A RE-EXAMINATION OF THE DOCTRINE OF CONDONATION OF PUBLIC OFFICERS*

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INTRODUCTION

The doctrine of condonation of misconduct of public officers committed during a previous term is an example of a method ingrained in the governmental set up that could perpetuate misdeeds by public officers.[1] This doctrine is made odious as it finds origin in judicial pronouncement, thus, it is given the imprimatur of legitimacy by the very government it wreaks havoc on.

The doctrine – interchangeably referred to as the "doctrine of condonation" or the "previous term rule" – is of American origin which sets forth two similar propositions.

The first proposition of the doctrine is that a public officer cannot be administratively removed from the public position he currently holds by reason of misconduct, malfeasance or misfeasance committed by him during the previous term. This is the general proposition which applies to all kinds of public officers, whether appointive or elective.[2] The phrase "previous term rule" is used to describe this proposition.

The second proposition is more restrictive in scope and applies only to elective officials. Known as the "doctrine of condonation", it expresses that an elective public official who has been reelected to his position cannot be removed administratively for acts committed during his previous term because, by reelecting the public officer into office, the electorate has been deemed to have condoned or forgiven his acts during the previous term. By the process of reelecting the public officer, they have cleansed him of all his

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[1] A public officer has been defined as an individual with a public office. This definition covers both elective and appointive officials. *See* RUPERTO MARTIN, ADMINISTRATIVE LAW, LAW OF PUBLIC OFFICERS AND PHILIPPINE LAW ON ELECTIONS (1960).

[2] As will be seen, the Philippine cases have only applied to elective officials.

previous "sins" and the public officer becomes immune from removal by way of administrative charges.

This doctrine, including both its propositions, was introduced into our country in *Pascual v. Hon. Provincial Board of Nueva Ecija*.[3] While the doctrine seems to have become more complex and intricate in United States decisions, there appears to be a rather simplistic application in our jurisdiction. These US decisions shall be examined in order to point out the many details and circumstances that must be considered in the application of the doctrine.

I. THE CONSTITUTIONAL POLICY ON PUBLIC OFFICERS

A constitution, it is said, is the manifestation of the express will of the people. In it, the sovereign distributes power to the different departments of government and allots to them the spheres within which they will exercise their power. A constitution however, does not only distribute power but sets the limits on its exercise so that government will not become abusive but will serve the people. As a starting point of our inquiry, an examination of our Constitution, past and present must be made to understand what the prevailing constitutional policy is towards public officers and to examine how the differing policies of the 1935, 1973 and 1987 Constitutions may have played a role in the genesis, continuation and possible nullification of the doctrine of condonation. The public policy today towards public officers, and the public policy at the time of the promulgation of the 1935 Constitution, when the doctrine was introduced in our jurisdiction, will be looked into to see what constitutional considerations were present at the time, if any.

The policy of the Constitution regarding public officers and their duty to the people must be examined in order to understand the prevailing policy our jurisdiction has toward these public officers. This is because jurisdictions that have allowed removal of public officers for acts committed during a previous term have often looked into the prevailing public policy in order to decide one way or the other.[4] It may be the crucial consideration that makes one court decide in favor of removal. As such, an inquiry into the three Constitutions will trace the progression of the public policy the Philippines has on public officers.

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[3] No. 11959, 106 Phil. 466, Oct. 31, 1959.
[4] State ex. rel. Londerholm v. Schroeder, 430 P.2d 304, 314 (Kan. 1967).

A. The 1987 Constitution's Policy on Public Office

The framers of the present Constitution, aware of the prevailing negative attitude towards the public service sector by the end of the Marcos dictatorship, took measures and defined policies that public officials were to follow. These policies and measures were meant to ensure the fidelity of public officers to their primary duty to serve the people. This sentiment is readily evident from the Constitutional Convention speeches and debates, most notably the discussion which preceded the inclusion of what is now Article II, Section 27 of the Constitution, which will be set forth shortly.

The Declaration of Principles and State Policies found in Article II of the 1987 Constitution spells out the role of the government and their duty to the people in Section 4 thus:

> "Sec. 4. The prime duty of the government is to serve and protect the people."

In the same article, the 1987 Constitution commits the State to keep public officials in line and ensure that only officials who have the correct character serve the public. It also vows to provide measures to chastise those who fail to meet the high standards set therein:

> "Sec. 27. The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption."

As was alluded to above, the discussions leading up to the inclusion of this new Section in the Declaration of Principles and State Policies makes clear that the framers felt that nothing less than a constitutional mandate was necessary in order to remove the cancers affecting our public officers.

Section 27 was proposed by Commissioner Crispino M. de Castro who explained the necessity of having such a pronouncement in the fundamental law:[5]

> "I am requesting that a mandate be made by our Constitution to recognize this very evil of our society and that we take positive and effective measures to eradicate it if possible."[6]

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[5] IV RECORD OF THE CONSTITUTIONAL COMMISSION 4 (1986) [hereinafter "RECORD"].
[6] *Id.*

Two other commissioners voiced their approval of the provision and likewise expressed the need for such a pronouncement. Said Commissioner Ponciano L. Bennagen:

> "I feel that we need this in the Declaration of Principles to remind us to be ever vigilant of the ills of graft and corruption which, if unchecked, can undermine any legitimate authority."[7]

To this was added the voice of Bishop Teodoro Bacani who explained how the misdeeds of public officers were adversely affecting the citizenry and thus the timeliness of the proposed provision:

> "And hence, I believe that it will be very necessary and very helpful at least, to have in this Constitution an explicit provision on that (graft and corruption), if only to serve also as a flag to wave for an increase of morale and morals in our country which will in turn, alleviate our poverty."[8]

The provision was unanimously approved without objection,[9] with only three commissioners abstaining.[10] The significance of what is now Section 27 can be culled from the following discussion:

> "Comm. Suarez: Does the Commissioner feel that this declaration is a culmination of all these measures which are designed to encourage public officers to live a public life of honesty and integrity?
>
> Comm. Padilla: That is correct. The provisions on Accountability of Public Officers, the Ombudsman and even Education are all complementary in support of this principle of honesty and integrity in the public service."[11]

The next applicable constitutional provision is found in Section 1 of Article XI, entitled "Accountability of Public Officers". The import of public office and the character that a public official must possess are spelled out:

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[7] RECORD 5.

[8] RECORD 7.

[9] The Records show, however, that the inclusion of Section 27 did meet some resistance. For instance, Commissioner Teofisto Guingona "objected" to the provision on the ground that, among others, there were enough provisions on the accountability of public officers already and that the inclusion of such provision in the Constitution would give the misimpression that the Filipinos were essentially dishonest.

[10] RECORD 7.

[11] RECORD 6.

> "Sec. 1 Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice and lead modest lives."

The provision was explained by Fr. Joaquin Bernas S.J. in this manner:

> "This provision sums up the high sense of idealism that is expected of every officer of the government. As expressed by Justice Malcolm in *Cornejo v. Gabriel*, the basic idea of government in the Philippines 'is that of a representative government, the officers being mere agents and not rulers of the people, one where no man or set of men has a proprietary or contractual right to an office, but where every officer accepts office pursuant to the provisions of law and holds the office as a trust for the people whom he represents.'"[12]

The scope of "public trust" has also been defined thus:

> "The trust attached to a public office should be exercised in behalf of the government or of the citizens and extends to all matters within the range of the duties pertaining to office."[13]

As a whole, the Constitution wants to ensure that the highest standards of honesty, integrity and efficiency are found in a public official in order to meet the public trust. It dictates that a public official must not only possess morality above reproach, but also that the public official must be competent and able. Failure of a public official to meet the standards set by the Constitution runs counter to these fundamental ideals enshrined in the fundamental law.

B. The 1935 Constitution's Policy on Public Office

The 1935 Constitution had no provisions regarding public office as a public trust or the duty of the State to maintain honesty and integrity in public office.[14] The provision that comes closest to dealing with public office is Section 2 of Article II, from which Section 4 of Article II of the 1987 Constitution originated. It reads:

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[12] JOAQUIN BERNAS, S.J., THE 1987 PHILIPPINE CONSTITUTION: A REVIEWER-PRIMER (1997).

[13] MARTIN, *supra* note 1, at 94.

[14] That is not to say that the 1935 Constitution allowed or turned a blind eye to illegal conduct. The point here is that the policy of the state against them was not constitutionally mandated.

> "Sec. 2. The defense of the State is a prime duty of government, and in fulfillment of this duty all citizens may be required by law to render personal military or civil service."

Contrasted with Section 4 of the 1987 Constitution, it is readily apparent that the two provisions emphasize different policies and definitions as to the "prime duty" of government. The older provision defines the highest duty of the government as the protector of the people. As written, there seems to be a sort of militaristic overtone that suggests that as long as the State vanquishes its foes, whether in the form of an enemy country or some natural calamity, the State fulfills its purpose. It says nothing about "serving" the people, which the present charter defines as the "prime duty" of government hand in hand with protection.

By including service to the people, the 1987 Constitution transformed the role of government from one of defense to that of service. While the 1935 provision seemed to look outward, telling the State to defend the country from anything harmful to it, the 1987 provision asks the State not only to look outward but to look inward, to look not for the enemies of the country but to look and focus its attention on the country itself and the needs of its people.

From this, it can be said that there is now a stricter policy as regards public officers as directed by the present Constitution. This policy was not a constitutional mandate back in 1959, when the doctrine of condonation was first introduced in our country in *Pascual v. Hon. Provincial Board of Nueva Ecija*. This is an important observation. The scale between removal or condonation has been so balanced that a constitutional pronouncement may easily tip the scales in favor of one or the other.[15] Looking at the constitutional background therefore in 1959, when the 1935 Constitution was in effect, it seems reasonable to conclude that condonation could have found easier acceptance and could have been more easily adopted by the Supreme Court since the express provisions against lack of integrity in public office were not yet written into the Constitution.

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[15] Thomas Goger, *Removal of Public Officers for Misconduct During Previous Term*, 42 A.L.R. 3d 695 (1970).

C. The 1973 Constitution's Policy on Public Office

The 1973 Constitution was not as bare the 1935 Constitution. It is in the 1973 Constitution that a whole article was, for the first time, devoted to the "Accountability of Public Officers", which was found in its Article XIII. Section 1, Article XIII, from which Section 1 of Article XI of the 1987 Constitution was patterned, reads as follows:

> "Sec. 1. Public office is a public trust. Public officers and employees shall serve with the highest degree of responsibility, integrity, loyalty and efficiency, and shall remain accountable to the people."

The only difference from the present provision is that public officers are now expressly required to "act with patriotism, justice and lead modest lives". In the 1973 Constitution therefore, there is a heightened awareness of the responsibility of a public officer to the people whom he is required to serve. It is here that public office is made into a public trust, accountable to the people.

However, the "prime duty" of the State defined in the 1935 Constitution remained the same. The State continues to be the "defender of the people" and its duty to act in the service of the people has not yet been made into a constitutional mandate. Still, the 1973 Constitution, as compared with the 1935 Charter, made a great leap regarding the duties of a public officer. It made clear that a public officer must serve with integrity and be free of corruption. In fine, while the 1973 Constitution was undoubtedly stricter than the first, it was still not as strict as the present one.

