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SECOND DIVISION

[A.M. No. SCC-13-18-J. July 1, 2015]
(Formerly A.M. OCA IPI No. 11-36-SCC)

BAGUAN M. MAMISCAL, *complainant, vs.* **CLERK OF COURT MACALINOG S. ABDULLAH, SHARI'A CIRCUIT COURT, MARAWI CITY,** *respondent.*

SYLLABUS

1. **CIVIL LAW; CIVIL CODE; CIVIL REGISTER; THE CIVIL REGISTRAR IS THE PERSON CHARGED BY LAW FOR THE RECORDING OF VITAL EVENTS AND OTHER DOCUMENTS AFFECTING THE CIVIL STATUS OF PERSONS.—** The civil registrar is the person charged by law for the recording of vital events and other documents affecting the civil status of persons. The Civil Registry Law embraces all acts of civil life affecting the status of persons and is applicable to all persons residing in the Philippines.

2. **ID.; THE CODE OF MUSLIM PERSONAL LAWS OF THE PHILIPPINES (PRES. DECREE NO. 1083); THE MUSLIM CODE PROVIDES THAT THE CLERK OF COURT OF THE SHARI'A CIRCUIT COURT SHALL ACT AS CIRCUIT REGISTRAR OF MUSLIM MARRIAGES, DIVORCES; REVOCATIONS OF DIVORCES, AND CONVERSIONS WITHIN HIS JURISDICTION.—** To ensure the proper registration of all facets of the civil life of Muslim Filipinos throughout the country, Article 81 of the Muslim Code provides. x x x **The Clerk of Court of the Shari'a Circuit Court shall act as Circuit Registrar of Muslim Marriages, Divorces, Revocations of Divorces, and Conversions within his jurisdiction.** x x x In view of the above-quoted provision, it becomes apparent that the Clerk of Court of the Shari'a Circuit Court enjoys the privilege of wearing two hats: *first,* as Clerk of Court of the Shari'a Circuit Court, and *second,* as Circuit Registrar within his territorial jurisdiction. Although the Constitution vests the Court with the power of administrative supervision over all courts and its personnel, this power must be taken with due regard to other prevailing laws.

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3. ID.; ID.; THE SUPREME COURT DOES NOT HAVE JURISDICTION TO IMPOSE THE PROPER DISCIPLINARY ACTION AGAINST CIVIL REGISTRARS; RATIONALE.— Article 185 of the Muslim Code provides. x x x Any district registrar or circuit registrar who fails to perform properly his duties in accordance with this Code **shall be penalized in accordance with Section 18 of Act 3753.** x x x Prescinding from the foregoing, it becomes apparent that **this Court does not have jurisdiction to impose the proper disciplinary action** against civil registrars. x x x The fact that the complaint charges Abdullah for "conduct unbecoming of a court employee" is of no moment. x x x In order to ensure that Circuit Registrars remain faithful to their duties, Article 82 of the Muslim Code tasks the Clerks of Court of the Shari'a *District* Court to act as District Registrars and exercise technical supervision over Circuit Registrars by requiring them to keep a proper recording of all matters pertaining to the personal lives of Muslims. x x x All these notwithstanding, the power of ***administrative*** supervision over civil registrars remains with the National Government. x x x It was only with the advent of the Local Government Code that the power of administrative supervision over civil registrars was devolved to the **municipal and city mayors** of the respective local government units. Under the "faithful execution clause" embodied in Section 455(b)(1)(x) and Section 444(b)(1)(x) of the Local Government Code, in relation to Section 479 under Article IX, Title V of the same Code, the municipal and city mayors of the respective local government units, in addition to their power to appoint city or municipal civil registrars are also given ample authority to exercise **administrative supervision over civil registrars**. Thus, when Administrative Order No. 1, Series of 1993 of the Office of the Civil Registrar-General *(OCRG)* was passed to implement CA No. 3753 it was declared: x x x **and all irregularities, negligence or incompetency of city/municipal civil registrar to the concerned mayor who shall take the proper disciplinary action against the offender**. This authority of the Mayor to exercise administrative jurisdiction over Circuit Registrars was also recognized *generally*, under Section 47(2) of the Administrative Code of 1987, and *specifically*, under Rule 11 of Administrative Order No. 2, Series of 1993 of the OCRG, and the more recent Administrative Order No. 5, Series of

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2005 of the same office, which applies specially to the registration of acts and events concerning the civil status of Muslim Filipinos. At this juncture, it should be remembered that the authority of the Mayor to exercise administrative supervision over C/MCRs is not exclusive. The Civil Service Commission *(CSC)*, as the central personnel agency of the government, has the power to appoint and discipline its officials and employees and to hear and decide administrative cases instituted by or brought before it directly or on appeal. Under Section 9 of the Revised Uniform Rules on Administrative Cases in the Civil Service, the CSC is granted original concurrent jurisdiction over administrative cases.

4. REMEDIAL LAW; ACTIONS; JURISDICTION; JURISDICTION OVER THE SUBJECT MATTER DISTINGUISHED FROM JURISDICTION OVER THE PERSON.— It bears to stress at this point that this Court can resolve the foregoing jurisdictional issue even if the matter of jurisdiction was never raised by any of the parties. Jurisprudence is replete with rulings that jurisdiction, or the power and authority of a court to hear, try and decide a case must first be acquired by the court or an adjudicative body over the subject matter and the parties in order to have authority to dispose of the case on the merits. Elementary is the distinction between jurisdiction over the subject matter and jurisdiction over the person. Jurisdiction over the subject matter is conferred by the Constitution or by law. In contrast, jurisdiction over the person is acquired by the court by virtue of the party's voluntary submission to the authority of the court or through the exercise of its coercive processes. Jurisdiction over the person is waivable unlike jurisdiction over the subject matter which is neither subject to agreement nor conferred by consent of the parties.

