



REPUBLIC OF THE PHILIPPINES

**Sandiganbayan**

QUEZON CITY

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**SEVENTH DIVISION**

*Minutes of the proceedings held on September 21, 2023.*

*Present:*

*Justice MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Chairperson*  
*Justice ZALDY V. TRESPESES ----- Member*  
*Justice GEORGINA D. HIDALGO ----- Member*

*The following resolution was adopted:*

***SB-23-CRM-0060 – People v. Rhodora J. Cadiao***

This resolves the following:

1. Accused Rhodora J. Cadiao's "EXPLANATION" dated August 20, 2023;<sup>1</sup> and
2. Prosecution's "COMMENT" dated September 15, 2023.

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***GOMEZ-ESTOESTA, J.,***

In the court's Resolution dated August 31, 2023, a continuation of the pre-suspension hearing was deemed necessary, as follows:

However, *Segovia v. Sandiganbayan* gives the court a window when to exercise discretion in the imposition of the preventive suspension in the following instances:

Its discretion lies only during the pre-suspension hearing where it is required to ascertain whether or not (1) the accused had been afforded due preliminary investigation prior to the filing of the information against him, (2) the acts for which he was charged constitute a violation of the provisions of Republic Act. No. 3019 or of the provisions of title 7, Book II of the Revised Penal Code, or (3) the information against him can be quashed, under any of the grounds provided in Section 2, Rules 117 of the Rules of Court. [emphasis supplied]

Notably, the *Information* involves a private complainant, Antonio A. Dela Vega, who claims to have been unjustly refused of his payment of salaries, RATA, and other benefits for the period July 2016 to February 2018 in the total amount of P1,664,810.00.

Two matters readily become apparent in accused's *Explanation*, viz:

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<sup>1</sup> Electronically filed on August 22, 2023 at 5:00 PM; Records, Vol. 2, pp. 21-39.

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- i. That the accused Cadio was informed by private complainant Antonio A. Dela Vega that he would be executing an affidavit of desistance; and
- ii. disbursement vouchers were issued showing payment to the private complainant.

How these allegations may affect the nature of the charge that will necessarily call for the preventive suspension of the accused should first be determined. Meantime, the prosecution should comment on the matter.

Case law has settled that the order of preventive suspension, while mandatory in nature, is by no means automatic or self-operative.<sup>2</sup>

At this time, a proper determination of the validity of the information has already been made, after accused Cadio's attempt to quash the same, in the court's **Resolution dated July 19, 2023** (which denied accused's *Omnibus Motion to Quash Information, Recall Warrant of Arrest and Dismiss the Case*) and **Resolution dated August 8, 2023** (which denied accused's *Motion for Reconsideration*). While the mandatory nature of the preventive suspension order should have already impelled this court to immediately issue the same, and not hold it in abeyance, it was the *Explanation* later given by accused Cadio which spurred this court to first determine whether the purported desistance of the private complainant, and his alleged payment, would have still constituted a violation of Section 3 (e) of Republic Act No. 3019, being the offense charged.<sup>3</sup>

Haplessly, the proceedings held for the continuation of the pre-suspension hearing were short of anything to prove the fact that a desistance was made. Despite the window given for the accused to aid the court in determining whether *the acts for which she was charged constitute a violation of the provisions of Republic Act. No. 3019*, the arguments made in court proved of no effect.

The pre-suspension hearing was called for the parties, especially the accused, to fortify her reasoning why she should not be preventively suspended. An allegation of payment, even if made belatedly after the alleged commission of the crime charged, may affect the element of damage.<sup>4</sup> During

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<sup>2</sup> *Flores v. Layosa*, G.R. No. 154714, August 12, 2004.

<sup>3</sup> See *Socrates v. Sandiganbayan*, G.R. Nos. 116259-6 and 118896-97, Feb. 20, 1996 and *Bolastig v. Sandiganbayan*, G.R. No. 110503, August 4, 1994.

