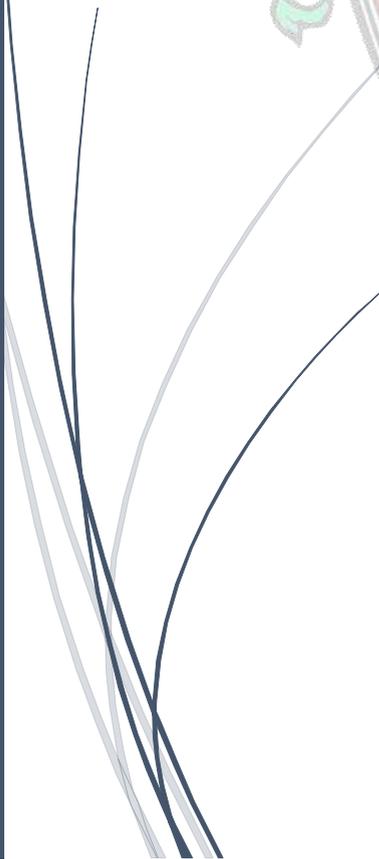




Legal and Judicial Ethics

Case Digest



**UNIVERSITY OF SANTO TOMAS
FACULTY OF CIVIL LAW**

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Legal and Judicial Ethics**

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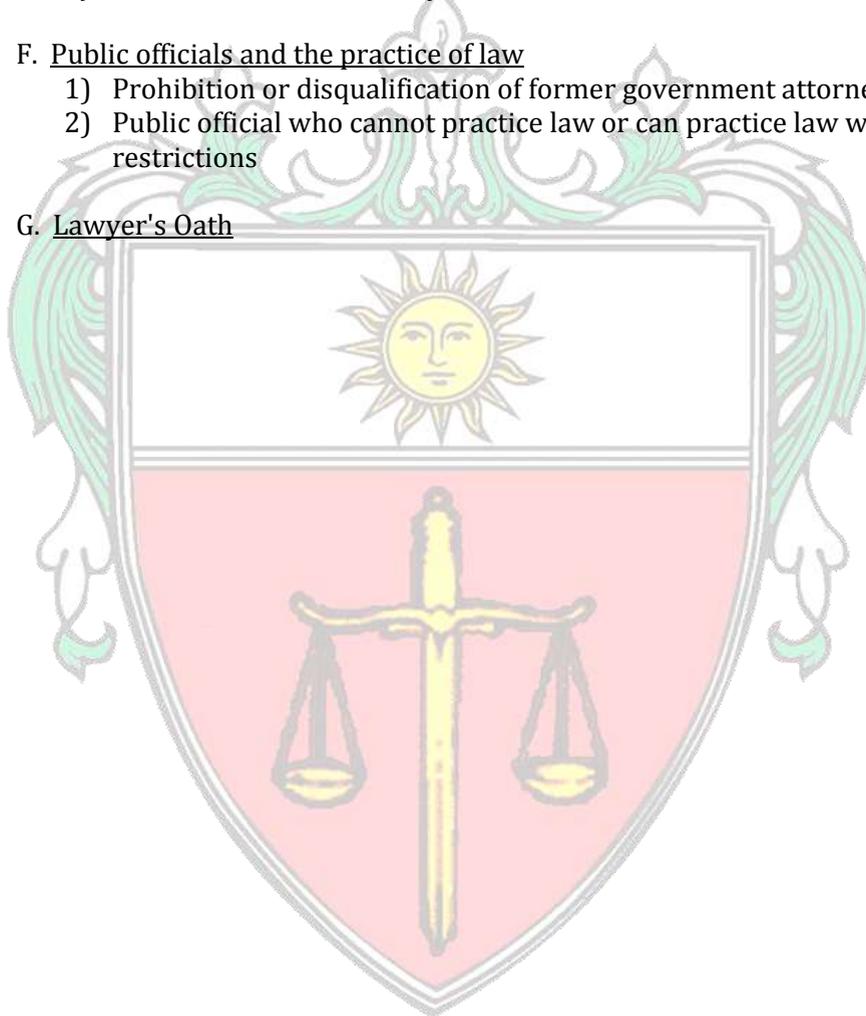
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Practice of law is not limited to the conduct of cases or litigation in court; it embraces the preparation of pleadings and other papers incident to actions and special proceedings, the management of such actions and proceedings on behalf of clients before judges and courts, and in addition, conveying.

Taking into consideration the modern definition of practice of law and the liberal construction intended by the framers of the Constitution, verily more than satisfy the constitutional requirement — that he has been engaged in the practice of law for at least ten years.

FACTS:

Christian Monsod was nominated by President Corazon C. Aquino to the position of Chairman of the COMELEC in a letter received by the Secretariat of the Commission on Appointments. Commission on Appointments confirmed Monsod's nomination. Cayetano opposed and challenged the nomination and the subsequent confirmation of the Commission because allegedly Monsod does not possess the required qualification of having been engaged in the practice of law for at least ten years.

ISSUE:

Whether or not Monsod possesses the required qualification for the position of Chairman of COMELEC. **(YES)**

HELD:

The case of *Philippine Lawyers Association v. Agrava* stated that *the practice of law* is not limited to the conduct of cases or *litigation in court*; it embraces the preparation of pleadings and other papers incident to actions and special proceedings, the management of such actions and proceedings on behalf of clients before judges and courts, and in addition, conveying. In general, all *advice to clients*, and all action taken for them in matters *connected with the law* incorporation services, assessment and condemnation services contemplating an appearance before a judicial body, the foreclosure of a mortgage, enforcement of a creditor's claim in bankruptcy and insolvency proceedings, and conducting proceedings in attachment, and in matters of estate and guardianship have been held to constitute law practice, as do the preparation and drafting of legal instruments, *where the work done involves the determination by the trained legal mind of the legal effect of facts and conditions.*"

Interpreted in the light of the various definitions of the term "practice of law", particularly the modern concept of law practice, and taking into consideration the liberal construction intended by the framers of the Constitution, Atty. Monsod is a member of the Philippine Bar, having passed the bar examinations of 1960 with the grade of 86.55%. He has been a dues paying member of the Integrated Bar of the Philippines. After passing the Bar, he worked in his father's law office. Monsod also

worked as an operations officer for World Bank Group (1963-1970). Upon his return to the Philippines, he worked as Chief Executive officer of Meralco Group, and subsequently rendered service to various company either as legal and economic consultant or as chief executive officer. He also served as former Secretary General (1986), and National Chairman of NAMFREL (1987), as a member of the Constitutional Commission (1986-1987) and Davide Commission (1990), and as Chairman of Committee on Accountability of Public Officers.

Atty. Monsod's past work experiences as a lawyer-economist, a lawyer-manager, a lawyer-entrepreneur of industry, a lawyer-negotiator of contracts, and a lawyer-legislator of both the rich and the poor — verily more than satisfy the constitutional requirement — that he has been engaged in the practice of law for at least ten years.

2. Re: Atty. Edillon A.M. No. 1928, August 3, 1978. Castro, C.J.

Requiring members of a privileged class, such as lawyers are, to pay a reasonable fee toward defraying the expenses of regulation of the profession to which they belong is indeed imposed as a regulatory measure, designed to raise funds for carrying out the objectives and purposes of integration. Such compulsion is justified as a valid exercise of the police power of the State over an important profession.

FACTS:

Atty. Edillon is a duly licensed practicing attorney in the Philippines. In 1975, the IBP Board of Governors unanimously adopted Resolution No. 75-65 in Administrative Case No. MDD-1 (In the Matter of the Membership Dues Delinquency of Atty. Marcial A. Edillon) recommending to the Court the removal of the name of the respondent from its Roll of Attorneys for "stubborn refusal to pay his membership dues" notwithstanding due notice pursuant to Par. 2, Sec. 24, Art. III of the By-Laws of the IBP.

In his pleadings, conceded the propriety and necessity of the integration of the Bar of the Philippines, but questions the all-encompassing, all-inclusive scope of membership therein and the obligation to pay membership dues arguing that the provisions therein (Section 1 and 9 of the Court Rule 139-A) constitute an invasion of his constitutional right in the sense that he is being compelled, as a precondition to maintaining his status as a lawyer in good standing, to be a member of the IBP and to pay the corresponding dues, and that as a consequence of this compelled financial support of the said organization to which he is admittedly personally antagonistic, he is being deprived of the rights to liberty and property guaranteed to him by the Constitution. Respondent likewise questions the jurisdiction of the Supreme Court to strike his name from the Roll of Attorneys, contending that this matter is not among the justiciable cases triable by the Court but is of an administrative nature pertaining to an administrative body.

ISSUES:

Whether or not a member of the Philippine Bar may be compelled to pay the required membership fee in IBP.

RULING:

An "Integrated Bar" is a State-organized Bar, to which every lawyer must belong, as distinguished from bar associations organized by individual lawyers themselves, membership in which is voluntary. Integration of the Bar is essentially a process by which every member of the Bar is afforded an opportunity to do his share in carrying out the objectives of the Bar as well as obliged to bear his portion of its responsibilities. Organized by or under the direction of the State, an integrated Bar is an official national body of which all lawyers are required to be members. They are, therefore, subject to all the rules prescribed for the governance of the Bar, including the requirement of payment of a reasonable annual fee for the effective discharge of the purposes of the Bar xxx.

The Court sees nothing in the Constitution that prohibits the Court, under its constitutional power and duty to promulgate rules concerning the admission to the practice of law and the integration of the Philippine Bar (Article X, Section 5 of the 1973 Constitution) — which power the respondent acknowledges — from requiring members of a privileged class, such as lawyers are, to pay a reasonable fee toward defraying the expenses of regulation of the profession to which they belong. It is quite apparent that the fee is indeed imposed as a regulatory measure, designed to raise funds for carrying out the objectives and purposes of integration. Such compulsion is justified as a valid exercise of the police power of the State over an important profession.

3. Soriano v. Dizon, A.C. No. 792, January 25, 2006. Per Curiam

"Homicide may or may not involve moral turpitude depending on the degree of the crime. Moral turpitude is not involved in every criminal act and is not shown by every known and intentional violation of statute, but whether any particular conviction involves moral turpitude may be a question of fact and frequently depends on all the surrounding circumstances."

The circumstances clearly evince the moral turpitude of respondent and his unworthiness to practice law. Atty. Dizon was definitely the aggressor, as he pursued and shot complainant when the latter least expected it. Under the circumstances, those were reasonable actions clearly intended to fend off the lawyer's assault. The Court also consider the trial court's finding of treachery as a further indication of the skewed morals of respondent.

FACTS:

Atty. Dizon was driving his car along Abanao Street in Baguio when a taxi driver, Soriano, overtook the car driven by Dizon who was under the influence of liquor. Incensed, Dizon tailed the taxi, pulled it over, and berated Soriano and held him by his shirt. To stop the aggression, Soriano forced open his door causing the accused to fall to the ground. Soriano got out of his car to help him get up. But Dizon, now enraged, stood up immediately and boxed Soriano on the chest. Dizon fell down a second time, got up again and was about to box Soriano, but the latter caught his fist

and turned his arm around. Soriano held on to Dizon until he could be pacified and then released him. Dizon went back to his car and got his revolver. As Soriano was handing the eyeglasses of Dizon which fell on the ground, Dizon fired and shot him on the neck. Soriano was brought to the hospital and would have surely died had he not received timely medical assistance.

Dizon was eventually convince of frustrated homicide, but was granted probation, conditioned of payment of civil liabilities. However, according to Soriano, Dixon still has yet to fulfill his obligation to pay such liability. Soriano then filed a complaint for disbarment against Dixon before the IBP Commission on Bar Discipline to which the Commission recommended Dizon's disbarment for having been convicted of a crime involving moral turpitude and for violating Rule 1.01 of Canon 1 of the CPR.

ISSUE:

Whether or not the crime of frustrated homicide involves moral turpitude. (In this case, **YES**)

RULING:

Moral turpitude has been defined as "everything which is done contrary to justice, modesty, or good morals; an act of baseness, vileness or depravity in the private and social duties which a man owes his fellowmen, or to society in general, contrary to justice, honesty, modesty, or good morals."

In *International Rice Research Institute (IRRI) v. NLRC*, the Court explained that it had the discretion to determine whether a crime involves moral turpitude. As further explained, "*Homicide may or may not involve moral turpitude depending on the degree of the crime. Moral turpitude is not involved in every criminal act and is not shown by every known and intentional violation of statute, but whether any particular conviction involves moral turpitude may be a question of fact and frequently depends on all the surrounding circumstances.*"

Under Section 27 of Rule 138 of the Rules of Court, conviction for a crime involving moral turpitude is a ground for disbarment or suspension. By such conviction, a lawyer is deemed to have become unfit to uphold the administration of justice and to be no longer possessed of good moral character. In the instant case, respondent has been found guilty; and he stands convicted, by final judgment, of frustrated homicide.

As the IBP correctly found in the present case, the circumstances clearly evince the moral turpitude of respondent and his unworthiness to practice law. Atty. Dizon was definitely the aggressor, as he pursued and shot complainant when the latter least expected it. Under the circumstances, those were reasonable actions clearly intended to fend off the lawyer's assault. The Court also consider the trial court's finding of treachery as a further indication of the skewed morals of respondent.

4. Re: Telesforo Diao v. Martinez, A.C. No. 244, March 29, 1963. Bengzon, J.

As provided by the Rules, the applicant for the Bar examination must affirm under oath that previous to the study of law, he had successfully and satisfactorily completed the required pre-legal education (A.A.) as prescribed by the Department of Private Education." Further, passing the Bar examination is not the only qualification to become an attorney-at-law; taking the prescribed courses of legal study in the regular manner is equally essential.

Diao was not qualified to take the bar examinations; but due to his false representations, he was allowed to take it and passed it, and was thereafter admitted to the Bar. Such admission having been obtained under false pretenses must be, and is hereby revoked.

FACTS

In 1953, Telesforo Diao was admitted to the Bar. About 2 years later, Severino Martinez charged him having falsely represented in his application for such Bar examination, that he had the requisite academic qualifications. The Solicitor General investigated and later recommended Diao's name to be erased from the roll of attorneys because contrary to the allegations in his petition for examination in this Court, Diao *had not completed*, before taking up law subjects, the required pre-legal education prescribed by the Department of Private Education, specially in the following particulars:

- (a) Diao did not complete his high school training; and
- (b) Diao never attended Quisumbing College, and never obtained his A.A. diploma therefrom — which contradicts the credentials he had submitted in support of his application for examination, and of his allegation therein of successful completion of the "required pre-legal education".

Diao admits the first charge, but claims that although he had left high school in his third year, he entered the service of U. S. Army, passed the General Classification Test given therein, which (according to him) is equivalent to a high school diploma, and upon his return to civilian life, the educational authorities considered his army service as the equivalent of 3rd and 4th year high school. As to the second charge, he asserted he had obtained his A.A. title from the Arellano University in April 1949, he says he was erroneously certified, due to confusion, as a graduate of Quisumbing College, in his school records.

ISSUE

Whether or not Diao should continue practicing law despite not completing the pre-law requirements. (NO)

RULING

Diao's explanation is not acceptable since the "error" or "confusion" was of his own making. Had his application disclosed his having obtained A.A. from Arellano University, it would also have disclosed that he got it in *April 1949*, thereby showing that he began his law studies (2nd semester of 1948- 1949) *six months before obtaining* his Associate in Arts degree, and then he would not have been permitted to take the bar tests because the Rules provide, and the applicant for the Bar examination must affirm under oath, "That previous to the study of law, he had successfully and satisfactorily completed the required pre-legal education (A.A.) as prescribed by the Department of Private Education."

Diao was not qualified to take the bar examinations; but due to his false representations, he was allowed to take it and passed it, and was thereafter admitted to the Bar. Such admission having been obtained under false pretenses must be, and is hereby revoked. The fact that he hurdled the Bar examinations is immaterial. Passing such examination is *not the only* qualification to become an attorney-at-law; taking the prescribed courses of legal study in the regular manner *is equally essential*.

5. Re: Atty. Jose Principe, Bar Matter No. 543, September 20, 1990.
6. PAFLU v. Binalbagan, G.R. L-23959, November 29, 1971. Reyes, J.B.L.

Section 24, Rule 138, Rules of Court imports the existence of attorney-client relationship as a condition for the recovery of attorney's fee. Such relationship cannot exist unless the representative is a lawyer. Since respondent Muning is not one, he cannot establish an attorney-client relationship with Enrique Entila and Victorino Tenezas or with PAFLU, and he cannot, therefore, recover attorney's fees.

FACTS

In Case No. 72-ULP-Iloilo titled, "*PAFLU, et al, vs. Binalbagan-Isabela Sugar Co., et al.*," the Court of Industrial Relations rendered a decision ordering the reinstatement with backwages of complainants Enrique Entila and Victorino Tenazas. Said decision became final and executory. Cipriano Cid & Associates, counsel of record for the winning complainants, filed a notice of attorney's hen equivalent to 30% of the total backwages. Atty. Atanacio Pacis also filed a similar notice for a reasonable amount. Complainants Entila and Tenazas filed a manifestation indicating their non-objection. Then, Quintin Muning filed a "Petition for Award of Services Rendered" equivalent to 20% of the backwages. Muning's petition was opposed by Cipriano Cid & Associates on the ground that he is not a lawyer.

The records of case show that the charge was filed by Cipriano Cid & Associates through Atty. Atanacio Pacis. All the hearings were held in Bacolod City and appearances made in behalf of the complainants were at first by Atty. Pacis and subsequently by Muning.

The Court of Industrial Relations awarded 25% of the backwaters as compensation where 10% of such was awarded to Muning who is not a lawyer. In this petition, the

10% award given to Muning was sought to be voided.

ISSUE

Whether or not a non-lawyer may recover attorney's fee for legal services rendered.
(NO)

RULING

In *Amalgamated Laborers' Association, et al. vs. Court of Industrial Relations, et al.*, it was stated that an agreement providing for the division of attorney's fees, whereby a non-lawyer union president is allowed to share in said fees with lawyers, is condemned by Canon 34 of Legal Ethics and is immoral and cannot be justified. An award by a court of attorney's fees is no less immoral in the absence of a contract, as in the present case.

The provision in Section 5(b) of Republic Act No. 875 provides that, "*In the proceeding before the Court or Hearing Examiner thereof, the parties shall not be required to be represented by legal counsel . . .*" is no justification for a ruling that the person representing the party-litigant in the Court of Industrial Relations, even if he is not a lawyer, is entitled to attorney's fees: for the same section adds that, "*it shall be the duty and obligation of the Court or Hearing Officer to examine and cross examine witnesses on behalf of the parties and to assist in the orderly presentation of evidence.*" thus making it clear that the representation should be exclusively entrusted to duly qualified members of the bar.

The permission for a non-member of the bar to represent or appear or defend in the said court on behalf of a party-litigant does not by itself entitle the representative to compensation for such representation. As Section 24, Rule 138, Rules of Court imports the existence of attorney-client relationship as a condition for the recovery of attorney's fee. Such relationship cannot exist unless the representative is a lawyer. Since respondent Muning is not one, he cannot establish an attorney-client relationship with Enrique Entila and Victorino Tenezas or with PAFLU, and he cannot, therefore, recover attorney's fees.

7. *People v. Villanueva*, G.R. No. L-19450, May 27, 1965. Paredes, J.

Practice is more than an isolated appearance, for it consists in frequent or customary action, a succession of acts of the same kind. In other words, it is frequent habitual exercise. Practice of law to fall within the prohibition of statute has been interpreted as customarily or habitually holding one's self out to the public, as a lawyer and demanding payment for such services. The appearance of Atty. Fule in one occasion is not conclusive as determinative of engagement in the private practice of law. Further, he was permitted by the SOJ to represent the complainant.

FACTS

Simplicio Villanueva was charged with the crime of Malicious Mischief Before the Justice of the Peace Court of Alaminos, Laguna. The complainant in the same case

was represented by City Attorney Ariston Fule of San Pablo City, having entered his appearance as private-prosecutor, after securing the permission of the Secretary of Justice. The condition of his appearance as such, was that every time he would appear at the trial of the case, he would be considered on official leave of absence, and that he would not receive any payment for his services.

The appearance of City Attorney Fule as private prosecutor was questioned by the counsel for the accused, invoking the case of *Aquino, et al., vs. Blanco, et al.*, wherein it was ruled that "when an attorney had been appointed to the position of Assistant Provincial Fiscal or City Fiscal and therein qualified, by operation of law, he ceased to engage in private law practice." Section 32, Rule 127, now Section 35, Rule 138 of the Revised Rules of Court was also invoked which bars certain attorneys from practicing.

ISSUE

Whether or not Atty. Rule violated Section 32, Rule 127, now Section 35, Rule 138 of the Revised Rules of Court. (NO)

RULING

The isolated appearance of City Attorney Fule did not constitute private practice, within the meaning and contemplation of the Rules. Practice is more than an isolated appearance, for it consists in frequent or customary action, a succession of acts of the same kind. In other words, it is frequent habitual exercise. Practice of law to fall within the prohibition of statute has been interpreted as customarily or habitually holding one's self out to the public, as a lawyer and demanding payment for such services. The appearance as counsel on one occasion, is not conclusive as determinative of engagement in the private practice of law. Further, Atty. Fule had been given permission by his immediate Superior, the Secretary of Justice, to represent the complainant in the case.

8. Atty. Mane v. Judge Belen, A.M. No. RTJ 08-2119, June 30, 2008. Carpio-Morales, J.

An alumnus of a particular law school has no monopoly of knowledge of the law. By hurdling the Bar Examinations which this Court administers, taking of the Lawyer's oath, and signing of the Roll of Attorneys, a lawyer is presumed to be competent to discharge his functions and duties as, inter alia, an officer of the court, irrespective of where he obtained his law degree. For a judge to determine the fitness or competence of a lawyer primarily on the basis of his alma mater is clearly an engagement in argumentum ad hominem.

The acts and statements of Judge Belen questioning the capability and credibility of Atty. Mane by sole reason of his alma matter is considered conduct unbecoming of a judge.

FACTS

Atty. Mane filed a letter-complaint to the OCA charging Judge Belen of “demeaning, humiliating and berating” him during hearing on the case *Rural Bank of Cabuyao, Inc. v. Malabanan, et al.* in which he was a counsel for the plaintiff. In the course of the proceeding, Judge Belen asked Atty. Mane if he was from the UP College of Law to which Atty. Mane answered in the negative and stated that he is from Manuel L. Quezon University. Judge Belen then told him that since Atty. Mane is not from UP College of Law, he cannot equate Atty. Mane to himself as not all law students and law schools are not created equal.

Further, Judge Belen seemingly disregarded the case at hand as Atty. Mane’s motion remained unacted. The OCA, found that Judge Belen’s statements and actions made during the hearing constitute conduct unbecoming of a judge and a violation of Canon 3 of the Code of Judicial Conduct. Further, his insulting statements which tend to question Atty. Mane’s capability and credibility is clearly unwarranted and inexcusable.

ISSUE

Whether or not the statements and actions made by Judge Belen during the hearing constitute conduct unbecoming of a judge and a violation the Code of Judicial Conduct. (YES)

RULING

The Court agrees with the findings of the OCA. An alumnus of a particular law school has no monopoly of knowledge of the law. By hurdling the Bar Examinations which this Court administers, taking of the Lawyer's oath, and signing of the Roll of Attorneys, a lawyer is presumed to be competent to discharge his functions and duties as, *inter alia*, an officer of the court, irrespective of where he obtained his law degree. For a judge to determine the fitness or competence of a lawyer primarily on the basis of his alma mater is clearly an engagement in argumentum ad hominem.

A judge must address the merits of the case and not on the person of the counsel. If respondent felt that his integrity and dignity were being "assaulted", he acted properly when he directed complainant to explain why he should not be cited for contempt. He went out of bounds, however, when he, as the above-quoted portions of the transcript of stenographic notes show, engaged on a supercilious legal and personal discourse.

9. *People v. Maceda*, GR Nos. 89591-96, January 4, 2000. Padilla, J.

Contempt of court presupposes a contumacious attitude, a flouting or arrogant belligerence, a defiance of the court. While courts are inherently empowered to punish for contempt to the end that they may enforce their authority, preserve their integrity, maintain their dignity, and insure the effectiveness of the administration of justice, nevertheless, such power should be exercised on the preservative and not on the vindictive principle, for the power to punish for contempt, being drastic and

extraordinary in its nature, should not be resorted to unless necessary in the interest of justice.

Assistant Provincial Prosecutor John Turalba had not made any statement that could be considered as "contumacious" or an affront to the dignity of the court. While the act of Assistant Provincial Prosecutor Turalba of "walking out" does not meet our approval — as he should have stayed after the respondent Judge had denied his motion for permission to leave the courtroom — yet, the respondent Judge, in ordering the incarceration of Assistant Provincial Prosecutor Turalba, acted beyond the permissible limits of his power to punish for contempt.

FACTS

During Atty. Avelino Javellana's hearing for petition for bail on September 14, 1989, Assistant Provincial Prosecutor John Turalba. He manifested that he was appearing only to reiterate the Señor State Prosecutor's motion for deferment of the scheduled hearings on Atty. Javellana's motion for bail. Judge Maceda denied the said motion. Assistant Provincial Prosecutor Turalba moved for reconsideration, claiming that his position is subservient to that of the Senior State Prosecutor who is the duly designated principal prosecutor and as a matter of conviction, he cannot proceed with the trial as well as with the subsequent trials. Respondent Judge denied the motion for reconsideration, and, again, directed the prosecution to present its evidence.

Assistant Provincial Prosecutor Turalba manifested that he was not participating in the proceedings and begged to be allowed to leave the courtroom, which the respondent Judge refused. Nevertheless, Assistant Provincial Prosecutor Turalba walked out and, while walking towards the door, respondent Judge ordered the Sheriff to arrest him. Judge Maceda issued an order finding Assistant Provincial Prosecutor Turalba in contempt of court; declaring the prosecution to have waived its right to present evidence in opposition to private respondent's petition for bail; and considering the said petition for bail submitted for resolution. The respondent Judge imposed upon the Assistant Provincial Prosecutor the penalty of ten (10) days imprisonment.

ISSUE

Whether or not Judge Maceda committed grave abuse of discretion when he insisted in continuously hearing Atty. Javellana's petition for bail and in ordering the arrest of APP Turalba of contempt of court. (YES)

RULING

Contempt of court presupposes a contumacious attitude, a flouting or arrogant belligerence, a defiance of the court. While courts are inherently empowered to punish for contempt to the end that they may enforce their authority, preserve their integrity, maintain their dignity, and insure the effectiveness of the administration of justice, nevertheless, such power should be exercised on the preservative and not on the vindictive principle, for the power to punish for contempt, being drastic and

extraordinary in its nature, should not be resorted to unless necessary in the interest of justice.

A perusal of the transcript of the hearing held on 14 September 1989 shows that Assistant Provincial Prosecutor John Turalba had not made any statement that could be considered as "contumacious" or an affront to the dignity of the court. And, while the act of Assistant Provincial Prosecutor Turalba of "walking out" does not meet our approval — as he should have stayed after the respondent Judge had denied his motion for permission to leave the courtroom — yet, the respondent Judge, in ordering the incarceration of Assistant Provincial Prosecutor Turalba, acted beyond the permissible limits of his power to punish for contempt.

A restraining order was issued on August 31, 1989 ordering Judge Maceda to cease and desist from continuing the hearing of Atty. Javellana's petition for bail until the motion for discharge of Oscar Tianzon as state witness is resolved. When respondent Judge, therefore, denied the prosecution's motion for deferment of the scheduled hearings on private respondent's petition for bail and in proceeding to hear the said motion, by ordering the prosecution to present its evidence — which precipitated the walk-out of the Assistant Provincial Prosecutor and his consequent arrest and commitment to the Provincial Jail — he (respondent judge) was acting in violation of the restraining order issued by this Court. Had the respondent Judge granted the prosecution's motion for deferment, this incident could have been avoided.

10) In Re: Petition of Michael Madado, Bar Matter No. 2540, September 24, 2013. Sereno, C.J.

While an honest mistake of fact could be used to excuse a person from the legal consequences of his acts as it negates malice or evil motive, a mistake of law cannot be utilized as a lawful justification, because everyone is presumed to know the law and its consequences. Ignorantia facti excusat; ignorantia legis neminem excusat.

Medado may have at first operated under an honest mistake of fact when he thought that what he had signed at the PICC entrance before the oath-taking was already the Roll of Attorneys. However, the moment he realized that what he had signed was merely an attendance record, he could no longer claim an honest mistake of fact as a valid justification.

FACTS

Medado graduated passed the 1979's bar examinations. On 7 May 1980, he took the Attorney's Oath at the PICC. He was scheduled to sign in the Roll of Attorneys on 13 May 1980, but he failed to do so on his scheduled date because he had misplaced the Notice to Sign the Roll of Attorneys when he went home to his province for a vacation. Several years later, while rummaging through his old college files, Medado found the Notice to Sign the Roll of Attorneys. It was then that he realized that he had not signed in the roll, and that what he had signed at the entrance of the PICC was probably just an attendance record.

By the time Medado found the notice, he was already working. He stated that he was mainly doing corporate and taxation work, and that he was not actively involved in litigation practice. Thus, he operated “under the mistaken belief that since he had already taken the oath, the signing of the Roll of Attorneys was not as urgent, nor as crucial to his status as a lawyer”;and “the matter of signing in the Roll of Attorneys lost its urgency and compulsion, and was subsequently forgotten.”

In 2005, when Medado attended Mandatory Continuing Legal Education (MCLE) seminars, he was required to provide his roll number in order for his MCLE compliances to be credited. Not having signed in the Roll of Attorneys, he was unable to provide his roll number. About 7 years later, Medado filed an instant petition praying that he be allowed to sign the Roll of Attorneys. The Office of the Bar Confidant recommended that his petition be denied on the ground of his own gross negligence, misconduct, and utter lack of merit.

ISSUE

Whether or not Atty. Medado should be allowed to sign the Roll of Attorneys despite the lapse of several years. (YES)

RULING

Medado demonstrated good faith and good moral character when he finally filed the instant Petition to Sign in the Roll of Attorneys. We note that it was not a third party who called this Court's attention to petitioner's omission; rather, it was Medado himself who acknowledged his own lapse, albeit after the passage of more than 30 years.

For another, petitioner has not been subject to any action for disqualification from the practice of law, which is more than what we can say of other individuals who were successfully admitted as members of the Philippine Bar.

Finally, Medado appears to have been a competent and able legal practitioner, having held various positions at the Laurel Law Office, Petron, Petrophil Corporation, the Philippine National Oil Company, and the Energy Development Corporation.

However, the Court cannot fully exculpate Medado from liability for his years of inaction. While an honest mistake of fact could be used to excuse a person from the legal consequences of his acts as it negates malice or evil motive, a mistake of law cannot be utilized as a lawful justification, because everyone is presumed to know the law and its consequences. *Ignorantia facti excusat; ignorantia legis neminem excusat.*

Medado may have at first operated under an honest mistake of fact when he thought that what he had signed at the PICC entrance before the oath-taking was already the Roll of Attorneys. However, the moment he realized that what he had signed was merely an attendance record, he could no longer claim an honest mistake of fact as a valid justification. At that point, Medado should have known that he was not a full-

fledged member of the Philippine Bar because of his failure to sign in the Roll of Attorneys, as it was the act of signing therein that would have made him so.

11. OCA v. Atty. Ladaga, AM P-99-1287, January 26, 2001.

OFFICE OF THE COURT ADMINISTRATOR, *complainant*, vs. ATTY. MISAEL M. LADAGA, Branch Clerk of Court, Regional Trial Court, Branch 133, Makati City, *respondent*.

A.M. No. P-99-1287, FIRST DIVISION, January 26, 2001, KAPUNAN, J.

The "private practice" of the law profession that is prohibited by law does not pertain to an isolated court appearance. It contemplates succession of acts of the same nature habitually or customarily holding one's self to the public as a lawyer. In this case, the isolated instances when respondent appeared as pro bono counsel of his cousin does not constitute the "private practice" of the law profession contemplated by law.

FACTS

Respondent Atty. Misael M. Ladaga, an RTC Branch Clerk of Court, requested the Court Administrator, Justice Alfredo L. Benipayo, for authority to appear as pro bono counsel of his cousin, Narcisa Naldoza Ladaga, in Criminal Case No. 84885. While respondent's letter-request was pending action, the private complainant in Criminal Case No. 84885, sent a letter to the Court Administrator, requesting for a certification with regard to respondent's authority to appear as counsel for the accused in the said criminal case. The Office of the Court Administrator referred the matter to respondent for comment.

In his Comment, respondent admitted that he had appeared in Criminal Case No. 84885 without prior authorization. He reasoned out that the factual circumstances surrounding the criminal case compelled him to handle the defense of his cousin who did not have enough resources to hire the services of a counsel de parte; while, on the other hand, private complainant was a member of a powerful family who was out to get even with his cousin. Furthermore, he rationalized that his appearance in the criminal case did not prejudice his office nor the interest of the public since he did not take advantage of his position. In any case, his appearances in court were covered by leave applications approved by the presiding judge.

On December 8, 1998, the Court issued a Resolution denying respondent's request for authorization to appear as counsel and directing the Office of the Court Administrator to file formal charges against him for appearing in court without the required authorization from the Court. On January 25, 1999, the Court Administrator filed the instant administrative complaint against respondent for violating Sec. 7(b)(2) of Republic Act No. 6713, otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees."

ISSUE

Whether or not the isolated instances when respondent appeared as pro bono counsel of his cousin constitute the "private practice" of the law profession contemplated by law. (NO)

RULING

The "private practice" of the law profession that is prohibited by law does not pertain to an isolated court appearance. It contemplates succession of acts of the same nature habitually or customarily holding one's self to the public as a lawyer. Here, the isolated instances when respondent appeared as pro bono counsel of his cousin does not constitute the "private practice" of the law profession contemplated by law. Nonetheless, respondent failed to obtain a written permission therefore from the head of the Department, which is the SC as required by Section 12, Rule XVIII of the Revised Civil Service Rules, and not the Presiding Judge of the court to which respondent is assigned, as the Judge is not the head of the department contemplated by law. And despite the fact that respondent filed leave applications corresponding to the dates he appeared in court. Respondent was reprimanded with stern warning that any repetition of the act would be dealt with more severely.

12. In Re: Petition of Al Argosino B.M. 712, March 19, 1997.

RE: PETITION OF AL ARGOSINO TO TAKE THE LAWYER'S OATH

Bar Matter No. 712, EN BANC, March 19, 1997, PADILLA, J.

The lawyer's oath is not a mere ceremony or formality for practicing law. Every lawyer should at all times weigh his actions according to the sworn promises he makes when taking the lawyer's oath.

FACTS

Petitioner Al Caparros Argosino passed the bar examinations held in 1993. The Court however deferred his oath-taking due to his previous conviction for Reckless Imprudence Resulting In Homicide.

The criminal case which resulted in petitioner's conviction, arose from the death of a neophyte during fraternity initiation rites sometime in September 1991. The trial court sentenced the petitioner and his co-accused to two (2) years four (4) months and one (1) day to four (4) years of imprisonment.

The trial court granted herein petitioner's application for probation and issued an order approving a report submitted by the Probation Officer recommending petitioner's discharge from probation.

On 14 April 1994, petitioner filed before the SC a petition to be allowed to take the lawyer's oath based on the order of his discharge from probation.

ISSUE

Whether or not petitioner should be allowed to take the lawyer's oath. (YES)

RULING

After a very careful evaluation of this case, the SC resolved to allow petitioner to take the lawyer's oath.

In allowing Mr. Argosino to take the lawyer's oath, the SC recognizes that Mr. Argosino is not inherently of bad moral fiber. On the contrary, the various certifications show that he is a devout Catholic with a genuine concern for civic duties and public service. Mr. Argosino has exerted all efforts to atone for the death of Raul Camaligan.

The SC stressed to Mr. Argosino that the lawyer's oath is NOT a mere ceremony or formality for practicing law. Every lawyer should at ALL TIMES weigh his actions according to the sworn promises he makes when taking the lawyer's oath. If all lawyers conducted themselves strictly according to the lawyer's oath and the Code of Professional Responsibility, the administration of justice will undoubtedly be faster, fairer and easier for everyone concerned.

13. Grande v. Atty. De Silva, AC. 4838, July 29, 2003.

EMILIO GRANDE, complainant, vs. ATTY. EVANGELINE DE SILVA, respondent.
A.C. No. 4838, EN BANC, July 29, 2003, YNARES-SANTIAGO, J.

A lawyer may be disciplined for evading payment of a debt validly incurred. Such conduct is unbecoming and does not speak well of a member of the bar, for a lawyer's professional and personal conduct must at all times be kept beyond reproach and above suspicion.

FACTS

Complainant sought the disbarment of respondent for deceit and violation of the Lawyer's Oath relative to the criminal case for estafa, which he filed against the latter's client. According to the complainant he withdrew his complaint against the respondent's client in exchange for respondent's personal check which he later found to have been drawn on a closed account. Complainant claimed that he refused to accept the said check as settlement of the civil liability of respondent's client, but the respondent assured him that the check will have sufficient funds when presented for payment. He alleged that the respondent ignored his repeated demands for payment. When directed to comment on the administrative complaint against her, the respondent refused to receive the notices served on her.

ISSUE

Whether or not respondent is guilty of deceit, gross misconduct and violation of the Lawyer's Oath. (YES)

RULING

The SC found the respondent guilty of deceit, gross misconduct and violation of the Lawyer's Oath for which she was suspended from the practice of law for a period of two years. According to the Court, the breach of trust committed by respondent in issuing a bouncing check amounted to deceit and constituted a violation of her oath for which she should be accordingly penalized. Such an act constitutes gross misconduct. A lawyer may be disciplined for evading payment of a debt validly incurred. Such conduct is unbecoming and does not speak well of a member of the bar, for a lawyer's professional and personal conduct must at all times be kept beyond reproach and above suspicion. Moreover, respondent's persistent refusal to comply with lawful orders directed at her with not even an explanation for doing so is contumacious conduct, which merits no compassion. The SC cannot tolerate any misconduct that tends to besmirch the fair name of an honorable profession.

14. Cruz v. Mina, GR No. 154207, April 27, 2007.

FERDINAND A. CRUZ, petitioner, vs. ALBERTO MINA, HON. ELEUTERIO F. GUERRERO and HON. ZENAIDA LAGUILLES, respondents.

G.R. No. 154207, THIRD DIVISION, April 27, 2007, AUSTRIA-MARTINEZ, J p:

Section 34, Rule 138 is clear that appearance before the inferior courts by a non-lawyer is allowed, irrespective of whether or not he is a law student. As succinctly clarified in Bar Matter No. 730, by virtue of Section 34, Rule 138, a law student may appear, as an agent or a friend of a party litigant, without the supervision of a lawyer before inferior courts.

FACTS

Ferdinand A. Cruz (petitioner) filed before the MeTC a formal Entry of Appearance, as private prosecutor, in Criminal Case No. 00-1705 for Grave Threats, where his father, Mariano Cruz, is the complaining witness.

The petitioner, describing himself as a third year law student, justifies his appearance as private prosecutor on the bases of Section 34 of Rule 138 of the Rules of Court and the ruling of the Court En Banc in Cantimbuhan v. Judge Cruz, Jr. that a non-lawyer may appear before the inferior courts as an agent or friend of a party litigant. The petitioner furthermore avers that his appearance was with the prior conformity of the public prosecutor and a written authority of Mariano Cruz appointing him to be his agent in the prosecution of the said criminal case.

ISSUE

Whether the petitioner, a law student, may appear before an inferior court as an agent or friend of a party litigant. (YES)

RULING

The courts a quo held that the Law Student Practice Rule as encapsulated in Rule 138-A of the Rules of Court, prohibits the petitioner, as a law student, from entering his appearance in behalf of his father, the private complainant in the criminal case without the supervision of an attorney duly accredited by the law school.

However, in Resolution dated June 10, 1997 in Bar Matter No. 730, the Court En Banc clarified:

The rule, however, is different if the law student appears before an inferior court, where the issues and procedure are relatively simple. In inferior courts, a law student may appear in his personal capacity without the supervision of a lawyer. Section 34, Rule 138 provides:

Sec. 34. By whom litigation is conducted. — In the court of a justice of the peace, a party may conduct his litigation in person, with the aid of an agent or friend appointed by him for that purpose, or with the aid of an attorney. In any other court, a party may conduct his litigation personally or by aid of an attorney, and his appearance must be either personal or by a duly authorized member of the bar.

Thus, a law student may appear before an inferior court as an agent or friend of a party without the supervision of a member of the bar.

The phrase "In the court of a justice of the peace" in Bar Matter No. 730 is subsequently changed to "In the court of a municipality" as it now appears in Section 34 of Rule 138, thus:

SEC. 34. By whom litigation is conducted. — In the Court of a municipality a party may conduct his litigation in person, with the aid of an agent or friend appointed by him for that purpose, or with the aid of an attorney. In any other court, a party may conduct his litigation personally or by aid of an attorney and his appearance must be either personal or by a duly authorized member of the bar.

Which is the prevailing rule at the time the petitioner filed his Entry of Appearance with the MeTC. No real distinction exists for under Section 6, Rule 5 of the Rules of Court, the term "Municipal Trial Courts" as used in these Rules shall include Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, and Municipal Circuit Trial Courts.

There is really no problem as to the application of Section 34 of Rule 138 and Rule 138-A. In the former, the appearance of a non-lawyer, as an agent or friend of a party litigant, is expressly allowed, while the latter rule provides for conditions when a law student, not as an agent or a friend of a party litigant, may appear before the courts.

Petitioner expressly anchored his appearance on Section 34 of Rule 138. The court a quo must have been confused by the fact that petitioner referred to himself as a law student in his entry of appearance. Rule 138-A should not have been used by the

courts a quo in denying permission to act as private prosecutor against petitioner for the simple reason that Rule 138-A is not the basis for the petitioner's appearance.

Section 34, Rule 138 is clear that appearance before the inferior courts by a non-lawyer is allowed, irrespective of whether or not he is a law student. As succinctly clarified in Bar Matter No. 730, by virtue of Section 34, Rule 138, a law student may appear, as an agent or a friend of a party litigant, without the supervision of a lawyer before inferior courts.

15. Sps. Agbulos GR No. 176530, June 16, 2009.

**SPOUSES CONSTANTE AGBULOS AND ZENAIDA PADILLA
AGBULOS, *petitioners*, vs. NICASIO GUTIERREZ, JOSEFA GUTIERREZ and ELENA
G. GARCIA, *respondents*.**

G.R. No. 176530, THIRD DIVISION, June 16, 2009, NACHURA, J.

A lawyer is mandated to "serve his client with competence and diligence". Consequently, a lawyer is entreated not to neglect a legal matter entrusted to him; otherwise, his negligence in connection therewith shall render him liable. In light of such mandate, Atty. Magbitang's act of filing the notice of appeal without waiting for her clients to direct him to do so was understandable, if not commendable.

FACTS

On October 16, 1997, respondents, through their counsel, Atty. Adriano B. Magbitang, filed with the RTC a complaint against petitioners for declaration of nullity of contract, cancellation of title, reconveyance and damages. The complaint alleged that respondents inherited from their father, Maximo Gutierrez, an eight-hectare parcel of land covered by Transfer Certificate of Title (TCT) No. NT-123790 in the name of Maximo Gutierrez. Through fraud and deceit, petitioners succeeded in making it appear that Maximo Gutierrez executed a Deed of Sale on July 21, 1978 when, in truth, he died on April 25, 1977. Based on the notation at the back of the certificate of title, portions of the property were brought under the Comprehensive Agrarian Reform Program (CARP) and awarded to Lorna Padilla, Elenita Nueva and Suzette Nueva who were issued Certificates of Land Ownership Award (CLOAs).

In an Order dated October 24, 2002, the RTC granted the petitioners' motion and dismissed the complaint for lack of jurisdiction. The RTC held that the DARAB had jurisdiction. Respondents filed a motion for reconsideration which the RTC denied.

Atty. Magbitang filed a Notice of Appeal with the RTC, which gave due course to the same. The records reveal that on December 15, 2003, respondent Elena G. Garcia wrote a letter to Judge Arturo M. Bernardo, Acting Judge of RTC Gapan, Branch 87, stating that they were surprised to receive a communication from the court informing them that their notice of appeal was ready for disposition. She also stated in the letter that there was no formal agreement with Atty. Magbitang as to whether they would pursue an appeal with the CA, because one of the plaintiffs was still in America.

On February 6, 2007, the CA rendered a Decision in favor of respondents. Thus, this petition.

ISSUE

Whether or not the CA erred in not dismissing the appeal despite the undisputed fact that Atty. Magbitang filed the notice of appeal without respondents' knowledge and consent. (NO)

RULING

A lawyer who represents a client before the trial court is presumed to represent such client before the appellate court, Section 22 of Rule 138 creates this presumption, thus:

SEC. 22. Attorney who appears in lower court presumed to represent client on appeal. — An attorney who appears de parte in a case before a lower court shall be presumed to continue representing his client on appeal, unless he files a formal petition withdrawing his appearance in the appellate court.

A reading of respondent Elena Garcia's letter to the RTC would show that she did not actually withdraw Atty. Magbitang's authority to represent respondents in the case. The letter merely stated that there was, as yet, no agreement that they would pursue an appeal.

In any case, an unauthorized appearance of an attorney may be ratified by the client either expressly or impliedly. Ratification retroacts to the date of the lawyer's first appearance and validates the action taken by him. Implied ratification may take various forms, such as by silence or acquiescence, or by acceptance and retention of benefits flowing therefrom. Respondents' silence or lack of remonstrance when the case was finally elevated to the CA means that they have acquiesced to the filing of the appeal.

Moreover, a lawyer is mandated to "serve his client with competence and diligence". Consequently, a lawyer is entreated not to neglect a legal matter entrusted to him; otherwise, his negligence in connection therewith shall render him liable. In light of such mandate, Atty. Magbitang's act of filing the notice of appeal without waiting for her clients to direct him to do so was understandable, if not commendable.

16. Tan v. Atty. Gumba, A.C. No. 9000, January 10, 2018.

TOMAS P. TAN, JR., complainant, vs. ATTY. HAIDE V. GUMBA, respondent.
A.C. No. 9000, SPECIAL FIRST DIVISION, January 10, 2018, DEL CASTILLO, J.

It is common sense that when the Court orders the suspension of a lawyer from the practice of law, the lawyer must desist from performing all functions which require the application of legal knowledge within the period of his or her suspension. In fine, it will amount to unauthorized practice, and a violation of a lawful order of the Court if a

suspended lawyer engages in the practice of law during the pendency of his or her suspension.

In this case, the Court notified respondent of her suspension. However, she continued to engage in the practice law by filing pleadings and appearing as counsel in courts during the period of her suspension.

FACTS

This case is an offshoot of the administrative Complaint filed complainant against respondent, and for which respondent was suspended from the practice of law for six months. The issues now ripe for resolution are: a) whether respondent disobeyed a lawful order of the Court by not abiding by the order of her suspension; and b) whether respondent deserves a stiffer penalty for such violation.

According to complainant, respondent obtained from him a loan. Incidental thereto, respondent executed in favor of complainant a Deed of Absolute Sale over a lot under the name of respondent's father. Attached to said Deed was a Special Power of Attorney (SPA) executed by respondent's parents authorizing her to apply for a loan with a bank to be secured by the subject property. Complainant and respondent agreed that if the latter failed to pay the loan in or before August 2000, complainant may register the Deed of Absolute Sale.

Respondent failed to pay the loan. Complainant attempted to register the Deed of Absolute Sale but to no avail because the aforesaid SPA only covered the authority of respondent to mortgage the property to a bank, and not to sell it.

In his Report, Commissioner de la Rama, Jr. stressed that for selling the property, and not just mortgaging it to complainant, who was not even a bank, respondent acted beyond her authority. Having done so, she committed gross violation of the Lawyer's Oath as well as Canon 1, Rule 1.01, and Canon 7 of the CPR. As such, he recommended that respondent be suspended for one year.

The Integrated Bar of the Philippines-Board of Governors (IBP-BOG) resolved to adopt and approve the Report and Recommendation of Commissioner de la Rama. Thereafter, the Court issued a Resolution dated October 5, 2011, which sustained the findings and conclusion of the IBP.

On March 14, 2012, the Court resolved to serve anew the October 5, 2011 Resolution because its previous copy was returned unserved. In its August 13, 2012 Resolution, the Court considered the October 5, 2011 Resolution to have been served upon respondent after the March 14, 2012 Resolution was also returned unserved. In the same resolution, the Court also denied with finality respondent's motion for reconsideration on the October 5, 2011 Resolution.

Subsequently, Judge Armea of the MTCC of Naga City inquired whether respondent could continue representing her clients in courts. She also asked if the decision relating to respondent's suspension, which was downloaded from the internet, constitutes sufficient notice to disqualify her to appear in courts.

Meanwhile, in a notice of resolution, the IBP-BOG resolved to adopt the Report and Recommendation of Commissioner Cachapero to dismiss the complaint against respondent because there is no rule allowing the service of judgments through the internet.

In a report, the OBC, however, stressed that respondent received the August 13, 2012 Resolution (denying her motion for reconsideration on the October 5, 2011 Resolution) on November 12, 2012. Thus, the effectivity of respondent's suspension was from November 12, 2012 until May 12, 2013.

The Court noted the OBC Report, and directed respondent to comply with the guidelines relating to the lifting of the order of her suspension.

On February 6, 2015, respondent filed with the RTC a Complaint against the OCA, the OBC, and Atty. Paraiso. Respondent accused the OCA and the OBC of suspending her from the practice of law even if the administrative case against her was still pending with the IBP.

In its Answer, the OBC declared that during and after the period of her suspension, respondent filed pleadings and appeared in courts in several cases. The OBC opined that for failing to comply with the order of her suspension, respondent deliberately refused to obey a lawful order of the Court. Thus, it recommended that a stiffer penalty be imposed against respondent.

ISSUE

Is respondent administratively liable for engaging in the practice of law during the period of her suspension and prior to an order of the Court lifting such suspension?
(YES)

RULING

While, indeed, service of a judgment or resolution must be done only personally or by registered mail, and that mere showing of a downloaded copy of the October 5, 2011 Resolution to respondent is not a valid service, the fact, however, that respondent was duly informed of her suspension remains unrebutted. Again, as stated above, she filed a motion for reconsideration on the October 5, 2011 Resolution, and the Court duly notified her of the denial of said motion. It thus follows that respondent's six months suspension commenced from the notice of the denial of her motion for reconsideration on November 12, 2012 until May 12, 2013.

In *Ibana-Andrade v. Atty. Paita-Moya*, despite having received the Resolution anent her suspension, Atty. Paita-Moya continued to practice law. She filed pleadings and she appeared as counsel in courts. For which reason, the Court suspended her from the practice of law for six months in addition to her initial one-month suspension, or a total of seven months.

Similarly, in this case, the Court notified respondent of her suspension. However, she continued to engage in the practice law by filing pleadings and appearing as counsel in courts during the period of her suspension.

It is common sense that when the Court orders the suspension of a lawyer from the practice of law, the lawyer must desist from performing all functions which require the application of legal knowledge within the period of his or her suspension. In fine, it will amount to unauthorized practice, and a violation of a lawful order of the Court if a suspended lawyer engages in the practice of law during the pendency of his or her suspension.

Under Section 27, Rule 138 of the Rules of Court, a member of the bar may be disbarred or suspended from practice of law for willful disobedience of any lawful order of a superior court, among other grounds. Here, respondent willfully disobeyed the Court's lawful orders by failing to comply with the order of her suspension, and to the Court's directive to observe the guidelines for the lifting thereof. Pursuant to prevailing jurisprudence, the suspension for six (6) months from the practice of law against respondent is in order.

17. *Manangan v. CFI*, GR No. 82760, August 30, 1990.

FELIMON MANANGAN, petitioner, vs. COURT OF FIRST INSTANCE OF NUEVA VIZCAYA, BRANCH 28, respondent.

G.R. No. 82760, SECOND DIVISION, August 30, 1990, MELENCIO-HERRERA, J.

For abuse of Court processes, hopping from one forum to another, filing a labyrinth of cases and pleadings, thwarting the smooth prosecution of Criminal Case No. 639 against him for no less than twelve (12) years, and for masquerading as Filemon Manangan when his real name is Andres Culauag, petitioner has brought upon himself the severest censure and a punishment for contempt.

FACTS

Petitioner was appointed Legal Officer I of the Bureau of Lands in Region II. On 30 June 1978, Criminal Case No. 639 entitled "People v. Filemon Manangan alias Andres Culanag" was filed before the then respondent CFI charging petitioner with "Execution of Deeds by Intimidation" (the Criminal Case, for short).

On 18 April 1979, petitioner filed before this Court a Petition for Certiorari, Prohibition and Mandamus with Writ of Preliminary Injunction entitled "Filemon de Asis Manangan v. Court of First Instance, et al.," in UDK No. 3906, assailing the jurisdiction of respondent Court to try the criminal case and seeking to stay the Order of Arrest of 30 June 1978. The petition was dismissed for non-payment of legal fees.

On 10 and 18 July 1978, the dates set for preliminary investigation, petitioner did not show up and, in fact, disappeared for about a year.

On 31 July 1973, a Second Amended Information was filed, this time identifying the accused as "Andres Culanag (alias Andres M. Culanag, Filemon Manangan, Atty. Filemon A. Manangan and Atty. Ross V. Pangilinan)."

On 8 July 1979, petitioner surfaced and, through alleged counsel posted a bailbond.

On 19 July 1979, an Alias Warrant of Arrest was issued by Judge Gabriel Dunuan. It is this Alias Warrant that is challenged herein.

On 12 September 1979, petitioner filed an ex-parte Motion to Dismiss the Criminal Case, which was denied by respondent Court.

Petitioner then resorted to a Petition for Certiorari and Mandamus before the Court of Appeals in CA-G.R. No. 11588-SP entitled "Filemon Manangan v. Director of Lands and CFI of Nueva Vizcaya." The Appellate Court, however, dismissed the Petition (hereinafter, the German Decision).

On 30 October 1981, before respondent Court, a Motion for Reconsideration was filed by petitioner, ostensibly through counsel, Atty. Benjamin Facun, asking that the Criminal Case be dismissed on the ground that the accused had already died on 29 September 1971. The Motion was denied.

On 25 June 1982, petitioner again resorted to the Court of Appeals in another Petition for Certiorari (CA-G.R. No. SP-14428) filed by one Atty. Benjamin Facun as counsel for petitioner, this time praying for the annulment of the proceedings in the Criminal Case "on the ground that the accused was already dead when the decision finding him guilty of the crime . . . was rendered." In a Decision, Certiorari was denied for being devoid of merit inasmuch as "there is nothing on record to show that such dismissal had been sought before the decision was rendered" (briefly, the Kapunan Decision). (Actually, no judgment has been rendered by respondent Court).

Unfazed by the adverse Kapunan Decision, the supposed heirs of the accused, filed a Manifestation before respondent Court asking for the dismissal and termination of the Criminal Case on the same ground that the accused had allegedly died. Respondent Court, however, refused to declare the case closed and terminated.

For the third time, the case was elevated to the then Intermediate Appellate Court in AC-G.R. No. SP-00707, entitled "Heirs of the Deceased Filemon Manangan v. Hon. Quirino A. Catral, etc." The Petition sought to annul the Order of Judge Catral denying the closure and termination of the Criminal Case.

On 28 May 1983, the then IAC, after quoting at length from the Kapunan Decision and the Catral Order, dismissed the Petition (hereinafter, the Aquino Decision).

On 28 June 1984, before the respondent Court, petitioner-accused filed an Omnibus Motion with Motion for New Trial, which was denied for lack of merit.

On 19 June 1986, counsel for petitioner-accused filed a Motion to Quash. Without awaiting disposition on the Motion to Quash, that the present Petition was instituted.

However, on 8 June 1989, the Solicitor General filed a "Manifestation/ Motion to Strike Out" the present petition for being fictitious and that by reason thereof petitioner should be cited for contempt of Court.

The Solicitor General maintains that a re-examination of the records in the Criminal shows that:

"a. Filemon A. Manangan is only an alias of Andres M. Culanag, the person charged in Criminal Case No. 639;

"b. Filemon A. Manangan was a lawyer from San Marcelino, Zambales, who died on September 29, 1971 in the vicinity of his residence where he and his driver died on the spot; and

"c. [Andres M. Culanag] knew the real Filemon Manangan and knowing about the latter's death, assumed the name, qualifications and other personal circumstances of Filemon Manangan. By means thereof, he was able to pass himself off as a lawyer and to actually practice law, using even the Certificate of Admission to the Philippine Bar of Filemon Manangan which states that he was admitted to the Bar on March 6, 1964. By this guise, [Andres M. Culanag] succeeded in obtaining a position as Legal Officer I in the Bureau of Lands."

ISSUE:

Whether or not the present petition should be strike out for being fictitious. (YES)

RULING

Petitioner's posturings are completely bereft of basis. As the Solicitor General had also disclosed in the German Decision, petitioner [Andres Culanag] had, on 23 February 1977, filed Sp. Procs. No. 23 with the Court of First Instance of Nueva Ecija, San Jose City Branch, for the change of his name from Andres Culanag to Filemon Manangan. In that petition, he claimed that his real name is Andres Culanag; that his entire school records carry his name as Filemon Manangan: and that he is the same person as Andres Culanag, the latter being his real name. The impersonation was carried to the extreme when, in petitioner's Manifestation, dated 10 February 1983, before respondent Court, his supposed heirs alleged that accused had died before the filing of the Information on 29 September 1971, the exact date of death of the real Filemon Manangan. More, petitioner also masquerades under the name of Atty. Benjamin M. Facun in the several pleadings filed in connection with the Criminal Case.

For abuse of Court processes, hopping from one forum to another, filing a labyrinth of cases and pleadings, thwarting the smooth prosecution of Criminal Case No. 639 against him for no less than twelve (12) years, and for masquerading as

Filemon Manangan when his real name is Andres Culauag, petitioner has brought upon himself the severest censure and a punishment for contempt. The Petition for Certiorari he has filed likewise calls for dismissal.

18. Jesus Falcis v. Civil Registrar, GR No. 217910, July 3, 2018.

III. Duties and Responsibility of Lawyers Under the Code of Professional Responsibility

A. To society (Canons 1-6)

- 1) Respect for law and legal processes
- 2) Efficient and convenient legal services
- 3) True, honest, fair, dignified and objective information on legal services
- 4) Participation in the improvement of and reforms in the legal system
- 5) Participation in legal education programs

Jurisprudence

1. Ui v. Bonifacio, A.C. No. 3319, June 8, 2000.

LESLIE UI, complainant, vs. ATTY. IRIS BONIFACIO, respondent.

A.C. No. 3319, SECOND DIVISION, June 8, 2000, DE LEON, JR., J.

The practice of law is a privilege. A bar candidate does not have the right to enjoy the practice of the legal profession simply by passing the bar examinations. It is a privilege that can be revoked, subject to the mandate of due process, once a lawyer violates his oath and the dictates of legal ethics.

FACTS

In 1971, complainant married Carlos L. Ui. Sometime in December 1987, however, complainant found out that Carlos Ui was carrying on an illicit relationship with respondent Atty. Iris Bonifacio with whom he begot a daughter, and that they had been living together at No. 527 San Carlos Street, Ayala Alabang Village in Muntinlupa City.

Carlos Ui admitted to complainant his relationship with the respondent. Complainant then visited respondent at her office in the later part of June 1988 and introduced herself as the legal wife of Carlos Ui. Whereupon, respondent admitted to her that she has a child with Carlos Ui and alleged, however, that everything was over between her and Carlos Ui.

However, complainant again discovered that the illicit relationship between her husband and respondent continued, and that sometime in December 1988, respondent and her husband had a second child. Complainant then met again with respondent sometime in March 1989 and pleaded with respondent to discontinue her illicit relationship with Carlos Ui but to no avail. The illicit relationship persisted,

and complainant even came to know later on that respondent had been employed by her husband in his company.

ISSUE

Whether or not Atty. Iris Bonifacio conducted herself in an immoral manner for which she deserves to be barred from the practice of law. [NO]

RULING

One of the conditions prior to admission to the bar is that an applicant must possess good moral character. Possession of good moral character must be continuous as a requirement to the enjoyment of the privilege of law practice, otherwise, the loss thereof is a ground for the revocation of such privilege. A lawyer may be disbarred for "grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude".

It is difficult to state with precision and to fix an inflexible standard as to what is "grossly immoral conduct" or to specify the moral delinquency and obliquity which render a lawyer unworthy of continuing as a member of the bar. The rule implies that what appears to be unconventional behavior to the straight-laced may not be the immoral conduct that warrants disbarment. Immoral conduct has been defined as "that conduct which is willful, flagrant, or shameless, and which shows a moral indifference to the opinion of the good and respectable members of the community."

Respondent's relationship with Carlos Ui, clothed as it was with what respondent believed was a valid marriage, cannot be considered immoral. For immorality connotes conduct that shows indifference to the moral norms of society and the opinion of good and respectable members of the community. Moreover, for such conduct to warrant disciplinary action, the same must be "grossly immoral," that is, it must be so corrupt and false as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree. Respondents act of immediately distancing herself from Carlos Ui upon discovering his true civil status belies just that alleged moral indifference and proves that she had no intention of flaunting the law and the high moral standard of the legal profession.

2) *Donton v. Tanaingco*. A.C. No. 6057, June 27, 2006.

PETER T. DONTON, *Complainant*, vs. ATTY. EMMANUEL O. TANSINGCO, *Respondent*.

A.C. No. 6057, THIRD DIVISION, June 27, 2006, CARPIO, J.

A lawyer should not render any service or give advice to any client which will involve defiance of the laws which he is bound to uphold and obey. A lawyer who assists a client in a dishonest scheme or who connives in violating the law commits an act which justifies disciplinary action against the lawyer.

FACTS:

Donton filed a criminal complaint for estafa thru falsification of a public document against Stier, Maggay and respondent, as the notary public who notarized the Occupancy Agreement. Donton averred that respondent's act of preparing the Occupancy Agreement, despite knowledge that Stier, being a foreign national, is disqualified to own real property in his name, constitutes serious misconduct and is a deliberate violation of the Code of Professional Responsibility. The IBP Commissioner found respondent liable for taking part in a "scheme to circumvent the constitutional prohibition against foreign ownership of land in the Philippines." Commissioner San Juan recommended respondent's suspension from the practice of law for two years and the cancellation of his commission as Notary Public.

ISSUE:

Whether or not Atty. Tansingco is guilty of serious misconduct. (YES)

RULING:

Atty. Tansingco is liable for violation of Canon 1 and Rule 1.02 of the Code. A lawyer should not render any service or give advice to any client which will involve defiance of the laws which he is bound to uphold and obey. A lawyer who assists a client in a dishonest scheme or who connives in violating the law commits an act which justifies disciplinary action against the lawyer. Respondent admitted that Stier, a U.S. citizen, was disqualified from owning real property. He prepared the Occupancy Agreement that would guarantee Stier's recognition as the actual owner of the property despite its transfer in complainant's name. In effect, respondent advised and aided Stier in circumventing the constitutional prohibition against foreign ownership of lands by preparing said documents. The court ruled that he is suspended from the practice of law for six months.

3) *Advincula v. Macabata*, A.C. No. 7204, March 7, 2007.

In this case immoral conduct is a conduct which is so willful, flagrant, or shameless as to show indifference to the opinion of good and respectable members of the community. It must be grossly immoral, so corrupt as to constitute a criminal act, or so unprincipled as to be reprehensible to a high degree or committed under such scandalous or revolting circumstances as to shock the common sense of decency.

The Court perceived acts of kissing or beso-beso on the cheeks as mere gestures of friendship and camaraderie, forms of greetings, casual and customary. The acts of respondent even if considered offensive and undesirable, cannot be considered grossly immoral. It also found that respondent of act of kissing the complainant on the lips is not motivated by malice as respondent immediately apologize through text.

FACTS:

Cynthia Advincula (complainant) seek the legal advice of the Atty. Macabata (respondent) regarding her collectibles from Queensway Travel and Tours. On

February 10, 2005, they met at Zencho at Tomas Morato, Quezon city to discuss the possibility of the complaint against said travel agency. After the dinner, respondent sent complainant home and while she is about to step out of the car, respondent hold complainant's arm and kissed her on the cheek and embraced her very tightly.

About past 10 o'clock in the morning of March 5, complainant met again the respondent at Starbucks coffee shop in West Avenue, Quezon City to finalize the draft of the complaint. Respondent offered again a ride, Along the way, complainant felt so sleepy. Along the road, when she was almost restless respondent stopped his car and kissed her lips while the other hand was holding her breast. Even in state of shocked, complainant manage to go out of the car.

After the incident, both are communicating in text message in which the complainant decided to refer the case to another lawyer and the respondent is asking for forgiveness. Respondent in the text message clearly manifested admission of guilt.

Respondent admitted that he agreed to provide legal service, that he met the complainant on said dates to discuss relevant to the case, and that both occasions, complainant offered her lips to him; and, that where he dropped off the complainant, was a busy street teeming with people, thus, it would have been impossible to commit the acts imputed to him.

Hence, this complaint of disbarment

ISSUE

Whether respondent committed acts that are grossly immoral or which constitute serious moral depravity that would warrant his disbarment or suspension from the practice of law.

RULING

NO. Respondent's acts are not grossly immoral nor highly reprehensible to warrant disbarment or suspension

Rule 1.01-- A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

CANON 7-- A lawyer shall at all times uphold the integrity and dignity of the legal profession and support the activities of the Integrated Bar.

Rule 7.03-- A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

Good moral character was defined as what a person really is and that it is not a subjective term but one which corresponds to objective reality. Good moral character has four ostensible purposes, namely: (1) to protect the public; (2) to

protect the public image of lawyers; (3) to protect prospective clients; and (4) to protect errant lawyers from themselves.

In this case immoral conduct is a conduct which is so willful, flagrant, or shameless as to show indifference to the opinion of good and respectable members of the community. It must be grossly immoral, so corrupt as to constitute a criminal act, or so unprincipled as to be reprehensible to a high degree or committed under such scandalous or revolting circumstances as to shock the common sense of decency.

The Court perceived acts of kissing or beso-beso on the cheeks as mere gestures of friendship and camaraderie, forms of greetings, casual and customary. The acts of respondent even if considered offensive and undesirable, cannot be considered grossly immoral. It also found that respondent of act of kissing the complainant on the lips is not motivated by malice as respondent immediately apologize through text. It also noted that incident happened in place where there are several people and should the respondent had malicious designs, he would brought

4) Phil. Aluminum Wheels v. FASGI, G.R. No. 137378, October 12, 2000.

It is an accepted rule that when a client, upon becoming aware of the compromise and the judgment thereon, fails to promptly repudiate the action of his attorney, he will not afterwards be heard to complain about it.

If PAWI were indeed hoodwinked by Mr. Ready who purportedly acted in collusion with FASGI, it should have aptly raised the issue before the forum which issued the judgment in line with the principle of international comity that a court of another jurisdiction should refrain, as a matter of propriety and fairness, from so assuming the power of passing judgment on the correctness of the application of law and the evaluation of the facts of the judgment issued by another tribunal.

FACTS

On 01 June 1978, FASGI Enterprises Incorporated ("FASGI"), a corporation organized and existing under and by virtue of the laws of the State of California, United States of America, entered into a distributorship arrangement with Philippine Aluminum Wheels, Incorporated ("PAWI"), a Philippine corporation, and Fratelli Pedrini Sarezzo S.P.A. ("FPS"), an Italian corporation. The agreement provided for the purchase, importation and distributorship in the United States of aluminum wheels manufactured by PAWI. FASGI paid PAWI the FOB value of the wheels. Unfortunately, FASGI later found the shipment to be defective and in non-compliance with the contract. Irked by PAWI's persistent default, FASGI filed with the US District Court of the Central District of California the agreements for judgment against PAWI.

On 24 August 1982, FASGI filed a notice of entry of judgment. A certificate of finality of judgment was issued by the US District Judge of the District Court for the Central District of California. Unable to obtain satisfaction of the final judgment within the United States, FASGI filed a complaint for "enforcement of foreign judgment", before the RTC Makati. The Makati court, however, dismissed the case, on the ground that

the decree was tainted with collusion, fraud, and clear mistake of law and fact. The lower court ruled that the foreign judgment ignored the reciprocal obligations of the parties. Furthermore, the trial court said, the supplemental settlement agreement and subsequent motion for entry of judgment upon which the California court had based its judgment were a nullity for having been entered into by Mr. Thomas Ready, counsel for PAWI, without the latter's authorization. The Court of Appeals, however, reversed the decision of the trial court and ordered the enforcement of the California judgment.

ISSUE

Whether or not PAWI's counsel, Mr. Thomas Ready, acted beyond his authority such that the California judgment may not be enforced in the Philippines

RULING

NO. PAWI claims that its counsel, Mr. Ready, has acted without its authority. Verily, in this jurisdiction, it is clear that an attorney cannot, without a client's authorization, settle the action or subject matter of the litigation even when he honestly believes that such a settlement will best serve his client's interest.

In the instant case, the supplemental settlement agreement was signed by the parties, including Mr. Thomas Ready, on 06 October 1980. The agreement was lodged in the California case on 26 November 1980 or two (2) days after the pre-trial conference held on 24 November 1980. If Mr. Ready was indeed not authorized by PAWI to enter into the supplemental settlement agreement, PAWI could have forthwith signified to FASGI a disclaimer of the settlement. Instead, more than a year after the execution of the supplemental settlement agreement, particularly on 09 October 1981, PAWI President Romeo S. Rojas sent a communication to Elena Buholzer of FASGI that failed to mention Mr. Ready's supposed lack of authority.

It is an accepted rule that when a client, upon becoming aware of the compromise and the judgment thereon, fails to promptly repudiate the action of his attorney, he will not afterwards be heard to complain about it.

If PAWI were indeed hoodwinked by Mr. Ready who purportedly acted in collusion with FASGI, it should have aptly raised the issue before the forum which issued the judgment in line with the principle of international comity that a court of another jurisdiction should refrain, as a matter of propriety and fairness, from so assuming the power of passing judgment on the correctness of the application of law and the evaluation of the facts of the judgment issued by another tribunal.

5) Atty. Alan F. Paguia v. Atty. Molina, A.C. No. 9881, June 4, 2014.

The Supreme Court, in dismissing the complaint held that when it comes to administrative cases against lawyers, two things are to be considered: quantum of proof, which requires clearly preponderant evidence; and burden of proof, which is on the complainant. Here, the complaint was without factual basis. The allegation of

giving legal advice was not substantiated in this case, either in the complaint or in the corresponding hearings. Bare allegations are not proof

FACTS

The case involves a conflict between neighbors in a four-unit compound named "Times Square" at Times Street, Quezon City. Mr. And Mrs. Wilson Lim, clients of Atty. Molina, entered into a contract covered by a document titled "Times Square Preamble," establishes a set of internal rules for the neighbors on matters such as the use of the common right of way to the exit gate, assignment of parking areas, and security with the other unit owners. Mr. Abreu, the client of complainant, Atty. Paguia, was not a party to the contract since the former did not agree with the terms concerning the parking arrangements.

On 3 August 2010, Investigating Commissioner Victor C. Fernandez recommended dismissal for lack of merit the IBP Board of Governors passed a Resolution adopting and approving the Report and Recommendation of the Investigating Commissioner

ISSUE

Whether or Not Atty. Molina should be administratively dismissed for dishonesty.

RULING

NO. The Supreme Court, in dismissing the complaint held that when it comes to administrative cases against lawyers, two things are to be considered: quantum of proof, which requires clearly preponderant evidence; and burden of proof, which is on the complainant. Here, the complaint was without factual basis. The allegation of giving legal advice was not substantiated in this case, either in the complaint or in the corresponding hearings. Bare allegations are not proof. Even if Atty. Molina did provide his clients legal advice, he still cannot be held administratively liable without any showing that his act was attended with bad faith or malice. The default rule is presumption of good faith.

6) *Crisostomo et al. v. Atty. Nazareno*, A.C. No. 6677, June 10, 2014.

CANON 1 – A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

It has been established that Atty. Nazareno made false declarations in the certifications against forum shopping attached to Rudex's pleadings, for which he should be held administratively liable. Atty. Nazareno – as mandated by the Rules of Court and more pertinently, the canons of the Code – should have truthfully declared the existence of the pending related cases in the certifications against forum shopping attached to the pertinent pleadings.

FACTS:

In 2001, the complainants purchased housing units from Rudex and due to some construction defects in the housing units and the subdivision itself, complainants sought for rescission. The rescission cases were filed by herein complainants Sioting, Crisostomo and Marquizo while the second batch of rescission cases were filed by complainants Balatucan, Solis and Villanueva. Rudex was represented by respondent Atty. Nazareno.

Judgement of default was rendered against Rudex during the first batch of rescission cases.

In 2003, Rudex filed three (3) petitions for review before the Housing and Land Use Regulatory Board (HLURB) assailing the same. Atty. Nazareno, stated that it has not commenced or has knowledge of any similar action or proceeding involving the same issues pending before any court, tribunal or agency despite the fact that they have previously filed an ejectment case on 2002 against Sioting and her husband in the MTC of Cavite.

In 2004, Rudex, again represented by Atty. Nazareno, filed another complaint against Sps. Sioting before the HLURB for the rescission of their contract to sell and the latter's ejectment, with a certification that they had not commenced any action involving the same issues before any court. It was notarized by Atty. Nazareno himself.

In the same year, Atty. Nazareno filed six (6) more complaints against complainants before the HLURB together with the same certification against forum shopping.

ISSUES:

1. Whether or not Atty. Nazareno should be held administratively liable.

RULING:

1. YES. In the realm of legal ethics, said infraction may be considered as a violation of Rule 1.01, Canon 1 and Rule 10.01, Canon 10 of the Code of Professional Responsibility (Code) which provides:

CANON 1 – A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

It has been established that Atty. Nazareno made false declarations in the certifications against forum shopping attached to Rudex's pleadings, for which he should be held administratively liable. Atty. Nazareno – as mandated by the Rules of Court and more pertinently, the canons of the Code – should have truthfully

declared the existence of the pending related cases in the certifications against forum shopping attached to the pertinent pleadings.

The Court must not hesitate to discipline the notary public accordingly as the circumstances of the case may dictate. Otherwise, the integrity and sanctity of the notarization process may be undermined and public confidence on notarial documents diminished. In this case, respondent's conduct amounted to a breach of Canon 1 of the Code of Professional Responsibility, which requires lawyers to obey the laws of the land and promote respect for the law and legal processes.

7) *Guarin v. Atty. Limpin*, A.C. No. 10576, January 14, 2015.

A lawyer who assists a client in a dishonest scheme or who connives in violating the law commits an act which justifies disciplinary action against the lawyer.

In filing a GIS that contained false information, Atty. Limpin has violated Canon 1 and Rule 1.01 of the CPR. Moreover, in allowing herself to be swayed by the business practice of having Mr. de los Angeles appoint the members of the BOD and officers of the Corporation despite the rules enunciated in the Corporation Code with respect to the election of such officers, Atty. Limpin has transgressed Rule 1.02 of the CPR

FACTS:

In 2004, Guarin was hired by Mr. Celso de los Angeles as Chief Operating Officer and thereafter as President of One Card Company, Inc., a member of the Legacy Group of Companies. On August 11, 2008, he resigned and transferred to St. Luke's Medical Center

On November 27, 2008, Atty. Limpin, the Corporate Secretary of Legacy Card, Inc. (LCI), another corporation under Legacy Group, filed with SEC a General Information Sheet (GIS) for LCI which identified Guarin as its Chairman of the Board of Directors and President. Mired with allegations of anomalous business transactions and practices, LCI applied for voluntary dissolution on December 18, 2008

Guarin filed a complaint for disbarment with the Integrated Bar of the Philippines Commission on Bar Discipline (IBP CBD) against Atty. Limpin for violation of Canon 1 and Rule 1.01 of the Code of Professional Responsibility.

IBP CBD found that Atty. Limpin violated Canon 1 and Rules 1.01 and 1.02 of the CPR and recommended that she be suspended from the practice of law for three months.

ISSUE:

Whether or not Atty. Limpin has violated Canon 1, Rule 1.01 and Rule 1.02 of the CPR

RULING:

YES. Atty. Limpin has violated Canon 1, Rule 1.01 and Rule 1.02 of the CPR.

Members of the Bar are reminded that their first duty is to comply with the rules of procedure, rather than seek exceptions as loopholes. A lawyer who assists a client in a dishonest scheme or who connives in violating the law commits an act which justifies disciplinary action against the lawyer.

There is no indication that Guarin held any share to the corporation and that he is ineligible to hold a seat in the BOD and be the president of the company, It is undisputed that Atty. Limpin filed and certified that Guarin was a stockholder of the LCI in the GIS.

Thus, in filing a GIS that contained false information, Atty. Limpin has violated Canon 1 and Rule 1.01 of the CPR. Moreover, in allowing herself to be swayed by the business practice of having Mr. de los Angeles appoint the members of the BOD and officers of the Corporation despite the rules enunciated in the Corporation Code with respect to the election of such officers, Atty. Limpin has transgressed Rule 1.02 of the CPR

- 8) Garcia v. Atty. Sesbreno, A.C. No. 7973 and A.C. No. 10457, February 3, 2015.

Moral turpitude is an act of baseness, vileness, or depravity in the private duties which a man owes to his fellow men or to society in general, contrary to justice, honesty, modesty, or good morals.

Moral turpitude is involved in a conviction for homicide. The Decision showed that the victim (Amaprado) and his companion (Yapchangco) were just passing by Sesbreño's house when the lawyer aimed his rifle at them and started shooting.

FACTS:

The Regional Trial Court (RTC) of Cebu convicted Atty. Sesbreño of homicide. While he was on parole, the lawyer represented Garcia's daughters, in filing an action for support against their father and their aunt while Melvyn Garcia was in Japan. The case was dismissed. In 2007, Atty. Sesbreño filed a Second Amended Complaint against Melvyn Garcia but Garcia filed a disbarment case against Atty. Sesbreño. In 2010, the Court ordered the IBP for investigation, report, and recommendation regarding the disbarment case against Atty. Sesbreño. The Integrated Bar of the Philippines, Commission on Bar Discipline (IBP-CBD) ruled that conviction for a crime involving moral turpitude is a ground for disbarment or suspension. The IBP-CBD reviewed the decision the RTC and found that the circumstances leading to the death of the victim involved moral turpitude.

ISSUE:

Whether moral turpitude is involved in a conviction for homicide.

HELD:

YES. Moral turpitude is an act of baseness, vileness, or depravity in the private duties which a man owes to his fellow men or to society in general, contrary to justice, honesty, modesty, or good morals. The Court agrees with the IBP-CBD that the circumstances show the presence of moral turpitude.

The Decision showed that the victim (Amaprado) and his companion (Yapchangco) were just passing by Sesbreño's house when the lawyer aimed his rifle at them and started shooting. Both Amparado and Yapchangco started running away but Amparado was hit. There was an eyewitness supporting their claims and another witness who saw Amparado fall down after being shot, then saw Sesbreño walking back towards the gate of his house while carrying a long firearm. As correctly stated by the IBP-CBD the victims were just at the wrong place and time.

9) Heenan v. Atty. Espejo, A.C. No. 10050, December 3, 2013.

In Wilkie v. Limos, the Court reiterated that the issuance of a series of worthless checks, which is exactly what Atty. Espejo committed in this case, shows the remorseless attitude of respondent, unmindful to the deleterious effects of such act to the public interest and public order. It also, manifests a lawyer's low regard for her commitment to her oath, for which she may be disciplined.

Atty. Espejo violated 1 Rule 1.01 of the Code of Professional Responsibility for issuing worthless checks.

Facts:

Victoria met Atty. Espejo through her godmother, Corazon Eusebio (Corazon). Following the introduction, Corazon told Victoria that Atty. Espejo was her lawyer in need of money and wanted to borrow two hundred fifty thousand pesos (PhP 250,000) from her (Victoria). Victoria agreed to accommodate Atty. Espejo. To secure the payment of the loan, Atty. Espejo simultaneously issued and turned over to Victoria a check dated February 2, 2009 for two hundred seventy-five thousand pesos (PhP 275,000) covering the loan amount and agreed interest.

In July 2009, Victoria received an Espejo-issued check dated July 10, 2009 in the amount of PhP 50,000 representing the interest which accrued due to the late payment of the principal obligation. Victoria deposited the said check but, to her dismay, the check bounced due to insufficiency of funds. Atty. Espejo failed to pay despite Victoria's repeated demands.

Victoria thereafter became more aggressive in her efforts to recover her money. When Atty. Espejo still refused to pay, Victoria filed a criminal complaint against Atty. Espejo on August 18, 2009 for violation of *Batas Pambansa Blg. 22* and *Estafa* under Article 315 of the Revised Penal Code, as amended, before the Quezon City Prosecutor's Office.

ISSUE/S:

Whether or not Atty. Espejo violated Canon 1 Rule 1.01 of the Code of Professional Responsibility for issuing worthless checks.

RULING:

YES. Atty. Espejo violated 1 Rule 1.01 of the Code of Professional Responsibility for issuing worthless checks.

In *Wilkie v. Limos*, the Court reiterated that the issuance of a series of worthless checks, which is exactly what Atty. Espejo committed in this case, shows the remorseless attitude of respondent, unmindful to the deleterious effects of such act to the public interest and public order. It also, manifests a lawyer's low regard for her commitment to her oath, for which she may be disciplined.

The fact that Atty. Espejo obtained the loan and issued the worthless checks in her private capacity and not as an attorney of Victoria is of no moment. As held in several cases, a lawyer may be disciplined not only for malpractice and dishonesty in his profession but also for gross misconduct outside of his professional capacity. While the Court may not ordinarily discipline a lawyer for misconduct committed in his non- professional or private capacity, the Court may be justified in suspending or removing him as an attorney where his misconduct outside of the lawyer's professional dealings is so gross in character as to show him morally unfit and unworthy of the privilege which his licenses and the law confer.

10) Teodoro III v. Atty. Gonzales, A.C. No. 6760, January 30, 2013.

Forum shopping exists when, as a result of an adverse decision in one forum, or in anticipation thereof, a party seeks a favorable opinion in another forum through means other than appeal or certiorari.

Atty. Gonzales committed forum shopping, thus violating Canon 1 of the Code of Professional Responsibility.

FACTS:

Anastacio Teodoro III related in his complaint that Atty. Romeo Gonzales acted as counsel of Araceli Teodoro-Marcial in two civil cases the latter filed against him. The first case, Special Proceeding No. 99-95587, involved the settlement of the intestate estate of Manuela Teodoro. While the settlement proceeding was pending, Atty. Gonzales assisted Teodoro-Marcial in filing Civil Case No. 00-99207, for Annulment of Document, Reconveyance and Damages, without indicating the special proceeding earlier tiled.

The IBP Commission on Bar Discipline Commissioner Caesar Dulay found Atty. Gonzales administratively liable for forum shopping. Commissioner Dulay asserted that a ruling in either case would result in res judicata over the other. Thus, Atty. Gonzales committed forum shopping when he instituted Civil Case No. 00-99207

without indicating that Special Proceeding No. 99-95587 was still pending. In committing forum shopping, Atty. Gonzales disregarded the Supreme Court Circular prohibiting forum shopping and thus violated Canon 1 of the Code of Professional Responsibility.

Commissioner Dulay recommended Atty. Gonzales be suspended for one month from the practice of law, with a warning that a repetition of a similar offense would merit a more severe penalty. The Board of Governors of the IBP reversed the commissioner's recommendation and dismissed the case against Atty. Gonzales for lack of merit.

ISSUE:

1. Whether or not Atty. Gonzales committed forum shopping and thereby violated Canon 1 of the Code of Professional Responsibility?

RULING:

1. **YES.** Atty. Gonzales committed forum shopping, thus violating Canon 1 of the Code of Professional Responsibility.

Forum shopping exists when, as a result of an adverse decision in one forum, or in anticipation thereof, a party seeks a favorable opinion in another forum through means other than appeal or *certiorari*.

There is forum shopping when the elements of *litis pendencia* are present or where a final judgment in one case will amount to *res judicata* in another: (a) identity of parties, or at least such parties that represent the same interests in both actions, (b) identity of rights or causes of action, and (c) identity of relief sought.

Under this test, the Court found Atty. Gonzales committed forum shopping when he filed Civil Case No. 00-99207 while Special Proceeding No. 99-95587 was pending.

An *identity of parties exists* in both cases because the initiating parties are the same and they both espoused the same interest. Meanwhile, the test of *identity of causes of action* does not depend on the form of an action taken, but on whether the same evidence would support and establish the former and the present causes of action. The heirs of Manuela cannot avoid the application of *res judicata* by simply varying the form of their action or by adopting a different method of presenting it.

In both cases, the issue of whether Manuela held the lot in Malate, Manila in trust had to be decided by the trial court. The initiating parties' claim in the two cases depended on the existence of the trust Manuela allegedly held in their favor. Thus, the evidence necessary to prove their claim was the same.

In Special Proceeding No. 99-95587, the heirs of Manuela prayed for the issuance of letters of administration, the liquidation of Manuela's estate, and its distribution among her legal heirs. While, in Civil Case No. 00-99207, the heirs of Manuela asked for the annulment of the deed of absolute sale Manuela executed in favor of

Anastacio. They likewise asked the court to cancel the resulting Transfer Certificate of Title issued in favor of the latter, and to issue a new one in their names.

While the reliefs prayed for in the initiatory pleadings of the two cases are different in form, a ruling in one case would have resolved the other, and *vice versa*, thus an ***identity of relief sought*** also exists.

11) *Saladaga v. Atty. Astorga*, A.C. No. 4697, November 25, 2014.

The actions of respondent in connection with the execution of the "Deed of Sale with Right to Repurchase" clearly fall within the concept of unlawful, dishonest, and deceitful conduct under Rule 1.01 of Canon 1

Respondent dealt with complainant with bad faith, falsehood, and deceit when he entered into the "Deed of Sale with Right to Repurchase" dated December 2, 1981 with the latter. He made it appear that the property was covered by T-662 under his name, even giving complainant the owner's copy of the said certificate of title, when the truth is that the said TCT had already been cancelled some nine years earlier by T-3211 in the name of PNB

FACTS:

Complainant Saladaga and Atty. Astorga entered into a Deed of Sale with Right to Repurchase on December 2, 1981 wherein respondent sold to complainant a parcel of coconut land located in Leyte, with TCT No. T-662 for P15, 000. Under the deed, it provided that it has 2 years within which to repurchase the property, and if not the parties shall renew the agreement. However, respondent failed to exercise his right to repurchase and no renewal was made even after the complainant sent the respondent a final demand letter for the latter to repurchase the property.

Complainant remained in peaceful possession of the property until he received letters from Rural Bank of Albuera Inc. (RBAI) that the property was mortgaged by respondent to RBAI, that the bank had subsequently foreclosed on the property and that in turn, complainant should vacate the property.

Due to this, the complainant learned that TCT No. T-662 was already cancelled by T-3211 in the name of PNB as early as November 1972 after foreclosure proceedings, and T-3211 was in turn cancelled by T-7235 in the names of Atty. Saladaga and his wife on January 1982 pursuant to a deed of sale dated March 1979 between PNB and respondent. Lastly, respondent mortgaged the subject property to RBAI on March 1984. It is here where RBAI foreclosed on the property and subsequently obtained a new TCT number.

The IBP investigating commissioner found that respondent was in bad faith when he dealt with complainant and executed the "Deed of Sale with Right to Repurchase" but later on claimed that the agreement was one of equitable mortgage. Respondent was also guilty of deceit or fraud when he represented in the "Deed of Sale with Right to Repurchase" dated December 2, 1981 that the property was covered by T-662, even giving complainant the owner's copy of the said certificate of title, when

the said TCT had already been cancelled on November 1972 by T-3211 in the name of Philippine National Bank (PNB).

ISSUE:

Whether or not the IBP Board of Governor's Finding as to the suspension of respondent from the practice of law is correct.

RULING:

Yes. Regardless of whether the written contract between respondent and complainant is actually one of sale with *pacto de retro* or of equitable mortgage, respondent's actuations in his transaction with complainant, as well as in the present administrative cases, *clearly show a disregard for the highest standards of legal proficiency, morality, honesty, integrity, and fair dealing required from lawyers, for which respondent should be held administratively liable.*

Respondent dealt with complainant with bad faith, falsehood, and deceit when he entered into the "Deed of Sale with Right to Repurchase" dated December 2, 1981 with the latter. He made it appear that the property was covered by T-662 under his name, even giving complainant the owner's copy of the said certificate of title, when the truth is that the said TCT had already been cancelled some nine years earlier by T-3211 in the name of PNB. He did not even care to correct the wrong statement in the deed when he was subsequently issued a new copy of T-7235 on January 1982, or barely a month after the execution of the said deed. All told, respondent clearly committed an act of gross dishonesty and deceit against complainant.

He indeed violated Canon 1 and Rule 1.01 of the Code of Professional Responsibility. The actions of respondent in connection with the execution of the "Deed of Sale with Right to Repurchase" clearly fall within the concept of unlawful, dishonest, and deceitful conduct under Rule 1.01 of Canon 1. They violate Article 19 of the Civil Code. The respondent also showed a disregard for Sec. 63 of the Land Registration Act. Thus, respondent deserves to be sanctioned.

12) Foster v. Atty. Agtang, A. C. No. 10579, December 10, 2014.

Rule 1.0, Canon 1 of the CPR, provides that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." It is well-established that a lawyer's conduct is "not confined to the performance of his professional duties. A lawyer may be disciplined for misconduct committed either in his professional or private capacity.

Agtang is guilty of engaging in dishonest and deceitful conduct, both in his professional and private capacity. Agtang resorted to overpricing, an act customarily related to depravity and dishonesty. He demanded the amount of P150,000.00 as filing fee, when in truth, the same amounted only to P22,410.00.

When a lawyer receives money from the client for a particular purpose, the lawyer is bound to render an accounting to the client showing that the money was spent for the intended purpose. Consequently, if the lawyer does not use the money for the intended

purpose, the lawyer must immediately return the money to the client. Agtang displayed a reprehensible conduct when he asked for P50,000.00 as "representation expenses" allegedly for the benefit of the judge handling the case, in exchange for a favorable decision.

FACTS:

Foster sought the legal services of Atty. Agtang regarding a legal dispute of a Deed of Absolute Sale she entered with Tierra Realty. Agtang agreed and Foster paid ₱20,000 as acceptance fee and ₱5,000 for incidental expenses. On a later date, Agtang visited Foster in her home asked for a loan of ₱100,000 for the repair of his car. Foster agreed to lend the loan without interest having confidence and trust in Agtang as her lawyer.

When Tierra Realty attempted to transfer to its name a lot that Foster had previously purchased, Agtang recommended the immediate filing of a case for reformation of contract with damages and requested the amount of ₱150,000 as filing fee. Agtang justified that the amount was due to the high value of the disputed land and coverage for the sheriff's travel expenses and accommodations for the service of summons to the defendant corporation. However, Foster confirmed with the trial court records that the filing fee would only amount to ₱22,410. Foster also discovered that it was Agtang who notarized the Deed being questioned in the case.

Agtang again visited Foster and demanded the sum of ₱50,000, purportedly to be given to the judge in exchange for a favorable ruling. Although Foster expressed her misgivings on the proposition, she eventually gave the amount of ₱25,000. Foster gave the latter half of Agtang's requested amount on a later date.

Foster's case was dismissed on September 29, 2010, but she was only made aware of such ruling on December 14, 2010 when she personally checked the status of the case; as Agtang never updated her on such matter. While in the process for reconsideration, Agtang's driver delivered to Foster a copy of the reply and requested ₱2,500 on Agtang's directive as reimbursement for a bottle of wine given to the judge as a present. Foster finally terminated Agtang's services as her counsel when her friend presented documents showing that Agtang was acquainted with Tierra Realty since December 2007.

ISSUE/S:

Whether Atty. Agtang Violated the CPR.

RULING:

YES. For taking advantage of the unfortunate situation of the complainant, for engaging in dishonest and deceitful conduct, for maligning the judge and the Judiciary, for undermining the trust and faith of the public in the legal profession and the entire judiciary, and for representing conflicting interests, respondent deserves no less than the penalty of disbarment.

Rule 1.0, Canon 1 of the CPR, provides that “[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.” It is well-established that a lawyer’s conduct is “not confined to the performance of his professional duties. A lawyer may be disciplined for misconduct committed either in his professional or private capacity. The test is whether his conduct shows him to be wanting in moral character, honesty, probity, and good demeanor, or whether it renders him unworthy to continue as an officer of the court.”

Agtang is guilty of engaging in dishonest and deceitful conduct, both in his professional and private capacity. Agtang resorted to overpricing, an act customarily related to depravity and dishonesty. He demanded the amount of P150,000.00 as filing fee, when in truth, the same amounted only to P22,410.00.

Agtang received various amounts from complainant but he could not account for all of them. Worse, he could not deny the authenticity of the receipts presented by complainant. Upon demand, he failed to return the excess money from the alleged filing fees and other expenses. His possession gives rise to the presumption that he has misappropriated it for his own use to the prejudice of, and in violation of the trust reposed in him by, the client.

When a lawyer receives money from the client for a particular purpose, the lawyer is bound to render an accounting to the client showing that the money was spent for the intended purpose. Consequently, if the lawyer does not use the money for the intended purpose, the lawyer must immediately return the money to the client. Agtang displayed a reprehensible conduct when he asked for P50,000.00 as “representation expenses” allegedly for the benefit of the judge handling the case, in exchange for a favorable decision. Agtang himself signed a receipt showing that he initially took the amount of P 25,000.00 and, worse, he subsequently demanded and received the other half of the amount at the time the case had already been dismissed.

The act of demanding a sum of money from his client, purportedly to be used as a bribe to ensure a positive outcome of a case, is not only an abuse of his client’s trust but an overt act of undermining the trust and faith of the public in the legal profession and the entire Judiciary. As officers of the court, lawyers owe their utmost fidelity to public service and the administration of justice. In no way should a lawyer indulge in any act that would damage the image of judges, lest the public’s perception of the dispensation of justice be overshadowed by iniquitous doubts.

13) *Malcampo-Sin v. Sin*, GR No. 137590, March 26, 2001.

The Family Code mandates:

Article 48. In all cases of annulment or declaration of absolute nullity of marriage, the Court shall order the prosecuting attorney or fiscal assigned to it to appear on behalf of the State to take steps to prevent collusion between the parties and to take care that evidence is not fabricated or suppressed (underscoring ours).

In the cases referred to in the preceding paragraph, no judgment shall be based upon a stipulation of facts or confession of judgment.

The records are bereft of any evidence that the State participated in the prosecution of the case not just at the trial level but on appeal with the Court of Appeals as well

In Republic of the Philippines v. Erlinda Matias Dagdag, while we upheld the validity of the marriage, we nevertheless characterized the decision of the trial court as prematurely rendered since the investigating prosecutor was not given an opportunity to present controverting evidence before the judgment was rendered. This stresses the importance of the participation of the State.

FACTS

On January 4, 1987, after a two-year courtship and engagement, Florence and respondent Philipp T. Sin (hereafter Philipp), a Portuguese citizen, were married at St. Jude Catholic Parish in San Miguel, Manila. On September 20, 1994, Florence filed with the RTC, Pasig City, a complaint for declaration of nullity of marriage against Philipp. Trial ensued and the parties presented their respective documentary and testimonial evidence.

On June 16, 1995, the trial court dismissed Florences petition and throughout its trial the State did not participate in the proceedings. While Fiscal Jose Danilo C. Jabson filed with the trial court a manifestation dated November 16, 1994, stating that he found no collusion between the parties, he did not actively participate therein. Other than entering his appearance at certain hearings of the case, nothing more was heard from him. Neither did the presiding Judge take any step to encourage the fiscal to contribute to the proceedings.

On December 19, 1995, Florence filed with the trial court a notice of appeal to the Court of Appeals. After due proceedings, on April 30, 1998, the Court of Appeals promulgated its decision, dismissing the appeal. Thus, the decision appealed from is affirmed with cost against the Appellant. On June 23, 1998, petitioner filed with the Court of Appeals a motion for reconsideration of the aforementioned decision. On January 19, 1999, the Court of Appeals denied petitioners motion for reconsideration.

ISSUE

Whether or not the prosecuting attorney took steps to prevent collusion between the parties. (NO)

RULING

The prosecuting attorney did not take steps to prevent collusion between the parties and declaration of nullity cannot be declared in absence of the participation of the State in the proceedings.

The Family Code mandates:

Article 48. In all cases of annulment or declaration of absolute nullity of marriage, the Court shall order the prosecuting attorney or fiscal assigned to it to appear on behalf of the State to take steps to prevent collusion between the parties and to take care that evidence is not fabricated or suppressed (underscoring ours).

In the cases referred to in the preceding paragraph, no judgment shall be based upon a stipulation of facts or confession of judgment.

It can be argued that since the lower court dismissed the petition, the evil sought to be prevented (i.e., dissolution of the marriage) did not come about, hence, the lack of participation of the State was cured. Not so. The task of protecting marriage as an inviolable social institution requires vigilant and zealous participation and not mere pro-forma compliance. The protection of marriage as a sacred institution requires not just the defense of a true and genuine union but the exposure of an invalid one as well. This is made clear by the following pronouncement:

“(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition as the case may be, to the petition. The Solicitor-General shall discharge the equivalent function of the defensorvinculi contemplated under Canon 1095 (underscoring ours).”

The records are bereft of any evidence that the State participated in the prosecution of the case not just at the trial level but on appeal with the Court of Appeals as well. Other than the manifestation filed with the trial court on November 16, 1994, the State did not file any pleading, motion or position paper, at any stage of the proceedings.

In **Republic of the Philippines v. Erlinda Matias Dagdag**, while we upheld the validity of the marriage, we nevertheless characterized **the decision of the trial court as prematurely rendered since the investigating prosecutor was not given an opportunity to present controverting evidence before the judgment was rendered. This stresses the importance of the participation of the State.**

Having so ruled, The court decline to rule on the factual disputes of the case, this being within the province of the trial court upon proper re-trial.

14) Royong v. Oblena, G.R. No. 376, April 30, 1963.

The moral turpitude for which an attorney may be disbarred may consist of misconduct in either his professional or non- professional activities. The tendency of the decisions of this Court has been toward the conclusion that a member of the bar may be removed or suspended from office as a lawyer for other than statutory grounds. Indeed, the rule is so phrased as to be broad enough to cover practically any misconduct of a lawyer.

In the case at bar, the moral depravity of the respondent is most apparent. His pretension that before complainant completed her eighteenth birthday, he refrained from having sexual intercourse with her, so as not to incur criminal liability, as he himself declared — and that he limited himself merely to kissing and embracing her and sucking her tongue, indicates a scheming mind, which together with his knowledge of the law, he took advantage of, for his lurid purpose. Moreover, his act becomes more despicable considering that the complainant was the niece of his common-law wife and that he enjoyed a moral ascendancy over her who looked up to him as her uncle. As the Solicitor General observed: "He also took advantage of his moral influence over her. From childhood, Josefina Andalis (Royong), treated him as an uncle and called him 'tata' (uncle), undoubtedly because he is the paramour of a sister of her mother. Considering her age (she was 17 or 18 years old then), her inexperience and his moral ascendancy over her, it is not difficult to see why she could not resist him". Furthermore, the blunt admission of his illicit relations with the complainant reveals the respondent to be a person who would suffer no moral compunction for his acts if the same could be done without fear of criminal liability. He has, by these acts, proven himself to be devoid of the moral integrity expected of a member of the bar.

FACTS

Josefina Royong, the complainant, testified that after lunch, Cecilia Angeles, her foster mother, left her alone in their house and went down to the pig sty to feed the pigs. While Josefina Royong was ironing clothes on the second floor of the house, Ariston Oblena, the respondent entered. Suddenly he covered her mouth with one hand and with the other hand dragged her to one of the bedrooms of the house and forced her to lie down on the floor. She did not shout for help because he threatened her and her family with death. He next undressed her as she lay on the floor, then had sexual intercourse with her after he removed her panties and gave her hard blows on the thigh with his fist to subdue her resistance. After the sexual intercourse, he warned her not to report him to her foster parents, otherwise, he would kill her and all the members of her family.

In a verified complaint filed with this Court on January 14, 1959, complainant Josefina Royong charged the respondent Ariston Oblena, with rape allegedly committed on her person in the manner described therein. Oblena, denied the charge against him stating that after lunch on the date of the alleged rape incident, he went to the Commission of Civil Service to follow up his appointment as technical assistant in the office of the mayor of Makati, Rizal, and read the record of one of the cases assigned to him. Oblena, however, admitted that he had illicit relations with Royong and that they had sexual intercourse for about fifty times.

During trial for the rape case, the Solicitor General discovered that although he did not commit the alleged rape, he was nevertheless guilty of other misconduct. Oblena's own evidence shows that he has been living adulterously with Briccia Angeles and at the same time maintaining illicit relations with the complainant Josefina Royong, niece of Briccia. Briccia Angeles, however is still married to a certain Arines Angeles who is from Camarines Sur and this fact was only made known to Oblena when they were already cohabitating as husband and wife.

ISSUE

Whether or not the prosecuting Atty. Oblena should be disbarred. (YES)

RULING

It is argued by the respondent that he is not liable for disbarment notwithstanding his illicit relations with the complainant and his open cohabitation with Briccia Angeles, a married woman, because he has not been convicted of any crime involving moral turpitude. It is true that the respondent has not been convicted of rape, seduction, or adultery on this count, and that the grounds upon which the disbarment proceedings is based are not among those enumerated by Section 24, Rule 127 of the Rules of Court for which a lawyer may be disbarred. But it has already been held that this enumeration is not exclusive and that the power of the courts to exclude unfit and unworthy members of the profession is inherent; it is a necessary incident to the proper administration of justice; it may be exercised without any special statutory authority, and in all proper cases unless positively prohibited by statute; and the power may be exercised in any manner that will give the party to be disbarred a fair trial and a fair opportunity to be heard.

The moral turpitude for which an attorney may be disbarred may consist of misconduct in either his professional or non-professional activities. The tendency of the decisions of this Court has been toward the conclusion that a member of the bar may be removed or suspended from office as a lawyer for other than statutory grounds. Indeed, the rule is so phrased as to be broad enough to cover practically any misconduct of a lawyer.

In the case at bar, the moral depravity of the respondent is most apparent. His pretension that before complainant completed her eighteenth birthday, he refrained from having sexual intercourse with her, so as not to incur criminal liability, as he himself declared — and that he limited himself merely to kissing and embracing her and sucking her tongue, indicates a scheming mind, which together with his knowledge of the law, he took advantage of, for his lurid purpose. Moreover, his act becomes more despicable considering that the complainant was the niece of his common-law wife and that he enjoyed a moral ascendancy over her who looked up to him as her uncle. As the Solicitor General observed: "He also took advantage of his moral influence over her. From childhood, Josefina Andalis (Royong), treated him as an uncle and called him 'tata' (uncle), undoubtedly because he is the paramour of a sister of her mother. Considering her age (she was 17 or 18 years old then), her inexperience and his moral ascendancy over her, it is not difficult to see why she could not resist him". Furthermore, the blunt admission of his illicit relations with the complainant reveals the respondent to be a person who would suffer no moral compunction for his acts if the same could be done without fear of criminal liability. He has, by these acts, proven himself to be devoid of the moral integrity expected of a member of the bar.

An immoral act cannot justify another immoral act. The noblest means he could have employed was to have married the complainant as he was then free to do so. But to continue maintaining adulterous relations with a married woman and

simultaneously maintaining promiscuous relations with the latter's niece is moral perversion that cannot be condoned. Respondent's conduct therefore renders him unfit and unworthy for the privileges of the legal profession.

15) Navarro v. Solidum, A.C. No. 9872, January 28, 2014.

Conduct, as used in the Rule, is not confined to the performance of a lawyer's professional duties. A lawyer may be disciplined for misconduct committed either in his professional or private capacity. The test is whether his conduct shows him to be wanting in moral character, honesty, probity, and good demeanor, or whether it renders him unworthy to continue as an officer of the court.

In this case, the loan agreements with Navarro were done in respondent's private capacity. Although Navarro financed the registration of Yulo's lot, respondent and Navarro had no lawyer-client relationship. However, respondent was Presbitero's counsel at the time she granted him a loan. It was established that respondent misled Presbitero on the value of the property he mortgaged as a collateral for his loan from her. To appease Presbitero, respondent even made a Deed of Undertaking that he would give her another 1,000-square-meter lot as additional collateral but he failed to do so. Clearly, respondent is guilty of engaging in dishonest and deceitful conduct, both in his professional capacity with respect to his client, Presbitero, and in his private capacity with respect to complainant Navarro.

FACTS

Respondent signed a retainer agreement with Presbitero to follow up the release of the payment for the latter's 2.7-hectare property was the subject of a Voluntary Offer to Sell (VOS) to the DAR. Presbitero engaged the services of respondent to represent her in the matter. Respondent proposed the filing of a case. Respondent received ₱50,000 from Presbitero, supposedly for the expenses of the case, but nothing came out of it. Presbitero's daughter, Ma. Theresa P. Yulo (Yulo), also engaged respondent's services to handle the registration of her 18.85-hectare lot. Yulo convinced her sister, Navarro, to finance the expenses for the registration of the property. Respondent undertook to register the property. Navarro later learned that the registration decree was already issued in the name of one Teodoro Yulo.

Respondent obtained a loan of ₱1,000,000 from Navarro to finance his sugar trading business and additional ₱1,000,000 covered by two MOA. They also agreed that respondent shall issue postdated checks to cover the principal amount of the loan as well as the interest thereon. Respondent delivered the checks to Navarro. Respondent then sent Navarro, through a messenger, postdated checks for the loan under the second MOA. Respondent then obtained a loan of ₱1,000,000 from Presbitero covered by a third MOA, except that the real estate mortgage was over a 263-square-meter property. Presbitero was dissatisfied with the value of the 263-square-meter property mortgaged under the third MOA, and respondent promised to execute a real estate mortgage over a 1,000-square-meter. Respondent did not execute a deed for the additional security.

Respondent paid the loan interest for the first few months. Thereafter, he failed to pay either the principal amount or the interest. Checks issued by could no longer be negotiated because the accounts against which they were drawn were already closed.

Respondent withdrew as counsel for Yulo. Presbitero terminated the services of respondent as counsel. Complainants also filed cases for estafa and violation of Batas Pambansa Blg. 22 against respondent.

As defense, Atty. Solidum alleged that it was Yulo who convinced Presbitero and Navarro to extend him loans; Navarro fixed the interest rate and he agreed because he needed the money; that their business transactions were secured by real estate mortgages and covered by postdated checks; denied that the property he mortgaged to Presbitero was less than the value of the loan; that he was able to pay complainants when business was good but he was unable to continue paying when business with Victorias Milling Company, Inc. did not push through because Presbitero did not help him; denied making any false representations. He claimed that complainants were aware that he could no longer open a current account and they were the ones who proposed that his wife and son issue the checks.

ISSUE

Whether or not Atty. Solidum violated Canon 1 Rule 1.01. (YES)

RULING

The Court **DISBARS** him from practice of law.

With respect to his client, Presbitero, it was established that respondent agreed to pay a high interest rate on the loan he obtained from her. He drafted the MOA. Yet, when he could no longer pay his loan, he sought to nullify the same MOA he drafted on the ground that the interest rate was unconscionable. It was also established that respondent mortgaged a 263-square-meter property to Presbitero for ₱1,000,000 but he later sold the property for only ₱150,000, showing that he deceived his client as to the real value of the mortgaged property.

Respondent failed to refute that the checks he issued belonged to his son. In fact, respondent signed in the presence of Navarro the first batch of checks he issued to Navarro. Respondent sent the second batch of checks to Navarro and the third batch of checks to Presbitero through a messenger, and complainants believed that the checks belonged to accounts in respondent's name.

Conduct, as used in the Rule, is not confined to the performance of a lawyer's professional duties. **A lawyer may be disciplined for misconduct committed either in his professional or private capacity. The test is whether his conduct shows him to be wanting in moral character, honesty, probity, and good demeanor, or whether it renders him unworthy to continue as an officer of the court.**

In this case, the loan agreements with Navarro were done in respondent's private capacity. Although Navarro financed the registration of Yulo's lot, respondent and Navarro had no lawyer-client relationship. However, respondent was Presbitero's counsel at the time she granted him a loan. It was established that respondent misled Presbitero on the value of the property he mortgaged as a collateral for his loan from her. To appease Presbitero, respondent even made a Deed of Undertaking that he would give her another 1,000-square-meter lot as additional collateral but he failed to do so. Clearly, respondent is guilty of engaging in dishonest and deceitful conduct, both in his professional capacity with respect to his client, Presbitero, and in his private capacity with respect to complainant Navarro. Both Presbitero and Navarro allowed respondent to draft the terms of the loan agreements. Respondent drafted the MOAs knowing that the interest rates were exorbitant. Later, using his knowledge of the law, he assailed the validity of the same MOAs he prepared. He issued checks that were drawn from his son's account whose name was similar to his without informing complainants. Further, there is nothing in the records that will show that respondent paid or undertook to pay the loans he obtained from complainants.

16) *Mercullo v. Atty. Ramon*, A.C. No. 11078, July 19, 2016.

*As a lawyer, the respondent was proscribed **from engaging in unlawful, dishonest, immoral or deceitful conduct in her dealings with others, especially clients whom she should serve with competence and diligence.** Her duty required her to maintain fealty to them, binding her not to neglect the legal matter entrusted to her. Thus, her neglect in connection therewith rendered her liable. Moreover, the unfulfilled promise of returning the money and her refusal to communicate with the complainants on the matter of her engagement aggravated the neglect and dishonesty attending her dealings with the complainants.*

The respondent certainly transgressed the Lawyer's Oath by receiving money from the complainants after having made them believe that she could assist them in ensuring the redemption in their mother's behalf. She was convincing about her ability to work on the redemption because she had worked in the NHFMC. She did not inform them soon enough, however, that she had meanwhile ceased to be connected with the agency. It was her duty to have so informed them. Everything she did was dishonest and deceitful in order to have them part with the substantial sum of P350,000.00. She took advantage of the complainants who had reposed their full trust and confidence in her ability to perform the task by virtue of her being a lawyer. Surely, the totality of her actuations inevitably eroded public trust in the Legal Profession.

FACTS

The National Home Mortgage Finance Corporation (NHMFC) sent several demand letters to Carmelita T. Vedaño regarding her unpaid obligations secured by the mortgage covering her residential property in Novaliches, Caloocan City. To avoid the foreclosure of the mortgage, Carmelita authorized her children, Verlita Mercullo and Raymond Vedaño (complainants herein), to inquire from the NHMFC about the status of the obligations. Verlita and Raymond learned that their mother's arrears had amounted to P350,000.00, and that the matter of the mortgage was under the

charge of respondent Atty. Ramon, but who was not around at that time. On June 20, 2012, Carmelita received a letter from the sheriff of RTC in Caloocan City, stating that her property would be put up for auction in July 2013.

Verlita and Raymond called up the respondent, and expressed their intention to redeem the property by paying the redemption price. The latter agreed and scheduled an appointment. On August 30, 2013, the respondent arrived at the designated meeting place at around 1:30 p.m., carrying the folder that Verlita and Raymond had seen at the NHFMC when they inquired on the status of their mother's property. After the respondent had oriented them on the procedure for redemption, the complainants handed P350,000.00 to the respondent, who signed an acknowledgment receipt. The respondent issued two acknowledgment receipts for the redemption price and for litigation expenses, presenting to the complainants her NHMFC identification card. Before leaving them, she promised to inform them as soon as the documents for redemption were ready for their mother's signature.

Verlita and Raymond went to the NHMFC on September 9, 2013 to follow up on the redemption, but discovered that the respondent had already ceased to be connected with the NHMFC. They discovered that the respondent had not deposited the redemption price and had not filed the letter of intent for redeeming the property.

ISSUE

Whether or not the Atty. Ramon is guilty of violating Canon 1, Rule 1.01 of the Code of Professional Responsibility. (YES)

RULING

The Court declares the respondent guilty of dishonesty and deceit.

The respondent certainly transgressed the Lawyer's Oath by receiving money from the complainants after having made them believe that she could assist them in ensuring the redemption in their mother's behalf. She was convincing about her ability to work on the redemption because she had worked in the NHFMC. She did not inform them soon enough, however, that she had meanwhile ceased to be connected with the agency. It was her duty to have so informed them. She further misled them about her ability to realize the redemption by falsely informing them about having started the redemption process. She concealed from them the real story that she had not even initiated the redemption proceedings that she had assured them she would do. Everything she did was dishonest and deceitful in order to have them part with the substantial sum of P350,000.00. She took advantage of the complainants who had reposed their full trust and confidence in her ability to perform the task by virtue of her being a lawyer. Surely, the totality of her actuations inevitably eroded public trust in the Legal Profession.

As a lawyer, the respondent was **proscribed from engaging in unlawful, dishonest, immoral or deceitful conduct in her dealings with others, especially clients whom she should serve with competence and diligence.** Her duty required her to maintain fealty to them, binding her not to neglect the legal matter

entrusted to her. Thus, her neglect in connection therewith rendered her liable. Moreover, the unfulfilled promise of returning the money and her refusal to communicate with the complainants on the matter of her engagement aggravated the neglect and dishonesty attending her dealings with the complainants.

The respondent's conduct patently breached Rule 1.01, Canon 1 of the Code of Professional Responsibility, which provides:

CANON 1 — A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes.

Rule 1.01 A lawyer shall not engage in unlawful, dishonest, immoral, or deceitful conduct.

Evil intent was not essential in order to bring the unlawful act or omission of the respondent within the coverage of Rule 1.01 of the Code of Professional Responsibility. The Code exacted from her not only a firm respect for the law and legal processes but also the utmost degree of fidelity and good faith in dealing with clients and the moneys entrusted by them pursuant to their fiduciary relationship.

17) *Chu v. Ginco*, A.C. No. 10573, January 13, 2015.

Atty. Guico willingly and wittingly violated the law in appearing to counsel Chu to raise the large sums of money in order to obtain a favorable decision in the labor case. He thus violated the law against bribery and corruption. He compounded his violation by actually using said illegality as his means of obtaining a huge sum from the client that he soon appropriated for his own personal interest. His acts constituted gross dishonesty and deceit, and were a flagrant breach of his ethical commitments under the Lawyer's Oath not to delay any man for money or malice; and under Rule 1.01 of the Code of Professional Responsibility that forbade him from engaging in unlawful, dishonest, immoral or deceitful conduct. His deviant conduct eroded the faith of the people in him as an individual lawyer as well as in the Legal Profession as a whole. In doing so, he ceased to be a servant of the law. Atty. Guico committed grave misconduct and disgraced the Legal Profession.

FACTS

Complainant Chu retained Respondent Guico as counsel to handle the labor disputes involving his company, CVC San Lorenzo Ruiz Corporation (CVC). Guico's legal services included handling a complaint for illegal dismissal. According to Chu, during a Christmas party held at Atty. Guico's residence, Atty. Guico asked him to prepare a substantial amount of money to be given to the NLRC Commissioner handling the appeal to insure a favorable decision. Months later, Chu called Atty. Guico to inform him that he had raised PhP 300,000.00 for the purpose and which he later delivered to the latter's law office.

In their subsequent meeting, Atty. Guico then handed Chua a copy of an alleged draft decision of the NLRC in favor of CVC. Atty. Guico told Chu to raise another PhP 300,000.00 to encourage the NLRC Commissioner to issue the decision but Chu

could only produce PhP 280,000.00, which he again brought to Atty. Guico's office. Finally, the NLRC issued an adverse decision against Chu's company and there was no other recourse but to file an appeal to the CA.

In response to the administrative complaint, Atty. Guico described the administrative complaint as replete with lies and inconsistencies, and insisted that the charge was only meant for harassment. He denied demanding and receiving money from Chu, a denial that Atty. Guico's assistant Nardo corroborated with his own affidavit. He further denied handing to Chu a draft decision printed on used paper emanating from his office, surmising that the used paper must have been among those freely lying around in his office that had been pilfered by Chu's witnesses in the criminal complaint he had handled for Chu.

IBP Commissioner Cecilio A.C. Villanueva found that Atty. Guico had violated Rules 1.01 and 1.02, Canon I of the CPRL and recommended his disbarment from the practice of law. The IBP Board of Governors, however, adopted leniency and reduced the penalty to three (3) years suspension.

ISSUE

Whether or not Respondent Guico violate the Lawyer's Oath and Rules 1.01 and 1.02, Canon I of the CPRL for demanding and receiving a huge sum of money from his client to guarantee a favorable decision from the NLRC. (YES)

RULING

By the acts committed by Atty. Guico, he has transgressed the parameters of conduct and ethics as embodied in the CPRL.

In disbarment proceedings, the burden of proof rests on the complainant to establish respondent attorney's liability by clear, convincing and satisfactory evidence. Indeed, this Court has consistently required clearly preponderant evidence to justify the imposition of either disbarment or suspension as penalty.

Chu submitted the affidavits of his witnesses, and presented the draft decision that Atty. Guico had represented to him as having come from the NLRC. Chu credibly insisted that the draft decision was printed on the dorsal portion of used paper emanating from Atty. Guico's office, inferring that Atty. Guico commonly printed documents on used paper in his law office.

Despite denying being the source of the draft decision presented by Chu, Atty. Guico's participation in the generation of the draft decision was undeniable. For one, Atty. Guico impliedly admitted Chu's insistence by conceding that the used paper had originated from his office, claiming only that used paper was just "*scattered around his office.*"

The testimony of Chu, and the circumstances narrated by Chu and his witnesses, especially the act of Atty. Guico of presenting to Chu the supposed draft decision... sufficed to confirm that he had committed the imputed gross misconduct by

demanding and receiving PhP 580,000.00 from Chu to obtain a favorable decision. Atty. Guico offered only his general denial of the allegations in his defense, but such denial did not overcome the affirmative testimony of Chu. [The Court] cannot but conclude that the production of the draft decision by Atty. Guico was intended to motivate Chu to raise money to ensure the chances of obtaining the favorable result in the labor case. As such, Chu discharged his burden of proof as the complainant to establish his complaint against Atty. Guico.

The sworn obligation to respect the law and the legal processes under the Lawyer's Oath and the Code of Professional Responsibility is a continuing condition for every lawyer to retain membership in the Legal Profession. To discharge the obligation, every lawyer should not render any service or give advice to any client that would involve defiance of the very laws that he was bound to uphold and obey, for he or she was always bound as an attorney to be law abiding, and thus to uphold the integrity and dignity of the Legal Profession. Verily, he or she must act and comport himself or herself in such a manner that would promote public confidence in the integrity of the Legal Profession. Any lawyer found to violate this obligation forfeits his or her privilege to continue such membership in the legal profession.

