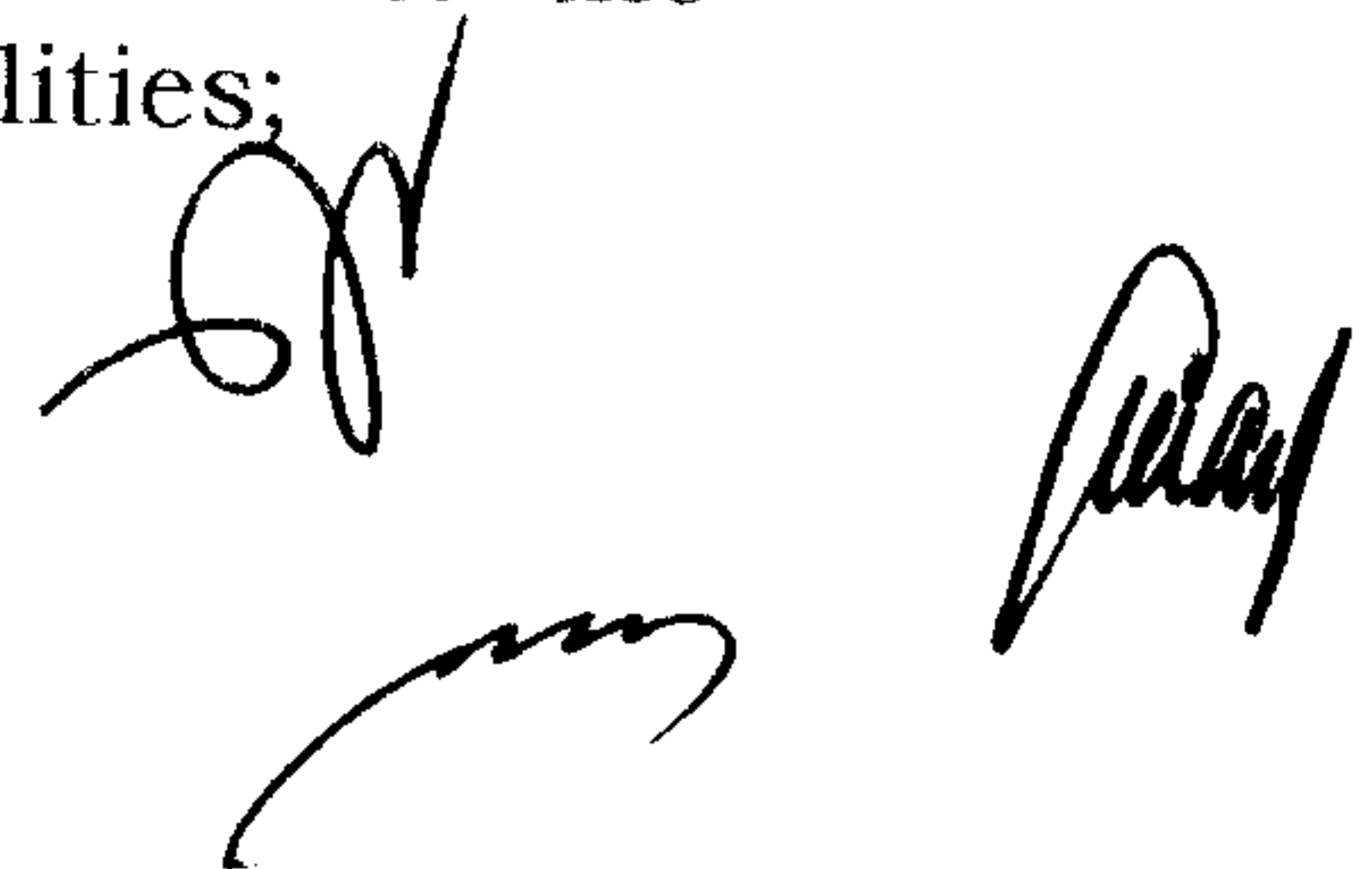
⁸² Office of the Special Prosecutor

⁸³ Record, pp. 43-127

⁸⁴ Dated March 8, 2011, Record, pp. 35-40.

⁸⁵ Dated November 20, 2012, Record, pp. 128-143.

⁸⁶ Record, pp. 7-21.