<sup>4</sup> *Rivera v. People*, G.R. No. 156577, December 3, 2014, stated:

Undue injury in the context of Section 3 (e) of R.A. No. 3019 should be equated with that civil law concept of "actual damage." Unlike in actions for torts, undue injury in Sec. 3 (e) cannot be presumed even after a wrong or a violation of a right has been established. Its existence must be proven as one of the elements of the crime. In fact, the causing of undue injury, or the giving of any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence constitutes the very act punished under this section. Thus, it is required that the undue injury be specified, quantified and proven to the point of moral certainty.

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the hearing, however, it was the prosecution which informed the court of the execution of an affidavit of desistance by the private complainant as it was submitted to the Office of the Ombudsman. Accused Cadio's counsel confirmed that he has an electronic copy of the same. For her part, accused Cadio was apparently informed of the execution of the affidavit of desistance by the private complainant himself during a flag ceremony to which she expressed her gratitude. She was of the impression, however, that the same will be submitted to court by the prosecution.

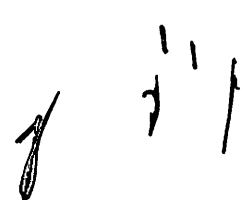
In the end, neither party submitted the original copy of the affidavit of desistance to the court, but more because the affiant himself, being the private complainant, was not even called to identify it. While accused Cadio reasoned that it should have been the prosecution which should have submitted it to court, truth is, it remains the prosecution's prerogative not to present the affidavit as it has opted to do, reasoning that they can prove the existence of the elements of the crime charged, independent of such affidavit of desistance, during the trial of the case.

The parameter for which this court opened the exercise of its discretion whether to impose preventive suspension is to determine whether *the acts for which the accused was charged constitute a violation of the provisions of Republic Act No. 3019.*

As it stands, none came from accused Cadio to debunk the allegation of undue injury or damage. Being a court of record, a mere allusion to a purported fact that private complainant has submitted an affidavit of desistance must still be presented and proven as evidence, even at this early stage, not to debunk the essence of the allegations of the charge but to determine whether preventive suspension can be imposed on the basis thereof. Regardless of which party should have presented it is now no longer consequential as the pre-suspension hearing ended with no affidavit presented and identified.

The Resolution dated July 19, 2023 finding that the allegations in the Information have sufficiently alleged the elements of the crime charged should only be maintained.

Consequently, it is of no moment that accused Cadio argued that the damage was negated by the execution of the affidavit of desistance. Neither the argument that the acts imputed against the accused did not constitute a specific crime under R.A. 3019, alleging that as it was neither an act nor a felony nor a breach of the public law involving fraud upon the government or public funds or property but rather, an omission when accused allegedly unjustly refused to pay the private complainant his salaries, RATA, and other benefits.



These claims fail to grasp the nature and context of the pre-suspension proceedings. At this stage, any question that still strikes at the validity of the Information or the sufficiency of the allegations therein is now beyond us. The Resolution dated August 31, 2023 which called for a continuation of the pre-suspension hearing was clear in its objective that it was to determine if the purported execution of the affidavit of desistance may have an effect on whether the *acts for which the accused was charged constitute a violation of the provisions of Republic Act No. 3019*.

Since no contrary proof or allegation was given, the imposition of the preventive suspension is now inevitable.

The grounds for accused's preventive suspension concur, which are: (1) accused's arraignment under a valid Information; and (2) that the crime charged involves a violation of Section 3 (e) of R.A. 3019.

Section 13 of Republic Act No. 3019 (“**R.A. 3019**”) provides:<sup>5</sup>

SEC. 13. Suspension and loss of benefits. – Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as a complex offense and in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office.

