



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated November 20, 2023, which reads as follows:

“A.C. No. 13295 (NOW TELECOM COMPANY, INC., Complainant, v. ATTY. GAMALIEL A. CORDOBA, Respondent). — The instant administrative case stemmed from a Verified Complaint¹ filed by complainant NOW Telecom Company, Inc., formerly known as Next Mobile, Inc. (complainant), against respondent Atty. Gamaliel A. Cordoba (respondent) for violation of the Lawyer’s Oath and the Code of Professional Responsibility and Accountability² (CPRA).

Antecedents

On 10 October 2005, complainant filed with the National Telecommunications Commission (NTC) an application for a cellular mobile telecommunications system (CMTS) Provisional Authority (PA) to install, operate, and maintain a nationwide 3G CMTS; and the assignment of a 3G frequency band.³ The application was docketed as NTC Case No. 2005-115.⁴

On 23 December 2005, the NTC sent letter-assessments to

¹ *Rollo*, pp. 1-28.

² Pursuant to Section 1, General Provisions of the Code of Professional Responsibility and Accountability (CPRA), which provides: “[T]he CPRA shall be applied to all pending and future cases, except to the extent that in the opinion of the Supreme Court, its retroactive application would not be feasible or would work in justice, in which case the procedure under which the cases were filed shall govern. (n)”

³ *Rollo*, p. 83.

⁴ *Id.* at 4.

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complainant, informing it that it has unpaid supervision and regulations fees (SRF) of PHP 126,094,195.67 and spectrum user fees (SUF) of PHP 9,674,190.00. The NTC pointed out that complainant's 2004 Audited Financial Statement, which it submitted in support of its application, was inconsistent with the figures appearing in its Annual Reports for 2003 and 2004, which complainant submitted to the NTC pursuant to Commonwealth Act No. 146.⁵

In its Consolidated Order⁶ dated 28 December 2005, the NTC granted complainant a CMTS PA, thus:

In view of the foregoing, Next Mobile is hereby GRANTED provisional authority to install, operate, and maintain a mobile telecommunications system, offer services, and to charge rates therefor subject to such terms and conditions set out in a separate order to be issued by the Commission, with the clarification that this provisional authority is not specific to 3G and is without prejudice to further evaluation under the criteria and requirements set forth in Sec. 3.6, 3.8, and 5 of MC No. 07-08-2005 for the determination of applicants qualified for the assignment of the allocated frequencies for 3G.⁷

However, in the same Order, the NTC found complainant as non-compliant with the requirements for frequency assignment under Section 3.6(a)⁸ of Memorandum Circular (M.C.) No. 07-08-2005 entitled *Rules and Regulations on the Allocation and Assignment of 3G Radio Frequency Bands*. Complainant was therefore disqualified from assignment of any CMTS/3G frequency bands because of its outstanding SRF and SUF, thus:

In its letter to Next Mobile dated December 23, 2005, the Commission called the company's attention to the latter's 2004 Audited Financial Statement which was submitted in support of its application for authority to install, operate and maintain a 3G network, stating therein that the Php1,638,328,276 and Php12,171,833,191 listed as additional paid-in capital in 2003 and 2004, respectively, are wholly inconsistent with the figures appearing in the Annual Reports for 2003 and 2004 previously submitted by Next Mobile to the Commission pursuant to CA 146. On the basis thereof, the Commission determined that Next Mobile has unpaid supervision and regulation fees (SRF) amounting to Php126,094,195.67 and unpaid spectrum user fees (SUF) amounting to Php9,674,190.00 as of December 2005. Therefore, **for purposes of its application for**

⁵ *Id.* at 140.

⁶ *Id.* at 55-153.

⁷ *Id.* at 102.

⁸ 3.6 Applications for the assignment of 3G frequency bands shall be accepted not later than ninety (90) calendar days from the effectivity of this Circular. The qualified applicants shall be determined using the following criteria:

a. For existing authorized PTEs, **no outstanding unpaid supervision and regulations fees (SRF), spectrum user fees (SUF), radio station license fees, permit fees and other fees** imposed by the National Telecommunications Commission pursuant to law, rules and regulations. (Emphasis supplied.)

assignment of 3G frequency, Next Mobile is non-compliant with the requirement under Sec. 3.6a of MC-07-08-2005 that existing PTEs shall have no outstanding unpaid supervision and regulation fees (SRF), spectrum user fees (SUF), radio station license fees, permit fees and other fees imposed by the Commission pursuant to existing laws and rules and regulations. Even if Next Mobile is to be accorded a 12-month restructured payment scheme consistent with present practice, the Commission nevertheless notes with approval the Opinion of its Legal Department citing correctly the observation of CCAD Dir. Edgardo V. Cabarios that the staggered payment of SRF and SUF means that Next Mobile will not be able to apply for assignment of 3G frequencies. In view of the foregoing, the Commission finds that Next Mobile is not qualified for the allocation of 3G frequency and shall no longer be considered for purposes of ranking the best-qualified applicants.⁹ (Emphasis supplied)

Complainant filed a Motion for Partial Reconsideration¹⁰ of the Consolidated Order and a letter-motion seeking reconsideration of the NTC's assessment of complainant's unpaid SRF and SUF.

In its Order¹¹ dated 17 September 2007, the NTC denied complainant's motion.

Complainant then filed a Petition for Review under Rule 43 of the Rules of Court against the NTC's 23 December 2005 and 05 July 2005 letter-assessments and 17 September 2007 Order with the Court of Appeals (CA). In its Decision¹² dated 11 February 2009, the CA denied the petition and affirmed the NTC's letter-assessments and 17 September 2007 Order, ruling that the assessments were justified due to complainant's increase in paid-in-capital resulting from its debt-to-equity conversion scheme.

Thereafter, complainant elevated the CA's decision to this Court through a Petition for Review on *Certiorari*,¹³ which was docketed as **G.R. No. 188655** and remains pending to date.

In August 2009, respondent was appointed as Commissioner of NTC.

Meanwhile, complainant sent letters dated 19 October 2009,¹⁴ 22 April 2013,¹⁵ 13 June 2016,¹⁶ 26 August 2016,¹⁷ and 13 September 2017¹⁸ (Various

⁹ *Rollo*, p. 140.

¹⁰ *Id.* at 646-672.

¹¹ *Id.* at 673-680.

¹² *Id.* at 681-693.

¹³ *Id.* at 154-183.

¹⁴ *Id.* at 195.

¹⁵ *Id.* at 196.

¹⁶ *Id.* at 197.

¹⁷ *Id.* at 198.

¹⁸ *Id.* at 199.

Letters) to the NTC, praying for frequency assignments:

Letter-Request	Requested Frequencies
Letter dated 19 October 2009	a pair of 20 MHz spectrum either in the 700 MHz band or in the 2.6 GHz band
Letter dated 22 April 2013	paired frequencies in the 1800 and 1900 Frequency Bands or in the frequency ranges from 1900 to 1920MHz and 3400MHz to 3800MHz
Letter dated 13 June 2016	2010MHz to 2025MHz frequency band
Letter dated 26 August 2016	1695 to 1710MHz paired with 1995 to 2010MHz frequency band
Letter dated 13 September 2017	2.660 GHz to 2.680 GHz and 3.490 to 3.510 GHz frequency band

Alleging that respondent ignored the Various Letters, complainant filed a Formal Complaint¹⁹ dated 18 May 2020 against respondent before the Anti-Red Tape Authority (ARTA), praying for the declaration of the automatic approval of complainant’s prayer for the assignment of the frequencies in its Various Letters.

In its Resolution²⁰ dated 01 March 2021, the ARTA declared the completeness of complainant’s application and deemed it automatically approved by operation of law. The ARTA likewise issued an Order of Automatic Approval²¹ dated 01 March 2021 (collectively, ARTA’s 01 March 2021 Resolution and Order).

Disbarment Complaint

Complainant filed before this Court a Verified Complaint dated 10 February 2022, charging respondent with grave misconduct and violation of his Lawyer’s Oath and Canon 1, Rules 1.01 to 1.03;²² Canon 12, Rule

¹⁹ *Id.* at 204-217.

²⁰ *Id.* at 279-288.

²¹ *Id.* at 289-291.

²² CANON 1 – A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW OF AND LEGAL PROCESSES.

Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

Rule 1.02 – A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening the confidence in the legal system.

Rule 1.03 – A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man’s cause.