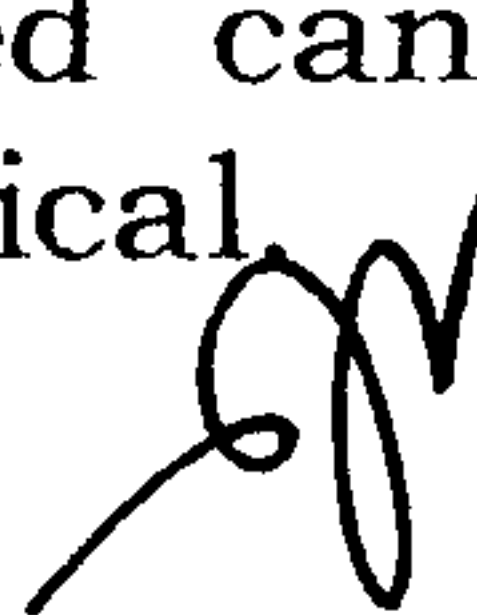
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- f. Unfair dismissal of casual employees in the Regional Office;
- g. Inclusion of personal maid in the agency payroll; and
- h. Spurious overtime service rendered by secretaries; and Solicitation of financial assistance from District Engineers for Distribution to DPWH Central Office Officials.⁸⁷

Acting Director Toribio found probable cause to indict accused for 3 counts of violation of Section 3(e) of R.A. No. 3019 for irregular reimbursements in connection with his travels to Manila and excessive reimbursements charged against the Extraordinary and Miscellaneous Expenses and Actual and Incidental Expenses,⁸⁸ while he concluded that there was no sufficient basis to support the other alleged irregular transactions, *i.e.*, spurious overtime service rendered by secretaries,⁸⁹ illegal dismissal of casual employees,⁹⁰ payment of honoraria and CNA incentive bonus to DPWH employees, and signing of clearances of retired DPWH personnel with unsettled accountabilities.⁹¹

Third, no less than the Supreme Court had taken judicial notice that the nature of the Office of the Ombudsman encourages individuals who clamor for efficient government service to freely lodge their complaints against wrongdoings of government personnel, thus resulting in a steady stream of cases reaching the Office of the Ombudsman.⁹² Hence, the Supreme Court recognized the efforts exerted by the Office of the Ombudsman in the evaluation of the charges against the accused, and considered as reasonable the eight-month period (from the time accused submitted his counter-affidavit) it took said agency to conclude its preliminary investigation.⁹³

This Court, thus, finds no evidence to show that the alleged delay in the disposition of the case against the accused can be characterized as vexatious, capricious or whimsical.



⁸⁷ Ombudsman Resolution dated December 10, 2014, pp. 1-2, Record, pp. 7-8.

⁸⁸ Ombudsman Resolution dated December 10, 2014, pp. 6-13, Record, pp. 12-19.

⁸⁹ Ombudsman Resolution dated December 10, 2014, p. 13, Record, p. 19.

⁹⁰ Ombudsman Resolution dated December 10, 2014, pp. 13-14, Record, pp. 19-20.

⁹¹ Ombudsman Resolution dated December 10, 2014, p. 14, Record, p. 20.

⁹² *Raro vs. Sandiganbayan*, 335 SCRA 581, 608 [2000], citing *Dansal vs. Fernandez*, *supra*.

⁹³ *Raro*, *Supra*, at p. 607.

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c. The Defendant's Assertion of his Right.

Accused belatedly asserted his right to the speedy disposition of his case.

The records available with this Court does not show that the accused invoked his right to the speedy disposition of his case before the Office of the Ombudsman. Indeed, accused did not allege in his *Motion to Quash* that he did. Neither did the accused invoke his right to speedy disposition of the case soon after the Informations were filed against him. Instead, accused filed a *Motion for Reinvestigation*⁹⁴ and invoked his right to preliminary investigation⁹⁵ to allow the Office of the Ombudsman to reexamine and reevaluate the merits of the case and the evidence against him. He did not invoke his right to a speedy disposition in said *Motion for Reinvestigation*. The filing of the *Motion for Reinvestigation* appears to be antithetical to his present claim on the Office of the Ombudsman's slow-paced disposition of his case.

Accused only invoked his right to the speedy disposition of his case after the denial of his *Motion for Reinvestigation*.

