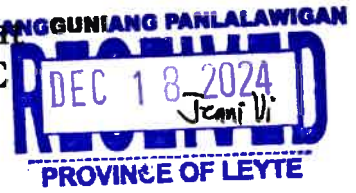


Republic of the Philippines
Department of Interior and Local Government
SANGGUNIANG PANLALAWIGAN OF LEYTE
Office of the Provincial Secretary
Provincial Capitol, Palo, Leyte
-00o-



MARVIN T. MARTICIO,
Complainant,

Admin Case No. ORC-
SP2024-003
For: Grave Misconduct
and Neglect of Duty.

-VS.-

HON. ANGEL ARAS SIA, JR.,
Respondent.

x-----x

**COMPLAINANT'S COMMENTS
AND OPPOSITION TO RESPONDENT'S
MOTION TO STRIKE OUT/WAIVER OF
SUBMISSION OF JUDICIAL AFFIDAVIT**

Complainant through counsel unto this Honorable Blue Ribbon Committee of the Sangguniang Panlalawigan of Leyte most respectfully states and avers thus:

PREFATORY STATEMENT

I.

"TO DENY A MAN JUSTICE IN THE PRESENCE OF THE MOST HIGH, TO WRONG A MAN IN HIS CONFLICT, THE LORD DOES NOT APPROVE."¹ [Bold letters and underscoring supplied for emphasis.]

¹ Lamentations 3:35-36 (Holy Bible).

**SPECIFIC ALLEGATIONS AS TO
TIMELINESS OF SUBMISSION OF THE
FOREGOING COMMENTS AND OPPOSITION**

II.

On December 12, 2024, private complainant through the counsel received a copy of respondent's Motion to Strike Out/Waiver of Submission of Judicial Affidavit.

III.

In an Order verbally issued by the presiding officer of this Honorable Committee last December 10, 2024, respondent was given ten (10) days within which to submit whatever pleading or motion it may wish to file pursuant to its observation on complainant's submission of judicial affidavit. Respondent on the other hand was afforded the same number of days counted from the receipt of respondent's pleading. Ergo, the foregoing comments and opposition falls within the time-frame granted by this Honorable Committee.

IV.

This being said, the private prosecution would like to move that although it was able to get hold a copy of accused's Joint Motion for Leave of Court to File Demurrer to Evidence as early as December 10, 2024, the counting of their five (5) day period within which to file their Comments and Opposition be reckoned from the date on which their copy will be received from the accused.

**PRIVATE COMPLAINANT'S STRONG REFUTATION
TO ACCUSED'S MOTION TO STRIKE OUT/WAIVER OF
SUBMISSION OF JUDICIAL AFFIDAVIT:**

V.

It is not difficult to logically discern by simply perusing respondent's discourse etched in its December 12, 2024 Motion to Strike Out/Waiver of Submission of Judicial Affidavit that respondent is desperate in his effort to thwart private complainant's testimonial evidence from reaching the portals of this Honorable Committee just to show his seemingly sinless and immaculate image in public.

VI.

From ancient times back to the antediluvian era of human history, one man did the same thing – Pontius Pilate. He washed his hands in public as if to show that he is spotlessly clean and innocent. So also is respondent. In his strive to maintain his false innocence, he is determined to do everything within his means in order to prevent complainant and his witnesses from fully testifying in this case before this Honorable Committee. Complainant boldly responds, a resounding no! Far be it and may it never be!

ARGUMENTS AND DISCUSSION:

VII.

Private complainant would have to be honest that at the time he submitted his complaint against respondent, only that of Raymart P. Marticio’s judicial affidavit was attached. If that is the truth, then so be it. At least complainant is honest to own up his shortcoming. Unlike respondent whose administrative infraction is clear and obvious, yet he persist in concocting contorted narratives utilizing even the microscopic details of technicality just to defeat the ends of substantial justice. Certainly, no person in his right mind can ever take it to his stomach.

VIII.

Respondent in his Motion to Strike Out/Waiver of Submission of Judicial Affidavit, he strongly asseverates that due to the late submission of complainant’s judicial affidavit and that of his witnesses, he wants to crucify complainant by wielding the sword of technicality at the expense of substantial justice.

IX.