12.04;²³ and Canon 13, Rule 13.02²⁴ of the Code of Professional Responsibility (CPR), and praying that respondent be disbarred.²⁵

Complainant alleged that respondent, as NTC Commissioner, committed acts of manifest partiality in assigning useable frequencies for its legislative franchise²⁶ and PA to install, operate, and maintain a mobile telecommunications system, and displayed undue preference to other entities.²⁷

Complainant asserted that since its franchise confers upon it the right to be assigned usable frequencies to provide telecommunications services to the public, the NTC and respondent, as Commissioner and chief executive officer exercising overall authority in the NTC, have the corresponding positive legal obligation to assign to it the concomitant frequencies to enable it to roll out its telecommunications services.²⁸

Complainant claimed that the NTC erroneously disqualified it for the allocation of a 3G frequency band due to its alleged outstanding unpaid SRF and SUF. As it disputed the assessment for the said fees all the way to this Court and still pending resolution, complainant argued that there is no final finding that it has unpaid SRF and SUF which are due and demandable.²⁹

Complainant then contended that respondent delayed, refused, and prevented the assignment of the concomitant frequencies to its CMTS PA. Complainant sent the Various Letters to respondent praying for the frequencies for its CMTS PA, but respondent ignored the same. Respondent also allegedly continued to refuse or neglect to comply with ARTA's 01 March 2021 Resolution and Order.³⁰

Complainant further alleged that respondent made a vilification campaign against it by maliciously depicting it as a delinquent telecommunication entity with unpaid SRF amounting to more than PHP

²³ CANON 12 - A LAWYER SHALL EXERT EVERY EFFORT AND CONSIDER IT HIS DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE.

x x x x

Rule 12.04 - A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse court processes.

²⁴ CANON 13 - A LAWYER SHALL RELY UPON THE MERITS OF HIS CAUSE AND REFRAIN FROM ANY IMPROPRIETY WHICH TENDS TO INFLUENCE, OR GIVES THE APPEARANCE OF INFLUENCING THE COURT.

x x x x

Rule 13.02 - A lawyer shall not make public statements in the media regarding a pending case tending to arouse public opinion for or against a party."

²⁵ *Rollo*, pp. 1-27.

²⁶ Republic Act No. 7940, renewed and expanded under Republic Act No. 10972.

²⁷ *Rollo*, pp. 1-27.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

2,000,000,000.00, ruining its reputation and credit standing to force it out of business.³¹

The NTC allegedly sent various malicious letters requiring complainant to pay extortionate amounts of SRF plus penalties since 2004, which included those subject of **G.R. No. 188655** in the aggregate amount of PHP 2,000,000,000.00.

Complainant likewise claimed that respondent caused the publication of news articles that falsely and maliciously depicted complainant as having an alleged unpaid PHP 2,600,000,000.00 liability to the Government when there is no final, due, and demandable SRF yet. Thus, complainant contended that respondent is abusing and misusing his public position.

Complainant also alleged that respondent displayed unwarranted preference to favored entities, such as Infinivan, Inc. (Infinivan), to which the NTC and respondent allocated 100 MHz from the 3.6 to 3.8 GHz band despite Infinivan being a relatively new player with no CMTS PA and no track record.

Complainant asserted that “[t]he legal fiction that NTC is a collegial body does not detract from Respondent Cordoba’s liability because, as Commissioner and head thereof, he exercises ‘overall authority’ in all the operations of the NTC.”³²

In a Resolution³³ dated 20 April 2022, the Court required respondent to file a comment on the complaint.

Respondent’s comment

In his Comment³⁴ dated 11 July 2022, respondent denied complainant’s accusations and prayed for the dismissal of the complaint. He stressed that complainant’s allegations were anchored on the NTC’s official actions and the exercise of its functions and jurisdiction. Hence, it was inappropriate for complainant to hurl accusations against him without any proof or specific allegation of a particular act attributable to him as member of a collegial body.³⁵

³¹ *Id.*

³² *Id.* at 20.

³³ *Id.* at 454.

³⁴ *Id.* at 462-522.

³⁵ *Id.*

In any case, respondent argued that he acted in accordance with and with full respect of the laws and the Constitution in discharging his duties as NTC Commissioner, and there is no factual or legal support for his alleged violation of the law.³⁶

Respondent explained that complainant's possession of a legislative franchise does not guarantee it a radio frequency assignment. The possession of a franchise and a PA are minimum requirements to be considered for frequency assignment. He emphasized that complainant is not the only public telecommunication entity (PTE) that was granted the privilege to operate telecommunications services. The same has been granted to 99 entities with subsisting legislative franchises. However, there are not enough CMTS frequency bands available for use and assignment for all these entities.³⁷

Respondent also explained that complainant had several opportunities to qualify for CMTS frequency assignments, but the latter either failed to qualify or did not participate in the open tenders for frequency assignments.³⁸

Respondent clarified that in the 28 December 2005 Consolidated Order, the NTC granted complainant's application for a CMTS PA with clarification that it is "not specific to 3G and is without prejudice to further evaluation under the criteria and requirements set forth in Sec. 3.6, 3.8 and 5 of MC No. 07-08-2005 for the determination of qualified applicants for the assignment of the allocated frequencies for 3G."³⁹

However, as stated in the same Order, complainant was found to be non-compliant with Section 3.6(a) of M.C. No. 07-08-2005, and was therefore disqualified from assignment of any CMTS/3G frequency bands because of its outstanding unpaid SRF and SUF.⁴⁰ Thereafter, in its 17 September 2007 Order,⁴¹ the NTC denied complainant's motion for reconsideration.

Respondent stressed that, contrary to complainant's allegations of delay, the NTC denied complainant's application for frequency assignment. Respondent also emphasized that these events took place prior to his appointment as NTC Commissioner in August 2009.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 102, 129.

⁴⁰ *Id.* at 140.

⁴¹ *Id.* at 673-680.

In 2018, the NTC issued M.C. No. 09-09-2018⁴² and a public, open, and competitive selection process was held among qualified congressional franchise holders that were not and were not related to the dominant telecommunications players for the entry of a New Major Player (NMP) in the telecommunications industry. MISLATEL, later renamed as DITO Telecommunity Corporation (DITO), eventually emerged as the NMP.

While complainant purchased bidding documents, it did not participate in the bidding process to prove that it was the best qualified user for the frequency bands allocated for the NMP. Instead, it filed a complaint⁴³ for injunction to restrain the NMP selection process. The Regional Trial Court (RTC) of Manila, Branch 42, denied⁴⁴ the applications for injunctive orders and eventually dismissed the complaint.⁴⁵ Complainant elevated the case to the CA, which denied the appeal on 24 May 2021.⁴⁶

Meanwhile, notwithstanding its outstanding SUF and SRF and pre-existing disqualification, complainant submitted the Various Letters to the NTC requesting for assignment of specific frequency bands.⁴⁷

Respondent pointed out that these letters did not conform to the NTC Rules of Practice and Procedure (NTC Rules). Moreover, the NTC's Radio Spectrum Planning Division (RSPD) determined that the requested frequency bands were not available for assignment as they were either not allocated for CMTS use, previously assigned to another PTE user, or subject of a court injunction against distribution or assignment.⁴⁸

Respondent also argued that he did not cause any deliberate or undue delay in its cases, impede the execution of any court or quasi-judicial judgment, or misuse any court process in dealing with complainant.

As to the ARTA case, respondent explained that despite its 01 March 2021 Resolution and Order, the ARTA found no reason to file or recommend the filing of any case against respondent. More importantly, the ARTA issued a Resolution⁴⁹ dated 17 June 2022 setting aside its 01 March 2021 Resolution and Order, following the Resolution⁵⁰ dated 09 July 2021 of the Secretary of Justice (SOJ) in OSJ Case No. 01-2020.

⁴² Entitled: "RULES AND REGULATIONS ON THE SELECTION PROCESS FOR A NEW MAJOR PLAYER IN THE PHILIPPINE TELECOMMUNICATIONS MARKET." Approved: 20 September 2018.

⁴³ *Rollo*, pp. 727-7296.

⁴⁴ *Id.* at 802-806.

⁴⁵ *Id.* at 807-816.

⁴⁶ *Id.* at 940-977.

⁴⁷ *Id.* at 462-522.

⁴⁸ *Id.* at 694-696.

⁴⁹ *Id.* at 1024-1028.

⁵⁰ *Id.* at 1029-1043.