The following table is a side-by-side comparison of the three Constitutions and Constitutional changes in attitude towards public office:

1935 Constitution	1973 Constitution	1987 Constitution
Art II, Sec 2 The defense of the State is a prime duty of government, and in fulfillment of this duty all citizens may be required by law to render personal military or civil service.	Art II, Sec. 2 The defense of the State is a prime duty of government, and in fulfillment of this duty all citizens may be required by law to render personal military or civil service.	Art. II, Sec. 4 The prime duty of the Government is to serve and protect the people. The Government may call upon the people to defend the State, and in fulfillment thereof, all citizens may be required, under conditions provided by law, to render personal, military or civil service.

	Art. XIII, Sec. 1 Public office is a public trust. Public officers and employees shall serve with the highest degree of responsibility, integrity, loyalty, and efficiency, and shall remain accountable to the people.	Art II, Sec. 27 The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption.
		Art XI, Sec. 1 Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency and act with patriotism and justice, and lead modest lives.
No express policy toward public office.	Policy of public office as public trust introduced; characteristic of public service likewise introduced.	Public policy is now with increased strictness toward public office; more requirements.

D. Effect of Constitutional Changes on the Doctrine of Condonation

More than any time in our history, the present Constitution directs public officers to observe the strictest adherence to good conduct. As opposed to previous constitutions, the 1987 Charter makes it plain that corruption, irresponsibility and even inefficiency are not to be tolerated and those who offend against these provisions must be removed from their positions of being servants of the people. Any application of the doctrine of condonation must take this into account since the constitutional mandate and the doctrine of condonation appear to directly oppose each other. If an officer's failure to maintain honesty, integrity and efficiency in the government is condoned, the State would then fail in its duty to serve the people and to maintain the public service free from such corrupt and inefficient people.

The Constitution, being the supreme law of the land, laws and doctrines which are incompatible with it must be deemed unconstitutional or abandoned. With the new provisions imposing fidelity to the service of the people free of corruption, the doctrine of condonation has been placed on precarious footing.

The potency and strength of these new constitutional mandates to revise, if not abandon laws and doctrines, contrary to them, cannot be doubted. Although they seem to be mere policies, they have the force of law. This proposition was made explicit by Justice Fernando in his concurring opinion in *RCPI v. Philcomm*:

> "Also from the constitutional standpoint, that is to render clear that in appropriate cases the Declaration of Principles and State Policies have a mandatory force of their own and are not just mere statements of noble platitudes or glittering generalities unrelated to reality."[16]

Thus, in the clash between these constitutional policies and the rationale for condonation, it should be carefully decided whether the former should take precedence over the latter.

II. NATURE OF AN ADMINISTRATIVE CASE FOR REMOVAL

In our jurisdiction, the doctrine of condonation of misconduct during a previous term or office applies only to administrative cases against public officers. This has been the rule laid down by the Supreme Court since *Ingco v. Sanchez*.[17] As a starting point to understanding the doctrine, therefore, an understanding of the concept of an administrative case is necessary.

The distinction between criminal and administrative cases for removal was elucidated by the Supreme Court in *Ingco* where the appellant, Mayor Ingco was charged with estafa through falsification of public documents committed while he was mayor thus:

> "There is a whale of difference between the two cases. The basis of the investigation which has been commenced here and is sought to be restrained is a criminal accusation, the object of which is to cause the indictment and punishment of petitioner-appellant as a private citizen; whereas in the case cited, the subject of the investigation was an administrative charge against the officer therein involved and its

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[16] Radio Comm. of the Phil. v. Phil. Comm. Electronics & Electricity Workers' Fed., G.R. No. 37662, 65 SCRA 82, 95, Jul. 15, 1975 (Fernando, J., *concurring*).

[17] G.R. No. 23220, 21 SCRA 1292, Dec. 18, 1967.

> object was merely to cause his suspension or removal from office. While the criminal case involves the character of the mayor as a private citizen and the People of the Philippines as a community is a party to the case, an administrative case involves only his actuations as a public officer as to affect the populace of the municipality where he serves... a crime is a public wrong more atrocious in character than mere misfeasance or malfeasance committed by a public officer in the discharge of his duties, and is injurious not only to a person or a group of persons but to the State as a whole."[18]

Adding to this, Justice Esguerra in his separate opinion in *Oliveros v. Villaluz* explained:

> "Administrative punishment has for its primary purpose to purge the government of undesirable elements for the efficient and faithful performance of the public service it renders, while punishment for a crime is a vindication for an offense against the body politic."[19]

Clarifying that an administrative case refers to the misconduct of a public officer which affects his public duty, the Supreme Court in *Lacson v. Roque,* discussed the term "misconduct" as used in an administrative case:

> "Misconduct in office has a definite and well understood legal meaning. By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the office."[20]

Furthermore, American Jurisprudence states:

> "To warrant the removal of an officer, the misconduct, misfeasance or malfeasance must have direct relation to and be connected with the performance of official duties, and amount either to maladministration or to willful and intentional neglect and failure to discharge the duties of his office."[21]

An administrative case for removal therefore, is essentially a method by which a public officer is sought to be removed from his office because he was found to have conducted himself in a manner that adversely affects his performance in a particular public office. The goal of such a proceeding is to

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[18] *Id.* at 1294-95.
[19] G.R. No. 34636, 57 SCRA 163, 215, May 30, 1974 (Esguerra, J., *concurring and dissenting*).
[20] No. 6225, 92 Phil. 456, 465, Jan. 10, 1953.
[21] 63A AM. JUR. 2d, *Public Officers and Employees*, § 246 (1984).

weed out and remove a public servant who has shown ineptness and lack of aptitude in the performance of his duties to the public.

III. STATUTORY BASIS FOR REMOVAL

In determining whether or not the doctrine of condonation will apply in a particular jurisdiction, the starting and most primary considerations are the statutory and constitutional provisions existing in the jurisdiction regarding the removal of public officers. These are the first thing courts have to consider in deciding whether or not the rule applies. All authorities are in agreement as to this first proposition:

> "The grounds which will justify the removal of a public officer are usually established by constitution or statute."[22]

The same authority, after an exhaustive examination of removal cases, concluded:

> "The cases treated throughout this annotation have all recognized, at least impliedly, that the propriety of removing a public officer from his current term of office for misconduct which he allegedly committed in a prior term of office is governed by the language of the statute or constitutional provision applicable to the facts of the particular case."[23]

The Local Government Code of 1991[24] is the source of our removal statute. The law as it was written provides for administrative removal and the grounds therefor. It states:

> "Sec.60. *Grounds for Disciplinary Action* - An elective local official may be disciplined, suspended, or removed from office on any of the following grounds:
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> (a) Disloyalty to the Republic of the Philippines;
> (b) Culpable violation of the Constitution;
> (c) Dishonesty, oppression, misconduct in office, gross negligence, or dereliction of duty;
> (d) Commission of any offense involving moral turpitude or an offense punishable by at least prision mayor;
> (e) Abuse of authority;
> (f) Unauthorized absence for fifteen (15) consecutive working days,

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[22] Goger, *supra* note 15, at 695.
[23] *Id.* at 697.
[24] Rep. Act No. 7160.

> except in the case of members of the sangguniang panlalawigan, sangguniang panlunsod, sanggunian bayan, and sangguniang barangay;
> (g) Application for, or acquisition of, foreign citizenship or residence or the status of an immigrant of another country; and
> (h) Such other grounds as may be provided in this Code and other laws.
>
> An elective local official may be removed from office on the grounds enumerated above by order of the proper court."

As this paper deals only with the misconduct of public officers during a previous term, only Section 60 paragraph (c) will be scrutinized. The other grounds for removal of a public officer are beyond the scope of this paper.

In general, authorities have frequently grouped removal statutes into three categories: (1) those which make no mention of terms; (2) those which expressly allow removal only for acts committed during the present term; and (3) those which also expressly allow removal for acts committed during the prior term.[25]

An example of wording of a statute which allows only removal in the present term is a Texas statute which says: "no officer shall be prosecuted or removed from office for any act he may have committed prior to his election to office."[26] Another is a California law stating that "a sheriff cannot be removed from office, while serving his second term for offenses committed during the first term."[27]

An example of the third type of removal statute allowing removal for previous misconduct is an Oklahoma statute which allows ejection from office upon "acts of commission, omission, or neglect committed, done or omitted during a previous or preceding term of office."[28]

It can be seen from a reading of Section 60 of the Local Government Code that it does not belong to the two latter categories which expressly allow or disallow removal for acts committed during a prior term. The section does not fall into either category since it is silent as to whether or not removal may be made for previous misconduct or only for

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[25] Goger, *supra* note 15, at 695.
[26] *Id.* at 702.
[27] In re Fudula, 147 A. 67 (1929).
[28] Goger, *supra* note 15, at 702.

misconduct in the present term. The law may then be said to be a part of the first category of removal statutes: those which are basically "silent" as to the issue of prior or present term removal.

It is when Section 60 is viewed this way, as being "silent" with regard to the question of prior or present term removal that the problem begins. This is where courts in the US start parting ways and their decisions begin contradicting each other. When the statute expressly says so, there is no problem since the answer is clear, but when the law is silent, the job is left to the judiciary to decide the question. As could have been guessed, when a particular statute is silent, courts have resolved the question differently.

State ex rel. Billon v. Bourgeois[29] is an example of a case interpreting such a "silent" statute. Here, the Supreme Court of Louisiana allowed the removal of a public officer on the ground that their statute, like ours was a "silent" statute, declaring that since it made no mention of when removal should be made, the law impliedly allowed it to be done anytime because there was no limitation:

> "Neither of these articles specify in what time a suit to remove an officer shall be instituted, whether in one term or another. Nor do they specify any limitation as to the offense. We must therefore conclude that the articles were intended to remove any unworthy officer while in office, irrespective of the fact of whether the act complained of was committed during his first or subsequent term."[30]

It may be said however, that Section 60 does mention, albeit not expressly, a point in time when removal may be made. This point in time refers to that span when the public officer is "in office" which would mean that any misconduct he commits while "in office" renders him susceptible to removal, the term in which he did it being immaterial. If seen in this light, there have been many differing opinions as to just what point in time "in office" means. Closer examination of this divergence of opinion is needed.

A. Significance of the Interpretation of "Misconduct in Office"

The three seemingly simple words of Section 60 (c) - "misconduct in office" are of paramount importance in determining whether or not

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[29] 14 So. 28 (La. 1983).
[30] *Id.* at 30.

condonation should apply. The removal of an officer has often hinged upon the construction of this very phrase.

> "The construction of statutes permitting the removal of a public officer on grounds of misconduct in office has sometimes been contingent upon the interpretation of the phrase `in office' as referring to the term of office in which the alleged misconduct must occur to justify the accused officer's removal."[31]

Not surprisingly, the two schools of thought regarding removal for previous misconduct have opposing interpretations of what "misconduct in office" really means.