Atty. Guico willingly and wittingly violated the law in appearing to counsel Chu to raise the large sums of money in order to obtain a favorable decision in the labor case. He thus violated the law against bribery and corruption. He compounded his violation by actually using said illegality as his means of obtaining a huge sum from the client that he soon appropriated for his own personal interest. His acts constituted gross dishonesty and deceit, and were a flagrant breach of his ethical commitments under the Lawyer's Oath not to delay any man for money or malice; and under Rule 1.01 of the Code of Professional Responsibility that forbade him from engaging in unlawful, dishonest, immoral or deceitful conduct. His deviant conduct eroded the faith of the people in him as an individual lawyer as well as in the Legal Profession as a whole. In doing so, he ceased to be a servant of the law. Atty. Guico committed grave misconduct and disgraced the Legal Profession.

Grave misconduct is *"improper or wrong conduct, the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies a wrongful intent and not mere error of judgment."* There is no question that any gross misconduct by an attorney in his professional or private capacity renders him unfit to manage the affairs of others, and is a ground for the imposition of the penalty of suspension or disbarment, because good moral character is an essential qualification for the admission of an attorney and for the continuance of such privilege.

Accordingly, the recommendation of the IBP Board of Governors to suspend him from the practice of law for three (3) years would be too soft a penalty. Instead, he should be disbarred, for he exhibited his unworthiness of retaining his membership in the legal profession.

18) Conjugal Partnership of Spouses Cadanedo substituted by Heirs v. Atty. Lacaya, GR No. 173188 2014.

That Atty. Lacaya agreed to represent the spouses Cadavedo and assumed the litigation expenses, without providing for reimbursement, in exchange for a contingency fee consisting of one-half of the subject lot is champertous and is contrary to public policy.

*Any agreement by a lawyer to "conduct the litigation in his own account, to pay the expenses thereof or to save his client therefrom and to receive as his fee a portion of the proceeds of the judgment is obnoxious to the law." In *Bautista v. Atty. Gonzales*, the Court held that an reimbursement of litigation expenses paid by the former is against public policy, especially if the lawyer has agreed to carry on the action at his expense in consideration of some bargain to have a part of the thing in dispute.*

FACTS

The present controversy arose when Spouses Cadavedo engaged the services of Atty. Lacaya in filing an action against Spouses Ames for sum of money and voiding of contract of sale of their homestead lot after the latter failed to pay the balance of the purchase price.

The Spouses Cadavedo hired Atty. Lacaya on a contingency fee basis for the said complaint and later engaged his services in two other cases involving the said lot in which the lower courts' ruled in their favor and placed them in possession of the subject lot.

Subsequently, Atty. Lacaya asked for one-half of the subject lot as attorney's fees. He caused the subdivision of the subject lot into two equal portions and selected the more valuable and productive half for himself; and assigned the other half to the spouses Cadavedo.

Unsatisfied with the division, petitioners entered the portion assigned to the respondents and filed a case to eject them. In the said ejectment case, petitioner entered into an amicable settlement (*compromise agreement*) with Atty. Lacaya, re-adjusting the area and portion obtained by each. Pursuant to this agreement, Atty. Lacaya acquired 10.5 hectares of the subject lot as attorney's fees.

Six years later, petitioners filed an action before the RTC assailing the compromise agreement praying that respondents be ejected from their one-half portion of the subject lot.

ISSUE

2. Whether or not the agreement is champertous and contrary to public policy. (YES)
3. Whether or not the attorney's fee consisting of one-half of the subject lot is valid and reasonable. (NO)

RULING

2. *That Atty. Lacaya agreed to represent the spouses Cadavedo and assumed the litigation expenses, without providing for reimbursement, in exchange for a contingency fee consisting of one-half of the subject lot is champertous and is contrary to public policy.*

Any agreement by a lawyer to "conduct the litigation in his own account, to pay the expenses thereof or to save his client therefrom and to receive as his fee a portion of the proceeds of the judgment is obnoxious to the law." In *Bautista v. Atty. Gonzales*, the Court held that an reimbursement of litigation expenses paid by the former is against public policy, especially if the lawyer has agreed to carry on the action at his expense in consideration of some bargain to have a part of the thing in dispute.

In addition to its champertous character, the contingent fee arrangement in this case expressly transgresses the Canons of Professional Ethics and, impliedly, the Code of Professional Responsibility. Under Rule 42 of the Canons of Professional Ethics, "a lawyer may not properly agree with a client that the lawyer shall pay or bear the expense of litigation"

3. *The attorney's fee consisting of one-half of the subject lot is excessive and unconscionable*

While the first case took twelve years to be finally resolved, that period of time, as matters then stood, was not a sufficient reason to justify a large fee in the absence of any showing that special skills and additional work had been involved. The issue involved in that case, as observed by the RTC (and with which we agree), was simple and did not require of Atty. Lacaya extensive skill, effort and research. That Atty. Lacaya also served as the spouses Cadavedo's counsel in the two subsequent cases did not and could not otherwise justify an attorney's fee of one-half of the subject lot. As asserted by the petitioners, the spouses Cadavedo and Atty. Lacaya made separate arrangements for the costs and expenses for each of these two cases.

Atty. Lacaya is entitled to receive attorney's fees on a quantum meruit basis.

Quantum meruit—meaning 'as much as he deserves'—is used as basis for determining a lawyer's professional fees in the absence of a contract xxx taking into account certain factors in fixing the amount of legal fees.

Under Section 24, Rule 138 of the Rules of Court and Canon 20 of the Code of Professional Responsibility, factors such as the importance of the subject matter of the controversy, the time spent and the extent of the services rendered, the customary charges for similar services, the amount involved in the controversy and the benefits resulting to the client from the service, to name a few, are considered in determining the reasonableness of the fees to which a lawyer is entitled

All things considered, We believe and so hold that the respondents are entitled to two (2) hectares (or approximately one-tenth [1/10] of the subject lot), with the fruits previously received from the disputed one-half portion, as attorney's fees.

The allotted portion of the subject lot properly recognizes that litigation should be for the benefit of the client, not the lawyer, particularly in a legal situation when the law itself holds clear and express protection to the rights of the client to the disputed property

19) Atty. Khan v. Simbillo, A.C. No. 5299, August 19, 2003. Villatuya v. Tabalingcos, A.C. No. 6622, July 10, 2012.

It has been repeatedly stressed that the practice of law is not a business. It is a profession in which duty to public service, not money, is the primary consideration. Lawyering is not primarily meant to be a money-making venture, and law advocacy is not capital that necessarily yields profits. The gaining of a livelihood should be a secondary consideration. The duty to public service and to the administration of justice should be the primary consideration of lawyers, who must subordinate their personal interests or what they owe to themselves.

There is no question that respondent committed the acts complained of. He himself admits that he caused the publication of the advertisements. What adds to the gravity of respondent's acts is that in advertising himself as a self-styled "Annulment of Marriage Specialist," he wittingly or unwittingly erodes and undermines not only the stability but also the sanctity of an institution still considered sacrosanct despite the contemporary climate of permissiveness in our society. Indeed, in assuring prospective clients that an annulment may be obtained in four to six months from the time of the filing of the case, he in fact encourages people, who might have otherwise been disinclined and would have refrained from dissolving their marriage bonds, to do so.

FACTS

On July 5, 2000, a paid advertisement appeared in the Philippine Daily Inquirer which reads "ANNULMENT OF MARRIAGE Specialist 532-4333/ 521-2667". Ma. Theresa B. Espeleta, a staff member of the Public Information Office of the Supreme Court called up and pretended to be an interested party. Espeleta spoke to Mrs. Simbillo, who claimed that her husband, Atty. Rizalino T. Simbillo, is an expert of annulment cases and can guarantee a court decree within four to six months, provided that it will not involve separation of property or custody of children. Atty. Simbillo's charge fee is P48, 000.00, half of which payable at the time of filing of the case and the remaining after a decision has been rendered. Further research of the Court Administrator and Public Information Office of the Supreme Court revealed that the same advertisements were published in the August 2 and 6, 2000 issues of the Manila Bulletin and August 5, 2000 issue of Philippine Star.

On September 1, 2000, Atty. Ishmael Khan, in his capacity as Assistant Court Administrator and Chief of Public Information Office, filed an administrative complaint against Atty. Simbillo for improper advertisement and solicitation of his legal services, in violation of Rule 2.03 and Rule 3.01 of the Code of Professional

Responsibility and Rule 138, Section 27 of the Rules of Court. In his answer, respondent admitted the acts imputed to him, but argued that advertising and solicitation per se are not prohibited acts; that the time has come to change our views about the prohibition on advertising and solicitation; that the interest of the public is not served by the absolute prohibition on lawyer advertising; that the Court can lift the ban on lawyer advertising; and that the rationale behind the decades-old prohibition should be abandoned. Thus, he prayed that he be exonerated from all the charges against him and that the Court promulgate a ruling that advertisement of legal services offered by a lawyer is not contrary to law, public policy and public order as long as it is dignified.

The case was referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation. On July 29, 2002, the IBP Commission on Bar Discipline passed a resolution finding the respondent guilty of violation of Rules 2.03 and 3.01 of the Code of Professional Responsibility and Rule 138, Section 27 of the Rules of Court and suspended Atty. Simbillo from practice of law for one (1) year with the warning that a repetition of similar acts would be dealt with more severely.

ISSUE

Whether or not publishing legal services in newspaper is an act of improper advertisement and solicitation of legal services violative of the rules of the Code of Professional Responsibility . (YES)

RULING

Atty. Simbillo is GUILTY of violation of Rules 2.03 and 3.01 of the Code of Professional Responsibility.

Rules 2.03 and 3.01 of the Code of Professional Responsibility read:

Rule 2.03. A lawyer shall not do or permit to be done any act designed primarily to solicit legal business.

Rule 3.01. A lawyer shall not use or permit the use of any false, fraudulent, misleading, deceptive, undignified, self-laudatory or unfair statement or claim regarding his qualifications or legal services.

It has been repeatedly stressed that the practice of law is not a business. It is a profession in which duty to public service, not money, is the primary consideration. Lawyering is not primarily meant to be a money-making venture, and law advocacy is not capital that necessarily yields profits. The gaining of a livelihood should be a secondary consideration. The duty to public service and to the administration of justice should be the primary consideration of lawyers, who must subordinate their personal interests or what they owe to themselves.

There is no question that respondent committed the acts complained of. He himself admits that he caused the publication of the advertisements. What adds to the gravity of respondent's acts is that in advertising himself as a self-styled

"Annulment of Marriage Specialist," he wittingly or unwittingly erodes and undermines not only the stability but also the sanctity of an institution still considered sacrosanct despite the contemporary climate of permissiveness in our society. Indeed, in assuring prospective clients that an annulment may be obtained in four to six months from the time of the filing of the case, he in fact encourages people, who might have otherwise been disinclined and would have refrained from dissolving their marriage bonds, to do so.

Nonetheless, the solicitation of legal business is not altogether proscribed. However, for solicitation to be proper, it must be compatible with the dignity of the legal profession. If it is made in a modest and decorous manner, it would bring no injury to the lawyer and to the bar. Thus, the use of simple signs stating the name or names of the lawyers, the office and residence address and fields of practice, as well as advertisement in legal periodicals bearing the same brief data, are permissible. Even the use of calling cards is now acceptable. Publication in reputable law lists, in a manner consistent with the standards of conduct imposed by the canon, of brief biographical and informative data is likewise allowable.

20) Atty. Renerio Paas, A.M. No. 01-12-02-SC, April 4, 2003.

Canon 2 of the Code of Judicial Conduct provides that "A judge should avoid impropriety and the appearance of impropriety in all activities." Specifically, Rule 2.03 thereof provides that:

Rule 2.03. A judge shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.

By allowing her husband to use the address of her court in pleadings before other courts, Judge Paas indeed "allowed him to ride on her prestige for purposes of advancing his private interest, in violation of the Code of Judicial Conduct." A judge's official conduct should indeed be free from the appearance of impropriety; and his behavior not only in the performance of judicial duties, but also in his everyday life should be beyond reproach. This is premised on the truism that a Judge's official life cannot simply be detached or separated from his personal existence and that upon a Judge's attributes depend the public perception of the Judiciary.

FACTS

In her complaint, Judge Paas alleged that Almarvez is discourteous to his coemployees, lawyers and party litigants; has failed to maintain the cleanliness in and around the court premises despite order to do so, thus amounting to insubordination; was, and on several instances, habitually absent from work or made it appear that he reported for work by signing the logbook in the morning, only to stay out of the office the whole day; asked from detention prisoners P100.00 to P200.00 before he released to them their Release Orders; asked for amounts in excess of what was necessary for the purchase of stamps and pocketed the

difference; once failed to mail printed matter on July 11, 2000 and kept for his own use the amount given to him for the purpose; and divulged confidential information to litigants in advance of its authorized release date for a monetary consideration, thus giving undue advantage or favor to the paying party, in violation of Rep. Act No. 3019 (The Anti-Graft and Corrupt Practices Act).

Almarvez, by Answer of September 25, 2000, denied Judge Paas' charges, and alleged that the real reason why Judge Paas filed the case against him was because she suspected him of helping her husband, Atty. Renerio G. Paas, conceal his marital indiscretions; since she failed to elicit any information from him, she resorted to calling him names and other forms of harassment; on September 6, 2000, she hurled at him the following invectives before the other employees of the court: "Walang kuwenta, ahas ka, driver lang kita, pinaasenso kita, walang utang na loob, pinagtatakan mo pa ang asawa ko, ulupong "; and she insisted that he sign a prepared resignation letter, a copy of which he was not able to keep.

In a separate case for inhibition of Judge Paas in a criminal case, it was revealed that Judge Paas' husband, private practitioner Atty. Paas, was using his wife's office as his office address in his law practice, in support of which were submitted copies of a Notice of Appeal signed by Atty. Paas, notices from Pasay City RTC Branch 109 and from the Supreme Court with respect to the case of *People vs. Louie Manabat, et al.* (GR Nos. 140536-37) which indicated Atty. Paas address to be Room 203, Hall of Justice, Pasay City, the office assigned to Pasay City MeTC, Branch 44.

Judge Paas and Atty Paas denied the charge that the latter was using Room 203 of the Pasay City Hall of Justice as his office address, claiming that Atty. Paas actually holds office at 410 Natividad Building, Escolta, Manila with his partner Atty. Herenio Martinez; that Atty. Paas would visit his wife at her office only when he has a hearing before the Pasay City courts or Prosecutors Office, or when he lunches with or fetches her, or when he is a guest during special occasions such as Christmas party and her birthday which are celebrated therein; and Judge Paas would never consent nor tolerate the use of the court for any personal activities. On January 24, 2002, Judge Paas admitted that Atty. Paas did use her office as his return address for notices and orders in "*People vs. Louie Manabat y Valencia and Raymond dela Cruz y Salita*", but only to ensure and facilitate delivery of those notices, but after the cases were terminated, all notices were sent to his office address in Escolta.

ISSUE

Whether or not Judge Paas and Atty. Paas should be penalized for allowing the latter to use the office of the former as his return address in his private practice. (YES)

RULING

On the charges against Judge Paas

Canon 2 of the Code of Judicial Conduct provides that "A judge should avoid impropriety and the appearance of impropriety in all activities." Specifically, Rule 2.03 thereof provides that:

Rule 2.03. A judge shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.

SC Circular No. 3-92, 33 dated August 31, 1992, of this Court reads:

SUBJECT: PROHIBITION AGAINST USE OF HALLS OF JUSTICE FOR RESIDENTIAL OR COMMERCIAL PURPOSES

All judges and court personnel are hereby reminded that the Halls of Justice may be used only for purposes directly related to the functioning and operation of the courts of justice, and may not be devoted to any other use, least of all as residential quarters of the judges or court personnel, or for carrying on therein any trade or profession.

By allowing her husband to use the address of her court in pleadings before other courts, Judge Paas indeed "allowed him to ride on her prestige for purposes of advancing his private interest, in violation of the Code of Judicial Conduct" and of the above-stated Supreme Court circulars, which violation is classified as a less serious charge under the Rules of Court and is punishable under the same Rule. A judge's official conduct should indeed be free from the appearance of impropriety; and his behavior not only in the performance of judicial duties, but also in his everyday life should be beyond reproach. This is premised on the truism that a Judge's official life cannot simply be detached or separated from his personal existence and that upon a Judge's attributes depend the public perception of the Judiciary.

On Atty. Paas' part

He was guilty of using a fraudulent, misleading, and deceptive address that had no purpose other than to try to impress either the court in which his cases are lodged, or his client, that he has close ties to a member of the judiciary, in violation of the following rules of the Code of Professional Responsibility:

Canon 3 A lawyer in making known his legal services shall use only true, honest, fair, dignified and objective information or statement of facts.

Rule 3.01. A lawyer shall not use or permit the use of any false, fraudulent, misleading, deceptive, undignified, self-laudatory or unfair statement or claim regarding his qualifications or legal services.

Canon 10 A lawyer owes candor, fairness and good faith to the court.

Rule 10.01 A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

Canon 13 Lawyer shall rely upon the merits of his cause and refrain from any impropriety which tends to influence, or gives the appearance of influencing the court.

Canon 15 Lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his clients.

Rule 15.06. A lawyer shall not state or imply that he is able to influence any public official, tribunal or legislative body.

21) Petition for authority to Continue Use of Firm Name “Sycip, Salazar, Feliciano, Hernandez and Castillo, G.R. No. x92-1, July 30, 1979.

Article 1825 of the Civil Code prohibits a third person from including his name in the firm name under pain of assuming the liability of a partner. The heirs of a deceased partner in a law firm cannot be held liable as the old members to the creditors of a firm particularly where they are non-lawyers. Thus, Canon 34 of the Canons of Professional Ethics "prohibits all agreement for the payment to the widow and heirs of a deceased lawyer of a percentage, either gross or net, of the fees received from the future business of the deceased lawyer's clients, both because the recipients of such division are not lawyers and because such payments will not represent service or responsibility on the part of the recipient." Accordingly, neither the widow nor the heirs can be held liable for transactions entered into after the death of their lawyer-predecessor. There being no benefits accruing, there can be no corresponding liability.

Prescinding the law, there could be practical objections to allowing the use by law firms of the names of deceased partners. The public relations value of the use of an old firm name can tend to create undue advantages and disadvantages in the practice of the profession. An able lawyer without connections will have to make a name for himself starting from scratch. Another able lawyer, who can join an old firm, can initially ride on that old firm's reputation established by deceased partners

FACTS

Two separate Petitions were filed before this Court 1) by the surviving partners of Atty. Alexander Sycip, who died on May 5, 1975, and 2) by the surviving partners of Atty. Herminio Ozaeta, who died on February 14, 1976, praying that they be allowed to continue using, in the names of their firms, the names of partners who had passed away.

Petitioners argued that under the law, a partnership is not prohibited from continuing its business under a firm name which includes the name of a deceased partner; in fact, Article 1840 of the Civil Code explicitly sanctions the practice. Second, The Canons of Professional Ethics are not transgressed by the continued use of the name of a deceased partner in the firm name of a law partnership because Canon 33 of the Canons of Professional Ethics adopted by the American Bar Association declares that: ". . . The continued use of the name of a deceased or former partner when

permissible by local custom, is not unethical, but care should be taken that no imposition or deception is practiced through this use. . . ." Third, there is no possibility of imposition or deception because the deaths of their respective deceased partners were well-publicized in all newspapers of general circulation for several days. Fourth, no local custom prohibits the continued use of a deceased partner's name in a professional firm's name; there is no custom or usage in the Philippines, or at least in the Greater Manila Area, which recognizes that the name of a law firm necessarily identifies the individual members of the firm. Lastly, the continued use of a deceased partner's name in the firm name of law partnerships has been consistently allowed by U.S. Courts and is an accepted practice in the legal profession of most countries in the world.

ISSUE

Whether or not the surviving partners may be allowed to retain the name of the partners who already passed away in the name of the firm. (NO)

RULING

Inasmuch as "Sycip, Salazar, Feliciano, Hernandez and Castillo" and "Ozaeta, Romulo, De Leon, Mabanta and Reyes" are partnerships, the use in their partnership names of the names of deceased partners will run counter to Article 1815 of the Civil Code which provides:

"Art. 1815. Every partnership shall operate under a firm name, which may or may not include the name of one or more of the partners.

"Those who, not being members of the partnership include their names in the firm name, shall be subject to the liability of a partner."

It is clearly tacit in the above provision that names in a firm name of a partnership must either be those of living partners and, in the case of non-partners, should be living persons who can be subjected to liability. In fact, Article 1825 of the Civil Code prohibits a third person from including his name in the firm name under pain of assuming the liability of a partner. The heirs of a deceased partner in a law firm cannot be held liable as the old members to the creditors of a firm particularly where they are non-lawyers. Thus, Canon 34 of the Canons of Professional Ethics "prohibits all agreement for the payment to the widow and heirs of a deceased lawyer of a percentage, either gross or net, of the fees received from the future business of the deceased lawyer's clients, both because the recipients of such division are not lawyers and because such payments will not represent service or responsibility on the part of the recipient." Accordingly, neither the widow nor the heirs can be held liable for transactions entered into after the death of their lawyer-predecessor. There being no benefits accruing, there can be no corresponding liability.

Prescinding the law, there could be practical objections to allowing the use by law firms of the names of deceased partners. The public relations value of the use of an old firm name can tend to create undue advantages and disadvantages in the

practice of the profession. An able lawyer without connections will have to make a name for himself starting from scratch. Another able lawyer, who can join an old firm, can initially ride on that old firm's reputation established by deceased partners

It is true that Canon 33 *does not consider as unethical* the continued use of the name of a deceased or former partner in the firm name of a law partnership when such a practice is *permissible by local custom* but the Canon warns that care should be taken that no imposition or deception is practiced through this use. The possibility of deception upon the public, real or consequential, where the name of a deceased partner continues to be used cannot be ruled out. A person in search of legal counsel might be guided by the familiar ring of a distinguished name appearing in a firm title. The public relations value of the use of an old firm name can tend to create undue advantages and disadvantages in the practice of the profession. An able lawyer without connections will have to make a name for himself starting from scratch. Another able lawyer, who can join an old firm, can initially ride on that old firm's reputation established by deceased partners.

22) *Dacanay v. Baker & Mckenzie*, A.M. No. 2131, May 10, 1985.

Baker & McKenzie, being an alien law firm, cannot practice law in the Philippines (Sec. 1, Rule 138, Rules of Court). As admitted by the respondents in their memorandum, Baker & McKenzie is a professional partnership organized in 1949 in Chicago, Illinois with members and associates in 30 cities around the world. Respondents, aside from being members of the Philippine bar, practising under the firm name of Guerrero & Torres, are members or associates of Baker & Mckenzie.

As pointed out by the Solicitor General, respondents' use of the firm name Baker & McKenzie constitutes a representation that being associated with the firm they could "render legal services of the highest quality to multinational business enterprises and others engaged in foreign trade and investment.". This is unethical because Baker & McKenzie is not authorized to practice law here.

FACTS

Lawyer Adriano E. Dacanay, in his 1980 verified complaint, sought to enjoin Juan G. Collas, Jr. and nine other lawyers from practising law under the name of Baker & McKenzie, a law firm organized in Illinois.

In a letter dated November 16, 1979 respondent Vicente A. Torres, using the letterhead of Baker & McKenzie, which contains the names of the ten lawyers, asked Rosie Clurman for the release of 87 shares of Cathay Products International, Inc. to H. E. Gabriel, a client.

Attorney Dacanay, in his reply dated December 7, 1979, denied any liability of Clurman to Gabriel. He requested that he be informed whether the lawyer of Gabriel is Baker & McKenzie "and if not, what is your purpose in using the letterhead of another law office." Not having received any reply, he filed the instant complaint.

ISSUE

Whether or not the the respondents are enjoined from practicing law under the firm name Baker & McKenzie. (YES)

RULING

Baker & McKenzie, being an alien law firm, cannot practice law in the Philippines (Sec. 1, Rule 138, Rules of Court). As admitted by the respondents in their memorandum, Baker & McKenzie is a professional partnership organized in 1949 in Chicago, Illinois with members and associates in 30 cities around the world. Respondents, aside from being members of the Philippine bar, practising under the firm name of Guerrero & Torres, are members or associates of Baker & Mckenzie.

As pointed out by the Solicitor General, respondents' use of the firm name Baker & McKenzie constitutes a representation that being associated with the firm they could "render legal services of the highest quality to multinational business enterprises and others engaged in foreign trade and investment.". This is unethical because Baker & McKenzie is not authorized to practice law here. Wherefore, the respondents are enjoined from practising law under the firm name Baker & McKenzie.

23) General Bank and Trust Co. v. Ombudsman, G.R. No. 125440, January 31, 2000.

Notwithstanding that a successful defense of the interest of the Central Bank would also inure an incidental benefit to the Lucio Tan group, ASG de Leon cannot be held criminally liable for violating Section 3 (e) of RA 3019. In defending the Central Bank, respondent was performing his legal duty to defend the interest of the Government and was merely pursuing the position taken by it.

FACTS

Petitioners filed a complaint against respondent Assistant Solicitor General (ASG) Magdangal M. de Leon, accusing the latter of violating Section 3 (e) of Republic Act 3019 (Anti-Graft and Corrupt Practices Act).

What prompted petitioners to file a complaint against respondent ASG de Leon with the Ombudsman is the alleged "inconsistent position" of said respondent in Spec. Proc. No. 107812 and in Civil Case No. 0005 filed with Sandiganbayan. Civil Case No. 0005 is an ill-gotten wealth case filed by the Presidential Commission on Good Government (PCGG) through the OSG against Lucio Tan, former President Ferdinand Marcos, Imelda R. Marcos, et al. Petitioners wrote respondent ASG De Leon that he inhibit himself from appearing in said case and to defend the interest of the Government as against the interest of Lucio Tan in the Civil Case. When respondent ASG de Leon for OSG continued to represent the Central Bank, petitioners then filed the complaint against respondent with the Office of the Ombudsman. However, the Ombudsman dismissed the case filed by the petitioners, holding that OSG as counsel of the Central Bank of the Philippines in the aforesaid case is defending its client, the

Central Bank. It is not defending the interest of Lucio Tan. The fact that, under the Liquidation Plan approved by the Monetary Board of the Central Bank, the Lucio Tan Group purchased the assets and assumed the liabilities of GBTC, is merely incidental.

ISSUE

Whether or not the OSG violated RA 3019 for representing conflicting interest. (NO)

RULING

ASG de Leon cannot be held criminally liable for violating Section 3 (e) of RA 3019. In defending the Central Bank, respondent was performing his legal duty to defend the interest of the Government and was merely pursuing the position taken by it. Whatever legal services respondent ASG de Leon rendered in favor of the Central Bank in Spec. Proc. No. 107812/CA-G.R. CV No. 39939 were made in his official capacity as a member of the legal staff of the OSG.

In defending the validity of the closure of GBTC, respondent ASG de Leon was merely acting in the interest of the Central Bank, which is the client of OSG. It may be true that a successful defense of the interest of the Central Bank in said case would also inure to the benefit of the Lucio Tan group. However, such benefit would just be an incidental result. Certainly, it cannot be deemed as an act of causing undue injury to a party by giving it unwarranted benefits or advantage.

24) Jose v. Court of Appeals, G.R. No. L- 38581, March 31, 1976.

In Suarez vs. Platon, et al., the Court held that a prosecuting officer, as the representative of a sovereignty whose obligation and interest in a criminal prosecution is not that it shall win a case but that justice shall be done, has the solemn responsibility to assure the public that while guilt shall not escape, innocence shall not suffer. Here, the Court gave due credit to the Solicitor General and his staff for upholding the aforementioned time-honored principle.

FACTS

Petitioner Lorenzo Jose who was convicted of illegal possession of explosives (handgrenade) seeks a new trial which was denied him by the Court of First Instance and by respondent Court of Appeals. He claimed to be an agent of the Philippine Constabulary with a permit to possess explosives such as the handgrenade in question. Hence, this motion for reconsideration was filed by petitioner, which was opposed by the Solicitor General. Later on, a Manifestation was submitted by the Solicitor General informing the Court that in view of the “persistence of accused petitioner Lorenzo Jose both before this Honorable Court and respondent Court of Appeals as to his alleged existing appointment as Philippine Constabulary Agent and/or authority to possess handgrenade,” in the interest of justice, he was constrained to make pertinent inquiries from the PC Chief, Gen. Fidel V. Ramos. The latter in his letter confirmed the appointment of petitioner Lorenzo Jose as a PC Agent of the Pampanga Constabulary Command. Thereafter,

the Solicitor General conceded that the interests of justice will best be served by remanding this case to the court of origin for a new trial.

ISSUE

Whether or not petitioner's motion for new trial should be granted. (YES)

RULING

The Court gave due credit to the Solicitor General and his staff for upholding the time-honored principle set forth in perspicuous terms by this Court in *Suarez vs. Platon, et al.*, that a prosecuting officer, as the representative of a sovereignty whose obligation and interest in a criminal prosecution is not that it shall win a case but that justice shall be done, has the solemn responsibility to assure the public that *while guilt shall not escape, innocence shall not suffer.*

The Court found and held that the circumstances of petitioner justify a reopening of his case to afford him the opportunity of producing exculpatory evidence. An outright acquittal from the Court which petitioner seeks as an alternative relief is not proper. As correctly stressed by the Solicitor General, the People is to be given the chance of examining the documentary evidence sought to be produced, and of cross-examining the persons who executed the same, as well as the accused himself, now petitioner, on his explanation for the non-production of the evidence during the trial.

25) PCGG v. Sandiganbayan, GR Nos. 151809-12, April 12, 2005.

Rule 6.03 - A lawyer shall not, after leaving government service, accept engagement or employment in connection with any matter in which he had intervened while in said service. Here, the advice given by respondent Mendoza, as then Solicitor General on the procedure to liquidate GENBANK is not the "matter" contemplated by Rule 6.03 of the Code of Professional Responsibility.

FACTS

Former Solicitor General Estelito Mendoza filed a petition with the CFI praying for the assistance and supervision of the court in the GenBank's liquidation. Mendoza gave advice on the procedure to liquidate the GenBank. Subsequently, President Aquino established the PCGG to recover the alleged ill-gotten wealth of former President Marcos, his family and cronies. The PCGG filed with the Sandiganbayan a complaint for reversion, reconveyance, restitution, accounting and damages against Tan, *et al.* and issued several writs of sequestration on properties they allegedly acquired. Tan, *et al.* were represented by former SolGen Mendoza, who has then resumed his private practice of law. The PCGG filed motions to disqualify Mendoza as counsel for Tan, *et al.*, alleging that then SolGen and counsel to Central Bank, "actively intervened" in the liquidation of GenBank, which was subsequently acquired by Tan, *et al.*

ISSUE

Whether Rule 6.03 of the Code of Professional Responsibility applies to respondent Mendoza. (NO)

RULING

The “matter” or the act of respondent Mendoza as Solicitor General involved in the case at bar is “advising the Central Bank, on how to proceed with the said bank’s liquidation and even filing the petition for its liquidation with the CFI of Manila.” Said procedure of liquidation is given in black and white in Republic Act No. 265, section 29. Thus, the Court held that this advice given by respondent Mendoza on the procedure to liquidate GENBANK is not the “matter” contemplated by Rule 6.03 of the Code of Professional Responsibility.

In interpreting Rule 6.03, the Supreme Court also cast a harsh eye on its use as a litigation tactic to harass opposing counsel as well as deprive his client of competent legal representation - the danger that the rule will be misused to bludgeon an opposing counsel is not a mere guesswork.

B. To the legal profession (Canons 7-9)

- 1) Integrated Bar of the Philippines (Rule 139-A)
 - a) Membership and dues
- 2) Upholding the dignity and integrity of the profession
- 3) Courtesy, fairness and candor toward professional colleagues
- 4) No assistance in unauthorized practice of law

Jurisprudence

- 1) Atty. Aileen R. Maglana v. Atty. Jose Vicente R. Opinion, B.B. No. 2713, June 10, 2014

The rotation by exclusion rule provides that once a member of a chapter is elected as Governor, his or her chapter would be excluded in the next turn until all have taken their turns in the rotation cycle. Once a full rotation cycle ends and a fresh cycle commences, all the chapters in the region are once again entitled to vie but subject again to the rule on rotation by exclusion. With the IBP Eastern Visayas region already in the second rotation cycle and with governors from Leyte, Bohol and Southern Leyte Chapters having served the region as starting points, Atty. Maglana’s position that IBP Samar Chapter is the only remaining chapter qualified to field a candidate for governor in the 2013-2015 term clearly fails.

FACTS

On May 25, 2013, delegates of the IBP Eastern Visayas Region gathered to elect the Governor of their region for the 2013-2015 term. Atty. Maglana, the incumbent President of IBP Samar Chapter, was nominated for the position of Governor. Atty. Maglana then moved that Governor Enage declare that only IBP Samar Chapter was

qualified to be voted upon for the position of Governor for IBP Eastern Visayas, to the exclusion of all the other eight (8) chapters. Atty. Maglana cited the rotation rule under Bar Matter No. 491 and argued that since 1989 or the start of the implementation of the rotation rule, only IBP Samar Chapter had not served as Governor for IBP Eastern Visayas.

Atty. Opinion, the candidate of the IBP Eastern Samar Chapter, thereafter, took the floor and manifested that before he decided to run for Governor, he sought the opinion of the IBP if he was still qualified to run considering that he also ran for Governor and lost in the immediately preceding term. IBP Executive Committee stated that Atty. Opinion is qualified and that under the present set up, the IBP Chapters of Eastern Samar, Samar, and Biliran are qualified to field their respective candidate for the said election. Atty. Opinion also manifested that in the 2011 Regional Elections for IBP Eastern Visayas, the representative of IBP Samar Chapter, Judge Amanzar, waived the votes as he cannot pursue an election at that time. Instead, Atty. Opinion was asked to run. The Chapter President of Samar in 2011, however, categorically denied the waiver.

Governor Enage eventually ruled that Atty. Opinion was disqualified from running for the position of Governor of IBP Eastern Visayas. Thereafter, Atty. Maglana was proclaimed as the duly elected Governor of IBP Eastern Visayas in view of the disqualification of the other nominee, Atty. Opinion. Upon protest, the IBP BOG declared Atty. Opinion the duly elected Governor of IBP Eastern Visayas for the 2013-2015 term, holding that IBP Samar waived its turn in the first rotation cycle, from 1989 to 2007. It also held that Atty. Opinion, who was actually a qualified candidate for Governor of IBP Eastern Visayas, should be declared the duly elected Governor for IBP Eastern Visayas for the 2013-2015 term, considering that he garnered the majority six (6) votes, as opposed to the minority four (4) votes garnered by Atty. Maglana.

ISSUE

Whether Atty. Opinion should be declared the duly elected Governor for IBP Eastern Visayas for the 2013-2015 term. (YES)

RULING

In its Resolution in Bar Matter No. 586 dated May 16, 1991, the Court decreed without amending Section 39, Article VI of the IBP By-Laws that the rotation rule under Sections 37 and 39, Article VI of the IBP By-Laws should be strictly implemented “so that all prior elections for governor in the region shall be reckoned with or considered in determining who should be the governor to be selected from the different chapters to represent the region in the Board of Governors.” Despite the call for strict implementation of the rotation rule under Bar Matter No. 586 in 1991, the Court amended Section 39, Article VI of the IBP By-Laws only in 2010 in *In the Matter of the Brewing Controversies in the Election in the Integrated Bar of the Philippines*, 638 SCRA 1 (2010), by mandating the mandatory and strict implementation of the rotation rule, as well as recognizing that the rotation rule is subject to waivers by the chapters of the regions.

As has been interpreted and applied by the Court in the past, the rotation rule under Section 39, Article VI, as amended, of the IBP By-Laws actually consists of two underlying directives. First is the directive for the mandatory and strict implementation of the rotation rule. The rule mandates that the governorship of a region shall rotate once in as many terms as there may be chapters in the region. This serves the purpose of giving every chapter a chance to represent the region in the IBP BOG. Second is the exception from the mandatory and strict implementation of the rotation rule. This exception would allow a chapter to waive its turn in the rotation order, subject to its right to reclaim the governorship at any time before the rotation is completed. Thus, as the Court held in *In the Matter of the Brewing Controversies in the Election in the Integrated Bar of the Philippines*, 638 SCRA 1 (2010), the rotation rule is not absolute but subject to waiver as when the chapters in the order of rotation opted not to field or nominate their own candidates for Governor during the election regularly done for that purpose.

With the IBP Eastern Visayas region already in the second rotation cycle and with governors from Leyte, Bohol and Southern Leyte Chapters having served the region as starting points, Atty. Maglana's position that IBP Samar Chapter is the only remaining chapter qualified to field a candidate for governor in the 2013-2015 term clearly fails. The rotation by exclusion rule provides that once a member of a chapter is elected as Governor, his or her chapter would be excluded in the next turn until all have taken their turns in the rotation cycle. Once a full rotation cycle ends and a fresh cycle commences, all the chapters in the region are once again entitled to vie but subject again to the rule on rotation by exclusion.

- 2) *In the Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines*, 686 SCRA 791 (2012)

The rotation by pre-ordained sequence is effected by the observance of the sequence of the service of the chapters in the first cycle, which is very predictable. The rotation by exclusion is effected by the exclusion of a chapter who had previously served until all chapters have taken their turns to serve. It is not predictable as each chapter will have the chance to vie for the right to serve, but will have no right to a re-election as it is debarred from serving again until the full cycle is completed. Here, the Court holds that in the IBP Western Visayas Region, the rotation by exclusion shall be adopted such that, initially, all chapters of the region shall have the equal opportunity to vie for the position of Governor for the next cycle except Romblon.

FACTS

One of the subjects of disposition is the Resolution Urgently Requesting the Supreme Court to Issue Clarification on the Query of Western Visayas IBP Governor Erwin M. Fortunato Involving the Application of the Rotational Rule in the Forthcoming Elections in his Region (IBP Resolution), filed by the IBP Board of Governors (IBP-BOG).

Gov. Fortunato of IBP-Western Visayas Region wrote a letter to the IBP-BOG seeking confirmation/clarification on whether Capiz is the only Chapter in the IBP-Western

Visayas Region eligible and qualified to run for Governor in the forthcoming election for Governor. As the IBP-BOG was unable to reach a unanimous resolution on the matter, it issued the subject IBP Resolution, urgently requesting the Court to issue a clarification on the query of IBP-Western Visayas Region Gov. Fortunato involving the application of the rotational rule for the next regional election.

In its Comment, the IBP-BOG, through Justice Kapunan, presented the view that with the completion of a rotational cycle with the election of Gov. Fortunato representing Romblon, all chapters are deemed qualified to vie for the governorship for the 2011-2013 term without prejudice to the chapters entering into a consensus to adopt any pre-ordained sequence in the new rotation cycle provided each chapter will have its turn in the rotation. Stated differently, the IBP-BOG recommends the adoption of the rotation by exclusion scheme. Like the IBP, Atty. Marven B. Daquilanea, immediate past president of the IBP-Iloilo Chapter, espoused the view that upon the completion of a rotational cycle, elections should be open to all chapters of the region subject to the exclusionary rule.

ISSUE

Whether, after the first cycle, the rotation rule in the IBP-Western Visayas Region will be the rotation by exclusion. (YES)

RULING

The rotation by pre-ordained sequence is effected by the observance of the sequence of the service of the chapters in the first cycle, which is very predictable. The rotation by exclusion is effected by the exclusion of a chapter who had previously served until all chapters have taken their turns to serve. It is not predictable as each chapter will have the chance to vie for the right to serve, but will have no right to a re-election as it is debarred from serving again until the full cycle is completed.

The Court takes notice of the predictability of the rotation by succession scheme. Through the rotation by exclusion scheme, the elections would be more genuine as the opportunity to serve as Governor at any time is once again open to all chapters, unless, of course, a chapter has already served in the new cycle. While predictability is not altogether avoided, as in the case where only one chapter remains in the cycle, still, as previously noted by the Court "the rotation rule should be applied in harmony with, and not in derogation of, the sovereign will of the electorate as expressed through the ballot."

Here, under the rotation by pre-ordained sequence, only members of the IBP-Capiz Chapter may vie for Governor of the IBP-Western Visayas Region. Under the rotation by exclusion, every chapter in IBP-Western Visayas Region may compete again. Thus, as applied in the IBP-Western Visayas Region, initially, all the chapters shall have the equal opportunity to vie for the position of Governor for the next cycle except Romblon, so as no chapter shall serve consecutively. Every winner shall then be excluded after its term. Romblon then joins the succeeding elections after the first winner in the cycle.

WHEREFORE, the Court hereby holds that in the IBP Western Visayas Region, the rotation by exclusion shall be adopted such that, initially, all chapters of the region shall have the equal opportunity to vie for the position of Governor for the next cycle except Romblon.

3) Atty. Embido v. Atty. Pe, A.M. No. 6732, October 22, 2013

Canon 7 of the Code of Professional Responsibility demands that all lawyers should uphold at all times the dignity and integrity of the Legal Profession. Rule 7.03 of the Code of Professional Responsibility states that a lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he whether in public or private life, behave in a scandalous manner to the discredit of the legal profession. Lawyers are further required by Rule 1.01 of the Code of Professional Responsibility not to engage in any unlawful, dishonest and immoral or deceitful conduct. Here, the respondent was guilty of grave misconduct for having authored the falsification of the decision in a non-existent court proceeding.

FACTS

A complaint for disbarment was filed against Assistant Provincial Prosecutor Atty. Salvador N. Pe, Jr. (respondent) of San Jose, Antique for his having allegedly falsified an inexistent decision of Branch 64 of the Regional Trial Court stationed in Bugasong, Antique (RTC) - decision in Special Proceedings Case No. 084 entitled *In the Matter of the Declaration of Presumptive Death of Rey Laserna*. After conducting its investigation, the NBI forwarded to the Office of the Ombudsman for Visayas the records of the investigation, with a recommendation that the respondent be prosecuted for falsification of public document under Article 171, 1 and 2, of the Revised Penal Code, and for violation of Section 3(a) of Republic Act 3019 (The Anti-Graft and Corrupt Practices Act). The NBI likewise recommended to the Office of the Court Administrator that disbarment proceedings be commenced against the respondent. Then Court Administrator Presbitero J. Velasco, Jr. (now a Member of the Court) officially endorsed the recommendation to the Office of the Bar Confidant. Upon being required by the Court, the respondent submitted his counter-affidavit, whereby he denied any participation in the falsification. Thereafter, the IBP Investigating Commissioner and the IBP Board of Governors found respondent guilty as charged.

ISSUE

Whether the respondent was guilty of grave misconduct for falsifying a court decision in consideration of a sum of money. (YES)

RULING

The respondent's denial and his implication against Dy Quioyo in the illicit generation of the falsified decision are not persuasive. In light of the established circumstances, the respondent was guilty of grave misconduct for having authored the falsification of the decision in a non-existent court proceeding. Canon 7 of the

Code of Professional Responsibility demands that all lawyers should uphold at all times the dignity and integrity of the Legal Profession. Rule 7.03 of the Code of Professional Responsibility states that a lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he whether in public or private life, behave in a scandalous manner to the discredit of the legal profession. Lawyers are further required by Rule 1.01 of the Code of Professional Responsibility not to engage in any unlawful, dishonest and immoral or deceitful conduct.

Gross immorality, conviction of a crime involving moral turpitude, or fraudulent transactions can justify a lawyer's disbarment or suspension from the practice of law. Specifically, the deliberate falsification of the court decision by the respondent was an act that reflected a high degree of moral turpitude on his part. Worse, the act made a mockery of the administration of justice in this country, given the purpose of the falsification, which was to mislead a foreign tribunal on the personal status of a person. He thereby became unworthy of continuing as a member of the Bar.

WHEREFORE, the Court finds and pronounces Asst. Provincial Prosecutor Salvador N. Pe, Jr. guilty of violating Rule 1.01 of Canon 1, and Rule 7.03 of Canon 7 of the Code of Professional Responsibility, and disbars him effective upon receipt of this decision

4) Garcia v. De Vera, A.C. No. 6052, December 11, 2003

The basic qualifications for one who wishes to be elected governor for a particular region are: (1) he is a member in good standing of the IBP; 2) he is included in the voter's list of his chapter or he is not disqualified by the Integration Rule, by the By-Laws of the Integrated Bar, or by the By-Laws of the Chapter to which he belongs; (3) he does not belong to a chapter from which a regional governor has already been elected, unless the election is the start of a new season or cycle; and (4) he is not in the government service. Here, the Court ruled that as long as De Vera, an aspiring member, meets the basic requirements provided in the IBP By-Laws, he cannot be barred.

FACTS

Petitioner lawyers Garcia et. al. filed a petition seeking the disqualification of respondent lawyer De Vera from being elected IBP Governor of Eastern Mindanao. Petitioners contend that Respondent's transfer from IBP Pasay, Paranaque, Las Pinas, and Muntinlupa (PPLM) Chapter to Agusan Chapter to Agusan del Sur Chapter is a brazen abuse and misuse of the rotation rule, a mockery of the domicile rule and a great insult to the lawyers of Eastern Mindanao for it implied that there is no lawyer from the region qualified to serve the IBP. They also submitted that De Vera also lacks the moral aptitude for the petition. According to them, respondent De Vera was sanctioned by the Supreme Court for irresponsibly attacking the integrity of the SC Justices during the deliberations on the constitutionality of the plunder law. They add that he could have been disbarred in the United States for misappropriating his client's funds had he not surrendered his California license to practice law. Finally, they accuse him of having actively campaigned for the position

of Eastern Mindanao Governor during the IBP National Convention held on May 22-24, 2003, a prohibited act under the IBP By-Laws.

In his defense, respondent De Vera argues that the Court has no jurisdiction over the present controversy, contending that the election of the Officers of the IBP, including the determination of the qualification of those who want to serve the organization, is purely an internal matter, governed as it is by the IBP By-Laws and exclusively regulated and administered by the IBP. Respondent De Vera also assails the petitioners' legal standing, pointing out that the IBP By-Laws does not have a provision for the disqualification of IBP members aspiring for the position of Regional governors, for instead all that it provides for is only an election protest under Article IV, Section 40, pursuant to which only a qualified nominee can validly lodge an election protest which is to be made after, not before, the election. He posits further that following the rotation rule, only members from the Surigao del Norte and Agusan del Sur IBP chapters are qualified to run for Governor for Eastern Mindanao Region for the term 2003-2005, and the petitioners who are from Bukidnon and Misamis Oriental are not thus qualified to be nominees. On the moral integrity question, respondent De Vera denies that he exhibited disrespect to the Court or to any of its members during its deliberations on the constitutionality of the plunder law. As for the administrative complaint filed against him by one of his clients when he was practicing law in California, which in turn compelled him to surrender his California license to practice law, he maintains that it cannot serve as basis for determining his moral qualification (or lack of it) to run for the position he is aspiring for. He explains that there is as yet no final judgment finding him guilty of the administrative charge, as the records relied upon by the petitioners are mere preliminary findings of a hearing referee which are recommendatory in character similar to the recommendatory findings of an IBP Commissioner on Bar Discipline which are subject to the review of and the final decision of the Supreme Court. Finally, on the alleged politicking he committed during the IBP National Convention held on May 22-24, 2003, he states that it is baseless to assume that he was campaigning simply because he declared that he had 10 votes to support his candidacy for governorship in the Eastern Mindanao Region and that the petitioners did not present any evidence to substantiate their claim that he or his handlers had billeted the delegates from his region at the Century Park Hotel.

ISSUE

Whether respondent De Vera is qualified to run for Governor of the IBP Eastern Mindanao Region. (YES)

RULING

The court is one with the IBP in its position that the case is premature for the petitioners to seek the disqualification of respondent De Vera from being elected IBP Governor for the Eastern Mindanao Region. In this case, respondent De Vera has not been nominated for the post. In fact, no nomination of candidates has been made yet by the members of the House of Delegates from Eastern Mindanao. Conceivably too, assuming that respondent De Vera gets nominated, he can always opt to decline the nomination.

De Vera is qualified to run for Governor of the IBP Eastern Mindanao Region. Section 19 Article II of the IBP By-laws states that a lawyer included in the Roll of Attorneys of the Supreme Court can register with the particular IBP Chapter of his preference or choice, thus, unless he otherwise registers his preference for a particular Chapter, a lawyer shall be considered a member of the Chapter of the province, city, political subdivision or area where his office or, in the absence thereof, his residence is located. In no case shall any lawyer be a member of more than one Chapter. It is clearly stated in the afore-quoted section of the By-Laws that it is not automatic that a lawyer will become a member of the chapter where his place of residence or work is located. He has the discretion to choose the particular chapter where he wishes to gain membership. Only when he does not register his preference that he will become a member of the Chapter of the place where he resides or maintains his office. The only proscription in registering one's preference is that a lawyer cannot be a member of more than one chapter at the same time. The same is provided in Section 29-2 of the IBP By-Laws. The only condition required under the foregoing rule is that the transfer must be made not less than three months prior to the election of officers in the chapter to which the lawyer wishes to transfer. In the case at bar, respondent De Vera requested the transfer of his IBP membership to Agusan del Sur on 1 August 2001. The Court noted that De Vera's transfer was made effective sometime between August 1, 2001 and September 3, 2001 while the elections of the IBP Chapter Officers was held on February 27, 2003. Between September 3, 2001 and February 27, 2003, seventeen months had elapsed. This makes respondent De Vera's transfer valid as it was done more than three months ahead of the chapter elections held on February 27, 2003. On the issue of morality as a ground of disqualification, the court also ruled in favor of the respondent. As long as an aspiring member meets the basic requirements provided in the IBP By-Laws, he cannot be barred. The basic qualifications for one who wishes to be elected governor for a particular region are: (1) he is a member in good standing of the IBP; (2) he is included in the voter's list of his chapter or he is not disqualified by the Integration Rule, by the By-Laws of the Integrated Bar, or by the By-Laws of the Chapter to which he belongs; (3) he does not belong to a chapter from which a regional governor has already been elected, unless the election is the start of a new season or cycle; and (4) he is not in the government service.

5) spouses Umaging v. Atty. De Vera, A.C. No. 10451, February 4, 2015

Rule 10.01, Canon 10 of the Code of Professional Responsibility provides that a lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice. Here, Atty. De Vera is found guilty of violating the Lawyer's Oath and Rule 10.01, Canon 10 of the Code of Professional Responsibility by submitting a falsified document before a court.

FACTS

A complaint for the alleged betrayal of trust, incompetence, and gross misconduct of respondent Atty. Wallen R. De Vera in his handling of the election protest case involving the candidacy of Mariecris Umaging daughter of Sps. Willie and Amelia Umaging, for the Sangguniang Kabataan (SK) Elections. According to the

complainants, Atty. De Vera had more than enough time to prepare and file the case but the former moved at a glacial pace and only took action when the deadline was looming. Atty. De Vera then rushed the preparation of the necessary documents and attachments for the election protest. Two (2) of these attachments are the Affidavits of material witnesses Mark Anthony Lachica and Angela Almera, which was personally prepared by Atty. De Vera. At the time that the aforesaid affidavits were needed to be signed by Lachica and Almera, they were unfortunately unavailable. To remedy this, Atty. De Vera allegedly looked for the nearest kin or relatives of Lachica and Almera and ask them to sign over the names. The signing over of Lachica's and Almera's names were done by Christina Papin and Elsa Almera-Almacen, respectively. Atty. De Vera then had all the documents notarized before one Atty. Donato Manguiat. Later, however, Lachica discovered the falsification and immediately disowned the signature affixed in the affidavit and submitted his own Affidavit, declaring that he did not authorize Papin to sign the document on his behalf. In further breach of his oath as a lawyer, the complainants pointed out that Atty. De Vera did not appear before the MeTC, although promptly notified, for a certain hearing; and did not offer any explanation as to why he was not able to attend. Thereafter, for lack of trust and confidence in the integrity and competency of Atty. De Vera, as well as his breach of fiduciary relations, the complainants asked the former to withdraw as their counsel. In view of the foregoing, complainants sought Atty. De Vera's disbarment.

For knowingly submitting a falsified document in court, a suspension was imposed against Atty. De Vera by the IBP Commission on Bar Discipline and the IBP Board of Governors.

ISSUE

Whether or not Atty. De Vera should be held administratively liable. (YES)

RULING

Fundamental is the rule that in his dealings with his client and with the courts, every lawyer is expected to be honest, imbued with integrity, and trustworthy. These expectations, though high and demanding, are the professional and ethical burdens of every member of the Philippine Bar, for they have been given full expression in the Lawyer's Oath that every lawyer of this country has taken upon admission as a *bona fide* member of the Law Profession. The Lawyer's Oath enjoins every lawyer not only to obey the laws of the land but also to refrain from doing any falsehood in or out of court or from consenting to the doing of any in court, and to conduct himself according to the best of his knowledge and discretion with all good fidelity to the courts as well as to his clients. Every lawyer is a servant of the law, and has to observe and maintain the rule of law as well as be an exemplar worthy of emulation by others. It is by no means a coincidence, therefore, that the core values of honesty, integrity, and trustworthiness are emphatically reiterated by the Code of Professional Responsibility. In this light, Rule 10.01, Canon 10 of the Code of Professional Responsibility provides that a lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

Here, Atty. De Vera is found guilty of violating the Lawyer's Oath and Rule 10.01, Canon 10 of the Code of Professional Responsibility by submitting a falsified document before a court, *i.e.*, Almera's affidavit, before the court in his desire to beat the November 8, 2008 deadline for filing the election protest of Umaguing

6) Atty. Jose Principe, B.M. No. 543, September 20, 1990

7) Atty. Aurelio C. Angeles, Jr. v. Atty. Renato C. Bagay, A.C. No. 8103, December 3, 2014

Respondent admitted in his comment and motion for reconsideration that the 18 documents were notarized under his notarial seal by his office secretary while he was out of the country. This clearly constitutes negligence considering that respondent is responsible for the acts of his secretary. Because of the negligence of respondent, the Court holds him liable for violation of the Code of Professional Responsibility (CPR). His failure to solemnly perform his duty as a notary public not only damaged those directly affected by the notarized documents but also undermined the integrity of a notary public and degraded the function of notarization. Respondent violated Canon 9 of the CPR which requires lawyers not to directly or indirectly assist in the unauthorized practice of law. Respondent also violated his obligation under Canon 7 of the CPR, which directs every lawyer to uphold at all times the integrity and dignity of the legal profession.

FACTS

Atty. Aurelio C. Angeles, Jr., the Provincial Legal Officer of Bataan, filed a complaint to Hon. Remigio M. Escalada, Jr., Executive Judge of the Regional Trial Court of Bataan against Atty. Renato C. Bagay (respondent), for his alleged notarization of 18 documents at the time he was out of the country from March 13, 2008 to April 8, 2008. Upon verification with the Bureau of Immigration, it was found out that a certain Renato C. Bagay departed from the country on March 13, 2008 and returned on April 8, 2008. In response, respondent claimed that he was not aware that those were documents notarized using his name while he was out of the country. Upon his own inquiry, he found out that the notarizations were done by his secretary and without his knowledge and authority. The said secretary notarized the documents without realizing the import of the notarization act. Respondent apologized to the Court for his lapses and averred that he had terminated the employment of his secretary from his office.

Finding respondent guilty of negligence in the performance of his notarial duty which gave his office secretary the opportunity to abuse his prerogative authority as notary public, the Investigating Commissioner, the IBP Board of Governors, and the Director for Bar Discipline recommended the immediate revocation of respondent's commission as notary public and his disqualification to be commissioned as such for a certain period.

ISSUE

Whether the notarization of documents by the secretary of respondent while he was out of the country constituted negligence. (YES)

RULING

Respondent admitted in his comment and motion for reconsideration that the 18 documents were notarized under his notarial seal by his office secretary while he was out of the country. This clearly constitutes negligence considering that respondent is responsible for the acts of his secretary. Section 9 of the 2004 Rules on Notarial Practice provides that a Notary Public refers to any person commissioned to perform official acts under these Rules. A notary public's secretary is obviously not commissioned to perform the official acts of a notary public. Respondent cannot take refuge in his claim that it was his secretary's act which he did not authorize. He is responsible for the acts of the secretary which he employed. He left his office open to the public while leaving his secretary in charge. He kept his notarial seal and register within the reach of his secretary, fully aware that his secretary could use these items to notarize documents and copy his signature. Such blatant negligence cannot be countenanced by this Court and it is far from being a simple negligence. There is an inescapable likelihood that respondent's flimsy excuse was a mere afterthought and such carelessness exhibited by him could be a conscious act of what his secretary did.

Because of the negligence of respondent, the Court also holds him liable for violation of the Code of Professional Responsibility (CPR). His failure to solemnly perform his duty as a notary public not only damaged those directly affected by the notarized documents but also undermined the integrity of a notary public and degraded the function of notarization. He should, thus, be held liable for such negligence not only as a notary public but also as a lawyer. Where the notary public is a lawyer, a graver responsibility is placed upon his shoulder by reason of his solemn oath to obey the laws and to do no falsehood or consent to the doing of any. Respondent violated Canon 9 of the CPR which requires lawyers not to directly or indirectly assist in the unauthorized practice of law. Due to his negligence that allowed his secretary to sign on his behalf as notary public, he allowed an unauthorized person to practice law. By leaving his office open despite his absence in the country and with his secretary in charge, he virtually allowed his secretary to notarize documents without any restraint.

Respondent also violated his obligation under Canon 7 of the CPR, which directs every lawyer to uphold at all times the integrity and dignity of the legal profession. The people who came into his office while he was away, were clueless as to the illegality of the activity being conducted therein. They expected that their documents would be converted into public documents. Instead, they later found out that the notarization of their documents was a mere sham and without any force and effect. By prejudicing the persons whose documents were notarized by an unauthorized person, their faith in the integrity and dignity of the legal profession was erode

8) Dongga-as v. Atty. Cruz, A.C. No. 11113, August 9, 2016

CLEO B. DONGGA-AS, Complainants, -versus- ATTY. ROSE BEATRIX CRUZ-ANGELES, ATTY. WYLIE M. PALER, and ATTY. ANGELES GRANDEA, OF THE ANGELES, GRANDEA, & PALER LAW OFFICE, Respondents.

A.C. No. 11113, EN BANC, August 9, 2016, PERLAS-BERNABE,J.

Canon 7 of the Code commands every lawyer to “at all times uphold the integrity and dignity of the legal profession” for the strength of the legal profession lies in the dignity and integrity of its members. It is every lawyer’s duty to maintain the high regard to the profession by staying true to his oath and keeping his actions beyond reproach. As an officer of the court, it is a lawyer’s sworn and moral duty to help build and not destroy unnecessarily that high esteem and regard towards the court. In this case, Attys. Cruz-Angeles and Paler compromised the integrity not only of the judiciary, but also of the national prosecutorial service by insinuating that they can influence a court, judge, and prosecutor to cooperate with them to ensure the annulment of complainant’s marriage which is a clear violation of Canon 7.

FACTS:

Cleo B. Dongga-as (Respondent) alleged that he engaged the Angeles, Grandea, & Paler Law Firm to handle the annulment of his marriage with his wife. In his meeting with Attys. Cruz-Angeles and Paler, complainant was told that the case would cost him PHP 300,000, with the first PHP 100,000 to be payable immediately which will cover the acceptance fee, psychologist fee, and filing fees while the remaining amount would be payable after the final hearing of the case. Accordingly, the complainant paid the respondents the agreed amount.

From then on, complainant constantly followed-up his case with the respondents but the respondent attorneys could not present any petition and instead, offered excuses for the delay. One of the excuses proffered was that **they were still looking for a “friendly” court and public prosecutor where they would file a case.** Despite his constant follow-ups regarding the status of his case, no appreciable progress has been made. In fact, respondents even asked for an additional payment of PHP 250,000 in order for them to continue working on the case which the complainant paid.

Frustrated with the delay in the filing of his petition for annulment, complainant went to respondents’ law office to terminate their engagement and **to demand for a refund** of the PHP 350,000 he earlier paid the respondents. However, **the respondents refused to return the said amount.** This led him to file this complaint-affidavit before the Integrated Bar of the Philippines (IBP) - Commission on Bar Discipline (CBD) charging the respondents various violations of the Code of Professional Responsibility.

The IBP Investigating Commissioner found Attys. Cruz-Angeles and Paler administratively liable and accordingly, recommended that they suffer the penalty of suspension from the practice of law for four months. The Investigating

Commissioner found that the complainant indeed engaged the services of Attys. Cruz-Angeles and Paler in order to annul his marriage with his wife and despite complainant's prompt payments, the aforementioned lawyers neglected the legal matter entrusted to them. The IBP Board of Governors, on the other hand, adopted and approved the recommendations of the Investigating Commissioner but modified it by increasing the recommended penalty to two years.

ISSUE:

Whether or not the respondent attorneys may be held administratively liable for violating the Code of Professional Responsibility (YES)

RULING:

Respondent attorneys have violated various canons in the Code of Professional Responsibility. The respondents violated **Canon 18 and Rule 18.03** which states that a lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable when they failed to file the appropriate pleadings to initiate the case before the proper court. Their failure to return the complainant the amount of PHP 350,000 representing their legal fees also runs contrary to **Rule 16.03** of the Code which provides that a lawyer shall deliver the funds and property of his client when due or upon demand.

Moreover, **Canon 7 of the Code** commands every lawyer to “at all times uphold the integrity and dignity of the legal profession” for the strength of the legal profession lies in the dignity and integrity of its members. It is every lawyer's duty to maintain the high regard to the profession by staying true to his oath and keeping his actions beyond reproach. As an officer of the court, it is a lawyer's sworn and moral duty to help build and not destroy unnecessarily that high esteem and regard towards the court. In this case, Attys. Cruz-Angeles and Paler compromised the integrity not only of the judiciary, but also of the national prosecutorial service by insinuating that they can influence a court, judge, and prosecutor to cooperate with them to ensure the annulment of complainant's marriage which is a clear violation of Canon 7.

9) Ricafort v. Medina, A.C. 5179, May 31, 2016

**DIONNIE RICAFORT, Complainant, -versus- ATTY. RENE O. MEDINA,
Respondent.**

A.C. No. 3179, EN BANC, May 31, 2016, LEONEN, J.

It can be gleaned from the acts of the respondents that he violated Canon 7, Rule 7.03 of the Code of Professional Responsibility which provides that a lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he whether in public or private life, behave in a scandalous manner to the discredit of the legal profession. In this case, the act of humiliating another in public by slapping him or her on the face hints of a character that disregards the human dignity of another. Respondent's question to complainant, "Wa ka makaila sa ako?"

*("Do you not know me?") confirms such character and **his potential to abuse the profession as a tool for bullying, harassment, and discrimination.***

FACTS:

Dionnie Ricafort (Complainant) alleged his tricycle sideswiped Atty. Rene O. Medina's (Respondent) car. Respondent alighted in his car and confronted complainant. It was alleged that respondent snapped at complainant, **saying: "Wa ka makaila sa ako?" ("Do you not know me?"). Respondent also allegedly proceeded to slap the complainant and then left.** Later, a traffic aide informed the complainant of the plate number of respondent's car. It was later learned that the driver of the car was Atty. Medina, a provincial board member of Surigao del Norte.

The incident led to the filing of a complaint against the respondent as according to the complainant, he felt hurt, embarrassed, and humiliated due to the acts of arrogance of the respondent which is in disrespect for the oath of office as a lawyer. Attached to his complaint were his affidavit, the traffic aide's affidavit, and a letter signed by the president of the League of Mayors of Surigao del Norte and other 19 mayors of the province.

The Integrated Bar of the Philippines (IBP) Investigating Commissioner recommended the penalty of suspension from the practice of law for 60 days from notice for misconduct and violation of Canon 7, Rule 7.03 of the Code of Professional Responsibility. The IBP Board of Governors issued a resolution adopting the findings of the commissioner but modifying the recommendation by suspending respondent from the practice of law for 30 days.

ISSUE:

Whether or not the respondent may be held administratively liable for violating the Canon 7, Rule 7.03 of the Code of Professional Responsibility (YES)

RULING:

In administrative cases involving lawyers, the required burden of proof is preponderance of evidence. The courts presumes a lawyer to be innocent of the charges against him or her as he or she enjoys that his or her acts are consistent with his or her oath. Thus, it is the complainant who must provide preponderance of evidence to overcome this presumption. In this case, the complainant had successfully discharged this burden which is proven by the findings of the investigating commissioner that the slapping incident actually occurred, the letter signed by the 19 mayors of Surigao del Norte also reinforced the assertions, the affidavits made by the complainant and the traffic aide present were also in great detail.

Since it was already proven by preponderance of evidence that the slapping occurred, it can be gleaned from the acts of the respondents that he violated Canon 7, Rule 7.03 of the Code of Professional Responsibility which provides:

RULE 7.03 - A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

In this case, the act of humiliating another in public by slapping him or her on the face hints of **a character that disregards the human dignity of another**. Respondent's question to complainant, "*Wa ka makaila sa ako?*" ("Do you not know me?") confirms such character and **his potential to abuse the profession as a tool for bullying, harassment, and discrimination**.

10) Tapay and Rustia v. Attys. Bancolo and Jarder, A.C. No. 9604, March 20, 2013

RODRIGO E. TAPAY and ANTHONY J. RUSTIA, Complainants, -versus- ATTY. CHARLIE L. BANCOLO and ATTY. JANUS JARDER, Respondents.
A.C. No. 9604, SECOND DIVISION, March 20, 2013, CARPIO, J.

As stated by the court in Cambaliza vs Cristal-Tenorio, the lawyer's duty to prevent or at the very least not to assist in, the unauthorized practice of law is founded on public interest and policy. Public policy required that the practice of law be limited to those individuals found duly qualified in education and character. The purpose is to protect the public, the court, the client, and the bar from incompetence or dishonesty of those unlicensed to practice law and not subject to the disciplinary control of the Court. It devolves upon a lawyer to see that this purpose is attained.

FACTS:

Tapay and Rustia, both employees of the Sugar Regulatory Administration, received an Order from the Office of the Ombudsman requiring them to file a counter-affidavit to a complaint for usurpation of authority, falsification of public document, and graft and corrupt practices filed against them by Nehimias Divinagracia (Divinagracia), a co-employee in the Sugar Regulatory Administration. The complaint was **allegedly signed on behalf of Divinagracia by one Atty. Charlie L. Bancolo of the Jarder Bancolo Law Office.**

In a chance meeting by Atty. Bancolo and Rustia, the latter informed Atty. Bancolo of the case filed against them but Atty. Bancolo denied that he represented Divinagracia since he had yet to meet Divinagracia in person. When Rustia showed him the Complaint, Atty. Bancolo declared that the signature appearing above his name as counsel for Divinagracia **was not his**. Following this, Atty. Bancolo executed an affidavit denying his supposed signature appearing in the Complaint. The Office of the Ombudsman provisionally dismissed the complaint but the Office ordered that separate cases of falsification of public document be filed against Divinagracia. However, Divinagracia denied that he falsified the signature of Atty. Bancolo. He presented evidence showing that the Complaint filed with the Office of the Ombudsman was signed by the office secretary per Atty. Bancolo's instructions.

With this knowledge, Tapay and Rustia filed with the Integrated Bar of the Philippines (IBP) a complaint to disbar Attys. Bancolo and Jarder, partners from the Jarder Bancolo Law Office. The complainants alleged that **they were subjected to a harassment Complaint filed before the Office of the Ombudsman with the forged signature of Atty. Bancolo.** It was also alleged that Atty. Bancolo has his forged signature attached in other letter-complaints for other clients. Documents proving such were attached to the complaint.

In their answer, Attys. Bancolo and Jarder admitted that their law office accepted Divinagracia's case which was assigned to Atty. Bancolo. Due to some minor lapses in the assignment of cases, **Atty. Bancolo permitted that pleadings and communications be signed in his name by the secretary of the law office.**

The Integrated Bar of the Philippines (IBP) Investigating Commissioner found that Atty. Bancolo violated Rule 9.01 of Canon 9 of the Code of Professional Responsibility while Atty. Jarder violated Rule 1.01 of Canon 1 of the same Code. The Investigating Commissioner recommended that Atty. Bancolo be suspended from the practice of law for two years while his partner, Atty. Jarder be admonished for his failure to exercise certain responsibilities in the law firm. The IBP Board of Governors adopted the findings of the Investigating Commissioner but modified the penalty suspending Atty. Bancolo from the practice of law for one year.

ISSUE:

Whether or not Atty. Bancolo may be held administratively liable for violating Rule 9.01 of Canon 9 of the Code of Professional Responsibility (YES)

RULING:

The admission of Atty. Bancolo that the Complaint he filed for a former client was **signed in his name by a secretary of his law office is in clear violation of Rule 9.01 of Canon 9 of the Code of Professional Responsibility.** The rule states that:

CANON 9 - A LAWYER SHALL NOT, DIRECTLY OR INDIRECTLY, ASSIST IN THE UNAUTHORIZED PRACTICE OF LAW.

Rule 9.01 - A lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the bar in good standing.

As stated by the court in *Cambaliza vs Cristal-Tenorio*, **the lawyer's duty to prevent or at the very least not to assist in, the unauthorized practice of law is founded on public interest and policy.** Public policy required that the practice of law be limited to those individuals found duly qualified in education and character. The purpose is **to protect the public, the court, the client, and the bar from incompetence or dishonesty of those unlicensed to practice law** and not

subject to the disciplinary control of the Court. It devolves upon a lawyer to see that this purpose is attained.

11) Castillo v. Padilla, AM No. 2339, February 1984

**JOSE M. CASTILLO, Complainant, -versus- ATTY. SABINO. PADILLA, JR,
Respondent.**

A.C. No. 2339, FIRST DIVISION, February 24, 1984, PLANA,J.

*Whether the remark was directed at the complainant or his manner of offering evidence, the remark “bobo” or “Ay, que bobo” was **offensive and uncalled for**. Respondent had no right to interrupt complainant which such cutting remark while the latter was addressing the court. In so doing, **he exhibited a lack of respect not only to a fellow lawyer but also to the court**. By the use of intemperate language, **respondent failed to measure up to the norm of conduct required of a member of the legal profession**.*

FACTS:

Atty. Jose M. Castillo (Complainant) was the counsel for the defendants in a cause for forcible entry before the Metropolitan Trial Court of Caloocan while Atty. Sabino Padilla Jr. (Respondent) was counsel for the plaintiff. At the hearing of the case, **while complainant was formally offering his evidence, he heard respondent say “bobo”**. When complainant turned toward the respondent, he saw the latter looking at him menacingly. Embarrassed and humiliated in the presence of many people, complainant was unable to proceed with his offer of evidence.

In his defense, while respondent admitted the utterance, he denied that it was directed at the complainant, claiming that what he was **“Ay, que bobo”**, referring to **“the manner complainant was trying to inject wholly irrelevant and highly offensive matter into the record”** while in the process of making an offer of evidence.

ISSUE:

Whether or not respondent may be held administratively liable for his utterance (YES)

RULING:

Among the duties of an attorney are to observe and maintain the respect due to the courts of justice; and to abstain from all offensive personality and to advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which he is charged.

Whether the remark was directed at the complainant or his manner of offering evidence, the remark “bobo” or “Ay, que bobo” was **offensive and uncalled for**. Respondent had no right to interrupt complainant which such cutting remark while the latter was addressing the court. In so doing, **he exhibited a lack of respect not**

only to a fellow lawyer but also to the court. By the use of intemperate language, respondent failed to measure up to the norm of conduct required of a member of the legal profession.

12) Gimeno v. Zaide, A.C. No. 10303, April 22, 2015

JOY A. GIMENO, Complainant, -versus- ATTY. PAUL CENTILLAS ZAIDE, Respondent.

A.C. No. 10303, SECOND DIVISION, April 22, 2015, BRION, J.

Lawyers are prohibited to use of intemperate, offensive, and abusive language in a lawyer's professional dealings, whether with the courts, his clients, or any other person. Canon 8, Rule 8.01 clearly states that a lawyer shall not, in his professional dealings, use language which is abusive, offensive, or otherwise, improper.

Based on the record, it is clear that the respondent, in the reply that he drafted, called complainant a "notorious extortionist". This is a clear violation of the Canons mentioned above and a confirmation of the respondent's lack of restraint in the use and choice of his words. While a lawyer is entitled to present his case with vigor and courage, such enthusiasm does not justify the use of offensive and abusive language. In keeping with the dignity of the legal profession, a lawyer's language even in his pleadings, must be dignified.

FACTS:

Joy Gimeno (Complainant) filed a Complaint against Atty. Paul Zaide (Respondent) charging the latter with usurpation of a notary public's office, falsification, use of intemperate, offensive, and abusive language, and violation of lawyer-client trust. It was submitted that complainant was respondent's former client. Complainant engaged the services of the Zaragoza-Makabangkit-Zaide Law Offices (ZMZ) in an annulment of title case that involved her husband and her parents-in-law.

Despite the previous lawyer-client relationship, respondent still appeared against her in the complaint for estafa and violation of RA 3019 filed against the complainant with the Ombudsman. Complainant posited that by appearing against a former client, Atty. Zaide violated the prohibition against the representation of conflicting clients' interests. Furthermore, complainant also alleges that the respondent called her a "notorious extortionist" in the same administrative complaint filed against her.

In his defense, respondent denied that he used any intemperate, offensive, and abusive language in his pleadings.

The Integrated Bar of the Philippines (IBP) Investigating Commissioner found the respondent administratively liable for violating the Notarial Practice Rules, representing conflicting interests, and using abusive and insulting language in his pleadings. It was recommended that the respondent be suspended for a total of nine

months. The IBP Board of Governors adopted the findings of the Investigating Commissioner but modified the penalty to be imposed increasing it to one year.

ISSUE:

Whether or not the respondent may be held administratively liable for the use of intemperate, offensive, and abusive language against the complainant

RULING:

Lawyers are prohibited to use of intemperate, offensive, and abusive language in a lawyer's professional dealings, whether with the courts, his clients, or any other person. The prohibition stems from the following canons and rules of the Code of Professional Responsibility:

CANON 8 - A LAWYER SHALL CONDUCT HIMSELF WITH COURTESY, FAIRNESS AND CANDOR TOWARDS HIS PROFESSIONAL COLLEAGUES, AND SHALL AVOID HARASSING TACTICS AGAINST OPPOSING COUNSEL.

Rule 8.01 - A lawyer **shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.**

CANON 11 - A LAWYER SHALL OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS AND TO JUDICIAL OFFICERS AND SHOULD INSIST ON SIMILAR CONDUCT BY OTHERS.

Rule 11.03 - A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the Courts.

Based on the record, it is clear that the respondent, in the reply that he drafted, called complainant a "notorious extortionist". This is a clear violation of the Canons mentioned above and a confirmation of the respondent's lack of restraint in the use and choice of his words. While a lawyer is entitled to present his case with vigor and courage, such enthusiasm does not justify the use of offensive and abusive language. **In keeping with the dignity of the legal profession, a lawyer's language even in his pleadings, must be dignified.**

13) *Tiongco v. Ilarde*, GR No. 114732, August 1, 2000

ESTRELLA TIONGCO YARED (now deceased) substituted by one of her heirs, CARMEN MATILDE M. TIONGCO, *Petitioner*, -versus- HON. RICARDO M. ILARDE, Presiding Judge, Regional Trial Court of Iloilo, Br, 26, JOSE B. TIONGCO and ANTONIO G. DORONILLO, JR., *Respondents*.

G.R. No. 114732, SECOND DIVISION,, August 1, 2000, DE LEON, JR.,J.

*It is apparent in the provisions of the Code of Professional Responsibility particularly in Rule 8.01 which provides that a lawyer **shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.***

*Although lawyers are allowed some latitude of remarks or comment in the furtherance of the cause he upholds, **his arguments, both written or oral, should be gracious both to the court and opposing counsel and be of such words as may be properly addressed by one gentleman to another.** Otherwise, his use of intemperate language invites the disciplinary authority of the court.*

FACTS:

On October 17, 1990, Estrella Tiongco Yared (Petitioner) filed an amended complaint against Jose B. Tiongco and Antonio Doronila Jr. (Respondents) for annulment of affidavit of adjudication, sales, transfer certificates of title, reconveyance and damages.

The amended complaint alleged that respondent Tiongco, on the basis of an affidavit of adjudication alleging that he is the sole surviving heir of the previous owner, Maria Luis de Tiongco, succeeded in having the subject properties registered in his name, to the prejudice of the other surviving heirs of the previous owner, petitioner among them.

In pleadings and motions filed before the courts by respondent Jose B. Tiongco, who also acts as a counsel for the private respondents, allegedly used improper and unethical language. It is his belief that counsel for petitioner, Atty. Marciana Deguma, **“a rambunctious wrestler-type female of 52 who does not wear a dress which is not red, and who stampedes into the courtroom like a mad fury and who speaks slang English to conceal her faulty grammar”**. At one point, he even called Atty. Deguma **“a love-crazed female Apache who is now ready to skin defendant alive for not being a bastard”**, and **“a horned spinster and man-hungry virago and female bull of an Amazon who would stop at nothing to molest, harass, and injure the defendant.”**

It was also noted that respondent thinks that **the ulterior motive of petitioner’s counsel is “to please and tenderize and sweeten towards her own self the readily available Carmelo M. Tiongco who is a retired police major.”** It was also noted that he stated that Atty. Deguma, a lawyer with the Public Attorney’s Office, is **engaged in a game of one-upmanship with a fellow employee** or in other words, she wants to put one over her officemate who simply netted a corporal by securing the affections of a police major and in so doing, Atty. Deguma is allegedly **using the PAO as a “marriage bureau for her own benefit”**.

ISSUE:

Whether or not Jose B. Tiongco violated the Canons of the Code of Professional Responsibility (YES)

RULING:

Respondent Tiongco has achieved a remarkable feat of character assassination. His verbal darts, albeit entertaining, are cast with little regard for truth. However, he

does nothing more than to obscure the issues and his reliance on gossip betrays only a shocking absence of discernment. To this end, it will be wise to give him an object lesson in the elementary rules of courtesy which is expected of the members of the bar. It is apparent in the provisions of the Code of Professional Responsibility particularly in Rule 8.01 which provides that a lawyer **shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.**

Although lawyers are allowed some latitude of remarks or comment in the furtherance of the cause he upholds, **his arguments, both written or oral, should be gracious both to the court and opposing counsel and be of such words as may be properly addressed by one gentleman to another.** Otherwise, his use of intemperate language invites the disciplinary authority of the court.

14) Belo-Henares v. Atty. Guevarra, A.C. No. 11394, December 1, 2016

MARIA VICTORIA G. BELO-HENARES, Complainant, -versus- ATTY. ROBERTO “ARGEE” C. GUEVARRA, Respondent.

A.C. No. 11394, FIRST DIVISION, December 1, 2016, PERLAS-BERNABE, J.

*Respondent's inappropriate and obscene language, and his act of publicly insulting and undermining the reputation of complainant through the subject Facebook posts are in complete violation of the provisions in the Code of Professional Responsibility particularly **Rule 7.03, Rule 8.01, and Rule 19.01.***

*By posting the subject remarks on Facebook directed at complainant and BMGI, respondent disregarded the fact that, as a lawyer, **he is bound to observe proper decorum at all times, be it in his public or private life.** He overlooked the fact that he must behave in a manner befitting of an officer of the court, that is, respectful, firm, and decent. Instead, he acted inappropriately and rudely; he used words unbecoming of an officer of the law, and conducted himself in an aggressive way by hurling insults and maligning complainant's and BMGI's reputation.*

FACTS:

Maria Victoria Belo-Henares (Complainant) is the Medical Director and principal stockholder of the Belo Medical Group, Inc. (BMGI) and engaged in the specialized field of cosmetic surgery. On the other hand, Atty. Roberto Guevarra is the lawyer of a certain Ms. Josefina Norcio, who filed a criminal case against complainant for an allegedly botched surgical procedure on her buttocks in 2002 and 2005, purportedly causing infection and making her ill in 2009.

In 2009, respondent wrote a series of posts on his Facebook account insulting and verbally abusing complainant. The Facebook posts by the respondent claims that complainant is a **“quack doctor” and engaged in bribing government officials.** He even claims that the complainant is **addicted to botox which resulted to her obtaining a mental disease.** The complaint alleged that the Facebook posts by the respondent were **not only intended to destroy BMGI's medical personnel, as well as the entire medical practice of around 300 employees for no fair or**

justifiable cause. Moreover, through Facebook, **respondent allegedly threatened complainant with criminal conviction without factual basis and proof.** Complainant likewise averred that **some of respondent's Facebook posts were sexist, vulgar, and disrespectful to women.** Finally, complainant also averred that **the attacks against her were made with the object to extort money from her.**

In the Report and Recommendation of the Integrated Bar of the Philippines-CBD, it recommended that respondent be suspended for a period of one year from the practice of law, with a stern warning that a repetition of similar acts shall be dealt with more severely finding him liable for violating a number of Canons in the Code of Professional Responsibility. The IBP Board of Governors resolved to adopt and approve the recommendations of the IBP-CBD.

ISSUE:

Whether or not the respondent may be held administratively liable for violating the Code of Professional Responsibility (YES)

RULING:

While the respondent argues that the complaint violates his constitutionally-guaranteed right to privacy as the remarks were made in private on his private account that can only be viewed by his friends, he may still be held administratively liable. Restricting the privacy of one's Facebook posts to "Friends" does not guarantee absolute protection from the prying eyes of another user who does not belong to one's circle of friends.

Respondent's inappropriate and obscene language, and his act of publicly insulting and undermining the reputation of complainant through the subject Facebook posts are in complete violation of the following provisions in the Code of Professional Responsibility:

Rule 7.03 - A lawyer **shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.**

Rule 8.01 - A lawyer **shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.**

Rule 19.01 - A lawyer **shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding.**

By posting the subject remarks on Facebook directed at complainant and BMGI, respondent disregarded the fact that, as a lawyer, **he is bound to observe proper decorum at all times, be it in his public or private life.** He overlooked the fact that he must behave in a manner befitting of an officer of the court, that is, respectful, firm, and decent. Instead, he acted inappropriately and rudely; he used

words unbecoming of an officer of the law, and conducted himself in an aggressive way by hurling insults and maligning complainant's and BMGI's reputation.

15) Cambaliga v. Cristal-Tenorio, A.C. No. 6290, July 14, 2004

ANA MARIE CAMBALIZA, Complainant, -versus- ATTY. ANA LUZ B. CRISTAL-TENORIO, Respondent.

A.C. No. 6290, FIRST DIVISION, July 14, 2016, DAVIDE JR,J.

Holding oneself out as a lawyer for the purpose of identifying oneself as an attorney, appearing in court in representation of a client, or associating oneself as a partner of a law office for the general practice of law constitute unauthorized practice of law. In this case, Felicisimo is not a lawyer but holds himself out as one while his wife, respondent, abetted and aided him in the unauthorized practice of the legal profession.

*The lawyer's duty to prevent, or at the very least not to assist in, the unauthorized practice of law is **founded on public interest and policy**. Public policy requires that the practice of law be limited to those individuals found duly qualified in education and character. The permissive right conferred on the lawyer is an individual and limited privilege subject to withdrawal if he fails to maintain proper standards of moral and professional conduct. **The purpose is to protect the public, the court, the client, and the bar from incompetence or dishonesty of those unlicensed to practice law and not subject to the disciplinary control of the Court.***

FACTS:

In a verified complaint for disbarment filed with the Committee on Bar Discipline of the Integrated Bar of the Philippines, Ana Marie Cambaliza (Complainant), a former employee of Atty. Ana Luz B. Cristal-Tenorio (Respondent), charged the latter with deceit, grossly immoral conduct, and malpractice or other gross misconduct in office.

On deceit, the complainant alleged that the respondent has been falsely representing herself to be married to Felicisimo R. Tenorio, Jr. (Felicisimo) who has a prior and subsisting marriage with another woman. However, through spurious means, the respondent and Felicisimo, were able to obtain a false marriage contract. No record of the marriage exists in the Civil Registry of Manila and National Statistics Office.

As to grossly immoral conduct, the complainant alleged that the respondent caused the dissemination to the public of a libelous affidavit derogatory to Makati City Councilor Divina Alora Jacome.

On **malpractice or other gross misconduct in office**, the complainant alleged that the respondent: (1) **cooperated in the illegal practice of law by her husband, who is not a member of the Philippine Bar**; (2) converted her client's money to her own use and benefit, which led to the filing of an estafa case against her; and (3)

threatened the complainant and her family with the statement *"Isang bala ka lang"* to deter them from divulging respondent's illegal activities and transactions.

In her report and recommendation, the IBP Commissioner on Bar Discipline found that the complainant failed to substantiate the charges of deceit and grossly immoral conduct. However, she found the respondent guilty of the charge of cooperating in the illegal practice of law by Felicisimo, in violation of Canon 9 and Rule 9.01 of the Code of Professional Responsibility based on the following evidence: (1) the letterhead of Cristal-Tenorio Law Office, which lists Felicisimo, as a senior partner; (2) an identification card signed by the respondent as Chairperson where her husband is identified as an attorney; and (3) Felicisimo entered his appearance as counsel and even moved for the provision dismissal of a case for failure of the private complainant to appear and for lack of interest to prosecute the said cases. The IBP Board of Governors adopted and approved the recommendations but increased the penalty to be imposed to six months.

ISSUE:

Whether or not respondent is administratively liable for violating Canon 9 and Rule 9.01 of the Code of Professional Responsibility (YES)

RULING:

A lawyer who allows a non-member of the Bar to misrepresent himself as a lawyer and to practice law is guilty of violating Canon 9 and Rule 9.01 of the Code of Professional Responsibility, which states:

Canon 9 - A lawyer **shall not directly or indirectly assist in the unauthorized practice of law.**

Rule 9.01 - A lawyer **shall not delegate to any unqualified person the performance of any task which by law may only be performed by lawyers.**

Holding oneself out as a lawyer for the purpose of identifying oneself as an attorney, appearing in court in representation of a client, or associating oneself as a partner of a law office for the general practice of law constitute unauthorized practice of law. In this case, Felicisimo is not a lawyer but holds himself out as one while his wife, respondent, **abetted and aided him in the unauthorized practice of the legal profession.**

The lawyer's duty to prevent, or at the very least not to assist in, the unauthorized practice of law is **founded on public interest and policy.** Public policy requires that the practice of law be limited to those individuals found duly qualified in education and character. The permissive right conferred on the lawyer is an individual and limited privilege subject to withdrawal if he fails to maintain proper standards of moral and professional conduct. **The purpose is to protect the public, the court, the client, and the bar from incompetence or dishonesty of**

those unlicensed to practice law and not subject to the disciplinary control of the Court.

C. To the courts (Canons 10-13)

- 1) Candor, fairness and good faith to the courts
- 2) Respects for courts and judicial officers
- 3) Assistance in the speedy and efficient administration of justice
- 4) Reliance on merits of his/her cause and avoidance of any impropriety which tends to influence or gives the appearance of influence upon courts

Jurisprudence

1. Figueras v. Victoria, A.C. No. 9116, March 12, 2014

NESTOR B. FIGUERAS and BIENVENIDO VICTORIA, JR. Complainants, -versus- ATTY. DIOSDADO B. JIMENEZ, Respondent.

A.C. No. 9116, FIRST DIVISION, March 12, 2016, VILLARAMA JR., J.

*Records show that respondent **filed the first motion for extension of time to file appellant's brief 95 days after the expiration of the reglementary period to file said brief**, thus causing the dismissal of the appeal of the homeowner's association.*

*A lawyer engaged to represent a client in a case **bears the responsibility of protecting the latter's interest with utmost diligence**. In failing to file the appellant's brief on behalf of his client, respondent had fallen far short of his duties as counsel as set forth in **Rule 12.04, Canon 12 of the Code of Professional Responsibility** which exhorts **every member of the Bar not to unduly delay a case and to exert every effort and consider it his duty to assist in the speedy and efficient administration of justice**.*

FACTS:

Congressional Village Homeowners Association Inc. secured the services of the respondent's law firm for a civil suit for damages filed against the association wherein the respondent was the counsel in record. The RTC rendered a decision against the association. The association, represented by respondent's law firm, appealed to the Court of Appeals. The CA, however, issued a resolution dismissing the appeal **on the ground that the original period to file the appellant's brief has expired 95 days even before the first motion for extension of time to file said brief was filed**.

Eight years later, complainants Nestor Figueras and Bienvenido Victoria, Jr., as members of the association filed a complaint for Disbarment against respondent before the IBP Committee on Bar Discipline (CBD) for violation of the Code of Professional Responsibility, particularly **Rule 12.03, Canon 12, Canon 17, and Rule 18.03, Canon 18** for his negligence in handling the appeal and willful violation of his duties as an officer of the court.

The Investigating Commissioner of the IBP-CBD found respondent liable for violation of the Code of Professional Responsibility, particularly Rule 12.03 of Canon 12, Canon 17, Rule 18.03, and Canon 18, and recommended the suspension of respondent to practice law for a period of three to six months. The IBP Board of Governors adopted the recommendation but modified the penalty suspending respondent from the practice of law for six months.

ISSUE:

Whether or not the respondent can be held administratively liable for his alleged negligence in handling the case of the complainant (YES)

RULING:

The Court agrees with the IBP that respondent had been remiss in the performance of his duties as counsel for Congressional Village Homeowners Association, Inc. Records show that respondent **filed the first motion for extension of time to file appellant's brief 95 days after the expiration of the reglementary period to file said brief**, thus causing the dismissal of the appeal of the homeowner's association.

A lawyer engaged to represent a client in a case **bears the responsibility of protecting the latter's interest with utmost diligence**. In failing to file the appellant's brief on behalf of his client, respondent had fallen far short of his duties as counsel as set forth in **Rule 12.04, Canon 12 of the Code of Professional Responsibility** which exhorts **every member of the Bar not to unduly delay a case and to exert every effort and consider it his duty to assist in the speedy and efficient administration of justice**.

2. Hueysuwan v. Atty. Florido, A.C. No. 5624, January 20, 2004

NATASHA HUEYSUWAN-FLORIDO, Complainant, -versus- ATTY. JAMES BENEDICT C. FLORIDO, Respondent.

A.C. No. 5624, EN BANC, January 20, 2004, YNARES-SANTIAGO,J.

*Candor and fairness are demanded of every lawyer. The burden cast on the judiciary would be intolerable if it could not take at face value what is asserted by counsel. The time that will have to be devoted just to the task of verification of allegations submitted could easily be imagined. Even with due recognition then that counsel is expected to display the utmost zeal in the defense of a client's cause, **it must never be at the expense of the truth.***

FACTS:

Natasha V. Hueysuwan-Florida (Complainant) averred that she is the legitimate spouse of respondent Atty. James Benedict Florido (Respondent), but that they are estranged and living separately from each other. They have two children, both of whom are in the complainant's custody. Complainant filed an annulment case against respondent.

Sometime in the middle of December 2001, respondent went to complainant's residence and demanded the custody of their two minor children be surrendered to him. He showed complainant a **photocopy of an alleged Resolution issued by the Court of Appeals which supposedly granted his motion for temporary child custody**. However, when complainant asked for the original copy of the alleged resolution, respondent failed to give it to her and complainant refused to give him custody of their children.

Several incidents also occurred which even included respondent being accompanied by armed men demanding that complainant surrender to him the custody of their children. He threatened to forcefully take them away.

Complainant filed this complaint alleging that respondent violated his attorney's oath by manufacturing, flaunting, and using a spurious Court of Appeals Resolution in and outside a court of law. Furthermore, respondent abused and misused the privilege granted to him by the Supreme Court to practice law in the country.

The Integrated Bar of the Philippines, in its Report and Recommendation, recommended that respondent be suspended from the practice of law for a period of three years. The IBP Board of Governors adopted and approved the Report and Recommendation but modified the penalty of suspension increasing it to six years.

ISSUE:

Whether or not the respondent can be held administratively liable for his reliance on and attempt to enforce a spurious Resolution of the Court of Appeals

RULING:

In his answer to the complaint, respondent claims that he acted in good faith in invoking the Court of Appeals Resolution which he honestly believed to be authentic. This, however, is belied by the fact that he used and presented the spurious resolution several times. Since it was respondent who used the spurious Resolution, he is presumed to have participated in its fabrication.

Candor and fairness are demanded of every lawyer. The burden cast on the judiciary would be intolerable if it could not take at face value what is asserted by counsel. The time that will have to be devoted just to the task of verification of allegations submitted could easily be imagined. Even with due recognition then that counsel is expected to display the utmost zeal in the defense of a client's cause, **it must never be at the expense of the truth**. Thus, the Code of Professional Responsibility states:

CANON 10 - A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.

Rule 10.01 -A lawyer **shall not do any falsehood; nor consent to the doing of any in court; nor shall he mislead, or allow the Court to be misled by any artifice.**

Rule 10.02 -A lawyer **shall not knowingly misquote or misrepresent the contents of a paper, the language or the argument of an opposing counsel, or the text of a decision or authority, or knowingly cite as a law a provision already rendered inoperative by repeal or amendment, or assert as a fact that which has not been proved.**

3. Molina v. Magat, A.C. No. 1900, June 13, 2012

RODRIGO A. MOLINA, complainant -versus- ATTY. CEFERINO R. MAGAT, respondent.

AC No. 1900, THIRD DIVISION, 13 June 2012, MENDOZA, J.

The practice of law is a privilege bestowed on those who show that they possess and continue to possess the legal qualifications for it. Indeed, lawyers are expected to maintain at all times a high standard of legal proficiency and morality, including honesty, integrity and fair dealing. They must perform their four-fold duty to society, the legal profession, the courts and their clients, in accordance with the values and norms of the legal profession as embodied in the Code of Professional Responsibility.

In this case, there was a deliberate intent on the part of Atty. Magat to mislead the court when he led the motion to dismiss the criminal charges on the basis of double jeopardy. Atty. Magat should not make any false and untruthful statements in his pleadings.

FACTS:

A complaint for disbarment was filed by Rodrigo Molina against Atty. Magat. Moline alleged that he filed cases of Assault Upon an Agent of a Person in Authority and Breach of the Peace and Resisting Arrest against one Pascual de Leon whose counsel was Atty. Magat. Subsequently, de Leon filed a counter-charge of slight physical injuries where Atty. Magat was also the private prosecutor.

Atty. Magat filed a motion to quash the information on Assault upon an Agent of a Person in Authority on the sole ground of double jeopardy claiming that a similar case for slight physical injuries was led in court by a certain Pat. Molina (Molina). However, records showed that no case of slight physical injuries was led by Molina against de Leon.

In his Answer, Atty. Magat averred that he was really under the impression that a criminal case in lieu of the two (2) charges was indeed led and that the said motion was opposed by the other party and was denied by the court.

ISSUE:

Whether or not Atty. Magat violated the Code of Professional Responsibility when he filed a motion to quash based on false information. (YES)

RULING:

The practice of law is a privilege bestowed on those who show that they possess and continue to possess the legal qualifications for it. Indeed, lawyers are expected to maintain at all times a high standard of legal proficiency and morality, including honesty, integrity and fair dealing. They must perform their four-fold duty to society, the legal profession, the courts and their clients, in accordance with the values and norms of the legal profession as embodied in the Code of Professional Responsibility.

Atty. Magat's act clearly falls short of the standards set by the Code of Professional Responsibility, particularly Rule 10.01, which provides:

Rule 10.01 — A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

In this case, there was a deliberate intent on the part of Atty. Magat to mislead the court when he led the motion to dismiss the criminal charges on the basis of double jeopardy. Atty. Magat should not make any false and untruthful statements in his pleadings. If it were true that there was a similar case for slight physical injuries that was really led in court, all he had to do was to secure a certification from that court that, indeed, a case was filed.

4. De Jesus v. Malit, A.C. No. 6470, July 8, 2014

MERCEDITA DE JESUS, complainant -versus- ATTY. JUVY MELL SANCHEZ-MALIT, respondent.

AC No. 6470, EN BANC, 08 July 2014, SERENO, C.J.

Where the notary public admittedly has personal knowledge of a false statement or information contained in the instrument to be notarized, yet proceeds to affix the notarial seal on it, the Court must not hesitate to discipline the notary public accordingly as the circumstances of the case may dictate. Otherwise, the integrity and sanctity of the notarization process may be undermined, and public confidence in notarial documents diminished.

In this case, Atty. Malit fully knew that Mercedita was not the owner of the mortgaged market stall. That Mercedita comprehended the provisions of the real estate mortgage does not make Atty. Malit any less guilty. It only heightens her liability for tolerating a wrongful act.

FACTS:

Atty. Sanchez-Malit had drafted and notarized a Real Estate Mortgage of a public market stall that falsely named Mercedita de Jesus as its absolute and registered owner. As a result, the mortgagee of the market stall sued Mercedita for perjury and for sum of money.

Prior thereto, Atty. Malit had also notarized two contracts that caused Mercedita legal and financial problems. One contract was a lease agreement notarized by respondent without the signature of the lessees. The other contract was a sale over a property covered by a Certificate of Land Ownership Award (CLOA) which Atty. Malit did not advise Mercedita that the property was still covered by the period within which it could not be alienated.

Atty. Malit explained that the mortgage contract was prepared in the presence of Mercedita and the latter read it before affixing her signature. With respect to the lease agreement, Atty. Malit gave the court's copy of the agreement to Mercedita to accommodate the latter's request for an extra copy and relied on her assurance that the lessees would sign it and that it would be returned in lieu of the original copy for the court. Mercedita, however, reneged on her promise. As regards the purchase agreement of a property covered by a CLOA, respondent claimed that complainant was an experienced realty broker and, therefore, needed no advice on the repercussions of that transaction.

ISSUE:

Whether or not Atty. Sanchez-Maralit committed misconduct and grievously violated her oath as a notary public (YES)

RULING:

Where the notary public admittedly has personal knowledge of a false statement or information contained in the instrument to be notarized, yet proceeds to affix the notarial seal on it, the Court must not hesitate to discipline the notary public accordingly as the circumstances of the case may dictate. Otherwise, the integrity and sanctity of the notarization process may be undermined, and public confidence in notarial documents diminished

In this case, Atty. Malit fully knew that Mercedita was not the owner of the mortgaged market stall. That Mercedita comprehended the provisions of the real estate mortgage contract does not make Atty. Malit any less guilty. If at all, it only heightens the latter's liability for tolerating a wrongful act.

As regards the lease agreement, a notary public should not notarize a document unless the persons who signed it are the very same ones who executed it and who personally appeared before the said notary public to attest to the contents and truth of what are stated therein. Atty. Malit's explanation about the unsigned lease agreement is incredulous. If, indeed, her file copy of the agreement bore the lessees' signatures, she could have given Mercedita a certified photocopy thereof.

5. Letter of UP Law Faculty, A.M. No. 10-10-4 SC, October 19, 2010

RE: LETTER OF THE UP LAW FACULTY ENTITLED "RESTORING INTEGRITY: A STATEMENT BY THE FACULTY OF THE UNIVERSITY OF THE PHILIPPINES COLLEGE OF LAW ON THE ALLEGATIONS OF PLAGIARISM AND MISREPRESENTATION IN THE SUPREME COURT

AM No. 10-10-4 SC, EN BANC, 19 October 2010, VILLARAMA, J.

The publication of a statement by the faculty of the UP College of Law regarding the allegations of plagiarism and misrepresentation in the Supreme Court was totally unnecessary, uncalled for and a rash act of misplaced vigilance. The UP Law faculty would fan the flames and invite resentment against a resolution that would not reverse said decision. This runs contrary to their obligation as law professors and officers of the Court to be the first to uphold the dignity and authority of the Court, to which they owe fidelity according to the oath they have taken as attorneys, and not to promote distrust in the administration of justice.

FACTS:

Allegations of plagiarism were hurled against Justice Mariano C. Del Castillo for his ponencia in *Vinuya v. Executive Secretary*, GR No. 162230, 28 April 2010. In said case, the Court denied the petition for certiorari filed by the Filipino comfort women for claims of reparation and apology from the Japanese government. The allegations of plagiarism centered on Justice Del Castillo's discussion of the principles of *ius cogens* and *erga omnes*.

Faculty members of the University of the Philippines College of Law published a statement on the allegations of plagiarism and misrepresentation relative to the Court's decision in *Vinuya v. Executive Secretary*. Then dean Atty. Marvic M.V.F. Leonen called for the resignation of Justice Del Castillo because of the allegations on plagiarism.

Not only did the authors assume that Justice Del Castillo committed plagiarism, but they also went further by directly accusing the Court of perpetrating extraordinary injustice by dismissing the petition of the comfort women in said case.

The statement accused the Court of deliberately delaying the resolution of the case and its dismissal was based on "polluted sources". It also stated that the Court showed indifference to the cause of petitioners, as well as the supposed alarming lack of concern of the members of the Court for even the most basic values of decency and respect.

ISSUE:

Whether or not the statement published by the faculty members of UP Law violated the Code of Professional Responsibility (YES)

RULING:

The publication of a statement by the faculty of the UP College of Law regarding the allegations of plagiarism and misrepresentation in the Supreme Court was totally unnecessary, uncalled for and a rash act of misplaced vigilance.

As if the case on the comfort women's claims is not controversial enough, the UP Law faculty would fan the flames and invite resentment against a resolution that would not reverse said decision. This runs contrary to their obligation as law professors and officers of the Court to be the first to uphold the dignity and authority of the Court, to which they owe fidelity according to the oath they have taken as attorneys, and not to promote distrust in the administration of justice. Their actions constitute violations of Canons 10, 11, and 13 and Rules 1.02 and 11.05 of the Code of Professional Responsibility.

6. Atty. Leonard de Vera, A.M. No. 01-12-03-SC, July 29, 2002

IN RE: PUBLISHED ALLEGED THREATS AGAINST MEMBERS OF THE COURT IN THE PLUNDER LAW CASE HURLED BY ATTY. LEONARD DE VERA.

AM No. 01-12-03-SC, EN BANC, 29 July 2002, KAPUNAN, J.

Atty. de Vera's statements are aimed at influencing and threatening the Court in deciding in favor of the constitutionality of the Plunder Law. It is respondent's duty as an officer of the court, to uphold the dignity and authority of the courts and to promote confidence in the fair administration of justice and in the Supreme Court as the last bulwark of justice and democracy. Respondent's statements, while the case of Estrada vs. Sandiganbayan was pending consideration by the Court, belies his protestation of good faith but were clearly made to mobilize public opinion and bring pressure on the Court.

FACTS:

On 11 December 2011, the Court En Banc issued a resolution directing Atty. Leonard de Vera to explain why he should not be cited for indirect contempt of court for uttering allegedly contemptuous statements in relation to the case involving the constitutionality of the Plunder Law which was then pending. Atty. de Vera's statements were published in the Philippine Daily Inquirer where he asked the Supreme Court to dispel rumors that it would vote in favor of a petition to

declare the Plunder Law unconstitutional for its supposed vagueness. He also said that to declare said law as unconstitutional “would trigger mass actions, probably more massive than those that led to People Power II”.

While he admitted to having said those statements, Atty. de Vera denied that he made the same to degrade the Court, to destroy public confidence in it and to bring it into disrepute.

ISSUE:

Whether or not he is guilty of indirect contempt of court. (YES)

RULING:

Atty. de Vera’s statements are aimed at influencing and threatening the Court in deciding in favor of the constitutionality of the Plunder Law. Such statements show disrespect not only for the Court but also for the judicial system as a whole, tend to promote distrust and undermine public confidence in the judiciary, by creating the impression that the Court cannot be trusted to resolve case impartially and violate the right of the parties to have their case tried fairly by an independent tribunal, uninfluenced by public clamor and other extraneous influences.

It is respondent's duty as an officer of the court, to uphold the dignity and authority of the courts and to promote confidence in the fair administration of justice and in the Supreme Court as the last bulwark of justice and democracy. Respondent's statements, while the case of Estrada vs. Sandiganbayan was pending consideration by the Court, belies his protestation of good faith but were clearly made to mobilize public opinion and bring pressure on the Court.

7. Anudon v. Cefra, A.C. No. 5482, February 10, 2015

JIMMY ANUDON AND JUANITA ANUDON, complainants-versus-ATTY. ARTURO B. CEFRA, respondent.

A.C. No. 5482, EN BANC, 10 February 2015, LEONEN, J.

The notarization of documents ensures the authenticity and reliability of a document. The rules require the notary public to assess whether the person executing the document voluntarily affixes his or her signature. Without physical presence, the notary public will not be able to properly execute his or her duty under the law. Atty. Arturo B. Cefra violated the Notarial Law and the Code of Professional Responsibility in notarizing a document without requiring the presence of the affiants.

FACTS:

On August 12, 1998, Atty. Cefra notarized a Deed of Absolute Sale over a parcel of land. The names of Johnny Anudon, Alfonso Anudon, Benita Anudon-Esguerra, and complainants Jimmy and Juanita appeared as vendors, while the name of Celino Paran, Jr. appeared as the vendee. In addition to the forgery of their signatures, Jimmy and Juanita stated that it was physically impossible for their brothers and

sister, Johnny, Alfonso, and Benita, to sign the Deed of Absolute Sale. Johnny and Benita were in the United States on the day the Deed of Absolute Sale was executed, while Alfonso was in Cavite.

Jimmy and Juanita also initiated a disciplinary action by filing a Complaint with this court on August 6, 2001 questioning the propriety of Atty. Cefra's conduct as lawyer and notary public.

The Investigating Commissioner found that Atty. Cefra's conduct in notarizing the Deed of Absolute Sale violated the Notarial Law. In addition, Atty. Cefra violated Canon 1 of the Code of Professional Responsibility, which requires that "[a] lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal processes."

Hence, the Investigating Commissioner recommended the revocation of Atty. Cefra's notarial commission and the disqualification of Atty. Cefra from reappointment as notary public for two (2) years. The Investigating Commissioner also recommended the penalty of suspension from the practice of law for six (6) months.

ISSUE:

Whether or not Atty. Cefra violated the Notarial Law (YES)

RULING:

Atty. Arturo B. Cefra violated the Notarial Law and the Code of Professional Responsibility in notarizing a document without requiring the presence of the affiants.

The notarization of documents ensures the authenticity and reliability of a document. The rules require the notary public to assess whether the person executing the document voluntarily affixes his or her signature. Without physical presence, the notary public will not be able to properly execute his or her duty under the law.

Notarization is the act that ensures the public that the provisions in the document express the true agreement between the parties. Transgressing the rules on notarial practice sacrifices the integrity of notarized documents. It is the notary public who assures that the parties appearing in the document are the same parties who executed it. This cannot be achieved if the parties are not physically present before the notary public acknowledging the document.

8. Uy v. Depasucat, A.C. No. 5332, July 20, 2003

**JOHNNY K.H. UY, *complainant* -versus- ATTYS. REYNALDO C. DEPASUCAT,
WILLIAM O. SU., and CELSO DE LAS ALAS, *respondents*.**

AC No. 5332, SECOND DIVISION, 29 July 2003, AUSTRIA-MARTINEZ, J.

Lawyers, most especially, should be allowed a great latitude of pertinent remark or comment in the furtherance of the causes they uphold, and for the felicity of their clients, they may be pardoned some infelicities of phrase. However, such remarks or comments should not trench beyond the bounds of relevancy and propriety. Respondents went overboard by further stating in the Manifestation that Uy confessed to bribing of the judges. A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the Courts. It must be remembered that the language vehicle does not run short of expressions which are emphatic but respectful, convincing but not derogatory, illuminating but not offensive.

FACTS:

Johnny Uy charged attorney-respondents with gross misconduct relative to their action for reconveyance of real property, cancellation of titles and recovery of ownership and possession, with damages.

After Uy filed an appeal before the Court of Appeals, attorney-respondents submitted a Manifestation before the same court titled “Manifestation of Usurpation of Authority of the Hon. Court of Appeals from a Self-Confessed Briber of Judges” where Uy was branded as a “briber of judges”.

Uy alleged that attorney-respondents’ act of filing of the subject Manifestation was for the purpose of putting him in a bad light to obtain a favorable judgment for their clients. He also alleged that the Manifestation contained groundless and false imputations which are immaterial to the appealed case. The attorney-respondents argued that the filing of the Manifestation was not attended by malice and falls under the protective mantle of absolute privileged communication.

ISSUE:

Whether or not the Manifestation is covered by absolute privileged communication (NO)

RULING:

The doctrine of privileged communication that utterances made in the course of judicial proceedings, including all kinds of pleadings, petitions and motions, belong to the class of communications that are absolutely privileged has been enunciated in a long line of cases. Said doctrine rests upon public policy which looks to the free and unfettered administration of justice, though, as an incidental result, it may in some instances afford an immunity to the evil-disposed and malignant slanderer.

Lawyers, most especially, should be allowed a great latitude of pertinent remark or comment in the furtherance of the causes they uphold, and for the felicity of their

clients, they may be pardoned some infelicities of phrase. However, such remarks or comments should not trench beyond the bounds of relevancy and propriety.

Attorney-respondents had knowledge that Uy had taken an improper action during the judicial proceedings. However, respondents went overboard by further stating in the Manifestation that Uy confessed to bribing of the judges. It belied their good intention and exceeded the bounds of propriety, hence not arguably protected; it is the surfacing of a feeling of contempt towards a litigant; it offends the court before which it is made. A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the Courts. It must be remembered that the language vehicle does not run short of expressions which are emphatic but respectful, convincing but not derogatory, illuminating but not offensive. It has been said that a lawyer's language should be dignified in keeping with the dignity of the legal profession.

9. Roxas v. Zuzuarregi, GR No. 152072, July 12, 2007

ROMEO G. ROXAS and SANTIAGO N. PASTOR, petitioners, -versus- ANTONIO DE ZUZUARREGUI, JR., ENRIQUE DE ZUZUARREGUI, PACITA JAVIER, ELIZABETH R. GONZALES, JOSEFINA R. DAZA, ELIAS REYES, NATIVIDAD REYES, TERESITA REYES, JOSE REYES and ANTONIO REYES, respondent.
GR. No. 152072, EN BANC, 12 July 2007, PER CURIAM.

It is the duty of a lawyer as an officer of the court to uphold the dignity and authority of the courts and to promote confidence in the fair administration of justice and in the Supreme Court as the last bulwark of justice and democracy. Respect for the courts guarantees the stability of the judicial institution. In the case at bar, the Court finds the statements made by Atty. Roxas to have been made mala fides and exceeded the boundaries of decency and propriety. By his unfair and unfounded accusation against Justice Nazario, and his mocking of the Court for allegedly being part of a wrongdoing and being a dispenser of injustice, he abused his liberty of speech.

FACTS:

In a Resolution, the Court En Banc ordered Atty. Romeo G. Roxas to explain in writing why he should not be held in contempt of court and subjected to disciplinary action when he, in a letter addressed to Associate Justice Minita V. Chico-Nazario with copies furnished to all other Supreme Court Justices, intimated that Justice Nazario decided G.R. No. 152072 and No. 152104 on considerations other than the pure merits of the case, and called the Supreme Court a "dispenser of injustice." Atty. Roxas stated in his letter, particularly, that the decision did not meet the standards or adhered to the basic characteristics of fair and just decision, such as objectivity, neutrality and conformity to the laws and the Constitution.

In his letter of explanation, Atty. Roxas extended apologies to Justice Nazario, to the other members of the High Court and to the High Court itself as a revered institution and ultimate dispenser of justice. He said he was merely exercising his right to express a legitimate grievance or articulate a bona fide and fair criticism of the Honorable Court's ruling.

ISSUE:

Whether or not Atty. Roxas should be held in contempt (YES)

RULING:

It is the duty of a lawyer as an officer of the court to uphold the dignity and authority of the courts and to promote confidence in the fair administration of justice and in the Supreme Court as the last bulwark of justice and democracy. Respect for the courts guarantees the stability of the judicial institution. Without such guarantee, the institution would be resting on a very shaky foundation. When confronted with actions and statements, from lawyers and non-lawyers alike, that tend to promote distrust and undermine public confidence in the judiciary, this Court will not hesitate to wield its inherent power to cite any person in contempt. In so doing, it preserves its honor and dignity and safeguards the morals and ethics of the legal profession.

In the case at bar, the Court finds the statements made by Atty. Roxas to have been made mala fides and exceeded the boundaries of decency and propriety. By his unfair and unfounded accusation against Justice Nazario, and his mocking of the Court for allegedly being part of a wrongdoing and being a dispenser of injustice, he abused his liberty of speech.

10. Santiago v. J. Enriquez, A.M. CA-09-47-J, February 13, 2009

GENARO SANTIAGO III, complainant, -versus- JUSTICE JUAN Q. ENRIQUEZ, JR. of the Thirteenth [13th] Division, Court of Appeals, respondent.A.M. No. CA-09-47-J, EN BANC, 13 February 2009, CARPIO-MORALES, J.

The principle of "judicial immunity" insulates judges, and even Justices of superior courts, from being held to account criminally, civilly or administratively for an erroneous decision rendered in good faith. To hold otherwise would render judicial office untenable. No one called upon to try the facts or interpret the law in the process of administering justice could be infallible in his judgment. In this case, The Decision was not rendered by respondent in his individual capacity. It was a product of the consultations and deliberations by the Special Division of five. The Court of Appeals is a collegiate court whose members reach their conclusions in consultation and accordingly render their collective judgment after due deliberation.

FACTS:

Santiago III filed before the Regional Trial Court (RTC) a Petition for Reconstitution of Lost/Destroyed Original Certificate of Title. The RTC granted the petition. The Republic of the Philippines through the Office of the Solicitor General appealed the decision to the Court of Appeals and was raffled to the 13th division.

Respondent Justice dissented to the Majority's report and in view of his dissent, he requested the Raffle Committee of the Court of Appeals to designate two associate

justices to complete the composition of a Special Division of five. The Raffle committee granted respondent's request.

The Decision of the Special Division reversed and set aside the Decision of the RTC. Santiago III filed a Motion for Reconsideration which was received by the appellate court. Days after, he filed the present complaint.

Santiago III alleged that despite the overwhelming evidence, all corroborated by several government agencies and adduced and offered in evidence during trial, Associate Justice Enriquez deliberately twisted the law and existing jurisprudence to grant the appeal, to the extreme prejudice of complainant. For this reason, this administrative charge of GROSS IGNORANCE OF LAW/GROSS INCOMPETENCE is now being filed against respondent Associate Justice Juan Q. Enriquez, Jr.

ISSUE:

Whether or not respondent Justice committed gross ignorance of the law/gross incompetence (NO)

RULING:

The principle of "judicial immunity" insulates judges, and even Justices of superior courts, from being held to account criminally, civilly or administratively for an erroneous decision rendered in good faith. To hold otherwise would render judicial office untenable. No one called upon to try the facts or interpret the law in the process of administering justice could be infallible in his judgment.

It bears particular stress in the present case that the filing of charges against a single member of a division of the appellate court is inappropriate. The Decision was not rendered by respondent in his individual capacity. It was a product of the consultations and deliberations by the Special Division of five. The Court of Appeals is a collegiate court whose members reach their conclusions in consultation and accordingly render their collective judgment after due deliberation. Thus, we have held that a charge of violation of the Anti-Graft and Corrupt Practices Act on the ground that a collective decision is "unjust" cannot prosper. Consequently, the filing of charges against a single member of a division of the appellate court is inappropriate.

11. Jardin v. Atty. Villar, A.C. No. 5474, August 28, 2003

**REDENTOR S. JARDIN, complainant -versus- ATTY.
DEOGRACIAS VILLAR, JR., respondent.**

AC No. 5474, SECOND DIVISION, 28 August 2003, TINGA, J.

The failure to file formal offer of evidence is in pari materia with failure to file brief, which as this Court held in Perla Compania de Seguros, Inc. v. Saquilabon constitutes inexcusable negligence. In this case, Atty. Villar committed a serious transgression when he failed to exert his utmost learning and ability and to give entire devotion to his client's cause. His client had relied on him to file the formal offer of exhibits among

other things, but he failed to do so. Resulting as it did in the dismissal of the case, his failure constitutes inexcusable default.

FACTS:

Jardin sought the disbarment of Atty. Villar, who was his counsel in a civil case, for the latter's failure to formally offer the documentary exhibits, which failure resulted in the dismissal of the case. The Court required the respondent to comment on the complaint against him. Respondent, however, disregarded the Court's order. The IBP Board of Governors found the respondent liable for negligence and recommended his suspension from the practice of law for a period of six (6) months.

ISSUE:

Whether or not failure to file formal offer of evidence constitutes inexcusable negligence (YES)

RULING:

Atty. Villar committed a serious transgression when he failed to exert his utmost learning and ability and to give entire devotion to his client's cause. His client had relied on him to file the formal offer of exhibits among other things, but he failed to do so. Resulting as it did in the dismissal of the case, his failure constitutes inexcusable default.

The failure to file formal offer of evidence is *in pari materia* with failure to file brief, which as this Court held in *Perla Compania de Seguros, Inc. v. Saquilabon* constitutes inexcusable negligence. A line of Supreme Court cases also punished failure to file brief and suspended lawyers from the practice of law for a period of six (6) months.

12. Felipe v. Atty. Macapagal, A.C. No. 4549, December 2, 2013

**NESTOR V. FELIPE, ALBERTO V. FELIPE, AURORA FELIPE-ORANTE,
ASUNCION FELIPE-DOMINGO, MILAGROS FELIPE-CABIGTING, and
RODOLFO V. FELIPE, complainants, -versus- ATTY. CIRIACO
A. MACAPAGAL, respondent**

A.C. No. 4549, SECOND DIVISION, 02 December 2013, DEL CASTILLO, J.

Atty. Macapagal's unjustified disregard of the lawful orders of this Court and the IBP is not only irresponsible, but also constitutes utter disrespect for the judiciary and his fellow lawyers. His conduct is unbecoming of a lawyer, for lawyers are particularly called upon to obey court orders and processes and are expected to stand foremost in complying with court directives being themselves officers of the court. As an officer of the court, respondent is expected to know that a resolution of this Court is not a mere request but an order which should be complied with promptly and completely. This is also true of the orders of the IBP as the investigating arm of the Court in administrative cases against lawyers.

Facts:

A disbarment case was filed against Atty. Macapagal. He was charged with dishonesty (1) when he stated in the defendants' Answer in Civil Case No. A-95-22906 that the parties therein are strangers to each other; (2) when he introduced a falsified Certificate of Marriage as part of his evidence in Civil Case No. A-95-22906; and (3) when he knowingly filed a totally baseless pleading captioned as Urgent Motion to Recall Writ of Execution of the Writ of Preliminary Injunction in the same case.