The SOJ Resolution held that the NTC's quasi-judicial and adjudicatory proceedings, including frequency adjudication, are outside the coverage of Republic Act No. (RA) 11032.⁵¹ The Office of the President (OP) denied⁵² ARTA's appeal of the SOJ Resolution and issued an Order⁵³ on 25 April 2022 declaring its Resolutions final and executory.

Thus, respondent maintained that the NTC cannot be faulted for not assigning complainant its requested frequencies pursuant to ARTA's vacated 01 March 2021 Resolution and Order.⁵⁴

Respondent denied any undue preference to other entities or prejudice to complainant, pointing out that the NTC assigned complainant the following frequencies: (1) 20 MHz in the 3400-3600 MHz band, pursuant to NTC's 04 December 2017 letter; (2) 100 channels of frequencies in the 800 MHz band for its Trunking service; and (3) 56 microwave links in the 3600-3800 MHz band, pursuant to NTC's 20 November 2019 Frequency Assignment Sheet. The NTC also assigned complainant's related companies, Newsnet and GHT Network, 25.35-26.35 GHz band and 26.35-27.35 GHz band, respectively, or a total of 2000 MHz bandwidth until the expiration of their legislative franchises.⁵⁵

Finally, respondent categorically denied that he made any public statement or caused the publication of any news article or other supposed court documents prejudicial to complainant. He pointed out that complainant failed to show any proof or even identify any specific act that respondent committed such acts. Respondent also clarified that **G.R. No. 188655** was consolidated with G.R. Nos. 189221, 191656, and 205603, involving multiple parties, who all have access to records and are updated of the developments of the case.⁵⁶

*Respondent's appointment as
Chairman of the Commission on
Audit*

While this complaint is pending, respondent filed a Manifestation &

⁵¹ Entitled: "RULES AND REGULATIONS ON THE SELECTION PROCESS FOR A NEW MAJOR PLAYER IN THE PHILIPPINE TELECOMMUNICATIONS MARKET." Approved: 20 September 2018.

⁵² *Rollo*, pp. 1044-1051.

⁵³ *Id.* at 1058-1059.

⁵⁴ *Id.* at 462-522.

⁵⁵ *Id.*

⁵⁶ *Id.*

Motion to Dismiss,⁵⁷ manifesting that on 21 October 2022, President Ferdinand R. Marcos, Jr. appointed him as *ad interim* Chairman of the Commission on Audit (COA). Thereafter, on 29 November 2022, the Commission on Appointments confirmed his appointment.

Citing Article XI, Section 2 of the Constitution and jurisprudence, respondent argued that, as Chairman of the COA, he may only be removed from office through impeachment proceedings and this complaint against him can no longer prosper. Thus, respondent prayed that this complaint be dismissed for lack of jurisdiction, considering that its continuation would amount to circumvention of Article XI, Section 2 of the Constitution.⁵⁸

Issue

The following are the issues for resolution of the Court: (1) whether the instant complaint should be dismissed in view of respondent's appointment as an impeachable official; and (2) whether respondent should be held liable for violations of the Lawyer's Oath and the CPRA.

Ruling of the Court

The Complaint must be dismissed.

Respondent cannot be charged with disbarment during his incumbency as an impeachable officer

Article XI, Section 2 of the Constitution provides that “[t]he President, the Vice-President, the Members of the Supreme Court, the **Members of the Constitutional Commissions**, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust.”⁵⁹

In *Lecaroz v. Sandiganbayan*,⁶⁰ the Court explained that the foregoing

⁵⁷ *Id.* at 1125-1128.

⁵⁸ *Id.*

⁵⁹ Emphasis supplied.

⁶⁰ 213 Phil. 288 (1984) [Per J. Reoysa, En Banc].

provision “proscribes removal from office of the aforementioned constitutional officers by any other method.”⁶¹

Thus, in *In re First Indorsement from Hon. Gonzalez*,⁶² the Court ruled that “[a] public officer who under the Constitution is required to be a Member of the Philippine Bar as a qualification for the office held by him [or her] and who may be removed from office only by impeachment, cannot be charged with disbarment during the incumbency of such public officer. Further, such public officer, during his [or her] incumbency, cannot be charged criminally before the Sandiganbayan or any other court with any offense which carries with it the penalty of removal from office, or any penalty service of which would amount to removal from office.”⁶³

The Court emphasized the “fundamental procedural requirement that must be observed before such liability may be determined and enforced,”⁶⁴ i.e., the constitutional officer “must first be removed from office via the constitutional route of impeachment under Sections 2 and 3 of Article XI of the 1987 Constitution.”⁶⁵ If the tenure of the constitutional officer is terminated by impeachment, such officer “may then be held to answer either criminally or administratively (by disbarment proceedings) for any wrong or misbehaviour that may be proven against him [or her] in appropriate proceedings.”⁶⁶

In *Cuenco v. Fernan*,⁶⁷ the Court stated the reason for such ruling: to grant a disbarment complaint against said constitutional officers during their incumbency “would in effect be to circumvent and hence to run afoul of the constitutional mandate” that said public officers “may be removed from office only by impeachment for and conviction of certain offenses listed in Article XI (2) of the Constitution.”⁶⁸ The rule applies to members of the COA who are not certified public accountants, and therefore constitutionally required to be members of the Philippine Bar.⁶⁹

Pursuant to Rule 129, Section 1 of the Revised Rules on Evidence,⁷⁰

⁶¹ *Id.* at 294.

⁶² 243 Phil. 167 (1988) [Per Curiam, En Banc]

⁶³ *Id.* at 170.

⁶⁴ *Id.* at 172.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ 241 Phil. 816 (1988) [Per Curiam, En Banc].

⁶⁸ *Id.* at 828.

⁶⁹ *Id.*; CONSTITUTION (1986), Art. IX (D), Sec. 1 (1).

⁷⁰ Section 1. *Judicial notice, when mandatory.* - A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, official acts of the legislative, executive and judicial departments of the National Government of the Philippines, the laws of nature, the measure of time, and the geographical divisions. (Emphasis supplied.)

the Court takes judicial notice of the appointment and the confirmation of respondent as Chairman of the COA, which pertain to official acts of the executive and the legislative.

Considering that respondent, as Chairperson of the COA, can only be removed from office by impeachment proceedings, and his membership with the Bar is a constitutional requirement to hold such office, the Court cannot proceed to determine his liability in the instant complaint without circumventing the constitutional mandate under Article XI, Section 2 of the Constitution.

Accordingly, the instant disbarment complaint against respondent must be dismissed.

*Respondent did not violate his oath
and duties as a lawyer*

In any case, even if the Court can proceed in determining respondent's administrative liability, the Court, after reviewing the parties' pleadings and evidence, finds that respondent did not commit any act or omission that constitutes as violation of his oath and duties as a lawyer.

An attorney enjoys the legal presumption of innocence until the charges against him or her are proven. As an officer of the Court, he or she is presumed to have performed his or her duties in accordance with his or her oath.⁷¹

The burden of proof rests upon the complainant to satisfactorily prove the allegations in the complaint through substantial evidence.⁷² Bare allegation or accusation is neither evidence nor equivalent to proof. Charges based on mere suspicion and speculation cannot be given credence.⁷³

Consequently, it is the duty of the Court towards the members of the bar not only to administer discipline to those found guilty of misconduct, but also to protect them and their reputation from malicious charges. While the Court will not hesitate to mete out proper disciplinary punishment upon lawyers who are shown to have failed to live up to their sworn duties, it will neither hesitate "to extend its protective arm to them when the accusation against them is not indubitably proven."⁷⁴

⁷¹ *Tan v. Alvarico*, A.C. No. 10933, 03 November 2020 [Per C.J. Peralta, First Division].

⁷² *Nocuencia v. Bensi*, A.C. No. 12609, 10 February 2020 [Per J. Hernando, Second Division].

⁷³ *Cabas v. Susisico*, 787 Phil. 167, 174 (2016) [Per J. Peralta, Third Division].

⁷⁴ *Guanzon v. Dojillo*, 838 Phil. 228, 235 (2018) [Per J. Peralta, Second Division].

It is worth noting that in *GMCR, Inc. v. Bell Telecommunication Philippines, Inc.* (GMCR, Inc.),⁷⁵ the Court has declared that the NTC is a collegial body that acts through the majority of its three members:

First. We hereby declare that the NTC is a collegial body requiring a majority vote out of the three members of the commission in order to validly decide a case or any incident therein. Corollarily, the vote alone of the chairman of the commission, as in this case, the vote of Commissioner Kintanar, absent the required concurring vote coming from the rest of the membership of the commission to at least arrive at a majority decision, is not sufficient to legally render an NTC order, resolution or decision.