Contrary to the destitute and lanky preposition advanced by respondent that just because complainant was not able to file the judicial affidavits of his witnesses on time that the same would warrant the forfeiture of their supposed testimony. In the first place, the manner of establishing an administrative case against would be respondent is clearly elaborated by Sec. 10 of Provincial Ordinance No. 2020-17. It states:

*“Sec. 10. Form of Complaint. **No complaint against any local elective official shall be given due course unless the same is in writing and verified or under oath.** The complaint shall be drawn in clear, simple, and concise language and in methodical manner as to apprise the respondent of the nature of the charge against him/her and to enable him or her to prepare his or her defense, and **must be accompanied by the judicial affidavits of the complainant and his or her witnesses.** xxx” [Bold letters and underscoring supplied for emphasis.]*

X.

Needless to state, while the Internal Rules of Procedure of the Sangguniang Panlalawigan of Leyte of which this Honorable Committee is a part of specifically so indicates that the complaint must be accompanied by the judicial affidavits of complainant and his or her witnesses, nowhere in the entirety of the said provision so manifestly declare that in the event of late filing the same shall not be given due course. **Late filing is variably different from no filing at all** in defiance to the mandate of the rules. Respondent should ponder on this!

XI.

As a matter of fact, the issue at hand is already in the pre-trial stage before this Honorable Committee which signifies that complainant’s administrative complaint has been given due course by the Sangguniang Panlalawigan of Leyte. Otherwise, complainant’s administrative complaint against respondent would not have reached the pre-trial stage.

XII.

This is due to the fact that under Sec. 17 of the Internal Rules of Procedure of the Sangguniang Panlalawigan of Leyte, the Sanggunian has the sole power to *motu proprio* dismiss the case filed by the complainant if in the evaluation of the members of this Committee, they failed to found the existence of probable cause. Anent thereto, complainant is constrained to reproduce the relevant and material provisions of Sec. 17 of Provincial Ordinance No. 2020-17. It states, thus:

“Sec. 17. Evaluation. Upon the receipt of the answer, the Blue Ribbon Committee or the Sangguniang Panlalawigan shall, in one of its sessions, determine the existence of a probable cause, and within ten (10) days commence the investigation through the Blue Ribbon Committee or through another committee or through a joint committee as the Sangguniang Panlalawigan may deem appropriate. If there exists no prima facie evidence against the respondent, the Sanggunian may motu proprio dismiss the case.”

[Bold letters and underscoring supplied for emphasis.]

XIII.

Thus, respondent’s assertion that just because complainant failed to file its judicial affidavits on time, the same is an automatic waiver of its right to present its testimonial evidence. Respondent’s claim is nowhere to be found in the entire corpus of Provincial Ordinance No. 2020-17. It is merely respondent’s evil scheme to escape administrative liability since the same is not an essential element of the offense with which he is administratively charged. In effect, **what the law does not require, a party is not allowed to supply!**

XIV.

Not only that and even then, the Rules of Procedure of this Honorable Committee is very much forgiving. It lends credence to the doctrine espoused in the case of **MID-PASIG LAND DEVELOPMENT CORPORATION vs. TABLANTE**² reiterated in the case of **CEBU METRO PHARMACY, INC. vs. EUROMED LABORATORIES, PHILIPPINES, INC.**³ where the Supreme Court repeatedly that:

“The rules of procedure ought not to be applied in a very rigid, technical sense for they have been adopted to help secure, not override, substantial justice.” [Bold letters and underscoring supplied for emphasis.]

² 611 SCRA 528.

³ 633 SCRA 320.

XV.

A careful scrutiny of Section 36 of the Provincial Ordinance No. 2020-17 discloses that the spirit and intent of the rules is apparently liberal rather than technical, constructive instead of destructive. It states that:

“Sec. 36. Effect of non-compliance with the Judicial Affidavit Rule.

(a) *A party who fails to submit the required judicial affidavits and exhibits on time shall be deemed to have waived their submission. **The Sangguniang Panlalawigan may however, allow only once the late submission of the same provided, the delay is for a valid reason, and would not unduly prejudice the opposing party.** xxx”*
[Bold letters and underscoring supplied for emphasis.]

XVI.

Anchored on the above premise, private complainant is of the stout opinion that in the interest of justice, he should be allowed to submit the judicial affidavits of his witnesses albeit late and out of time. The liberal principle which allows a party to present its evidence without regard to technicality has long been established by the Supreme Court in the case of **ALCANTARA vs. THE PHILIPPINE COMMERCIAL AND INTERNATIONAL BANK**⁴ where it was held that:

*“**Failure to attach all pleadings and documents, by itself, is not a sufficient ground to dismiss a petition – lapses in the literal observation of a procedural rule will be overlooked when they do not involve public policy, when they arose from an honest mistake or unforeseen accident, and when they have not prejudiced the adverse party or deprived the court of its authority.**”* [Bold letters and underscoring supplied for emphasis.]