LEONEN, *J.*, *concurring opinion*:

POLITICAL LAW; PRINCIPLE OF SEPARATION OF POWERS; THE PRINCIPLE OF SEPARATION OF POWERS EXTENDS TO THE AUTHORITY TO DISCIPLINE PUBLIC OFFICERS AND EMPLOYEES, HENCE, THE POWER TO DISCIPLINE REGISTRARS IS NOT LODGED WITHIN THE COURT; CASE AT BAR.— [O]ur recent decision in *Gonzales III v. Office of the*

> *President* noted that the principle of separation of powers extends to the authority to discipline public officers and employees: x x x The complaint subject of the present administrative matter charges respondent Macalinog S. Abdullah with partiality, violation of due process, dishonesty, and conduct unbecoming of a court employee. Article VIII, Section 6 of the 1987 Constitution provides for this court's "administrative supervision over all courts and the personnel thereof." However, a careful consideration of the complaint reveals that Abdullah is being held to account for acts committed in the course of his performance of functions, not as clerk of court but as a circuit (or civil) registrar. He is therefore being charged, not in his capacity as an officer performing judicial functions, but as an officer performing executive functions. In accordance with the principle of separation of powers thus, the task of disciplining Abdulla does not fall upon this court. x x x In Justice Mendoza's language thus, clerks of court of Shari'a Circuit Courts wear "two hats": a judicial hat, in respect of their being clerks of court; and an executive one, in respect of their being registrars. Indeed, disciplining civil registrars is well beyond the power of this court. The Code of Muslim Personal Laws, making reference to Commonwealth Act No. 3753, itself recognizes that the power to discipline registrars is not lodged with this court: x x x Clearly, the statutory provisions which vest executive functions in clerks of court of the Shari'a Circuit Courts dangerously transgress the fundamental constitutional boundaries between departments.

D E C I S I O N

MENDOZA, *J.*:

This resolves the complaint[1] of Baguan M. Mamiscal *(Mamiscal)* against respondent Macalinog S. Abdullah *(Abdullah),* Clerk of Court, Shari'a Circuit Court, Marawi City, for partiality, violation of due process, dishonesty, and conduct unbecoming of a court employee. Originally, the complaint also charged Judge Aboali J. Cali *(Judge Cali)*, Presiding Judge,

[1] *Rollo*, pp. 1-28.

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Shari'a Circuit Court, Marawi City, for his participation in the subject controversy. On January 9, 2013, the Court resolved to dismiss the charges against Judge Cali for lack of merit.[2]

The Facts

In his complaint, Mamiscal averred that on September 26, 2010, he and his wife, Adelaidah Lomondot *(Adelaidah)* had a heated argument. In a fit of anger, Mamiscal decided to divorce his wife by repudiating her *(talaq)*.[3] The repudiation was embodied in an agreement[4] *(kapasadan)* signed by Mamiscal and Adelaidah.

The next day, Adelaidah left their conjugal dwelling in Iligan City and went back to her family's home in Marinaut, Marawi City. A few days later, during the obligatory period of waiting *('iddah)*,[5] Mamiscal had a change of heart and decided to

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[2] *Id*. at 95-96.

[3] Art. 45. Definition and forms. — Divorce is the formal dissolution of the marriage bond in accordance with this Code to be granted only after the exhaustion of all possible means of reconciliation between the spouses. It may be effected by:

(a) Repudiation of the wife by the husband (*talaq*);
(b) Vow of continence by the husband (*ila*);
(c) Injurious assimilation of the wife by the husband (*zihar*);
(d) Acts of imprecation (*li'an*);
(e) Redemption by the wife (*khul'*);
(f) Exercise by the wife of the delegated right to repudiate (*tafwid*); or
(g) Judicial decree (*faskh*).

[4] *Rollo*, p. 13.

[5] Article 56, Presidential Decree *(P.D.)* No. 1083, otherwise known as the "Code of Muslim Personal Laws of the Philippines" defines *'iddah* as the period of waiting prescribed for a woman whose marriage has been dissolved by death or by divorce the completion of which shall enable her to contract a new marriage. In connection with divorce effected through *talaq*, Article 161 of the same Code provides, in part, that the *talaq* pronounced shall not become irrevocable until after the expiration of the prescribed '*iddah*. In case of divorce, the obligatory waiting period *('iddah)* equivalent to three (3) monthly courses from the date of divorce, should be observed; see Articles 29 and 57 of P.D. No. 1083.

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make peace with his wife. For the purpose, he sent their common relatives to see Adelaidah and make peace with her on his behalf.[6]

Almost five (5) months later, however, on February 23, 2011, Adelaidah filed[7] the Certificate of Divorce *(COD)*,[8] dated September 26, 2010, with the office of Abdullah for registration. Although unsigned, the certificate, purportedly executed by Mamiscal, certified that he had pronounced *talaq* in the presence of two (2) witnesses and in accordance with Islamic Law for the purpose of effecting divorce from Adelaidah. A notation on the certificate stated that it was being filed together with the *kapasadan*.