Issue:

Whether or not such issues may be considered as valid grounds for disbarment (YES)

Ruling:

The Supreme Court held that these issues are proper subjects of and must be threshed out in a judicial action. However, since Atty. Macapagal failed to file a comment and his position paper despite his receipt of Notice, he was reprimanded for failing to give due respect to the Court and the Integrated Bar of the Philippines.

Atty. Macapagal's unjustified disregard of the lawful orders of this Court and the IBP is not only irresponsible, but also constitutes utter disrespect for the judiciary and his fellow lawyers. His conduct is unbecoming of a lawyer, for lawyers are particularly called upon to obey court orders and processes and are expected to stand foremost in complying with court directives being themselves officers of the court.

As an officer of the court, he is expected to know that a resolution of this Court is not a mere request but an order which should be complied with promptly and completely. This is also true of the orders of the IBP as the investigating arm of the Court in administrative cases against lawyers.

13. Top Rate Construction, GR No. 151081, September 11, 2003

**TOP RATE CONSTRUCTION & GENERAL SERVICES, INC., *Petitioner*, -versus-
PAXTON DEVELOPMENT CORPORATION AND BAIKAL REALTY
CORPORATION, *Respondents*.**

G.R. No. 151081, SECOND DIVISION, September 11, 2003, BELLOSILLO, J.

Forum shopping is committed by a party who institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes or to grant the same or substantially the same reliefs, on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action. It is an act of malpractice for it trifles with the courts, abuses their processes, degrades the administration of justice and adds to the already congested court dockets. What is critical is the vexation brought upon the courts and the litigants by a party who asks different courts to rule

on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same issues, regardless of whether the court in which one of the suits was brought has no jurisdiction over the action.

FACTS

Five civil actions involving the ownership of Lots Nos. 5763 and 5765 — New situated in Salawag, Dasmariñas, Cavite, were jointly tried by RTC-Br. 21, Imus, Cavite. One of the complaints was filed by respondent Paxton Development Corporation against petitioner Top Rate Construction and General Services, Inc., and against respondent Baikal Realty Corporation and the Register of Deeds of Cavite, for declaration of nullity of the Torrens Title for Lots Nos. 5763-A and 5763-B as part and parcel of Lot No. 5763, docketed as Civil Case No. 1124-95, with prayer for damages. TOP RATE was represented in this civil case by the Gana Law Office through Attys. Luis Ma. Gil L. Gana and/or Elmer E. Manlangit.

On 13 March 1998 the trial court rendered a joint Decision on the five civil actions, which included Civil Case No. 1124-95. On 21 May 2001 the Court of Appeals promulgated its Decision on the various appeals affirming in toto the Joint Decision of the trial court.

On 28 June 2001 TOP RATE moved for reconsideration of the CA Decision where it was represented by the Gana Law Office through Attys. Luis Ma. Gil L. Gana and Elmer E. Manlangit. In due time, the other party-appellants followed suit. Despite notice PAXTON did not file its Comment, while BAIKAL as one of the appellants moved on 27 November 2001 for the early resolution of the pending motions for reconsideration.

On 14 December 2001 the appellate court promulgated a Resolution denying all motions for reconsideration.

On 26 December 2001 TOP RATE through a Manifestation informed the Court of Appeals that it filed on 21 December 2001 by registered mail a Manifestation and Motion of even date which was attached as annex thereof.

On 7 January 2002, despite the Manifestation and Motion of 21 December 2001 pending with the Court of Appeals, TOP RATE filed with this Court a motion for extension of time to file a petition for review from the adverse CA Decision and Resolution. The motion was signed by TOP RATE's counsel of record Gana & Manlangit Law Office through Attys. Luis Ma. Gil L. Gana and Elmer E. Manlangit. Furthermore, the motion contained a "Verification/Certification" under oath executed by one Alfredo S. Hocson, President of TOP RATE. It may be observed that the Verification/Certification did not mention the pending Manifestation and Motion dated 21 December 2001 filed with the Court of Appeals.

On 4 February 2002, regardless of the denial of its motion for extension of time to file petition for review, and the Manifestation and Motion of 21 December 2001 still to be resolved by the Court of Appeals, TOP RATE filed with this Court its Petition

for Review assailing the CA Decision of 21 May 2001 and Resolution of 14 December 2001, and praying that the Decision dated May 21, 2001 of the Court of Appeals in CA G.R. CV No. 60656 be set aside and a new one issued confirming TOP RATE's lawful ownership of Lots 5763-A and 5763-B, Imus Estate, as well as the validity and authenticity, of its TCT Nos. T-147755 (Lot 5763-A) & T-147756 (Lot 5763-B), both issued by the Cavite Register of Deeds. For the second time, TOP RATE's Verification/Certification did not state that its Manifestation and Motion dated 21 December 2001 was then still pending with the Court of Appeals.c

On 6 March 2002 this Court resolved to deny TOP RATE's Petition for Review. On 3 May 2002 this Court made an entry of judgment for its Resolution of 6 March 2002 denying TOP RATE's Petition for Review on *Certiorari*.

On 2 August 2002, notwithstanding the previous denial with finality of TOP RATE's motion for extension of time to file petition for review and its Petition for Review itself, the Division of Five of the Court of Appeals promulgated an Amended Decision granting the appeal of TOP RATE and modifying the joint Decision of RTC-Br. 21 of Imus, Cavite.

ISSUE

Whether Attys. Luis Ma. Gil L. Gana and Elmer E. Manlangit are administratively liable for violation of the Code of Professional Responsibility (YES)

RULING

Forum shopping is committed by a party who institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes or to grant the same or substantially the same reliefs, on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action. It is an act of malpractice for it trifles with the courts, abuses their processes, degrades the administration of justice and adds to the already congested court dockets. What is critical is the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same issues, regardless of whether the court in which one of the suits was brought has no jurisdiction over the action.

We have no doubt that Top Rate Construction and General Services, Inc. and its lawyer Gana & Manlangit Law Office through Attys. Luis Ma. Gil L. Gana and Elmer E. Manlangit are guilty of forum shopping. Although TOP RATE as principal party executed the several certifications of non-forum shopping, Attys. Gana and Manlangit cannot deny responsibility therefor since Atty. Manlangit notarized the certifications and both of them definitely knew the relevant case status after having invariably acted as counsel of TOP RATE before the trial court, the Court of Appeals and this Court.

Clearly, in seeking to reverse the 13 March 1998 Joint Decision of the trial court and the 21 May 2001 Decision of the appellate court and to perfect ownership of Lots 5763-A and 5763-B upon similar causes and the same reliefs, TOP RATE and its lawyers committed forum shopping when they resorted simultaneously to both this Court by means of their Petition for Review on *Certiorari* and the Court of Appeals through their Manifestation and Motion dated 21 December 2001. This misdeed amounts to a wagering on the result of their twin devious strategies and shows not only their lack of faith in this Court in its evenhanded administration of law but also their expression of disrespect if not ridicule for our judicial process and orderly procedure. What aggravates the transgression perpetrated by TOP RATE and its lawyers is that they deceived the highest court of the land. In all the certificates of non-forum shopping they presented to this Court, they did not reveal the existence of their Manifestation and Motion dated 21 December 2001 which they claimed was still pending before the Court of Appeals. They divulged this "secret" only after their motion for extension of time to file a petition for review and their Petition for Review on *Certiorari* were denied by this Court, and only after they had filed their motion for reconsideration of such denials.

We also rule that the forum shopping pulled off by TOP RATE and its lawyers is willful and deliberate. As reflected in the "Secretary's Certificate" authorizing the President of TOP RATE to file the necessary pleadings in court to question the adverse decisions of the Court of Appeals, Atty. Luis Ma. Gil L. Gana as TOP RATE Corporate Secretary attested to the collective desire to file the Petition for Review even while the Manifestation and Motion of 21 December 2001 was still pending with the Court of Appeals.

Attys. Luis Ma. Gil L. Gana and Elmer E. Manlangit of the Gana and Manlangit Law Office, counsel of record of TOP RATE, are administratively liable for grotesque violations of the Code of Professional Responsibility. In arriving at this conclusion, we strongly note how Attys. Luis Ma. Gil L. Gana and Elmer E. Manlangit prompted the Court of Appeals to rule on their Manifestation and Motion of 21 December 2001 and thereby complete the process of forum shopping, despite their knowledge that their Petition for Review had been denied with finality and that their motion to withdraw such petition was not granted.

The lawyers of record of TOP RATE, as all other lawyers, should be reminded that their primary duty is to assist the courts in the administration of justice. Any conduct which tends to delay, impede or obstruct the administration thereof contravenes their oath of office. This Court has time and again warned counsel of litigants not to abuse court processes, especially not to resort to forum shopping for this practice clogs the court dockets. Regrettably, TOP RATE's counsel of record failed to, internalize and observe with due regard the honorable tenets of the legal profession and the noble mission of our courts of justice.

14. People v. Boras, GR No. 17495, December 22, 2000

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus-NOLITO BORAS Y
DOE, *Accused-Appellant*.**

G.R. No. 127495, SECOND DIVISION, December 22, 2000, BUENA, J.

In rape, mere touching by the male's organ, or instrument of sex, of the labia of the pudendum of the female's private part is sufficient to consummate rape. But when the victim is below 12 years old, sexual contact of the male's sex organ with the woman's private part consummates rape and it is not required to prove force, intimidation, or consent.

FACTS

Melanie Medalla is a six year old girl. Melanie Medalla's parents were sleeping in their house at Barangay Bahay, Libmanan, Camarines Sur, she remained downstairs playing alone. At around 9 o'clock in the morning of that day, Nolito Boras, herein accused-appellant, went to her and invited her to go with him. Since she is familiar with the accused-appellant as neighbor, she was cajoled to go with him.

When they arrived at a guava tree near the coconut plantation, which is about 15 meters from her house, accused-appellant told her "magkitoan" which means "we will have sex." Obeying the instruction of accused-appellant, she removed her panty. Thereafter, she was placed "on top and in-between accused-appellant's legs" who then inserted his penis into her vagina. While accused-appellant was satisfying his salacious desire, Cirilo Guirela, the victim's uncle arrived. When she saw her uncle Cirilo, she ran away. Thereafter, Cirilo told Jesus Amenia, brother-in-law of accused-appellant, that the latter raped his niece. Jesus Amenia got angry with the accused-appellant then proceeded home with the latter. Dr. Cynthia S. Algeroy of Libmanan District Hospital examined the six-year-old victim. The examination revealed hymenal laceration at 3 o'clock caused by any organ which is inserted into the vagina, like a penis, and hypremia of the introitus (redness found at the entrance of the vagina).

ISSUE

Whether the accused-appellant is guilty of statutory rape (YES)

RULING

In statutory rape, there are two elements that must be established prior to conviction of this crime, namely: (1) that the accused had carnal knowledge of a woman and (2) that the woman is below twelve years of age.

As to the first element, accused-appellant denied having sexual contact with the victim and challenges the latter's credibility. After a thorough review of the records of this case, we find the victim's testimony credible. From the victim's narration, it was clear that there was sexual intercourse. The victim even demonstrated in court how she was raped by the accused-appellant in squatting position by holding her hips. She narrated that she felt pain and when she was crying, accused-appellant stopped thrusting his organ. She declared that she was not able to shout because

during the sexual contact, accused-appellant was covering her mouth. Her credible testimony alone suffices to establish accused-appellant's guilt. In rape, mere touching by the male's organ, or instrument of sex, of the labia of the pudendum of the female's private part is sufficient to consummate rape. But when the victim is below 12 years old, sexual contact of the male's sex organ with the woman's private part consummates rape and it is not required to prove force, intimidation, or consent. The victim's declarations were corroborated by the testimony of her uncle who witnessed the bestial act. Such testimonies were further supported by the medical findings of Dr. Algery who examined the victim two days after the incident. The medical report shows that there was penetration by the male organ into her genitalia.

The victim even testified to other occasions of rape committed against her by accused-appellant prior to December 13, 1991. However, accused-appellant cannot be convicted for the alleged rapes committed other than the one charged in the information. A rule to the contrary will violate accused-appellant's constitutional rights to be informed of the nature and cause of the accusation against him. Such other alleged rapes committed which are not alleged in the information may be taken only as proof of specific intent or knowledge, plan, system or scheme.

Anent the second element as to the age of the victim when the crime was committed, accused-appellant questions the admission of the photocopy of the birth certificate of the child invoking Section 3, Rule 130. Accused-appellant argues that the failure of the prosecution to prove the circumstances that will warrant the admission in evidence of the said photocopy, renders the same inadmissible and he cannot be convicted of statutory rape since the age of the victim was not proven with reasonable certainty. It is clear from the records that complainant Melanie Medalla was born on October 23, 1985. Besides, under Section 36, Rule 132 of the Rules of Court, objection to evidence offered orally must be made immediately after the offer is made. In the case at bar, the photocopy of the birth certificate was formally offered in evidence and marked as Exhibit "B". It was offered to prove (a) the fact of birth of the victim, and (b) the fact that the victim was below twelve years old when she was ravished on December 13, 1991. The defense objected to the purpose for which Exhibit "B" was being offered, but did not object to the presentation of the photocopied birth certificate which is merely treated as a secondary evidence. Having failed to raise a valid and timely objection against the presentation of this secondary evidence the same became a primary evidence, and the same is deemed admitted and the other party is bound thereby. Even so, if the evidence objected to was not received, it would not have varied the conclusion arrived at by the court as to the correct age of the victim considering that the victim and her mother testified as to her age. The testimony of the mother as to the age of her child is admissible in evidence for who else would be in the best position to know when she delivered the child. Besides, the court could very well assess whether or not the victim is below twelve years old by simply looking at her physique and built.

D. To the clients (Canons 14-22)

- a. Availability of service without discrimination

- 1) Services regardless of a person's status
- 2) Services as counsel de officio
- 3) Valid grounds for refusal to serve

Jurisprudence

- 1) Areola v. Atty. Mendoza, A.C. No. 10125, January 15, 2014

EDGARDO AREOLA, Complainant, -VERSUS- ATTY. MARIA VILMA MENDOZA, Respondent

A.C. No. 10135, FIRST DIVISION, January 15, 2014, REYES, J.

The conduct of a lawyer ought and must always be scrupulously observant of law and ethics. Any means, not honorable, fair and honest which is resorted to by lawyer, even pursuant to his client's cause, is condemnable and unethical.

FACTS

This is an administrative complaint filed by Areola in behalf of his co-detainees against Atty. Maria Vilma Mendoza for alleged violation of her attorney's oath of office and violation of Code of Professional Responsibility. The complaint stated that during respondent's lecture, she stated the following: "O kayong mga kasong drugs na may pangpiyansa o pang-areglo ay maging praktikal sana kayo kung gusto ninyong makalaya agad. Upang makatiyak kayo na hindi masasayang ang pera ninyo ay sa akin ninyo ibigay o ng kamag-anak ninyo ang pera at ako na ang bahalang maglagay kay Judge Martin at Fiscal banqui; at kayong mga detenidong mga babae na no bail ang kaso sa drugs, iyak-iyakan lang ninyo si Judge Martin at palalayain na kayo. Malambot ang puso noon." The complaint also alleged that respondent demanded money from Areola's co-detainees.

ISSUE

Whether or not the statements made by respondent during her speech renders her unfit to be a member of the Bar (NO)

RULING

The Court finds that the complaint lacks evidence to support the allegations contained therein. Furthermore, Areola is not the proper party to file the complaint since he himself is not a client of Atty. Mendoza and no document was submitted to show that he was authorized to file the complaint. However, the remarks made by respondent during her speech though inappropriate and unbecoming, her remark is not disparaging and reproachful so as to cause dishonor and disgrace to the Judiciary. The complaint filed by Areola is baseless and was only given consideration due to respondent's own admission.

- 2) Adaria O. Daging v. Atty. Riz Tingalon L. Davis, A.C. No. 9395, November 12, 2014

**DARIA O. DAGING, Complainant, -versus- ATTY. RIZ TINGALON L. DAVIS,
Respondent**

A.C. No. 9395, SECOND DIVISION, November 12, 2014, DEL CASTILLO, J.

A lawyer's act of representing and defending the other party of the case who was impleaded as one of the defendants in a case filed by his client during the subsistence of the Retainer Agreement is a clear violation of Rule 15.03 of Canon 15 of the Code of Professional Responsibility which mandates that a lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts

FACTS

Complainant Daria Daging was the owner and operator of Nashville Country Music Lounge. She leased from Benjie Pinlac (Pinlac) a building spaGe located at No. 22 Otek St., Baguio City where she operated the bar. Meanwhile, complainant received a Retainer Proposal from Davis & Sabling Law Office signed by respondent and his partner Atty. Amos Saganib Sabling (Atty. Sabling). This eventually resulted in the signing by the complainant, the respondent and Atty. Sabling of a Retainer Agreement. Because complainant was delinquent in paying the monthly rentals, Pinlac terminated the lease. Together with Novie Balageo (Balageo) and respondent, Pinlac went to complainant's music bar, inventoried all the equipment therein, and informed her that Balageo would take over the operation of the bar. Complainant averred that subsequently respondent acted as business partner of Balageo in operating the bar under her business name, which they later renamed Amarillo Music Bar.

Complainant likewise alleged that she filed an ejectment case against Pinlac and Balageo before the Municipal Trial Court in Cities (MTCC), Branch 1, Baguio City. At that time, Davis & Sabling Law Office was still her counsel as their Retainer Agreement remained subsisting and in force. However, respondent appeared as counsel for Balageo in that ejectment case and filed, on behalf of the latter, an Answer with Opposition to the Prayer for the Issuance of a Writ of Preliminary Injunction. In his Comment, respondent denied participation in the takeover or acting as a business partner of Balageo in the operation of the bar. He also denied that he took advantage of the Retainer Agreement between complainant and Davis and Sabling Law Office. The Investigating Commissioner rendered a Report and Recommendation finding respondent guilty of betrayal of his client's trust and for misuse of information obtained from his client to the disadvantage of the latter and to the advantage of another person. He recommended that respondent be suspended from the practice of law for a period of one year. The IBP Board of Governors adopted and approved the Report and Recommendation of the Investigating Commissioner.

ISSUE

Whether or not Atty. Davis is guilty of betrayal of his client's trust when, during the subsistence of said Retainer Agreement, he represented and defended Balageo, who

was impleaded as one of the defendants in the ejectment case filed by complainant.
(YES)

RULING

It is undisputed that complainant entered into a Retainer Agreement dated March 7, 2005 with respondent's law firm. This agreement was signed by the respondent and attached to the rollo of this case. And during the subsistence of said Retainer Agreement, respondent represented and defended Balageo, who was impleaded as one of the defendants in the ejectment case complainant filed before the MTCC of Baguio City. In fact, respondent filed on behalf of said Balageo an Answer with Opposition to the Prayer for the Issuance of a Writ of Preliminary Injunction dated July 11, 2005. It was only on August 26, 2005 when respondent withdrew his appearance for Balageo. Based on the established facts, it is indubitable that respondent transgressed Rule 15.03 of Canon 15 of the Code of Professional Responsibility. Rule 15.03 -A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts. The prohibition against representing conflicting interests is absolute and the rule applies even if the lawyer has acted in good faith and with no intention to represent conflicting interests. Lawyers are expected not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing for only then can litigants be encouraged to entrust their secrets to their lawyers, which is of paramount importance in the administration of justice.

Respondent's argument that he never took advantage of any information acquired by his law firm in the course of its professional dealings with the complainant as her case is actually handled only by his partner Atty. Sabling, even assuming it to be true, is of no moment. Undeniably aware of the fact that complainant is a client of his law firm, respondent should have immediately informed both the complainant and Balageo that he, as well as the other members of his law firm, cannot represent any of them in their legal tussle; otherwise, they would be representing conflicting interests and violate the Code of Professional Responsibility. Indeed, respondent could have simply advised both complainant and Balageo to instead engage the services of another lawyer.

The penalty for representing conflicting interests may either be reprimand or suspension from the practice of law ranging from six months to two years. We thus adopt the recommendation of the IBP Board of Governors.

- 3) Almira C. Foronda v. Atty. Jose L. Alvarez, Jr., A.C. No. 9976, June 25, 2014

**ALMIRA C. FORONDA, Complainant, -versus- ATTY. JOSE L. ALVAREZ, JR.,
Respondent**

A.C. No. 9976, FIRST DIVISION, June 25, 2014, REYES, J.

Atty. Alvarez's unfulfilled promise to settle his obligation and the issuance of worthless checks have seriously breached the complainant's trust. "The relationship of an attorney to his client is highly fiduciary. Canon 15 of the Code of Professional

Responsibility provides that 'a lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his client.' Necessity and public interest enjoin lawyers to be honest and truthful when dealing with his client."

FACTS

Complainant Foronda is an overseas Filipino worker in Dubai. She returned to the Philippines to institute a case for the nullification of her marriage. Foronda engaged the services of Atty. Alvarez for a fee of P195,000.00. Foronda averred that the Atty. Alvarez promised to file the petition after he received the full payment of his attorney's fee, or on June 11, 2008. In September 2008, the complainant inquired about the status of her case and was allegedly told by the respondent that her petition was pending in court; and in another time, she was told that a decision by the court was already forthcoming. However, when she came back to the country in May 2009, the respondent told her that her petition was still pending in court and apologized for the delay.

Eventually, the complainant was able to get a copy of her petition and found out that it was filed only on July 16, 2009. Foronda further alleged that Atty. Alvarez invited her to be an investor in the lending business allegedly ran by the latter's sister-in-law. The respondent encouraged her to invest P200,000.00 which he said can earn five percent (5%) interest per month. Thus, the complainant gave P200,000.00 to the respondent upon the security of thirteen (13) United Coconut Planters Bank (UCPB) checks. Upon presentment of these checks, the drawee-bank honored the first two (2) checks, but the rest were dishonored for being drawn against a closed account.

When she brought the matter to Atty. Alvarez, he actually paid her certain amounts as interest through her representative. Nevertheless, Atty. Alvarez failed to pay the entire obligation as promised. Thereafter, the respondent issued eight (8) Banco de Oro (BDO) checks as replacement for the dishonored UCPB checks. However, the BDO checks were likewise dishonored for being drawn against a closed account. Foronda filed a disbarment case against Atty. Alvarez. In his Answer, Atty. Alvarez admitted that he filed the petition for annulment only in July 2009 but the delay was caused by the complainant herself who allegedly instructed him to hold the filing of the said petition as she and her husband were discussing a possible reconciliation. He further argued that the contract he executed with the complainant was a mere contract of loan. Being a contract of loan, he cannot be held guilty of violation of Batas Pambansa Bilang 22 since the checks he issued were to serve only as security for it.

ISSUE

Whether or not Atty. Alvarez violated the Canons of Professional Responsibility
(YES)

RULING

"Once a lawyer agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him." "He is required by the Canons of Professional Responsibility to undertake the task with zeal, care and utmost devotion." "A lawyer who performs his duty with diligence and candor not only protects the interest of his client, he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession."

The respondent's act of issuing worthless checks is a violation of Rule 1.01 of the Code of Professional Responsibility which requires that "a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." "The issuance of checks which were later dishonored for having been drawn against a closed account indicates a lawyer's unfitness for the trust and confidence reposed on him, shows such lack of personal honesty and good moral character as to render him unworthy of public confidence, and constitutes a ground for disciplinary action."

It cannot be denied that the respondent's unfulfilled promise to settle his obligation and the issuance of worthless checks have seriously breached the complainant's trust. She went so far as to file multiple criminal cases for violation of B.P. Blg. 22 against him. "The relationship of an attorney to his client is highly fiduciary. Canon 15 of the Code of Professional Responsibility provides that 'a lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his client.' Necessity and public interest enjoin lawyers to be honest and truthful when dealing with his client." All told, this Court finds that the respondent is liable for violation of Canons 15, 17, Rule 18.04, and Rule 16.04 of the Code of Professional Responsibility. Likewise, he is also liable under Rule 1.01 thereof. The complainant seeks the disbarment of the respondent. However, "disbarment, jurisprudence teaches, should not be decreed where any punishment less severe, such as reprimand, suspension, or fine, would accomplish the end desired. This is as it should be considering the consequence of disbarment on the economic life and honor of the erring person."

In the instant case, the Court very well takes note of the fact that the criminal charges filed against the respondent have been dismissed upon an affidavit of desistance executed by the complainant. The Court also acknowledges that he dutifully participated in the proceedings before the IBP-CBD and that he completely settled his obligation to the complainant, as evidenced by the Acknowledgment Receipt signed by the complainant's counsel. Therein, it was acknowledged that the respondent paid the amount of P650,000.00 in payment for the: (1) P200,000.00 for the amount of checks he issued in favor of the complainant; (2) P195,000.00 for the attorney's fees he received for the annulment case; and (3) cost and expenses that the complainant incurred in relation to the cases the latter filed against the respondent including the instant complaint with the IBP. Unlike in Solidon where the respondent failed to file the required petition and did not account for the money he received, the respondent was able to file, albeit belatedly, the complainant's petition. In addition, he returned in full the money he received as attorney's fee in spite of having gone through all the trouble of preparing the required petition and in filing the same - not to mention the cost he incurred for the purpose.

In light of the foregoing and the Court's rulings in the cases mentioned above, the Court finds that the penalty of six months suspension from the practice of law is commensurate, with a stern warning that a repetition of any of the infractions attributed to him in this case, or any similar act, shall merit a heavier penalty.

4) Orola v. Atty. Ramos, A.C. No. 9860, September 11, 2013

JOSEPHINE L. OROLA, MYRNA L. OROLA, MANUEL L. OROLA, MARY ANGELYN OROLABELARGA, MARJORIE MELBA OROLA-CALIP, AND KAREN OROLA, Complainants, -versus- ATTY. JOSEPH ADOR RAMOS, Respondents
A.C. No. 9860, SECOND DIVISION, September 11, 2013, PERLAS-BERNABE, J.

The change of respondent's representation from one party (Heirs of Antonio) to the latter's opponent (Emilio) in the same case without the express written consent of the former warrants administrative sanction. It is explicit that a lawyer is prohibited from representing new clients whose interests oppose those of a former client in any manner, whether or not they are parties in the same action or on totally unrelated cases. The prohibition is founded on the principles of public policy and good taste. It behooves lawyers not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing for only then can litigants be encouraged to entrust their secrets to their lawyers, which is of paramount importance in the administration of justice.

FACTS

Complainants In the settlement of Trinidad's estate, pending before the Regional Trial Court were represented by Atty. Roy M. Villa as counsel for and in behalf of Heirs of Trinidad; Atty. Ely F. Azarraga, Jr. as counsel for and in behalf of heirs of the late Antonio (brother of Trinidad), with respondent as collaborating counsel; and Atty. Aquiliana Brotarlo as counsel for and in behalf of Emilio, the initially appointed administrator of Trinidad's estate. In the course of the proceedings, the Heirs of Trinidad and the Heirs of Antonio moved for the removal of Emilio as administrator and, in his stead, sought the appointment of the latter's son, Manuel Orola, which the RTC granted.

Subsequently, respondent filed an Entry of Appearance as collaborating counsel for Emilio in the same case and moved for the reconsideration of the RTC Order. Due to the respondent's new engagement, complainants filed the instant disbarment complaint before the Integrated Bar of the Philippines (IBP), claiming that he violated: (a) Rule 15.03 of the Code, as he undertook to represent conflicting interests in the subject case; and (b) Section 20(e), Rule 138 of the Rules, as he breached the trust and confidence reposed upon him by his clients, the Heirs of Antonio. Complainants further claimed that while Maricar, the surviving spouse of Antonio and the mother of Karen, consented to the withdrawal of respondent's appearance, the same was obtained only on October 18, 2007, or after he had already entered his appearance for Emilio on October 10, 2007. In this accord, respondent failed to disclose such fact to all the affected heirs and, as such, was not able to obtain their written consent as required under the Rules.

ISSUE

Whether or not respondent is guilty of representing conflicting interests in violation of Rule 15.03 of the Code (YES)

RULING

Rule 15.03 - A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts. (Emphasis supplied) Under the afore-cited rule, it is explicit that a lawyer is prohibited from representing new clients whose interests oppose those of a former client in any manner, whether or not they are parties in the same action or on totally unrelated cases. The prohibition is founded on the principles of public policy and good taste. It behooves lawyers not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing for only then can litigants be encouraged to entrust their secrets to their lawyers, which is of paramount importance in the administration of justice.

In *Hornilla v. Salunat* (*Hornilla*), the Court explained the concept of conflict of interest, to wit: There is conflict of interest when a lawyer represents inconsistent interests of two or more opposing parties. The test is "whether or not in behalf of one client, it is the lawyer's duty to fight for an issue or claim, but it is his duty to oppose it for the other client. In brief, if he argues for one client, this argument will be opposed by him when he argues for the other client." This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used. Also, there is conflict of interests if the acceptance of the new retainer will require the attorney to perform an act which will injuriously affect his first client in any matter in which he represents him and also whether he will be called upon in his new relation to use against his first client any knowledge acquired through their connection. Another test of the inconsistency of interests is whether the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness or double dealing in the performance thereof. (Emphasis supplied; citations omitted).

It must, however, be noted that a lawyer's immutable duty to a former client does not cover transactions that occurred beyond the lawyer's employment with the client. The intent of the law is to impose upon the lawyer the duty to protect the client's interests only on matters that he previously handled for the former client and not for matters that arose after the lawyer-client relationship has terminated.

E. Candor, fairness, and loyalty to clients

- 1) Confidentiality rule
- 2) Privileged communication
- 3) Conflict of interest
- 4) Candid and honest advise to clients
- 5) Compliance with laws
- 6) Concurrent practice of another profession

Jurisprudence

1) Espiritu v. Cabredo IV, A.C. No. 5831, January 23, 2003.

CESAR A. ESPIRITU, Complainant, -versus- ATTY. JUAN CABREDO IV, Respondent.

A.C. No. 5831, SECOND DIVISION, January 13, 2003, MENDOZA, J.

The relationship between a lawyer and a client is highly fiduciary; it requires a high degree of fidelity and good faith. 10 Hence, in dealing with trust property, a lawyer should be very scrupulous. Money or other trust property of the client coming into the possession of the lawyer should be reported by the latter and account any circumstances, be commingled with his own or be used by him.

FACTS

On November 5, 1999, the BPI Family Savings Bank Inc. (BPI-FSB) filed two complaints for replevin and damages against Esphar Medical Center (Esphar) Inc. and its president Cesar Espiritu and a certain John Doe. In the first complaint, the BPI-FSB alleged that, on July 14, 1997, Esphar, Cesar Espiritu, and a certain John Doe executed in favor of Gencars, Inc. (Gencars) a promissory note in which they obligated themselves jointly and severally to pay the latter P511,956 in monthly installments pursuant to a schedule they had agreed upon. It was provided that failure on the part of the makers to pay any installment when due shall make subsequent installments and the balance of the obligation immediately due and demandable. The promissory note was secured by a chattel mortgage on an Isuzu "Close Van" (1997 model) and registered with the Register of Deeds and the Land Transportation Commission. On July 14, 1997, Gencars executed a deed of assignment in favor of the BPI-FSB, assigning to the latter all of its rights, title and interest in the promissory note secured by the chattel mortgage. In 1999, Esphar, Espiritu and John Doe failed to pay installments for three consecutive months, for which reason demands were made on the three to pay the entire balance of P186,806.28, with accrued interest at the rate of 36% per annum or to give to BPI-FSB the possession of the Isuzu van in order to foreclose the mortgage. As the three failed to comply with the demands, the BPI-FSB brought suit for replevin and damages against them. The second complaint alleged similar facts involving Citimotors, Inc. as the payee of another promissory note in which Esphar, Espiritu and John Doe, as makers, obligated themselves solidarily to pay the former P674,640.00 in monthly installments. The promissory note was secured by a chattel mortgage on a Mitsubishi L-300 "Exceed Montone Van" (1997 model), which BPI-FSB, as holder of the said promissory note, sought to foreclose due to the makers' failure to comply with its terms and conditions.

On December 10, 1999, Espiritu engaged the services of Atty. Juan Cabredo IV, herein respondent, to represent him in the two civil cases. On same day, Cabredo's secretary, Rose Tria, picked up copies of the complaints from Espiritu's office and, on December 14, 1999, his representative Reynaldo Nuñez received from Esphar P16,000.00 for use as filing and acceptance fees. While the cases were pending in

court, Atty. Cabredo advised Esphar to remit money and update payments to BPI-FSB through the trial court. Accordingly, on December 28, 1999 and again January 28, 2000, Esphar's representative, Maritess Alejandrino, delivered a total of P51,161.00 to Atty. Cabredo's office. Later on, when Atty. Cabredo failed to appear at a hearing of the civil cases, the management of Esphar found out that he did not deliver the sum of P51,161.00 to the court or BPI-FSB. The management of Esphar then agreed to settle the cases amicably. For this reason, a joint motion to dismiss was filed by the parties, and the cases were dismissed on May 15, 2000. Thereafter, on May 8, 2001, Espiritu filed a complaint against Atty. Cabredo for fraud.

On February 13, 2002, Commissioner Reyes submitted his report and recommendation. He found respondent guilty of violation of the Code of Professional Responsibility and recommended that the latter be suspended from the practice of law for three months and ordered to return the amount of P51,161.00 to Esphar. 8 In a resolution dated August 3, 2002, the IBP Board of Governors adopted and approved the recommendation of the investigating commissioner.

ISSUE

Whether the Supreme Court should adopt the recommendation of the IBP Commissioner (YES)

RULING

The Code of Professional Responsibility provides:
CANON 16 — A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

Rule 16.01 — A lawyer shall account for all money or property collected or received for or from the client.

Rule 16.02 — A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.

Rule 16.03 — A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

The relationship between a lawyer and a client is highly fiduciary; it requires a high degree of fidelity and good faith. 10 Hence, in dealing with trust property, a lawyer should be very scrupulous. Money or other trust property of the client coming into the possession of the lawyer should be reported by the latter and account any circumstances, be commingled with his own or be used by him.

In this case, respondent claims that he did not know about the receipt by his secretary on the amount of P51,161.00 received from Esphar until he read the first

demand letter of the company. However, even after receiving this notice and two other demand letters, respondent never returned the money of complainant nor paid it to the bank. Indeed, it is improbable that respondent's secretary failed to inform complainant about the receipt of such a substantial sum of money. In failing to account for the money of his client, respondent violated not only the Code of Professional Responsibility but also his oath to conduct himself with all good fidelity to his clients. Like judges, lawyers must not only be proper but they must also appear to be so. This way, the people's faith in the justice system would remain unshaken.

From the evidence presented by complainant, which respondent failed to rebut, it is clear that the breach of trust committed by respondent amounted to deceit, as well as a violation of his oath, for which he should be penalized with either disbarment or suspension. While we agree with the findings of the investigating commissioner, we find the recommended penalty of suspension for three months to be too light. In *Reyes v. Maglaya* 15 a lawyer was suspended for one year for failing to return P1,500.00 belonging to his client despite numerous demands. In *Castillo v. Taguines*, a lawyer failed to deliver to his client P500.00, representing the monetary settlement of a civil suit despite demands. To make matters worse, he fooled the client by issuing a bouncing check. He was suspended for one year.

- 2) *Estrella R. Sanchez v. Atty. Nicolas C. Torres, M.D.*, A.C. No. 10240, November 25, 2014.

ESTRELLA R. SANCHEZ, Complainant, -versus. ATTY. NICOLAS C. TORRES, M.D., Respondent

A.C. No. 10240, EN BANC, November 25, 2014, Per Curiam

Sanchez extended a loan to Atty. Torres in the amount of 2,200,000.00. Atty. Torres failed to pay said obligation. This prompted Sanchez to file a complaint for disciplinary action against Atty. Torres. The IBP-CBD and the IBP Board of Governors recommended that Atty. Torres be suspended for 2 years and be ordered to pay the loaned amount. In this regard, the Court ruled that in a previous case, Atty. Torres was already disbarred, therefore he cannot be meted the penalty of suspension. Moreover, the Court cannot sustain, however, the IBP's recommendation ordering respondent to return the amount of P2,200,000.00 to complainant. In disciplinary proceedings against lawyers, the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar. Our only concern is the determination of respondent's administrative liability. Our findings have no material bearing on other judicial actions which the parties may choose to file against each other.

FACTS

Estrella Sanchez is a friend and close acquaintance of Atty. Torres. That in 2007, Atty. Torres asked Sanchez to lend him money in the amount of Two Million Two Hundred Thousand Pesos (P2,200,000.00), and convinced her that he will pay the said amount within a period of one (1) month, plus interest. Sanchez was convinced and handed him the cash amounting to Two Million Two Hundred Thousand Pesos (P2,200,000.00. To bolster Sanchez's trust and confidence, Atty. Torres issued two

(2) Allied Bank checks in the total amount of P2,200,000.00² However, after one (1) month, Atty. Torres failed to pay his obligation as promised. When Sanchez called Atty. Torres, she was told that she could again deposit the check. When Sanchez deposited the said checks to her account, but the same were returned due to "ACCOUNT CLOSED." Despite repeated demands for the last three (3) years, Atty. Torres had yet to pay his obligation since then, and thus, complainant sought legal assistance. As a consequence, formal demand letters were sent by the complainant's lawyer. Atty. Torres failed and refused to pay his obligation. Nonetheless, Atty. Torres, in his letter, promised to pay anew the amount of P2,200,000.00 in cash on or before May 15, 2009 as replacement for the two checks he previously issued. But no payment whatsoever was made.

The IBP-Commission on Bar Discipline (CBD) required Atty. Torres to file an answer. However, Atty. Torres moved for extension of time to file an answer. The IBP-CBD noted that Atty. Torres had yet to file his Answer to the complaint even after the expiration of the extension period earlier granted; thus, a final extension was given anew. Despite sufficient time for respondent Atty. Torres to file his answer, he failed to do so. Worse, he even failed to appear in the scheduled mandatory conference despite due notice.

The IBP-CBD found Atty. Torres guilty of willful dishonesty and unethical conduct for failure to pay just debt and for issuing checks without sufficient funds. It recommended that Atty. Torres be sanctioned with suspension from the practice of law for at least two (2) years. On March 20, 2013, the IBP Board of Governors adopted and approved the Report and Recommendation of the IBP-CBD. On August 5, 2013, Atty. Torres, through counsel, filed a Manifestation with Motion for Extension of Time to File Motion for Reconsideration. However, despite the lapse of considerable time after the receipt of notice to comply with the said Resolution, no motion for reconsideration was filed.

ISSUE

Whether or not Atty. Torres should be sanctioned for the imputed actions against him (YES)

RULING

Atty. Torres should be sanctioned. He indeed violated the Code of Professional Responsibility. In the instant case, the existence of the loan obligation is undisputed. Sanchez was able to discharge her burden of proving that she loaned P2,200,000.00 to Atty. Torres as evidenced by the subject bank checks. Furthermore, backed by Atty. Torres' admission in his letter dated May 9, 2009, his promise to pay the amount of P2,200,000.00 in cash, as replacement for the two checks he previously issued, is more than sufficient to establish a valid obligation of Atty. Torres to Sanchez. Atty. Torres' admission of the loan he contracted and his failure to pay the same leave no room for interpretation. Likewise, other than his belated and empty claims of payment, Atty. Torres failed to discharge his burden of proving that he had indeed paid his obligation to Sanchez.

The Court also note Atty. Torres' conduct in the course of the proceedings where he repeatedly asked for extensions of time to file an answer and a motion for reconsideration, which he failed to submit, and his failure to attend the disciplinary hearings set by the IBP do not speak well of his standing as a lawyer.

The Court deems it proper to adopt the penalty of two (2) years suspension in light of the amount involved and the brazen disregard by Atty. Torres of the Orders of the IBP-CBD on the filing of an answer and appearance in the hearing. The Court cannot sustain, however, the IBP's recommendation ordering respondent to return the amount of P2,200,000.00 to complainant. In disciplinary proceedings against lawyers, the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar. Our only concern is the determination of respondent's administrative liability. Our findings have no material bearing on other judicial actions which the parties may choose to file against each other.

However, the Court notes that in *CF Sharp Crew management, Inc. v. Nicolas C. Torres*, the Court had already disbarred Torres from the practice of law for having been found guilty of violating Rule 1.01, Canon 1 and Rules 16.01 and 16.03, Canon 16 of the Code of Professional Responsibility.

- 3) Spouses Nicasio and Donelita San Pedro vs. Atty. Isagani A. Mendoza, A.C. No. 5440, November 26, 2014.

SPOUSES NICASIO AND DONELITA SAN PEDRO, *Complainants*, -versus-. ATTY. ISAGANI A. MENDOZA, *Respondents*

A.C. No. 5440, SECOND DIVISION, November 26, 2014, LEONEN, J.

A valid retaining lien has the following elements: An attorney's retaining lien is fully recognized if the presence of the following elements concur: (1) lawyer-client relationship; (2) lawful possession of the client's funds, documents and papers; and (3) unsatisfied claim for attorney's fees. In the case at bar, Atty. Mendoza did not present evidence as to an unsatisfied claim for attorney's fees. The enumeration of cases he worked on for spouses San Pedro remains unsubstantiated. When there is no unsatisfied claim for attorney's fees, lawyers cannot validly retain their client's funds or properties. Furthermore, assuming that Atty. Mendoza had proven all the requisites for a valid retaining lien, he cannot appropriate for himself his client's funds without the proper accounting and notice to the client.

FACTS

Spouses San Pedro engaged the services of Atty. Mendoza to facilitate the transfer of title to property, in the name of Isabel Azcarraga Marcaida, to the spouses. The spouses then gave Atty. Mendoza a check for P68,250.00 for the payment of transfer taxes. They also gave Atty. Mendoza a check for 13,800.00 for respondent's professional fee. Atty. Mendoza failed to produce the title despite spouses' repeated follow-ups. Several letters were sent by Atty. Mendoza explaining the delay in the transfer of title. However, he still failed to produce the title and refused to return the amount the spouses gave for the transfer taxes. The spouses were then forced to obtain a loan from Philippine American Life and General Insurance Company to

secure the transfer of the title to the property in their names. According to Atty. Mendoza, it was the spouses who caused the three-year delay in the transfer of title because they were not able to furnish him several important documents. He also claimed that retention of the money is justified owing to his receivables from the spouses for the services he rendered in various cases.

The Investigating Commissioner, Atty. Salvador B. Hababag, found that Atty. Mendoza violated Canon 16, Rules 16.01 and 16.03 of the Code of Professional Responsibility. The Investigating Commissioner found that both checks issued to Atty. Mendoza were encashed despite respondent's failure to facilitate the release of the title in the name of the spouses.

ISSUE

Whether or not Atty. Mendoza is guilty of violating Canon 16 of the Code of Professional Responsibility for failing to hold in trust the money of his clients. (YES)

RULING

Canon 16 of the Code of Professional Responsibility states:

CANON 16 - A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

Rule 16.01 – A lawyer shall account for all money or property collected or received for or from the client. Rule 16.02 – A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.

Rule 16.03 – A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

Rule 16.04 – A lawyer shall not borrow money from his client unless the client's interests are fully protected by the nature of the case or by independent advice. Neither shall a lawyer lend money to a client except, when in the interest of justice, he has to advance necessary expenses in a legal matter he is handling for the client. A lawyer's duty under Canon 16 of the Code of Professional Responsibility is clear: The fiduciary nature of the relationship between counsel and client imposes on a lawyer the duty to account for the money or property collected or received for or from the client, thus . . . when a lawyer collects or receives money from his client for a particular purpose (such as for filing fees, registration fees, transportation and office expenses), he should promptly account to the client how the money was spent. If he does not use the money for its intended purpose, he must immediately return it to the client. His failure either to render an accounting or to return the money (if the intended purpose of the money does not materialize) constitutes a blatant disregard of Rule 16.01 of the Code of Professional Responsibility.

The lawyer's failure to return the client's money upon demand gives rise to the presumption that he has misappropriated it for his own use to the prejudice of and in violation of the trust reposed in him by the client.

Atty. Mendoza admitted that there were delays in the transfer of title of property to spouses' name. He continuously assured them that he would still fulfill his duty. However, after three (3) years and several demands from the spouses, Atty. Mendoza Spouses' alleged failure to provide the necessary documents to effect the transfer does not justify his violation of his duty under the Code of Professional Responsibility.

Mendoza's assertion of a valid lawyer's lien is also untenable. A valid retaining lien has the following elements: An attorney's retaining lien is fully recognized if the presence of the following elements concur: (1) lawyer-client relationship; (2) lawful possession of the client's funds, documents and papers; and (3) unsatisfied claim for attorney's fees. Further, the attorney's retaining lien is a general lien for the balance of the account between the attorney and his client, and applies to the documents and funds of the client which may come into the attorney's possession in the course of his employment.

Respondent did not satisfy all the elements of a valid retaining lien. He did not present evidence as to an unsatisfied claim for attorney's fees. The enumeration of cases he worked on for complainants remains unsubstantiated. When there is no unsatisfied claim for attorney's fees, lawyers cannot validly retain their client's funds or properties.

Furthermore, assuming that respondent had proven all the requisites for a valid retaining lien, he cannot appropriate for himself his client's funds without the proper accounting and notice to the client. The rule is that when there is "a disagreement, or when the client disputes the amount claimed by the lawyer . . . the lawyer should not arbitrarily apply the funds in his possession to the payment of his fees. . . ."

- 4) Erlinda Foster v. Atty. Jaime V. Agtang, A.C. No. 10579, December 10, 2014.

ERLINDA FOSTER, Complainant, -versus- ATTY. JAIME V. AGTANG, Respondent
A.C. No. 10579, EN BANC, December 10, 2014, Per Curiam

A lawyer collecting expensive amounts from his client without intent to return them shall be held liable for unethical conduct.

FACTS

Erlinda Foster sought the legal services of Atty. Agtang for her case against Tierra Realty which involved an absolute sale of land. Foster immediately paid P20,000 for acceptance fee and P5,000 for incidental expenses. Atty. Agtang loaned from

spouses Foster the amount of P100,000 for his car troubles and asked Erlinda to give P150,000 to be used as payment for filing fees.

Erlinda found out that the total filing fees only amounted to P22,410. Worse, she found out that the matters she alleged to have happened never appeared in the complaint which resulted to the dismissal of her case. She also learned from the Registrar of Deeds that Atty. Agtang was the lawyer who notarized the Deed of Absolute Sale by Tierra Realty. Erlinda filed a complaint before the IBP for the non-payment of the money advanced by Atty. Agtang. In his defense, Atty. Agtang denied that he borrowed money from Erlinda and contended that it was Erlinda who insisted for him to take the money and need not worry for the payment.

The IBP recommended that Atty. Agtang was guilty of ethical impropriety but did not rule on Atty. Agtang's conflict of interest.

ISSUE

Whether or not Atty. Agtang violated the Code of Professional Responsibility (YES)

RULING

Rule 1.0, Canon 1 of the CPR, provides that “[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.” It is well-established that a lawyer's conduct is “not confined to the performance of his professional duties. A lawyer may be disciplined for misconduct committed either in his professional or private capacity. The test is whether his conduct shows him to be wanting in moral character, honesty, probity, and good demeanor, or whether it renders him unworthy to continue as an officer of the court.”

In this case, respondent is guilty of engaging in dishonest and deceitful conduct, both in his professional and private capacity. As a lawyer, he clearly misled complainant into believing that the filing fees for her case were worth more than the prescribed amount in the rules, due to feigned reasons such as the high value of the land involved and the extra expenses to be incurred by court employees. In other words, he resorted to overpricing, an act customarily related to depravity and dishonesty.

Moreover, the “fiduciary nature of the relationship between the counsel and his client imposes on the lawyer the duty to account for the money or property collected or received for or from his client.” Money entrusted to a lawyer for a specific purpose but not used for the purpose should be immediately returned. A lawyer's failure to return upon demand the funds held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. Such act is a gross violation of general morality as well as of professional ethics. It impairs public confidence in the legal profession and deserves punishment.

Time and again, the Court has consistently held that deliberate failure to pay just debts constitutes gross misconduct, for which a lawyer may be sanctioned with

suspension from the practice of law. Lawyers are instruments for the administration of justice and vanguards of our legal system. They are expected to maintain not only legal proficiency, but also a high standard of morality, honesty, integrity and fair dealing so that the people's faith and confidence in the judicial system is ensured. They must, at all times, faithfully perform their duties to society, to the bar, the courts and their clients, which include prompt payment of financial obligations.

With respect to respondent's alleged representation of conflicting interests, the Court finds it proper to modify the findings of the Investigating Commissioner who concluded that complainant presented insufficient evidence of respondent's "lawyering" for the opposing party, Tierra Realty.

Rule 15.03, Canon 15 of the CPR, provides that "[a] lawyer shall not represent conflicting interest except by written consent of all concerned given after a full disclosure of the facts." The relationship between a lawyer and his/her client should ideally be imbued with the highest level of trust and confidence. This is the standard of confidentiality that must prevail to promote a full disclosure of the client's most confidential information to his/her lawyer for an unhampered exchange of information between them. Needless to state, a client can only entrust confidential information to his/her lawyer based on an expectation from the lawyer of utmost secrecy and discretion; the lawyer, for his part, is duty-bound to observe candor, fairness and loyalty in all dealings and transactions with the client. Part of the lawyer's duty in this regard is to avoid representing conflicting interests." Thus, even if lucrative fees offered by prospective clients are at stake, a lawyer must decline professional employment if the same would trigger the violation of the prohibition against conflict of interest. The only exception provided in the rules is a written consent from all the parties after full disclosure.

The Court deviates from the findings of the IBP. There is substantial evidence to hold respondent liable for representing conflicting interests in handling the case of complainant against Tierra Realty, a corporation to which he had rendered services in the past. The Court cannot ignore the fact that respondent admitted to having notarized the deed of sale, which was the very document being questioned in complainant's case. The Court cannot brush aside the dissatisfied observations of the complainant as to the allegations lacking in the complaint against Tierra Realty and the clear admission of respondent that he was the one who notarized the assailed document. Regardless of whether it was the validity of the entire document or the intention of the parties as to some of its provisions raised, respondent fell short of prudence in action when he accepted complainant's case, knowing fully that he was involved in the execution of the very transaction under question. Neither his unpaid notarial fees nor the participation of a collaborating counsel would excuse him from such indiscretion. It is apparent that respondent was retained by clients who had close dealings with each other. More significantly, there is no record of any written consent from any of the parties involved.

The representation of conflicting interests is prohibited "not only because the relation of attorney and client is one of trust and confidence of the highest degree, but also because of the principles of public policy and good taste. An attorney has the duty to deserve the fullest confidence of his client and represent him with

undivided loyalty. Once this confidence is abused or violated the entire profession suffers.”

CF Sharp Crew Management Incorporated v. Nicolas C. Torres, A.C. No. 10438,
September 23, 2014.

**CF SHARP CREW MANAGEMENT INCORPORATED, Complainant, –versus-
NICOLAS TORRES, Respondent.**

A.C. No. 10438, EN BANC, September 23, 2014, PER CURIAM.

*It is fundamental that the relationship between a lawyer and his client is highly fiduciary and ascribes to a lawyer a **great degree of fidelity and good faith**. The highly fiduciary nature of this relationship imposes upon the lawyer the **duty to account for the money or property collected** or received for or from his client. Hence, it has been held that a lawyer's failure to return upon demand the funds held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client.*

*Clearly, respondent's **acts of misappropriation** constitute **dishonesty, abuse of trust and confidence reposed in him** by the complainant, and **betrayal of his client's interests** which he is duty-bound to protect. They are **contrary to the mandate of Rule 1.01, Canon 1 of the CPR** which provides that "a lawyer shall not engage in unlawful, dishonest, immoral, or deceitful conduct."*

FACTS:

Complainant is a corporation duly organized and existing under Philippine laws engaged in overseas maritime employment. It hired Torres, a medical doctor and a lawyer by profession to serve as its legal counsel and to oversee the administration and management of legal cases and medical-related claims instituted by seafarers against complainant's various principals. Among the cases Torres handled in his capacity as Legal and Claims Manager were the claims of seafarers Bernardo R. Mangi, Rodelio J. Sampani, Joseph C. Delgado, and Edmundo M. Chua.

In its administrative complaint, it was alleged that per Torres' request, CF Sharp Crew Management issued checks in the amounts of P524,000.00, P652,013.20, P145,650.00, P97,100.00, and P296,808.40 as settlement of the respective claims of Mangi, Sampani, Delgado, and Chua. However, the former later discovered that, save for the check in the amount of P145,650.00 issued to Delgado, Torres never gave the checks to the seafarers and instead, had them deposited.. With respect to Sampani, CF Sharp Crew Management also discovered that he only received the amounts of P216,936.00 and P8,303.00 or a total of P225,239.00 out of the requested amount of P652,013.20, through checks not issued by CF Sharp Crew Management. On October 30, 2008, the Integrated Bar of the Philippines Commission on Bar Discipline directly received the instant complaint and on even date, issued an Order requiring Torres to file an answer, but the latter failed to do so. Neither did he appear in the mandatory conference scheduled on March 20, 2009 nor did he file his position paper.

ISSUE:

Whether or not respondent should be held administratively liable for violating the CPR. (YES)

RULING:

It is fundamental that the relationship between a lawyer and his client is highly fiduciary and ascribes to a lawyer a **great degree of fidelity and good faith**. The highly fiduciary nature of this relationship imposes upon the lawyer the **duty to account for the money or property collected** or received for or from his client. Hence, it has been held that a lawyer's failure to return upon demand the funds held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client.

A **lawyer's failure to return upon demand the funds** held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. It is well-settled that **when a lawyer receives money** from the client for a particular purpose, the lawyer is **bound to render an accounting** to the client showing that the money was spent for a particular purpose. And if he does not use the money for the intended purpose, the **lawyer must immediately return the money to his client**. This, respondent failed to do.

Clearly, respondent's **acts of misappropriation** constitute **dishonesty, abuse of trust and confidence reposed in him** by the complainant, and **betrayal of his client's interests** which he is duty-bound to protect. They are **contrary to the mandate of Rule 1.01, Canon 1 of the CPR** which provides that "a lawyer shall not engage in unlawful, dishonest, immoral, or deceitful conduct."

Anent the proper penalty for respondent's acts, the Court deems it proper to modify the penalty recommended by the IBP. Jurisprudence provides that in similar cases where lawyers misappropriated their clients' money, the Court imposed upon them the ultimate penalty of **disbarment from the practice of law**.

Layos v. Atty. Villanueva, A.C. No. 8085, December 1, 2014.

FELIPE LAYOS, Complainant, - versus - . ATTY. MARLITO I. VILLANUEVA, Respondent.

A.C. No. 8085, FIRST DIVISION, December 01, 2014, Perlas-Bernabe, J.

*As an officer of the court, it is the **duty of an attorney to inform his client** of whatever **important information** he may have acquired affecting his client's case. He should notify his client of any adverse decision to enable his client to decide whether to seek an appellate review thereof.*

In the case at bar, records reveal that since missing the April 4, 2002 hearing due to car trouble, respondent no longer kept track of complainant's criminal case and merely assumed that the same was already amicably settled and terminated. Clearly,

respondent failed to exercise such skill, care, and diligence as men of the legal profession commonly possess and exercise in such matters of professional employment.

FACTS:

It was alleged that respondent Atty. Marlito I. Villanueva is complainant Felipe Layos' counsel of record wherein the former's constant failure to appear during court hearings resulted in the RTC's issuance of an Order waiving the defense's right to cross-examine a prosecution witness. Despite the issuance of such order, Villanueva remained absent and thus, Layos was only able to move for reconsideration thru Villanueva, only four (4) years later, or on April 21, 2007, which was denied. Aggrieved, Layos, also thru Villanueva, filed a petition for certiorari before the Court of Appeals (CA).

The CA dismissed the petition on the merits. The CA likewise chastised Villanueva for his "**lack of candidness and fervor on [his part] to champion the cause**" of his client, considering that, inter alia: (a) Villanueva never bothered to know the outcome of the hearings where he was absent from; (b) it took Villanueva a long amount of time before moving to reconsider the RTC's June 26, 2003 Order; and (c) Villanueva never questioned the appearances of other lawyers as Layos' counsel during his absence. Citing as basis such disquisition by the CA, Layos filed the instant administrative case against Villanueva.

Villanueva denied being **remiss in his duty as Layos' counsel**. He averred that during the hearing on April 4, 2002 where the criminal case was supposed to be amicably settled, his car broke down and thus, he was unable to attend the hearing. After his car was fixed, he decided to go back to his office and asked his secretary to call Layos to know what happened in the said hearing. However, Villanueva was unable to contact Layos and that he never heard from the latter for a long time. Villanueva claimed that he no longer received any notices from the RTC, and thus, he assumed that the amicable settlement pushed through and that the case was dismissed already.

Finally, Villanueva averred that he had a hard time locating Layos who was not at his home address and was staying at his workplace in Carmona, Cavite. According to Villanueva, this caused him to advance the filing fees and other expenses of Layos' cases, not to mention that the latter has failed to pay the agreed appearance fees and attorney's fees due him.

The Integrated Bar of the Philippines (IBP) Commissioner found Villanueva administratively liable, and accordingly, recommended that he be **suspended from the practice of law** for a period of six (6) months.

ISSUE:

Whether or not Villanueva should be held administratively liable for the acts complained of. (YES)

RULING:

The Court concurs with the IBP's findings, subject to the modification of the recommended penalty to be imposed upon respondent. Under **Canon 17 and Canon 18, Rules 18.03 and 18.04 of the CPR**, it is the **lawyer's duty to serve his client's interest with utmost zeal, candor and diligence**. As such, he must keep abreast of all the developments in his client's case and should inform the latter of the same, as it is crucial in maintaining the latter's confidence.

As an officer of the court, it is the duty **of an attorney to inform his client** of whatever **important information** he may have acquired affecting his client's case. The lawyer should not leave the client in the dark on how the lawyer is defending the client's interests. In this connection, the lawyer must constantly keep in mind that his actions, omissions, or nonfeasance would be binding upon his client. As such, the lawyer is expected to be acquainted with the rudiments of law and legal procedure, and a client who deals with him has the right to expect not just a good amount of professional learning and competence but also a whole-hearted fealty to the client's cause.

In the case at bar, records reveal that since missing the April 4, 2002 hearing due to car trouble, respondent no longer kept track of complainant's criminal case and merely assumed that the same was already amicably settled and terminated. Thereafter, when respondent finally knew that the case was still on-going, he attended the November 15, 2005 hearing, and discovered the RTC's issuance of the June 26, 2003 Order which is prejudicial to complainant's cause. Despite such alarming developments, respondent did not immediately seek any remedy to further the interests of his client. Instead, he passively relied on the representations of the court employees that they would send him a copy of the aforesaid Order. Worse, when he finally secured a copy on April 4, 2006, it still took him over a year, or until April 21, 2007, just to move the RTC to reconsider its June 26, 2003 Order.

While the Court agrees that respondent should be held administratively liable for the foregoing acts and thus, must be suspended from the practice of law, it nevertheless deems that the IBP's **recommended period of suspension of six (6) months is too harsh a penalty**, given the complainant's seeming disinterest in the developments of his own case. This is evidenced by complainant not communicating with respondent, getting other lawyers referred to him by his friends despite having a counsel of record, and being indifferent despite being informed of a standing warrant of arrest against him. In view of the foregoing, the Court finds that respondent's **suspension from the practice of law for a period of three (3) months** would be commensurate penalty to the acts complained of.

Baltazar v. Atty. Banez, A.C. No. 9091, December 11, 2013.
CONCHITA A. BALTAZAR, ET AL., Complainants, -versus- ATTY. JUAN B. BAÑEZ,
Respondent.

A.C. No. 9091, FIRST DIVISION, December 11, 2013, SERENO, *CJ.*

*Lawyers have a sworn duty and responsibility to **protect the interest of their client** and pursue the ends of justice. Any lawyer worth his salt would advise complainants against abuses under the circumstances.*

*In the case at bar, respondent cannot be admonished for advising his client to institute an action instead of agreeing to a settlement of ten million pesos since such amount is measly compared to the thirty five million pesos under the original agreement. The Court **cannot countenance an administrative complaint against a lawyer only because he performed a duty imposed on him** by his oath.*

FACTS:

The plaintiffs engaged the services of respondent for the purpose of assisting them in the preparation of a settlement agreement. Instead of assisting them in the preparation of a settlement, respondent encouraged them to institute actions in order to recover their properties. Complainants then signed a contract of legal services,² in which it was agreed that they would not pay acceptance and appearance fees to respondent, but that the docket fees would instead be shared by the parties. Under the contract, complainants would pay respondent 50% of whatever would be recovered of the properties.

Complainants found it hard to wait for the outcome of the case and finalized the amicable settlement and terminated the services of the respondent, withdrew their complaint against Fevidal, and finalized their amicable settlement with him. The complainants sought the suspension/disbarment of the respondent due to allegations of collusion with their adversary in court.

The IBP Commission on Bar Discipline adopted and approved the Report and Recommendation²⁹ of the investigating commissioner. It suspended respondent from the practice of law for a period of one year for entering into a champertous agreement.

ISSUE:

Whether or not respondent should be admonished for encouraging his clients to institute an action in order to recover their properties. (NO)

RULING:

Respondent cannot be admonished for advising his client to institute an action instead of agreeing to a settlement of ten million pesos since such amount is measly compared to the thirty five million pesos under the original agreement. Lawyers have a sworn duty and responsibility to protect the interest of their client and

pursue the ends of justice. Any lawyer worth his salt would advise complainants against abuses under the circumstances. The Court cannot countenance an administrative complaint against a lawyer only because he performed a duty imposed on him by his oath.

However, Atty. Juan was **admonished for advancing the litigation expenses in a legal matter she handled for her client**, in violation of **Canon 16.04 of the Code of Professional Responsibility**. Such contracts are contrary to public policy and are thus void or inexistent. A reading of the contract for legal services shows that respondent agreed to pay for at least half of the expense for the docket fees. He also paid for the whole amount needed for the recording of complainants' adverse claim. While lawyers may advance the necessary expenses in a legal matter they are handling in order to safeguard their client's rights, it is imperative that the **advances be subject to reimbursement**. The purpose is to avoid a situation in which a lawyer acquires a personal stake in the clients cause. Regrettably, nowhere in the contract for legal services is it stated that the expenses of litigation advanced by respondents shall be subject to reimbursement by complainants.

Segovia-Ribaya v. Atty. Lansin, A.C. No. 7965, November 13, 2013.

AZUCENA SEGOVIA-RIBAYA, Complainants, -versus- ATTY. BARTOLOME C. LAWSIN, Respondent.

A.C. No. 7965, SECOND DIVISION, November 13, 2013, PERLAS-BERNABE, J.

*A lawyer's failure to properly account for and duly return client's money despite due demand is tantamount to a violation of **Rules 16.01 and 16.03, Canon 16 of the Code.***

*With the fact of receipt being established, it was then respondent's **obligation to return the money** entrusted to him by complainant. To this end, suffice it to state that complainant's purported act of "maligning" respondent does not justify the latter's failure to properly account for and return his client's money upon due demand. Verily, a lawyer's duty to his client is one essentially **imbued with trust** so much so that it is incumbent upon the former to exhaust all reasonable efforts towards its faithful compliance.*

FACTS:

The parties entered into a **retainership agreement** whereby respondent undertook to, inter alia process the registration and eventually deliver, within a period of six (6) months, the certificate of title over a certain parcel of land in favor of complainant acting as the representative of the heirs of the late Isabel Segovia. Complainant alleged that respondent, without proper explanation, failed to fulfill his undertaking to register the subject land and deliver to complainant the certificate of title over the same. As complainant was tired of respondent's excuses, she finally decided to just withdraw the subject amount from respondent. For such purpose, she confronted the latter at his office and also subsequently sent him two (2) demand letters, but all to no avail.

Respondent admitted that he indeed received the subject amount from complainant but averred that after receiving the same, the latter's brother, Erlindo, asked to be reimbursed the amount of ₱7,500.00 which the latter purportedly paid to the land surveyor. Respondent likewise alleged that he later found out that he could not perform his undertaking under the retainer because the ownership of the subject land was still under litigation. Finally, respondent stated that he wanted to return the balance of the subject amount to complainant after deducting what Erlindo took from him, but was only prevented to do so because he was maligned by complainant when she went to his office and there, shouted and called him names in the presence of his staff.

The IBP found respondent to have violated **Rules 16.01 and 16.03, Canon 16 of the Code of Professional Responsibility (Code)** for his failure to properly account for the money entrusted to him without any adequate explanation why he could not return the same. The Investigating Commissioner found that respondent's acts demonstrated his **lack of candor, fairness, and loyalty** to his client, who entrusted him with money and documents for the registration of the subject land. Respondent's **failure to return the subject amount**, despite being given adequate time to return the same, not to mention the repeated demands made upon him, constitutes gross dishonesty, grave misconduct, and even misappropriation of money in violation of the above-stated rules. In view of the foregoing, the Investigating Commissioner recommended that respondent be suspended from the practice of law for a period of six (6) months, with a stern warning that a repetition of the same or similar offenses in the future shall be dealt with more severely.

ISSUE:

Whether or not respondent should be held administratively liable for violating Rules 16.01 and 16.03, Canon 16 of the Code. (YES)

RULING:

The Court agrees with the IBP that respondent's failure to properly account for and duly return his client's money despite due demand is tantamount to a violation of **Rules 16.01 and 16.03, Canon 16 of the Code.**

With the fact of receipt being established, it was then respondent's **obligation to return the money** entrusted to him by complainant. To this end, suffice it to state that complainant's purported act of "maligning" respondent does not justify the latter's failure to properly account for and return his client's money upon due demand. Verily, a lawyer's duty to his client is one essentially **imbued with trust** so much so that it is incumbent upon the former to exhaust all reasonable efforts towards its faithful compliance.

After a judicious scrutiny of the records, the Court observes that respondent did not only accomplish his undertaking under the retainer, but likewise failed to give an adequate explanation for such non-performance despite the protracted length of time given for him to do so. As such omissions equally showcase respondent's non-compliance with the standard of proficiency required of a lawyer as embodied in the

above-cited rules, the Court deems it apt to extend the period of his **suspension from the practice of law** from six (6) months to one (1) year similar to the penalty imposed in the case of *Del Mundo v. Capistrano*.

Soliman v. Atty. Lerios-Amboy, A.C. No. 10568, January 13, 2015. **MARILEN G. SOLIMAN, Complainant, -versus- ATTY. DITAS LERIOS-AMBOY, Respondent.**
A.C. No. 10568, EN BANC, January 13, 2015, REYES, J.

Atty. Amboy violated Canon 16 of the Code of Professional Responsibility, particularly Rule 16.03 thereof, which requires that a lawyer shall deliver the funds and property of his client upon demand. It is settled that the unjustified withholding of money belonging to a client warrants the imposition of disciplinary action.

“A lawyer’s failure to return upon demand the funds held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. Such act is a gross violation of general morality as well as of professional ethics. It impairs public confidence in the legal profession and deserves punishment.”

FACTS:

Soliman claimed that she engaged the services of Atty. Amboy in connection with a partition case. In accordance with the Retainer Agreement between the parties, Soliman agreed to pay Atty. Amboy ₱50,000.00 as acceptance fee. Upon the latter’s engagement, Soliman paid her ₱25,000.00. Later on, Atty. Amboy advised Soliman to no longer institute a partition case since the other co-owners of the property were amenable to the partition thereof. Instead, Atty. Amboy just facilitated the issuance of the titles to the said property from the co-owners to the individual owners; the ₱25,000.00 already paid to her was then treated as payment for her professional services.

Soliman gave Atty. Amboy ₱16,700.00 as payment for the transfer tax. In the second quarter of 2009, Atty. Amboy told Soliman that there was a delay in the issuance of the titles to the property because of the failure of the other co-owners to submit certain documents. Atty. Amboy then told Soliman that someone from the Register of Deeds (RD) can help expedite the issuance of the titles for a fee of ₱80,000.00. Atty. Amboy told Soliman that her contact in the RD agreed to reduce the amount to ₱50,000.00.

Meanwhile, Soliman deposited the amount of ₱8,900.00 to Atty. Amboy’s bank account as payment for the real property tax for the year 2009. Thereafter, Soliman deposited the amount of ₱50,000.00 to Atty. Amboy’s bank account as payment for the latter’s contact in the RD.

Atty. Amboy informed Soliman that the certificates of title to the property were then only awaiting the signature of the authorized officer. However, Atty. Amboy **failed to deliver the respective certificates of title** of Soliman and her co-owners to the subject property. Atty. Amboy’s secretary informed Soliman that their contact in the RD was asking for an additional ₱10,000.00 to facilitate the release of the said certificates of title. Soliman then refused to further pay the amount being asked by

Atty. Amboy's secretary. Thereafter, Soliman kept on asking Atty. Amboy for any update on the release of the said titles, but the latter was not responding to her queries. Soliman and Atty. Amboy's secretary went to the office of a certain Atty. Marasigan, Deputy RD of Manila. Soliman asked Atty. Marasigan if he received the ₱50,000.00 as payment for the release of the said titles. Atty. Marasigan denied having received any amount to facilitate the release of the titles and claimed that the reason why the same could not be processed was that Atty. Amboy failed to file certain documents.

ISSUE:

Whether or not Atty. Amboy violated the Canon of Professional Responsibility. (YES)

RULING:

The **Code of Professional Responsibility** clearly states that a lawyer **owes fidelity to the cause of his client** and that he should be mindful of the trust and confidence reposed in him. A lawyer is mandated to serve his client with competence and diligence; to never neglect a legal matter entrusted to him; and to keep his client informed of the status of his case and respond within a reasonable time to the client's request for information.

The circumstances of this case clearly show that Atty. Amboy, after receiving ₱25,000.00 as payment for her professional services, failed to submit material documents relative to the issuance of separate certificates of title to the individual owners of the property. It was her negligence which caused the delay in the issuance of the certificates of title.

Clearly, this is not a simple case of negligence and incompetence, Atty. Amboy's acts undermined the legal processes, which she swore to uphold and defend. In swearing to the oath, Atty. Amboy bound herself to respect the law and its processes.

Atty. Amboy violated Canon 16 of the Code of Professional Responsibility, particularly Rule 16.03 thereof, which requires that a lawyer shall deliver the funds and property of his client upon demand. It is settled that the unjustified withholding of money belonging to a client warrants the imposition of disciplinary action. "A lawyer's **failure to return upon demand the funds** held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. Such act is a gross violation of general morality as well as of **professional ethics**. It **impairs public confidence** in the legal profession and deserves punishment."

F. Competence and diligence

- 1) Adequate protection
- 2) Negligence
- 3) Collaborating counsel
- 4) Duty to apprise client

Jurisprudence

1.) Philippine Aluminum Wheels, Inc. v. FASGI Enterprises, Inc., G.R. No. 137378, October 12, 2000.

PHILIPPINE ALUMINUM WHEELS, INC., *Complainant*, -versus- FASGI ENTERPRISES, INC., *Respondent*.

G.R. No. 137378, THIRD DIVISION, October 12, 2000, VITUG, J.

It is an accepted rule that when a client, upon becoming aware of the compromise and the judgment thereon, fails to promptly repudiate the action of his attorney, he will not afterwards be heard to complain about it.

Nor could PAWI claim any prejudice by the settlement. PAWI was spared from possibly paying FASGI substantial amounts of damages and incurring heavy litigation expenses normally generated in a full-blown trial. PAWI, under the agreement was afforded time to reimburse FASGI the price it had paid for the defective wheels. PAWI, should not, after its opportunity to enjoy the benefits of the agreement, be allowed to later disown the arrangement when the terms thereof ultimately would prove to operate against its hopeful expectations.

FACTS:

ASGI Enterprises Incorporated ("FASGI"), entered into a distributorship arrangement with Philippine Aluminum Wheels, Incorporated ("PAWI"), a Philippine corporation, and Fratelli Pedrini Sarezzo S.P.A. ("FPS"), an Italian corporation. The agreement provided for the purchase, importation and distributorship in the United States of aluminum wheels manufactured by PAWI. Pursuant to the contract, PAWI shipped to FASGI a total of eight thousand five hundred ninety four (8,594) wheels. Thereabouts, FASGI paid PAWI the FOB value of the wheels. Unfortunately, FASGI later found the shipment to be defective and in non-compliance with stated requirements.

FASGI instituted an action against PAWI and FPS for breach of contract. During the pendency of the case, the parties entered into a settlement. PAWI president Romeo Rojas expressed the company's inability to comply with the foregoing agreement and proposed a revised schedule of payment. Again through a telex message, PAWI informed FASGI that it was impossible to open a letter of credit but assured that it would do its best to comply with the suggested schedule of payments. FASGI insisted that PAWI should meet the terms of the proposed schedule of payments, specifically its undertaking to open the first LC within April of 1980, and that "If the letter of credit is not opened by April 30, 1980, then [it would] immediately take all necessary legal action to protect [its] position.

PAWI, again, proved to be remiss in its obligation under the supplemental settlement agreement. While it opened the first LC on 19 June 1980, it, however, only paid on it nine (9) months. FASGI promptly shipped to PAWI the first container of wheels. Again, despite the delay incurred by PAWI on the second LC, FASGI readily delivered the second container. Later, PAWI totally defaulted in opening and

paying the third and the fourth LCs. PAWI claims that its counsel, Mr. Ready, has acted without its authority. Verily, in this jurisdiction, it is clear that an attorney cannot, without a client's authorization, settle the action or subject matter of the litigation even when he honestly believes that such a settlement will best serve his client's interest.

ISSUE:

Whether or not a client may repudiate the action of his attorney after being aware of the compromise. (NO)

RULING:

It is an accepted rule that when a client, **upon becoming aware of the compromise** and the judgment thereon, **fails to promptly repudiate the action of his attorney**, he **will not afterwards be heard to complain about it**. Nor could PAWI claim any prejudice by the settlement. PAWI was spared from possibly paying FASGI substantial amounts of damages and incurring heavy litigation expenses normally generated in a full-blown trial. PAWI, under the agreement was afforded time to reimburse FASGI the price it had paid for the defective wheels. PAWI, should not, after its opportunity to enjoy the benefits of the agreement, be allowed to later disown the arrangement when the terms thereof ultimately would prove to operate against its hopeful expectations.

PAWI assailed not only Mr. Ready's authority to sign on its behalf the Supplemental Settlement Agreement but denounced likewise his authority to enter into a stipulation for judgment before the California court on 06 August 1982 on the ground that it had by then already terminated the former's services. For his part, Mr. Ready admitted that while he did receive a request from Manuel Singson of PAWI to withdraw from the motion of judgment, the request unfortunately came too late. In an explanatory telex, Mr. Ready told Mr. Singson that under American Judicial Procedures when a motion for judgment had already been filed a counsel would not be permitted to withdraw unilaterally without a court order. From the time the stipulation for judgment was entered into on 26 April 1982 until the certificate of finality of judgment was issued by the California court on 07 September 1982, no notification was issued by PAWI to FASGI regarding its termination of Mr. Ready's services. If PAWI were indeed hoodwinked by Mr. Ready who purportedly acted in collusion with FASGI, it should have aptly raised the issue before the forum which issued the judgment in line with the principle of international comity that a court of another jurisdiction should refrain, as a matter of propriety and fairness, from so assuming the power of passing judgment on the correctness of the application of law and the evaluation of the facts of the judgment issued by another tribunal.

2.) *Lorenzana Food Corporation v. Daria*, A.C. No. 2736, May 27, 1991.

LORENZANA FOOD CORPORATION, Complainant, -versus- ATTY. FRANCISCO L. DARIA, Respondent.

A.C. No. 2736, SECOND DIVISION, May 27, 1991, PER CURIAM.

*An attorney owes **loyalty to his client** not only in the case in which he has represented him but also after the relation of attorney and client has terminated, and it is **not a good practice to permit him afterwards to defend in another case other persons against his former client** under the pretext that the case is distinct from and independent of the former case.*

FACTS:

Respondent was hired by complainant Lorenzana Food Corporation (LFC) as its legal counsel and was designated as its personnel manager six months later. LFC employee, Violeta Hanopol, filed a complaint for illegal dismissal and other monetary claims against complainant. During the initial hearing, Hanopol and respondent tried to explore the possibility of an amicable settlement. Since no agreement was reached the hearing was reset. On the pretext that Hanopol was supposed to go to his office on that date, respondent **failed to appear for the second setting**. So, the Labor Arbiter was constrained to further reset the hearing to June 28, 1983. In the meantime, respondent received an Order in another labor case, setting the hearing therein also on June 28, 1983.

Faced with a **conflicting schedule**, respondent decided to move to postpone the hearing in the Hanopol case. However, instead of filing a written motion for postponement, he opted to call, through his secretary, the Office of the Labor Arbiter to move for postponement. Respondent's telephone message apparently failed to reach the Labor Arbiter, because at the hearing on June 28, 1983, he considered the case submitted for decision on the basis of Hanopol's complaint and affidavit. Respondent **had not submitted a position paper**.

Respondent Daria appealed the Decision to the National Labor Relations Commission (NLRC). The case was remanded to the Labor Arbiter for further proceedings. In the meantime, the middle of June 1984, respondent signified to management his intention to resign.

ISSUE:

Whether or not Atty. Daria should be held liable for violation of Rule 18.03, Canon 18. (YES)

RULING:

For **failure to appear in two consecutive hearings** and to submit a position paper in the Hanopol case which resulted in complainant LFC's default and judgment against it by the Labor Arbiter, the respondent is faulted for negligence. The respondent avers that Hanopol should have seen him in his office to work out a compromise agreement, on the scheduled day of the second hearing but did not.

The setting aside of the adverse Decision of the Labor Arbiter cannot obliterate the effects of respondent's negligence. Indeed, **had respondent attended the two scheduled hearings and filed the required position paper, then at least, there would have been no delay in the resolution of the case**, which, perhaps, would

have been in favor of complainant. The delay, by itself, was prejudicial to complainant because it deprived successor-counsel Atty. Loy of time which he should be devoting to other cases of complainant. In fact he had to prepare complainant's position paper which respondent should have done earlier.

From the foregoing, it is manifest that the respondent is indeed guilty of negligence, a clear violation of the Code of Professional Responsibility. An attorney owes **loyalty to his client** not only in the case in which he has represented him but also after the relation of attorney and client has terminated, and it is **not a good practice to permit him afterwards to defend in another case other persons against his former client** under the pretext that the case is distinct from and independent of the former case.

3.) Samson v. Atty. Edgardo O. Era, A.C. No. 6664, July 16, 2013.

FERDINAND A. SAMSON, Complainant, -versus- ATTY. EDGARDO O. ERA, Respondent.

A.C. No. 6664, EN BANC, July 16, 2013, BERSAMIN, J.

*Rule 15.03, Canon 15 of the Code of Professional Responsibility provides that: "A lawyer **shall not represent conflicting interests** except by written consent of all concerned given after a full disclosure of the facts." Atty. Era thus owed to Samson and his group entire devotion to their genuine interest, and warm zeal in the maintenance and defense of their rights. He was expected to **exert his best efforts and ability to preserve the clients' cause**, for the unwavering loyalty displayed to his clients likewise served the ends of justice.*

FACTS:

Samson and his relatives were among the investors who fell prey to the pyramiding scam perpetrated by ICS Exports, Inc. Exporter, Importer, and Multi-Level Marketing Business (ICS Corporation), a corporation whose corporate officers were led by Sison. Samson engaged Atty. Era to represent and assist him and his relatives in the criminal prosecution of Sison and her group.

Atty. Era called a meeting with Samson and his relatives to discuss the possibility of an amicable settlement with Sison and her cohorts. He told Samson and the others that undergoing a trial of the cases would just be a waste of time, money and effort for them, and that they could settle the cases with Sison and her group, with him guaranteeing the turnover to them of a certain property located in Antipolo City belonging to ICS Corporation in exchange for their desistance. They acceded and executed the affidavit of desistance he prepared, and in turn they received a deed of assignment.

Samson and his relatives later demanded from Atty. Era that they be given instead a deed of absolute sale to enable them to liquidate the property among themselves. However, Atty. Era told them that whether or not the title of the property had been encumbered or free from lien or defect would no longer be his responsibility. He further told them that as far as he was concerned he had already accomplished his

professional responsibility towards them upon the amicable settlement of the cases between them and ICS Corporation. They were dismayed to learn that they could not liquidate the property because it was no longer registered under the name of ICS Corporation but was already under the name of Bank Wise Inc.

Due to the silence of Atty. Era for sometime thereafter, Samson and his group wrote to him on to remind him about his guarantee and the promise to settle the issues with Sison and her cohorts. But they did not hear from Atty. Era at all. During the hearings in the RTC, Atty. Era did not anymore appear for Samson and his group. This forced them to engage another lawyer. They were shocked to find out later on, however, that Atty. Era had already been **entering his appearance as the counsel for Sison in her other criminal cases** in the other branches of the RTC in Quezon City involving the same pyramiding scam that she and her ICS Corporation had perpetrated.

ISSUE:

Whether or not Atty. Era should be held liable for violation of Rule 15.03, Canon 15 and Canon 17 of the Code of Professional Responsibility. (YES)

RULING:

In his petition for disbarment, Samson charged Atty. Era with violating **Canon 15 of the Code of Professional Responsibility** for **representing conflicting interests** by accepting the responsibility of representing Sison in the cases similar to those in which he had undertaken to represent Samson and his group, notwithstanding that Sison was the very same person whom Samson and his group had accused with Atty. Era's legal assistance.

Atty. Era's contention that the lawyer-client relationship ended when Samson and his group entered into the compromise settlement with Sison was unwarranted. The lawyer-client relationship did not terminate as of then, for the fact remained that he still needed to oversee the implementation of the settlement as well as to proceed with the criminal cases until they were dismissed or otherwise concluded by the trial court. It is also relevant to indicate that the execution of a **compromise settlement in the criminal cases did not ipso facto cause the termination of the cases** not only because the approval of the compromise by the trial court was still required, but also because the compromise would have applied only to the **civil aspect**, and excluded the **criminal aspect**.

Rule 15.03, Canon 15 of the Code of Professional Responsibility provides that: "A lawyer **shall not represent conflicting interests** except by written consent of all concerned given after a full disclosure of the facts." Atty. Era thus owed to Samson and his group entire devotion to their genuine interest, and warm zeal in the maintenance and defense of their rights. He was expected to exert his best efforts and ability to **preserve the clients' cause**, for the unwavering loyalty displayed to his clients likewise served the ends of justice.

4.) Ylaya v. Atty. Gacott, A.C. No. 6475, January 30, 2013.

**FE A. YLAYA, Complainant, -versus- ATTY. GLENN CARLOS GACOTT,
Respondent.**

Adm. Case No. 6475, SECOND DIVISION, January 30, 2013, CARPIO-MORALES, J.

The relationship between a lawyer and his client should ideally be imbued with the highest level of trust and confidence. Necessity and public interest require that this be so. Part of the lawyer's duty to his client is to avoid representing conflicting interests. He is duty bound to decline professional employment, no matter how attractive the fee offered may be, if its acceptance involves a violation of the proscription against conflict of interest, or any of the rules of professional conduct. Thus, a lawyer may not accept a retainer from a defendant after he has given professional advice to the plaintiff concerning his claim; nor can he accept employment from another in a matter adversely affecting any interest of his former client. It is his duty to decline employment in any of these and similar circumstances in view of the rule prohibiting representation of conflicting interests.

FACTS:

The complainant alleged that she and her late husband are the registered owners of two (2) parcels of land. Prior to the acquisition of these properties, the property in dispute was already the subject of expropriation proceedings against its former registered owner.

The respondent briefly represented the complainant and her late husband in the expropriation case as intervenors for being the new registered owners of the property. The complainant alleged that the respondent convinced them to sign a "preparatory deed of sale" for the sale of the property, but he left blank the space for the name of the buyer and for the amount of consideration. The respondent then fraudulently – without their knowledge and consent, and contrary to their understanding – converted the "preparatory deed of sale" into a Deed of Absolute Sale. The complainant also claimed that the respondent notarized the Deed of Absolute Sale even though Reynold and Sylvia (his mother's sister) are his uncle and his aunt, respectively.

IBP Commissioner found the respondent administratively liable for violating Canon 1, Rule 1.01 (A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct) and Canon 16 ("A lawyer shall hold in trust all moneys and properties of his client that may come into his possession) of the Code of Professional Responsibility. She recommended his suspension from the practice of law for a period of six (6) months.

ISSUE:

Whether or not Atty. Gacott should be held administratively liable for violating Canon 1, Rule 1.01 and Canon 16 of the Code of Professional Responsibility. (YES)

RULING:

A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

The **relationship between a lawyer and his client should ideally be imbued with the highest level of trust and confidence.** Necessity and public interest require that this be so. Part of the lawyer's duty to his client is to avoid representing conflicting interests. He is **duty bound to decline professional employment**, no matter how attractive the fee offered may be, if its acceptance involves a violation of the proscription against conflict of interest, or any of the rules of professional conduct. Thus, a **lawyer may not accept a retainer from a defendant after he has given professional advice to the plaintiff concerning his claim**; nor can he accept employment from another in a matter adversely affecting any interest of his former client. It is his duty to decline employment in any of these and similar circumstances in view of the **rule prohibiting representation of conflicting interests.**

Based on the records, we find substantial evidence to hold the respondent liable for violating Canon 15, Rule 15.03 of the Code of Professional Responsibility. The facts of this case show that the respondent retained clients who had close dealings with each other. The respondent admits to acting as legal counsel for Cirilo Arellano, the spouses Ylaya and Reynold at one point during the proceedings in Civil Case No. 2902. Subsequently, he represented only Reynold in the same proceedings,⁸¹ asserting Reynold's ownership over the property against all other claims, including that of the spouses Ylaya.

We find no record of any written consent from any of the parties involved and we cannot give the respondent the benefit of the doubt in this regard. We find it clear from the facts of this case that the respondent retained Reynold as his client and actively opposed the interests of his former client, the complainant. He thus violated Canon 15, Rule 15.03 of the Code of Professional Responsibility.

G. Representation with zeal within legal bounds

- 1) Use of fair and honest means
- 2) Client's fraud
- 3) Procedure in handling a case

Jurisprudence

- 1) Sarenas v. Ocampos, A.C. No. 4401, January 29, 2004.

BIOMIE SARENAS-OCHAGABIA, Complainant, -versus- ATTY. BALMES L. OCAMPOS, Respondent.

A.C. No. 4401, THIRD DIVISION, January 29, 2004, CARPIO-MORALES, J.

*A lawyer engaged to represent a client in a case bears the **responsibility of protecting the latter's interest with utmost diligence.** By failing to file appellants'*

brief, respondent was remiss in the discharge of such responsibility. He thus violated the Code of Professional Responsibility which provides:

Rule 12.03. A lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so.

Rule 18.03. A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

FACTS:

Complainant Biomie Sarenas-Ochagabia lodged a complaint against her former counsel, respondent Atty. Balmes L. Ocampos, whose legal services she engaged for recovery of possession and ownership of a parcel of land. An adverse decision having been rendered against the plaintiffs in above-mentioned civil case, Atty. Ocampos filed a notice of appeal at the behest of the former.

The Court of Appeals gave the plaintiffs-appellants 45 days from notice to file their brief but before the lapse of the period, their counsel Atty. Ocampos, upon motion, was granted a 90-day extension of time to file the brief. The **extended period lapsed, without, however, any appellants' brief being filed**, prompting the appellate court to dismiss the appeal. The dismissal of the appeal was not challenged. Thus spawned the present complaint against Atty. Ocampos.

ISSUE:

Whether or not Atty. Ocampos should be suspended from the practice of law. (YES)

RULING:

In the instant case, the respondent Atty. Ocampos had no justifiable excuse for not preparing and filing the needed appellants' brief. Granting that he was ill during that time, he could have written to the complainant about it so that the latter will be able to hire another lawyer to handle the case for her and to prepare and file the appellants' brief. He also failed to make the necessary Manifestation and Motion with the Court of Appeals. Sad to state, the respondent **failed to do all these in blatant violation of his duty towards his client and to the Courts**. We therefore maintain that a lawyer's neglect of duty should not be tolerated and for such inaction he has to be penalized.

This Court finds the IBP Board Resolution faulting respondent in order. A lawyer engaged to represent a client in a case bears the responsibility of **protecting the latter's interest with utmost diligence**. By failing to file appellants' brief, respondent was remiss in the discharge of such responsibility. He thus violated the Code of Professional Responsibility.

That respondent accepted to represent complainant et al. *gratis et amore* does not justify his failure to exercise due diligence in the performance of his duty to file appellants' brief. **Every case a lawyer accepts deserves full attention**, diligence,

skill, and competence regardless of its importance and whether he accepts it for a fee or for free.

It bears emphasis that a client is entitled to the benefit of any and every remedy and defense that is authorized by the law and expects his lawyer to assert every such remedy or defense.

2) Spouses Arcing v. Atty. Cefra (2013).

**SPOUSES ARCING AND CRESING BAUTISTA, EDAY RAGADIO and
FRANCING GALGALAN, Complainants, vs. ATTY. ARTURO
CEFRA, Respondent.**

Adm. Case No. 5530, SECOND DIVISION, January 28, 2013, BRION, J.:

The Code of Professional Responsibility mandates that "a lawyer shall serve his client with competence and diligence."

It further states that "a lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable. In addition, a lawyer has the corresponding duty to "keep the client informed of the status of his case."

FACTS:

The complainants were the defendants in Civil Case No. U-6504 an action for quieting of title, recovery of possession and damages filed in the Regional Trial Court (RTC), Branch 45, Urdaneta City, Pangasinan. The complainants engaged the services of Atty. Cefra to represent them in the proceedings. According to the complainants, they lost in Civil Case No. U-6504 because of Atty. Cefra's negligence in performing his duties as their counsel. First, Atty. Cefra only presented testimonial evidence and disregarded two (2) orders of the RTC directing him to submit a formal offer of documentary exhibits. Second, Atty. Cefra belatedly submitted the formal offer of documentary exhibits after the complainants had been declared to have waived their right to make a submission. Third, Atty. Cefra did not file a motion or appeal and neither did he file any other remedial pleading to contest the RTC's decision rendered against them.

The IBP Board of Governors found Atty. Cefra negligent in handling the complainants' case and unanimously approved his suspension from the practice of law for six (6) months. This was however reversed to REPRIMAND due to the motion for reconsideration filed by Atty. Cefra.

ISSUE:

Whether or not Atty. Cefra is guilty of negligence. YES

RULING:

The Code of Professional Responsibility mandates that "a lawyer shall serve his client with competence and diligence."

It further states that "a lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable." In addition, a lawyer has the corresponding duty to "keep the client informed of the status of his case."

In *Jardin v. Villar, Jr.*, the Court held:

Every case a lawyer accepts deserves his full attention, diligence, skill and competence, regardless of its importance and whether he accepts it for a fee or free. Certainly, a member of the Bar who is worth his title cannot afford to practice the profession in a lackadaisical fashion. A lawyer's lethargy from the perspective of the Canons is both unprofessional and unethical.

Atty. Cefra failed to live up to these standards. Interestingly, he did not deny the complainants' allegations and impliedly admitted his actions in the proceedings in Civil Case No. U-6504.

Under the circumstances, the IBP Board of Governors' recommended penalty of simple reprimand is not commensurate with the gravity of Atty. Cefra's infractions. As the complainants incurred pecuniary damage by reason of Atty. Cefra's negligence, a suspension of one (1) year from the practice of law is in order.

3) *Dagala v. Atty. Quesada, Jr.*, A.C. No. 5044, December 2, 2013.

FELIPE C. DAGALA, Complainant, vs. **ATTY. JOSE C. QUESADA, JR. and ATTY. AMADO T. ADQUILEN**, Respondents.

A.C. No. 5044, SECOND DIVISION, December 2, 2013, PERLAS-BERNABE, J.:

In the present case, the Court finds Atty. Quesada to have violated Canons 1, 10, 17 and 18 the foregoing Rules and Canons. Primarily, Atty. Quesada failed to exercise the required diligence in handling complainant's case by his failure to justify his absence on the two (2) mandatory conference hearings in NLRC Case No. RAB-I-11-1123-94 despite due notice, which thus resulted in its dismissal. It bears stressing that a retained counsel is expected to serve the client with competence and diligence and not to sit idly by and leave the rights of his client in a state of uncertainty. To this end, he is obliged to attend scheduled hearings or conferences, prepare and file the required pleadings, prosecute the handled cases with reasonable dispatch, and urge their termination without waiting for the client or the court to prod him or her to do so.

FACTS:

On November 8, 1994 complainant, assisted by Atty. Quesada, filed before the National Labor Relations Commission (NLRC), Regional Arbitration Branch No. 1, San Fernando City, La Union (NLRC-RAB) Complaint for illegal dismissal, overtime pay, separation pay, damages and attorney's fees against Capitol Allied Trading & Transport (Capitol), and owner and General Manager, Lourdes Gutierrez, as well as its Personnel Manager, Joseph G. De Jesus, docketed as NLRC Case No. RAB-I-11-1123-94. The said case was, however, dismissed without prejudice, through an Order dated December 13, 1994 (December 13, 1994 Order), for failure of

complainant and Atty. Quesada to appear during the two (2) scheduled mandatory conference hearings despite due notice. Thereafter, complainant engaged the services of Atty. Adquilen, a former Labor Arbiter (LA) of the NLRC-RAB, who re-filed his labor case, re-docketed as NLRC Case No. RAB-I-10-1091-95 (LU).

Similarly, the case was dismissed without prejudice on June 28, 1996, this time due to the parties' failure to submit their respective position papers.

Complainant and Atty. Adquilen re-filed the case for a third time on August 27, 1996, docketed as NLRC Case No. RAB-I-08-1191-96 (LU).

During its pendency, the representative of Capitol purportedly offered the amount of ₱74,000.00 as settlement of complainant's claim, conditioned on the submission of the latter's position paper.

Atty. Adquilen, however, failed to submit one, resulting in the dismissal of the complaint "for lack of interest and failure to prosecute" as stated in an Order dated February 27, 1997 (February 27, 1997 Order). Atty. Adquilen and complainant received notice of the said order on March 11, 1997 and March 24, 1997, respectively. On July 11, 1997, complainant - this time assisted by Atty. Imelda L. Picar (Atty. Picar) - filed a motion for reconsideration from the February 27, 1997 Order, which was treated as an appeal and transmitted to the NLRC-National Capital Region (NLRC-NCR).

However, the NLRC-NCR dismissed the same in a Resolution dated June 17, 1998 for having been filed out of time, adding that the negligence of counsel binds the client.

Due to the foregoing, Atty. Picar sent separate letters dated November 18, 1998 to respondents, informing them that complainant is in the process of pursuing administrative cases against them before the Court. Nevertheless, as complainant remains open to the possibility of settlement, respondents were invited to discuss the matter at Atty. Picar's office. Only Atty. Quesada responded to the said letter and subsequently, through a Memorandum of Agreement dated December 5, 1998 (December 5, 1998 MoA), undertook to compensate the damages sustained by complainant in consideration of the non-filing of an administrative complaint against him. Atty. Quesada, however, reneged on his promise, thus prompting complainant to proceed with the present complaint.

ISSUE:

Whether or not Atty. Quesada should be held administratively liable for gross negligence in handling complainant's labor case. (YES)

RULING:

The Court has repeatedly emphasized that the relationship between a lawyer and his client is one imbued with utmost trust and confidence. In this regard, clients are led to expect that lawyers would be ever-mindful of their cause and accordingly exercise the required degree of diligence in handling their affairs. For his part, the

lawyer is required to maintain at all times a high standard of legal proficiency, and to devote his full attention, skill, and competence to the case, regardless of its importance and whether he accepts it for a fee or for free.

These principles are embodied in Rule 1.01 of Canon 1, Rule 10.01 of Canon 10, Canon 17 and Rule 18.03 of Canon 18 of the Code which respectively read as follows:

CANON 1 - A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCEDURES.

Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

CANON 10 - A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.

Rule 10.01 - A lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead, or allow the Court to be misled by any artifice.

CANON 17 - A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.

CANON 18 - A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

Rule 18.03 - A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

In the present case, the Court finds Atty. Quesada to have violated the foregoing Rules and Canons. Primarily, Atty. Quesada failed to exercise the required diligence in handling complainant's case by his failure to justify his absence on the two (2) mandatory conference hearings in NLRC Case No. RAB-I-11-1123-94 despite due notice, which thus resulted in its dismissal. It bears stressing that a retained counsel is expected to serve the client with competence and diligence and not to sit idly by and leave the rights of his client in a state of uncertainty. To this end, he is obliged to attend scheduled hearings or conferences, prepare and file the required pleadings, prosecute the handled cases with reasonable dispatch, and urge their termination without waiting for the client or the court to prod him or her to do so.

4) Dagohoy v. Atty. San Juan, A.C. No. 7944, June 3, 2013.

REX POLINAR DAGOHOY, COMPLAINANT, vs. ATTY. ARTEMIO V. SAN JUAN, RESPONDENT.

A.C. No. 7944, SECOND DIVISION, June 03, 2013, BRION, J.:

Atty. San Juan's negligence undoubtedly violates the Lawyer's Oath that requires him to "conduct [himself] as a lawyer according to the best of (his) knowledge and

discretion, with all good fidelity as well to the courts as to (his) clients[.]” He also violated Rule 18.03 and Rule 18.04, Canon 18 of the Code of Professional Responsibility, which provide:

CANON 18 — A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

Rule 18.03 — A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Rule 18.04 - A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

”It is a fundamental rule of ethics that ‘an attorney who undertakes to conduct an action impliedly stipulates to carry it to its conclusion.” It was Atty. San Juan’s bounden duty to see his cases through until proper completion; he could not abandon or neglect them in midstream, in the way he did with the complainant’s case.

FACTS:

Atty. San Juan was administratively charged for gross negligence, in connection with the dismissal of his client’s appeal filed before the Court of Appeals (CA). Tomas Dagohoy (Tomas), his client and the father of complainant Rex Polinar Dagohoy, was charged with and convicted of theft by the Regional Trial Court, Branch 34, of Panabo City, Davao del Norte. According to the complainant, the CA dismissed the appeal for Atty. San Juan’s failure to file the appellant’s brief. He further alleged that Atty. San Juan did not file a motion for reconsideration against the CA’s order of dismissal.

The complainant also accused Atty. San Juan of being untruthful in dealing with him and Tomas. The complainant, in this regard, alleged that Atty. San Juan failed to inform him and Tomas of the real status of Tomas’ appeal and did not disclose to them the real reason for its dismissal.

ISSUE:

Whether or not Atty. San Juan is guilty of gross negligence. (YES)

RULING:

In *Dalisay Capili v. Atty. Alfredo L. Bentulan*, we held that the failure to file a brief resulting in the dismissal of an appeal constitutes inexcusable negligence. In this case, Atty. San Juan’s negligence in handling his client’s appeal was duly established by the records and by his own admission. We cannot accept as an excuse the alleged lapse committed by his client in failing to provide him a copy of the case records.

In the first place, securing a copy of the case records was within Atty. San Juan's control and is a task that the lawyer undertakes. We note that Atty. San Juan received a notice dated April 19, 2005 from CA Clerk of Court Beverly S. Beja informing him that the case records were already complete and at his disposal for the preparation of the brief.

Second, Atty. San Juan, unlike his client, knows or should have known, that filing an appellant's brief within the reglementary period is critical in the perfection of an appeal. In this case, Atty. San Juan was directed to file an appellant's brief within thirty (30) days from receipt of the notice dated April 19, 2005 sent by CA Clerk of Court Beja.

The preparation and the filing of the appellant's brief are matters of procedure that fully fell within the exclusive control and responsibility of Atty. San Juan. It was incumbent upon him to execute all acts and procedures necessary and incidental to the perfection of his client's appeal.

Third, the records also disclose Atty. San Juan's lack of candor in dealing with his client. He omitted to inform Tomas of the progress of his appeal with the CA. Worse, he did not disclose to Tomas the real reason for the CA's dismissal of the appeal. Neither did Atty. San Juan file a motion for reconsideration to address the CA's order of dismissal, or otherwise resort to available legal remedies that might have protected his client's interest.

Atty. San Juan's negligence undoubtedly violates the Lawyer's Oath that requires him to "conduct [himself] as a lawyer according to the best of (his) knowledge and discretion, with all good fidelity as well to the courts as to (his) clients[.]" He also violated Rule 18.03 and Rule 18.04, Canon 18 of the Code of Professional Responsibility, which provide:

CANON 18 — A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

x x x x

Rule 18.03 — A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Rule 18.04 - A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

"It is a fundamental rule of ethics that 'an attorney who undertakes to conduct an action impliedly stipulates to carry it to its conclusion.'" It was Atty. San Juan's bounden duty to see his cases through until proper completion; he could not abandon or neglect them in midstream, in the way he did with the complainant's case.

In light of these considerations, we find the IBP's recommended penalty of three (3) months suspension from the practice of law not commensurate to the gravity of the infractions committed; as described above, these infractions warrant the imposition of a stiffer sanction. We take into account the following acts, omissions, and consequence attendant to Atty. San Juan's inadequacies: first, the negligence in

handling his client's appeal; second, his failure to act candidly and effectively in communicating information to his client; and more importantly, third, the serious and irreparable consequence of his admitted negligence which deprived his client of legal remedies in addressing his conviction.

5) Pitcher v. Atty. Gagate, A.C. No. 9532, October 8, 2013.

MARIA CRISTINA ZABALJAUREGUI PITCHER, Complainant, vs. ATTY. RUSTICO B. GAGATE, Respondent.

A.C. No. 9532, EN BANC, October 8, 2013, PERLAS-BERNABE, J.:

The Court has repeatedly emphasized that the relationship between a lawyer and his client is one imbued with utmost trust and confidence.

In this regard, clients are led to expect that lawyers would be ever-mindful of their cause and accordingly exercise the required degree of diligence in handling their affairs.

For his part, the lawyer is expected to maintain at all times a high standard of legal proficiency, and to devote his full attention, skill, and competence to the case, regardless of its importance and whether he accepts it for a fee or for free. To this end, he is enjoined to employ only fair and honest means to attain lawful objectives. These principles are embodied in Canon 17, Rule 18.03 of Canon 18, and Rule 19.01 of Canon 19 of the Code.

The Court finds that respondent failed to exercise the required diligence in handling complainant's cause since he: first, failed to represent her competently and diligently by acting and proffering professional advice beyond the proper bounds of law; and, second, abandoned his client's cause while the grave coercion case against them was pending.

FACTS:

Complainant claimed to be the legal wife of David B. Pitcher (David), a British national who passed away on June 18, 2004. Prior to his death, David was engaged in business in the Philippines and owned, among others, 40% of the shareholdings in Consulting Edge, Inc. (Consulting Edge), a domestic corporation. In order to settle the affairs of her deceased husband, complainant engaged the services of respondent.

On June 22, 2004, complainant and respondent met with Katherine Moscoso Bantegui Bantegui), a major stockholder of Consulting Edge, in order to discuss the settlement of David's interest in the company. They agreed to another meeting which was, however, postponed by Bantegui. Suspecting that the latter was merely stalling for time in order to hide something, respondent insisted that the appointment proceed as scheduled.

Eventually, the parties agreed to meet at the company premises on June 28, 2004. However, prior to the scheduled meeting, complainant was prevailed upon by respondent to put a paper seal on the door of the said premises, assuring her that the same was legal.

On the scheduled meeting, Bantegui expressed disappointment over the actions of complainant and respondent, which impelled her to just leave the matter for the court to settle. She then asked them to leave, locked the office and refused to give them a duplicate key.

Subsequently, however, respondent, without the consent of Bantegui, caused the change in the lock of the Consulting Edge office door,¹ which prevented the employees thereof from entering and carrying on the operations of the company. This prompted Bantegui to file before the Office of the City Prosecutor of Makati (Prosecutor's Office) a complaint for grave coercion against complainant and respondent. Eventually, however, respondent abandoned the grave coercion case and stopped communicating with complainant. Failing to reach respondent despite diligent efforts, complainant filed the instant administrative case before the Integrated Bar of the Philippines (IBP) - Commission on Bar Discipline (CBD), docketed as CBD Case No. 06-1689.

ISSUE:

Whether or not Atty. Gagate grossly neglected his duties to his client. (YES)

RULING:

The Court has repeatedly emphasized that the relationship between a lawyer and his client is one imbued with utmost trust and confidence. In this regard, clients are led to expect that lawyers would be ever-mindful of their cause and accordingly exercise the required degree of diligence in handling their affairs. For his part, the lawyer is expected to maintain at all times a high standard of legal proficiency, and to devote his full attention, skill, and competence to the case, regardless of its importance and whether he accepts it for a fee or for free.

To this end, he is enjoined to employ only fair and honest means to attain lawful objectives. These principles are embodied in Canon 17, Rule 18.03 of Canon 18, and Rule 19.01 of Canon 19 of the Code which respectively state:

CANON 17 - A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

CANON 18 – A lawyer shall serve his client with competence and diligence.

x x x x

Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

x x x x

CANON 19 – A lawyer shall represent his client with zeal within the bounds of the law.

Rule 19.01 – A lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding.

x x x x

Keeping with the foregoing rules, the Court finds that respondent failed to exercise the required diligence in handling complainant's cause since he: first, failed to represent her competently and diligently by acting and proffering professional advice beyond the proper bounds of law; and, second, abandoned his client's cause while the grave coercion case against them was pending.

6) Samonte v. Atty. Abellana, A.C. No. 3452, June 23, 2014.

HENRY SAMONTE, Petitioner, vs. **ATTY. GINES ABELLANA**, Respondent.

A.C. No. 3452 , FIRST DIVISION, June 23, 2014

BERSAMIN, J.:

In his dealings with his client and with the courts, every lawyer is expected to be honest, imbued with integrity, and trustworthy. A lawyer ought to remember that honesty and integrity are of far greater value for him than any of the circumstances occurring in his transactions with his clients.

Facts:

On February 16, 1990, complainant Henry E. Samonte brought an administrative complaint against respondent Atty. Gines N. Abellana who had represented him as plaintiff in Civil Case No. CEB-6970.

In the administrative complaint, Samonte enumerated the serious acts of professional misconduct by Atty. Abellana. On May 23, 1990, the Court received Samonte's letter dated May 8, 1990 embodying additional charges of falsification of documents, dereliction of duty and dishonesty based on the reply and the annexes Atty. Abellana had filed.

On May 30, 1990¹³ and July 30, 1990, the Court referred the administrative complaint to the Integrated Bar of the Philippines for investigation. IBP received a motion to quash from Atty. Abellana, seeking the dismissal of the administrative complaint because of the lack of interest on the part of Samonte.

Atty. Abellana observed therein that Samonte had always sought the postponement of the hearings. Reacting to the motion to quash, Samonte requested an early hearing by motion filed on declaring his interest in pursuing the administrative complaint against Atty. Abellana.

On May 1, 2008, the IBP Commission on Bar Discipline found Atty. Abellana negligent in handling certain aspects of his client's case. The IBP Commission on Bar Discipline recommended the disbarment of Atty. Abellana.

On June 5, 2008, the IBP Board of Governors, albeit adopting the findings of the IBP Investigating Commissioner, suspended Atty. Abellana from the practice of law for one year.

Issue:

Whether Atty. Abellana is guilty of acts complained of. (YES)

Ruling:

In his dealings with his client and with the courts, every lawyer is expected to be honest, imbued with integrity, and trustworthy. These expectations, though high and demanding, are the professional and ethical burdens of every member of the Philippine Bar, for they have been given full expression in the Lawyer's Oath that every lawyer of this country has taken upon admission as a bona fide member of the Law Profession.

By the Lawyer's Oath, every lawyer is enjoined not only to obey the laws of the land but also to refrain from doing any falsehood in or out of court or from consenting to the doing of any in court, and to conduct himself according to the best of his knowledge and discretion with all good fidelity as well to the courts as to his clients. Every lawyer is a servant of the Law, and has to observe and maintain the rule of law as well as be an exemplar worthy of emulation by others.

Atty. Abellana abjectly failed the expectations of honesty, integrity and trustworthiness in his dealings with Samonte as the client, and with the RTC as the trial court. He resorted to outright falsification by superimposing "0" on "4" in order to mislead Samonte into believing that he had already filed the complaint in court on June 10, 1988 as promised, instead of on June 14, 1988, the date when he had actually done so. His explanation that Samonte was himself the cause of the belated filing on account of his inability to remit the correct amount of filing fees and his acceptance fees, as agreed upon, did not excuse the falsification, because his falsification was not rendered less dishonest and less corrupt by whatever reasons for filing at the later date. He ought to remember that honesty and integrity were of far greater value for him as a member of the Law Profession than his transactions with his client.

7) Penilla v. Atty. Alcid, A.C. No. 9149, September 4, 2013.

**JULIAN PENILLA, COMPLAINANT, vs. ATTY. QUINTIN P. ALCID,
JR., RESPONDENT.**

A.C. No. 9149, FIRST DIVISION, September 4, 2013, VILLARAMA, JR., J.:

A lawyer may be disbarred or suspended for any violation of his oath, a patent disregard of his duties, or an odious deportment unbecoming an attorney. A lawyer must at no time be wanting in probity and moral fiber which are not only conditions precedent to his entrance to the Bar but are likewise essential demands for his continued membership therein.

FACTS:

Complainant Julian Penilla entered into an agreement with Spouses Rey and Evelyn Garin (the spouses) for the repair of his Volkswagen automobile. Despite full payment, the spouses defaulted in their obligation. Thus, complainant decided to file a case for breach of contract against the spouses where he engaged the services of respondent as counsel.

Respondent sent a demand letter to the spouses and asked for the refund of complainant's payment. When the spouses failed to return the payment, respondent advised complainant that he would file a criminal case for estafa against said spouses. Respondent charged ₱30,000 as attorney's fees and ₱10,000 as filing fees. Complainant turned over the relevant documents to respondent and paid the fees in tranches. Respondent then filed the complaint for estafa before Asst. City Prosecutor Jose C. Fortuno of the Office of the City Prosecutor of Quezon City. Respondent attended the hearing with complainant but the spouses did not appear. After the hearing, complainant paid another ₱1,000 to respondent as appearance fee. Henceforth, complainant and respondent have conflicting narrations of the subsequent events and transactions that transpired.

Complainant claims not hearing from respondent again despite his several letters conveying his disappointment and requesting for the return of the money and the documents in respondent's possession. Complainant then sought the assistance of the radio program "Ito ang Batas with Atty. Aga" to solve his predicament. Following the advice he gathered, complainant went to the Office of the Clerk of Court of the Caloocan City Metropolitan Trial Court and Regional Trial Court (RTC).

Respondent explained that it was not a matter of indifference on his part when he failed to inform petitioner of the status of the case. In fact, he was willing to return the money and the documents of complainant. What allegedly prevented him from communicating with complainant was the fact that complainant would go to his office during days and times that he would be attending his daily court hearings.

ISSUE:

Whether or not Atty. Alcid is guilty for gross misconduct in the performance of his duty as a lawyer. (YES)

RULING:

A review of the proceedings and the evidence in the case at bar shows that respondent violated Canon 18 and Rules 18.03 and 18.04 of the Code of Professional Responsibility. Complainant correctly alleged that respondent violated his oath under Canon 18 to "serve his client with competence and diligence" when respondent filed a criminal case for estafa when the facts of the case would have warranted the filing of a civil case for breach of contract.

To be sure, after the complaint for estafa was dismissed, respondent committed another similar blunder by filing a civil case for specific performance and damages before the RTC. The complaint, having an alternative prayer for the payment of

damages, should have been filed with the Municipal Trial Court which has jurisdiction over complainant's claim which amounts to only ₱36,000. As correctly stated in the Report and Recommendation of the IBP-CBD:

Batas Pambansa Blg. 129[,] as amended by R.A. No. 7691 which took effect on April 15, 1994[,] vests in the MTCs of Metro Manila exclusive original jurisdiction of civil cases where the amount of demand does not exceed ₱200,000.00 exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs (Sec. 33), and after five (5) years from the effectivity of the Act, the same shall be adjusted to ₱400,000.00 (Sec. 34).

The errors committed by respondent with respect to the nature of the remedy adopted in the criminal complaint and the forum selected in the civil complaint were so basic and could have been easily averted had he been more diligent and circumspect in his role as counsel for complainant. What aggravates respondent's offense is the fact that his previous mistake in filing the estafa case did not motivate him to be more conscientious, diligent and vigilant in handling the case of complainant. The civil case he subsequently filed for complainant was dismissed due to what later turned out to be a basic jurisdictional error.

8) Vda. De Saldivar v. Atty. Ramon Cabanes, A.C. No. 7749, July 8, 2013.

JOSEFINA CARANZA VDA. DE SALDIVAR, COMPLAINANT, vs. ATTY. RAMON SG CABANES, JR., RESPONDENT.

A.C. No. 7749, SECOND DIVISION, July 8, 2013, PERLAS-BERNABE, J.:

The relationship between an attorney and his client is one imbued with utmost trust and confidence. In this light, clients are led to expect that lawyers would be ever-mindful of their cause and accordingly exercise the required degree of diligence in handling their affairs. Verily, a lawyer is expected to maintain at all times a high standard of legal proficiency, and to devote his full attention, skill, and competence to the case, regardless of its importance and whether he accepts it for a fee or for free. Canon 17, and Rules 18.03 and 18.04 of Canon 18 of the Code embody these quintessential directives.

FACTS:

On December 30, 2003, the MTC issued a Decision (MTC Decision) against complainant, ordering her to vacate and turn-over the possession of the subject property to the heirs as well as to pay them damages. On appeal, the Regional Trial Court of Pili, Camarines Sur, Branch 32 (RTC), reversed the MTC Decision and dismissed the unlawful detainer complaint. Later however, the Court of Appeals (CA) reversed the RTC's ruling and reinstated the MTC Decision. Respondent received a copy of the CA's ruling on January 27, 2006. Yet, he failed to inform complainant about the said ruling, notwithstanding the fact that the latter frequented his work place. Neither did respondent pursue any further action. As such, complainant decided to engage the services of another counsel for the purpose of seeking other available remedies. Due to respondent's failure to timely turn-over to her the papers

and documents in the case, such other remedies were, however, barred. Thus, based on these incidents, complainant filed the instant administrative complaint, alleging that respondent's acts amounted to gross negligence which resulted in her loss.

ISSUE:

Whether or not respondent is guilty of gross negligence. (YES)

RULING:

The relationship between an attorney and his client is one imbued with utmost trust and confidence. In this light, clients are led to expect that lawyers would be ever-mindful of their cause and accordingly exercise the required degree of diligence in handling their affairs. Verily, a lawyer is expected to maintain at all times a high standard of legal proficiency, and to devote his full attention, skill, and competence to the case, regardless of its importance and whether he accepts it for a fee or for free. Canon 17, and Rules 18.03 and 18.04 of Canon 18 of the Code embody these quintessential directives and thus, respectively state:

CANON 17 - A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

CANON 18 – A lawyer shall serve his client with competence and diligence.

x x x x

Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Rule 18.04 – A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

Case law further illumines that a lawyer's duty of competence and diligence includes not merely reviewing the cases entrusted to the counsel's care or giving sound legal advice, but also consists of properly representing the client before any court or tribunal, attending scheduled hearings or conferences, preparing and filing the required pleadings, prosecuting the handled cases with reasonable dispatch, and urging their termination without waiting for the client or the court to prod him or her to do so.

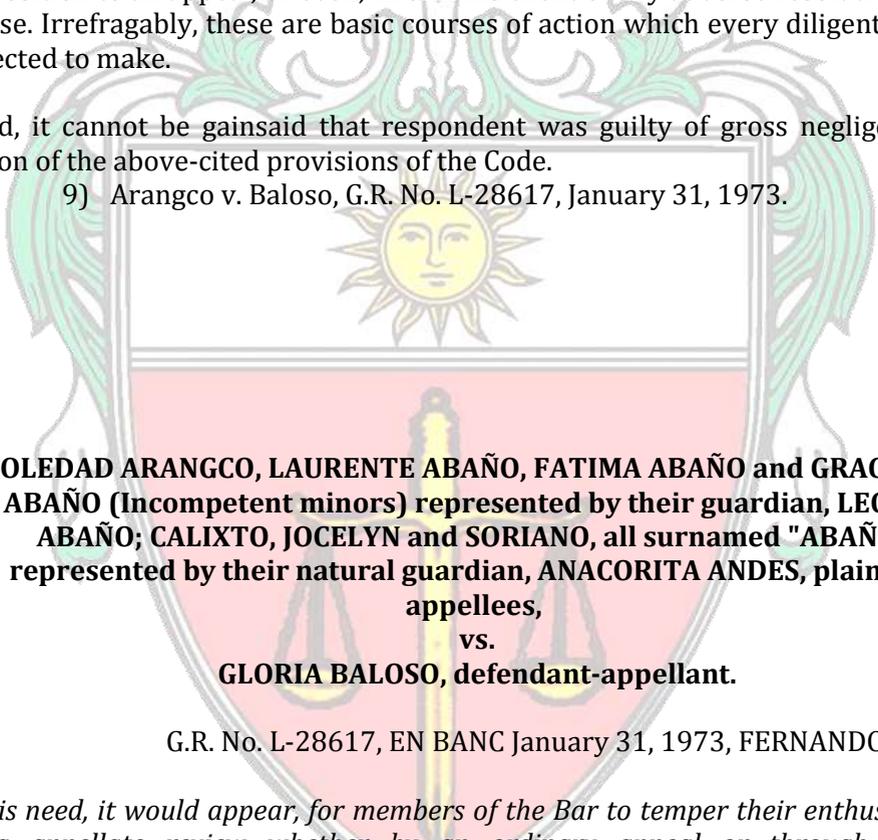
Records show that he failed to justify his absence during the scheduled preliminary conference hearing in Civil Case No. 1972 which led the same to be immediately submitted for decision. As correctly observed by the Investigating Commissioner, respondent could have exercised ordinary diligence by inquiring from the court as to whether the said hearing would push through, especially so since it was only tentatively set and considering further that he was yet to confer with the opposing counsel. The fact that respondent had an important commitment during that day hardly exculpates him from his omission since the prudent course of action would have been for him to send a substitute counsel to appear on his behalf. In fact, he should have been more circumspect to ensure that the aforesaid hearing would not

have been left unattended in view of its adverse consequences, i.e., that the defendant's failure to appear at the preliminary conference already entitles the plaintiff to a judgment. Indeed, second-guessing the conduct of the proceedings, much less without any contingent measure, exhibits respondent's inexcusable lack of care and diligence in managing his client's cause.