B. Jurisprudence Favoring Condonation

Proponents of condonation adhere to the theory that the phrase "in office" should be understood as "each term in office". According to them, this is necessary since one rationale for the condonation doctrine is that "each term is separate from other terms, and that the re-election to office operates as a condonation of the officer's previous misconduct to the extent of removing the right to remove him therefrom."[32] For this group, therefore, "in office" actually talks about a "term of office". It should be noted that most cases interpreting "in office" in this light have given as a reason for ruling in this manner that the term should be given a strict construction because of the quasi-penal or even penal nature of a removal proceeding.[33]

An example of this kind of construction is given in *State ex rel. Stokes v. Probate Court of Cuyahoga County.*[34] The Supreme Court of Ohio defined the question before it this way:

> "Thus, the specific question is whether `misfeasance or malfeasance in office' refers to conduct during the existing term or refers more broadly to conduct during the existing term and also during prior terms."[35]

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[31] Goger, *supra* note 15, at 698.
[32] 43 AM JUR., *Public Officers,* § 202 (1942).
[33] *Id.*
[34] 258 N.E.2d 594 (Ohio 1970).
[35] *Id.* at 595.

In reaching its decision, the Court therein first explained that removal statutes are quasi-penal in character and should be strictly construed. They then ruled:

> "RC Sec. 733.72 applies to misfeasance or malfeasance `in office'. This language is ambiguous and conceivably could apply to either present or prior term of office. Strict construction however, would require limitation of the word 'office' to the single term in which the offense occurred. In the absence of clear legislative language making conduct in prior terms a ground for removal from office under this section, the misfeasance or malfeasance alleged as a ground for removal must occur during the term from which removal is sought and be subsequent to the exercise of the power to elect vested in the electorate of the municipality."[36]

The Court then concluded by observing that all the charges against the public officer in the case were alleged to have been committed prior to his present term, hence, the Court decided, the question had become moot and academic.

It is also explained that the term "in office" was a "time limitation with regard to the grounds for removal, so that an officer could not be removed for misbehavior which occurred prior to the taking of office."[37] And later pointing out that each term of office should be considered a separate entity, the court was of the opinion that the constitutional provision did not apply to an offense committed prior to the inception of a term of office, since in such a case it might be assumed that the voters knew of and condoned the offense.

C. Jurisprudence Favoring Removal

On the other hand, those in favor of removal interpret "in office" as just that. "In office" makes no reference to terms but simply refers to "office" as an institution of government itself. Thus "misconduct in office" as a ground for removal simply means that if a person is occupying a particular office and is guilty of malfeasance or misfeasance therein, then that is already a ground for removal. Since the statute merely says "in office", it would be error to add a concept that is different as "in office" by saying the statute refers to "term in office". Seen in this light, it does not matter that the misconduct, malfeasance or misfeasance was committed in a

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[36] *Id.* at 596.
[37] Goger, *supra* note 15, at 698.

previous term or a present term. What is of essence is that the wrongdoing was committed while the public official was holding an office. This construction and the reasons therefore will be explained below.

D. Interpretation Should be in Favor of Removal

i. Refutation of the theory that removal statutes are penal or quasi-penal in nature

The strict interpretation of removal statutes used by opposing cases are due to the fact that they treat removal proceedings as being penal in nature. This is not the universal rule, however, since just as many courts have interpreted removal statutes as not being of penal or quasi-penal in nature. Rather, these authorities classify a removal proceeding as being either civil or remedial. As was said in *Territory v. Sanches*[38]*:*

> "But we again apply the test that the procedure for removal is not penal in purpose, but remedial and protective."[39]

As further explained by the Court in reaching its finding:

> "...we do not perceive why a proceeding should be considered criminal which does not provide for the imposition of a fine or imprisonment for the one through it found to be unfit for office, but leaves him still subject to either or both if the acts for which he is removed are so punishable, which does not even deprive him of property, since in this country a civil office is not property, but which merely by the judgment rendered prevents him from holding the office for which he has been found unfit for the remainder of his term, and does not disqualify him for reelection or reappointment for another term, We hold, then, that the trial judge had the right to direct a verdict as in a civil case.."[40]

In another case, the Supreme Court of Kansas agreed with the proposition that quo warranto proceedings to oust a public officer was civil in nature. The Court simply said in one sentence, "[T]his procedure is civil in its nature rather than criminal".[41]

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[38] 94 P. 954 (N.M. 1908).
[39] *Id.* at 955.
[40] *Id.* at 956.
[41] State ex rel. Beck v. Harvey, 80 P.2d 1095, 1096 (Kan. 1938).

There are some cases in our jurisprudence that have held that administrative cases are considered as having a penal or quasi-penal characteristic. Among these cases are *Cabal v. Kapunan*[42] and *Pascual v. Board of Medical Examiners.*[43]

In the first case, Manuel Cabal of the Armed Forces of the Philippines was faced with graft and corruption charges under the Anti-Graft and Corrupt Practices Act. When the accused was required to answer questions, he invoked his right against self-incrimination. The Supreme Court, upholding his position, ruled that the administrative proceeding in this case partook of the nature of a criminal or penal proceeding because:

> "...the Anti-Graft Law....authorizes the forfeiture to the State of property of a public officer or employee which is manifestly out of proportion to his salary as such public officer or employee and his other lawful income and the income from legitimately acquired property. Such forfeiture has been held, however, to partake of the nature of a penalty...As a consequence, proceedings for forfeiture of property are deemed criminal or penal…"[44]

The next case deals with a doctor, Arsenio Pascual Jr., who was charged with immorality in the performance of his medical duties. The Board of Medical Examiners sought to have him removed from the practice of medicine by revoking his license. The Court also labeled the administrative case before it as having a penal nature, in accordance with its previous decision in the Cabal case:

> "The proceeding for forfeiture while administrative in character thus possesses a criminal or penal aspect. The case before us is not dissimilar: petitioner would be similarly disadvantaged. He could suffer not the forfeiture of property but the revocation of his license as a medical practitioner, for some an even greater deprivation."[45]

Now, we turn to the nature of public office to determine whether or not an administrative case for removal from office can also be considered as partaking of a penal or criminal proceeding.

As a general premise, our courts have accepted the universal proposition that "no person has a right to hold office."[46] Now, in the *Cabal*

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[42] G.R. No. 19052, 6 SCRA 1059, Dec. 29, 1962.
[43] G.R. No. 25018, 28 SCRA 344, May 26, 1969.
[44] Cabal, 6 SCRA at 1063-64.
[45] Pascual, 28 SCRA at 348.
[46] Segovia v. Noel, No. 23226, 47 Phil. 543, 547, Mar. 4, 1925.

case, the Court ruled that the provisions of the Anti-Graft law which provides for forfeiture of property made the administrative case penal in nature. This ruling however, cannot apply to a public office simply because public office is not deemed "property" of which one can be deprived of without due process of law. As explained by Justice Martin:

> "A public office is not the property of the office holder within the provision of the Constitution against deprivation of one's property without due process of law, but is revocable according to the will and appointment of the people as expressed in the Constitution."[47]

Also, as further explained by Francisco Carreon:

> "Public office is not, strictly speaking, a property right, nor a grant or contract or obligation which cannot be impaired but a public agency or trust. There is no such thing as a vested interest or an estate in office, or even an absolute right to hold office. Public offices are created for the purpose of effecting the end for which government has been instituted, which is the common good, and not for the profit, honor, private interest of any one man, family or class of men. In the last analysis, a public office is a privilege in the gift of state."[48]

In *Pascual Jr.,* the Supreme Court characterized the proceedings therein as penal because of the fact that Arsenio Pascual might be deprived of his privilege to practice medicine. This case would not apply to an administrative case for removal. Although the public officer also faces a proceeding wherein he may be deprived of his means of sustenance, the fact that a public office is a public trust, one wherein the incumbent is involved in "some portion of the sovereign power and function of the government to be exercised by him for the benefit of the public"[49] makes him more susceptible to removal. While the practice of medicine has been labeled one affecting public interest,[50] it still does not reach the status of a public office which is in the nature of a public trust, where the officer is in office precisely for the purpose of serving the government and the public.

Taking into consideration (a) the nature of public office as being one of public trust; (b) the rule that a public officer has no vested right to office; and (c) the pronouncements that public office is not a property right, it can be concluded that the cases in which administrative proceedings were

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[47] MARTIN, *supra* note 1, at 95.
[48] FRANCISCO CARREON, ADMINISTRATIVE LAW, PUBLIC OFFICERS AND ELECTIONS (1950).
[49] *Id.* at 145.
[50] *See* Dept. of Educ. Culture and Sports v. San Diego, G.R. No. 89572, 180 SCRA 533, Dec. 21, 1989.

considered as penal in nature do not apply to cases in which public officers are sought to be removed due to misconduct. The label given in *Sanches* seems most apt in that these cases are more "protective" in nature, i.e., they are cases which seek to remedy a situation by removing the cause of the misconduct.

In our jurisdiction therefore, removal proceedings do not partake of penal or even quasi-penal proceedings so that a strict interpretation of the removal statute found in Section 60 of the Local Government Code can be applied. Cases describing certain administrative proceedings as penal do not apply due to the nature of public office as a public trust.

Given this conclusion, the reason given by proponents of condonation that removal statutes must be strictly interpreted because of the penal nature of these proceedings must fail. There is no reason, therefore, to give them a strict interpretation. The more liberal interpretation of "in office" as meaning only that and not "term of office" must therefore be adopted. This interpretation would also be in line with the public trust aspect of public office.

ii. The meaning of "in office"

In *Newman v. Stroebel*[51] and the *Opinion of the Justices*[52] both Supreme Courts refused to give a strict interpretation of the phrase "in office". They instead adopted a construction based on what the language of the statute contained, not willing to add or subtract from what was stated.

In *Newman*, a case which dealt with an officer who had been reelected to his office and was being removed for acts committed during a previous term, the applicable statute provided for removal of a public official for "any misconduct, maladministration, malfeasance or malversation in office." In construing the phrase, the Court ruled that the statute should be construed as was found in the wording of the law and therefore, what the Legislature intended:

> "Clearly under the statute, the wrongdoing must relate to the official duties of the accused, and must have been committed while he was in office. But it will be noted that this section does not provide that the misconduct, maladministration, malfeasance or malversation shall have occurred during the particular term which the offender was

[51] 259 N.Y.S. 402 (App. Div. 1932).
[52] 33 N.E.2d 275 (Mass. 1941).

> serving when the proceedings were instituted. It simply refers to wrongdoing `in office'. Doubtless the reference is to the same office which the accused was filling when the attempt was made to remove him, and not to some other, but there is nothing to indicate that the legislature intended to treat each term of office to which an official might be reelected to succeed himself as entirely distinct, separate, and apart from all other terms of the same office, and to confine the remedy provided for to the identical term which accused was serving at the moment the ouster proceedings were instituted. In fact if the legislature had intended any such limitation, it would have so indicated by some appropriate word or expression."[53]

In defending its construction principle, the Court said:

> "It is elementary that a statute should be construed so as to effectuate the intent of the legislature: the language of the act must be read in harmony with the purpose and aim of the lawmaking body."[54]

In the *Opinion of the Justices*, the Supreme Court of Massachusetts was asked to render an advisory opinion for the House of Representatives of that state with regard to the interpretation of an impeachment provision found in the state Constitution. The House had "grave doubts" as to the interpretation of the phrase "misconduct and maladministration in office" and so asked the Court to render its opinion as to what this meant exactly.

