

**OFFICE OF THE OMBUDSMAN v. HON. COURT OF APPEALS
and FORMER DEPUTY OMBUDSMAN FOR VISAYAS
ARTURO C. MOJICA
GR No. 146486, 4 March 2005, Chico-Nazario, J. (Second Division)**

The enumeration in the Constitution of the impeachable officers is exclusive. The Ombudsman is only one man, not including his Deputies. Thus, only the Ombudsman, not his deputies, is impeachable.

On 29 December 1999, twenty- two officials and employees of the Office of the Deputy Ombudsman for the Visayas, led by its two directors, filed a complaint with the Office of the Ombudsman requesting an investigation on the basis of allegations that then Deputy Ombudsman for the Visayas, herein private respondent Arturo Mojica, committed (1) sexual harassment against Rayvi Padua- Varona, mulcting money from confidential employees: James Alueta and Eden Kiamco and (3) oppression against all employees in not releasing P7,200.00 in benefits of OMB- Visayas employees on the date the said amount was due for release.

Fact-finding investigation was conducted by the Office of the Ombudsman and the report was referred by the Ombudsman to a constituted *Committee of Peers* which initially recommended that the investigation be converted into one solely for purposes of impeachment. However, this recommendation was denied by the Office of the Ombudsman and following the stand of the Office of the Ombudsman that the Deputy Ombudsmen and The Special Prosecutor are not removable through impeachment.

On 18 December 2000, despite the expiration of private respondent Mojica's term of office, the Court of Appeals nevertheless rendered the assailed Decision on the grounds of public interest. CA ruled that the Deputy Ombudsman is an impeachable officer. Thus, OMB's appeal.

ISSUE:

1. Whether or not the Ombudsman's Deputies are impeachable
2. Whether or not the Deputy Ombudsman may be held criminally and/or administratively liable

HELD: Order of the CA is REVERSED and SET ASIDE. The complaints in Criminal Case No. OMB-0-00-0616 and Administrative Case No. OMB-ADM-0-00-0316 are REINSTATED and the Office of the Ombudsman is ordered to proceed with the investigation relative to the above cases.

*Ombudsman's Deputies
Not Impeachable*

The Deputy Ombudsman is *not* an impeachable officer. Sec. 2, Article XI of the 1987 Constitution states that “The 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. All other public officers and employees may be removed from Office as provided by law, but not by impeachment”.

RECENT JURISPRUDENCE – POLITICAL LAW

Records of the Constitutional Commission, as well as the opinions of leading commentators in Constitutional Law reveal that the term Ombudsman in Sec. 2, Article XI of the 1987 Constitution refer to the rank in itself. The Ombudsman is only one man, not including his Deputies.

Leading legal luminaries on the Constitution are one in their opinion as to whether or not the Deputy Ombudsman is impeachable. All of them agree that the enumeration impeachable officers in Section 2, Article XI of the 1986 Constitution, is exclusive. In their belief, only the Ombudsman, not his deputies, is impeachable.

How then to explain our earlier pronouncement in *Cuenco v. Fernan*, as later cited in *In Re: Raul M. Gonzales*, *Jarque v. Desierto* and *Lastimosa-Dalawampu v. Dep. Ombudsman Mojica and Graft Investigator Labella* which reads: To grant a complaint for disbarment of a Member of the Court during the Member's incumbency, would in effect be to circumvent and hence to run afoul of the constitutional mandate that Members of the Court may be removed from office only by impeachment for and conviction of certain offenses listed in Article XI [2] of the Constitution. Precisely the same situation exists in respect of the Ombudsman and his deputies (Article XI [8] in relation to Article XI [2])... all of whom are constitutionally required to be members of the Philippine Bar?

A dictum is an opinion that does not embody the resolution or determination of the court, and made without argument, or full consideration of the point. Mere dicta are not binding under the doctrine of *stare decisis*. The succeeding cases of *In Re: Raul M. Gonzales* and *Jarque v. Desierto* do not tackle the impeachability of a Deputy Ombudsman either. Nor, for that matter, does *Lastimosa-Dalawampu v. Deputy Ombudsman Mojica and Graft Investigator Labella*, which, as previously mentioned, is a minute resolution dismissing a complaint for disbarment against the herein private respondent on the basis of the questioned *obiter* in *Cuenco v. Fernan* and the succeeding cases without going into the merits. Thus, where the issue involved was not raised nor presented to the court and not passed upon by the court in the previous case, the decision in the previous case is not *stare decisis* of the question presented.

Criminal and Administrative Liability of Deputy Ombudsman

As to whether or not the private respondent, then Deputy Ombudsman for the Visayas, may be held criminally and/or administratively liable, we likewise resolve the issue in favor of the petitioner. The rule that an impeachable officer cannot be criminally prosecuted for the same offenses which constitute grounds for impeachment presupposes his continuance in office. Hence, the moment he is no longer in office because of his removal, resignation, or permanent disability, there can be no bar to his criminal prosecution in the courts. Nor does retirement bar an administrative investigation from proceeding against the private respondent, given that, as pointed out by the petitioner, the former's retirement benefits have been placed on hold in view of the provisions of Sections 12 and 13 of the Anti-Graft and Corrupt Practices Act.