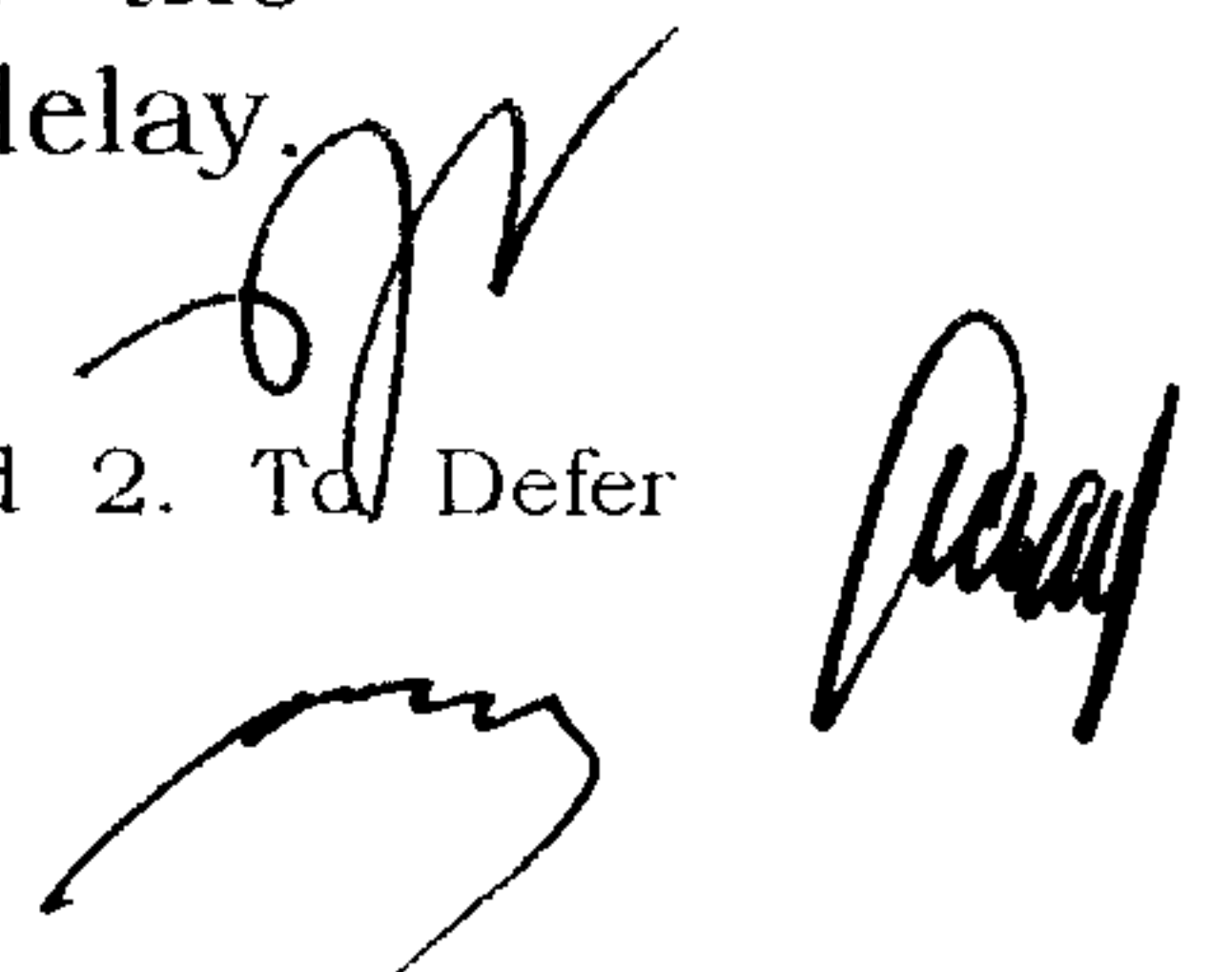
In *Rulloda vs. Sandiganbayan*,⁹⁶ the Supreme Court dismissed the petition for failure of therein petitioner to show grave abuse on the part of the Sandiganbayan in denying therein petitioner's Motion to Dismiss grounded on his right to the speedy disposition of his case. The Supreme Court noted that the petitioner's failure to seasonably invoke such right and his concomitant failure to show that he was unduly prejudiced by the alleged delay in the preliminary investigation conducted by the Office of the Ombudsman warranted the denial of his motion, viz:

Withal, the right to a speedy disposition of cases is a relative or flexible rule which must be judiciously applied according to the peculiar facts and circumstances of each case. To determine if such right was infringed, the following factors must necessarily pass judicial scrutiny, viz: (a) the length of delay; (b) the reasons for the delay; (c) the assertion or failure to assert such right by the accused; and (d) the prejudice caused by the delay.

⁹⁴ Entry of Appearance with Omnibus Motion 1. For Reinvestigation and 2. To Defer Arraignment dated July 15, 2015, Record, pp. 160-165.

⁹⁵ *Id.*, at p. 4, Record, p. 163.

⁹⁶ G.R. No. 218371, July 20, 2015.