⁴ 634 SCRA 48.

XVII.

The same sentiment was reached by the Supreme Court in the case of **GOVERNMENT SERVICE INSURANCE SYSTEM vs. NATIONAL LABOR RELATIONS COMMISSION**⁵ where it was held that:

***“Procedural rules are not to be belittled or dismissed** simply because their non-observance may have prejudiced a party’s substantive rights – like all rules, they are required to be followed; Exceptions: (1) most persuasive and weighty reasons; (2) **to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure;** (3) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (4) the existence of special or compelling circumstances; (5) **the merits of the case;** (6) a cause not entirely attributable to the fault or negligence of the party favoured by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) **the other party will not be unjustly prejudiced thereby;** (9) fraud, accident, mistake or excusable negligence without appellant’s fault; (10) peculiar legal and equitable circumstances attendant to each case; (11) **in the name of substantial justice and fair play;** (12) importance of the issues involved; and (13) exercise of sound discretion by the judge guided by all the attendant circumstances.”* [Bold letters and underscoring supplied for emphasis.]

XVIII.

In another case involving a very late submission of appeal, the Supreme Court in the interest of justice and equity allowed a party to comply with the same. Thus, bending the rules for the sake of justice is not despicable after all. On this score, instructive is the ruling of the Supreme Court in the case of **471 PHIL. 670 [2004] cited in the case of ANTONIO L. TAN, JR. vs. YOSHITSUGU MATSUURA and CAROLINA T. ANJUTCO, G.R. No. 179003, Jan. 9, 2013** where it was held that:

⁵ 635 SCRA 251.

*“In **Vallejo vs. Court of Appeals**, we emphasized that the Court has allowed some meritorious cases to proceed despite inherent procedural defects and lapses. This is in keeping with the principle that rules of procedure are mere tools designed to facilitate the attainment of justice and that the strict and rigid application of rules which would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case to attain the ends of justice, rather than dispose of the case on technicality and cause grave injustice to the parties. Thus, **we allowed the petition in Vallejo to proceed even if it was filed almost four (4) months beyond the prescribed reglementary period under the rules.**”* [Bold letters and underscoring supplied for emphasis.]

XIX.

By analogy and pursuant to the Latin maxim **STARE DECISIS ET NON QUIETA MOVERE**⁶, private complainant is of the view that based on the above pronouncements of the Supreme Court, he should be given opportunity to submit the judicial affidavits of his witnesses.

XX.

Be that as it may, it would seem that respondent indeed intends to press complainant by calling for the rigid and very unforgiving application of the rules. That would be fine with complainant since understandably, respondent like a lone survivor of sinking ship, would really row hard with all its might with the sole intention of reaching the shore. In other words, he will do everything in his own power to survive. But so also is complainant. Complainant will also do everything in his means to establish administrative guilt on the part of respondent.

⁶ Follow past precedents and do not disturb what has been settled.

XXI.

But in the spirit of fairness and equality, complainant would like to pose a challenge to respondent. Complainant dares to withdraw the belatedly submitted judicial affidavits of all its witnesses. Complainant would even acquiesce to waive the presentation of Atty. Jerome A. Tenebro and Police Staff Sergeant EM Labanta of the La Paz Municipal Police Station and would forego the submission of their respective judicial affidavits. Anyway, the gist of the testimony of Police Staff Sergeant EM Labanta is merely collateral to the issues at hand.

XXII.

As to the testimony of Atty. Jerome A. Tenebro, complainant feels that his testimony is not indispensable since the copy of the subject letter was already submitted to this Honorable Committee and is listed as one of complainant's documentary evidence marked as Exhibit "F". Besides, it was tacitly admitted by respondent in his answer that he did not make a written reply to the letter which his office received on January 08, 2024 in violation of by Sec. 5, par (a) of R.A. No. 6713 which expressly requires that "**The reply "must" contain the action taken on the request**".

XXIII.

As a matter of fact, the bone of respondent's contention quoted from the very lines of his answer states that, hence we quote:

"16. From this perspective, Mayor Sia posits that the word "respond" as contemplated by Section 5 (a) of Rep. Act. No. 6713 not to literally mean verbal or written response, because in this instant case, he in fact responded by way of action through setting the case for mediation, as alleged in paragraphs 8 to 15 hereinabove." [Bold letters and underscoring supplied for emphasis.]