Simply put, Commissioner Kintanar is not the National Telecommunications Commission. He alone does not speak for and in behalf of the NTC. The NTC acts through a three-man body, and the three members of the commission each has one vote to cast in every deliberation concerning a case or any incident therein that is subject to the jurisdiction of the NTC. When we consider the historical milieu in which the NTC evolved into the quasi-judicial agency it is now under Executive Order No. 546 which organized the NTC as a three-man commission and expose the illegality of all memorandum circulars negating the collegial nature of the NTC under Executive Order No. 546, we are left with only one logical conclusion: the NTC is a collegial body and was a collegial body even during the time when it was acting as a one-man regime.⁷⁶

Hence, while complainant argues that respondent “exercises overall authority in matters within the jurisdiction” of the NTC, complainant cannot simply disregard the collegial nature of the NTC in the conduct of its official functions and actions. Just as the Court ruled in *GMCR, Inc.*, respondent is not the NTC, and he alone does not speak or act for and on behalf of the NTC. Neither does respondent, as NTC Commissioner, has the authority to override or overrule the votes of the other members of the NTC.

Complainant cannot thus plainly attribute every unfavorable act of the NTC to respondent without any specific allegation and proof of his act or omission as member of a collegial body that constitutes violation of the law.

Unfortunately, complainant failed to provide any specific allegation and proof of respondent’s act or omission as member and Commissioner of the NTC that constitutes as violation of his lawyer’s oath and the CPRA. On the contrary, the actions of the NTC, including respondent, have been sustained or affirmed by the CA, the SOJ, the OP, and the former Presidential Anti-Corruption Commission (PACC).

⁷⁵ 338 Phil. 507 (1997) [Per J. Hermosisima, Jr., First Division].

⁷⁶ *Id.* at 520; Emphases supplied.

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Respondent did not violate his duty to uphold the Constitution and the laws

The revised Lawyer's Oath under the CPRA reads:

I, (name), do solemnly swear (affirm) that I accept the honor, privilege, duty and responsibility of practicing law in the Philippines as an Officer of the Court in the interest of our people.

I declare fealty to the Constitution of the Republic of Philippines. In doing so, I shall work towards promoting "the rule of law and a regime of truth, justice, freedom, love, equality, and peace."

I shall conscientiously and courageously work for justice, as well as safeguard the rights and meaningful freedoms of all persons, identities and communities. I shall ensure greater and equitable access to justice. I shall do no falsehood nor shall I pervert the law to unjustly favor nor prejudice anyone. I shall faithfully discharge these duties and responsibilities to the best of my ability, with integrity, and utmost civility. I impose all these upon myself without mental reservation nor purpose of evasion.

[For oaths] So help me, God. (Omit for affirmations)

Canon III, Section 2 of the CPRA provides:

**CANON III
FIDELITY**

Fidelity pertains to a lawyer's duty to uphold the Constitution and the laws of the land, to assist in the administration of justice as an officer of the court, and to advance or defend a client's cause, with full devotion, genuine interest, and zeal in the pursuit of truth and justice. (n)

x x x x

SECTION 2. *The responsible and accountable lawyer.* — A lawyer shall uphold the constitution, obey the laws of the land, promote respect for laws and legal processes, safeguard human rights, and at all times advance the honor and integrity of the legal profession. (1a)

As an officer of the court, a lawyer shall uphold the rule of law and conscientiously assist in the speedy and efficient administration of justice. (12a)

As an advocate, a lawyer shall represent the client with fidelity and zeal within the bounds of the law and the CPRA. (17a, 19a)

- over -

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Complainant charges respondent of violating the foregoing when he allegedly disobeyed the laws and committed gross and criminal neglect and inordinate delay in assigning the concomitant frequencies to complainant's CMTS PA despite ARTA's 01 March 2021 Resolution and Order, in violation of RA 7940 and 10972 granting complainant legislative franchise to operate mobile telecommunications service; RA 9485, as amended by RA 11032, otherwise known as the "Ease of Doing Business and Efficient Government Service Delivery Act of 2018;" Section 5(a) of RA 6713, otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees;" and Sections 3(e) and (f) of RA 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act."

Complainant also asserts that respondent exhibited manifest partiality and discrimination when the 100MHz from the 3.6 to 3.8HGz band was assigned to Infinivan, an alleged favored entity with no track record, instead of complainant despite ARTA's 01 March 2021 Resolution and Order.

At the outset, the Court notes that complainant primarily relies on ARTA's 01 March Resolution and Order in its charges against respondent. However, the ARTA, in its **17 June 2022 Resolution**, had **set aside** its 01 March 2021 Resolution and Order. Thus, ARTA's 01 March Resolution and Order could no longer serve complainant or support its charges against respondent.

*i. Respondent did not violate RA
7940 and RA 10972*

Complainant cites Section 1 of its franchise under RA 7940 and RA 10972 as the basis of its alleged right to be assigned, and the NTC and respondent's corresponding "positive legal obligation" to assign, the usable frequencies for complainant's telecommunication services to the public. However, complainant disregards the first clause of the said provisions, the other provisions of its franchise, and the relevant laws, rules, regulations, and jurisprudence on the matter.

Section 1 of RA 7940 provides that complainant's franchise is "[s]ubject to the provisions of the Constitution and applicable laws, rules and regulations of the National Telecommunications Commission." Section 1 of RA 10972 similarly provides that it is "[s]ubject to the provisions of the Philippine Constitution and applicable laws, rules and regulations."

More importantly, Section 7 of RA 10972 provides that "[t]he radio

spectrum is a finite resource that is part of the national patrimony and **the use thereof is a privilege** conferred upon the grantee by the State and may be withdrawn at any time after due process.”⁷⁷

Hence, contrary to complainant’s assertions, the grant of a franchise to operate telecommunications services does not necessarily carry with it a right to be assigned, or result to a “positive legal obligation” of the NTC to assign, usable radio frequencies in its favor. Complainant’s use of radio frequencies is not a right, but only a privilege, subject to compliance with the relevant laws, rules, and regulations. Complainant cannot thus demand the assignment of radio frequencies in its favor.

More so, complainant cannot circumvent the NTC’s authority and demand the assignment of specific radio frequency bands in its favor through letter-requests and then seek their automatic approval, without complying with the rules and regulations relative to their allocation and assignment, or considering the purposes for which such frequency bands are allocated and whether such frequency bands are available for use.

In *Liberty Broadcasting Network, Inc. v. Atlocom Wireless System, Inc.*,⁷⁸ the Court held that “[e]ven entities with unexpired PA **cannot claim a vested right on a specific frequency assignment**. This proceeds from the nature of its franchise which is not solely for commercial purposes but one imbued with public interest. As earlier quoted, Atlocom’s franchise (RA 8605) declared the use of radio spectrum as a mere privilege conferred upon the grantee by the State that may be withdrawn anytime provided that due process is observed. It further emphasized that the radio spectrum is a finite resource and its use and distribution should be aligned with existing laws and policies.”⁷⁹

The Court has recognized “the scarcity of radio frequencies [which] made it necessary for the government to step in and allocate frequencies x x x. In undertaking that function, the government is impelled to adjudge which of the competing applicants are worthy of frequency allocation.”⁸⁰

RA 7925, otherwise known as the “Public Telecommunications Policy Act of the Philippines,” has given the NTC the authority and responsibility to allocate and assign the radio frequencies and facilitate the entry of qualified service providers through administrative process.⁸¹ Complainant’s own franchise recognizes that the NTC shall authorize complainant’s use of

⁷⁷ Emphasis and underscoring supplied.

⁷⁸ 762 Phil. 210 (2015) [Per J. Villarama, Jr., En Banc].

⁷⁹ *Id.* at 223. Emphasis and underscoring supplied.

⁸⁰ *Divinagracia v. Consolidated Broadcasting System, Inc.*, 602 Phil. 625, 647 (2009) [Per J. Tinga, Second Division].

⁸¹ REPUBLIC ACT NO. 7295 (1995), Sec. 5(a).

frequency in the radio spectrum, and the NTC has the power and authority to regulate and impose conditions relative to the construction and operation of complainant's telecommunications system.⁸²

Section 4 of RA 7925 mandates that radio frequencies should always be (1) administered in the public interest; (2) administered in accordance with international agreements and conventions to which the Philippines is a party to; and (3) granted only to the best qualified service providers who can efficiently and effectively meet public demand.