Equally compelling is the fact that respondent purposely failed to assail the heirs' appeal before the CA. Records disclose that he even failed to rebut complainant's allegation that he neglected to inform her about the CA ruling which he had duly received, thereby precluding her from availing of any further remedies. As regards respondent's suggested legal strategy to pursue the case at the administrative level, suffice it to state that the same does not excuse him from failing to file a comment or an opposition to an appeal, or even, inform his client of any adverse resolution, as in this case. Irrefragably, these are basic courses of action which every diligent lawyer is expected to make.

All told, it cannot be gainsaid that respondent was guilty of gross negligence, in violation of the above-cited provisions of the Code.

9) Arangco v. Baloso, G.R. No. L-28617, January 31, 1973.



**SOLEDAD ARANGCO, LAURENTE ABAÑO, FATIMA ABAÑO and GRACITA ABAÑO (Incompetent minors) represented by their guardian, LEONOR ABAÑO; CALIXTO, JOCELYN and SORIANO, all surnamed "ABAÑO," represented by their natural guardian, ANACORITA ANDES, plaintiffs-appellees,
vs.
GLORIA BALOSO, defendant-appellant.**

G.R. No. L-28617, EN BANC January 31, 1973, FERNANDO, J.:

There is need, it would appear, for members of the Bar to temper their enthusiasm in seeking appellate review whether by an ordinary appeal or through a writ of certiorari. It is well that they keep ill mind that as officers of the court, they are required to exercise the utmost care and to undertake the most thorough preparation to assure that all the learning at their command be brought to bear on the legal questions that might be raised, or, in their opinion, could be raised, for the resolution of a higher court. To act otherwise would show less than full compliance with their duty to the bench.

FACTS:

The case refers to a mortgage claim of one Gloria Baloso to a parcel of land owned by the Abano's. The case was subsequently appealed to the higher court thus

prompting the Supreme Court in reminding all lawyers to be mindful in appealing cases.

RULING:

Litigants manifest their resentment at losing cases by indulging their propensity for elevating the matter to a higher tribunal in the hope of a successful outcome, notwithstanding the absence of any clear illegality or rank injustice in the judgment thus rendered. Counsel, if faithful to the command of legal ethics insofar as their duty to the judiciary is concerned, would do well to temper such inclination on the part of clients. Otherwise, the result would be to clog further what is already the crowded dockets of the courts.

There is need, it would appear, for members of the Bar to temper their enthusiasm in seeking appellate review whether by an ordinary appeal or through a writ of *certiorari*. It is well that they keep ill mind that as officers of the court, they are required to exercise the utmost care and to undertake the most thorough preparation to assure that all the learning at their command be brought to bear on the legal questions that might be raised, or, in their opinion, could be raised, for the resolution of a higher court. To act otherwise would show less than full compliance with their duty to the bench. Moreover, in the end, it might only signify that in their unbounded optimism they plant seeds of hope in their client's minds which, unfortunately, may never grow. For obviously unless they could show the merit in such an appeal, all that they would have accomplished would be to increase unnecessarily the burden on appellate tribunals. In the final analysis then, the utmost fidelity to a client's cause requires a more discriminating appraisal of the matter, as in more cases than not, the prospect for reversal is dim, not to say non-existent. A sense of realism should thus infuse their actuation. Nor should there be any hesitancy in so informing the disappointed litigant that most likely the verdict would not be altered. This observation has pertinence in a case like the present where the lower court was commendably impelled to see to it that the children of the original mortgagor, all of whom are still in their minority, enjoy the full benefit of the law, ever solicitous of the young. It is not to be forgotten that appellees in this case had lost their father through a fatal accident, and the mother was confined as an incompetent in a mental institution. Certainly, only a clear misinterpretation or misapplication of the controlling legal norms would call for setting aside a decision that did not only apply settled doctrines but also did manifest full fidelity to the laudable policy of protecting the minors. There is, it must be stressed anew, no such failing in the appealed judgment.

10) Trinidad, et al. v. Atty. Villarín, A.C. No. 9310, February 27, 2013.

VERLEEN TRINIDAD, FLORENTINA LANDER, WALLY CASUBUAN, MINERVA MENDOZA, CELEDONIO ALOJADO, ROSENDO VILLAMIN and AUREA TOLENTINO, Complainants, vs. ATTY. ANGELITO VILLARIN, Respondent.

A.C. No. 9310, FIRST DIVISION, February 27, 2013, SERENO, J.:

*As the lawyer of Purence Realty, respondent is expected to champion the cause of his client with wholehearted fidelity, care, and devotion.¹ This simply means that his client is entitled to the benefit of any and every remedy and defense – including the institution of an ejectment case – that is recognized by our property laws. In *Legarda v. Court of Appeals*, we held that in the full discharge of their duties to the client, lawyers shall not be afraid of the possibility that they may displease the general public.*

Nevertheless, the Code of Professional Responsibility provides the limitation that lawyers shall perform their duty to the client within the bounds of law. They should only make such defense only when they believe it to be honestly debatable under the law. In this case, respondent's act of issuing demand letters, moved by the understanding of a void HLURB Decision, is legally sanctioned. If his theory holds water, the notice to vacate becomes necessary in order to file an action for ejectment. Hence, he did not resort to any fraud or chicanery prohibited by the Code, just to maintain his client's disputed ownership over the subdivision lots.

FACTS

The instant case stemmed from a Complaint for specific performance filed with the Housing and Land Use Regulatory Board (HLURB) by the buyers of the lots in Don Jose Zavalla Subdivision against the subdivision's owner and developer- Purence Realty Corporation and Roberto Bassig.

In the final adjudication of that case on 11 October 2000, the HLURB ordered the respondents therein to accept the payments of the buyers under the old purchase price. These buyers included some of the complainants in the instant case, to wit: Florentina Lander, Celedonio Alojado, Aurea Tolentino and Rosendo Villamin.

The HLURB ordered the owner and the developer to deliver the Deeds of Sale and the Transfer Certificates of Title to the winning litigants. The Decision did not evince any directive for the buyers to vacate the property.

Purence Realty and Roberto Bassig did not appeal the Decision, thus making it final and executory. Thereafter, the HLURB issued a Writ of Execution. It was at this point that respondent Villarin entered his special appearance to represent Purence Realty. Specifically, he filed an Omnibus Motion to set aside the Decision and to quash the Writ of Execution for being null and void on the ground of lack of jurisdiction due to the improper service of summons on his client. This motion was not acted upon by the HLURB.

On 4 December 2003, respondent sent demand letters to herein complainants. In all of these letters, he demanded that they immediately vacate the property and surrender it to Purence Realty within five days from receipt. Otherwise, he would file the necessary action against them.

True enough, Purence Realty, as represented by respondent, filed a Complaint for forcible entry before the Municipal Trial Court (MTC) against Trinidad, Lander, Casubuan and Mendoza. Aggrieved, the four complainants filed an administrative case against respondent. A month after, Alojado, Villamin and Tolentino filed a disbarment case against respondent.

ISSUE

Whether respondent should be administratively sanctioned for sending the demand letters despite a final and executory HLURB Decision directing, not the ejection of complainants, but the payment of the purchase price of the lots by the subdivision buyers. (NO)

RULING

Respondent counsel merely acted on his legal theory that the HLURB Decision was not binding on his client, since it had not received the summons. Espousing the belief that the proceedings in the HLURB were void, Villarín pursued the issuance of demand letters as a prelude to the ejection case he would later on file to protect the property rights of his client.

As the lawyer of Purence Realty, respondent is expected to champion the cause of his client with wholehearted fidelity, care, and devotion. This simply means that his client is entitled to the benefit of any and every remedy and defense² – including the institution of an ejection case – that is recognized by our property laws. In *Legarda v. Court of Appeals*, we held that in the full discharge of their duties to the client, lawyers shall not be afraid of the possibility that they may displease the general public.

Nevertheless, the Code of Professional Responsibility provides the limitation that lawyers shall perform their duty to the client within the bounds of law. They should only make such defense only when they believe it to be honestly debatable under the law. In this case, respondent's act of issuing demand letters, moved by the understanding of a void HLURB Decision, is legally sanctioned. If his theory holds water, the notice to vacate becomes necessary in order to file an action for ejection. Hence, he did not resort to any fraud or chicanery prohibited by the Code, just to maintain his client's disputed ownership over the subdivision lots. Even so, respondent cannot be considered free of error.

The factual findings of the IBP board of governors reveal that in his demand letter, he brazenly typified one of the complainants, Florentina Lander, as an illegal occupant. However, this description is the exact opposite of the truth, since the final and executory HLURB Decision had already recognized her as a subdivision lot buyer who had a right to complete her payments in order to occupy her property. Respondent is very much aware of this ruling when he filed an Omnibus Motion to set aside the HLURB Decision and the appurtenant Writ of Execution.

11) *Agbolos v. Atty. Viray*, A.C. No. 7350, February 18, 2013.

PATROCINIO V. AGBULOS, Complainant, vs. ATTY. ROSELLER A. VIRAY, Respondent.

A.C. No. 7350, THIRD DIVISION, February 18, 2013, PERALTA, J.:

To be sure, a notary public should not notarize a document unless the person who signed the same is the very same person who executed and personally appeared before him to attest to the contents and the truth of what are stated therein. Without the appearance of the person who actually executed the document in question, the notary public would be unable to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act or deed.

FACTS

The case stemmed from a Complaint filed before the Office of the Bar Confidant (OBC) by complainant Mrs. Patrocinio V. Agbulos against respondent Atty. Roseller A. Viray of Asingan, Pangasinan, for allegedly notarizing a document denominated as Affidavit of Non-Tenancy in violation of the Notarial Law. The said affidavit was supposedly executed by complainant, but the latter denies said execution and claims that the signature and the community tax certificate (CTC) she allegedly presented are not hers. She further claims that the CTC belongs to a certain Christian Anton. Complainant added that she did not personally appear before respondent for the notarization of the document. She, likewise, states that respondent's client, Rolando Dollente (Dollente), benefited from the said falsified affidavit as it contributed to the illegal transfer of a property registered in her name to that of Dollente.

In his Comment, respondent admitted having prepared and notarized the document in question at the request of his client Dollente, who assured him that it was personally signed by complainant and that the CTC appearing therein is owned by her. He, thus, claims good faith in notarizing the subject document.

ISSUE

Whether or not Atty. Viray violated the Notarial Law. (YES)

RULING

Section 2 (b) of Rule IV of the 2004 Rules on Notarial Practice emphasizes the necessity of the affiant's personal appearance before the notary public:

x x x x

(b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document –

- (1) is not in the notary's presence personally at the time of the notarization; and
- (2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

Moreover, Section 12, Rule II, of the 2004 Rules on Notarial Practice defines the "competent evidence of identity" referred to above.

In this case, respondent admits that not only did he prepare and notarize the subject affidavit but he likewise notarized the same without the affiant's personal appearance. He explained that he did so merely upon the assurance of his client Dollente that the document was executed by complainant. In notarizing the document, respondent contented himself with the presentation of a CTC despite the Rules' clear requirement of presentation of competent evidence of identity such as an identification card with photograph and signature. With this indiscretion, respondent failed to ascertain the genuineness of the affiant's signature which turned out to be a forgery. In failing to observe the requirements of the Rules, even the CTC presented, purportedly owned by complainant, turned out to belong to somebody else.

Respondent's failure to perform his duty as a notary public resulted not only damage to those directly affected by the notarized document but also in undermining the integrity of a notary public and in degrading the function of notarization. He should, thus, be held liable for such negligence not only as a notary public but also as a lawyer. The responsibility to faithfully observe and respect the legal solemnity of the oath in an acknowledgment or *jurat* is more pronounced when the notary public is a lawyer because of his solemn oath under the Code of Professional Responsibility to obey the laws and to do no falsehood or consent to the doing of any. Lawyers commissioned as notaries public are mandated to discharge with fidelity the duties of their offices, such duties being dictated by public policy and impressed with public interest.

H. Attorney's Fees

- 1) Acceptance fees
- 2) Contingency fee arrangements
- 3) Attorney's Liens
- 4) Fees and controversies with clients (Quantum Meruit)
- 5) Concepts of attorney's fees
 - a) Ordinary concept
 - b) Extraordinary concept
 - 6) Preservation of Client's Confidences
 - a) Prohibited disclosures and use
 - b) Disclosure, when allowed
 - 7) Withdrawal of Services

1) The Conjugal Partnership of the Spouses Vicente Cadavedo and Benita Arcoy-Cadavedo (Both Deceased), Substituted by their Heirs, namely; Herminia, Pastora, Heirs of Fructuosa, Heirs of Raquel, Evangeline, Vicente, Jr., and Armando, all surnamed Cadavedo v. Victorino T. Lacaya, married to Rosa Legados, G.R. No. 173188, January 15, 2014.

THE CONJUGAL PARTNERSHIP OF THE SPOUSES VICENTE CADAVEDO AND BENITA ARCOY-CADAVEDO (both deceased), SUBSTITUTED BY THEIR HEIRS, namely: HERMINIA, PASTORA, HEIRS OF FRUCTIOSA, HEIRS OF RAQUEL EVANGELINE, VICENTE Jr., AND ARMAND, ALL SUERNAMED CADAVEDO, Petitioners, -versus - ATTY. VICTORINO T. LAXAYA, Respondents.

G.R. No. 173188, SECOND DIVISION, JANUARY 15, 2014, BRION, J.

As matters currently stand, any agreement by a lawyer to "conduct the litigation in his own account, to pay the expenses thereof or to save his client therefrom and to receive as his fee a portion of the proceeds of the judgment is obnoxious to the law." The rule of the profession that forbids a lawyer from contracting with his client for part of the thing in litigation in exchange for conducting the case at the lawyer's expense is designed to prevent the lawyer from acquiring an interest between him and his client. To permit these arrangements is to enable the lawyer to "acquire additional stake in the outcome of the action which might lead him to consider his own recovery rather than that of his client or to accept a settlement which might take care of his interest in the verdict to the sacrifice of that of his client in violation of his duty of undivided fidelity to his client's cause."

FACTS

The petitioners and respondent entered into a contract with the following stipulation: "That due to the above circumstances, the plaintiffs were forced to hire a lawyer on contingent basis and if they become the prevailing parties in the case at bar, they will pay the sum of P2,000.00 for attorney's fees."

ISSUE

Whether or not the stipulation in the contract is valid. (NO).

RULING

This agreement is champertous and is contrary to public policy.

Champerty, along with maintenance (of which champerty is an aggravated form), is a common law doctrine that traces its origin to the medieval period. The doctrine of maintenance was directed "against wanton and in officious intermeddling in the disputes of others in which the intermeddler has no interest whatever, and where the assistance rendered is without justification or excuse." Champerty, on the other hand, is characterized by "the receipt of a share of the proceeds of the litigation by the intermeddler. "Some common law court decisions, however, add a second factor in determining champertous contracts, namely, that the lawyer must also, "at his own expense maintain, and take all the risks of, the litigation."

The doctrines of champerty and maintenance were created in response "to medieval practice of assigning doubtful or fraudulent claims to persons of wealth and influence in the expectation that such individuals would enjoy greater success in prosecuting those claims in court, in exchange for which they would receive an entitlement to the spoils of the litigation."

"In order to safeguard the administration of justice, instances of champerty and maintenance were made subject to criminal and tortuous liability and a common law rule was developed, striking down champertous agreements and contracts of maintenance as being unenforceable on the grounds of public policy."

In this jurisdiction, we maintain the rules on champerty, as adopted from American decisions, for public policy considerations. As matters currently stand, any agreement by a lawyer to "conduct the litigation in his own account, to pay the expenses thereof or to save his client therefrom and to receive as his fee a portion of the proceeds of the judgment is obnoxious to the law." The rule of the profession that forbids a lawyer from contracting with his client for part of the thing in litigation in exchange for conducting the case at the lawyer's expense is designed to prevent the lawyer from acquiring an interest between him and his client. To permit these arrangements is to enable the lawyer to "acquire additional stake in the outcome of the action which might lead him to consider his own recovery rather than that of his client or to accept a settlement which might take care of his interest in the verdict to the sacrifice of that of his client in violation of his duty of undivided fidelity to his client's cause."

2) Augusto M. Aquino v. Hon. Ismael P. Casabar, as Presiding Judge Regional Trial Court-Guimba, Nueva Ecija, Branch 33 and Ma. Ala F. Domingo and Margarita Irene F. Domingo, substituting heirs of the deceased Angel T. Domingo, G.R. No. 191470, January 26, 2015.

**AUGUSTO M. AQUINO, *Petitioner*, -versus- HON. ISMAEL P. CASABAR AS
PRESIDEING JUDGE OF RTC-GUIMBA, NUEVA ECIJA, BRANCH 33 AND MA. ALA F.
DOMINO AND MARGARITA IRENE F. DOMINDO, SUBSTITUTING HEIRS OF THE
DECEASES ANGEL T. DOMINO**

G.R. No. **191470**, THIRD DIVISION, January 26, 2015, PERALTA, J.

Aquino claims that he and Atty. Domingo agreed to a contract for contingent fees equivalent to thirty percent (30%) of the increase of the just compensation awarded, albeit verbally. However, a contract for contingent fees is an agreement in writing by which the fees, usually a fixed percentage of what may be recovered in the action, are made to depend upon the success in the effort to enforce or defend a supposed right. Contingent fees depend upon an express contract, without which the attorney can only recover on the basis of quantum meruit. Here, considering that the contract was made verbally and that there was no evidence presented to justify the 30% contingent fees being claimed by Aquino, the only way to determine his right to appropriate attorney's fees is to apply the principle of quantum meruit.

FACTS

On June 27, 2002, Atty. Angel T. Domingo (now deceased) verbally contracted Aquino to represent him in Agrarian Case on a contingency fee basis. The case was for the determination of the just compensation for the expropriation and taking of Atty. Domingo's ricelands consisting of 60.5348 hectares, situated in Guimba, Nueva Ecija, by the Department of Agrarian Reform (DAR), pursuant to Presidential Decree (P.D.) 27. The DAR and the Land Bank of the Philippines (Land Bank) initially valued Atty. Domingo's property at P484,236.27 or P7,999.30 per hectare, which the latter, through Aquino-counsel, opposed in courts.

Eventually, the RTC, acting as Special Agrarian Court (RTC/SAC) issued a Decision

dated April 12, 2004 fixing the just compensation for Atty. Domingo's property at P2,459,319.70 or P40,626.54 per hectare, or an increase of P1,975,083.43 over the initial DAR and the Land Bank valuation. Land Bank moved for reconsideration, but was denied, thus, it filed a petition for review. However, in a Decision dated June 12, 2007, the appellate court affirmed in toto the SAC Decision dated April 12, 2004. Land Bank moved for reconsideration anew, but was denied.

Meanwhile, on September 30, 2007, Atty. Domingo died. Aquino filed a Manifestation dated December 11, 2007 of the fact of Atty. Domingo's death and the substitution of the latter by his legal heirs, Ma. Ala F. Domingo and Margarita Irene F. Domingo (private respondents).

Land Bank assailed the appellate court's decision and resolution before the Supreme Court via a petition for review on certiorari dated December 4, 2007 docketed as G.R. No. 180108 entitled "Land Bank of the Philippines vs. Angel T. Domingo". However, in a Resolution dated September 17, 2008, the Court denied the same for failure to sufficiently show any reversible error in the appellate court's decision. On December 15, 2008, the Court denied with finality Land Bank's motion for reconsideration.

On February 11, 2009, Aquino wrote private respondent Ma. Ala Domingo and informed her of the finality of the RTC/SAC decision as affirmed by the Court of Appeals and the Supreme Court. He then requested her to inform the Land Bank of the segregation of Aquino's thirty percent (30%) contingent attorney's fees out of the increase of the just compensation for the subject property, or thirty percent (30%) of the total increase amounting to P1,975,983.43. Aquino claimed never to have received a reply from private respondent.

On March 30, 2009, Aquino received a copy of the entry of judgment from this Court certifying that its Resolution dated September 17, 2008 has already become final and executory on March 3, 2009.

On July 28, 2009, Aquino received a Notice of Appearance dated July 16, 2009 filed by Atty. Antonio G. Conde, entering his appearance as counsel of herein private respondents and replacing him as counsel in Agrarian Case No. 1217-G.

On August 14, 2009, private respondents, through their new counsel, Atty. Conde, filed a Motion for Execution dated August 6, 2009 of the RTC/SAC Decision dated April 12, 2004.

On August 12, 2009, Aquino filed a Motion for Approval of Charging Attorney's Lien and for the Order of Payment. Aquino further executed an Affidavit dated August 10, 2009, attesting to the circumstances surrounding the legal services he has rendered for the deceased Atty. Domingo and the successful prosecution of the Agrarian case from the RTC/SAC through the appellate court and the Supreme Court.

On August 18, 2009, private respondents filed a Motion to Dismiss/Expunge Aquino's Motion.⁶ Public respondent Presiding Judge Casabar denied the same.⁷ Private respondents moved for reconsideration.

On January 11, 2010, public respondent Judge Casabar issued the disputed Order denying Aquino's motion for approval of attorney's lien.

On the same day, January 11, 2010, public respondent issued an Order directing the issuance of a Writ of Execution of the RTC/SAC Decision dated April 12, 2004.

On January 12, 2010, the Clerk of Court of Branch 33, RTC of Guimba, Nueva Ecija, issued a Writ of Execution of the April 12, 2004. On January 15, 2010, the Sheriff of the RTC of Guimba, Nueva Ecija issued a Notice of Garnishment.

ISSUE

Whether or not the trial court committed a reversible error in denying the motion to approve attorney's lien and order of payment on the ground that it lost jurisdiction over the case since judgment in the case has already become final and executory.

RULING

The trial court committed an error.

In the case of *Rosario, Jr. v. De Guzman*, the Court clarified a similar issue and discussed the two concepts of attorney's fees – that is, ordinary and extraordinary. In its ordinary sense, it is the reasonable compensation paid to a lawyer by his client for legal services rendered. In its extraordinary concept, it is awarded by the court to the successful litigant to be paid by the losing party as indemnity for damages.

With regards to how attorney's fees for professional services can be recovered, and when an action for attorney's fees for professional services can be filed, the case of *Traders Royal Bank Employees Union-Independent v. NLRC* is instructive:

x x x It is well settled that a claim for attorney's fees may be asserted either in the very action in which the services of a lawyer had been rendered or in a separate action.

With respect to the first situation, the remedy for recovering attorney's fees as an incident of the main action may be availed of only when something is due to the client. Attorney's fees cannot be determined until after the main litigation has been decided and the subject of the recovery is at the disposition of the court. The issue over attorney's fees only arises when something has been recovered from which the fee is to be paid.

While a claim for attorney's fees may be filed before the judgment is rendered, the determination as to the propriety of the fees or as to the amount thereof will have to be held in abeyance until the main case from which the lawyer's claim for attorney's fees may arise has become final. Otherwise, the determination to be made by the courts will be premature. Of course, a petition for attorney's fees may be filed before the judgment in favor of the client is satisfied or the proceeds thereof delivered to the client.

It is apparent from the foregoing discussion that a lawyer has two options as to when to file his claim for professional fees. Hence, private respondent was well within his rights when he made his claim and waited for the finality of the judgment for holiday

pay differential, instead of filing it ahead of the award's complete resolution. To declare that a lawyer may file a claim for fees in the same action only before the judgment is reviewed by a higher tribunal would deprive him of his aforestated options and render ineffective the foregoing pronouncements of this Court.

Here, apparently Aquino filed his claim as an incident of the main action, as in fact, his motion was for the court's approval of charging attorney's lien and the prayer thereto was to direct the entry into the case records the attorney's fees he is claiming. Needless to say, Aquino's motion for approval of charging attorney's lien and order of payment was not intended to be filed as a separate action. Nevertheless, it is within Aquino's right to wait for the finality of the judgment, instead of filing it ahead of the court's resolution, since precisely the basis of the determination of the attorney's fees is the final disposition of the case, that is, the just compensation to be awarded to the private respondents.

Aquino claims that he and Atty. Domingo agreed to a contract for contingent fees equivalent to thirty percent (30%) of the increase of the just compensation awarded, albeit verbally. However, a contract for contingent fees is an agreement in writing by which the fees, usually a fixed percentage of what may be recovered in the action, are made to depend upon the success in the effort to enforce or defend a supposed right. Contingent fees depend upon an express contract, without which the attorney can only recover on the basis of *quantum meruit*. Here, considering that the contract was made verbally and that there was no evidence presented to justify the 30% contingent fees being claimed by Aquino, the only way to determine his right to appropriate attorney's fees is to apply the principle of *quantum meruit*.

Ordinarily, the Supreme Court would have left it to the trial court the determination of attorney's fees based on *quantum meruit*, however, following the several pronouncements of the Court that it will be just and equitable to now assess and fix the attorney's fees in order that the resolution thereof would not be needlessly prolonged, this Court, which holds and exercises the power to fix attorney's fees on *quantum meruit* basis in the absence of an express written agreement between the attorney and the client, deems it fair to fix Aquino's attorney's fees at fifteen percent (15%) of the increase in the just compensation awarded to private respondents.

3) Pioneer Insurance and Surety Corp. v. De Dios Transportation Co., Inc. and De Dios Marikina Transit Corp., G.R. No. 147010, July 18, 2003.

PIONEER INSURANCE AND SURETY CORPORATION, *petitioner*, -versus- DE DIOS TRANSPORTATION CO., INC. AND DE DIOS MARIKINA TRANSIT CORPORATION, *respondents*

G.R. No. 147010, SECOND DIVISION, July 18, 2003, CALLEJO, SR.,J

In order that there be a substitution of attorneys in a given case, the following must be satisfied: (a) a written application for substitution; (b) the written consent of the client; (c) the written consent of the attorney substituted; (d) if such written consent cannot be secured, then an application of proof of service of notice of such motion

upon the attorney substituted. If the formalities are not met, then substitution will not be permitted

FACTS:

Respondents De Dios Transportation Co. and De Dios Marikina Transport Corporation executed a Deed of Conditional Sale covering fifty-eight buses and their franchise in favor of Willy Choa Coyukiatic and Goldfinger Transport Corporation. The respondents guaranteed that the franchises were valid and completely utilizable. The vendees delivered the down payment and postdated checks drawn upon the account of Goldfinger.

The respondents delivered the buses to the vendees and were able to encash the check for the down payment of the purchase price. However, the vendees stopped all payments and claimed that some of the buses were not in good running condition. The vendees were unable to operate the buses along the Buendia-Ayala-UP route because they were misled that only registration with the LTO was required.

The vendees, through its counsel, the Padilla Reyes & De la Torre Law Office, filed a complaint against the respondents for rescission of contract. The defendants denied the material allegations and prayed for the dismissal of the complaint. The RTC dismissed the complaint and granted the counterclaims of the defendants. The plaintiffs filed an appeal before the Court of Appeals. However, before the appellees could file their brief, the Padilla Reyes & De la Torre Law Office filed its withdrawal of appearance as counsel for the appellants.

The withdrawal of appearance and the notice of withdrawal of appeal filed by Luis Q.U. Uranza, Jr. & Associates did not bear the conformity of the appellants. The Court of Appeals granted the withdrawal of the Padilla Reyes & De la Torre Law Office as counsel for the appellants and directed the appellants to submit their written conformity, with respect to the withdrawal of their appeal.

ISSUE:

Whether or not the Withdrawal of Appeal made by the new or substituted counsel is valid. (NO).

RULING:

The Withdrawal of Appeal was not effectual because it did not bear the conformity of Coyukiatic. In *Fojas v. Navarro*, the Court explained that the attorney of record is regarded as the counsel who should be held responsible for the conduct of the case.

In order that there be a substitution of attorneys in a given case, the following must be satisfied: (a) a written application for substitution; (b) the written consent of the client; (c) the written consent of the attorney substituted; (d) if such written consent cannot be secured, then an application of proof of service of notice of such

motion upon the attorney substituted. If the formalities are not met, then substitution will not be permitted.

Therefore, the Withdrawal of Appeal filed by a new counsel who substituted the counsel of record without bearing the conformity of Coyukiat was deemed by the Court as a mere scrap of paper. In short, there was clearly no compliance to the essential requisites.

4) Czarina T. Malvar v. Kraft Foods Phils., Inc., et al., G.R. No. 183952 (2013).

CZARINO T. MALVA *Petitioner*, -versus - KRAFT FOODS PHILS. INC. and/or BIENVENIDO BAUTISTA, KRAFT FOODS INTERNATIONAL, *Respondents*.

G.R. No. 183952, FIRST DIVISION, September 9, 2013, BERSAMIN, J.

The respondent lawyer has the right recover in full its compensation based on its written agreement with his client who unceremoniously and without any justifiable reason terminated its legal service and required it to withdraw from the case. A client may at any time dismiss his attorney or substitute another in his place, but if the contract between client and attorney has been reduced to writing and the dismissal of the attorney was without justifiable cause, he shall be entitled to recover from the client the full compensation stipulated in the contract. However, the attorney may, in the discretion of the court, intervene in the case to protect his rights. For the payment of his compensation the attorney shall have a lien upon all judgments for the payment of money, and executions issued in pursuance of such judgment, rendered in the case wherein his services had been retained by the client.

FACTS

The case initially concerned the execution of a final decision of the Court of Appeals (CA) in a labor litigation between Complainant and Respondent where the former was ruled to be illegally dismissed by the latter and thus entitled to payment of her full backwages, inclusive of allowances and other benefits, plus attorney's fees. However, the matter has mutated into a dispute over attorney's fees between the complainant and her attorney after she entered into a compromise agreement with the respondent under circumstances that the attorney has bewailed as designed to prevent the recovery of just professional fees.

A Motion for Intervention was filed by the Intervenor, complainant's lawyer, who claimed that the complainant unceremoniously and without any justifiable reason terminated its legal service and required it to withdraw from the case; and that complainant's precipitate action had baffled, shocked and even embarrassed the Intervenor, because it had done everything legally possible to serve and protect her interest. It added that it could not recall any instance of conflict or misunderstanding with her, for; on the contrary, she had even commended it for its dedication and devotion to her case.

According to the Intervenor, it was certain that the compromise agreement was authored by the respondents to evade a possible loss of P182,000,000.00 or more as a result of the labor litigation, but considering the Intervenor's interest in the case

as well as its resolve in pursuing complainant's interest, they saw the Intervenor as a major stumbling block to the compromise agreement that it was then brewing with her. Obviously, the only way to remove the Intervenor was to have her terminate its services as her legal counsel. This prompted the Intervenor to bring the matter to the attention of the Court to enable it to recover in full its compensation based on its written agreement with her the complainant.

ISSUE

Whether or not the Motion for Intervention to protect attorney's rights can prosper, and, if so, recover attorney's fees

RULING

A client has an undoubted right to settle her litigation without the intervention of the attorney, for the former is generally conceded to have exclusive control over the subject matter of the litigation and may at anytime, if acting in good faith, settle and adjust the cause of action out of court before judgment, even without the attorney's intervention. It is important for the client to show, however, that the compromise agreement does not adversely affect third persons who are not parties to the agreement.

By the same token, a client has the absolute right to terminate the attorney-client relationship at any time with or without cause. But this right of the client is not unlimited because good faith is required in terminating the relationship. The limitation is based on Article 19 of the Civil Code, which mandates that "every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith." The right is also subject to the right of the attorney to be compensated. This is clear from Section 26, Rule 138 of the Rules of Court, which provides:

Section 26. Change of attorneys. - An attorney may retire at anytime from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party.

A client may at any time dismiss his attorney or substitute another in his place, but if the contract between client and attorney has been reduced to writing and the dismissal of the attorney was without justifiable cause, he shall be entitled to recover from the client the full compensation stipulated in the contract. However, the attorney may, in the discretion of the court, intervene in the case to protect his rights. For the payment of his compensation the attorney shall have a lien upon all judgments for the payment of money, and executions issued in pursuance of such judgment, rendered in the case wherein his services had been retained by the client. (Bold emphasis supplied)

In fine, it is basic that an attorney is entitled to have and to receive a just and reasonable compensation for services performed at the special instance and request of his client. The attorney who has acted in good faith and honesty in representing and serving the interests of the client should be reasonably compensated for his service.

In the absence of the lawyer's fault, consent or waiver, a client cannot deprive the lawyer of his just fees already earned in the guise of a justifiable reason. Here, Malvar not only downplayed the worth of the Intervenor's legal service to her but also attempted to camouflage her intent to defraud her lawyer by offering excuses that were not only inconsistent with her actions but, most importantly, fell short of being justifiable.

As a final word, it is necessary to state that no court can shirk from enforcing the contractual stipulations in the manner they have agreed upon and written. As a rule, the courts, whether trial or appellate, have no power to make or modify contracts between the parties. Nor can the courts save the parties from disadvantageous provisions. The same precepts hold sway when it comes to enforcing fee arrangements entered into in writing between clients and attorneys. In the exercise of their supervisory authority over attorneys as officers of the Court, the courts are bound to respect and protect the attorney's lien as a necessary means to preserve the decorum and respectability of the Law Profession. Hence, the Court must thwart any and every effort of clients already served by their attorneys' worthy services to deprive them of their hard-earned compensation. Truly, the duty of the courts is not only to see to it that attorneys act in a proper and lawful manner, but also to see to it that attorneys are paid their just and lawful fees.

4) Sps. Warriner v. Atty. Dublin, A.C. No. 5239, November 18, 2013.

**SPOUSES GEORGE A. WARRINER AND AURORA R. WARRINER, Complainants, -
versus - ATTY. RENI M. DUBLIN, Respondent.**

A.C. No. 5239, SECOND DIVISION, November 18, 2013, DEL CASTILLO, J.

Respondent lawyer admitted that he deliberately failed to timely file a formal offer of exhibits because he believes that the exhibits were fabricated and was hoping that the same would be refused admission by the RTC. If respondent truly believes that the exhibits to be presented in evidence by his clients were fabricated, then he has the option to withdraw from the case. Canon 22 allows a lawyer to withdraw his services for good cause such as "[w]hen the client pursues an illegal or immoral course of conduct with the matter he is handling" or "[w]hen the client insists that the lawyer pursue conduct violative of these canons and rules."

FACTS

Complainants secured the services of the respondent in an action for damages filed before the RTC of Davao City. During the proceedings, the respondent failed to file his Formal Offer of Documentary Evidence despite the lapse of the requested period which he himself asked the Court. The respondent even failed to file any Comment on the other party's motion to declare complainants to have waived their rights to

file Formal Offer of Documentary Evidence. Though he late on filed the same, the RTC denied. The respondent did not even oppose or file any comment with the other party's motion to dismiss the Complaint; and the RTC eventually dismissed the case to the prejudice of the complainants.

ISSUE

Whether or not the respondent should be held administratively liable for gross negligence and dereliction of duty

RULING

Plainly, respondent violated the Code of Professional Responsibility particularly Canon 18 and Rule 18.03 which provide: Canon 18 – A lawyer shall serve his client with competence and diligence. Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Worse, it appears that respondent deliberately mishandled Civil Case No. 23,396-95 to the prejudice of herein complainants. Culled from the pleadings respondent submitted before this Court and the IBP, respondent admitted that he deliberately failed to timely file a formal offer of exhibits because he believes that the exhibits were fabricated and was hoping that the same would be refused admission by the RTC. This is improper.

If respondent truly believes that the exhibits to be presented in evidence by his clients were fabricated, then he has the option to withdraw from the case. Canon 22 allows a lawyer to withdraw his services for good cause such as “[w]hen the client pursues an illegal or immoral course of conduct with the matter he is handling” or “[w]hen the client insists that the lawyer pursue conduct violative of these canons and rules.”

Jurisprudence

1) De Jesus-Paras v. Vailoces, Adm. Case No. 439 (1961).

**LEDESMA DE JESUS-PARAS, *Petitioner*, -versus - QUINCIANO VAILOCES,
Respondent.**

A.C. No. 439, EN BANC, April 12, 1961, BAUTISTA ANGELO, J.

The intent of disbarment of an attorney is to protect the court and the public from the misconduct of officers of the court, and its purpose is to protect the administration of justice by requiring that those who exercise this important function shall be competent, honourable and reliable; men in whom courts and clients may repose confidence.

In this case, respondent was found guilty of falsification of public document, as a consequence, the petitioner instituted a disbarment proceeding against respondent lawyer.

FACTS

On 14 December 1950, respondent as a member of the bar and in his Capacity as a notary public, acknowledge the execution of a document purporting to be the last will and testament of one Tarcila Visitacion de Jesus. The will was presented for probate before the CFI of Negros Oriental and was impugned by her surviving spouse and daughter. CFI found that the will was a forgery, thus rendered a decision denying probate to the will.

A criminal action for falsification of public document was filed against respondent. They were found guilty.

On appeal, the CA affirmed the conviction of respondent. Consequently, the offended part instituted the disbarment proceedings.

Respondent argued that the charges against him were based on insufficient and inconclusive evidence, and were merely motivated by sheer vindictiveness, malice and spite.

ISSUE

Whether or not respondent is guilty of moral turpitude, and must be disbarred. (YES).

RULING

Section 25, Rule 127, of the Rules of Court states that a member of the bar may be removed or suspended from his office as attorney if it appears that he has been convicted of a crime involving moral turpitude. **Moral turpitude includes any act deemed contrary to justice, honesty, and good morals.**

Indeed, falsification of public document is clearly contrary to justice, honest, and good morals; it involves moral turpitude. Thus, he is amenable to disbarment. Therefore, Supreme Court rendered a decision removing him from his office as attorney.

2) Cuenco v. Fernan, 158 SCRA 29 (1988).

MIGUEL CUENCO, complainant, -versus- HON. B. FERNAN, respondent
A.M. No. 3135, EN BANC, February 17, 1988, PER CURIAM.

To grant a complaint for disbarment of a Member of the Court during the Member's incumbency, would in effect be to circumvent and hence to ran afoul of the constitutional mandate that Members of the Court may be removed from office only by impeachment for and conviction of certain offenses listed in Article XI (2) of the Constitution.

FACTS

Vito Borromeo died without any forced heirs, but leaving behind extensive properties situated in the province of Cebu. On April 19, 1952, a Petition for probate was filed with then Court of First Instance of Cebu. The probate court declared that the will was forged. In the intestacy proceedings that ensued, nine individuals were declared by the trial court as rightful successors to the decedent.

Complainant Cuenco and Numeriano E. Estenzo filed an administrative complaint against Justice Fernan. The complainant alleged the following:

1. Justice Fernan appeared as counsel for the three instituted heirs despite having accepted his appointment as an Associate Justice of the Court
2. Justice Fernan exerted personal efforts to take away the Vito Borromeo proceedings from the Supreme Court to his Office as Chairman of the Third Division to enable him to influence the decision.
3. Justice Fernan had violated his Oath of Office as a lawyer which imposes upon him the duty not to delay any man for money or malice.

ISSUE

Whether or not Justice Fernan should be held administratively disciplined based on the allegations in the complaint. (NO)

RULING

The complainant did present any evidence to indicate that Justice Fernan had appeared as counsel in the Vito Borromeo estate proceedings. The instituted heir and claimant Fortunato Borromeo was represented by Atty. Juan Legarte Sanchez as early as 1953.

There was nothing in the record, other than the undocumented assertions of complainant Cuenco, that would suggest that Justice Fernan has violated his oath of office as a lawyer. The complainant did not offer any evidence that would support his serious accusations

To grant a complaint for disbarment of a Member of the Court during the Member's incumbency, would in effect be to circumvent and hence to ran afoul of the constitutional mandate that Members of the Court may be removed from office only by impeachment for and conviction of certain offenses listed in Article XI (2) of the Constitution.

3) Siao Aba et al. v. Atty. De Guzman Jr., et al. (2011).

**SIAO ABA, MIKO LUMABAO, ALMASIS LAUBAN AND BENJAMIN DANDA,
complainants, -versus- ATTY. SALVADOR DE GUZMAN, JR., WENCESLAO
“PEEWEE” TRINIDAD, and ANDRESITO FORNIER, respondents**

A.C. No. 7649, SECOND DIVISION, December 14, 2011, CARPIO, J.

The Court has consistently held that in suspension or disbarment proceedings against lawyers, the lawyer enjoys the presumption of innocence, and the burden of proof rests upon the complainant to prove the allegations in his complaint. The required evidence is preponderance of evidence and in case the evidence of the parties are equally balanced, the equipoise doctrine mandates a decision in favor of the respondent.

FACTS

Complainants claim that Judge Salvador P. De Guzman, Jr. persuaded them to file an illegal recruitment case against certain persons, in exchange for money. Judge De Guzman allegedly represented to the complainants that his group, composed of Pasay City Mayor Wenceslao Trinidad, Atty. Andresito Fornier, Everson Lim Go Tian, Emerson Lim Go Tian, and Stevenson Lim Go Tian, were untouchable.

The complainants received from Judge De Guzman a prepared Joint Complaint-Affidavit and they were directed to sign and file the said document. The Joint Affidavit-Complaint and supporting documents were allegedly fabricated and manufactured by De Guzman. The complainants received several phone calls from the Judge and his group, telling them to pursue the case.

Complainants were bothered by their conscience and decided to tell Judge De Guzman and his group that they planned to withdraw the criminal complaint. They were allegedly offered Php 200,000 and later Php 1,000,000 by Judge De Guzman and his group, however, they refused to accept their offers. Respondents allegedly orchestrated the filing of fabricated charges for syndicated illegal recruitment and estafa against them.

The complainants filed an administrative case against Judge De Guzman and his group. For their defense, they denied the allegations against them.

The Investigating Commissioner of the Commission on Bar Discipline recommended the dismissal of the charges against Respondent Trinidad and Fornier, however, Judge De Guzman was suspended for two months. The Board of Governors of the Integrated Bar of the Philippines adopted the recommendation of the Investigating Commissioner's Report and Recommendation.

ISSUE

Whether Trinidad, Fornier and De Guzman should be administratively disciplined based on the allegations in the complaint. (NO)

RULING

The Court has consistently held that in suspension or disbarment proceedings against lawyers, the lawyer enjoys the presumption of innocence, and the burden of proof rests upon the complainant to prove the allegations in his complaint. The required evidence is preponderance of evidence and in case the evidence of the

parties are equally balanced, the equipoise doctrine mandates a decision in favor of the respondent.

The documents submitted by complainants are clearly not credible. First, the Office of the City Prosecutor of Iligan confirmed that the complainant did not submit any Joint Counter-Affidavit in connection to the complaints against Judge De Guzman and his group. The complainant did not also file any Affidavit of Complaint against any person. Second, complainants did not even attend any mandatory conference called by the Investigating Commissioner to identify the documents and substantiate or narrate in detail the allegations of misconduct allegedly committed by respondents.

Complainants were not able to discharge the burden of proof to prove their allegations because the documents they submitted were not authenticated and were apparently fabricated. The complaint must be dismissed.

4) Uy v. Mercado (1987).

BENJAMIN UY *Petitioner*, -versus - HON. RENATO S. MERCADO, *Respondent*.
A.M. No. R-368-MTJ, EN BANC, September 30, 1987, PER CURIAM

Sec. 37 of B.P. No. 129, judges of Metropolitan Trial Courts, except those in the NCR, Municipal trial Courts and Municipal Circuit Trial Courts have authority to conduct preliminary investigation of crimes alleged to have been committed within their respective territorial jurisdictions and cognizable by the Regional trial Courts.

Art. 360 of the Revised Penal Code provides that where one of the offended parties is a public officer, the action shall be filed in the Court of First Instance of the province or city where he holds office at the time of the commission of the offense, or of the province or city where the libellous article was printed and first published.

The intent of the above state laws regarding (limitation of choice of) venue is to minimize the filing of out-of-town libel suits in order to protect the alleged offender from hardship, inconvenience, and harassment and further protect the interest of the public service where one of the offended parties is a public officer.

FACTS

Respondent was administratively charged with abuse of power and discretion and gross ignorance of the law.

On 3 May 1985, former Mambabatas Pambansa Orlando Dulay (MP DULAY) filed a complaint for libel against petitioner. Records show that respondent judge conducted the preliminary investigation and issued the warrant of arrest of the accused in the libel case.

Petitioner, while in the vicinity of the Quezon City Hall in Quezon City, was arrested and ordered detained in Cabarroguis, Quirino Province.

MP Dulay alleged that respondent judge gave due course to the complaint of libel despite the fact that the proper jurisdiction and venue of the case was Quezon City.

Respondent judge admitted having conducted the preliminary investigation and issuing the warrant of arrest since there was reason to believe that there was probable cause.

ISSUE

Whether or not respondent judge's acts are tantamount to serious misconduct or gross ignorance of law. (YES).

RULING

Sec. 37 of B.P. No. 129, judges of Metropolitan Trial Courts, except those in the NCR, Municipal trial Courts and Municipal Circuit Trial Courts **have authority to conduct preliminary investigation of crimes alleged to have been committed within their respective territorial jurisdictions and cognizable by the Regional trial Courts.**

Art. 360 of the Revised Penal Code provides that where one of the offended parties is a public officer, **the action shall be filed in the Court of First Instance** of the province or city where he holds office **at the time of the commission of the offense**, or of the **province or city where the libellous article was printed and first published.**

Respondent judge should not have just examined whether probable cause existed in the case, but he should have also seen to it that the venue was correct, so as to legally acquire jurisdiction over the case and correct issuance of the warrant of arrest. As explained in *Montemayor v. Judge Collado*, "no position seeks a greater demand on momentarily righteousness and uprightness of an individual than a seat in the judiciary."

Since the venue was improper, even if respondent judge found probable cause, he should not have issued a warrant of arrest for there it is not necessary and he does not have jurisdiction over the case.

Respondent judge's unjustified and irregular acts constitute serious misconduct, or at least, gross ignorance of the law. Since his filing of certificate of candidacy for the position of Congressman for the province of Quirino already resulted in his automatic separation from the service; the Court, thus forfeited.

5) *Henry Samonte v. Atty. Gines Abellana*, A.C. No. 3452, June 23, 2014.

HENRY SAMONTE, Petitioner, -versus - ATTY. GINES ABELLANA, Respondent.
A.C. No. 3452, FIRST DIVISION, June 23, 2014, BERSAMIN, J.

*Every lawyer is expected to be **honest, imbued with integrity, and trustworthy.** These expectations are every Philippine Bar member's professional and ethical burden. In the **Lawyer's Oath**, it explicitly demands honesty in every lawyer, "**I will do no falsehood, nor consent to the doing of any in court xxx**". This is so because lawyers are servants of the Law, thus they must maintain and observe the rule of law. Moreover, honesty, integrity and trustworthiness are mentioned in the **Code of***

Professional Responsibility: *that a lawyer shall do no falsehood, shall punctually appear at court hearings, and shall keep the client informed of the status of his case. In this case, respondent lawyer abjectly failed such expectations in his dealings with his client, the petitioner. Respondent lawyer (a) falsified documents; (b) failed to file reply, inform the trial court beforehand of his client's unavailability to attend hearing, and submit an exhibit required by the trial judge; (c) and was always absent or tardy in attending scheduled hearings.*

FACTS

Petitioner brought the administrative complaint against respondent lawyer, Atty. Abellana who represented the former as plaintiff in a civil case. The administrative complaint enumerated serious acts of professional misconduct by Atty. Abellana, which are:

1. Falsification of public documents. Atty. Abellana made it appear that he filed the civil case on 10 June 1998, in accordance with their agreement; when in fact, it was actually filed on 14 June 1998.
2. Dereliction of duty. Atty Abellana (a) failed to file the reply vis-à-vis the answer with counterclaim, with his omission having delayed the pre-trial case; (b) failed to inform the trial court beforehand regarding petitioner's unavailability on a scheduled hearing; and (c) failed to submit an exhibit required by the trial judge, he only submitted it three months later.
3. Gross negligence and tardiness in attending scheduled hearings.
4. Dishonest for not issuing official receipts for every cash payment made by petitioner for his court appearances and his acceptance of the case.

Petitioner supported his claims by attaching a number of annexes. Atty. Abellana countered:

1. The actual filing of the complaint could have been done on 10 June 1998 if only petitioner had given enough money to cover the filing fees and other charges totalling P5,027.76. Since the money was not enough, he filed it on 14 June 1998.
2. The charge of dereliction of duty was baseless because he did file the reply after receiving the counterclaim of the defendants. He argued that it was the RTC, not him, who scheduled the pre-trial on 16 January 1998.
3. Regarding his nonattendance at hearings, he asserted that he had informed the RTC that he was stranded in another province or he attended the arraignment of another client in another court, but the presiding judge opted not to wait for his arrival in the courtroom.
4. No receipts were issued because that was the practice of most lawyers, and that petitioner did not even demand for any receipt.

The IBP Commission on Bar Discipline recommended that disbarment of Atty. Abellana.

The IBP Board of Governors adopted the findings of the IBP Investigating Commissioner, but suspended Atty. Abellana from practice of law for one year.

ISSUE

Whether or not Atty. Abellana is guilty of violating the Lawyer's Oath and Code of Professional Responsibility. (YES).

RULING

The Court found that Atty. Abellana failed the expectations of honesty, integrity, and trustworthiness in his dealings with petitioner and with RTC. The reasons:

1. He resorted to outright falsification of the date when he filed the complaint in court. Thus, misleading his own client with his own case.
2. He was dishonest to the Court by using a fake rubber stamp. He submitted two documents as annexes of his comment during the investigation by the IBP, and represented such documents to have been part of the actual records of the case in RTC. However, such documents turned out to be forged since the rubber stamp marks the documents bore were not the official marks of the RTC's. This is great disrespect towards the Court and his client.
3. He did not present any proof of his alleged filings.
4. He misrepresented the papers he had supposedly filed.

The Code of Professional Responsibility states:

Rule 10.01 - **A lawyer shall not do any falsehood**, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

Rule 11.02 - **A lawyer shall punctually appear in court hearings.**

Rule 18.04 - **A lawyer shall keep the client informed of the status of his case and shall respond** within a reasonable time to client's request for information.

The Court, hence, affirms the Resolution of IBP Board of Governors that Atty. Abellana is suspended for 6 months from the practice of law.

6) Mariano R. Cristobal v. Atty. Ronaldo E. Renta, A.C. No. 9952, September 17, 2014.

MARIANO R. CRISTOBAL, complainant, vs. ATTY. RONALDO E. RENTA, respondent.
1`A.C. No. 9925, THIRD DIVISION, September 17, 2014, VILLARAMA, JR., J.

Canon 18, Rule 18.03 states that a lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable. Here, the Court held that once a lawyer agrees to handle a case, it is that lawyer's duty to serve the client with competence and diligence. Here, it is beyond doubt that respondent breached his duty to serve complainant with diligence and neglected a legal matter entrusted to him. He himself admits that the petition for recognition was not filed, seeks forgiveness from the Court and promises not to repeat his mistake.

FACTS

Complainant, Cristobal, engaged the services of Renta Pe & Associates Law Office for the filing of a "petition for recognition for the minors Codie Darnell Green and Matthew Darnell Green" before the Bureau of Immigration. Respondent as the managing partner signed the "Special Contract of Legal Services" in behalf of said

law office. Respondent also received from complainant the "full and package price" of P160,000 for the filing of the petition for recognition. No such petition, however, was filed. Thus, the instant complaint for disbarment was filed against respondent for the latter's failure to file the petition for recognition and return the amount of P160,000 despite demand.

ISSUE

Whether or not respondent Pe is liable for violation of the Code of Professional Responsibility (YES).

RULING

Under the established facts, the Court found that respondent violated Canon 18, Rule 18.03 of the Code of Professional Responsibility. Canon 18 reads: a lawyer shall serve his client with competence and diligence. Under Rule 18.03 — A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable. The Court held that once a lawyer agrees to handle a case, it is that lawyer's duty to serve the client with competence and diligence. Here, it is beyond doubt that respondent breached his duty to serve complainant with diligence and neglected a legal matter entrusted to him. He himself admits that the petition for recognition was not filed, seeks forgiveness from the Court and promises not to repeat his mistake. Complainant also submitted official letters from the Bureau of Immigration that indeed no such petition was filed. That a certain Anneth Tan supposedly lost the petition for recognition and failed to inform respondent cannot absolve him of liability for it was his duty not to neglect complainant's case and handle it with diligence.

However, the Court notes that while respondent failed to refund immediately the amount paid by complainant, he nevertheless exerted earnest efforts that he eventually was able to fully repay complainant and begged complainant's forgiveness. Hence, he was only reprimanded with a stern warning that the same violation would be reprimanded more severely next time.

7) *Conrado N. Que v. Atty. Anastacio E. Revilla, Jr.*, A.C. No. 7054, November 11, 2014.

CONRADO N. QUE, complainant, vs. ATTY. ANASTACIO E. REVILLA, JR., respondent
A.C. No. 7054, EN BANC, November 11, 2014, PER CURIAM

When exercising its inherent power to grant reinstatement, the Court should see to it that only those who establish their present moral fitness and knowledge of the law will be readmitted to the Bar. The Court was not persuaded that he had sufficiently achieved moral reformation. The Court is not fully convinced that the passage of more than four (4) years is sufficient to enable the respondent to reflect and to realize his professional transgressions.

FACTS

On December 4, 2009, this Court disbarred the respondent from the practice of law on the following grounds: abuse of court procedures and processes; filing of multiple actions and forum-shopping; willful, intentional and deliberate resort to falsehood and deception before the courts; maligning the name of his fellow lawyer; and fraudulent and unauthorized appearances in court. Hence the present petition of a Profound Appeal for Judicial Clemency filed by Atty. Anastacio E. Revilla, Jr. (*respondent*), who seeks to be reinstated as a member of the Philippine Bar.

ISSUE

Whether or not respondent should be reinstated as a member of the bar (NO)

RULING

The Court denied the appeal. Membership in the Bar is a privilege burdened with conditions. It is not a natural, absolute or constitutional right granted to everyone who demands it, but rather, a special privilege granted and continued only to those who demonstrate special fitness in intellectual attainment and in moral character. The same reasoning applies to reinstatement of a disbarred lawyer. When exercising its inherent power to grant reinstatement, the Court should see to it that only those who establish their present moral fitness and knowledge of the law will be readmitted to the Bar. Thus, though the doors to the practice of law are never permanently closed on a disbarred attorney, the Court owes a duty to the legal profession as well as to the general public to ensure that if the doors are opened, it is done so only as a matter of justice.

Although the Court believes that the respondent is not inherently lacking in moral fiber as shown by his conduct prior to his disbarment, it is not persuaded that he had sufficiently achieved moral reformation. The Court is not fully convinced that the passage of more than four (4) years is sufficient to enable the respondent to reflect and to realize his professional transgressions. It emphasized that this is the second time that the respondent was accused and was found guilty of gross misconduct. The Court held that they were not persuaded by the respondent's sincerity in acknowledging his guilt. While he expressly stated in his appeal that he had taken full responsibility of his misdemeanor, his previous inclination to pass the blame to other individuals, to invoke self-denial, and to make alibis for his wrongdoings, contradicted his assertion. The respondent also failed to submit proof satisfactorily showing his contrition. He failed to establish by clear and convincing evidence that he is again worthy of membership in the legal profession. We thus entertain serious doubts that the respondent had completely reformed.

- 8) *Joven and Rasing v. Atty. Pablo R. Cruz and Atty. Magsalin III*, A.C. No. 7686, July 31, 2013.

**JAIME JOVEN and REYNALDO C. RASING, complainants, vs.
ATTYS. PABLO R. CRUZ and FRANKIE O. MAGSALIN III, respondents.**

A.C. No. 7686, FIRST DIVISION, July 31, 2013, VILLARAMA, JR., J

The burden of proof in disbarment and suspension proceedings always rests on the shoulders of the complainant. The Court exercises its disciplinary power only if the complainant establishes the complaint by clearly preponderant evidence that warrants the imposition of the harsh penalty. As a rule, an attorney enjoys the legal presumption that he is innocent of the charges made against him until the contrary is proved. An attorney is further presumed as an officer of the Court to have performed his duties in accordance with his oath. In this case, complainants failed to discharge their burden of proving respondents' administrative liability.

FACTS

A labor case was filed by complainant Jaime Joven against Phil. Hoteliers, Inc. and/or Dusit Hotel Nikko, a client of respondents' law firm, P.R. Cruz Law Offices. On July 16, 2007, the National Labor Relations Commission (NLRC) rendered a decision. Joven's counsel, Atty. Solon R. Garcia, received their copy of the decision on August 14, 2007. As to respondents, they received a copy of the decision on August 24, 2007 based on the Registry Return Receipt that was sent back to the NLRC. On September 5, 2007, Atty. Garcia received by registered mail at his law office located in Quezon City the Partial Motion for Reconsideration. As Atty. Garcia found it unusual for the postman to belatedly deliver a copy of the NLRC decision to respondents (whose law office is also located in Quezon City) on August 24, 2007 or 10 days after he received his copy on August 14, 2007, he requested Larry Javier, Vice-President of National Union of Workers in Hotel Restaurant and Allied Industries (NUWHRAIN)-Dusit Hotel Nikko Chapter, to secure a post office certification of the actual date respondents received a copy of said decision. Through a letter-request of Angelito V. Vives, NLRC Board Secretary IV, Javier was able to secure the following Quezon City Central Post Office (QCCPO) Certification dated September 17, 2007.

Because of this, an administrative complaint 1 for disbarment filed by Jaime Joven and Reynaldo C. Rasing against Attys. Pablo R. Cruz and Frankie O. Magsalin III for deceit, malpractice, gross misconduct and falsification of public documents.

ISSUE

Whether or not respondent is guilty of deceit, malpractice, gross misconduct and falsification of public documents (NO).

RULING

The burden of proof in disbarment and suspension proceedings always rests on the shoulders of the complainant. The Court exercises its disciplinary power only if the complainant establishes the complaint by *clearly preponderant evidence* that warrants the imposition of the harsh penalty. As a rule, an attorney enjoys the legal presumption that he is innocent of the charges made against him until the contrary is proved. An attorney is further presumed as an officer of the Court to have

performed his duties in accordance with his oath. In this case, complainants failed to discharge their burden of proving respondents' administrative liability. Granting that the certification of the QCCPO of the actual date of receipt of the subject NLRC decision has *prima facie* credence, this Court finds it is not sufficient to hold respondents administratively liable as contended by complainants. While there is incongruity between said certification and the records of respondents' law firm as to when the subject NLRC decision was actually received by the latter, there is no clear and convincing evidence presented by complainants that respondents maliciously made it appear that they received the decision on a date ten days later than what is reflected on the records of the QCCPO.

9) Fortun v. Quinsayas, GR No. 194578, February 13, 2013

PHILIP SIGFRID A. FORTUN, petitioner, vs. PRIMA JESUSA B. QUINSAYAS, MA. GEMMA OQUENDO, DENNIS AYON, NENITA OQUENDO, ESMAEL MANGUDADATU, JOSE PAVIA, MELINDA QUINTOS DE JESUS, REYNALDO HULOG, REDMOND BATARIO, MALOU MANGAHAS, DANILO GOZO, GMA NETWORK, INC. through its news editors Raffy Jimenez and Victor Sollorano, SOPHIA DEDACE, ABS-CBN CORPORATION through the Head of its News Group, Maria Ressa, CECILIA VICTORIA OREÑA-DRILON, PHILIPPINE DAILY INQUIRER, INC. represented by its Editor-in-Chief Letty Jimenez Magsanoc, TETCH TORRES, PHILIPPINE STAR represented by its Editor-in-Chief Isaac Belmonte, and EDU PUNAY, respondents.

G. R. No. 194578, SECOND DIVISION, February 13, 2013, CARPIO, J

As a general rule, disbarment proceedings are confidential in nature until their final resolution and the final decision of this Court. In this case, however, the filing of a disbarment complaint against petitioner is itself a matter of public concern considering that it arose from the Maguindanao Massacre case. Since the disbarment complaint is a matter of public interest, legitimate media had a right to publish such fact under freedom of the press. The Court also recognizes that respondent media groups and personalities merely acted on a news lead they received when they reported the filing of the disbarment complaint.

However, Atty. Quinsayas is bound by Section 18, Rule 139-B of the Rules of Court both as a complainant in the disbarment case against petitioner and as a lawyer. As a lawyer and an officer of the Court, Atty. Quinsayas is familiar with the confidential nature of disbarment proceedings. His act of distributing copies of the disbarment complaint render him guilty of indirect contempt.

FACTS

Petitioner is the counsel for Datu Andal Ampatuan Jr., the principal accused for the Maguindanao Massacre. In November 2010, Atty. Quinsayas, et al. filed a disbarment complaint against petitioner before this Court, docketed as Bar Matter No. A.C. 8827, which case is still pending. Petitioner alleged that several media outlets, such as GMA News TV internet website, Inquirer.net, and PhilStar, among others, all published articles giving details to the disbarment allegations. In November 2010, Atty. Quinsayas, et al. filed a disbarment complaint against petitioner before this Court, docketed as Bar Matter No. A.C. 8827. The disbarment case is still pending.

Petitioner alleged that Atty. Quinsayas, et al. actively disseminated the details of the disbarment complaint against him in violation of Rule 139-B of the Rules of Court on the confidential nature of disbarment proceedings. Petitioner further alleged that respondent media groups and personalities conspired with Atty. Quinsayas, et al. by publishing the confidential materials on their respective media platforms. Petitioner pointed out that Drilon discussed the disbarment complaint with Atty. Quinsayas in a television program viewed nationwide.

ISSUE

(1) Whether or not media respondents violated the confidentiality rule in disbarment proceedings, warranting a finding of guilt for indirect contempt of court (NO)

(2) Whether or not Atty Quinsayas violated the confidentiality rule in disbarment proceedings, warranting a finding of guilt for indirect contempt of court (YES)

RULING

As a general rule, disbarment proceedings are confidential in nature until their final resolution and the final decision of this Court. In this case, however, the filing of a disbarment complaint against petitioner is itself a matter of public concern considering that it arose from the Maguindanao Massacre case. The interest of the public is not on petitioner himself but primarily on his involvement and participation as defense counsel in the Maguindanao Massacre case. Indeed, the allegations in the disbarment complaint relate to petitioner's supposed actions involving the Maguindanao Massacre case. The Maguindanao Massacre is a very high-profile case. Of the 57 victims of the massacre, 30 were journalists. It is understandable that any matter related to the Maguindanao Massacre is considered a matter of public interest and that the personalities involved, including petitioner, are considered as public figure.

Since the disbarment complaint is a matter of public interest, legitimate media had a right to publish such fact under freedom of the press. The Court also recognizes that respondent media groups and personalities merely acted on a news lead they received when they reported the filing of the disbarment complaint. The distribution by Atty. Quinsayas to the media of the disbarment complaint, by itself, is not sufficient to absolve the media from responsibility for violating the confidentiality rule. However, since petitioner is a public figure or has become a public figure because he is representing a matter of public concern, and because the event itself that led to the filing of the disbarment case against petitioner is a matter of public concern, the media has the right to report the filing of the disbarment case as legitimate news. It would have been different if the disbarment case against petitioner was about a private matter as the media would then be bound to respect the confidentiality provision of disbarment proceedings under Section 18, Rule 139-B of the Rules of Court.

However, Atty. Quinsayas is bound by Section 18, Rule 139-B of the Rules of Court both as a complainant in the disbarment case against petitioner and as a lawyer. As a lawyer and an officer of the Court, Atty. Quinsayas is familiar with the

confidential nature of disbarment proceedings. Hence, only he was found guilty for indirect contempt for distributing a copy of the disbarment complaint against the petitioner.

I. Notarial Practice (A.M. No. 02-8-13-SC, as amended)

- 1) Qualification of notary public
- 2) Term of the office of notary public
- 3) Powers and limitations
- 4) Notarial register
- 5) Jurisdiction of notary public and place of notarization
- 6) Revocation of commission
- 7) Competent evidence of identity
- 8) Sanctions

Jurisprudence

1. Baylon v. Almo (2008).

CHARLES B. BAYLON, complainant, vs. ATTY. JOSE A. ALMO, respondent.

A.C. No. 6962, SECOND DIVISION, June 25, 2008, QUISUMBING, J.

Reasonable diligence should have compelled herein respondent to ascertain the true identity of the person seeking his legal services considering the nature of the document, i.e., giving a third party authority to mortgage a real property owned by another. Considering that respondent admitted in the IBP hearing on February 21, 2005 that he had already previously notarized some documents for the complainant, he should have compared the complainant's signatures in those documents with the impostor's signature before he notarized the questioned SPA.

FACTS

The complainant filed an administrative complaint at the Integrated Bar of the Philippines (IBP) charging the respondent with fraud and deceit for notarizing a Special Power of Attorney (SPA) bearing the forged signature of the complainant as the supposed principal thereof. Complainant averred that Pacita Filio, Rodolfo Llantino, Jr. and his late wife, Rosemarie Baylon, conspired in preparing an SPA authorizing his wife to mortgage his real property located in Signal Village, Taguig. He said that he was out of the country when the SPA was executed on June 17, 1996, and also when it was notarized by the respondent on June 26, 1996. To prove that his signature on the SPA was forged, the complainant presented a report from the National Bureau of Investigation stating to the effect that the questioned signature on the SPA was not written by him. The complainant likewise alleged that because of the SPA, his real property was mortgaged to Lorna Express Credit Corporation and that it was subsequently foreclosed due to the failure of his wife to settle her mortgage obligations.

The respondent admitted notarizing the SPA, but he argued that he initially refused to notarize it when the complainant's wife first came to his office on June 17, 1996,

due to the absence of the supposed affiant thereof. He said that he only notarized the SPA when the complainant's wife came back to his office on June 26, 1996, together with a person whom she introduced to him as Charles Baylon. He further contended that he believed in good faith that the person introduced to him was the complainant because said person presented to him a Community Tax Certificate bearing the name Charles Baylon. To corroborate his claims, the respondent attached the affidavit of his secretary, Leonilita de Silva. The respondent likewise denied having taken part in any scheme to commit fraud, deceit or falsehood.

ISSUE

Whether or not the respondent is guilty of fraud and deceit (YES)

RULING

After due proceedings, the IBP-Commission on Bar Discipline recommended to the IBP-Board of Governors that the respondent be strongly admonished for notarizing the SPA; that his notarial commission be revoked; and that the respondent be barred from being granted a notarial commission for one year.

In this instance, reasonable diligence should have compelled herein respondent to ascertain the true identity of the person seeking his legal services considering the nature of the document, *i.e.*, giving a third party authority to mortgage a real property owned by another. The only saving grace on the part of respondent is that he relied on the fact that the person being authorized under the SPA to act as agent and who accompanied the impostor, is the wife of the principal mentioned therein. The importance attached to the act of notarization cannot be overemphasized.

Mindful of his duties as a notary public and taking into account the nature of the SPA which in this case authorized the complainant's wife to mortgage the subject real property, the respondent should have exercised utmost diligence in ascertaining the true identity of the person who represented himself and was represented to be the complainant. He should not have relied on the Community Tax Certificate presented by the said impostor in view of the ease with which community tax certificates are obtained these days. Moreover, considering that respondent admitted in the IBP hearing on February 21, 2005 that he had already previously notarized some documents for the complainant, he should have compared the complainant's signatures in those documents with the impostor's signature before he notarized the questioned SPA.

2. Villarin v. Sabate A.C. No. 3224, February 2000.

**PASTOR EDWIN VILLARIN, PACIANO DE VEYRA, SR., and BARTOLOME
EVAROLO, SR., complainants, vs. ATTY. RESTITUTO SABATE, JR., respondent.**
A.C. No. 3324, SECOND DIVISION, February 9, 2000, BUENA, J

The function of a notary public is, among others, to guard against any illegal or immoral arrangements. That function would be defeated if the notary public were one

of the signatories to the instrument. For then, he would be interested in sustaining the validity thereof as it directly involves himself and the validity of his own act. It would place him in an inconsistent position, and the very purpose of the acknowledgment, which is to minimize fraud, would be thwarted. From the facts obtaining, it is apparent that respondent Atty. Restituto Sabate, Jr. notarized the Motion to Dismiss With Answer prepared by him which pleading he signed for and in behalf of Levi Pagunsan and Alejandro Bofetiado. He failed to observe due diligence in observing Notarial Laws.

FACTS

Complainants Pastor Edwin Villarin, Paciano de Veyra, Sr. and Bartolome Evarolo, Sr. prays that administrative sanctions be imposed on respondent Atty. Restituto Sabate, Jr. for not having observed honesty and utmost care in the performance of his duties as notary public. In their Affidavit-Complaint, complainants alleged that through their counsel Atty. Eduardo D. Estores, they filed a complaint against Paterno Diaz, *et al.* under SEC Case No. DV091, Region XI Davao Extension Office, Davao City. Respondents in the SEC Case filed their "Motion to Dismiss With Answer To Villarin's *Et Al.*, Complaint To The Securities and Exchange Commission" prepared and notarized by Atty. Restituto Sabate, Jr. Complainants alleged that the signature of Paterno Diaz was not his, but that of a certain Lilian Diaz; that with regard to the signatures of Levi Pagunsan and Alejandro Bofetiado, it was Atty. Sabate, Jr. who signed for them; and that herein respondent Sabate, Jr. made it appear that said persons participated in the said act when in fact they did not do so. Complainants averred that respondent's act undermined the public's confidence for which reason administrative sanctions should be imposed against him. They pray that administrative sanctions be imposed on respondent Atty. Restituto Sabate, Jr. for not having observed honesty and utmost care in the performance of his duties as notary public.

ISSUE

Whether or not Atty. Sabate is administratively liable for not having observed honesty and utmost care in the performance of his duties as notary public (YES)

RULING

The function of a notary public is, among others, to guard against any illegal or immoral arrangements. That function would be defeated if the notary public were one of the signatories to the instrument. For then, he would be interested in sustaining the validity thereof as it directly involves himself and the validity of his own act. It would place him in an inconsistent position, and the very purpose of the acknowledgment, which is to minimize fraud, would be thwarted.

From the facts obtaining, it is apparent that respondent Atty. Restituto Sabate, Jr. notarized the Motion to Dismiss With Answer prepared by him which pleading he signed for and in behalf of Levi Pagunsan and Alejandro Bofetiado (while Lilian Diaz signed for her husband Pastor Diaz), three of the respondents in the SEC case, with the word "By" before their signatures, because he was their counsel in said case and

also because he was an officer of the religious sect and corporation represented by the respondents-Pastors. But while it would appear that in doing so, he acted in good faith, the fact remains that the same cannot be condoned. He failed to state in the preliminary statements of said motion/answer that the three respondents were represented by their designated attorneys-in-fact. Besides, having signed the Verification of the pleading, he cannot swear that he appeared before himself as Notary Public.

As a lawyer commissioned as notary public, respondent is mandated to subscribe to the sacred duties pertaining to his office, such duties being dictated by public policy impressed with public interest. Faithful observance and utmost respect of the legal solemnity of the oath in an acknowledgment or *jurat is sacrosanct*. Simply put, such responsibility is incumbent upon and failing therein, he must now accept the commensurate consequences of his professional indiscretion.

3. *Sicat v. Arriola* (2005).
(Can't find the case)
4. *Espinosa v. Omaña* (2011).

**RODOLFO A. ESPINOSA and MAXIMO A. GLINDO, complainants, vs. ATTY.
JULIETA A. OMAÑA, respondent.**
A.C. No. 9081, SECOND DIVISION, October 12, 2011, CARPIO, J

Rule 1.01, Canon 1 of the Code of Professional Responsibility provides that a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct. This Court has ruled that the extrajudicial dissolution of the conjugal partnership without judicial approval is void. The Court has also ruled that a notary public should not facilitate the disintegration of a marriage and the family by encouraging the separation of the spouses and extrajudicially dissolving the conjugal partnership, which is exactly what Omaña did in this case.

FACTS

Complainants alleged that on 17 November 1997, Espinosa and his wife Elena Marantal (Marantal) sought Omaña's legal advice on whether they could legally live separately and dissolve their marriage solemnized on 23 July 1983. Omaña then prepared a document entitled "*Kasunduan Ng Paghiwalay*". Complainants alleged that Marantal and Espinosa, fully convinced of the validity of the contract dissolving their marriage, started implementing its terms and conditions. However, Marantal eventually took custody of all their children and took possession of most of the property they acquired during their union. Espinosa sought the advice of his fellow employee, complainant Glindo, a law graduate, who informed him that the contract executed by Omaña was not valid. Espinosa and Glindo then hired the services of a lawyer to file a complaint against Omaña before the Integrated Bar of the Philippines Commission on Bar Discipline. They charged Omaña with violation of her oath as a lawyer, malpractice, and gross misconduct in office.

ISSUE

Whether or not respondent violated the Code of Professional Responsibility (YES)

RULING

Omaña violated Rule 1.01, Canon 1 of the Code of Professional Responsibility which provides that a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct. The IBP-CBD stated that Omaña had failed to exercise due diligence in the performance of her function as a notary public and to comply with the requirements of the law. The IBP-CBD noted the inconsistencies in the defense of Omaña who first claimed that it was her part-time staff who notarized the contract but then later claimed that it was her former maid who notarized it. It found that respondent truly signed the questioned document, yet she still disclaimed its authorship, thereby revealing much more her propensity to lie and make deceit, which she is deserving [of] disciplinary sanction or disbarment. The Court adopted this recommendation. This case is not novel. This Court has ruled that the extrajudicial dissolution of the conjugal partnership without judicial approval is void. The Court has also ruled that a notary public should not facilitate the disintegration of a marriage and the family by encouraging the separation of the spouses and extrajudicially dissolving the conjugal partnership, which is exactly what Omaña did in this case.

5. *Aquino v. Manese* (2003).

FIDEL D. AQUINO, complainant, vs. Atty. OSCAR MANESE, respondent.

A.C. No. 4958, THIRD DIVISION, April 3, 2003, CARPIO MORALES, J

A notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed. By respondent's reckless act of notarizing the Deed of Absolute Sale without ascertaining that the vendors-signatories thereto were the very same persons who executed it and personally appeared before him to attest to the contents and truth of what were stated therein, he has undermined the confidence of the public on notarial documents and he thereby breached Canon I of the Code of Professional Responsibility.

FACTS

Fidel D. Aquino (complainant) charged Atty. Oscar Manese (respondent) with falsification of public document for preparing and notarizing a Deed of Absolute Sale dated September 15, 1994 which could not have been executed and sworn to by Lilia D. Cardona, one of the therein three vendors-signatories, she having died on November 25, 1990 or four (4) years earlier. Complainant alleges that, *inter alia*, he has since 1960 been tilling the land subject of the Deed of Absolute Sale as tenant of the now deceased owner thereof, Luis M. Cardona; in 1975, the spouses Antonio and Fe Perez unlawfully took possession of the land, thus spawning the filing of a case

that reached the Court of Appeals which recognized him to be the lawful tenant; and on September 15, 1994, without his knowledge, the Deed of Absolute Sale was purportedly executed on even date by the three heirs of Luis Cardona, including the already deceased Lilia Cardona, in favor of Ma. Cita C. Perez, daughter of the spouses Perez, and was notarized by respondent.

ISSUE

Whether or not respondent is liable for violation of Notarial Law and the Code of Professional Responsibility (YES)

RULING

Notaries public must observe with utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined. Hence a notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed.

By respondent's reckless act of notarizing the Deed of Absolute Sale without ascertaining that the vendors-signatories thereto were *the very same persons* who executed it and *personally appeared* before him to attest to the contents and truth of what were stated therein, he has undermined the confidence of the public on notarial documents and he thereby breached Canon I of the Code of Professional Responsibility which requires lawyers to uphold the Constitution, obey the laws of the land and promote respect for the law and legal processes, and Rule 1.01 thereof which proscribes lawyers from engaging in unlawful, dishonest, immoral or deceitful conduct.

5. *Mondejar v. Rubia* (2006).

ELSA L. MONDEJAR, complainant, vs. ATTY. VIVIAN G. RUBIA, respondent.
A.C. Nos. 5907 and 5942, THIRD DIVISION, July 21, 2006, CARPIO MORALES, J

Lawyers commissioned as notaries public are thus mandated to subscribe to the sacred duties appertaining to their office, such duties being dictated by public policy impressed with public interest. A graver responsibility is placed upon them by reason of their solemn oath to obey the laws, to do no falsehood or consent to the doing of any, and to guard against any illegal or immoral arrangement, and other duties and responsibilities. In this case, the document clearly appears to have been ante-dated in an attempt to exculpate Marilyn from the Anti-Dummy charge against her in 2002. As to the said discrepancies of dates appearing in the document because of the respondent's acts, Commissioner Aguila found respondent to have violated Rule 1.01 of the Code of Professional Responsibility.

FACTS

By two separate complaints filed with the Office of the Court Administrator (OCA), Elsa L. Mondejar (complainant) sought the disbarment of Atty. Vivian G. Rubia (respondent) and the cancellation of her notarial commission for allegedly committing deceitful acts and malpractice in violation of the Code of Professional Responsibility.

Sometime in 2002, complainant charged Marilyn Carido (Marilyn) and her common law husband Japanese national Yoshimi Nakayama (Nakayama) before the Digos City Prosecutor's Office for violation of the Anti-Dummy Law. During the pendency of the case, it was raised that on April 20, 2001, respondent notarized a Deed of Absolute Sale of a parcel of land situated in Digos City, purportedly executed by Manuel Jose Lozada (Lozada) as vendor and Marilyn as vendee. Complainant alleged that respondent falsified the document by forging the signature of Lozada who has been staying in Maryland, U.S.A. since 1992. Hence, administrative cases were filed against the respondent.

ISSUE

Whether or not respondent is guilty of violation of the Code of Professional Responsibility (YES)

RULING

As to the discrepancies of dates appearing in the document because of the respondent's acts, Commissioner Aguila found respondent to have violated Rule 1.01 of the Code of Professional Responsibility which states that a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct. Lawyers commissioned as notaries public are thus mandated to subscribe to the sacred duties appertaining to their office, such duties being dictated by public policy impressed with public interest. A graver responsibility is placed upon them by reason of their solemn oath to obey the laws, to do no falsehood or consent to the doing of any, and to guard against any illegal or immoral arrangement, and other duties and responsibilities.

In this case, the document clearly appears to have been ante-dated in an attempt to exculpate Marilyn from the Anti-Dummy charge against her in 2002. The document was allegedly notarized on January 9, 2001 but a new revised/amended document was made in 2002 bearing the original date of execution/acknowledgment. If that were so, how could an error have been committed regarding the other year 2001 original entries in the notarial register, when the purported new document was to retain the original January 9, 2001 date as it would merely input additional conditions thereto? The above-quoted discussion by the Investigating IBP Commissioner of why he discredited respondent's explanation behind the conflicting dates appearing in the document is thus well-taken.

6. Laquindanum v. Quintana, A.C. No. 7036 (2009).

JUDGE LILY LYDIA A. LAQUINDANUM, Complainant, vs. ATTY. NESTOR Q. QUINTANA, Respondent. A.C. No. 7036, EN BANC, June 29, 2009, PUNO, J.

After a careful review of the records and evidence, there is no doubt that Atty. Quintana violated the 2004 Rules on Notarial Practice and the Code of Professional Responsibility when he committed the following acts: (1) he notarized documents outside the area of his commission as a notary public; (2) he performed notarial acts with an expired commission; (3) he let his wife notarize documents in his absence; and (4) he notarized a document where one of the signatories therein was already dead at that time.

The act of notarizing documents outside one's area of commission is not to be taken lightly. Aside from being a violation of Sec. 11 of the 2004 Rules on Notarial Practice, it also partakes of malpractice of law and falsification. Notarizing documents with an expired commission is a violation of the lawyer's oath to obey the laws, more specifically, the 2004 Rules on Notarial Practice. Since the public is deceived into believing that he has been duly commissioned, it also amounts to indulging in deliberate falsehood, which the lawyer's oath proscribes. Notarizing documents without the presence of the signatory to the document is a violation of Sec. 2(b)(1), Rule IV of the 2004 Rules on Notarial Practice,³² Rule 1.01 of the Code of Professional Responsibility, and the lawyer's oath which unconditionally requires lawyers not to do or declare any falsehood. Finally, Atty. Quintana is personally accountable for the documents that he admitted were signed by his wife. He cannot relieve himself of liability by passing the blame to his wife. He is, thus, guilty of violating Canon 9 of the Code of Professional Responsibility, which requires lawyers not to directly or indirectly assist in the unauthorized practice of law.

All told, Atty. Quintana fell miserably short of his obligation under Canon 7 of the Code of Professional Responsibility, which directs every lawyer to uphold at all times the integrity and dignity of the legal profession.

FACTS

This administrative case against Atty. Nestor Q. Quintana (Atty. Quintana) stemmed from a letter addressed to the Court filed by Executive Judge Lily Lydia A. Laquindanum (Judge Laquindanum) of the Regional Trial Court of Midsayap, Cotabato requesting that proper disciplinary action be imposed on him for performing notarial functions in Midsayap, Cotabato, which is beyond the territorial jurisdiction of the commissioning court that issued his notarial commission, and for allowing his wife to do notarial acts in his absence.

In her letter, Judge Laquindanum alleged that pursuant to A.M. No. 03-8-02-SC, executive judges are required to closely monitor the activities of notaries public within the territorial bounds of their jurisdiction and to see to it that notaries public shall not extend notarial functions beyond the limits of their authority. Hence, she wrote a letter to Atty. Quintana directing him to stop notarizing documents within the territorial jurisdiction of the Regional Trial Court of Midsayap, Cotabato (which

is outside the territorial jurisdiction of the commissioning court that issued his notarial commission for Cotabato City and the Province of Maguindanao) since certain documents notarized by him had been reaching her office. However, despite such directive, respondent continuously performed notarial functions in Midsayap, Cotabato as evidenced by: (1) the Affidavit of Loss of ATM Card executed by Kristine C. Guro; and (2) the Affidavit of Loss of Driver's License executed by Elenita D. Ballentes.

Under Sec. 11, Rule III of the 2004 Rules on Notarial Practice, Atty. Quintana could not extend his notarial acts beyond Cotabato City and the Province of Maguindanao because Midsayap, Cotabato is not part of Cotabato City or the Province of Maguindanao. Midsayap is part of the Province of Cotabato. The City within the province of Cotabato is Kidapawan City, and not Cotabato City.

Judge Laquindanum also alleged that, upon further investigation of the matter, it was discovered that it was Atty. Quintana's wife who performed notarial acts whenever he was out of the office as attested to by the Joint Affidavit executed by Kristine C. Guro and Elenita D. Ballentes.

In his Response, Atty. Quintana alleged that he filed a petition for notarial commission before Branch 18, Regional Trial Court, Midsayap, Cotabato. However, the same was not acted upon by Judge Laquindanum for three weeks. He alleged that the reason for Judge Laquindanum's inaction was that she questioned his affiliation with the Integrated Bar of the Philippines (IBP) Cotabato City Chapter, and required him to be a member of IBP Kidapawan City Chapter and to obtain a Certification of Payments from the latter chapter. Because of this, he opted to withdraw his petition. After he withdrew his petition, he claimed that Judge Laquindanum sent a clerk from her office to ask him to return his petition, but he did not oblige because at that time he already had a Commission for Notary Public issued by Executive Judge Reno E. Concha of the Regional Trial Court, Branch 14, Cotabato City.

Atty. Quintana lamented that he was singled out by Judge Laquindanum, because the latter immediately issued notarial commissions to other lawyers without asking for so many requirements. However, when it came to him, Judge Laquindanum even tracked down all his pleadings; communicated with his clients; and disseminated information through letters, pronouncements, and directives to court clerks and other lawyers to humiliate him and be ostracized by fellow lawyers.

Atty. Quintana argued that he subscribed documents in his office at Midsayap, Cotabato; and Midsayap is part of the Province of Cotabato. He contended that he did not violate any provision of the 2004 Rules on Notarial Practice, because he was equipped with a notarial commission. He maintained that he did not act outside the province of Cotabato since Midsayap, Cotabato, where he practices his legal profession and subscribes documents, is part of the province of Cotabato. He claimed that as a lawyer of good moral standing, he could practice his legal profession in the entire Philippines.

Atty. Quintana further argued that Judge Laquindanum had no authority to issue such directive, because only Executive Judge Reno E. Concha, who issued his notarial commission, and the Supreme Court could prohibit him from notarizing in the Province of Cotabato.

In the February 28, 2007 Hearing before the (Office of the Bar Confidant) OBC presided by Atty. Ma. Crisitina B. Layusa (Hearing Officer), Judge Laquindanum presented a Deed of Donation, which was notarized by Atty. Quintana in 2004. Judge Laquindanum testified that Atty. Quintana continued to notarize documents in the years 2006 to 2007 despite the fact that his commission as notary public for and in the Province of Maguindanao and Cotabato City had already expired on December 31, 2005, and he had not renewed the same. To support her claim, Judge Laquindanum presented, among others, an Affidavit of Loss executed by Santos V. Magbanua with subscription dated February 22, 2007 at Midsayap, Cotabato.

For his part, Atty. Quintana admitted that all the signatures appearing in the documents marked as exhibits of Judge Laquindanum were his except for the following: (1) Affidavit of Loss of ATM Card executed by Kristine C. Guro; and (2) Affidavit of Loss of Driver's License executed by Elenita D. Ballentes; and (3) Affidavit of Loss executed by Santos V. Magbanua. He explained that those documents were signed by his wife and were the result of an entrapment operation of Judge Laquindanum: to let somebody bring and have them notarized by his wife, when they knew that his wife is not a lawyer. He also denied that he authorized his wife to notarize documents. According to him, he slapped his wife and told her to stop doing it as it would ruin his profession. Atty. Quintana also claimed that Judge Laquindanum did not act on his petition, because he did not comply with her requirements for him to transfer his membership to the Kidapawan Chapter, wherein her sister, Atty. Aglepa, is the IBP President.

On the one hand, Judge Laquindanum explained that she was only performing her responsibility and had nothing against Atty. Quintana. The reason why she did not act on his petition was that he had not paid his IBP dues, which is a requirement before a notarial commission may be granted. She told his wife to secure a certification of payment from the IBP, but she did not return.

This was denied by Atty. Quintana, who claimed that he enclosed in his Response the certification of good standing and payments of his IBP dues. However, when the same was examined, there were no documents attached thereto. On March 5, 2007, Atty. Quintana submitted to the OBC the documents issued by the IBP Cotabato City Chapter to prove that he had paid his IBP dues. Finally, Atty. Quintana asked for forgiveness for what he had done and promised not to repeat the same. He also asked that he be given another chance and not be divested of his privilege to notarize, as it was the only bread and butter of his family.

In a Manifestation dated March 9, 2007, Judge Laquindanum submitted a Certification and its entries show that Atty. Quintana paid his IBP dues for the year 2005 only on January 9, 2006 per Official Receipt (O.R.) No. 610381. Likewise, the arrears of his IBP dues for the years 1993, 1995, 1996, and 1998 to 2003 were also

paid only on January 9, 2006 per O.R. No. 610387. Hence, when he filed his petition for notarial commission in 2004, he had not yet completely paid his IBP dues.

In its Report and Recommendation, the OBC recommended that Atty. Quintana be disqualified from being appointed as a notary public for two (2) years; and that if his notarial commission still exists, the same should be revoked for two (2) years. The OBC found the defenses and arguments raised by Atty. Quintana to be without merit, viz:

Apparently, respondent has extended his notarial acts in Midsayap and Kabacan, Cotabato, which is already outside his territorial jurisdiction to perform as Notary Public.

Section 11 of the 2004 Rules on Notarial Practice provides, thus:

"Jurisdiction and Term - A person commissioned as notary public may perform notarial acts in any place within the territorial jurisdiction of the commissioning court for a period of two (2) years commencing the first day of January of the year in which the commissioning court is made, unless earlier revoked [or] the notary public has resigned under these Rules and the Rules of Court.

Under the rule[,] respondent may perform his notarial acts within the territorial jurisdiction of the commissioning Executive Judge Concha, which is in Cotabato City and the [P]rovince of Maguindanao only. But definitely he cannot extend his commission as notary public in Midsayap or Kabacan and in any place of the province of Cotabato as he is not commissioned thereat to do such act. Midsayap and Kabacan are not part of either Cotabato City or [P]rovince of Maguindanao but part of the province of North Cotabato. Thus, the claim of respondent that he can exercise his notarial commission in Midsayap, Cotabato because Cotabato City is part of the province of Cotabato is absolutely devoid of merit.

Further, evidence on record also shows that there are several documents which the respondent's wife has herself notarized. Respondent justifies that he cannot be blamed for the act of his wife as he did not authorize the latter to notarize documents in his absence. According to him[,] he even scolded and told his wife not to do it anymore as it would affect his profession.

Likewise, evidence reveals that respondent notarized in 2004 a Deed of Donation (Rollo, p. 79) wherein, (sic) Honorata Rosel (Honorata Rosil) one of the affiants therein, was already dead at the time of notarization as shown in a Certificate of Death (Rollo, p.80) issued by the Civil Registrar General of Libungan, Cotabato.

Sec. 2, (b), Rule IV of the 2004 Rules on Notarial Practice provides, thus[:]

"A person shall not perform a notarial act if the person involved as signatory to the instrument or document (1) is not in the notary's presence personally at the time of the notarization; and (2) is not personally known to the notary public through competent evidence of identity as defined by these Rules."

Clearly, in notarizing a Deed of Donation without even determining the presence or qualifications of affiants therein, respondent only shows his gross negligence and ignorance of the provisions of the 2004 Rules on Notarial Practice.

Furthermore, respondent claims that he, being a lawyer in good standing, has the right to practice his profession including notarial acts in the entire Philippines. This statement is barren of merit.

While it is true that lawyers in good standing are allowed to engage in the practice of law in the Philippines.(sic) However, not every lawyer even in good standing can perform notarial functions without having been commissioned as notary public as specifically provided for under the 2004 Rules on Notarial Practice. He must have submitted himself to the commissioning court by filing his petition for issuance of his notarial (sic) Notarial Practice. The commissioning court may or may not grant the said petition if in his sound discretion the petitioner does not meet the required qualifications for [a] Notary Public. Since respondent herein did not submit himself to the procedural rules for the issuance of the notarial commission, he has no reason at all to claim that he can perform notarial act[s] in the entire country for lack of authority to do so.

Likewise, contrary to the belief of respondent, complainant being the commissioning court in Midsayap, Cotabato has the authority under Rule XI of the 2004 Rules on Notarial Practice to monitor the duties and responsibilities including liabilities, if any, of a notary public commissioned or those performing notarial acts without authority in her territorial jurisdiction.

ISSUE

Whether or not respondent is administratively liable. (YES)

RULING

SC adopts the findings of the OBC. After a careful review of the records and evidence, there is no doubt that Atty. Quintana violated the 2004 Rules on Notarial Practice and the Code of Professional Responsibility when he committed the following acts: (1) he notarized documents outside the area of his commission as a notary public; (2) he performed notarial acts with an expired commission; (3) he let his wife notarize documents in his absence; and (4) he notarized a document where one of the signatories therein was already dead at that time.

The act of notarizing documents outside one's area of commission is not to be taken lightly. Aside from being a violation of Sec. 11 of the 2004 Rules on Notarial Practice, it also partakes of malpractice of law and falsification. Notarizing documents with an expired commission is a violation of the lawyer's oath to obey the laws, more specifically, the 2004 Rules on Notarial Practice. Since the public is deceived into believing that he has been duly commissioned, it also amounts to indulging in deliberate falsehood, which the lawyer's oath proscribes. Notarizing documents without the presence of the signatory to the document is a violation of Sec. 2(b)(1),

Rule IV of the 2004 Rules on Notarial Practice,³² Rule 1.01 of the Code of Professional Responsibility, and the lawyer's oath which unconditionally requires lawyers not to do or declare any falsehood. Finally, Atty. Quintana is personally accountable for the documents that he admitted were signed by his wife. He cannot relieve himself of liability by passing the blame to his wife. He is, thus, guilty of violating Canon 9 of the Code of Professional Responsibility, which requires lawyers not to directly or indirectly assist in the unauthorized practice of law.

All told, Atty. Quintana fell miserably short of his obligation under Canon 7 of the Code of Professional Responsibility, which directs every lawyer to uphold at all times the integrity and dignity of the legal profession.

That Atty. Quintana relies on his notarial commission as the sole source of income for his family will not serve to lessen the penalty that should be imposed on him. On the contrary, he should be reminded that a notarial commission should not be treated as a money-making venture. It is a privilege granted only to those who are qualified to perform duties imbued with public interest. As we have declared on several occasions, notarization is not an empty, meaningless, routinary act. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. The protection of that interest necessarily requires that those not qualified or authorized to act must be prevented from imposing upon the public, the courts, and the administrative offices in general. It must be underscored that notarization by a notary public converts a private document into a public document, making that document admissible in evidence without further proof of the authenticity thereof.

7. *Meneses v. Venturozo* G.R. No. 172196, October 19, 2011.

ADELAIDA MENESES (deceased), substituted by her heir MARILYN M. CARBONEL-GARCIA, Petitioner, vs. ROSARIO G. VENTUROZO, Respondent. G.R. No. 172196, THIRD DIVISION, October 19, 2011, PERALTA, J.

The necessity of a public document for contracts which transmit or extinguish real rights over immovable property, as mandated by Article 1358 of the Civil Code is only for convenience; it is not essential for validity or enforceability. As notarized documents, Deeds of Absolute Sale carry evidentiary weight conferred upon them with respect to their due execution and enjoy the presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to falsity. The presumptions that attach to notarized documents can be affirmed only so long as it is beyond dispute that the notarization was regular. A defective notarization will strip the document of its public character and reduce it to a private instrument. Consequently, when there is a defect in the notarization of a document, the clear and convincing evidentiary standard normally attached to a duly-notarized document is dispensed with, and the measure to test the validity of such document is preponderance of evidence.

In this case, it should be pointed out that contrary to the finding of the Court of Appeals, the Deed of Sale dated June 20, 1966 did not comply with the formalities

required by law, specifically Act No. 496, otherwise known as *The Land Registration Act*;

Section 127. *Deeds, conveyances, mortgages, leases, releases, and discharges affecting lands, whether registered under this Act or unregistered, shall be sufficient in law when made substantially in accordance with the following forms, and shall be as effective to convey, encumber, lease, release, discharge, or bind the lands as though made in accordance with the more prolix form heretofore in use: Provided, That every such instrument shall be signed by the person or persons executing the same, in the presence of two witnesses, who shall sign the instrument as witnesses to the execution thereof, and shall be acknowledged to be his or their free act and deed by the person or persons executing the same, before the judge of a court of record or clerk of a court of record, or a notary public, or a justice of the peace, who shall certify to such acknowledgment x x x*

In the Deed of Absolute Sale dated June 20, 1966, the Notary Public signed his name as one of the two witnesses to the execution of the said deed; hence, there was actually only one witness thereto. Moreover, the residence certificate of petitioner was issued to petitioner and then it was given to the Notary Public the day after the execution of the deed of sale and notarization; hence, the number of petitioner's residence certificate and the date of issuance (June 21, 1966) thereof was written on the Deed of Absolute Sale by the Notary Public on June 21, 1966, after the execution and notarization of the said deed on June 20, 1966.³⁴ Considering the defect in the notarization, the Deed of Absolute Sale dated June 20, 1966 cannot be considered a public document, but only a private document, and the evidentiary standard of its validity shall be based on preponderance of evidence.

The Court finds the Notary Public's testimony self-serving and unreliable, because although he testified that petitioner was the one who submitted her residence certificate to him on June 21, 1966, the next day after the Deed of Absolute Sale was executed on June 20, 1966, Crescencia de Guzman, respondent's mother, testified that she and her husband got the residence certificate from petitioner and gave it to the Notary Public on June 21, 1966. Thus, it is doubtful whether the Notary Public really knew the identity of the vendor who signed the Deed of Absolute Sale dated June 20, 1966.

FACTS

On June 8, 1988, plaintiff Rosario G. Venturozo, *respondent herein*, filed a Complaint for "ownership, possession x x x and damages" in the RTC of Dagupan City against defendant Adelaida Meneses, *petitioner herein*, alleging that she, Venturozo, is the absolute owner of an untitled coconut land, containing an area of 2,109 square meters, situated at Embarcadero, Mangaldan, Pangasinan, and declared under Tax Declaration No. 239. Plaintiff alleged that she purchased the property from the spouses Basilio de Guzman and Crescencia Abad on January 31, 1973 as evidenced by a Deed of Absolute Sale, and that the vendors, in turn, purchased the property from defendant (Meneses) as evidenced by a Deed of Absolute Sale dated June 20, 1966. Plaintiff alleged that she has been in possession

of the land until May 1983 when defendant with some armed men grabbed possession of the land and refused to vacate despite repeated demands prompting her to engage the services of counsel.

In her Answer, defendant Adelaida Meneses stated that plaintiff is the daughter of Basilio de Guzman, the vendee in the Deed of Absolute Sale dated June 20, 1966 that was purportedly executed by her (defendant) covering the subject property. Defendant alleged that she never signed any Deed of Absolute Sale dated June 20, 1966, and that the said deed is a forgery. Defendant also alleged that she never appeared before any notary public, and she did not obtain a residence certificate; hence, her alleged sale of the subject property to Basilio de Guzman is null and void ab initio. Consequently, the Deed of Absolute Sale dated January 31, 1973, executed by Basilio de Guzman in favor of plaintiff, covering the subject property, is likewise null and void. Defendant stated that she acquired the subject property from her deceased father and she has been in possession of the land for more than 30 years in the concept of owner. Plaintiff's allegation that she (defendant) forcibly took possession of the land is a falsehood. Defendant stated that this is the fourth case the plaintiff filed against her concerning the land in question.

In her Counterclaim, defendant stated that in view of the nullity of the falsified Deed of Absolute Sale of the subject property, and the fact that plaintiff and her father Basilio de Guzman had never been in actual possession of the property, plaintiff is under legal obligation to execute a deed of reconveyance over the said property in her favor.

RTC rendered judgement in favor of Adelaida Meneses, declaring the Deed of Absolute and Definite Sale dated June 20, 1966 and the Deed of Absolute and Definite Sale dated January 31, 1973 null and void ab initio; declaring the defendant Adelaida Meneses as the owner of the property in question; and ordering Rosario Venturozo to execute a Deed of Reconveyance in favor of Meneses.

The trial court found that Adelaida Meneses inherited the land in dispute from her father, Domingo Meneses; that she did not sell her property to Basilio de Guzman in 1966; and that the signature of Adelaida Meneses on the Deed of Absolute Sale dated June 20, 1966 is a forgery. Said signature being very much different from her specimen signatures and those appearing in the records of Civil Case No. 1096 in the Municipal Trial Court of Mangaldan. It held that since there was no valid transfer of the property by Adelaida Meneses to Basilio de Guzman, the conveyance of the same property in 1973 by Basilio de Guzman to his daughter, Rosario G. Venturozo, was also invalid. The trial court stated that the claim of plaintiff Rosario G. Venturozo, that her parents, Spouses Basilio and Crescencia de Guzman, purchased from defendant Adelaida Meneses the subject property in 1966, is negated by defendant's continued possession of the land and she gathered the products therefrom.

On appeal, CA reversed the decision of RTC. The Court of Appeals stated that Adelaida Meneses failed to prove by clear and convincing evidence that her signature on the Deed of Absolute Sale dated June 20, 1966 was a forgery. Instead, she admitted on direct examination that her signature on the Deed of Absolute Sale was genuine

The Court of Appeals also stated that mere variance of signatures cannot be considered as conclusive proof that the same were forged, as forgery cannot be presumed. Appellee Adelaida Meneses should have produced specimen signatures appearing on documents executed in or about the year 1966 for a better comparison and analysis.

The Court of Appeals held that a notarized document, like the questioned Deed of Absolute Sale dated June 20, 1966, has in its favor the presumption of regularity, and to overcome the same, there must be evidence that is clear, convincing and more than merely preponderant; otherwise, the document should be upheld. Moreover, Atty. Abelardo G. Biala – the notary public before whom the questioned Deed of Sale was acknowledged – testified and confirmed its genuineness and due execution, particularly the signature in question. The appellate court stated that as against appellee Adelaida Meneses' version, Atty. Biala's testimony, that appellee appeared before him and acknowledged that the questioned deed was her free and voluntary act, is more credible. The testimony of a notary public enjoys greater credence than that of an ordinary witness.

ISSUE

Whether or not CA is correct in reversing the decision of RTC on the basis of the notary public's testimony. (NO)

RULING

The necessity of a public document for contracts which transmit or extinguish real rights over immovable property, as mandated by Article 1358 of the Civil Code is only for convenience; it is not essential for validity or enforceability. As notarized documents, Deeds of Absolute Sale carry evidentiary weight conferred upon them with respect to their due execution and enjoy the presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to falsity. The presumptions that attach to notarized documents can be affirmed only so long as it is beyond dispute that the notarization was regular. A defective notarization will strip the document of its public character and reduce it to a private instrument. Consequently, when there is a defect in the notarization of a document, the clear and convincing evidentiary standard normally attached to a duly-notarized document is dispensed with, and the measure to test the validity of such document is preponderance of evidence.

In this case, it should be pointed out that contrary to the finding of the Court of Appeals, the Deed of Sale dated June 20, 1966 did not comply with the formalities required by law, specifically Act No. 496, otherwise known as The Land Registration Act, which took effect on January 1, 1903, as Section 127 of the Act provides:

Section 127. Deeds, conveyances, mortgages, leases, releases, and discharges affecting lands, whether registered under this Act or unregistered, shall be sufficient in law when made substantially in accordance with the following forms, and shall be as effective to convey, encumber, lease, release, discharge, or

bind the lands as though made in accordance with the more prolix form heretofore in use: Provided, That every such instrument shall be signed by the person or persons executing the same, in the presence of two witnesses, who shall sign the instrument as witnesses to the execution thereof, and shall be acknowledged to be his or their free act and deed by the person or persons executing the same, before the judge of a court of record or clerk of a court of record, or a notary public, or a justice of the peace, who shall certify to such acknowledgment x x x

In the Deed of Absolute Sale dated June 20, 1966, the Notary Public signed his name as one of the two witnesses to the execution of the said deed; hence, there was actually only one witness thereto. Moreover, the residence certificate of petitioner was issued to petitioner and then it was given to the Notary Public the day after the execution of the deed of sale and notarization; hence, the number of petitioner's residence certificate and the date of issuance (June 21, 1966) thereof was written on the Deed of Absolute Sale by the Notary Public on June 21, 1966, after the execution and notarization of the said deed on June 20, 1966.³⁴ Considering the defect in the notarization, the Deed of Absolute Sale dated June 20, 1966 cannot be considered a public document, but only a private document, and the evidentiary standard of its validity shall be based on preponderance of evidence.

Section 20, Rule 132 of the Rules of Court provides that before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either: (a) by anyone who saw the document executed or written; or (b) by evidence of the genuineness of the signature or handwriting of the maker.

In regard to the genuineness of petitioner's signature appearing on the Deed of Absolute Sale dated June 20, 1966, the Court agrees with the trial court that her signature therein is very much different from her specimen signatures and those appearing in the pleadings of other cases filed against her, even considering the difference of 17 years when the specimen signatures were made. Hence, the Court rules that petitioner's signature on the Deed of Absolute Sale dated June 20, 1966 is a forgery.

The Court finds the Notary Public's testimony self-serving and unreliable, because although he testified that petitioner was the one who submitted her residence certificate to him on June 21, 1966, the next day after the Deed of Absolute Sale was executed on June 20, 1966, Crescencia de Guzman, respondent's mother, testified that she and her husband got the residence certificate from petitioner and gave it to the Notary Public on June 21, 1966. Thus, it is doubtful whether the Notary Public really knew the identity of the vendor who signed the Deed of Absolute Sale dated June 20, 1966.

The Court notes that the trial court found petitioner and her testimony to be credible. It is a well-settled doctrine that findings of trial courts on the credibility of witnesses deserve a high degree of respect. Having observed the deportment of witnesses during the trial, the trial judge is in a better position to determine the issue of credibility.

In fine, the preponderance of evidence is with petitioner. The decision of the CA is reversed and set aside, the decision of the RTC is reinstated.

8. Gonzales v. Padiernos (2008).

ZENAIDA B. GONZALES, *Petitioner*, v. ATTY. NARCISO PADIERNOS, *Respondent*.
A.C. No. 6713, SECOND DIVISION, December 8, 2008, BRION, J.

Rule II of the 2004 Rules of Notarial Practice provides:

SECTION 1. Acknowledgment. - *"Acknowledgment" refers to an act in which an individual on a single occasion:*

- (a) *appears in person before the notary public and present an integrally complete instrument on document;*
- (b) *is attested to be personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and*
- (c) *represents to the notary public that the signature on the instrument or document was voluntarily affixed by him for the purpose stated in the instrument or document, declares that he has executed the instrument or document as his free and voluntary act and deed, and, if he acts in a particular representative capacity that he has the authority to sign in that capacity."*

Under the given facts, the respondent clearly failed to faithfully comply with the foregoing rules when he notarized the three documents subject of the present complaint. The respondent did not know the complainant personally, yet he did not require proof of identity from the person who appeared before him and executed and authenticated the three documents. The IBP Report observed that had the respondent done so, "the fraudulent transfer of complainant's property could have been prevented."

FACTS

The complainant alleged in her complaint for disbarment against respondent that on three (3) separate occasions the respondent notarized the following documents: (1) a Deed of Absolute Sale dated July 16, 1979 which disposed of her property in Jaen, Nueva Ecija in favor of Asterio, Estrella and Rodolfo, all surnamed Gonzales; (2) a Subdivision Agreement dated September 7, 1988 which subdivided her property among the same persons; and (3) an affidavit of Non-Tenancy dated March 3, 1988 which certified that her property was not tenanted. All three documents were purportedly signed and executed by complainant. All three documents carried forged signatures and falsely certified that the complainant personally appeared before the respondent and that she was "known to me (the respondent) to be the same person who executed the foregoing and acknowledged to me that the same is her own free act and voluntary deed." The complainant claimed that she never appeared before respondent on the dates the documents were notarized because she was then in the United States.

The respondent filed his Answer on June 16, 2003. He admitted that he notarized the three documents, but denied the "unfounded and malicious imputation" that the three documents contained the complainant's forged signatures. On the false certification aspect, he countered that "with the same or identical facts obtained in the instant case, the Highest Tribunal, the Honorable Supreme Court had this to say - That it is not necessary to know the signatories personally, provided he or she or they signed in the presence of the Notary, alleging that they are the same persons who signed the names."

On December 19, 2003, complainant amended her complaint. This time, she charged respondent with gross negligence and failure to exercise the care required by law in the performance of his duties as a notary public, resulting in the loss of her property in Jaen, Nueva Ecija. The complainant claimed that because of the respondent's negligent acts, title to her property was transferred to Asterio, Estrella, and Rodolfo Gonzales. She reiterated that when the three documents disposing of her property were notarized, she was out of the country. Estrella Gonzales Mendrano, one of the vendees, was also outside the country as shown by a certification issued by the Bureau of Immigration and Deportation (BID) on September 14, 1989. She likewise claimed that Guadalupe Ramirez Gonzales (the widow of Rodolfo Gonzales, another vendee) executed an affidavit describing the "Deed of Absolute Sale and Subdivision Agreement" as spurious and without her husband's participation. The affidavit further alleged that the complainant's signatures were forged and the respondent did not ascertain the identity of the person who came before him and posed as vendor despite the fact that a large tract of land was being ceded and transferred to the vendees.

The complainant prayed for the revocation of the respondent's notarial commission and his suspension from the practice of law due to "his deplorable failure to hold the importance of the notarial act and observe [with] utmost care the basic requirements in the performance of his duties as a notary public which include the ascertainment that the person who signed the document as the very person who executed and personally appeared before him."

In her report, Commissioner Milagros V. San Juan (Commissioner San Juan) categorically noted the respondent's admission that he notarized the three documents in question and that complainant's documentary evidence supported her claim that she never executed these documents and never appeared before the respondent to acknowledge the execution of these documents. These documentary evidence consisted of the certification from the BID that complainant did not travel to the Philippines on the dates the documents were allegedly notarized; and the affidavit of Guadalupe Ramirez Gonzales described above.

Commissioner San Juan found that the respondent had no participation in the preparation or knowledge of the falsity of the spurious documents, and found merit in the complainant's contention that the respondent "was negligent in the performance of his duties as a notary public." ***She faulted the respondent for not demanding proof of the identity of the person who claimed to be complainant Zenaida Gonzales when the documents were presented to him for notarization.*** She concluded that the respondent failed to exercise the diligence required of him as

notary public to ensure the integrity of the presented documents. She recommended that the respondent's notarial commission be revoked and that he be suspended from the practice of law for a period of three months.

ISSUE

Whether or not respondent is administratively liable. (YES)

RULING

Rule II of the 2004 Rules of Notarial Practice provides:

SECTION 1. Acknowledgment. - "Acknowledgment" refers to an act in which an individual on a single occasion:

(a) appears in person before the notary public and present an integrally complete instrument on document;

(b) is attested to be personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and

(c) represents to the notary public that the signature on the instrument or document was voluntarily affixed by him for the purpose stated in the instrument or document, declares that he has executed the instrument or document as his free and voluntary act and deed, and, if he acts in a particular representative capacity that he has the authority to sign in that capacity."

Under the given facts, the respondent clearly failed to faithfully comply with the foregoing rules when he notarized the three documents subject of the present complaint. The respondent did not know the complainant personally, yet he did not require proof of identity from the person who appeared before him and executed and authenticated the three documents. The IBP Report observed that had the respondent done so, "the fraudulent transfer of complainant's property could have been prevented."

Through his negligence in the performance of his duty as a notary public resulting in the loss of property of an unsuspecting private citizen, the respondent eroded the complainant's and the public's confidence in the notarial system; he brought disrepute to the system.

The respondent should be reminded that a notarial document is, on its face and by authority of law, entitled to full faith and credit. For this reason, notaries public must observe utmost care in complying with the formalities intended to ensure the integrity of the notarized document and the act or acts it embodies.

We are not persuaded by the respondent's argument that this Court, in a similar case or one with identical facts, said "that it is not necessary to know the signatories personally provided he or she or they signed in the presence of the notary, alleging that they are the persons who signed the names." The respondent not only failed to identify the cited case; he apparently also cited it out of context. A notary public is

duty bound to require the person executing a document to be personally present, and to swear before him that he is the person named in the document and is voluntarily and freely executing the act mentioned in the document. The notary public faithfully discharges this duty by at least verifying the identity of the person appearing before him based on the identification papers presented.

WHEREFORE, premises considered, **ATTY. NARCISO PADIERNOS** of 103 Del Pilar Street, Cabanatuan City, is **SUSPENDED** from the practice of law for a period of **THREE (3) MONTHS**, and his notarial commission is hereby **REVOKED**.

9. Jandoquile v. Revilla, A.C. No. 9514, April 10, 2013.

BERNARD N. JANDOQUILE, Complainant, v. ATTY. QUIRINO P. REVILLA, JR., Respondent. A.C. No. 9514, FIRST DIVISION, April 10, 2013, VILLARAMA, JR., J.

Atty. Revilla, Jr. readily admitted that he notarized the complaint-affidavit signed by his relatives within the fourth civil degree of affinity in violation of Section 3(c), Rule IV of the 2004 Rules on Notarial Practice. Given the clear provision of the disqualification rule, it behooved upon Atty. Revilla, Jr. to act with prudence and refuse notarizing the document. We cannot agree with his proposition that we consider him to have acted more as counsel of the affiants, not as notary public, when he notarized the complaint-affidavit. The notarial certificate at the bottom of the complaint-affidavit shows his signature as a notary public, with a notarial commission valid until December 31, 2012. He cannot therefore claim that he signed it as counsel of the three affiants.

On the second charge, we agree with Atty. Revilla, Jr. that he cannot be held liable. If the notary public knows the affiants personally, he need not require them to show their valid identification cards. This rule is supported by the definition of a "jurat" under Section 6, Rule II of the 2004 Rules on Notarial Practice. A "jurat" refers to an act in which an individual on a single occasion: (a) appears in person before the notary public and presents an instrument or document; (b) is personally known to the notary public or identified by the notary public through competent evidence of identity; (c) signs the instrument or document in the presence of the notary; and (d) takes an oath or affirmation before the notary public as to such instrument or document.

In this case, Heneraline Brosas is a sister of Atty. Revilla, Jr.'s wife; Herizalyn Brosas Pedrosa is his wife's sister-in-law; and Elmer Alvarado is the live-in houseboy of the Brosas family. Atty. Revilla, Jr. knows the three affiants personally. Thus, he was justified in no longer requiring them to show valid identification cards. But Atty. Revilla, Jr. is not without fault for failing to indicate such fact in the "jurat" of the complaint-affidavit. No statement was included therein that he knows the three affiants personally. Let it be impressed that Atty. Revilla, Jr. was clearly disqualified to notarize the complaint-affidavit of his relatives within the fourth civil degree of affinity. While he has a valid defense as to the second charge, it does not exempt him from liability for violating the disqualification rule.

FACTS

Complainant Bernard N. Jandoquile filed a case of disbarment against respondent Atty. Quirino P. Revilla, Jr. The facts are undisputed:

Atty. Revilla, Jr. notarized a complaint-affidavit signed by Heneraline L. Brosas, Herizalyn Brosas Pedrosa and Elmer L. Alvarado. Heneraline Brosas is a sister of Heizel Wynda Brosas Revilla, Atty. Revilla, Jr.'s wife. Jandoquile complains that Atty. Revilla, Jr. is disqualified to perform the notarial act per Section 3(c), Rule IV of the 2004 Rules on Notarial Practice which reads as follows:

SEC. 3. Disqualifications. – A notary public is disqualified from performing a notarial act if he:

xxxx

(c) is a spouse, common-law partner, ancestor, descendant, or relative by affinity or consanguinity of the principal within the fourth civil degree.

Jandoquile also complains that Atty. Revilla, Jr. did not require the three affiants in the complaint-affidavit to show their valid identification cards.

In his comment, Atty. Revilla, Jr. did not deny but admitted Jandoquile’s material allegations. The issue, according to Atty. Revilla, Jr., is whether the single act of notarizing the complaint-affidavit of relatives within the fourth civil degree of affinity and, at the same time, not requiring them to present valid identification cards is a ground for disbarment. He submits that his act is not a ground for disbarment. He also says that he acts as counsel of the three affiants; thus, he should be considered more as counsel than as a notary public when he notarized their complaint-affidavit. He did not require the affiants to present valid identification cards since he knows them personally. Heneraline Brosas and Herizalyn Brosas Pedrosa are sisters-in-law while Elmer Alvarado is the live-in houseboy of the Brosas family.

ISSUE

Whether or not Atty. Revilla, Jr. violated the disqualification rule under Section 3(c), Rule IV of the 2004 Rules on Notarial Practice (YES) and whether it is a ground for disbarment. (NO)

RULING

Indeed, Atty. Revilla, Jr. violated the disqualification rule under Section 3(c), Rule IV of the 2004 Rules on Notarial Practice. The Court agrees, however, that his violation is not a sufficient ground for disbarment.

Atty. Revilla, Jr.’s violation of the aforesaid disqualification rule is beyond dispute. Atty. Revilla, Jr. readily admitted that he notarized the complaint-affidavit signed by his relatives within the fourth civil degree of affinity in violation of Section 3(c), Rule IV of the 2004 Rules on Notarial Practice. Given the clear provision of the disqualification rule, it behooved upon Atty. Revilla, Jr. to act with prudence and

refuse notarizing the document. We cannot agree with his proposition that we consider him to have acted more as counsel of the affiants, not as notary public, when he notarized the complaint-affidavit. The notarial certificate at the bottom of the complaint-affidavit shows his signature as a notary public, with a notarial commission valid until December 31, 2012. He cannot therefore claim that he signed it as counsel of the three affiants.

On the second charge, we agree with Atty. Revilla, Jr. that he cannot be held liable. If the notary public knows the affiants personally, he need not require them to show their valid identification cards. This rule is supported by the definition of a "jurat" under Section 6, Rule II of the 2004 Rules on Notarial Practice. A "jurat" refers to an act in which an individual on a single occasion: (a) appears in person before the notary public and presents an instrument or document; (b) is personally known to the notary public or identified by the notary public through competent evidence of identity; (c) signs the instrument or document in the presence of the notary; and (d) takes an oath or affirmation before the notary public as to such instrument or document.

In this case, Heneraline Brosas is a sister of Atty. Revilla, Jr.'s wife; Herizalyn Brosas Pedrosa is his wife's sister-in-law; and Elmer Alvarado is the live-in houseboy of the Brosas family. Atty. Revilla, Jr. knows the three affiants personally. Thus, he was justified in no longer requiring them to show valid identification cards. But Atty. Revilla, Jr. is not without fault for failing to indicate such fact in the "jurat" of the complaint-affidavit. No statement was included therein that he knows the three affiants personally. Let it be impressed that Atty. Revilla, Jr. was clearly disqualified to notarize the complaint-affidavit of his relatives within the fourth civil degree of affinity. While he has a valid defense as to the second charge, it does not exempt him from liability for violating the disqualification rule.

WHEREFORE, respondent Atty. Quirino P. Revilla, Jr., is **REPRIMANDED** and **DISQUALIFIED** from being commissioned as a notary public, or from performing any notarial act if he is presently commissioned as a notary public, for a period of three (3) months. Atty. Revilla, Jr. is further **DIRECTED** to **INFORM** the Court, through an affidavit, once the period of his disqualification has lapsed.

10. Mercedita De Jesus v. Atty. Juvy Mell Sanchez-Malit, A.C. No. 6470, July 8, 2014.

MERCEDITA DE JESUS, complainant, -versus- ATTY. JUVY MELL SANCHEZ-MALIT, respondent.

A.C. No. 6470, EN BANC, July 8, 2014, SERENO, C.J.

The Court has repeatedly stressed that notarization is not an empty, meaningless routinary act, but one invested with substantive public interest. Notarization converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. Thus, a notarized document is, by law, entitled to full faith and credit upon its face. It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his notarial duties;

otherwise, the public's confidence in the integrity of a notarized document would be undermined.

Where the notary public admittedly has personal knowledge of a false statement or information contained in the instrument to be notarized, yet proceeds to affix the notarial seal on it, the Court must not hesitate to discipline the notary public accordingly as the circumstances of the case may dictate. Otherwise, the integrity and sanctity of the notarization process may be undermined, and public confidence in notarial documents diminished. In this case, respondent fully knew that complainant was not the owner of the mortgaged market stall. That complainant comprehended the provisions of the real estate mortgage contract does not make respondent any less guilty. If at all, it only heightens the latter's liability for tolerating a wrongful act. Clearly, respondent's conduct amounted to a breach of Canon 1 and Rules 1.01 and 1.02 of the Code of Professional Responsibility.

FACTS

In the Affidavit-Complaint filed by complainant before the Office of the Bar Confidant, she alleged that respondent had drafted and notarized a Real Estate Mortgage of a public market stall that falsely named the former as its absolute and registered owner. As a result, the mortgagee sued complainant for perjury and for sum of money. She claimed that respondent was a consultant of the local government unit of Dinalupihan, Bataan, and was therefore aware that the market stall was government-owned.