On the same day, Abdullah, in the exercise of his duty as both Clerk of Court and Circuit Civil Registrar,[9] issued the Invitation[10] notifying the couple and their representatives to appear before the Shari'a Circuit Court on February 28, 2011, in order

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[6] *Rollo*, p. 74.

[7] See *rollo*, p. 15.

[8] *Id.* at 14.

[9] Articles 81 and 83 of the Muslim Code of the Philippines provides:

Article 81. District Registrar. – The Clerk of Court of the Shari'a District Court shall, in addition to his regular functions, act as District Registrar of Muslim Marriages, Divorces, Revocations of Divorces, and Conversions within the territorial jurisdiction of said court. **The Clerk of Court of the Shari'a Circuit Court shall act as Circuit Registrar of Muslim Marriages, Divorces, Revocations of Divorces, and Conversations within his jurisdiction.**

Article 83. Duties of Circuit Registrar. – Every Circuit Registrar shall:

a) File every certificate of marriage (which shall specify the nature and amount of the dower agreed upon), divorce or revocation of divorce and conversion and such other documents presented to him for registration;

b) Compile said certificates monthly, prepare and send any information required of him by the District Registrar;

c) Register conversions involving Islam;

d) Issue certified transcripts or copies of any certificate or document registered upon payment of the required fees.

[10] *Rollo*, p. 15.

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to constitute the Agama Arbitration Council *(AAC)* that would explore the possibility of reconciling the spouses.[11]

On March 24, 2011, Abdullah issued the Certificate of Registration of Divorce[12] *(CRD)* finalizing the divorce between Mamiscal and Adelaidah.

Mamiscal sought the revocation of the CRD, questioning the validity of the *kapasadan* on which the CRD was based. In his motion, Mamiscal contended that the *kapasadan* was invalid considering that he did not prepare the same. Moreover, there were no witnesses to its execution. He claimed that he only signed the *kapasadan* because of Adelaidah's threats.

Mamiscal also questioned the validity of the COD, denying that he had executed and filed the same before the office of Abdullah. Insisting that he never really intended to divorce his wife, Mamiscal pointed out the fact that on December 13, 2010, before the expiration of the *'iddah*, he wrote his wife[13] to inform her that he was revoking the repudiation he made on September 26, 2010 and the *kapasadan* they entered into on the same day because he did it on the "spur of the moment."[14]

For Mamiscal, the CRD should be declared invalid considering that: a) he was deprived of due process because the AAC, before which he and his children were supposed to express their sentiments regarding the divorce, was yet to be constituted; b) three days before the issuance of the CRD, Professor Mustafa Lomala M. Dimaro, appeared before Judge Cali to discuss the possibility of reconciliation between the parties; and c) their children, Adelah Rima and Naim Mamiscal, prayed that the trial court advise their mother not to proceed with the divorce.[15]

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[11] Under Section 7, R.A. No. 1083 the Agama Arbitration Council is a body composed of the Chairman and a representative of each of the parties to constitute a council to take all necessary steps for resolving conflicts between them.

[12] *Rollo*, p. 49.

[13] *Id*. at 28.

[14] *Id*. at 20.

[15] *Id*. at 20-21.

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In addition to the revocation of the CRD, Mamiscal also prayed that Abdullah order the reconvening of the AAC and, thereafter, grant the restoration of his marital rights with Adelaidah.

On April 20, 2011, Abdullah denied Mamiscal's motion.[16] In sustaining the divorce between Mamiscal and Abdullah, Abdullah opined that it was simply his ministerial duty to receive the COD and the attached *kapasadan* filed by Adelaidah. Abdullah also noted that when the AAC was convened during the February 28, 2010 hearing, only Mamiscal and his representatives appeared. Considering the fact that Adelaidah manifested her opposition in writing to any reconciliation with her husband and the fact that the 90-day period of *'iddah* had already lapsed, Abdullah ruled that any move to reconstitute the AAC would have been futile because the divorce between Mamiscal and his wife had already become final and irrevocable.

Contending that the issuance of the CRD was tainted with irregularity, Mamiscal comes to this Court, through the subject complaint, charging Abdullah with partiality, violation of due process, dishonesty, and conduct unbecoming of a court employee.

The Charge

In his complaint, Mamiscal averred that Abdullah should not have entertained or acted upon the COD and the *kapasadan* filed by Adelaidah. He contended that under the Code of Muslim Personal Laws, a divorce under *talaq* could only be filed and registered by the male spouse, considering that female Muslims could do so only if the divorce was through *tafwid*.[17]

Moreover, Mamiscal alleged that Abdullah "fabricated and twisted the facts"[18] when he declared that only Mamiscal and his representative appeared when the AAC was convened. Mamiscal insisted that Adelaidah and her relatives were also

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[16] *Id*. at 4-5.

[17] Exercise by the wife of the delegated right to repudiate [Art. 45 (f), P.D. No. 1083].

[18] *Rollo*, p. 6.

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present during the hearing of February 28, 2010, and that the AAC was never convened because the parties agreed to reset the proceedings so that they could explore the possibility of reconciling the differences between them. Notwithstanding the ongoing mediation proceedings, Abdullah proceeded to act on the COD and finalized the divorce by issuing the CRD.

Finally, it was averred that Abdullah violated the Shari'a rules of procedure when he initially refused to receive Mamiscal's motion for reconsideration when it was first filed. Mamiscal also argued that Abdullah should not have considered the opposition of Adelaidah when he denied his attempt to seek reconsideration because he was never furnished a copy of Adelaidah's opposition.