The assignment for the use of radio frequency involves an exercise of quasi-judicial power or "the power of the administrative agency to determine questions of fact to which the legislative policy is to apply, in accordance with the standards laid down by the law itself."⁸³ It involves the determination of questions of fact as to what is "the public interest;" who is the "best qualified" service provider; and who "can efficiently and effectively meet public demand."

Hence, in order to properly exercise such quasi-judicial power, the NTC must (1) acquire jurisdiction; and (2) observe the requirements of due process, *i.e.*, right to notice and hearing.⁸⁴

Consistent with the foregoing, the NTC promulgated various rules and regulations for the allocation and assignment of radio frequencies, such as M.C. No. 3-3-96 entitled *Review, Allocation and Assignment of the Radio Spectrum*; M.C. No. 07-08-2005 entitled *Rules and Regulations on the Allocation and Assignment of 3G Radio Frequency Bands*; and M.C. No. 09-09-2018 entitled *Rules and Regulations on the Selection Process for a New Major Player in the Philippine Telecommunications Market*.

These rules and regulations provide for the allocation of radio frequencies and the corresponding procedure for their assignment, including the periods for filing and resolving applications and the necessary quasi-judicial process for the same. Complainant must comply with these rules and regulations. It cannot simply request or demand the assignment of specific frequency bands in its favor.

ii. *Respondent did not violate RA
11032 or RA 6713*

Relatedly, complainant cannot invoke the periods provided under

⁸² REPUBLIC ACT NO. 10972 (2017), Sec. 3.

⁸³ *Alliance for the Family Foundation, Philippines, Inc. v Garin*, 809 Phil. 897, 918 (2017) [Per J. Mendoza, Special Second Division].

⁸⁴ *Id.*

Section 9 and the automatic approval of its requested frequencies under Section 10 of RA 11032.

ARTA, the government agency created by law to administer and implement RA 11032, admitted that the “3-7-20 rule” under Sections 9⁸⁵ and 10⁸⁶ of RA 11032 is not absolute. It conceded that an agency created by special law which provides for a different period for performing its functions should follow such period.⁸⁷

ARTA’s own rules of procedure provides that its enforcement function over quasi-judicial agencies on the automatic approval, renewal, or extension shall not apply to cases where there are other parties claiming the same subject matter of the complaint, or in any situation where ARTA’s favorable disposition will result in the encroachment on the jurisdiction of the quasi-judicial agency.⁸⁸

In this case, the records show that after the issuance of ARTA’s 01 March 2021 Resolution and Order, DITO intervened in the case, arguing that the said resolution and order awarded to complainant frequencies which have been previously assigned to it as the NMP. Moreover, in its 09 July 2021 Resolution in OSJ Case No. 01-2020, the SOJ ruled that the NTC’s quasi-judicial and adjudicatory proceedings, including frequency

⁸⁵ Sec. 9. *Accessing Government Services*. – The following shall adopted by all government offices and agencies:

x x x x

(1) All applications or requests submitted shall be acted upon by the assigned officer or employee within the prescribed processing time stated in the Citizen’s Charter which shall not be longer than three (3) working days in the case of simple transactions and seven (7) working days in the case of complex transactions from the date the request and/or complete application or request was received.

For applications or requests involving activities which pose danger to public health, public safety, public morals, public policy, and highly technical application, the prescribed processing time shall in no case be longer than twenty (20) working days or as determined by the government agency or instrumentality concerned, whichever is shorter.

⁸⁶ Sec. 10. *Automatic Approval or Automatic Extension of License, Clearance, Permit, Certification or Authorization*. – If a government office or agency fails to approve or disapprove an original application or request for issuance of license, clearance, permit, certification or authorization within the prescribed processing time, said application or request shall be deemed approved: Provided, That all required documents have been submitted and all required fees and charges have been paid. The acknowledgment receipt together with the official receipt for payment of all required fees issued to the applicant or requesting party shall be enough proof or has the same force and effect of a license, clearance, permit, certification or authorization under this automatic approval mechanism.

If a government office or agency fails to act on an application or request for renewal of a license, clearance, permit, certification or authorization subject for renewal within the prescribed processing time, said license, clearance, permit, certification or authorization shall automatically be extended: Provided, That the Authority, in coordination with the Civil Service Commission (CSC), Department of Trade and Industry (DTI), Securities and Exchange Commission (SEC), Department of the Interior and Local Government (DILG) and other agencies which shall formulate the IRR of this Act, shall provide a listing of simple, complex, highly technical applications, and activities which pose danger to public health, public safety, public morals or to public policy.

⁸⁷ *Rollo*, pp. 1034-1035.

⁸⁸ Anti-Red Tape Authority, Memorandum Circular No. 2021-07, 21 July 2021, *2021 Revised Rules of Procedure Implementing the Electronic Complaints Handling*, Rule 4, Sec. 4.

adjudication, are outside the coverage of RA 11032.

Thus, consistent with the ARTA's rules and the relevant laws, rules, regulations, and jurisprudence relating to the allocation and assignment of radio frequencies, respondent or the NTC cannot be held liable for violation of RA 11032.

In any case, there is no basis in complainant's allegation that respondent delayed the assignment of the concomitant frequencies to its CMTS PA.

The records show that on 10 October 2005, complainant filed with the NTC an application for a CMTS PA and assignment of a 3G frequency band.⁸⁹

In its 28 December 2005 Consolidated Order, the NTC granted complainant's application for CMTS PA "with the clarification that this provisional authority is **not specific to 3G** and is **without prejudice to further evaluation under the criteria and requirements set forth in Sec. 3.6, 3.8 and 5 of MC No. 07-08-2005** for the determination of qualified applicants for the assignment of the allocated frequencies for 3G."⁹⁰

In the same Order, the NTC disqualified complainant for 3G frequency assignment because it is non-compliant with Section 3.6(a) of M.C. No. 07-08-2005, which provides:

3.6 Applications for the assignment of 3G frequency bands shall be accepted not later than ninety (90) calendar days from the effectivity of this Circular. The qualified applicants shall be determined using the following criteria:

- a. For existing authorized PTEs, **no outstanding unpaid supervision and regulations fees (SRF), spectrum user fees (SUF)**, radio station license fees; permit fees and other fees imposed by the National Telecommunications Commission pursuant to law, rules and regulations. (Emphasis and underscoring supplied)

Thus, contrary to its allegations, complainant's application for assignment of radio frequencies was acted upon by the NTC when it **denied** the same. In fact, complainant was able to challenge such action before the CA, and then before this Court in **G.R. No. 188655**.

Notably, this was the finding of the PACC, where complainant

⁸⁹ *Rollo*, p. 83.

⁹⁰ *Id.* at 102, 129; Emphasis supplied.

likewise filed a complaint⁹¹ against respondent for alleged violation of RA 11032 and Sections 3(e) and (f) of RA 3019. In its 13 May 2022 Resolution, PACC dismissed⁹² the complaint and held that there was no delay on the part of the NTC in acting on complainant's application for frequency band. It held that the NTC denied the application in its 28 December 2005 Consolidated Order. Hence, the NTC timely acted upon complainant's application.

For the same reasons, respondent did not violate Section 5(a) of RA 6713, which provides that public officials and employees are obliged to act promptly on letters and requests.

In addition to the foregoing, complainant failed to show that it has paid all required fees and charges, pursuant to Section 10 of RA 11032. In fact, complainant's outstanding SUF and SRF is the reason for its disqualification and the denial of its application for frequency assignment.

Thus, complainant failed to prove respondent's violation of RA 11032 or RA 6713.

*iii. Respondent did not violate RA
3019*

Complainant likewise failed to show how respondent violated Sections 3(e) and (f) of RA 3019, which provide:

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

x x x

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

(f) **Neglecting or refusing, after due demand or request, without sufficient justification, to act** within a reasonable time on any matter

⁹¹ *Id.* at 1060-1079.

⁹² *Id.* at 1081-1083.

pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter **some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.** (Emphasis and underscoring supplied)

Complainant failed to show that respondent (1) caused “undue” injury or gave any private party any unwarranted benefits, advantage, or preference; and (2) such undue injury or giving of unwarranted benefit, advantage, or preference was done through manifest partiality, evident bad faith, or gross inexcusable negligence.