Prior thereto, respondent had also notarized two contracts that caused complainant legal and financial problems. One contract was a lease agreement notarized by respondent sometime in without the signature of the lessees. The other contract was a sale agreement over a property covered by a Certificate of Land Ownership Award (CLOA) which complainant entered into. Respondent drafted and notarized said agreement, but did not advise complainant that the property was still covered by the period within which it could not be alienated.

The IBP Investigating Commissioner recommended the immediate revocation of the Notarial Commission of respondent and her disqualification as notary public for two years for her violation of her oath as such by notarizing documents without the signature of the parties who had purportedly appeared before her. The IBP Board of Governors, in its Resolution upheld the findings of the IBP.

ISSUE

Whether or not respondent Atty. Sanchez-Malit violated Canon 1 and Rules 1.01, 1.02, and 10.01 of the Code of Professional Responsibility as well as her oath as notary public. (YES)

RULING

The Court finds that she committed misconduct and grievously violated her oath as a notary public.

The important role a notary public performs cannot be overemphasized. The Court has repeatedly stressed that notarization is not an empty, meaningless routinary act, but one invested with substantive public interest. Notarization converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. Thus, a notarized document is, by law, entitled to full faith and credit upon its face. It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his notarial duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined.

Where the notary public admittedly has personal knowledge of a false statement or information contained in the instrument to be notarized, yet proceeds to affix the notarial seal on it, the Court must not hesitate to discipline the notary public accordingly as the circumstances of the case may dictate. Otherwise, the integrity and sanctity of the notarization process may be undermined, and public confidence in notarial documents diminished. In this case, respondent fully knew that complainant was not the owner of the mortgaged market stall. That complainant comprehended the provisions of the real estate mortgage contract does not make respondent any less guilty. If at all, it only heightens the latter's liability for tolerating a wrongful act. Clearly, respondent's conduct amounted to a breach of Canon 1 and Rules 1.01 and 1.02 of the Code of Professional Responsibility.

It even appears that said lease agreement is not a rarity in respondent's practice as a notary public. Records show that on various occasions from 2002 to 2004, respondent has notarized 22 documents that were either unsigned or lacking signatures of the parties. Technically, each document may be a ground for disciplinary action, for it is the duty of a notarial officer to demand that a document be signed in his or her presence.

A notary public should not notarize a document unless the persons who signed it are the very same ones who executed it and who personally appeared before the said notary public to attest to the contents and truth of what are stated therein. Thus, in acknowledging that the parties personally came and appeared before her, respondent also violated Rule 10.01 of the Code of Professional Responsibility and her oath as a lawyer that she shall do no falsehood.

Certainly, respondent is unfit to continue enjoying the solemn office of a notary public. In several instances, the Court did not hesitate to disbar lawyers who were found to be utterly oblivious to the solemnity of their oath as notaries public. Even so, the rule is that disbarment is meted out only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court and the Court will not disbar a lawyer where a lesser penalty will suffice to accomplish the desired end. The blatant disregard by respondent of her basic duties as a notary public warrants the less severe punishment of suspension from the practice of law and perpetual disqualification to be commissioned as a notary public.

11. Imelda Cato Gaddi v. Atty. Lope M. Velasco, A.C. No. 8637, September 15, 2014.

IMELDA GADDI, complainant, -versus- ATTY. LOPE M. VELASCO, respondent.

The 2004 Rules on Notarial Practice provides that a notary public should not notarize a document unless the signatory to the document is in the notary's presence personally at the time of the notarization, and personally known to the notary public or otherwise identified through competent evidence of identity. At the time of notarization, the signatory shall sign or affix with a thumb or mark the notary public's notarial register. The purpose of these requirements is to enable the notary public to verify the genuineness of the signature and to ascertain that the document is the signatory's free act and deed. If the signatory is not acting of his or her own free will, a notary public is mandated to refuse to perform a notarial act. A notary public is also prohibited from affixing an official signature or seal on a notarial certificate that is incomplete.

Velasco did not comply with the most basic function that a notary public must do, that is, to require the presence of Gaddi; otherwise, he could have ascertained that the handwritten admission was executed involuntarily and refused to notarize the document. Furthermore, Velasco affixed his signature in an incomplete notarial certificate. For notarizing a document without ascertaining the identity and voluntariness of the signatory to the document, for affixing his signature in an incomplete notarial certificate, and for dishonesty in his pleadings, Velasco failed to discharge his duties as notary public and breached Canon 1 and Rule 1.01 of the Code of Professional Responsibility.

FACTS

According to Gaddi, Operations and Accounting Manager of the Bert Lozada Swimming School (BLSS), broached the idea of opening a branch of BLSS in Nueva Vizcaya to Angelo Lozada (Angelo), the Chief Operations Officer. Believing that Angelo agreed, Gaddi opened a BLSS in Solano. However, Angelo informed the management that he did not authorize Solano. Upon Angelo's complaint, the police officers apprehended the swimming instructors of BLSS in Solano. Gaddi was informed of the apprehension. Worried, Gaddi pleaded with Angelo's wife permission to leave the office and proceed to Nueva Vizcaya. Instead of acceding to her plea, they commanded Gaddi to make a handwritten admission that the BLSS in Solano was unauthorized. Gaddi conceded in doing the handwritten admission. Subsequently, Gaddi found out that Angelo filed a complaint against her regarding the BLSS in Solano using her handwritten admission, which was already notarized by Velasco. Gaddi filed the present complaint against Velasco for violation of the 2004 Rules on Notarial Practice, specifically Rule IV, Section 2 (b) and Rule VI, Section 3.

Gaddi denied that she personally appeared before Velasco to have her handwritten admission notarized. She alleged that she did not consent to its notarization nor did she personally know him, give any competent evidence of identity or sign the notarial register. On the other hand, respondent contends that He alleged that Gaddi appeared before him in his notarial office and requested for the notarization of a

four-page handwritten document. He ascertained Gaddi's identity, through two identification cards her BLSS ID and Tax Identification Number (TIN) ID, and that the document was her own. Velasco claimed that Gaddi only denied having the document notarized when she found out that Angelo used the document against her.

ISSUE

Whether or not Velasco violated Rule IV, Section 2(b) and Rule VI, Section 3 of the 2004 Rules on Notarial Practice. (YES)

RULING

The 2004 Rules on Notarial Practice provides that a notary public should not notarize a document unless the signatory to the document is in the notary's presence personally at the time of the notarization, and personally known to the notary public or otherwise identified through competent evidence of identity. At the time of notarization, the signatory shall sign or affix with a thumb or mark the notary public's notarial register. The purpose of these requirements is to enable the notary public to verify the genuineness of the signature and to ascertain that the document is the signatory's free act and deed. If the signatory is not acting of his or her own free will, a notary public is mandated to refuse to perform a notarial act. A notary public is also prohibited from affixing an official signature or seal on a notarial certificate that is incomplete.

In the present case, contrary to Velasco's claim that Gaddi appeared before him and presented two identification cards as proof of her identity, the notarial certificate, in rubber stamp, itself indicates: "SUBSCRIBE AND SWORN TO BEFORE ME THIS APR 22, 2010 x x x AT MAKATI CITY. AFFIANT EXHIBITING TO ME HIS/HER C.T.C. NO. _____ ISSUED AT/ON _____." The unfilled spaces clearly establish that Velasco had been remiss in his duty of ascertaining the identity of the signatory to the document. Velasco did not comply with the most basic function that a notary public must do, that is, to require the presence of Gaddi; otherwise, he could have ascertained that the handwritten admission was executed involuntarily and refused to notarize the document. Furthermore, Velasco affixed his signature in an incomplete notarial certificate.

For notarizing a document without ascertaining the identity and voluntariness of the signatory to the document, for affixing his signature in an incomplete notarial certificate, and for dishonesty in his pleadings, Velasco failed to discharge his duties as notary public and breached Canon 1 and Rule 1.01 of the Code of Professional Responsibility.

The Court finds respondent Atty. Lope M. Velasco guilty of violating the 2004 Rules on Notarial Practice and the Code of Professional Responsibility. Accordingly, the Court Suspends him from the practice of law for one year, revokes his incumbent notarial commission, if any, and prohibits him from being commissioned as a notary public for two years, effective immediately, with a stern warning that a repetition of the same or similar offense shall be dealt with more severely.

12. Tenoso v. Atty. Enchavez, A.C. No. 8384, April 11, 2013.

EFIGENIA M. TENOSO, complainant, -versus- ATTY. ANSELMO S. ECHANEZ, respondent.

A.C. No. 8384, EN BANC, April 11, 2013, LEONEN, J.

Respondent failed to present evidence to rebut complainant's allegations. Per Section 1, Rule 131 of the Rules of Court, the burden of proof is vested upon the party who alleges the truth of his claim or defense or any fact in issue. Respondent merely posited that the notarized documents presented by complainant were "tampered and adulterated" or were results of forgery, but he failed to present any proof. Respondent also resorted to a sweeping and unsupported statement that he never notarized any document. Accordingly, the reasonable conclusion is that respondent repeatedly notarized documents without the requisite notarial commission.

Time and again, this Court emphasizes that the practice of law is imbued with public interest and that "a lawyer owes substantial duties not only to his client, but also to his brethren in the profession, to the courts, and to the nation, and takes part in one of the most important functions of the State — the administration of justice — as an officer of the court." Accordingly, "lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity and fair dealing." Similarly, the duties of notaries public are dictated by public policy and impressed with public interest. "Notarization is not a routinary, meaningless act, for notarization converts a private document to a public instrument, making it admissible in evidence without the necessity of preliminary proof of its authenticity and due execution."

FACTS

Tenoso (complainant) filed a complaint against Atty. Anselmo S. Echaney (respondent) alleging that respondent was engaged in practice as a notary public in Cordon, Isabela, without having been properly commissioned by the RTC of Santiago City, Isabela. This is the RTC exercising jurisdiction over the Municipality of Cordon. This alleged act violates Rule III of the 2004 Rules on Notarial Practice (A.M. No. 02-8-13-SC). To support her allegations, complainant attached the following documents to her pleadings:

- a. Two documents signed and issued by RTC Santiago City Executive Judge Efren M. Cacatian bearing the names of commissioned notaries public within the territorial jurisdiction of the RTC of Santiago City for the years 2006 to 2007 and 2007 to 2008. Respondent's name does not appear on either list;
- b. Copies of ten (10) documents that appear to have been notarized by respondent in the years 2006, 2007, and 2008; and
- c. A copy of a certification issued by Judge Cacatian stating that a joint affidavit notarized by respondent in 2008 could not be "authenticated as to respondent's seal and signature as NO Notarial Commission was issued upon him at the time of the document's notarization."

ISSUE

Whether or not respondent violated Rule III of the 2004 Rules on Notarial Practice, Canon 10.01 and Canon 1.01 of the Code of Professional Responsibility. (YES)
(YES)

RULING

Complainant presented evidence supporting her allegation that respondent had notarized various documents in Cordon, Isabela from 2006 to 2008 and that respondent's name does not appear on the list of notaries public commissioned by the RTC of Santiago City, Isabela for the years 2006 to 2007 and 2007 to 2008.

Respondent failed to present evidence to rebut complainant's allegations. Per Section 1, Rule 131 of the Rules of Court, the burden of proof is vested upon the party who alleges the truth of his claim or defense or any fact in issue. Thus, in **Leave Division, Office of Administrative Services, Office of the Court Administrator v. Gutierrez**, where a party resorts to bare denials and allegations and fails to submit evidence in support of his defense, the determination that he committed the violation is sustained. Respondent merely posited that the notarized documents presented by complainant were "tampered and adulterated" or were results of forgery, but he failed to present any proof. Respondent also resorted to a sweeping and unsupported statement that he never notarized any document. Accordingly, the reasonable conclusion is that respondent repeatedly notarized documents without the requisite notarial commission.

Time and again, this Court emphasizes that the practice of law is imbued with public interest and that "a lawyer owes substantial duties not only to his client, but also to his brethren in the profession, to the courts, and to the nation, and takes part in one of the most important functions of the State — the administration of justice — as an officer of the court." Accordingly, "lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity and fair dealing." Similarly, the duties of notaries public are dictated by public policy and impressed with public interest. "Notarization is not a routinary, meaningless act, for notarization converts a private document to a public instrument, making it admissible in evidence without the necessity of preliminary proof of its authenticity and due execution."

In misrepresenting himself as a notary public, respondent exposed party-litigants, courts, other lawyers and the general public to the perils of ordinary documents posing as public instruments. As noted by the Investigating Commissioner, respondent committed acts of deceit and falsehood in open violation of the explicit pronouncements of the Code of Professional Responsibility. Evidently, respondent's conduct falls miserably short of the high standards of morality, honesty, integrity and fair dealing required from lawyers. It is proper that he be sanctioned.

13. Sales v. CA, 211 SCRA 858, 865 (1992).

SEVERO SALES, ESPERANZA SALES BERMUDEZ, *petitioners*, -versus- COURT OF APPEALS and LEONILLO GONZALES, *respondent*.

G.R. No. L-40145, THIRD DIVISION, July 29, 1992, ROMERO, J.

But more revealing is the fact that the deed of sale itself, specifically the notarial acknowledgment thereof, contains a statement that its executors were known to the notary public to be the persons who executed the instrument; that they were "informed by me (notary public) of the contents thereof" and that they acknowledged to the notary public that the instrument was freely and voluntarily executed. Thus, the stark denial of the petitioners, specially Sales, that he executed the deed of sale pales in the face of Malazo's testimony because the testimony of the notary public enjoys greater credence than that of an ordinary witness.

What is important under the Notarial Law is that the notary public concerned has authority to acknowledge the document executed within his territorial jurisdiction. A notarial acknowledgment attaches full faith and credit to the document concerned. It also vests upon the document the presumption of regularity unless it is impugned by strong, complete and conclusive proof. Such kind of proof has not been presented by the petitioners.

FACTS

Severo Sales owned an unregistered parcel of land in Bugallon, Pangasinan. Covered by Tax Declaration No. 5861. Sales mortgaged said property, together with two other parcels of land, to Faustina P. Agpoon and Jose Agpoon to secure the payment of a loan. On October 30, 1957, Tax Declaration No. 5861 was canceled and in lieu hereof, Tax Declaration No. 13647 was issued to Sales. More than a year later, Sales, with the consent of his wife, Margarita Ferrer, donated 900 square meters of the same property in favour of their daughter, petitioner Esperanza Sales Bermudez. The duly notarized deed of donation was presented to the Assessor's Office on the day of its execution. Hence, Tax Declaration No. 13647 was replaced by two tax declarations: Tax Declaration No. 13875 in the name of Esperanza Sales Bermudez for and Tax Declaration No. 13874 in the name of Sales.

As a consequence of a case filed by Faustina P. Agpoon against sometime in January 1959, the mortgaged property of Sales was set for foreclosure. To prevent such foreclosure, Sales requested his friend, Ernesto Gonzales, to pay his total indebtedness of P2,700 to the Agpoon spouses. Ernesto Gonzales acceded to the request and asked Sales and his wife to sign a document transferring the mortgage to him. According to the Sales spouses, they were not given a copy of said document.

A document entitled "Deed of Sale" between Severo Sales and Leonilo Gonzales was registered with the Register of Deeds. In October 1968, Sales received a photostat copy of the deed of sale appearing to have been signed by him and his wife on January 29, 1959 before ex-officio Notary Public Arturo Malazo. The document stated that the Sales spouses had sold the land described under Tax Declaration No. 5861 in consideration of the amount of P4,000 to Leonilo Gonzales, son of Ernesto Gonzales.

Leonilo Gonzales filed an action for illegal detainer against Sales. Before the case could be tried, Sales and his daughter, Esperanza Sales Bermudez filed a complaint for annulment of the deed of sale between Sales and Gonzales on the ground of fraud. Petitioners primarily invoked Art. 1332 of the Civil Code. Petitioners contend that respondent Gonzales failed to prove that the contents of the deed of sale were ever explained to Sales, an illiterate. The Court of First Instance rendered a decision finding that the allegation of fraud was not supported by convincing evidence. The Court of Appeals affirmed the decision of the lower court.

ISSUE

Whether or not the "Deed of Sale" between Severo Sales and Leonilo Gonzales was valid. (YES)

RULING

With regard to the issue of whether or not there was compliance with the provision of Art. 1332 of the Civil Code, before said article may be invoked, it must be convincingly established that the disadvantaged party is unable to read or that the contract involved is written in a language not understood by him. The records of this case, however, show that although Sales did not go to school and knew only how to sign his name, he and his wife had previously entered into contracts written in English: first, when Sales mortgaged his property to Faustina P. Agpoon and second, when he donated a portion of the property involved to his daughter, petitioner Esperanza Sales Bermudez. The court below also noted the fact that the signatures of the Sales spouses in the deed of sale showed the "striking features of the signatures of the intelligent" individuals.

But more revealing is the fact that the deed of sale itself, specifically the notarial acknowledgment thereof, contains a statement that its executors were known to the notary public to be the persons who executed the instrument; that they were "informed by me (notary public) of the contents thereof" and that they acknowledged to the notary public that the instrument was freely and voluntarily executed. When he testified at the hearing, notary public Arturo Malazo stated, "I know Mr. Severo Sales and he appeared before me when I notarized that document." Later, he added that "the document speaks for itself and the witnesses were there and those were the persons present" Thus, the stark denial of the petitioners, specially Sales, that he executed the deed of sale pales in the face of Malazo's testimony because the testimony of the notary public enjoys greater credence than that of an ordinary witness.

What is important under the Notarial Law is that the notary public concerned has authority to acknowledge the document executed within his territorial jurisdiction. **A notarial acknowledgment attaches full faith and credit to the document concerned. It also vests upon the document the presumption of regularity unless it is impugned by strong, complete and conclusive proof.** Such kind of proof has not been presented by the petitioners.

J. Mandatory Continuing Legal Education

- 1) Purpose
- 2) Requirements
- 3) Compliance
- 4) Exemptions
- 5) Sanctions

JUDICIAL ETHICS

I. Sources

- A) New Code of Judicial Conduct for the Philippine Judiciary (Bangalore Draft)
- B) Code of Judicial Conduct

C) Special Laws

II. Administrative Jurisdiction over Judges and Justices (All levels)

III. Disqualification of Judicial Officers (Rule 137)

- A) Compulsory
- B) Voluntary

IV. Initiation of complaint against Judges and Justices

V. Discipline of members of the Judiciary

- A) Supreme Court
- B) Lower court judges and justices of the Court of Appeals, Sandiganbayan and Court of Tax Appeals (Rule 140)
- C) Grounds
- D) Sanctions imposed by the Supreme Court on erring members of the Judiciary

Jurisprudence

1. Gahol v. Riodigue, 64 SCRA 494.
NO AVAILABLE FULL TEXT.
2. Tan v. Rosete, A.M. No. MTJ-04-1563, September 8, 2004 (formerly A.M. OCA IPI No. 02-1207-MTJ).

LUCILA TAN, Complainant, v. Judge MAXWEL S. ROSETE, Respondent. A.M. NO. MTJ-04-1563, SECOND DIVISION, September 8, 2004, PUNO, J.

After a thorough evaluation of the testimonies of all the witnesses, as well as the documentary evidence presented by both parties, we find the complainant's version more trustworthy. Not only did she testify with clarity and in full detail, but she also presented during the investigation the unsigned copy of the draft decision of respondent judge in Criminal Case No. 59440 given to her by a member of his staff. Said documentary evidence supports her allegation that a member of complainant's staff met with her, showed her copies of respondent judge's draft decisions in Criminal Cases Nos. 59440 and 66120, and demanded, in behalf of respondent judge, that she

pays P150,000.00 for the reversal of the disposition of said cases. It would be impossible for complainant to obtain a copy of a judge's draft decision, it being highly confidential, if not through the judge himself or from the people in his office. And an ordinary employee in the court cannot promise a litigant the reversal of a case's disposition if not assured by the judge who drafted the decision.

The respondent's evidence did not overcome the facts proved by complainant. We note that the testimonies of two of respondent's witnesses contradict each other. Fernando Espuerta confirmed complainant's claim that she met respondent judge and his two companions, Espuerta himself and Rodolfo Cea (Buboy), at Sangkalan Restaurant in Quezon City. Rodolfo Cea, on the other hand, denied that he met complainant at Sangkalan Restaurant and swore that he never went out with respondent judge in non-office functions.

Respondent's act of sending a member of his staff to talk with complainant and show copies of his draft decisions, and his act of meeting with litigants outside the office premises beyond office hours violate the standard of judicial conduct required to be observed by members of the Bench. They constitute gross misconduct which is punishable under Rule 140 of the Revised Rules of Court.

FACTS

Lucila Tan filed the instant complaint against Judge Maxwell S. Rosete, former Acting Presiding Judge, Metropolitan Trial Court, Branch 58, San Juan, Metro Manila, for violation of Rule 140 of the Revised Rules of Court and the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019).

The complaint alleged that Lucila Tan was the private complainant in Criminal Case No. 59440 and Criminal Case No. 66120, both entitled *People of the Philippines v. Alfonso Pe Sy* and pending before Branch 58, Metropolitan Trial Court of San Juan, Metro Manila, then presided by respondent judge. Before the cases were decided, respondent judge allegedly sent a member of his staff to talk to complainant. They met at Sangkalan Restaurant along Scout Albano, near Timog Avenue in Quezon City. The staff member told her that respondent was asking for P150,000.00 in exchange for the non-dismissal of the cases. She was shown copies of respondent judge's Decisions in Criminal Cases Nos. 59440 and 66120, both still unsigned, dismissing the complaints against the accused. She was told that respondent judge would reverse the disposition of the cases as soon as she remits the amount demanded. The staff member allowed complainant to keep the copy of the draft decision in Criminal Case No. 59440. Complainant, however, did not accede to respondent's demand because she believed that she had a very strong case, well supported by evidence. The criminal cases were eventually dismissed by respondent judge.

Respondent judge, in his Comment, denied the allegations of complainant. He instead stated that it was complainant who attempted to bribe him in exchange for a favorable decision. She even tried to delay and to derail the promulgation of the decisions in Criminal Cases Nos. 59440 and 66120. Complainant also sought the intervention of then San Juan Mayor, Jinggoy Estrada, to obtain judgment in her favor. Mayor Estrada allegedly talked to him several times to ask him to help

complainant. The former even called him over the phone when he was in New Zealand, persuading him to hold in abeyance the promulgation of the Decisions in said cases. But he politely declined, telling him that there was no sufficient evidence to convict the accused, and moreover, he had already turned over the Decisions to Judge Quilatan for promulgation. Respondent further stated that complainant kept bragging about her close relations with Mayor Estrada who was her neighbor in Greenhills, San Juan, and even insinuated that she could help him get appointed to a higher position provided he decides the suits in her favor. Respondent judge also claimed that complainant offered to give cash for the downpayment of a car he was planning to buy. But he refused the offer. Finally, respondent judge denied that a member of his staff gave complainant a copy of his draft decision in Criminal Case No. 59440. He said that he had entrusted to Judge Quilatan his Decisions in Criminal Cases Nos. 59440 and 66120 before he left for New Zealand on study leave. Thus, he asserted that it was impossible for him to thereafter change the resolution of the cases and it was likewise impossible for any member of his staff to give complainant copies of said Decisions.

In a resolution dated December 2, 2002, the Court referred the complaint to the Executive Judge of the Regional Trial Court of Pasig City for investigation, report and recommendation.

First Vice Executive Judge Edwin A. Villasor conducted several hearings on the administrative case. Only complainant Lucila Tan testified for her side. She presented as documentary evidence the copy of the unsigned Decision in Criminal Case No. 59440 dated February 23, 2001 which was allegedly handed to her by a member of respondent judge's staff. Respondent judge, on the other hand, presented four (4) witnesses: Josefina Ramos, Rodolfo Cea (Buboy), Fernando B. Espuerta, and Joyce Trinidad Hernandez. His documentary evidence consists of the affidavits of his witnesses and copy of the Motion for Reconsideration in Criminal Case No. 59440, among others.

ISSUE

Whether or not respondent is administratively liable for violating Rule 140 of the Rules of Court. (YES)

RULING

After a thorough evaluation of the testimonies of all the witnesses, as well as the documentary evidence presented by both parties, we find the complainant's version more trustworthy. Not only did she testify with clarity and in full detail, but she also presented during the investigation the unsigned copy of the draft decision of respondent judge in Criminal Case No. 59440 given to her by a member of his staff. Said documentary evidence supports her allegation that a member of complainant's staff met with her, showed her copies of respondent judge's draft decisions in Criminal Cases Nos. 59440 and 66120, and demanded, in behalf of respondent judge, that she pays P150,000.00 for the reversal of the disposition of said cases. It would be impossible for complainant to obtain a copy of a judge's draft decision, it being highly confidential, if not through the judge himself or from the people in his

office. And an ordinary employee in the court cannot promise a litigant the reversal of a case's disposition if not assured by the judge who drafted the decision.

The respondent's evidence did not overcome the facts proved by complainant. We note that the testimonies of two of respondent's witnesses contradict each other. Fernando Espuerta confirmed complainant's claim that she met respondent judge and his two companions, Espuerta himself and Rodolfo Cea (Buboy), at Sangkalan Restaurant in Quezon City. Rodolfo Cea, on the other hand, denied that he met complainant at Sangkalan Restaurant and swore that he never went out with respondent judge in non-office functions.

Hence, we are more inclined to believe complainant's version that she met with respondent judge and his companions at Sangkalan Restaurant sometime in April 2001.

We have also observed that respondent judge has not been very candid with the Court as regards the dates when he went to New Zealand and when he came back to the Philippines. Respondent asserts that he was already in New Zealand at the time when complainant claims that he met with her. However, the evidence he presented only shows his New Zealand visa and the dates when he entered said country. He did not show to the investigating body the dates when he left and returned to the Philippines. Apparently, he entered New Zealand on two dates: March 4, 2001 and May 1, 2001. We may therefore infer that complainant was in the Philippines before May 1, 2001, which is consistent with complainant's testimony, as well as that of Fernando Espuerta, that she met with respondent judge and his companions, Fernando and Buboy in April 2001.

We have repeatedly admonished our judges to adhere to the highest tenets of judicial conduct. They must be the embodiment of competence, integrity and independence. Like Caesar's wife, a judge must not only be pure but above suspicion. This is not without reason. The exacting standards of conduct demanded from judges are designed to promote public confidence in the integrity and impartiality of the judiciary because the people's confidence in the judicial system is founded not only on the magnitude of legal knowledge and the diligence of the members of the bench, but also on the highest standard of integrity and moral uprightness they are expected to possess. When the judge himself becomes the transgressor of any law which he is sworn to apply, he places his office in disrepute, encourages disrespect for the law and impairs public confidence in the integrity and impartiality of the judiciary itself. It is therefore paramount that a judge's personal behavior both in the performance of his duties and his daily life, be free from any appearance of impropriety as to be beyond reproach.

Respondent's act of sending a member of his staff to talk with complainant and show copies of his draft decisions, and his act of meeting with litigants outside the office premises beyond office hours violate the standard of judicial conduct required to be observed by members of the Bench. They constitute gross misconduct which is punishable under Rule 140 of the Revised Rules of Court.

IN VIEW WHEREOF, Respondent Judge Maxwel S. Rosete is **SUSPENDED** from office without salary and other benefits for **FOUR (4) MONTHS**.

3. Atty. Melvin D.C. Mane vs. Judge Medel Arnaldo B. Belen, A.M. No. RTJ-08-2119, June 30, 2008.

ATTY. MELVIN D.C. MANE, Complainant, -versus- JUDGE MEDEL ARNALDO B. BELEN, Regional Trial Court, Branch 36, Calamba City, Respondent.
A.M. No. RTJ-08-2119 [Formerly A.M. O.C.A. IPI No. 07-2709-RTJ], SECOND DIVISION, June 30, 2008, Carpio Morales, J.

An alumnus of a particular law school has no monopoly of knowledge of the law. By hurdling the Bar Examinations which this Court administers, taking of the Lawyer's oath, and signing of the Roll of Attorneys, a lawyer is presumed to be competent to discharge his functions and duties as, inter alia, an officer of the court, irrespective of where he obtained his law degree. For a judge to determine the fitness or competence of a lawyer primarily on the basis of his alma mater is clearly an engagement in an argumentum ad hominem.

FACTS

Atty. Melvin D.C. Mane (Complainant) charged Judge Medel Arnaldo B. Belen (Respondent), Presiding Judge of Branch 36, Regional Trial Court, Calamba City, of demeaning, humiliating and berating him during the hearing on February 27, 2006 of Civil Case No. 3514-2003-C, "Rural Bank of Cabuyao, Inc. v. Samuel Malabanan, et al" in which he was counsel for the plaintiff. In the course of the proceedings on the said date, respondent made the following remarks as reflected in the transcript of stenographic notes taken on the same date:

COURT:

. . . Sir, **are you from the College of Law of the University of the Philippines?**

ATTY. MANE:

No[,] [Y]our Honor[,] from Manuel L. Quezon University[,] [Y]our Honor.

COURT:

No, you're not from UP.

ATTY. MANE:

I am very proud of it.

COURT:

Then you're not from UP. **Then you cannot equate yourself to me** because there is a saying and I know this, not all law students are created equal, not all law schools are created equal, not all lawyers are created equal despite what the Supreme Being that we all are created equal in His form and substance. (Emphasis supplied)

For his part, respondent claimed that complainant filed on 15 December 2005 an urgent motion to inhibit, portions of which maliciously stated that respondent

issued an order for a consideration other than the merits of the case. Moreover, on the unacted motion filed by the same complainant to furnish him a copy of the "unedited" tape recording of the proceedings, respondent claims that complainant again made implications that the trial court was illegally, unethically and unlawfully engaged in 'editing' the transcript of records to favor a party litigant against the interest of complainant's client.

The OCA recommended that respondent be reprimanded for violation of Canon 3 of the Code of Judicial Conduct with a warning that a repetition of the same shall be dealt with more severely.

ISSUE

Whether or not respondent is guilty of conduct unbecoming of a Judge (YES)

RULING

An alumnus of a particular law school has no monopoly of knowledge of the law. By hurdling the Bar Examinations which this Court administers, taking of the Lawyer's oath, and signing of the Roll of Attorneys, a lawyer is presumed to be competent to discharge his functions and duties as, inter alia, an officer of the court, irrespective of where he obtained his law degree. For a judge to determine the fitness or competence of a lawyer primarily on the basis of his alma mater is clearly an engagement in an argumentum ad hominem.

A judge must address the merits of the case and not on the person of the counsel. If respondent felt that his integrity and dignity were being "assaulted," he acted properly when he directed complainant to explain why he should not be cited for contempt. He went out of bounds, however, when he, as the above-quoted portions of the transcript of stenographic notes show, engaged on a supercilious legal and personal discourse.

4. Pimentel v. Salanga, G.R. No. L-27934, September 18, 1967.

**CONSTANTE PIMENTEL, *Petitioner*, -versus- THE HONORABLE JUDGE
ANGELINO C. SALANGA, *Respondent*.**

G.R. No. L-27934, EN BANC, September 18, 1967, Sanchez, J.

Efforts to attain fair, just and impartial trial and decision, have a natural and alluring appeal. But the Supreme Court is not licensed to indulge in unjustified assumptions, or make a speculative approach to this ideal. It ill behooves the Court to tar and feather a judge as biased or prejudiced, simply because counsel for a party litigant happens to complain against him. As applied here, respondent judge has not as yet crossed the line that divides partiality and impartiality. He has not thus far stepped to one side of the fulcrum. No act or conduct of his would show arbitrariness or prejudice. Therefore, the Court is not to assume what respondent judge, not otherwise legally disqualified, will do in a case before him.

FACTS

Constante Pimentel (Petitioner) challenges the right of Judge Angelino C. Salanga (Respondent) to sit in judgement in cases where he appears as counsel. Petitioner's misgivings stem from the fact that he is the complainant in an administrative case he himself lodged against respondent judge upon averments of serious misconduct, inefficiency in office, partiality, ignorance of the law and incompetence which was still pending as of the date this decision was rendered by the Supreme Court.

Respondent judge rejected the foregoing motion. He stood his ground with the statement that the administrative complaint against him is no cause for disqualification under the Rules of Court; that two (2) of those cases handled by petitioner in his sala are now on the final stages of termination and transfer thereof to another sala would only delay their final disposition, make the parties suffer [from] further efforts and expenses and "would be violative of Administrative Order 371 of the Department of Justice defining the court's territorial jurisdiction; and that he is "sworn to administer justice in accordance with the law and the merits of the cases to be heard and decided by him."

ISSUE

Whether or not respondent is disqualified from acting in litigations in which counsel of record for one of the parties is his adversary in an administrative case said counsel lodged against him (NO)

RULING

The answer to the predicament of petitioner falls under the second paragraph of Section 1, Rule 137 of the Rules of Court which provides:

SECTION 1. Disqualification of judges. — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject to review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above. (Emphasis supplied)

Efforts to attain fair, just and impartial trial and decision, have a natural and alluring appeal. But the Supreme Court is not licensed to indulge in unjustified assumptions, or make a speculative approach to this ideal. It ill behooves the Court to tar and feather a judge as biased or prejudiced, simply because counsel for a party litigant happens to complain against him. As applied here, respondent judge has not as yet crossed the line that divides partiality and impartiality. He has not thus far stepped

to one side of the fulcrum. No act or conduct of his would show arbitrariness or prejudice. Therefore, the Court is not to assume what respondent judge, not otherwise legally disqualified, will do in a case before him. Prejudice is not to be presumed. Especially if weighed against a judge's legal obligation under his oath to administer justice, 'without respect to person and do equal right to the poor and the rich." To disqualify or not to disqualify himself then, as far as respondent judge is concerned, is a matter of conscience.

A judge may not be legally prohibited from sitting in a litigation. But when suggestion is made of record that he might be induced to act in favor of one party or with bias or prejudice against a litigant arising out of circumstances reasonably capable of inciting such a state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired.

5. Aleria, Jr. v. Velez, G.R. No. 127400, November 16, 1998.

VICTORIO ALERIA, JR., Petitioner, -versus- HON. ALEJANDRO M. VELEZ, in his official capacity as Presiding Judge, RTC-Branch 20, Cagayan de Oro City, and the PEOPLE OF THE PHILIPPINES, Respondents.

G.R. No. 127400, FIRST DIVISION, November 16, 1998, Quisumbing, J.

Opinions formed in the course of judicial proceedings, as long as they are based on the evidence presented and conduct observed by the judge, even if found later on as erroneous, do not prove personal bias or prejudice on the part of the judge. Extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose, in addition to palpable error which may be inferred from the decision or order itself. This, the petitioner herein did not sufficiently adduce to warrant respondent Judge's inhibition or disqualification.

FACTS

Victorio Aleria, Jr. (Petitioner) stands accused in Criminal Case No. 95-394 for Illegal Possession of Firearms, and in Criminal Case No. 95-395 for Murder. Both cases arose out of the same incident and are being tried jointly by Judge Alejandro M. Velez (Respondent). Petitioner filed a Petition to Admit Bail in Criminal Case No. 95-394 (Illegal Possession) where the recommended bail is P 300,000.00 and in Criminal Case No. 95-395 (Murder) where no bail was recommended.

Respondent Judge duly conducted bail hearings and thereafter issued the questioned Order dated July 19, 1996, 2 which states:

ORDER

This is a petition for bail filed by the accused in both cases. After the prosecution had formally offered their documentary exhibits on the bail petition, petitioner and the prosecution submitted their memorandum in support or against such petition, hence this resolution.

After going over the memorandum of both the movant and the oppositor State together with the existing jurisprudence and the evidence adduced by the prosecution, this court finds the evidence of the state sufficiently strong to hold the accused criminally liable under the present charges in the absence of convincing evidence to the contrary.

SO ORDERED.

Petitioner filed a Motion for Reconsideration on the grounds that the aforesaid Order denying bail is not supported by the evidence on record, and that the Order failed to state the grounds for denying bail and the evidence relied upon to show that the evidence of guilt of the accused is strong. In denying petitioner's Motion for Reconsideration, respondent Judge ruled in this wise:

ORDER

This court had already spelled out in its previous order denying bail the reason for its denial - that the evidence against the accused is strong to sustain a conviction in the absence of evidence to the contrary. The perception and observation of this court was arrived at after evidence was adduced by the prosecution.

In other words, there is no particular language fixed by law and jurisprudence limiting this court to issue an order based on the evidence and in the exercise of his sound discretion involving criminal charges which carry the penalty of capital punishment.

Stated otherwise, the order sought to be reconsidered was the result of the fact of death of the victim, that when the victim died, whether by suicide or not, the accused was with the victim, that the gun allegedly used in the death of the victim was presented in court, that proof was shown that there were no signs that the victim fired the gun and other pertinent and related facts amounting to the approximation of the term "strong evidence."

For lack of basis, the motion for reconsideration is hereby denied.

SO ORDERED.

Thus, petitioner filed a petition for *certiorari* with prayer for inhibition and temporary restraining order assailing the issuance of the aforementioned Orders with a prayer that petitioner be allowed to post bail in such amount as shall be reasonably affordable, and that respondent Judge be ordered to inhibit himself from further trying the instant case and that the same be raffled to another sala on the ground that the aforementioned Orders evidence respondent's partiality.

ISSUES

1. Whether the aforementioned Orders denying the petition of petitioner to post bail are valid; (NO) and
2. Whether respondent Judge should inhibit himself from trying the case (NO)

RULING

1. The grant or denial of bail in capital offenses hinges on the issue of whether or not the evidence of guilty of the accused is strong. Hence the need for the trial court to conduct bail hearings wherein both the prosecution and defense are afforded sufficient opportunity to present their respective evidence. The determination, however, of whether or not the evidence of guilt is strong, being a matter of judicial discretion, remains with the judge. Judicial discretion is not unbridled but must be supported by a finding of the facts relied upon to form an opinion on the issue before the court. A court's order granting or refusing bail must contain a summary of the evidence for the prosecution followed by its conclusion whether or not the evidence of guilty is strong. Indeed, the summary of evidence for the prosecution which contains the judge's evaluation of the evidence may be considered as an aspect of judicial due process for both the prosecution and the defense.
2. The questioned Orders, by themselves, do not sufficiently prove bias and prejudice to disqualify respondent Judge under Section 1, second paragraph of Rule 137 of the Rules of Court. For such bias and prejudice, to be a ground for disqualification, must be shown to have stemmed from an extrajudicial source, and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case. Opinions formed in the course of judicial proceedings, as long as they are based on the evidence presented and conduct observed by the judge, even if found later on as erroneous, do not prove personal bias or prejudice on the part of the judge. Extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose, in addition to palpable error which may be inferred from the decision or order itself. This, the petitioner herein did not sufficiently adduce to warrant respondent Judge's inhibition or disqualification.

6. Oktubre v. Velasco, A.M. No. MTJ 02-1444, July 20, 2004.

**JORDAN P. OKTUBRE, Complainant, -versus- JUDGE RAMON P. VELASCO,
Municipal Trial Court, Maasin, Southern Leyte, Respondent.**
A.M. NO. MTJ 02-1444, EN BANC, July 22, 2004, Per Curiam.

A judge should act and behave in such a manner that the parties before him have confidence in his impartiality. Indeed, even conduct that gives rise to the mere appearance of partiality is proscribed. Here, although he is the complainant in the three criminal complaints, respondent Judge did not disqualify himself from the cases. Worse, he even issued a warrant of arrest resulting in the arrest and detention of complainant. By doing so, respondent Judge violated Rule 3.12 and, by implication Section 1 of Rule 137, which covers the preliminary stages of criminal prosecution.

Moreover, paragraph (d) of Rule 3.12 prohibits a judge from sitting in a case where he is related to a party or to counsel within the sixth and fourth degree of consanguinity or affinity, respectively. Thus, there is more reason to prohibit a judge from doing so in cases where he is a party.

FACTS

Complainant is the attorney-in-fact of one Peggy Louise DArcy vda. De Paler (DArcy), a non-resident American. DArcy is the widow of Abraham Paler (Abraham), a resident of Maasin City, Southern Leyte. Respondent Judge is Abraham's nephew. During his lifetime, Abraham built a four-storey commercial and residential building (Paler building) in Maasin City on a lot he owned in common with his siblings. DArcy, through complainant, administered the Paler building. At the time material to this case, three tenants occupied the Paler building with some rooms reserved for Abraham's relatives. The tenants pay their rent to complainant.

Shortly after his appointment to the MTC Maasin in March 1998, respondent Judge, with DArcy's permission, stayed in the Paler building for a few days. He sought an extension of his stay but DArcy turned down his request since during her next visit to the country, she would use the room respondent Judge then occupied. Nevertheless, respondent Judge was able to continue staying in the Paler building by transferring to a room reserved for a sister of Abraham. Complainant alleges that DArcy's refusal to grant extension to respondent Judge's stay triggered the following series of events:

- (a) Respondent Judge, pretending to be the administrator of the estate of Gaspar Paler, Abraham's father and co-heir of Abraham Paler, sent letters to the tenants of the building and demanded that they deposit their monthly rentals to his office at the Municipal Trial Court (MTC) of Maasin City despite the fact that no action has been filed yet for that matter in court;
- (b) Respondent Judge sent threatening letters to DArcy containing declarations that he is taking over possession of the building, misrepresentation among others of Judge Velasco that he did it in collaboration with his other relatives, legal arguments, and mostly intimidating words coming from a Judge-Lawyer. All this while using the letter head of the MTC;
- (c) Respondent Judge moved the jeepney owned by DArcy out of the garage without the latter's permission causing it to be exposed to the sun and rain;
- (d) Respondent Judge destroyed the padlock of complainant's room and replaced it with another one including the second floor entrance padlock to the third floor with the precise purpose of controlling the ingress and egress of the said building;
- (e) Complainant was served with a warrant of arrest issued by respondent Judge for a complaint filed against him for Robbery. The private complainant of such was no other than respondent Judge himself;

- (f) After posting bail, complainant again received another Order for the submission of a counter-affidavit from respondent Judge concerning a case filed against him by the latter this time for malicious mischief;
- (g) Complainant received another subpoena this time for falsification and use of falsified documents filed by private complainant respondent Judge himself, again.

The OCA found respondent Judge to be administratively guilty of Grave Misconduct, Gross Ignorance of the Law and Grave Abuse of Authority and recommended that he be fined Php 10,000.00.

ISSUE

Whether or not the recommended penalty by the OCA is proportionate with the respondent Judge's offenses (NO)

RULING

A judge should act and behave in such a manner that the parties before him have confidence in his impartiality. Indeed, even conduct that gives rise to the mere appearance of partiality is proscribed. Here, although he is the complainant in the three criminal complaints, respondent Judge did not disqualify himself from the cases. Worse, he even issued a warrant of arrest resulting in the arrest and detention of complainant. By doing so, respondent Judge violated Rule 3.12 and, by implication Section 1 of Rule 137, which covers the preliminary stages of criminal prosecution. Moreover, paragraph (d) of Rule 3.12 prohibits a judge from sitting in a case where he is related to a party or to counsel within the sixth and fourth degree of consanguinity or affinity, respectively. Thus, there is more reason to prohibit a judge from doing so in cases where he is a party.

Respondent Judge also flagrantly disobeyed the Rules of Criminal Procedure. It is elementary that a warrant of arrest shall only be issued after an examination in writing and under oath of the complainant and his witnesses in the form of searching questions and answers, that a probable cause exists and that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice. For clearly failing to abide by the said procedure, respondent Judge is guilty of Gross Ignorance of the Law.

Considering that respondent Judges grave misconduct is compounded by his other offenses of grave abuse of authority and gross ignorance of the law, his dismissal from service is more than justified.

7. Datu Inocencio C. Siawan v. Judge Aquilino A. Inopiquez, Jr., A.M. No. MTJ-95-1056, May 21, 2001.

DATU INOCENCIO C. SIAWAN, *Complainant*, -versus- JUDGE AQUILINO A. INOPIQUEZ, JR., *Respondent*.

A.M. No. MTJ-95-1056, SECOND DIVISION, May 21, 2001, Mendoza, J.

A judge should not handle a case where he might be perceived, rightly or wrongly, to be susceptible to bias and impartiality, which axiom is intended to preserve and promote public confidence in the integrity and respect for the judiciary. Respondent's bias towards Restituto showed when he allowed his father-in-law to advise the former, who is said to be his political leader during the proceedings held in Crim. Case No. 584. It must have been disconcerting on the part of Seco, the accused, to see the private complainant Restituto openly consulting the father-in-law of the person sitting in judgment of this case.

FACTS

The facts are split into two (2) separate cases handled by respondent Judge – Crim. Case No. 584 entitled People of the Philippines vs. Juliana Enriqueta Seco (Crim. Case No. 584); and Election Case Nos. 333 and 292.

Crim Case No. 584:

The accused Juliana Enriqueta Seco (Seco) filed before a Municipal Circuit Trial Court a Motion for the Inhibition of respondent Judge who presided over her case on the ground that the father-in-law of said respondent Judge was conspicuously present in the proceedings and even had the chance to converse and advise the private complainant in the said criminal case, Restituto C. Pedrano (Restituto), reportedly his political leader and protegee. The said Motion was signed by the accused herself with the assistance of one Atty. Superable as counsel. Respondent Judge, however, denied the Motion.

Thereafter, an Affidavit of Desistance was executed by the private complainant Restituto before the Provincial Prosecutor. On the basis of the said Affidavit, the complaint was dismissed. Seco then sued Restituto for damages, as a result of which the latter filed an Omnibus Motion to revive Crim Case No. 584 which was dismissed over a year ago.

Respondent Judge ordered the reinstatement of Crim. Case No. 584, and withdrew from the records of the case the Affidavit of Desistance filed earlier. By reason of statements made by respondent Judge in his order to the effect that the crime has not yet prescribed and double jeopardy will not set in, another case, Crim. Case No. 1181, filed by Restituto against Seco again, involving the same facts and issues, was lodged. This time, respondent Judge voluntarily inhibited himself by reason of his relation to the counsel of the offended party.

Election Case No. 333:

In this case, the petitioner was retired RTC Judge Ponciano Inopiquez, respondent's uncle. Respondent Judge did not inhibit himself, stating that the petitioner was not running for public office, but was merely seeking his right to vote.

ISSUE

Whether or not respondent Judge is administratively liable for abuse of authority and ignorance of the law in not recusing himself from the aforementioned cases (YES)

RULING

Crim. Case No. 583

Indeed, although the disqualification of judges is limited only to cases where the judge is related to counsel within the fourth degree of consanguinity or affinity, the Rules nonetheless provide that a judge may, in the exercise of his discretion, disqualify himself from sitting in a case for other just and valid reasons. A judge should not handle a case where he might be perceived, rightly or wrongly, to be susceptible to bias and impartiality, which axiom is intended to preserve and promote public confidence in the integrity and respect for the judiciary. Respondent's bias towards Restituto showed when he allowed his father-in-law to advise the former, who is said to be his political leader during the proceedings held in Crim. Case No. 584. It must have been disconcerting on the part of Seco, the accused, to see the private complainant Restituto openly consulting the father-in-law of the person sitting in judgment of this case.

To maintain the appearance of impartiality in his court, at the first instance, respondent should have stopped his father-in-law from meddling in the proceedings. If he did not want to offend or displease him, he should have outrightly inhibited himself from further trying the case. However, he even denied the motion for inhibition filed by the accused.

As regards Election Case No. 333, Rule 3.12 of the Code of Judicial Conduct provides for the grounds which prohibit a judge from sitting in judgement. One of which is his relation by consanguinity or affinity to a party litigant within the sixth degree or to counsel within the fourth degree. respondent judge was disqualified from hearing the petition of his uncle and it was immaterial that the petition was meritorious. The purpose of the prohibition is to prevent not only a conflict of interest but also the appearance of impropriety on the part of a judge. The failure of respondent judge to inhibit himself constitutes an abuse of his authority and undermines public confidence in the impartiality of judges.

8. Office of the Court Administrator v. Paderanga, A.M. No. RTJ-01-1660, August 25, 2005.

OFFICE OF THE COURT ADMINISTRATOR, *Complainant*, -versus- JUDGE MAXIMO G.W. PADERANGA, Regional Trial Court, Branch 38, Misamis Oriental, Cagayan de Oro City, *Respondent*.

A.M. No. RTJ-01-1660, SECOND DIVISION, August 25, 2005, Austria-Martinez, J.

Rule 3.04 of the Code of Judicial Conduct requires that a judge should be patient, attentive and courteous to all lawyers, especially the inexperienced, to litigants,

witnesses, and others appearing before the court. A judge should avoid unconsciously falling into the attitude of mind that the litigants are made for the courts instead of the courts for the litigants. In this case, respondent judge's act of unceremoniously citing Atty. Oclarit in contempt while declaring himself as having absolute power is a clear evidence of his unjustified use of the authority vested upon him by law. He has lost sight of the fact that the power to cite persons in contempt is at his disposal for purposes that are impersonal, because that power is intended as a safeguard not for the judges as persons but for the functions that they exercise.

FACTS

During a hearing for pre-trial presided by herein respondent Judge, Atty. Oclarit filed a motion to approve a compromise agreement entered into by the parties pointing out that the compromise agreement was reached before a barangay captain. Counsel for the defendants opposed the motion because the defendants were placed in a disadvantageous condition, arguing that the case was before the court not before the barangay. At this point, Atty. Oclarit informed the respondent Judge that the compromise agreement was signed and was explaining further when respondent Judge told him repeatedly to 'shut up'. Then Atty. Oclarit requested respondent Judge to stop shouting at him. The court rhetorically asked: 'why should the court precisely not cite you for contempt for doing that, that is, for settling the case before the barangay captain.'

Consequently, the presiding judge cited Atty. Oclarit in contempt of court and imposed on him a fine of P1,000.00. At that moment, respondent Judge issued a verbal order holding Atty. Oclarit for direct contempt of court and sentencing Atty. Oclarit to serve one (1) day in jail and to pay a fine of P1,000.00. Atty. Oclarit indicated that he would challenge the ruling. The next day, with Atty. Oclarit in jail, he received a copy of the written order declaring him in direct contempt of court and sentencing him to pay a fine of P1,000.00 and also to serve one (1) day in jail. He was released after serving one (1) day in jail. Apparently, he also paid the fine of P1,000.00.

CA Justice De Leon, in his report and recommendation, recommended that respondent Judge be reprimanded for drastically resorting to his contempt powers with a warning that a repetition of similar acts will be dealt with more severely.

ISSUE

Whether or not respondent Judge was administratively liable for his act of citing Atty. Oclarit in contempt (YES)

RULING

Rule 3.04 of the Code of Judicial Conduct requires that a judge should be patient, attentive and courteous to all lawyers, especially the inexperienced, to litigants, witnesses, and others appearing before the court. A judge should avoid unconsciously falling into the attitude of mind that the litigants are made for the courts instead of the courts for the litigants. In this case, respondent judge's act of

unceremoniously citing Atty. Oclarit in contempt while declaring himself as having absolute power is a clear evidence of his unjustified use of the authority vested upon him by law. He has lost sight of the fact that the power to cite persons in contempt is at his disposal for purposes that are impersonal, because that power is intended as a safeguard not for the judges as persons but for the functions that they exercise. Respondent Judge is guilty of grave abuse of authority.

9. Manansala III v. Asdala, A.M. No. RTJ-05-1916, May 10, 2005.

MELENCIO P. MANANSALA III, Complainant, -versus- JUDGE FATIMA G. ASDALA, Regional Trial Court (RTC) Branch 87, Quezon City, Respondent.
A.M. NO. RTJ-05-1916, EN BANC, May 10, 2005, Carpio-Morales, J.

Rightly or wrongly, the public identifies the abstract precept of justice, and the administration of justice, with the persona and actuations of the visible human judge that they see, and with whom they come in contact, or deal with. Respondent judge's plea of good faith thus becomes tenuous when it is remembered that as a former fiscal or prosecutor, respondent judge ought to know that there is no legal or statutory warrant or basis, at that time, for her requests/ actions in seeking to obtain temporary custody of the still-to-be-inquested Herbst, or for the compounding or amicable settlement of the malicious mischief (or vandalism) case, against the latter. However one looks at it, either course of action amounted to an unjustified, if not unlawful, interference or meddling, or persuading, inducing or influencing another public officer.

FACTS

Winfried Herbst (Herbst) had been detained at Police Station 10 in Kamuning, Quezon City for breaking a glass wall in the office of Melencio Manansala (complainant). Late afternoon that day, herein respondent Judge Asdala (respondent) called up the Station Commander Atty. Coronel nad requested that Herbst be released to her custody. Atty. Coronel, however, did not accede to respondent's request, he informing her that complainant was adamant in filing criminal charges against Herbst and they were just waiting for the arrival of the inquest fiscal. Two (2) days later, Mark Cabigao, the sheriff assigned at respondent's sala, together with two policemen, requested that the Mercedes Benz car of Herbst which he parked within the vicinity be turned over to their custody.

Investigating Justice Dacudao, in his Report and Recommendation, found respondent Judge answerable for palpable abuse of authority or plain misconduct.

ISSUE

Whether or not respondent Judge should be held administratively liable for her acts (YES)

RULING

The Supreme Court found Investigating Justice Dacudao's findings to be well-taken. Investigating Justice Dacudao, in his findings, indicated that respondent Judge can

be faulted for requesting Atty. Coronel to release Herbst into her custody despite Herbst being scheduled to undergo an inquest investigation; and for asking for the compounding or amicable settlement of the malicious mischief case against Herbst. Rightly or wrongly, the public identifies the abstract precept of justice, and the administration of justice, with the persona and actuations of the visible human judge that they see, and with whom they come in contact, or deal with. Respondent judge's plea of good faith thus becomes tenuous when it is remembered that as a former fiscal or prosecutor, respondent judge ought to know that there is no legal or statutory warrant or basis, at that time, for her requests/ actions in seeking to obtain temporary custody of the still-to-be-inquested Herbst, or for the compounding or amicable settlement of the malicious mischief (or vandalism) case, against the latter. However one looks at it, either course of action amounted to an unjustified, if not unlawful, interference or meddling, or persuading, inducing or influencing another public officer.

As for respondent's act of ordering her sheriff to engage the assistance of policemen and retrieve Herbst's car, the Court found that respondent should also be faulted therefor. For by such act, she availed of the services of a government employee for private concerns. In any event, that her sheriff was even ordered to engage the services of policemen could not have been intended other than to demonstrate her perceived might as a judge in order to hopefully secure an unimpeded release of the car. Her claim that the sheriff was all too willing to help does not, even if true, albeit the sheriff's testimony does not reflect such claim, extenuate her or mitigate her liability.

10. Venancio Inonog v. Judge Francisco B. Ibay, A.M. No. RTJ-09-2175, July 28, 2009.

**VENANCIO INONOG, Complainant, -versus- JUDGE FRANCISCO B. IBAY,
PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 135, MAKATI CITY,
Respondent.**

A.M. No. RTJ-09-2175, EN BANC, July 28, 2009, Leonardo-De Castro, J.

The phrase "improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice" shown in Section 3 of Rule 71 of the Rules of Court is so broad and general that it encompasses wide spectrum of acts that could constitute indirect contempt. However, the act of complainant in parking his car in a slot allegedly reserved for respondent judge does not fall under this category. There was no showing that he acted with malice and/or bad faith or that he was improperly motivated to delay the proceedings of the court by making use of the parking slot supposedly reserved for respondent judge. We cannot also say that the said act of complainant constitutes disrespect to the dignity of the court.

FACTS

The present administrative case stemmed from the Sinumpaang Salaysay of Venancio P. Inonog, filed with the Office of the Court Administrator (OCA) on April 26, 2005, charging Judge Francisco B. Ibay of the RTC, Branch 135, Makati City with gross abuse of authority. The complaint involved an incident in the Makati City Hall

basement parking lot for which respondent judge cited complainant in contempt of court because complainant parked his superior's vehicle at the parking space reserved for respondent judge.

Complainant alleged that he is the security-driver of the Chief of the Business Permit Division of Makati City. According to complainant, at around 1:00 a.m. of March 18, 2005, he parked the vehicle that he drives for his boss in a vacant parking space at the basement of the City Hall because the slot where he usually parked was already occupied. At the time, the parking slots at the basement of the Makati City Hall were indicated only by numbers and not by names of officials to whom they were assigned. Thereafter, complainant notified his superior that he will not be reporting for work for the rest of that day, March 18, 2005, because he was not feeling well. Thus, he left the vehicle in the said basement parking area and went home to Tanay, Rizal.

Later that morning, complainant received a call from his brother, also an employee of the City Government of Makati, informing him that he should appear before the sala of respondent judge at 10:30 a.m. to explain/show cause why he should not be cited for contempt of court for parking his vehicle at the space reserved for respondent judge. He was informed that the respondent judge blamed the usurpation of the said parking space for the delay in the promulgation of the decision of several Criminal Cases scheduled at 8:00 a.m. of March 18, 2005 because the latter had a hard time looking for another parking space. Complainant was also informed that if he failed to appear at the hearing, a warrant for his arrest will be issued.

Complainant immediately left his home in Tanay to go to Makati City Hall even though he was not feeling well. However, due to the distance involved and the time consumed by using various modes of public transportation, he arrived there only at around 1:00 p.m. He found out that by then he had already been adjudged guilty of contempt of court by respondent judge for delaying in the administration of justice. He was sentenced to suffer imprisonment for five (5) days and to pay a fine of one thousand pesos (P1,000.00). A warrant for his arrest was also issued.

Thereafter, complainant through counsel filed an Urgent Motion for Reconsideration and/or to Lift Order of Arrest, but said motion was denied. Subsequently, complainant filed an Amended Urgent Motion for Reconsideration and/or To Lift the Order of Arrest, attaching proof of payment of the fine in the amount of one thousand pesos (P1,000.00). In his motions, complainant explained that he did not know that the parking space was reserved for the respondent judge. He also begged for forgiveness and promised not to repeat the incident. Acting on the said amended motion, respondent judge issued an Order dated March 30, 2005 finding complainant's explanation to be unsatisfactory. However, respondent judge modified his previous order by deleting the sentence for imprisonment for five (5) days but the fine of P1,000.00 was increased to P2,000.00, with a stern warning that a repetition of the same offense will be dealt with more severely. In compliance, complainant paid the additional amount of P1,000.00 as fine.

Respondent judge explained that his acts were brought about by his deep concern with the disposition of the cases assigned to him within the prescribed period. To accomplish this, he came to office at 7:00 a.m. and worked on his cases not only in his office, but even at home. Respondent judge mentioned that he was able to dispose 349 cases leaving only 171 cases pending as of December 31, 2004. He pointed out that he was able to further reduce his docket to 23 civil cases and 29 criminal cases as of May 31, 2005. Thus, he ranked 3rd among judges in the RTC, Makati with respect to disposition of cases.

Respondent judge added that petty disturbances, like the incident involved in the instant administrative complaint, were annoying to him since they interfered in the performance of his judicial function. Nevertheless, he did not lose his objectivity, probity, equanimity, integrity and impartiality and reacted to these incidents within the limits and boundaries of the law and justice.

ISSUE

Whether or not the responded judge erred in citing the complainant indirect contempt of court

RULING

Yes. Indirect contempt is not committed in the presence of the court and can be punished only after notice and hearing (*Zarate v. Balderian*, 329 SCRA 558). In the instant case, there was no defiance of authority on the part of the complainant when he parked his vehicle at the spot reserved for the respondent judge. The incident is too flimsy to be a basis of a contempt proceedings. At most, the act resulted to a minor inconvenience on the part of the respondent but it was unlikely that it delayed the administration of justice. Besides, it was not shown that complainant parked his vehicle at the spot intentionally to show disrespect to Judge Ibay. Respondent Judge Ibay acted precipitously in citing complainant in contempt of court in a manner which obviously smacks of retaliation rather than upholding of the court's honor.

Assuming, without conceding, that the complainant had committed indirect contempt of court, he was nonetheless entitled to be charged in writing and given an opportunity to be heard by himself or counsel. Section 3, Rule 71 of the Rules of Court specifically outlines the procedural requisites before a person may be punished for indirect contempt, thus: (1) a complaint in writing which may either be a motion for contempt filed by a party or an order issued by the court requiring a person to appear and explain his conduct; and, (2) an opportunity for the person charged to appear and explain his conduct (*Pacuribot v. Lim, Jr.*, 275 SCRA 543). Proceedings against persons charged with contempt of court are commonly treated as criminal in nature, thus this mode of procedure should be strictly followed.

Records failed to show that complainant was properly notified of Judge Ibay's order directing the former to appear and explain why he should not be cited in contempt of court. The hearing was set at 10:30 A.M. or only about two and a half hours after respondent judge found that his parking space was occupied. The lack of notice

accounts for the complainant's failure to appear at the hearing. Verily, complainant was not given a reasonable opportunity to be heard and submit evidence in support of his defense.

The phrase "improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice" shown in Section 3 of Rule 71 of the Rules of Court is so broad and general that it encompasses wide spectrum of acts that could constitute indirect contempt. However, the act of complainant in parking his car in a slot allegedly reserved for respondent judge does not fall under this category. There was no showing that he acted with malice and/or bad faith or that he was improperly motivated to delay the proceedings of the court by making use of the parking slot supposedly reserved for respondent judge. We cannot also say that the said act of complainant constitutes disrespect to the dignity of the court. In sum, the incident is too flimsy and inconsequential to be the basis of an indirect contempt proceeding.

11. *J. King & Sons Company, Inc., v. Judge Agapito L. Hontanosas, Jr., A.M. No. RTJ-03-1802, September 21, 2004.*

J. KING & SONS COMPANY, INC., REPRESENTED BY ITS PRESIDENT, RICHARD L. KING, Complainant, -versus- JUDGE AGAPITO L. HONTANOSAS, JR., PRESIDING JUDGE OF RTC, BRANCH 16, CEBU CITY, Respondent.

A.M. No. RTJ-03-1802, EN BANC, September 21, 2004, Per Curiam

Case law repeatedly teaches that judicial office circumscribes the personal conduct of a judge and imposes a number of restrictions thereon, which he has to pay for accepting and occupying an exalted position in the administration of justice. Although there is a question of whether or not respondent had used the facilities free of charge, the investigating justice nevertheless finds that respondent judge should have not frequented the place to prevent any appearance of impropriety considering that, as admitted by respondent, there are at least three (3) cases filed by complainant which are pending before his court. This is a violation of Canon 2 of the Code of Judicial Conduct.

FACTS

Complainant alleges: It is the plaintiff in a case for Specific Performance with Damages with Prayer for Writ of Preliminary Attachment, docketed as Civil Case No. CEB-27870, pending before the RTC presided over by respondent. On July 2, 2002, respondent issued an Order granting the application for writ of preliminary attachment upon applicant's filing of a bond in the amount of P35,973,600.00. An urgent motion to discharge and lift writ of preliminary attachment was filed by defendants before the respondent on July 5, 2002 and on the same day, respondent issued an Order lifting the writ of preliminary attachment. Said Order dated July 5, 2002 was issued sans proper notice and hearing as required by section 4, Rule 15 of the 1997 Rules of Civil Procedure. Respondent approved defendants' counter-bond despite knowledge that the bonding company's Supreme Court Clearance was not valid and the maximum net retention of the bonding company had a deficiency of P22,541,463.69. At a meeting in his house, respondent asked Rafael King to match

defendants' offer to pay P250,000.00 so that the Order of July 5, 2002 will be reconsidered formally if a motion for reconsideration is filed by complainant. Respondent's favorite hang-out is the karaoke music lounge of Metropolis Hotel owned by herein complainant, and he uses said facilities "gratis et amore."

In compliance with the directive of the Court Administrator, respondent filed his Comment, dated August 22, 2002, wherein he vehemently denies soliciting money from the King brothers. He contends that complainant is merely a dissatisfied litigant which cannot accept an unfavorable court ruling; and that the questioned orders relative to Civil Case No. CEB-27870 were issued by him in the exercise of lawful judicial discretion in accordance with the rules of procedure, the evidence on record, and with the dictates of justice and equity.

ISSUE

1. Whether or not the use of respondent judge of the complainant's karaoke bar is a violation of Canon 2 of the Code of Judicial Conduct
2. Whether or not the respondent judge is guilty of gross ignorance of law

RULING

1. Although there is a question of whether or not respondent had used the facilities free of charge, the investigating justice nevertheless finds that respondent judge should have not frequented the place to prevent any appearance of impropriety considering that, as admitted by respondent, there are at least three (3) cases filed by complainant which are pending before his court. This is a violation of Canon 2 of the Code of Judicial Conduct.

CANON 2 A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES.

Rule 2.01 A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.

It is evident from the aforesaid provisions that both the reality and the appearance must concur. Case law repeatedly teaches that judicial office circumscribes the personal conduct of a judge and imposes a number of restrictions thereon, which he has to pay for accepting and occupying an exalted position in the administration of justice. The irresponsible or improper conduct of a judge erodes public confidence in the judiciary. It is thus the duty of the members of the bench to avoid any impression of impropriety to protect the image and integrity of the judiciary.

This reminder applies all the more sternly to municipal, metropolitan and regional trial court judges like herein respondent, because they are judicial front-liners who have direct contact with the litigating parties. They are the intermediaries between conflicting interests and the embodiments of the

people's sense of justice. Thus, their official conduct should remain free from any appearance of impropriety and should be beyond reproach.

2. Yes, respondent judge is guilty of gross ignorance of law. For clarity, the undisputed facts leading to the lifting of the writ of preliminary injunction are reiterated, thus: On July 2, 2002, a writ of preliminary injunction was issued. On July 5, 2002 defendants filed an urgent motion to lift writ of preliminary injunction and on the same day an order lifting the writ of preliminary injunction was issued...Respondent of the other hand, countered in his testimony that he granted the motion to lift the writ of preliminary attachment because he thought that it was the most equitable thing to do...

In the present administrative case, no opportunity was given to complainant to even oppose the motion to lift attachment. Respondent failed to persuade the investigating justice of the alleged urgency to grant the motion to lift the writ of preliminary attachment as a justification for granting the motion without a full-blown hearing. It may also be said that the July 5, 2002 Order may have been too hastily issued considering the fact that a copy of the said motion was mailed only on July 3, 2002 (Exhibit "5"). Hence, as argued by complainant, the motion could not have been set for hearing earlier than July 6, 2002 without doing violence to the 3-day notice rule.

12. Atty. Gloria Lastimosa-Dalawampu v. Judge Raphael B. Yrastorza, Sr., A.M. RTJ-03-1793, February 5, 2004.

ATTY. GLORIA LASTIMOSA-DALAWAMPU, *Complainant*, -versus- JUDGE RAPHAEL B. YRASTORZA, SR., REGIONAL TRIAL COURT OF CEBU CITY, BRANCH 14, *Respondent*.

A.M. No. RTJ-03-1793, FIRST DIVISION, February 5, 2004, Ynares-Santiago, J.

A judge should conduct proceedings in court with fitting dignity and decorum. Respondent cannot justify his action by a desire to hasten the proceedings before him. Respondent's unfounded act of insulting the complainant in open court and cutting her off in mid-sentence while she was still explaining her side exhibited a manifest disregard by respondent of his duty to be patient, attentive, and courteous to lawyers.

FACTS

Complainant filed a complaint for serious misconducts against the respondent. The complaint alleged that in January 2002, the complainant appeared as a counsel for the accused before the respondent in a Criminal Case. After her client was arraigned, the complainant moved for the re-settling of the pre-trial conference in view of absence of the trial prosecutor assigned to Branch 14. However, before she could finish her statement, respondent judge purportedly cut her off by saying, "If you cannot handle this case, Atty. Dalawampu, you better give this case to another lawyer." When complainant answered that she can handle the case, respondent again cut her off saying, "Do not give me so many excuses, Atty. Dalawampu! I don't care who you are!" When complainant was about to leave the courtroom, she heard

respondent say, “I don’t care who you are. You can file one thousand administrative cases against me. I don’t care.”

According to the complainant, the foregoing incident was not the first time that she was berated by the respondent judge. Sometime in October 2000, she was scolded by respondent judge for failure to file the pre-trial brief even if a pre-trial brief is not compulsory in criminal cases.

The Court referred the case to Associate Justice Marina Buzon of the Court of Appeals for investigation, report and recommendation. Prior to the date of first hearing before the Investigating Justice, complainant filed a motion to withdraw complaint, alleging that sometime in September 2003, she and the respondent judge have ironed out their differences in a Bench and Bar dialogue, and the pendency of her complaint against respondent judge poses a block to a harmonious relation between them.

Thereafter, complainant failed to appear during the investigation of the case. At the hearing on October 21, 2003, respondent judge filed a motion to dismiss on the ground of lack of interest and failure to prosecute.

On November 6, 2003, Justice Buzon submitted her report to the Office of the Court Administrator recommending the dismissal of the administrative case against respondent judge due to the failure of the complainant to prove the allegations in her complaint.

ISSUE

1. Whether or not the desistance and withdrawal of the complaint made by the complainant warrants the dismissal of the administrative case against respondent judge
2. Whether or not the respondent judge violated his duty to maintain respect for the dignity of the court and to the members of the bar and bench alike

RULING

1. No. The Court must reiterate the rule that mere desistance on the part of the complainant does not warrant the dismissal of an administrative complaint against any member of the bench and the judiciary. The Court’s interest in the affairs of the judiciary is a paramount concern that knows no bounds. Hence, instead of dismissing the charge as recommended, the Court, in the exercise of its power of administrative supervision, resolves to reprimand respondent judge for his failure to exercise greater circumspection in dealing with the complainant.

Upon his assumption to office, a judge ceases to be an ordinary mortal. He becomes the visible representation of the law and, more importantly, of justice. He must be the embodiment of competence, integrity and

independence. A magistrate of the law must comport himself at all times in such manner that his conduct, official or otherwise, can bear the most searching scrutiny of the public that looks up to him as the epitome of integrity and justice.

2. Yes, respondent judge violated his duty to maintain respect for the dignity of the court and members of the bar and bench alike. Respondent's unfounded act of insulting the complainant in open court and cutting her off in mid-sentence while she was still explaining her side exhibited a manifest disregard by respondent of his duty to be patient, attentive, and courteous to lawyers. A judge should conduct proceedings in court with fitting dignity and decorum. Respondent cannot justify his action by a desire to hasten the proceedings before him.

A judge's duty to observe courtesy to those who appear before him is not limited to lawyers. The said duty also includes being courteous to litigants and witnesses.

Judges are strictly mandated to abide by the law, the Code of Judicial Conduct and existing administrative policies in order to maintain the faith of our people in the administration of justice. Any act which falls short of the exacting standard for public office, especially on the part of those expected to preserve the image of the judiciary, shall not be countenanced.

13. Mataga v. Rosete, A.M. No. MTJ-03-1488, October 13, 2004.

ADARLINA G. MATAGA, Complainant, -versus- JUDGE MAXWELL S. ROSETE, Municipal Trial Court in Cities of Santiago City and Process Server GASAT M. PAYOYO, Municipal Trial Court, Cordon, Isabela, Respondents.

A.M. No. MTJ-03-1488, FIRST DIVISION, October 13, 2004, YNARES-SANTIAGO, J.

*Any administrative complaint leveled against a judge must always be examined with a discriminating eye, for its consequential effect are by their nature highly penal, such that the respondent judge stands to face the sanction of dismissal or disbarment. **Mere imputation of judicial misconduct in the absence of sufficient proof to sustain the same will never be countenanced. If a judge should be disciplined for misconduct, the evidence against him should be competent.***

FACTS

Adarlina Mataga alleged that she was a retired Court Stenographer who applied for a disability retirement. Her application was subsequently approved and a check amounting to P165,530.08 was prepared in the name of Mataga. It was released to respondent Gasat Payoyo who turned it over to Judge Maxwell Rosete.

Payoyo brought Mataga to the house of Judge Rosete where she was given P44,000.00 as her terminal pay. Mataga then came to know that the retirement benefit granted to her was in the amount of P165,530.08, which respondents did not deliver to her.

Judge Rosete denied the allegations stating that Mataga has not been to his house, nor has he given her the sum of P44,000.00 as her terminal pay. Judge Rosete however admitted that the check was turned over to him by the Supreme Court security guard after it was misplaced by his co-respondent, Payoyo. Then, he immediately handed the check to Payoyo because the complainant had requested Payoyo to follow up her check. Payoyo also denied the accusations against him. He claimed that Judge Rosete instructed him to claim the check and encash the same at the Land Bank of the Philippines. After encashing the check, he claimed that he turned over the full amount of complainant's disability benefit.

A second investigation of the case was recommended by the OCA. After conducting another investigation, Mataga had no more complaint against Judge Rosete. The complaint was directed at the dishonesty of respondent Payoyo in his dealings with Mataga.

ISSUE

Whether or not the complaint against respondent Judge Rosete should be dismissed. (YES)

RULING

Any administrative complaint leveled against a judge must always be examined with a discriminating eye, for its consequential effect are by their nature highly penal, such that the respondent judge stands to face the sanction of dismissal or disbarment. **Mere imputation of judicial misconduct in the absence of sufficient proof to sustain the same will never be countenanced.** If a judge should be disciplined for misconduct, **the evidence against him should be competent.**

On the other hand, respondent Payoyo should be held administratively liable. The records of the case revealed the dishonesty of Payoyo, his acts in not giving the complainant the full amount of her terminal leave benefits and in putting the blame on Judge Rosete.

The behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the clerk of lowest rank, should be circumscribed with a high degree of responsibility. The image of a court, as a true temple of justice, is mirrored in the conduct, official or otherwise, of the men and women who work thereat. Judicial personnel are expected to be living examples of uprightness in the performance of official duties to preserve at all times the good name and standing of the courts in the community.

Payoyo's acts all fall short of the measure of uprightness expected of judicial personnel. For respondent Payoyo's dishonesty, he should be suspended for a period of six months.

14. Atty. Manuel J. Jimenez, Jr. v. Presiding Judge Michael M. Amdengan, Municipal Trial Court, Angono Rizal, A.M. No. MTJ-12-1818, February 13, 2013.

ATTY. MANUEL J. JIMENEZ, JR., *Complainant*, -versus- JUDGE MICHAEL M. AMDENGAN, Presiding Judge, Municipal Trial Court, Angono, Rizal, *Respondent*.

A.M. No. MTJ-12-1818, FIRST DIVISION, February 13, 2013, SERENO, C.J.

*In the case of Teraña v. Hon. Antonio de Sagun, the Court held that **the strict adherence to the reglementary period prescribed by the RSP is due to the essence and purpose of these rules.** The law looks with compassion upon a party who has been illegally dispossessed of his property. Due to the urgency presented by this situation, the RSP provides for an expeditious and inexpensive means of reinstating the rightful possessor to the enjoyment of the subject property. This fulfills the need to resolve the ejectment case quickly.*

*In the case at bar, despite the submission of the parties' respective position papers on January 04, 2010, Judge Amdengan issued an Order dated February 17, 2010 submitting the case for decision. Respondent judge considered his Order the start of the 30-day period within which to render a decision. However, **the ruling was already due on February 04, 2010.** His issuance of an Order could not have extended the period, when the rules clearly provide for a mandatory period. Hence, Judge Amdengan was guilty of undue delay in rendering a decision.*

*In Rodriguez v. Judge Rodolfo S. Gatdula, the Court held that **administrative complaints against judges cannot be pursued simultaneously with the judicial remedies accorded to parties aggrieved by the erroneous orders or judgments of the former.** Administrative remedies are neither alternative to judicial review nor do they cumulate thereto, where such review is still available to the aggrieved parties and the case has not yet been resolved with finality.*

*In the case at bar, complainant Atty. Jimenez, Jr. **had the available remedy of appeal** when her ejectment Complaint was dismissed. Hence, the OCA correctly dismissed the second charge against respondent judge.*

FACTS

Atty. Manuel Jimenez, Jr. was the lawyer of Olivia Merced, the plaintiff in the ejectment case presided by respondent Judge Michael Amdengan. Merced filed an ejectment complaint against the defendant Nelson Cana. During the preliminary conference, Judge Amdengan referred the case for mediation. The case was referred back to the MTC for trial on the merits because the parties were unable to arrive at a settlement. On December 04, 2009, Judge Amdengan ordered the parties to file their respective position papers within 30 days, after which the case was to be submitted for resolution. On January 4, 2010, the parties simultaneously filed their position papers.

On February 17, 2010, Judge Amdengan issued an order submitting the case for decision. On March 03, 2010, he promulgated his ruling, dismissing the ejectment complaint. He noted that the plaintiff had failed to refer her complaint to the Lupon for the mandatory conciliation proceedings as required under the Revised Katarungang Pambarangay Law.

A complaint was filed against Judge Amdengan charging him with gross inefficiency for failing to resolve the ejectment case within a period of 30 days as mandated under the Rules of Summary Procedure. Judge Amdengan was also charged with gross ignorance of law for having dismissed the case on the ground of failure to comply with the barangay conciliation procedure.

The OCA found respondent judge guilty of gross inefficiency for having failed to resolve the ejectment case within the prescribed 30-day period after the filing of the parties' respective Position Papers, pursuant to the Rules of Court and the Revised Rules on Summary Procedure. The OCA however dismissed the charge of gross ignorance of the law for being judicial in nature. It noted that complainant was already assailing the propriety of the Order, which it deemed to be judicial in nature. It held that the proper remedy for correcting the actions of judges should rest on judicial adjudication, and not on the filing of administrative complaints against them.

ISSUES

1. Whether or not Judge Amdengan is guilty of gross inefficiency. (YES)
2. Whether or not Judge Amdengan is guilty of gross ignorance of the law. (NO)

RULING

1. Under the Rules of Summary Procedure, Section 10:

Sec. 10. Rendition of judgment. — Within thirty (30) days after receipt of the last affidavits and position papers, or the expiration of the period for filing the same, the court shall render judgment.

However should the court find it necessary to clarify certain material facts, it may, during the said period, issue an order specifying the matters to be clarified, and require the parties to submit affidavits or other evidence on the said matters within ten (10) days from receipt of said order. Judgment shall be rendered within fifteen (15) days after the receipt of the last clarificatory affidavits, or the expiration of the period for filing the same.

In the case of *Teraña v. Hon. Antonio de Sagun*, the Court held that **the strict adherence to the reglementary period prescribed by the RSP is due to the essence and purpose of these rules.** The law looks with compassion upon a party who has been illegally dispossessed of his property. Due to the urgency presented by this situation, the RSP provides for an expeditious and inexpensive means of reinstating the rightful possessor to the enjoyment of the subject property. This fulfills the need to resolve the ejectment case quickly.

In the case at bar, despite the submission of the parties' respective position papers on January 04, 2010, Judge Amdengan issued an Order dated February 17, 2010 submitting the case for decision. Respondent judge considered his Order the start of the 30-day period within which to render a decision. However, **the ruling was already due on February 04, 2010.** His issuance of an Order could not have extended the period, when the rules clearly provide for a

mandatory period. Hence, Judge Amdengan was guilty of undue delay in rendering a decision.

2. The charge of gross ignorance of the law should be **dismissed** as the complainant was already assailing the propriety of the Decision rendered by respondent Judge Amdengan. The administrative Complaint contains no allegation that the dismissal of the ejectment case was marred by unethical behavior on his part. Thus, an **administrative complaint against him is not the proper remedy to assail his judgment.**

In *Rodriguez v. Judge Rodolfo S. Gatdula*, the Court held that **administrative complaints against judges cannot be pursued simultaneously with the judicial remedies accorded to parties aggrieved by the erroneous orders or judgments of the former.** Administrative remedies are neither alternative to judicial review nor do they cumulate thereto, where such review is still available to the aggrieved parties and the case has not yet been resolved with finality.

In the case at bar, complainant Atty. Jimenez, Jr. **had the available remedy of appeal** when her ejectment Complaint was dismissed. Hence, the OCA correctly dismissed the second charge against respondent judge.

15. Narciso G. Dulalia v. Judge Afable E. Cajigal, RTC. Br. 96, Quezon City, A.M. No. OCA IPI No. 10-3492-RTJ, December 4, 2013.

NARCISO G. DULALIA, Complainant, -versus- JUDGE AFABLE E. CAJIGAL, Regional Trial Court, Branch 96, Quezon City, Respondent.
A.M. OCA I.P.I. No. 10-3492-RTJ, SECOND DIVISION, December 04, 2013, PEREZ, J.

As a matter of public policy, a judge cannot be subjected to liability for any of his official acts, no matter how erroneous, as long as he acts in good faith. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.

Moreover, administrative complaints against judges cannot be pursued simultaneously with the judicial remedies accorded to parties aggrieved by the erroneous orders or judgments of the former. Administrative remedies are neither alternative to judicial review nor do they cumulate thereto, where such review is still available to the aggrieved parties and the cases have not yet been resolved with finality. In the instant case, complainant had in fact availed of the remedy of a motion for reconsideration prior to his filing of the administrative complaint.

FACTS

Complainant is one of the petitioners in the aforementioned special proceeding cases pertaining to the joint settlement of the testate and intestate estates of his parents wherein he and his sister, Gilda Dulalia-Figueroa, vied for appointment as special and regular administrator.

Complainant alleged that respondent judge is liable for gross inefficiency for his failure to resolve the pending incident within the required period. According to complainant, respondent judge not only failed to resolve the subject motion on time, he likewise ignored the basic rules and jurisprudence in the appointment of special administrators in accordance with the Supreme Court's ruling in *Co v. Rosario*. Later on, complainant's sister was the one appointed as administratrix. Aggrieved, he maintained that respondent judge should also be held liable for gross ignorance of the law.

ISSUE

1. Whether or not Judge Amdengan is guilty of gross ignorance of the law. (NO)
2. Whether or not Judge Amdengan is guilty of gross inefficiency. (YES)

RULING

1. The SC ruled that the charges of ignorance of law bereft of merit since it is clear that the respondent's judge's order was issued in the proper exercise of his judicial functions, and as such, is not subject to administrative disciplinary action; especially considering that the complainant failed to establish bad faith on the part of respondent judge. Well entrenched is the rule that a judge may not be administratively sanctioned for mere errors of judgment in the absence of showing of any bad faith, fraud, malice, gross ignorance, corrupt purpose, or a deliberate intent to do an injustice on his or her part.

As a matter of public policy, **a judge cannot be subjected to liability for any of his official acts, no matter how erroneous, as long as he acts in good faith.** To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.

Moreover, administrative complaints against judges **cannot** be pursued simultaneously with the judicial remedies accorded to parties aggrieved by the erroneous orders or judgments of the former. Administrative remedies are neither alternative to judicial review nor do they cumulate thereto, where such review is still available to the aggrieved parties and the cases have not yet been resolved with finality. In the instant case, **complainant had in fact availed of the remedy of a motion for reconsideration prior to his filing of the administrative complaint.**

2. With regard to the charge of undue delay, the SC found merit on the explanation of the respondent judge that his failure to resolve the issue within the required period was due to mere inadvertence as it was shown that the respondent judge acted in good faith. However, respondent judge admitted that he may have inadvertently failed to categorically address the motion for reconsideration. Thus, there was indeed delay in the resolution of the pending incident. Failure to decide cases and other matters within the reglementary period constitutes gross inefficiency and warrants the imposition of administrative sanction against the erring magistrate. In the instant case, the Court found it proper to mitigate the

penalty to be imposed on respondent judge taking into consideration that this was his first infraction in his more than 15 years in the service; his age; the caseload of his court; and his candid admission of his infraction.

16. Anonymous v. Judge Rio C. Achas, MTCC Branch 2, Ozamis City, Misamis Occidental, A.M. No. MTJ-11-1801, February 27, 2013.

ANONYMOUS, Complainant, -versus- JUDGE RIO C. ACHAS, Municipal Trial Court in Cities, Branch 2, Ozamis City, Misamis Occidental, Respondent.
A.M. No. MTJ-11-1801, THIRD DIVISION, February 27, 2013, MENDOZA, J.

*The Court held that it is not proper for a judge to be perceived as going out with a woman not his wife for it is a **blemish to his integrity and propriety, as well as to that of the Judiciary**. For going out with a woman not his wife, Judge Achas violated Canons 2 and 4 of the New Code of Judicial Conduct.*

*With regard to Judge Achas's involvement in cockfighting, no evidence was presented that Judge Achas engaged in cockfighting and betting. However, he admitted that he reared fighting cocks for leisure. While rearing fighting cocks is not illegal, Judge Achas should avoid mingling with a crowd of cockfighting bettors as it undoubtedly impairs the respect due him. As a judge, **he must impose upon himself personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.***

FACTS

An anonymous letter-complaint was received by the Court, alleging immorality and conduct unbecoming of a judge against respondent Judge Rio C. Achas. According to the letter, (1) it is of public knowledge in the city that Judge Achas is living scandalously with a woman who is not his wife; (2) he lives beyond his means; (3) he is involved with illegal activities through his connection with bad elements, the kuratongs; (4) he comes to court very untidy and dirty; (5) he decides his cases unfairly in exchange for material and monetary consideration; and (6) he is involved with cockfighting/gambling.

Upon investigation, it was found that Judge Achas and his legal wife has been separated for quite some time and they are living apart. It was also found out that he and a young woman would go out occasionally in public and it was not a secret around town. With regard to the allegations of illegal activities and deciding his cases unfairly, the investigating Judge could not be certain whether such were true and found it vague and unsubstantiated. With regard to the allegation that respondent Judge would come to court untidy and dirty, the investigating judge contended that it was a matter of personal hygiene and in the eye of the beholder.

Judge Achas denied all the charges but admitted that he was separated from his legal wife and that he reared game cocks only for leisure and extra income. The OCA recommended that Judge Achas be reprimanded as to the charge of immorality and recommended that he be ordered to refrain from going to cockpits with a warning that the same or similar complaint in the future shall be dealt with more severely.

ISSUE

Whether or not Judge Achas should be reprimanded. (YES)

RULING

Under Section 1 of Rule 140 of the Rules of Court, **anonymous complaints filed against judges must be supported by public records of indubitable integrity.** For anonymous complaints, the burden of proof in administrative proceedings which usually rests with the complainant, must be supported by indubitable public records and by what is sufficiently proven during the investigation. If the burden of proof is not overcome, the respondent is under no obligation to prove his defense.

In the case, no evidence was attached to the letter-complaint. The complainant never appeared, and no public records were brought forth. Judge Achas denied all the charges and only admitted that he was separated from his wife and that he reared fighting cocks. Hence, the charges that he (1) lives beyond his means, (2) is involved with illegal activities through his connection with the kuratongs, (3) comes to court very untidy and dirty, and (4) decides his cases unfairly in exchange for material and monetary consideration **should be dismissed for lack of evidence.**

With regard to the charges that (1) it is of public knowledge that he is living scandalously with a woman not his wife and that (2) he is involved with cockfighting/gambling, Judge Achas should be reprimanded and fined.

Under the New Code of Judicial Conduct

Canon 2

SEC. 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

SEC. 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

Canon 4

SEC. 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

SEC. 2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office.

Although Judge Achas denied the allegation against him going out with a young lass and there was no evidence presented to prove the contrary, he did admit that he was separated from his wife. The Court held that it is not proper for a judge to be perceived as going out with a woman not his wife for it is a **blemish to his integrity and propriety, as well as to that of the Judiciary.** For going out with a woman not his wife, Judge Achas violated Canons 2 and 4 of the New Code of Judicial Conduct.

With regard to Judge Achas's involvement in cockfighting, no evidence was presented that Judge Achas engaged in cockfighting and betting. However, he admitted that he reared fighting cocks for leisure. While rearing fighting cocks is not illegal, Judge Achas should avoid mingling with a crowd of cockfighting bettors as it undoubtedly impairs the respect due him. As a judge, **he must impose upon himself personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.**

17. German Wenceslao Cruz, Jr. v. Judge Daniel C. Joven, Municipal Circuit Trial Court, Sipocot, Camarines Sur, A.M. No. MTJ-00-1270 January 23, 2001.

GERMAN WENCESLAO CRUZ, JR., Complainant, -versus- JUDGE DANIEL C. JOVEN, Municipal Circuit Trial Court, Sipocot, Camarines Sur, Respondent.
A.M. No. MTJ-00-1270, THIRD DIVISION, January 23, 2001, MENDOZA, J.

*In People vs. Serrano, the Court held that **the mere filing of an administrative case against a judge is not a ground for disqualifying him from hearing the case, 'for, if in every occasion the party apparently aggrieved would be allowed to either stop the proceedings in order to await the final decision on the desired disqualification, or demand the immediate inhibition of the judge on the basis alone of his being so charged, many cases would have to be kept pending or perhaps there would not be enough judges to handle all the cases pending in all the court.'***

In the case at bar, instead of resolving the case as directed by then Executive Judge, respondent Judge awaited the appointment of a new Executive Judge, upon whose assumption to office, respondent again inhibited himself from the proceedings on the same ground he had invoked in his first attempt to divorce himself from the case. Respondent Judge thus showed little respect to his bounden duty.

FACTS

Complainant German Wenceslao Cruz alleged that he was the representative of the plaintiff estate in a civil case for unlawful detainer. He alleged that the counsel for the defendant in the civil case filed a motion for extension of time and for the inhibition of respondent Judge Daniel Joven from taking cognizance of the case because said defendant had charged Judge Joven before the Ombudsman. Judge Joven denied the motion for extension of time for being a prohibited pleading under the Revised Rules on Summary Procedure but granted the motion for inhibition so as to assure the parties of the impartiality and cold neutrality of the court.

Executive Judge Cajot of the RTC however **denied** the motion for inhibition. Judge Joven thereupon proceeded with the case. The defendant failed to file an answer despite a number of motions filed by the Complainant. For the defendant's failure to file an answer, respondent Judge Joven issued an order declaring that judgment would be rendered within 30 days pursuant to the Revised Rule on Summary Procedure. However, no decision was rendered.

When a new executive judge was appointed, Judge Joven, for the second time, inhibited himself on the same ground as the first. Thus, Complainant Cruz, Jr. lodged a complaint against Judge Joven for gross negligence, abuse of authority, dereliction of duty and failure to render decision within the 30-day period prescribed by the rules. Judge Joven admitted that he had failed to resolve the motion because of his inadvertence. With regard to his second order of inhibition, he justified that the case filed against him by the defendant might affect his impartiality and cold neutrality as the presiding judge.

ISSUE

Whether or not Judge Joven is found to have been remiss in his duty as a judge.
(YES)

RULING

The Court held that it was inexcusable for Judge Joven to allow the unlawful detainer case to drag on end. It **was not right for Judge Joven to recuse himself from hearing the case simply because the defendant had previously charged him before the Ombudsman.** Moreover the inhibition order was **denied** by then Executive Judge Cajot who ordered respondent Judge Joven to continue with the case.

In *People vs. Serrano*, the Court held that **the mere filing of an administrative case against a judge is not a ground for disqualifying him from hearing the case**, 'for, if in every occasion the party apparently aggrieved would be allowed to either stop the proceedings in order to await the final decision on the desired disqualification, or demand the immediate inhibition of the judge on the basis alone of his being so charged, many cases would have to be kept pending or perhaps there would not be enough judges to handle all the cases pending in all the court."

In the case at bar, instead of resolving the case as directed by then Executive Judge, respondent Judge awaited the appointment of a new Executive Judge, upon whose assumption to office, respondent again inhibited himself from the proceedings on the same ground he had invoked in his first attempt to divorce himself from the case. Respondent Judge thus showed little respect to his bounden duty.

18. *Anna Liza Valmores-Salinas v. Judge Crisologo S. Bitas*, Regional Trial Court, Branch 7, Tacloban City, A.M. No. RTJ-12-2335 (2013).

ANNA LIZA VALMORES-SALINAS, Complainant, -versus- JUDGE CRISOLOGO S. BITAS, Regional Trial Court, Branch 7, Tacloban City, Respondent.
A.M. No. RTJ-12-2335, THIRD DIVISION, March 18, 2013, PERALTA, J.

The propriety of the decision denying petitioner's Petition for the Issuance of a Temporary Protection Order and the Order appointing an administrator are judicial matters which are beyond the scope of administrative proceedings. If there were indeed errors in their issuance, petitioner should have resorted to judicial remedies and not to the filing of the instant administrative complaint. To begin with,

*jurisprudence is replete with cases holding that errors, if any, committed by a judge in the exercise of his adjudicative functions cannot be corrected through administrative proceedings, but should instead be assailed through available judicial remedies. **Disciplinary proceedings do not complement, supplement or substitute judicial remedies and, thus, cannot be pursued simultaneously with the judicial remedies accorded to parties aggrieved by their erroneous orders or judgments.***

FACTS

Petitioner filed a case for Violence Against Women and their Children with a Petition for the Issuance of a Temporary Protection Order against her husband Roy Salinas which was presided by respondent Judge. Subsequently, respondent Judge rendered a Decision denying the petition for the issuance of a TPO filed by petitioner.

Meanwhile, respondent Judge heard Civil Case No. 2011-08-60, particularly Roy Salinas' prayer for a TRO and preliminary injunction. After a chamber conference with both parties' counsels, respondent Judge immediately issued an Order appointing an administrator of the spouses' community properties despite petitioner's reservations. A Letter of Administration was still issued and released with an order motu proprio appointing Mervyn Añover as the administrator. Petitioner asserts that she and her counsel were not furnished copies of the order and the letter of administration. Aggrieved, petitioner filed a Motion for Reconsideration.

In response, Roy Salinas' counsel filed his comment on the motion, with motion to cite petitioner for indirect contempt for her defiance to the order of the court by disallowing Mervyn Añover to take over the management of Royal Grand Suites.

In an Order, respondent Judge summarily held petitioner in contempt of court for violating the court's order by disallowing the administrator to perform his duty and violating the injunction of the court to desist from getting the income of the businesses. Thus, petitioner was ordered to suffer a 5-day imprisonment.

Petitioner the filed the complaint alleging that the Order was in direct violation of Section 4, Rule 71 of the Revised Rules of Court, since there was neither an order nor any formal charge requiring her to show cause why she should not be punished for contempt. She asserts that no verified petition was initiated and there were no proceedings to determine whether her act was indeed contumacious.

ISSUE

Whether or not the respondent is guilty of gross ignorance of the law. (YES)

RULING

To begin with, jurisprudence is replete with cases holding that errors, if any, committed by a judge in the exercise of his adjudicative functions cannot be corrected through administrative proceedings, but should instead be assailed through available judicial remedies. **Disciplinary proceedings do not**

complement, supplement or substitute judicial remedies and, thus, cannot be pursued simultaneously with the judicial remedies accorded to parties aggrieved by their erroneous orders or judgments.

Given this doctrine, the Court fully agrees with the OCA's report that the propriety of the decision denying petitioner's Petition for the Issuance of a TPO and the Order appointing Mr. Mervyn Añover as an administrator are judicial matters which are beyond the scope of administrative proceedings. If there were indeed errors in their issuance, petitioner should have resorted to judicial remedies and not to the filing of the instant administrative complaint. In fact, it is a matter of policy that it is only when there is fraud, dishonesty or corruption that the acts of a judge in his judicial capacity are subject to disciplinary action, even though such acts are erroneous.

Nevertheless, respondent Judge may be held administratively liable for summarily holding petitioner in contempt of court. **Plainly, respondent Judge's obstinate disregard of established rules of procedure amounts to gross ignorance of the law or procedure, since he disregarded the basic procedural requirements in instituting an indirect contempt charge.**

19. Carmen P. Edano v. Judge Fatima Gonzales-Asdala and Stenographer Myrla del Pilar Nicandro, A.M. No. RTJ-06-1974 (2013).

CARMEN P. EDAÑO, Complainant, -versus- JUDGE FATIMA GONZALES-ASDALA and STENOGRAPHER MYRLA DEL PILAR NICANDRO, Respondents.
A.M. No. RTJ-06-1974, EN BANC, March 19, 2013, SERENO, C.J.

*The personal letters written by the respondent seeking for the mercy of the Supreme Court in order to lighten the penalties imposed upon her were treated as Motions for Reconsideration. Filing of multiple Motions for Reconsideration in the guise of personal letters to whoever sits as the Chief Magistrate of the Court, is **trifling with the judicial processes to evade a final judgment.***

FACTS

In a Decision, the Supreme Court found Quezon City Regional Trial Court Judge Fatima G. Asdala (respondent) guilty of insubordination and gross misconduct unbecoming a member of the judiciary. Accordingly, she was dismissed from service. Respondent filed with the Court a letter addressed to then Chief Justice Reynato S. Puno and the Associate Justices. In her letter, she pleaded for mercy and prayed that she be given one last chance to redeem herself, and that the harshness of her dismissal be tempered with the grant of some of the benefits and leave credits she had earned in her almost 25 years of service in the government. The letter treated as a Motion for Reconsideration, the Court resolved to DENY respondent's motion for reconsideration with FINALITY.

Respondent then continuously wrote letters seeking mercy and requesting that she be granted even a half of her retirement benefits to then Chief Justice Puno (treated as her second Motion for Reconsideration) and another one to Chief Justice Sereno,

considered as her Third Motion for Reconsideration as the former was again DENIED with FINALITY.

ISSUE

Whether or not the third motion for reconsideration should be denied. (YES)

RULING

It is clear that the last letter of respondent is in effect, her third Motion for Reconsideration. Thus, it should be denied outright if not expunged from the records.

It appears to this Court that respondent, in filing multiple Motions for Reconsideration in the guise of personal letters to whoever sits as the Chief Magistrate of the Court, is **trifling with the judicial processes to evade the final judgment against her.**

20. Sonia C. Decena and Rey C. Decena v. Judge Nilo Malanyaon, A.M. No. RTJ-10-2217 (2013).

SONIA C. DECENA and REY C. DECENA, *Petitioners*, -versus- JUDGE NILO A. MALANYAON, REGIONAL TRIAL COURT, BRANCH 32, IN PILI, CAMARINES SUR, *Respondent*.

A.M. No. RTJ-10-2217, FIRST DIVISION, April 8, 2013, BERSAMIN, J.

Respondent judge, upon occupying a seat beside his daughter (who was the lawyer for the respondent in the case) that was reserved for the lawyers during the hearing to advise his daughter on what to do and say during the hearing, to the point of coaching his daughter and upon introducing himself as the "counsel of the respondent's counsel", engaged in the private practice of law which is unbecoming of him as an RTC Judge. Such excuse, seemingly grounded on a "filial" duty towards his wife and his daughter, did not furnish enough reason for him to forsake the ethical conduct expected of him as a sitting judge. He ought to have restrained himself from sitting at that hearing, being all too aware that his sitting would have him cross the line beyond which was the private practice of law.

Thus, an attorney who accepts an appointment to the Bench must accept that his right to practice law as a member of the Philippine Bar is thereby suspended, and it shall continue to be so suspended for the entire period of his incumbency as a judge. The term practice of law is not limited to the conduct of cases in court or to participation in court proceedings, but extends to the preparation of pleadings or papers in anticipation of a litigation, the giving of legal advice to clients or persons needing the same, the preparation of legal instruments and contracts by which legal rights are secured, and the preparation of papers incident to actions and special proceedings.

FACTS

Complainant, Rey Decena, had brought an administrative case against the respondent's wife, then the Assistant Provincial Health Officer of the Province of Camarines Sur; and during the hearing of the administrative case the respondent, a judge by profession, sat beside his daughter, Atty. Kristina, who was the counsel of her mother in the case.

During the early stage of the hearing, the respondent coached her daughter in making manifestations/motions before the hearing officer, by scribbling on some piece of paper and giving the same to the former, thus prompting her daughter to rise from her seat and/or ask permission from the officer to speak, and then make some manifestations while reading or glancing on the paper given by the respondent. At one point, the respondent even prompted her daughter to demand that the collaborating counsel of the complainant's principal counsel be required to produce his PTR number.

When the complainant's principal counsel arrived and took over, she inquired regarding the personality of the respondent, being seated at the lawyer's bench beside Atty. Kristina. The respondent then proudly introduced himself and manifested that he was the "counsel of the respondent's counsel". Complainant's principal counsel proceeded to raise the propriety of the respondent's sitting with and assisting his daughter in that hearing, being a member of the judiciary, to which the respondent loudly retorted that he be shown any particular rule that prohibits him from sitting with his daughter at the lawyers' bench. He insisted that he was merely "assisting" her daughter, who "just passed the bar", defend the respondent in the case who was his wife, and was likewise helping the latter defend herself.

The complainants averred that the actuations of the respondent during the hearing of his wife's administrative case in the Civil Service Commission constituted violations of the New Code of Judicial Conduct for the Philippines Judiciary.

ISSUE

Whether the actuations of Judge Malanyaon complained of constituted conduct unbecoming of a judge. (YES)

RULING

Section 35 of Rule 138 of the Rules of Court expressly prohibits sitting judges like Judge Malanyaon from engaging in the private practice of law or giving professional advice to clients. Section 11, Canon 4 (Propriety), of the New Code of Judicial Conduct and Rule 5.07 of the Code of Judicial Conduct reiterate the prohibition from engaging in the private practice of law or giving professional advice to clients. The prohibition is based on sound reasons of public policy, considering that the rights, duties, privileges and functions of the office of an attorney are inherently incompatible with the high official functions, duties, powers, discretion and privileges of a sitting judge. It also aims to ensure that judges give their full time and attention to their judicial duties, prevent them from extending favors to their own

private interests, and assure the public of their impartiality in the performance of their functions. These objectives are dictated by a sense of moral decency and desire to promote the public interest.

Thus, an attorney who accepts an appointment to the Bench must accept that his right to practice law as a member of the Philippine Bar is thereby suspended, and it shall continue to be so suspended for the entire period of his incumbency as a judge. The term practice of law is not limited to the conduct of cases in court or to participation in court proceedings, but extends to the preparation of pleadings or papers in anticipation of a litigation, the giving of legal advice to clients or persons needing the same, the preparation of legal instruments and contracts by which legal rights are secured, and the preparation of papers incident to actions and special proceedings.

Any propensity on the part of a magistrate to ignore the ethical injunction to conduct himself in a manner that would give no ground for reproach is always worthy of condemnation. We should abhor any impropriety on the part of judges, whether committed in or out of their courthouses, for they are not judges only occasionally. The Court has fittingly emphasized in *Castillo v. Calanog, Jr.*:

The Code of Judicial Ethics mandates that the conduct of a judge must be free of a whiff of impropriety not only with respect to his performance of his judicial duties, but also to his behavior outside his sala and as a private individual. There is no dichotomy of morality; a public official is also judged by his private morals. The Code dictates that a judge, in order to promote public confidence in the integrity and impartiality of the judiciary, must behave with propriety at all times. As we have very recently explained, a judge's official life cannot simply be detached or separated from his personal existence.

21. *Office of the Court Administrator v. Lorenza M. Martinez, A.M. No. P-06-2223 (2013).*

OFFICE OF THE COURT ADMINISTRATOR, *Complainant*, -versus- LORENZA M. MARTINEZ, Clerk of Court, Municipal Trial Court, Candelaria, Quezon, *Respondent*.

A.M. No. P-06-2223, EN BANC, June 10, 2013, PER CURIAM

Shortages in the judicial funds were due to the respondent's (as the clerk of court) schemes and manipulations of not issuing official receipts and failure to deposit immediately to bank the funds received through her. Being the custodian of the court's funds, revenues, records, properties, and premises, she was liable for any loss, shortage, destruction or impairment of such funds and property.

Time and again, the Court reminds that "those charged with the dispensation of justice, from the justices and judges to the lowliest clerks, should be circumscribed with the heavy burden of responsibility. A public servant is expected to exhibit, at all times, the highest degree of honesty and integrity, and should be made accountable to all those whom he serves. There is no place in the Judiciary for those who cannot meet the exacting standards of judicial conduct

and integrity. The Court condemns and would never countenance any conduct, act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and would diminish, or even just tend to diminish, the faith of the people in the Judiciary."

FACTS

In September 2004, the salaries of the respondent were withheld. Beginning December 2005, she was excluded from the payroll because of her failure to submit the monthly reports of collections and deposits as required by SC Circular No. 32-93. The audit disclosed that respondent incurred cash shortages in the Judicial Development Fund in the amount of P12,273.33 and in the Fiduciary Fund in the amount of P882,250.00. The audit team discovered that the shortages were due to the schemes and manipulations of not issuing official receipts and failure to deposit immediately to bank the funds received through her in violation of the OCA Circulars; All conducted by the respondent for her own personal gain.

ISSUE

Whether or not the respondent should be DISMISSED from the service for gross dishonesty resulting in malversation of judiciary funds. (YES)

RULING

As Clerk of Court, she was the court's accountable officer. It was not the cash clerk. It was her duty to supervise and monitor her subordinate to ensure that the proper procedures were followed in the collection of the court's funds. Being the custodian of the court's funds, revenues, records, properties, and premises, she was liable for any loss, shortage, destruction or impairment of such funds and property.

Time and again, the Court reminds that **"those charged with the dispensation of justice, from the justices and judges to the lowliest clerks, should be circumscribed with the heavy burden of responsibility. A public servant is expected to exhibit, at all times, the highest degree of honesty and integrity, and should be made accountable to all those whom he serves. There is no place in the Judiciary for those who cannot meet the exacting standards of judicial conduct and integrity. The Court condemns and would never countenance any conduct, act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and would diminish, or even just tend to diminish, the faith of the people in the Judiciary."**

22. Jill M. Tormis v. Judge Meinrado P. Paredes, A.M. No. RTJ-13-2366, February 4, 2015.

**JILL M. TORMIS, *Complainants*, -versus – JUDGE MEINRADO P. PAREDES,
Respondent.**

A.M. No. RTJ-13-2366, SECOND DIVISION, February 4, 2015, MENDOZA, J.

A judge should always conduct himself in a manner that would preserve the dignity, independence and respect for himself, the Court and the Judiciary as a whole. He must exhibit the hallmark judicial temperament of utmost sobriety and self-restraint. He should choose his words and exercise more caution and control in expressing himself. In other words, a judge should possess the virtue of gravitas. Furthermore, a magistrate should not descend to the level of a sharp-tongued, ill-mannered petty tyrant by uttering harsh words, snide remarks and sarcastic comments. He is required to always be temperate, patient and courteous, both in conduct and in language.

Judge Paredes in using intemperate language and unnecessary comments tending to project Judge Tormis as a corrupt and ignorant judge in his class discussions, was correctly found guilty of conduct unbecoming of a judge by Justice Dy. When Judge Paredes failed to restrain himself and included Francis, whose condition and personal circumstances, as properly observed by Justice Diy, had no relevance to the topic that was then being discussed in class, it strongly indicated his intention to taint their reputations.

FACTS:

In her Affidavit/Complaint, dated September 5, 2011, Jill charged Judge Paredes with grave misconduct. Jill was a student of Judge Paredes in Political Law Review during the first semester of school year 2010-2011 at the Southwestern University, Cebu City. She averred that sometime in August 2010, in his class discussions, Judge Paredes named her mother, Judge Rosabella Tormis (Judge Tormis), then Presiding Judge of Branch 4, Municipal Trial Court in Cities (MTCC), Cebu City, as one of the judges involved in the marriage scams in Cebu City. Judge Paredes also mentioned in his class that Judge Tormis was abusive of her position as a judge, corrupt, and ignorant of the law.

Jill added that Judge Paredes included Judge Tormis in his discussions not only once but several times. In one session, Judge Paredes was even said to have included in his discussion Francis Mondragon Tormis (Francis), son of Judge Tormis, stating that he was a "court-noted addict."

In his Comment, dated October 28, 2011, Judge Paredes denied the accusations of Jill. He stated that Judge Tormis had several administrative cases, some of which he had investigated; that as a result of the investigations, he recommended sanctions against Judge Tormis; that Judge Tormis used Jill, her daughter, to get back at him; that he discussed in his class the case of *Lachica v. Tormis*, but never Judge Tormis' involvement in the marriage scams nor her sanctions as a result of the investigation conducted by the Court; that he never personally attacked Judge Tormis' dignity and credibility; that the marriage scams in Cebu City constituted a negative experience for all the judges and should be discussed so that other judges, court employees and aspiring lawyers would not emulate such misdeeds; that the marriage scams were also discussed during meetings of RTC judges and in schools where remedial law

and legal ethics were taught; that he talked about past and resolved cases, but not the negative tendencies of Judge Tormis; that there was nothing wrong in discussing the administrative cases involving Judge Tormis because these cases were known to the legal community and some were even published in the Supreme Court Reports Annotated (SCRA) and other legal publications; and that when he was the executive judge tasked to investigate Judge Tormis, he told her to mend her ways, but she resented his advice.

ISSUE

Whether Judge Paredes is guilty of conduct unbecoming of a judge. (YES)

RULING

Notably, when Judge Paredes discussed the marriage scams involving Judge Tormis in 2010, the investigation relative to the said case had not yet been concluded. In fact, the decision on the case was promulgated by the Court only on April 2, 2013. In 2010, he still could not make comments on the administrative case to prevent any undue influence in its resolution. Commenting on the marriage scams, where Judge Tormis was one of the judges involved, was in contravention of the subjudice rule. Justice Diy was, therefore, correct in finding that Judge Paredes violated Section 4, Canon 3 of the New Code of Judicial Conduct.

The Court shares the view of Justice Diy that although the reasons of Judge Paredes for discussing the marriage scams in his classes seemed noble, his objectives were carried out insensitively and in bad taste. The pendency of the administrative case of Judge Tormis and the publicity of the marriage scams did not give Judge Paredes unrestrained license to criticize Judge Tormis in his class discussions. The publicity given to the investigation of the said scams and the fact that it was widely discussed in legal circles let people expressed critical opinions on the issue. There was no need for Judge Paredes to "rub salt to the wound," as Justice Diy put it.

Judge Paredes in using intemperate language and unnecessary comments tending to project Judge Tormis as a corrupt and ignorant judge in his class discussions, was correctly found guilty of conduct unbecoming of a judge by Justice Dy.

A judge should always conduct himself in a manner that would preserve the dignity, independence and respect for himself, the Court and the Judiciary as a whole. He must exhibit the hallmark judicial temperament of utmost sobriety and self-restraint. He should choose his words and exercise more caution and control in expressing himself. In other words, a judge should possess the virtue of gravitas. Furthermore, a magistrate should not descend to the level of a sharp-tongued, ill-mannered petty tyrant by uttering harsh words, snide remarks and sarcastic comments. He is required to always be temperate, patient and courteous, both in conduct and in language.

When Judge Paredes failed to restrain himself and included Francis, whose condition and personal circumstances, as properly observed by Justice Diy, had no

relevance to the topic that was then being discussed in class, it strongly indicated his intention to taint their reputations.

23. Benito B. Nate v. Judge Lelu P. Contreras, Branch 43, Regional Trial Court, Virac, Catanduanes (Then Clerk of Court, RTC-Iriga City), A.M. No. RTJ-15-2406, February 18, 2015.

BENITO B. NATE, Complainant, -versus - JUDGE LELU P. CONTRERAS, Branch 43, Regional Trial Court, Virac, Catanduanes, Respondent.
A.M. No. RTJ-15-2406, FIRST DIVISION, February 18, 2015, SERENO, C.J.

While we agree with her that clerks of court are allowed to perform the notarial act of copy certification, this act must still be connected to the exercise of their official functions and duties — meaning to say, it must be done in connection with public documents and records that are, by virtue of their position, in their custody. Respondent herself admits that the document was filed before the National Labor Relations Commission in Naga City, not the RTC-Iriga City. Thus, in the regular course of her duties, she would not have come across, encountered, or been in custody of the document.

FACTS

Complainant Atty. Benito B. Nate calls the attention of this Court to the supposed grave misconduct of respondent Contreras while she was still clerk of court and ex officio provincial sheriff of RTC-Iriga City. According to him, there were three instances in which respondent abused her authority.

First, respondent Contreras allegedly notarized an administrative complaint that was prepared by her own father and led with this Court sometime in June 2003. Complainant Nate stresses that respondent could not have legally notarized a document. He points out that Section 3, Rule 4 of the 2004 Rules of Notarial Practice disqualifies notaries from performing a notarial act if they are related to the principal within the fourth civil degree of consanguinity or affinity. Furthermore, he argues that respondent acted beyond her authority when she notarized in Iriga City a document that was signed in the Municipality of Buhi, which was outside that city. We note that complainant was the subject of the administrative complaint filed by respondent's father.

Next, complainant Nate claims that respondent certified a document as a true copy of the original, and that her sister-in-law later on used the certified document in a labor case then pending with the National Labor Relations Commission in Naga City. He points out that respondent, as an ex officio notary public, was empowered to authenticate only those documents that were in her custody. Since the document — an amended labor complaint — was not a document pending before the RTC-Iriga City, respondent allegedly went beyond her authority when she authenticated it.

Finally, purportedly without this Court's prior written authority, respondent Contreras appeared as her father's counsel before the Commission on Bar Discipline

of the IBP. Complainant Nate alleges that respondent herself admitted during the proceedings before the IBP that she had not yet obtained a written authority.

ISSUES

Whether Contreras is administratively liable for the following acts:

1. Affixing her signature to the jurat portion of the administrative complaint prepared by her father (YES)
2. Authenticating documents as genuine copies of the original labor complaint (YES)
3. Appearing as counsel before the IBP on behalf of her father (NO)

RULING

1. Proceeding now to the first act complained about, we agree with the OCA findings that respondent's act of affixing her signature to the jurat portion of the administrative complaint prepared by her father had no direct relation to her work as the then clerk of court of RTC-Iriga City. Under Rule 139-B of the Rules of Court, the proceedings involving the disbarment and discipline of attorneys shall be conducted before the IBP. This means that clerks of court are not among the touchpoints in the regular procedure pertaining to complaints against an attorney. Neither may a pleading in a case involving lawyers be filed with the RTC.

2. We apply the same legal reasoning to the second act of respondent being complained about; that is, her certification of a copy of her sister-in-law's labor complaint. Respondent herself admits that the document was filed before the National Labor Relations Commission in Naga City, not the RTC-Iriga City. Thus, in the regular course of her duties, she would not have come across, encountered, or been in custody of the document. While we agree with her that clerks of court are allowed to perform the notarial act of copy certification, this act must still be connected to the exercise of their official functions and duties — meaning to say, it must be done in connection with public documents and records that are, by virtue of their position, in their custody.

3. With regard to the third act, we reiterate that the primary employment of court personnel must be their full-time position in the judiciary, which is the chief concern requiring their dutiful attention. Nevertheless, we recognize that the Code of Conduct and Ethical Standards for Public Officials and Employees does allow for limited exceptions. Section 7 (b) thereof in relation to Rule X, Section 1 (c) of its implementing rules, provides that public officials and employees are prohibited from engaging in the private practice of their profession unless authorized by the Constitution, law, or regulation; and under the condition that their practice will not conflict or tend to conflict with their official functions.

Respondent has satisfactorily proved that she was granted authority by this Court to "represent her father in Administrative Case No. 6089 provided that she files the corresponding leaves of absence on the scheduled dates of hearing of the case and that she will not use official time in preparing for the case." We thus agree with the

OCA recommendation that she did not commit any irregularity when she represented her father before the IBP.

24. Tormis v. Judge Paredes, A.M. RTJ-13-2366, February 4, 2015.

JILL M. TORMIS, *Complainants*, -versus – JUDGE MEINRADO P. PAREDES, *Respondent*.

A.M. No. RTJ-13-2366, SECOND DIVISION, February 4, 2015, MENDOZA, J.

A judge should always conduct himself in a manner that would preserve the dignity, independence and respect for himself, the Court and the Judiciary as a whole. He must exhibit the hallmark judicial temperament of utmost sobriety and self-restraint. He should choose his words and exercise more caution and control in expressing himself. In other words, a judge should possess the virtue of gravitas. Furthermore, a magistrate should not descend to the level of a sharp-tongued, ill-mannered petty tyrant by uttering harsh words, snide remarks and sarcastic comments. He is required to always be temperate, patient and courteous, both in conduct and in language.

Judge Paredes in using intemperate language and unnecessary comments tending to project Judge Tormis as a corrupt and ignorant judge in his class discussions, was correctly found guilty of conduct unbecoming of a judge by Justice Dy. When Judge Paredes failed to restrain himself and included Francis, whose condition and personal circumstances, as properly observed by Justice Dy, had no relevance to the topic that was then being discussed in class, it strongly indicated his intention to taint their reputations.

FACTS

In her Affidavit/Complaint, dated September 5, 2011, Jill charged Judge Paredes with grave misconduct. Jill was a student of Judge Paredes in Political Law Review during the first semester of school year 2010-2011 at the Southwestern University, Cebu City. She averred that sometime in August 2010, in his class discussions, Judge Paredes named her mother, Judge Rosabella Tormis (Judge Tormis), then Presiding Judge of Branch 4, Municipal Trial Court in Cities (MTCC), Cebu City, as one of the judges involved in the marriage scams in Cebu City. Judge Paredes also mentioned in his class that Judge Tormis was abusive of her position as a judge, corrupt, and ignorant of the law.

Jill added that Judge Paredes included Judge Tormis in his discussions not only once but several times. In one session, Judge Paredes was even said to have included in his discussion Francis Mondragon Tormis (Francis), son of Judge Tormis, stating that he was a "court-noted addict."

In his Comment, dated October 28, 2011, Judge Paredes denied the accusations of Jill. He stated that Judge Tormis had several administrative cases, some of which he had investigated; that as a result of the investigations, he recommended sanctions against Judge Tormis; that Judge Tormis used Jill, her daughter, to get back at him; that he discussed in his class the case of Lachica v. Tormis, but never Judge Tormis' involvement in the marriage scams nor her sanctions as a result of the investigation

conducted by the Court; that he never personally attacked Judge Tormis' dignity and credibility; that the marriage scams in Cebu City constituted a negative experience for all the judges and should be discussed so that other judges, court employees and aspiring lawyers would not emulate such misdeeds; that the marriage scams were also discussed during meetings of RTC judges and in schools where remedial law and legal ethics were taught; that he talked about past and resolved cases, but not the negative tendencies of Judge Tormis; that there was nothing wrong in discussing the administrative cases involving Judge Tormis because these cases were known to the legal community and some were even published in the Supreme Court Reports Annotated (SCRA) and other legal publications; and that when he was the executive judge tasked to investigate Judge Tormis, he told her to mend her ways, but she resented his advice.

ISSUE

Whether Judge Paredes is guilty of conduct unbecoming of a judge. (YES)

RULING

Notably, when Judge Paredes discussed the marriage scams involving Judge Tormis in 2010, the investigation relative to the said case had not yet been concluded. In fact, the decision on the case was promulgated by the Court only on April 2, 2013. In 2010, he still could not make comments on the administrative case to prevent any undue influence in its resolution. Commenting on the marriage scams, where Judge Tormis was one of the judges involved, was in contravention of the subjudice rule. Justice Diy was, therefore, correct in finding that Judge Paredes violated Section 4, Canon 3 of the New Code of Judicial Conduct.