"19. The act of Mayor Sia in acting on the Letter via complainant, Marvin Marticio by action is sufficient response in contemplation of Section 5 (a) of Rep. Act No. 6713 that negates this administrative liability for Grave Misconduct." [Bold letters and underscoring supplied for emphasis.]

XXIV.

The crux of this controversy is simple. It hinges on the lone issue which on account of its substantive importance may be engendered in the following query, thus: **IS MAYOR SIA GUILTY OF VIOLATION OF SEC. 5, PAR. (A) OF R.A. NO. 6713 WHEN IT FAILED TO RESPOND IN WRITING AS REQUIRED BY THE SAME LAW TO THE LETTER SENT TO IT BY COMPLAINANT?**

XXV.

Respondent's Motion to Strike Out/Waiver of Submission of Judicial Affidavit is primarily designed to mislead this Honorable Committee from the real issues at hand. Respondent is constrained to resort to technicality because he fully knows that that is the only defense left for him and no other.

XXVI.

Complainant's administrative complaint to be candid is not too difficult to be answered only if respondent had a legitimate defense. Respondent could have easily produced the response letter he issued to complainant's letter in compliance to Sec. 5, par. (a) of R.A. No. 6713, if there was any. But truth be told, there was none. Had there been one, it would have been discussed and identified in his answer and with more reason, it would have been listed as one of the documentary evidence for respondent in his preliminary conference brief. But then again, there was none.

XXVII.

Corollary to complainant's challenge however, he would agree to the withdrawal of its belatedly submitted judicial affidavits only if respondent would agree as well for the striking out of his defective answer which deceitfully claims on its face to be verified but in reality is not. **Fair isn't it?** If respondent accepts complainant's challenge fair and square, well and good. Otherwise, respondent cannot have two sides of the coins at the same time. Either he withdraws his defective answer or he allows complainant's witnesses to submit its judicial affidavit in the interest of justice.

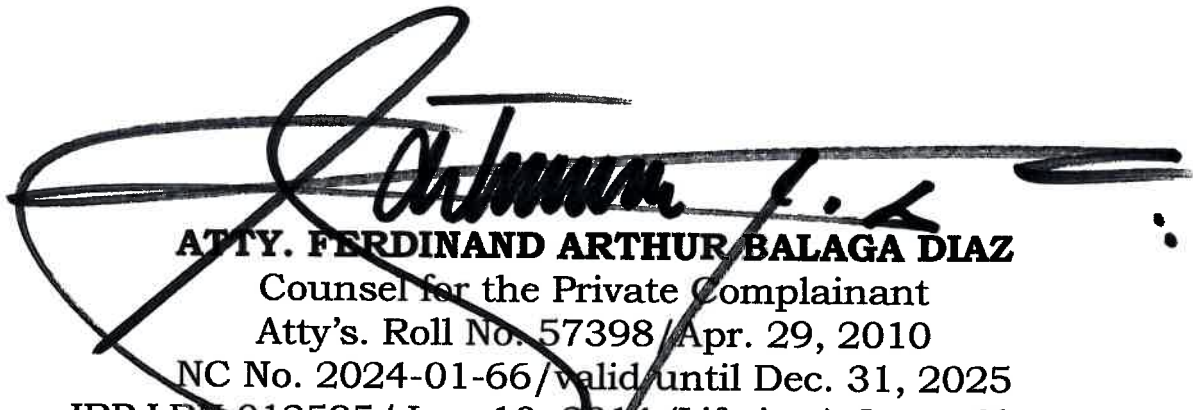
PRAYER

WHEREFORE, premised on the above discourse, private complainant most respectfully prays unto this Honorable Committee of the Sangguniang Panlalawigan of Leyte that respondent's Motion to Strike Out/Waiver of Submission of Judicial Affidavit be DENIED with emphasis for utter lack of merit both in fact, law and jurisprudence.

Other reliefs as are just and equitable under the premises are likewise prayed for and pleaded.

RESPECTFULLY SUBMITTED, Tacloban City for Palo, Leyte, December 18, 2024.

By:



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NC No. 2024-01-66 / valid until Dec. 31, 2025
IBP LRN 012595 / Jan. 10, 2014 (Lifetime), Leyte Chapter
PTR OR No. 8582402 / January 02, 2024 / Babatngon, Leyte
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MARVIN T. MARTICIO vs. HON. ANGEL ARAS SIA, JR.

Admin. Case No. ORC-SP2024-003

For: Grave Misconduct and Neglect of Duty

Copy furnished: (by personal service)

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Date: December 18, 2024