Moreover, aside from the fact that the NTC, including respondent, did not “neglect” or “refuse” to act (as it acted) on complainant’s application for frequency assignment, complainant failed to show that such alleged neglect or refusal to act was (1) “without sufficient justification;” and (2) for the purpose of obtaining “some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.”

The NTC has the authority *and responsibility* to impose regulation fees, such as SRF and SUF, in the exercise of its regulatory powers under Sections 5(g)⁹³ and 15⁹⁴ of RA 7925 and Section 40(e) and (f)⁹⁵ of Commonwealth Act No. 146.

As stated in the CA’s 11 February 2009 Decision, complainant implemented a debt-to-equity conversion scheme, which led to increase in its authorized capital stock from PHP 400,000,000.00 to PHP 3,035,500.00

⁹³ Section 5. Responsibilities of the National Telecommunications Commission. – The National Telecommunications Commission (Commission) shall be the principal administrator of this Act and as such shall **take the necessary measures to implement the policies and objectives set forth in this Act.** Accordingly, in addition to its existing functions, **the Commission shall be responsible** for the following:

x x x

(g) In the exercise of its regulatory powers, **continue to impose such fees and charges as may be necessary to cover reasonable costs and expenses for the regulation and supervision of the operations of telecommunications entities.** (Emphasis supplied)

⁹⁴ Section 15. Radio Frequency Spectrum. – The radio frequency spectrum allocation and assignment shall be subject to periodic review. The use thereof shall be subject to reasonable spectrum user fees. Where demand for specific frequencies exceed availability, the Commission shall hold open tenders for the same and ensure wider access to this limited resource.” (Emphasis supplied)

⁹⁵ Section 40. The Commission is authorized and ordered to charge and collect from any public service or applicant, as the case may be, the following fees as reimbursement of its expenses in the authorization, supervision and/or regulation of public services:

x x x

(e) For annual reimbursement of the expenses incurred by the Commission in the supervision of other public services and/or in the regulation or fixing of their rates, twenty centavos for each one hundred pesos or fraction thereof, of the capital stock subscribed or paid, or if no shares have been issued, of the capital invested, or of the property and equipment, whichever is higher.

(f) For the issue or increase of capital stock, twenty centavos for each one hundred pesos or fraction thereof, of the increased capital.

where PHP 2,634,184,800.00 was subscribed and fully paid by way of offset of liabilities. Based on these, the NTC assessed complainant's unpaid SRF and SUF in the amounts of PHP 126,094,195.76 and PHP 9,674,190.00, respectively, as of December 2005. As mentioned above, the CA affirmed the NTC and its assessments, and the said CA decision is now subject of complainant's petition for review on *certiorari* docketed as **G.R. No. 188655** before this Court.

Moreover, the NTC's 28 December 2005 Consolidated Order clearly states the basis for the denial of complainant's application, i.e., non-compliance with Section 3.6(a) of M.C. No. 07-08-2005, or that the applicant PTE should have no outstanding or unpaid SRF and SUF, among others.

Meanwhile, the NTC's efforts to collect from complainant the payment of its outstanding SUF and SRF is not "without sufficient justification." The CA has affirmed the NTC's assessments, and this Court has not issued any injunction or restraining order against such assessments. Therefore, the NTC's assessments and 17 September 2007 Order remain to be immediately executory, pursuant to Rule 15, Section 5 and Rule 17, Section 2 of the NTC Rules in relation to Rule 43, Section 12 of the Rules of Court, which provide:

RULE 15
Decisions and Orders

x x x x

SECTION 5. *Execution or Order, Ruling, Decision or Resolution*
— **All orders, decisions, or resolutions of the Commission shall take effect immediately** and unless there is an appeal, shall become final upon expiration of thirty (30) days from notice thereof to all parties. (Emphasis and underscoring supplied)

RULE 17
Appeal

x x x x

SECTION 2. *Effect of Appeal* — Unless the Supreme Court directs otherwise, **appeal shall not stay the execution of the order, ruling, decision, or resolution.** (Emphasis and underscoring supplied)

RULE 43
Appeals From the Court of Tax Appeals and Quasi-Judicial Agencies to
the Court of Appeals

x x x

WP

Section 12. *Effect of appeal.* — **The appeal shall not stay the award, judgment, final order or resolution sought to be reviewed unless the Court of Appeals shall direct otherwise** upon such terms as it may deem just. (10a) (Emphasis and underscoring supplied)

In addition, respondent has explained that the NTC regularly sends demand letters to all PTEs, including complainant, with outstanding debts to preserve the NTC's rights and ensure that the period to institute actions for collections is not extinguished by prescription or laches, in accordance with Article 1155 of the Civil Code, which provides:

ARTICLE 1155. The prescription of actions is interrupted when they are filed before the court, when there is a **written extrajudicial demand by the creditors**, and when there is any written acknowledgment of the debt by the debtor. (1973a) (Emphasis and underscoring supplied)

The Court also notes that in its demand letters* to complainant, the NTC acknowledged the pendency of **G.R. No. 188655** and undertook to re-assess complainant's SUF and SRF in accordance with the final decision of this Court in the said case.

Thus, while the propriety of the NTC's assessments is still pending final determination by this Court, the NTC still had sufficient justification when it denied complainant's application for frequency assignment and exerted efforts to collect the latter's outstanding SUF and SRF. In other words, the NTC did not deny complainant's application for frequency assignment and sent demand letters "without sufficient justification," although the correctness of such justification is still pending final determination by this Court.

In the same manner, the NTC's denial of complainant's application for frequency assignment, imposition and assessment of SRF and SUF, and efforts to collect the same cannot be considered as causing "undue" injury to, or an act of discrimination against complainant.

If complainant suffered any injury when it was disqualified for frequency assignment, it was because it failed to qualify or comply with the requirements set forth in the rules and regulations duly promulgated by the NTC. Moreover, the NTC had the legal authority and responsibility to impose and collect SRF and SUF. The SRF and SUF are being imposed and collected not only from complainant, but also from other users of the radio spectrum.

It is also worth noting that the NTC has assigned complainant the

* *Rollo*, pp. 343-346; 350.

following: (1) 20 MHz in the 3400-3600 MHz band in 2017; (2) 100 channels of frequencies in the 800 MHz band for its trunking service; (3) 56 microwave links in the 3600-3800 MHz band in 2019. Additionally, complainant's related companies, NewsNet and GHT Network were assigned 25.35-26.35 GHz band and 26.35-27.35 GHz band, respectively, or a total of 2000 MHz bandwidth until the expiration of their legislative franchises. These assignments contradict complainant's allegations that the NTC or respondent discriminated against complainant.

Considering that the NTC, including respondent, had sufficient legal justifications for denying complainant's application for frequency assignment and for sending demand letters for the latter's outstanding SUF and SRF, there is no basis in complainant's allegations that the NTC or respondent discriminated or acted with manifest partiality, evident bad faith, or gross inexcusable negligence against complainant.

Considering all the foregoing, the Court finds that respondent did not violate any law that would constitute as violation of the revised lawyer's oath or Canon III, Section 2 of the CPRA.

*Respondent did not use his
government position to promote
private interests*

Canon II, Sections 28 and 30 of the CPRA provide:

**CANON II
PROPRIETY**

A lawyer shall, at all times, act with propriety and maintain the appearance of propriety in personal and professional dealings, observe honesty, respect and courtesy, and uphold the dignity of the legal profession consistent with the highest standards of ethical behavior.

x x x x

SECTION 28. Dignified government service. -
Lawyers in government service shall observe the standard of conduct under the CPRA, the Code of Conduct and Ethical Standards for Public Officials and Employees, and other related laws and issuances in the performance of their duties.

Any violation of the CPRA by lawyers in government service shall be subject to disciplinary action, separate and distinct from liability under pertinent laws or

- over -

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rules.

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SECTION 30. *No financial interest in transactions; no gifts.* - A lawyer in government shall not, directly or indirectly, promote or advance his or her private or financial interest or that of another, in any transaction requiring the approval of his or her office. Neither shall such lawyer solicit gifts or receive anything of value in relation to such interest.

Such lawyer in government shall not give anything of value to, or otherwise unduly favor, any person transacting with his or her office, with the expectation of any benefit in return.