The Court pointed out:

> "This constitutional provision...is to be `given a construction adapted to carry into effect its purpose'; And the Constitution `was written to be understood by the voters to whom it was submitted for approval'; Its words and phrases are to be interpreted `in the sense most obvious to the common understanding, because they were proposed for adoption by all the people entitled to vote'; Such words and phrases `are chosen to express generic ideas and not nice shades of distinction'; They are `not to be given a constricted meaning.'"[55]

After stating that the plain language of the law must be followed the Court proceeded to explain what misconduct "in office" meant:

> "In our opinion therefore, in order to carry out into effect the obvious purpose of the provisions relating to impeachment, any 'misconduct' of an officer of the Commonwealth while holding his

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[53] Newman v. Stroebel, 259 N.Y.S. at 403.
[54] *Id.* at 404.
[55] Opinion of the Justices, 33 N.E.2d at 279.

> office that can be said reasonably to render him unfit to continue to hold office is such misconduct 'in' his office as constitutes ground for impeachment."
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> "And such misconduct or mal-administration of a councilor, in our opinion, would occur 'in' his office, within the meaning of the constitution, notwithstanding the intervention of one or more reelections to councilor."[56]

E. Interpretations of Key Words in Section 60 of the Local Government Code

In dealing with the issue of condonation of misconduct during a previous term, our Supreme Court has chosen to side with the strict interpretation of the term "in office" as will be seen in *Pascual v. Provincial Board of Nueva Ecija.* That they have adopted the construction of the phrase as meaning "terms in office" and equating one with the other is evident since they ruled in *Pascual* that each term is separate from another.

However, there is also authority in our jurisdiction that states that the two terms "in office" and "term in office" cannot be used interchangeably and mixed with one another. The Supreme Court has defined the two phrases differently, giving one phrase an entirely different meaning from the other. That there is a substantial difference between them has been explained in our jurisprudence:

> "[A] term means the time during which the officer may claim to hold the office as of right, and fixes the interval after which the several incumbents shall succeed one another."[57]

"While 'office' is the right, authority and duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public."[58] Thus, as Justice Esguerra explained in *Oliveros:*

> "'Office' is an institutional unit of government, while 'term' is a matter of time during which a person may hold office."[59]

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[56] *Id.*

[57] Topacio Nueno v. Angeles, No. 89, 76 Phil. 12, 21-22, Feb. 1, 1946.

[58] Oliveros v. Villaluz, G.R. No. 34636, 57 SCRA 163, 217, May 30, 1974 (Esguerra, J., *concurring and dissenting*).

[59] *Id.*

Our own Supreme Court has also therefore made a delineation and distinction between the two terms. In so doing it can be reasonably concluded that the Court in those cases has not recognized that a "term of office" is synonymous with the phrase "in office". Hence, the term "in office" found in Section 60 cannot encompass and carry within its language a different concept as a "term of office". There is then a seeming conflict in our jurisdiction regarding these two phrases, i.e., between one saying "in office" may mean "term of office"; and the other concluding that the two are different.

F. Proposed Construction in the light of Philippine Law

In order to resolve the conflict, let us turn to two rules on statutory construction. When applied, the conclusion will be inescapable that to rule that "in office" may be used interchangeably with "term of office" is a violation of these time-honored principles.

i. When the law is clear, courts have no choice but to apply it.

As the rules of statutory construction dictate, in enacting the Local Government Code, Congress was deemed to have meant what it wrote in the statute since it is fundamental that legislative intent must be determined from the language of the statute itself.[60] Since the two terms have different meanings, Congress must be deemed to have chosen one meaning over the other. And in choosing to write into the law the phrase "in office", Congress should be deemed to have made its decision clear.

Looking at it this way, it can be seen that there is nothing ambiguous about Section 60 when it speaks of the situation within which the misconduct must occur in order to be susceptible to removal. When, as in this case, the law is clear, it is the duty of the courts apply the law as written and refrain from interpretation.

> "It has been repeated time and time again that where the statutory norm speaks unequivocally, there is nothing for the courts to do except to apply it. The law leaving no doubt as to the scope of its operation, must be obeyed. Our decisions have consistently been to that effect."[61]

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[60] Tanada v. Yulo, No. 43575, 61 Phil 515, 518, May 31, 1935.
[61] Gonzaga v. Court of Appeals, G.R. No. 27455, 51 SCRA 381, 385, Jun. 28, 1973.

ii. Laws are interpreted in the light of the Constitution.

One of the rules of statutory construction is that the construction of statutes must support the implementation of the Constitution.[62]

This principle was used by the Supreme Court in rejecting a proposed construction of a minimum wage directive by a penny-pinching corporation.[63] Said the Court in refusing to allow a construction at odds with the Constitution:

> "To state the construction sought to be fastened on the clear and explicit language of the statute is to reject it. It comes into collision with the Constitutional command pursuant to the social justice principle that the government extend protection to labor... No such intent could rightfully be imputed to congress. Moreover to cast a suspicion that such a form of evasion was legislatively willed may even raised serious Constitutional doubts. For it is undeniable that every statute, much more so one arising from a legislative implementation of a constitutional mandate, must be so construed that no question as to its conformity with what the fundamental law requires need arise."[64]

From this, it is not such a far logical jump to apply this principle against the doctrine of condonation. Section 60(c), like the legislative enactment in the *Automotive* case, should be construed in a like manner, i.e., it should be construed in conformity with the constitutionally-mandated policies on public officers. To construe it differently would run counter to an established statutory construction principle, since such a construction would view the law outside of what the Constitution seeks to implement. It should be remembered also that the present Local Government Code was enacted in 1991, after the 1987 Constitution came into effect. Hence the legislative branch of government cannot have intended to allow a construction running counter to the constitutional mandate.

While a strong argument may be made that the rules of statutory construction given above demand that "in office" be interpreted that as long as a public officer commits any wrongdoing while holding public office, irrespective of the being re-elected or not, the real ammunition of proponents of the theory is found not in statute but in the decisions of the

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[62] *Univ. of the Phil. College of Law Sourcebook Series Project: Statutory Construction,* at 177 (1991).

[63] Automotive Parts & Equipment Co., Inc. v. Lingad, G.R. No. 26406, 30 SCRA 248, 251, Oct. 31, 1969.

[64] *Id.* at 253.

Supreme Court. The doctrine of condonation had already been established before the Local Government Code or its predecessor, the Decentralization Act came into effect. It is thus imperative that a review of the jurisprudential basis of the doctrine be examined and analyzed.

IV. PHILIPPINE JURISPRUDENTIAL BASIS FOR THE DOCTRINE OF CONDONATION

A. Origin of the Doctrine: A Closer Examination of *Pascual v. Hon. Provincial Board of Nueva Ecija*

The doctrine of condonation of misconduct during a previous term first came to light in our jurisdiction in *Pascual v. Hon. Provincial Board of Nueva Ecija.*

The case involved Arturo B. Pascual, mayor of San Jose, Nueva Ecija. He had been elected to office in November 1951 and was again re-elected in 1955, succeeding himself. In October of 1956, well within Pascual's second term, administrative charges were filed with the Provincial Board by the Acting Provincial Governor of Nueva Ecija. Among the charges were that Pascual assumed and usurped the judicial power of a justice of the peace by accepting a criminal complaint, conducting the preliminary investigation thereon, issuing a bail bond of P 60,000.00, issuing the corresponding warrant of arrest and afterwards reducing the bail bond to P 30,000.00. All these acts were alleged to have been committed on 18th and 20th day of December, 1954 or during his first term in office.

Pascual then raised the issue of condonation by filing a motion to dismiss with the Provincial Board, claiming that he could not be disciplined for acts committed during his previous term. After the denial of his motion to dismiss and motion for reconsideration in the Provincial Board, Pascual eventually went to the Supreme Court on appeal. The Court then promulgated its four and one-half page decision in 1959.

The Supreme Court defined the issue thus:

> "We now come to the main issue of the controversy - the legality of disciplining an elective municipal official for a wrongful act committed by him during his immediately preceding term of office."[65]

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[65] Pascual v. Hon. Prov. Board of Nueva Ecija, No. 11959, 106 Phil. 466, 471, Oct. 31, 1959.

and proceeded to resort to authorities in the United States.[66] Thus, in crafting the Philippine doctrine of condonation, the Court sourced it from the US doctrine. Said the Court :

> "In the absence of any precedent in this jurisdiction, we have resorted to American authorities. We found that cases on the matter are conflicting due in part, probably, to differences in statutes and constitutional provisions, and also, in part, to a divergence of views with respect to the question of whether the subsequent election or appointment condones the prior misconduct. The weight of authority, however seems to incline to the rule denying the right to remove one from office because of misconduct during a prior term, to which we fully prescribe."[67]

In reaching its precedent-setting decision, the Supreme Court relied on three sources: Corpus Juris Secundum, American Jurisprudence and American Law Reports.[68] That the Court relied heavily on these sources is evident. That they relied on them solely is probable. In fact, the three paragraphs the Court used to define the doctrine of condonation and its rationale in our jurisdiction were lifted verbatim from these sources thus:

> "Offenses committed, or acts done, during previous term are generally held not to furnish cause for removal and this is especially true where the constitution provides that the penalty in proceedings for removal shall not extend beyond the removal from office, and disqualification from holding office for the term for which the officer was elected or appointed."[69]
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> …
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> "…each term is separate from other terms, and that the reelection to office operates as a condonation of the officer's previous misconduct to the extent of cutting of the right to remove him therefor."[70]
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> …
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> "The Court should never remove a public officer for acts done prior to his present term of office. To do otherwise would be to deprive the people of their right to elect their officers. When the people have elected a man to office, it must be assumed that they disregarded or forgave his faults or misconduct, if he had been guilty of any. It is not for the Court, by reason of such faults or misconduct to practically overrule the will of the people."[71]

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[66] *Id.*
[67] *Id.*
[68] *Id.* at 471-72.
[69] 67 C.J.S., *Officers,* § 60 (1950).
[70] 43 AM JUR., *Public Officers,* § 202 (1942).
[71] 17 A.L.R. 281.

Right before resolving the issue, the Court was faced with two very simple choices: to adopt the doctrine of condonation and prohibit the removal of Pascual or reject the doctrine and allow him to be removed. After weighing the options, the Court played it safe by deciding to go along with where "the weight of authority"[72] lay and thus the doctrine of condonation was introduced into our country.

However, in siding with the weight of authority, there were some very important points that the Supreme Court chose to ignore. These important points attached to the US doctrine were not overlooked by the Court because of inadvertence or ignorance. Truly, these salient points were staring the Supreme Court right in its face because they were printed in the very sources that the Court used as "authorities". In thus adopting condonation, the Court lent a blind eye to these points.

The first point is that there really was no "weight of authority". That there is such a superior number of cases adopting the theory of condonation was not at all true. This was merely what text writers perceived it to be. In other words, text writers believe and think as a whole, that most courts in the US had decided in favor of condonation. The fact that such thinking was not accurate was plainly pointed out by 17 ALR 279 in its very first paragraph thus:

> "It cannot apparently be said that there is a decided weight of authority on either side of the question, although the courts and text writers have sometimes regarded the weight of authority as denying the right to remove one from office because of misconduct during a prior term; and some courts which have held to the contrary have considered that the larger number of cases considered this view. As will be seen from this annotation, the cases, numerically considered are nearly evenly divided."[73]

Also:

> "Although, as above shown, there are many cases which hold that misconduct in a prior term of office is not ground for removal of a public officer, there is almost an equal number of cases to the contrary effect, that such misconduct may constitute a ground for removal or impeachment."[74]

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[72] Pascual, 106 Phil. at 471.
[73] 17 A.L.R. at 279.
[74] 17 A.L.R. at 285.