Abdullah's Comment

In his comment,[19] Abdullah countered that although he had the authority to process the registration of the divorce as court registrar, he could not be held responsible for the contents of the COD and the *kapasadan* because his functions were only ministerial. Nevertheless, Abdullah asserted that the divorce between Mamiscal and Adelaidah had already attained finality, not only because of the lapse of the required '*iddah,* but also because the *kapasadan* and Adelaidah's opposition both proved that there could be no reconciliation between the spouses.

Abdullah also discounted any impropriety for processing the unsigned COD, arguing that since it was accompanied by the *kasapadan* which bore the signature of Mamiscal and his declaration that he was divorcing his wife by *talaq* – there was nothing wrong with Adelaidah filing it with his office. Moreover, with the lapse of the *'iddah*, Abdullah argued that the COD had remained to be nothing more than a formality for the purpose of registering the divorce with the National Statistics Office *(NSO)* and its issuance using the NSO security paper.

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[19] *Id*. at 31-60.

As to the allegations pertaining to the February 28, 2010 hearing, Abdullah stated that he only conducted the same because it was required under the Muslim Personal Code. Abdullah explained that he did not convene the ACC anymore not only because Adelaidah or her representatives were not present, but also because the divorcing couple's own children wrote to him opposing the convening of the council.

As to Mamiscal's contention that he already revoked his repudiation of his wife, Abdullah pointed out that his office was not informed of any revocation of the divorce. According to Abdullah, if Mamiscal had indeed revoked his repudiation, he should have complied with the provisions of Rule II (1)(2) of NSO Administrative Order No. 1, series of 2001, which required the husband to file five (5) copies of his sworn statement attesting to the fact of revocation, together with the written consent of his wife.

In its report,[20] the Office of the Court Administrator *(OCA)* found Abdullah guilty of gross ignorance of the law and recommended that he be fined in the amount of ₱10,000.00 with a stern warning that a repetition of the same offense shall be dealt with severely.

On January 30, 2014, Abdullah filed a motion,[21] praying for the early resolution of the complaint filed against him. Reiterating his plea for the dismissal of the said complaint, Abdullah claimed that he was due for compulsory retirement on June 5, 2014.

The Court's Ruling

At the outset, it must first be pointed out that while it may seem to be a related issue, the validity of the divorce between Mamiscal and Adelaidah is not in issue here. Whether or not Mamiscal had validly effected a divorce from his wife is a matter that must first be addressed by the Shari'a Circuit Court which, under the Code of Muslim Personal Laws of the Philippines

[20] *Id*. at 74-82.

[21] *Id*. at 100-102.

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(Muslim Code),[22] enjoys exclusive original jurisdiction to resolve disputes relating to divorce.

Thus, Article 155 of the Muslim Code provides:

> Article 155. *Jurisdiction.* The Shari'a Circuit Courts shall have **exclusive original jurisdiction** over;
>
> (1) All cases involving offenses defined and punished under this Code.
>
> (2) All civil actions and proceedings between parties who are Muslims or have been married in accordance with Article 13 involving disputes relating to:
>
> (a) Marriage;
>
> **(b) Divorce recognized under this Code;**
>
> (c) Betrothal or breach of contract to marry;
>
> (d) Customary dower (mahr);
>
> (e) Disposition and distribution of property upon divorce;
>
> (f) Maintenance and support, and consolatory gifts, (mut'a); and
>
> (g) Restitution of marital rights.
>
> (3) All cases involving disputes relative to communal properties.
>
> [Emphases Supplied]

Consequently, in resolving the subject complaint, the Court shall confine itself to the sole issue of whether or not Abdullah should be held administratively liable for his actions in connection with the registration of the divorce between Mamiscal and Adelaidah. A *priori* to the resolution of the foregoing issue is the question of whether this Court has jurisdiction to impose administrative sanction against Abdullah for his acts.

The Court rules in the negative.

The civil registrar is the person charged by law for the recording of vital events and other documents affecting the civil status of persons. The Civil Registry Law embraces all acts of civil life affecting the status of persons and is applicable to all persons residing in the Philippines.[23]

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[22] Otherwise known as Presidential Decree No. 1083.

[23] Preliminary Statement, Administrative Order No. 1, series of 1993.

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To ensure the proper registration of all facets of the civil life of Muslim Filipinos throughout the country, Article 81 of the Muslim Code provides:

> Article 81. *District Registrar.* The Clerk of Court of the Shari'a District Court shall, in addition to his regular functions, act as District Registrar of Muslim Marriages, Divorces, Revocations of Divorces, and Conversions within the territorial jurisdiction of said court. **The Clerk of Court of the Shari'a Circuit Court shall act as Circuit Registrar of Muslim Marriages, Divorces, Revocations of Divorces, and Conversions within his jurisdiction.**
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> [Emphasis Supplied]

In view of the above-quoted provision, it becomes apparent that the Clerk of Court of the Shari'a Circuit Court enjoys the privilege of wearing two hats: *first,* as Clerk of Court of the Shari'a Circuit Court, and *second,* as Circuit Registrar within his territorial jurisdiction. Although the Constitution vests the Court with the power of administrative supervision over all courts and its personnel,[24] this power must be taken with due regard to other prevailing laws.

Thus, Article 185 of the Muslim Code provides:

> Article 185. Neglect of duty by registrars. Any district registrar or circuit registrar who fails to perform properly his duties in accordance with this Code **shall be penalized in accordance with Section 18 of Act 3753.**

Commonwealth Act *(C.A.)* No. 3753[25] is the primary law that governs the registry of civil status of persons. To ensure that civil registrars perform their duties under the law, Section 18 of C.A. No. 3753 provides:

> Section 18. Neglect of duty with reference to the provisions of this Act. – Any local registrar who **fails to properly** perform his duties in accordance with the provisions of this Act and of the regulations issued hereunder, shall be punished for the first offense,

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[24] Section 6, Article VIII, 1987 Constitution.