However, complainant failed to prove or even allege any act or omission of respondent where he used his public position as NTC Commissioner to promote, advance, or allow his private or financial interests to interfere with his public duties.⁹⁷

The complaint is bereft of any allegation of respondent's private or financial interests that purportedly affected, influenced, or interfered with the exercise of his duties as NTC Commissioner. There is no allegation or any showing that respondent solicited gifts or anything of monetary value in any transaction requiring the approval of the NTC or may be affected by the functions of the NTC.⁹⁸ There is no allegation or any showing that respondent demanded and received money from complainant or any party who had pending application, request, or case before the NTC.⁹⁹

There is neither any showing that respondent promoted or advanced another person's private or financial interest in any transaction requiring the NTC's approval.

Complainant asserts that respondent exhibited manifest partiality to Infinivan when it was assigned 100MHz from the 3.6 to 3.8HGz band. It alleges that Infinivan is a favored entity with no track record.

However, complainant failed to show any proof to support these allegations. It did not show how Infinivan is a supposed favored entity of respondent, and how the alleged assignment of 100MHz from the 3.6 to 3.8GHz band to Infinivan was due to respondent's manifest partiality. There was likewise no showing how the NTC or respondent unduly favored

⁹⁷ See *Olazo v. Tinga*, 651 Phil. 290, 300 (2010) [Per J. Brion, En Banc].

⁹⁸ *Id.*; *Huyssen v. Gutierrez*, 520 Phil. 117, 131 (2006) [Per Curiam, En Banc].

⁹⁹ *Olazo v. Tinga*, *id.* at 300-301.

Infinivan with the expectation of any benefit in return. Further, complainant did not show how it was entitled to such radio frequency.

Additionally, as discussed above, respondent alone does not act for and on behalf of the NTC. He alone has no authority to assign any radio frequency. It is the NTC, acting as a collegial body, that has the authority to do the same. If a radio frequency was indeed assigned to Infinivan, then it is the act of the NTC, and not respondent.

Complainant failed to show how respondent, as member of a collegial body, unduly favored Infinivan when it was assigned the said radio frequency. Clearly, the mere assignment of a radio frequency in favor of Infinivan does not in itself constitute manifest partiality or undue favor on the part of respondent or the NTC.

The alleged manifest partiality in favor of Infinivan is thus a mere allegation. Bare allegations, however, are not evidence or proof. Complainant's allegation that Infinivan is a favored entity is at best a mere suspicion or speculation which cannot be given credence.¹⁰⁰

On the other hand, respondent, together with the two Deputy Commissioners of the NTC, enjoy the presumption of regularity in the performance of their official duties as far as its allocations and assignments of radio frequency are concerned. Complainant has not provided any justification to impute any malicious or fraudulent intent on the part of respondent or the NTC.

Consequently, there is no basis to hold respondent liable for violation of Canon II, Sections 28 and 30 of the CPRA.

Respondent did not impede the execution of a judgment or misuse court processes

Canon II, Section 7 of the CPRA provides:

**CANON II
PROPRIETY**

A lawyer shall, at all times, act with propriety and maintain the appearance of propriety in personal and professional dealings, observe honesty, respect and courtesy, and uphold the dignity of the legal

¹⁰⁰ *Supra* note 71.

profession consistent with the highest standards of ethical behavior.

x x x x

SECTION 7. *Prohibition against frivolous suits and abuse of court processes.* — A lawyer shall not:

- (a) file or encourage the filing of any suit or proceeding not authorized by law or jurisprudence and without any evidentiary support;
- (b) unduly impede the execution of an order or judgment which is warranted; or
- (c) abuse court processes. (1.03a)

Complainant contends that respondent violated the afore-quoted provisions when he allegedly unjustifiably refused or neglected to comply with ARTA's 01 March 2021 Resolution and Order to forestall complainant from delivering mobile telecommunications services to the public.

However, complainant failed to show how respondent unduly impeded the execution of an order or judgment. In the first place, complainant did not show that ARTA's 01 March 2021 Resolution and Order have become final and executory as to warrant their execution.¹⁰¹ There is even no showing that complainant has moved for the execution of the said resolution and order.

After the ARTA's issuance of the 01 March 2021 Resolution and Order, DITO filed a motion for leave to intervene, arguing that the said Resolution and Order awarded to complainant frequencies which have been previously assigned to DITO as the NMP. The NTC likewise filed a motion to vacate and set aside the said Resolution and Order.¹⁰²

Thereafter, the ARTA issued Omnibus Order¹⁰³ dated 31 January 2022 denying DITO's and the NTC's respective motions. In the same Order, the **ARTA deemed it proper "for the parties to observe *status quo* pending the resolution by the Office of the President of the Authority's *Motion for Reconsideration dated 01 December 2021* entitled, *National Telecommunications Commission vs. Anti-Red Tape Authority* in relation to the Department of Justice's Resolution (re: OSJ Case No.: 01-2020) since the said case involves the same subject matter as in this case."**¹⁰⁴

¹⁰¹ See *David v. Rongcal*, A.C. No. 12163, 23 June 2020 [Per Curiam, En Banc].

¹⁰² *Rollo*, p. 293.

¹⁰³ *Id.* at 292-295.

¹⁰⁴ *Id.* at 294.

More importantly, as discussed above, the ARTA issued the **17 June 2022 Resolution setting aside its 01 March 2021 Resolution and Order**. Thus, the 01 March 2021 Resolution and Order never became final and executory as to warrant their execution. Ultimately, there was no execution of order or judgment that respondent could unduly impede, or even refuse or neglect to comply.

In any case, the Court notes that under RA 11032, the ARTA is only vested with, among others, the power to investigate complaints, refer complaints to the appropriate office or agency, file cases for violations of the said law, and assist complainants in filing the necessary cases with the Civil Service Commission (CSC), the Office of the Ombudsman (Ombudsman), and other appropriate courts, as the case may be.¹⁰⁵ Section 24 of RA 11032 expressly provides that administrative jurisdiction on violations of the same law is vested in either the CSC or the Ombudsman.

Thus, the ARTA is not vested with quasi-judicial powers and has no authority to render judgments. ARTA itself has admitted that it has no such power.¹⁰⁶ As such, it cannot issue orders or judgments that may be executed.

Consequently, there is no basis to hold respondent administratively liable under Canon II, Section 7 of the CPRA.

Respondent did not violate the sub-judice rule

Canon II, Section 19 of the CPRA provides:

**CANON II
PROPRIETY**

A lawyer shall, at all times, act with propriety and maintain the appearance of propriety in personal and professional dealings, observe honesty, respect and courtesy, and uphold the dignity of the legal profession consistent with the highest standards of ethical behavior.

X X X X

SECTION 19. *Sub-judice rule.* - A lawyer shall not use any forum or medium to comment or publicize opinion pertaining to a pending proceeding before any court, tribunal, or other government agency that may:

¹⁰⁵ REPUBLIC ACT NO. 11032 (2018), Sec. 17 (d) & (e).

¹⁰⁶ *Rollo*, p. 1092.

- (a) cause a pre-judgment, or
- (b) sway public perception so as to impede, obstruct, or influence the decision of such court, tribunal, or other government agency, or which tends to tarnish the court's or tribunal's integrity, or
- (c) impute improper motives against any of its members, or
- (d) create a widespread perception of guilt or innocence before a final decision.

Complainant further charges respondent with violation of the *sub-judice* rule for allegedly causing the publication of the following news articles from ABS-CBN News and Business Mirror, respectively, which maliciously depicted complainant as having an unpaid PHP 2,600,000,000.00 to the Government when there is yet a final, due, and demandable SRF owing from complainant:

“MANILA – The National Telecommunications Commission through the Office of the Solicitor General has filed a motion with the Supreme Court reiterating its call to resolve NOW Telecom’s P2.6-billion unpaid dues to the government.

The debt is from unpaid Supervision and Regulation Fees (SRF) and Spectrum User Fees (SUF) as well as accumulated fines and penalties, the motion dated Oct. 25 said.

The pending cases represent the total of P2,615,868,531 receivables computed as of December 2020, the motion said.

This is part of the P3.065 billion in unresolved receivables from NOW Telecom, according to a letter received by the NTC from the Commission on Audit dated May 2021.

“Considering the contingent nature of the collection of the aforementioned receivable and in further consideration of the government’s need for funds to defray the costs of its COVID-19 response, the prompt resolution of the present cases is most humbly requested,” the OSG’s motion said.

A Reiterative Motion for Early Resolution was also filed in February 2019.