The Court shares the view of Justice Diy that although the reasons of Judge Paredes for discussing the marriage scams in his classes seemed noble, his objectives were carried out insensitively and in bad taste. The pendency of the administrative case of Judge Tormis and the publicity of the marriage scams did not give Judge Paredes unrestrained license to criticize Judge Tormis in his class discussions. The publicity given to the investigation of the said scams and the fact that it was widely discussed in legal circles let people expressed critical opinions on the issue. There was no need for Judge Paredes to "rub salt to the wound," as Justice Diy put it.

Judge Paredes in using intemperate language and unnecessary comments tending to project Judge Tormis as a corrupt and ignorant judge in his class discussions, was correctly found guilty of conduct unbecoming of a judge by Justice Dy.

A judge should always conduct himself in a manner that would preserve the dignity, independence and respect for himself, the Court and the Judiciary as a whole. He must exhibit the hallmark judicial temperament of utmost sobriety and self-restraint. He should choose his words and exercise more caution and control in expressing himself. In other words, a judge should possess the virtue of gravitas. Furthermore, a magistrate should not descend to the level of a sharp-tongued, ill-mannered petty tyrant by uttering harsh words, snide remarks and sarcastic

comments. He is required to always be temperate, patient and courteous, both in conduct and in language.

When Judge Paredes failed to restrain himself and included Francis, whose condition and personal circumstances, as properly observed by Justice Diy, had no relevance to the topic that was then being discussed in class, it strongly indicated his intention to taint their reputations.

25. *Banas v. Judge Rubia*, A.M. RTJ-14-2388, June 10, 2014.

EMILIE SISION-BARIAS, Complainant, -versus - JUDGE MARINO E. RUBIA, REGIONAL TRIAL COURT [RTC], BRANCH 24, BIÑAN LAGUNA and EILEEN A. PECAÑA, DATA ENCODER II, RTC, OFFICE OF THE CLERK OF COURT, BIÑAN, LAGUNA, Respondents.

A.M. No. RTJ-14-2388, EN BANC, June 10, 2014, PER CURIAM

*In Gandeza Jr. v. Tabin, this court reminded judges: Canon 2 of the Code of Judicial Conduct requires a judge to avoid not only impropriety but also the mere appearance of impropriety in **all activities**.*

The evidence on record supports the allegations that a meeting with complainant, a litigant with several cases pending before his sala, took place. Respondent Judge Rubia's mere presence in the dinner meeting provides a ground for administrative liability. Respondent Judge Rubia clearly failed to live up to the standards of his office. By participating in the dinner meeting and by failing to admonish respondent Pecaña for her admitted impropriety, respondent Judge Rubia violated Canons 1 and 2 of the New Code of Judicial Conduct.

FACTS

Complainant Emilie Sison-Barias is involved in three cases pending before the sala of respondent Judge Marino Rubia. The first case being an intestate proceeding; the second case is a guardianship proceeding over Romelias Almeda-Barias; and the third case is a civil action for annulment of contracts and reconveyance of real properties filed by Romelias Almeda-Barias, represented by Evelyn Tanael, against complainant, among others. In all these cases, a parcel of land covered by a transfer certificate title and part of the estate of complainant's late husband was involved.

Complainant alleged that there was delay in the publication of the notice in the petition for issuance of letters of administration filed. Complainant's brother informed her about relations with respondent Pecaña and how she could provided help to her dilemma. Complainant and respondent Pecaña along with respondent Judge Rubia met for a dinner meeting; respondents allegedly asked complainant inappropriate questions.

These details, according to complainant, were never discussed in the pleadings or in the course of the trial. Thus, she inferred that respondent Judge Rubia had been talking to the opposing counsel regarding these matters outside of the court

proceedings. The impression of complainant was that respondent Judge Rubia was actively taking a position in favor of Atty. Zarate.

Complainant alleged that respondent Judge Rubia refused to issue orders that would have allowed her to comply with her duties as the special administrator of her late husband's estate. This included the order to conduct an inventory of the properties, rights, and credits of the deceased, subject to the authority of the administrator.

In addition, complainant alleged that respondent Judge Rubia refused to grant her request for subpoena duces tecum and ad testi candum that she had prayed for to compel Evelyn Tanael to produce the documents showing the accrued rentals of the parcel of land belonging to her late husband.

ISSUE

Whether Judge Rubia should be administratively held liable. (YES)

RULING

By meeting a litigant and advising her to talk to opposing counsel, respondent Judge Rubia violated several canons of the New Code of Judicial Conduct.

Respondent Judge Rubia failed to act in a manner that upholds the dignity mandated by his office. He was already made aware of the impropriety of respondent Pecaña's actions by virtue of her admissions in her comment. At the time of the referral of the complaint to the Office of the Court Administrator, respondent Judge Rubia was already the Executive Judge of Branch 24 of the Regional Trial Court of Biñan, Laguna. As a judge, he had the authority to ensure that all court employees, whether or not they were under his direct supervision, act in accordance with the esteem of their office.

Respondent Pecaña even alleged that respondent Judge Rubia made several warnings to all court employees not to intercede in any case pending before any court under his jurisdiction as Executive Judge. However, nothing in the record shows that respondent Judge Rubia took action after being informed of respondent Pecaña's interactions with a litigant, such as ascertaining her actions, conducting an inquiry to admonish or discipline her, or at least reporting her actions to the Office of the Court Administrator. For this failure alone, respondent Judge Rubia should be held administratively liable.

Furthermore, the evidence on record supports the allegations that a meeting with complainant, a litigant with several cases pending before his sala, took place. Respondent Judge Rubia's mere presence in the dinner meeting provides a ground for administrative liability.

In *Gandeza Jr. v. Tabin*, this court reminded judges: Canon 2 of the Code of Judicial Conduct requires a judge to avoid not only impropriety but also the mere appearance of impropriety in **all activities**.

Respondent Judge Rubia clearly failed to live up to the standards of his office. By participating in the dinner meeting and by failing to admonish respondent Pecaña for her admitted impropriety, respondent Judge Rubia violated Canons 1 and 2 of the New Code of Judicial Conduct.

As to complainant's questioning of respondent Judge Rubia's actions in the issuance of the orders in her pending cases and the exercise of his judgment, this court agrees that complainant should resort to the appropriate judicial remedies. This, however, does not negate the administrative liability of respondent Judge Rubia. His actions failed to assure complainant and other litigants before his court of the required "cold neutrality of an impartial judge." Because of this, respondent Judge Rubia also violated Canon 3 of the New Code of Judicial Conduct on Impartiality.

The totality of the actions of respondent Judge Rubia is a clear manifestation of a lack of integrity and impartiality essential to a judge. By meeting with complainant, respondent Judge Rubia also violated Canon 4 of the New Code of Judicial Conduct.

26. Senate Blue Ribbon Committee v. Justice Gregory Ong, A.M. SP 14-21-J, September 23, 2014.

RE: ALLEGATIONS MADE UNDER OATH AT THE SENATE BLUE RIBBON COMMITTEE HEARING HELD ON SEPTEMBER 26, 2013 AGAINST ASSOCIATE JUSTICE GREGORY S. ONG, SANDIGANBAYAN

A.M. No. SB-14-21-J, EN BANC, September 23, 2014, PER CURIAM.

In this light, it does not matter that the case is no longer pending when improper acts were committed by the judge. Because magistrates are under constant public scrutiny, the termination of a case will not deter public criticisms for acts which may cast suspicion on its disposition or resolution.

Notwithstanding the absence of direct evidence of any corrupt act by the respondent, we find credible evidence of his association with Napoles after the promulgation of the decision in the Kevlar case. The totality of the circumstances of such association strongly indicates respondent's corrupt inclinations that only heightened the public's perception of anomaly in the decision-making process. By his act of going to respondent at her office on two occasions, respondent exposed himself to the suspicion that he was partial to Napoles.

Respondent's act of voluntarily meeting with Napoles at her office on two occasions was grossly improper and violated Section 1, Canon 4 (Propriety) of the New Code of Judicial Conduct.

FACTS

In the middle of 2013, the local media ran an exposé involving billions of government funds channeled through bogus foundations. Dubbed as the "pork barrel scam," as the money was sourced from the Priority Development Assistance Fund allotted to members of the House of Representatives and Senate, the controversy spawned massive protest actions all over the country. In the course of

the investigation conducted by the Senate Committee on Accountability of Public Officers and Investigations (Blue Ribbon Committee), the names of certain government officials and other individuals were mentioned by "whistle-blowers" who are former employees of the alleged mastermind, Janet Lim-Napoles (Mrs. Napoles), wife of an ex-military officer. These personalities identified by the whistle-blowers allegedly transacted with or attended Mrs. Napoles' parties and events, among whom is incumbent **Sandiganbayan Associate Justice Gregory S. Ong**, herein respondent.

Based on the testimonies of Luy, Sula and Rufo, the Investigating Justice formulated the charges against the respondent, as follows:

1. Respondent **acted as contact of Napoles in connection with the Kevlar case** while it was pending in the Sandiganbayan Fourth Division wherein he is the Chairman;
2. Respondent, being Napoles' contact in the Sandiganbayan, **fixed the Kevlar case** resulting in her acquittal;
3. Respondent **received an undetermined amount of money from Napoles** prior to the promulgation of the decision in the Kevlar case thus, she was sure ("kampante") of her acquittal;
4. Respondent **visited Napoles in her office where she handed to him eleven (11) checks**, each amounting to P282,000.00 or a total of P3,102,000.00, as advanced interest for his P25.5 million BDO check she deposited in her personal account; and
5. Respondent attended Napoles' parties and was photographed with Senator Estrada and Napoles.

Respondent thus stands accused of gross misconduct, partiality and corruption or bribery during the pendency of the Kevlar case, and impropriety on account of his dealing and socializing with Napoles after her acquittal in the said case. Additionally, respondent failed to disclose in his September 26, 2013 letter to Chief Justice Sereno that he had actually visited Napoles at her office in 2012, as he vehemently denied having partied with or attended any social event hosted by her.

Respondent maintains that the testimonies of Luy and Sula were hearsay as they have no personal knowledge of the matters they were testifying, which were merely told to them by Napoles. Specifically, he points to portions of Sula's testimony indicating that Napoles had not just one but "contact persons" in Ombudsman and Sandiganbayan; hence, it could have been other individuals, not him, who could help Napoles "x" the Kevlar case, especially since Napoles never really disclosed to Sula who was her (Napoles) contact at the Sandiganbayan and at one of their conversations Napoles even supposedly said that respondent's "talent fee" was too high.

Contrary to respondent's submission, Sula in her testimony said that whenever Napoles talked about her contacts in the Ombudsman and Sandiganbayan, they knew that insofar as the Sandiganbayan was concerned, it was understood that she was referring to respondent even as she may have initially contacted some persons to get to respondent, and also because they have seen him meeting with Napoles at her office. It appears that Napoles made statements regarding the Kevlar case not just to Luy but also to the other employees of JLN Corporation.

ISSUE

Whether Associate Justice Gregory S. Ong should be held administratively liable. (YES)

RULING

We agree with Justice Sandoval-Gutierrez that respondent's association with Napoles during the pendency and after the promulgation of the decision in the Kevlar case resulting in her acquittal, constitutes gross misconduct notwithstanding the absence of direct evidence of corruption or bribery in the rendition of the said judgment.

The testimonies of Luy and Sula established that Napoles had been in contact with respondent ("*nag-uusap sila*") during the pendency of the Kevlar case. As Napoles' trusted staff, they (especially Luy who is a cousin) were privy to her daily business and personal activities. Napoles constantly updated them of developments regarding the case. She revealed to them that she has a "connect" or "contact" in the Sandiganbayan who will help "x" the case involving her, her mother, brother and some employees. Having closely observed and heard Napoles being confident that she will be acquitted even prior to the promulgation of the decision in the Kevlar case, they were convinced she was indeed in contact with respondent, whose identity was earlier divulged by Napoles to Luy. Luy categorically testified that Napoles told him she gave money to respondent but did not disclose the amount. There was no reason for them to doubt Napoles' statement as they even keep a ledger detailing her expenses for the "Sandiganbayan," which reached P100 million. Napoles' information about her association with respondent was confirmed when she was eventually acquitted in 2010 and when they saw respondent visit her office and given the eleven checks issued by Napoles in 2012.

An accusation of bribery is easy to concoct and difficult to disprove. The complainant must present a panoply of evidence in support of such an accusation. Inasmuch as what is imputed against the respondent judge connotes a grave misconduct, the Quantum of proof required should be more than substantial. Concededly, **the evidence in this case is insufficient to sustain the bribery and corruption charges against the respondent.** Both Luy and Sula have not witnessed respondent actually receiving money from Napoles in exchange for her acquittal in the Kevlar case. Napoles had confided to Luy her alleged bribe to respondent.

Notwithstanding the absence of direct evidence of any corrupt act by the respondent, we find credible evidence of his association with Napoles after the promulgation of the decision in the Kevlar case. The totality of the circumstances of such association strongly indicates respondent's corrupt inclinations that only heightened the public's perception of anomaly in the decision-making process. By his act of going to respondent at her office on two occasions, respondent exposed himself to the suspicion that he was partial to Napoles.

Respondent's act of voluntarily meeting with Napoles at her office on two occasions was grossly improper and violated Section 1, Canon 4 (Propriety) of the New Code of Judicial Conduct, which took effect on June 1, 2004.

SECTION 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

Judges must, at all times, be beyond reproach and should avoid even the mere suggestion of partiality and impropriety. Canon 4 of the New Code of Judicial Conduct states that "[p]ropriety and the appearance of propriety are essential to the performance of all the activities of a judge."

In this light, it does not matter that the case is no longer pending when improper acts were committed by the judge. Because magistrates are under constant public scrutiny, the termination of a case will not deter public criticisms for acts which may cast suspicion on its disposition or resolution. As what transpired in this case, respondent's association with Napoles has unfortunately dragged the Judiciary into the "Pork Barrel" controversy which initially involved only legislative and executive officials. Worse, Napoles' much-flaunted "contact" in the judiciary is no less than a Justice of the Sandiganbayan, our special court tasked with hearing graft cases. We cannot, by any stretch of indulgence and compassion, consider respondent's transgression as a simple misconduct.

Regrettably, the conduct of respondent gave cause for the public in general to doubt the honesty and fairness of his participation in the Kevlar case and the integrity of our courts of justice. Before this Court, even prior to the commencement of administrative investigation, respondent was less than candid. In his letter to the Chief Justice where he vehemently denied having attended parties or social events hosted by Napoles, he failed to mention that he had in fact visited Napoles at her office. Far from being a plain omission, we find that **respondent deliberately did not disclose his social calls to Napoles.** It was only when Luy and Sula testified before the Senate and named him as the "contact" of Napoles in the Sandiganbayan, that respondent mentioned of only one instance he visited Napoles.

Considering that respondent is not a first time offender and the charges of gross misconduct and dishonesty are both grave offenses showing his unfitness to remain as a magistrate of the special graft court, we deem it proper to impose the supreme penalty of dismissal.

27. Lopez v. Judge Lucmayon, A.M. MTJ-13-1837, September 24, 2014.

**CONRADO ABE LOPEZ, represented by ATTY. ROMUALDO JUBAY, Complainant,
-versus - JUDGE ROGELIO S. LUCMAYON, Municipal Trial Court in Cities,
Branch 1, Mandaue City, Cebu, Respondent.**

A.M. No. MTJ-13-1837, SECOND DIVISION, September 24, 2014, BRION, J.

As a general rule, a judge is prohibited from serving as executor, administrator, trustee, guardian or other fiduciary. The intent of the rule is to limit a judge's involvement in the affairs and interests of private individuals to minimize the risk of conflict with his judicial duties and to allow him to devote his undivided attention to the performance of his official functions.

*The only exception to this rule as set forth in Rule 5.06 is when the estate or trust belongs to, or the ward is a **member of his immediate family**, and only if his service as executor, administrator, trustee, guardian or fiduciary will not interfere with the proper performance of his judicial duties. The Code defines "immediate family" as being limited to the **spouse and relatives within the second degree of consanguinity**.*

In this case, since complainant clearly does not fall under respondent's "immediate family" as herein defined, the latter's appointment as the former's attorney-in-fact is not a valid exception to the rule. Furthermore, by serving as attorney-in-fact, the respondent not only allowed himself to be distracted from the performance of his judicial duties; he also undertook to perform all acts necessary to protect the complainant's interest. In effect, the respondent acted as the complainant's fiduciary, in direct and patent violation of the prohibition against judges.

FACTS

In a verified complaint-affidavit dated December 12, 2011, the complainant, through his counsel Atty. Romualdo M. Jubay, alleged that when he was eight years old, he inherited from his adoptive father Restituto Lopez one-half (1/2) of Lot No. 1718 with an area of 355 square meters located in Balamban, Cebu, evidenced by a document entitled "Katapusan Panugon" (Testamente). He claimed that while the document mentioned Lot No. 1718, he ended up receiving a portion of Lot No. 1696 with a total land area of 49,817 square meters, that became the object of an extrajudicial settlement involving him, his adoptive mother Honorata Lopez, and the relatives of the respondent in December 1978. Half of Lot No. 1696 was cultivated by his adoptive mother until the latter's death in 1982. He took over the cultivation of the land after he retired as a seafarer in 1988.

The complainant alleged that sometime in October 2004, he and the respondent met in a waiting shed located in front of the house of the latter's grandmother in Buanoy, Balamban, Cebu. At that meeting, the respondent allegedly deceived him into signing a Special Power of Attorney (SPA) to process the sale of Lot No. 1696 to the prospective buyer, Aboitiz Group of Company. Unknown to the complainant, the said SPA contained at the bottom portion, a so-called "Waiver of Rights" that the respondent had deceptively inserted in order to strip him of his ownership of Lot No. 1696. After signing the document (notarized by a certain Atty. Arturo C. Mata (Atty. Mata) without the complainant's presence), the respondent allegedly told the

complainant that he no longer had any right over the property. In March 2005, the father of the respondent, Pedro Lucmayon (Pedro), ordered him to cease cultivating the land because of the Waiver of Rights in the SPA he signed.

In his comment dated March 8, 2012, the respondent vehemently denied that he convinced the complainant to sell his shares in the property; he claimed that it was the complainant who was interested in selling his shares after he got tired of cultivating the land. He also denied that he deceived the complainant into signing the Waiver of Rights. He contended that the filing of the administrative case against him was intended to embarrass and harass him.

ISSUE

Whether respondent Judge Lucmayon should be held administratively liable. (YES)

RULING

As a general rule, a judge is prohibited from serving as executor, administrator, trustee, guardian or other fiduciary. The intent of the rule is to limit a judge's involvement in the affairs and interests of private individuals to minimize the risk of conflict with his judicial duties and to allow him to devote his undivided attention to the performance of his official functions. When a member of the bench serves as administrator of the properties of private individuals, he runs the risk of losing his neutrality and impartiality, especially when the interests of his principal conflicts with those of the litigant who comes before his court.

The only exception to this rule as set forth in Rule 5.06 is when the estate or trust belongs to, or the ward is a **member of his immediate family**, and only if his service as executor, administrator, trustee, guardian or fiduciary will not interfere with the proper performance of his judicial duties. The Code defines "immediate family" as being limited to the **spouse and relatives within the second degree of consanguinity**.

In this case, since complainant clearly does not fall under respondent's "immediate family" as herein defined, the latter's appointment as the former's attorney-in-fact is not a valid exception to the rule. Furthermore, by serving as attorney-in-fact, the respondent not only allowed himself to be distracted from the performance of his judicial duties; he also undertook to perform all acts necessary to protect the complainant's interest. In effect, the respondent acted as the complainant's fiduciary, in direct and patent violation of the prohibition against judges.

On the charge of impropriety, we have repeatedly reminded members of the Judiciary to keep their conduct beyond reproach and suspicion, and to be free from any appearance of impropriety in their personal behavior, both in the discharge of their official duties and in their everyday lives.

In the present administrative complaint, we agree with the OCA that the respondent's acts of: (1) **making the complainant sign at least two (2) documents — consisting of SPA and Waiver of Rights — without the presence**

of a counsel; and (2) allowing the notarization of the documents outside the presence of the executor, amount to impropriety. While no evidence directly shows that the respondent had deceived the complainant into signing these documents, this Court cannot ignore the fact that the documents the respondent himself prepared greatly prejudiced the complainant.

28. Ascaño v. Presiding Judge Jacinto, A.M. RTJ-15-2405, January 12, 2015.

ANTONIO S. ASCAÑO, JR., CONSOLACION D. DANTES, BASILISA A. OBALO, JULIETA D. TOLEDO, JOSEPH Z. MAAC, EMILIANO E. LUMBOY, TITA F. BERNARDO, IGMEDIO L. NOGUERA, FIDEL S. SARMIENTO, SR., DAN T. TAUNAN, AMALIA G. SANTOS, AVELINA M. COLONIA, ERIC S. PASTRANA, and MARIVEL B. ISON, Complainants, -versus - PRESIDING JUDGE JOSE S. JACINTO, JR., Branch 45, Regional Trial Court, San Jose Occidental Mindoro, Respondent.
A.M. No. RTJ-15-2405, FIRST DIVISION, January 12, 2015, SERENO, C.J.

A Judge should be considerate, courteous and civil to all persons who come to his court, viz.:

It is reprehensible for a judge to humiliate a lawyer, litigant or witness. The act betrays lack of patience, prudence and restraint. Thus, a judge must at all times be temperate in his language. He must choose his words, written or spoken, with utmost care and sufficient control. The wise and just man is esteemed for his discernment. Pleasing speech increases his persuasiveness.

*In this case, instead of reprimanding Mayor Villarosa for not asking for the court's permission to leave while the trial was ongoing, respondent appeared to serve as the former's advocate. He did so by declaring in open court that the abrupt exit of the Mayor should be excused, as the latter had an important appointment to attend. Respondent does not deny this in his Comment. It was the **Mayor's lawyer**, and **not respondent judge**, who had the duty of explaining why the mayor left the courtroom without asking for the court's permission.*

FACTS

Complainants were allegedly section leaders of the lessees of market stalls in the public market of Occidental Mindoro. The Mayor of the Municipality of San Jose, Occidental Mindoro, Jose T. Villarosa allegedly wanted to demolish the public market, so that the Municipality can use the space to erect the new "San Jose Commercial Complex." Thus, on 26 June 2012, complainants filed a Petition for Prohibition with Urgent Application for the Issuance of Temporary Restraining Order (TRO) and Writ of Preliminary Injunction (WPI) against the Municipality and Mayor Villarosa. The case was docketed as Special Civil Action No. R-1731 and was raffled to respondent's sala.

While the entire entourage of Mayor Villarosa, none of whom were parties to the case, were all allowed inside the courtroom during the 2 July 2012 hearing, only 12 out of the more than 500 members accompanying complainants on that day were

allowed to enter. Worse, upon the motion of the Mayor, all the complainants were escorted out of the courtroom except for Julieta D. Toledo, who was scheduled to give her testimony that day.

At the next hearing held on 3 July 2012, Mayor Villarosa stepped out of the courtroom to take a call. He exited through the door used by the judge and the employees of the court. According to complainants, the Mayor did not speak to anyone, not even his lawyer, before leaving the courtroom. Thus, it came as a surprise to everyone when respondent suddenly explained that the Mayor had to excuse himself for an important appointment.

Petitioners claimed that during the hearings held on 2 and 3 July 2012, respondent "argued, berated, accused, scolded, confused and admonished petitioners without basis or justification." They further claimed that respondent judge asked complainants "confusing and misleading questions all geared and intended to elicit answers damaging to the cause of petitioners and favorable to the cause of their adversary."

Complainants led the instant complaint charging respondent with serious violations of the canons of the Codes of Judicial Conduct and Judicial Ethics and for Violation of Section 3 (e) of R.A. 3019.

ISSUE

1. Whether respondent judge should be held administratively liable on the ground of bias and partiality (NO).
2. Whether respondent judge is guilty of conduct unbecoming of a judge (YES)

RULING

1. Petitioners failed to substantiate their allegation that respondent acted with bias and partiality. **Mere suspicion that a judge is partial is not enough. Clear and convincing evidence is necessary to prove a charge of bias and partiality.** The circumstances detailed by petitioners failed to prove that respondent exhibited "manifest partiality, evident bad faith or gross inexcusable negligence" in the discharge of his judicial functions, as required by Section 3 (e) of R.A. 3019, when he issued the Order lifting the TRO.

This Court cannot accept the contention that respondent's bias and partiality can be gleaned from the mere fact that he did not allow the "more than 500 members" who accompanied petitioners during the hearing to enter the courtroom. As indicated in the report, due to the standard sizes of our courtrooms, it is highly improbable that this huge group could have been accommodated inside. With respect to the exclusion of the other witnesses while Julieta Toledo was giving her testimony, this is sanctioned by Section 15, Rule 132 of the Rules of Court.

2. As stated in the report, respondent raised his voice and uttered abrasive and unnecessary remarks to petitioners' witness. Respondent failed to conduct himself

in accordance with the mandate of Section 6, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary.

A Judge should be **considerate, courteous** and **civil** to all persons who come to his court, viz.:

It is reprehensible for a judge to humiliate a lawyer, litigant or witness. The act betrays lack of patience, prudence and restraint. Thus, a judge must at all times be temperate in his language. He must choose his words, written or spoken, with utmost care and sufficient control. The wise and just man is esteemed for his discernment. Pleasing speech increases his persuasiveness.

In this case, instead of reprimanding Mayor Villarosa for not asking for the court's permission to leave while the trial was ongoing, respondent appeared to serve as the former's advocate. He did so by declaring in open court that the abrupt exit of the Mayor should be excused, as the latter had an important appointment to attend. Respondent does not deny this in his Comment. It was the **Mayor's lawyer**, and **not respondent judge**, who had the duty of explaining why the mayor left the courtroom without asking for the court's permission.

29. Dorothy Fe Mah-Arevalo v. Judge Celso L. Mantua, Regional Trial Court of Palompon, Leyte, Branch 17, A.M. No. RTJ-13-2360, November 19, 2014.

DOROTHY FE MAH-AREVALO, Complainant, -versus – JUDGE CELSO L. MANTUA, REGIONAL TRIAL COURT OF PALOMPON, LEYTE, BRANCH 17, Respondent.
A.M. No. RTJ-13-2360, FIRST DIVISION, November 19, 2014, PERLAS-BERNABE, J.

Immorality has been defined "to include not only sexual matters but also 'conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness; or is willful, flagrant, or shameless conduct showing moral indifference to opinions of respectable members of the community, and an inconsiderate attitude toward good order and public welfare.

In the case at bar, it was adequately proven that respondent engaged in an extramarital affair with his mistress. The respective testimonies of complainant and Nuñez clearly demonstrated how respondent paraded his mistress in full view of his colleagues, court personnel, and even the general public by bringing her to fiestas and other public places, without any regard to consequences that may arise as a result thereof. Worse, respondent even had the audacity to use his chambers as a haven for their morally depraved acts. In doing so, respondent failed to adhere to the exacting standards of morality and decency which every member of the judiciary is expected to observe.

FACTS

A complaint was filed against respondent judge accusing the latter of improper use of his sala, using the court process server as his driver, delegating his work to the legal researcher because he could no longer perform his duties due to his vices, committed gross ignorance of law, asked for monetary benefits from the

government, and failure to timely decide a case. In his comment, respondent judge denied the allegations mentioned in the complaint.

The OCA referred the matter to the CA for investigation, report, and recommendation. The Investigating Justice found respondent guilty of violating Canon 2 and Rule 2.01 of the Code of Judicial Conduct, improper use of his sala as his residence in violation of SC Administrative Circular No. 3-92 and A.M. No. 01-9-09-SC.

Similar to the Investigating Justice, the OCA found respondent to have violated Administrative Circular No. 3-92 and A.M. No. 01-9-09-SC when he used his chambers in the Hall of Justice as his residence. The OCA likewise found respondent guilty of Immorality for bringing his mistress to his chambers and using the same as their "love nest."

ISSUE

Whether respondent should be held administratively liable for Immorality and violation of SC Administrative Circular No. 3-92 in relation to A.M. No. 01-9-09-SC. (YES)

RULING

SC Administrative Circular No. 3-92 explicitly states that the Halls of Justice may only be used for functions related to the administration of justice and for no other purpose. Similar thereto, Section 3, Part I of A.M. No. 01-9-09-SC also provides for similar restrictions regarding the use of the Halls of Justice.

In this case, complainant's evidence had sufficiently established that respondent used his chambers in the Hall of Justice as his residential and dwelling place. As correctly pointed out by both the Investigating Justice and the OCA, respondent's defense that he rented a house did not negate the possibility that he used the Hall of Justice as his residence, since it is possible that a person could be renting one place while actually and physically residing in another.

Further, the Investigating Justice and the OCA correctly found respondent guilty of Immorality. Immorality has been defined "to include not only sexual matters but also 'conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness; or is willful, flagrant, or shameless conduct showing moral indifference to opinions of respectable members of the community, and an inconsiderate attitude toward good order and public welfare.

In the case at bar, it was adequately proven that respondent engaged in an extramarital affair with his mistress. The respective testimonies of complainant and Nuñez clearly demonstrated how respondent paraded his mistress in full view of his colleagues, court personnel, and even the general public by bringing her to fiestas and other public places, without any regard to consequences that may arise as a result thereof. Worse, respondent even had the audacity to use his chambers as a haven for their morally depraved acts. In doing so, respondent failed to adhere to

the exacting standards of morality and decency which every member of the judiciary is expected to observe. There is no doubt that engaging in an extra marital affair is not only a violation of the moral standards expected of the members and employees of the judiciary but is also a desecration of the sanctity of the institution of marriage which the Court abhors and is, thus, punishable.

30. Re: Allegations made under oath at the Senate Blue Ribbon Committee Hearing Held on September 26, 2013 against Associate Justice Gregory S. Ong, A.M. No. SB-14-21-J, September 23, 2014.

RE: ALLEGATIONS MADE UNDER OATH AT THE SENATE BLUE RIBBON COMMITTEE HEARING HELD ON SEPTEMBER 26, 2013 AGAINST ASSOCIATE JUSTICE GREGORY S. ONG, SANDIGANBAYAN

A.M. No. SB-14-21-J, EN BANC, September 23, 2014, PER CURIAM.

In this light, it does not matter that the case is no longer pending when improper acts were committed by the judge. Because magistrates are under constant public scrutiny, the termination of a case will not deter public criticisms for acts which may cast suspicion on its disposition or resolution.

Notwithstanding the absence of direct evidence of any corrupt act by the respondent, we find credible evidence of his association with Napoles after the promulgation of the decision in the Kevlar case. The totality of the circumstances of such association strongly indicates respondent's corrupt inclinations that only heightened the public's perception of anomaly in the decision-making process. By his act of going to respondent at her office on two occasions, respondent exposed himself to the suspicion that he was partial to Napoles.

Respondent's act of voluntarily meeting with Napoles at her office on two occasions was grossly improper and violated Section 1, Canon 4 (Propriety) of the New Code of Judicial Conduct.

FACTS

In the middle of 2013, the local media ran an exposé involving billions of government funds channeled through bogus foundations. Dubbed as the "pork barrel scam," as the money was sourced from the Priority Development Assistance Fund allotted to members of the House of Representatives and Senate, the controversy spawned massive protest actions all over the country. In the course of the investigation conducted by the Senate Committee on Accountability of Public Officers and Investigations (Blue Ribbon Committee), the names of certain government officials and other individuals were mentioned by "whistle-blowers" who are former employees of the alleged mastermind, Janet Lim-Napoles (Mrs. Napoles), wife of an ex-military officer. These personalities identified by the whistle-blowers allegedly transacted with or attended Mrs. Napoles' parties and events, among whom is incumbent **Sandiganbayan Associate Justice Gregory S. Ong**, herein respondent.

Based on the testimonies of Luy, Sula and Rufo, the Investigating Justice formulated the charges against the respondent, as follows:

1. Respondent **acted as contact of Napoles in connection with the Kevlar case** while it was pending in the Sandiganbayan Fourth Division wherein he is the Chairman;
2. Respondent, being Napoles' contact in the Sandiganbayan, **fixed the Kevlar case** resulting in her acquittal;
3. Respondent **received an undetermined amount of money from Napoles** prior to the promulgation of the decision in the Kevlar case thus, she was sure ("kampante") of her acquittal;
4. Respondent **visited Napoles in her office where she handed to him eleven (11) checks**, each amounting to P282,000.00 or a total of P3,102,000.00, as advanced interest for his P25.5 million BDO check she deposited in her personal account; and
5. Respondent attended Napoles' parties and was photographed with Senator Estrada and Napoles.

Respondent thus stands accused of gross misconduct, partiality and corruption or bribery during the pendency of the Kevlar case, and impropriety on account of his dealing and socializing with Napoles after her acquittal in the said case. Additionally, respondent failed to disclose in his September 26, 2013 letter to Chief Justice Sereno that he had actually visited Napoles at her office in 2012, as he vehemently denied having partied with or attended any social event hosted by her.

Respondent maintains that the testimonies of Luy and Sula were hearsay as they have no personal knowledge of the matters they were testifying, which were merely told to them by Napoles. Specifically, he points to portions of Sula's testimony indicating that Napoles had not just one but "contact persons" in Ombudsman and Sandiganbayan; hence, it could have been other individuals, not him, who could help Napoles "x" the Kevlar case, especially since Napoles never really disclosed to Sula who was her (Napoles) contact at the Sandiganbayan and at one of their conversations Napoles even supposedly said that respondent's "talent fee" was too high.

Contrary to respondent's submission, Sula in her testimony said that whenever Napoles talked about her contacts in the Ombudsman and Sandiganbayan, they knew that insofar as the Sandiganbayan was concerned, it was understood that she was referring to respondent even as she may have initially contacted some persons to get to respondent, and also because they have seen him meeting with Napoles at her office. It appears that Napoles made statements regarding the Kevlar case not just to Luy but also to the other employees of JLN Corporation.

ISSUE

Whether Associate Justice Gregory S. Ong should be held administratively liable.
(YES)

RULING

We agree with Justice Sandoval-Gutierrez that respondent's association with Napoles during the pendency and after the promulgation of the decision in the Kevlar case resulting in her acquittal, constitutes gross misconduct notwithstanding the absence of direct evidence of corruption or bribery in the rendition of the said judgment.

The testimonies of Luy and Sula established that Napoles had been in contact with respondent ("*nag-uusap sila*") during the pendency of the Kevlar case. As Napoles' trusted staff, they (especially Luy who is a cousin) were privy to her daily business and personal activities. Napoles constantly updated them of developments regarding the case. She revealed to them that she has a "connect" or "contact" in the Sandiganbayan who will help "x" the case involving her, her mother, brother and some employees. Having closely observed and heard Napoles being confident that she will be acquitted even prior to the promulgation of the decision in the Kevlar case, they were convinced she was indeed in contact with respondent, whose identity was earlier divulged by Napoles to Luy. Luy categorically testified that Napoles told him she gave money to respondent but did not disclose the amount. There was no reason for them to doubt Napoles' statement as they even keep a ledger detailing her expenses for the "Sandiganbayan," which reached P100 million. Napoles' information about her association with respondent was confirmed when she was eventually acquitted in 2010 and when they saw respondent visit her office and given the eleven checks issued by Napoles in 2012.

An accusation of bribery is easy to concoct and difficult to disprove. The complainant must present a panoply of evidence in support of such an accusation. Inasmuch as what is imputed against the respondent judge connotes a grave misconduct, the Quantum of proof required should be more than substantial. Concededly, **the evidence in this case is insufficient to sustain the bribery and corruption charges against the respondent.** Both Luy and Sula have not witnessed respondent actually receiving money from Napoles in exchange for her acquittal in the Kevlar case. Napoles had confided to Luy her alleged bribe to respondent.

Notwithstanding the absence of direct evidence of any corrupt act by the respondent, we find credible evidence of his association with Napoles after the promulgation of the decision in the Kevlar case. The totality of the circumstances of such association strongly indicates respondent's corrupt inclinations that only heightened the public's perception of anomaly in the decision-making process. By his act of going to respondent at her office on two occasions, respondent exposed himself to the suspicion that he was partial to Napoles.

Respondent's act of voluntarily meeting with Napoles at her office on two occasions was grossly improper and violated Section 1, Canon 4 (Propriety) of the New Code of Judicial Conduct, which took effect on June 1, 2004.

SECTION 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

Judges must, at all times, be beyond reproach and should avoid even the mere suggestion of partiality and impropriety. Canon 4 of the New Code of Judicial Conduct states that "[p]ropriety and the appearance of propriety are essential to the performance of all the activities of a judge."

In this light, it does not matter that the case is no longer pending when improper acts were committed by the judge. Because magistrates are under constant public scrutiny, the termination of a case will not deter public criticisms for acts which may cast suspicion on its disposition or resolution. As what transpired in this case, respondent's association with Napoles has unfortunately dragged the Judiciary into the "Pork Barrel" controversy which initially involved only legislative and executive officials. Worse, Napoles' much-flaunted "contact" in the judiciary is no less than a Justice of the Sandiganbayan, our special court tasked with hearing graft cases. We cannot, by any stretch of indulgence and compassion, consider respondent's transgression as a simple misconduct.

Regrettably, the conduct of respondent gave cause for the public in general to doubt the honesty and fairness of his participation in the Kevlar case and the integrity of our courts of justice. Before this Court, even prior to the commencement of administrative investigation, respondent was less than candid. In his letter to the Chief Justice where he vehemently denied having attended parties or social events hosted by Napoles, he failed to mention that he had in fact visited Napoles at her office. Far from being a plain omission, we find that **respondent deliberately did not disclose his social calls to Napoles.** It was only when Luy and Sula testified before the Senate and named him as the "contact" of Napoles in the Sandiganbayan, that respondent mentioned of only one instance he visited Napoles.

Considering that respondent is not a first time offender and the charges of gross misconduct and dishonesty are both grave offenses showing his unfitness to remain as a magistrate of the special graft court, we deem it proper to impose the supreme penalty of dismissal.

31. Antonio S. Ascaño, et al. v. Presiding Judge Jose S. Jacinto, Jr., Branch 45, Regional Trial Court, San Jose Occidental Mindoro, A.M. No. RTJ-15-2405, January 12, 2015.

ANTONIO S. ASCAÑO, JR., CONSOLACION D. DANTES, BASILISA A. OBALO, JULIETA D. TOLEDO, JOSEPH Z. MAAC, EMILIANO E. LUMBOY, TITA F. BERNARDO, IGMEDIO L. NOGUERA, FIDEL S. SARMIENTO, SR., DAN T. TAUNAN, AMALIA G. SANTOS, AVELINA M. COLONIA, ERIC S. PASTRANA, and MARIVEL B. ISON, Complainants, -versus – PRESIDING JUDGE JOSE S. JACINTO, JR., Branch 45, Regional Trial Court, San Jose Occidental Mindoro, Respondent.
A.M. No. RTJ-15-2405, FIRST DIVISION, January 12, 2015, SERENO, C.J.

*A Judge should be **considerate, courteous** and **civil** to all persons who come to his court, viz.:*

It is reprehensible for a judge to humiliate a lawyer, litigant or witness. The act betrays lack of patience, prudence and restraint. Thus, a judge must at all times be temperate in his language. He must choose his words, written or spoken, with utmost care and sufficient control. The wise and just man is esteemed for his discernment. Pleasing speech increases his persuasiveness.

*In this case, instead of reprimanding Mayor Villarosa for not asking for the court's permission to leave while the trial was ongoing, respondent appeared to serve as the former's advocate. He did so by declaring in open court that the abrupt exit of the Mayor should be excused, as the latter had an important appointment to attend. Respondent does not deny this in his Comment. It was the **Mayor's lawyer, and not respondent judge**, who had the duty of explaining why the mayor left the courtroom without asking for the court's permission.*

FACTS

Complainants were allegedly section leaders of the lessees of market stalls in the public market of Occidental Mindoro. The Mayor of the Municipality of San Jose, Occidental Mindoro, Jose T. Villarosa allegedly wanted to demolish the public market, so that the Municipality can use the space to erect the new "San Jose Commercial Complex." Thus, on 26 June 2012, complainants filed a Petition for Prohibition with Urgent Application for the Issuance of Temporary Restraining Order (TRO) and Writ of Preliminary Injunction (WPI) against the Municipality and Mayor Villarosa. The case was docketed as Special Civil Action No. R-1731 and was raffled to respondent's sala.

While the entire entourage of Mayor Villarosa, none of whom were parties to the case, were all allowed inside the courtroom during the 2 July 2012 hearing, only 12 out of the more than 500 members accompanying complainants on that day were allowed to enter. Worse, upon the motion of the Mayor, all the complainants were escorted out of the courtroom except for Julieta D. Toledo, who was scheduled to give her testimony that day.

At the next hearing held on 3 July 2012, Mayor Villarosa stepped out of the courtroom to take a call. He exited through the door used by the judge and the employees of the court. According to complainants, the Mayor did not speak to anyone, not even his lawyer, before leaving the courtroom. Thus, it came as a

surprise to everyone when respondent suddenly explained that the Mayor had to excuse himself for an important appointment.

Petitioners claimed that during the hearings held on 2 and 3 July 2012, respondent "argued, berated, accused, scolded, confused and admonished petitioners without basis or justification." They further claimed that respondent judge asked complainants "confusing and misleading questions all geared and intended to elicit answers damaging to the cause of petitioners and favorable to the cause of their adversary."

Complainants led the instant complaint charging respondent with serious violations of the canons of the Codes of Judicial Conduct and Judicial Ethics and for Violation of Section 3 (e) of R.A. 3019.

ISSUE

1. Whether respondent judge should be held administratively liable on the ground of bias and partiality (NO).
2. Whether respondent judge is guilty of conduct unbecoming of a judge (YES)

RULING

1. Petitioners failed to substantiate their allegation that respondent acted with bias and partiality. **Mere suspicion that a judge is partial is not enough. Clear and convincing evidence is necessary to prove a charge of bias and partiality.** The circumstances detailed by petitioners failed to prove that respondent exhibited "manifest partiality, evident bad faith or gross inexcusable negligence" in the discharge of his judicial functions, as required by Section 3 (e) of R.A. 3019, when he issued the Order lifting the TRO.

This Court cannot accept the contention that respondent's bias and partiality can be gleaned from the mere fact that he did not allow the "more than 500 members" who accompanied petitioners during the hearing to enter the courtroom. As indicated in the report, due to the standard sizes of our courtrooms, it is highly improbable that this huge group could have been accommodated inside. With respect to the exclusion of the other witnesses while Julieta Toledo was giving her testimony, this is sanctioned by Section 15, Rule 132 of the Rules of Court.

2. As stated in the report, respondent raised his voice and uttered abrasive and unnecessary remarks to petitioners' witness. Respondent failed to conduct himself in accordance with the mandate of Section 6, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary.

A Judge should be **considerate, courteous** and **civil** to all persons who come to his court, viz.:

It is reprehensible for a judge to humiliate a lawyer, litigant or witness. The act betrays lack of patience, prudence and restraint. Thus, a judge must at all times be temperate in his language. He must choose his words, written or spoken, with

utmost care and sufficient control. The wise and just man is esteemed for his discernment. Pleasing speech increases his persuasiveness.

In this case, instead of reprimanding Mayor Villarosa for not asking for the court's permission to leave while the trial was ongoing, respondent appeared to serve as the former's advocate. He did so by declaring in open court that the abrupt exit of the Mayor should be excused, as the latter had an important appointment to attend. Respondent does not deny this in his Comment. It was the **Mayor's lawyer**, and **not respondent judge**, who had the duty of explaining why the mayor left the courtroom without asking for the court's permission.

32. Atty. Jerome Norman L. Tacorda for: Odel L. Gedraga v. Judge Reynaldo B. Clemens, A.M. No. RTJ-13-2359 (2013).

ATTY. JEROME NORMAN L. TACORDA for: ODEL L. GEDRAGA, Complainant, - versus - JUDGE REYNALDO B. CLEMENS, Respondent.
A.M. No. RTJ-13-2359, FIRST DIVISION, October 23, 2013, SERENO, C.J.

For respondent judge to be held administratively liable for gross ignorance of the law, the acts complained of must be gross or patent. To constitute gross ignorance of the law, not only must the acts be contrary to existing law and jurisprudence, but they must also be motivated by bad faith, fraud, malice or dishonesty.

FACTS

The case from a Complaint-Affidavit filed by Atty. Jerome Tacorda charging respondent Judge Reynaldo Clemens for gross ignorance of the law and alleged violation of the Witness Examination Rule. The complainant claims that Odel Gedraga, then fifteen years, was presented as witness before the sala of Judge Clemens for a criminal case involving the alleged murder of Odel's father.

Atty. Tacorda alleges that the Child Witness Examination Rule was not properly followed by the respondent Judge when he made certain rulings that were not implemented and from Judge Clemens' alleged failure to castigate the defense counsel for standing beside the witness. Furthermore, the Judge also continued the hearing for three hours, during which Gedraga was subjected to the rigors of trial despite his minority. Finally, Atty. Tacorda claims that Judge Clemens remained passive in many occasions. In his Comment, Judge Clemens belied all the allegations of Atty. Tacorda as having no basis.

The Office of the Court Administrator recommended that charges for gross ignorance of law against Judge Clemens be dismissed for bare allegations and presumption of regularity.

ISSUE

Whether or not Judge Clemens is administratively liable for gross ignorance of the law for supposedly violating the Child Witness Examination Rule (NO).

RULING

The Supreme Court sustained the findings of the OCA that the acts of Judge Clemens were far from being ill-motivated and in bad faith as to justify any administrative liability on his part, as a complete reading of the TSN reveals that he was vigilant in his conduct of the proceedings. According to the SC, in the instances mentioned in the Complaint-Affidavit, he had been attentive to the manifestations made by Atty. Tacorda and had acted accordingly and with dispatch.

In administrative proceedings, the presumption that the respondent has regularly performed the latter's duties would prevail and that the complainant has the burden of proving the contrary by substantial evidence. Charges based on suspicion and speculation cannot be given credence.

For respondent judge to be held administratively liable for gross ignorance of the law, the acts complained of must be gross or patent. To constitute gross ignorance of the law, not only must the acts be contrary to existing law and jurisprudence, but they must also be motivated by bad faith, fraud, malice or dishonesty.

In this case, the OCA found that Atty. Tacorda failed to prove that the acts of Judge Clemens were ill-motivated.

33. Re: Unauthorized Travel Abroad of Judge Cleto R. Villacorta III, Regional Trial Court, Branch 6, Baguio City, A.M. No. 11-9-167-RTC (2013).

**RE: UNAUTHORIZED TRAVEL ABROAD OF JUDGE CLETO R. VILLACORTA III,
REGIONAL TRIAL COURT, BRANCH 6, BAGUIO CITY**

A.M. No. 11-9-167-RTC, FIRST DIVISION, November 11, 2013, SERENO, C.J.

Section 50 of Civil Service Commission Memorandum Circular No. 41, series of 1998, states that an official or an employee who is absent without approved leave shall not be entitled to receive the salary corresponding to the period of the unauthorized leave of absence. Considering that the absences of Judge Villacorta during his extended travel from 4-15 February and 3-6 June 2011 were already considered unauthorized.

FACTS

Judge Cleto R. Villacorta III was previously granted authority to travel to Canada for the period covering 20 December 2010 to 3 February 2011, and he was expected to report for work on 4 February 2011, but reported back for work only on 16 February 2011. Thus, he was asked to explain in writing his failure to secure an extension of his authority to travel abroad in violation of OCA Circular No. 49-2003. In his letter, Judge Villacorta explained that he was unable to return to the country at the expiration of his travel authority because he had to attend to a few family-related matters. However, the OCA recommended that the judge's absence during his extended travel be considered unauthorized.

On 29 April 2011, Judge Villacorta was granted another authority to travel to Canada from 1 May to 2 June to attend the wake and funeral of his sister. However, he reported back for work only on 7 June 2011. In another letter, Judge Villacorta explained that no other return flight was available other than on 5 June 2011. The OCA recommended that the judge's absence during this time be considered unauthorized and that he be given a stern warning for his failure to observe the rules relative to travel abroad

ISSUE

Whether or not Judge Villacorta should be given a stern warning for his failure to observe OCA Circular No. 49-2003 (Guidelines on Requests for Travel Abroad and Extensions for Travel/Stay Abroad). (YES)

RULING

The Supreme Court issued a stern warning to Judge Cleto R. Villacorta and that his failure to observe reasonable rules and guidelines for applying for a leave of absence shall be dealt with more severely. The SC also directed the Office of the Court Administrator to deduct the salaries corresponding to the judge's unauthorized absences, if they have not yet been deducted.

In this case, Judge Villacorta was in a position to file an application for leave to cover his extended stay abroad from 3-6 June 2011. In his letter dated 15 June 2011, he stated that he had to rush on 28 April 2011 to book a flight to Canada, as well as the return flight, for which the only available seat was for 5 June 2011. Thus, even before he left on 1 May 2011, he was already aware that he would not be able to report for work on 3 June 2011 because of the schedule of his return flight.

OCA Circular No. 49-2003 (Guidelines on Requests for Travel Abroad and Extensions for Travel/Stay Abroad) requires that a request must be made for an extension of the period to travel/stay abroad, and that the request be received by the OCA ten (10) working days before the expiration of the original travel authority. Failure to do so would make the absences beyond the original period unauthorized.

Section 50 of Civil Service Commission Memorandum Circular No. 41, series of 1998, states that an official or an employee who is absent without approved leave shall not be entitled to receive the salary corresponding to the period of the unauthorized leave of absence. Considering that the absences of Judge Villacorta during his extended travel from 4-15 February and 3-6 June 2011 were already considered unauthorized.

34. Antonio M. Lorenzana v. Judge Ma. Cecilia I. Austria, A.M. No. RTJ-09-2200, April 2, 2014.

ANTONIO M. LORENZANA, Complainant, -versus – JUDGE MA. CECILIA I. AUSTRIA, Respondent.

A.M. No. RTJ-09-2200, SECOND DIVISION, April 2, 2014, BRION, J.

The New Code of Judicial Conduct does not prohibit a judge from joining or maintaining an account in a social networking site such as Friendster. Section 6, Canon 4 of the New Code of Judicial Conduct recognizes that judges, like any other citizen, are entitled to freedom of expression. This right "includes the freedom to hold opinions without interference and impart information and ideas through any media regardless of frontiers." Joining a social networking site is an exercise of one's freedom of expression. The respondent judge's act of joining Friendster is, therefore, per se not violative of the New Code of Judicial Conduct.

Section 6, Canon 4 of the New Code of Judicial Conduct, however, also imposes a correlative restriction on judges: in the exercise of their freedom of expression, they should always conduct themselves in a manner that preserves the dignity of the judicial office and the impartiality and independence of the Judiciary.

FACTS

A supplemental complaint was filed against Judge Ma. Cecilia I. Austria, who was alleged to have committed an act of impropriety when she displayed her photographs in a social networking website called "Friendster" and posted her personal details as an RTC Judge for the purpose of finding a compatible partner. She also posed with her upper body barely covered by a shawl, allegedly suggesting that nothing was worn underneath except probably a brassiere.

Judge Austria submitted that the photos she posted in the social networking website "Friendster" could hardly be considered vulgar or lewd. She added that an "off-shouldered" attire is an acceptable social outfit under contemporary standards and is not forbidden. She further stated that there is no prohibition against attractive ladies being judges; she is proud of her photo for having been aesthetically made.

The Court of Appeals recommended that the respondent be admonished for failing to observe strict propriety and judicial decorum required by the office. The Office of the Court Administration agreed with the CA recommendation that the respondent's act of posting seductive photos in her Friendster account contravened the standard of propriety set forth by the Code.

ISSUE

Whether or not Judge Austria's act of allegedly posting seductive photos in her Friendster account contravened the standard of propriety and judicial decorum required by the office. (YES)

RULING

The Supreme Court said that while judges are not prohibited from becoming members of and from taking part in social networking activities, they should be reminded that they do not thereby shed off their status as judges. They carry with them in cyberspace the same ethical responsibilities and duties that every judge is expected to follow in his/her everyday activities. It is in this light that the Supreme

Court ruled the respondent in the charge of impropriety when she posted her pictures in a manner viewable by the public.

The New Code of Judicial Conduct does not prohibit a judge from joining or maintaining an account in a social networking site such as Friendster. Section 6, Canon 4 of the New Code of Judicial Conduct recognizes that judges, like any other citizen, are entitled to freedom of expression. This right "includes the freedom to hold opinions without interference and impart information and ideas through any media regardless of frontiers." Joining a social networking site is an exercise of one's freedom of expression. The respondent judge's act of joining Friendster is, therefore, per se not violative of the New Code of Judicial Conduct.

Section 6, Canon 4 of the New Code of Judicial Conduct, however, also imposes a correlative restriction on judges: in the exercise of their freedom of expression, they should always conduct themselves in a manner that preserves the dignity of the judicial office and the impartiality and independence of the Judiciary.

This rule reflects the general principle of propriety expected of judges in all of their activities, whether it be in the course of their judicial office or in their personal lives. In particular, Sections 1 and 2 of Canon 4 of the New Code of Judicial Conduct prohibit impropriety and even the appearance of impropriety in all of their activities.

Based on this provision, the SC held that the respondent disregarded the propriety and appearance of propriety required of her when she posted Friendster photos of herself wearing an "off-shouldered" suggestive dress and made this available for public viewing. While the respondent's act of posting her photos would seem harmless and inoffensive had this act been done by an ordinary member of the public. As the visible personification of law and justice, however, judges are held to higher standards of conduct and thus must accordingly comport themselves.

35. Dulalia v. Judge Cujigal, A.M. No. OCA IPI No. 10-3492, RTC, December 4, 2013.

JUAN DULALIA, JR., Complainant, -versus – ATTY. PABLO C. CRUZ, Respondent.
A.C. No. 6854, SECOND DIVISION, April 25, 2007, CARPIO-MORALES, J.

An attorney enjoys the legal presumption that he is innocent of the charges preferred against him until the contrary is proved. The burden of proof rests upon the complainant to overcome the presumption and establish his charges by a clear preponderance of evidence. In the absence of the required evidence, the presumption of innocence on the part of the lawyer continues and the complaint against him should be dismissed

FACTS

Respondent Atty. Pablo C. Cruz, Municipal Legal Officer of Meycauayan, Bulacan is charged by complainant Juan Dulalia, Jr. of violation Rules 1.01, 6.02, and 7.03 of the Code of Professional Responsibility.

Complainant's wife Susan Soriano Dulalia filed an application for building permit for the construction of a warehouse. Despite compliance with all the requirements for the purpose, she failed to secure a permit, she attributing the same to the opposition of respondent, who allegedly opposed the application for building permit because of a personal grudge against his wife Susan who objected to respondent's marrying her first cousin Imelda Soriano, respondent's marriage with Carolina Agaton being still subsisting.

The IBP Commission on Bar Discipline recommended the dismissal of the complaint as it dealt with mainly on the issue that respondent allegedly opposes the application of his wife for a building permit for the construction of their commercial building.

ISSUE

Whether or not Atty. Pablo C. Cruz violated Rules 1.01, 6.02, and 7.03 of the Code of Professional Responsibility. (NO)

RULING

The Supreme Court found that respondent satisfactorily answered all the charges and accusations of complainant. There was no clear, convincing and strong evidence to warrant the disbarment or suspension of respondent. An attorney enjoys the legal presumption that he is innocent of the charges preferred against him until the contrary is proved. The burden of proof rests upon the complainant to overcome the presumption and establish his charges by a clear preponderance of evidence. In the absence of the required evidence, the presumption of innocence on the part of the lawyer continues and the complaint against him should be dismissed.

36. *Mamasan Sultan Ali v. Judge Pacalma, A.M. MTJ-03-1505*, November 27, 2013.

MAMASAW SULTAN ALI, Complainant, -versus - HON. BAGUINDA-ALI PACALNA, Presiding Judge HON. PUNDAYA A. BERUA, Acting Presiding Judge HADJI IBRA DARIMBANG, Clerk of Court and MANDAG U. BATUA-AN, Court Stenographer, Respondents.

A.M. No. MTJ-03-1505, FIRST DIVISION, November 27, 2013, VILLARAMA, JR., J.

Respondent's petition is not supported by any single proof of his professed repentance. His appeal for clemency is solely anchored on his avowed intention to go back to the judiciary on his personal belief that "he can be x x x an effective instrument in the delivery of justice in the Province of Lanao del Sur because of his seventeen (17) years of experience," and on his "promise before the Almighty God and the High Court that he will never repeat the acts or omissions that he had committed as a Judge." He claims having learned "enough lessons" during the three years he became jobless and his family had "suffered so much because of his shortcoming." Apart from respondent's own declarations, there is no independent evidence or relevant circumstances to justify

clemency. Applying the standards set by this Court in A.M. No. 07-7-17-SC, respondent's petition for judicial clemency must be denied.

FACTS

A Petition for judicial clemency was filed by Baguinda-Ali Pacalna, former Presiding Judge of the MCTC of Balindong in Lanao del Sur.

Respondent Pacalna was previously found administratively liable for dishonesty, serious misconduct and gross ignorance of the law or procedure, and also violated the Code of Judicial Conduct which enjoins judges to uphold the integrity of the judiciary, avoid impropriety or the appearance of impropriety in all activities and to perform their official duties honestly and diligently. Subsequently, another administrative complaint was filed against Pacalna by members of the Marawi City Police and was held liable for grave misconduct and meted the penalty of six (6) months suspension, converted to forfeiture of the corresponding amount of his salary.

Pacalna resigned while he was being investigated by the OCA but now seeks to rejoin the judiciary and filed his application for the Regional Trial Court (RTC) of Marawi City, Branch 9. He was already interviewed by the Judicial and Bar Council (JBC) in Cagayan de Oro City in November 2012 and that the only hindrance to his nomination for the said judicial position was the penalty imposed on him in the present case.

ISSUE

Whether or not Pacalna should be allowed to rejoin the judiciary. (NO)

RULING

A.M. No. 07-7-17-SC (Re: Letter of Judge Augustus C. Diaz, Metropolitan Trial Court of Quezon City, Branch 37, Appealing for Judicial Clemency) laid down the following guidelines in resolving requests for judicial clemency, to wit:

1. There must be proof of remorse and reformation. These shall include but should not be limited to certifications or testimonials of the officer(s) or chapter(s) of the Integrated Bar of the Philippines, judges or judges associations and prominent members of the community with proven integrity and probity. A subsequent finding of guilt in an administrative case for the same or similar misconduct will give rise to a strong presumption of non-reformation.
2. Sufficient time must have lapsed from the imposition of the penalty to ensure a period of reformation.
3. The age of the person asking for clemency must show that he still has productive years ahead of him that can be put to good use by giving him a chance to redeem himself.
4. There must be a showing of promise (such as intellectual aptitude, learning or legal acumen or contribution to legal scholarship and the development of

the legal system or administrative and other relevant skills), as well as potential for public service.

5. There must be other relevant factors and circumstances that may justify clemency.

In this case, respondent's petition is not supported by any single proof of his professed repentance. His appeal for clemency is solely anchored on his avowed intention to go back to the judiciary on his personal belief that "he can be x x x an effective instrument in the delivery of justice in the Province of Lanao del Sur because of his seventeen (17) years of experience," and on his "promise before the Almighty God and the High Court that he will never repeat the acts or omissions that he had committed as a Judge." He claims having learned "enough lessons" during the three years he became jobless and his family had "suffered so much because of his shortcoming."

Apart from respondent's own declarations, there is no independent evidence or relevant circumstances to justify clemency. Applying the standards set by this Court in A.M. No. 07-7-17-SC, respondent's petition for judicial clemency must be denied.

37. Josephine Jazmines Tan v. Judge Sibannah E. Usman, Regional Trial Court, Branch 28, Catbalogan City, Samar, A.M. No. RTJ-14-2390, August 13, 2014.

JOSEPHINE JAZMINES TAN, *Petitioner*, -versus - JUDGE SIBANAH E. USMAN, Regional Trial Court, Branch 28, Catbalogan City, Samar, *Respondent*.
A.M. No. RTJ-14-2390, THIRD DIVISION, August 13, 2014, PERALTA, J.

As settled, an accusation of bribery is easy to concoct but difficult to prove. The complainant must present a panoply of evidence in support of such an accusation. Bare allegation would not suffice to hold respondent liable. In the absence of showing direct and convincing evidence to prove the alleged bribery, respondent judge cannot be held guilty of said charge.

FACTS

An administrative complaint was filed by complainant Josephine Jazmines Tan against respondent Judge Sibannah E. Usman for bribery and corruption after allegedly receiving payment of P250,000.00 from their opponent and for knowingly issuing an unjust interlocutory order.

Judge Usman, in his Comment, countered that Tan's allegations and issues had already been raised and threshed out, thus, following the principle of res judicata, the instant complaint should not be given due course. Respondent judge also argues that the allegations of bribery and corruption are baseless and unfounded.

The Office of the Court Administrator referred the administrative complaint to the Presiding Judge of the Court of Appeals in Cebu City, who recommended that the instant complaint be dismissed for lack of evidence.

ISSUE

Whether or not Judge Usman should be dismissed from service for alleged bribery and corruption. (NO)

RULING

The Supreme Court adopted the findings of the Investigating Justice and dismissed the instant complaint.

The Court declared that it is settled that in administrative proceedings, the burden of proof that respondent committed the acts complained of rests on the complainant. Thus, if the complainant, upon whom rests the burden of proving his cause of action, fails to show in a satisfactory manner the facts upon which she bases her claim, respondent is under no obligation to prove his exception or defense.

As settled, an accusation of bribery is easy to concoct but difficult to prove. The complainant must present a panoply of evidence in support of such an accusation. Bare allegation would not suffice to hold respondent liable. In the absence of showing direct and convincing evidence to prove the alleged bribery, respondent judge cannot be held guilty of said charge.

In the instant case, no evidence was presented showing that respondent in fact accepted or received money or anything from Cui in relation to the subject cases. Neither was there any evidence to show that respondent judge unlawfully or wrongfully used his official function for his own benefit or personal gain.

The Court emphasized that they will not hesitate to protect Judges or court personnel against any groundless accusation that trifles with judicial processes when an administrative charge against them has no basis whatsoever in fact or in law. This Court will not shirk from its responsibility of imposing discipline upon all employees of the judiciary, but neither will it hesitate to shield them from unfounded suits that only serve to disrupt rather than promote the orderly administration of justice.

38. *George T. Chua v. Judge Fortunito L. Madrona*, A.M. No. RTJ-14-2394, September 1, 2014.

GEORGE T. CHUA, Complainant, -versus - JUDGE FORTUNITO L. MADRONA, Respondent.

A.M. No. RTJ-14-2394, FIRST DIVISION, September 1, 2014, BERSAMIN, J.

A trial judge is not accountable for performing his judicial functions and office because such performance is a matter of public duty and responsibility. Indeed, the judge's office and duty to render and administer justice, being functions of sovereignty, should not be simply taken for granted. No administrative charge for manifest partiality, gross misconduct, and gross ignorance of the law should be brought against him for the orders issued in the due course of judicial proceedings.

FACTS

George T. Chua, the president of Manila Bay Development Corporation, filed a complaint against Judge Fortunito L. Madrona after the respondent judge declared MBDC in default and rendered their motion for reconsideration moot. Chua is alleging that Judge Madrona's actions showed his manifest partiality in favor of Uniwide.

The complainant is alleging that Judge Madrona, despite active participation of MBDC in the RTC proceedings, unduly deprived the company of its right to participate. Furthermore, Chua also charged Judge Madrona with gross ignorance of the law and accused him of tampering with the minutes of a hearing. Judge Madrona, on the other hand, averred that his actions were justified and that the allegations were unfounded.

The Investigating Justice found that Judge Madrona is not administratively liable as the allegations of the complaint are matters pertaining to the exercise of his adjudicative function.

ISSUE

Whether or not respondent Judge should be held administratively liable. (NO)

RULING

The Supreme Court emphasized that jurisprudence is replete with cases holding that errors, if any, committed by a judge in the exercise of his adjudicative functions cannot be corrected through administrative proceedings, but should instead be assailed through available judicial remedies. Disciplinary proceedings against judges do not complement, supplement or substitute judicial remedies and, thus, cannot be pursued simultaneously with the judicial remedies accorded to parties aggrieved by their erroneous orders or judgments.

Assuming that Judge Madrona erroneously interpreted the provision of Section 4, Rule 16 of the Rules of Court in relation to this case, he cannot be administratively liable for such judicial error. It is settled that a judge's failure to interpret the law or to properly appreciate the evidence presented does not necessarily render him administratively liable. Only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith, or deliberate intent to do an injustice will be administratively sanctioned. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.

Furthermore, MBDC failed to adduce convincing evidence showing that Judge Madrona's error was so gross or patent, deliberate and malicious or incurred with evident bad faith. Neither was bias nor partiality established. Acts or conduct of the judge clearly indicative of arbitrariness or prejudice must be clearly shown before he can be branded the stigma of being biased and partial. In the same vein, bad faith

or malice cannot be inferred simply because the judgment or order is adverse to a party.

A trial judge is not accountable for performing his judicial functions and office because such performance is a matter of public duty and responsibility. Indeed, the judge's office and duty to render and administer justice, being functions of sovereignty, should not be simply taken for granted. No administrative charge for manifest partiality, gross misconduct, and gross ignorance of the law should be brought against him for the orders issued in the due course of judicial proceedings.

39. Presiding Judge Jose L. Madrid, Regional Trial Court, Branch 51, Sorsogon City v. Atty. Juan S. Dealca, A.C. No. 7474, September 9, 2014.

PRESIDING JUDGE JOSE L. MADRID, *Complainant*, -versus - ATTY. JUAN S. DEALCA, *Respondent*.

A.C. No. 7474, EN BANC, September 9, 2014, BERSAMIN, J.

The Lawyer's Oath is a source of obligations and duties for every lawyer, and any violation thereof by an attorney constitutes a ground for disbarment, suspension, or other disciplinary action. The oath exhorts upon the members of the Bar not to "wittingly or willingly promote or sue any groundless, false or unlawful suit." These are not mere facile words, drift and hollow, but a sacred trust that must be upheld and keep inviolable. As a lawyer, therefore, Atty. Dealca was aware of his duty under his Lawyer's Oath not to initiate groundless, false or unlawful suits.

FACTS

Respondent Atty. Juan Dealca was hired as a counsel in a pending criminal case that was raffled to the sala of Judge Jose Madrid. Subsequently, Dealca moved that the case be re-raffled to another Branch of the RTC considering the adverse incidents between the respondent Presiding Judge and the complainant, which was denied by Judge Madrid.

Thereafter, Judge Madrid filed a letter complaint in the Office of the Bar Confidant citing Atty. Dealca's unethical practice of entering his appearance and then moving for the inhibition of the presiding judge on the pretext of previous adverse incidents between them.

Atty. Dealca, on the other hand, asserted that Judge Madrid's issuance of the order unconstitutionally and unlawfully deprived the accused of the right to counsel, to due process, and to a fair and impartial trial; that Judge Madrid exhibited bias in failing to act on the motion to lift and set aside the warrant of arrest issued against the accused; and that it should be Judge Madrid himself who should be disbarred and accordingly dismissed from the Judiciary for gross ignorance of the law.

The IBP submitted their findings and recommended that Atty. Dealca be suspended from the practice of law for a period of six months.

ISSUE

Whether or not Atty. Dealca filed frivolous administrative and criminal complaints against judges and court personnel in violation of the Lawyer's Oath and the Code of Professional Responsibility. (YES)

RULING

The Supreme Court ruled that there were no merits in Atty. Dealca's arguments.

Atty. Dealca's complaint against Judge Madrid has failed the judicious scrutiny. The Court did not find any trace of idealism or altruism in the motivations for initiating it. Instead, Atty. Dealca exhibited his proclivity for vindictiveness and penchant for harassment, considering that, as IBP Commissioner Hababag pointed out, his bringing of charges against judges, court personnel and even his colleagues in the Law Profession had all stemmed from decisions or rulings being adverse to his clients or his side. He well knew, therefore, that he was thereby crossing the line of propriety, because neither vindictiveness nor harassment could be a substitute for resorting to the appropriate legal remedies. He should now be reminded that the aim of every lawsuit should be to render justice to the parties according to law, not to harass them.

The Lawyer's Oath is a source of obligations and duties for every lawyer, and any violation thereof by an attorney constitutes a ground for disbarment, suspension, or other disciplinary action. The oath exhorts upon the members of the Bar not to "wittingly or willingly promote or sue any groundless, false or unlawful suit." These are not mere facile words, drift and hollow, but a sacred trust that must be upheld and kept inviolable.

As a lawyer, therefore, Atty. Dealca was aware of his duty under his Lawyer's Oath not to initiate groundless, false or unlawful suits. The duty has also been expressly embodied in Rule 1.03, Canon 1 of the Code of Professional Responsibility.

2017 Jurisprudence on Legal and Judicial Ethics

1) A.C. No. 10758, December 5, 2017 (Formerly CBD Case No. 11-3215)
ATTY. ROSITA L. DELA FUENTE TORRES, ET AL. vs. ATTY. BAYANI P. DALANGIN
(consolidated with) A.C. No. 10759, December 5, 2017 (Formerly CBD Case No. 12-3292)
GLENDA ALVARO vs. ATTY. BAYANI P. DALANGIN

2) G.R. No. 208614, November 27, 2017.
SIMEON TRINIDAD PIEDAD (deceased) survived and assumed by his heirs, namely: ELISEO PIEDAD (deceased), * JOEL PIEDAD, PUBLIO PIEDAD, JR., GLORIA PIEDAD, LOT PIEDAD, ABEL PIEDAD, ALI PIEDAD, and LEE PIEDAD vs. CANDELARIA LINEHAN BOBILLES and MARIANO BOBILLES

3) A.C. No. 11828, November 22, 2017
SPOUSES VICENTE and PRECYWINDA GIMENA vs. ATTY. JOJO S. VIJIGA

- 4) A.C. No. 11822, November 22, 2017
VICKA MARIE D. ISALOS vs. ATTY. ANA LUZ B. CRISTAL
- 5) A.C. No. 5573, November 21, 2017
GIZALE O. TUMBAGA vs. ATTY. MANUEL P. TEOXON
- 6) A.C. No. 10547, November 8, 2017
FREDDIE A. GUILLEN vs. ATTY. AUDIE ARNADO
- 7) A.C. No. 10564, November 7, 2017
MANUEL L. VALIN AND HONORIO L. VALIN vs. ATTY. ROLANDO T. RUIZ
- 8) A.C. No. 10532, November 7, 2017
REYNALDO A. CABUELLO (DECEASED), SUBSTITUTED BY BEATRIZ CABUELLO
CABUTIN vs. ATTY. EDITHA P. TALABOC
- 9) A.C. No. 8887, November 7, 2017
ROMAN DELA ROSA VERANO vs. ATTY. LUIS FERNAN DIORES, JR.
- 10) A.C. No. 11483, October 3, 2017
LUZVIMINDA S. CERILLA vs. ATTY. SAMUEL SM. LEZAMA
- 11) A.C. No. 11754, October 3, 2017
JOAQUIN G. BONIFACIO vs. ATTY. EDGARDO O. ERA and ATTY. DIANE KAREN B.
BRAGAS
- 12) A.C. No. 11616, August 23, 2017
LITO V. BUENVIAJE vs. ATTY. MELCHOR G. MAGDAMO
- 13) A.C. No. 10253, August 22, 2017
RAFAEL PADILLA vs. ATTY. GLENN SAMSON
- 14) A.C. No. 8574, August 16, 2017
CARMELO IRINGAN vs. ATTY. CLAYTON B. GUMANGAN
- 15) A.C. No. 10245, August 16, 2017
ELIBENA A. CABILES vs. ATTY. LEANDRO S. CEDO
- 16) A.C. No. 11663, July 31, 2017
NANETTE B. SISON, represented by DELIA B. SARABIA vs. ATTY. SHERDALE M.
VALDEZ
- 17) A.C. No. 1346, July 25, 2017
PACES INDUSTRIAL CORPORATION vs. ATTY. EDGARDO M. SALANDANAN
- 18) A.C. No. 9919, July 19, 2017
DR. EDUARDO R. ALICIAS, JR. vs. ATTY. VIVENCIO S. BACLIG

- 19) A.C. No. 11668, July 17, 2017
JOY T. SAMONTE vs. ATTY. VIVENCIO V. JUMAMIL
- 20) A.C. No. 10911, June 6, 2017
VIRGILIO J. MAPALAD, SR. vs. ATTY. ANSELMO S. ECHANEZ
- 21) A.C. No. 7594, February 9, 2016
ADELPHA E. MALABED vs. ATTY. MELJOHN B. DE LA PEÑA
- 22) A.C. No. 11165, February 6, 2017
ORLANDO S. CASTELO, ELENA C. CAMA, OSWALDO CASTELO, JOCELYN LLANILLO,
AND BENJAMIN CASTELO vs. ATTY. RONALD SEGUNDINO C. CHING
- 23) A.C. No. 11545, January 24, 2017
SUSAN LOBERES-PINTAL vs. ATTY. RAMONCITO B. BAYLOSIS
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2018 Jurisprudence on Legal and Judicial Ethics

- 1) A.C. No. 11724, July 31, 2018 (Formerly CBD No. 14-4109)
- 2) A.M. No. 18-06-01-SC. July 17, 2018.
- 3) A.C. No. 10557, July 10, 2018 (Formerly CBD Case No. 07-1962)
- 4) A.C. No. 11185, July 4, 2018 (Formerly CBD No. 12-3619)
JAIME S. DE BORJA, complainant, vs. ATTY. RAMON R. MENDEZ, JR.
- 5) A.C. No. 11981, July 3, 2018. LEAH B. TADAY, complainant, vs. ATTY.
DIONISIO B. APOYA, JR.
- 6) A.C. No. 8854, July 3, 2018
JULIETA DIMAYUGA, complainant, vs. ATTY. VIVIAN G. RUBIA
- 7) A.M. No. RTJ-16-2460. June 27, 2018.
ATTY. JEROME NORMAN L. TACORDA and LETICIA RODRIGO-
DUMDUM, complainants, vs. JUDGE PERLA V. CABRERA-FALLER, Executive
Judge, and OPHELIA G. SULUEN, Officer-in-Charge/Legal Researcher II, both
of Branch 90, Regional Trial Court, Dasmariñas City, Cavite, respondents.
- 8) A.C. No. 12121. June 27, 2018. (Formerly CBD Case No. 14-4322)
CELESTINO MALECDAN, complainant, vs. ATTY. SIMPSON T. BALDO
- 9) A.C. No. 12011. June 26, 2018.
NICANOR D. TRIOL, complainant, vs. ATTY. DELFIN R. AGCAOILI, JR.
- 10) A.C. No. 11173. June 11, 2018. (Formerly CBD No. 13-3968)
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Re: CA-G.R. CV No. 96282 (SPOUSES BAYANI AND MYRNA M. PARTOZA vs. LILIAN * B. MONTANO and AMELIA SOLOMON), complainant, vs. ATTY. CLARO JORDAN M. SANTAMARIA, respondent.

- 11) A.C. No. 10145. June 11, 2018.
OLIVER FABUGAIS, complainant, vs. ATTY. BERARDO C. FAUNDO, JR.
- 12) [A.C. No. 11156. March 19, 2018. [Formerly CBD Case No. 12-3680] MICHELLE YAP, complainant, vs. ATTY. GRACE C. BURI, respondent.
- 13) A.M. No. 17-11-06-CA. March 13, 2018.
RE: ANONYMOUS LETTER-COMPLAINT (with Attached Pictures) AGAINST ASSOCIATE JUSTICE NORMANDIE B. PIZARRO, COURT OF APPEALS
- 14) A.M. No. RTJ-15-2435. March 6, 2018.[Formerly A.M. No. 15-08-246-RTC] OFFICE OF THE COURT ADMINISTRATOR, complainant, vs. JUDGE WINLOVE M. DUMAYAS, BRANCH 59, REGIONAL TRIAL COURT, MAKATI CITY, respondent.
- 15) A.C. No. 11829. February 26, 2018.
MARIA ROMERO, complainant, vs. ATTY. GERONIMO R. EVANGELISTA, JR.
- 16) A.C. No. 10684. January 24, 2018.
ILUMINADA D. YUZON, complainant, vs. ATTY. ARNULFO M. AGLERON
- 17) A.M. No. RTJ-16-2470, January 10, 2018. (Formerly OCA IPI No. 12-3987-RTJ) PROSECUTOR LEO T. CAHANAP, complainant, vs. JUDGE LEONOR S. QUIÑONES, Regional Trial Court, Branch 6, Iligan City, Lanao del Norte
- 18) A.C. No. 8208. January 10, 2018.
RET. JUDGE VIRGILIO ALPAJORA, complainant, vs. ATTY. RONALDO ANTONIO V. CALAYAN
- 19) A.M. No. MTJ-16-1879. July 24, 2018 (Formerly OCA IPI No. 14-2719-MTJ) ANONYMOUS, complainant, vs. JUDGE BILL D. BUYUCAN, MUNICIPAL CIRCUIT TRIAL COURT, BAGABAG-DIADI, NUEVA VIZCAYA

2017 JURISPRUDENCE ON LEGAL AND JUDICIAL ETHICS

1) A.C. No. 10758
ATTY. ROSITA L. DELA FUENTE TORRES, ET AL, Petitioner
vs.
ATTY. BAYANI P. DALANGIN, Respondent
x ----- x
GLENDALVARO, Petitioner
vs.
ATTY. BAYANI P. DALANGIN, Respondent
x ----- x
ATTY. BAYANI P. DALANGIN, Petitioner

vs.

**ATTY. ROSITA L. DELA FUENTE TORRES AND ATTY. AVELINO ANDRES,
Respondent**

x-----x

ATTY. BAYANI P. DALANGIN, Petitioner

vs.

ATTY. ROSITA L. DELA FUENTE TORRES, Respondents

FACTS

These are four administrative complaints that were separately filed with the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) by and against substantially the same parties, particularly:

FIRST ADMIN COMPLAINT

Complaint for gross immorality, malpractice and gross misconduct filed against Atty. Dalangin

Act 1: complaint for disbarment was filed against Atty. Torres by Marzan and Valdez, who were clients of Atty. Dalangin and the losing parties in an unlawful detainer case. Marzan and Valdez later disclosed to Atty. Torres that the filing of the disbarment case was orchestrated by Atty. Dalangin, who prepared the affidavit and instructed them to sign it even without explaining the contents and tenor of the document.

Act 2: Atty. Dalangin was accused of maintaining an illicit and immoral affair with one Julita Pascual (Pascual), a clerk at the Public Attorney's Office (PAO) in Talavera, Nueva Ecija, where Atty. Dalangin previously worked as district public attorney. After Atty. Dalangin had left PAO, he retained Pascual as his private secretary, who still remained to be employed with PAO. Atty. Dalangin and Pascual had a daughter whom they named Julienne, even when each of them had existing marriages with some other persons. The affair between Atty. Dalangin and Pascual, and the paternity of Julienne, were known to the community, especially the courts. Julienne was nonetheless entered in the civil registry as Pascual and her legal husband's own child so as to conceal the fact that Atty. Dalangin was the real father. The foregoing acts allegedly breached Rule 1.01, Canon 1, and Rule 7.03, Canon 7 of the CPR. And for other several acts (***See table below- RULING PART***)

SECOND ADMIN COMPLAINT

A complaint for gross misconduct, was filed by Alvaro against Atty. Dalangin while Alvaro was waiting for the start of a hearing at the lobby RTC...

Upon seeing Alvaro, Atty. Dalangin allegedly hurled slanderous and defamatory remarks against her, as he spoke at the top of his voice and referred to her as a "certified swindler." He also confronted and threatened Alvaro for her participation in the filing of CBD Case No. 11-3215, and then precluded her from visiting the PAO in Talavera, Nueva Ecija. Atty. Dalangin's tirade was heard and witnessed by several

persons, and some of them executed their respective affidavits to narrate the incident. The foregoing impelled Alvaro to seek Atty. Dalangin's disbarment for a violation of Rules 1.01 and 1.02, Canon 1, Rule 7.03, Canon 7, and Rule 8.02, Canon 8 of the CPR

THIRD ADMIN COMPLAINT

Atty. Dalangin sought the disbarment of Atty. Torres and Atty. Andres for gross misconduct, violation of the lawyer's oath, and breach of Rules 1.01 and 1.02, Canon 1 of the CPR. He claimed that both lawyers conspired with their clients in filing CBD Case No. 11-3215, even as they violated Republic Act (R.A.) No. 4200, otherwise known as the Anti-Wiretapping Act.

Submitted to support CBD Case No. 11-3215 was Nonilo Alejo's (Alejo) affidavit, which contained a transcript of a recorded telephone conversation between Alejo and one Wilma Pineda (Pineda).²² The recording was without the prior knowledge and consent of Pineda.²³

As a backgrounder, Atty. Dalangin was accused in CBD Case No. 11- 3215 of fabricating testimonies against Noveras, who was claimed to be a vital witness in a criminal case against Pascual. In an affidavit drafted by Atty. Dalangin for Pineda, the latter complained of Noveras and Alejo's failure to return in full the cash bond that she posted in a case for violation of the Bouncing Checks Law, even after the case had been dismissed by the trial court. This allegation was negated in the disputed transcript, as Pineda allegedly confirmed receiving the full ₱8,000.00, but decided to give half thereof to Alejo for a "blow-out" after her case's dismissal.

FOURTH ADMIN COMPLAINT

Dalangin filed this complaint solely against Atty. Torres for grave misconduct, dishonesty for violation of Article 183 of the Revised Penal Code, and breach of Canon 1 of the CPR

Atty. Dalangin faulted Atty. Torres for submitting in CBD Case No. 11-3215 Marzan and Valdez's affidavit which allegedly contained untruthful statements. Marzan and Valdez knew from the beginning that they were complainants in a disbarment case against Atty. Torres. Atty. Torres, however, later made them issue the perjured statements by using as a leverage her own complaint for perjury against Marzan and Valdez, who were then pressured to sign the affidavits in exchange for the perjury case's dismissal.

ISSUES: FIRST ADMIN COMPLAINT

1. WON atty, Dalangin is guilty of gross immorality
2. WON he is guilty of gross misconduct and malpractice

RULING: FIRST ADMIN COMPLAINT

1. NO – but not entirely without fault: penalty is: admonition with stern warning

With careful consideration of the foregoing tenets, the Court's perusal of the records reveals an insufficiency of evidence that could warrant the recommended suspension from the practice of law.

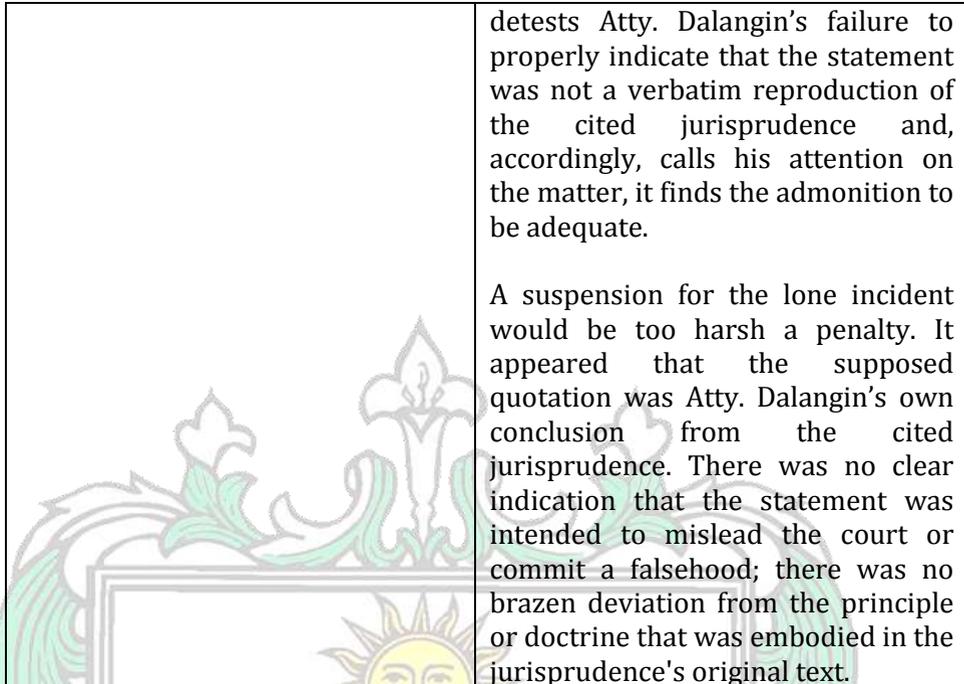
To begin with, the two affidavits considered by the IBP as bases for its finding of Atty. Dalangin's gross immorality harped only on general statements of a supposed personal and public knowledge on the wrongful relationship between Atty. Dalangin and Pascual. The circumstances that could have led them to their conclusion were scant and unsubstantiated. The most concrete proof that they could offer was the birth of Julienne, yet even the child's birth certificate, a public document, expressly indicated the girl's father to be Pascual's husband, and not Atty. Dalangin.⁶¹ Julienne's baptismal certificate⁶² also provided such fact, along with a confirmation of Atty. Dalangin's defense on his closeness to Julienne for being her godfather.

It would be unfair to Atty. Dalangin, more so for the child whose filiation is in a way needlessly dragged into this case, for the Court to affirm the assertions in the complaint and the IBP's findings and conclusions on the basis of the available evidence. The alleged similarities in the physical appearances of Atty. Dalangin and Julienne were but lame and dismal validations of the complainants' vehement claim of paternity. Even the photographs⁶³ of Atty. Dalangin, Pascual and Julienne in what appeared to be a trip to Pue1io Princesa, Palawan were insufficient to support a conclusion on the unlawful relations. The lone photo where Atty. Dalangin appeared with Pascual and Julienne, who were apparently merely waiting for boarding in an airport terminal, utterly failed to manifest any romantic or filial bond among them. It was also explained through an affidavit⁶⁴ executed by spouses Dante Capindian and Timotea Jamito that Atty. Dalangin was a principal sponsor, while Pascual's family were guests, in their wedding which was held on August 6, 2011 in Puerto Princesa, Palawan. Apparently, the photos were taken during the said trip. Pascual's husband, Edgardo, was also present for the occasion.

The Court, nonetheless, does not find Atty. Dalangin totally absolved of fault. While he vehemently denied any romantic relationship with Pascual, he admitted demonstrating closeness with the latter's family, including her children. It was such display of affection that could have sparked in the minds of observers the idea of a wrongful relationship and belief that Julienne was a product of the illicit affair. Atty. Dalangin should have been more prudent and mindful of his actions and the perception that his acts built upon the public, particularly because he and Pascual were both married. "As officers of the court, lawyers must not only in fact be of good moral character but must also be seen to be of good moral character and leading lives in accordance with the highest moral standards of the community." **As keepers of public faith, lawyers are burdened with a high degree of social responsibility and, hence, must handle their personal affairs with great caution**

2. NO

<u>ACT ALLEGELY MADE</u>	<u>SC'S RULING</u>
<p>on the claim that Atty. Dalangin failed to fully explain to Marzan and Valdez the contents of the affidavit that supported a disbarment case against Atty. Torres</p>	<p>the Court takes note of the fact that the alleged failure to explain did not necessarily equate to the falsity of the claims therein made.</p> <p>It was not alleged that they were fraudulently lured or tricked by Atty. Dalangin into signing the complaint, and that the charges therein hurled against Atty. Torres were absolutely false. Thus, the claim that Atty. Dalangin knowingly brought a groundless suit against a fellow lawyer had no leg to stand on.</p>
<p>Collected attorney's fees from indigent litigants who sought his assistance</p>	<p>Unsubstantiated by evidence. Such serious imputation could not have been adequately established by an affidavit that was executed in 2010 by a lone person</p>
<p>appeared in courts beyond his area of jurisdiction as public attorney</p>	<p>he claimed to have obtained permission therefor from the Regional Public Attorney, a defense which the complainants failed to refute. In the absence of contrary evidence, the presumption that the respondent regularly performed his duty in accordance with his oath shall prevail, especially as the Court considers it highly improbable for the courts where appearances were made to fail to notice such patent irregularity, if Atty. Dalangin was indeed not authorized to perform his acts before their courts as a public attorney.</p>
<p>failure of Atty. Dalangin to submit all pages of a certificate of title in Civil Case No. 336-SD(04)AF pending with the RTC,</p>	<p>it has been explained that the error had been corrected at once during the pre-trial conference</p>
<p>Misquoted jurisprudence</p>	<p>GUILTY. Violated Canon 10, Rule 10.02</p> <p>The Court, nonetheless, still does not find suspension to be an appropriate penalty for the act. While the Court</p>

	<p>detests Atty. Dalangin's failure to properly indicate that the statement was not a verbatim reproduction of the cited jurisprudence and, accordingly, calls his attention on the matter, it finds the admonition to be adequate.</p> <p>A suspension for the lone incident would be too harsh a penalty. It appeared that the supposed quotation was Atty. Dalangin's own conclusion from the cited jurisprudence. There was no clear indication that the statement was intended to mislead the court or commit a falsehood; there was no brazen deviation from the principle or doctrine that was embodied in the jurisprudence's original text.</p>
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ISSUE: SECOND ADMIN COMPLAINT

WON atty. Dalangin erred in his conduct subject of the complaint

RULING: SECOND ADMIN COMPLAINT

1. YES - Atty. Dalangin erred in his conduct subject of the complaint, especially since his outburst was carried out within the court premises and in the presence of several persons who readily witnessed his fit of anger. Part of Atty. Dalangin's duties as a lawyer is to maintain the honor that is due the profession. Members of the legal profession should commit to the mandates of Canon 7, particularly Rule 7 .03 Although Atty. Dalangin, at that instant, could have been stirred by his frustration or resentment for the disbarment case filed against him by Alvaro, such circumstance could not have absolved him from any responsibility for his conduct. At most, this only serves to mitigate the penalty that the Court deems appropriate to impose, as it likewise considers its finding that Alvaro's allegations in CBD Case No. 11-3215 on the supposed extra-marital affair of Atty. Dalangin with Pascual were indeed not backed by sufficient evidence.

The Court finds it appropriate to impose upon Atty. Dalangin a fine of ₱5,000.00, with a stem warning that a more severe sanction will be imposed on him for any repetition of the same or similar offense in the future. Although the Court has admonished Atty. Dalangin in A.C. No. 10758, it finds the imposition of this fine still suitable under the circumstances

ISSUE: THIRD ADMIN COMPLAINT

WON Atty. Torres and Atty. Andres are guilty of the act complained

RULING: THIRD ADMIN COMPLAINT

NO.

Atty. Dalangin sought to support his complaint by referring to the supposed participation of Atty. Torres and Atty. Andres in a violation of the Anti-Wiretapping Act. He asserted that the act also violated the lawyer's oath, and breached Canon 1, Rules 1.01 and 1.02

In this case, Atty. Dalangin claimed that Atty. Torres and Atty. Andres conspired with Alejo on the wrongful recording of a private communication with Pineda, along with the use of the transcript thereof to support Alejo's affidavit in CBD Case No. 11-3215. However, Pineda's own denial of the truth of the statements in the transcription lends doubt as to the allegation of a purported secret recording of an actual conversation. While Pineda denied knowledge that her telephone conversation with Alejo was recorded by the latter, she still refused to acknowledge the veracity of the assertions that she allegedly made as contained in the transcript,⁸⁰ which then appears to be a rejection of the supposed conversation. Given the circumstances, the IBP correctly ruled that Atty. Dalangin failed to substantiate the charges in his complaint against Atty. Torres and Atty. Andres.

ISSUE: FOURTH ADMIN COMPLAINT

WON Atty. Torres is guilty of the act complained of

RULING: FOURTH ADMIN COMPLAINT

NO.

The commission of perjury was imputed upon Atty. Torres, as the person who prepared the affidavits of Marzan and Valdez. As witnesses in CBD Case No. 11-3215, Marzan and Valdez claimed that Atty. Dalangin prepared an affidavit for Atty. Torres' disbarment without fully explaining to them the contents thereof. The fact that Atty. Torres induced the affiants to make perjured statements, however, was not established by clear and convincing proof. Even granting that statements of affiants were eventually determined to be inaccurate and untruthful, it would be wrong to at once ascribe error or fault upon the lawyers who drafted the affidavits, in the absence of clear and sufficient proof that they actively participated in the intentional commission of a fraud or declaration of fabricated statements.

3) HEIRS OF PIEDAD V. BOBILLES

FACTS:

Sometime in 1974, Simeon Piedad (Piedad) filed a case for annulment of an absolute deed of sale against Candelaria and Mariano Bobilles. The case was presided over by Judge Benigno Gaviola. Judge Gaviola.

On March 19, 1992, the trial court ruled in Piedad's favor and declared the deed of sale as null and void for being a forgery and ordered herein defendants, their heirs and/or assigns to vacate the house and surrender their possession of said house and all other real properties which are supposed to have been covered by the voided deed of sale to the administrator of the estate of spouses Nemesio Piedad and Fortunata Nillas. Candelaria and Mariano appealed the trial court Decision, but the CA dismissed the appeal and affirmed the trial court ruling.

The CA Decision became final and executory on November 1, 1998. Judge Gaviola issued an order for the issuance of a writ of demolition and referred it to Sheriff Antonio A. Bellones (Sheriff Bellones) for its implementation.

That same day, in the same case, Candelaria filed a Petition for the Probate of the Last Will and Testament of Simeon Piedad. Judge Gaviola ordered that the petition be heard independently and that it be raffled to another branch.

Candelaria's Petition for the Probate of the Last Will and Testament of Simeon Piedad was eventually docketed, raffled and was presided over by Judge Gaudioso D. Villarin.

On May 16, 2002, Candelaria also filed a verified petition for the issuance of a temporary restraining order and/or preliminary injunction against Sheriff Bellones to restrain him from enforcing the writ of demolition.

Judge Cesar O. Estrera, Executive Judge of the Regional Trial Court of Toledo City and Presiding Judge of Branch 29, ordered the raffle of the petition against Sheriff Bellones. A few days later, after summarily hearing the case, Judge Estrera issued a restraining order against Sheriff Bellones.

The following motions were eventually filed before Judge Villarin, but he never resolved them: (1) a motion to dismiss, as amended; (2) a motion requesting the issuance of an order lifting the injunction order; and (3) a joint motion to resolve the motions.[20]

On February 28, 2007, the Heirs of Piedad filed an administrative complaint against Judges Estrera and Villarin. The administrative complaint charged them with Issuing an Unlawful Order Against a Co-Equal Court and Unreasonable Delay in Resolving Motions.

ISSUE

1. Whether or not respondents, through their counsels, deliberately and maliciously delayed the execution of a final and executory judgment by filing patently dilatory actions.

RULING

1. Yes. These actions include the Petition for the Probate of the Last Will and Testament of Simeon Piedad, filed in the same case as Piedad's complaint for annulment of absolute deed of sale. The Petition for Probate of the Last Will and Testament of Simeon Piedad was filed in response to the Writ of Demolition issued on December 4, 2001, pursuant to the final and executory Court of Appeals September 15, 1998 Decision.

Respondents, through their counsels, further delayed the execution of the judgment by filing a petition against Sheriff Bellones of Branch 9, Regional Trial Court, Cebu City to restrain him from enforcing the writ of demolition.

The extent of the insidious machinations employed by respondents and their counsels were highlighted when they assailed petitioners' motion for execution for purportedly being filed beyond the prescriptive period of 10 years, when they themselves were part of the reason for the delay in execution.

Counsels for respondents are reminded that as officers of the law, they are mandated **by Rule 12.04 of the Code of Professional Responsibility** to "not unduly delay a case, impede the execution of a judgment or misuse court processes." While counsels for respondents are expected to serve their clients to the utmost of their ability, their duty to their clients does not include disrespecting the law by scheming to impede the execution of a final and executory judgment. As members of the Bar, counsels for respondents are enjoined to represent their clients "with zeal within the bounds of the law."

Thus, counsels for respondents are given a stern warning to desist from committing similar acts which undermine the law and its processes. Any similar infractions in the future from counsels for respondents will be dealt with more severely.

WHEREFORE, this Court resolves to **GRANT** the Petition. The assailed Resolutions of the Court of Appeals dated December 10, 2012 and July 10, 2013 in CA-G.R. SP No. 07176 are **REVERSED** and **SET ASIDE**. The Writ of Demolition issued on December 4, 2001 by Branch 9, Regional Trial Court, Cebu City is **ORDERED SERVED** on Candelaria Linehan Bobilles and/or Mariano Bobilles or any of their heirs, successors, or assigns to resume the execution process against them.

- 4) **SPOUSES VICENTE AND PRECYWINDA GIMENA V. ATTY. JOJO S. VIJIGA - A.C. NO. 11828, NOVEMBER 22, 2017**

CHARGES: Violation of Canons 17 and 18 of the Code of Professional Responsibility and Lawyer's oath

FACTS

In their complaint, Spouses Gimena alleged that they hired the Atty. Vijiga to represent them in a civil case for nullity of foreclosure proceedings and voidance of loan documents filed against Metropolitan Bank and Trust Company, involving eight parcels of land (subject properties), docketed as Civil Case No. C-21053, assigned to the Regional Trial Court (RTC) of Caloocan City, Branch 126.

After trial on the merits, the RTC dismissed the action in its Decision dated June 6, 2011.

Aggrieved by the adverse decision, the complainants then brought the case to the appellate court, docketed as CA G.R. CV No. 98271.

On June 7, 2012, the CA issued a notice requiring complainants, (appellants therein), to file the appellants' brief in accordance with Sec. 7, Rule 44 of the Rules of Court. Atty. Vijiga failed to file the brief. As a result, the CA issued a Resolution² dated September 21, 2012.

On October 11, 2012, Atty. Vijiga filed an Omnibus Motion seeking the reconsideration of the September 21, 2012 Resolution, citing illness and the damage to his law office due to monsoon rains, as reasons for his failure to file the appellants' brief.

The CA granted the motion in its Resolution dated January 3, 2013, and reinstated complainants' appeal. Complainants were then given a period of fifteen (15) days within which to file the required brief.

Atty. Vijiga failed to file the appellants' brief within the given period. Hence, the CA issued a Resolution on March 15, 2013 dismissing the appeal. Complainants alleged that the March 15, 2013 Resolution became final and executory and was entered in the Book of Entries of Judgment of the CA on April 27, 2013.

Complainants alleged that throughout the proceedings in the CA, Atty. Vijiga did not apprise them of the status of their case. They were thus surprised when a bulldozer suddenly entered their properties. Complainants thereafter inquired on the status of their case, and it was then that they discovered that their appeal was dismissed. Complainants alleged that Atty. Vijiga violated Canon 17 and 18 of the Code of Professional Responsibility and his oath as a lawyer. They claimed that Atty. Vijiga's lapse is not excusable and is tantamount to gross ignorance, negligence and dereliction of duty.

For his part, Atty. Vijiga denied that he abandoned and neglected complainants' appeal. He averred that he was able to talk to complainant Vicente, via telephone, after the CA dismissed the appeal in its Resolution dated September 21, 2012. Complainant Vicente purportedly told Atty. Vijiga not to pursue the appeal considering that the subject properties are already in the possession of the bank.

FINDINGS OF THE INTEGRATED BAR OF THE PHILIPPINES (IBP)

Investigating Commissioner Arsenio Adriano recommended that Atty. Vijiga be suspended from the practice of law for six (6) months.

The IBP Board of Governors issued a Resolution on June 6, 2015, adopting and approving the Report and Recommendation of the Investigating Commissioner.

ISSUE

Did the Atty. Vijiga violate his ethical duties as a member of the Bar in his dealings with the complainants?

RULING OF THE COURT

We adopt the findings and recommendation of the IBP. The Court finds that the suspension of Atty. Vijiga from the practice of law is proper.

The Code of Professional Responsibility (CPR) is clear. A lawyer owes his client competent and zealous legal representation.

CANON 17 - A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.

CANON 18 - A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

x x x x

Rule 18.03 - A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Rule 18.04 - A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

Atty. Vijiga's failure to submit the appellants' brief and update his clients, complainants herein, of the status of their appeal falls short of the ethical requirements set forth under the CPR.

A lawyer is not required to represent anyone who consults him on legal matters.¹³ Neither is an acceptance of a client or case, a guarantee of victory. However, being a service-oriented occupation, lawyers are expected to observe diligence and exhibit professional behavior in all their dealings with their clients. Lawyers should be mindful of the trust and confidence, not to mention the time and money, reposed in them by their clients.

When a lawyer agrees to act as a counsel, he guarantees that he will exercise that reasonable degree of care and skill demanded by the character of the business he undertakes to do, to protect the clients' interests and take all steps or do all acts necessary therefor.¹⁴

The necessity and repercussions of non-submission of an appellant's brief are provided for in the Rules of Court, to wit:

RULE 44

ORDINARY APPEALED CASES

x x x x

Sec. 7. Appellants brief.

It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

RULE 50

DISMISSAL OF APPEAL

Section 1. Grounds for dismissal of appeal.

An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x x

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules; x x x (Emphasis supplied)

As a lawyer, Atty. Vijiga is presumed to be knowledgeable of the procedural rules in appellate practice. He is presumed to know that dismissal is an inevitable result from failure to file the requisite brief within the period stated in the Rules of Court. In this case, the fact that the appeal was twice dismissed further highlights Atty. Vijiga's indifference to his client's cause. Interestingly, Atty. Vijiga failed to offer any explanation as to why he failed to submit the appellants' brief within the 45-day period from his receipt of the notice to file the same, resulting to the dismissal of the appeal for the first time. To the mind of this Court, such failure is an unequivocal indication of his guilt in the administrative charge. Indeed, failure to file the required pleadings is per se a violation of Rule 18.03 of the Code of Professional Responsibility, as cited above.¹⁵

His failure to file the appellants' brief, despite the CA's grant of leniency in reconsidering its initial dismissal of the appeal further compounds Atty. Vijiga's inadequacies. In this case, Atty. Vijiga's neglect of his professional duties led to the loss of complainants' properties and has left them bereft of legal remedies. They lost their case not because of merits but because of technicalities, specifically the Atty. Vijiga's failure to file the required pleadings. Certainly, the situation in the case at bar, is one such evil that the CPR intended to avoid.

Worse, Atty. Vijiga's failure to inform complainants of the unfortunate fate of their appeal further amplifies his lack of competence and diligence. As an officer of the court, it was Atty. Vijiga's duty to inform his client of whatever important information he may have acquired affecting his client's case. The purpose of informing the client is to minimize misunderstanding and loss of trust and confidence in the attorney. The lawyer should not leave the client in the dark on how the lawyer is defending the client's interests.

This Court fails to find merit to Atty. Vijiga's claim that complainant Vicente directed him not to pursue the appeal. If that was true, candor and respect of the courts would have impelled Atty. Vijiga to file a motion to withdraw their appeal. Further, if indeed it was true that complainants lost interest in pursuing the appeal, they would not have secured the services of another counsel and file before the CA a motion to set aside the entry of judgment.

Thus, the relationship between a lawyer and her client is regarded as highly fiduciary. Between the lawyer and the client, it is the lawyer that has the better knowledge of facts, events, and remedies. While it is true that the client chooses which lawyer to engage, he or she usually does so on the basis of reputation. It is only upon actual engagement that the client discovers the level of diligence, competence, and accountability of the counsel that he or she chooses. In some cases, such as this one, the discovery comes too late. Between the lawyer and the client, therefore, it is the lawyer that should bear the full costs of indifference or negligence.

True, for Atty. Vijiga's failure to protect the interest of complainants, Atty. Vijiga indeed violated Canon 17 and Canon 18 of the Code of Professional Responsibility. Atty. Vijiga is reminded that the practice of law is a special privilege bestowed only upon those who are competent intellectually, academically and morally.

In this case, the fact that the complaining parties now stand to lose eight parcels of land which they claim to own due to Atty. Vijiga's failure to perform his professional and ethical duties, We deemed justified the suspension of Atty. Vijiga from the practice of law for six months.

The general public must know that the legal profession is a closely regulated profession where transgressions merit swift but commensurate penalties; it is a profession that they can trust because we guard our ranks and our standards well. The Bar must sit up and take notice of what happened in this case to be able to guard against any repetition of the Atty. Vijiga's transgressions, particularly his failure to report the developments of an ongoing case to his clients. Unless the Bar takes a pro-active stance, we cannot really blame members of the public who are not very well disposed towards, and who may even distrust, the legal profession after hearing experiences similar to what the complainant suffered. The administration of justice is served well when we demonstrate that effective remedies exist to address the injustice and inequities that may result from transgressions by those acting in the dispensation of justice process.

**4) VICKA MARIE D. ISALOS, vs. ATTY. ANA LUZ B. CRISTAL, A.C. No. 11822,
PERLAS-BERNABE, J.:
CHARGE: DISBARMENT**

CANONS VIOLATED:

CANON 16 - A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

RULE 16.01 - A lawyer shall account for all money or property collected or received for or from the client.

RULE 16.03 - A lawyer shall deliver the funds and property of his client when due or upon demand

FACTS

Complainant is the Director and Treasurer of C Five Holdings, Management & Consultancy, Inc. (C Five. Atty. Cristal was C Five's Corporate Secretary and Legal Counsel. Atty. Cristal recommended the purchase of a resort in Laguna, with the assurances that the title covering the property was "clean" and the taxes were fully paid. Relying on respondent's recommendation, C Five agreed to acquire the property and completed the payment of the purchase price.

On September 5, 2011, complainant personally handed the sum of ₱1,200,000.00 to respondent, as evidenced by Official Receipt No. 1038 of even date. The said amount was intended to cover the expenses for the documentation, preparation, and notarization of the Final Deed of Sale, as well as payment of capital gains tax, documentary stamp tax, and other fees relative to the sale and transfer of the property.

More than a year thereafter, however, no title was transferred in C Five's name. It was then discovered that the title covering the property is a Free Patent issued on August 13, 2009, rendering any sale, assignment, or transfer thereof within a period of five (5) years from issuance of the title null and void. Thus, formal demand was made upon respondent to return the ₱1,200,000.00 entrusted to her for the expenses which remained unheeded, prompting C Five to file a criminal complaint for *Estafa* as well as the present case for disbarment.

In defense, respondent claimed that she paid the Bureau of Internal Revenue (BIR) registration, Mayor's Permit, business licenses, documentation, and other expenses using the money entrusted to her by complainant, as itemized in a Statement of Expenses that she had prepared, and that she was ready to turn over the balance in the amount of ₱885,068.00. However, C Five refused to receive the said amount, insisting that the entire ₱1,200,000.00 should be returned.

THE IBP'S REPORT AND RECOMMENDATION

The Commission on Bar Discipline of the IBP (CBD-IBP) issued a Report and finding respondent administratively liable and thereby, recommending her suspension from the legal profession for a period of three (3) years. the CBDIBP concluded that there was dishonesty on the part of respondent and accordingly, recommended the penalty of suspension.

The IBP Board of Governors recommended the penalty of suspension from the practice of law for one (1) year and directing the return of the amount of ₱1,200,000.00 to complainant.

ISSUE

Whether or not grounds exist to hold respondent administratively liable.

RULING

Yes, The CPR, particularly Rules 16.01 and 16.03 of Canon 16, provides:

CANON 16 - A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

RULE 16.01 - A lawyer shall account for all money or property collected or received for or from the client.

RULE 16.03 - A lawyer shall deliver the funds and property of his client when due or upon demand.

Money entrusted to a lawyer for a specific purpose, such as for the processing of transfer of land title, but not used for the purpose, should be immediately returned. A lawyer's failure to return upon demand the funds held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed to him by his client. Such act is a gross violation of general morality, as well as of professional ethics. It impairs public confidence in the legal profession and deserves punishment.

In this case, it is indubitable that respondent received the amount of ₱1,200,000.00 from complainant to be used to cover the expenses for the transfer of title of the subject property under C Five's name. Respondent admitted having received the same, but claimed that she had spent a portion of it for various expenses, such as documentation, permits, and licenses, among others, as evidenced by the Statement of Expenses with attached receipts. However, it has been established that the registration of the property in C Five's name could not have materialized, as the subject property was covered by a Free Patent which, consequently, bars it from being sold, assigned, or transferred within a period of five (5) years therefrom. Thus, and as the CBD-IBP had aptly opined, there was no longer any reason for respondent to retain the money. Furthermore, the expenditures enumerated in the Statement of Expenses, except for the documentation and notarization fees for which no receipts were attached, do not relate to the purposes for which the money was given, *i.e.*, the documentation and registration of the subject property. As such, even if official receipts had been duly attached for the other purposes - which, the Court notes, respondent failed to do despite the opportunity given - the expenditures are not legitimate ones. Hence, the Court finds respondent to have violated the above-cited rules, to the detriment and prejudice of complainant.

WHEREFORE, respondent Atty. Ana Luz B. Cristal is found guilty of violation of Rules 16.01 and 16.03, Canon 16 of the Code of Professional Responsibility. Accordingly, she is **SUSPENDED** from the practice of law for a period of one (1) year, and is **STERNLY WARNED** that a repetition of the same or similar acts will be dealt with more severely.

**5) GIZALE O. TUMBAGA VERSUS ATTY. MANUEL P. TEOXON- A.C. NO. 5573,
NOVEMBER 21, 2017, J. LEONARDO-DE CASTRO**

TOPIC: Immoral Conduct (Rule 1.01, Canon 7, and Rule 7.03 of CPR)

FACTS

In her complaint, Gizale Tumbaga claimed that after consulting with Atty. Manuel Teoxon, he visited her often at her residence and brought gifts for her son, Al Greg Tumbaga, who is Atty. Teoxon's godson. He assured her that although he was already married to Luzviminda Balang, his marriage was a sham because their marriage contract was not registered. After moving in together at the Puncia Apartment, she became pregnant. After their son, Billy John, was baptized, Atty. Teoxon rarely visited them. Tumbaga sought assistance from the Office of the City Fiscal. Prior to the conference set by said office, Atty. Teoxon gave Tumbaga an affidavit of support and told her there was no need for him to appear in the conference. He reneged on his promise of support, so he executed a promissory note, which he also failed to honor. After Tumbaga moved out of the Puncia Apartment, Atty. Teoxon raided her new residence, accompanied by three SWAT members and his wife. He drunkily demanded the return of the personal belongings that he left in their previous apartment unit. The incident was recorded in the police blotter.

To corroborate her allegations, complainant attached the following documents to her complaint: (a) pictures showing Atty. Teoxon lying in a bed holding Billy John, Atty. Teoxon holding Billy John in a beach setting, Tumbaga holding Billy John in a beach setting, Atty. Teoxon holding Billy John in a house setting, and Tumbaga and Atty. Teoxon seated beside each other in a restaurant; (b) the Certificate of Live Birth of Billy John with an Affidavit of Acknowledgment/Admission of Paternity showing Atty. Teoxon's signature; (c) the affidavit of support executed by Atty. Teoxon; (d) the promissory note executed by Atty. Teoxon; (e) the police blotter entry; and (f) copies of pleadings showing the signature of Atty. Teoxon.

In his answer, Atty. Teoxon asserted that Tumbaga merely wanted to exact money from him. He alleged began to visit Tumbaga's residence to visit his godson. He also denied being the father of Billy John since Tumbaga supposedly had several live-in partners. In an affidavit of Antonio Orogo, Tumbaga's uncle, it was alleged that Al Greg was used to extort money from Alfrancis Bichara, the former governor of Albay, with whom Tumbaga also had a sexual relationship. He denied that he lived together with Tumbaga at the Puncia Apartment since he was already married. As Tumbaga was his kumadre, he would pass by her house whenever he visited the house of Representative Sulpicio S. Roco, Jr., whom he worked for as a legislative staff. Sometimes, Atty. Teoxon would leave a bag of clothing in Tumbaga's house to save money for his fare in going to the House of Representatives in Quezon City. In one instance, Tumbaga refused to return one of his bags such that he was forced to file a replevin case. The MTCC of Naga City decided the case in his favor.

Atty. Teoxon also claimed that Tumbaga falsified his signature in the Certificate of Live Birth of Billy John so he filed a complaint for the cancellation of his

acknowledgment therein. He also contended that complainant forged his signature in the Affidavit of Support.

As to the pictures of Atty. Teoxon with Billy John, he argued that the same cannot prove paternity. While he was holding the child, Tumbaga secretly took their picture. Atty. Teoxon accused Tumbaga of taking the pictures in order to use the same to extort money from him. This is the same scheme allegedly used by Tumbaga against her previous victims, who paid money to buy peace with her.

Apart from the affidavit and proof of his signatures, one of the evidence attached to the answer was the Decision of the MTCC of Naga City in a civil case for replevin between him and Tumbaga. In said case, Atty. Teoxon made it appear that he was merely seeking to recover personal belongings that he left behind at one time in Tumbaga's house. The items included a traveling bag with various articles of clothing and file folders of cases that he was handling. He also tried to recover the pieces of furniture that he allegedly bought for the Tumbaga, which the latter failed to reimburse as promised. For her defense, Tumbaga argued that Atty. Teoxon gradually left the items of clothing in their apartment unit during the period that they cohabited therein from time to time. She also said that the furniture were gifts to her and Billy John. In its decision, even though it ruled in favor of Atty. Teoxon, the MTCC plainly disbelieved Atty. Teoxon's claim that he merely left his bag of clothing in Tumbaga's house before he left for his place of work in Metro Manila. MTCC further posited that the pieces of furniture sought to be recovered by Atty. Teoxon were indeed bought by him but the same were intentionally given to Tumbaga out of love.

Tumbaga filed an administrative complaint against Atty. Teoxon, charging him with gross immorality, deceitful and fraudulent conduct, and gross misconduct. The IBP-CBD issued its Report and Recommendation, finding that Atty. Teoxon maintained an illicit affair with Tumbaga and that he should be meted the penalty of suspension for a period of two (2) years. In a Resolution, the IBP-BOG increased the recommended period of suspension to three (3) years.

ISSUE

1. Whether or not the Decision of the MTCC of Naga City in a civil case for replevin can be used as evidence against Atty. Teoxon.
2. Whether or not Atty. Teoxon's guilt is established by substantial evidence.
3. Whether or not the CPR is violated.
4. Whether or not the Court can also rule on the paternity of Billy John.
5. Whether or not suspension for three (3) years is proper.

RULING

1. Yes. Clearly, the MTCC was convinced that Atty. Teoxon and Tumbaga were involved in an illicit relationship that eventually turned sour and led to the filing of the replevin case. The findings and conclusions therein were arrived at by the MTCC after a trial on the merits of the case. While the issues in the replevin case and the instant administrative case are indeed different, they share a common factual

backdrop, i.e., the parties' contrasting account of the true nature of their relationship. From the evidence of both parties, the MTCC chose the Tumbaga's version of the events. Incidentally, it was Atty. Teoxon himself who brought to light the existence of the MTCC decision in the replevin case when he attached the same to his answer in the present case to substantiate his narration of facts.

2. Yes. One of the key pieces of evidence considered in ruling against Atty. Teoxon is the Decision of the MTCC of Naga City in a civil case for replevin. The MTCC ruling was more than sufficient to prove that Atty. Teoxon tried to distort the truth that he and Tumbaga did live together as husband and wife in one apartment unit.

While the pictures cannot prove Billy John's paternity, they are nevertheless indicative of a relationship between Tumbaga and Atty. Teoxon that is more than merely platonic. One of the annexed pictures shows the couple in a restaurant setting, smiling at the camera while seated beside each other very closely that their arms are visibly touching. Another picture shows the couple in the same setting, this time with Tumbaga smiling as she embraced Atty. Teoxon from behind and they were both looking at the camera. From the facial expressions and the body language in the pictures, the same unfailingly demonstrate their unmistakable closeness and their lack of qualms over publicly displaying their affection towards one another.

Atty. Teoxon verbally repudiated the affidavit of support and the promissory note, pointing out that the same were typewritten while he used a computer in his office, not a typewriter. He submitted photocopies of his credit card and A TM card that allegedly showed his customary signatures. However, when compared to Atty. Teoxon's signatures in his pleadings before the IBP and other documents submitted in evidence, there appears to be two sets of signature that are dissimilar, which suggests Atty. Teoxon uses several different signatures. Moreover, no criminal charges against Tumbaga for her alleged acts of falsification was attached as evidence. Thus, Atty. Teoxon claim of forgery is unconvincing.

As to the Certificate of Live Birth of Billy John, Atty. Teoxon did file a complaint for the cancellation of his acknowledgment therein, so the issue should be threshed out in the proper proceeding.

As to the affidavit of Antonio Orogo which accused Tumbaga of engaging in the practice of extorting money from various men since she was just 11 years old, which involved the Tumbaga falsely accusing one man of rape and falsely claiming to another man that he was the father of her first child, it was found to lack evidentiary value. Because of the gravity of his accusations, he should have been presented as a witness but he was not.

The Court can hardly ascribe any credibility to the above affidavit. Given the materiality of Orogo's statements therein, not to mention the gravity of his accusations against complainant and her mother, he should have been presented as a witness before the IBP investigating commissioner in order to confirm his affidavit and give complainant the opportunity to cross-examine him. For whatever reason, this was not done. As it is, Orogo's affidavit lacks evidentiary value.

Thus, Atty. Teoxon failed to prove his defense when the burden of evidence shifted to him. He could neither provide any concrete corroboration of his denials nor satisfactorily prove his claim that Tumbaga was merely extorting money from him.

3. Yes. The good moral conduct or character must be possessed by lawyers at the time of their application for admission to the Bar, and must be maintained until retirement from the practice of law. In this regard, the Code of Professional Responsibility states:

Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

CANON 7 - A lawyer shall at all times uphold the integrity and dignity of the legal profession, and support the activities of the Integrated Bar.

Rule 7.03 - A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor should he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

Accordingly, it is expected that every lawyer, being an officer of the Court, must not only be in fact of good moral character, but must also be seen to be of good moral character and leading lives in accordance with the highest moral standards of the community. More specifically, a member of the Bar and officer of the Court is required not only to refrain from adulterous relationships or keeping mistresses but also to conduct himself as to avoid scandalizing the public by creating the belief that he is flouting those moral standards. If the practice of law is to remain an honorable profession and attain its basic ideals, whoever is enrolled in its ranks should not only master its tenets and principles but should also, in their lives, accord continuing fidelity to them. The requirement of good moral character is of much greater import, as far as the general public is concerned, than the possession of legal learning.

Immoral conduct has been described as conduct that is so willful, flagrant, or shameless as to show indifference to the opinion of good and respectable members of the community. To be the basis of disciplinary action, such conduct must not only be immoral, but grossly immoral, that is, it must be so corrupt as to virtually constitute a criminal act or so unprincipled as to be reprehensible to a high degree or committed under such scandalous or revolting circumstances as to shock the common sense of decency.