In *Territory v. Sanches,* the court made an inquiry into cases which favored condonation and those which favored removal and concluded that, "[o]n either we can have the company of able lawyers and eminent jurists."[75]

As a whole therefore, the matter of which side had numerical superiority really depended upon the case which was being read. Cases in favor of removal mention that more authorities agreed with them while those espousing condonation insist that the authorities sided with them. Simply put, both sides were claiming they had the advantage.

The first reason given by the Court in adopting the doctrine was therefore erroneous. They had not sided with the greater number of legal scholars since there were an almost equal number of other legal scholars taking an opposing view. Taken from a scientific concept, what the Supreme Court did was to accept a mere hypothesis, one that had not yet been proven as the correct thinking as there were still many with a contrary view. In other words, the issue was still very much debatable and not at all settled. It was inaccurate for the Court to say that most authorities had thought as they did. The mantle of safety therefore, that the Court was merely siding with the majority must be removed.

The second point that the Court chose to ignore was the fact that Pascual's situation was not uncommon in the US jurisdiction. There were many cases involving an official reelected to the same position, cases wherein an incumbent succeeded himself. In such cases, this was made an exception to the doctrine of condonation by many courts. Courts that have ruled in favor of condonation have recognized this exception, which was plainly spelled out in 67 CJS, again an "American authority" the Court had relied upon. It says:

> "It has also been held that officers who are their own successors may be removed for acts done in their prior terms of office."[76]

In other words, an accepted exception to the rule on condonation is the situation where an incumbent is reelected into the same office. The reason for this exception applies in jurisdictions (like ours) which have strong public policies as regards public officers, which will be more clearly discussed later. This exception clearly applied to Pascual as he was reelected to the same position, hence, he was his own successor. Again in choosing to

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[75] Territory v. Sanches, 94 P. 954, 955 (N.M. 1908).
[76] 67 C.J.S. at 248.

side with the doctrine of condonation, this exception was apparently overlooked, a situation which was on all-fours with *Pascual*.

In the end, the Supreme Court, in *Pascual* decided to adopt a doctrine that had: (1) not been decided with authority in the US from whence it came; and (2) admitted of an exception on public policy grounds, a public policy more in line with our present Constitution.

B. Condonation Gains Inertial Strength: A Review of Cases Following *Pascual*

After *Pascual* came a host of other cases adopting and strengthening the doctrine. As can be seen from a review of these cases, later Justices of the Supreme Court unhesitatingly and unquestioningly accepted the Pascual doctrine in its entirety. Because of this, the doctrine had been elevated to the status of legal truth, a dogma to be applied in all cases. Except for Justice Esguerra's opinion in *Oliveros* there seems to have been no doubt as to the applicability of the doctrine, and it was therefore applied uniformly.

The cases, stretching from 1959 to 1999, are basically identical in their situations. They all deal with a local government official who is sought to be administratively disciplined for misconduct during his previous term but after his reelection. Let us then take a brief review of these cases and see how condonation has become so well entrenched in our jurisprudence.

1. Lizares v. Hechanova

The first case to apply condonation after *Pascual* was the 1966 case of *Lizares v. Hechanova*.[77] In that case, the Mayor of Talisay, Negros Occidental was administratively charged with "corruption and maladministration in the disbursement of public funds" for shady dealings involving infrastructure projects. Although Mayor Lizares was acquitted by the Provincial Board in 1963, two months later he was suspended for one month by the Executive Secretary, after the case was appealed. When Lizares was slapped with the suspension order, he elevated the case to the Supreme Court in March of 1964, on the theory that the Chief Executive had no power to revoke his acquittal by the Provincial Board.

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[77] G.R. No. 22059, 17 SCRA 58, May 17, 1966.

While the case was pending and going through all these appeals, Lizares was reelected as Mayor for another term, from January 1, 1964 until December 31, 1967.

In resolving the issue, the Court, speaking through Justice JBL Reyes, dismissed the case on the ground that the issue had become moot and academic. Said the Court:

> "Considering the facts narrated, the expiration of petitioner's term of office during which the acts charged were committed, and his subsequent reelection the petition must be dismissed for the reason that the issue has become academic."[78]

The Court then quoted the four paragraphs of the *ratio decidendi* of *Pascual* and ended thus:

> "Since petitioner, having been duly reelected, is no longer amenable to administrative sanctions for any acts committed during his former tenure, the determination whether the respondents validly acted in imposing upon him one month's suspension for an act done during his previous term as mayor is now merely of theoretical importance."[79]

As can be seen, the sole rationale of the Supreme Court was the *Pascual* doctrine. It is another example of the automatic application of the previous term rule without an understanding of the doctrine in its entirety. If the Court had taken pains to look at the doctrine, it would have seen that this is not a case wherein the doctrine of condonation can apply, but an exception. From the recital of facts, it can be seen that Lizares was charged with "corruption and maladministration in the disbursement of public funds". In other words, he was charged with misappropriation of public funds, which as will be later on discussed, is a charge that is labeled as a "continuing offense". As Lizares was charged with a continuing offense, he had the duty to account for the funds from the moment it was misappropriated until he had accounted for it, which duty continued notwithstanding his reelection. Hence, he was being removed for misconduct which continued into his present term since there had been no accounting of the misappropriated funds yet. He was then being removed for misconduct not during his previous term but during his present.

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[78] *Id.* at 59.
[79] *Id.* at 60.

2. Aguinaldo v. Santos[80]

The case involved Governor Rodolfo E. Aguinaldo of Cagayan who was elected to his position in 1988. During his first term as governor, he was administratively charged with disloyalty to the Republic for allegedly taking part in the December 1989 coup attempt. Although he denied the charges, the Secretary of Local Government found him guilty as charged and ordered his removal from office in 1990. Although he was already ordered removed, the governor was able to raise the issue of his removal to the Supreme Court, citing constitutional arguments. The removal of Aguinaldo remained in limbo for two years while the wheels of justice slowly ground on. Given this respite, Aguinaldo filed his certificate of candidacy for the position of Governor in the May 11, 1992 elections. Three petitions for disqualification were filed against him, on the ground that he had been removed from office, thereby rendering him incapable of being a candidate.

The COMELEC, acting on petitions for his disqualification, ordered Aguinaldo disqualified as candidate in the local elections, however granting him the right to be voted on since their order would not have become final by May 11. Aguinaldo then bought some more time by seeking to have the order of disqualification by the COMELEC nullified by the Supreme Court. Acting on the petition, the Supreme Court obliged Aguinaldo by first granting a temporary restraining order, thereby preventing the COMELEC from implementing its disqualification order and meanwhile, allowing Aguinaldo's votes to be canvassed. In that resolution, the Court also ordered the COMELEC to refrain from proclaiming a winner.

In June 1992, the Court, nullified the disqualification order of the COMELEC on the ground that the 1990 order of removal of the Secretary of Local Government had not yet attained finality and was still pending with the Court. When all the smoke had cleared, and after the votes were canvassed, Aguinaldo had won by a landslide.

By then, enough time had been killed and the way was now clear for the Court to apply the condonation doctrine. The Court said:

> "Petitioner's reelection to the position of Governor of Cagayan has rendered the administrative case pending before Us moot and academic. It appears that after the canvassing of votes, petitioner

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[80] G.R. No. 94115, 212 SCRA 768, Aug. 21, 1992.

> garnered the most number of votes among the candidates for governor of Cagayan province."[81]

In keeping with the tradition in condonation cases, the Court then again cited the exact four paragraphs used in the *Pascual* case, also quoted in *Linares* and ended:

> "Clearly then, the rule is that a public official can not be removed for administrative misconduct committed during a prior term, since his reelection to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor."[82]

This case stands out as emphasizing one point: the theory of condonation allows a smart politician to beat an administrative charge for his removal.[83]

3. *Reyes v. Commission on Elections*[84]

Renato Reyes was the municipal mayor of Bongabong, Oriental Mindoro, having been elected on May 11, 1992. During his first term of office, administrative cases were filed against him with the Sangguniang Panlalawigan. He was charged with: (a) exacting P 50,000 from each market stall holder in the public market, (b) checks issued to him by the National Reconciliation and Development Program of the Department of Interior and Local Government were never received by the Municipal Treasurer nor reflected in his books of account and (c) with taking twenty seven heads of cattle from beneficiaries of a cattle dispersal program after the latter had reared and fattened the cattle for seven months. The Sanggunian Panlalawigan then found him guilty of these charges on February 6, 1995.

Upon learning of the decision, Reyes filed a petition for *certiorari,* prohibition and injunction with the Regional Trial Court, alleging due process violations. A temporary restraining order was granted by the court, preventing the Sanggunian from proceeding with the case and from serving the decision on Reyes. Until this point, Reyes had been very vigilant in keeping the removal from attaining finality. However, on March 3 1995, Reyes committed a mistake by allowing the TRO to expire. The decision then became final and even though he made a futile attempt to avoid being

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[81] *Id.* at 772.
[82] *Id.* at 773.
[83] *See also* Lingating v. Commission on Elections, G.R. No. 153475, 391 SCRA 629, Nov. 13, 2002.
[84] G.R. No. 120905, 254 SCRA 514, Mar. 7, 1996.

served, the Sangguniang Panlalawigan ordered him to vacate his position. Before the Sanggunian was able to order him out, however, Reyes was able to file his certificate of candidacy.

A petition for disqualification was then filed in the COMELEC but the latter body did not come out with its decision by the time the elections were held on May 8, 1995. Reyes was consequently voted on. It was only on the next day that the COMELEC issued an order disqualifying him. However, the Municipal Board of Canvassers was unaware of the decision and subsequently proclaimed him the winner in the mayoralty race. This proclamation was in turn set aside by the COMELEC since Reyes had already been disqualified.

Reyes then appealed to the Supreme Court on the ground that the COMELEC decision was devoid of basis on the Sanggunian removal had not yet attained finality. He put forth the theory that the charges against him were rendered moot and academic by his being reelected. He invoked *Aguinaldo v. COMELEC* as a shield against his removal.

In deciding against Reyes, the Supreme Court correctly refused to apply the *Aguinaldo* case. The Court pointed out the differences between the two situations thus:

> "But that was because in that case [Aguinaldo], before the petition questioning the validity of the administrative decision removing petitioner could be decided, the term of office during which the alleged misconduct was committed expired. Removal cannot extend beyond the term during which the alleged misconduct was committed. If a public official is not removed before his term of office expires, he can no longer be removed if he is thereafter reelected for another term. This is the rationale for the ruling in the two *Aguinaldo* cases.
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> The case at bar is the very opposite of those cases. Here, although petitioner Reyes brought an action to question the decision in the administrative case, the temporary restraining order issued in the action he brought lapsed, with the result that the decision was served on petitioner and it thereafter became final on April 3, 1995, because the petitioner failed to appeal to the Office of the President. He was thus validly removed from office and pursuant to Sec. 40 (b) of the Local Government Code, he was disqualified from running for reelection."[85]

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[85] *Id.* at 525-26.