NOW Telecom is a telco provider in the Philippines. It earlier expressed intent to join the search for the third major telco but held off in submitting documents after it questioned the selection process.”¹⁰⁷

“The government, through the Office of the Solicitor General (OSG), has filed a motion with the Supreme Court reiterating its earlier request to resolve the case involving Now Telecom’s P2.6 billion unpaid obligation

¹⁰⁷ *Id.* at 446-447.

to the state.

The OSG is seeking to recover on behalf of the government the unpaid Supervision and Regulation Fee (SRF) and Spectrum User Fees (SUFs) plus accumulated fines and penalties that Now Telecom has failed to pay—receivables which the government could use to augment its relief funds for COVID-19 response.

In the motion for early resolution, the OSG has asked the High Tribunal to resolve the case at the earliest opportune time since “all parties have already submitted their respective memoranda and that there are no longer pending incidents that need to be addressed.”

“Considering the contingent nature of the collection of the aforementioned receivables, and in further consideration of the government’s needs for funds to defray the costs of its COVID-19 response, the prompt resolution to the present cases is most humbly requested,” the OSG stated in the motion it filed with the Supreme Court on October 25, 2021.

The P2.6-billion being recovered from Now Telecom, which accounts for 85.32 percent of the more than P3 billion in “unresolved receivables” of the government, was part of the observation report of state auditors for the period covering January 1 through December 31, 2020.

“Particularly for the present cases, the Commission on Audit took note that unresolved receivables in the total amount of Php2,615,868,531.30 is attributed to the above-captioned cases in the form of unpaid Supervision and Regulation Fees (SRF) and Spectrum User Fees (SUF), including accumulated fines and penalties, computed as of 31 December 2020,” the OSG said.

The state lawyers have filed a reiterative motion for early resolution with the High Tribunal in February 2019, which the magistrates took note of in August of the same year.

Next Mobile, Inc., the former name of Now Telecom Company, Inc., has challenged the decision and resolution of the Court of Appeals in 2009, which affirmed the letter-assessments of the telecommunications regulatory body seeking to collect P126 million in SRF and almost P9.7 million in SUF, as of December 2005. Now Telecom’s unpaid obligation to the government has ballooned to P2,615,868,531.50, which included penalties and fines, as of December 2020.”¹⁰⁸

In support of its charges, complainant provided an e-mail from ABS-CBN’s Ms. Tarra Quismundo, stating that the subject news article “was based on a court document released by the NTC to the media.”¹⁰⁹ Complainant then asserted that the release of said court document “could not have happened without the instruction, knowledge, and/or approval” of

¹⁰⁸ *Id.* at 448-450.

¹⁰⁹ *Id.* at 453.

respondent who exercises overall authority in NTC's operations.

However, complainant failed to show that respondent commented or publicized opinion pertaining to G.R. No. 188655 that may (1) cause a pre-judgment; (2) sway public perception so as to impede, obstruct, or influence the decision of the Court; (3) tend to tarnish the Court's integrity; (4) impute improper motives against any of its members; or (5) create a widespread perception of guilt or innocence before a final decision. Complainant failed to provide substantial evidence that respondent indeed caused the publication of the afore-quoted news articles.

Complainant merely asserted that the release of the purported court document "could not have happened without the instruction, knowledge, and/or approval" of respondent. It then concluded that respondent caused the publication of said news articles. However, such assertion and conclusion, without concrete proof, are mere suspicion or speculation. To reiterate, charges based on mere suspicion or speculation cannot be given credence.¹¹⁰

In any case, the subject news articles do not appear to prejudge the issue in G.R. No. 188655, influence the Court, or obstruct administration of justice.

In *Marantan v. Diokno (Marantan)*,¹¹¹ the Court ruled that "[t]he *sub judice* rule restricts comments and disclosures pertaining to the judicial proceedings in order to avoid prejudging the issue, influencing the court, or obstructing the administration of justice. A violation of this rule may render one liable for indirect contempt under Sec. 3 (d), Rule 71 of the Rules of Court" The rule "is directed against the dignity and authority of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect."¹¹²

Hence, "[f]or a comment to be considered as contempt of court 'it must really appear' that such does impede, interfere with and embarrass the administration of justice. What is, thus, sought to be protected is the all-important duty of the court to administer justice in the decision of a pending case."¹¹³

The Court further explained that "the evil consequence of the comment must be 'extremely serious and the degree of imminence extremely high' before an utterance can be punished. There must exist a clear and present danger that the utterance will harm the administration of

¹¹⁰ *Cabas v. Sususco*, supra note 71.

¹¹¹ 726 Phil. 642 (2014) [Per J. Mendoza, Third Division].

¹¹² *Id.* at 648.

¹¹³ *Id.* at 648-649.

justice. Freedom of speech should not be impaired through the exercise of the power of contempt of court unless there is no doubt that the utterances in question make a serious and imminent threat to the administration of justice.”¹¹⁴

Thus, in that case, the Court held that there was no violation of the *sub-judice* rule as the subject comments therein were mere reiteration of their position in a pending case, i.e., their loved ones were murdered by Marantan. As such, the Court did not find any “malice on the face of the said statements. The mere restatement of their argument in their petition cannot actually, or does not even tend to, influence the Court.”¹¹⁵ Moreover, the comments merely stated that the Court had not yet resolved their petition. “There was no complaint, express or implied, that an inordinate amount of time had passed since the petition was filed without any action from the Court.”¹¹⁶ Thus, there was no attack or insult on the dignity of the Court. Consequently, such comments did not pose a serious and imminent threat to the administration of justice, and “[n]o criminal intent to impede, obstruct, or degrade the administration of justice can be inferred from the comments.”¹¹⁷

The Court also emphasized that a publication cannot be denied the constitutional guarantee of freedom of speech and the press “merely because it concerns a judicial proceeding still pending in the courts, upon the theory that in such a case, it must necessarily tend to obstruct the orderly and fair administration of justice.”¹¹⁸

In this case, the alleged malicious news articles merely stated the contents of the Reiterative Motion for Early Resolution filed by the Office of the Solicitor General (OSG), NTC’s counsel, before this Court in relation to G.R. No. 188655. The said motion, as stated in the news articles, merely called for the resolution of complainant’s unsettled SRF and SUF, citing the government’s need for funds to defray the costs of its COVID-19 response.

Just as in *Marantan*, the mere restatement of the OSG’s argument in its motion and position in G.R. No. 188655 that complainant has unpaid dues worth PHP 2,600,000,000.00 to the government “cannot actually, or does not even tend to, influence the Court.” There was likewise no attack or insult on the dignity of the Court as the OSG merely humbly requested for the resolution of the case. Hence, the subject news articles did not pose serious and imminent threat to the administration of justice, and no criminal

¹¹⁴ *Id.* at 649; Emphasis supplied.

¹¹⁵ *Id.* at 650.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*, citing *Austria v. Masaquel*, 127 Phil. 677, 691 (1967).

intent to impede, obstruct, or degrade the administration of justice can reasonably be inferred from such publications. Thus, there was no violation of the *sub-judice* rule.

Consequently, there is likewise no basis to hold respondent administratively liable for violation of Canon II, Section 19 of the CPRA.

All told, there is no reason to hold respondent administratively liable in this case. Verily, the instant complaint against respondent has no basis and must be dismissed for lack of merit.

The Court reiterates that “administrative proceedings brought against lawyers, including those in the public service, to make them be accountable for their acts or omissions in the exercise of their profession are not alternatives to reliefs that may be sought and obtained from the proper offices or agencies.”¹¹⁹ Accordingly, “[a]ny complaint for disbarment or other disciplinary sanction brought against lawyers that is based on frivolous matters or proof, like this case, should be immediately dismissed.”¹²⁰

WHEREFORE, premises considered, the disbarment complaint filed by complainant NOW Telecom Company, Inc. against respondent Atty. Gamaliel A. Cordoba is hereby **DISMISSED**.

The respondent’s Manifestation and Motion to Dismiss dated 06 January 2023 is **NOTED**. The copy of the Resolution dated 06 February 2023 sent to the respondent at NTC Building, BIR Road, Diliman 1101, Quezon City, that was returned to this Court on 26 July 2023 unserved with postal notion “RTS-Moved out” is **CONSIDERED** as **SERVED**.

SO ORDERED.”

By authority of the Court:



MARIA TERESA B. SIBULO
Division Clerk of Court

314 & 339

JAN 08 2024

¹¹⁹ *Domingo v. Rubio*, 797 Phil. 581, 590 (2016) [Per J. Bersamin, First Division].

¹²⁰ *Id.*

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