4. No. The paternity and/or acknowledgement of Billy John, if indeed he is Atty. Teoxon's illegitimate child, must be alleged and proved in separate proceedings before the proper tribunal having jurisdiction to hear the same.

5. Yes. The penalty for immoral conduct is disbarment, or indefinite or definite suspension, depending on the circumstances of the case. Jurisprudence states that in the absence of aggravating circumstances (such as an adulterous relationship coupled with refusal to support his family; or maintaining illicit relationships with at least two women during the subsistence of his marriage; or abandoning his legal wife and cohabiting with other women), suspension from the practice of law for two

years was ruled to be an adequate penalty imposed on the lawyer who was found guilty of gross immorality. However, considering Atty. Teoxon's blatant attempts to deceive the courts and the IBP regarding his true relationship with complainant, the proper penalty in this instance is a three-year suspension from the practice of law. WHEREFORE, the Court finds respondent Atty. Manuel P. Teoxon GUILTY of gross immorality and is hereby SUSPENDED from the practice of law for a period of three (3) years effective upon notice hereof, with a STERN WARNING that a repetition of the same or similar offense shall be punished with a more severe penalty.

6) FREDDIE A. GUILLEN v. ATTY. AUDIE ARNADO, A.C. No. 10547, November 08, 2017; PERALTA, J.

FACTS

Complainant Freddie Guillen is the registered owner of the City Grill Restaurant. He then invited respondent Atty. Audie Arnado and a certain Cedric Ebo to join the restaurant business. Each of them had to shell out P200,000.00 to make up a total capital of P600,000.00. A Memorandum of Agreement (MOA) was therefore executed and the business was formally launched in May 2003. At first, everything went smoothly, until Arnado's sister-in-law and Ebo's son participated in the management, causing complications in the business operations, which later forced Guillen and his wife to step down as general manager and operations manager, respectively.

Because of the disagreements among the parties, Guillen offered that he would waive his claims for profits, provided that Arnado would return the P200,000.00 that he paid as capital. Arnado allegedly claimed that said refund would still be subject to the billings of the Arnado and Associate Law Firm. Thereafter, Guillen was surprised to find out that Arnado had already caused the incorporation of the restaurant with the Securities and Exchange Commission (SEC), which was approved on February 16, 2004. Guillen was likewise excluded from the business without the aforementioned refund of his capital. He was further charged with Estafa before the Office of the City Prosecutor of Cebu. Thus, Guillen initiated the present administrative case.

For his part, Arnado admitted the existence and the contents of the MOA. He also admitted that he caused the incorporation of City Grill-Sutukil Food Corporation. However, he insisted that the same was done in accordance with the requirements under the law. Guillen could not validly claim for a refund, and if he was really entitled, he should simply file an action to that effect. Arnado likewise contended that Guillen's refund would still be subject to the legal compensation claim of his law firm.

The Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) recommended the censure of Arnado. The IBP Board of Governors affirmed the recommendation. Upon reconsideration, IBP modified the penalty and increased it to 3 months suspension. Hence, this petition.

ISSUE

Whether or not Atty. Arnado violated Rule 1.01 of CPR

RULING

Yes. At the onset, it must be pointed out that the business name City Grill Restaurant registered under Guillen's name was never dissolved in accordance with the law. Even Arnado failed to prove that the City Grill Restaurant business had already been terminated. Although said business name was only used for a short period of time, the same had already acquired goodwill among the residents and customers in the locality.

On February 26, 2004, City Grill-Sutukil Food Corporation was registered with the SEC. Although Arnado and Ebo were not included as incorporators, those persons reflected in the articles of incorporation as the company's incorporators were their relatives. It is clear that when Arnado caused the incorporation of City Grill-Sutukil Food Corporation, he was fully aware that City Grill Restaurant was still registered in Guillen's name. Obviously, he did the same to take advantage of the goodwill earned by the name of City Grill Restaurant. Arnado was likewise the one who actually notarized some of City Grill-Sutukil Food Corporation's legal documents such as the Treasurer's Affidavit and a letter addressed to the SEC.

The IBP Board thus aptly concluded that Arnado is guilty of taking advantage of his knowledge of the law and of surreptitiously easing out Guillen from their restaurant business partnership by registering a corporation under a different but similar name and style, in the same line of business, and using the same trade secrets. Arnado, although not reflected as one of the incorporators of City Grill-Sutukil Food Corporation, has deceived the public into believing that City Grill Restaurant and City GrillSutukil Food Corporation are one and the same, clearly violating Rule 1.01 of the CPR, which prohibits a lawyer from engaging in unlawful, dishonest, immoral, or deceitful conduct.

The Court has repeatedly emphasized that the practice of law is imbued with public interest and that a lawyer owes substantial duties, not only to his client, but also to his brethren in the profession, to the courts, and to the public, and takes part in the administration of justice, one of the most important functions of the State, as an officer of the court. Accordingly, lawyers are bound to maintain, not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing.

Here, Arnado has certainly fallen short of the high standard of morality, honesty, integrity, and fair dealing required of him. On the contrary, he employed his knowledge and skill of the law as well as took advantage of Guillen to secure undue gains for himself and to inflict serious damage on others.

WHEREFORE, IN VIEW OF THE FOREGOING, the Court **SUSPENDS** Atty. Audie Arnado from the practice of law for a period of one (1) year and **WARNS** him that a repetition of the same or similar offense shall be dealt with more severely.

**7) MANUEL L. VALIN AND HONORIO L. VALIN VERSUS ATTY. ROLANDO T. RUIZ
– A.C. NO. 10564, NOVEMBER 7, 2017, J. GESMUNDO**

TOPIC

Legal Ethics – RULE 1.01 AND RULE 10.01

Rule 1.01: A lawyer shall not engage in unlawful, dishonest, immoral and deceitful conduct. Rule 10.01: A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

FACTS

The complainants were two of the surviving children of Pedro and Cecilia Valin. Pedro was the original registered owner of a parcel of land located in San Andres, Sanchez Mira, Cagayan, with an area of 833 square meters. Then, in December 1992, Pedro died in Honolulu, Hawaii. However, after several years, Honorio discovered that the subject land has been transferred to Atty. Rolando Ruiz, the godson of Pedro for a consideration of P10,000.00 by virtue of a Deed of Absolute Sale dated July 15, 1996 purportedly by Pedro with the alleged consent of his spouse, Cecilia. They alleged that the subject deed was obviously falsified and the signatures therein of Pedro and Cecilia were forgeries because Pedro was already dead and Cecilia was in Hawaii at that time. They also asserted that Pedro's Community Tax Certificate which was used to identify Pedro in the deed, was also falsified as it was issued only on January 2, 1996 long after Pedro's death. The complainants pointed to Atty. Ruiz as the author of the falsifications and forgeries because the latter caused the registration of the subject land unto his name and because he was the one who benefited from the same.

In his Answer, Atty. Ruiz claimed that Rogelio Valin one of the children of Pedro and Cecilia, sold the subject land to him sometime in 1989 allegedly in representation of Pedro since Rogelio was in need of money for the surgery of his son. Atty. Ruiz also denied having knowledge regarding the execution of the subject deed in 1996. He insisted that he neither falsified the said deed and Pedro's CTC No. 2259388 nor forged the signatures of Pedro and Cecilia as it was Rogelio who processed the transfer of the title of the subject land in his name. He explained that when the subject land was sold in 1989, Rogelio, as the vendor, undertook to process the transfer of the title of the subject land. Respondent further clarified that in 1996, he instructed his house helper, Judelyn Baligad (*Baligad*), to sign the release of the title in his name because at that time he was busy to go to the RD to sign the release for himself as per instruction of Rogelio's messenger.

The IBP CBD found Atty. Ruiz to be unfit to be entrusted with the powers of an attorney. It reasoned that as the beneficiary of the falsified deed, Atty. Ruiz was presumed to be the author thereof. Thus, the IBP-CBD recommended the suspension of Atty. Ruiz from the practice of law for a period of two (2) years.

The IBP Board of Governors (*IBP Board*) resolved to adopt and approve the report and recommendation of the IBP-CBD for the suspension of respondent from the practice of law for a period of two (2) years

ISSUE

Whether or not Atty Ruiz violated the lawyer's oath and Rule 1.01 and Rule 10.01 of the CPR

RULING

Yes, the Supreme Court is convinced that Atty. Ruiz violated the lawyer's oath and Rule 1.01 and 10.01 of the CPR when he participated and benefited from the falsified deed. According to the Court, Atty. Ruiz being the author or, at the very least, has connived with the author of the subject deed and Pedro's CTC for his personal benefits. Atty. Ruiz incessantly closed his eyes until he became blind to the anomalies surrounding the sale of the subject land. Whether through deliberate intent or gross negligence, he participated in the successful registration and release of the title that originated from an absolutely falsified deed of sale. There being numerous occasions that respondent could have stopped and noted the red flags apparent throughout the transaction. Disappointingly, he chose to profit from the falsified deed, devoid of any empathy that his actions would damage innocent third persons.

Respondent's acts are inconsistent with the sacred oath to do no falsehood nor consent to the doing of any. Even though he acted in his personal capacity in the improper sale and registration of the subject, he is not excused from liability. A lawyer may be disciplined for acts committed even in his private capacity for acts which tend to bring reproach on the legal profession or to injure it in the favorable opinion of the public. There is no distinction as to whether the transgression is committed in a lawyer's private life or in his professional capacity, for a lawyer may not divide his personality as an attorney at one time and a mere citizen at another.

DISPOSITIVE PORTION

WHEREFORE, Atty. Rolando T. Ruiz is found guilty of violating the Lawyer's Oath, Rule 1.01 and Rule 10.01 of the Code of Professional Responsibility. The Court hereby **SUSPENDS** him from the practice of law for two (2) years effective immediately, with a **STERN WARNING** that the repetition of a similar violation will be dealt with even more severely. He is **DIRECTED** to report the date of his receipt of this Decision to enable this Court to determine when his suspension shall take effect.

8) REYNALDO A. CABUELLO v. ATTY. EDITHA P. TALABOC

FACTS

On October 12, 2010, complainant Reynaldo A. Cabuello filed an administrative complaint against respondent Atty. Editha P. Talaboc with the Integrated Bar of the Philippines (IBP).

Complainant engaged the services of respondent to represent his parents who were charged with the crime of qualified theft of coconuts. Complainant alleged that he paid for the legal services of respondent, but she did not attend any hearing. She also failed to file the necessary complaint against the policemen (who arrested the accused) as agreed upon by them.

Complainant alleged that because respondent did not attend the hearings of the case, he was forced to go back and forth from Manila to the province for 10 months to attend to the cases of his parents. Every time he went home to the province, he spent P5,000.00 for his bus and plane fares and P1,000.00 for the van. He spent a total amount of about P150,000.00 due to the negligence of respondent.

Unsatisfied with respondent's legal services, complainant sent respondent a demand letter^[2] dated February 15, 2009 and a second demand letter^[3] dated September 13, 2010, asking respondent to return the payments given to her, but respondent disregarded his demand letters.

Complainant stated that he filed this complaint so the respondent will not repeat her negligence of duty toward her client's case and for the return of the payments given to respondent, because she failed to fulfill her legal obligation toward his parents as their lawyer.

On October 13, 2010, the IBP Director for Bar Discipline ordered respondent to file her Answer within 15 days from notice. However, respondent failed to file her answer despite receipt of the order. The hearing was reset many times for failure of the respondent to file an answer. Ultimately, the respondent never filed an answer before the IBP.

Report and Recommendation of the Investigating Commissioner

On July 25, 2011, Investigating Commissioner Victor C. Fernandez submitted his Report and Recommendation^[9] on the administrative complaint, finding respondent guilty of violating Canons I 7 and 18 of the Code of Professional Responsibility and recommended the suspension of respondent from the practice of law for six months. The IBP Commissioner found that the cases of complainant's parents were set for arraignment on July 27, 2007. On the said date, respondent failed to appear. Hence, a counsel *de officio* was assigned to assist complainant's parents. Thereafter, the hearing was set on October 1 and 12, 2007.

On August 31, 2007, respondent filed a *Motion to Transfer Dates of Hearing*,^[10] praying that the hearings set on October 1, 2007 and on October 12, 2007 be cancelled and transferred to November 8 and 9, 2007 allegedly for convenience, economic reason and to maximize efforts and results.

After the trial court granted the motion to transfer the hearing to November 8 and 9, 2007, respondent again filed an *Urgent Motion to Reset Hearing (Scheduled on November 8 and 9, 2007)*^[11] to January 18, 2008, because respondent was allegedly suffering from severe and recurring back pains due to a vehicular accident that occurred on September 7, 2007, and she submitted a medical certificate^[12] therefor. Thus, the pre-trial was reset to November 28 and 29, 2007,^[13] which did not proceed, because respondent filed another motion to reset the hearing to December 19 and 20, 2007.^[14] Several postponements followed until June 19, 2008 when respondent failed to appear because of peptic ulcer.^[15] (In the Order^[16] dated June 19, 2008, the trial court issued a warrant of arrest for the apprehension of the accused). Thereafter, respondent filed a *Motion for Reconsideration with Motion to Lift Warrant of Arrest with Apologia Cum Explanation*,^[17] and requested that the hearing of the motion be set on July 25, 2008, but since the court would not be in session on the said date, the hearing of the motion was set on July 31, 2008.^[18] On the said date, respondent again failed to appear despite due notice. This was followed by other settings until the pre-trial conference was set on September 25, 2008.^[19]

On the scheduled pre-trial conference on September 25, 2008, respondent again failed to appear despite due notice. Hence, the trial court appointed Atty. Prescilla A. Salvacion of the Public Attorney's office (PAO) as counsel for complainant's parents. Notwithstanding the appointment by the trial court of a counsel *de officio* due to the repeated absences of the respondent, the latter still filed a *Motion to Reset Hearing*,^[20] praying that the hearings of the case for trial on the merits scheduled on November 27, 2008 and December 11, 2008 be reset to January 15, 2009 and February 19, 2009, which motion was denied by the trial court.^[21]

On December 11, 2008, before the prosecution presented its first witness, Atty. Salvacion manifested to the trial court that respondent's secretary called up to inform her that respondent would still be appearing in the said case and that she would be available on January 15, 2009. Thereafter, the respondent never communicated with the complainant or his family. The demand letters sent by complainant to respondent for the return of the payments made to her were just ignored.

RESPONDENT'S DEFENSE

On May 17, 2012, respondent filed a *Motion to Re-open and to Set Conference and For (15) Days to File Opposition/Position Paper*, Respondent stated that she learned of the filing of the complaint and was able to read the allegations therein when she arrived from the U.S.A. for medical reasons as she had to be tested at the New York Hospital in New York, U.S.A. for the donation of her bone marrow to her brother who was afflicted with cancer.

- Respondent admitted that she was engaged to represent the accused Spouses Cabuello in the criminal cases for qualified theft. However, she said that at that time, she already intimated to Mr. Cabuello that she has health problems so that
- a) in case she cannot attend the hearings, she may have to withdraw from the case,

although in terms of legwork or filing of pleadings and the like, her assistant Marivic Alusitain can assist them.

- b) Thus, respondent filed an Omnibus Motion^[28] dated August 16, 2007 in the second case for Qualified Theft, which motion prayed for (1) the early resolution of accused's prayer for reduction of bail incorporated in respondent's (as accused's counsel) Formal Entry of Appearance; (2) the remand of the custody of both the accused, pending the proceedings of the case, from the provincial jail to the Calbiga Municipal Jail where they were previously detained; and (3) the cancellation of the hearing of the case on August 17, 2007 and resetting it on October 1, 2007 or October 12, 2007 at 8:30 a.m. Respondent caused a request for reduction of the bail of the accused, and in an Order-^[29] dated August 9, 2007, the trial court gave notice that the request for reduction of bail from P24,000.00 and P30,000.00, respectively, to P5,000.00 for both cases would be heard on August 17, 2007.
- c) In the Order^[30] dated September 21, 2007, the court stated that coaccused Cecilia Cabuello posted thru Marivic Alusitain the amount of P22,000.00 as cash bail for both cases. In view thereof, co-accused Cecilia Cabuello was ordered released from detention.
- d) In one of the hearings of the case, both accused were indisposed due to medical reasons; hence, an order for the issuance of a warrant of arrest against them was issued. Thus, respondent filed a Motion for Reconsideration^[31] of the said Order with an Affidavit of Waiver^[32] so that the absence of the accused thereafter may be excused.
- e) During the subsequent hearings of the case, either the court or the respondent, who was afflicted with several ailments, [reset the hearings] as evidenced by the orders of the court for the resetting of the case and some of the medical certificates attached to the motion.
- f) All the resetting of the hearings of the case that were filed by the respondent were with the knowledge and conformity of her clients as well as complainant Reynaldo Cabuello.
- g) Thus, respondent and Mr. Cabuello agreed, for economic reasons, that the Cabuellos would verify from the court, days before a hearing is scheduled, if the hearing would push through so that there would be no need for them to go to court in case a hearing is or would be cancelled.
- h) For the February 6, 2008 hearing, respondent purchased a PAL ticket,^[33] but she was informed by complainant Reynaldo Cabuello the day before the hearing that the said February 6, 2008 hearing was cancelled due to the retirement of the Presiding Judge of the court.
- i) Because of the foregoing events and incidents, which have caused problems, stress and inconvenience as well as expenses for all parties, both accused, thru complainant Reynaldo Cabuello, informed the respondent that they will terminate her services and they will get a new lawyer to represent them. As far as respondent knows, the accused were already represented by a new counsel of record in the case (per the trial court's Order^[34] dated February 5, 2009).
- j) Thus, respondent filed a *Motion to Withdraw as Counsel for the Accused*^[35] (dated February 28, 2009), with the conformity of the accused and duly received by the court. Corollary thereto, respondent surrendered to the accused all the records of the case in her possession, as evidenced by the
- k)

Acknowledgment (dated February 28, 2009) of Ms. Cabuello.

Ruling of the IBP Board of Governor

The penalty meted by Atty. Editha Talaboc increased from six (6) months SUSPENSION from the practice of law to two (2) years. Moreover, she is hereby Ordered to Return the amount received from Complainant with legal interest from the time the demand was made within thirty (30) days from notice.

Issue

WON the respondent is guilty of violating Canons 17 and 18.

Ruling

Yes

The Court agrees with the finding of the Investigating Commissioner and affirms ResolutiQn No. XX-2013-234 and Resolution No. XXI-2014-96 of the IBP Board of Governors, but modifies the penalty imposed on the respondent and the amount of money to be refunded by respondent to complainant.

The records show that as counsel of the complainant's parents, respondent was remiss in her duty toward them by never appearing in the hearings of the criminal case, which contributed to the delay of the pre-trial of the case for eleven months or almost a year until the trial court finally appointed a counsel *de officio* for respondent's clients so the pre-trial and trial on the merits could proceed. Respondent kept on filing a motion to reset the scheduled pre-trial, including those dates of hearings requested by her, from the start until her withdrawal as counsel. This is borne out by the Orders of the RTC having jurisdiction over the cases of complainant's parents. The Order dated June 19, 2008 states:

It appears from the records that the arraignment of these cases was conducted on July 27, 2007 yet but no pre-trial conference was conducted because Atty. Editha Talaboc, the counsel for both accused had filed a series of postponememis alleging every thinkable ground as reasons for her nonappearance.

Considering that sufficient time had already been granted by the Court to the accused, further considering that in all of these scheduled hearings both accused were not present, issue a warrant of arrest for the apprehension of accused Alejandro Cabuello and Cecilia Cabuello.

To the Order quoted above, respondent filed a *Motion for Reconsideration with Motion to Lift Warrant of Arrest with Apologia cum Explanation*^l dated June 24, 2008. The trial court set the respondent's motion for hearing on July 31, 2008.

In the Order dated July 31, 2008, the trial court lifted the warrant for the arrest of the accused as they were present in court. Respondent, however, was not available on that day, so the court re-scheduled the pre-trial conference on August 28, 2008

and stated that if respondent would not appear on that day, the court will appoint a counsel *de officio* to assist the accused.

In an Order dated August 21, 2008, the pre-trial conference was reset to September 25, 2008. On September 25, 2008, respondent was not present, so the court appointed Atty. Prescilla A. Salvacion of the PAO to represent complainant's parents.^[53]

Thereafter, the hearing for the presentation of the evidence for the prosecution was scheduled on November 27, 2008 and December 11, 2008. Respondent again filed a *Motion to Reset Hearing*,^[54] alleging that she was not available during the scheduled hearings as she was committed to appear in other branches of the RTC in Metro Manila, and praying that the trial of the cases be reset to January 15, 2009 and February 19, 2009.

The trial court denied the motion as it had already appointed Atty. Prescilla A. Salvacion to assist the accused and she had already ably assisted the accused during the pre-trial conference of the case on September 25, 2008.^[55]

During the hearing of the presentation of evidence for the prosecution

scheduled on December 11, 2008, Atty. Prescilla A. Salvacion informed the court that respondent's secretary called up to inform her that respondent will still be representing the accused in the case and that she is available on January 15, 2009. Based on the foregoing, it is clear that respondent indeed violated Canons 17 and 18 of the Code of Professional Responsibility, thus:

Canon 17 - A lawyer owes fidelity to the cause of his client and shall be mindful of the trust and confidence reposed in him.

Canon 18 - A lawyer shall serve his client with competence and diligence. A member of the legal profession owes his/her client entire devotion to the latter's genuine interest, and warm zeal in the maintenance and defense of his/her rights.^[58] An attorney is expected to exert his/her best efforts and ability to preserve his/her client's cause, for the unwavering loyalty displayed to his/her client, likewise, serves the ends of justice.^[59] Verily, the entrusted privilege to practice law carries with it the corresponding duties, not only to the client, but also to the court, to the bar and to the public.

Camara v. Atty. Reyes^[61] held: Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare and for the purpose of preserving courts of justice from the official ministrations of persons unfit to practice in them. The attorney is called to answer to the court for his conduct as an officer of the court. The complainant is in no sense a party, and has generally no interest in the outcome of the case. This is also the reason why this Court may investigate charges against lawyers regardless of complainant's standing.^[62]

In regard to the refund sought for payments made to respondent alleged to be in the total amount of P97,500.00, complainant failed to present receipts or documents to evidence the same.

The attorney's fees shall be those stipulated in the retainer's agreement between the client and the attorney, which constitutes the law between the parties for as long as it is not contrary to law, good morals, good customs, public policy or public order.^[63] In this case, there was no retainer's agreement between the parties to be able to ascertain the attorney's fees agreed upon and received by respondent. In his Complaint, complainant sought the return of acceptance fees in the amount of P20,000.00 for the criminal cases and P15,000.00 for the case supposed to be filed against the police officers who arrested the accused. The Court notes that in Annex "14"^[64] of respondent's motion for reconsideration, respondent admitted to having received the amount of P25,000.00 as attorney's fee/acceptance fee for the two criminal cases and P15,000.00 for the case supposed to be filed with the fiscal's office plus P5,000.00 for expenses, and P5,000.00 representing the refund of the PAL ticket rescheduled four times due to the cancellation and resetting of the court hearings, totaling P50,000.00, which amount respondent offered to return to complainant's mother Cecilia Cabuello.^[65] Cecilia Cabuello, however, declined and denied receipt of such payment from respondent's representative, Marivic Alusitain, because she had no right to receive the money that belonged to her children, as stated in her letter (Annex "D-2")^[66] attached to complainant's *Opposition to Respondent's Motion for Reconsideration*.

Hence, in the absence of receipts or documentary evidence to substantiate the amount of P97,500.00 sought to be recovered by complainant from respondent, complainant is entitled to a refund in the amount of P50,000.00, which had been admittedly received by respondent from the Cabuellos as payment for attorney's/acceptance fees and other expenses including refund of a PAL ticket and which amount respondent offered to return to Cecilia Cabuello.

The Court modifies the penalty of suspension imposed by the IBP Board of Governors on respondent from two years to one year. In *Chang v. Hidalgo*,^[67] the Court stated that in several cases, it has imposed the penalty of one (1) year suspension from the practice of law for violation of Canons 17 and 18 of the Code of Professional Responsibility

10) ROMAN VERANO vs. ATTY. LUIS DIORES, JR.,

This administrative case stemmed from a letter-complaint filed with the Court by complainant Verano against respondent Atty. Diores for deceit, malpractice, gross ignorance of the law and violation of the Lawyer's Oath for surreptitiously using Verano's parcel of land to secure bail bonds in connection with at least 61 cases of *Estafa* and Violation of BP 22 that had been filed against Atty. Diores.

FACTS

Verano executed a SPA in favor of Atty. Diores authorizing the latter to use Verano's parcel of land as guaranty to obtain a bail bond for particular criminal cases that had been filed against Atty. Diores.

Verano was surprised to discover that Atty. Diores used the subject property as guarantee to obtain bail bonds for at least 61 cases of *Estafa* and Violation of B.P.

Blg. 22 that had been filed against him which were other than those he authorized under the SPA, causing great loss and damage to Verano.

Thereafter, the Court directed Atty. Dioces to file his comment on the letter-complaint. However, Atty. Dioces failed to file any comment despite notice. Consequently, the Court considered as waived the filing of Atty. Dioces' comment, and referred the case to the IBP for investigation, report and recommendation.

At the scheduled mandatory conference before the IBP only Verano appeared together with his counsel. Atty. Dioces, on the other hand, failed to appear despite notice. Thereafter, Verano filed his position paper, adding that subsequent to the filing of the letter-complaint before the Court, Atty. Dioces had jumped bail in some of his criminal cases and had failed to serve his sentence on some of the decided cases against him which had already become final and executory. Atty. Dioces, on the other hand, failed to file his position paper.

IBP - R&R: Found Atty. Dioces guilty of deceit in violation of Canon 1, Rule 1.01 of the Code of Professional Responsibility (CPR), holding that Atty. Dioces: (1) took undue advantage of the trust reposed on him by Verano by secretly entering into the subject MOA; (2) jumped bail on some of the criminal cases and failed to serve sentence in those where he was duly convicted by final judgment; and (3) refused to comply with the orders of the Court and the IBP to submit his comment and position paper, and to attend the mandatory conference.

It was recommended that respondent be **SUSPENDED** from the practice of law for a period of **TWO (2) YEARS**.

IBP-BOG: Resolved to adopt and approve the said Report and Recommendation, but recommended that Atty. Dioces be **disbarred**.

ISSUE

Whether Atty. Dioces should be disbarred.

RULING

Yes. In dealing with clients or other people, lawyers are expected to observe the highest degree of good faith, fairness and candor, both in their private and professional capacities. Thus, any form of deception or fraudulent act committed by a lawyer in either capacity is not only disgraceful and dishonorable, but also severely undermines the trust and confidence of people in the legal profession, **violates Canon 1, Rule 1.01 of the CPR**, and puts the lawyer's moral character into serious doubt as a member of the Bar, rendering him unfit to continue his practice of law. Moreover, a lawyer has the duty to obey lawful orders of a superior court and the IBP. **Willful disobedience** to such orders, especially to those issued by this Court, is a sufficient ground to disbar a lawyer or suspend him from the practice of law under **Section 27, Rule 138 of the Rules of Court**.

In this case, Commissioner Antiquiera observed that while there was an SPA executed by Verano in favor of Atty. Diores for the latter to use Verano's land as guarantee for the bail bonds, it only authorized Atty. Diores to use the same for specific criminal cases, and not for the other criminal cases filed against him. In addition, Atty. Diores failed to file his comment to Verano's letter-complaint filed against him despite two (2) notices from the Court ordering him to do so, failed to attend the mandatory conference and file his position paper despite orders from the IBP, and jumped bail in the criminal cases filed against him.

The Court agrees with Commissioner Antiquiera's observation. While the SPA executed by Verano empowered Atty. Diores, in his private capacity, to use the subject property as guaranty for his bail bond in some of his criminal cases, this did not grant him *carte blanche* to use the said property to secure bail bonds in his other criminal cases which were not included in the SP A, much less enter into a MOA with Visayan Surety for the said purpose. Such act not only violates the trust granted to him by Verano, but also shows doubt as to his moral character.

Moreover, the fact that Atty. Diores jumped bail in the criminal cases filed against him, failed to file a comment in the instant case despite notice from the Court, and also failed to attend the mandatory conference and file his position paper when he was directed to do so by the IBP, shows his propensity to willfully disobey the orders - of the Court, no less - and other judicial authorities, including the IBP, which is a grave affront to the legal profession, and which should be penalized to the greatest extent.

As for the recommended penalty, the Court agrees with, and hereby adopts, the IBP's recommendation that Atty. Diores should be disbarred, in view of the totality of infractions he had committed, compounded by his conviction for six (6) counts of *Estafa* by the RTC.

It is also well-settled that *Estafa*, which is an act of defrauding another person, whether committed through abuse of confidence, false pretenses or other fraudulent acts, is a crime involving moral turpitude which is also a violation of Canon 1, Rule 1.01 of the CPR, and a ground to disbar or suspend a lawyer as **gross misconduct** under **Section 27, Rule 138 of the Rules of Court**.

Here, Atty. Diores was convicted of not only one, but six (6) counts of *Estafa* through false pretenses and fraudulent means under Article 315(2)(a) of the Revised Penal Code. Such conviction simply shows his criminal tendency to defraud and deceive other people into remitting to him their hard-earned money, which the legal profession condemns in the strongest terms. This, together with his willful disobedience of court orders and his act of using Verano's subject property as guaranty for his bail bond outside the criminal cases wherein he was authorized, cements his utter unfitness to continue exercising his duties as a lawyer. Thus, the Court will not hesitate to adopt the penalty of the IBP and hereby disbar Atty. Diores to protect the trust and confidence of the people in this noble profession.

10) LUZVIMINDA S. CERILLA V. ATTY. SAMUEL SM. LEZAMA; A.C. NO. 11483, October 3, 2017

FACTS

Luzviminda S. Cerilla, complainant, filed an administrative complaint for gross misconduct against Atty. Samuel Lezama, respondent, before the IBP.

In her complaint, complainant alleged that she is one of the co-owners of a parcel of land, located in Sibulan, Negros Oriental. The heirs of Gringio sold it to heirs of Fabio Solmayor, including the complainant.

Being co-owner, complainant engaged the services of respondent to file an unlawful detainer case against Garlito with the MTC.

However, at that time, complainant was working at Camp Aguinaldo in EDSA; hence, she executed a special power of attorney (SPA) in favor of respondent to represent her in filing of the case, to appear during preliminary conference, including amicable settlement of the case if necessary.

Thereafter, by virtue of the SPA, respondent entered into a compromise agreement with the defendant, to sell the property of complainant for P350,000, without her consent or special authority. The compromise agreement was approved; hence, a writ of execution was issued.

Complainant argued that the respondent should be suspended or disbarred because he misrepresented that she was willing to sell the property, considering there are other co-owners, and respondent misconduct was the proximate cause of loss of property.

In defense, respondent argued that he was duly armed with an SPA to enter into a compromise agreement, and the price of P350,000 was the actual price paid by complainant to owner. Hence, he entered into the compromise agreement under the honest and sincere belief that it was the fairest and most equitable arrangement. The IBP- Commissioner found respondent guilty of violating Canons 15 and 17 of the Code of Professional Responsibility, and recommended a suspension from the practice of law for two (2) years. During the preliminary conference, respondent admitted that complainant did not grant him the authority to sell the property in P350,000. Hence, he acted beyond the scope of his authority.

The IBP- Board of Governors adopted and approved the report and recommendation of the investigating commissioner.

ISSUE

Whether respondent is guilty of gross misconduct.

RULING

Yes, respondent is found guilty of violating Canons 5, 15, and 17 of the CPR. Therefore, the Supreme Court affirmed the suspension from the practice of law for a period of 2 years.

The Supreme Court ruled that it is imperative that lawyers be conversant with basic legal principles. Here, nowhere it is expressly stated in the SPA that respondent is authorized to compromise on the sale of property. Hence, he clearly acted beyond the scope of his authority.

The Canons violated are:

CANON 5 – A LAWYER SHALL KEEP ABREAST OF LEGAL DEVELOPMENTS, PARTICIPATE IN CONTINUING LEGAL EDUCATION PROGRAMS, SUPPORT EFFORTS TO ACHIEVE HIGH STANDARDS IN LAW SCHOOLS AS WELL AS IN THE PRACTICAL TRAINING OF LAW STUDENTS AND ASSIST IN DISSEMINATING INFORMATION REGARDING THE LAW AND JURISPRUDENCE.

CANON 15 – A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENT.

CANON 17- A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.

11) JOAQUIN G. BONIFACIO, Complainant vs. ATTY. EDGARDO O. ERA and ATTY. DIANE KAREN B. BRAGAS, Respondents

FACTS

Sometime in 2003, an illegal dismissal case was lodged against Bonifacio and his company, Solid Engine Rebuilders Corporation entitled *Gil Abucejo, Edgar Besmano, Efren Sager, Darlito Sosa, Gerardo G. Talosa, and Salvador Villanueva v. Solid Engine Rebuilders Corporation and/or Joaquin G. Bonifacio*. Complainants therein (Abucejon Group) were represented by Era and Associates Law Office through Atty. Era.

On June 15, 2004, the Labor Arbiter found Bonifacio and the corporation liable for illegal dismissal and, consequently, ordered them to pay Abucejo Group their separation pay, full backwages and pro-rated 13th month pay. More specifically, Bonifacio and his corporation were ordered to pay a partially computed amount of ₱674,128 for the separation pay and full backwages, and ₱16,050.65 for the 13th month pay. Bonifacio and the corporation brought their case up to the Supreme Court but they suffered the same fate as their appeals and motions were decided against them.

Thus, on January 26, 2006, a Writ of Execution was issued to implement the June 15, 2004 Decision. A Notice of Garnishment dated February 6, 2006 was likewise issued. Two alias writs dated May 8, 2008 and April 16, 2013 were later on issued, directing

the sheriff to collect the sum of ₱4,012,166.43, representing the judgment award plus interest and attorney's fees.

Meanwhile, an administrative complaint was filed against Atty. Era for representing conflicting interests entitled *Ferdinand A. Samson v. Atty. Edgardo O. Era*, docketed as A.C. No. 6664. In a July 16, 2013 Decision, this Court found Atty. Era guilty of the charge and imposed the penalty of suspension from the practice of law for two years for violating Rule 15.03 of Canon 15, and Canon 17 of the Code of Professional Responsibility; and SUSPENDS him from the practice of law for two years effective upon his receipt of this decision, with a warning that his commission of a similar offense will be dealt with more severely.

On November 28, 2013, the scheduled public auction over Bonifacio's and/or the corporation's properties in the business establishment was conducted to implement the alias writ. Atty. Era actively participated therein. He attended the public auction and tendered a bid for his clients who were declared the highest bidders. On the same day, a certificate of sale was issued, which Atty. Era presented to the corporation's officers and employees who were there at that time. Armed with such documents, Atty. Era led the pulling out of the subject properties but eventually stopped to negotiate with Bonifacio's children for the payment of the judgment award instead of pulling out the auctioned properties. Atty. Era summoned Bonifacio's children to continue with the negotiation in his law office. On behalf of his clients, their counter-offer for the satisfaction of the judgment award went from ₱6 Million to ₱9 Million.

ISSUES

- (1) Did Atty. Era engage in the practice of law during his suspension therefrom that would warrant another disciplinary action against him?
- (2) In the affirmative, is Atty. Bragas guilty of directly or indirectly assisting Atty. Era in his illegal practice of law that would likewise warrant this Court's exercise of its disciplining authority against her?

RULING

1. Yes. We sustain the findings and recommendations of the Board of Governors. *Atty. Era's acts constituted "practice of law".*

On this matter, Our pronouncement in the landmark case of *Renato L. Cayetano v. Christian Monsod, et. al.* is on point. Thus, We quote herein the relevant portions of the said Decision,

Black defines "practice of law" as:

Otherwise stated, one who, in a representative capacity, engages in the business of advising clients as to their rights under the law, or while so engaged performs any act or acts either in court or outside of court for that purpose, is engaged in the practice of law."

Practice of law means any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience. "To engage in the practice of law is to perform those acts which are characteristics of the profession. Generally, to practice law is to give notice or render any kind of service, which device or service requires the use in any degree of legal knowledge or skill."

In this case, it is undisputed that Atty. Era committed the following acts: (1) appeared on behalf of his winning clients in the public auction of the condemned properties; (2) tendered bid in the auction for his clients; (3) secured the certificate of sale and presented the said document to the corporation's officers and employees present in the premises at that time; (4) insisted that his clients are now the new owners of the subject properties, hence, should be allowed entry in the premises; (5) initiated the pull out of the properties; and (6) negotiated with Bonifacio's children in his law office as regards the payment of the judgment award with interest instead of pulling out the properties.

It is true that being present in an auction sale and negotiating matters relating to the same may not be exclusively for lawyers, as opined by the Investigating Commissioner. However, in this case, as aptly put by the Board in its Resolution, Atty. Era's acts clearly involved the determination by a trained legal mind of the legal effects and consequences of each course of action in the satisfaction of the judgment award. Precisely, this is why his clients chose Atty. Era to represent them in the public auction and in any negotiation/settlement with the corporation arising from the labor case as stated in the SPA being invoked by Atty. Era. Such trained legal mind is what his clients were relying upon in seeking redress for their claims. This is evident from the fact that they agreed not to enter into any amicable settlement without the prior written consent of Atty. Era, the latter being their lawyer. It could readily be seen that the said SPA was executed by reason of Atty. Era being their legal counsel. Thus, We are one with the Board's submission that the said SPA cannot be invoked to support Atty. Era's claim that he was not engaged in the practice of law in performing the acts above-cited as such SP A cunningly undermines the suspension ordered by this Court against Atty. Era, which We cannot countenance.

Atty. Era was engaged in an unauthorized practice of law during his suspension

As mentioned, Atty. Era was suspended from the practice of law for a period of two years in this Court's Decision dated July 16, 2013. He performed the above-cited acts on the same year, specifically November to December 2013. Indubitably, Atty. Era was engaged in an unauthorized law practice.

Atty. Era's acts constitute willful disobedience of the lawful order of this Court, which under Section 27, Rule 138 of the Rules of Court is a sufficient cause for suspension or disbarment. Further, Atty. Era's intentional maneuver to circumvent the suspension order not only reflects his insubordination to authority but also his disrespect to this Court's lawful order which warrants reproach. Members of the bar, above anyone else, are called upon to obey court orders and processes. Graver responsibility is imposed upon a lawyer than any other to uphold the integrity of the courts and to show respect to their processes.

2. Yes. *Atty. Bragas is guilty of assisting Atty. Era in his unauthorized practice of law and, thus, must likewise be reprovved.*

There is no question that Atty. Bragas has knowledge of Atty. Era's suspension from the practice of law and yet, she allowed herself to participate in Atty. Era's unauthorized practice. Clearly, Atty. Bragas violated the CPR, specifically:

CANON 9 - A lawyer shall not, directly or indirectly, assist in the unauthorized practice of law.

Indeed, it is a lawyer's duty to prevent, or at the very least not to assist in, the unauthorized practice of law. Such duty is founded upon public interest and policy, which requires that law practice be limited only to individuals found duly qualified in education *and* character.

As correctly observed by the Board, Atty. Bragas ought to know that Atty. Era's acts constitutive of law practice could be performed only by a member of the Bar in good standing, which Atty. Era was not at that time. Hence, she should have not participated to such transgression.

Being an associate in Atty. Era's law firm cannot be used to circumvent the suspension order. The factual circumstances of the case clearly shows that Atty. Bragas did not act to replace Atty. Era as counsel for his and/or the law firm's clients during the latter's suspension. Atty. Bragas merely assisted Atty. Era, who admittedly was the one actively performing all acts pertaining to the labor case he was handling.

WHEREFORE, premises considered, Atty. Edgardo O. Era is found **GUILTY** of willfully disobeying this Court's lawful order and is hereby **SUSPENDED** from the practice of law for a period of three (3) years, while Atty. Diane Karen B. Bragas is likewise found **GUILTY** of violating CANON 9 of the Code of Professional Responsibility and is hereby **SUSPENDED** from the practice of law for one (1) month, effective immediately from receipt of this Decision. Also, both Attys. Era and Bragas are **WARNED** that a repetition of the same or similar offense, or a commission of another offense will warrant a more severe penalty.

12) A.C. No. 11616 [Formerly CBD Case No. 08-2141], August 23, 2017 LITO V. BUENVIAJE, Complainant, v. ATTY. MELCHOR G. MAGDAMO, Respondent.
NATURE OF THE CASE

An Administrative Complaint filed by Lito Buenviaje(Buenviaje) against respondent Atty. Melchor G. Magdamo (Atty. Magdamo), for violation of the Code of Professional Responsibility.

FACTS

Buenviaje alleged that he was married to the late Fe Gonzalo-Buenviaje.

Meanwhile, Atty. Magdamo was the counsel of Fe's sisters, Lydia and Florenia Gonzalo, who filed a criminal case for bigamy against Buenviaje. They claimed that Buenviaje was married to a certain Amalia Ventura

Atty. Magdamo sent a Notice of Death of Depositor to the Bank of the Philippine Islands (BPI)-Dagupan Branch where Buenviaje and Fe appeared to have a joint account. The pertinent portion of said Notice reads as follows:

1.) FE SOLIS GONZALO was formerly an Overseas Filipina Worker (OFW) Nurse in Switzerland whose lifetime savings is now in an account in BPI-Dagupan. While she was terminally ill and while residing in Manila so as to be near Saint Luke's Hospital, **a clever swindler by the name of LITO BUENVIAJE made it appear on spurious documents that he is the husband of Fe Gonzalo when in truth and in fact LITO BUENVIAJE is married to AMALIA VALERA.**

2.) Moreover, ever since 24 August 2007, **LITO V. BUENVIAJE has been a fugitive from justice as he has been hiding from the criminal charge** in People of the Philippines versus Lito Buenviaje y Visayana, case number 7H-103365, pending in the City of Manila.

3.) **Fe never had a husband or child in her entire life.** x x x" (Emphasis ours)
Buenviaje discovered the existence of the notice when he inquired about the remaining balance of his joint account with Fe. He lamented that he was shocked upon reading the letter and felt humiliated at the words written against him as the bank might have really thought that he was a swindler and a fugitive from justice.

Buenviaje denied Atty. Magdamo's allegation that Fe was never married as they were in fact married in a public civil rites in the presence of many relatives of Fe.

However, Buenviaje admitted that he had extramarital relationship with her and that they had two (2) sons. When they separated and he subsequently worked overseas, it did not stop him from fulfilling his responsibilities as a father to his sons. He was then advised to remit money to Amalia but he was told that he needed a marriage contract to be able to do so, thus, he asked someone to make a marriage contract for remittance purposes and that he was told that there would be no record of it. Buenviaje claimed that at that time, he really believed that no valid marriage took place between him and Amalia and that he was single up to the time he married Fe.

Buenviaje prays that considering Atty. Magdamo's actuations, he should be disbarred or suspended from the practice of law.

RECOMMENDATORY RULING

The IBP-Commission on Bar Discipline recommended that Atty. Magdamo be reprimanded for his unethical actuations.

The IBP-Board of Governors approved with modification the Report and Recommendation of the IBP-CBD, and instead suspend Atty. Magdamo from the practice of law for three (3) months.

The motion for reconsideration filed by Atty. Magdamo was then denied by the IBP-Board of Governors.

ISSUES

Whether or not Atty. Magdamo shall be suspended for violation of the Code of Professional Responsibility.

RULING

YES.

CANON 8 — A lawyer shall conduct himself with courtesy, fairness and candor towards his professional colleagues, and shall avoid harassing tactics against the opposing counsel.

Rule 8.01. — A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

The records show that he referred to Buenviaje as a "swindler". He made this imputation with pure malice for he had no evidence that Buenviaje is committing swindling activities.

Atty. Magdamo's malicious imputation against Buenviaje is further aggravated by the fact that said imputation was made in a forum which is not a party to the legal dispute between Fe's siblings and Buenviaje. He could have just informed BPI-Dagupan of the death of its client and that there is a pending litigation regarding their client's estate

Atty. Magdamo is likewise out of line when he made inference to the marriage documents of Buenviaje and Fe as "spurious" as well as his conclusion that "Fe never had a husband or child in her entire life". He should know better that without the courts' pronouncement to this effect, he is in no position to draw conclusions as to the validity of the marriage of Buenviaje and Fe. At the very least, Atty. Magdamo's actuations are blatant violation of Rule 10.02 of the Code of Professional Responsibility which provides:

Rule 10.02 - A lawyer shall not knowingly misquote or misrepresent the contents of a paper, the language or the argument of opposing counsel, or the text of a decision or authority, or knowingly cite as law a provision already rendered inoperative by repeal or amendment, or assert as a fact that which has not been proved.

Equally incredulous is Atty. Magdamo's statement in the Notice that "Lito V. Buenviaje has been a fugitive from justice as he has been hiding from a criminal

charge. Upon review, it appears that such case is the same bigamy case which Fe's siblings filed against Buenviaje before the Prosecutor's Office of Manila. At the time Atty. Magdamo made the subjects statement in the Notice to BPI-Dagupan, he knew that there was no final resolution yet from the prosecutor's office, no case has yet to be filed in the courts, there was no warrant of arrest against Buenviaje, and more importantly, there was no evidence that Buenviaje had any intent to flee prosecution as he even filed the instant case and participated in the proceedings hereto. A mere charge or allegation of wrongdoing does not suffice.

PENALTY

ACCORDINGLY, the Court AFFIRMS the Resolutions of the Integrated Bar of the Philippines Board of Governors ORDERS the suspension of Atty. Melchor G. Magdamo from the practice of law for three (3) months effective upon his receipt of this Decision.

13) RAFAEL PADILLA VS ATTY. GLENN SAMSON; AC NO. 10253; AUGUST 22, 2017

FACTS

This case stemmed from a complaint filed by Rafael Padilla against his former lawyer, Atty. Glenn Samson, for behavior unbecoming of a lawyer.

Complainant Rafael Padilla filed a Complaint on November 25, 2013 against his former counsel, respondent Atty. Glenn Samson, in connection with his case, entitled *Indelecia Balaga and Enrique Balaga v. Rafael Padilla*, Case No. 00-05-07038-08. Padilla contends that Samson suddenly cut all communications with him, which almost caused him to miss the due date for the filing of a required pleading. He even wrote a demand letter asking Samson to withdraw his appearance and return all the documents pertinent to his case, but to no avail.

Also, Padilla had been asking Samson for the refund of his overpayment amounting to ₱19,074.00. However, Samson failed to offer any response, despite aforementioned demands. Likewise, when ordered by the Court as well as the Commission on Bar Discipline of the *IBP* to refute the allegations in Padilla's complaint and explain his side, Samson refused to do so.

On January 26, 2016, the Commission on Bar Discipline of the *IBP* recommended Samson's suspension for six (6) months. On February 25, 2016, the *IBP* Board of Governors increased the penalty to one (1) year suspension.

ISSUE

Whether or not Atty. Samson should be held administratively accountable

RULING

Yes. Ordinarily, lawyers may decline employment and refuse to accept representation, if they are not in a position to carry it out effectively or competently. But once they agree to handle a case, attorneys are required by the Canons of Professional Responsibility (CPR) to undertake the task with zeal, care, and utmost devotion. Acceptance of money from a client establishes an attorney-client relationship and gives rise to the duty of fidelity to the client's cause. Every case which a lawyer accepts deserves full attention, diligence, skill, and competence, regardless of importance.

Canon 15 - A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his clients.

Canon 17 - A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

Canon 18 - A lawyer shall serve his client with competence and diligence.

Rule 18.03 - A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Canon 19 - A lawyer shall represent his client with zeal within the bounds of the law.
Rule 19.01 - A lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding.

Samson completely abandoned Padilla without any justification, notwithstanding his receipt of the professional fees for services rendered as well as the latter's efforts to reach him. His continuous inaction despite repeated follow-ups reveals his cavalier attitude and appalling indifference toward his client's cause, in blatant disregard of his duties as a lawyer. Also, despite numerous demands, Samson has unjustifiably refused to return Padilla's documents and the amount of P19, 074.00 as overpayment for his legal services. It is a hornbook principle that a lawyer's duty of competence and diligence includes, not merely reviewing the cases entrusted to his care or giving sound legal advice, but also consists of properly representing the client before any court or tribunal, attending scheduled hearings or conferences, preparing and filing the required pleadings, prosecuting the handled cases with reasonable dispatch, and urging their termination even without prodding from the client or the court. Further, Samson failed to file his Answer to the complaint despite due notice from the Court and the IBP. His unwarranted tenacity simply shows, not only his lack of responsibility, but also his lack of interest in clearing his name, which, as pronounced in case law, is indicative of an implied admission of the charges levelled against him.

The CPR requires lawyers to give their candid and best opinion to their clients on the merit or lack of merit of the case. Knowing whether a case would be potentially successful is not only a function, but also an obligation on the part of lawyers. If ever

Samson found that his client's cause was defenseless, then he should have met with Padilla so that they would be able to discuss their possible options, instead of abruptly dropping the case without any notice or explanation. Samson's failure to fulfill this basic undertaking constitutes a violation of his duty to observe candor, fairness, and loyalty in all his dealings and transactions with his clients.

Withal, his persistent refusal to return Padilla's money and case files despite frequent demands clearly reflects his lack of integrity and moral soundness; he is clinging to something that does not belong to him, and that he absolutely has no right to keep or use without Padilla's permission. Lawyers are deemed to hold in trust their client's money and property that may come into their possession.

WHEREFORE, IN VIEW OF THE FOREGOING, the Court **SUSPENDS** Atty. Glenn Samson from the practice of law for a period of two (2) years, effective upon finality of this Decision, **ORDERS** him to **RETURN** to complainant Rafael Padilla, within thirty (30) days from notice of this Decision, all the documents and properties entrusted to him by virtue of their lawyer-client relationship and the amount of 19,074.00 as overpayment of fees, with interest at the rate of six percent (6%) *per annum*, from November 25, 2013, until fully paid, and **WARNS** him that a repetition of the same or similar offense, including the failure to return said amount and documents, shall be dealt with more severely.

**14) CARMELO IRINGAN v. ATTY. CLAYTON B. GUMANGAN;
A.C. No. 8574**

FACTS

This is an administrative complaint for disbarment or suspension filed by complainant Carmelo Iringan (Carmelo) against respondent Atty. Clayton B. Gumangan (Atty. Gumangan) relative to Civil Case No. 518-09, entitled *Sps. Renato and Carmen A. Iringan v. Carmelo A. Iringan*, for Illegal Detainer and Ejectment with Damages. Civil Case No. 518-09 was instituted before the MTCC by spouses Renato (Renato) and Cannen Iringan (spouses Iringan) against Carmelo, who is Renato's brother. The spouses Iringan alleged in their complaint that they are the owners of a piece of land registered under Renato's name. A two-storey structure stands on said piece of land, which was used as a restaurant. Renato acquired the right to operate said restaurant from his mother by virtue of a Deed of Assignment to Operate Establishment. Pursuant to a Contract of Lease Renato agreed to lease to Carmelo the land and the two-storey building thereon (collectively referred to herein as the premises) for a period of one year, for a monthly rental of ₱5,000.00. The Contract of Lease was notarized by Atty. Gumangan. The lease expired but Carmelo continued to possess the premises upon spouses Iringan's tolerance. Then, the spouses Iringan demanded that Carmelo vacate the premises but to no avail. Thus, the spouses Iringan had no other recourse but to file Civil Case No. 518-09 for Illegal Detainer and Ejectment with Damages against Carmelo.

In his defense, Carmelo averred that he and Renato are brothers. The premises actually belonged to their late parents Sixto and Lourdes Iringan, and upon their parents' deaths, the premises descended to Carmelo, Renato, and their other

siblings. Hence, Renato is not the sole owner of the premises even though the certificate of title to the land is registered in his name alone. Renato is a mere trustee of the premises for his siblings. The Deed of Assignment to Operate Establishments did not vest title to the premises upon the spouses Iringan as this was in derogation of the succession rights of Renato's siblings. Carmelo further claimed that the Contract of Lease for the premises was spurious as he had never entered into such a contract with Renato. Carmelo asserted that he did not sign the Contract of Lease nor did he appear before Atty. Gumangan who notarized the same. In the meantime, while Civil Case No. 762 was still pending before the RTC, Carmelo instituted on April 5, 2010, before the Court, through the Office of the Bar Confidant (OBC), the present administrative complaint against Atty. Gumangan alleging that it is too obvious that the alleged Lease Contract prepared and notarized by Atty. Gumangan is fraudulent since by simple examination, the same was executed and subscribed before him on December 30, 2005, when in fact Renato Iringan's CTC was issued on January 17, 2006; Carmelo's own CTC does not appear thereon, meaning that he never appeared to execute it; That more importantly, Carmelo had not known, met or had any transaction with Atty. Gumangan; He only saw him for the first time in the Municipal Trial Court, Tabuk, Kalinga, during one of the proceedings in Civil Case No. 518-09 where Atty. Gumangan happened to be present in attendance.

Moreover, the said "Contract of Lease" was never filed with the notarial report of Atty. Gumangan with the Office of the Clerk of Court of Kalinga.; That the very blatant act of Atty. Gumangan in preparing and notarizing said "Contract of Lease" bespeaks of wanton and willful violation of the Canons of Professional Responsibility for lawyers; As officers of the Court they are mandated not to involve themselves in fraudulent and deceitful acts, to the grave damage and prejudice of private individuals.

ISSUE

Whether or not Atty. Gumangan violated Notarial Law

RULING

Yes. Atty. Gumangan herein violated the 2004 Rules on Notarial Practice by notarizing the Contract of Lease on December 30, 2005 without competent evidence of identity of Renato and Carmelo and, thus, committing an expressly prohibited act under the Rules.

Atty. Gumangan did not allege that he personally knew Renato and Carmelo when they appeared before him on December 30, 2005 for the notarization of the Contract of Lease. There was no showing that Renato and Carmelo presented current identification documents issued by an official agency bearing their photographs and signatures before Atty. Gumangan notarized their Contract of Lease. Langgaman and Padua witnessed Renato and Carmelo signing the Contract of Lease in person at Atty. Gumangan's office, but they did not attest under oath or affirmation that they personally knew Renato and Carmelo, and neither did they present their own documentary identification.

According to Renato, Atty. Gumangan asked them to present their CTCs, but neither Renato nor Carmelo had CTCs at that moment. Renato only secured a CTC on January 17, 2006, which he belatedly presented to Atty. Gumangan for recording.

CTCs no longer qualifies as competent evidence of the parties' identity as defined under Rule II, Section 12 of the 2004 Rules on Notarial Practice. In *Baylon v. Almo*, considering the ease with which a CTC could be obtained these days and recognizing the established unreliability of a CTC in proving the identity of a person who wishes to have his document notarized, the Court did not include the CTC in the list of competent evidence of identity that notaries public should use in ascertaining the identity of persons appearing before them to have their documents notarized. Worse, neither Renato nor Carmelo had CTCs with them on December 30, 2005, yet, Atty. Gumangan still proceeded with notarizing the Contract of Lease, allowing Renato to belatedly present his CTC weeks later, while Carmelo did not present any CTC at all.

Moreover, Atty. Gumangan did not submit to the RTC Clerk of Court his Notarial Report and a duplicate original of the Contract of Lease dated December 30, 2005 between Renato and Carmelo. Atty. Gumangan did not dispute Atty. Andomang's Affidavit nor provide any explanation for his failure to comply with such requirements.

It cannot be overemphasized that notarization of documents is not an empty, meaningless or routine act. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. It is through the act of notarization that a private document is converted into a public one, making it admissible in evidence without need of preliminary proof of authenticity and due execution. Indeed, a notarial document is by law entitled to full faith and credit upon its face, and for this reason, notaries public must observe utmost care in complying with the elementary formalities in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined.

Canon 1 of the Code of Professional Responsibility requires every lawyer to uphold the Constitution, obey the laws of the land and promote respect for the law and legal processes. Moreover, the **Notarial Law and the 2004 Rules on Notarial Practice** require a duly commissioned notary public to make the proper entries in his Notarial Register and to refrain from committing any dereliction or act which constitutes good cause for the revocation of commission or imposition of administrative sanction. Unfortunately, respondent failed in both respects.

Clearly, herein, Atty. Gumangan - in notarizing the Contract of Lease without competent evidence of the identity of Renato and Carmelo, and in failing to submit to the RTC Clerk of Court his Notarial Report and a duplicate original of the Contract of Lease - had been grossly remiss in his duties as a notary public and as a lawyer, consequently, undermining the faith and confidence of the public in the notarial act

and/or notarized documents. Therefore, in light of the foregoing, the Court holds Atty. Gumangan administratively liable and imposes upon him the penalty of suspension of his notarial commission for two years.

As a last note, the Court points out that its judgment in the present case does not touch upon the execution and existence of the Contract of Lease between Renato and Carmelo. It is worthy to mention that any defect in the notarization of the Contract of Lease did not affect its validity and it continued to be binding between the parties to the same, namely, Renato and Carmelo. The irregularity in the notarization was not fatal to the validity of the Contract of Lease since the absence of such formality would not necessarily invalidate the lease, but would merely render the written contract a private instrument rather than a public one. Hence, the ruling of the Court in the present administrative case, essentially addressing the defects in the notarization of the Contract of Lease dated December 30, 2005 between Renato and Carmelo and Atty. Gumangan's failings as a notary public, should not affect the judgment rendered against Carmelo in Civil Case No. 518-09, the unlawful detainer case.

15) ELIBENA A. CABILES vs. ATTY. LEANDRO S. CEDO

FACTS

Elibena Cabiles engaged the services of respondent lawyer to handle an illegal dismissal case. Respondent lawyer was paid Php5, 500.00 for drafting therein respondents' position paper and Php2, 000.00 for his every appearance in the NLRC hearings. Cabiles alleged that Atty. Cedo did not appear in a hearing and failed to submit a reply for his client. The appeal in the NLRC was also dismissed because of the failure of the respondent lawyer to inform Cabiles that a bond must be posted to perfect an appeal before the NLRC.

Elibena Cabiles also engaged the services of the respondent lawyer to file a criminal case for unjust vexation against Emelita Claudit. Elibena claimed that, despite payment of his professional fees, respondent lawyer did not exert any effort to seasonably file her Complaint for unjust vexation before the City Prosecutor's Office; that the Office of the City Prosecutor of Muntinlupa City dismissed her Complaint for unjust vexation on September 10, 2009 on the ground of prescription.

Complainant also alleged that respondent lawyer had not at all complied with the first, second, and third compliance periods of the (MCLE) requirement.

In his Answer, respondent lawyer argued that the hearing was set to provide the parties the opportunity either to explore the possibility of an amicable settlement, or give time for him to decide whether to file a responsive pleading, after which the case would be routinely submitted for resolution, with or without the parties' further appearances. Respondent lawyer likewise claimed that Elibena was only feigning ignorance of the cost of the appeal bond, and that in any event, Elibena herself could have paid the appeal bond. Respondent lawyer did not refute Elibena's claim that he failed to indicate his MCLE compliance in the position paper and in the memorandum of appeal.

THE IBP'S REPORT AND RECOMMENDATION

The Investigating Commissioner found respondent lawyer guilty of having violated Canons 5, 17, and 18 of the Code of Professional Responsibility and recommended his suspension from the practice of law for two years. Aside from respondent lawyer's failure to comply with the MCLE requirements, the Investigating Commissioner also found him grossly negligent in representing his clients, particularly (1) in failing to appear on the March 26, 2009 hearing in the NLRC, and file the necessary responsive pleading; (2) in failing to advise and assist his clients who had no knowledge of, or were not familiar with, the NLRC rules of procedure, in filing their appeal and; 3) in failing to file seasonably the unjust vexation complaint before the city prosecutor's office, in consequence of which it was overtaken by prescription.

The **IBP Board of Governors** adopted and approved the Investigating Commissioner's Report and Recommendation, but modified the recommended administrative sanction by reducing the suspension to one year.

ISSUE

Whether or not the respondent lawyer should be held administratively liable?

RULING

1. The respondent lawyer violated canon 5 of the CPR because of his failure to comply with the three MCLE compliance periods. Canon 5 provides that "A LAWYER SHALL KEEP ABREAST OF LEGAL DEVELOPMENTS, PARTICIPATE IN CONTINUING LEGAL EDUCATION PROGRAMS, SUPPORT EFFORTS TO ACHIEVE HIGH STANDARDS IN LAW SCHOOLS AS WELL AS IN THE PRACTICAL TRAINING OF LAW STUDENTS AND ASSIST IN DISSEMINATING INFORMATION REGARDING THE LAW AND JURISPRUDENCE".
2. The circumstances of this case indicated that respondent lawyer was guilty of gross negligence for failing to exert his utmost best in prosecuting and in defending the interest of his client. Hence, he is guilty of the following:

CANON 17 - A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.

CANON 18 - A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

Rule 18.03 - A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Furthermore, respondent lawyer's act of receiving an acceptance fee for legal services, only to subsequently fail to render such service at the appropriate time, was a clear violation of Canons 17 and 18 of the Code of Professional Responsibility. Respondent lawyer did not diligently and fully attend to the cases that he accepted, although he had been fully compensated for them. First off, respondent lawyer

never successfully refuted Elibena's claim that he was paid in advance his Php2,000.00 appearance fees on March 21, 2009 for the scheduled hearing of the labor case on March 26, 2009, during which he was absent. Furthermore, although respondent lawyer had already received the sum of Php45,000.00 to file an unjust vexation case, he failed to promptly file the appropriate complaint therefor with the City Prosecutor's Office, in consequence of which the crime prescribed, resulting in the dismissal of the case.

Case law further illumines that a lawyer's duty of competence and diligence includes not merely reviewing the cases entrusted to the counsel's care or giving sound legal advice, but also consists of properly representing the client before any court or tribunal, attending scheduled hearings or conferences, preparing and filing the required pleadings, prosecuting the handled cases with reasonable dispatch, and urging their termination without waiting for the client or the court to prod him or her to do so.

Conversely, a lawyer's negligence in fulfilling his duties subjects him to disciplinary action. While such negligence or carelessness is incapable of exact formulation, the Court has consistently held that the lawyer's mere failure to perform the obligations due his client is per se a violation.

With regard to the labor case for which he opted not to file a Reply and refused to present the cash vouchers which, according to Elibena, ought to have been submitted to the NLRC, we hold that even granting that he had the discretion being the handling lawyer to present what he believed were available legal defenses for his client, and conceding, too, that it was within his power to employ an allowable legal strategy, what was deplorable was his way of handling the appeal before the NLRC. Aside from handing over or delivering the requisite pleading to his clients almost at the end of the day, at the last day to file the appeal before the NLRC, he never even bothered to advise Elibena and the rest of his clients about the requirement of the appeal bond. He should not expect Elibena and her companions to be conversant with the indispensable procedural requirements to perfect the appeal before the NLRC. If the averments in his Answer are any indication, respondent lawyer seemed to have relied heavily on the NLRC's much vaunted 'leniency' in gaining the successful prosecution of the appeal of his clients in the labor case; no less censurable is his propensity for passing the blame onto his clients for not doing what he himself ought to have done. And, in the criminal case, he should have known the basic rules relative to the prescription of crimes that operate to extinguish criminal liability. All these contretemps could have been avoided had respondent lawyer displayed the requisite zeal and diligence.

"[T]he appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts." Given herein respondent lawyer's failure to maintain a high standard of legal proficiency with his refusal to comply with the MCLE as well as his lack of showing of his fealty to Elibena's interest in view of his lackadaisical or indifferent approach in handling the cases entrusted to him, we find it apt and commensurate to the facts of the case to adopt the recommendation of the IBP to suspend him from the practice of law for one year.

WHEREFORE, respondent Atty. Leandro S. Cedo is hereby found GUILTY of violating Canons 5, 17, 18, and Rule 18.03 of the Code of Professional Responsibility. He is hereby SUSPENDED from the practice of law for a period of one (1) year effective upon receipt of this Decision, and warned that a repetition of the same or a similar act will be dealt with more severely.

**16) NANETTE B. SISON, represented by DELIA B. SARABIA, Complainant
vs. ATTY. SHERDALE M. VALDEZ, A.C. No. 11663 , PERLAS-BERNABE, J.
NATURE**

Disbarment Complaint for violating his professional duties under the Code of Professional Responsibility (CPR).

FACTS

Sometime in September 2012, complainant, an overseas Filipino worker in Australia, engaged respondent's legal services to file an action against Engr. Eddie S. Pua of E.S. Pua Construction (old contractor) and the project manager, Engr. Dario Antonio (project manager), for failing to construct complainant's house in Nuvali, Canlubang, Calamba, Laguna in due time. Although no written agreement was executed between the parties specifying the scope of legal services, respondent received the total amount of ₱215,000.00 from complainant, through Sarabia, on three (3) separate dates.

On January 8, 2013, complainant terminated respondent's legal services *via* e-mail and text messages with a demand to return the amount given, which was not heeded notwithstanding several demands; Hence, complainant, through Sarabia, filed the instant disbarment complaint before the Integrated Bar of the Philippines (IBP) - Commission on Bar Discipline (CBD), alleging that despite receipt of her payments: (a) respondent failed to render his legal services and update her regarding the status of the case; (b) commingled her money with that of respondent's wife; (c) misappropriated her money by failing to issue a receipt for the last installment of the payment received; and (d) fabricated documents to justify retention of her money.

After respondent finished studying the case, he informed complainant of his evaluation via e-mail. On November 1, 2012, respondent went to his hometown in Ilagan, Isabela with one "Atty. Joselyn V. Valeros" to personally serve the demand letter to the old contractor. However, when they went to the house of the old contractor on November 4, 2012, the person present thereat refused to receive the letter. Respondent supposedly spent ₱15,000.00 for his travel to Ilagan, Isabela. Respondent further averred that he was supposed to personally meet complainant for the first time upon the latter's arrival in the Philippines in the second week of November 2012.

Respondent, through complainant's sister, Elisea Sison, asked complainant to reconsider the termination and outlined the services he already rendered, as follows: (a) he sent a demand letter dated November 4, 2012 to the old contractor;

(b) he drafted a complaint for breach of contract and damages with prayer for preliminary attachment; (c) he sent a final demand letter dated January 8, 2013 to the old contractor; and (d) while waiting for a response, he proceeded to investigate the old contractor's real and personal properties to ascertain what can be the subject of preliminary attachment. Respondent offered to return the amount of ₱150,000.00 to complainant, explaining that he already studied the case, prepared the complaint, and incurred expenses. However, complainant refused and proceeded to file the present case.

Instead of filing their respective position papers before the IBP-CBD, the parties filed a Joint Manifestation on February 20, 2014, agreeing to settle the matter amicably and acknowledging that the disbarment complaint was filed because of "misapprehension of facts due to pure error in accounting and honest mistakes by respondent." Complainant's counsel acknowledged receipt of ₱200,000.00 representing partial payment of respondent's obligation, while the balance of ₱18,352.00 will be paid subsequently. In turn, complainant undertook not to pursue nor testify against respondent in this administrative case, as well as in the *Estafa* case.

The IBP's Report and Recommendation

In the Report and Recommendation dated June 7, 2014, the IBPCBD Investigating Commissioner (IC) recommended that respondent be reprimanded for violating his obligations under the CPR with a stem warning never to commit the same mistakes again. At the outset, the IC disapproved the Joint Manifestation, noting that a compromise agreement would not operate to exonerate a lawyer from a disciplinary case.

First, he failed to inform his client about the status of the case; *Second*, he asked for payment of fees from complainant even before he prepared the draft complaint; *Third*, respondent failed to issue the proper receipt for the full amount he received from complainant; *Fourth*, respondent commingled the funds of his client with that of his wife when he asked that the ₱50,000.00 be deposited to his wife's bank account. As to the compensation for legal services, the IC opined that ₱30,000.00 was reasonable based on *quantum meruit*, in view of the limited services respondent rendered.

IC considered his active membership in the IBP-Laguna Chapter from 2007 to 2009 and his continuous service as a law professor in Adamson University since 2009 as mitigating factors to reduce his recommended penalty to reprimand. In a Resolution dated January 31, 2015, the IBP Board of Governors adopted and approved the IC's Report and Recommendation, but modified the penalty to suspension from the practice of law for a period of six (6) months. Respondent moved for reconsideration, but was denied in a Resolution dated September 23, 2016.

ISSUE

1. Whether or not respondent should be held administratively liable for the acts complained of?

2. Whether or not respondent Atty. Valdez should be disbarred?

HELD

After a judicious review of the records, the Court concurs with the IBP's finding of administrative liability with some modifications.

As correctly pointed out by the IBP, respondent's lapses constitute a violation of Rule 18.04,

Canon 18 of the CPR, which reads:

CANON 18 - A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

Rule 18.04 - A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

The Court likewise finds that respondent violated Rules 16.01 and 16.03, Canon 16 of the CPR, which respectively read:

CANON 16 - A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

Rule 16.01 - A lawyer shall account for all money or property collected or received for or from the client.

Rule 16.03 - A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client.

The highly fiduciary nature of an attorney-client relationship imposes on a lawyer the duty to account for the money or property collected or received for or from his client. Money entrusted to a lawyer for a specific purpose, such as for the filing and processing of a case, if not utilized, must be returned immediately upon demand. His failure to return gives rise to a presumption that he has appropriated it for his own use, and the conversion of funds entrusted to him constitutes a gross violation of his professional obligation under Canon 16 of the CPR.

In this case, respondent failed to account for the money received from complainant when he only acknowledged receipt of ₱165,000.00 for litigation expenses despite admittedly receiving ₱215,000.00.

Although the IBP correctly found that respondent is entitled to reasonable compensation for the limited services he rendered, the Court notes that respondent appears to have waived his claim for compensation when he agreed to return the amount of ₱200,000.00 in cash and pay an additional ₱118,352.00 in exchange for complainant's desistance in the *Estafa* and disbarment cases filed against him. Thus,

the matter of restitution should no longer be an issue. However, it should be stressed that his administrative liability herein should remain, considering the rule that a disbarment case is not subject to any compromise it should be stressed that his administrative liability herein should remain, considering the rule that a disbarment case is not subject to any compromise.

Considering the surrounding circumstances of this case, such as the short duration of the engagement, respondent's return of the money, his expression of humility and remorse, and the fact that this is his first administrative case, the Court finds the penalty of suspension from the practice of law for a period of three (3) months sufficient and commensurate to respondent's violations.

DISPOSITIVE PORTION

WHEREFORE, respondent Atty. Sherdale M. Valdez is found **GUILTY** of violating Rule 18.04, Canon 18, as well as Rules 16.01 and 16.03, Canon 16 of the Code of Professional Responsibility. Accordingly, he is **SUSPENDED** from the practice of law for a period of three (3) months effective from the finality of this Resolution, and is **STERNLY WARNED** that a repetition of the same or similar acts shall be dealt with more severely.

**17) PACES INDUSTRIAL CORPORATION,
vs.
ATTY. EDGARDO M. SALANDANAN**

FACTS

In October 1973, Salandanan became a stockholder of Paces, and later became its Director, Treasurer, Administrative Officer, Vice-President for Finance, then its counsel. As lawyer for Paces, he appeared for it in several cases.

On December 4, 1973, E.E. Black Ltd., through its counsel, sent a letter to Paces regarding the latter's outstanding obligation to it. In the negotiations that transpired thereafter, Salandanan was the one who represented Paces.

Meanwhile, disagreements on various management policies ensued among the stockholders and officers in the corporation. Eventually, Salandanan and his group were forced to sell out their shareholdings.

After said sell-out, Salandanan started handling the case between E.E. Black Ltd. and Paces, but now, representing E.E. Black Ltd. Salandanan then filed a complaint with application for preliminary attachment against Paces for the collection of its obligation to E.E. Black Ltd. He later succeeded in obtaining an order of attachment, writ of attachment, and notices of garnishment.

Thus, Paces filed a complaint against Salandanan. It argued that when he acted as counsel for E.E. Black Ltd., he represented conflicting interests and utilized, to the full extent, all the information he had acquired as its stockholder, officer, and

lawyer. On the other hand, Salandanan claimed that he was never employed nor paid as a counsel by Paces. There was no client-lawyer contract between them.

RECOMMENDATORY RULING

Commission on Bar Discipline of the Integrated Bar of the Philippines (*IBP*) recommended Salandanan's suspension for one (1) year. On IBP Board of Governors recommended *Suspension from the practice of law for three (3) years.*

ISSUE

WON Atty. Salandanan was guilty of representing conflict of interest.

HELD

YES, Rule 15.03, Canon 15 and Canon 21 of the Code of Professional Responsibility (*CPR*) provide:

CANON 15 - A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENTS.

Under the aforesaid rules, it is explicit that a lawyer is prohibited from representing new clients whose interests oppose those of a former client in any manner, whether or not they are parties in the same action or on totally unrelated cases. Conflict of interest exists when a lawyer represents inconsistent interests of two or more opposing parties.

The test is:

- 1.) whether or not in behalf of one client, it is the lawyer's duty to fight for an issue or claim, but it is his duty to oppose it for the other client.
- 2.) if the acceptance of the new retainer will require the attorney to perform an act which will injuriously affect his first client in any matter in which he represents him and also whether he will be called upon in his new relation to use against his first client any knowledge acquired through their connection.
- 3.) Another test of the inconsistency of interests is whether the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness or double-dealing in the performance of said duty. The prohibition is founded on the principles of public policy and good taste.

Even the termination of the attorney-client relationship does not justify a lawyer to represent an interest adverse to or in conflict with that of the former client. The spirit behind this rule is that the client's confidence once given should not be stripped by the mere expiration of the professional employment. Even after the severance of the relation, a lawyer should not do anything that will injuriously affect

his former client in any matter in which the lawyer previously represented the client. Nor should the lawyer disclose or use any of the client's confidences acquired in the previous relation.

CANON 21 - A LAWYER SHALL PRESERVE THE CONFIDENCES AND SECRETS OF HIS CLIENT EVEN AFTER THE ATTORNEY-CLIENT RELATION IS TERMINATED.

PENALTY: SUSPENDS Atty. Edgardo M. Salandanan from the practice of law for three (3) years effective upon his receipt of this decision, with a warning that his commission of a similar offense will be dealt with more severely.

18) DR. EDUARDO R. ALICIAS, JR. COMPLAINANT, VS. ATTY. VIVENCIO S. BACLIG, Respondent.

A.C. No. 9919 | July 19, 2017 | TIJAM, J.:

FACTS

The case stemmed from the amended complaint for declaration of nullity of void documents, recovery of ownership and possession, accounting of the natural, industrial fruits derived from the illegal occupation of the subject property, exercise of the right of legal redemption with damages, and application for a writ of preliminary injunction filed by Eleuterio Lamorena, Higinio Rene Lamorena, Oscar Lamorena and Eloisa Lamorena (Lamorena, et. al.) against Robert R. Alicia and Urvillo A. Paa and complainant before the Regional Trial Court (RTC) in Vigan City. Said complaint was filed in September 2012 and Atty. Baclig was hired by Lamorena, et. al. as their counsel.

In said amended complaint, Lamorena, et. al. questioned the occupancy of complainant and his co-defendants of a certain parcel of land. Lamorena, et. al. claimed that they are entitled to possession of the same, being the surviving heirs of the lawful owners of the subject property, spouses Vicente and Catalina Lamorena.

Complainant and his co-defendants filed their Answer, stressing that they legally acquired the subject property by virtue of a contract of sale from its lawful owner, Catalina, as the same is her paraphernal property.

It appears, however, that in February 2010, an amended complaint for reconveyance, annulment of deeds and quieting of title was filed by Lamorena, et. al. against herein complainant and Urvillo Paa before the Municipal Trial Court in Cities (MTCC) in Vigan City. However, it was not Atty. Baclig who acted as counsel in this case.

On May 14, 2013, the complainant filed an administrative case for disbarment against Atty. Baclig.

In said administrative complaint, the complainant averred that Atty. Baclig consented to false assertions when his clients allegedly made false statements in their amended complaint. Complainant also stated that Atty. Baclig knowingly filed an action which was: (1) already barred by res judicata and laches; and (2) without

the jurisdiction of the RTC where such complaint was filed. Lastly, complainant claimed that Atty. Baclig consented to the filing of a complaint, which asserted similar relief, when a similar case was filed before the MTCC.

Atty. Baclig contended that the allegations in the subject complaint contained absolutely privileged communication, which insulates him from liability. Also, the issues as to whether or not the assertions in the subject complaint are false statements and whether or not the RTC has jurisdiction over the subject matter of the action are yet to be decided; hence, the complaint against him holds no water.

ISSUE

Whether or not Atty. Baclig is administratively liable

RULING

YES. The issue in the amended complaint is who between Lamorena, et. al. and complainant herein has the right of possession over the subject property. Hence, Atty. Baclig cannot be faulted for consenting to his clients' act of asserting such statements. At any rate, it must be considered that Atty. Baclig's pleadings were privileged and would not occasion any action against him as an attorney.

However, as to the matter of forum shopping, We find that Atty. Baclig resorted to the same.

In forum shopping, the following requisites should concur: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration.

In this case, it must be noted that an amended complaint was filed by Lamorena, et. al. against herein complainant and Paa before the MTCC in February 2010. In sum, such amended complaint sought for the nullification of the mortgage contract and deed of sale which transferred the property to herein complainant and his co-defendants and the declaration of Lamorena, et. al. as the absolute owners of the subject property. Eventually, the case before the MTCC was dismissed with prejudice in an Order dated November 9, 2012.

However, on September 19, 2012, another amended complaint was filed by Lamorena, et. al. against complainants, Robert and Paa, but this time, before the RTC. A cursory reading of the complaint reveals that the reliefs sought pertain to the nullification of any and all the documents in the form of a written agreement which may be executed without the consent of Lamorena, et. al. In esse, such complaint before the RTC prayed for similar reliefs as those which were sought for in the complaint before the MTCC.

On this note, We rule that there was forum shopping in this case, for while the case before the MTCC was pending, Atty. Baclig consented to the filing of another complaint before another forum, i.e., RTC. Such cases deal with the same parties and same reliefs. Thus, a ruling in one case would resolve the other, and vice versa.

Moreover, regardless of the fact that Atty. Baclig did not act as counsel in the case before the MTC, it would not exempt him from culpability. Atty. Baclig did not categorically deny the allegations of complainant regarding the commission of forum shopping. Moreover, it is surprising that he was able to answer the 10 causes of action raised by complainant, except the issue on forum shopping. Hence, he is deemed to have admitted that he has knowledge of the pendency of a similar complaint before the MTC when a complaint before the RTC was filed.

In this regard, the filing of another action concerning the same subject matter runs contrary to Canon 1 and Rule 12.04 of Canon 12 of the CPR. Canon 1 of the CPR requires a lawyer to exert every effort and consider it his duty to assist in the speedy and efficient administration of justice and Rule 12.04 of Canon 12 prohibits the undue delay of a case by misusing court processes.

We reiterate that a lawyer owes fidelity to the cause of his client, but not at the expense of truth and the administration of justice. The filing of multiple petitions constitutes abuse of the court's processes and improper conduct that tends to impede, obstruct and degrade the administration of justice and will be punished as contempt of court.

A former member of the judiciary need not be reminded of the fact that forum shopping wreaks havoc upon orderly judicial process and clogs the courts' dockets. As a former judge, Atty. Baclig must be mindful not only of the tenets of the legal profession but also of the proper observance of the same.

CANONS VIOLATED

Canon 1 and Rule 12.04 of Canon 12 of the Code of Professional Responsibility.

Canon 1

A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal processes.

Rule 12.04 of Canon 12:

A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse court processes.

**20)JOY T. SAMONTE v. ATTY. VIVENCIO V. JUMAMIL;
21)A.C. No. 11668, July 17, 2017**

FACT

Complainant alleged that sometime in October 2012, she received summons from the National Labor Relations Commission (NLRC) relative to an illegal dismissal case

filed by four (4) persons claiming to be workers in her small banana plantation. Consequently, complainant engaged the services of respondent to prepare her position paper, and paid him the amount of P8,000.00 as attorney's fees.

Despite constantly reminding respondent of the deadline for the submission of her position paper, complainant discovered that he still failed to file the same. As such, on January 25, 2013, the Labor Arbiter rendered a Decision based on the evidence on record, whereby complainant was held liable to the workers in the total amount of P633,143.68. When complainant confronted respondent about the said ruling, the latter casually told her to just sell her farm to pay the farm workers. Because of respondent's neglect, complainant claimed that she was left defenseless and without any remedy to protect her interests against the execution of the foregoing judgment; hence, she filed the instant complaint.

In his Answer dated April 19, 2013, respondent admitted that he indeed failed to file a position paper on behalf of complainant. However, he maintained that said omission was due to complainant's failure to adduce credible witnesses to testify in her favor. In this relation, respondent averred that complainant instructed her to prepare an Affidavit for one Romeo P. Baol (Romeo), who was intended to be her witness; nevertheless, respondent was instructed that the contents of Romeo's affidavit were not to be interpreted in the Visayan dialect so that the latter would not know what he would be testifying on.

Respondent added that complainant's uncle, Nicasio Ticong, who was also an intended witness, refused to execute an affidavit and testify to her lies. Thus, it was complainant who was deceitful in her conduct and that the complaint against him should be dismissed for lack of merit.

IBP-CBD found respondent administratively liable and, accordingly, recommended that he be suspended from the practice of law for a period of one (1) year. Essentially, the IBP-CBD found respondent guilty of violating Rule 10.01, Canon 10, and Rule 18.03, Canon 18 of the Code of Professional Responsibility (CPR), as well as the 2004 Rules on Notarial Practice.

In a Resolution dated December 13, 2014, the IBP Board of Governors adopted and approved the aforesaid Report and Recommendation, finding the same to be fully supported by the evidence on record and the applicable laws and rules.

ISSUE

Whether or not respondent should be held administratively liable.

RULING

The Court concurs with and affirms the findings of the IBP, with modification, however, as to the penalty in order to account for his breach of the rules on notarial practice.

CANON 10 – A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.

Rule 10.01 – A lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead, or allow the Court to be misled by any artifice.

CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

In this case, it is undisputed that a lawyer-client relationship was forged between complainant and respondent when the latter agreed to file a position paper on her behalf before the NLRC and, in connection therewith, received the amount of P8,000.00 from complainant as payment for his services. Case law instructs that a lawyer-client relationship commences when a lawyer signifies his agreement to handle a client's case and accepts money representing legal fees from the latter, as in this case. From then on, as the CPR provides, a lawyer is duty-bound to "serve his client with competence and diligence," and in such regard, "not neglect a legal matter entrusted to him."

However, it is fairly apparent that respondent breached this duty when he admittedly failed to file the necessary position paper before the NLRC, which had, in fact, resulted into an adverse ruling against his client, *i.e.*, herein complainant. To be sure, it is of no moment that complainant purportedly failed to produce any credible witnesses in support of her position paper; clearly, this is not a valid justification for respondent to completely abandon his client's cause.

By voluntarily taking up complainant's case, respondent gave his unqualified commitment to advance and defend the latter's interest therein. Verily, he owes fidelity to such cause and must be mindful of the trust and confidence reposed in him. In *Abay v. Montesino*, it was explained that regardless of a lawyer's personal view, the latter must still present every remedy or defense within the authority of the law to support his client's cause.

In light of the foregoing, the Court therefore agrees with the IBP that respondent should be held administratively liable for violation of Rule 18.03, Canon 18 of the CPR.

Likewise, the IBP correctly found that respondent violated Rule 10.01, Canon 10 of the CPR. Records show that he indeed indulged in deliberate falsehood when he admittedly prepared and notarized the affidavit of complainant's intended witness, Romeo, despite his belief that Romeo was a perjured witness. In *Spouses Umaguing v. De Vera*, the Court highlighted the oath undertaken by every lawyer to not only obey the laws of the land, but also to refrain from doing any falsehood, *viz.*:

The Lawyer's Oath enjoins every lawyer not only to obey the laws of the land but also **to refrain from doing any falsehood in or out of court or from consenting**

to the doing of any in court, and to conduct himself according to the best of his knowledge and discretion with all good fidelity to the courts as well as to his clients. Every lawyer is a servant of the law, and has to observe and maintain the rule of law as well as be an exemplar worthy of emulation by others. It is by no means a coincidence, therefore, that the core values of honesty, integrity, and trustworthiness are emphatically reiterated by the Code of Professional Responsibility. In this light, **Rule 10.01, Canon 10 of the Code of Professional Responsibility provides that "[a] lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice."**

Notably, the notarization of a perjured affidavit also constituted a violation of the 2004 Rules on Notarial Practice. Section 4 (a), Rule IV thereof pertinently provides: *SEC. 4. Refusal to Notarize.* - A notary public shall not perform any notarial act described in these Rules for any person requesting such an act even if he tenders the appropriate fee specified by these Rules if:

- (a) **the notary knows or has good reason to believe that the notarial act or transaction is unlawful or immoral[.]**

On this score, it is well to stress that "notarization is not an empty, meaningless routinary act. It is invested with substantive public interest. It must be underscored that the notarization by a notary public converts a private document into a public document, making that document admissible in evidence without further proof of authenticity thereof.

Having established respondent's administrative liability, the Court now determines the proper penalty.

WHEREFORE, respondent Atty. Vivencio V. Jumamil is found **GUILY** of violating Rule 10.01, Canon 10 and Rule 18.03, Canon 18 of the Code of Professional Responsibility. Accordingly, he is hereby **SUSPENDED** for a period of one (1) year, effective upon his receipt of this Resolution. Moreover, in view of his violation of the 2004 Rules on Notarial Practice, his notarial commission, if still existing, is hereby **REVOKED**, and he is **DISQUALIFIED** from being commissioned as a notary public for a period of two (2) years. Finally, he is **STERNLY WARNED** that a repetition of the same or similar offense shall be dealt with more severely.

**20) VIRGILIO J. MAPALAD, SR. vs. ATTY. ANSELMO S. ECHANEZ
NATURE OF THE CASE**

This administrative case arose from a verified Complaint for disbarment dated October 16, 2009 filed by complainant Virgilio Mapalad, Sr. against respondent Atty. Anselmo S. Echanez before the Integrated Bar of the Philippines (IBP).

FACTS

Complainant alleged that in an action for Recovery of Possession and Damages with Writ of Preliminary Mandatory Injunction, complainant was one of the plaintiffs

while respondent was the defendants' counsel therein. As the said case was decided in favor of the plaintiffs, respondent filed a Notice of Appeal in which he indicated his Mandatory Continuing Legal Education (MCLE) Compliance No. II-0014038 without indicating the date of issue thereof. On appeal, respondent filed the appellants' brief, again only indicating his MCLE Compliance Number.

In another case, respondent, for the same clients, filed a Petition for Injunction wherein he once again only indicated his MCLE Compliance Number. Respondent also filed a Motion for Leave of Court in the said action, indicating his MCLE Compliance Number without the date of issue.

Upon inquiry with the MCLE Office, complainant discovered that respondent had no MCLE compliance yet. The MCLE Office then issued a Certification stating that respondent had not yet complied with his MCLE requirements for the First Compliance Period (April 15, 2001 to April 14, 2004) and Second Compliance Period (April 15, 2004 to April 14, 2007).

Complainant argues that respondent's act of deliberately and unlawfully misleading the courts, parties, and counsels concerned into believing that he had complied with the MCLE requirements when in truth he had not, is a serious malpractice and grave misconduct. The complainant, thus, prayed for the IBP to recommend respondent's disbarment to this Court.

In a resolution, the Supreme Court required the respondent to file a comment on the complaint. Despite receipt however, respondent failed to comply with the said resolution. The Court, thus, issued another resolution requiring the respondent to show cause why he should not be disciplinarily dealt with or held in contempt for such failure and, again, to file a comment to the complaint. However, the respondent again failed to comply.

RECOMMENDATORY RULING OF THE IBP

The Investigating Commissioner of the IBP-CBD rendered a report recommending the disbarment of Atty. Anselmo S. Echaney. The recommendation was approved by the IBP Board of Governors and ordered that due to his violation of the Lawyer's Oath, Canon 1, Rule 1.01 and Canon 10, Rule 10.01 of the Code of Professional Responsibility when he falsified his MCLE Compliance Number and used it in his pleadings in Court, including his having ignored the Orders and notices of the Commission on Bar Discipline and his having been previously sanctioned twice by the IBP, Atty. Anselmo Echaney shall be disbarred and his name stricken from the Roll of Attorneys.

ISSUE

Should Atty. Echaney be administratively disciplined based on the allegations in the complaint and evidence on record?

RULING

Respondent's acts of misconduct are clearly manifest, thus, warranting the exercise by this Court of its disciplinary power.

No less than the MCLE Office had issued a certification stating that respondent had not complied with the first and second compliance period of the MCLE. Despite such non-compliance, respondent repeatedly indicated a false MCLE compliance number in his pleadings before the trial courts. In indicating patently false information in pleadings filed before the courts of law, not only once but four times, as per records, the respondent acted in manifest bad faith, dishonesty, and deceit. In so doing, he indeed misled the courts, litigants – his own clients included – professional colleagues, and all others who may have relied on such pleadings containing false information.

Respondent's act of filing pleadings that he fully knew to contain false information is a mockery of the courts, especially this Court, considering that it is this Court that authored the rules and regulations that the respondent violated.

The Lawyer's Oath in Rule 138, Section 3 of the Rules of Court requires commitment to obeying laws and legal orders, doing no falsehood, and acting with fidelity to both court and client, among others, viz.:

I, x x x do solemnly swear that I will maintain allegiance to the Republic of the Philippine, I will support the Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any groundless, false, or unlawful suit, or give aid nor consent to the same; I will delay no man for money or malice, and **will conduct myself as a lawyer according to the best of my knowledge and discretion, with all good fidelity as well to the courts as to my clients**; and I impose upon myself these, voluntary obligations without any mental reservation or purpose of evasion. So help me God.

Also, Canon 1, Rule 1.01 of the Code of Professional Responsibility (CPR) provides:
CANON 1 – A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes.

Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

Canon 10, Rule 10.01 of the CPR likewise states:

CANON 10 – A lawyer owes candor, fairness and good faith to the court.

Rule 10.01 – A lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead, or allow the Court to be misled by any artifice.

In using a false MCLE compliance number in his pleadings, respondent also put his own clients at risk. Such deficiency in pleadings can be fatal to the client's cause as

pleadings with such false information produce no legal effect. In so doing, respondent violated his duty to his clients. Canons 17 and 18 of the CPR provide:

CANON 17 – A lawyer owes fidelity to the cause of his client and shall be mindful of the trust and confidence reposed upon him.

CANON 18 – A lawyer shall serve his client with competence and diligence.

The respondent also repeatedly failed to obey legal orders of the trial court, the IBP-CBD, and also this Court despite due notice. This Court directed respondent to file a comment on the instant complaint but he failed to do so. We then issued a show cause order against the respondent to explain why he should not be disciplined or held in contempt for failing to file the required comment but again, respondent did not heed this court's order.

Court orders should be respected not only because the authorities who issued them should be respected, but because of the respect and consideration that should be extended to the judicial branch of the government, which is absolutely essential if our government is to be a government of laws and not of men.

Clearly, respondent's act of ignoring the said court orders despite notice violates the lawyer's oath and runs counter to the precepts of the CPR. By his repeated dismissive conduct, the respondent exhibited an unpardonable lack of respect for the authority of the Court.

Respondent's culpability is further highlighted by the fact that, as cited by the IBP Board of Governors in its resolution, respondent had already been sanctioned by the IBP twice. The respondent has already been found guilty of engaging in notarial practice without a notarial commission, and was thus suspended from the practice of law for two years. In another decision, respondent was again found guilty of performing notarial acts without a notarial commission and was thus suspended from the practice of law for two years and barred permanently from being commissioned as notary public. In the said cases, the respondent likewise failed to file answers, comments, or position papers, or attended mandatory conferences despite due notices.

Taken altogether, the Court affirms the recommendatory ruling issued by the IBP, recommending Atty. Echaney's disbarment to prevent him from further engaging in legal practice. It cannot be overstressed that lawyers are instruments in the administration of justice. As vanguards of our legal system, they are expected to maintain legal proficiency and a high standard of honesty, integrity, and fair dealing. WHEREFORE, respondent Anselmo S. Echaney is hereby DISBARRED from the practice of law, and his name is ORDERED STRICKEN FROM THE ROLL OF ATTORNEYS.

22)ADELPHA E. MALABED v. ATTY. MELJOHN B. DE LA PENA

FACTS

This is an administrative complaint filed by complainant against the respondent for dishonesty and grave misconduct.

Complainant charged respondent with dishonesty for the following:

1. Complainant claimed that the Certificate to File Action in the complaint filed by Atty. De la Pena refers to a different complaint. In effect, there was no Certificate to File Action which is required for the filing of a civil action;
2. Respondent did not furnish complainant's counsel with a copy of the free patent title but respondent forwarded a copy to the CA; and
3. Respondent was guilty of conflict of interest when he represented the occupants of the lot owned by complainant's family, who previously donated a parcel to the Roman Catholic Church which deed of donation was notarized by Atty. De la Pena; Complainant further accused respondent of conniving with a RTC judge.

Lastly, complainant charged respondent of grave misconduct when he defied the accessory penalty of perpetual disqualification from reemployment in any government office, including GOCCs. Respondent worked as Associate Dean and Professor of the Naval Institute of Technology (NIT) - University of Eastern Philippines College of Law which is a government institution.

Respondent basically denied the charges against him. He alleged that the Certificate to File Action he used was the certification of Lupon Chairman issued on May 9, 2001. Also, he claimed that the free patent title was attached to the records and the notarization of the deed of donation had no relation to the case.

As regards the charge of grave misconduct, he admitted that he accepted the position but claimed that it was only temporary and that he even furnished the OBC, MCLE Office, and the complainant in the dismissal case a copy of the designation, and since there was no objections, he proceeded to perform the functions.

In the pleadings submitted by the respondent before the IBP, his use of foul language was noted when he called the complainant's counsel as "silahis" and accused complainant of "cohabiting with a married man xxx before the wife of that married man died".

IBP Commissioner found him guilty of the charges and recommended a suspension from the practice of law for one year which was adopted by the IBP Board of Governors.

ISSUE

WON Atty. De la Pena is guilty of dishonesty and grave misconduct

RULING

Respondent is guilty of gross misconduct for:

(1) misrepresenting that he submitted a certificate to file action issued by the Lupon Tagapamaya on May 9, 2001 when in fact there was none prior to the institution of the civil action of his client on October 18, 2000. Respondent violated CANON 10. A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.

Rule 10.01- A lawyer shall not do any falsehood; nor consent to the doing of any in court; nor shall he misled, or allow the Court to be misled by any artifice.

Rule 10.02- A lawyer shall not knowingly misquote or misrepresent the contents of a paper.

(2) using improper language in his pleadings

Respondent violated Rule 8.01 of Canon 8 of the Code of Professional Responsibility which states:

Rule 8.01 – A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

(3) defying willfully the Court's prohibition on reemployment in any government office as accessory penalty of his dismissal as a judge

The prohibition does not distinguish between permanent or temporary appointments. Also, the furnishing of copy to the OBC, MCLE Office and to the complainant in that case does not extinguish the disqualification in any way.

Gross Misconduct is defined as “improper or wrong conduct, the transgression of an established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies a wrongful intent and not a mere error in judgment.”

The failure to furnish the complainant's counsel a copy of the free patent title does not constitute dishonesty. Also, there is no conflict of interest because notarization is different from representation and the serious accusations of connivance with a judge are bare allegations with no proof.

In view of respondent's repeated gross misconduct, the Court increased the IBP's recommended penalty to suspension from the practice of law for two (2) years.

23) CASTELO, ET.AL. VS ATTY. CHING

FACTS

Complainants Orlando Castelo, et al (Castelos) received summons for an ejectment case filed against them by Leonida Delen and Spouses Nestor and Jesiebel Delen (Delens). Armed with a title, Delens claim that they are the owner of the house and lot where the Castelos live. Upon verifying, the Castelos discovered that the property in contention, which was previously under the name of the parents of the Castelos, was cancelled in favor of the Delens by virtue of a Deed of Absolute Sale. Atty. Ronald Ching (Atty. Ching) is the notary public in the Deed questioned.

Irregularities were present in the execution and authorization of the Deed of Absolute Sale. The deed was executed on March 24, 2010 whereas Perzidia Castelo died on May 4, 2009 as shown in the death certificate. In the Acknowledgment portion, only community tax certificates were presented to Atty. Ching instead of valid identification cards—as required under the Rules on Notarial Practice.

With their discovery, the Castelo heirs filed with IBP an administrative case against Atty. Ching on the lawyer's gross negligence in notarizing the Deed.

In Atty. Ching's Answer, he denied having notarized the Deed, alleging he did not know spouses Delens nor the Castelos, that the deed presented by the heirs had been falsified, and his signature therein had been forged. Despite the denial of Atty. Ching, the presented copy of the Deed in question was a faithful copy of the original contained in his notarial books.

After due proceedings, Commissioner Eduardo Robles rendered a Report and Recommendation finding Atty. Ching guilty of gross negligence in notarizing the Deed, and recommended the immediate cancellation of the notarial commission and that he be definitely disqualified from ever being commissioned again as Notary Public. The IBP on the other hand adopted and approved the recommendation with modification—Atty. Ching is perpetually disqualified from being commissioned as Notary Public and suspended from the practice of law for six months.

ISSUE

Whether Atty. Ching is guilty of gross negligence in notarizing the Deed.

RULING

Yes. Gross negligence on the part of a notary public encompasses the failure to observe any of the requirements of a notarial act under the 2004 Rules on Notarial Practice which would result in putting the rights of a person to his liberty or property in jeopardy. This includes, among others, failing to require the presence of the signatories to a notarial instrument and ascertaining their identities through competent evidence thereof, and allowing, knowingly or unknowingly, people, other than the notary public himself, to sign notarial documents, affix the notarial seal therein, and make entries in the notarial register.

In this case, while Atty. Ching denied having notarized the Deed by showing the discrepancy between his purported signature therein and the specimen signatures, he failed to explain how the Deed ended up in his notarial books. Atty. Ching failed in ensuring that only documents which he had personally signed and sealed with his notarial seal, after satisfying himself with the completeness of the same and the identities of the parties who affixed their signatures therein, would be included in his notarial register. This means that Atty. Ching failed to properly store and secure his notarial equipment in order to prevent other people from notarizing documents by forging his signature and affixing his notarial seal, and recording such documents in his notarial books, without his knowledge and consent. Such gross negligence on

the part of Atty. Ching in letting another person notarize the Deed had also unduly put the Castelo heirs in jeopardy of losing their property.

WHEREFORE, Atty. Ronald Segundino C. Ching is found **GUILTY** of gross negligence in the performance of his duties as notary public. His existing notarial commission, if any, is hereby **REVOKED**, and he is also **PERPETUALLY DISQUALIFIED** from being commissioned as a notary public. Moreover, he is hereby **SUSPENDED FROM THE PRACTICE OF LAW FOR SIX (6) MONTHS**. He is **STERNLY WARNED** that a repetition of the same or similar act will be dealt with more severely.

24) PINTAL V. ATTY. BAYLOSIS

FACTS

Complainant filed a complaint for disbarment against Atty. Baylosis for committing perjury, falsification of public documents and the use of falsified documents. Atty. Baylosis conspired with Roldan by making it appear in the petition that he was a resident of Caloocan City when, in truth and in fact, he was a resident of Quezon City; and that Atty. Baylosis notarized the verification and certification against non-forum shopping of the petition on May 13, 2011, but, at that time, Roldan was out of the country.

Complainant submitted a Certification from the Barangay Chairman of Barangay 12, Zone 1, District II of Caloocan City, attesting that Roldan was not a resident thereof and a Certification from the Bureau of Immigration showing that he was out of the country from April 10, 2011 to September 8, 2011.

The CBD set the case for mandatory conference but before its conclusion, complainant filed an Affidavit of Desistance manifesting that she was no longer interested in continuing with the complaint and that she was withdrawing it. For said reason, the CBD, in its Report and Recommendation, recommended the dismissal of the complaint against Atty. Baylosis. However, the IBP-Board of Governors found Atty. Baylosis guilty of violating the 2004 Rules on Notarial Practice when he made it appear that Roldan was present during the notarization of the petition on May 13, 2011 and recommended the immediate revocation of his notarial commission and his disqualification from being commissioned as notary public for two years.

ISSUE

Whether or not Atty. Baylosis is guilty of violating the 2004 Rules on Notarial Practice.

RULING

Yes. Rule IV, Section 2(b) of the 2004 Rules on Notarial Practice specifically provides:

Section 2 .Prohibitions.–(a)

. (b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document –

(1) is not in the notary's presence personally at the time of the notarization; and
(2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

Atty. Baylosis was negligent in the performance of his duty as a notary public when he notarized the petition for declaration of the nullity of marriage without the presence of Roldan. This was evidenced by the Certification issued by the Bureau of Immigration. In notarizing a document in the absence of a party, Atty. Baylosis violated not only the rule on notarial practice but also the Code of Professional Responsibility which proscribes a lawyer from engaging in any unlawful, dishonest, immoral, or deceitful conduct. By affixing his signature and notarial seal on the document, he attested that Roldan personally appeared before him on the day it was notarized and verified the contents thereof.

Further, A case of suspension or disbarment may proceed regardless of interest or lack of interest of the complainant. What matters is whether, on the basis of the facts borne out by the record, the charge of deceit and grossly immoral conduct has been proven.

WHEREFORE, finding Atty. Ramoncito B. Baylosis **GUILTY** of violating the Rule on Notarial Practice and Rule 1.01 and Canon 1 of the Code of Professional Responsibility, the Court hereby imposes the penalty of being **PERMANENTLY BARRED** from being commissioned as a Notary Public with a **STERN WARNING** that repetition of the same or similar conduct in the future will be dealt with more severely.

2018 JURISPRUDENCE ON LEGAL AND JUDICIAL ETHICS

**1) HDI HOLDINGS PHILIPPINES, INC. v. ATTY. EMMANUEL N. CRUZ
A.C. No. 11724 (Formerly CBD No. 14-4109), July 31, 2018**

FACTS

HDI retained the services of Atty. Cruz as its in-house corporate counsel and corporate secretary.

However, HDI averred that through Atty. Cruz's deception and machinations, he managed to misappropriate a total of Forty-One Million Three Hundred Seventeen Thousand One Hundred Sixty-Seven and Eighteen Centavos (P41,317,167.18), in the following manner, to wit:

(a) Misappropriation of the cash bid in the total amount of P6,000,000.00 which remains unpaid;

(b) Contracting unsecured personal loans with HDI in the total amount of P8,000,000.00 which remains unpaid;

- (c) Deceiving HDI as to the true selling price of the Q.C. property which resulted in overpayment in the amount of P1, 689,100.00 which remains unpaid;
- (d) Fabricating a fictitious sale by executing a fictitious contract to sell and deed of sale in order to obtain money in the amount of P21,250,000.00 from HDI which remains unpaid;
- (e) Collecting rental payments amounting to P4, 408,067.18, without authority, and thereafter, failed to turn over the same to HDI; and
- (f) Executing a fake Secretary's Certificate appointing himself as the authorized person to receive the payments of the lease rentals.

Upon discovery, HDI confronted Atty. Cruz. The latter went to HDI's office where he broke down and admitted to everything. However, even after several demand letters, he failed to return the misappropriated money. Consequently, HDI filed a disbarment case against Atty. Cruz.

Atty. Cruz failed to file his Answer on the complaint against him. Also, during the mandatory conference before the IBP-Commission on Bar Discipline (IBP-CBD), only the counsel for HDI appeared. Thus, IBP-CBD recommended that Atty. Cruz be disbarred from the practice of law.

Thereafter, IBP Board of Governors resolved to adopt and approve the report and recommendation of the IBP-CBD.

ISSUE

Whether or not Atty. Cruz should be disbarred?

RULING

YES, he violated the following rules:

1. Rule 1.0 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.
2. Rule 16.01 - A lawyer shall account for all money or property collected or received for or from the client.
3. Rule 16.02 - A lawyer shall keep the funds of each client separate and apart from his own and those others kept by him.
4. Canon. 16.04 - A lawyer shall not borrow money from his client unless the client's interests are fully protected by the nature of the case or by independent advice. Neither shall a lawyer lend money to a client except, when in the interest of justice, he has to advance necessary expenses in a legal matter he is handling/or the client.

5. Canon 7 - A lawyer shall at all times uphold the integrity and dignity of the legal profession and support the activities of the Integrated Bar.

That being said, the Court has consistently held that deliberate failure to pay just debts constitutes gross misconduct, for which a lawyer may be sanctioned.

Finally, Atty. Cruz's indifference to the IBP's directives to file his comment on the allegations against him cannot be countenanced. He disregarded the proceedings before the IBP despite receipt of summons and notices. Atty. Cruz's act of not filing his answer and ignoring the hearings set by the Investigating Commissioner, despite due notice, further aggravated his already disgraceful attitude.

However, insofar as the return of the misappropriated money, the same should be qualified. As to the money which Atty. Cruz borrowed as personal loan, the Court cannot order him to return the money borrowed from complainant in his private capacity.

In *Foster v. Atty. Agtang*, the Court held that it cannot order the lawyer to return money to complainant if he or she acted in a private capacity because its findings in administrative cases have no bearing on liabilities which have no intrinsic link to the lawyer's professional engagement. In disciplinary proceedings against lawyers, the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar.

However, insofar as the money received by Atty. Cruz from HDI, in his professional capacity, to wit: P6,000,000.00, representing the total amount released for bidding; P21,250,000.00, representing the total amount released for the purported purchase of a property which turned out to be fictitious; P4,408,067.18 representing the unremitted rentals from Petron, and P1,689,100.00 representing the overpayment in the overpriced Q.C. property, these amounts should be returned as it was borne out of their professional relationship.

IN VIEW OF ALL THE FOREGOING, we find respondent ATTY. EMMANUEL CRUZ, guilty of gross misconduct by violating the Canon of Professional Responsibility through his unlawful, dishonest, and deceitful conduct, and willful disobedience of lawful orders rendering him unworthy of continuing membership in the legal profession. He is thus ordered DISBARRED from the practice of law and his name stricken off of the Roll of Attorneys, effective immediately.

Furthermore, Atty. Cruz is ORDERED to RETURN to complainant HDI the amounts of P6, 000,000.00, P21, 250,000.00, P4, 408,067.18 and P1, 689,100.00, with legal interest, if it is still unpaid, within ninety (90) days from the finality of this Decision.

**2) RE: SHOW CAUSE ORDER IN THE DECISION DATED MAY 11, 2018 IN G.R. NO. 237428 (REPUBLIC OF THE PHILIPPINES, REPRESENTED BY SOLICITOR GENERAL JOSE C. CALIDA v. MARIA LOURDES P.A SERENO)
A.M. No. 18-06-01-SC; JULY 17, 2018**

FACTS

The instant administrative matter is an offshoot of Republic of the Philippines v. Maria Lourdes P. A. Sereno, hereinafter referred to as the quo warranto case or proceedings against Sereno.

The Court in its decision in the quo warranto case, ordered respondent to show cause why she should not be sanctioned for violating the Code of Professional Responsibility (CPR) and the New Code of Judicial Conduct for the Philippine Judiciary (NCJC) for transgressing the sub judice rule and for casting aspersions and ill motives to the Members of this Court.

On August 30, 2017, an impeachment complaint was lodged before the Committee on Justice of the House of Representatives against respondent for culpable violation of the Constitution, corruption, high crimes, and betrayal of public trust. Having learned of respondent's disqualification as a Chief Justice from the House Committee on Justice's hearings, the Republic of the Philippines (Republic), through the Office of the Solicitor General, filed a petition for quo warranto against respondent, basically questioning her eligibility for the Chief Justice position.

The Court observed that since the filing of the impeachment complaint, during the pendency of the quo warranto case, and even after the conclusion of the quo warranto proceedings, respondent continuously opted to defend herself in public through speaking engagements before students and faculties in different universities, several public forums, interviews on national television, and public rallies. As the Court noted in its decision in the quo warranto case, respondent initially refused to participate in the congressional hearings for the impeachment complaint. When the petition for quo warranto was filed, respondent likewise continuously refused to recognize this Court's jurisdiction. Instead of participating in the judicial process and answering the charges against her truthfully to assist in the expeditious resolution of the matter, respondent opted to proceed to a nationwide campaign, conducting speeches and accepting interviews, discussing the merits of the case and making comments thereon to vilify the members of the Congress, cast aspersions on the impartiality of the Members of the Court, degrade the faith of the people to the Judiciary, and falsely impute ill motives against the government that it is orchestrating the charges against her. In short, as the Court stated in the said decision, respondent chose to litigate her case before the public and the media instead of the Court.

The Court was disquieted as doubts against the impartiality and dignity of the Court and its Members emerged, and the obfuscation of the issues in the quo warranto proceedings resulted from such out-of-court discussions on the merits of the case. Worse, the Court was perturbed by the fact that respondent, not only being a member of the Bar but one who was asserting her eligibility and right to the highest

position in the Judiciary, significantly participated in such detestable and blatant disregard of the sub judice rule.

Respondent contends that she should not be judged on the stringent standards set forth in the CPR and NCJC, emphasizing that her participation in the quo warranto case is not as counsel or a judge but as a party-litigant and that the imputed acts against respondent did not create any serious and imminent threat to the administration of justice to warrant the Court's exercise of its power of contempt in accordance with the "clear and present danger" rule.

Respondent also argues that in addressing the matters of impeachment and quo warranto to the public, she was in fact discharging her duty as a Justice and a lawyer to uphold the Constitution and promote respect for the law and legal processes pursuant to the said Codes and assuming arguendo that respondent violated some provisions of the CPR and the NCJC in her public statements, the same does not warrant the exercise of the Court's power to discipline in view of the attendant circumstances, to wit: (a) no less than the Solicitor General repeatedly made personal attacks against her and publicly discussed the merits of the case, hence, she had to respond to such accusations against her; and (b) she was not given her right to due process despite her repeated demand.

ISSUE

May respondent be held administratively liable for her actions and public statements as regards the quo warranto case against her during its pendency?

RULING

That she should be treated as an ordinary litigant in judging her actions. The fact that respondent was not the judge nor the counsel but a litigant in the subject case does not strip her off her membership in the Bar, as well as her being a Member and the head of the highest court of the land at that time. Her being a litigant does not mean that she was free to conduct herself in less honorable manner than that expected of a lawyer or a judge.

Sub Judice Rule

Sub Judice is a Latin term which refers to matters under or before a judge or court; or matters under judicial consideration. In essence, the sub judice rule restricts comments and disclosures pertaining to pending judicial proceedings. The restriction applies to litigants and witness, the public in general, and most especially to members of the Bar and the Bench. All told, respondent's reckless behavior of imputing ill motives and malice to the Court's process is plainly evident in the present case. Her public statements covered by different media organizations incontrovertibly brings the Court in a position of disrepute and disrespect, a patent transgression of the very ethics that members of the Bar are sworn to uphold.

Respondent may be correct in arguing that there must exist a "clear and present danger" to the administration of justice for statements or utterances covered by the sub judice rule to be considered punishable under the rules of contempt.

Thus, contrary to respondent's argument, the "clear and present danger" rule does not find application in this case. What applies in this administrative matter is the CPR and NCJC.

The case at bar, however, is not a contempt proceeding. The Court, in this case is not geared towards protecting itself from such prejudicial comments outside of court by the exercise of its inherent contempt power. Rather, in this administrative matter, the Court is discharging its Constitutionally-mandated duty to discipline members of the Bar and judicial officers.

As We have stated in Our decision in the quo warranto case, actions in violation of the sub judice rule may be dealt with not only through contempt proceedings but also through administrative actions. This is because a lawyer speech is subject to greater regulation for two significant reasons: one, because of the lawyer's relationship to the judicial process; and two, the significant dangers that a lawyer's speech poses to the trial process.²⁷ Hence, the Court En Banc resolved to treat this matter in this separate administrative action.²⁸ Indeed, this Court has the plenary power to discipline erring lawyers through this kind of proceeding, aimed to purge the law profession of unworthy members of the Bar and to preserve the nobility and honor of the legal profession.²⁹

Her public utterances did not only tend to arouse public opinion on the matter but as can be clearly gleaned from the tenor of the statements, such comments, speeches, and interviews given by the respondent in different forums indisputably tend to tarnish the Court's integrity and unfairly attributed false motives against its Members. Particularly, in several occasions, respondent insinuated the following: (i) that the grant of the quo warranto petition will result to dictatorship; (ii) in filing the quo warranto petition, the livelihood and safety of others are likewise in danger; (iii) that the people could no longer rely on the Court's impartiality; and (iv) that she could not expect fairness from the Court in resolving the quo warranto petition against her.

In the case at hand, as can be clearly seen from respondent's afore-quoted statements, respondent unquestionably directed her statements to the merits of the quo warranto case, to influence the public and the Members of the Court, and to attack the dignity and authority of the institution. Perhaps, to an unwilling mind, it may be argued that the public statements expressed by respondent were without the intention of prejudging the matters or issues that are before the Court. However, a scrutiny thereof clearly demonstrates that her statements went beyond the supposed arguments and contentions contained in her pleadings. To cite an example, respondent never alleged or argued in her pleadings nor during the Oral Argument, as she knows the ethical issues that would entail if she did, that the grant of the quo warranto petition would result into dictatorship and would destroy the judiciary, but she did during one of her public speeches as cited above.

The newsman's questioned statements are nothing but a publication of reports on the status of the case, whether true or not, which on its face notably comes within the purview of the freedom of the press. Besides, as We have been emphasizing, an ordinary citizen's action cannot be judged with the same standard on this matter as that of a member of the Bar and Bench. Also, whether or not the Solicitor General or any newsman attacked respondent finds no relevance to her liability for her violative actions and statements. At the risk of being repetitive, it bears stressing that lawyers, as first and foremost officers of the court, must never behave in such a way that would diminish the sanctity and dignity of the courts even when confronted with rudeness and insolence.

The court gives short shrift to respondent's contention that she was denied due process despite her repeated demands to be heard, hence, she resorted to bringing her case to the public. Recall that this matter has already been squarely addressed by this Court in its decision in the *quo warranto* case. The essence of due process is to be heard, and, as applied to administrative proceedings, this means a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.

Suffice it to say, in this case, respondent has been given several opportunities to explain her side. Records show that the Congress invited her to shed light on the accusations hurled against her but she never heeded the invitation. Likewise, the Court gave her the opportunity to comment on the petition and file several motions in the *quo warranto* case. A special hearing for her requested oral argument was even conducted during the Court's Baguio session last April of this year. During the hearing, she was given the chance to answer several questions from her colleagues. In fact, she even freely raised questions on some of the magistrates present during the hearing. Undeniably, she was accorded due process not only through her written pleadings, but also during the special hearing wherein she voluntarily participated. These facts militate against her claim of denial of due process.

Despite the severity of the offenses committed by respondent, The court id constrained to suspend the application of the full force of the law and impose a lighter penalty. Mindful of the fact that respondent was removed and disqualified as Chief Justice as a result of *quo warranto* proceedings, suspending her further from law practice would be too severe to ruin the career and future of respondent. We are also not inclined to merely disregard respondent's length of service in the government, specifically, when she was teaching in the University of the Philippines, as well as during her incumbency in this Court. Further, the fact that, per available record, respondent has not been previously found administratively liable is significant in determining the imposable penalty. These factors have always been considered by the Court in the determination of proper sanctions in such administrative cases.⁵¹ This Court is not merciless and opts to dispense judicial clemency even if not sought by respondent.

To be clear, however, this accommodation is not a condonation of respondent's wrongdoings but a second chance for respondent to mend her ways, express remorse for her disgraceful conduct, and be forthright to set an example for all law-abiding members of the legal profession. The legal profession is a noble profession:

as a former Member of this Court, it is incumbent upon respondent to exemplify respect, obedience, and adherence to this institution. This judicial temperance is not unprecedented as this Court has in several cases reduced the impossible penalties so that erring lawyers are encouraged to repent, reform, and be rehabilitated.

Henceforth, respondent is expected to be more circumspect, discerning, and respectful to the Court in all her utterances and actions. Respondent is reminded that the practice of law is neither a natural right nor a Constitutional right demandable or enforceable by law. It is a mere privilege granted by this Court premised on continuing good behavior and ethical conduct, which privilege can be revoked or cancelled by this Court for just cause.

The Court after deep reflection and deliberation, in lieu of suspension, respondent is meted the penalty of **REPRIMAND with a STERN WARNING** that a repetition of a similar offense or any offense violative of the Lawyer's Oath and the Code of Professional Responsibility shall merit a heavier penalty of a fine and/or suspension or disbarment.

CANONS VIOLATED

Violation of Code of Professional Responsibility

CANON 11 of the CPR, which states that:

CANON 11- A LAWYER SHALL BE OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS AND TO JUDICIAL OFFICERS AND SHOULD INSIST ON SIMILAR CONDUCT BY OTHERS.

CANON 13 - A LAWYER SHALL RELY UPON THE MERITS OF HIS CAUSE AND REFRAIN FROM ANY IMPROPRIETY WHICH TENDS TO INFLUENCE, OR GIVES THE APPEARANCE OF INFLUENCING THE COURT.

Rule 13.02 - A lawyer shall not make public statements in the media regarding a pending case tending to arouse public opinion for or against a party.

Violation of New Code Judicial Conduct

CANON 1 – INDEPENDENCE

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

SECTION 3. Judges shall refrain from influencing in any manner the outcome of litigation or dispute pending before any court or administrative agency.

SECTION 7. Judges shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

SECTION 8. Judges shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary, which is fundamental to the maintenance of judicial independence.

CANON 2 – INTEGRITY

Integrity is essentially not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

SECTION 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

SECTION 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

CANON 3 – IMPARTIALITY

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

SECTION 2. Judges shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession, and litigants in the impartiality of the judge and of the judiciary.

SECTION 4. Judges shall not knowingly, while a proceeding is before or could come before them, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall judges make any comment in public or otherwise that might affect the fair trial of any person or issue.

CANON 4 – PROPRIETY

SECTION 2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office.

SECTION 6. Judges, like any other Citizen, are entitled to freedom of expression, belief, association and assembly, but in exercising such rights, they shall always conduct themselves in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

3)A.C. No. 10557 (Formerly CBD Case No. 07-1962), July 10, 2018
JERRY M. PALENCIA, Complainant, v. ATTY. PEDRO L. LINSANGAN, ATTY.
GERARD M. LINSANGAN, AND ATTY. GLENDA M. LINSANGAN-BINOYA,
Respondents.