[25] Otherwise known as the Law on Registry of Civil Status.

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by an administrative fine in a sum equal to his salary for not less than fifteen days nor more than three months, and for a second or repeated offense, by removal from the service.

[Emphasis Supplied]

The same Act provides:

Section 2. Civil Registrar-General his duties and powers. – The director of the National Library shall be Civil Registrar-General and shall enforce the provisions of this Act. The Director of the National Library, in his capacity as Civil Registrar-General, is hereby authorized to prepare and issue, with the approval of the Secretary of Justice, regulations for carrying out the purposes of this Act, and to prepare and order printed the necessary forms for its proper compliance. In the exercise of his functions as Civil Registrar-General, the Director of the National Library shall have the power to give orders and instructions to the local Civil registrars with reference to the performance of their duties as such. It shall be the duty of the Director of the National Library to report any violation of the provisions of this Act and **all irregularities, negligence or incompetency on the part of the officers designated as local civil registrars to the (Chief of the Executive Bureau or the Director of the Non-Christian Tribes) Secretary of the Interior, as the case may be, who shall take the proper disciplinary action against the offenders.**

[Emphasis and Underscoring Supplied]

Prescinding from the foregoing, it becomes apparent that **this Court does not have jurisdiction to impose the proper disciplinary action** against civil registrars. While he is undoubtedly a member of the Judiciary as Clerk of Court of the Shari'a Circuit Court, a review of the subject complaint reveals that Mamiscal seeks to hold Abdullah liable for registering the divorce and issuing the CRD **pursuant to his duties as Circuit Registrar of Muslim divorces**. It has been said that the test of jurisdiction is the nature of the offense and not the personality of the offender.[26] The fact that the complaint charges Abdullah for "conduct unbecoming of a court employee" is of

[26] *Corpus v. Tanodbayan*, 233 Phil. 279, 282 (1987).

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no moment. Well-settled is the rule that what controls is not the designation of the offense but the actual facts recited in the complaint. Verily, unless jurisdiction has been conferred by some legislative act, no court or tribunal can act on a matter submitted to it.[27]

It bears to stress at this point that this Court can resolve the foregoing jurisdictional issue even if the matter of jurisdiction was never raised by any of the parties. Jurisprudence is replete with rulings that jurisdiction, or the power and authority of a court to hear, try and decide a case must first be acquired by the court or an adjudicative body over the subject matter and the parties in order to have authority to dispose of the case on the merits.[28] Elementary is the distinction between jurisdiction over the subject matter and jurisdiction over the person. Jurisdiction over the subject matter is conferred by the Constitution or by law. In contrast, jurisdiction over the person is acquired by the court by virtue of the party's voluntary submission to the authority of the court or through the exercise of its coercive processes. Jurisdiction over the person is waivable unlike jurisdiction over the subject matter which is neither subject to agreement nor conferred by consent of the parties.[29]

Having settled the foregoing issue, the following question now confronts the Court: Who, among the various agencies and instrumentalities of the government, is empowered with administrative supervisory powers in order to impose disciplinary sanctions against erring civil registrars?

On this score, a recap of the legislative history surrounding our system of civil registration is in order.

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[27] *U.S. v. De La Santa*, 9 Phil. 22, 26 (1907).

[28] *Perkin Elmer Singapore Pte Ltd. v. Dakila Trading Corporation*, 556 Phil. 822, 836 (2007); *Bank of the Philippine Islands v. Sps. Evangelista*, 441 Phil. 445, 453 (2002).

[29] *Arnado v. Buban*, A.M. No. MTJ-04-1543, May 31, 2004, 430 SCRA 382, 386.

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The system of civil registration was first established in the Philippines by the revolutionary government on June 18, 1898 or barely six days after the declaration of the country's independence from Spain on June 12, 1898. Originally, the system was decentralized in the sense that civil registration was purely a local government responsibility. It was only on February 27, 1931, when C.A. No. 3753[30] took effect and centralized the system of civil registration in the country. Under this law, the director of the National Library was made responsible as the Civil Registrar-General to exercise technical supervision and ensure the proper establishment and maintenance of our civil registry system.

Then, following C.A. No. 591,[31] the duties exercised by the director of National Library with regard to matters concerning the system of civil registration were transferred to the Bureau of Census and Statistics. This bureau subsequently became the NSO,[32] whose Administrator concurrently served as the Civil Registrar-General.[33] At present, the National Statistician is empowered by Republic Act (R.A.) No. 10625, as Civil Registrar-General to exercise technical supervision of civil registrars.[34]

Due to the need to address the cultural peculiarities practiced by our Muslim brethren, however, Congress saw the need to

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[30] Otherwise known as the Law on Registry of Civil Status.

[31] Entitled "An act to Create a Bureau of the Census and Statistics to consolidate statistical activities of the government therein."

[32] By virtue of Executive Order No. 121, series of 1987.

[33] See <http://web0.psa.gov.ph/old/NCRV/civilregistration.html>; last visited January 22, 2015.