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Section 4, Rule VIII of the 2018 Revised Internal Rules of the Sandiganbayan states:

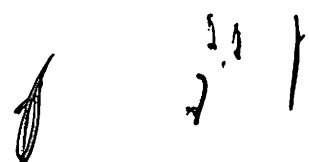
Sec. 4. Suspension Pendente Lite. – After the arraignment of an accused public officer against whom a valid information charging any of the violations referred to in Section 13 of R.A. No. 3019 is filed, the Sandiganbayan shall motu proprio give the said accused a non-extendible period of ten (10) calendar days from notice within which to explain in writing why he should not be preventively suspended. Thereafter, the Sandiganbayan shall issue an order of preventive suspension of the accused, if found warranted under the aforesaid provision of R.A. No. 3019, as well as applicable decisions of the Supreme Court.

Section 13 of R.A. 3019 makes it mandatory for the court to suspend any public officer against whom a valid information is filed charging a violation of said law, Title 7, Book II of the Revised Penal Code, or for any offense involving fraud upon government or public funds or property.<sup>6</sup> Once the information is found to be sufficient in form and substance, then the court

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<sup>5</sup> As amended by *Batas Pambansa Blg. 195* (1982).

<sup>6</sup> *Flores v. Layosa*, G.R. No. 154714, August 12, 2004.



must issue the order of suspension as a matter of course.<sup>7</sup> There are no ifs and buts about it.<sup>8</sup>

A preventive suspension is necessary to forestall the possibility that the accused may use one's office to intimidate witnesses, or frustrate the prosecution of the case, or continue committing malfeasance. The presumption is that unless the accused is suspended, he or she may frustrate the prosecution of the case, commit further acts of malfeasance, or do both.<sup>9</sup>


As to the duration of suspension, it is settled that the preventive suspension may not be of indefinite duration or for an unreasonable length of time; it would be constitutionally proscribed otherwise as it raises, at the very least, questions of denial of due process and equal protection of the laws. The Supreme Court has thus laid down the rule that preventive suspension may not exceed the maximum period of ninety (90) days in consonance with Presidential Decree No. 807 otherwise known as the Civil Service Decree of the Philippines (now Section 52 of the Administrative Code of 1987).<sup>10</sup>

**WHEREFORE**, pursuant to Section 13 of Republic Act No. 3019, accused Rhodora J. Cadio is preventively suspended from her position as Provincial Governor of the Province of Antique and from any public office which she may now or hereafter be holding for a period of ninety (90) days.

Let a copy of this Resolution be furnished the Secretary of the Department of Interior and Local Government for the implementation of the order of preventive suspension on said accused. The Secretary of the Department of Interior and Local Government is requested to inform this court of the dates to which Provincial Governor Rhodora J. Cadio started serving her preventive suspension and the date of its termination.

The preventive suspension of the accused shall be automatically lifted upon expiration of the 90-day period from the implementation of this Resolution.

**SO ORDERED.**

  
**MA. THERESA DOLORES C. GOMEZ-ESTOESTA**  
*Associate Justice, Chairperson*

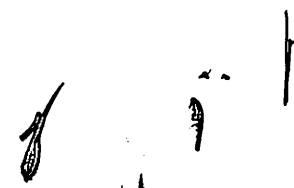
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<sup>7</sup> Ibid.

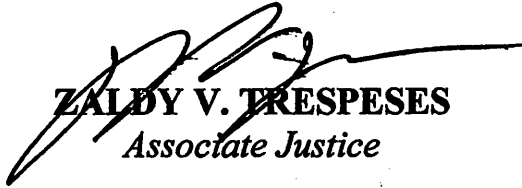
<sup>8</sup> *Beroña v. Sandiganbayan*, G.R. No. 142456, July 27, 2004.

<sup>9</sup> *Dela Cruz v. Sandiganbayan*, G.R. No. 161929, December 8, 2009, which cited *Socrates v. Sandiganbayan*, 324 Phil. 151, 179 (1996).

<sup>10</sup> *Layus v. Sandiganbayan*, G.R. No. 134272, December 8, 1999, which cited *Segovia v. Sandiganbayan*, G.R. No. 124067, March 27, 1998.



WE CONCUR:



**ZALBY V. TRESPESES**  
*Associate Justice*



**GEORGINA D. HIDALGO**  
*Associate Justice*



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