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Notably, **petitioner's failure to seasonably invoke such right and his concomitant failure to show that he was unduly prejudiced by the alleged delay in the preliminary investigation conducted by the Office of the Ombudsman warranted the denial of his motion.**⁹⁷

Just as in *Rulloda*, accused failed to seasonably invoke his right to the speedy disposition of his case. His belated invocation of his right to speedy disposition of his case must be similarly denied by this Court.

d. Prejudice to the Defendant.

Accused claims that the protracted proceedings prejudiced him because it prevented him from securing documents. But this patently contradicts his claim in his *Motion for Reinvestigation* that "through accused's persistence, perseverance, and earnest efforts, pertinent documents that had long been archived were found and retrieved."⁹⁸ It, thus, appears that the delay benefitted accused because he was able to secure copies of relevant documents to establish his innocence before this Court. Accused made the following statements in his *Motion for Reinvestigation*:

7.3. When he was preparing his counter affidavit, he had no access to the records and documents that will dispel the charge against him; and

7.4. Securing the records and documents proved to be difficult and required considerable time and effort because they have long been archived.

8. Through the perseverance, diligence, and earnest efforts of the accused to locate and secure the records and documents, the following records/documents were retrieved:

8.1. Ministry of Public Works and Highways (MPWH) Memorandum Circular No. 26 dated June 13, 1984, informing the concerned officers (Regional Directors included) informing them the requirement for

⁹⁷ Underscoring supplied.

⁹⁸ Entry of Appearance with Omnibus Motion 1. For Reinvestigation and 2. To Defer Arraignment dated July 15, 2015, p. 1, Record, p. 160.

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said officials to present certificates of appearance in support of their official travel outside of their permanent official station may be dispensed with;

8.2. Various memoranda issued for the period 2003 to 2005 directing the accused to travel to Manila and other Region;

8.3. Department Order No. 24 dated May 7, 2007 clarifying Department Order No 42 dated May 19, 1988. The former Order clarified that it is within the approving authority (*sic*) the Regional Directors to approve the preparation of the budget chargeable against EAO/Special Budget. Among others, the expenses chargeable against EAO/Special Budget include travel, repair of vehicles and offices, representation, office supplies, and utilities.

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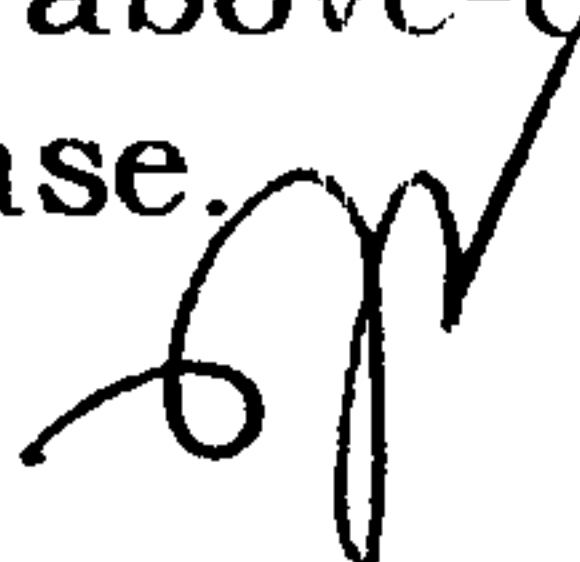
9. For reasons abovestated, the aforesaid documents were not presented during the preliminary investigation, hence, were not passed upon by the investigating officers. Apparently, these were the documents that the investigating officer claimed that the accused failed to present. These documents will be presented during the re-investigation of the present cases.

10. Given the chance for reinvestigation, accused can dispel the charges against him. The aforesaid documents do not only justify the subject disbursements but also refute and shatter the material allegations against the accused in the Information. With this evidence, there is a great probability, if not imminent or certain, that the accused will be acquitted if a full blown trial will ensue.⁹⁹

Clearly, accused was not able to establish that the delay prejudiced him.

Accused cites the cases of *Enriquez vs. Ombudsman*,¹⁰⁰ *Tatad vs. Sandiganbayan*,¹⁰¹ and *Coscolluela vs. Sandiganbayan*¹⁰² in support of his *Motion to Quash*.

The above-cited cases are not on all fours with the present case.



⁹⁹ *Id.*, at pp. 3-4, Record, pp. 162-163.

¹⁰⁰ 545 SCRA 618 [2008].

¹⁰¹ 159 SCRA 70 [1988].