[34] SEC. 11. The National Statistician. – x x x

x x x x x x x x x

The National Statistician shall perform the following duties:

(a) x x x x x x x x x

(b) x x x x x x x x x

(c) Provide overall direction in the implementation of the Civil Registry Law and related issuances and **exercise technical supervision over the local civil registrars as Civil Registrar General**;

x x x x x x x x x

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designate the Clerk of Court of the Shari'a Circuit Court to act as the Circuit Registrar of Muslim marriages, divorces, revocations of divorces, and conversions to Islam within his jurisdiction. As earlier cited, Article 181 of the Muslim Code provides that: *The Clerk of Court of the Shari'a Circuit Court shall act as Circuit Registrar of Muslim Marriages, Divorces, Revocations of Divorces, and Conversions within his jurisdiction.*

In order to ensure that Circuit Registrars remain faithful to their duties, Article 82 of the Muslim Code tasks the Clerks of Court of the Shari'a *District* Court to act as District Registrars and exercise technical supervision over Circuit Registrars by requiring them to keep a proper recording of all matters pertaining to the personal lives of Muslims. Thus:

> Article 82. *Duties of District Registrar.* Every District Registrar shall exercise supervision over Circuit Registrars in every Shari'a District. He shall**, in addition to an entry book, keep and bind copies of certificates of Marriage, Divorce, Revocation of Divorce, and Conversion sent to him by the Circuit Registrars in separate general registers**. He shall send copies in accordance with Act. No. 3753, as amended, to the office of the Civil Registrar-General.

All these notwithstanding, the power of ***administrative*** supervision over civil registrars remains with the National Government. As Section 2 of CA No. 3753 provides:

> Section 2. Civil Registrar-General his duties and powers. – The director of the National Library shall be Civil Registrar-General and shall enforce the provisions of this Act. The Director of the National Library, in his capacity as Civil Registrar-General, is hereby authorized to prepare and issue, with the approval of the Secretary of Justice, regulations for carrying out the purposes of this Act, and to prepare and order printed the necessary forms for its proper compliance. In the exercise of his functions as Civil Registrar-General, the Director of the National Library shall have the power to give orders and instructions to the local Civil registrars with reference to the performance of their duties as such. It shall be the duty of the Director of the National Library **to report any violation of the provisions of this Act and all irregularities, negligence or incompetency on the part of the officers designated as local civil registrars to the (Chief of the Executive Bureau or the Director**

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of the Non-Christian Tribes) Secretary of the Interior, as the case may be, who shall take the proper disciplinary action against the offenders.

[Emphasis Supplied]

It was only with the advent of the Local Government Code that the power of administrative supervision over civil registrars was devolved to the **municipal and city mayors** of the respective local government units. Under the "faithful execution clause" embodied in Section 455(b)(1)(x)[35] and Section 444(b)(1)(x)[36]

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[35] Section 455. *Chief Executive; Powers, Duties and Compensation*. –

(a) x x x x x x x x x

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the city and its inhabitants pursuant to Section 16 of this Code, the city mayor shall:

(1) x x x x x x x x x

(x) Ensure that all executive officials and employees of the municipality faithfully discharge their duties and functions as provided by law and this Code, and cause to be instituted administrative or judicial proceedings against any official or employee of the municipality who may have committed as offense in the performance of his official duties;

x x x x x x x x x

[36] Section 444. *The Chief Executive: Powers, Duties, Functions and Compensation.* -

(a) x x x x x x x x x

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:

(1) Exercise general supervision and control over all programs, projects, services, and activities of the municipal government, and in this connection, shall:

x x x x x x x x x

(x) Ensure that all executive officials and employees of the municipality faithfully discharge their duties and functions as provided by law and this Code, and cause to be instituted administrative or judicial proceedings against any official or employee of the municipality who may have committed as offense in the performance of his official duties;

x x x x x x x x x

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of the Local Government Code, in relation to Section 479[37] under Article IX, Title V[38] of the same Code, the municipal and city mayors of the respective local government units, in addition to their power to appoint city or municipal civil registrars are also given ample authority to exercise **administrative supervision over civil registrars**. Thus, when Administrative Order No. 1, Series of 1993 of the Office of the Civil Registrar-General *(OCRG)* was passed to implement CA No. 3753 it was declared:

> Rule 1. Duties and Powers of the Civil Registrar-General. – The Civil Registrar-General shall have the following duties and powers:
>
> a) To enforce the provisions of Act No. 3753;
>
> b) To prepare and issue regulations for carrying out the purposes of Act No. 3753 and other laws relative to civil registration, and to prepare and order printed the necessary forms for its proper compliance;
>
> c) To give orders and instructions to the city/municipal civil registrars with reference to the performance of their duties as such; and
>
> d) To report any violation of the provisions of Act No. 3753 and other laws on civil registration, **and all irregularities, negligence or incompetency of city/municipal civil registrar to the concerned mayor who shall take the proper disciplinary action against the offender**.

This authority of the Mayor to exercise administrative jurisdiction over Circuit Registrars was also recognized *generally*, under Section 47(2) of the Administrative Code of 1987,[39] and

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[37] Entitled "The Civil Registrar; Qualifications, Powers and Duties."

[38] Appointed Local Officials Common To All Municipalities, Cities And Provinces.

[39] Section 47. *Disciplinary Jurisdiction*.– x x x

(2) The Secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. Their decisions shall be final in case the penalty imposed

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specifically, under Rule 11 of Administrative Order No. 2, Series of 1993[40] of the OCRG, and the more recent Administrative Order No. 5, Series of 2005[41] of the same office, which applies specially to the registration of acts and events concerning the civil status of Muslim Filipinos.