In trying to prevent his removal by using the doctrine of condonation, Reyes had tried to do the exact thing Aguinaldo had done – prevent the decision from becoming final until election day came. This he correctly did by instantly appealing the removal decision to the RTC and securing a TRO. In contrast to the Aguinaldo case however, the decision for removal was able to become final due to a lack of vigilance on Reyes' part. Reyes was therefore very close to beating the administrative removal and it was only due to his neglect that the Sanggunian removal became final.

It should also be noted that Reyes was charged with making illegal exactions from market stall holders, for not accounting for checks issued by the national government and for stealing cattle. Like the *Lizares* case, these charges are "continuing offenses" which fall under the rule that condonation will not apply. Again, the Supreme Court failed to take this fact into account when it decided the case.

4. *Salalima v. Guingona*[86]

Albay Governor Romeo R. Salalima was administratively charged for having his province enter into a retainer agreement with private lawyers and paying for their legal services without authority. The retainer contract was signed in 1989. For unlawfully entering into a negotiated contract on March 6, 1992, Salalima was also administratively charged. It was only after Salalima was reelected in the May 11, 1992 elections, however, that these administrative charges were brought against him for acts committed in his previous term. In an Administrative Order dated October 7, 1994, during Salalima's second term in office, the Office of the President suspended Salalima.

Pascual and *Aguinaldo* served as the basis for the Supreme Court to rule that Gov. Salalima's administrative cases involving the retainer agreement and March 1992 contract should be dismissed, on account of condonation. The Supreme Court, noting the factual antecedents of *Pascual,* easily disposed of the argument of the Solicitor General that the condonation doctrine should be applied only if the administrative case had been filed prior to the official's re-election.

What makes Salalima interesting, however, is that the Supreme Court fashioned out a new underlying policy for favoring the doctrine of

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[86] G.R. No. 17589, 257 SCRA 55, May 22, 1996.

condonation, i.e., to prevent re-elected officials from being "hounded" by his political enemies:

> "The rule adopted in *Pascual*, qualified in *Aguinaldo* insofar as criminal case are concerned, is still a good law. Such a rule is not only founded on the theory that an official's reelection expressed the sovereign will of the electorate to forgive or condone any act or omission constituting a ground for administrative discipline which was committed during his previous term. We may add that sound policy dictates it. To rule otherwise would open the floodgates to exacerbating endless partisan contests between the reelected official and his political enemies, who may not stop to hound the former during his new term with administrative cases for acts alleged to have been committed during his previous term. His second term may thus be devoted to defending himself in the said cases to the detriment of public service. This doctrine of forgiveness or condonation cannot, however, apply to criminal acts which the reelected official may have committed during his previous term."[87]

Thus, in *Salalima*, the doctrine of condonation gained further strength, the Supreme Court even erecting a public policy ground to prop it up. This new policy argument, however, will be held up against the contrary Constitutional policies mandating strict scrutiny into a public official's integrity, as will be discussed later on.

5. *Garcia v. Mojica*[88]

Four days before the May 1998 elections, incumbent Cebu City Mayor Alvin Garcia entered into an alleged anomalous contract for the asphalting of the city. After his re-election, the Office of the Ombudsman slapped a six month suspension order on him stemming from the contract.

Apparently anticipating that Garcia would put up the defense of condonation, the respondents in the case argued that the electorate could not have possibly known of the asphalting contract which was entered into a mere four days before the election and hence, could not have possibly re-elected him with the knowledge of his anomalous activities. Also, the respondents pointed out that the asphalting contract was to be effective during his re-elective term, hence, should be deemed as having been performed during his re-elected term.

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[87] *Id.* at 115-16.
[88] G.R. No. 139043, 314 SCRA 207, Sep. 10, 1999.

The importance of Garcia is that it fashioned an evidentiary rule to be used in condonation cases. It should be recalled that the *assumption* of the knowledge of the electorate of the past misdeeds of an official seeking reelection was one of the cornerstones of *Pascual*. The Supreme Court in *Garcia*, however, elevated this knowledge not only to an *assumption*, but to a *conclusive presumption*. Said the Court:

> "For his part, petitioner contends that `the only conclusive determining factor' as regards the people's thinking on the matter is an election. On this point, we agree with petitioner. That the people voted for an official with knowledge of his character is presumed, precisely to eliminate the need to determine, in factual terms, the extent of this knowledge. Such an undertaking will obviously be impossible. Our rulings on the matter do not distinguish the precise timing or period when the misconduct was committed, reckoned from the date of the official's reelection, except that it must be prior to said date."[89]

The "new" policy against political enemies hounding re-elected officials crafted in *Salalima* was also cited to buttress the foregoing reasoning. Further, the factual underpinnings of *Salalima* were also cited to dispose of the argument that the contract was to be performed during the re-elective term of Garcia.

C. Similarities and Observations in the Cases

From these cases, it can be seen that all of them dealt with an incumbent public official who was later on re-elected to the same position. The Court then applied the condonation doctrine to render moot and academic the removal or suspension proceedings that were carried on or instituted in the succeeding term.

The Philippine rule on condonation then is very simple. It admits of no exceptions when the correct situation presents itself. This situation is of two kinds:

> 1. The public official has been re-elected to the same office and he is sought to be removed or suspended for misconduct committed in the previous term. (*Pascual, Salalima, Garcia*)

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[89] *Id.* at 227-28.

> 2. The public official is being removed or suspended for acts committed during his present term but during the pendency of the proceedings or during the pendency of an appeal, an election is held and the public official is re-elected into the same office. (*Reyes, Aguinaldo, Lizares*)

Under these circumstances, the Courts will apply the doctrine of condonation, will deem the case moot and academic, and thus will dismiss the case. The public official will then continue occupying the office from which removal was sought.

V. THE AMERICAN RULE

While the Philippine rule is cut and dry and calls for automatic application under the proper circumstances, the American rule on condonation is much more complex, many factors being taken into account. US Courts do not approach the problem as simplistically as our courts do. As was pointed out previously, there are just as many states that refuse to allow the doctrine than there are that apply it. Also, for those jurisdictions which apply the doctrine, the doctrine is not applied without exception. So for jurisdictions allowing condonation, the rule is not one of automatic application when the situation presents itself. There are still other important and essential factors to be considered.

The American cases which have applied the doctrine need not be examined anymore since they all generally follow the same reasoning as the Pascual case. What must be scrutinized are the cases which stray from the doctrine of condonation. These cases will enlighten us as to their wisdom and their applicability to the Philippine situation.

A. Rationale Against Condonation

The reasons for the adoption of the doctrine of condonation have already been stated as, among others, that:

> "...each term is separate from other terms, and that the reelection to office operates as a condonation of the officer's previous misconduct to the extent of cutting of the right to remove him therefor."[90]

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[90] 43 AM JUR., *Public Officers,* § 202.

Furthermore:

> "The Court should never remove a public officer for acts done prior to his present term of office. To do otherwise would be to deprive the people of their right to elect their officers. When the people have elected a man to office, it must be assumed that they disregarded or forgave his faults or misconduct, if he had been guilty of any. It is not for the Court, by reason of such faults or misconduct to practically overrule the will of the people."[91]

With these in mind, we now turn to the rationale for precluding the application of the doctrine of condonation.

The main reason for not allowing condonation is a strong public policy concern regarding the high standards of public office. In jurisdictions refusing to succumb to the temptation of adopting condonation, the courts have seen the potentially disastrous effects of keeping a scalawag or a person charged with misconduct in public office, where he can continue to wreak havoc on the affairs of government. In order to prevent such a sorry state of affairs where higher authorities can do nothing but keep a man in office solely on the ground that he has been reelected, notwithstanding his obvious unfitness, these courts have allowed removal in order to protect the public from "bad" officers. They have not agreed with the theory that in placing a man back in office, the electorate has condoned his offenses.

That there is such a strong public policy concern with regard to the fitness of public officers was recognized in *State v. Schroeder* where the Kansas Supreme Court debated about the propriety of removing an officer who was charged with conflict of interest:

> "...we think there is a public interest in the fitness for public office of one engaging in such calculated trafficking, even though the transactions occurred in a term immediately prior to the present term of the officer."[92]

In other cases, courts have endeavored to explain the purpose of removal statutes as protecting the public. One of the earliest cases rejecting the theory of condonation was the 1899 case of *State v. Welsh*.[93] In that case, the Supreme Court of Kansas explained the purpose of a removal as:

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[91] *Id.*
[92] State ex. rel. Londerholm v. Schroeder, 430 P.2d 304, 314 (Kan. 1967).
[93] 79 N.W. 369 (Iowa 1899).

> "The very object of removal is to rid the community of a corrupt, incapable, or unworthy official. His acts during the previous term quite as effectually stamp him as such as those of that he may be serving."[94]

and quoting from the earlier case of *State v. Hill,*[95] the Court continued:

> "The object of impeachment is to remove a corrupt or unworthy officer. If his term has expired and he is no longer in office, that object is attained, and the reason for his impeachment no longer exists; but if the officer is still an officer, he is amenable to impeachment, although the acts charged were committed in his previous term of office."[96]

The Supreme Court of New Mexico in *Territory v. Sanches*, said that the goal of removal is not directed against the public officer to chastise him for his acts, but for the good of the public. Said the Court:

> "The object of the removal of a public officer for official misconduct is not to punish the officer but to improve the public service from an unfit officer."[97]

In a similar vein, *Allen v. Tufts* pronounced that the purpose of removal statutes is to "purge the public service from an unfit officer"[98] The case of *In re Rome* further explained the purpose of removal statutes as protecting the public from officers possessing characteristics which are not fit for the particular office and in general, for service to the public.[99]

In these cases then, removal proceedings are seen as a means to improve the government. By expelling those persons who have proven to be unsuitable for their position, these courts have granted the power of removal so that the government can be streamlined and its efficiency improved by cutting out the deadweight and those supposed public servants who seem to serve only themselves. Instead of following the doctrine of condonation and keeping these officers in a position of authority, these courts have taken the more sensible and rational stand of booting out those who are found unworthy so they can no longer pose any danger to the affairs of government.

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[94] *Id.* at 370.
[95] 55 N.W. 794 (Neb. 1893).
[96] State v. Welsh, 79 N.W. at 370.
[97] Territory v. Sanches, 94 P. 954, 954 (N.M. 1908).
[98] 17 A.L.R. 274, 278 (Mass. 1921).
[99] 542 P.2d 676, 682-83 (Kan. 1975).

In *Tibbs v. City of Atlanta*,[100] the proposition was put before the Court that Tibbs, a police officer who had been re-elected to his position, could not be removed by the Board of Police Commissioners because the acts he committed were done previous to his second term. The Court said that such a proposition would be deleterious to the public interest and would hamper the board from weeding out negative elements from the police ranks. It said:

> "We cannot assent to a proposition that will so hamper the board in its control of the officers of the police department. The board may know of the conduct of an individual who is elected, and at the time of the election may not have a just appreciation of the injurious effects upon the efficiency and discipline of the force that the election of such a person would have, and it would be disastrous to the public interests if they were compelled to keep in the employ of the city a policeman whose conduct was, prior to his election, of such a character as to make him a disturbing element in the force."[101]

i. Clash between public policies

We can conclude from the foregoing that there seems to be a clash between two types of public policy concerns: The first type, and which is one of the reasons for condonation, is the public policy concerning the primary power of the people to choose who will be their public officials and servants. Those in favor of condonation will see this as the stronger public policy concern since if removal is allowed, the electorate will be deprived of their right to choose and elect into office any person they want, even if that person has been charged with unfitness or misconduct in his office.