FACTS

Complainant was an overseas Filipino worker seafarer who was seriously injured during work when he fell into the elevator shaft of the vessel flying a Cyprus flag. After initial treatment in Singapore, complainant was discharged and flown to the Philippines to continue his medical treatment and rehabilitation.

While confined at the Manila Doctors Hospital, one "Moises," and later Jesheryl L. Millena (Jesheryl), paralegals in respondents' law office, approached complainant. They convinced him to engage the services of respondents' law office in order to file a suit against his employers for indemnity. After several visits from the paralegals and respondent Atty. Pedro Linsangan, complainant executed (1) an Attorney-Client Contract, and (2) a Special Power of Attorney,⁶ where he engaged the legal services of respondents and Gurbani & Co., a law firm based in Singapore, and agreed to pay attorney's fees of 35% of any recovery or settlement obtained for both.

After execution of the contract, complainant, through the efforts of respondents, was paid by his employer the following amounts: US\$60,000.00 as indemnity and US\$20,000.00 under their collective bargaining agreement. From these amounts, respondents charged complainant attorney's fees of 35%.⁷

Respondents and Gurbani & Co. also filed a tort case against the owners of "Panos G" before the High Court of Singapore (Singapore case). For this case, respondents engaged the services of Papadopoulos, Lycourgos & Co., a law firm based in Cyprus, to draft a written opinion on the issues involving Cyprus law, among others.

Thereafter, negotiations led to a settlement award in favor of complainant in the amount of US\$95,000.00. Gurbani & Co. remitted to respondents the amount of US\$59,608.40.

From this amount, respondents deducted their attorney's fees equivalent to 35% and other expenses

Respondents tendered the amount of US\$20,756.05 to complainant, which the latter refused.

complainant also filed the subject letter-Complaint with the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline (CBD).

He requested that an investigation be conducted and the corresponding disciplinary action be imposed upon respondents for committing the following unethical acts: (1) refusing to remit the amount collected in the Singapore case worth US\$95,000.00, and in offering only US\$20,756.05; (2) depositing complainant's money into their own account; and (3) engaging in "ambulance chasing" by deploying their agents to convince complainant to hire respondents' services while the former was still bedridden in the hospital.

ISSUE

1. WON they are guilty of ambulance chasing
2. WON there was failure to account the money of their client

RULING**1. YES**

Here, there is sufficient evidence to show that respondents violated these rules. No less than their former paralegal Jeshere admitted that respondent Atty. Pedro Linsangan came with her and another paralegal named Moises, to Manila Doctors Hospital several times to convince complainant to hire their services. This is a far cry from respondents' claim that they were merely providing free legal advice to the public. Moreover, while respondents deny Jeshere's connection with their law firm, this was sufficiently rebutted by complainant when he presented Jeshere's resignation letter as received by respondents' firm. In employing paralegals to encourage complainant to file a lawsuit against his employers, respondents indirectly solicited legal business and encouraged the filing of suit.

These constitute malpractice which calls for the exercise of the court's disciplinary powers and warrants serious sanctions.

The practice of law is a profession and not a business. Lawyers are reminded to avoid at all times any act that would tend to lessen the confidence of the public in the legal profession as a noble calling, including, among others, the manner by which he makes known his legal services.

2. YES

Money collected by a lawyer on a judgment rendered in favor of his client constitutes trust funds and must be immediately paid over to the client.⁵¹ As he holds such funds as agent or trustee, his failure to pay or deliver the same to the client after demand constitutes conversion.⁵² Thus, whenever a lawyer collects money as a result of a favorable judgment, he must promptly report and account the money collected to his client.⁵³

It is the lawyer's duty to give a prompt and accurate account to his client. Upon the collection or receipt of property or funds for the benefit of the client, his duty is to notify the client promptly and, absent a contrary understanding, pay or remit the same to the client, less only *proper fees* and disbursements, as soon as reasonably possible.⁵⁴ He is under absolute duty to give his client a full, detailed, and *accurate account* of all money and property which has been received and handled by him, and must justify all transactions and dealings concerning them.⁵⁵ And while he is in possession of the client's funds, he should not commingle it with his private property or use it for his personal purposes without his client's consent.⁵⁶

Here, respondents claim that they promptly accounted for the total award of US\$95,000.00, and after deducting their fees, tendered the amount of US\$20,756.05. Complainant, however, refused to accept the amount because he contested both the expenses and the separate deduction of attorney's fees by respondents and Gurbani & Co.

We find that while respondents gave prompt notice to complainant of their receipt of money collected in the latter's favor, they were amiss in their duties to give

accurate accounting of the amounts due to complainant, and to return the money due to client upon demand.

The Attorney-Client Contract between the parties states: "We/I hereby voluntarily agree and bind ourselves, our heirs and assigns to pay Atty. Pedro L. Linsangan and his collaborating Singapore counsels, the sum equivalent to thirty-five [35%] percent of any recovery or settlement obtained."⁵⁷ Clearly, the stipulated rate referred to the combined professional fees of both respondents and their collaborating Singapore counsel, Gurbani & Co.⁵⁸ Nevertheless, respondents proceeded to deduct separate fees on top of the amount already deducted by Gurbani & Co. Complainant contested this deduction and refused to accept the amount being tendered by respondents. Since a claim for attorney's fees may be asserted either in the very action in which the services of a lawyer had been rendered, or in a separate action,⁵⁹ respondents, instead of forcibly deducting their share, should have moved for the judicial determination and collection of their attorney's fees. The fact alone that a lawyer has a lien for his attorney's fees on money in his hands collected for his client does not entitle him to unilaterally appropriate his client's money for himself.⁶⁰

Worse, respondents allegedly kept the money inside the firm's vault for two years until they were made aware of the disciplinary complaint against them before the IBP-CBD. However, as noted by the IBP-CBD in its Report and Recommendation:

[T]he defense of respondents that they kept in their office vault the share of complainant as computed by them in the amount of US\$18,132.43, hence, they forgot the same and remembered it only when they received the Order of this Commission for them to file an Answer to complainant's Complaint [*which is more than 2 years*] is rather highly incredible considering that it involves a substantial amount, the series of communications between the parties, and the Civil cases subsequently filed.⁶¹ (Italics in the original.)

Even if we give credence to this explanation, it is improper for the lawyer to put his client's funds in his personal safe deposit vault.⁶² Funds belonging to the client should be deposited in a separate trust account in a bank or trust company of good repute for safekeeping.⁶³

It is apparent from the foregoing that respondents failed to handle their client's money with great degree of fidelity. Respondents also showed their lack of good faith when they appropriated for themselves more than what is allowed under their contract. They have demonstrated that the payment of their attorney's fees is more important than their fiduciary and faithful duty of accounting and returning what is rightfully due to their client. More, they also failed to observe proper safekeeping of their client's money. Respondents violated the trust reposed in them, and demonstrated their lack of integrity and moral soundness.⁶⁴ Respondents' flagrant and malicious refusal to comply with the CPR amounts to gross misconduct.⁶⁵ This warrants the imposition of disciplinary sanctions.⁶⁶

PENALTY: SUSPENSION OF 2 YEARS

We emphasize that this penalty of two years of suspension corresponds to the compounded infractions of the violations of Rule 1.03, Rule 2.03, Canon 3, Canon 16, Rule 16.01, and Rule 16.03 of the CPR: (1) the penalty of suspension of one year is imposed for the violation of the proscription on ambulance chasing; and (2) the penalty of one year suspension for gross misconduct consisting in the failure or refusal, despite demand, of a lawyer to account for and return money or property belonging to a client.

To reiterate, there is no basis, and would even be unjust under the circumstances, to reduce the penalty imposed on respondents. Quite the contrary, respondents should find themselves so fortunate that for all their exploits, including their ambulance chasing, this Court would only impose a two-year suspension.

Finally, we note that this Court, in G.R. No. 205088, has already affirmed the CA's ruling as to the issue of how much respondents can collect from complainant as attorney's fees. This judgment has long attained finality and, in fact, appears to be set for execution. For this reason, we do not adopt the IBP Board of Governors' recommendation for respondents to return to complainant 5% of the amount assessed. The principle of immutability of judgments behooves us from making any further statements on this particular issue

4) DE BORJA v. ATTY. MENDEZ

FACTS

Jaime, as representative of the Heirs of Deceased Augusto De Borja, engaged the services of R.R. Mendez & Associates Law Offices where Atty. Mendez is a lawyer, for the reconveyance of a parcel of land. Atty. Mendez demanded P300,000.00 for the titling of a property situated in Pateros. Jaime submitted a copy of the receipt of said amount of money which was acknowledged by Atty. Mendez.

However, the complaint for reconveyance was dismissed, thus, Atty. Mendez filed a notice of appeal. The CA ordered the Heirs of De Borja to file their Appellant's Brief within forty-five (45) days from receipt of the notice. When Jaime received the notice, he inquired with Atty. Mendez about the letter, to which Atty. Mendez committed that he will file the Appellant's Brief as soon as he receives a copy of the notice.

But, Jaime was surprised to receive a Resolution from the CA dismissing the appealed case for failure to file Appellant's Brief. He asked Atty. Mendez the reason why they weren't able to file the required pleading, and he was told that the firm did not receive a copy of the notice which ordered them to file the appellant's brief. Unsatisfied, Jaime went to the CA and the Postal Office of Caloocan. He discovered that the notice to file appellant's brief was in fact received by one Jennifer Lastimosa, a secretary of the firm.

Citing loss of trust and confidence due to the dismissal of their appeal, Jaime terminated the services of Atty. Mendez, and demanded the return of the Php300,000.00. Thus, the instant administrative complaint against Atty. Mendez for incompetence and malpractice.

The IBP-CBD ordered Atty. Mendez to submit his Answer to the complaint. In his Answer, Atty. Mendez insisted that his law office did not receive a copy of the court order to file the appellant's brief. He claimed that even their secretary, Jennifer Lastimosa, cannot recall having received said order or mail. He claimed that when Jaime informed him about the dismissal order, he lost no time in preparing the motion for reconsideration and the appellant's brief. But before it could be filed, Jaime already terminated his services as counsel. He also claimed that it was unfortunate that his secretary's signature was forged to make it appear that she has received the mail.

Atty. Mendez, however, acknowledged the receipt of 300,000.00 as retainer's fees from Jaime. He averred that considering that he had actually rendered professional services to Jaime, he may refund reasonable portion thereof.

After more than one (1) year, or on June 26, 2013, Atty. Mendez made partial return of Jaime's money in the amount of P140,000.00 which was received by Atty. Marie Diane Bolong, Jaime's new counsel.

The IBP-CBD found Atty. Mendez guilty of negligence, thus, violating Canon 18 of the Code of Professional Responsibility which directs lawyers to serve his client with competence and diligence. It recommended that Atty. Mendez be suspended from the practice of law for a period of six (6) months with a warning that a repetition of the same infraction will result in the imposition of a more severe penalty.

The IBP-Board of Governors resolved to adopt and approve with modification the report and recommendation of the IBP-CBD. It further recommended that Atty. Mendez be ordered to return to Jaime the remaining amount of One Hundred Sixty Thousand Pesos (P160,000.00).

ISSUE

Whether or not Atty. Mendez is guilty of negligence for failing to do his duty to his client.

RULING

Yes. In the instant case, Atty. Mendez' guilt as to his failure to do his duty to his client is undisputed. His conduct relative to the non-filing of the appellant's brief falls below the standards exacted upon lawyers on dedication and commitment to their client's cause. Failure to file the brief within the reglementary period despite notice certainly constitutes inexcusable negligence, more so if the failure resulted in the dismissal of the appeal, as in this case. As a lawyer, it is expected of him to make certain that the appeal brief was filed on time. Clearly, his failure to do so is tantamount to negligence which is contrary to the mandate prescribed in **Rule**

18.03, Canon 18 of the Code of Professional Responsibility enjoining lawyers not to neglect a legal matter entrusted to him.

The court cannot give credence to Atty. Mendez' lame excuse that they did not receive the notice to file the appellant's brief, or that their secretary cannot recall receiving the notice. Such bare allegation of non-receipt of notice as against the registry return card, the postmaster's record books and the certification issued by the Caloocan Central Post Office showing receipt of the notice by Jennifer Lastimosa, the firm's secretary, the latter deserves more weight.

The court also found Atty. Mendez guilty of violating **Rule 16.01 of the Code of Professional Responsibility** which requires a lawyer to account for all the money received from the client and **Rule 16.03** of the Code which obligates a lawyer to deliver the client's funds and property when due or upon demand. Moreover, considering it took more than a year before Atty. Mendez' made an initiative to return the money albeit partial only, the same cannot be said to be prompt or immediate return of the money, rather, he was already in delay for a considerable period of time in returning his client's money. Notably, it must be pointed out that Atty. Mendez not only failed to return the money immediately, but he also failed to return the whole amount of P300,000.00. He was able to return the amount of P140,000.00 only, thus, there is still a remaining balance of P160,000.00. While, Atty. Mendez insisted that the remaining balance was used for the titling of the property and his daily needs, there was still no proper accounting as to when, where and how the remaining balance was specifically utilized. Clearly, these acts constitute violations of Atty. Mendez' professional obligations under Canon 16 of the CPR which mandates lawyers to hold in trust and account all moneys and properties of his client that may come into his possession.

WHEREFORE, premises considered, respondent ATTY. RAMON R. MENDEZ, JR. is found GUILTY of violating **Rules 16.01 and 16.03 of Canon 16, and Rule 18.03 of Canon 18 of the Code of Professional Responsibility**. He is SUSPENDED from the practice of law for a period of one (1) year, effective upon receipt of this Decision, with a stern warning that a repetition of the same or similar acts will be dealt with more severely.

Atty. Mendez is, likewise, ORDERED to RETURN to complainant Jaime S. De Borja the remaining balance of P160,000.00 with legal interest, if it is still unpaid, within ninety (90) days from the finality of this Decision. Failure to comply with this directive will merit the imposition of the more severe penalty, which this Court shall impose based on the complainant's motion with notice duly furnished to Atty. Mendez.

5) LEAH B. TADAY V. ATTY. DIONISIO B. APOYA, JR., - A.C. NO. 11981, JULY 03, 2018

CHARGES: violation of Canon 1, Rule 1.01 and Rule 1.02 of the Code of Professional Responsibility.

FACTS

Leah B. Taday, an overseas Filipino worker (OFW) staying in Norway, asked her parents in the Philippines, Virgilio and Natividad Taday, to seek legal services for the nullification of her marriage. Taday's parents found Atty. Apoya and contracted his legal services. On April 17, 2011, a Retainer Agreement was executed between Atty. Apoya and Taday's parents indicating that Atty. Apoya's acceptance fee was P140,000.00, to be paid on a staggered basis.

According to Taday, Atty. Apoya was informed that she was staying in Norway and Atty. Apoya assured her that this would not be an issue as he can find ways to push for the resolution of the case despite her absence.

Atty. Apoya drafted a Petition for Annulment of Marriage³ (petition) dated April 20, 2011, which he allegedly sent to Taday for her signature. After notarizing the petition, Atty. Apoya filed it before the Regional Trial Court of Caloocan City (RTC). The case was then raffled to Branch 131, docketed as Civil Case No. C-22813.

On November 17, 2011, while Taday was on vacation in the Philippines, Atty. Apoya delivered a Decision dated November 16, 2011 which granted the annulment of Taday's marriage. The said decision was promulgated by a certain Judge Ma. Eliza Becamon-Angeles of RTC Branch 162. Taday became suspicious as the said decision came from a different branch presided by a different judge where the case was originally filed. Taday's family became skeptical as the said decision seemed to come too soon and was poorly crafted.

Confused with the turn of events, verifications were made to ascertain the validity of the decision. Taday discovered that both Branch 162 and Judge Ma. Eliza Becamon-Angeles do not exist in the RTC. Frustrated with the incident, Taday, through her parents, sought the withdrawal of Atty. Apoya as her counsel from the case.

However, instead of withdrawing as counsel, Atty. Apoya filed an urgent motion to withdraw the petition. In its Order dated June 25, 2012, the RTC Branch 131 granted the said motion and the case was dropped from the civil docket of the court.

IBP REPORT AND RECOMMENDATION

In its Report and Recommendation, the IBP Commission on Bar Discipline (Commission) found that Atty. Apoya committed several violations of the Code, particularly, Rules 1.01, 1.02 and Canon 1. The Commission held that Atty. Apoya notarized the Verification and Certification of Non Forum Shopping of the petition, even though Taday was not personally present as she was then in Norway.

The Commission also found that Atty. Apoya authored a fake decision. It opined that the said decision was fake because it bore the same format and grammatical errors as that of the petition prepared by Atty. Apoya. The Commission disregarded the defense of Atty. Apoya that it was Taday's parents who made the fake decision. It stressed that any reasonable mind would know that a fake decision would not

benefit Taday. Moreover, Taday's parents continuously paid the legal fees of Atty. Apoya, which would show their lack of intent to create the fabricated decision.

The Commission further underscored that when Atty. Apoya was confronted with the fake decision, he filed an urgent motion to withdraw the petition before RTC Branch 131. It highlighted that when the new counsel of Taday questioned Atty. Apoya regarding these irregularities, he did not respond.

Based on these circumstances, the Commission concluded that the fake decision originated from Atty. Apoya and that he violated Rules 1.01 and 1.02, Canon I of the Code. It recommended the penalty of suspension of two (2) years from the practice of law.

In its Resolution No. XXI-2015-10012 dated January 31, 2015, the IBP Board of Governors (Board) modified the recommended penalty of two (2) years suspension to a penalty of disbarment.

ISSUE

Is Atty. Apoya guilty of violation of Canon 1, Rule 1.01 and Rule 1.02 of the Code of Professional Responsibility?

RULING

Yes, Atty. Apoya guilty of violation of Canon 1, Rule 1.01 and Rule 1.02 of the Code of Professional Responsibility. In addition, he also violated Section 2, Rule IV of the 2004 Rules on Notarial Practice.

The Court adopts the findings of the Commission and agrees with the recommendation of the IBP Board to disbar Atty. Apoya.

It bears stressing that membership in the bar is a privilege burdened with conditions. A lawyer has the privilege and right to practice law during good behavior and can only be deprived of it for misconduct ascertained and declared by judgment of the court after opportunity to be heard has afforded him. Without invading any constitutional privilege or right, and attorney's right to practice law may be resolved by a proceeding to suspend or disbar him, based on conduct rendering him unfit to hold a license or to exercise the duties and responsibilities of an attorney. In disbarment proceedings, the burden of proof rests upon the Taday, and for the court to exercise its disciplinary powers, the case against the Atty. Apoya must be established by clear, convincing and satisfactory proof.

In this case, the Court finds that Atty. Apoya violated Canon 1, Rules 1.01 and 1.02 of the Code and the 2004 Rules on Notarial Practice.

Atty. Apoya notarized the petition even though the affiant was not present. Notarization is not an empty, meaningless and routinary act. It is imbued with public interest and only those who are qualified and authorized may act as notaries public.¹⁸ Notarization converts a private document to a public document, making it

admissible in evidence without further proof of its authenticity. A notarial document is, by law, entitled to full faith and credit upon its face. For this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties.

The 2004 Rules on Notarial Practice provides that a notary public should not notarize a document unless the signatory to the document personally appeared before the notary public at the time of the notarization, and personally known to the notary public or otherwise identified through competent evidence of identity. At the time of notarization, the signatory shall sign or affix with a thumb or other mark in the notary public's notarial register. The purpose of these requirements is to enable the notary public to verify the genuineness of the signature and to ascertain that the document is the signatory's free act and deed. If the signatory is not acting on his or her own free will, a notary public is mandated to refuse to perform a notarial act. A notary public is also prohibited from affixing an official signature or seal on a notarial certificate that is incomplete.

In this case, on April 20, 2011, Atty. Apoya notarized the verification and certification of non forum shopping in the petition filed before RTC Branch 131 supposedly executed by Taday as the affiant. At that time, however, complaint was not in the Philippines because she was still in Norway working as an OFW. Undoubtedly, Atty. Apoya violated the notarial rules when he notarized a document without the personal presence of the affiant.

Atty. Apoya gave a flimsy excuse that he was not informed that Taday was not in the Philippines when he notarized the verification and certification on non forum shopping. Assuming *arguendo* that this is true, he should have refrained from notarizing such document until Taday personally appear before him. In addition, Atty. Apoya should have explained to Taday and her parents that he can only notarize and file the petition before the court once Taday returns to the Philippines. Lamentably, instead of informing his client about the rules of notarization, Atty. Apoya proceeded with the notarization of the document and gave a false assurance that the case of Taday would still continue even in her absence.

In *Gaddi v. Atty. Velasco*, the Court held that for notarizing a document without ascertaining the identity and voluntariness of the signatory to the document, for affixing his signature in an incomplete notarial certificate, and for dishonesty in his pleadings, the lawyer failed to discharge his duties as notary public and breached Canon 1 and Rule 1.01 of the Code.

Here, Atty. Apoya notarized the verification and certification of non forum shopping even though Taday did not personally appear before him. Not only did he violate the 2004 Rules on Notarial Practice, he also violated Canon 1 and Rule 1.01 of the Code. Atty. Apoya authored a fake decision and delivered it to his client

Aside from improperly notarizing a petition, Atty. Apoya committed an even graver transgression by drafting a fake decision and delivering it to his client in guise of a genuine decision.

In this case, Atty. Apoya delivered a decision dated November 16, 2011, to Taday, which purportedly granted the petition for annulment of marriage in her favor. This decision is marred by numerous and serious irregularities that point to Atty. Apoya as the author thereof.

First, the decision came from a certain Judge Ma. Eliza Becamon- Angeles of RTC Branch 162. Yet, a verification from the RTC revealed that the said judge and the branch were non-existent.

Second, the fake decision is starkly the same as the petition prepared and filed by Atty. Apoya. A reading of the fake decision shows that the statement of facts, issues and the rationale therein are strikingly similar, if not exactly alike, with the petition. Even the grammatical errors in both documents are similar. The fake decision was so poorly crafted because it merely copied the petition filed by Atty. Apoya. Moreover, the font and spacing in the caption of the petition and the fake decision are one and the same. Glaringly, Atty. Apoya did not give any credible explanation regarding the similarity of the fake decision and the petition he drafted.

Third, when Atty. Apoya was confronted by Taday and her parents about the fake decision, Atty. Apoya immediately filed an urgent motion to withdraw the petition before RTC Branch 131. Atty. Apoya provided a poor excuse that he merely prepared the said motion but did not file it. However, it is clear from the order dated June 25, 2012 of RTC Branch 131 that the motion was filed by Atty. Apoya and the case was indeed withdrawn.

Lastly, when Taday's case was dropped from the civil docket of RTC Branch 131 at the instance of Atty. Apoya, Taday and her parents sought the assistance of another lawyer. Atty. Verzosa, through a letter dated February 26, 2013, confronted Atty. Apoya regarding the payment of attorney's fees and the fake decision which Atty. Apoya gave to Taday. However, Atty. Apoya neither answered nor denied the allegation of Taday's new counsel.

In his last ditch attempt to escape liability, Atty. Apoya argued that the fake decision was drafted by Taday's parents. The Court finds this completely absurd. On November 17, 2011, Taday's parents had just paid Atty. Apoya's staggering acceptance fee as evidenced by a Receipt.²⁴ On the other hand, the fake decision was dated November 16, 2011. Thus, it is illogical for Taday's parents to draft a fake decision when they regularly paid for the services of Atty. Apoya to legally and rightfully represent their daughter's case. As opined by the Commission, any reasonable mind would know that a fake decision would not benefit Taday, thus, Taday's parents have nothing to gain from it.

Based on the foregoing circumstances, the Court concludes that Atty. Apoya indeed authored the fake decision in order to deceive Taday that he won the legal battle in her favor. Fortunately, Taday was prudent in protecting her rights and discovered that the decision given to her by Atty. Apoya was fake. Surely, Atty. Apoya's acts resulted to Taday's injuries and has tarnished the noble image of legal profession.

PROPER PENALTY

The Court finds that Taday has established by clear, convincing and satisfactory evidence that: (1) Atty. Apoya notarized the verification and certification of non forum shopping of the petition without the personal presence of Taday; (2) Atty. Apoya is the author of the fake decision to deceive Taday that her petition for annulment of marriage was granted; and (3) Atty. Apoya retaliated against Taday for confronting him with the fake decision by withdrawing the petition in the court, resulting into the dropping of the case from the civil docket of the court. These acts constitute violations of Canon 1, Rule 1.01 and Rule 1.02 of the Code, to wit:

CANON 1 - A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes.

RULE 1.01 A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

RULE 1.02 A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

Atty. Apoya also violated Section 2, Rule IV of the 2004 Rules on Notarial Practice, which states that:

SECTION 2. Prohibitions. - x x x

(b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document -

(1) is not in the notary's presence personally at the time of the notarization; and
(2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

A member of the Bar may be penalized, even disbarred or suspended from his office as an attorney, for violation of the lawyer's oath and/or for breach of the ethics of the legal profession as embodied in the Code. For the practice of law is a profession, a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character. The appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.

In this case, Atty. Apoya committed unlawful, dishonest, immoral and deceitful conduct, and lessened the confidence of the public in the legal system. Instead of being an advocate of justice, he became a perpetrator of injustice. His reprehensible acts do not merit him to remain in the rolls of the legal profession. Thus, the ultimate penalty of disbarment must be imposed upon him.

6) JULIETA DIMAYUGA VS. ATTY. VIVIAN G. RUBIA; A.C. NO. 8854, TIJAM CHARGE: DISBARMENT

CANONS/ LAWS VIOLATED

Section 27, Rule 138 of the Rules of Court – Willful disobedience

CANON 1 - a lawyer shall uphold the Constitution, obey the laws, and promote respect for law and legal processes.

Rule 15.07 - A lawyer shall impress upon his client compliance with the laws and the principles of fairness.

STATEMENT OF FACTS

Julieta Dimayuga averred that she and her family engaged respondent's legal services to effect the transfer of their deceased father's property to them, which services were supposed to include preparation, notarization, and processing of the transfer document and payment of taxes and other fees for such transfer. Atty. Rubia prepared a document denominated as Amended Extrajudicial Settlement of Estate with Waiver of Rights, which they signed on June 17, 2002. However, the transfer did not happen soon thereafter. Her family learned that respondent paid the transfer tax only on October 25, 2007; the donor's tax was paid on April 2, 2007; and Atty. Rubia only entered the Amended Extrajudicial Settlement of Estate with Waiver of Rights with the Register of Deeds of Davao del Sur only on November 28, 2007 and re-entered on December 1, 2008. It is complainant's theory that respondent may have misappropriated the money.

Complainant also alleged that in June 2003, she also sought respondent's legal services for the purchase of a real property. However, contrary to her representation that the property shall be registered in their names after one month, the title was not transferred to them. The Deed of Absolute Sale dated June 27, 2003 for the purchase of a 600-square meter parcel of land prepared by respondent, was covered by a Certificate of Land Ownership Award (CLOA) No. 00394433. Being a land covered by CLOA, it shall not be sold, transferred or conveyed except through hereditary succession, or to the Government, or to the Land Bank of the Philippines, or to other qualified beneficiaries for a period often (10) years. Thus, on June 27, 2003, the sale of the property was still prohibited.

In a Resolution dated January 31, 2011, the Court required the respondent to comment on the complaint within ten days from notice. Atty moved for an extension of time to file her comment, which was granted by the Court. The same happened repeatedly until 2016 thus the Court also required her to show cause why she should not be disciplinarily dealt with or held in contempt for such failure and, again ordered her to comply with the January 31, 2016 Resolution.

On December 27, 2016, respondent complied with the show cause order, explaining that she suffered from trauma and stress due to the previous cases filed against her and also that she had undergone life-threatening situations due to some high-profile cases that she handled, hence, her failure to file her comment. However to this date Atty. Rubia still failed to file her comment to the Complaint.

ISSUES:

1. Whether Atty. Rubia shall be held administratively liable for repeated failure to file a comment.
2. Whether Atty. Rubia shall be held administratively liable for the delay in executing her services.
3. Whether Atty. Rubia shall be held administratively liable for notarizing the deed of sale.

RULING

1. Yes, this Court cannot, anymore, accept respondent's excuses for such defiance, *i.e.*, trauma, stress, and life-threatening situations, considering that she was able to file pleadings stating such explanation but still failed to file the required comment. Nothing can be concluded therefrom but that respondent's acts or inaction for that matter, were deliberate and manipulating, which unreasonably delay this Court's action on the case. These acts constitute willful disobedience of the lawful orders of this Court, which, not only works against her case as she is now deemed to have waived the filing of her comment, but more importantly is in itself a sufficient cause for suspension or disbarment pursuant to Section 27, Rule 138 of the Rules of Court. Such attitude constitutes utter disrespect to the judicial institution. "A Court's Resolution is not to be construed as a mere request, nor should it be complied with partially, inadequately, or selectively."
2. No, we find that the allegations of delay in the performance of duty and misappropriation of funds were not sufficiently substantiated. In this case, complainant alleged that she and her family gave respondent ₱150,000 on June 17, 2002, inclusive of respondent's attorneys fees and the legal fees necessary for the transfer of the property. Despite that, respondent did not pay the transfer tax and donor's tax until 2007. However, there is nothing on the records, except for complainant's bare allegation, which proves that such amount was indeed given to respondent on the claimed date. Hence, We cannot judiciously rule on the alleged delay and misappropriation without relying upon assumptions, surmises, and conjectures.
3. Yes, What is apparent in the Complaint, however, is the fact that respondent prepared and notarized a deed of sale, covering a parcel of land, which was evidently prohibited to be sold, transferred, or conveyed under Republic Act (R.A.) No. 6657.

Time and again, we have held that a lawyer's conduct ought to and must always be scrupulously observant of the law and ethics. CANON 1 of the Code of Professional Responsibility (CPR) provides that a lawyer shall uphold the Constitution, obey the laws, and promote respect for law and legal processes. Also, Rule 15.07 thereof mandates a lawyer to impress upon his client compliance with the laws and principles of fairness. Indeed, in preparing and notarizing a deed of sale within the prohibited period to sell the subject property under the law, respondent assisted, if not led, the contracting parties, who relied on her knowledge of the law being their lawyer, to an act constitutive of a blatant disregard for or defiance of the law.

Moreover, respondent likewise displayed lack of respect and made a mockery of the solemnity of the oath in an Acknowledgment as her act of notarizing such illegal document entitled it full faith and credit upon its face, when it obviously does not deserve such entitlement, considering its illegality due to the prohibition above-cited.

WHEREFORE, in view of the foregoing, Atty. Vivian G. Rubia is found **GUILTY** of violating Section 27, Rule 138 of the Rules of Court, CANON 1 and Rule 15.07 of the Code of Professional Responsibility, and the Rules on Notarial Practice. Accordingly, she is **SUSPENDED** from the practice of law for three (3) years effective immediately with a **STERN WARNING** that future infractions shall be dealt with more severely. She is likewise **DISQUALIFIED** from being commissioned as a notary public for a period of three (3) years and her notarial commission, if currently existing, is hereby **REVOKED**.

**7) ATTY. JEROME NORMAN L. TACORDA AND LETICIA RODRIGO-DUMDUM
VERSUS JUDGE PERLA V. CABRERA-FALLER, EXECUTIVE JUDGE, AND OPHELIA
G. SULUEN, OFFICER-IN-CHARGE/LEGAL RESEARCHER II, BOTH OF BRANCH 90,
REGIONAL TRIAL COURT, DASMARIÑAS CITY, CAVITE -**

TOPIC

Gross Ignorance of the Law, Gross Inefficiency, Delay in the Administration of Justice, and Impropriety (Sec. 5, Canon 6 of NCJC)

STATEMENT OF FACTS

A civil case involving Souses Dumdum was raffled to the sala of Judge Cabrera-Faller when Judge Felicen inhibited himself from the case which was already set for pre-trial. As the last event in the court of origin was for pre-trial, the case was set for pre-trial on 14 and 29 August 2013. However, it was found out that the case had already been referred for mediation, prompting the trial court to suspend the proceedings until receipt of the Mediator's Report. The Mediator's Report was received on 18 September 2013. Meanwhile, the plaintiffs in the civil case belatedly filed their Pre-Trial Brief on 27 August 2013, which prompted the Spouses Dumdum, through their lawyer Atty. Tacorda, to file a Motion to Expunge the Pre-Trial Brief Submitted by the Plaintiffs with Manifestation on 3 September 2013.

On 31 July 2015, almost two years after the Motion was filed, Judge Cabrera-Faller denied the motion and set the case for pre-trial conference on 8 October 2015. This, however, was rescheduled to 18 November 2015, because Judge Cabrera-Faller was hospitalized on 8 October 2015.

The delay attendant in resolving the motion prompted Atty. Tacorda and Rodrigo-Dumdum to file this complaint against Judge Cabrera-Faller and Suluen, the Officer-in-Charge (OIC)/Legal Researcher II, for the latter's failure to call the attention of Judge Cabrera-Faller on the delay.

In a Comment filed by Judge Cabrera-Faller and Suluen, they argue that there was (1) no ignorance of the law as the case was immediately acted upon after receipt of the records; (2) no gross inefficiency as the resetting of the hearings was part of the continuing court events and incidents; and (3) no delay in the administration of justice, as the case was merely transferred to them and had gone through mediation for possible settlement, which unfortunately had failed. Judge Cabrera-Faller and Suluen also allege that the complaint is baseless and illusory, designed to disqualify

Judge Cabrera-Faller from the proceedings and other cases of Atty. Tacorda which are pending before her.

STATEMENT OF THE CASE

Tacorda et al. filed an administrative complaint against Judge Cabrera-Faller and Suluen, charging them of Gross Ignorance of the Law, Gross Inefficiency, Delay in the Administration of Justice, and Impropriety.

The OCA, upon evaluation of the complaint, found that the allegation of gross ignorance of the law against Judge Cabrera-Faller and Suluen was bereft of any evidence, since no act or demeanor committed was alleged that would directly constitute impropriety in the performance of their official functions and as private individuals.

However, the OCA found that Judge Cabrera-Faller was guilty of gross inefficiency and delay in the administration of justice, because the trial judge unreasonably and inexcusably failed to act from 22 May 2013, when the case was set for pre-trial, to 31 July 2015, when the motion to expunge was denied, which was in clear violation of the 1987 Constitution and the Code of Judicial Ethics.

As against Suluen, the OCA found that there was no evidence on record to substantiate the charges against her and cleared her of administrative liability. The responsibility to resolve the motion was with the judge and not with the OIC/Legal Researcher.

Thus, OCA recommended the imposition of a fine in the amount of Twenty Thousand Pesos (P20,000.00) payable within thirty (30) days from the receipt of notice with a warning that a commission of the same or similar offense shall be dealt with more severity, and the dismissal of the charges against Suluen for lack of merit.

ISSUE

1. Whether or not there is Gross Ignorance of the Law.
2. Whether or not there is Impropriety.
3. Whether or not there is Gross Inefficiency and Delay in the Administration of Justice.
4. Whether or not Judge Cabrera-Faller can still be suspended from office.

RULING

1. No. To be held liable for gross ignorance of the law, it must be shown that the error must be so gross and patent as to produce an inference of bad faith. Moreover, the acts complained of must not only be contrary to existing law and jurisprudence, but should also be motivated by bad faith, fraud, dishonesty, and corruption. In this case, there was no allegation or mention of any bad faith, fraud, dishonesty, and corruption committed by Judge Cabrera-Faller or Suluen. Tacorda et al. also failed to allege any gross and patent ignorance of the law which would indicate any bad faith.

2. No. There are no allegations as to specific acts which would constitute impropriety on the part of Judge Cabrera-Faller or Suluen, either in the course of the performance of their official functions or as private individuals. Necessarily, the complaint for gross ignorance of the law and impropriety must fail.

3. Yes. There is merit in the complaint for gross inefficiency and delay in the administration of justice against Judge Cabrera-Faller when she failed to promptly act on the motion filed by the Spouses Dumdum. On the other hand, as against Suluen, the charges must be dismissed. The responsibility of acting and resolving a pending matter or incident before a court rests primarily on the judge, and Suluen, who was merely an OIC/Legal Researcher, could not be held responsible for the delay incurred by the respondent judge. Based on the facts on record, only Judge Cabrera-Faller may be held liable for the delay in the disposition of cases.

Delay in the disposition of cases amounts to a denial of justice, which brings the court into disrepute, and ultimately erodes public faith and confidence in the Judiciary. Judges are therefore called upon to exercise the utmost diligence and dedication in the performance of their duties. More particularly, trial judges are expected to act with dispatch and dispose of the court's business promptly and to decide cases within the required periods. The main objective of every judge, particularly trial judges, should be to avoid delays, or if it cannot be totally avoided, to hold them to the minimum and to repudiate manifestly dilatory tactics.

The Constitution clearly provides that all lower courts should decide or resolve cases or matters within three months from the date of submission. Moreover, Section 5, Canon 6 of the New Code of Judicial Conduct provides:

Sec. 5. Judges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

The Court has, time and again, reminded judges to decide cases promptly and expeditiously under the time-honored principle that justice delayed is justice denied. More specifically, presiding judges must endeavor to act promptly on all motions and interlocutory matters pending before their courts. To repeat, trial court judges, who serve as the frontline officials of the judiciary, are expected to act at all times with efficiency and probity.

In this case, Judge Cabrera-Faller failed to meet the expectation of promptness and efficiency that is required of a trial court judge. She failed to act on the Motion to Expunge the Pre-Trial Brief for almost two years, which is a clear delay in the administration of justice. Failure to decide cases and other matters within the reglementary period constitutes gross inefficiency which warrants the imposition of administrative sanctions.

Judge Cabrera-Faller failed to offer any satisfactory reason to explain the reason for this delay. The fact that the case was re-raffled to her sala or that the case was referred to mediation is hardly an excuse for her inaction for almost two years. In fact, the Mediator's Report was received on 18 September 2013 but Judge Cabrera-Faller denied the motion of the Spouses Dumdum only on 31 July 2015. This is

clearly an unreasonable delay for which Judge Cabrera-Faller should be held administratively liable.

4. No. Undue delay in rendering a decision or order is considered a less serious offense which is punishable by: (1) Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or (2) A fine of more than P10,000.00 but not exceeding P20,000.00.

In this case, the delay in resolving the motion was for almost two years. Based on this period of delay, a fine of Twenty Thousand Pesos (P20,000.00) is appropriate. However, Judge Cabrera-Faller has already been dismissed from the service in *Marcos v. Cabrera-Faller* for gross ignorance of the law and for violating Rule 1.01 and Rule 3.01, Canon 3 of the Code of Judicial Conduct. Subsequently, she was found guilty of gross ignorance of the law and gross misconduct constituting violations of the Code of Judicial Conduct in *Office of the Court Administrator v. Cabrera-Faller*, where she was fined in the amount of P80,000.00. In the same case, Suluen was found by the Court to have committed simple neglect of duty for which she was suspended for a period of one month and one day with a warning that a repetition of the same or similar acts shall warrant a more severe penalty.

In this case, while Suluen cannot be held liable for the charges against her, the complaint against Judge Cabrera-Faller for unreasonable delay is meritorious. In view of the foregoing, the fine of Twenty Thousand Pesos (P20,000.00) shall be deducted from whatever amounts may still be due Judge Cabrera-Faller.

DISPOSITIVE PORTION:

WHEREFORE, we find Judge Perla V. Cabrera-Faller of Branch 90, Regional Trial Court, Dasmariñas City, Cavite GUILTY of Gross Inefficiency and Delay in the Administration of Justice and impose on her a FINE of Twenty Thousand Pesos (P20,000.00) which shall be deducted from whatever amounts may still be due her. The charges against Ophelia G. Suluen, Officer-in-Charge/Legal Researcher II of Branch 90, Regional Trial Court, Dasmariñas City, Cavite are hereby DISMISSED for lack of merit.

8) CELESTINO MALECDAN VS ATTY. SIMPSON T. BALDO; AC NO 12121; JUNE 27, 2018

FACTS

Before this Court is an administrative complaint filed with the Office of the Integrated Bar of the Philippines Baguio-Benguet Chapter (IBP Baguio-Benguet Chapter) by Complainant Celestino Malecdan (Malecdan) against Respondent Atty. Simpson T. Baldo (Atty. Baldo), for the latter's alleged violation of Section 9 of Presidential Decree 1508 (P.D. 1508), otherwise known as the *Katarungang Pambarangay* Law, which prohibits the participation of lawyers in the proceedings before the *Lupon*.

Malecdan filed a letter of complaint for *Estafa*, Breach of Contract and Damages against spouses James and Josephine Baldo, before the *Lupon* of Barangay Pico in La Trinidad, Benguet.

Atty. Baldo appeared as counsel of spouses Baldo during the hearing on the subject complaint before the *Punong Barangay*. Malecdan filed a Complaint-Affidavit (Complaint) before the IBP Baguio-Benguet Chapter praying that proper sanctions be imposed on Atty. Baldo for violating Section 9 of P.D. 1508.

On August 20, 2014, the Committee on Ethics of the IBP Baguio-Benguet Chapter furnished Atty. Baldo with a copy of the complaint and set the case for a conciliation conference on September 12, 2014. On September 15, 2014, the Complaint was endorsed to the Committee on Bar Discipline-IBP (CBD-IBP) by the Committee on Ethics of IBP Baguio-Benguet Chapter after the parties failed to agree on a settlement.

On January 14, 2015, the CBD-IBP issued a Notice setting the mandatory conference/hearing of the subject complaint. Malecdan filed his Mandatory Conference Brief. The mandatory conference of the case was rescheduled to March 24, 2015 after Atty. Baldo failed to attend the same.

In his Answer, Atty. Baldo admitted that he was present during the proceedings before the *Punong Barangay*. He explained that he was permitted by the parties to participate in the said hearing.

On March 31, 2015, Malecdan filed his Verified Supplemental Complaint Affidavit, wherein he insisted that he vehemently objected to the presence of Atty. Baldo during the proceedings before the Punong Barangay.

After due proceedings, Investigating Commissioner Robles rendered a Report and Recommendation, recommending that Atty. Baldo be given a warning. Commissioner Robles found that the language of the *Katarungang Pambarangay* Law is not that definite as to unqualifiedly bar lawyers from appearing before the *Lupon*, nor is the language that clear on the sanction imposable for such an appearance.

On June 20, 2015, the IBP Board of Governors passed a Resolution reversing and setting aside the Report and Recommendation of the Investigating Commissioner and instead recommended that Atty. Baldo be reprimanded.

ISSUE

Whether or not Atty. Baldo should be held administratively liable

RULING

Yes. Section 9 of P.D. 1508 mandates personal confrontation of the parties because: "x x x **a personal confrontation between the parties without the intervention of a counsel or representative would generate spontaneity and a favorable**

disposition to amicable settlement on the part of the disputants. In other words, the said procedure is deemed conducive to the successful resolution of the dispute at the barangay level." x x x x

"To ensure compliance with the requirement of personal confrontation between the parties, and thereby, the effectiveness of the barangay conciliation proceedings as a mode of dispute resolution, the above-quoted provision is couched in mandatory language. Moreover, pursuant to the familiar maxim in statutory construction dictating that '*expressio unius est exclusio alterius*', the express exceptions made regarding minors and incompetents must be construed as exclusive of all others not mentioned."²⁴ (Emphasis supplied)

Atty. Baldo's violation of P.D. 1508 thus falls squarely within the prohibition of Rule 1.01 of Canon 1 of the Code of Professional Responsibility (CPR), which provides:

CANON 1 - A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

Canon 1 clearly mandates the obedience of every lawyer to laws and legal processes. A lawyer, to the best of his ability, is expected to respect and abide by the law: and thus, avoid any act or omission that is contrary to the same. A lawyer's personal deference to the law not only speaks of his character but it also inspires the public to likewise respect and obey the law. Rule 1.01, on the other hand, states the norm of conduct to be observed by all lawyers. Any act or omission that is contrary to, or prohibited or unauthorized by, or in defiance of, disobedient to, or disregards the law is unlawful⁷ Unlawful conduct does not necessarily imply the element of criminality although the concept is broad enough to include such element.

Here, Atty. Baldo admitted that he appeared and participated in the proceedings before the *Punong Barangay* in violation of Section 9 of P.D. 1508. Atty. Baldo therefore violated Rule 1.01 of the CPR in connection with Section 9 of P.D. 1508 when he appeared as counsel for spouses James and Josephine Baldo in a hearing before the *Punong Barangay*.

WHEREFORE, the Court finds Atty. Simpson T. Baldo **LIABLE** for violation of Canon 1 and Rule 1.01 of the Code of Professional Responsibility and he is hereby **REPRIMANDED** with a stem warning that a repetition of the same or similar act would be dealt with more severely.

9) NICANOR D. TRIOL VERSUS ATTY. DELFIN R. AGCAOILI, JR. MANUEL L. – A.C. NO. 12011, JUNE 26, 2018, J. PERLAS-BERNABE

TOPIC

Legal Ethics – Canon 1, Rule 1.01 and Canon 10, Rule 10.01

CANON 1 – A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes.

Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

CANON 10 – A lawyer owes candor, fairness and good faith to the court.

Rule 10.01 — A lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead, or allow the Court to be misled by any artifice.

STATEMENT OF FACTS

Nicanor Triol alleged that he and his sister, Grace D. Triol were co-owners of a parcel of land with an area of 408.80 square meters situated in Quezon City. Sometime in January 2011, Nicanor Triol decided to sell the subject land to a certain Leonardo P. Caparas but was unable to do so, as he could not obtain the signature of Grace who was already residing in the United States at that time. Subsequently, complainant discovered that a Deed of Absolute Sale dated March 11, 2011 was executed and notarized by Atty. Agcaoili supposedly conveying the subject land to Fajardo without the authority of complainant and Grace; neither did they give their consent to the same, as they allegedly did not personally appear before respondent when the subject deed was notarized. Moreover, complainant found out that their purported community tax certificates stated in the subject deed were fake. Accordingly, he filed a disbarment complaint against Atty. Agcaoili.

In his defense, Atty. Agcaoili disavowed knowledge of the execution and notarization of the subject deed, claiming that he did not know complainant, Grace, and Caparas. He maintained that his signature on the subject deed was forged, since he would never notarize an instrument without the signatory parties personally appearing before him. He likewise asserted that he could not have notarized it, as he was not a commissioned notary public in Quezon City in 2011.

STATEMENT OF THE CASE

The IBP Investigating Commissioner recommended the dismissal of the complaint, there being no substantial evidence to show that respondent is guilty of violating Section 1 (b) (7), Rule XI of the 2004 Rules on Notarial Practice (2004 Notarial Rules). The Investigating Commissioner found that respondent was not aware of the execution and notarization of the subject deed, as he was able to establish that the signature affixed on the subject deed was not his by virtue of the specimen signature that he provided in his Answer. However, the IBP Board of Governors reversed the

recommendation of the Investigating Commissioner, and accordingly, imposed the penalty of suspension from the practice of law for a period of two (2) years, as well as disqualification from being commissioned as a notary public for the same period. It likewise directed the revocation of his current notarial commission, if any. The IBP Board of Governors observed that while Atty. Agcaoili provided his specimen signature in his Answer, he failed to substantiate its genuineness and authenticity, given that he did not submit a copy of his signature appearing in the records of the Office of the Clerk of Court or any other official document containing the same specimen signature. As such, the probative value of the subject deed containing his notarization, as well as the certifications from the Clerk of Court of the Regional Trial Court (RTC) of Quezon City that he was not a commissioned notary public in 2011 and 2012, stands.

ISSUE

Whether or not whether or not Atty. Agcaoili should be held administratively liable.

RULING

Yes, it is settled that "notarization is not an empty, meaningless routinary act, but one invested with substantive public interest. Notarization converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. Thus, a notarized document is, by law, entitled to full faith and credit upon its face. In this light, Section 2 (b), Rule IV of the 2004 Notarial Rules requires a duly-commissioned notary public to perform a notarial act only **if the person involved as signatory to the instrument or document is: (a) in the notary's presence personally at the time of the notarization;** and (b) personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.¹ The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed.¹

In the realm of legal ethics, a breach of the aforesaid provision of the 2004 Notarial Rules would also constitute a violation of the Code of Professional Responsibility (CPR), considering that an erring lawyer who is found to be remiss in his functions as a notary public is considered to have violated his oath as a lawyer as well. He does not only fail to fulfill his solemn oath of upholding and obeying the law and its legal processes, but he also commits an act of falsehood and engages in an unlawful, dishonest, and deceitful conduct. Thus, Rule 1.01, Canon 1 and Rule 10.01, Canon 10 of the CPR.

In this case, Atty. Agcaoili indeed violated the 2004 Notarial Rules when he notarized the subject deed without Nicanor Triol and Grace personally appearing before him, much more without the requisite notarial commission in 2011. Apart from Atty Agcaoili's bare denials and unsubstantiated defense of forgery, he failed to rebut complainant's allegations and evidence. Although he provided his specimen signature in his Answer to support his defense of forgery, the same nonetheless remained insufficient for he did not even submit a copy of his signature appearing in

the records of the Office of the Clerk of Court or any other official document containing the same specimen signature to prove its genuineness and authenticity.

With this, he also violated the provisions of the CPR, particularly Rule 1.01, Canon 1 and Rule 10.01, Canon 10 thereof. By misrepresenting himself as a commissioned notary public at the time of the alleged notarization, he did not only cause damage to those directly affected by it, but he likewise undermined the integrity of the office of a notary public and degraded the function of notarization. In so doing, his conduct falls miserably short of the high standards of morality, honesty, integrity and fair dealing required from lawyers, and it is only but proper that he be sanctioned.

WHEREFORE, the Court finds respondent Atty. Delfin R. Agcaoili, Jr. (respondent) **GUILTY** of violating the 2004 Rules on Notarial Practice and the Code of Professional Responsibility. Accordingly, the Court hereby **SUSPENDS** him from the practice of law for a period of two (2) years; **PROHIBITS** him from being commissioned as a notary public for a period of two (2) years; and **REVOKES** his incumbent commission as a notary public, if any. He is **WARNED** that a repetition of the same offense or similar acts in the future shall be dealt with more severely.

The suspension in the practice of law, the prohibition from being commissioned as notary public, and the revocation of his notarial commission, if any, shall take effect immediately upon receipt of this Decision by respondent. He is **DIRECTED** to immediately file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

10) RE: CA-G.R. CV NO. 96282 (SPOUSES BAYANI AND MYRNA M. PARTOZA VS. LILIAN* B. MONTANO AND AMELIA SOLOMON), COMPLAINANT, VS. ATTY. CLARO JORDAN M. SANTAMARIA, RESPONDENT.

A recalcitrant lawyer who defies the directives of the court "must deservedly end in tribulation for the lawyer and in victory for the higher ends of justice."^[1]
The administrative liability of a lawyer who repeatedly ignores the directives of the Court of Appeals (CA) is properly resolved in this case.

FACTS

A civil action for Declaration of Nullity of Deed of Real Estate Mortgage, Reconveyance of Transfer Certificate and Damages^[2] was filed by the spouses Bayani and Myrna M. Partoza (spouses Partoza) against Lilia B. Montano and Amelia T. Solomon.

The case was dismissed^[3] by the Regional Trial Court.

On November 25, 2010, a Notice of Appeal^[4] was filed by the counsel on record, Atty. Samson D. Villanueva (Atty. Villanueva). the CA required the submission of the Appellant's Brief pursuant to Rule 44, Section 7 of the Rules of Civil Procedure.

On April 27, 2011, however, Atty. Villanueva filed his Withdrawal of Appearance;^[6] subsequently, a Motion for Extension of Time to File Appellant's Brief^[7] dated May 19, 2011, was also filed. Atty. Villanueva's Withdrawal of

Appearance carried the conformity of the appellant's attorney-in-fact, Honnie M. Partoza (Honnie) who, on the same occasion, also acknowledged receipt of the entire records of the case from Atty. Villanueva.

Thereafter, respondent Atty. Claro Jordan M. Santamaria (respondent) submitted an Appellant's Brief^[8] dated July 4, 2011.

In a Resolution^[9] dated August 4, 2011, the CA directed Atty. Villanueva to submit proof of authority of Honnic to represent appellants as their attorney-in-fact and the latter's conformity to Atty. Villanueva's Withdrawal of Appearance.

[Respondent] is directed to submit within five (5) days from notice his formal Entry of Appearance as counsel for appellants and to secure and submit to this Court also within the same period the written conformity of his clients to his appearance as their counsel. Likewise, said counsel is also directed to furnish this Court the assailed RTC Decision that should have been appended to the Appellant's Brief also within the same period.

Atty. Villanueva then filed a Manifestation with Motion^[10] dated August 31, 2011 explaining that he communicated with Ronnie and with appellants as well, but was informed that appellants were residing abroad (in Germany at the time). He then requested for a period of 15 days, or until September 15, 2011, to comply with the CA's Resolution.

On March 20, 2012, the CA issued a Resolution granting the Manifestation and Motion filed by Atty. Villanueva, and ordered the latter to show cause, within 10 days from notice, why he should not be cited in contempt for his failure to comply with the CA's Resolution of August 4, 2011; and why the Appellant's Brief filed by respondent should not be expunged from the *rollo* of the case and the appeal dismissed for his failure to comply with the August 4, 2011 Resolution. All these directives by the CA were ignored by the respondent.

Thus, in a Resolution^[12] dated October 25, 2012, the CA cited respondent in contempt of court and imposed on him a fine of P5,000.00. In the same Resolution, the CA once again directed respondent: (1) to comply with requirements of a valid substitution of counsel and to file his formal Entry of Appearance within five days from notice; and (2) to show cause, within the same period, why the Appellant's Brief filed should not be expunged from the *rollo* of the case and the appeal be dismissed for his failure to comply with the Rules of Court.

Ultimately, in a Resolution dated April 11, 2013, the CA ordered the Appellant's Brief filed by respondent expunged from the *rollo* and dismissed the appeal. More than that, the CA directed respondent to explain why he should not be suspended from the practice of law for willful disobedience to the orders of the court. Respondent paid no heed to this Resolution.

So it was that the CA, in a Resolution^[13] dated September 17, 2013, referred the unlawyerly acts of respondent to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

REPORT AND RECOMMENDATION THE INVESTIGATING COMMISSIONER

In his Answer^[14] of November 13, 2013, respondent contended: (1) that the spouses Partoza sought his opinion regarding their case and later on requested that he handle their appeal before the CA; (2) that he advised the spouses Partoza to inform Atty. Villanueva of their decision to engage the services of a new counsel; (3) that he relied on the Withdrawal of Appearance filed by Atty. Villanueva and then prepared the Appellant's Brief; (4) that he was not aware of the authority of Honnie to represent spouses Panoza as well as of Honnie's conformity to the Withdrawal of Appearance by Atty. Villanueva; (5) that he believed that he had no personality to represent the spouses Partoza in the case, and to address the problems/compliances pertaining to appellant's appeal; and (6) that it was still Atty. Villanueva who should have continued to represent the spouses Partoza.

The Investigating Commissioner Michael G. Fabunan (Investigating Commissioner) found respondent liable for willful disobedience to the lawful orders of the CA and recommended that he be suspended from the practice of law for six months. The Investigating, Commissioner gave the reasons for the said recommendation in his Report and Recommendation,^[15] viz.:

The act of respondent in not filing any of the compliances required of him in the 4 August 2011, 20 March 2012, 5 September 2012, and 25 October 2012 Resolutions of the [CA] despite due notice, emphasized his contempt and total disregard of the legal proceedings, for which he should be held liable.

Granting that he [was] not aware of the problem between Atty. Villanueva and [Honnie], he could have explained this fact by complying with the court resolutions and not just ignored them on the premise that he has no personality to represent the [spouses Partoza]. The compliances required of the respondent by the [CA] are provided under the rules for a valid substitution of counsel and validity of the appeal and may not be disregarded.

The nonchalant attitude of the respondent cannot be left unsanctioned. Clearly, his acts constitute willful disobedience of the lawful orders of the [CA], which under Section 27. Rule 138 of the Rules of Court is a sufficient case for suspension.

ISSUE

Whether or not respondent is administratively liable.

RULING

This Court adopts the findings of fact of, and the penalty recommended by, the IBP Board of Governors.

This Court explained the crucial role played by lawyers in the administration of justice in *Salabao v. Villaruel, Jr., viz.:*

While it is true that lawyers owe 'entire devotion' to the cause of their clients, it cannot be emphasized enough that their first and primary duty is not to the client but to the administration or justice. Canon 12 of the Code of Professional Responsibility states that 'A lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.' x x x This is a fundamental principle in legal ethics and professional responsibility that has iterations in various forms:

x x x x

Because a lawyer is an officer of the court called upon to assist in the administration of justice, any act of a lawyer that obstructs, perverts, or impedes the administration of justice constitutes misconduct and justifies disciplinary action against him. (citations omitted)

There is no dispute that respondent did not comply with five Resolutions of the CA. His actions were definitely contumacious. By his repeated failure, refusal or inability to comply with the CA resolutions, respondent displayed not only reprehensible conduct but showed an utter lack of respect for the CA and its orders. Respondent ought to know that a resolution issued by the CA, or any court for that matter, is not mere request that may be complied with partially or selectively.

Lawyers are duty bound to uphold the dignity and authority of the court. In particular, Section 20(b), Rule 138 of the Rules of Court states that it "is the duty of an attorney [t]o observe and maintain the respect due to courts of justice and judicial officers." In addition, Canon 1 of the Code of Professional Responsibility mandates that "[a] lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal processes." Also, Canon 11 provides that a "lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others."

Section 27, Rule 138 of the Rules of Court provides:

SECTION 27. Disbarment or suspension of attorneys by Supreme Court; grounds therefor. - A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a **wilful disobedience of any lawful order of a superior court**, or for corruptly or wilfully appealing as an attorney for a party to a case without authority [to do so]. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (Emphasis supplied)

This Court, in *Anudon v. Cefra*^[19] citing *Sebastian v. Atty. Bajar*,^[20] held that a lawyer's obstinate refusal to comply with the Court's orders not only betrayed a recalcitrant flaw in his character; it also underscored his disrespect towards the Court's lawful orders which was only too deserving of reproof

"Lawyers are particularly called upon to obey court orders and processes, and this deference is underscored by the fact that willful disregard thereof may subject the lawyer not only to punishment for contempt but to disciplinary sanctions as well."^[21] In this case, respondent deliberately ignored five CA Resolutions, thereby violating his duty to observe and maintain the respect due the courts.

In one case,^[22] the Court suspended a lawyer from the practice of law for one year for having ignored twelve (12) CA Resolutions. The Court found that the said lawyer's conduct gave the impression that he was above the duly constituted judicial authorities of the land, and looked down on them with a patronizing and supercilious attitude. In this case, we find the penalty of suspension for six (6) months, as recommended by the IBP, commensurate under the circumstances.

WHEREFORE, respondent Atty. Claro Jordan M. Santamaria is **SUSPENDED** from the practice of law for six (6) months effective upon his receipt of this Resolution. He is **STERNLY WARNED** that repetition of the same or similar act shall be dealt with more severely.

11) OLIVER FABUGAIS v. ATTY. BERARDO C. FAUNDO JR.

In both their professional and personal lives, lawyers must conduct themselves in such a way that does not reflect negatively upon the legal profession.

FACTS

This is a Complaint filed by complainant Oliver Fabugais against Atty. Berardo C. Faundo, Jr. for **gross misconduct and conduct unbecoming of a lawyer** for having allegedly engaged in illicit and immoral relations with his wife, Annaliza.

Then 10-year old girl Marie Nicole Fabugais, daughter of complainant, alleged that she, along with her mother, Annaliza. Ate Mimi, and a certain Ate Ada, stayed in a house that belonged to respondent lawyer. Marie Nicole said that when night-time fell, respondent lawyer slept in the same bed with her and her mother and that she saw respondent lawyer embracing her mother while they were sleeping.

Marie Nicole further recounted that the next morning, while she was watching television along with her mother, Ate *Mimi* and Ate Ada, respondent lawyer who just had a shower, and clad only in a towel or "*tapis*," suddenly entered the room; that she (Marie Nicole) along with her Ate Mimi and her Ate Ada, were told to step outside the room, while her mother and respondent lawyer remained inside the room.

Respondent lawyer denied that he had had any immoral relations with Annaliza. He claimed that he was merely assisting Annaliza in her tempestuous court battle with complainant for custody of her children. Respondent lawyer asserted that when Marie Nicole's maternal grandmother sought out his help in this case, he told them that they could hide in his (respondent lawyer's) parents' house.

He claimed that complainant filed the instant complaint simply "to harass him from practicing his legitimate profession, and for no other reason."

Upon recommendation of the IBP-ZAMBASULTA Chapter Board, this case was forwarded to the IBP-BOG.

IBP-R&R:

Found respondent lawyer guilty of violating **Rule 1.01** of the Code of Professional Responsibility and recommended his **suspension from the practice of law for one (1) month.**

Found respondent lawyer to have acted inappropriately with Annaliza which created the appearance of immorality, viz.:

As can be gleaned from the records or the hearing, no categorical sexual activity took place between respondent and complainant's wife. One would need to inject a bit of imagination to create an image of something sexual. But as can be read, no sexual activity took place based on the witness' account.

However, it would be erroneous to conclude that respondent's behavior was in total and complete accord with how a lawyer should behave, particularly in the presence of a minor. Was respondent's behavior toward a woman, in the presence of her minor daughter of 11 years, proper and in keeping with the dignity of the legal profession? It is clear that there was impropriety on the part of respondent.

In *Tolosa v. Cargo*, the Court held that creating the appearance that a lawyer is flouting with moral standards is sanctionable. Thus, while the charge of immorality, viz[.], adulterous relationship, was not factually established, certain behavior of the respondent did not escape notice of the Court.

In this case, while sexual immorality was not established, respondent should be held to account for his inappropriate behavior which created the image or appearance of immorality especially in the presence of a minor girl. Respondent's act of lying in bed with another married woman, while he himself is a married man, in the presence of the woman's daughter could raise suspicions, as in fact it did

Respondent should have been considerate of the feelings and perceptions of other people, particularly of minor children.

IBP-BOG: adopted and approved the findings and recommendation of the Investigating Commissioner.

Sometime in 2011, complainant's counsel Atty. Mario Frez (Atty. Frez) filed a Notice, Manifestation, and Motion for Withdrawal from this case, stating that complainant had passed away; and that he was not sure whether complainant's heirs were still willing to pursue the disbarment case against respondent lawyer since he has had no contact with the complainant since 2009; and he has had no information as to the whereabouts of complainant's heirs.

Notwithstanding the Motion for Withdrawal filed by Atty. Frez and considering the Motion for Reconsideration filed by the respondent lawyer in 2013, the IBP-BOG issued a Resolution denying respondent lawyer's motion for reconsideration.

Pursuant to **Section 12(c) of Rule 139-B of the Rules of Court**, this case is before us for final action.

ISSUE

Whether respondent lawyer in fact commit acts that are grossly immoral, or acts that amount to serious moral depravity, that would warrant or call for his disbarment or suspension from the practice of law.

RULING

We find substantial merit in the findings of facts of the IBP. And we reject respondent lawyer's highly implausible defense that the complainant filed the instant case for no other reason but simply "to harass him from practicing his legitimate profession." There is absolutely nothing in the record to support it.

It bears stressing that this case can proceed in spite of complainant's death and the apparent lack of interest on the part of complainant's heirs. **Disciplinary proceedings against lawyers are sui generis in nature**; they are intended and undertaken primarily to look into the conduct or behavior of lawyers, to determine whether they are still fit to exercise the privileges of the legal profession, and to hold them accountable for any misconduct or misbehavior which deviates from the mandated norms and standards of the Code of Professional Responsibility, all of which are needful and necessary to the preservation of the integrity of the legal profession. Because not chiefly or primarily intended to administer punishment, such proceedings do not call for the active service of prosecutors.

"Immoral conduct" has been defined as that conduct which is so willful, flagrant, or shameless as to show indifference to the opinion of good and respectable members of the community. This Court has held that for such conduct to warrant disciplinary action, the same must be **"grossly immoral**, that is, it must be so corrupt and false as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree."

It is not easy to state with accuracy what constitutes "grossly immoral conduct," let alone what constitutes the moral delinquency and obliquity that renders a lawyer unfit or unworthy to continue as a member of the bar in good standing.

In the present case, going by the eyewitness testimony of complainant's daughter Marie Nicole, raw or explicit sexual immorality between respondent lawyer and complainant's wife was not established as a matter of fact. Indeed, to borrow the Investigating Commissioner's remark: "[o]ne would need to inject a bit of imagination to create an image or something sexual."

That said, it can in no wise or manner be argued that respondent lawyer's behavior was par for the course for members of the legal profession. Lawyers are mandated to do honor to the bar at all times and to help maintain the respect of the community for the legal profession under all circumstances. **Canon 7 of the Code of Professional Responsibility** provides:

A lawyer shall at all times uphold the integrity and dignity of the legal profession, and support the activities of the Integrated Bar.

Rule 7.03 of the Code of Professional Responsibility further provides:

A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor should he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

"There is perhaps no profession after that of the sacred ministry in which a high-toned morality is more imperative than that of the law." As officers of the court, lawyers must in fact and in truth be of good moral character. They must moreover also be *seen* or *appear* to be of good moral character; and be *seen* or *appear* to – live a life in accordance with the highest moral standards of the community. Members of the bar can ill-afford to exhibit any conduct which tends to lessen in any degree the confidence of the public in the fidelity, the honesty, and the integrity of the legal profession. The Courts require adherence to these lofty precepts because any thoughtless or ill-considered actions or actuations by any member of the Bar can irreversibly undermine public confidence in the law and, consequently, those who practice it.

The acts complained of in this case might not be grossly or starkly immoral in its rawness or coarseness, but they were without doubt condemnable. Respondent lawyer who made avowals to being a respectable father to three children, and also to being a respected leader of his community apparently had no qualms or scruples about being seen sleeping in his own bed with another man's wife, his arms entwined in tender embrace with the latter. Respondent lawyer's claim that he was inspired by nothing but the best of intentions in inviting another married man's wife and her 10-year old daughter to sleep with him in the same bed so that the three of them could enjoy good night's rest in his airconditioned chamber, reeks with racy, ribaldhumor.

And in aggravation or the aforementioned unseemly behavior, respondent lawyer apparently experienced neither qualms nor scruples at all about exploding into the room occupied by a married man's wife and her 10-year old daughter and their two other women companions clad with nothing else but a "*tapis*" or a towel. Of course, respondent lawyer sought to downplay this boorish impropriety by saying in his Motion for Reconsideration that he was wearing a *malong* and not *tapis* at that time. And, of course, this plea will not avail because his scanty trappings gave him no license to intrude into a small room full of women. Respondent lawyer could have simply asked everyone in the room to step outside for a little while. Or he could have donned his clothing elsewhere. But these things seemed to have been totally lost to respondent lawyer's density. Indeed, respondent lawyer seemed to have forgotten that there are rules other men – decent men, – live by.

Respondent lawyer's defense that he was a "respectable father with three children" and that he was a "respected civic leader" to boot, flies in the face of a young girl's perception of his diminished deportment. It does not escape this Court's attention that the 10-year old Marie Nicole called respondent lawyer "Tito Attorney." Indeed, by calling respondent lawyer as "Tito Attorney" Marie Nicole effectively proclaimed her avuncular affection for him, plus her recognition of his being a member of the legal profession. We believe that Marie Nicole must have been a bit disappointed with what she saw and observed about the manners, predilections and propensities of her "Tito Attorney." In fact, a close examination of Marie Nicole's testimony cannot fail to show that in Marie Nicole's young mind, it was clearly not right, appropriate or proper for her "Tito Attorney" to be sharing the same bed with her and her mother, and for her mother to remain alone in the same room with her "Tito Attorney," while this "Tito Attorney" was dressing up. In all these happenings, a modicum of decency should have impelled this "Tito Attorney" to behave more discreetly and more sensitively, as he could not have been unaware that Marie Nicole was observing him closely and that she could be forming her impressions of lawyers and the legal profession by the actions and the behavior of this, her "Tito Attorney."

In deciding, upon the appropriate sanction to be imposed upon respondent lawyer in this case, this Court is ever mindful that administrative disciplinary proceedings are essentially designed to protect the administration of justice and that this lofty ideal can be attained by requiring that those who are honored by the title "Attorney" and counsel or at law are men and women of undoubted competence, unimpeachable integrity and undiminished professionalism, men and women in whom courts and clients may repose confidence. This Court moreover realizes only too well that the power to disbar or suspend members of the bar ought always to be exercised not in a spirit of spite, hostility or vindictiveness, but on the preservative and corrective principle, with a view to safeguarding the purity of the legal profession. Hence, that power can be summoned only in the service of the most compelling duty, which must be performed, in light of incontrovertible evidence of grave misconduct, which seriously taints the reputation and character of the lawyer as an officer of the court and as member of the Bar.³¹ It goes without saying moreover that it should not be exercised or asserted when a lesser penalty or sanction would accomplish the end desired.

In the context of the circumstances obtaining in this case, and hewing to jurisprudential precedence, and considering furthermore that this is respondent lawyer's first offense, this Court believes that a **one-month suspension** from the practice of law, as recommended by the IBP, would suffice.

WHEREFORE, premises considered, respondent lawyer Atty. Berardo C. Faundo, Jr. is hereby **SUSPENDED** from the practice of law for one (1) month, reckoned from receipt of a copy of this Decision. He is hereby **WARNED** to be more careful and more circumspect in all his actions, and to be mindful of the kind of example he holds up, especially to impressionable young people, lest he brings upon himself a direr fate the second time around.

**12) MICHELLE YAP, COMPLAINANT, V. ATTY. GRACE C. BURI, RESPONDENT;
A.C. No. 11156, March 19, 2018**

FACTS

Complainant filed an administrative complaint against respondent, for refusing to pay her monetary obligation and for filing a criminal case of Estafa against her based on false accusations.

Complainant was the seller in a contract of sale of a condominium unit, while respondent was the buyer. The total amount of agreed price was P1,200,000.00, however, P200,000 remains unpaid.

Respondent insisted that she would just pay the balance on instalment, without specifying the amount. Because complainant trusted the respondent, Yap gave Buri the possession of the unit upon completion of the P1,000,000.00 despite outstanding balance and even without the necessary Deed of Absolute Sale.

However, when Yap asked for the balance, Buri said she would pay it on a monthly instalment of P5,000 until fully paid. When Yap disagreed, Buri said she would just cancel the sale. Thereafter, Buri also started threatening her through text messages, and then later on filed a case for estafa against her.

In the criminal case, Buri alleged that when she found out that the sale was made without the consent of Yap's husband, Yap cancelled the sale and promised to return the P1,000,000.00. However, she failed and refused to return the money. Nevertheless, this case was dismissed.

When ordered to submit her answer, Buri failed to comply. She did not even appear during the mandatory conference.

The IBP- CBD recommended Buri's suspension from the practice of law for a period of three (3) months, and ordered to pay the balance of P200,000.00. Respondent was found guilty violating Canon 1 of the CPR.

The IBP-BOG modified the recommendation of the IBP- Commissioner, and increased the suspension period from three (3) months to one (1) year, and the order to pay P200,000.00 is deleted.

ISSUE

Whether respondent is administratively liable.

RULING

YES. The Supreme Court affirmed the recommendation of the IBP- BOG, and found respondent guilty of violating the Code of Professional Responsibility (CPR), specifically Rule 1.01 of Canon 1 and Rule 7.03 of Canon 7 of the CPR.

The Supreme Court ruled that Buri's refusal to file an answer, attend the hearing, or to submit her position paper, despite due notice, is indicative of an implied admission of the charges levelled against her.

The Court has repeatedly emphasized that the practice of law is imbued with public interest. That Buri's act involved a private dealing with Yap is immaterial. Her repeated failure to file answer and position paper and to appear at the mandatory conference aggravates her misconduct.

The Court likewise upholds the deletion of the payment of P200,000 because the same is not intrinsically linked to Buri's professional engagement. Disciplinary proceedings should only revolve around the determination of the respondent lawyer's administrative and not his civil liability.

Thus, the Court ruled that when the claim involves money owed by the lawyer to his client in view of a separate and distinct transaction and not by virtue of a lawyer-client relationship, the same should be threshed out in a separate civil action.

The canons and rules of the CPR violated are:

CANON 1- A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

RULE 1.01- A LAWYER SHALL NOT ENGAGE IN UNLAWFUL, DISHONEST, IMMORAL OR DECEITFUL CONDUCT.

CANON 7 - A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTERGRATED BAR.

RULE 7.03- A LAWYER SHALL NOT ENGAGE IN CONDUCT THAT ADVERSELY REFLECTS ON HIS FITNESS TO PRACTICE LAW, NOR SHALL HE, WHETHER IN PUBLIC OR PRIVATE LIFE, BEHAVE IN A SCANDALOUS MANNER TO THE DISCREDIT OF THE LEGAL PROFESSION.

13) RE: ANONYMOUS LETTER COMPLAINT (with Attached Pictures) AGAINST ASSOCIATE JUSTICE NORMANDIE B. PIZARRO, COURT OF APPEALS,

FACTS

This administrative matter arose from an anonymous letter-complaint charging Associate Justice Normandie B. Pizarro (*Justice Pizarro*) of the Court of Appeals (*CA*) of habitually gambling in casinos, "selling" decisions, and immorally engaging in an illicit relationship. The subject letter-complaint was initially filed with the Office of the Ombudsman (*Ombudsman*) on 20 September 2017. The matter was referred by the Ombudsman to this Court on 24 October 2017.

The anonymous letter-complaint accused Justice Pizarro of being a gambling addict who would allegedly lose millions of pesos in the casinos daily, and insinuated that Justice Pizarro resorted to "selling" his cases in order to support his gambling addiction. The anonymous complainant further accused Justice Pizarro of having an illicit relationship, claiming that Justice Pizarro bought his mistress a house and lot in Antipolo City, a condominium unit in Manila, and brand new vehicles such as Toyota Vios and Ford Everest worth millions of pesos. Lastly, the anonymous complainant alleged that Justice Pizarro, together with his mistress and her whole

family, made several travels abroad to shop and to gamble in casinos. Attached to the anonymous letter-complaint are four (4) sheets of photographs showing Justice Pizarro sitting at the casino tables allegedly at the Midori Hotel and Casino in Clark, Pampanga.

On 8 December 2017, Justice Pizarro filed his comment wherein he admitted to his indiscretion. He stated that he was indeed the person appearing on the subject photographs sitting at a casino table. He explained that the photographs were taken when he was accompanying a *balikbayan* friend; and that they only played a little in a parlor game fashion without big stakes and without their identities introduced or made known. Justice Pizarro averred that the photographs may have been taken by people with ulterior motives considering his plan for early retirement. He further confessed that sometime in 2009 he also played at the casino in what he termed, again, a parlor game concept. He maintained, however, that such was an indiscretion committed by a dying man because, prior to this, he had learned that he had terminal cancer.

ISSUE

The sole issue before the Court is whether Justice Pizarro is guilty of the accusations against him for which he may be held administratively liable.

RULING

Yes. In this case, the anonymous complaint accused Justice Pizarro of selling favorable decisions, having a mistress, and habitually playing in casinos; and essentially charging him of dishonesty and violations of the Anti-Graft and Corrupt Practices Law, immorality, and unbecoming conduct. These accusations, however, with the only exception of gambling in casinos, are not supported by any evidence or by any public record of indubitable integrity. Thus, the bare allegations of corruption and immorality do not deserve any consideration. For this reason, the charges of corruption and immorality against Justice Pizarro must be dismissed for lack of merit.

Paragraphs 3 and 22 of the Canons of Judicial Ethics provide:

3. Avoidance of appearance of impropriety -

A judge's official conduct should be free from the appearance of impropriety, and his personal behavior, not only upon the bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach.

x x x x

22. Infractions of law -

The judge should be studiously careful himself to avoid even the slightest infraction of the law, lest it be a demoralizing example to others.

Further, Justice Pizarro also violated Canons 2 and 4 of the New Code of Judicial Conduct for the Philippine Judiciary which pertinently provides:

CANON 2
INTEGRITY

Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

SEC. 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

SEC. 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. *1âwphi1* Justice must not merely be done but must also be seen to be done.

x x x x

CANON 4

PROPRIETY

Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

SEC. 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

SEC. 2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office.

The Court has repeatedly reminded judges to conduct themselves irreproachably, not only while in the discharge of official duties but also in their personal behavior every day. No position demands greater moral righteousness and uprightness from its occupant than does the judicial office. Judges in particular must be individuals of competence, honesty and probity, charged as they are with safeguarding the integrity of the court and its proceedings. Judges should behave at all times so as to promote public confidence in the integrity and impartiality of the judiciary, and avoid impropriety and the appearance of impropriety in all their activities. A judge's personal behaviour outside the court, and not only while in the performance of his official duties, must be beyond reproach, for he is perceived to be the personification of law and justice. Thus, any demeaning act of a judge degrades the institution he represents.

Accordingly, the Court finds respondent Justice Pizarro guilty of conduct unbecoming of a member of the judiciary. Considering, however, that this is the respondent justice's first transgression, and further bearing in mind his immediate admission of his indiscretion as well as the number of years he has been in government service, the Court finds the imposition of a fine in the amount of ₱100,000.00 sufficient in this case.

WHEREFORE, the Court finds respondent Associate Justice Normandie B. Pizarro **GUILTY** of conduct unbecoming of a member of the judiciary, and is hereby **ORDERED** to pay a fine in the amount of ₱100,000,00.
SO ORDERED.

14) OFFICE OF THE COURT ADMINISTRATOR, Complainant, v. JUDGE WINLOVE M. DUMAYAS, BRANCH 59, REGIONAL TRIAL COURT, MAKATI CITY, Respondent.

NATURE OF THE CASE

This case stemmed from the charges against respondent Judge Winlove M. Dumayas for allegedly rendering a decision without citing the required factual and legal bases and by ignoring the applicable jurisprudence, which constitutes gross misconduct and gross ignorance of the law.

CANONS INVOLVED

CANON 3

A JUDGE SHOULD PERFORM OFFICIAL DUTIES HONESTLY, AND WITH IMPARTIALITY AND DILIGENCE

STATEMENT OF FACTS

Information was filed charging Juan Alfonso Abastillas, Crispin Dela Paz, Osric Cabrera, and Galiciano Datu III with the crime of murder under Article 248 of The Revised Penal Code.

The accused, conspiring and confederating with one another and all of them mutually helping and aiding, one another, with intent to kill and with the qualifying circumstance of abuse of superior strength did then and there stab one George Anikow with a knife, thereby inflicting upon the latter injuries and wounds on the different parts of his body, the fatal one of which is the stab wound on his neck, which directly caused his death.

Respondent Judge Dumayas imposed a light sentence against the accused, when he should have found them guilty of committing murder instead. The OCA found two (2) issues with said judge, particularly in the imposition of the penalties.

FIRST, he appreciated the presence of the privileged mitigating circumstance of incomplete self-defense by concluding that there was unlawful aggression on the part of American national George Anikow and that there was no sufficient provocation on the part of accused Crispin C. Dela Paz and Galiciano S. Datu III. In doing so, he totally ignored the positive testimony of security guard Jose Romel Saavedra and the physical evidence consisting of closed circuit television (CCTV) video footages of the incident clearly showing that Anikow had already fled, but was still pursued and viciously attacked and hit by the accused when they finally caught up with him.

It is a well-settled rule that the moment the first aggressor runs away, unlawful aggression on the part of the first aggressor ceases to exist, and when the unlawful aggression ceases, the defender no longer has any right to kill or wound the former aggressor; otherwise, retaliation and not self-defense is committed. Retaliation is not the same as self-defense.

SECOND, without mentioning any factual or legal basis therefor, Judge Dumayas appreciated in favor of Dela Paz and Datu III the ordinary mitigating circumstance of voluntary surrender, contrary to Saavedra's positive testimony that the four (4) accused, including Dela Paz and Datu III, warned him not to report

the incident or note their plate number as they were leaving the scene of the incident.

Judge Dumayas argued that judges cannot be held civilly, criminally, and administratively liable for any of their official acts, no matter how erroneous, as long as they act in good faith. He apologized for failing to quote in his Decision the portions of the testimony of the prosecution witnesses attesting to the voluntary surrender of the accused. He quoted a testimony of a security guards who apprehended the accused when they were trying to leave Rockwell Center.

RECOMMENDATORY RULING

The OCA recommended the imposition of the extreme penalty of dismissal: that Judge Winlove M. Dumayas be ADJUDGED GUILTY of gross ignorance of the law or procedure and gross misconduct, and be METED the penalty of DISMISSAL from the service, with forfeiture of his retirement benefits, except his accrued leave credits, and with prejudice to reinstatement in any branch of the government, including government owned and controlled corporations.

ISSUES

Whether or not Judge Dumayas violated the code of judicial conduct

RULING

YES. Under Canon 3 of the New Code of Judicial Conduct, impartiality applies not only to the decision itself, but also to the process by which the decision is made. When Judge Dumayas chose to simply ignore all the evidence showing that the accused still pursued Anikow after the latter had already run away, not even bothering to explain the irrelevance or lack of weight of the same, such act necessarily put the integrity of his entire Decision in question. It is clear that Judge Dumayas failed to hear and decide the subject case with the cold neutrality of an impartial judge.

Frst, Judge Dumayas downgraded the offense charged from murder to homicide.

Second, he inappropriately appreciated the privileged mitigating circumstance of self-defense and the ordinary mitigating circumstance of voluntary surrender despite the overwhelming testimonial and physical evidence to the contrary. **Third**, he sentenced Dela Paz and Datu III to suffer an indeterminate penalty of imprisonment of four (4) years, two (2) months, and one (1) day, as minimum, to six (6) years of *prision correccional*, as maximum, **which made them eligible for probation.** **Finally**, he granted the separate applications for probation of Dela Paz and Datu III.

The prosecution's evidence proves that (1) there was unlawful aggression on the part of Anikow; and (2) there was no provocation on the part of any of the accused.

In so far, however, as the second element of self-defense is concerned, this Court is convinced that the means employed by accused Dela Paz and Datu were unreasonable - there was no rational equivalence between the means of attack and the means of defense. Reasonableness of the means employed depends on the imminent danger of the injury to the person attacked; he acts under the impulse of self-preservation. He is not going to stop and pause to find out whether the means he has in his hands is reasonable. (*Eslabon vs. People, 127 SCRA 785*) True, Anikow committed unlawful aggression against the accused with his fists. However, the means used by the accused were unreasonable.

His complete disregard of the settled rules and jurisprudence on self-defense and of the events that transpired after the first fight, despite the existence of testimonial and physical evidence to the contrary, in the appreciation of the privileged mitigating circumstance of incomplete self-defense casts serious doubt on his impartiality and good faith.

2.) Likewise, his failure to cite in the Decision his factual and legal bases for finding the presence of the ordinary mitigating circumstance of voluntary surrender is not a mere matter of judicial ethics. **No less than the Constitution provides that no decision shall be rendered by any court without expressing clearly and distinctly the facts and the law on which it is based.**

The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself to the authorities either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture. On the contrary and far from being spontaneous, security guard Saavedra even testified that accused warned him not to report the incident or note their plate number as they were fleeing the scene of the incident. **Corollarily, the Court finds Judge Dumayas guilty of gross ignorance of the law and gross misconduct.**

Gross ignorance of the law is the disregard of basic rules and settled jurisprudence. A judge is presumed to have acted with regularity and good faith in the performance of judicial functions. Such, however, is not the case with Judge Dumayas. A blatant disregard of a clear and unmistakable provision of the Constitution upends this presumption and subjects the magistrate to corresponding administrative sanctions. Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from service, the misconduct must be grave and serious. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former.

Interestingly, Judge Dumayas has the several (13) administrative cases filed against him. That a significant number of litigants saw it fit to file administrative charges against Judge Dumayas, with most of these cases having the same grounds, *i.e.*, gross ignorance of the law or procedure and knowingly rendering unjust judgment, only shows how poorly he has been performing as a member of the bench.

PENALTY

WHEREFORE, the Court finds Judge Winlove M. Dumayas of Branch 59, Regional Trial Court, Makati City, **GUILTY** of gross ignorance of the law or procedure and gross misconduct and hereby **DISMISSES** him from the service with **FORFEITURE** of retirement benefits, except leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations.

15) MARIA ROMERO VS ATTY. GERONIMO R. EVANGELISTA, JR. A.C. NO. 11829; FEBRUARY 26, 2018

FACTS

For the Court's resolution is a Complaint for disbarment filed by Maria Romero (Maria) with the Integrated Bar of the Philippines (IBP) against Atty. Geronimo R. Evangelista, Jr. (Atty. Evangelista), for his alleged violation of several provisions of the Code of Professional Responsibility (CPR) and Canon 6 of the Canons of Professional Ethics.

In her Complaint, Maria alleged that in several cases, Atty. Evangelista represented her and her aunt Adela A. Romero (Adela), in their individual capacities and as Heirs of the Late Adela Aguinaldo Vda. De Romero. However, Atty. Evangelista subsequently represented the Spouses Joseph and Rosalina Valles in suits against Adela, such as Forcible Entry with Damages and Recovery of Possession and Ownership with Damages.

In his Answer, Atty. Evangelista admitted that he had handled cases involving the properties of the Romero clan, but not a single case for Maria. He explained that: a) there was never a lawyer-client relationship between him and Maria; b) his professional services were never retained by Maria nor did he receive any privileged information regarding Maria's cases; and c) Maria never paid him any legal fee.

Atty. Evangelista also contended that Adela is not a complainant in the disbarment case against him nor is there any proof that she authorized Maria to file a complaint on her (Adela's) behalf.

The IBP-Commission on Bar Discipline (CBD) found Atty. Evangelista to have represented conflicting interests and recommended that he be meted the penalty of suspension from the practice of law for one year. The IBP-CBD noted that Atty. Evangelista, who once lawyered for Adela, had accepted and handled legal actions against her. In his defense, Atty. Evangelista argued that Adela herself did not file a complaint against him. But, according to the IBP-CBD, Adela's participation in the filing of the action is not necessary since Atty. Evangelista's culpability had been established by documentary evidence on record. The IBP-Board of Governors adopted and approved *in toto* the Report and Recommendation of the IBP-CBD.

ISSUE

Whether Atty. Evangelista is guilty of representing conflicting interests

RULING

Yes. The relationship between a lawyer and his client should ideally be imbued with the highest level of trust and confidence. There is conflict of interest when a lawyer represents inconsistent interests of two or more opposing parties.

The rule against conflict of interest also "prohibits a lawyer from representing new clients whose interests oppose those of a former client in any manner, whether or not they are parties in the same action or on totally unrelated cases," since the representation of opposing clients, even in unrelated cases, "is tantamount to representing conflicting interests or, at the very least, invites suspicion of double-dealing which the Court cannot allow." The only exception is provided under Canon 15, Rule 15.03 of the CPR - if there is a written consent from all the parties after full disclosure. "Such prohibition is founded on principles of public policy and good taste as the nature of the lawyer-client relations is one of trust and confidence of the highest degree."

With Atty. Evangelista's admission that he retained clients who have cases against Adela without all the parties' written consent, it is clear that he has violated *Canon 15, Rule 15.03* of the CPR. Adela's non-participation in the filing of the instant complaint is immaterial, since it is stated under Section 1, Rule 139-B of the Rules of Court, as amended by Bar Matter No. 1645 that, "[proceedings for the disbarment, suspension or discipline of attorneys may be taken by the Supreme Court *motu proprio*, or upon the filing of a verified complaint of any person before the Supreme Court or the Integrated Bar of the Philippines (IBP)."

CANON 15 - A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENTS.

Rule 15.03. - A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

Considering that this is Atty. Evangelista's first offense in his more than 30 years of practice, the Court finds a six-month suspension from the practice of law to be an adequate and appropriate sanction against him.

WHEREFORE, in view of the foregoing, the Court finds Atty. Geronimo R, Evangelista, Jr. **GUILTY** of representing conflicting interests in violation of Rule 15.03, Canon 15 of the Code of Professional Responsibility and is **SUSPENDED** from the practice of law **for a period of six (6) months**, effective upon receipt of this Resolution, with a **STERN WARNING** that a commission of the same or similar offense in the future will result in the imposition of a more severe penalty.

16) ILUMINADA D. YUZON v. ATTY. ARNULFO M. AGLERON
A.C. No. 10684, January 24, 2018

FACTS

This administrative case arose from a Complaint filed by Iluminada Yuzon Vda. de Rodriguez (Iluminada) before the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD) seeking to disbar Atty. Arnulfo M. Agleron (Atty. Agleron), for misappropriating the amount of P582,000.00 which the respondent lawyer received in trust from the complainant.

Iluminada alleged that she gave Atty. Agleron the amount One Million Pesos (P1,000,000.00) meant for the purchase of a house and a lot of one Alexander Tenebroso (Alexander). However, since the intended purchase did not materialize, Iluminada demanded the return of the aforesaid amounts that she entrusted to Atty. Agleron, which the latter failed to return. Iluminada, through her lawyer, through a letter, demanded the return of the amount of P750,000.00. Atty. Agleron replied through a letter and explained that he already returned the amount of P418,000.00, and that the remaining balance is only P582,000.00 which shall be paid upon payment of his client who borrowed the said amount for his emergency operation after an accident. Iluminada also alleged that she filed an Estafa case under Article 315, paragraph 1(B) of the Revised Penal Code against Atty. Agleron.

Atty. Agleron claims that the balance of P582,000.00 was never misappropriated and/or converted to the personal use and benefit of Atty. Agleron as the said amount was borrowed for the emergency operation of a client who, at that time has nobody to turn to for help. Thus, Atty. Agleron's infraction should not warrant the imposition of the supreme penalty of disbarment. Atty. Agleron prayed that, if he be found guilty, the lesser penalty of fine should be imposed considering he rendered almost fifty (50) years of service in the government, and he is also an Officer and Member of the IBP, Davao Oriental Chapter.

Thus, the Investigating Commissioner is convinced that Atty. Agleron is guilty of Gross Misconduct under Section 27, Rule 138 for violating his duty to his client by converting and using his client's money. Accordingly, the penalty of suspension of one (1) year from the practice of law in any court was imposed on Atty. Agleron. Atty. Agleron filed with this Court an Urgent Motion for the Immediate Lifting of the Order of Suspension but was denied by the OBC.

ISSUE

Whether or not Atty. Algeron is guilty of Gross Misconduct

RULING

Yes. Jurisprudence is instructive that a lawyer's failure to return upon demand the monies he/she holds for his/her client gives rise to the presumption that he/she has appropriated the said monies for his/her own use, to the prejudice and in violation of the trust reposed in him/her by his/her client. Proceeding from the premise that

indeed Atty. Agleron merely wanted to help another client who is going through financial woes, he, nevertheless, acted in disregard of his duty as a lawyer with respect to Iluminada. Such act is a gross violation of general morality, as well as of professional ethics.

It is of no moment as well that Atty. Agleron's property has been subjected to a levy; thus, his claim in his Urgent Motion for the Immediate Lifting of the Order of Suspension that with such levy he has even overpaid Iluminada, considering that the total value of his property is P2,912,000.00 is bereft of merit. Levy is defined as the act or acts by which an officer of the law and court sets apart or appropriates a part or the whole of the judgment debtor's property for the purpose of eventually conducting an execution sale to the end that the writ of execution may be satisfied, and the judgment debt, paid. Thus, there must be an execution sale first before he can claim that he already complied with his legal obligation.

Further, respondent also violated Rules 16.01 and 16.03, Canon 16 of the Code of Professional Responsibility (*CPR*) when he failed to return upon demand the amount Iluminada entrusted to him, *viz.*:

CANON 16 — A LAWYER SHALL HOLD IN TRUST ALL MONIES AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

Rule 16.01 — A lawyer shall account for all money or property collected or received for or from the client.

xxxx

Rule 16.03 — A lawyer shall deliver the funds and property of his client when due or upon demand. x x x15

As to the issue on when is the effectivity of the order of suspension, the OBC aptly explained in its Report and Recommendation dated February 16, 2016, that the Court merely noted the IBP's Notice of Resolution which suspended Atty. Agleron from the practice of law and that such act does not imply the approval of the same. Here, this Court is yet to finally resolve first the merit of this administrative case. Thus, the effectivity of the order of suspension has not actually commenced and it is erroneous on Atty. Agleron's part to claim in his Motion that he has already served the one (1) year suspension from the date of the issuance of the IBP Notice of Resolution is bereft of merit.

Jurisprudence is instructive that as guardian of the legal profession, this Court has the ultimate disciplinary power over members of the Bar to ensure that the highest standards of competence, honesty and fair dealing are maintained. Verily, this Court has the final say on imposition of sanctions to be imposed on errant members of both bench and bar, this Court has the prerogative of making its own findings and rendering judgment on the basis thereof rather than that of the IBP, OSG, or any lower court to whom an administrative complaint has been referred to for investigation and report.

**16) PROSECUTOR LEO T. CAHANAP v. JUDGE LEONOR S. QUIÑONES,
REGIONAL TRIAL COURT, BRANCH 6, ILIGAN CITY, LANA DEL
NORTE**

ALLEGATION/S: Gross Ignorance of the Law, Gross Misconduct and violation of the Code of Judicial Conduct.

CANONS VIOLATED:

Section 3, Canon 5 of the New Code of Judicial Conduct: Judges shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

Rule 3.04- A judge should be patient, attentive, and courteous to lawyers, especially the inexperienced, to litigants, witnesses and others appearing before the court. A judge should avoid unconsciously falling into the attitude of mind that the litigants are made for the courts, instead of the courts to the litigants.

Section 6, Canon 6: Judges shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others with whom the judge deals in an official capacity. Judges shall require similar conduct of legal representatives, court staff and others subject to their influence, direction or control.

FACTS

Complainant Prosecutor Leo T. Cahanap filed the instant administrative complaint for the following alleged acts of respondent Judge:

1. Complainant alleged that in his last two (2) years as a prosecutor in Branch 6, he suffered unbearable and intolerable oppression in the hands of respondent Judge. Complainant asserted that the prosecutors, who previously appeared before respondent Judge, opted to be assigned to other courts as they too experienced humiliation and harsh treatment from her. Further, respondent Judge's staff themselves were subjected to respondent Judge's insolent behavior.
2. Complainant further accused respondent Judge of habitual tardiness which delayed the start of court sessions, usually at 9:30 or 10:00 in the morning, earning for her sala the moniker "Branch 10".
3. In the proceedings for the case of People v. Heck, respondent Judge, in open court and heard by the public, asked private complainant, Hanna Mamad, to go to her house because she was interested in buying jewelry items from her. Complainant averred that when he called Mamad, Mamad confirmed that respondent Judge bought jewelry from her. Court personnel have also testified that respondent Judge showed off the jewelry she bought from Mamad.

4. In proceedings in the case of *People v. Macapato*, respondent Judge issued an Order dated June 18, 2012, directing the release of accused vehicle despite the prosecution's written opposition on the ground that the vehicle has yet to be presented as evidence in court and has yet to be formally offered before the court could acquire jurisdiction. Respondent Judge immediately set accused's subject motion for the release of accused Dimaampao's vehicle for hearing a day after it was filed, in violation of the three-day notice rule. The Transcript of Stenographic Notes (TSN) of the hearing revealed that respondent Judge showed her bias and practically acted as defense counsel, prompting the prosecution to move for the inhibition of respondent Judge.
5. In the case of *People v. Tingcang*, respondent Judge dismissed the case provisionally without prejudice to its refile upon the availability of the prosecution's witnesses on the ground of speedy trial. The prosecution lamented that the delay in the proceedings was due to the absence of the accused that has been in hiding since 1996.
6. In the case of *People v. Casido*, respondent Judge dismissed a complaint for Attempted Murder due to the absence of a fatal wound on the victim, which the prosecution believed to be misplaced in information for Attempted Murder.
7. Complainant averred that respondent Judge also mistreated her court staff. Respondent Judge allegedly shouted at a court stenographer, and called her "bobo" which meant dumb. Respondent Judge berated another stenographer and shouted at the latter "punyeta ka" and "buwisit ka".

Comment of the Respondent Judge:

1. Respondent Judge denied that she maltreated the prosecutors assigned to her sala and she submitted documents to prove that the prosecutors requested for transfer for other valid reasons.
2. Relative to the Heck Case, respondent Judge denied having asked jewelry from Mamad, the private complainant in the subject case.
3. Respondent Judge reasoned that she immediately acted on the motion of the defense in the Macapato Case because an urgent motion is exempted from the three-day notice rule. She maintained that the motion was granted and was issued in good faith in the performance of judicial functions.²⁴
4. Respondent Judge also insisted that her order of dismissal in the Tingcang Case was issued in good faith in the performance of her judicial functions.²⁵
5. Respondent Judge admitted her mistake in the Casido Case, averring that the finding of lack of probable cause on the basis of absence of a 'fatal injury' was an error but an error of judgment made in good faith.

6. In response to the allegation that she unduly interfered in the court proceedings, respondent Judge explained that she merely reminded lawyers of the purpose of enforcing the rules and to elicit evidence with sufficient probative value to help in the search for truth.
7. On her alleged offensive and disrespectful attitude towards her staff, respondent Judge denied doing so and claimed that she merely rebuked or admonished them in the exercise of her supervisory authority.
8. Respondent Judge also admitted arriving late to court but denied that her tardiness was often or habitual.

OCA RESOLUTION

The Office of the Court Administrator (OCA) recommended that the charges against respondent Judge relative to the issuance of the (1) Order dated June 18, 2012 in the Macapato Case, (2) Order dated June 18, 2012 in the Tingcang Case for the dismissal of the case on the ground of violation of the accused's right to speedy trial, and (3) Order relative to the Casido Case, dismissing the same for lack of probable cause, be dismissed for involving issues judicial in nature which are beyond the purview of an administrative proceeding. The OCA reasoned that a party's remedy, if prejudiced by the orders of a judge given in the course of a trial, lies with the proper reviewing court, not with OCA by means of an administrative complaint.

With respect however to the other charges, pertaining largely to the demeanor of respondent Judge, the OCA found that the same appear to be serious.³⁴ However, because of the conflicting versions presented by the parties, there exist factual issues that cannot be resolved merely on the basis of the records at hand, and can be ventilated only in a formal investigation where the parties can adduce their respective evidence.

The OCA thus recommended that the remaining charges filed against respondent Judge be referred to the Executive Justice of the Court of Appeals, Cagayan de Oro City, for raffle among the Justices thereat for investigation, report and recommendation within sixty (60) days from receipt of the records. Third Division of the Court adopted the recommendations of the OCA.

REPORT OF INVESTIGATING JUSTICE MARIA FILOMENA D. SINGH:

The testimonies of the court staff witnesses and the Branch Clerk of Court uniformly pointed to the habitual tardiness of respondent Judge in coming to work and holding court hearings, which they consistently testified to as generally starting between 9:00 and 9:30 in the morning.⁴² In the judicial affidavit of complainant, he attested that during his time as the public prosecutor in respondent Judge's sala, respondent Judge started court hearings at 9:30 a.m., instead of 8:30 a.m.⁴³ The successor of complainant, Assistant City Prosecutor Diaz, also confirmed that respondent Judge commenced court sessions between 9:30 a.m. and 10:00 a.m.

On the charge of Oppression, the Investigating Justice found that respondent Judge failed to show compassion, patience, courtesy and civility to lawyers who appear before her in contravention of the mandates of the New Code of Judicial Conduct which sets the high standards of demeanor before all judges must observe.

Investigating Justice Maria Filomena D. Singh (Investigating Justice) recommended that respondent Judge be held administratively liable for Oppression with a fine of P40,000.00 and Habitual Tardiness with a fine of P20,000.00. The Investigating Justice also recommended that respondent Judge be transferred to a different court considering the irretrievably strained relations between respondent Judge and the court staff; and that the names of certain witnesses be blocked from the decision that the Court will render in this case.

OCA REPORT (2015)

The OCA, in their Report dated October 26, 2015, agree and adopted the findings of the Investigating Justice.

The OCA pointed out that one significant aspect that became apparent during the investigation is respondent Judge's competence in the performance of her duties. True, she was exonerated in the instant complaint because the issues raised were judicial in nature and in another case for grave abuse of discretion, dishonesty and partiality for lack of merit. But, as testified to by witnesses, respondent Judge did not personally prepare the court's orders, resolutions and decisions; she did not know the details of some cases before her; and she does not possess proficiency in English. Yet, respondent Judge remained intractable and would not own up to her mistakes and shortcomings.

The OCA held that respondent Judge violated the Code of Judicial Conduct for her repeated acts of oppression against lawyers and court staff (gross misconduct) which constitute serious charge pursuant to Rule 140, Section 8 of the Revised Rules of Court punishable by dismissal, suspension from office for more than three (3) to six (6) months or a fine of more than P20, 000.00 to P40, 000.00. The OCA also held that respondent Judge is also guilty of habitual tardiness which is a less serious charge sanctioned by either suspension from office for not less than one (1) nor more than three (3) months or a fine of more than P10, 000.00 but not exceeding P20, 000.00. The OCA noted that the penalties that may be imposed on respondent Judge may be mitigated by her being a first offender as she has never been previously sanctioned. She has also offered her apology. One staff member said that she would sometimes show motherly care and compassion towards her staff.⁸¹ Further, her "temper explosions" are no longer as frequent as before. Anent Justice Singh's recommendation that respondent Judge be transferred to a different court considering the strained relations between respondent Judge and the court staff, the OCA recommended that respondent Judge be given a fair chance to change her unpleasant attitude and behavior.

ISSUE

Whether or not the respondent judge should be held administratively liable?

RULING

The Court agrees with the findings of the OCA.

The Court has time and again reminded the members of the bench to faithfully observe the prescribed official hours to inspire public respect for the justice system. It has issued Supervisory Circular No. 14 dated October 22, 1985, Circular No. 13 dated July 1, 1987, and Administrative Circular No. 3-99 dated January 15, 1999 to reiterate the trial judges' mandate to exercise punctuality in the performance of their duties.

The aforesaid circulars are restatements of the Canons of Judicial Ethics which enjoin judges to be punctual in the performance of their judicial duties, recognizing that the time of litigants, witnesses, and attorneys is of value, and that if the judge is not punctual in his habits, he sets a bad example to the bar and tends to create dissatisfaction in the administration of justice.⁸⁸

The OCA aptly found that the testimonies of the prosecutors and the court staff unquestionably proved that respondent Judge failed to observe the prescribed official hours as repeatedly enjoined by the Court. Respondent Judge's own branch clerk of court even testified that court sessions commenced between 9:00 a.m. and 10:00 a.m. although the Minutes of the Proceedings reflected the time at 8:30 a.m.⁸⁹ The OCA also correctly observed that respondent Judge failed to show compassion, patience, courtesy and civility to lawyers who appear before her in contravention of the mandates of the Code of Judicial Ethics, which sets the high standards of demeanor all judges must observe. The Court is convinced that respondent Judge is guilty of Oppression as shown in several incidents of misbehavior by respondent Judge.

The Court has previously ruled that "[a] display of petulance and impatience in the conduct of trial is a norm of behavior incompatible with the needful attitude and sobriety of a good judge."

Thus, the Court finds the imposition of fines amounting to Forty Thousand Pesos (P40, 000.00) and Twenty Thousand Pesos (P20, 000.00), appropriate given the prevailing facts of the present case vis-a-vis respondent Judge's record for habitual malfeasance in office.

WHEREFORE, IN VIEW OF THE FOREGOING, the Court hereby finds respondent Presiding Judge Leonor S. Quiñones, Branch 6, Regional Trial Court, Iligan City GUILTY of (1) Oppression (gross misconduct constituting violations of the Code of Judicial Conduct) and FINED in the amount of Forty Thousand Pesos (P40,000.00); and (2) Habitual Tardiness and FINED in the amount of Twenty Thousand Pesos (P20,000.00), with WARNING that a repetition of the same or similar acts shall be dealt with more severely.

18) RET. JUDGE VIRGILIO ALPAJORA, Complainant vs. ATTY. RONALDO ANTONIO V. CALAYAN, Respondent, A.C. 8208, GESMUNDO, J.**FACTS**

In his Comment/Opposition with Counter-Complaint to Discipline Complainant, complainant charged respondent with (a) filing a malicious and harassment administrative case, (b) propensity for dishonesty in the allegations in his pleadings, (c) misquoting provisions of law, and (d) misrepresentation of facts. Complainant prayed for respondent's disbarment and cancellation of his license as a lawyer.

Position of complainant

Complainant alleged that he partially tried and heard Civil Case No. 200710, an intra-corporate case filed against respondent, when he later voluntarily inhibited himself from it on account of the latter's filing of the administrative case against him. The intra-corporate case was previously tried by Presiding Judge Adolfo Encomienda until he voluntarily inhibited after respondent filed an Urgent Motion to Recuse and a Supplement to Defendant's Urgent Motion to Recuse on the grounds of undue delay in disposing pending incidents, gross ignorance of the law and gross inefficiency. After Presiding Judge Encomienda inhibited himself, the case was re-raffled to the sala of Executive Judge Norma Chionglo-Sia, who also inhibited herself because she was about to retire. The case was referred to Executive Judge Eloida R. de Leon-Diaz for proper disposition and re-raffle. The case was finally raffled to complainant.

Complainant averred that the administrative case against him by respondent was brought about by his issuance of the omnibus order, where he ordered the creation of a management committee and appointment of its members. Complainant further claimed that before the records of Civil Case 2007-10 was transmitted to his sala and after he had inhibited from said case, respondent filed thirteen (13) civil and special actions before the RTC of Lucena City. Atty. Calayan also filed two (2) related intra-corporate controversy cases - violating the rule on splitting causes of actions involving the management and operation of the foundation. According to complainant, these showed the propensity and penchant of respondent in filing cases, whether or not they are baseless, frivolous or unfounded, with no other intention but to harass, malign and molest his opposing parties, including the lawyers and the handling judges. Complainant also disclosed that before his sala, respondent filed eighteen (18) repetitious and prohibited pleadings. To complainant's mind, the ultimate and ulterior objective of respondent in filing the numerous pleadings, motions, manifestation and explanations was to prevent the takeover of the management of CEFI and to finally dismiss the case at the pre-trial stage. Complainant further revealed that due to the series of motions for recusation or inhibition of judges, there is no presiding judge in Lucena City available to try and hear the Calayan cases. Moreover, respondent filed nine (9) criminal charges against opposing lawyers and their respective clients before the City Prosecutor of Lucena City. In addition, there were four (4) administrative cases filed against opposing counsels pending before the IBP Commission on Bar Discipline.

Based on the foregoing, complainant asserted that respondent committed the following: (1) serious and gross misconduct in his duties as counsel for himself; (2) violated his oath as lawyer for [a] his failure to observe and maintain respect to the courts (Section 20(b), Rule 138, Rules of Court); [b] by his abuse of judicial process thru maintaining actions or proceedings inconsistent with truth and honor and his acts to mislead the judge by false statements (Section 20(d), Rule 138); (3) repeatedly violated the rules of procedures governing intra-corporate cases and maliciously misused the same to defeat the ends of justice; and (4) knowingly violated the rule against the filing of multiple actions arising from the same cause of action.

Position of respondent

In his Position Paper, respondent countered that the subject case is barred by the doctrine of res judicata. He stressed that because no disciplinary measures were leveled on him by the OCA as an outcome of his complaint, charges for malpractice, malice or bad faith were entirely ruled out; more so, his disbarment was decidedly eliminated. Respondent argued that the doctrine of res judicata was embedded in the OCA's finding that his complaint was judicial in nature. Respondent also claimed that the counter-complaint was unverified and thus, without complainant's own personal knowledge; instead, it is incontrovertible proof of his lack of courtesy and obedience toward proper authorities and fairness to a fellow lawyer.

Further, respondent maintained that complainant committed the following: (1) grossly unethical and immoral conduct by his impleading a non-party; (2) betrayal of his lawyer's oath and the Code of Professional Responsibility (CPR); (3) malicious and intentional delay in not terminating the pretrial,²² in violation of the Interim Rules because he ignored the special summary nature of the case; and (4) misquoted provisions of law and misrepresented the facts.

In any case, based on the parties' position papers, the Investigating Commissioner concluded that respondent violated Section 20, Rule 138 of the Rules of Court, Rules 8.01, 10.01 to 10.03, 11.03, 11.04, 12.02 and 12.04 of the CPR and, thus, recommended his suspension from the practice of law for two (2) years, for the following reasons:

1. Respondent did not deny having filed four (4) cases against the counsel involved in the intra corporate case from which the subject administrative cases stemmed, and nine (9) criminal cases against the opposing parties, their lawyers, and the receiver before the Office of the Prosecutor of Lucena City - all of which were subject of judicial notice.
2. Respondent committed misrepresentation when he cited a quote from former Chief Justice Hilario Davide, Jr. as a thesis when, in fact, it was a dissenting opinion.
3. Respondent grossly abused his right of recourse to the courts by the filing of multiple actions concerning the same subject matter or seeking substantially identical relief.

4. Respondent violated Canon 11 of the CPR by attributing to complainant ill-motives that were not supported by the record or had no materiality to the case.

IBP Board of Governors issued a Resolution adopting and approving the report and recommendation of the Investigating Commissioner. It recommended the suspension of respondent from the practice of law for two (2) years. Aggrieved, respondent moved for reconsideration. In a Resolution,⁴¹ dated May 4, 2014, the IBP Board of Governors denied respondent's motion for reconsideration as there was no cogent reason to reverse the findings of the Commission and the motion was a mere reiteration of the matters which had already been threshed out.

ISSUE

Whether or not Atty. Calayan is guilty of violating the lawyer's oath and the CPR?

RULING

Yes, The Court adopts the findings of the Investigating Commissioner and the recommendation of the IBP Board of Governors.

The Court, however, emphasizes that a case for disbarment or suspension is not meant to grant relief to a complainant as in a civil case, but is intended to cleanse the ranks of the legal profession of its undesirable members in order to protect the public and the courts. Proceedings to discipline erring members of the bar are not instituted to protect and promote the public good only, but also to maintain the dignity of the profession by the weeding out of those who have proven themselves unworthy thereof.

In this case, perusal of the records reveals that Atty. Calayan has displayed conduct unbecoming of a worthy lawyer. Atty. Calayan is guilty of harassing opposing counsel, attributing unsupported ill-motives against a judge, failed to observe candor, fairness and good faith before the court; and failed to assist in the speedy and efficient administration of justice.

Respondent justifies his filing of administrative cases against certain judges, including complainant, by relying on *In Re: Almacén* (Almacén). He claims that the mandate of the ruling laid down in *Almacén* was to encourage lawyers' criticism of erring magistrates. In *Almacén*, however, it did not mandate but merely recognized the right of a lawyer, both as an officer of the court and as a citizen, to criticize in properly respectful terms and through legitimate channels the acts of courts and judges.

Indubitably, the acts of respondent were in violation of his duty to observe and maintain the respect due to the courts of justice and judicial officers and his duty to never seek to mislead the judge or any judicial officer. In his last ditch attempt to escape liability, respondent apologized for not being more circumspect with his remedies and choice of words. He admitted losing objectivity and becoming emotional while pursuing the cases involving him and the CEFI. The Court, however,

reiterates that a lawyer's duty, is not to his client but primarily to the administration of justice.

WHEREFORE, the Court ADOPTS and APPROVES the Resolution of the Integrated Bar of the Philippines - Board of Governors dated September 28, 2013. Accordingly, Atty. Ronaldo Antonio V. Calayan is found GUILTY of violating The Lawyer's Oath and The Code of Professional Responsibility and he is hereby ordered SUSPENDED from the practice of law for two (2) years, with a STERN WARNING that a repetition of the same or a similar offense will warrant the imposition of a more severe penalty.

19) ANONYMOUS, Complainant, v. JUDGE BILL D. BUYUCAN, MUNICIPAL CIRCUIT TRIAL COURT, BAGABAG-DIADI, NUEVA VIZCAYA, Respondent.

FACTS

On June 26, 1969, Proclamation No. 573 was signed, which set aside certain lands of the public domain as permanent forest reserves. Included in the said reservation was a 193-hectare parcel of land located in Sitio Tapaya, Villaros, Bagabag, Nueva Vizcaya, a portion of which was granted to the Department of Agriculture (DA) for research purposes.

As there was a need to clear the Subject Property of informal settlers already residing therein, the DA filed several criminal and civil cases before the Municipal Circuit Trial Court of Bagabag-Diadi, Nueva Vizcaya (MCTC), which is presided over by respondent Judge Buyucan. The said cases were eventually dismissed by respondent Judge Buyucan

A few months later, in August 2008, respondent Judge Buyucan acquired a parcel of land located *within* the Subject Property, the same respondent in the previously dismissed cases.

A Motion for Voluntary Inhibition dated March 9, 2009 was then filed by the Office of the Solicitor General (OSG), seeking the inhibition of respondent Judge Buyucan as he was also residing within the very same property involved in the said criminal cases.

OMB informed the OCA of an anonymous text message received which resulted to Hon. Fernando F. Flor, Jr. (Judge Flor), for investigation and report.

Judge Flor gathered the following facts:

Judge Buyucan is occupying an approximate area of one (1) hectare where he keeps and maintains his fighting cock farm. A year ago, he started constructing a two-storey house made of strong materials without securing a building permit.

Judge Buyucan denied knowledge of the DA's ownership of the Subject Property. Respondent Judge Buyucan also claimed that the alleged two (2)-storey house actually belonged to his nephew and that what he constructed were merely a

"temporary Ifugao native house" and an adjacent shanty.²⁴ He further stated that he is, in any case, ready to vacate the area if and when the DPWH needs it.

Judge Flor recommended the penalty of dismissal from the service against respondent Judge Buyucan as a result of the foregoing acts

(OCA):

(1) The instant administrative complaint be RE-DOCKETED as a regular administrative matter against Judge Bill D. Buyucan, Municipal Circuit Trial Court, Bagabag-Diadi, Nueva Vizcaya;

(2) Judge Buyucan be found GUILTY of gross misconduct and violation of the Code of Judicial Conduct and be SUSPENDED for a period of six (6) months from office without salary and other benefits; and

(3) Judge Buyucan be ordered to IMMEDIATELY VACATE the land owned by the Department of Agriculture-Cagayan Valley Hilly Land Research Outreach Station, REMOVE the structures he introduced thereon; and SUBMIT a report on his compliance within a period of thirty (30) days from notice.

ISSUE

Whether respondent Judge Buyucan is guilty of gross misconduct.

RULING

YES, Judge Buyucan is liable.

Judge Buyucan's claim that he was not occupying a portion of the Subject Property is plainly belied by the verification plan prepared by the DENR, which forms part of the records of this case. Proceeding therefrom, the Court so finds that respondent Judge Buyucan was indeed an illegal occupant of the Subject Property.

In any case, even assuming that respondent Judge Buyucan did not occupy a portion of the Subject Property, he is still liable due to his admission in his Letter that he was then occupying a portion of the RRW of the DPWH Nueva Vizcaya-Isabela National Road.

By his own admission, respondent Judge Buyucan acquired the occupied portion of the Subject Property **only a few months after dismissing Civil Case No. 626.**⁵⁰ As stated earlier, it bears stressing that one of the vendors in the alleged transaction was Eling Valdez, one of the respondents in Civil Case No. 626 and the accused in Criminal Case No. 4691.⁵¹

Lastly, the Court also notes that despite repeated demands from the DA, respondent Judge Buyucan refused to cease his illegal occupation of the Subject Property.

Persons involved in the administration of justice are expected to uphold the strictest standards of honesty and integrity in the public service; their conduct must always be beyond reproach and circumscribed with the heavy burden of responsibility.

At the outset, respondent Judge Buyucan's continued illegal settlement erodes the public's confidence in its agents of justice considering that such act amounts to an arbitrary deprivation of the DA's ownership rights over the Subject Property. Even worse, his continued refusal to vacate instigated the continued illegal occupation of other informal settlers residing therein. Canon 2 of the New Code of Judicial Conduct⁵⁵ requires that the conduct of judges must reaffirm the people's faith in the integrity of the judiciary and that their conduct must, at the least, be perceived to be above reproach in the view of a reasonable observer. Based on the foregoing acts alone, it is clear the respondent Judge Buyucan fell short of the required conduct of all members of the bench.

In the same vein, the Court faults respondent Judge Buyucan for his act of acquiring a portion of the Subject Property from a respondent in a case pending before his *sala*. His act is further aggravated by the fact that the respondent therein, Eling Valdez, received a favorable judgment just a few months before the purported sale.

Impartiality is essential to the proper discharge of the judicial office. **Section 2 of Canon 3 of the New Code of Judicial Conduct mandates that a judge shall ensure that his conduct, both in and out of court, maintains and enhances the confidence of the public and litigants in his impartiality and that of the judiciary.** In this respect, respondent Judge Buyucan's conduct incites intrigue and puts into question his impartiality in deciding the cases then pending before him. Such conduct unquestionably gives rise to the impression that he was motivated by extraneous factors in ruling on the said cases.

A judge should, in pending or prospective litigation before him, be scrupulously careful to avoid such action as may reasonably tend to waken the suspicion that his social or business relations or friendships constitute an element in determining his judicial course. He must not only render a just, correct and impartial decision but should do so in such a manner as to be free from any suspicion as to his fairness, impartiality and integrity.

Guided by the foregoing standards, the Court hereby finds respondent Judge Buyucan guilty of gross misconduct for his flagrant violation of the standard of conduct embodied in the New Judicial Code of Judicial Conduct.

To prove that he legally occupies the subject land, Judge Buyucan presented the Waiver of Rights executed by Ernesto Bagos in his favor. However, the said land transferred to him is within the land owned by the DA-CVHILROS which has been the subject of a controversy between the DA and the occupants of the land which was brought to his court for adjudication. Hence, Judge Buyucan's rights over the land are still questionable as the DA has yet to take appropriate action against him and claimants of the land.

The Court takes note of the undisputed fact that respondent Judge Buyucan is occupying public land. Thus, while respondent Judge Buyucan denies the DA's ownership, he nevertheless admitted on record he is encroaching on what he claims to be the RRW of the DPWH beside the Nueva Vizcaya-Isabela National Road.

PENALTY: **DISMISSED** from the service, with **FORFEITURE OF ALL BENEFITS**, except accrued leave credits. He is likewise **DISQUALIFIED** from reinstatement or appointment to any public office or employment, including to one in any government-owned or government-controlled corporations.

He is likewise ordered to **IMMEDIATELY VACATE** the land known as the Department of Agriculture Cagayan Valley Hillyland Research Outreach Station, **REMOVE** the structures he introduced thereon, and **SUBMIT** a report on his compliance within a period of thirty (30) days from notice.

Further, respondent Bill D. Buyucan is directed to **SHOW CAUSE** in writing within ten (10) days from notice why he should not be disbarred for violation of the Lawyer's Oath, the Code of Professional Responsibility, and the Canons of Professional Ethics as outlined herein.