At this juncture, it should be remembered that the authority of the Mayor to exercise administrative supervision over C/MCRs is not exclusive. The Civil Service Commission *(CSC)*, as the central personnel agency of the government, has the power to appoint and discipline its officials and employees and to hear and decide administrative cases instituted by or brought before it directly or on appeal.[42] Under Section 9 of the Revised Uniform Rules on Administrative Cases in the Civil Service, the CSC is granted original concurrent jurisdiction over administrative cases. Thus:

Section 9. *Jurisdiction of Heads of Agencies*. – The Secretaries and heads of agencies, and other instrumentalities, provinces, cities and municipalities shall have **original concurrent jurisdiction** with

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is suspension for not more than thirty days or a fine in an amount not exceeding thirty days' salary. In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned.

[40] RULE 11. *Other Aspects of Registration*. – All other aspects of registration such as assigning of registry number, records keeping, submission of reports, issuance of certifications, **violation of civil registration laws, and others shall be governed by Act 3753, Presidential Decree No. 1083, Administrative Order No. 1, Series of 1993 and other pertinent laws, circulars and issuances.**

[41] Rule 15. *Penalty* – Any person found violating this Order shall be liable under the existing civil registry laws, P.D. 1083, civil service laws and other pertinent laws.

[42] *Civil Service Commission v. Court of Appeals*, G.R. Nos. 176162 & 178845, October 9, 2012, 682 SCRA 353, 364, citing Article IX (B) Section 2, 1987 Constitution and Book V, Title I, Subtitle A, Chapter 3, Section 12(6) and (11).

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the Commission over their respective officers and employees. x x x

Consequently, it behooves the Court to also forward the subject complaint to the Office of the Mayor, Marawi City and to the CSC for appropriate action.

WHEREFORE, the administrative matter against Macalinog S. Abdullah, Clerk of Court II, Shari'a Circuit Court, Marawi City, for partiality, violation of due process, dishonesty, and conduct unbecoming a court employee is **DISMISSED** for lack of jurisdiction, without prejudice. The complaint of Baguan M. Mamiscal against Macalinog S. Abdullah is hereby **REFERRED** to the Office of the Mayor, Marawi City and the Civil Service Commission for appropriate action.

SO ORDERED.

Carpio (Chairperson),Bersamin,[*] and *del Castillo, JJ.,* concur.

Leonen, J., see concurring opinion.

CONCURRING OPINION

LEONEN, *J.*:

I join the ponencia in holding that the complaint against respondent Macalinog S. Abdullah must be dismissed. I write separately to draw emphasis on how this dismissal stems from the fundamental principle of separation of powers.

Separation of powers is basic in our constitutional design. As explained by this court in the landmark case of *Angara v. Electoral Commission*:[1]

The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by

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[*] Designated Acting Member in lieu of Associate Justice Arturo D. Brion, per Special Order No. 2079 dated June 29, 2015.

[1] 63 Phil. 139 (1936). [Per *J.* Laurel, *En Banc*].

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actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government.[2]

The doctrine of separation of powers was also discussed in *United States v. Ang Tang Ho*,[3] a case which was decided when the Philippines was still under American rule:

> By the organic law of the Philippine Islands and the Constitution of the United States all powers are vested in the Legislative, Executive and Judiciary. It is the duty of the Legislature to make the law; of the Executive to execute the law; and of the Judiciary to construe the law. The Legislature has no authority to execute or construe the law, the Executive has no authority to make or construe the law, and the Judiciary has no power to make or execute the law. Subject to the Constitution only, the power of each branch is supreme within its own jurisdiction, and it is for the Judiciary only to say when any Act of the Legislature is or is not constitutional.[4]

Justice Antonio Carpio, quoting Justice Presbitero Velasco's dissent in *Province of North Cotabato, et al. v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, et al.[5] noted in his own dissenting opinion in *Metro Manila Development Authority v. Concerned Residents of Manila Bay*[6] that separation of powers entails ensuring that no branch of government shall be controlled or subjected to the influence of another:

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[2] *Id*. at 156.

[3] 43 Phil. 1 (1922). [Per *J*. Johns, *En Banc*].

[4] *Id*. at 6.

[5] 589 Phil. 387 (2008) [Per *J*. Carpio-Morales, *En Banc*].

[6] G.R. Nos. 171947-48, February 15, 2011, 643 SCRA 90 [Per *J*. Velasco, Jr., *En Banc*].

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Now then, if it be important to restrict the great departments of government to the exercise of their appointed powers, it follows, as a logical corollary, equally important, that one branch should be left completely independent of the others, independent not in the sense that the three shall not cooperate in the common end of carrying into effect the purposes of the constitution, but *in the sense that the acts of each shall never be controlled by or subjected to the influence of either of the branches*.[7] [Emphasis supplied]

More to the point, our recent decision in *Gonzales III v. Office of the President*[8] noted that the principle of separation of powers extends to the authority to discipline public officers and employees:

While the manner and cause of removal are left to congressional determination, this must still be consistent with constitutional guarantees and principles, namely: the right to procedural and substantive due process; the constitutional guarantee of security of tenure; *the principle of separation of powers*; and the principle of checks and balances.[9] (Emphasis supplied)

This is a point I echoed in my concurring and dissenting opinion in *Gonzales*:

I agree with the positions of Justice Brion and Justice Abad in their dissenting opinions on the September 4, 2012 decision that the independence of the Office of the Ombudsman is of such a fundamental and unequivocal nature. This independence is essential to carry out the functions and duties of the Office of the Ombudsman. I agree with their position that since those in the Executive branch are also subject to the disciplinary authority of the Office of the Ombudsman, providing the Office of the President with the power to remove would be an impediment to the fundamental independence of the Ombudsman.