On the other hand, there is the other public policy concern of those in favor of removal. This concern, which is admittedly more strict and unforgiving, is directed to the ideal of what public service and accountability really means. The public policy is recognized that a public officer must be one possessing the highest virtues of integrity, honesty, discipline and moral uprightness and once an officer fails in his duty to serve the public honestly and is found not to possess the mentioned characteristics but the opposite, he must be allowed to be removed in order to safeguard the public from his abuses. If he is kept in office, the only one to benefit will be the officer and the public will have to suffer.

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[100] 53 S.E. 811 (Ga. 1906).
[101] *Id.* at 813.

ii. Strong public policy in the Philippines against condonation

Which public policy then will prevail or ought to prevail in the Philippines? In the preceding cases, it was seen that courts which have allowed removal for previous term acts have examined the public interest or public policy prevailing in the jurisdiction to determine if there is a strict policy against public officers. If there is such strong public policy against erring public officers, removal may be had.

That the Philippines has such a strong public policy against deviating officers is emphatically, explicitly and clearly spelled out in the fundamental law. A plain reading of Article II Section 4 and Section 27 and Article XI, Section 1 gives a plain understanding that in our country, public officers hold office as a public trust and those who betray such trust by being dishonest, inefficient and corrupt fail to meet the stringent standards found in the Constitution and must be removed. As was mentioned early on, the present public policy is the most exacting one in our history, one that has resulted from the hard-learned lessons of the past.

In *Salalima* and *Garcia*, however, the Supreme Court set forth its own public policy that favored condonation, *i.e.*, to prevent re-elected officials from being "hounded" by their political enemies. Such policy, however, appears to have its genesis on mere expedience and would favor a suspicious public official over the public weal. What is disconcerting is that such policy would take precedence over the more emphatic provisions of the Constitution regarding fidelity by public servants to their offices. Favoring a policy that would, in effect, allow malfeasance or misfeasance no matter how true or duly proved to be swept under the rug would appear to fly in the face of Constitutional provisions regarding the sanctity of public office.

Since it can be said that the Philippines is one of those jurisdictions that has a strong public policy against public officers who fail to conduct themselves in a manner suitable for their position of trust, the Court in *Salalima* and *Garcia* should have taken this policy into consideration before fashioning a contrary policy. Being a constitutional imperative, it was incumbent upon the Court to have given greater weight to the fundamental law before constructing a questionable policy based on mere evidentiary expedience.

B. The "Own-Successor" Theory

i. The theory as a well recognized exception

As previously explained, the American rule is not as simplistic in application as the Philippine rule. It is not a doctrine to be automatically applied but one that admits of exceptions. One of the most notable exceptions is known as the "own successor" theory. This exception has been accepted even by courts that have habitually ruled in favor of condonation. This was explained in *Hawkins v. Common Council of the City of Grand Rapids*[102] where the Supreme Court of Michigan held that the general rule of condonation does not apply to one who succeeds himself in office:

> "While other well-considered cases, recognizing the general rule, make an exception where the accused officer, continuing in office by re-election, was charged with official misconduct in the same office during a preceding term."[103]

The Court there pointed out that in previous cases where condonation was applied, the public officer therein was not his own successor in the same office. The Court distinguished the present case with a previous one, saying the public officer "had not previous to his then-term been an incumbent of the office from which it was sought to remove him. We are not prepared to find in this case, nor to hold as a general rule, that the misconduct of an officer, who is his own successor, committed during the preceding term, may not be inquired into and furnish ground for his removal."[104]

The "own successor" doctrine has undoubtedly achieved the status of an exception to the condonation rule. That this is the weight of authority finds ample support in *Newman v. Stroebel*, where the New York Supreme Court ruled:

> "I think that the weight of authority favors the rule that misconduct in a prior term of office, where the tenure has been continuous, furnishes adequate ground for the removal of the official."[105]

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[102] 158 N.W. 953 (Mich. 1916).
[103] *Id.* at 956.
[104] *Id.* at 957.
[105] Newman v. Stroebel, 259 N.Y.S. 402, 406 (App. Div. 1932).

The Court therein then gave a run-down of the numerous authorities sustaining such a position.[106]

It must be noted that well known authorities, speaking on the subject of removal for acts committed in a previous term, have indicated that in an "own successor" situation, removal is justified even for misconduct in a previous term. Corpus Juris Secundum provides that "officers who are their own successors may be removed for acts done in their prior terms of office."[107]

ii. "Own Successor" doctrine explained

Simply put, an own successor is one who has been re-elected to the same position he held in the immediately preceding term. The doctrine contemplates a situation where an incumbent runs for the same position and wins in the election.

The "own successor" theory in essence attacks one of the rationales of the doctrine of condonation, i.e., that each term is separate and distinct from the previous term and that a re-election will whitewash a previous term into a brand new one, free from any sins formerly committed. As an exception to the general rule, the "own-successor" theory then says that in the case of a public official who succeeds himself, the situation presented is different. In case of a re-elected incumbent, each term should not be taken as separate and distinct but should be regarded as one continuous term of office. Hence, offenses committed in a previous term will provide grounds for removal because in the case of a re-elected incumbent, there is no previous term to speak of since he will be considered to have been serving only one continuous term without any break in his service. The theory then of separating each term of office as separate entities is debunked by an own successor.

One of the first cases to apply this exception was the 1893 case of *Bilton v. Bourgeois*. The latter, a re-elected sheriff, was sought to be removed for misconduct in his previous term. The Court, in allowing the sheriff to be removed explained that:

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[106] People ex rel. Burby v. Common Council of Auburn, 33 N.Y.S. 165 (Sup. Ct. 1895); Atty. Gen. v. Tufts, 17 A.L.R. 274 (Mass. 1921); State v. Welsh, 79 N.W. 369 (Iowa 1899); State ex rel. Douglas v. Megaarden, 88 N.W. 412 (Minn. 1901); Hawkins v. Common Council of Grand Rapids, 158 N.W. 953 (Mich. 1916); State ex rel. Timothy v. Howse, 183 S.W. 510 (Tenn. 1916); State v. Hill, 55 N.W. 794 (Neb. 1893); Territory v. Sanches, 94 P. 954 (N.M. 1908); State ex rel. Perez v. Whitaker, 41 So. 218 (La. 1906); State ex rel. Billon v. Bourgeois, 14 So. 28 (Louisiana 1983); Tibbs v. City of Atlanta, 53 S.W. 811 (Ga. 1906); Brackenridge v. State, 11 S.W. 630 (Tex. Ct. App. 1899).

[107] 67 C.J.S., *Officers*, § 60 (1950).

> "The defendant sheriff has been uninterruptedly in office since the commission of the acts complained of. There was, by his re-election, no interruption in his official tenure. At no time was there an interregnum. He was, by the constitution, to continue in office until his successor was elected and qualified. He was his own successor, the identical officer in both terms against whom charges are preferred....It is immaterial, therefore, whether they were committed during his present or immediate preceding term of office. His inability to hold the office results from the commission of said offenses, and at once renders him unfit to continue in office. The fact that he had been re-elected does not condone and purge the offense."[108]

In 1899, *State v. Welsh* set forth the explanation that while the general rule may be that each term of office is separate and distinct, such is not the case for a re-elected official, thus rejecting one of the theories of the condonation doctrine. Said the Court:

> "For many purposes each term of office is separate and entire. This is especially true with respect to the obligation of sureties. But there is no reason for so holding as to the incumbent. Being his own successor, there is no interregnum. His qualification marks the only connection between his terms. The commission of any of the prohibited acts the day before quite as particularly stamps him as an improper person to be intrusted with the performance of the duties of the particular office, as though done the day after. The fact of guilt with respect to that office warrants the conclusion that he may no longer with safety be trusted in discharging his duties."[109]

iii. Philippine jurisprudence disregards the exception.

It can be seen from the foregoing that all the Philippine cases applying condonation fall into the exact situation that would otherwise call for an exception. Thus, Mayors Pascual, Lizares, and Garcia and Governors Aguinaldo and Salalima, all re-elected incumbents, were all "own successors". They should have therefore been removed, but were retained.

In choosing to import the doctrine of condonation, should not the Court also have accepted its recognized exceptions such as the "own successor" rule? For in not doing so, the Court would not be considering the doctrine holistically but would be guilty of cherry-picking what fit into its

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[108] State ex rel. Billon v. Bourgeois, 14 So. at 30.
[109] State v. Welsh, 79 N.W. at 371.

theory. Sadly, the Court *did* adopt the doctrine piece-meal and jurisprudence is left with an incomplete doctrine ensconced therein.

C. Misconduct Being Hidden from the Electorate

As was previously explained, the doctrine of condonation works on a number of assumptions and public policy considerations. Perhaps the greatest public policy consideration which gave rise to the doctrine is that the people have the fundamental right to choose who their public officers will be and no entity, not even the courts, can deprive them of this right. This justification is best expressed in *Pascual*:

> "The court should never remove a public officer for acts done prior to his present term of office. To do otherwise would be to deprive the people of their right to elect their officers. When the people have elected a man to office, it must be assumed that they did this with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. It is not for the court, by reason of such faults or misconduct, to practically overrule the will of the people."[110]

Indeed, in *Garcia*, as previously seen, the mere assumption in *Pascual* that the electorate has knowledge of past misdeeds was promoted to a conclusive presumption.

Also pertinent is this rationale found in *in re Fudula*[111] which said:

> "Each official term is a separate entity, and a citizen whom the electors have chosen to a public office cannot be deprived thereof because of nonperformance or misperformance of duty in some other office or during a prior term of the same office."[112]

The linchpin of the theory that the electorate condones previous misconduct by their act of reelecting the public officer in question is in this sentence: "When the people have elected a man to office, it must be assumed that they did this with the knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any." The doctrine therefore *assumes* and even *conclusively presumes* the electorate knew of the misconduct. But is such a leap in conclusions valid?

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[110] Pascual v. Hon. Prov. Board of Nueva Ecija, No. 11959, 106 Phil. 466, 472, Oct. 31, 1959, *citing* Conant v. Brogan, 6 N.Y.S.R. 332 (1886).

[111] 147 Atl. 67 (Pa. 1929).

[112] *Id.* at 68.

Can it be safely presumed or even assumed that the electorate possesses such a degree of omnipotence that they know of the acts of misconduct committed by their public officers?

There are cases that point out this glaring flaw in the theory of condonation. Misconduct may easily be concealed by a public officer and such misconduct may not surface until he has been reelected by an unknowing electorate. How then can it be presumed that the electorate knew of his misconduct when the same was hidden from them?