¹⁰² *Supra*

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In *Enriquez*, petitioners “exerted diligent efforts by filing several motions urging respondent to resolve their cases speedily.” Notably, in *Enriquez*, the Office of the Ombudsman had yet to resolve the complaints-affidavits despite the lapse of eight (8) years from the filing thereof.¹⁰³ Here, accused never bothered to call the attention of the Office of the Ombudsman on the supposed inordinate delay in resolving his case.

On the other hand, in *Tatad*, the Supreme Court observed that: 1) The complaint had been resurrected only after the accused had a falling out with former President Marcos, indicating that political motivations had played a vital role in activating and propelling the prosecutorial process; 2) The Tanodbayan had blatantly departed from the established procedure prescribed by law for the conduct of preliminary investigation; and 3) The simple factual and legal issues involved did not justify the delay.¹⁰⁴ Here, the prosecution of accused does not appear to have been politically motivated. There is no proof that the Office of the Ombudsman departed from its Rules of Procedure in resolving his case.

Finally, the factual circumstances in *Coscolluela* are dissimilar to the present case. First, it took the Office of the Ombudsman eight (8) years after the filing of the complaint to decide the case. Second, it does not appear that the accused in *Coscolluela* contributed to the delay in the resolution of the complaint against them. *Coscolluela* filed his counter-affidavit on November 13, 2002. The Resolution recommending the filing of the Information was supposedly prepared on March 27, 2003 but was approved only on May 21, 2009 or six (6) years after.

The circumstances herein do not justify the dismissal of the cases against accused on the ground that the State violated his right to the speedy disposition of his case. Accused failed to establish that the preliminary investigation conducted by the Office of the Ombudsman was attended by vexatious, capricious and oppressive delays. Thus, the Ombudsman was not divested of its jurisdiction to file the Informations against accused.

¹⁰³ Supra, at p. 626.

¹⁰⁴ See *People vs. Sandiganbayan*, 712 SCRA 359 [2013].

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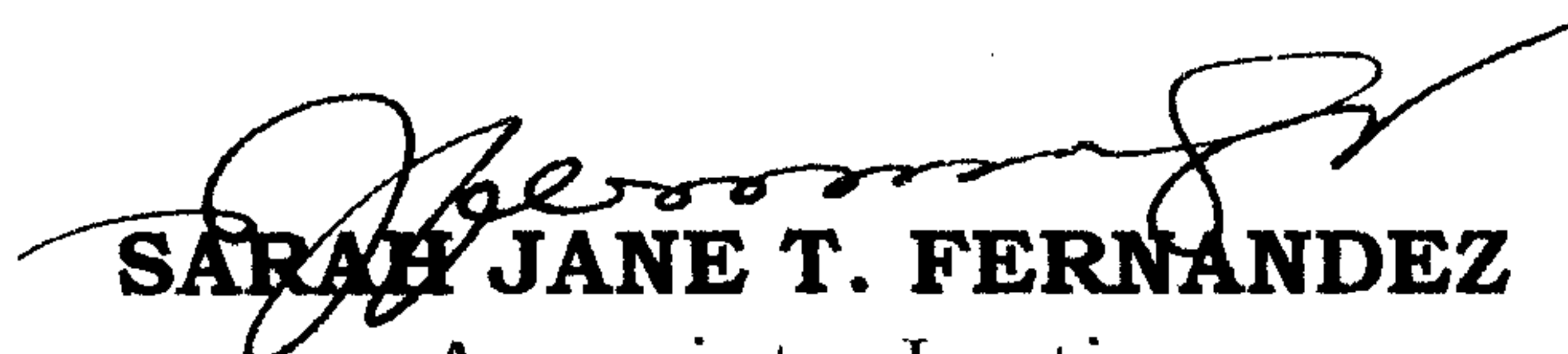
For justice to prevail, the scales must balance, for justice is not to be dispensed for the accused alone.¹⁰⁴ The right of the accused to speedy trial (and to the speedy disposition of his case) secure rights to the accused, but it does not preclude the rights of public justice. Thus,

While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.¹⁰⁵

WHEREFORE, the *Motion to Quash/Dismiss with Motion to Defer Proceedings* dated September 11, 2015 filed by accused Juanito P. Abergas, is hereby **DENIED**.

SO ORDERED.

Quezon City, Metro Manila.


SARAH JANE T. FERNANDEZ
Associate Justice

WE CONCUR:


AMPARO M. CABOTAJE TANG
Presiding Justice
Chairperson


SAMUEL R. MARTIRES
Associate Justice

¹⁰⁴ Tan vs. People, 586 SCRA 139, 162 [2009].

¹⁰⁵ Corpuz, Supra, at pp. 312-313.