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[7] *Id*. at 126-127.

[8] G.R. No. 196231, January 28, 2014, 714 SCRA 611 [Per *J*. Brion, *En Banc*].

[9] *Id*. at 655.

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We cannot allow a circumvention of the separation of powers by construing Article XI, Section 2 of the Constitution[10] as delegating plenary and unbounded power to Congress. The exclusive power of the Ombudsman to discipline her own ranks is fundamental to the independence of her office.[11]

The complaint subject of the present administrative matter charges respondent Macalinog S. Abdullah with partiality, violation of due process, dishonesty, and conduct unbecoming of a court employee. Article VIII, Section 6 of the 1987 Constitution provides for this court's "administrative supervision over all courts and the personnel thereof." However, a careful consideration of the complaint reveals that Abdullah is being held to account for acts committed in the course of his performance of functions, not as clerk of court but as a circuit (or civil) registrar. He is therefore being charged, not in his capacity as an officer performing judicial functions, but as an officer performing executive functions. In accordance with the principle of separation of powers thus, the task of disciplining Abdulla does not fall upon this court.

As ably pointed out by Justice Jose C. Mendoza, Article 81 of Presidential Decree No. 1083, otherwise known as the Code of Muslim Personal Laws[12] provides that clerks of court of Shari'a

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[10] Section 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

[11] *J.* Leonen, Dissenting in *Gonzales III v. Office of the President,* G.R. No. 196231, January 28, 2014, 714 SCRA 611, 693 [Per *J.* Brion, *En Banc*].

[12] Art. 81. District Registrar. — The Clerk of Court of the Shari'a District Court shall, in addition to his regular functions, act as District Registrar of Muslim Marriages, Divorces, Revocations of Divorces, and Conversions within the territorial jurisdiction of said court. The Clerk of Court of the Shari'a Circuit Court shall act as Circuit Registrar of Muslim

Circuit Courts shall also acts as circuit registrars. In Justice Mendoza's language thus, clerks of court of Shari'a Circuit Courts wear "two hats":[13] a judicial hat, in respect of their being clerks of court; and an executive one, in respect of their being registrars. Indeed, disciplining civil registrars is well beyond the power of this court.

The Code of Muslim Personal Laws, making reference to Commonwealth Act No. 3753,[14] itself recognizes that the power to discipline registrars is not lodged with this court:

Art. 185. Neglect of duty by registrars. — Any district registrar or circuit registrar who fails to perform properly his duties in accordance with this Code shall be penalized in accordance with Section 18 of Act No. 3753.

Section 18 of Commonwealth Act No. 3753 provides:

Section 18. Neglect of duty with reference to the provisions of this Act. – Any local registrar who fails properly to perform his duties in accordance with the provisions of this Act and of the regulations issued hereunder, shall be punished for the first offense, by an administrative fine in a sum equal to his salary for not less than fifteen days nor more than three months, and for a second or repeated offense, by removal from the service.

Moreover, Section 2 of Commonwealth Act No. 3753 provides for the proper disciplining authority for civil registrars:

Section 2. Civil Registrar-General his duties and powers. – The director of the National Library shall be Civil Registrar-General and shall enforce the provisions of this Act. The Director of the National Library, in his capacity as Civil Registrar-General, is hereby authorized to prepare and issue, with the approval of the Secretary of Justice, regulations for carrying out the purposes of this Act, and to prepare and order printed the necessary forms for its proper

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Marriages, Divorces, Revocations of Divorces, and Conversions within his jurisdiction.

[13] Draft *ponencia*, p. 7.

[14] Com. Act No. 3753 (1930), Law on Registry of Civil Status.

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compliance. In the exercise of his functions as Civil Registrar-General, the Director of the National Library shall have the power to give orders and instructions to the local Civil registrars with reference to the performance of their duties as such. It shall be the duty of the Director of the National Library to report any violation of the provisions of this Act and all irregularities, negligence or incompetency on the part of the officers designated as local civil registrars to the (Chief of the Executive Bureau or the Director of the Non-Christian Tribes) Secretary of the Interior, as the case may be, who shall take the proper disciplinary action against the offenders.

Moreover, as noted by Justice Mendoza:

> [T]he subject complaint should have been filed with the Regional government of the Autonomous Region in Muslim Mindanao (ARMM), for it is empowered by Republic Act no. 6734 to exercise supervisory power over "all line agencies and offices of the National Government" which are not otherwise excluded therein.[15] (Citation omitted)

Clearly, the statutory provisions which vest executive functions in clerks of court of the Shari'a Circuit Courts dangerously transgress the fundamental constitutional boundaries between departments. It creates an enclave within the judiciary that is not subject to the disciplinary power of this court but of executive bodies.[16] Had it been raised as an issue in this case, I would have had no hesitation to vote that they be declared unconstitutional. But, this is not the lis mota of the present case.

I concur in the ponencia. The complaint subject of this administrative matter must be dismissed without prejudice. A copy of our disposition should be served on the Department of Justice, the Senate President, the Speaker of the House of Representatives, and the Secretary of the National Commission on Muslim Filipinos.

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[15] Draft *Ponencia*, p. 9.

[16] Pursuant to Executive Order No. 121, January 30, 1987, the Administrator of the National Statistics Office has the over-all technical supervision over local civil registrars.