



October 22, 2021

MEMORANDUM

**FOR : The Regional Executive Director
DENR MIMAROPA Region**

THRU : The Assistant Regional Director for Management Services

ATTENTION: The Chief, Legal Division

FROM : The OIC – PENR Officer

SUBJECT : Decisions rendered by the Commission on Audit with regard to the appeal cases pertaining to the Notice of Disallowance No. 2019 – 002 – 101 – (17), and 2019 – 003 – 101 – (18), on the payment of legal retainer fees to Atty. Alfredo De Luna, and Atty. Rommel Fernandez hired as private counsel for PENRO Marinduque.

The matter presented beforehand is about the adverse decision made by the Director IV of the Commission on Audit pertaining to two cases which involves Notice of Disallowance on the payment of legal retainer fees to Atty. Alfredo De Luna, and Atty. Rommel Fernandez, rendered against the appellants Imelda M. Diaz – OIC PENR Officer Marinduque, Lorelyn P. Saet – Accountant III, Gemma P. Delos Reyes – In Charge, Management Services Division, and Eden P. Palacios – In Charge, Management Services Division.

The facts of the appealed cases, Notice of Disallowance No. 2019 – 002 – 101 – (17) for Atty. Alfredo L. De Luna, and Notice of Disallowance 2019 – 003 – 101 – (18) for Atty. Rommel P. Fernandez, are as follows:

NGS – CLUSTER VIII DECISION NO. 2021 – 22, Notice of Disallowance No. 2019 – 002 – 101 – (17), FACTS;

On November 2, 2017, the PENRO Marinduque contracted Atty. De Luna as lawyer for the same from November 2, 2017 to December 31, 2017, with a monthly compensation of Php. 47,779.00 chargeable against the DENR funds. The said lawyer was paid his fees in the total amount of Php. 71,668.50, inclusive of tax. On February 12, 2019, the audit team issued AOM No. 2019 – 001 stating that the agency engaged the services of private lawyers without written conformity and acquiescence from the OSG and the written concurrence of the COA (COA Circular No. 95 – 011). On May 21, 2019, NS No. 19 – 001 – 101 (17) suspending the payment made to Atty. De Luna (Php. 71,668.50). On December 10, 2019, the appellees issued the subject ND disallowing in audit the legal retainer fees paid to Atty. De Luna based on the same ground in the AOM and NS.

The appellants, except for Eden P. Palacios, were determined to be liable for the transactions for their respective participation. In their appeal, the appellants contested that the payment to Atty. De Luna was supported with written conformity and acquiescence of the OSG, per letter dated August 30, 2017 of SG Jose C. Calida. They also asserted that the PENRO – Marinduque, through the DENR Central Office, sought the written concurrence of the COA in hiring Atty. De Luna under COS but is pending approval by the COA. Furthermore, a meeting was held on April 15, 2019, wherein COA Chairperson Aguinaldo agreed in principle to facilitate the approval of the COA's written concurrence, and give consideration

on the explanations and justifications of concerned DENR CENR and implementing PENR Officers, and ROs to the findings of the COA.

The COA Director Maribeth De Jesus decided that the disallowance is proper because the prior written conformity and acquiescence of the OSG and the prior written concurrence of the COA were not secured before the hiring of the private lawyers in violation of COA Circular No. 1995 – 011 dated December 4, 1995. The Director also stated that the appellants are liable to refund the payment of the disallowed amount because, as stated in the case of Oñate vs COA, when a government entity engages the legal services of private counsel, it must do so with the necessary authorization required by law; otherwise, its officials bind themselves to be personally liable for compensating such legal services. The whole case and decision is attached herein.

NGS – CLUSTER VIII DECISION NO. 2021 – 26, Notice of Disallowance No. 2019 – 003 – 101 – (18), FACTS;

On February 1, 2018, the PENRO Marinduque contracted Atty. Fernandez as lawyer for the same from February 1, 2018 to April 30, 2018, with a monthly compensation of Php. 47,779.00 chargeable against the DENR funds. The said lawyer was paid his fees in the total amount of Php. 71,668.50, inclusive of tax. On April 26 2018, the contract of service was renewed for the period May 1, 2018 to June 30, 2018 under the same terms. The contract was renewed again for another period from July 1, 2018 to December 31, 2018 under the same terms. Atty. Fernandez was paid his legal retainer fees in the total amount of Php. 457,245.03, net of tax. On February 12, 2019, the audit team issued AOM No. 2019 – 001 stating that the agency engaged the services of private lawyers without written conformity and acquiescence from the OSG and the written concurrence of the COA (COA Circular No. 95 – 011). On May 21, 2019, NS No. 19 – 001 – 101 (17) suspending the payment made to Atty. Fernandez (Php. 457,245.03). On December 10, 2019, the appellees issued the subject ND disallowing in audit the legal retainer fees paid to Atty. Fernandez based on the same ground in the AOM and NS.

