



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **25 January 2021** which reads as follows:*

“G.R. No. 254044 (Asterio C. Tolentino, Jr. v. Office of the Ombudsman, Public Assistance and Corruption Prevention Office). – After a judicious study of the case, the Court resolves to **DENY** the petition and **AFFIRM** the Decision<sup>1</sup> dated September 11, 2019 and the Resolution<sup>2</sup> dated August 25, 2020 of the Court of Appeals (CA) in CA-G.R. SP No. 149779 for failure of petitioner Asterio C. Tolentino, Jr. (petitioner) to sufficiently show that the CA committed any reversible error in dismissing his petition for *certiorari*<sup>3</sup> filed under Rule 65 of the Rules of Court, for being the wrong remedy to assail the Office of the Ombudsman’s Decision<sup>4</sup> dated January 27, 2014 and Order<sup>5</sup> dated August 12, 2015 in Case No. OMB-I.-A-08-0148-C.

Jurisprudence is settled that appeals from decisions of the Ombudsman in administrative disciplinary cases should be taken to the CA under Section 4,<sup>6</sup> Rule 43 of the Rules of Court,<sup>7</sup> which provides for the reglementary period of ‘fifteen (15) days from notice of the award, judgment, final order or resolution, x x x or of the denial of petitioner’s motion for new trial or reconsideration duly filed x x x.’ In this case, the Ombudsman found petitioner *administratively* guilty of Conduct Prejudicial to the Best Interest of the Service and meted upon him the penalty of

<sup>1</sup> *Rollo*, pp. 33-43. Penned by Associate Justice Pablito A. Perez with Associate Justices Franchito N. Diamante and Germano Francisco D. Legaspi, concurring.

<sup>2</sup> *Id.* at 45-48.

<sup>3</sup> *Id.* at 91.

<sup>4</sup> *Id.* at 49-72. Signed by Graft Investigation and Prosecution Officer II Albert S. Almojuela and Approved by Ombudsman Conchita Carpio Morales.

<sup>5</sup> *Id.* at 73-78.

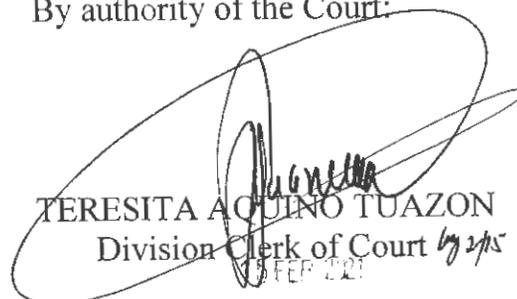
<sup>6</sup> Section 4. *Period of appeal.* -- The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner’s motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*. Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

<sup>7</sup> See *Gatchalian v. Ombudsman*, G.R. No. 279288, August 1, 2018, citing *Fabian v. Desierto*, 356 Phil. 787 (1998). See also *Kuizon v. Desierto*, 406 Phil. 611 (2001).

one (1) year suspension without pay.<sup>8</sup> Clearly, petitioner's recourse was to file an appeal to the CA *via* petition for review under Rule 43 of the Rules of Court. On this score, the CA cannot be faulted for refusing to treat his petition for *certiorari* as one filed under Rule 43 on account of his failure to show that the same was seasonably filed. Considering his actual notice of the Ombudsman's Decision as early as 2015, as in fact he sought its nullification but was subsequently denied in the Order<sup>9</sup> dated August 12, 2015, petitioner cannot now beg the CA's indulgence to allow his petition especially in the absence of compelling and justifiable reasons. While formal service of the judgment is indeed necessary as a rule, the lack of formal notice cannot prevail against the fact of actual notice,<sup>10</sup> which is evident in this case. Furthermore, it is well-settled that *certiorari* is not and cannot be a substitute for a lost appeal, especially if such loss was occasioned by one's own negligence or error in the choice of remedy, and while exceptions are allowed under certain conditions whereby a petition for *certiorari* may be treated as an appeal, none of those apply in this case.<sup>11</sup> Perforce, the present petition<sup>12</sup> must be denied.

**SO ORDERED.** (Rosario, *J.*, designated additional member per Special Order No. 2797 dated November 5, 2020)."

By authority of the Court:



TERESITA AQUINO TUAZON  
Division Clerk of Court by *aps*  
15 FEB 2021

<sup>8</sup> Rollo, p. 69.

<sup>9</sup> Id. at 74.

<sup>10</sup> See *Spouses Hernal v. Spouses De Guzman*, 578 Phil. 562 (2008).

<sup>11</sup> See *Punongbayan-Visitacion v. People*, 823 Phil. 212 (2018).

<sup>12</sup> Rollo, p. 10.

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*Please notify the Court of any change in your address.*  
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