This flaw was put to the fore by the Supreme Court of Kansas in *State v. Schroeder* wherein defendant interposed the defense of condonation after he was reelected. The Court, in denying his argument said:

> "Condonation of an offense implies knowledge of the offense, and, if the officer's misconduct in the prior term was concealed or not known to the electorate or the appointing official at the time of the reelection or reappointment, several court have refused to apply the rule.
>
> We would have difficulty supposing any electorate would knowingly reelect as guardian of the public funds one guilty of the deceitful dealings involved here...The wrongdoing has been concealed from public view and there is nothing before us which may fairly be interpreted as condonation by the electorate."[113]

Other cases have likewise recognized the stark reality that misconduct can be easily hidden from the electorate or the appointing authority and therefore debunked the theory of the electorate condoning previous offenses.[114]

On the other hand, an example of a case wherein previous misconduct was deemed to be condoned by reelection appears in *State v. Blake*.[115] Here, the court disallowed the removal of the public officer therein invoking the condonation rule. As one of the reasons for favoring the condonation doctrine, the Court mentioned that his misconduct was not

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[113] State ex rel. Londerholm v. Schroeder, 430 P.2d 304, 313-14 (Kan. 1967).

[114] Re-election does not condone the offense. Misconduct may not have been discovered prior to election, and, in any event, had not been established in the manner contemplated by the statute [State v. Welsh, 79 N.W. at 370]. The court correctly held that conduct of the plaintiff during a previous term of office, not known to the defendant at the time of his reappointment, could be made the basis of his removal from office. [Bolton v. Tully, 158 A at 807] Moreover it has been held that subsequent election to office does not bar charges on undisclosed prior misconduct affecting general character and fitness for office [Sarisohn v. App. Div. of the Supreme Court, 286 N.Y.2d 255, 262 (1967)].

[115] 280 P. 833 (Okla. 1929).

hidden from the electorate, hence by electing him, people were able to make a knowing and well-informed decision.

Of note is the fact that in deciding this case, the Court recognized the possibility that a reelection may be made by an electorate oblivious to the charges against the public officer. In applying the doctrine, the Court had to make a finding that the reelection was made with knowledge of the misconduct.

The fact that there is a big possibility of the electorate's being unaware of the public official's misconduct is too important to be ignored by courts in our jurisdiction. It is a fact that adheres to common sense and reality. Misconduct can be easily hidden from the public; and even if the misconduct comes to light, these facts may be learned only after the guilty officer has been unwittingly reelected.

The conclusive presumption fashioned by the Court in *Garcia* regarding the knowledge of the electorate must not, therefore, be given attribution as a Gordian-knot solution. The ordinary man in the street is not expected to keep abreast of administrative cases pending against a public official and the facts surrounding it. Hence, instead of a conclusive presumption, the Court should require as a threshold evidentiary fact that there was some degree of disclosure of such facts to the electorate in general such that they knew or should have known that the person they were reelecting into office committed or could have committed acts which breached the trust reposed upon him. This would not be too difficult since newspaper articles or news reports on such cases can be proven by simple evidentiary means and need not be as impossible as the Court in *Garcia* made it appear.

D. Gravity of the Misconduct

Another factor that American courts have considered in weighing their options is the seriousness of the offense committed. Innocuous infidelities like taking home paper clips should not, of course, be considered so grave as constituting grounds for removal. However, there are certain offenses that are considered to be so harmful and contrary to public office that they demand removal, even if committed during a previous term.

Thus, if the gravity of the offense so warrants, the doctrine of condonation should not be applied. This is illustrated in *Allen v. Tufts.*[116]

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[116] 17 A.L.R. 274 (Mass. 1921).

Allen was a district attorney who was faced with removal for acts committed by him previous to his reelection. The Court ruled that the gravity of the offense required his removal thus:

> "…it is enough to say that acts of such nature may be proved to have been committed by the respondent during his first term of office as to constitute 'sufficient cause' for, and to make it appear that the 'public good' requires his removal from office. The single circumstance of reelection is not enough to prevent inquiry into acts alleged during the first term. Some of the charges referred to in the information relate to matters involving moral obliquity and positive crime of great magnitude, committed in connection with the office of district attorney. If proven, they might be found to constitute sufficient cause why the person guilty of them ought no longer to hold office."[117]

Here, the Court labeled the acts committed as involving "moral obliquity and positive crime of great magnitude, committed in connection with the office of district attorney."[118] Due to this finding, the Court said that it could not allow the officer to remain in his post simply because he had been reelected.

In deciding the case, the court wrestled with the condonation doctrine and whether or not to apply it.[119] One of the factors that tilted the scale in favor of the non-application of the rule was that the offenses committed were too serious to be overlooked. These refer to acts which show their abuse and wanton disregard of the sacred trust given to them by the public. These offenses are of such gravity and seriousness that they show the unworthiness of the officer, hence justifying their removal, even if the heinous acts were committed during a previous term.

In dealing with the factor of the gravity of the offense, it is the duty of the court to look at the nature of the offense in relation to the office held by the officer sought to be removed. If the offense is so incompatible with and runs counter to the nature of the office, eroding the trust inherent in such office, courts must not hesitate to allow removal, rather than permit the officer to remain in his position. By the gravity of his acts, he has already shown that he is unworthy of the office.

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[117] *Id.* at 278.
[118] *Id.*
[119] *See also* State ex rel. Londerholm v. Schroeder, 430 P.2d at 314.

E. Misconduct Continuing Into the Present Term

The final consideration that a court must look into before deciding any condonation case is whether or not the misconduct is a continuing one. If it is continuous, then the doctrine of condonation will not apply for one simple reason: the act will not be considered as being done in the previous term since the misconduct is still being performed in the present term.

This class of offenses is usually limited in its scope to malversation and misappropriation or maladministration of public funds cases. The scenario that often presents itself is when a public officer has misappropriated public property or funds for himself during the previous term and has not returned, accounted or made restitution of the same even when he had been reelected. The public officer is deemed to have an obligation to return the property malversed from the moment he took it for himself and his duty is deemed to continue until he makes payment, whether it be in the form of being removed from office or in the form of returning what he had taken. Failure to perform this duty amounts to "misconduct" by the officer which would warrant his dismissal.

This situation presented itself in *State v. Megaarden*. Philip Megaarden was a sheriff of Hennepin County who allegedly made illegal collections. When he raised the defense that he could not be investigated for acts committed during his previous term, the Court ruled that his offense was a continuing one:

> "...and it is further stated therein that large sums of money illegally collected during the previous years are still retained by him. We have no doubt that the presentation of unfounded claims for services by a sheriff to the county board for allowance which had been collected during a previous term and retained in the succeeding one, particularly if such course of malversation had been knowingly and willfully continued for a considerable period, as alleged in this information, would amount to official misconduct which would justify his removal from office."[120]

Also of similar vein is *State v. Harvey*. The defendant was a district court clerk who was sought to be ousted due to shortages in her accounts for the previous terms. She had been continuing her duty for three terms and put up the defense that she could not be tried for acts committed during the previous terms. The Court ruled that her duty to return the money that

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[120] State ex rel. Douglas v. Megaarden, 88 N.W. 412, 413 (Minn. 1901).

was due was a continuing one and that there was no need to apply the prior term doctrine.

> "But there is no necessity of doing that (applying the prior term rule) in this case. Here the misconduct continued into the present term of office. There was a duty upon defendant to restore this money on demand of the county commissioners..."[121]

The *Harvey* case was then used by the Supreme Court of Kansas in *State v. Schroeder*. Schroeder was charged for failing to deliver merchandise paid for by the county and excessive prices charged by him to the county were brought under the *Harvey* rule and labeled as continuing offenses:

> "Insofar as the nondelivery of merchandise and excessive prices are concerned, we think, under the reasoning applied in Harvey, there remains a continuing duty on the part of the defendant to make restitution to the county for the wrongful depletion of its funds, this duty extends into the present term, and neglect to discharge it constitutes misconduct."[122]

The lesson to be learned from these cases is that the courts, in addition to the other inquiries it must perform before applying the condonation or prior term rule, mentioned above, must also determine whether or not the offense is a continuing one and therefore falls under the rule that removal may be made. Continuing misconduct cases will not be difficult to spot, since most of them will fall under malversation or misappropriation cases. Once it is recognized that the offense is a continuing one, the court must not hesitate to allow removal.

These simple lessons were not heeded by our Supreme Court as earlier pointed out. *Lizares, Reyes, Salalima* and *Garcia* clearly fall under the "continuing offense" rule. All these charges are glaringly similar if not exactly the same charges faced by the public officers in the cases referred to above.

Looking closer at the charges in these cases and comparing it with those faced in the *Megaarden* and *Harvey*, it will be evident that cases like these fall under the continuing offense rule. In *Megaarden* the charge that he had made illegal collections was labeled as a continuing offense[123]. Isn't the charge of illegally exacting and collecting P50,000 from each market stall holder from the public market as in Reyes exactly the same charge? Harvey

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[121] State ex rel. Beck v. Harvey, 80 P.2d 1095, 1099 (Kan. 1938).
[122] State ex rel. Londerholm v. Schroeder, 430 P.2d at 314.
[123] State ex rel. Douglas v. Megaarden, 88 N.W. at 413.

on the other hand was charged with failure to account for public funds received by her[124], which was exactly the same charge against Reyes when he failed to account for the DILG checks received by him. Sadly, these similarities were unnoticed by our Supreme Court which again applied the prior term doctrine automatically and, with all due respect, simplistically.

VI. CONCLUSION AND RECOMMENDATION

The doctrine of condonation was incompletely introduced into our jurisdiction. Its true complexity, together with its exceptions and rationales were ignored at inception. As a result, all the cases decided by the Supreme Court touching on the subject of condonation consistently and automatically referred to the *ratio decidendi* of the *Pascual* case or other cases adopting it. The present application of the doctrine thus became seemingly straightforward and simple: if a public officer is reelected, he is immune from administrative removal for acts done prior to his reelection, and any pending cases for his removal are rendered moot and academic.

It is respectfully recommended, that when the issue presents itself, as it inevitably will, the Supreme Court use the opportunity to take a long and hard look at the doctrine, this time in its entirety. Its exceptions and rationales should be carefully considered since such exceptions may be more fitting to a particular set of facts instead of an automatic application of the rule.

Morever, the doctrine enunciated in *Pascual* must also be reconsidered in light of the emphatic provisions of the present Constitution against graft and corruption in public office. The simple act of reelection alone cannot be taken to condone a public officer's previous acts since to do so would run counter to the State's duty to maintain honesty and integrity in public office and to keep officers accountable to the public. More importantly, it would collide with the character of public office as a public trust.

Perhaps, the Court in choosing to re-examine the doctrine should consider the following passage from *Territory v. Sanches*[125]and thereby determine that the greater weight of authority is, in reality, laying the doctrine of condonation to rest :

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[124] State ex rel. Beck v. Harvey, 80 P.2d at 1097.

[125] The court therein was also faced with the decision of accepting the doctrine of condonation or not.

> "On either we can have the company of able lawyers and eminent jurists. On the one however, we shall find ourselves with those public officers who have shown themselves unworthy of the trust reposed in them, but escaped removal because the courts followed rules which came into being centuries ago, when the individual needed protection against the despotic executive, who claimed to be the state and are but poorly adapted to these times in which the state, now the people collectively, is beset by predatory individuals and is often helpless against them, because it is hampered by such rules.
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> By the other way we shall join lawyers and judges equally learned and upright, and what is more important, the great body of citizens who are entitled to be served by competent and honest officers. There can be no question then of the choice we should make."[126]

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[126] Territory v. Sanches, 94 P. 954, 955 (N.M. 1908).