The appellants were determined to be liable for the transactions for their respective participation. In their appeal, the appellants contested that the payment to Atty. Fernandez was supported with written conformity and acquiescence of the OSG, per letter dated August 30, 2017 of SG Jose C. Calida. They also asserted that the PENRO – Marinduque, through the DENR Central Office, sought the written concurrence of the COA in hiring Atty. Fernandez under COS but is pending approval by the COA. Furthermore, a meeting was held on April 15, 2019, wherein COA Chairperson Aguinaldo agreed in principle to facilitate the approval of the COA's written concurrence, and give consideration on the explanations and justifications of concerned DENR CENR and implementing PENR Officers, and ROs to the findings of the COA.

Director Maribeth De Jesus of COA decided that the disallowance is proper because the prior written conformity and acquiescence of the OSG and the prior written concurrence of the COA were not secured before the hiring of the private lawyers in violation of COA Circular No. 1995 – 011 dated December 4, 1995. The Director also stated that the appellants are liable to refund the payment of the disallowed amount because, as stated in the case of Oñate vs COA, when a government entity engages the legal services of private counsel, it must do so with the necessary authorization required by law; otherwise, its officials bind themselves to be personally liable for compensating such legal services. The whole case and decision is attached herein.

Appellants' Plea and Request

The Commission on Audit released Circular No. 2021 – 003, dated July 16, 2021 which basically creates an exemption with regard to the necessity of acquiring a prior written concurrence of the Commission under COA Circular Nos. 1986 – 255, 1995 – 011; and COA Memorandum No. 2016 – 010 on the engagement of: 1) lawyers under contract of service or job order contract; and 2) legal consultants, subject to condition provided under item 4.0 of the said circular. COA Circular No. 2021 – 003 also provided that “All pending requests for

written concurrence and appeals from consideration of Legal Retainer Review or **petitions for review of Notice of Disallowances issued on the ground of lack of COA's written concurrence shall be GRANTED** after a finding by this Commission of the existence of the abovementioned conditions”.

All the conditions set forth on item 4.0 were followed and complied with in good faith by the appellants with regard to the hiring of Atty. De Luna and Atty. Fernandez. The existence of the said memorandum circular only means that the notice of disallowance wherein the appellants were held liable for the refund the payment of the disallowed amount should be reversed and be decided in their favor.

Also, the undersigned, along with her co – appellants believe that they should not be held liable for the payment of such enormous amount of money. Although it is granted that private lawyers were hired by the PENRO Marinduque, we just merely followed and executed an order coming from our superiors in good faith. We relied on their assurance that everything was all in order, and that all the necessary documents and requisites were all complied with as provided by the law, however we soon realized that this was not the case.

The law provides that any person who caused damage to another or caused a person or persons to breach a contract or agreement can also be held liable. In criminal law, those who abide or obey a lawful order from his/her superior/s does not incur criminal liability. The appellants were not entirely at fault but rather can be considered also as victims. A lot of PENROs and CENROs hired lawyers because they complied with the order given to them by their superiors; it will be a great injustice if all of them will suffer the consequences of paying such amount all because they obeyed such order. They may have hired private lawyers not in accordance with the law at that time, but they should not be held liable for the payment, for they were not the **proximate cause of the irregularity**.

The undersigned, on behalf of the appellants, therefore respectfully requests for legal assistance from the Legal Division to help us with our case, to support our stand, and in order to ensure that the credibility, dignity, and honor of the innocent are not tarnished but rather protected. There is an utmost belief on our part that us taking the blame and the burden of a mistake or irregularity that we did not cause on the first place is a grave injustice and an insult to the equity protected and granted by law. Most importantly, now that the COA Circular No. 2021 – 003 was already issued and effective thereby repealing COA Circular No. 95 – 011, only meant that we have a better stand to this case; and authorities realized that the requirements under COA Circular No. 95 – 001 may not be applicable in the case of DENR because of some considerations. Knowing that the DENR, through its Legal Division, is on our side in this struggle, will be of great help not only with regard to our case, but also in appeasing our worries and reducing the anxieties caused by this issue.

Attached are photocopies of the **COA Circular No. 2021 – 003**, NGS – Cluster VIII Decision No. 2021 – 22 dated June 22, 2021, and NGS – Cluster VIII Decision No. 2021 – 26 dated June 22, 2021.

For your information, consideration, and appropriate action.

IMELDA M. DIAZ